

Tab 1	SB 634 by Bradley; (Similar to H 00677) Judicial Notice						
321424	A	S	RCS	CM, Bradley	Delete L.24 - 41:	01/25 11:05 AM	
Tab 2	SB 1038 by Perry; (Similar to CS/H 00907) Florida Seaport Transportation and Economic Development Council						
Tab 3	SB 1618 by Broxson; (Identical to H 01191) Restrictions on Employment						
679300	A	S	RCS	CM, Broxson	Delete L.18:	01/25 11:07 AM	
Tab 4	SB 1718 by Book (CO-INTRODUCERS) Taddeo; (Identical to H 01279) Cosmetic Animal Testing						
539134	A	S	RCS	CM, Book	Delete L.45:	01/25 11:07 AM	
Tab 5	SB 1762 by Brandes; (Identical to H 01537) Solicitation of Nonmedical Services						
Tab 6	SB 1800 by Boyd; (Similar to H 01543) Broadband Infrastructure						
240514	A	S	RCS	CM, Boyd	Delete L.263:	01/25 11:08 AM	
Tab 7	SB 1802 by Boyd; (Identical to H 01545) Broadband Pole Replacement Trust Fund						
621096	A	S	RCS	CM, Boyd	Delete L.49:	01/25 11:08 AM	
Tab 8	SB 1564 by Hutson; (Compare to CS/H 01095) Telephone Solicitation						
183960	D	S	RCS	CM, Hutson	Delete everything after	01/25 11:09 AM	
Tab 9	SB 1878 by Gruters; Capital Investment Tax Credit						

The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA

COMMERCE AND TOURISM
Senator Hooper, Chair
Senator Wright, Vice Chair

MEETING DATE: Monday, January 24, 2022
TIME: 3:00—5:00 p.m.
PLACE: *Toni Jennings Committee Room*, 110 Senate Building

MEMBERS: Senator Hooper, Chair; Senator Wright, Vice Chair; Senators Diaz, Garcia, Gruters, Hutson, Pizzo, Powell, Taddeo, and Torres

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	SB 634 Bradley (Similar H 677)	Judicial Notice; Authorizing courts to take judicial notice of certain information taken from web mapping services, global satellite imaging sites, or Internet mapping tools upon request of a party; requiring parties who intend to offer such information into evidence to file a notice of intent containing specified information; authorizing parties to object to the admissibility of such information; requiring courts to overrule such objection unless certain findings are made, etc. JU 11/30/2021 Not Considered JU 01/10/2022 Favorable CM 01/24/2022 Fav/CS RC	Fav/CS Yeas 9 Nays 0
2	SB 1038 Perry (Similar H 907)	Florida Seaport Transportation and Economic Development Council; Revising the membership of the Florida Seaport Transportation and Economic Development Council to include a representative of Putnam County; authorizing Putnam County to apply for a grant for a port feasibility study through the Florida Seaport Transportation and Economic Development Council; requiring the Department of Transportation to include the study in its budget request under certain circumstances; terminating the membership of Putnam County on the council under certain circumstances, etc. TR 01/12/2022 Favorable CM 01/24/2022 Favorable RC	Favorable Yeas 9 Nays 0
3	SB 1618 Broxson (Identical H 1191)	Restrictions on Employment; Providing that restrictive covenants are only enforceable against a former employee, agent, or independent contractor who voluntarily resigned or was terminated because of misconduct; defining the term "misconduct", etc. CM 01/24/2022 Fav/CS JU RC	Fav/CS Yeas 9 Nays 0

COMMITTEE MEETING EXPANDED AGENDA

Commerce and Tourism

Monday, January 24, 2022, 3:00—5:00 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	SB 1718 Book (Identical H 1279)	Cosmetic Animal Testing; Citing this act as the "Humane Cosmetics Act"; prohibiting a manufacturer from manufacturing, importing for profit, selling, or offering for sale a cosmetic developed or manufactured using cosmetic animal testing conducted or contracted by certain persons or from conducting or contracting for cosmetic animal testing; providing exceptions; providing labeling requirements for specified cosmetics; providing enforcement and civil penalties, etc. CM 01/24/2022 Fav/CS AP RC	Fav/CS Yeas 9 Nays 0
5	SB 1762 Brandes (Identical H 1537)	Solicitation of Nonmedical Services; Providing that a person who submits or sponsors a nonmedical solicitation that contains certain terminology or fails to include specified disclosures commits a deceptive and unfair trade practice, subject to the penalties and remedies of the Florida Deceptive and Unfair Trade Practices Act; prohibiting the unauthorized use, sale, transfer, or disclosure of protected health information for the purpose of soliciting professional services; providing that a person who willfully and knowingly violates such prohibition commits a deceptive and unfair trade practice, subject to the penalties and remedies of the Florida Deceptive and Unfair Trade Practices Act, etc. CM 01/24/2022 Temporarily Postponed JU RC	Temporarily Postponed
6	SB 1800 Boyd (Similar H 1543, Compare H 1545, Linked S 1802)	Broadband Infrastructure; Revising the duties of the Florida Office of Broadband to include administering the Broadband Pole Replacement Program; establishing the Broadband Pole Replacement Program within the office; requiring the Secretary of Economic Opportunity to apply for certain federal funding for the program; requiring that the amount of state funds allocated to the program be reduced by the amount of certain federal funds provided to the program; requiring an audit of the Broadband Pole Replacement Trust Fund within a certain period of time, etc. CM 01/24/2022 Fav/CS ATD AP	Fav/CS Yeas 9 Nays 0

COMMITTEE MEETING EXPANDED AGENDA

Commerce and Tourism

Monday, January 24, 2022, 3:00—5:00 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
7	SB 1802 Boyd (Identical H 1545, Compare H 1543, Linked S 1800)	Broadband Pole Replacement Trust Fund; Creating the trust fund within the Department of Economic Opportunity; providing the purpose of the trust fund; providing that moneys credited to the trust fund shall consist of certain funds; requiring that funds in the trust fund be used in a manner consistent with federal law; providing that the balance in the trust fund at the end of a fiscal year remains in the trust fund and is available for carrying out the purposes of the trust fund; providing for future legislative review and termination or re-creation of the trust fund, etc. CM 01/24/2022 Fav/CS ATD AP	Fav/CS Yeas 9 Nays 0
8	SB 1564 Hutson (Compare CS/H 1095)	Telephone Solicitation; Revising the definitions of the terms "prior express written consent" and "unsolicited telephonic sales call"; revising the limitations on making unsolicited telephonic sales calls, etc. CM 01/24/2022 Fav/CS RI RC	Fav/CS Yeas 10 Nays 0
9	SB 1878 Gruters	Capital Investment Tax Credit; Providing a credit against the corporate income tax, the sales and use tax, or a stated combination of the two taxes to a qualifying business that establishes a qualifying project for the creation of intellectual property which meets a certain capital investment threshold; specifying the calculation of the credit; authorizing use of the credit or portions of the credit by the business or members of its affiliated group of corporations; authorizing use of the credit within a certain timeframe, etc. CM 01/24/2022 Favorable FT AP	Favorable Yeas 8 Nays 1

Other Related Meeting Documents



SENATOR JENNIFER BRADLEY
5th District

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Community Affairs, *Chair*
Agriculture, *Vice Chair*
Appropriations Subcommittee on Agriculture,
Environment, and General Government
Education
Ethics and Elections
Judiciary
Reapportionment

SELECT SUBCOMMITTEE:
Select Subcommittee on Congressional
Reapportionment, *Chair*

JOINT COMMITTEES:
Joint Legislative Auditing Committee
Joint Select Committee on Collective Bargaining

January 11, 2022

Senator Ed Hooper, Chairman
Senate Committee on Commerce and Tourism
302 Senate Building
404 South Monroe Street
Tallahassee, FL 32399-1100

Dear Chairman Hooper:

I respectfully request that Senate Bill 634 be placed on the committee's agenda at your earliest convenience. This bill relates to judicial notice.

Thank you for your consideration.

Sincerely,

A handwritten signature in blue ink that reads "Jennifer Bradley".

Jennifer Bradley

cc: Todd McKay, Staff Director
Kathryn Vigrass, Administrative Assistant

REPLY TO:

- 1279 Kingsley Avenue, Kingsley Center, Suite 117, Orange Park, Florida 32073 (904) 278-2085
- 324 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5005

Senate's Website: www.flsenate.gov

WILTON SIMPSON
President of the Senate

AARON BEAN
President Pro Tempore

The Florida Senate

APPEARANCE RECORD

634

1/24/2022

Meeting Date

Bill Number or Topic

Commerce & Tourism

Committee

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

Amendment Barcode (if applicable)

Name Nancy Daniels

Phone 850 468-6850

Address 103 N. Gadsden St.

Email ndaniels@flpta.org

Street

Tallahassee

City

FL

State

32301

Zip

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

PLEASE CHECK ONE OF THE FOLLOWING:

I am appearing without compensation or sponsorship.

I am a registered lobbyist, representing:

Florida Public Defender Association

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

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

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

S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

SB 634

January 24, 2021

Meeting Date

Commerce & Tourism

Committee

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

Bill Number or Topic

Amendment Barcode (if applicable)

Name **John H. Hickey**

Phone **305-371-8000**

Address **1401 Brickell Avenue, Suite 510**

Email

Street

Miami

FL

33131

City

State

Zip

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

PLEASE CHECK ONE OF THE FOLLOWING:

I am appearing without compensation or sponsorship.

I am a registered lobbyist, representing:

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

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

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

S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

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

1/24/22

Meeting Date

634

Bill Number or Topic

Commerce & Tourism

Committee

Amendment Barcode (if applicable)

Name Bob Harris

Phone 850-222-0720

Address 2618 Centennial Place

Email bharris@lawfla.com

Street

Tallahassee FL 32308

City

State

Zip

Speaking: For Against Information

OR

Waive Speaking: In Support Against

PLEASE CHECK ONE OF THE FOLLOWING:

I am appearing without compensation or sponsorship.

I am a registered lobbyist, representing:

Trial Lawyers Section / Florida Bar

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

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. 511.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

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

S-001 (08/10/2021)

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 634

INTRODUCER: Commerce and Tourism Committee and Senator Bradley

SUBJECT: Judicial Notice

DATE: January 25, 2022

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Ravelo</u>	<u>Cibula</u>	<u>JU</u>	Favorable
2.	<u>McKay</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 634 creates a process for a court to take “judicial notice” of certain information taken from mapping services, such as Google Maps. Under Florida law, judicial notice may generally be declared for certain facts “not subject to dispute because they are capable of accurate and ready determination by resort to sources whose accuracy cannot be questioned” or “because they are generally known within the territorial jurisdiction of the court.”¹

The bill provides a process separate from the above standards for judicial notice of any image, map, location, distance, calculation, or other information taken from any widely accepted web mapping service, global satellite imaging site, or Internet mapping tool so long as the information in question indicates the date that it was created. Under the process, a party must file a notice of intent to offer the information, and the information will be admitted into evidence unless another party objects. There is a rebuttable presumption that the information sought to be judicially noticed should be judicially noticed, which may be overcome if the court finds by the greater weight of the evidence that the information does not fairly and accurately portray what it is being offered to prove, or that it otherwise should not be admitted into evidence under the Florida Evidence Code. If the court overrules the objection, it must take judicial notice of the information and admit it into evidence.

The bill provides an effective date of July 1, 2022.

¹ Section 90.202(11) and (12), F.S.

II. Present Situation:

The Florida Evidence Code

Florida statutes, such as the Florida Evidence Code (Code) as enacted by the Legislature, contain both procedural and substantive law for the courts to apply. Depending on the type of proceeding, the Code is generally applicable to all proceedings in Florida courts,² including actions based on federal claims.³ However, statutes that are procedural in nature, even those passed by the Legislature, must be approved by Supreme Court. Occasionally, the Court rejects the legislative changes.

In 2000, for example, the Court refused to adopt a recently enacted hearsay exception, noting that applying the statute would go against long standing rules of evidence and violate a defendant's right of confrontation.⁴ A concurring opinion by Justice Lewis also found that the statute was an unacceptable rule of procedure, and therefore infringed on the Court's ability to adopt rules under article v, section 2(a), of the Florida Constitution. In 2014, the Court refused to adopt a statute that was not part of the evidence code requiring certain qualifications for expert witnesses in medical negligence cases on the grounds that the statute was procedural.⁵

Judicial Notice

Judicial notice allows a court to make a finding that a certain piece of evidence is true without any formal introduction for that basis.⁶ Generally, this may involve undisputed facts or facts that are so well known they speak for themselves. Often, judicial notice may be used to save time and resources, as presenting evidence for certain situations may prove too much of an unnecessary burden.⁷ Courts warn though, that judicial notice "should be exercised with great caution" and "must be of common and general knowledge [and] authoritatively settled and not doubtful."⁸ A famous example occurred in Ohio where a trial court took judicial notice that "Bud Lite is beer" in a case involving the sale of beer to an underage person.⁹ The conviction was eventually vacated by the Ohio Supreme Court, consistent with an appellate court finding that despite Bud Lite meeting the "common, everyday understanding" of the term "beer," this did not align with the statutory language as enacted by Ohio Legislature, which included that the beverage contain "between one-half of one percent and twelve percent alcohol by volume."¹⁰ The conviction was

² Section 90.103, F.S.

³ *Byrd v. BT Foods, Inc.*, 26 So. 3d 600, 605 (Fla. 4th DCA 2009) ("[S]tate evidence codes control evidentiary questions presented in state court. This is so even where federal claims are litigated, unless the state rules would affect substantive federal rights.").

⁴ *In re Amendments to the Fla. Evidence Code*, 782 So. 2d 339, 341 (Fla. 2000). The statute in question stripped the former testimony of witnesses hearsay exception of the requirement that the witness be unavailable.

⁵ *In re: Amendments to the Fla. Evidence Code*, 144 So. 3d 536, 537 (Fla. 2014).

⁶ Legal Information Institute, *Cornel Law School*, https://www.law.cornell.edu/wex/judicial_notice (last visited January 21, 2022).

⁷ For example, soliciting testimony from members of the Governor, the Secretary of State, and members of the Legislature to verify that an act of the Legislature was enacted into Florida law would put a large burden on those officials in addition to any parties seeking evidence of any Legislative act.

⁸ *State v. Coleman*, 5 So. 2d 60, 62 (Fla. 1941).

⁹ *State v. Kareski*, 2012 WL 1717976, *2 (Ohio 9th Dist. Ct. App. 2012), *vacated*, 998 N.E.2d 410, (Ohio 2013).

¹⁰ Ohio Rev. Code Ann. § 4301.01(6)(b).

thus vacated because the government failed to prove that the Bud Lite in question contained required percentage of alcohol.

There are practical considerations when asking a court to take judicial notice of something. In the above referenced case, for example, judicial notice likely allowed the prosecutor to avoid testing a sample of Bud Lite to determine the alcoholic content. The Bud Lite in question did not contain an official marker identifying the amount of alcohol.¹¹ The Code differentiates between when a court *may* or *shall* take judicial notice upon request of a party.

Under s. 90.201, F.S., a court *shall* take judicial notice of:

- Decisional, constitutional, and public statutory law and resolutions of the Florida Legislature and the Congress of the United States,
- Florida rules of court that have statewide application, its own rules, and the rules of United States courts adopted by the United States Supreme Court, and
- Rules of court of the United States Supreme Court and of the United States Courts of Appeal.¹²

Under s. 90.202, F.S., a court *may* take judicial notice of:

- Special, local, and private acts and resolutions of the Congress of the United States and of the Florida Legislature,
- Decisional, constitutional, and public statutory law of every other state, territory, and jurisdiction of the United States,
- Contents of the Federal Register,
- Laws of foreign nations and of an organization of nations,
- Official actions of the legislative, executive, and judicial departments of the United States and of any state, territory, or jurisdiction of the United States,
- Records of any court of this state or of any court of record of the United States or of any state, territory, or jurisdiction of the United States,
- Rules of court of any court of this state or of any court of record of the United States or of any other state, territory, or jurisdiction of the United States,
- Provisions of all municipal and county charters and charter amendments of this state, provided they are available in printed copies or as certified copies,
- Rules promulgated by governmental agencies of this state which are published in the Florida Administrative Code or in bound written copies,
- Duly enacted ordinances and resolutions of municipalities and counties located in Florida, provided such ordinances and resolutions are available in printed copies or as certified copies,
- Facts that are not subject to dispute because they are generally known within the territorial jurisdiction of the court,
- Facts that are not subject to dispute because they are capable of accurate and ready determination by resort to sources whose accuracy cannot be questioned, and

¹¹ *Kareski*, 998 N.E.2d at 411.

¹² Section 90.201, F.S.

- Official seals of governmental agencies and departments of the United States and of any state, territory, or jurisdiction of the United States.¹³

When presented with a request under s. 90.202, F.S., a court is required to take judicial notice after the court:

- Gives each adverse party timely written notice of the request, proof of which is filed with the court, to enable the adverse party to prepare to meet the request, and
- Is furnished with sufficient information to enable it to take judicial notice of the matter.¹⁴

III. Effect of Proposed Changes:

The bill creates a process to allow a court to take judicial notice of certain information from widely accepted web mapping services, such as street information from Google Maps. Specifically, the bill will allow a court to take judicial notice of any image, map, location, distance, calculation, or other information taken from any widely accepted web mapping service, global satellite imaging site, or internet mapping tool so long as the information in question indicates the date that it was created.

In order for a court to take judicial notice of this type of information, the bill requires a party to file notice within a reasonable time, or as required by a court order. This notice must include a copy of the information and specify the Internet address or pathway where it may be inspected.

The bill provides a process for a party to object to a request for judicial notice of such information. There is a rebuttable presumption that the information sought to be judicially noticed should be judicially noticed, which may be overcome if the court finds by the greater weight of the evidence that the information does not fairly and accurately portray what it is being offered to prove, or that it otherwise should not be admitted into evidence under the Florida Evidence Code.

The bill provides that this section “does not affect, expand, or limit standards for any matters that may otherwise be judicially noticed.”

The bill provides an effective date of July 1, 2022.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

¹³ Section 90.202, F.S.

¹⁴ Section 90.203, F.S.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill may enable parties in litigation to avoid costs that they would otherwise incur to produce, verify, and authenticate information from web mapping service, a global satellite imaging site, or an Internet mapping tool.

C. Government Sector Impact:

The bill may enable government parties to litigation avoid costs that they would otherwise incur to produce, verify, and authenticate information from web mapping service, a global satellite imaging site, or an Internet mapping tool. The bill may also reduce costs to the judiciary by reducing the judicial time and resources that would otherwise be required in litigation over the admissibility of such information.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates s. 90.2035, 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 January 24, 2022:

The CS limits the presumption that a court may take judicial notice of information from web mapping services, global satellite imaging sites, or an Internet mapping tool to those that are “widely accepted.” The CS also rewords provisions of the bill without making substantive changes.

- B. **Amendments:**

None.



321424

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
01/25/2022	.	
	.	
	.	
	.	

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

Senate Amendment (with title amendment)

Delete lines 24 - 41
and insert:
other information taken from a widely accepted web mapping service, global satellite imaging site, or Internet mapping tool, if such image, map, location, distance, calculation, or other information indicates the date on which the information was created.

(b) A party intending to offer such information in evidence



321424

11 at trial or at a hearing must file notice of such intent within
12 a reasonable time, or as defined by court order. The notice must
13 include a copy of the information and specify the Internet
14 address or pathway where such information may be accessed and
15 inspected.

16 (2) (a) A party may object to the court taking judicial
17 notice of the image, map, location, distance, calculation, or
18 other information taken from a widely accepted web mapping
19 service, global satellite imaging site, or Internet mapping tool
20 within a reasonable time or as defined by court order.

21 (b) There is a rebuttable presumption that information
22 sought to be judicially noticed under this section should be
23 judicially noticed. The rebuttable presumption may be overcome
24 if the court finds by the greater weight of the evidence that
25 the information does not fairly and accurately portray what it
26 is

27
28 ===== T I T L E A M E N D M E N T =====

29 And the title is amended as follows:

30 Delete lines 4 - 11

31 and insert:

32 notice of certain information taken from widely
33 accepted web mapping services, global satellite
34 imaging sites, or Internet mapping tools upon request
35 of a party; requiring parties who intend to offer such
36 information into evidence to file a notice of intent
37 containing specified information; authorizing parties
38 to object to the court taking judicial notice of such
39 information; creating a rebuttable presumption that



321424

40
41

such information should be judicially noticed unless
certain

By Senator Bradley

5-00450-22

2022634__

1 A bill to be entitled
 2 An act relating to judicial notice; creating s.
 3 90.2035, F.S.; authorizing courts to take judicial
 4 notice of certain information taken from web mapping
 5 services, global satellite imaging sites, or Internet
 6 mapping tools upon request of a party; requiring
 7 parties who intend to offer such information into
 8 evidence to file a notice of intent containing
 9 specified information; authorizing parties to object
 10 to the admissibility of such information; requiring
 11 courts to overrule such objection unless certain
 12 findings are made; providing construction; providing
 13 an effective date.

14
 15 Be It Enacted by the Legislature of the State of Florida:

16
 17 Section 1. Section 90.2035, Florida Statutes, is created to
 18 read:

19 90.2035 Judicial notice of information taken from web
 20 mapping services, global satellite imaging sites, or Internet
 21 mapping tools.-

22 (1) (a) Upon request of a party, a court may take judicial
 23 notice of an image, map, location, distance, calculation, or
 24 other information taken from a web mapping service, a global
 25 satellite imaging site, or an Internet mapping tool, if such
 26 image, map, location, distance, calculation, or other
 27 information indicates the date on which the information was
 28 created.

29 (b) A party intending to offer such information in evidence

Page 1 of 2

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

5-00450-22

2022634__

30 at trial or hearing must file notice of such intent within a
 31 reasonable time, or as defined by court order, which notice must
 32 include a copy of the information and specify the Internet
 33 address where such information may be inspected.

34 (2) (a) A party may object to the admissibility of the
 35 image, map, location, distance, calculation, or other
 36 information taken from a web mapping service, a global satellite
 37 imaging site, or an Internet mapping tool within a reasonable
 38 time or as defined by court order.

39 (b) The court shall overrule the objection unless the court
 40 finds by a preponderance of evidence that the material sought to
 41 be admitted does not fairly and accurately portray what it is
 42 being offered to prove or that it otherwise should not be
 43 admitted into evidence under the Florida Evidence Code.

44 (c) If the court overrules the objection, the court must
 45 take judicial notice of the information and admit the
 46 information into evidence.

47 (3) This section does not affect, expand, or limit
 48 standards for any matters that may otherwise be judicially
 49 noticed.

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

Page 2 of 2

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



The Florida Senate

Committee Agenda Request

To: Senator Ed Hooper, Chair
Committee on Commerce and Tourism

Subject: Committee Agenda Request

Date: January 17, 2022

I respectfully request that **Senate Bill #1038**, relating to Florida Seaport Transportation and Economic Development Council, be placed on the:

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

A handwritten signature in black ink that reads "W. Keith Perry".

Senator Keith Perry
Florida Senate, District 8

January 24, 2022

Meeting Date

Commerce & Tourism

Committee

The Florida Senate

APPEARANCE RECORD

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

SB 1038

Bill Number or Topic

Amendment Barcode (if applicable)

Name **Nicole Kelly**

Phone **(850) 671-4401**

Address **123 S. Adams Street**

Email **kelly@thesoutherngroup.com**

Street

Tallahassee

FL

32301

City

State

Zip

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

PLEASE CHECK ONE OF THE FOLLOWING:

I am appearing without compensation or sponsorship.

I am a registered lobbyist, representing:

Putnam County

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

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

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

S-001 (08/10/2021)

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 Transportation

BILL: SB 1038
 INTRODUCER: Senator Perry
 SUBJECT: Florida Seaport Transportation and Economic Development Council
 DATE: January 21, 2022 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Price	Vickers	TR	Favorable
2.	Renner	McKay	CM	Favorable
3.			RC	

I. Summary:

SB 1038 revises the membership of the Florida Seaport Transportation and Economic Development (FSTED) Council to include as a member the port director (or the director’s designee) of the Port of Putnam County. The bill increases the total number of members on the FSTED Council from 17 to 18.

Until July 1, 2024, the bill authorizes Putnam County to apply for a grant through the FSTED Council to fund a feasibility study regarding the establishment of a port in Putnam County. The bill directs the Council to evaluate the grant application in accordance with existing statutory provisions governing evaluation and selection of projects for funding under the FSTED Program within the Florida Department of Transportation (FDOT).

If the grant application is approved, the bill requires the FDOT to include the feasibility study as a specific project in its annual legislative budget request for funding of the FSTED Program. If the study concludes that a port in Putnam County is not feasible, the bill terminates the membership of Putnam County on the FSTED Council.

The bill also reenacts a number of statutory provisions to incorporate amendments made by the bill to the FSTED Council statute.

The fiscal impact of the bill is unknown, as whether any grant award under the FSTED Program for the bill’s specified purpose will occur, and in what amount, is unknown. See the “Fiscal Impact Statement” below for additional details.

The bill takes effect July 1, 2022.

II. Present Situation:

The Florida Seaport Transportation and Economic Development (FSTED) Program

The FSTED Program was created within the FDOT to finance port transportation or port facilities projects that will improve the movement and intermodal transportation of cargo or passengers in commerce and trade and support the interests, purposes, and requirements of all 15 public seaports.¹ Section 311.07(2), F.S., currently requires a minimum of \$25 million annually to be made available from the State Transportation Trust Fund to fund the FSTED Program. Section 311.09(9), F.S., also directs the FDOT to include no less than \$25 million annually in its legislative budget request for the FSTED Program. An additional \$35 million in seaport-related funding is provided for specified projects under the Strategic Port Investment Initiative under s. 311.10, F.S., and seaport-related projects may be funded under the Intermodal Logistics Center Infrastructure Support Program under s. 311.101, F.S., and the Intermodal Development Program under s. 341.053, F.S. Additional annual funding for debt service in the amount of \$10 million is also provided under s. 320.20, F.S., for seaport-related bonds.

The FSTED Program is managed by the 17-member FSTED Council. The members currently include the port director of the state's 15 public seaports or the director's designee, the Secretary of the FDOT or his or her designee, and the Executive Director of the Department of Economic Opportunity (DEO) or his or her designee.² The Council reviews applications for the award of grants for projects eligible for funding under the FSTED Program. The Council evaluates eligible projects³ and submits an annual list of approved projects, along with a recommended funding level for each project, to the FDOT and the DEO.⁴

The FDOT reviews the list annually approved by the Council for consistency with the Florida Transportation Plan, the Statewide Seaport and Waterways System Plan, and its adopted work program and must notify the council of projects found to be inconsistent.⁵ The DEO reviews the annual list to evaluate the economic benefit of the project, and to determine whether a project is consistent with the Florida Seaport Mission Plan, with state economic developments goals and policies, and with state, regional, and local plans, as appropriate.⁶ Generally, projects found to be inconsistent may not be included in the list of projects to be funded.

The FDOT must include in its annual legislative budget request for the FSTED Program funded under s. 311.09, F.S., funding for projects determined to be consistent and approved by the Council, and the specific projects to be funded during the ensuing fiscal year must be included in the FDOT's tentative work program.⁷

¹ Section 311.07(1), F.S. The 15 seaports, listed in s. 311.09(1), F.S., are Jacksonville (JaxPort), Port Canaveral, Port Citrus, Port of Fort Pierce, Port of Palm Beach, Port Everglades, Port of Miami, Port Manatee, Port of St. Petersburg, Port of Tampa, Port St. Joe, Port Panama City, Port of Pensacola, Port of Key West, and Port of Fernandina.

² Section 311.09(1), F.S.

³ Eligible project types are listed in s. 311.07(3)(b), F.S., and funding is limited to the specified port facility or port transportation projects on a 50-50 matching basis per s. 311.07(3)(a), F.S., except for projects involving rehabilitation of wharves, docks, berths, bulkheads, or similar structures, which require a 25-percent match.

⁴ Section 311.09(5), F.S.

⁵ Section 311.09(6), F.S.

⁶ Section 311.09(7), F.S.

⁷ See s. 311.09(9), F.S. The FDOT's adopted work program is the 5-year work program adopted by the FDOT pursuant to s. 339.135, F.S. In developing the adopted work program, each of the FDOT districts submits an annual district work program,

The Putnam County Port District and Barge Port Project

The Florida Legislature created the Putnam County Port District in 1961.⁸ The Putnam County Commission, acting as the Port Authority, owns an existing barge port and industrial development area located in Putnam County on the St. Johns River. According to the Putnam County Port District website, barge port services currently include:

- Bulkheaded dock space;
- Enclosed, lockable warehouse space with utilities;
- Separate keyed office space;
- Paved parking; and
- Gated entry.⁹

Additional assets are described as available land at the port and new land acquisitions, an on-dock heavy lift stick crane, CSX rail service at the port, and proximity to major customers.¹⁰

The Port Authority is currently pursuing expansion of the barge port, in cooperation with the Army Corps of Engineers (the Corps),¹¹ under the federal Continuing Authorities Program (CAP), under which the Corps is authorized to plan, design, and implement certain types of water resources projects without additional project specific congressional authorization. The purpose of the CAP is to plan and implement projects of limited size, cost, scope and complexity.¹² The Port Authority's consultant describes the "CAP Section 107" process as an "expedited" process.¹³

The project involves dredging of a 5,000-foot branch channel from the existing barge berth to the St. Johns channel, with the addition of a turning basin to enhance vessel navigation and safety.¹⁴ The new branch channel depth would be 12 feet at low water, as the existing channel has been

which is the 5-year listing of transportation projects planned for each fiscal year, to the FDOT's central office for review and development of the tentative work program. The tentative work program is the 5-year listing of all transportation projects planned for each fiscal year which is developed by the FDOT's central office based on the district work programs. Each year, a new fifth year is added for purposes of developing the tentative and adopted work programs.

⁸ Chapter 67-1961, L.O.F.

⁹ Putnam County, Florida, Port Authority General Information, including a map of the port district boundaries, available at <https://main.putnam-fl.com/?s=Port+District+General+Information> (last visited January 21, 2022). Additional assets are described as available land at the port and new land acquisitions, an on-dock heavy lift stick crane, CSX Rail service at the port, and proximity to major customers.

¹⁰ See video of a presentation to the Putnam County Commission meeting as the Port Authority on December 14, 2021, at 20:29, available at <https://www.youtube.com/c/PutnamBOCC/live?app=desktop> (last visited January 21, 2022).

¹¹ *Id.* At 9:44.

¹² See U.S. Army Corps of Engineers, *Continuing Authorities Program*, for additional program information available at <https://www.nae.usace.army.mil/Missions/Public-Services/Continuing-Authorities-Program/> (last visited January 21, 2022).

¹³ See U.S. Army Corps of Engineers, *Small Navigation Project Study (Section 107)*, available at <https://www.nae.usace.army.mil/Missions/Public-Services/Continuing-Authorities-Program/Section-107/> (last visited January 21, 2022). "Section 107 of the River and Harbor Act of 1960 provides authority for the Corps of Engineers to improve navigation including dredging of channels, anchorage areas, and turning basins and construction of breakwaters, jetties and groins, through a partnership with non-Federal government sponsor such as cities, counties, special chartered authorities (such as port authorities), or units of state government. The maximum Federal cost for project development and construction of any one project is \$10 million and each project must be economically justified, environmentally sound, and technically feasible."

¹⁴ *Supra* note 10 at 10:25.

filled with silt due to storm events over the last 10 to 15 years. The current depth is about 7 feet, which precludes use by anything other than “very shallow-draft barges” and recreational vessels and “doesn’t do much for business.” An estimate of the material that needs to be removed is under 2,000 cubic yards, with a nearby, viable disposal site. At a new depth of 12 feet, the number, size, and capacity of vessels using the barge port would increase dramatically, as would revenues associated with that activity.

In terms of project development,¹⁵ three critical steps have been completed:

- A Federal Interest Determination, completed in July of 2021, which is prepared by the Corps and indicates a federal interest in continuing to evaluate the project.
- Development of a Fact Sheet, containing detailed project information, also prepared by the Corps. This document, completed in September of 2021, indicates that if a required feasibility report is positive and the project is actually constructed, the Corps will assume responsibility for the operations and maintenance of dredging.
- Completion of a Feasibility Cost Sharing Agreement in October of 2021, which establishes the responsibilities of the Port Authority and the Corps for funding the feasibility report.

The purpose of the feasibility report is to demonstrate the project’s support of national economic development (NED), which, in the absence of sufficient historical detail in Palatka, Florida, will be based on a market analysis involving identification of probable marine cargo activity at the facility if the project is completed.¹⁶ If NED is demonstrated, the project will be approved. It is estimated that the feasibility report will require about 18 months to complete, at an estimated cost of \$800,000, with the County’s share being \$350,000 of that amount, which can be spread over the duration of the report’s production.

Assuming the outcome of the report is favorable,¹⁷ the Corps would develop a project partnership agreement between Putnam County and the Corps covering the estimated cost of construction of the project and the responsibility of the County for 20 percent of the cost, which may be reduced by contributions in kind, such as lands, easements, and disposal areas. The entire process, including advertisement for bids, selection and award of a contract, and issuance of a Notice to Proceed, would be handled by the Corps and is expected to take about 18 months.

The dredging project,¹⁸ will allow barges and smaller vessels to access the port, but raising the Shands Bridge would make possible use of the port by larger vessels, such as hopper and flat deck barges, small vessels, and even cruise ships.

The FDOT plans to begin construction of a new Shands Bridge over the St. Johns River just south of the existing bridge in the fall of 2022 as part of the First Coast Expressway Project, increasing the vertical clearance height of the new bridge from the current 45 feet of clearance to 65 feet from the water line. According to the FDOT, this increase “is an improvement for marine commerce in the region.”¹⁹

¹⁵ *Id.* at 11:39.

¹⁶ *Id.* at 13:24.

¹⁷ *Id.* at 15:13.

¹⁸ *Id.* at 21:55.

¹⁹ FDOT, *First Coast Expressway – New St. Johns River Bridge*, available at <https://nflroads.com/ProjectDetails?p=5136> (last visited January 21, 2022.)

III. Effect of Proposed Changes:

The bill increases the total number of members on the FSTED Council from 17 to 18, by adding as a member the port director (or the director's designee) of the Port of Putnam County.

The bill authorizes Putnam County, until July 1, 2024, to apply for a grant through the FSTED Council to fund a feasibility study regarding the establishment of a port in Putnam County. The bill directs the Council to evaluate the grant application in accordance with the existing statutory provisions governing evaluation and selection of projects for funding under the FSTED Program.

If the grant application is approved, the bill requires the FDOT, as is the case under current law for other FSTED applicants who are awarded project grants, to include the feasibility study as a specific project in its annual legislative budget request for funding of the FSTED Program. If the study concludes that a port in Putnam County is not feasible, the bill terminates the membership of Putnam County on the FSTED Council.

The bill reenacts a number of statutory provisions to incorporate the amendment to s. 311.09, F.S.

The bill takes effect July 1, 2022.

IV. Constitutional Issues

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

A private sector consultant may be hired to conduct the described feasibility study should the FSTED Council grant an award to fund the study.

C. Government Sector Impact:

The bill does not revise funding levels under the FSTED Program. However, if the grant application for the feasibility study is approved, funding currently available for other grants under the FSTED Program would be reduced by the unknown amount of any award of funds granted by the FSTED Council for the feasibility study. Going forward, if the study concludes in a finding that a Putnam County Port is feasible, the county's membership on the Council continues, and competition for available funding under the FSTED Program would increase by one. If the study concludes the port is not feasible, membership on the Council terminates, and the bill presents no further fiscal impact.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill provides that if the feasibility study regarding the establishment of a port in Putnam County determines that the port is not feasible, the membership of Putnam County on the council must terminate. The Legislature may wish to clarify when exactly the membership of the council would be changed, and consider requiring the council to report back to the Legislature on the actual current membership of the council after the Putnam County feasibility study has been acted upon.

VIII. Statutes Affected:

This bill substantially amends the following section of the Florida Statutes: 311.09.

The bill reenacts the following sections of the Florida Statutes: 163.3178, 189.068, 311.07, 311.091, 311.10, 311.101, 311.12, 311.121, 311.14, 315.18, 320.20, 334.27, 337.14, 373.406, 373.4133, 373.4136, and 403.061.

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

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

None.

B. Amendments:

None.

By Senator Perry

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1 A bill to be entitled
 2 An act relating to the Florida Seaport Transportation
 3 and Economic Development Council; amending s. 311.09,
 4 F.S.; revising the membership of the Florida Seaport
 5 Transportation and Economic Development Council to
 6 include a representative of Putnam County; authorizing
 7 Putnam County to apply for a grant for a port
 8 feasibility study through the Florida Seaport
 9 Transportation and Economic Development Council;
 10 providing for the evaluation of the application;
 11 requiring the Department of Transportation to include
 12 the study in its budget request under certain
 13 circumstances; terminating the membership of Putnam
 14 County on the council under certain circumstances;
 15 reenacting ss. 163.3178(2)(k), (5), and (6),
 16 189.068(6), 311.07(1) and (3)(a) and (b), 311.091,
 17 311.10(1) and (2), 311.101(2), 311.12(2)(a), (3), and
 18 (6)(a), 311.121(2) and (3)(a), 311.14(1), 315.18,
 19 320.20(3) and (4), 334.27(1), 337.14(7), 373.406(12),
 20 373.4133(2) and (10), 373.4136(6)(d), and 403.061(38)
 21 and (39), F.S., relating to coastal management, the
 22 oversight of deepwater ports, Florida seaport
 23 transportation and economic development funding, entry
 24 into public-private infrastructure project agreements
 25 for port-related public infrastructure projects, the
 26 Strategic Port Investment Initiative within the
 27 department, the Intermodal Logistics Center
 28 Infrastructure Support Program, seaport security,
 29 licensed security officers at Florida seaports,

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30 seaport planning, the confidentiality of certain
 31 records held by deepwater ports, the disposition of
 32 license tax moneys, the definition of the term
 33 "governmental transportation entity," seaport
 34 contractor services, exemptions for overwater piers,
 35 docks, or similar structures in deepwater ports, port
 36 conceptual permits, the authorized use of mitigation
 37 banks, and the duties of the Department of
 38 Environmental Protection in providing environmental
 39 resource permits, respectively, to incorporate the
 40 amendment made to s. 311.09, F.S., in references
 41 thereto; providing an effective date.
 42
 43 Be It Enacted by the Legislature of the State of Florida:
 44
 45 Section 1. Subsection (1) of section 311.09, Florida
 46 Statutes, is amended, and subsection (13) is added to that
 47 section, to read:
 48 311.09 Florida Seaport Transportation and Economic
 49 Development Council.—
 50 (1) The Florida Seaport Transportation and Economic
 51 Development Council is created within the Department of
 52 Transportation. The council consists of the following ~~18~~ 17
 53 members: the port director, or the port director's designee, of
 54 each of the ports of Jacksonville, Port Canaveral, Port Citrus,
 55 Fort Pierce, Palm Beach, Port Everglades, Miami, Port Manatee,
 56 St. Petersburg, Putnam County, Tampa, Port St. Joe, Panama City,
 57 Pensacola, Key West, and Fernandina; the secretary of the
 58 Department of Transportation or his or her designee; and the

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59 secretary of the Department of Economic Opportunity or his or
60 her designee.

61 (13) Until July 1, 2024, Putnam County may apply for a
62 grant through the Florida Seaport Transportation and Economic
63 Development Council to perform a feasibility study regarding the
64 establishment of a port in Putnam County. The council shall
65 evaluate the grant application pursuant to subsections (5)-(9)
66 and, if approved, the Department of Transportation must include
67 the feasibility study in its budget request pursuant to
68 subsection (9). If the study determines that a port in Putnam
69 County is not feasible, the membership of Putnam County on the
70 council must terminate.

71 Section 2. For the purpose of incorporating the amendment
72 made by this act to section 311.09, Florida Statutes, in
73 references thereto, paragraph (k) of subsection (2) and
74 subsections (5) and (6) of section 163.3178, Florida Statutes,
75 are reenacted to read:

76 163.3178 Coastal management.—

77 (2) Each coastal management element required by s.
78 163.3177(6)(g) shall be based on studies, surveys, and data; be
79 consistent with coastal resource plans prepared and adopted
80 pursuant to general or special law; and contain:

81 (k) A component which includes the comprehensive master
82 plan prepared by each deepwater port listed in s. 311.09(1),
83 which addresses existing port facilities and any proposed
84 expansions, and which adequately addresses the applicable
85 requirements of paragraphs (a)-(k) for areas within the port and
86 proposed expansion areas. Such component shall be submitted to
87 the appropriate local government at least 6 months prior to the

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88 due date of the local plan and shall be integrated with, and
89 shall meet all criteria specified in, the coastal management
90 element. "The appropriate local government" means the
91 municipality having the responsibility for the area in which the
92 deepwater port lies, except that where no municipality has
93 responsibility, where a municipality and a county each have
94 responsibility, or where two or more municipalities each have
95 responsibility for the area in which the deepwater port lies,
96 "the appropriate local government" means the county which has
97 responsibility for the area in which the deepwater port lies.
98 Failure by a deepwater port which is not part of a local
99 government to submit its component to the appropriate local
100 government shall not result in a local government being subject
101 to sanctions pursuant to s. 163.3184. However, a deepwater port
102 which is not part of a local government shall be subject to
103 sanctions pursuant to s. 163.3184.

104 (5) The appropriate dispute resolution process provided
105 under s. 186.509 must be used to reconcile inconsistencies
106 between port master plans and local comprehensive plans. In
107 recognition of the state's commitment to deepwater ports, the
108 state comprehensive plan must include goals, objectives, and
109 policies that establish a statewide strategy for enhancement of
110 existing deepwater ports, ensuring that priority is given to
111 water-dependent land uses. As an incentive for promoting plan
112 consistency, port facilities as defined in s. 315.02(6) on lands
113 owned or controlled by a deepwater port as defined in s.
114 311.09(1), as of the effective date of this act shall not be
115 subject to development-of-regional-impact review provided the
116 port either successfully completes an alternative comprehensive

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 117 development agreement with a local government pursuant to ss.
 118 163.3220-163.3243 or successfully enters into a development
 119 agreement with the state land planning agency and applicable
 120 local government pursuant to s. 380.032 or, where the port is a
 121 department of a local government, successfully enters into a
 122 development agreement with the state land planning agency
 123 pursuant to s. 380.032. Port facilities as defined in s.
 124 315.02(6) on lands not owned or controlled by a deepwater port
 125 as defined in s. 311.09(1) as of the effective date of this act
 126 shall not be subject to development-of-regional-impact review
 127 provided the port successfully enters into a development
 128 agreement with the state land planning agency and applicable
 129 local government pursuant to s. 380.032 or, where the port is a
 130 department of a local government, successfully enters into a
 131 development agreement with the state land planning agency
 132 pursuant to s. 380.032.

133 (6) Each port listed in s. 311.09(1) and each local
 134 government in the coastal area which has spoil disposal
 135 responsibilities shall provide for or identify disposal sites
 136 for dredged materials in the future land use and port elements
 137 of the local comprehensive plan as needed to assure proper long-
 138 term management of material dredged from navigation channels,
 139 sufficient long-range disposal capacity, environmental
 140 sensitivity and compatibility, and reasonable cost and
 141 transportation. The disposal site selection criteria shall be
 142 developed in consultation with navigation and inlet districts
 143 and other appropriate state and federal agencies and the public.
 144 For areas owned or controlled by ports listed in s. 311.09(1)
 145 and proposed port expansion areas, compliance with the

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 146 provisions of this subsection shall be achieved through
 147 comprehensive master plans prepared by each port and integrated
 148 with the appropriate local plan pursuant to paragraph (2) (k).
 149 Section 3. For the purpose of incorporating the amendment
 150 made by this act to section 311.09, Florida Statutes, in a
 151 reference thereto, subsection (6) of section 189.068, Florida
 152 Statutes, is reenacted to read:

153 189.068 Special districts; authority for oversight; general
 154 oversight review process.—

155 (6) This section does not apply to a deepwater port listed
 156 in s. 311.09(1) which is in compliance with a port master plan
 157 adopted pursuant to s. 163.3178(2) (k), or to an airport
 158 authority operating in compliance with an airport master plan
 159 approved by the Federal Aviation Administration, or to any
 160 special district organized to operate health systems and
 161 facilities licensed under chapter 395, chapter 400, or chapter
 162 429.

163 Section 4. For the purpose of incorporating the amendment
 164 made by this act to section 311.09, Florida Statutes, in
 165 references thereto, subsection (1) and paragraphs (a) and (b) of
 166 subsection (3) of section 311.07, Florida Statutes, are
 167 reenacted to read:

168 311.07 Florida seaport transportation and economic
 169 development funding.—

170 (1) There is created the Florida Seaport Transportation and
 171 Economic Development Program within the Department of
 172 Transportation to finance port transportation or port facilities
 173 projects that will improve the movement and intermodal
 174 transportation of cargo or passengers in commerce and trade and

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175 support the interests, purposes, and requirements of all ports
176 listed in s. 311.09.

177 (3) (a) Florida Seaport Transportation and Economic
178 Development Program funds shall be used to fund approved
179 projects on a 50-50 matching basis with any of the deepwater
180 ports, as listed in s. 311.09, which is governed by a public
181 body or any other deepwater port which is governed by a public
182 body and which complies with the water quality provisions of s.
183 403.061, the comprehensive master plan requirements of s.
184 163.3178(2)(k), and the local financial management and reporting
185 provisions of part III of chapter 218. However, program funds
186 used to fund projects that involve the rehabilitation of
187 wharves, docks, berths, bulkheads, or similar structures shall
188 require a 25-percent match of funds. Program funds also may be
189 used by the Seaport Transportation and Economic Development
190 Council for data and analysis that will assist Florida's
191 seaports and international trade.

192 (b) Projects eligible for funding by grants under the
193 program are limited to the following port facilities or port
194 transportation projects:

195 1. Transportation facilities within the jurisdiction of the
196 port.

197 2. The dredging or deepening of channels, turning basins,
198 or harbors.

199 3. The construction or rehabilitation of wharves, docks,
200 structures, jetties, piers, storage facilities, cruise
201 terminals, automated people mover systems, or any facilities
202 necessary or useful in connection with any of the foregoing.

203 4. The acquisition of vessel tracking systems, container

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204 cranes, or other mechanized equipment used in the movement of
205 cargo or passengers in international commerce.

206 5. The acquisition of land to be used for port purposes.

207 6. The acquisition, improvement, enlargement, or extension
208 of existing port facilities.

209 7. Environmental protection projects which are necessary
210 because of requirements imposed by a state agency as a condition
211 of a permit or other form of state approval; which are necessary
212 for environmental mitigation required as a condition of a state,
213 federal, or local environmental permit; which are necessary for
214 the acquisition of spoil disposal sites and improvements to
215 existing and future spoil sites; or which result from the
216 funding of eligible projects listed in this paragraph.

217 8. Transportation facilities as defined in s. 334.03(30)
218 which are not otherwise part of the Department of
219 Transportation's adopted work program.

220 9. Intermodal access projects.

221 10. Construction or rehabilitation of port facilities as
222 defined in s. 315.02, excluding any park or recreational
223 facilities, in ports listed in s. 311.09(1) with operating
224 revenues of \$5 million or less, provided that such projects
225 create economic development opportunities, capital improvements,
226 and positive financial returns to such ports.

227 11. Seaport master plan or strategic plan development or
228 updates, including the purchase of data to support such plans.

229 Section 5. For the purpose of incorporating the amendment
230 made by this act to section 311.09, Florida Statutes, in a
231 reference thereto, section 311.091, Florida Statutes, is
232 reenacted to read:

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233 311.091 Entry into public-private infrastructure project
 234 agreements for port-related public infrastructure projects.—A
 235 seaport listed in s. 311.09(1) may receive or solicit proposals
 236 from and enter into a public-private infrastructure project
 237 agreement with a private entity, or a consortium of private
 238 entities, to build, operate, manage, maintain, or finance a
 239 port-related public infrastructure project.

240 Section 6. For the purpose of incorporating the amendment
 241 made by this act to section 311.09, Florida Statutes, in
 242 references thereto, subsections (1) and (2) of section 311.10,
 243 Florida Statutes, are reenacted to read:

244 311.10 Strategic Port Investment Initiative.—

245 (1) There is created the Strategic Port Investment
 246 Initiative within the Department of Transportation. Beginning in
 247 fiscal year 2012-2013, a minimum of \$35 million annually shall
 248 be made available from the State Transportation Trust Fund to
 249 fund the Strategic Port Investment Initiative. The Department of
 250 Transportation shall work with the deepwater ports listed in s.
 251 311.09 to develop and maintain a priority list of strategic
 252 investment projects. Project selection shall be based on
 253 projects that meet the state's economic development goal of
 254 becoming a hub for trade, logistics, and export-oriented
 255 activities by:

256 (a) Providing important access and major on-port capacity
 257 improvements;

258 (b) Providing capital improvements to strategically
 259 position the state to maximize opportunities in international
 260 trade, logistics, or the cruise industry;

261 (c) Achieving state goals of an integrated intermodal

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262 transportation system; and

263 (d) Demonstrating the feasibility and availability of
 264 matching funds through local or private partners.

265 (2) Prior to making final project allocations, the
 266 Department of Transportation shall schedule a publicly noticed
 267 workshop with the Department of Economic Opportunity and the
 268 deepwater ports listed in s. 311.09 to review the proposed
 269 projects. After considering the comments received, the
 270 Department of Transportation shall finalize a prioritized list
 271 of potential projects.

272 Section 7. For the purpose of incorporating the amendment
 273 made by this act to section 311.09, Florida Statutes, in a
 274 reference thereto, subsection (2) of section 311.101, Florida
 275 Statutes, is reenacted to read:

276 311.101 Intermodal Logistics Center Infrastructure Support
 277 Program.—

278 (2) For the purposes of this section, the term "intermodal
 279 logistics center," including, but not limited to, an "inland
 280 port," means a facility or group of facilities serving as a
 281 point of intermodal transfer of freight in a specific area
 282 physically separated from a seaport where activities relating to
 283 transport, logistics, goods distribution, consolidation, or
 284 value-added activities are carried out and whose activities and
 285 services are designed to support or be supported by conveyance
 286 or shipping through one or more seaports listed in s. 311.09.

287 Section 8. For the purpose of incorporating the amendment
 288 made by this act to section 311.09, Florida Statutes, in
 289 references thereto, paragraph (a) of subsection (2), subsection
 290 (3), and paragraph (a) of subsection (6) of section 311.12,

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291 Florida Statutes, are reenacted to read:

292 311.12 Seaport security.—

293 (2) SECURITY PLAN.—

294 (a) Each seaport listed in s. 311.09 shall adopt and
295 maintain a security plan specific to that seaport which provides
296 for a secure seaport infrastructure that promotes the safety and
297 security of state residents and visitors and the flow of
298 legitimate trade and travel.

299 (3) SECURE AND RESTRICTED AREAS.—Each seaport listed in s.
300 311.09 must clearly designate in seaport security plans, and
301 clearly identify with appropriate signs and markers on the
302 premises of a seaport, all secure and restricted areas as
303 defined by 33 C.F.R. part 105.

304 (a)1. All seaport employees and other persons working at
305 the seaport who have regular access to secure or restricted
306 areas must comply with federal access control regulations as
307 prescribed in this section.

308 2. All persons and objects in secure and restricted areas
309 are subject to search by a sworn state-certified law enforcement
310 officer, a Class D seaport security officer certified under
311 Maritime Transportation Security Act of 2002 guidelines, or an
312 employee of the seaport security force certified under the
313 Maritime Transportation Security Act of 2002 guidelines.

314 3. Persons found in these areas without the proper
315 permission are subject to the trespass provisions of ss. 810.08
316 and 810.09.

317 (b) The seaport must provide clear notice of the
318 prohibition against possession of concealed weapons and other
319 contraband material on the premises of the seaport. Any person

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320 in a restricted area who has in his or her possession a
321 concealed weapon, or who operates or has possession or control
322 of a vehicle in or upon which a concealed weapon is placed or
323 stored, commits a misdemeanor of the first degree, punishable as
324 provided in s. 775.082 or s. 775.083. This paragraph does not
325 apply to active-duty certified federal or state law enforcement
326 personnel or persons so designated by the seaport director in
327 writing.

328 (c) During a period of high terrorist threat level, as
329 designated by the United States Department of Homeland Security,
330 the management or controlling authority of the port may
331 temporarily designate any part of the seaport property as a
332 secure or restricted area. The duration of such designation is
333 limited to the period in which the high terrorist threat level
334 is in effect or a port emergency exists.

335 (6) GRANT PROGRAM.—

336 (a) The Florida Seaport Transportation and Economic
337 Development Council shall establish a Seaport Security Grant
338 Program for the purpose of assisting in the implementation of
339 security plans and security measures at the seaports listed in
340 s. 311.09(1). Funds may be used for the purchase of equipment,
341 infrastructure needs, cybersecurity programs, and other security
342 measures identified in a seaport's approved federal security
343 plan. Such grants may not exceed 75 percent of the total cost of
344 the request and are subject to legislative appropriation.

345 Section 9. For the purpose of incorporating the amendment
346 made by this act to section 311.09, Florida Statutes, in
347 references thereto, subsection (2) and paragraph (a) of
348 subsection (3) of section 311.121, Florida Statutes, are

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349 reenacted to read:

350 311.121 Qualifications, training, and certification of
351 licensed security officers at Florida seaports.—

352 (2) The authority or governing board of each seaport
353 identified under s. 311.09 that is subject to the seaport
354 security standards referenced in s. 311.12 shall require that a
355 candidate for certification as a seaport security officer:

356 (a) Has received a Class D license as a security officer
357 under chapter 493.

358 (b) Has successfully completed the certified training
359 curriculum for a Class D license or has been determined by the
360 Department of Agriculture and Consumer Services to have
361 equivalent experience as established by rule of the department.

362 (c) Has completed the training or training equivalency and
363 testing process established by this section for becoming a
364 certified seaport security officer.

365 (3) The Seaport Security Officer Qualification, Training,
366 and Standards Coordinating Council is created under the
367 Department of Law Enforcement.

368 (a) The executive director of the Department of Law
369 Enforcement shall appoint 11 members to the council, to include:

370 1. The seaport administrator of the Department of Law
371 Enforcement.

372 2. The Commissioner of Education or his or her designee.

373 3. The director of the Division of Licensing of the
374 Department of Agriculture and Consumer Services.

375 4. The administrator of the Florida Seaport Transportation
376 and Economic Development Council.

377 5. Two seaport security directors from seaports designated

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378 under s. 311.09.

379 6. One director of a state law enforcement academy.

380 7. One representative of a local law enforcement agency.

381 8. Two representatives of contract security services.

382 9. One representative of the Department of Highway Safety
383 and Motor Vehicles.

384 Section 10. For the purpose of incorporating the amendment
385 made by this act to section 311.09, Florida Statutes, in a
386 reference thereto, subsection (1) of section 311.14, Florida
387 Statutes, is reenacted to read:

388 311.14 Seaport planning.—

389 (1) The Department of Transportation shall develop, in
390 coordination with the ports listed in s. 311.09(1) and other
391 partners, a Statewide Seaport and Waterways System Plan. This
392 plan shall be consistent with the goals of the Florida
393 Transportation Plan developed pursuant to s. 339.155 and shall
394 consider needs identified in individual port master plans and
395 those from the seaport strategic plans required under this
396 section. The plan will identify 5-year, 10-year, and 20-year
397 needs for the seaport system and will include seaport, waterway,
398 road, and rail projects that are needed to ensure the success of
399 the transportation system as a whole in supporting state
400 economic development goals.

401 Section 11. For the purpose of incorporating the amendment
402 made by this act to section 311.09, Florida Statutes, in a
403 reference thereto, section 315.18, Florida Statutes, is
404 reenacted to read:

405 315.18 Confidentiality of certain records held by deepwater
406 ports.—Any proposal or counterproposal exchanged between a

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407 deepwater port listed in s. 311.09(1) and any nongovernmental
 408 entity, relating to the sale, use, or lease of land or of port
 409 facilities, and any financial records submitted by any
 410 nongovernmental entity to such a deepwater port for the purpose
 411 of the sale, use, or lease of land or of port facilities, are
 412 confidential and exempt from s. 119.07(1) and s. 24(a), Art. I
 413 of the State Constitution. However, 30 days before any such
 414 proposal or counterproposal is considered for approval by the
 415 governing body of such a deepwater port, the proposal or
 416 counterproposal shall cease to be exempt. If no proposal or
 417 counterproposal is submitted to the governing body for approval,
 418 such a proposal or counterproposal shall cease to be exempt 90
 419 days after the cessation of negotiations.

420 Section 12. For the purpose of incorporating the amendment
 421 made by this act to section 311.09, Florida Statutes, in
 422 references thereto, subsections (3) and (4) of section 320.20,
 423 Florida Statutes, are reenacted to read:

424 320.20 Disposition of license tax moneys.—The revenue
 425 derived from the registration of motor vehicles, including any
 426 delinquent fees and excluding those revenues collected and
 427 distributed under the provisions of s. 320.081, must be
 428 distributed monthly, as collected, as follows:

429 (3) Notwithstanding any other provision of law except
 430 subsections (1) and (2), \$15 million shall be deposited annually
 431 into the State Transportation Trust Fund solely for the purposes
 432 of funding the Florida Seaport Transportation and Economic
 433 Development Program as provided in chapter 311. Such revenues
 434 shall be distributed on a 50-50 matching basis to any port
 435 listed in s. 311.09(1) to be used for funding projects as

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436 described in s. 311.07(3)(b). Such revenues may be assigned,
 437 pledged, or set aside as a trust for the payment of principal or
 438 interest on bonds, tax anticipation certificates, or any other
 439 form of indebtedness issued by an individual port or appropriate
 440 local government having jurisdiction thereof, or collectively by
 441 interlocal agreement among any of the ports, or used to purchase
 442 credit support to permit such borrowings. However, such debt is
 443 not a general obligation of the state. The state covenants with
 444 holders of such revenue bonds or other instruments of
 445 indebtedness issued that it will not repeal or impair or amend
 446 in any manner that will materially and adversely affect the
 447 rights of such holders so long as bonds authorized by this
 448 section are outstanding. Any revenues that are not pledged to
 449 the repayment of bonds authorized by this section may be used
 450 for purposes authorized under the Florida Seaport Transportation
 451 and Economic Development Program. This revenue source is in
 452 addition to any amounts provided and appropriated in accordance
 453 with s. 311.07. The Florida Seaport Transportation and Economic
 454 Development Council shall approve the distribution of funds to
 455 ports for projects that have been approved pursuant to s.
 456 311.09(5)-(8). The council and the Department of Transportation
 457 may perform acts required to facilitate and implement this
 458 subsection. To better enable the ports to cooperate to their
 459 mutual advantage, the governing body of each port may exercise
 460 powers provided to municipalities or counties in s. 163.01(7)(d)
 461 subject to chapter 311 and special acts, if any, pertaining to a
 462 port. The use of funds provided pursuant to this subsection are
 463 limited to eligible projects listed in this subsection. Income
 464 derived from a project completed with the use of program funds,

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465 beyond operating costs and debt service, is restricted solely to
 466 further port capital improvements consistent with maritime
 467 purposes. Use of such income for nonmaritime purposes is
 468 prohibited. The revenues available under this subsection may not
 469 be pledged to the payment of any bonds other than the Florida
 470 Ports Financing Commission Series 1996 and Series 1999 Bonds
 471 currently outstanding; however, such revenues may be pledged to
 472 secure payment of refunding bonds to refinance the Florida Ports
 473 Financing Commission Series 1996 and Series 1999 Bonds.
 474 Refunding bonds secured by revenues available under this
 475 subsection may not be issued with a final maturity later than
 476 the final maturity of the Florida Ports Financing Commission
 477 Series 1996 and Series 1999 Bonds or which provide for higher
 478 debt service in any year than is currently payable on such
 479 bonds. Any revenue bonds or other indebtedness issued after July
 480 1, 2000, other than refunding bonds shall be issued by the
 481 Division of Bond Finance at the request of the Department of
 482 Transportation pursuant to the State Bond Act.

483 (4) Notwithstanding any other provision of law except
 484 subsections (1), (2), and (3), \$10 million shall be deposited
 485 annually into the State Transportation Trust Fund solely for the
 486 purposes of funding the Florida Seaport Transportation and
 487 Economic Development Program as provided in chapter 311 and for
 488 funding seaport intermodal access projects of statewide
 489 significance as provided in s. 341.053. Such revenues shall be
 490 distributed to any port listed in s. 311.09(1), to be used for
 491 funding projects as follows:

492 (a) For any seaport intermodal access projects that are
 493 identified in the 1997-1998 Tentative Work Program of the

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494 Department of Transportation, up to the amounts needed to offset
 495 the funding requirements of this section.

496 (b) For seaport intermodal access projects as described in
 497 s. 341.053(6) which are identified in the 5-year Florida Seaport
 498 Mission Plan as provided in s. 311.09(3). Funding for such
 499 projects shall be on a matching basis as mutually determined by
 500 the Florida Seaport Transportation and Economic Development
 501 Council and the Department of Transportation if a minimum of 25
 502 percent of total project funds come from any port funds, local
 503 funds, private funds, or specifically earmarked federal funds.

504 (c) On a 50-50 matching basis for projects as described in
 505 s. 311.07(3)(b).

506 (d) For seaport intermodal access projects that involve the
 507 dredging or deepening of channels, turning basins, or harbors;
 508 or the rehabilitation of wharves, docks, or similar structures.
 509 Funding for such projects requires a 25 percent match of the
 510 funds received pursuant to this subsection. Matching funds must
 511 come from port funds, federal funds, local funds, or private
 512 funds.

513

514 Such revenues may be assigned, pledged, or set aside as a trust
 515 for the payment of principal or interest on bonds, tax
 516 anticipation certificates, or other form of indebtedness issued
 517 by an individual port or appropriate local government having
 518 jurisdiction thereof, or collectively by interlocal agreement
 519 among any of the ports, or used to purchase credit support to
 520 permit such borrowings. However, such debt is not a general
 521 obligation of the state. This state covenants with holders of
 522 such revenue bonds or other instruments of indebtedness issued

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523 hereunder that it will not repeal, impair, or amend this
 524 subsection in a manner that will materially and adversely affect
 525 the rights of holders while bonds authorized by this subsection
 526 remain outstanding. Revenues that are not pledged to the
 527 repayment of bonds as authorized by this section may be used for
 528 purposes authorized under the Florida Seaport Transportation and
 529 Economic Development Program. This revenue source is in addition
 530 to any amounts provided for and appropriated in accordance with
 531 s. 311.07 and subsection (3). The Florida Seaport Transportation
 532 and Economic Development Council shall approve distribution of
 533 funds to ports for projects that have been approved pursuant to
 534 s. 311.09(5)-(8), or for seaport intermodal access projects
 535 identified in the 5-year Florida Seaport Mission Plan as
 536 provided in s. 311.09(3) and mutually agreed upon by the Florida
 537 Seaport Transportation and Economic Development Council and the
 538 Department of Transportation. All contracts for actual
 539 construction of projects authorized by this subsection must
 540 include a provision encouraging employment of participants in
 541 the welfare transition program. The goal for such employment is
 542 25 percent of all new employees employed specifically for the
 543 project, unless the Department of Transportation and the Florida
 544 Seaport Transportation and Economic Development Council
 545 demonstrate that such a requirement would severely hamper the
 546 successful completion of the project. In such an instance,
 547 CareerSource Florida, Inc., shall establish an appropriate
 548 percentage of employees who are participants in the welfare
 549 transition program. The council and the Department of
 550 Transportation may perform such acts as are required to
 551 facilitate and implement the provisions of this subsection. To

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552 better enable the ports to cooperate to their mutual advantage,
 553 the governing body of each port may exercise powers provided to
 554 municipalities or counties in s. 163.01(7)(d) subject to the
 555 provisions of chapter 311 and special acts, if any, pertaining
 556 to a port. The use of funds provided pursuant to this subsection
 557 is limited to eligible projects listed in this subsection. The
 558 revenues available under this subsection may not be pledged to
 559 the payment of any bonds other than the Florida Ports Financing
 560 Commission Series 1996 and Series 1999 Bonds currently
 561 outstanding; however, such revenues may be pledged to secure
 562 payment of refunding bonds to refinance the Florida Ports
 563 Financing Commission Series 1996 and Series 1999 Bonds.
 564 Refunding bonds secured by revenues available under this
 565 subsection may not be issued with a final maturity later than
 566 the final maturity of the Florida Ports Financing Commission
 567 Series 1996 and Series 1999 Bonds and may not provide for higher
 568 debt service in any year than is currently payable on such
 569 bonds. Any revenue bonds or other indebtedness issued after July
 570 1, 2000, other than refunding bonds shall be issued by the
 571 Division of Bond Finance at the request of the Department of
 572 Transportation pursuant to the State Bond Act.

573 Section 13. For the purpose of incorporating the amendment
 574 made by this act to section 311.09, Florida Statutes, in a
 575 reference thereto, subsection (1) of section 334.27, Florida
 576 Statutes, is reenacted to read:

577 334.27 Governmental transportation entities; property
 578 acquired for transportation purposes; limitation on soil or
 579 groundwater contamination liability.—
 580 (1) For the purposes of this section, the term

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581 "governmental transportation entity" means the department; an
582 authority created pursuant to chapter 343, chapter 348, or
583 chapter 349; airports as defined in s. 332.004(14); a port
584 enumerated in s. 311.09(1); a county; or a municipality.

585 Section 14. For the purpose of incorporating the amendment
586 made by this act to section 311.09, Florida Statutes, in a
587 reference thereto, subsection (7) of section 337.14, Florida
588 Statutes, is reenacted to read:

589 337.14 Application for qualification; certificate of
590 qualification; restrictions; request for hearing.—

591 (7) A "contractor" as defined in s. 337.165(1)(d) or his or
592 her "affiliate" as defined in s. 337.165(1)(a) qualified with
593 the department under this section may not also qualify under s.
594 287.055 or s. 337.105 to provide testing services, construction,
595 engineering, and inspection services to the department. This
596 limitation does not apply to any design-build prequalification
597 under s. 337.11(7) and does not apply when the department
598 otherwise determines by written order entered at least 30 days
599 before advertisement that the limitation is not in the best
600 interests of the public with respect to a particular contract
601 for testing services, construction, engineering, and inspection
602 services. This subsection does not authorize a contractor to
603 provide testing services, or provide construction, engineering,
604 and inspection services, to the department in connection with a
605 construction contract under which the contractor is performing
606 any work. Notwithstanding any other provision of law to the
607 contrary, for a project that is wholly or partially funded by
608 the department and administered by a local governmental entity,
609 except for a seaport listed in s. 311.09 or an airport as

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610 defined in s. 332.004, the entity performing design and
611 construction engineering and inspection services may not be the
612 same entity.

613 Section 15. For the purpose of incorporating the amendment
614 made by this act to section 311.09, Florida Statutes, in a
615 reference thereto, subsection (12) of section 373.406, Florida
616 Statutes, is reenacted to read:

617 373.406 Exemptions.—The following exemptions shall apply:

618 (12) An overwater pier, dock, or a similar structure
619 located in a deepwater port listed in s. 311.09 is not
620 considered to be part of a stormwater management system for
621 which this chapter or chapter 403 requires stormwater from
622 impervious surfaces to be treated if:

623 (a) The port has a stormwater pollution prevention plan for
624 industrial activities pursuant to the National Pollutant
625 Discharge Elimination System Program; and

626 (b) The stormwater pollution prevention plan also provides
627 similar pollution prevention measures for other activities that
628 are not subject to the National Pollutant Discharge Elimination
629 System Program and that occur on the port's overwater piers,
630 docks, and similar structures.

631 Section 16. For the purpose of incorporating the amendment
632 made by this act to section 311.09, Florida Statutes, in
633 references thereto, subsections (2) and (10) of section
634 373.4133, Florida Statutes, are reenacted to read:

635 373.4133 Port conceptual permits.—

636 (2) Any port listed in s. 311.09(1) may apply to the
637 department for a port conceptual permit, including any
638 applicable authorization under chapter 253 to use sovereignty

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639 submerged lands under a joint coastal permit pursuant to s.
 640 161.055 or an environmental resource permit issued pursuant to
 641 this part, for all or a portion of the area within the
 642 geographic boundaries of the port. A private entity with a
 643 controlling interest in property used for private industrial
 644 marine activities in the immediate vicinity of a port listed in
 645 s. 311.09(1) may also apply for a port conceptual permit under
 646 this section. A port conceptual permit may be issued for a
 647 period of up to 20 years and extended one time for an additional
 648 10 years. A port conceptual permit constitutes the state's
 649 conceptual certification of compliance with state water quality
 650 standards for purposes of s. 401 of the Clean Water Act and the
 651 state's conceptual determination that the activities contained
 652 in the port conceptual permit are consistent with the state
 653 coastal zone management program.

654 (10) In lieu of meeting the generally applicable stormwater
 655 design standards in rules adopted under this part, which create
 656 a presumption that stormwater discharged from the system will
 657 meet the applicable state water quality standards in the
 658 receiving waters, any port listed in s. 311.09(1) may propose
 659 alternative stormwater treatment and design criteria for the
 660 construction, operation, and maintenance of stormwater
 661 management systems serving overwater piers. The proposal shall
 662 include such structural components or best management practices
 663 to address the stormwater discharge from the pier, including
 664 consideration of activities conducted on the pier, as are
 665 necessary to provide reasonable assurance that stormwater
 666 discharged from the system will meet the applicable state water
 667 quality standards in the receiving waters.

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668 Section 17. For the purpose of incorporating the amendment
 669 made by this act to section 311.09, Florida Statutes, in a
 670 reference thereto, paragraph (d) of subsection (6) of section
 671 373.4136, Florida Statutes, is reenacted to read:
 672 373.4136 Establishment and operation of mitigation banks.—
 673 (6) MITIGATION SERVICE AREA.—The department or water
 674 management district shall establish a mitigation service area
 675 for each mitigation bank permit. The department or water
 676 management district shall notify and consider comments received
 677 on the proposed mitigation service area from each local
 678 government within the proposed mitigation service area. Except
 679 as provided herein, mitigation credits may be withdrawn and used
 680 only to offset adverse impacts in the mitigation service area.
 681 The boundaries of the mitigation service area shall depend upon
 682 the geographic area where the mitigation bank could reasonably
 683 be expected to offset adverse impacts. Mitigation service areas
 684 may overlap, and mitigation service areas for two or more
 685 mitigation banks may be approved for a regional watershed.
 686 (d) If the requirements in s. 373.414(1)(b) and (8) are
 687 met, the following projects or activities regulated under this
 688 part shall be eligible to use a mitigation bank, regardless of
 689 whether they are located within the mitigation service area:
 690 1. Projects with adverse impacts partially located within
 691 the mitigation service area.
 692 2. Linear projects, such as roadways, transmission lines,
 693 distribution lines, pipelines, railways, or seaports listed in
 694 s. 311.09(1).
 695 3. Projects with total adverse impacts of less than 1 acre
 696 in size.

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697 Section 18. For the purpose of incorporating the amendment
698 made by this act to section 311.09, Florida Statutes, in
699 references thereto, subsections (38) and (39) of section
700 403.061, Florida Statutes, are reenacted to read:

701 403.061 Department; powers and duties.—The department shall
702 have the power and the duty to control and prohibit pollution of
703 air and water in accordance with the law and rules adopted and
704 promulgated by it and, for this purpose, to:

705 (38) Provide a supplemental permitting process for the
706 issuance of a joint coastal permit pursuant to s. 161.055 or
707 environmental resource permit pursuant to part IV of chapter
708 373, to a port listed in s. 311.09(1), for maintenance dredging
709 and the management of dredged materials from maintenance
710 dredging of all navigation channels, port harbors, turning
711 basins, and harbor berths. Such permit shall be issued for a
712 period of 5 years and shall be annually extended for an
713 additional year if the port is in compliance with all permit
714 conditions at the time of extension. The department is
715 authorized to adopt rules to implement this subsection.

716 (39) Provide a supplemental permitting process for the
717 issuance of a conceptual joint coastal permit pursuant to s.
718 161.055 or environmental resource permit pursuant to part IV of
719 chapter 373, to a port listed in s. 311.09(1), for dredging and
720 the management of materials from dredging and for other related
721 activities necessary for development, including the expansion of
722 navigation channels, port harbors, turning basins, harbor
723 berths, and associated facilities. Such permit shall be issued
724 for a period of up to 15 years. The department is authorized to
725 adopt rules to implement this subsection.

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

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726
727 The department shall implement such programs in conjunction with
728 its other powers and duties and shall place special emphasis on
729 reducing and eliminating contamination that presents a threat to
730 humans, animals or plants, or to the environment.

731 Section 19. This act shall take effect July 1, 2022.

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

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 1618

INTRODUCER: Senator Broxson

SUBJECT: Restrictions on Employment

DATE: January 25, 2022

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	McMillan	McKay	CM	Fav/CS
2.			JU	
3.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1618 amends Florida's non-compete statute, which allows for the enforcement of contracts that restrict or prohibit competition as long as such contracts are reasonable in time, area, and line of business.

The bill establishes in s. 542.335(3), F.S., that a restrictive covenant is only enforceable against a former employee, agent, or independent contractor who voluntarily resigns, is terminated because of misconduct, or does not satisfy reasonable performance standards or goals which were set in advance. The bill clarifies that the termination or resignation of an employee following a substantial unanticipated change in market conditions is not a termination for the failure to satisfy reasonable performance standards or goals. Additionally, the bill provides that a resignation resulting from a constructive termination is not voluntary.

The bill provides that s. 542.335(3), F.S., does not apply to a restrictive covenant that prohibits disclosing a trade secret of the employer to third parties. Additionally, s. 542.335(3), F.S., does not apply to a restrictive covenant sought to be enforced against a former employer, agent, or independent contractor who is associated with the sale of all or part of the following:

- The assets of a business or professional practice;
- The shares of a corporation;
- A partnership interest;
- A limited liability company membership; or
- An equity interest, of any other type, in a business or professional practice.

The bill establishes that ss. 542.335(1) and 542.335(2), F.S., apply to restrictive covenants entered into on or after July 1, 1996, and before June 30, 2022, and s. 542.335(3), F.S., applies to restrictive covenants entered into on or after July 1, 2022.

The bill takes effect July 1, 2022.

II. Present Situation:

Federal Antitrust Laws

In 1890, Congress passed the first antitrust law, the Sherman Act, as a comprehensive charter of economic liberty aimed at preserving free and unfettered competition as the rule of trade. Congress subsequently passed two additional antitrust laws in 1914: the Federal Trade Commission Act, which created the Federal Trade Commission (FTC), and the Clayton Act. Currently, these are the three core federal antitrust laws.¹

The Sherman Act

The Sherman Act outlaws every contract, combination, or conspiracy in restraint of trade, and any monopolization, attempted monopolization, or conspiracy or combination to monopolize. The Sherman Act does not prohibit every restraint of trade, only those that are unreasonable. For example, an agreement between two individuals to form a partnership may restrain trade, but may not do so unreasonably, and thus may be lawful under the antitrust laws. In contrast, certain acts are considered “per se” violations of the Sherman Act because they are so harmful to competition. These include plain arrangements among competing individuals or businesses to fix prices, divide markets, or rig bids.²

The penalties for violating the Sherman Act can be severe. Although most enforcement actions are civil, the Sherman Act is also a criminal law, and individuals and businesses that violate it may be prosecuted by the U.S. Department of Justice (DOJ). Criminal prosecutions are typically limited to intentional and clear violations, such as when competitors fix prices or rig bids. The Sherman Act imposes criminal penalties of up to \$100 million for a corporation and \$1 million for an individual, along with up to 10 years in prison.³ Under some circumstances, the maximum fines can reach twice the gain or loss involved.⁴

The Federal Trade Commission Act

The Federal Trade Commission Act prohibits unfair methods of competition and unfair or deceptive acts or practices. The Supreme Court has said that all violations of the Sherman Act also violate the FTC Act. Therefore, the FTC can bring cases under the FTC Act against the same kinds of activities that violate the Sherman Act. The FTC Act also reaches other practices

¹ See *The Antitrust Laws*, Federal Trade Commission, available at <https://www.ftc.gov/tips-advice/competition-guidance/guide-antitrust-laws/antitrust-laws> (last visited Jan. 25, 2022).

² *Id.*

³ See *Antitrust Enforcement and the Consumer*, U.S. Department of Justice, available at <https://www.justice.gov/atr/file/800691/download> (last visited Jan. 25, 2022).

⁴ *Id.*

that harm competition but that may not fit neatly into categories of conduct formally prohibited by the Sherman Act. Only the FTC brings cases under the FTC Act.⁵

The Clayton Act

The Clayton Act addresses specific practices that the Sherman Act does not clearly prohibit, such as mergers and interlocking directorates.⁶ It also bans mergers and acquisitions where the effect may substantially lessen competition or create a monopoly. As amended by the Robinson-Patman Act of 1936, the Clayton Act also prohibits certain discriminatory prices, services, and allowances in dealings between merchants. The Clayton Act was amended again in 1976 by the Hart-Scott-Rodino Antitrust Improvements Act to require companies planning large mergers or acquisitions to notify the government of their plans in advance. Additionally, private parties are authorized to sue for triple damages when they have been harmed by conduct that violates either the Sherman or Clayton Act and to obtain a court order prohibiting the anticompetitive practice in the future.⁷

Florida Antitrust Laws

Florida law also provides protections against anticompetitive practices. Chapter 542, F.S., the Florida Antitrust Act of 1980, has a stated purpose to complement the body of federal law prohibiting restraints of trade or commerce in order to foster effective competition.⁸ It outlaws every contract, combination, or conspiracy in restraint of trade or commerce in Florida⁹ and any person from monopolizing or attempting or conspiring to monopolize any part of trade.¹⁰

Contracts in Restraint of Trade or Commerce

Generally, a contract in restraint of trade or commerce in Florida is unlawful.¹¹ However, non-competition restrictive covenants¹² contained in employment agreements that are reasonable in time, area, and line of business are not prohibited.¹³ In any action concerning enforcement of a restrictive covenant, a court may not enforce a restrictive covenant unless it is set forth in a writing signed by the person against whom enforcement is sought, and the person seeking enforcement of a restrictive covenant must prove the existence of one or more legitimate business interests justifying the restrictive covenant.¹⁴ The term “legitimate business interest” includes, but is not limited to:

- Trade secrets;¹⁵

⁵ See *The Antitrust Laws*, Federal Trade Commission, available at <https://www.ftc.gov/tips-advice/competition-guidance/guide-antitrust-laws/antitrust-laws> (last visited Jan. 25, 2022).

⁶ “Interlocking directorates” means the same person making business decisions for competing companies. See also *Id.*

⁷ *Id.*

⁸ Section 542.16, F.S.

⁹ Section 542.18, F.S.

¹⁰ Section 542.19, F.S.

¹¹ Section 542.18, F.S.

¹² Section 542.335, F.S. employs the term “restrictive covenants” and includes all contractual restrictions such as noncompetition/nonsolicitation agreements, confidentiality agreements, exclusive dealing agreements, and all other contractual restraints of trade. See *Heno v. Prof'l Shoe Repair, Inc.*, 929 So.2d 723, 726 (Fla. 5th DCA 2006).

¹³ Section 542.335(1), F.S.

¹⁴ *Id.*

¹⁵ Section 688.002(4), F.S., defines a trade secret as information, including a formula, pattern, compilation, program, device, method, technique, or process that derives independent economic value, actual or potential, from not being generally known

- Valuable confidential business or professional information that otherwise does not qualify as trade secrets;
- Substantial relationships with specific prospective or existing customers, patients, or clients;
- Customer, patient, or client goodwill associated with:
 - An ongoing business or professional practice, by way of trade name, trademark, service mark, or “trade dress”;
 - A specific geographic location; or
 - A specific marketing or trade area; or
- Extraordinary or specialized training.¹⁶

Any restrictive covenant not supported by a legitimate business interest is unlawful and is void and unenforceable.¹⁷ A person seeking enforcement of a restrictive covenant must prove that the contractually specified restraint is reasonably necessary to protect the legitimate business interest or interests justifying the restriction.¹⁸

Restrictive Covenants in Healthcare

Currently in Florida, a restrictive covenant entered into with a physician who practices a medical specialty in a county where one entity employs or contracts with all physicians who practice that specialty in that county is not supported by a legitimate business interest, and is void and unenforceable.¹⁹ The restrictive covenant remains void and unenforceable until 3 years after the date on which a second entity that employs or contracts with one or more physicians who practice that specialty begins serving patients in that county.²⁰

III. Effect of Proposed Changes:

The bill amends s. 542.335, F.S., to provide that a restrictive covenant is only enforceable against a former employee, agent, or independent contractor who voluntarily resigns, is terminated for misconduct, or does not satisfy reasonable performance standards or goals which were set in advance. The bill clarifies that the termination or resignation of an employee following a substantial unanticipated change in market conditions is not a termination for the failure to satisfy reasonable performance standards or goals. Additionally, the bill provides that a resignation resulting from a constructive termination²¹ is not voluntary.

to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

¹⁶ Section 542.335(1)(b), F.S.

¹⁷ *Id.*

¹⁸ Section 542.335(1)(c), F.S.

¹⁹ Section 542.336, F.S.

²⁰ *Id.* 21st Century Oncology, Inc., sought a preliminary injunction to enjoin the application and enforcement of s. 542.336, F.S. In August of 2019, the U.S. District Court for the Northern District of Florida denied the injunction. Although it was determined that s. 542.336, F.S., did impair the plaintiff’s employment contracts within the meaning of the Contracts Clause, the court held that the degree of impairment does not outweigh the statute’s significant, legitimate public purpose.

²¹ A “constructive discharge” occurs when an employee involuntarily resigns in order to escape intolerable and illegal employment requirements. In order to prevail on a constructive discharge claim, an employee must show, under an objective standard that the employer made working conditions so difficult that a reasonable person would feel compelled to resign. See *Vazquez v. City Of Hialeah Gardens*, 874 So. 2d 626 (Fla. 3d DCA 2004). See also *Webb v. Florida Health Care Mgmt. Corp.*, 804 So.2d 422, 424 (Fla. 4th DCA 2001).

The bill establishes that for the purpose of s. 542.335(3), F.S., the term “misconduct” means all misconduct warranting involuntary termination, regardless of whether the misconduct occurs at the workplace or during working hours, and includes, but is not limited to, the following, which may not be construed in pari materia with each other:

- Conduct demonstrating conscious disregard of an employer’s interests and found to be a deliberate violation or disregard of the reasonable standards of behavior which the employer expects of his or her employee, agent, or independent contractor;²²
- Carelessness or negligence to a degree or recurrence that manifests culpability or wrongful intent or shows an intentional and substantial disregard of the employer’s interests or of the employee’s, agent’s or independent contractor’s duties and obligations to his or her employer;
- Chronic absenteeism or tardiness in deliberate violation of a known policy of the employer or one or more unapproved absences following a written reprimand or warning relating to more than one unapproved absence;
- A willful and deliberate violation of a standard or regulation of the state by an employee, agent, or independent contractor of an employer licensed or certified by the state, which violation would cause the employer to be sanctioned or have its license or certification suspended by the state;
- A violation of an employer’s rule, unless the employee, agent, or independent contractor can demonstrate the following:
 - He or she did not know, and could not reasonably know, of the rules requirements;
 - The rule is not lawful or not reasonably related to the job environment and performance;
 - or
 - The rule is not fairly or consistently enforced; and
- Committing criminal assault or battery on another employee, or on a customer or invitee of the employer, or committing abuse or neglect of a patient, resident, disabled person, elderly person, or child in her or his professional care.

The bill provides that s. 542.335(3), F.S., does not apply to a restrictive covenant that prohibits disclosing a trade secret of the employer to third parties. Additionally, s. 542.335(3), F.S., does not apply to a restrictive covenant sought to be enforced against a former employer, agent, or independent contractor who is associated with the sale of all or part of the following:

- The assets of a business or professional practice;
- The shares of a corporation;
- A partnership interest;
- A limited liability company membership; or
- An equity interest, of any other type, in a business or professional practice.

The bill establishes that ss. 542.335(1) and 542.335(2), F.S., apply to restrictive covenants entered into on or after July 1, 1996, and before June 30, 2022, and s. 542.335(3), F.S., applies to restrictive covenants entered into on or after July 1, 2022.

The bill takes effect July 1, 2022.

²² Such conduct may include, but is not limited to, willful damage to an employer’s property that results in damage of more than \$500, or theft of employer property or property of a customer or invitee of the employer.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None Identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill provides that a restrictive covenant is only enforceable against a former employee, agent, or independent contractor who voluntarily resigns or is terminated because of misconduct. This may provide more competition within the labor market.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 542.335 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 January 24, 2022:

The committee substitute adds that a restrictive covenant is enforceable against a former employee, agent, or independent contractor who does not satisfy reasonable performance standards or goals which were set in advance. The amendment clarifies that the termination or resignation of an employee following a substantial unanticipated change in market conditions is not a termination for the failure to satisfy reasonable performance standards or goals.

- B. **Amendments:**

None.



679300

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
01/25/2022	.	
	.	
	.	
	.	

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

Senate Amendment (with title amendment)

Delete line 18

and insert:

voluntarily resigns, is terminated for misconduct, or does not satisfy reasonable performance standards or goals which were set in advance. The termination or resignation of an employee following a substantial unanticipated change in market conditions is not a termination for the failure to satisfy reasonable performance standards or goals. A



679300

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17
18

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

And the title is amended as follows:

Delete lines 6 - 7

and insert:

voluntarily resigned or was terminated for misconduct
or failing satisfy performance standards or goals;
defining the term "misconduct"; providing

By Senator Broxson

1-00675A-22

20221618__

A bill to be entitled

An act relating to restrictions on employment; amending s. 542.335, F.S.; providing that restrictive covenants are only enforceable against a former employee, agent, or independent contractor who voluntarily resigned or was terminated because of misconduct; defining the term "misconduct"; providing applicability; providing an effective date.

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

Section 1. Subsection (3) of section 542.335, Florida Statutes, is amended, and subsection (4) is added to that section, to read:

542.335 Valid restraints of trade or commerce.—

(3) (a) A restrictive covenant is only enforceable against a former employee, agent, or independent contractor who voluntarily resigns or is terminated because of misconduct. A resignation resulting from a constructive termination is not voluntary.

(b) For purposes of this subsection, the term "misconduct" means all misconduct warranting involuntary termination, regardless of whether the misconduct occurs at the workplace or during working hours, and includes, but is not limited to, the following, which may not be construed in pari materia with each other:

1. Conduct demonstrating conscious disregard of an employer's interests and found to be a deliberate violation or disregard of the reasonable standards of behavior which the

Page 1 of 3

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

1-00675A-22

20221618__

employer expects of his or her employee, agent, or independent contractor. Such conduct may include, but is not limited to, willful damage to an employer's property that results in damage of more than \$500, or theft of employer property or property of a customer or invitee of the employer.

2. Carelessness or negligence to a degree or recurrence that manifests culpability or wrongful intent or shows an intentional and substantial disregard of the employer's interests or of the employee's, agent's, or independent contractor's duties and obligations to his or her employer.

3. Chronic absenteeism or tardiness in deliberate violation of a known policy of the employer or one or more unapproved absences following a written reprimand or warning relating to more than one unapproved absence.

4. A willful and deliberate violation of a standard or regulation of the state by an employee, agent, or independent contractor of an employer licensed or certified by the state, which violation would cause the employer to be sanctioned or have its license or certification suspended by the state.

5. A violation of an employer's rule, unless the employee, agent, or independent contractor can demonstrate that:

a. He or she did not know, and could not reasonably know, of the rule's requirements;

b. The rule is not lawful or not reasonably related to the job environment and performance; or

c. The rule is not fairly or consistently enforced.

6. Committing criminal assault or battery on another employee, or on a customer or invitee of the employer, or committing abuse or neglect of a patient, resident, disabled

Page 2 of 3

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1-00675A-22

20221618__

59 person, elderly person, or child in her or his professional
60 care.

61 (c) This subsection does not invalidate a covenant that
62 prohibits disclosing a trade secret of the employer to third
63 parties.

64 (d) This subsection does not apply to a restrictive
65 covenant sought to be enforced against a former employee, agent,
66 or independent contractor who is associated with the sale of all
67 or a part of:

68 1. The assets of a business or professional practice;

69 2. The shares of a corporation;

70 3. A partnership interest;

71 4. A limited liability company membership; or

72 5. An equity interest, of any other type, in a business or
73 professional practice.

74 (4) (a) Subsections (1) and (2) apply to restrictive
75 covenants entered into on or after July 1, 1996, and before June
76 30, 2022.

77 (b) Subsection (3) applies to restrictive covenants entered
78 into on or after July 1, 2022 ~~This act shall apply~~
79 prospectively, and it shall not apply in actions determining the
80 enforceability of restrictive covenants entered into before July
81 1, 1996.

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



The Florida Senate

Committee Agenda Request

To: Senator Ed Hooper, Chair
Committee on Commerce and Tourism

Subject: Committee Agenda Request

Date: January 13, 2022

I respectfully request that **Senate Bill 1718**, relating to Cosmetic Animal Testing, be placed on the:

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

Thank you for your consideration.

A handwritten signature in cursive script that reads "Lauren Book".

Minority Leader Lauren Book
Florida Senate, District 32

1/24/22

Meeting Date

The Florida Senate
APPEARANCE RECORD

SB 1718 Momane Cosmetics

Bill Number or Topic

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

Commerce & Tourism

Committee

Amendment Barcode (if applicable)

Name Kate MacFall

Phone 850 508-1001

Address 1206 Walter Dr

Street

Email kmacfall@hsus.org

Tallahassee FL 32312

City

State

Zip

Speaking: For Against Information

OR

Waive Speaking: In Support Against

PLEASE CHECK ONE OF THE FOLLOWING:

I am appearing without compensation or sponsorship.

I am a registered lobbyist, representing:

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

Humane Society of the United States

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

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

S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

1/24/22

Meeting Date

1718

Bill Number or Topic

COMMERCE & TOURISM

Committee

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

Amendment Barcode (if applicable)

Name TRAVIS MOORE

Phone 727.421.6902

Address P.O. Box 2020

Email travis@moore-relations.com

Street

St. Pete

FL

33731

City

State

Zip

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

PLEASE CHECK ONE OF THE FOLLOWING:

I am appearing without compensation or sponsorship.

I am a registered lobbyist, representing:

Animal Legal Defense Fund

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

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

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

S-001 (08/10/2021)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: SB 1718

INTRODUCER: Commerce and Tourism Committee and Senator Book

SUBJECT: Cosmetic Animal Testing

DATE: January 25, 2022

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Renner	McKay	CM	Fav/CS
2.			AP	
3.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1718 creates the Humane Cosmetics Act and prohibits a manufacturer in this state from manufacturing, importing for profit, selling, or offering for sale a cosmetic developed or manufactured using cosmetic animal testing conducted or contracted by the manufacturer or any supplier of the manufacturer, with certain exceptions.

A violation of this act constitutes a civil penalty of \$5,000 and an additional \$1,000 for each day a person continues to violate the act. Violations may be enforced by the Attorney General, state attorney, or the city attorney or county attorney of the city or county in which the violation occurred.

The bill does not appear to have a fiscal impact on state or local government.

The bill takes effect July 1, 2022.

II. Present Situation:

Licensing and Regulation of Drugs, Devices and Cosmetics in Florida

The Florida Drug and Cosmetic Act (act) is found in part I of ch. 499, F.S.¹ The act's purpose is to safeguard the public health and promote the public welfare by protecting the public from

¹ Section 499.001, F.S., provides that ss. 499.001-499.94 is the Florida Drug and Cosmetic Act.

injury by product use and by merchandising deceit involving drugs, devices, and cosmetics.² The Department of Business and Professional Regulation (DBPR) is responsible for administering and enforcing efforts to prevent fraud, adulteration, misbranding, or false advertising in the preparation, manufacture, repackaging, or distribution of drugs, devices, and cosmetics.³ Administration of the act must conform to the Federal Food, Drug, and Cosmetic Act⁴ and the applicable portions of the Federal Trade Commission Act,⁵ which prohibit the false advertising of drugs, devices, and cosmetics.⁶

DBPR's Division of Drugs, Devices and Cosmetics (division) issues permits to over-the-counter drug manufacturers and cosmetic manufacturers and inspects permittees and enforces the act.⁷

In addition to the above, the act also provides:⁸

- Criminal prohibitions against distribution of contraband and misbranded prescription drugs;
- Regulations for the advertising and labeling of drugs, devices, and cosmetics; and
- Enforcement avenues for DBPR, including seizure and condemnation of drugs, devices, and cosmetics.

Over-the-Counter Drugs and Cosmetics

Part I of Ch. 499, F.S., Definitions

A “proprietary drug,” or “OTC drug,” is defined as a patent or over-the-counter drug in its unbroken, original package, which is sold to the public by, or under the authority of, the manufacturer or primary distributor thereof, is not misbranded, and can be purchased without a prescription.⁹ The term “cosmetic” is defined as an article, with the exception of soap, that is: (a) intended to be rubbed, poured, sprinkled, or sprayed on or otherwise applied to the human body for cleansing, beautifying, promoting attractiveness, or altering the appearance; or (b) intended for use as a component of any such article.¹⁰

U.S. Food and Drug Administration Role and Guidance

Florida's drugs, devices and cosmetics regulations must conform to the Federal Food, Drug, and Cosmetic Act.¹¹ The U.S. Food and Drug Administration (FDA) defines “over-the counter drug products” as nonprescription drugs that are safe and effective for use by the general public without seeking treatment by a health professional.¹² The FDA reviews the active ingredients and the labeling of classes of drugs instead of individual drug products because there are over

² Section 499.002(1)(a), F.S.

³ Section 499.002(2), F.S.

⁴ 21 U.S.C. ss. 301 *et seq.*

⁵ *See* 15 U.S.C. §§ 41-58, as amended.

⁶ Section 499.002(1)(b), F.S.

⁷ *Id.*

⁸ *See* ss. 499.0051, 499.0054, and 499.062, F.S.

⁹ Section 499.003(43), F.S.

¹⁰ Section 499.003(12), F.S.

¹¹ *See supra* note 5.

¹² U.S. Food and Drug Administration, *Drug Applications for Over-the-Counter (OTC) Drugs*, available at <https://www.fda.gov/drugs/types-applications/drug-applications-over-counter-otc-drugs> (last visited Jan. 21, 2022).

300,000 marketed OTC drug products.¹³ For each class, an OTC drug monograph¹⁴ is developed and published in the Federal Register. According to the FDA, OTC drug monographs are a kind of "recipe book" covering acceptable ingredients, doses, formulations, and labeling.¹⁵

The FDA defines "cosmetic products" in a fashion similar to the definition of cosmetic in s. 499.003(12), F.S.¹⁶ Examples of cosmetics include skin moisturizers, perfumes, lipsticks, fingernail polishes, eye and facial makeup, cleansing shampoos, permanent waves, hair colors, and deodorants. Cosmetic products and ingredients do not need FDA premarket approval, with the exception of color additives.¹⁷

FDA Guidance on Animal Testing and Cosmetics

The FDA advises cosmetic manufacturers to employ whatever testing is appropriate and effective for substantiating the safety of their products. However, "in all cases where animal testing is used, FDA advocates that research and testing derive the maximum amount of useful scientific information from the minimum number of animals and employ the most humane methods available within the limits of scientific capability."¹⁸ The FDA also believes that consideration should be given "to the use of scientific alternative methods to whole-animal testing."¹⁹

III. Effect of Proposed Changes:

The bill creates the Humane Cosmetics Act and prohibits a manufacturer²⁰ in this state from:

- Manufacturing, importing for profit, selling, or offering for sale a cosmetic developed or manufactured using cosmetic animal testing conducted or contracted by the manufacturer or any supplier²¹ of the manufacturer.
- Conducting or contracting for cosmetic animal testing.

The bill defines "cosmetic animal testing" as the internal or external application of a cosmetic in its final form or any ingredient used in the formulation of such cosmetic to the skin, eyes, or other body part of a live, nonhuman vertebrate. Reviewing, assessing, or retaining evidence from a cosmetic animal test does not constitute developing or manufacturing a cosmetic using animal testing.

¹³ *Id.*

¹⁴ An OTC monograph establishes conditions under which certain OTC drugs may be marketed without approved new drug applications because they are "generally recognized as safe and effective" (GRASE) and not misbranded.

¹⁵ See *supra* note 5.

¹⁶ See U.S. Food and Drug Administration, *FDA Authority over Cosmetics: How Cosmetics Are Not FDA-Approved, but Are FDA-Regulated*, available at https://www.fda.gov/cosmetics/cosmetics-laws-regulations/fda-authority-over-cosmetics-how-cosmetics-are-not-fda-approved-are-fda-regulated#What_kinds (last visited Jan. 21, 2022)

¹⁷ *Id.*

¹⁸ See U.S. Food and Drug Administration, *Animal Testing & Cosmetics* (8/24/2020), available at <https://www.fda.gov/cosmetics/product-testing-cosmetics/animal-testing-cosmetics> (last visited Jan. 21, 2022).

¹⁹ *Id.*

²⁰ The bill defines a "manufacturer" as any person whose name appears on the label of a cosmetic pursuant to requirements of the name and place of business of the manufacturers, packers, or distributors on cosmetic labels under 21 C.F.R. § 701.12, as those requirements exist on July 1, 2022.

²¹ The bill defines a "supplier" as the entity that supplies, directly or through a third party, any ingredient used in the formulation of a manufacturer's cosmetics.

The prohibitions do not apply if cosmetic animal testing is conducted to comply with the following:

- A requirement of a federal or state law or regulation, if all of the following apply:
 - The ingredient is in wide use and cannot be replaced by another ingredient capable of performing a similar function.
 - A specific human health problem is substantiated and the need to conduct animal tests is justified and is supported by a detailed research protocol proposed as the basis for the evaluation.
 - There is no non-animal alternative method accepted for the relevant endpoint by the relevant federal or state authority.
- Chapter V of the Federal Food, Drug, and Cosmetic Act relating to drugs and devices;
- A requirement of a foreign regulatory authority if no evidence derived from such testing was relied upon to substantiate the safety of the cosmetic sold in the state by the manufacturer; or
- For noncosmetic purposes, a requirement of a federal, state, or foreign regulatory authority if no evidence derived from such testing was relied upon to substantiate the safety of the cosmetic sold in the state by the manufacturer.

For the above exceptions, manufacturers must include a statement printed on the label or packaging of the cosmetic stating: “This product or an ingredient used in the formulation of this product has been tested on animals.”

A person who violates the Humane Cosmetics Act is subject to a civil penalty of \$5,000 and an additional \$1,000 for each day a person continues to violate the act. Violations may be enforced by the Attorney General, state attorney, or the city attorney or county attorney of the city or county in which the violation occurred. The civil penalty must be remitted to the entity authorized to bring an action to enforce such penalty.

The bill takes effect July 1, 2022.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Manufacturers are prohibited from importing for profit, selling, or offering for sale a cosmetic developed or manufactured using cosmetic animal testing, with certain exceptions, and is subject to a \$5,000 civil penalty for violating the Humane Cosmetics Act and an additional \$1,000 for each day a person continues to violate the act.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 499.075 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 January 24, 2022:

- Limits manufacturer prohibitions to activity in Florida.

B. Amendments:

None.



539134

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
01/25/2022	.	
	.	
	.	
	.	

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

Senate Amendment (with title amendment)

Delete line 45
and insert:
manufacturer may not perform any of the following acts in this state:

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

And the title is amended as follows:

Delete line 5



539134

11 and insert:
12 importing for profit, selling, or offering for sale in
13 this state a

By Senator Book

32-01335-22

20221718__

A bill to be entitled

An act relating to cosmetic animal testing; creating s. 499.075, F.S.; providing a short title; defining terms; prohibiting a manufacturer from manufacturing, importing for profit, selling, or offering for sale a cosmetic developed or manufactured using cosmetic animal testing conducted or contracted by certain persons or from conducting or contracting for cosmetic animal testing; providing exceptions; providing labeling requirements for specified cosmetics; providing enforcement and civil penalties; providing an effective date.

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

Section 1. Section 499.075, Florida Statutes, is created to read:

499.075 Cosmetic Animal Testing.—

(1) SHORT TITLE.—This section may be cited as the “Humane Cosmetics Act.”

(2) DEFINITIONS.—For the purposes of this section:

(a) “Cosmetic” means any article intended to be rubbed, poured, sprinkled, or sprayed on, introduced into, or otherwise applied to the human body or any part thereof for cleansing, beautifying, promoting attractiveness, or altering the appearance, including, but not limited to, personal hygiene products such as deodorant, shampoo, or conditioner.

(b) “Cosmetic animal testing” means the internal or external application of a cosmetic in its final form or any

Page 1 of 3

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

32-01335-22

20221718__

ingredient used in the formulation of such cosmetic to the skin, eyes, or other body part of a live, nonhuman vertebrate.

Reviewing, assessing, or retaining evidence from a cosmetic animal test does not constitute developing or manufacturing a cosmetic using animal testing for purposes of this section.

(c) “Ingredient” means any single chemical entity or mixture used as a component in the manufacture of a cosmetic product.

(d) “Manufacturer” means any person whose name appears on the label of a cosmetic pursuant to the requirements of 21 C.F.R. s. 701.12 as those requirements exist on July 1, 2022.

(e) “Supplier” means an entity that supplies, directly or through a third party, any ingredient used in the formulation of a manufacturer’s cosmetic.

(3) PROHIBITION.—Except as provided in subsection (4), a manufacturer may not:

(a) Manufacture, import for profit, sell, or offer for sale a cosmetic developed or manufactured using cosmetic animal testing conducted or contracted by the manufacturer or any supplier of the manufacturer.

(b) Conduct or contract for cosmetic animal testing.

(4) EXCEPTIONS.—The prohibitions under subsection (3) do not apply if cosmetic animal testing is conducted to comply with the following:

(a) A requirement of a federal or state law or regulation, if all of the following apply:

1. The ingredient is in wide use and cannot be replaced by another ingredient capable of performing a similar function.

2. A specific human health problem is substantiated and the

Page 2 of 3

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32-01335-22

20221718__

59 need to conduct animal tests is justified and is supported by a
60 detailed research protocol proposed as the basis for the
61 evaluation.

62 3. There is no nonanimal alternative method accepted for
63 the relevant endpoint by the relevant federal or state
64 authority;

65 (b) Chapter V of the Federal Food, Drug, and Cosmetic Act;

66 (c) A requirement of a foreign regulatory authority if no
67 evidence derived from such testing was relied upon to
68 substantiate the safety of the cosmetic sold in the state by the
69 manufacturer; or

70 (d) For noncosmetic purposes, a requirement of a federal,
71 state, or foreign regulatory authority if no evidence derived
72 from such testing was relied upon to substantiate the safety of
73 the cosmetic sold in the state by the manufacturer.

74 (5) LABELING.—For a cosmetic described in subsection (4), a
75 manufacturer shall include the following statement legibly
76 printed on the label or packaging of the cosmetic: "This product
77 or an ingredient used in the formulation of this product has
78 been tested on animals."

79 (6) ENFORCEMENT AND PENALTIES.—A person who violates this
80 section is subject to a civil penalty of \$5,000 and an
81 additional \$1,000 for each day he or she continues to violate
82 this section. A violation of this section may be enforced by the
83 Attorney General, state attorney, or the city attorney or county
84 attorney of the city or county in which the violation occurred.
85 The civil penalty shall be remitted to the entity authorized to
86 bring an action to enforce such penalty.

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

The Florida Senate

APPEARANCE RECORD

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1/24/22

Meeting Date

1762

Bill Number or Topic

Committee

Amendment Barcode (if applicable)

Name Jared Willis

Phone

Address 200 W. College Ave. Ste. 201

Email jwillis@strategiesgroup.com

Street

City

State

Zip

Speaking: [X] For [] Against [] Information OR Waive Speaking: [] In Support [] Against

PLEASE CHECK ONE OF THE FOLLOWING:

[] I am appearing without compensation or sponsorship.

[X] I am a registered lobbyist, representing:

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

Alliance for Patient Access

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

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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

01.24.22

1762

Meeting Date

Bill Number or Topic

Commerce

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Committee

Amendment Barcode (if applicable)

Name William Large

Phone 850-222-0170

Address 210 South Monroe Street

Email William@fljustice.org

Street

Tallahassee

FL

32301

City

State

Zip

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

PLEASE CHECK ONE OF THE FOLLOWING:

I am appearing without compensation or sponsorship.

I am a registered lobbyist, representing:

Florida Justice Reform Institute

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

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

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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

SB 1762

January 24, 2022

Meeting Date

Commerce & Tourism

Committee

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

Bill Number or Topic

Amendment Barcode (if applicable)

Name Joshua Harris

Phone 850-435-7000

Address 316 S. Baylen St., Suite 600

Email jharris@levinlaw.com

Street

Pensacola

FL

32502

City

State

Zip

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

PLEASE CHECK ONE OF THE FOLLOWING:

I am appearing without compensation or sponsorship.

I am a registered lobbyist, representing:

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

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

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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

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

1/24/22
Meeting Date

1762
Bill Number or Topic

Commerce
Committee

Amendment Barcode (if applicable)

Name Chris Nuland Phone 904-233-3051

Address 4427 Herschel St Email nulandlaw@aol.com

Street

Jacksonville, FL 32210
City State Zip

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

PLEASE CHECK ONE OF THE FOLLOWING:

I am appearing without compensation or sponsorship.

I am a registered lobbyist, representing:

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

Florida Chapter, American College of Physicians

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

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S-001 (08/10/2021)

1/24/2022

Meeting Date

The Florida Senate

APPEARANCE RECORD

SB 1762

Bill Number or Topic

Commerce and Tourism

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

Amendment Barcode (if applicable)

Committee

Edda. Ivonne Fernandez

954-850-7262

Name

Phone

215 South Monroe # 603

ifernandez@aarp.org

Address

Email

Street

Tallahassee

Florida

32301

City

State

Zip

Speaking:

For

Against

Information

OR

Waive Speaking:

In Support

Against

PLEASE CHECK ONE OF THE FOLLOWING:

I am appearing without compensation or sponsorship.

I am a registered lobbyist, representing:

AARP

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

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

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The Florida Senate

APPEARANCE RECORD

SB 1762

1/24/22

Meeting Date

Bill Number or Topic

Commerce & Tourism

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

Committee

Amendment Barcode (if applicable)

Name **Carolyn Johnson**

Phone **521-1200**

Address **136 S Bronough St**

Email **cjohnson@flchamber.com**

Street

Tallahassee

FL

32301

City

State

Zip

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

PLEASE CHECK ONE OF THE FOLLOWING:

I am appearing without compensation or sponsorship.

I am a registered lobbyist, representing:

FL Chamber of Commerce

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

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

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S-001 (08/10/2021)

1/24/22

Meeting Date

Commerce & Tourism

Committee

The Florida Senate

APPEARANCE RECORD

Deliver both copies of this form to
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SB 1762

Bill Number or Topic

Amendment Barcode (if applicable)

Name Marnie George

Phone (850) 510-8866

Address 215 S. Monroe St. Suite 301

Email marnie.george@bipc.com

Street

Tallahassee

FL

32301

City

State

Zip

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

PLEASE CHECK ONE OF THE FOLLOWING:

I am appearing without compensation or sponsorship.

I am a registered lobbyist, representing:

Florida Chapter, American College of Cardiology

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

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11,045 and Joint Rule 1, [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

SB 1762

1/24/22

Meeting Date

Commerce & Tourism

Committee

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

Bill Number or Topic

Amendment Barcode (if applicable)

Name George Feijoo

Phone 3057207099

Address 108 S. Monroe St.

Email grfeijoo@gmail.com

Street

Tallahassee

FL

32312

City

State

Zip

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

PLEASE CHECK ONE OF THE FOLLOWING:

I am appearing without compensation or sponsorship.

I am a registered lobbyist, representing:

Institute for Legal Reform

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

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

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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

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1762

Bill Number or Topic

1/24/22

Meeting Date

Commerce & Tourism

Committee

Amendment Barcode (if applicable)

Name Steve Winn

Phone

Address 1424 Q Bottom Rd.

Email

Street

Tallahassee

32312

City

State

Zip

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

PLEASE CHECK ONE OF THE FOLLOWING:

I am appearing without compensation or sponsorship.

I am a registered lobbyist, representing:

Florida Osteopathic Medical Assn.

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

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

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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

1762

Meeting Date

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

Bill Number or Topic

Commercial

Committee

Amendment Barcode (if applicable)

Name Angie Hatfield

Phone 863-409-3332

Address Street

Email

City

State

Zip

Speaking: For Against Information

OR

Waive Speaking: In Support Against

PLEASE CHECK ONE OF THE FOLLOWING:

I am appearing without compensation or sponsorship.

I am a registered lobbyist, representing:

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

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

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S-001 (08/10/2021)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: SB 1762

INTRODUCER: Senator Brandes

SUBJECT: Solicitation of Nonmedical Services

DATE: January 21, 2022

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	McMillan	McKay	CM	Pre-meeting
2.			JU	
3.			RC	

I. Summary:

The bill creates s. 501.20791, F.S., which provides that it is a deceptive and unfair trade practice for a person to submit or approve the submittal of a nonmedical solicitation for publication, broadcast, or dissemination, or to pay for or otherwise sponsor a nonmedical solicitation if the solicitation meets or fails to meet specified criteria, including the following:

- Fails to clearly disclose the phrase, “this is a paid advertisement for nonmedical services;”
- Includes terminology implying that the advertisement is a public alert or announcement;
- Displays a logo in a manner implying affiliation with a governmental agency;
- Includes terminology implying that the product has been recalled;
- Fails to clearly disclose the sponsor of the advertisement;
- Fails to clearly disclose the individual or entity that will provide professional services; and
- Fails to include any required disclosure.

The bill creates s. 877.025, F.S., which provides that a person who is soliciting professional services may not use, cause to be used, obtain, sell, transfer, or disclose to another person an individual’s protected health information, without the individual’s written authorization.

The Criminal Justice Impact Conference, which provides the final, official estimate of the prison bed impact, if any, of legislation, has not yet reviewed the bill. However, since the bill creates a new second degree felony, it will likely have a positive indeterminate (i.e., unquantifiable increase) prison bed impact on the Department of Corrections. The bill also creates a new misdemeanor, which will likely have a positive indeterminate (i.e., unquantifiable increase) jail bed impact on counties.

Except as otherwise provided, the bill takes effect July 1, 2022.

II. Present Situation:

Attorney Advertising Seeking Plaintiffs against Pharmaceutical Companies

The television advertisements that attorneys use to find personal injury clients has generated concerns at the federal level. In 2019, the Federal Trade Commission (FTC) contacted seven law firms and lead generating companies to express concerns that some of their “television advertisements that solicit clients for personal injury lawsuits against drug manufacturers may be deceptive or unfair under the FTC Act.” The warning letters also stated that some of the ads might misrepresent the risks associated with certain medications and could lead consumers to the false conclusion that their prescribed medication had been recalled.¹

The FTC also noted that the Food and Drug Administration’s (FDA) Adverse Event Reporting System contained reports of consumers who had viewed advertisements about the prescription drugs they were taking, then discontinued those medications, and suffered harmful consequences.² The FTC warned that advertisements that cause, or are likely to cause, viewers to discontinue their prescribed medications might create an unfair act or practice. As a remedial step, the FTC recommended those advertisements “include clear and prominent audio and visual disclosures” stating that a consumer should not stop taking prescribed medication without first consulting a doctor.³

In 2020, a Congressman asked the Chairman of the FTC for a progress report on the effects of the seven warning letters issued in 2019. The Chairman replied that each recipient committed to heed the FTC warnings for future lawsuit advertising. When asked if various renditions of the lawsuit advertisements violated the FTC Act, the Chairman essentially said that it depended on the actual claim involved. The Chairman did note that FTC staff had reviewed state laws enacted in West Virginia, Texas, and Tennessee to address deceptive lawsuit advertisements but has not taken a position on federal legislation on the topic. These state laws contain provisions similar to this bill.⁴

Florida Deceptive and Unfair Trade Practices Act (FDUTPA)

History and Purpose of FDUTPA

The Florida Deceptive and Unfair Trade Practices Act (FDUTPA) became law in 1973.⁵ The FDUTPA is a consumer and business protection measure that prohibits unfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in trade or

¹ See Federal Trade Commission, *FTC Flags Potentially Unlawful TV Ads for Prescription Drug Lawsuits* (September 24, 2019), available at <https://www.ftc.gov/news-events/press-releases/2019/09/ftc-flags-potentially-unlawful-tv-ads-prescription-drug-lawsuits> (last visited Jan. 21, 2022).

² *Id.*

³ *Id.*

⁴ Correspondence from Joseph J. Simons, Chairman of the Federal Trade Commission, to The Honorable Greg Walden, Committee on Energy and Commerce, U.S. House of Representatives, (November 17, 2020), available at <http://republicans-energycommerce.house.gov/wp-content/uploads/2020/11/2020.11.17-FTC-to-Rep.-Walden-Lawyer-Ads-.pdf> (last visited Jan. 21, 2022).

⁵ Ch. 73-124, Laws of Fla.; codified at part II of ch. 501, F.S.

commerce.⁶ The FDUTPA is based on federal law, and s. 501.204(2), F.S., provides that it is the intent of the Legislature that due consideration and great weight must be given to the interpretations of the Federal Trade Commission and the federal courts relating to section 5 of the Federal Trade Commission Act.⁷

The State Attorney or the Department of Legal Affairs may bring actions when it is in the public interest on behalf of consumers or governmental entities.⁸ The Office of the State Attorney may enforce violations of the FDUTPA if the violations take place in its jurisdiction.⁹ The Department of Legal Affairs has enforcement authority if the violation is multi-jurisdictional, the state attorney defers in writing, or the state attorney fails to act within 90 days after a written complaint is filed.¹⁰ Consumers may also file suit through private actions.¹¹

Remedies under the FDUTPA

The Department of Legal Affairs and the State Attorney, as enforcing authorities, may seek the following remedies:

- Declaratory judgments;
- Injunctive relief;
- Actual damages on behalf of consumers and businesses;
- Cease and desist orders; and
- Civil penalties of up to \$10,000 per willful violation.¹²
- Remedies for private parties are limited to the following:
 - A declaratory judgment and an injunction where a person is aggrieved by a FDUTPA violation; and
 - Actual damages, attorney fees and court costs, where a person has suffered a loss due to a FDUTPA violation.¹³

⁶ See s. 501.202, F.S. Trade or commerce means the advertising, soliciting, providing, offering, or distributing, whether by sale, rental, or otherwise, of any good or service, or any property, whether tangible or intangible, or any other article, commodity, or thing of value, wherever situated. "Trade or commerce" shall include the conduct of any trade or commerce, however denominated, including any nonprofit or not-for-profit person or activity. See s. 501.203(8), F.S.

⁷ See s 501.204(2), F.S.

⁸ See ss. 501.203(2), 501.206, and 501.207, F.S.

⁹ Section 501.203(2), F.S.

¹⁰ *Id.*

¹¹ Section 501.211, F.S.

¹² Sections 501.207(1), 501.208, and 501.2075, F.S. Civil Penalties are deposited into general revenue. Enforcing authorities may also request attorney fees and costs of investigation or litigation. Section 501.2105, F.S.

¹³ Section 501.211(1) and (2), F.S.

Federal Unfair and Deceptive Trade Practices

The Federal Trade Commission's (FTC's) unfair and deceptive trade practices regulations prohibit unfair¹⁴ or deceptive¹⁵ acts or practices in or affecting commerce.¹⁶ The FTC's regulations include "Truth In Advertising" guidelines, which require advertisements to be truthful, not misleading, and, when appropriate, backed by scientific evidence.¹⁷ To enforce these regulations, the FTC takes law enforcement actions, provides consumer and business education, issues reports and policy guidance, leads workshops, and participates in other forums.¹⁸

Legal Advertising

Section 15 of Article V of the Florida Constitution vests exclusive jurisdiction in the Florida Supreme Court to regulate admissions to the bar and to discipline admitted attorneys. The Florida Bar approves lawyer advertising, issues advisory opinions interpreting rules, and investigates and prosecutes attorneys for alleged violations.¹⁹ Florida's legal advertising rules apply to all forms of communication soliciting legal services in any print or electronic form.²⁰ Advertisements in specified media must be submitted to the Legal Division of the Florida Bar at least 20 days prior to dissemination, including print, television, radio, direct mail, and Internet.²¹

The Legal Division reviews an advertisement to determine whether it complies with the Florida Bar's advertising rules, and issues an opinion either approving or disapproving the advertisement. The Disciplinary Counsel of the Florida Bar investigates and prosecutes attorneys for alleged violations of the advertising rules.²²

Florida Bar rules require legal advertising to include:

- The name of the lawyer or law firm;²³
- The location of the law practice;²⁴ and

¹⁴ An "unfair" practice is unfair if it causes or is likely to cause substantial injury to consumers which is not reasonably avoidable by consumers themselves and not outweighed by countervailing benefits to consumers or to competition. *See* 15 U.S.C. Sec. 45(n).

¹⁵ A "deceptive" practice involves a material representation, omission or practice that is likely to mislead a consumer acting reasonably in the circumstances. *See* FTC Policy Statement on Deception (Oct. 14, 1983) available at https://www.ftc.gov/system/files/documents/public_statements/410531/831014deceptionstmt.pdf (last visited Jan. 21, 2022). *See also* Federal Trade Commission, *A Brief Overview of the Federal Trade Commission's Investigative, Law Enforcement, and Rulemaking Authority* (revised, May 2021) available at <https://www.ftc.gov/about-ftc/what-we-do/enforcement-authority> (last visited Jan. 21, 2022).

¹⁶ 15 U.S.C. s. 45(a)(1).

¹⁷ Federal Trade Commission, *Truth In Advertising*, available at <https://www.ftc.gov/news-events/media-resources/truth-advertising> (last visited Jan. 21, 2022).

¹⁸ Federal Trade Commission, *Protecting Consumers from Fraud and Deception*, available at <https://www.ftc.gov/news-events/media-resources/truth-advertising/protecting-consumers> (last visited Jan. 21, 2022).

¹⁹ The Florida Bar, *Frequently Asked Questions About the Florida Bar*, available at <https://www.floridabar.org/about/faq/> (last visited Jan. 21, 2022).

²⁰ Fla. Bar Code Prof. Resp. D. R. 4-7.11(a).

²¹ Fla. Bar Code Prof. Resp. D. R. 4-7.19.

²² Fla. Bar Code Prof. Resp. D. R. 4-7.19.

²³ Fla. Bar Code Prof. Resp. D. R. 4-7.12(a)(1).

²⁴ Fla. Bar Code Prof. Resp. D. R. 4-7.12(a)(2).

- Certain disclosures when relevant, including whether a case will be referred to another lawyer;²⁵ a spokesperson in the advertisement is not an employee or member of the law firm;²⁶ or a scene depicted is a dramatization and not an actual event.²⁷

Required information must be reasonably prominent and clearly legible if written, as well as, clearly audible if spoken aloud.²⁸

Health Insurance Portability and Accountability Act²⁹ and its Related Rules

The Federal Health Insurance Portability and Accountability Act (HIPAA), protects personal health information (PHI).³⁰ HIPAA's two pertinent implementing rules are the Privacy Rule and the Security Rule. The Privacy Rule addresses the use and disclosure of an individual's PHI by covered entities.³¹ Covered entities include the following:

- Health plans;
- Health care providers;
- Health care clearinghouses; and
- Business associates of any of the above.³²

A common example of PHI is a patient's name, address, birth date, or social security number. However, PHI does not include de-identified health information or employment-related records.

The Privacy Rule protects PHI that is held or transmitted by a covered entity or its business associate by preventing covered entities from disclosing PHI without the patient's consent or knowledge unless it is being used or shared for treatment, payment, or healthcare operations or for another exempt purpose.

The Privacy Rule also requires covered entities to prominently post an electronic notice and give notice upon a specific request to patients regarding the manner in which it may use and disclose PHI. A covered entity must also provide an accounting of disclosures it has made of a patient's PHI upon his or her request as well as a copy of his or her PHI.

The Security Rule applies to the subset of identifiable health information that a covered entity creates, receives, maintains, or transmits in electronic form called "electronic protected health information" (e-PHI).³³ The Security Rule does not apply to PHI that is transmitted orally or in writing. A covered entity must comply with the Security Rule by:

²⁵ Fla. Bar Code Prof. Resp. D. R. 4-7.12(b).

²⁶ Fla. Bar Code Prof. Resp. D. R. 4-7.13(b)(5).

²⁷ Fla. Bar Code Prof. Resp. D. R. 4-7.13(b)(6).

²⁸ Fla. Bar Code Prof. Resp. D. R. 4-7.12(d).

²⁹ Pub. L. No. 104-191 (1996).

³⁰ Protected health information includes all individually identifiable health information held or transmitted by a covered entity or its business associate. Pub. L. No. 104-191 (1996).

³¹ 45 C.F.R. §160 and 164. *See also*, Department of Health and Human Services, *Summary of the HIPPA Privacy Rule* (July 26, 2013) available at <https://www.hhs.gov/hipaa/for-professionals/privacy/laws-regulations/index.html> (last visited Jan. 21, 2022).

³² U.S. Department of Health and Human Services, Office for Civil Rights, *Summary of the HIPAA Privacy Rule*, available at <https://www.hhs.gov/sites/default/files/privacysummary.pdf>. (last visited Jan. 21 2022).

³³ 45 C.F.R. § 164.302-318.

- Ensuring the confidentiality, integrity, and availability of all electronic protected health information;
- Detecting and safeguarding against anticipated threats to the security of the information;
- Protecting against anticipated impermissible uses or disclosures; and
- Certifying compliance by their workforce.

The Department of Health and Human Services may institute a civil enforcement under HIPAA and may seek civil penalties. A civil penalty varies based on the severity of the violation, the number of people affected, the nature of the data exposed, the length of time a violation was allowed to persist, the prior compliance history of the covered entity, and the knowledge the covered entity had of the violation.³⁴ The Department of Justice may institute criminal proceedings against a violator who knowingly obtained or disclosed PHI. Criminal penalties for a HIPAA violation are triggered when a person obtains PHI for financial gain or under false pretenses.³⁵ The criminal penalty for such HIPAA violations are punishable by up to 10 years imprisonment.³⁶ There is no private cause of action under HIPAA.

III. Effect of Proposed Changes:

The bill creates s. 501.20791, F.S., which provides that it is a deceptive and unfair trade practice for a person³⁷ to submit or approve the submittal of a nonmedical solicitation for publication, broadcast, or dissemination, or to pay for or otherwise sponsor a nonmedical solicitation if the solicitation does any of the following:

- Fails to clearly and conspicuously disclose at the outset of the solicitation the phrase, “this is a paid advertisement for nonmedical services;”
- Includes terminology implying that the advertisement is a “medical alert,” “health alert,” “consumer alert,” “public service announcement,” or similar public alert or announcement;
- Displays the logo, or a similar facsimile thereof, of a federal or state governmental agency in a manner implying affiliation with or sponsorship by, a governmental agency;
- Includes terminology, including use of the term “recall” when referring to a product, implying that the product has been recalled when, in fact, the product has not been recalled by a governmental agency or through agreement between a manufacturer and a governmental agency;
- Fails to clearly and conspicuously disclose the sponsor of the advertisement;
- Fails to clearly and conspicuously disclose the individual or entity that will provide professional services to persons responding to the advertisement or how those persons will be referred to such individual or entity;
- Solicits clients who may allege injury from a prescription drug approved or cleared by, or which is the subject of monograph authorized by, the United States (U.S.) Food and Drug Administration (FDA) and fails to clearly and conspicuously disclose, “do not stop taking a prescribed medication without first consulting your doctor,” and “discontinuing a prescribed medication without your doctor’s advice can result in injury or death;”

³⁴ HIPAA Journal, *What are the penalties for HIPAA Violations?*, <https://www.hipaajournal.com/what-are-the-penalties-for-hipaa-violations-7096/> (last visited Jan. 21, 2022).

³⁵ *Id.*

³⁶ *Id.*

³⁷ A “person” includes individuals, children, firms, associations, joint adventures, partnerships, estates, trusts, business trusts, syndicates, fiduciaries, corporations, and all other groups or combinations. *See* s. 1.01(3), F.S.

- Solicits clients who may allege injury from a prescription drug or medical device approved or cleared by, or which is the subject of monograph authorized by, the U.S. FDA and fails to clearly and conspicuously disclose that the drug or medical device remains approved by the U.S. FDA, unless the product is recalled or withdrawn; and
- Fails to present a written disclosure that is clearly legible and, if televised or displayed electronically, is displayed for sufficient time to enable the viewer to easily see and fully read the disclosure, or fails to present a spoken disclosure that is plainly audible and clearly intelligible.

The bill provides the following definitions:

- “Client” means a prospective customer, client, or patron of nonmedical professional services;
- “Nonmedical solicitation” means a paid solicitation for nonmedical professional services which contains information about a drug³⁸ or device³⁹ and which is directed to the public through television, radio, the Internet, a newspaper or other periodical, an outdoor advertising sign, or another written, electronic, or recorded communication;
- “Person” means individuals, children, firms, associations, joint adventures, partnerships, estates, trusts, business trusts, syndicates, fiduciaries, corporations, and all other groups or combinations;⁴⁰ and
- “Solicit” means to offer to provide professional services by written, recorded, or electronic communication or by in-person, telephone, or real-time electronic contact.

The bill creates s. 877.025, F.S., which is effective October 1, 2022, and provides that a person who is soliciting professional services may not use, cause to be used, obtain, sell, transfer, or disclose to another person an individual’s protected health information,⁴¹ without the individual’s written authorization.

The bill establishes the following:

- A person who violates s. 877.025(2), F.S., commits a deceptive and unfair trade practice;

³⁸ A “drug” is defined as recognized in the current edition of the United States Pharmacopoeia and National Formulary, official Homeopathic Pharmacopoeia of the United States, or any supplement to any of those publications, which is intended for use in the diagnosis, cure, mitigation, treatment, therapy, or prevention of disease in humans or other animals, intended to affect the structure or any function of the body of humans or other animals, or intended for use as a component of any of the aforementioned articles, and includes active pharmaceutical ingredients, but does not include devices or their nondrug components, parts, or accessories. *See* s. 499.003(17), F.S.

³⁹ A “device” is defined as any instrument, apparatus, implement, machine, contrivance, implant, in vitro reagent, or other similar or related article, including its components, parts, or accessories, which is recognized in the current edition of the United States Pharmacopoeia and National Formulary, or any supplement thereof, intended for use in the diagnosis, cure, mitigation, treatment, therapy, or prevention of disease in humans or other animals, or intended to affect the structure or any function of the body of humans or other animals, and that does not achieve any of its principal intended purposes through chemical action within or on the body of humans or other animals and which is not dependent upon being metabolized for the achievement of any of its principal intended purposes. *See* s. 499.003(15), F.S.

⁴⁰ *See* s. 1.01(3), F.S.

⁴¹ “Protected health information” means individually identifiable health information that is transmitted by electronic media, maintained in electronic media, or transmitted or maintained in any other form or medium, but excludes individually identifiable health information in education records covered by the Family Educational Rights and Privacy Act, in records described at 20 U.S.C. 1232g(a)(4)(B)(iv), in employment records held by a covered entity in its role as employer, and regarding a person who has been deceased for more the 50 years. *See* 45 C.F.R. s. 160.103.

- A person who willfully and knowingly violates s. 877.025(2), F.S., commits a misdemeanor of the first degree;⁴² and
- A person who willfully and knowingly violates s. 877.025(2), F.S., with intent to sell, transfer, or use protected health information for financial gain commits a felony of the second degree.⁴³

The bill provides that s. 877.025, F.S., does not apply to the disclosure or use of protected health information to an attorney or by an attorney for use in a judicial or administrative proceeding, or any other use or disclosure otherwise authorized or required by law.

Except as otherwise provided, the bill takes effect July 1, 2022.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The bill creates new criminal offenses relating to the unlawful use of protected health information. Criminal laws are exempt from the requirements of Art. VII, s. 18(d) of the Florida Constitution, relating to unfunded mandates.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

In *Virginia State Board of Pharmacy v. Virginia Citizens Consumer Council*, the Supreme Court held that commercial speech does receive protection under the First Amendment.⁴⁴ The Court based its opinion on the public's right to receive a free flow of commercial information.⁴⁵ Although commercial speech does receive protection, it is below the protection provided to completely protected speech, and states retain the ability to regulate commercial speech that is inherently misleading or that has proven to be misleading in practice.⁴⁶

⁴² A misdemeanor of the first degree is punishable by a definite term of imprisonment not to exceed 1 year and a fine not to exceed \$1,000. See ss. 775.082 and 775.083, F.S.

⁴³ The bill provides that the term of imprisonment may not exceed 10 years and the fine must be more than \$10,000 but may not exceed \$250,000. See ss. 775.082, 775.083, and 775.084, F.S.

⁴⁴ See *Virginia State Board of Pharmacy v. Virginia Citizens Consumer Council*, 96 S. Ct. 1817 (1976).

⁴⁵ *Id.*

⁴⁶ See *In re R.M.J.*, 102 S. Ct. 929 (1982).

In *Central Hudson Gas & Elec. Corp. v. Public Service Commission of New York*, the Supreme Court established a three-part test for analyzing the limitations of advertising regulations.⁴⁷ Under the *Central Hudson* test, a state must show that any commercial speech regulation aimed at regulating “non-misleading” commercial speech is in service of a substantial state interest, directly advances that interest, and is no more extensive than necessary to serve that interest.⁴⁸ Although commercial speech regulations must meet the *Central Hudson* test, in *Bates v. State Bar of Arizona*, the Supreme Court held that reasonable time, place, and manner restrictions on advertising are authorized if the content or subject matter is not regulated.⁴⁹

In May of 2021, the U.S. District Court for the Northern District of West Virginia ruled that a West Virginia law⁵⁰ restricting advertising by lawyers seeking clients who have been harmed by drugs or medical devices cannot be enforced because it violates the First Amendment.⁵¹ The court found that the state of West Virginia had the burden to justify the advertising restrictions because the restrictions are content and speaker based, which require a strict scrutiny analysis.⁵² The holding indicates that the advertising restricted by the law is not misleading, and the state has not shown it is necessary to protect the public. Additionally, the opinion states that West Virginia did not show it has tried less-restrictive alternatives.⁵³ The case is currently pending before the United States Court of Appeals for the Fourth Circuit.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Criminal Justice Impact Conference, which provides the final, official estimate of the prison bed impact, if any, of legislation, has not yet reviewed the bill. However, since the bill creates a new second degree felony, it will likely have a positive indeterminate (i.e., unquantifiable increase) prison bed impact on the Department of Corrections. The bill

⁴⁷ See *Central Hudson Gas & Elec. Corp. v. Public Service Commission of New York*, 100 S. Ct. 2343 (1980).

⁴⁸ *Id.*

⁴⁹ See *Bates v. State Bar of Arizona*, 97 S. Ct. 2691 (1977).

⁵⁰ See W.Va. Code § 47-28-1.

⁵¹ See *Recht v. Morrissey*, No. 5:20-cv-90 (N.D. W.Va., 2021).

⁵² *Id.* The strict scrutiny standard requires the government to show that the law is narrowly written to serve compelling state interests, is justified without reference to the speech’s content, leaves open alternative channels of communication, and there is no less restrictive alternative that would serve the state’s interest.

⁵³ *Id.*

also creates a new misdemeanor, which will likely have a positive indeterminate (i.e., unquantifiable increase) jail bed impact on counties.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

The bill creates the following sections of the Florida Statutes: 501.20791 and 877.025.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

None.

B. Amendments:

None.

By Senator Brandes

24-00556-22

20221762__

1 A bill to be entitled
 2 An act relating to the solicitation of nonmedical
 3 services; creating s. 501.20791, F.S.; defining terms;
 4 providing that a person who submits or sponsors a
 5 nonmedical solicitation that contains certain
 6 terminology or fails to include specified disclosures
 7 commits a deceptive and unfair trade practice, subject
 8 to the penalties and remedies of the Florida Deceptive
 9 and Unfair Trade Practices Act; creating s. 877.025,
 10 F.S.; defining terms; prohibiting the unauthorized
 11 use, sale, transfer, or disclosure of protected health
 12 information for the purpose of soliciting professional
 13 services; providing that a person who willfully and
 14 knowingly violates such prohibition commits a
 15 deceptive and unfair trade practice, subject to the
 16 penalties and remedies of the Florida Deceptive and
 17 Unfair Trade Practices Act; providing criminal
 18 penalties for willful and knowing violations and
 19 enhanced criminal penalties for violations committed
 20 for financial gain; providing applicability; providing
 21 effective dates.

22
 23 Be It Enacted by the Legislature of the State of Florida:

24
 25 Section 1. Section 501.20791, Florida Statutes, is created
 26 to read:

27 501.20791 Nonmedical solicitation; deceptive and unfair
 28 trade practices.-

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

Page 1 of 5

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

24-00556-22

20221762__

30 (a) "Client" means a prospective customer, client, or
 31 patron of nonmedical professional services.
 32 (b) "Nonmedical solicitation" means a paid solicitation for
 33 nonmedical professional services which contains information
 34 about a drug or device as defined in s. 499.003 and which is
 35 directed to the public through television; radio; the Internet,
 36 including a domain name; a newspaper or other periodical; an
 37 outdoor advertising sign; or another written, electronic, or
 38 recorded communication.
 39 (c) "Person" has the same meaning as in s. 1.01(3).
 40 (2) A person who submits or approves the submittal of a
 41 nonmedical solicitation for publication, broadcast, or
 42 dissemination, or who pays for or otherwise sponsors a
 43 nonmedical solicitation, commits a deceptive and unfair trade
 44 practice under this part if the solicitation, once published,
 45 broadcast, or disseminated, does any of the following:
 46 (a) Fails to clearly and conspicuously disclose at the
 47 outset of the solicitation the phrase: "This is a paid
 48 advertisement for nonmedical services."
 49 (b) Includes terminology implying that the advertisement is
 50 a "medical alert," "health alert," "consumer alert," "public
 51 service announcement," or similar public alert or announcement.
 52 (c) Displays the logo, or a similar facsimile thereof, of a
 53 federal or state governmental agency in a manner implying
 54 affiliation with, or sponsorship by, a governmental agency.
 55 (d) Includes terminology, including use of the term
 56 "recall" when referring to a product, implying that the product
 57 has been recalled when, in fact, the product has not been
 58 recalled by a governmental agency or through agreement between a

Page 2 of 5

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24-00556-22

20221762__

59 manufacturer and a governmental agency.

60 (e) Fails to clearly and conspicuously disclose the sponsor
61 of the advertisement.

62 (f) Fails to clearly and conspicuously disclose the
63 individual or entity that will provide professional services to
64 persons responding to the advertisement or how those persons
65 will be referred to such individual or entity.

66 (g) Solicits clients who may allege injury from a
67 prescription drug approved or cleared by, or which is the
68 subject of a monograph authorized by, the United States Food and
69 Drug Administration and fails to clearly and conspicuously
70 disclose the following warning: "Do not stop taking a prescribed
71 medication without first consulting with your doctor.
72 Discontinuing a prescribed medication without your doctor's
73 advice can result in injury or death."

74 (h) Solicits clients who may allege injury from a
75 prescription drug or medical device approved or cleared by, or
76 which is the subject of a monograph authorized by, the United
77 States Food and Drug Administration and fails to clearly and
78 conspicuously disclose that the drug or medical device remains
79 approved by the United States Food and Drug Administration,
80 unless the product is recalled or withdrawn.

81 (i) Fails to present any disclosure required by this
82 subsection such that:

83 1. A written disclosure is clearly legible and, if
84 televised or displayed electronically, is displayed for
85 sufficient time to enable the viewer to easily see and fully
86 read the disclosure.

87 2. A spoken disclosure is plainly audible and clearly

Page 3 of 5

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24-00556-22

20221762__

88 intelligible.

89 Section 2. Effective October 1, 2022, section 877.025,
90 Florida Statutes, is created to read:

91 877.025 Solicitation of nonmedical services; wrongful use
92 or disclosure of protected health information.—

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

94 (a) "Person" has the same meaning as in s. 1.01(3).

95 (b) "Protected health information" has the same meaning as
96 provided in 45 C.F.R. s. 106.103.

97 (c) "Solicit" means to offer to provide professional
98 services by written, recorded, or electronic communication or by
99 in-person, telephone, or real-time electronic contact.

100 (2) A person may not use, cause to be used, obtain, sell,
101 transfer, or disclose to another person an individual's
102 protected health information, without that individual's written
103 authorization, to solicit professional services.

104 (3) (a) A person who violates subsection (2) commits a
105 deceptive and unfair trade practice subject to the penalties and
106 remedies provided in part II of chapter 501.

107 (b) A person who willfully and knowingly violates
108 subsection (2) commits a misdemeanor of the first degree,
109 punishable as provided in s. 775.082 or s. 775.083.

110 (c) A person who willfully and knowingly violates
111 subsection (2) with intent to sell, transfer, or use protected
112 health information for financial gain commits a felony of the
113 second degree, punishable as provided in s. 775.082, s. 775.083,
114 or s. 775.084, except that the term of imprisonment may not
115 exceed 10 years and the fine must be more than \$10,000 but may
116 not exceed \$250,000.

Page 4 of 5

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

24-00556-22

20221762__

117 (4) This section does not apply to the disclosure of
118 protected health information to an attorney, or the attorney's
119 use of such protected health information, in any judicial or
120 administrative proceeding or any other use or disclosure
121 otherwise authorized or required by law.

122 Section 3. Except as otherwise expressly provided in this
123 act, this act shall take effect July 1, 2022.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Banking and Insurance, *Chair*
Agriculture
Appropriations Subcommittee on Agriculture,
Environment, and General Government
Appropriations Subcommittee on Transportation,
Tourism, and Economic Development
Judiciary
Rules

JOINT COMMITTEE:

Joint Legislative Auditing Committee

SENATOR JIM BOYD

21st District

January 12, 2022

Senator Ed Hooper
404 South Monroe Street
310 Knott Building
Tallahassee, FL 32399

Dear Chairman Hooper:

I respectfully request Senate Bill 1800: Broadband Infrastructure and SB 1802: Broadband Pole Replacement Trust Fund, be scheduled for a hearing in the Committee on Commerce and Tourism at your earliest convenience.

If I may be of assistance to you on this or any other matter, please do not hesitate to contact me.

Thank you for your consideration of this matter.

Best regards,

A handwritten signature in blue ink that reads "Jim Boyd".

Jim Boyd

cc: Todd McKay
Kathryn Vigrass

REPLY TO:

- 717 Manatee Avenue West, Bradenton, Florida 34205 (941) 742-6445
- 312 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5021

Senate's Website: www.flsenate.gov

WILTON SIMPSON
President of the Senate

AARON BEAN
President Pro Tempore

The Florida Senate

APPEARANCE RECORD

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

1/24/22

Meeting Date

1800

Bill Number or Topic

Commerce

Committee

Amendment Barcode (if applicable)

Name Albie Kaminsky

Phone 407-310-9834

Address Street

Email Albert.Kaminsky@Charter.com

City

State

Zip

Speaking:

For

Against

Information

OR

Waive Speaking:

In Support

Against

PLEASE CHECK ONE OF THE FOLLOWING:

I am appearing without compensation or sponsorship.

I am a registered lobbyist, representing:

Charter Communications

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

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

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S-001 (08/10/2021)

The Florida Senate
APPEARANCE RECORD

1860

Meeting Date

Bill Number or Topic

Deliver both copies of this form to
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Committee

Amendment Barcode (if applicable)

Name

Chris Doolin

Phone

SMALL County Coalition

Address

1018 - Thommas Rd

Email

cdoolin@doolin.com

Street

City

State

Zip

ASSOC
COM

Speaking:

For

Against

X

Information

OR

Waive Speaking:

In Support

Against

PLEASE CHECK ONE OF THE FOLLOWING:

I am appearing without compensation or sponsorship.

X

I am a registered lobbyist, representing:

SMALL County Coalition

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

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

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5-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

1/24/22

1800

Meeting Date

Bill Number or Topic

Commerce and Tourism

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

Committee

Amendment Barcode (if applicable)

Name **Adam Basford**

Phone **850-224-7173**

Address **516 N Adams**
Street

Email **abasford@aif.com**

Tallahassee
City

FL
State

32301
Zip

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

PLEASE CHECK ONE OF THE FOLLOWING:

I am appearing without compensation or sponsorship.

I am a registered lobbyist, representing:

Associated Industries of Florida

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

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. 511.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

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1/24

Meeting Date

1800

Bill Number or Topic

Commerce + Tourism

Committee

Amendment Barcode (if applicable)

Name Allison Carter

Phone 850-567-0059

Address 2916 Apalachee Rkwy

Street

Email allison@fecca.com

Tallahassee

City

FL

State

32301

Zip

Speaking: For Against Information

OR

Waive Speaking: In Support Against

PLEASE CHECK ONE OF THE FOLLOWING:

I am appearing without compensation or sponsorship.

I am a registered lobbyist, representing:

Florida Electric Cooperatives Assoc.

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

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

1/24/2022

Meeting Date

The Florida Senate APPEARANCE RECORD

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

SB 1800

Bill Number or Topic

Commerce and Tourism

Amendment Barcode (if applicable)

Committee

Edda. Ivonne Fernandez

954-850-7262

Name

Phone

Address

215 South Monroe # 603

Email

ifernandez@aarp.org

Street

Tallahassee

Florida

32301

City

State

Zip

Speaking:

For

Against

Information

OR

Waive Speaking:

In Support

Against

PLEASE CHECK ONE OF THE FOLLOWING:

I am appearing without
compensation or sponsorship.

I am a registered lobbyist,
representing:

AARP

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

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

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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

112412Z

1800

Meeting Date

Bill Number or Topic

Commerce & Tourism

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

Committee

Amendment Barcode (if applicable)

Name Parents & Educators Endorsing Public Schools

Phone

Address 14842 Banyan Ln Dr

Email Angie.Gallo@cms@gmail.com

Street

Or

FL

32826

City

State

Zip

Speaking:

For

Against

Information

OR

Waive Speaking:

In Support

Against

PLEASE CHECK ONE OF THE FOLLOWING:

I am appearing without compensation or sponsorship.

I am a registered lobbyist, representing:

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

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11,045 and Joint Rule 1. 2020-2022 Joint Rules.pdf (flsenate.gov)

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 1800

INTRODUCER: Commerce and Tourism Committee and Senator Boyd

SUBJECT: Broadband Infrastructure

DATE: January 25, 2022

REVISED: _____

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

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1800 creates the Broadband Pole Replacement Program, to be administered by the Office of Broadband (Office) within the Department of Economic Opportunity (Department). The Program will reimburse eligible broadband Internet service providers for their costs incurred for the removal and replacement of existing utility poles in areas of Florida that are unserved by broadband Internet service.

Reimbursements under the program are limited to 50 percent of the broadband Internet service provider's eligible pole replacement costs, or \$5,000—whichever is less, in addition to their administrative costs related to the preparation and submission of the application for reimbursement.

The bill directs the Secretary of the Department to apply for \$100 million in federal funding from the Coronavirus Capital Projects Fund, and directs any such funds received to be placed into the Broadband Pole Replacement Trust Fund, which is created by linked bill, SB 1802.

For the 2022-2023 fiscal year, the bill appropriates \$400 million in nonrecurring funds from the General Revenue Fund to the Department for the purpose of administering the Broadband Opportunity Program established in s. 288.9962, F.S.

CS/SB 1800 takes effect upon becoming law if SB 1802, or similar legislation, is adopted in the same legislative session or an extension thereof and becomes law.

II. Present Situation:

Broadband Internet Deployment

Fixed and mobile broadband Internet services provide access to numerous employment, education, entertainment, and health care opportunities.¹ Access to a sufficient internet connection has only grown more important during the COVID-19 pandemic, which requires many Americans to connect to their family and friends, schooling, work, and even medical appointments over the internet.²

Broadband internet is a high speed internet that is faster than dial-up access and is always on; in 2015, the Federal Communications Commission (FCC) defined broadband as 25/3 megabits per second (Mbps), i.e., 25 Mbps (download rate) and 3 Mbps (upload rate).³ Consumers can receive Broadband internet through several different technologies, including a digital subscriber line (DSL), a cable modem, fiber, wireless, satellite, and broadband over power lines.⁴

While Florida's urban areas are served at a fixed broadband coverage rate of 98 percent, its rural areas are served at a rate of 78.6 percent.⁵ This disparity is caused primarily by high per-unit construction costs required to build broadband infrastructure across larger swaths of rural geographic areas.⁶ One key factor in deploying broadband infrastructure is access to utility poles, upon which broadband providers affix their infrastructure.⁷ Often, broadband providers who seek to expand their infrastructure are met with denied or delayed utility pole access, or are asked to pay an excessive fee for the attachment, or even replacement of the entire pole.⁸

¹ U.S. Federal Communications Commission (FCC), *2018 Broadband Deployment Report*, at 1 (Feb. 2, 2018), available at <https://docs.fcc.gov/public/attachments/FCC-18-10A1.pdf> (last visited Jan. 21, 2022).

² FCC, *Emergency Broadband Benefit Report and Order*, at 2-3 (Feb. 26, 2021), available at <https://docs.fcc.gov/public/attachments/FCC-21-29A1.pdf> (last visited Jan. 21, 2022).

³ CRS, *State Broadband Initiatives: Selected State and Local Approaches as Potential Models for Federal Initiatives to Address the Digital Divide*, at 2-3 (Apr. 6, 2020), available at <https://crsreports.congress.gov/product/pdf/R/R46307> (last visited Jan. 21, 2022).

⁴ CRS, Congressional Research Service (CRS), *Broadband Internet Access and the Digital Divide: Federal Assistance Programs*, at 1 (Oct. 25, 2019), available at <https://fas.org/sgp/crs/misc/RL30719.pdf> (last visited Jan. 21, 2022).

⁵ FCC, *2021 Broadband Deployment Report*, at 58 (Jan. 19, 2021), available at <https://docs.fcc.gov/public/attachments/FCC-21-18A1.pdf> (last visited Jan. 21, 2022). For purposes of this data, "fixed broadband services" are measured at 25 megabits per second downstream and 3 megabits per second upstream.

⁶ National Telecommunications and Information Administration, American Broadband Initiative, *Milestones Report*, at 11 (Feb. 13, 2019), available at <https://www.ntia.doc.gov/report/2019/american-broadband-initiative-milestones-report> (last visited Jan. 21, 2022). See also CRS, *Broadband Internet Access and the Digital Divide: Federal Assistance Programs*, *supra* note 4 at 7.

⁷ Kristian Stout, Ben Sperry, International Center for Law and Economics, *Issue Brief: Pole Attachments and Broadband Build-out: The Case for Reform*, 3 (Jul. 2021), <https://laweconcenter.org/wp-content/uploads/2021/07/Pole-Attachment-Issue-Brief.pdf> (last visited Jan. 21, 2022) (citing Petition of NCTA for Expedited Declaratory Ruling, In the Matter of Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment, WC Docket No. 17-84 (Jul. 16, 2020), at 5-9, https://www.ncta.com/sites/default/files/2020-07/071620_17-84_NCTA_Petition_for_Declaratory_Ruling.pdf.)

⁸ R Street, *Pole Replacement Explainer* (Apr. 2021), <https://www.rstreet.org/wp-content/uploads/2021/04/explainer23.pdf> (last visited Jan. 21, 2022). See also, Edward Lopez and Patricia Kravtin, Connect the Future, *Advancing Pole Attachment Policies to Accelerate National Broadband Buildout*, 3, <https://connectthefuture.com/wp-content/uploads/2021/11/Advancing-Pole-Attachment-Policies-To-Accelerate-National-Broadband-Buildout-National-Report.pdf> (last visited Jan. 21, 2022).

Communities that lack broadband access can have difficulty attracting new capital investment.⁹ Additionally, data indicates that low-income households disproportionately lack access to broadband Internet service, which puts children in those households at risk of falling behind.¹⁰

Federal Broadband Initiatives

Department of Commerce Coronavirus Capital Projects Fund

The American Rescue Plan¹¹ allocated \$10 billion to eligible governments to carry out capital projects to meet critical needs, with an emphasis on broadband infrastructure.¹² Each state is eligible for a fixed amount of \$100 million, and an additional allocation based on the state's population, proportion of its population that lives in rural areas, and proportion of individuals who receive a household income below 150 percent of the poverty line.¹³

Eligible states must submit both an application (due date passed on December 27, 2021) and a grant plan (due September 24, 2022).¹⁴ Capital Projects Fund Recipients may pass the funds on to subrecipients, such as other levels of government, non-profits, or private entities.

Presumptively eligible projects under the program include the construction and deployment of broadband infrastructure that is designed to deliver service that reliably meets or exceeds symmetrical speeds of 100 Mbps, or if impracticable, speeds of 100 Mbps downstream and 20 Mbps upstream.¹⁵ Projects that may be eligible on a case-by-case review include investments in capital assets, such as buildings, towers, digital devices and equipment, fiber-optic lines, and broadband networks.¹⁶

FCC Digital Opportunity Data Collection Program

The FCC collects and monitors data on broadband deployment in order to identify underserved and unserved localities in the United States.¹⁷ In August 2019, the FCC adopted the Digital Opportunity Data Collection Program, which modernized the collection of broadband deployment data by creating granular coverage maps, as opposed to census tract maps, and by implementing a process to accept public data to confirm the maps' accuracy.¹⁸ In March 2020,

⁹ CRS, *Broadband Internet Access and the Digital Divide: Federal Assistance Programs*, *supra* note 4 at 8.

¹⁰ New American Economy Research Fund, *Back to School: A Look at the Internet Access Gap* (Aug. 6, 2020), available at <https://research.newamericaneconomy.org/report/internet-access-covid-19/> (last visited Jan. 21, 2022).

¹¹ Pub. L. 117-2 (117th Congress) (H.R. 1319).

¹² U.S. Dep't. of Treasury, *Capital Projects Fund*, <https://home.treasury.gov/policy-issues/coronavirus/assistance-for-state-local-and-tribal-governments/capital-projects-fund> (last visited Jan. 21, 2022).

¹³ U.S. Dep't. of Treasury, *Coronavirus Capital Projects Fund: Allocations Methodology for States, Territories, and Freely Associated States* (Aug. 2021), <https://home.treasury.gov/system/files/136/Allocations-Methodology-States-Territories-Freely-Associated-States.pdf> (last visited Jan. 21, 2022).

¹⁴ *Id.* See also, U.S. Dep't. of Treasury, *Guidance for the Coronavirus Capital Projects Fund for States, Territories, and Freely Associated States*, 1, 14 (Sept. 2021), <https://home.treasury.gov/system/files/136/Capital-Projects-Fund-Guidance-States-Territories-and-Freely-Associated-States.pdf> (last visited Jan. 21, 2022).

¹⁵ U.S. Dep't. of Treasury, *Guidance for the Coronavirus Capital Projects Fund for States, Territories, and Freely Associated States*, *supra* note 14 at 3.

¹⁶ *Id.* at 7.

¹⁷ FCC, *Establishing the Digital Opportunity Data Collection*, at 1-2 (Jan. 19, 2021), available at <https://www.fcc.gov/document/fcc-takes-next-step-collect-more-precise-broadband-mapping-data> (last visited Jan. 21, 2022).

¹⁸ *Id.* at 3.

Congress ratified the FCC's Data Collection Program with passage of the Broadband Data Act, which requires the FCC to establish a semiannual collection of geographically granular broadband coverage data to use to create coverage maps.¹⁹ Congress allocated \$65 million to the FCC to achieve this mapping project in December 2020.²⁰

To create these geographic service maps, the FCC collects information from service providers according to specific reporting standards. The service providers must report their service coverage areas, including where their services were available to residences or businesses, and the speed and latency at which their services are delivered.²¹ The FCC also set up a website to allow for public input regarding consumers' experiences with broadband.²² The FCC is in the process of updating its broadband maps with more detailed and precise information.²³

FCC's Rural Digital Opportunity Fund²⁴

In January 2020, the FCC established the Rural Digital Opportunity Fund to fund the deployment of broadband networks in rural America. The first phase of the fund began in 2020 and made \$16 billion available to target census blocks that are wholly unserved by fixed broadband speeds of at least 25 Mbps downstream and 3 Mbps upstream (25/3 Mbps).²⁵ Florida entities received over \$190 million (to be distributed over the next 10 years) in this first round of funding.²⁶

Phase II of the Fund will target underserved localities, as identified by the FCC's Digital Opportunity Data Collection Program.²⁷ Using this more precise data, the second phase of FCC grants will make available at least \$4.4 billion to target geographic areas where some locations lack access to 25/3 Mbps broadband.²⁸

U.S. Department of Agriculture Programs

The U.S. Department of Agriculture (USDA) has several rural utilities programs to provide a variety of loans and grants to build and expand broadband networks.²⁹ The ReConnect Program offers federal loans, grants, and loan/grant combinations to facilitate broadband deployment to rural areas without access to sufficient broadband service. Eligible entities include cooperatives and nonprofits, for-profit companies, and state and local governments and their agencies and political subdivisions. Applicants for a grant or a loan/grant combination under the ReConnect

¹⁹ 47 U.S.C. 642(a)(1)(A) and (a)(2) (2020).

²⁰ Marguerite Reardon, CNET, *FCC Chair Rosenworcel Launches Broadband Mapping Taskforce* (Feb. 17, 2021), available at <https://www.cnet.com/news/fcc-chair-rosenworcel-launches-broadband-mapping-task-force/> (last visited Jan. 21, 2022).

²¹ FCC, *Establishing the Digital Opportunity Data Collection*, *supra* note 17 at 5, 8-16.

²² FCC, *Broadband Data Collection Consumer Information*, <https://www.fcc.gov/BroadbandData/consumers> (last visited Jan. 21, 2022).

²³ FCC, *Broadband Data Collection* (Dec. 15, 2021), <https://www.fcc.gov/BroadbandData> (last visited Jan. 21, 2022).

²⁴ FCC, *Auction 904: Rural Digital Opportunity Fund: Fact Sheet*, <https://www.fcc.gov/auction/904/factsheet> (last visited Jan. 21, 2022).

²⁵ FCC, *FCC Launches \$20 Billion Rural Digital Opportunity Fund* (Feb. 7, 2020), available at <https://www.fcc.gov/document/fcc-launches-20-billion-rural-digital-opportunity-fund-0> (last visited Jan. 21, 2022).

²⁶ Federal Communications Commission, *Auction 904 Winning Bidders: Attachment A*, available at <https://www.fcc.gov/document/auction-904-winning-bidders> (last visited Jan. 21, 2022).

²⁷ See, FCC, *FCC Launches \$20 Billion Rural Digital Opportunity Fund*, *supra* note 25 at 3.

²⁸ FCC, *FCC Launches \$20 Billion Rural Digital Opportunity Fund*, *supra* note 25 at 4.

²⁹ USDA, *Telecom Programs*, available at <https://www.rd.usda.gov/programs-services/all-programs/telecom-programs> (last visited Jan. 21, 2022).

Program must submit a scoring sheet by which USDA may analyze nine separate evaluation criteria to score the application. One of the evaluation criteria is whether the proposed project is in a state with a broadband plan that has been updated within the previous 5 years.³⁰

Miscellaneous Federal Broadband Initiatives

Multiple federal assets to assist with the expansion of broadband are available, for example:³¹

- The U.S. Department of Housing and Urban Development³² offers block grants that can support broadband infrastructure;
- The Department of the Interior launched a mapping tool to allow service providers to locate federal property available for infrastructure development;³³ and
- The National Telecommunications and Information Administration (NTIA) within the U.S. Department of Commerce is working to improve coordination between federal programs that fund broadband and statewide efforts.³⁴

The COVID-19 relief bill passed by Congress in December 2020³⁵ included the following funding to expand broadband Internet access for students, families, and unemployed workers:³⁶

- \$300 million for rural broadband;³⁷
- \$250 million for the FCC's telehealth program;³⁸
- \$285 million to fund a pilot program to assist with broadband issues at historically Black colleges and universities;³⁹

³⁰ See USDA, *ReConnect Loan and Grant Program*, available at <https://www.usda.gov/reconnect#anchor1> (last visited Jan. 21, 2022).

³¹ See generally, National Telecommunications and Information Administration (NTIA), *American Broadband Initiative, Progress Report* (June 2020), available at https://www.ntia.doc.gov/files/ntia/publications/abi_progress_report_june2020.pdf (last Jan. 21, 2022).

³² U.S. Department of Housing and Urban Development, *State CDBG Program Broadband Infrastructure FAQs* (Jan. 7, 2016), available at <https://files.hudexchange.info/resources/documents/State-CDBG-Program-Broadband-Infrastructure-FAQs.pdf> (last visited Jan. 21, 2022).

³³ U.S. Department of Interior, *Supporting Broadband Tower Facilities in Rural America on Federal Properties Managed at Interior*, available at <https://www.doi.gov/broadband> (last visited Jan. 21, 2022).

³⁴ Broadband USA, *State Broadband Leaders Network* (Dec. 19, 2018), available at <https://broadbandusa.ntia.doc.gov/ntia-resources/state-broadband-leaders-network-sbln> (last visited Jan. 21, 2022).

³⁵ Consolidated Appropriations Act of 2021, H.R. 133, 116th Cong. (2021).

³⁶ NCSL, *COVID-19 Economic Relief Bill: Broadband*, (Jan. 4, 2021) <https://www.ncsl.org/ncsl-in-dc/publications-and-resources/covid-19-economic-relief-bill-stimulus.aspx#:~:text=Erlinda%20Doherty-Overview,agency%20operations%20through%20September%202021>. (last visited Jan. 21, 2022).

³⁷ See generally, NTIA, *Overview of Consolidated Appropriations Act, 2021: Broadband Infrastructure Deployment Grants*, available at <https://broadbandusa.ntia.doc.gov/ntia-common-content/overview-consolidated-appropriations-act-2021> (last visited Jan. 21, 2022). These grants will be available to support infrastructure for the deployment of fixed broadband service in a census block with at least one household or business that does not have access to internet at 25/3Mbps or higher.

³⁸ FCC, *COVID-19 Telehealth Program* (Feb. 9, 2021), available at <https://www.fcc.gov/covid-19-telehealth-program> (last visited Jan. 21, 2022).

³⁹ See generally, NTIA, *Minority Broadband Initiative*, available at <https://www.ntia.doc.gov/category/minority-broadband-initiative> (last visited Jan. 21, 2022).

- \$1.9 billion for “rip and replace” efforts related to Huawei and ZTE equipment in U.S. networks;⁴⁰ and
- \$1 billion in grants for tribal broadband programs.⁴¹

The American Rescue Plan, signed into law on March 11, 2021, includes multiple appropriations that can be used for broadband infrastructure, such as \$10 billion for the Capital Projects Fund to provide grants to states for the costs of capital projects, like broadband infrastructure and \$130.2 billion for Community Development Block Grants that can be used for community development projects, including broadband infrastructure.⁴²

Additionally, the Infrastructure Investment and Jobs Act,⁴³ signed into law on November 15, 2021, contains \$64 billion in funding for broadband expansion and access. The law:⁴⁴

- Establishes the Broadband Equity, Access, and Development Program to be administered by the NTIA to states through matching grants;
- Allocates \$2.75 billion to the Digital Equity Act Competitive Grant Programs administered by the Department of Commerce;
- Invests \$2 billion in the Tribal Broadband Connectivity Program; and
- Funds the Middle Mile Grants program, administered by the NTIA with \$1 billion, especially to support construction, improvement, or acquisition of broadband infrastructure.

Florida’s Office of Broadband

In 2020 the Legislature created the Florida Office of Broadband (Office) within the Department of Economic Opportunity (DEO).⁴⁵ The Office is tasked with developing, marketing, and promoting broadband Internet service in the state.⁴⁶

Specifically, the Office must:⁴⁷

- Create a strategic plan for increasing the availability and use of broadband Internet service in Florida which must incorporate federal broadband initiatives and also include a process to

⁴⁰ B. Braverman, M. Browne, and J. Mark, *Let Her Rip! FCC Adopts Remove-and-Replace Rules* (Jan. 15, 2021), available at <https://www.dwt.com/insights/2021/01/fcc-huawei-zte-rip-and-replace-rules> (last visited Jan. 21, 2022). See also, FCC, *Second Report and Order in re: Protecting Against National Security Threats to the Communications Supply Chain Through FCC Programs* (Dec. 10, 2020), available at <https://docs.fcc.gov/public/attachments/FCC-20-176A1.pdf> (last visited Jan. 21, 2022).

⁴¹ See generally, NTIA, *NTIA Announces Tribal Consultations on New Program to Increase Broadband Access Across Indian Country* (Feb. 5, 2021), available at <https://www.ntia.gov/blog/2021/ntia-announces-tribal-consultations-new-program-increase-broadband-access-across-indian> (last visited Jan. 21, 2022).

⁴² Pub. L. No. 112-2, ss. 603 and 604 (117th Congress) (H.R. 1319). U.S. Treasury, *FACT SHEET: The American Rescue Plan Will Deliver Immediate Economic Relief to Families*, <https://home.treasury.gov/news/press-releases/jy0069> (last visited Jan. 21, 2022).

⁴³ Pub. L. No. 117-58 (117th Congress) (H.R. 3684). See also, Congressional Research Service, *The Infrastructure Investment and Jobs Act (P.L. 117-58): Summary of the Broadband Provisions in Division F* (Nov. 16, 2021), <https://crsreports.congress.gov/product/pdf/R/R46967> (last visited Jan. 21, 2022).

⁴⁴ NTIA, *Infrastructure Investment and Jobs Act Overview*, <https://www.ntia.doc.gov/category/grants> (last visited Jan. 21, 2022).

⁴⁵ Chapter 2020-26, Laws of Fla.

⁴⁶ Section 288.9961(4), F.S. See also, Florida Department of Economic Opportunity, Office of Broadband, *About Us*, <https://floridajobs.org/community-planning-and-development/broadband/office-of-broadband> (last visited Jan. 21, 2022).

⁴⁷ Section 288.9961(4), F.S.

review and verify public input regarding transmission speeds and availability of broadband Internet service throughout the state;

- Build local technology planning teams representing, among others, libraries, schools, colleges and universities, local health care providers, private businesses, community organizations, economic development organizations, local governments, tourism, parks and recreation, and agriculture in order to identify needs and resources to reduce barriers to the deployment of broadband Internet services;
- Encourage the use of broadband Internet service, especially in rural, unserved, and underserved⁴⁸ areas of the state through grant programs;
- Monitor, participate in, and provide input in proceedings of the FCC and other federal agencies related to the geographic availability and deployment of broadband Internet service as necessary to ensure that Florida’s rural, unserved, and underserved areas are best positioned to benefit from federal and state broadband deployment programs; and
- Administer Florida’s Broadband Opportunity Program⁴⁹.

The DEO may apply for and accept federal grant funds, enter into necessary or useful contracts, and establish any committee or workgroup to further the above goals. Additionally, the DEO has rulemaking authority to implement sections 288.9961-288.9963, F.S., relating to the Office.⁵⁰

Broadband Opportunity Program⁵¹

The Office administers the Broadband Opportunity grant program to expand broadband Internet service to unserved areas of Florida. Grant funds may not be used to provide broadband Internet service to a geographic area where broadband Internet is already deployed by at least one provider.

The Office has not received funding for the program, and no grants have been made available.

Regulation of Pole Attachments

Utility poles may be installed and owned by different kinds of utilities,⁵² such as electrical or telecommunications providers.⁵³ “Pole attachment” is the process by which communications companies allocate infrastructure on utility poles. Different vertical portions of utility poles are divided for specific uses, including electrical power, telephone, cable television, broadband

⁴⁸ Section 288.9961(2)(f), F.S., defines the term “underserved” to mean a geographic area of this state in which there is no provider of broadband Internet service that offers a connection to the Internet with a capacity for transmission at a consistent speed of at least 100 Mbps downstream and at least 10 Mbps upstream. Section 288.9961(2)(g), F.S., defines the term “unserved” as a geographic area in which there is no broadband Internet service provider.

⁴⁹ The Broadband Opportunity Program is established in s. 288.9962, F.S., to award grants to those who seek to expand broadband Internet service to unserved areas of Florida.

⁵⁰ Section 288.9961(5), F.S.

⁵¹ Section 288.9962, F.S.

⁵² 47 U.S.C. § 224(a)(1) (1996), defines “utility” as “any person who is a local exchange carrier or an electric, gas, water, steam, or other public utility, and who owns or controls poles, ducts, conduits, or rights-of-way used, in whole or in part, for any wire communications. Such term does not include any railroad, any person who is cooperatively organized, or any person owned by the Federal Government or any State.”

⁵³ See, Jim Saunders, NEWS SERVICE OF FLORIDA, *FPL, AT&T Battle Over Utility Bills*, (Aug. 1, 2019) <https://www.news-press.com/story/news/newswire/2019/08/01/florida-power-light-fpl-at-t-battle-over-utility-bills/1887655001/> (last visited Jan. 21, 2022).

Internet, and wireless service.⁵⁴ The owning entity can charge others to attach their services to its pole. This sharing of the pole resource benefits the public by minimizing “unnecessary and costly duplication of plant for all pole users.”⁵⁵ When a new attacher seeks access to a pole, it is necessary to evaluate the safety and ability to add the attachment. In many cases, existing attachments must be moved to make room for the new attachment. In some cases, a larger pole is necessary to accommodate a new attachment.⁵⁶

Federal law recognizes state and local government authority to manage the public right-of-way (ROW) on utility poles and to require fair and reasonable compensation from telecommunication providers, on a competitively neutral and nondiscriminatory basis, for the use of such ROW.⁵⁷

Congress began regulating pole attachments⁵⁸ in 1978.⁵⁹ The Telecommunications Act (Act) of 1996⁶⁰ added provisions making access to utility poles mandatory for telecommunications services providers,⁶¹ and providing for nondiscriminatory access, unless there is insufficient capacity and reasons of safety, reliability and generally applicable engineering purposes.⁶² Municipalities and rural electric cooperative utilities are exempt from the provisions of 47 U.S.C. s. 224.⁶³

A state, however, can assume regulation of pole attachment through a process known as “reverse preemption.” This requires a state to expressly assert jurisdiction through state legislation, followed by certification to the FCC that “in so regulating such rates, terms, and conditions, the state has the authority to consider and does consider the interests of the subscribers of the services offered via such attachments, as well as the interests of the consumers of the utility services.”⁶⁴ As of March 19, 2020, 22 states and the District of Columbia have reverse preemption.⁶⁵ In 2021, the Florida Legislature passed SB 1944, which transfers this regulatory authority to the Florida PSC;⁶⁶ the PSC is still in the process of adopting rules to complete this transfer.⁶⁷

⁵⁴ Florida Public Service Commission, *What’s on a Utility Pole?*, <http://www.psc.state.fl.us/ConsumerAssistance/UtilityPole> (last visited Jan. 21, 2022).

⁵⁵ S. REP. NO. 95-580, at 13 (1977), as reprinted in 1978 U.S.C.C.A.N. 109, 121.

⁵⁶ FCC, *Third Report and Order and Declaratory Ruling In the Matter of Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, FCC-CIRC 1808-03 (2018) at 4-5.

⁵⁷ 47 U.S.C. § 253(c).

⁵⁸ 47 U.S.C. § 224(a)(4), defines “pole attachment” as “any attachment by a cable television system or provider or telecommunications service to a pole, duct, conduit, or right-of-way owned or controlled by a utility.”

⁵⁹ The Pole Attachment Act of 1978 granted utility pole access to cable companies and was designed to promote utility competition and service to the public. Communications Act Amendments of 1978, Pub. L. No. 950234 (Feb. 21, 1978).

⁶⁰ Telecommunications Act of 1996, Pub. LA. No. 104-104, 110 Stat. 56 (1996).

⁶¹ The term “telecommunications” means the transmission, between or among points specified by the user, of information of the user’s choosing, without change in the form or content of the information as sent and received. 47 U.S.C. § 153(50).

⁶² Pub. L. No. 104-104, *codified* at 47 U.S.C. s. 224(f).

⁶³ 47 U.S.C. s. 224(a)(1).

⁶⁴ 47 U.S.C. s. 224(c)(2).

⁶⁵ FCC, *Public Notice: States That Have Certified That They Regulate Pole Attachments*, Mar. 19, 2020, <https://www.fcc.gov/document/states-have-certified-they-regulate-pole-attachments-2> (last visited Jan. 21, 2022).

⁶⁶ Ch. 2021-191, Laws of Fla.

⁶⁷ Cindy Miller, *What’s Up with Pole Attachments in Florida: Energy and Telecom Players Urge Different Approaches* (Sep. 17, 2021), <https://energycentral.com/c/um/whats-pole-attachments-florida-energy-and-telecom-players-urge-different> (last visited Jan. 21, 2022).

In April 2011, the FCC approved a pole attachment order, which established a revised telecommunications formula and included make-ready⁶⁸ provisions which provided a benchmark for pole attachment rates and access.⁶⁹

In September 2018, the FCC issued an order⁷⁰ which preempted state and local laws and agreements, including those related to pole attachments, to remove regulatory barriers that would inhibit the deployment of “small cell” infrastructure necessary to support new wireless broadband services. The order set uniform rates and regulations for attachments on poles owned and controlled by publicly-owned electric utilities.⁷¹ The order provided that state or local fees charged to mobile service providers for deploying small cell sites violate federal law unless they:

- Are a reasonable approximation of the state or local government’s costs;
- Only factor in costs that are “objectively reasonable;” and
- Are no higher than fees charged to similarly situated competitors.⁷²

Except for small cell wireless facilities, attachments of cable and telecommunications carrier facilities to utility poles owned by a municipal electric utility are not currently regulated at the state or federal level.

Florida Promotional Rates for Wireline Attachment

The Legislature has provided for the promotional rate of \$1 per wireline attachment per pole, per year for any new attachment necessary to make broadband service available to an unserved or underserved end user within a municipal electric utility service territory. This rate began July 1, 2021 and ends July 1, 2024.⁷³

Section 288.9963, F.S., further provides that if a municipal electric utility is required to replace a utility pole due to a broadband provider’s attachment, the municipal electric utility may require the broadband provider to reimburse all reasonable costs attributable to the new attachment, minus the salvage value of the pole. A utility cannot require pole replacement to accommodate the broadband provider’s pole attachment unless it is necessary to comply with applicable

⁶⁸ “Make-ready” generally refers to the modification of poles or lines or the installation of guys and anchors to accommodate additional attachments. FCC, *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket Nos. 96-98, 95-185, Order on Reconsideration, 14 FCC Rcd 18049, 18056 n.50 (1999).

⁶⁹ FCC, *In the Matter of A National Broadband Plan for Our Future* (GN Docket No. 09-51) Implementation of Section 224 of the Act (WC Docket No. 07-245) Report And Order And Order On Reconsideration, FCC 11-50. (Apr. 7, 2011).

⁷⁰ FCC, *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment, Report and Order*, 33 FCC Rcd 9088 (14), FCC-18-133. *See also* CRS, *Overview of Legal Challenges to the FCC’s 5G Order on Small Cell Siting* (Feb. 25, 2019) The Order’s discussion of preemption begins by interpreting the Telecommunication Act’s two relevant preemption provisions: Sections 253 and 332(c)(7). Subject to certain exceptions, these sections preempt state and local requirements that “prohibit or have the effect of prohibiting the ability of any entity” to provide “telecommunications” or “personal wireless services.”

⁷¹ American Public Power Association, *Preserving the Municipal Exemption from Federal Pole Attachment Regulations*, at 2, <https://www.publicpower.org/system/files/documents/January%202021%20-%20Federal%20Pole%20Attachment%20Regulations.pdf> (last visited Jan. 21, 2022).

⁷² CRS, *Overview of Legal Challenges to the FCC’s 5G Order on Small Cell Siting supra*, note 70, at 2-3. The order also identifies specific fee limits that are presumptively allowed under federal law. For non-recurring fees, such as up-front applications for small cell site installations, localities may charge up to \$500, subject to certain exceptions. For recurring fees, such as access fees, localities may charge up to \$270 per year. Higher fees may be charged due to local cost variances.

⁷³ Section 288.9963(3), F.S.

engineering and safety standards. Additionally, if the pole replacement is necessary to correct an existing violation, to bring the pole into compliance with changes in applicable standards, or because the pole is at the end of its useful life,⁷⁴ the replacement cost may not be passed on to the broadband provider.

III. Effect of Proposed Changes:

Broadband Pole Replacement Program

The bill creates the Broadband Pole Replacement Program (Program) within the Department's Office of Broadband. The Office will accept applications for the reimbursement of eligible pole replacement costs, and distribute payments from the Broadband Pole Replacement Trust Fund (Trust Fund) until the funds are exhausted.

Eligibility

Private businesses or nonprofit corporations that currently provide, or will provide, qualifying broadband service to Florida are eligible for reimbursements under the Program. These entities must provide, or commit to providing broadband Internet service that is capable of delivering Internet access at speeds of at least 100 Mbps downstream and 100 Mbps upstream with a latency at a level sufficient to allow real-time, interactive applications.⁷⁵ Additionally, the applicants' pole replacements must occur in unserved areas⁷⁶ for the purpose of attaching facilities to provide qualifying broadband service to residences or businesses in that area.

Reimbursements

The Office must reimburse an applicant within 60 days after it receives its completed application. The Office will reimburse under the Program according to availability of funds in the Trust Fund. Any application that is pending when the Trust Fund is exhausted is denied, but the applicant may reapply if funds are later added to the Trust Fund.

An application for reimbursement must include the following:

- Information sufficient to establish the number and cost of eligible pole replacements;
- Documentation sufficient to establish that the eligible pole replacements are completed;
- The total reimbursement amount requested, and any state or federal grant funding or accounting information required to justify the amount requested;

⁷⁴ "Useful life" of a utility pole means not less than 30 years for wood utility poles, and not less than 50 years for concrete, steel, ductile iron, and all other utility poles. Section 288.9963(5), F.S.

⁷⁵ This requirement is consistent with the U.S. Dep't. of Commerce Coronavirus Capital Projects Fund, which requires projects to deliver service that reliably meets or exceeds symmetrical speeds of 100 Mbps, or if that is impracticable, the project can be designed to reliably meet or exceed 100/20 Mbps speeds, and be scalable to a minimum of 100 Mbps symmetrical download and upload speeds. U.S. Dep't. of Treasury, *Guidance for the Coronavirus Capital Projects Fund for States, Territories, and Freely Associated States*, *supra* note 14 at 3.

⁷⁶ The bill defines an "unserved area" as a location in which (1) fixed, terrestrial, or retail wireline broadband Internet service is unavailable at the time that the broadband service provider requests to attach its facilities to a pole in that location, and no other person has committed to providing qualifying broadband service; or (2) the applicant is committed under the terms of a state or federal grant to provide qualifying broadband service, provided that the availability of the grant is limited to areas that lack access to fixed, terrestrial, or retail wireline broadband Internet service.

- A notarized statement from an officer or agent of the applicant which certifies that the application's contents are true and accurate, and that the applicant will comply with applicable law as a condition of receiving reimbursement under the Program; and
- Receipts to verify the amount of eligible pole replacement costs paid by the applicant.

An eligible pole replacement cost is the actual cost paid by the applicant to perform a pole replacement, excluding any amount that is otherwise reimbursed through another state or federal broadband grant program or other governmental entity. Specifically, the cost may include:

- The removal and disposal of the existing utility pole;
- The purchase and installation of a replacement utility pole; and
- The transfer of any existing facilities to the replacement utility pole.

An eligible applicant shall receive a reimbursement of (1) up to 50 percent of the total amount it paid for eligible pole replacement costs, or \$5,000, whichever is less; and (2) up to 100 percent of its actual and reasonable administrative expenses paid to prepare and submit the application. This reimbursement of administrative expenses cannot exceed 5 percent of the eligible pole replacement costs that the applicant requests in its application.

If the applicant broadband Internet service provider cannot provide the information required by the application, it may request that the pole owner that performed the pole replacement submit the required information, including the pole replacement costs paid by the applicant. A pole owner that submits this information on behalf of a broadband Internet service provider may require reimbursement of its administrative expenses from the applicant.

As a condition of receiving reimbursement, the applicant must certify its compliance with s. 288.9964, F.S., and agree to refund with interest any reimbursements or portions thereof if the Office finds that the applicant materially violated any requirement of the program.

Administrative Duties

The bill directs the Secretary of the Department to apply for \$100 million in federal funding for the Program, including funds available under the Coronavirus Capital Projects Fund. If Florida receives any such funds, they must be deposited into the Trust Fund created by linked bill, SB 1802. If Florida receives federal funds from the Coronavirus Capital Projects Fund, then state funds allocated to the Program must be reduced by an equal amount.

The Office must publish and update the following information on its website within 60 days after the Trust Fund receives its first deposit of funds:

- Statistics on the number of applications received, processed, and rejected by the Program;
- Statistics on the value, number, and status of reimbursements provided under the Program, including the names of pole owners and retail providers of qualifying broadband service which received reimbursements under the Program; and
- The amount of funds remaining in the Trust Fund.

The Office must further provide a report to the Governor, President of the Senate, and the Speaker of the House of Representatives within 1 year after the Trust Fund is exhausted of its

funds. This report must identify and examine the deployment of broadband infrastructure and technology facilitated by reimbursements from the program.

The bill specifically does not authorize rulemaking authority for the department, the office, or any other agency, to administer the Program.

The Office of the Auditor General must perform an audit of the Trust Fund and its administration for compliance with pertinent law within 1 year after funds are deposited into the Trust Fund.

Broadband Opportunity Program

For the 2022-2023 fiscal year, the bill appropriates \$400 million in nonrecurring funds from the General Revenue Fund, from payments received by the state pursuant to the Federal Coronavirus State Fiscal Recovery Fund, to the Office of Broadband within the Department of Economic Opportunity for the purpose of administering the Broadband Opportunity Program established in s. 288.9962, F.S.

Effective Date

The bill takes effect upon becoming law, if SB 1802 or similar legislation is adopted in the same legislative session or an extension thereof and also becomes law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill may ultimately help to provide more affordable broadband Internet service to Florida's communities by increasing related infrastructure. The bill will benefit eligible providers by assisting them to expand their services.

C. Government Sector Impact:

The bill does not appropriate any funds to the Broadband Pole Replacement Program created in the bill. It is unclear whether the Department will require additional funds or FTE's to administer the program. However, linked bill, SB 1802, allows funds deposited into the Broadband Pole Replacement Trust Fund to be used to administer the Program.

VI. Technical Deficiencies:

The deadline to submit an application for the Coronavirus Capital Projects Fund was December 27, 2021. It is unclear whether the Secretary will be able to comply with the requirement in the bill to apply for federal funds available under the Coronavirus Capital Projects Fund.

VII. Related Issues:

The Department will be limited in its administration of the Program to exclusively those requirements established in s. 288.9964, F.S., as it is not granted rulemaking authority to enlarge or alter the Program further. This may result in a less agile or responsive Program that will require further Legislative action to, e.g., change its application criteria, or conduct investigations of violations beyond the scope of the bill.

VIII. Statutes Affected:

This bill substantially amends section 288.9961 of the Florida Statutes, and creates section 288.9964 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 January 24, 2022:**

Inserts the bill number assigned to linked bill, CS/SB 1802, which creates the Broadband Pole Replacement Program, in the contingent effective date.

B. Amendments:

None.



240514

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
01/25/2022	.	
	.	
	.	
	.	

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

Senate Amendment

Delete line 263
and insert:
if SB 1802 or similar legislation is adopted in the same

By Senator Boyd

21-01515C-22

20221800__

1 A bill to be entitled
 2 An act relating to broadband infrastructure; amending
 3 s. 288.9961, F.S.; revising the duties of the Florida
 4 Office of Broadband to include administering the
 5 Broadband Pole Replacement Program; creating s.
 6 288.9964, F.S.; providing legislative findings;
 7 defining terms; establishing the Broadband Pole
 8 Replacement Program within the office; providing
 9 responsibilities of the office; providing eligibility
 10 requirements for reimbursement under the program;
 11 providing that reimbursements are subject to the
 12 availability of certain funds; providing that certain
 13 denied applicants may reapply in certain
 14 circumstances; providing requirements for the program
 15 application; requiring the office to provide certain
 16 reimbursements within a certain period of time;
 17 authorizing an applicant to request certain
 18 information from a pole owner under certain
 19 circumstances; requiring an applicant to meet certain
 20 conditions; requiring the Secretary of Economic
 21 Opportunity to apply for certain federal funding for
 22 the program; requiring that the amount of state funds
 23 allocated to the program be reduced by the amount of
 24 certain federal funds provided to the program;
 25 requiring the office to publish and continually update
 26 certain information on its public website; requiring
 27 an audit of the Broadband Pole Replacement Trust Fund
 28 within a certain period of time; requiring the office
 29 to provide a report containing specified information

Page 1 of 10

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21-01515C-22

20221800__

30 to the Governor and the Legislature within a specified
 31 timeframe; providing that certain provisions do not
 32 require or authorize rulemaking; providing an
 33 appropriation; providing a contingent effective date.
 34
 35 Be It Enacted by the Legislature of the State of Florida:
 36
 37 Section 1. Paragraph (g) is added to subsection (4) of
 38 section 288.9961, Florida Statutes, to read:
 39 288.9961 Promotion of broadband adoption; Florida Office of
 40 Broadband.—
 41 (4) FLORIDA OFFICE OF BROADBAND.—The Florida Office of
 42 Broadband is created within the Division of Community
 43 Development in the department for the purpose of developing,
 44 marketing, and promoting broadband Internet services in this
 45 state. The office, in the performance of its duties, shall do
 46 all of the following:
 47 (g) Administer the Broadband Pole Replacement Program
 48 established in s. 288.9964.
 49 Section 2. Section 288.9964, Florida Statutes, is created
 50 to read:
 51 288.9964 Broadband Pole Replacement Program.—
 52 (1) LEGISLATIVE FINDINGS.—The Legislature finds that a
 53 broadband pole replacement program administered by the Florida
 54 Office of Broadband is necessary to further the state's goal of
 55 expanding and accelerating access to broadband service in
 56 unserved areas throughout this state.
 57 (2) DEFINITIONS.—As used in this section, the term:
 58 (a) "Applicant" means a private business, including a

Page 2 of 10

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21-01515C-22

20221800__

59 corporation, a limited liability company, a partnership, a
 60 nonprofit corporation, or any other private business entity that
 61 provides or will provide qualifying broadband service in this
 62 state.

63 (b) "Application" means an application made under this
 64 section for an eligible pole replacement reimbursement.

65 (c) "Broadband Internet service" means a service that
 66 offers a connection to the Internet with a capacity for
 67 transmission at a consistent speed of at least 25 megabits per
 68 second downstream and 3 megabits per second upstream.

69 (d) "Broadband Pole Replacement Trust Fund" means the trust
 70 fund established pursuant to s. 288.9965.

71 (e) "Eligible pole replacement" means the removal of an
 72 existing utility pole and its replacement with a new utility
 73 pole in an unserved area in order to accommodate the attachment
 74 to such new utility pole of facilities used in whole or in part
 75 by a retail provider of qualifying broadband service for the
 76 purpose of providing qualifying broadband service access to
 77 residences or businesses in that unserved area. The term does
 78 not include the removal and replacement of an existing utility
 79 pole by the owner or an affiliated company unless the removal or
 80 replacement is performed as an accommodation to a provider of
 81 qualifying broadband services.

82 (f) "Eligible pole replacement costs" means the actual
 83 costs to perform an eligible pole replacement which are paid by
 84 an applicant, excluding any amount separately reimbursed through
 85 another state or federal broadband grant program or by some
 86 other governmental entity. The term includes the costs to remove
 87 and dispose of the existing utility pole, to purchase and

21-01515C-22

20221800__

88 install a replacement utility pole, and to transfer any existing
 89 facilities to the replacement utility pole.

90 (g) "Office" means the Florida Office of Broadband.

91 (h) "Pole" means any pole used in whole or in part for wire
 92 communications or electric distribution.

93 (i) "Pole owner" means any electric utility as defined in
 94 s. 366.02(2), public utility as defined in s. 366.02(1),
 95 communications services provider as defined in s. 366.02(5),
 96 cable television operator, or local exchange carrier that owns
 97 or controls a pole.

98 (j) "Program" means the Broadband Pole Replacement Program
 99 established under this section.

100 (k) "Qualifying broadband service" means a fixed,
 101 terrestrial, retail wireline broadband Internet service capable
 102 of delivering Internet access at speeds of at least 100 megabits
 103 per second both downstream and upstream with latency at a level
 104 sufficient to allow real-time, interactive applications.

105 (l) "Reimbursed through another state or federal broadband
 106 grant program" means, with respect to eligible pole replacement
 107 costs, that an applicant paying such costs has received or is
 108 entitled to receive reimbursement for such costs under the terms
 109 of another state or federal broadband grant program for the
 110 deployment of broadband facilities, whether through a specific
 111 reimbursement for such costs or through support payments that
 112 equal or exceed the person's actual deployment costs, including
 113 eligible pole replacement costs. The term does not include the
 114 receipt of a state or federal grant that covers only a portion
 115 of the applicant's actual deployment costs, including eligible
 116 pole replacement costs, if the applicant pays the eligible pole

21-01515C-22

20221800__

117 replacement costs with its own funds.
 118 (m) "Unserved area" means a location in which:
 119 1. At the time of a request by a retail provider of
 120 qualifying broadband service to attach facilities to a pole in
 121 such location, fixed, terrestrial, retail wireline broadband
 122 Internet service is unavailable, according to the latest
 123 available broadband deployment data from the Federal
 124 Communications Commission, provided that no person other than
 125 the applicant has committed to providing qualifying broadband
 126 service in such area; or
 127 2. An applicant is committed under the terms of a federal
 128 or state grant to provide qualifying broadband service, provided
 129 that the availability of such grant is limited to areas lacking
 130 access to fixed, terrestrial, retail wireline broadband Internet
 131 service.
 132 (3) BROADBAND POLE REPLACEMENT PROGRAM.—
 133 (a) The Broadband Pole Replacement Program is established
 134 within the Florida Office of Broadband. The office shall
 135 administer the program and is responsible for receiving and
 136 reviewing applications and distributing reimbursements under the
 137 program.
 138 (b) Any applicant that pays eligible pole replacement costs
 139 is eligible for reimbursement of such costs under the program
 140 and may submit an application for reimbursement in accordance
 141 with this section.
 142 (c) Reimbursements provided under the program are subject
 143 to the availability of funds in the Broadband Pole Replacement
 144 Trust Fund. The office shall accept applications for
 145 reimbursement until all funds in the Broadband Pole Replacement

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21-01515C-22

20221800__

146 Trust Fund are exhausted.
 147 (d) An application pending when all funds in the Broadband
 148 Pole Replacement Trust Fund are exhausted is deemed denied;
 149 however, the applicant may reapply if sufficient funds are later
 150 made available in the trust fund.
 151 (e) Within 60 days after the first deposit of funds into
 152 the Broadband Pole Replacement Trust Fund, the office shall
 153 publish an application form for reimbursement of eligible pole
 154 replacement costs under the program. The application must
 155 require the following:
 156 1. Information sufficient to establish the number and cost
 157 of eligible pole replacements that qualify for reimbursement
 158 under the program.
 159 2. Documentation sufficient to establish that the claimed
 160 eligible pole replacements have been completed.
 161 3. The total reimbursement amount requested and any state
 162 or federal grant funding or accounting information required to
 163 justify the amount requested.
 164 4. A notarized statement from an officer or agent of the
 165 applicant certifying that the contents of the application are
 166 true and accurate and that such applicant will comply with the
 167 requirements of this section as a condition of receiving
 168 reimbursement under the program.
 169 5. Receipts verifying the amount of eligible pole
 170 replacement costs paid by the applicant.
 171 (f) Within 60 days after receipt of a complete application
 172 that establishes an applicant's eligible pole replacement costs,
 173 the office shall reimburse the applicant in an amount equal to:
 174 1. Up to 50 percent of the total amount paid or \$5,000,

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21-01515C-22 20221800__

175 whichever is less, by such applicant for eligible pole
176 replacement costs; and

177 2. Up to 100 percent of the documented actual and
178 reasonable administrative expenses paid by such applicant in
179 preparing and submitting the application, including any
180 administrative expenses charged by a pole owner pursuant to
181 paragraph (g). The amount reimbursed under this subparagraph may
182 not exceed 5 percent of eligible pole replacement costs set
183 forth in the application.

184 (g) If such information is not otherwise reasonably
185 available, an applicant may request that a pole owner performing
186 an eligible pole replacement provide the number and costs of the
187 pole replacements and receipts verifying the amount of eligible
188 pole replacement costs paid by the applicant. A pole owner
189 providing such information and documentation may require
190 reimbursement from the applicant of its administrative expenses,
191 which may not exceed 5 percent of the eligible pole replacement
192 costs.

193 (h) As a condition of receiving reimbursement under the
194 program, an applicant must:

195 1. Certify its compliance with the requirements of this
196 section; and

197 2. Agree to refund with interest at the applicable Federal
198 Funds rate as specified by s. 670.506 any reimbursements or
199 portions thereof received under the program to the Broadband
200 Pole Replacement Trust Fund or the General Revenue Fund, at the
201 direction of the office, if the office finds, upon substantial
202 evidence and after providing such applicant with notice and an
203 opportunity to respond, that such applicant materially violated

21-01515C-22 20221800__

204 a requirement of this section with respect to such
205 reimbursements or portions thereof.

206 (i) If applicable, an applicant that is a pole owner that
207 calculates its pole rental and other fees on the basis of a
208 formula required or approved by federal or state law or
209 regulation which includes consideration of the pole owner's
210 expenses, must, as a condition of receiving reimbursement under
211 the program, exclude from such expenses any eligible pole
212 replacement costs that were reimbursed by the program, paid for
213 by a retail provider of qualifying broadband service, or funded
214 by another state or federal grant.

215 (4) PROGRAM FUNDING.-

216 (a) The Secretary of Economic Opportunity shall apply for
217 \$100 million in federal funding for the program, including funds
218 available under the Coronavirus Capital Projects Fund, pursuant
219 to the authorization set forth in s. 9901 of the American Rescue
220 Plan Act of 2021 and codified at s. 604, Title VI of the Social
221 Security Act, 42 U.S.C. s. 801, et seq. Any such funds received
222 must be deposited into the Broadband Pole Replacement Trust
223 Fund.

224 (b) The amount of state funds allocated to the program must
225 be reduced by the amount of federal funds provided to the
226 program from the Coronavirus Capital Projects Fund.

227 (5) TRANSPARENCY.-Within 60 days after the initial deposit
228 of funds into the Broadband Pole Replacement Trust Fund, the
229 office shall publish, and thereafter continually update, the
230 following information on its public website:

231 (a) Statistics on the number of applications received,
232 processed, and rejected under the program.

21-01515C-22 20221800__

233 (b) Statistics on the value, number, and status of
 234 reimbursements provided under the program, including the names
 235 of pole owners and retail providers of qualifying broadband
 236 service which received reimbursements under the program.

237 (c) The amount of funds remaining in the Broadband Pole
 238 Replacement Trust Fund.

239 (6) AUDIT.—Within 1 year after the initial deposit of funds
 240 into the Broadband Pole Replacement Trust Fund, the Auditor
 241 General shall audit the fund and its administration for
 242 compliance with the requirements of this section and s.
 243 288.9965.

244 (7) REPORT.—Within 1 year after all funds in the Broadband
 245 Pole Replacement Trust Fund are exhausted, the office shall
 246 provide a report to the Governor, the President of the Senate,
 247 and the Speaker of the House of Representatives which identifies
 248 and examines the deployment of broadband infrastructure and
 249 technology facilitated by reimbursements provided under the
 250 program.

251 (8) RULEMAKING.—Rulemaking by the department, the office,
 252 or any other agency is not required to administer and is not
 253 authorized by this section.

254 Section 3. For the 2022-2023 fiscal year, the sum of \$400
 255 million in nonrecurring funds is appropriated from the General
 256 Revenue Fund, from payments received by the state pursuant to
 257 the Federal Coronavirus State Fiscal Recovery Fund established
 258 in 42 U.S.C. s. 802, to the Florida Office of Broadband within
 259 the Department of Economic Opportunity for the purpose of
 260 administering the Broadband Opportunity Program established in
 261 s. 288.9962, Florida Statutes.

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262 Section 4. This act shall take effect upon becoming a law,
 263 if SB ___ or similar legislation is adopted in the same
 264 legislative session or an extension thereof and becomes a law.

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The Florida Senate

APPEARANCE RECORD

11/24/22

Meeting Date

1802

Bill Number or Topic

Commerce & Tourism

Committee

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

Amendment Barcode (if applicable)

Name Parents, & Educators Endorsing Public Schools

Phone

Address 14842 Bonnybrook Dr

Email

Street

Or

City

FL

State

32826

Zip

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

PLEASE CHECK ONE OF THE FOLLOWING:

I am appearing without compensation or sponsorship.

I am a registered lobbyist, representing:

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

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

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

S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

1/24/22

1802

Meeting Date

Bill Number or Topic

Commerce and Tourism

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

Committee

Amendment Barcode (if applicable)

Name Adam Basford

Phone 850-224-7173

Address 516 N Adams

Email abasford@aif.com

Street

Tallahassee

FL

32301

City

State

Zip

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

PLEASE CHECK ONE OF THE FOLLOWING:

I am appearing without compensation or sponsorship.

I am a registered lobbyist, representing:

Associated Industries of Florida

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

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

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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

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1/24/22

Meeting Date

1802

Bill Number or Topic

Committee

Amendment Barcode (if applicable)

Name Albie Kaminsky

Phone 407-310-4834

Address Street

Email Albert.Kaminsky@Charter.Com

City State Zip

Speaking: [] For [] Against [] Information OR Waive Speaking: [x] In Support [] Against

PLEASE CHECK ONE OF THE FOLLOWING:

[] I am appearing without compensation or sponsorship.

[x] I am a registered lobbyist, representing: Charter Communications

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

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

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

S-001 (08/10/2021)

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 1802

INTRODUCER: Commerce and Tourism Committee and Senator Boyd

SUBJECT: Broadband Pole Replacement Trust Fund

DATE: January 25, 2022

REVISED: _____

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

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1802 creates the Broadband Pole Replacement Trust Fund within the Department of Economic Opportunity (Department) and provides that the trust fund is established as a depository for funds appropriated by the Legislature, federal funds received from the Coronavirus Capital Projects Fund, funds transferred by the Department, interest earnings, and grants, gifts, and other contributions made directly to the fund.

The bill is linked to CS/SB 1800, which creates the Broadband Pole Replacement Program within the Department's Office of Broadband.

This bill takes effect on the same date that SB 1800 takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes law.

II. Present Situation:

Article III, s. 19(f), of the Florida Constitution requires that state trust funds may only be created by the Legislature if passed by a three-fifths vote of the membership of each house of the Legislature in a separate bill for the sole purpose of creating a trust fund. Each trust fund must be created by general law that specifies at a minimum all of the following:

- The name of the trust fund;
- The agency or branch of state government responsible for administering the trust fund;
- The requirements or purposes the trust fund is established to meet;

- The sources of moneys to be credited to the trust fund or specific sources of receipts to be deposited in the trust fund.¹

State trust funds terminate no more than four years after the effective date of the act authorizing the initial creation of the trust fund.² The Legislature is required to review all state trust funds at least once every four years.³ If the Legislature does not re-create a trust fund, it will be abolished four years after its initial creation pursuant to the Florida Constitution.⁴

III. Effect of Proposed Changes:

Section 1 creates the Broadband Pole Replacement Trust Fund within the Department of Economic Opportunity (Department) for the deposit of funds appropriated by the Legislature; federal funds received from the Coronavirus Capital Projects Fund for the Broadband Pole Replacement Program; funds transferred by the Department; interest earnings; and grants, gifts, and other contributions made directly to the fund.

The bill provides that funds from the trust fund will be used to provide reimbursements to qualified applicants from the Broadband Pole Replacement Program, created by linked bill, SB 1800, and for use by the Office of Broadband to administer the Program.

The bill further provides that any balance that is in the trust fund at the end of any fiscal year shall be carried forward in the trust fund for the purposes of continued administration of the Broadband Pole Replacement Program.

Pursuant to the requirements of the Florida Constitution, the trust fund will terminate 4 years after its effective date, but must first be reviewed as provided in s. 215.3206(1) and (2), F.S.

Section 2 directs the Division of Law Revision to replace the phrase “4 years after the effective date of this act” with the date that the trust fund will terminate.

Section 3 states that the act takes effect on the same date that SB 1800, relating to the Broadband Pole Replacement Program, takes effect if such legislation is adopted in the same legislative session or an extension thereof and becomes law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

¹ Section 215.3207, F.S.

² FLA. CONST. art III, s. 19.

³ Section 215.3208, F.S.

⁴ FLA. CONST. art III, s. 19.

C. Trust Funds Restrictions:

Article III, s. 19(f), of the Florida Constitution requires that every trust fund be created by a three-fifths vote of the membership of each house of the Legislature in a separate bill for the sole purpose of creating a trust fund. State trust funds terminate no more than 4 years after the initial creation, unless they are re-created.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 288.9965 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 on January 24, 2022:

Inserts the bill number assigned to linked bill, CS/SB 1800, which creates the Broadband Pole Replacement Trust Fund, in the contingent effective date.

B. Amendments:

None.

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



621096

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
01/25/2022	.	
	.	
	.	
	.	

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

Senate Amendment

Delete line 49
and insert:
SB 1800 or similar legislation takes effect, if such legislation



The Florida Senate

Committee Agenda Request

To: Senator Ed Hooper, Chair
Committee on Commerce and Tourism

Subject: Committee Agenda Request

Date: January 19, 2022

I respectfully request that **Senate Bill #1564**, relating to Telephone Solicitation, be placed on the:

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

A handwritten signature in black ink that reads "Travis Hutson".

Senator Travis Hutson
Florida Senate, District 7

1/24/2022

Meeting Date

The Florida Senate

APPEARANCE RECORD

SB 1564

Bill Number or Topic

Commerce and Tourism

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

Amendment Barcode (if applicable)

954-850-7262

Committee

Name Edda. Ivonne Fernandez

Phone

Address 215 South Monroe # 603

Email ifernandez@aarp.org

Street

Tallahassee

Florida

32301

City

State

Zip

Speaking: For Against Information

OR

Waive Speaking: In Support Against

PLEASE CHECK ONE OF THE FOLLOWING:

I am appearing without compensation or sponsorship.

I am a registered lobbyist, representing:

AARP

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

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

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5-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

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1-24 Meeting Date

1564 1564 Bill Number or Topic

Commerce & Tourism Committee

Amendment Barcode (if applicable)

Name TED SMITH Phone 850 445 0435

Address 400 N. MERIDIAN ST Street Email

TALLA FL 32301 City State Zip

Speaking: [X] For [] Against [] Information OR Waive Speaking: [] In Support [] Against

PLEASE CHECK ONE OF THE FOLLOWING:

[] I am appearing without compensation or sponsorship.

[X] I am a registered lobbyist, representing: FL AUTO DEALERS ASSOC.

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

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

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

S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

SB 1564

1/24/22

Meeting Date

Commerce & Tourism

Committee

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

Bill Number or Topic

Amendment Barcode (if applicable)

Name Carolyn Johnson

Phone 521-1200

Address 136 S Bronough St

Email cjohnson@flchamber.com

Street

Tallahassee

FL

32301

City

State

Zip

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

PLEASE CHECK ONE OF THE FOLLOWING:

I am appearing without compensation or sponsorship.

I am a registered lobbyist, representing:

FL Chamber of Commerce

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

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

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

5-001 (08/10/2021)

1/24/22

APPEARANCE RECORD

1564

Meeting Date

Bill Number or Topic

Commerce and Tourism

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

Committee

Amendment Barcode (if applicable)

Name **Adam Basford**

Phone **850-224-7173**

Address **516 N Adams**

Email **abasford@aif.com**

Street

Tallahassee

FL

32301

City

State

Zip

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

PLEASE CHECK ONE OF THE FOLLOWING:

I am appearing without compensation or sponsorship.

I am a registered lobbyist, representing:

Associated Industries of Florida

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

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

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: CS/SB 1564

INTRODUCER: Commerce and Tourism Committee and Senator Hutson

SUBJECT: Telephone Solicitation

DATE: January 25, 2022 REVISED: 1/26/2022

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Harmsen	McKay	CM	Fav/CS
2.			RI	
3.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

Section 501.059, F.S., prohibits telephonic sales calls that:

- Use an automated system for the selection *or* dialing of telephone numbers or playing a recorded message to a number without the prior express written consent of the called party;
- Fail to transmit the originating telephone number and, when possible, name of the solicitor; or
- Alter the voice of the caller in order to defraud, confuse, or injure the telephone call recipient.

The law also includes Do-Not-Call provisions, and similar consumer protections.

CS/SB 1564 makes the following changes to s. 501.059, F.S., regarding telephone solicitations:

- Amends the definition of an “automated system” that is subject to s. 501.059, F.S., to include only those that select *and* dial telephone numbers, play a recorded message, *transmit a text message*, or transmit a prerecorded voicemail, rather than those that select *or* dial telephone numbers;
- Classifies telephonic sales calls made 120 days or more after the called party’s express request for such a call as an unsolicited telephonic sales call;
- Removes telephonic sales calls and text messages that poll or solicit the expression of ideas, opinions, or votes from regulation as an unsolicited telephonic sales call subject to the Do-Not-Call list regulations;

- Limits the number of calls or messages that are made using an automated telephone dialing system with live messages or text messages in response to an inquiry by the called party to two per inquiry, but expressly provides that such calls are not prohibited pursuant to s. 501.059(8), F.S.; and
- Declares the bill as remedial in nature and applies the amendments made by the bill retroactively to July 1, 2021, and to any proceeding pending or commenced on or after July 1, 2021.

The bill takes effect upon becoming law.

II. Present Situation:

Unsolicited Phone Calls

Consumers are often inundated with unwanted calls. In fiscal year 2021, the Federal Trade Commission (FTC) received 388,227 complaints from Florida consumers about unwanted telephone calls.¹ The Federal Communications Commission (FCC) reports that unwanted calls constitute their top consumer complaint.² Unwanted calls can come in many forms, including robocalls³, which use an “automatic telephone dialing system,”⁴ referred to as an autodialer, and play a recorded message upon connection with the consumer; “spoofing” or “spoofed calls,” which transmit falsified information to a consumer’s caller ID to disguise the solicitor’s identity; and unwanted telemarketing calls.⁵

State and federal action to combat these issues are limited because there are legitimate and legal uses of this technology. For example, a doctor’s office may legally use a robocall to remind one of an upcoming appointment.⁶ Additionally, some solicitors act outside the scope of federal or state enforcement authority.

¹ Federal Trade Commission, *Do Not Call Data Book 2020* (Nov. 2021), https://www.ftc.gov/system/files/documents/reports/national-do-not-call-registry-data-book-fiscal-year-2021/dnc_data_book_2021.pdf (last visited Jan. 24, 2022).

² Federal Communications Commission, *Stop Unwanted Robocalls and Texts* (Mar. 17, 2021), <https://www.fcc.gov/consumers/guides/stop-unwanted-robocalls-and-texts> (last visited Jan. 24, 2022).

³ “At the FCC, we use the term ‘robocalls’ to refer not to just prerecorded calls but also autodialed calls, regardless of whether the call is live or prerecorded.” *Stopping Fraudulent Robocall Scams: Can More Be Done?*, Hearing Before the Senate Subcomm. on Cons. Protect., Product Safety, and Ins. of the Comm. on Commerce, Science, and Transportation, 130th Cong. (July 10, 2013) (Statement of Eric J. Bash, Associate Chief, Enforcement Bureau, Federal Communications Commission) <https://www.govinfo.gov/content/pkg/CHRG-113shrg85765/pdf/CHRG-113shrg85765.pdf> (last visited Jan. 24, 2022).

⁴ An “automatic telephone dialing system” or “autodialer” is equipment that has the capacity to produce or store phone numbers using a random or sequential number generator, and to call those phone numbers. 47 U.S.C. § 227(a)(1).

⁵ “Fraudsters have also further exploited caller ID spoofing, which induces the consumer to pick up the phone, while at the same time enabling the scammer to hide its identity and location.” *Stopping Fraudulent Robocall Scams*, Hearing, *supra* note 3, Statement of Lois Greisman, Associate Director, Division of Marketing Practices, Bureau of Consumer Protection, Federal Trade Commission.

⁶ Federal Communication Commission, Consumer and Governmental Affairs Bureau, *Report on Robocalls* (Feb. 2019), CG Docket No. 17-59, <https://www.fcc.gov/document/fcc-issues-report-illegal-robocalls> (last visited Jan. 24, 2022). *See also*, Federal Communications Commission, *Stop Unwanted Calls and Texts--Spoofing*, *supra* note 2. (Mar. 2, 2021) <https://www.fcc.gov/consumers/guides/stop-unwanted-calls-and-texts> (last visited Jan. 24, 2022).

Florida's SB 1120 (2021)

In 2021, the Florida Legislature updated s. 501.059, F.S., and the Florida Telemarketing Act, s. 501.601, F.S., et. seq, to further address some of these issues facing consumers.⁷

Section 501.059, F.S., currently requires all sales telephone calls, text messages, and direct-to-voicemail transmissions made with an autodialer that is capable of either selecting *or* dialing the recipient's number to have the receiving consumer's prior express written consent. Additionally, such calls require prior consent if they will play a recorded message upon connection with the recipient. Aggrieved parties can sue under this section to recover actual monetary damages or \$500, plus attorney fees and costs. Additionally, a court may triple these damages if the underlying violation is willfully or knowingly performed.

One entity reports that this 2021 change to the FTSA has resulted in at least 100 class action complaints against those who make telephone sales calls since July 2021.⁸

Florida Law (Section 501.059, F.S.)

Generally

Section 501.059, F.S., governs telephone solicitors—those who make or cause to be made telephonic sales calls in this state.⁹ A telephonic sales call includes solicitations via telephone calls, text messages, and direct-to-voicemail transmissions.¹⁰

For example, the section requires telephone solicitors to:

- Identify themselves and the businesses on whose behalf they make a telephone solicitation call immediately upon making contact with the person called;
- Adhere to the Do Not Call lists maintained by the Florida Department of Agriculture Consumer Services¹¹ and the Federal Trade Commission;^{12,13}
- Honor consumers' requests to not receive any further telephone calls, text messages, or voice mail transmissions. However, this prohibition applies only to calls made by or on behalf of a seller who offers goods or services or a charity that solicits a charitable contribution.¹⁴

Additionally, section 501.059(8), F.S., prohibits telephonic sales calls that:

- Use an automated system for the selection *or* dialing of telephone numbers or playing a recorded message to a number without the prior express written consent¹⁵ of the called party;

⁷ Chapter 2021-185, s. 1, Laws of Fla.

⁸ Eric Troutman, TCPAWorld, *The FTSA Claims are Still Pouring In: Florida Mini TCPA Continues to Generate Huge Volume of Litigation* (Dec. 13, 2021), <https://tcpaworld.com/2021/12/13/the-fts-claims-are-still-pouring-in-florida-mini-tcpa-continues-to-generate-huge-volume-of-litigation/> (last visited Jan. 24, 2022).

⁹ Section 501.059(1)(i), F.S.

¹⁰ Section 501.059(1)(j), F.S.

¹¹ Florida Department of Agriculture and Consumer Services (DACS), *Florida Do Not Call*, <https://www.fdacs.gov/Consumer-Resources/Florida-Do-Not-Call> (last visited Jan. 24, 2022).

¹² Federal Trade Commission, *National Do Not Call Registry*, <https://www.donotcall.gov/> (last visited Jan. 24, 2022).

¹³ *See*, ss. 501.059(3)-(4), F.S.

¹⁴ Section 501.059(5), F.S.

¹⁵ "Prior express written consent" is defined by s. 501.059(1)(g) as "a written agreement that bears the signature of the called party; clearly authorizes receipt of a telephonic sales call made using an automated system to selected or dial the telephone

- Fail to transmit the originating telephone number and, when possible, name of the solicitor; or
- Alter the voice of the caller in order to defraud, confuse, or injure the telephone call recipient.

Florida Do Not Call Act

Do Not Call List

The Department also administers the Florida Do Not Call Act (also called the “Do Not Call List”), which prohibits unsolicited phone calls and text messages.¹⁶ Residents who do not wish to receive sales calls may request to have their residential, mobile, or paging device telephone number included on the department’s list.¹⁷

A communication is unsolicited, and therefore prohibited under the Do Not Call List, unless the contact is made:

- At the consumer’s request;
- By a charitable or political organization that is seeking donations;
- As part of a survey, or for the purpose of research seeking an opinion;
- To a person with whom the telephone solicitor has a prior existing business relationship;
- In connection with an existing debt or contract for which payment is due; or
- By a newspaper publisher, or his or her agent or employee, in connection with the publisher’s business.¹⁸

Continued Solicitations

Section 501.059, F.S., further prohibits a telephone solicitor¹⁹ from calling, text messaging, sending a direct voicemail transmission, or using automated telephone equipment to contact any consumer who has previously communicated to the solicitor that he or she does not wish to receive a telephone call, whether or not he or she is part of the Do Not Call List. However, this prohibition applies only to calls made by or on behalf of a seller who offers goods or services or a charity that solicits a charitable contribution.

Penalties

Either the Department of Agriculture and Consumer Services or the Office of the Attorney General may bring an action against a telephone solicitor who violates the provisions of s, 501.059, F.S. Each violation is subject to a civil penalty with a maximum fine of \$10,000 per violation, or an administrative fine with a maximum of \$1,000 per violation, in addition to attorney’s fees and costs.²⁰

numbers, or to play a recorded message; includes the telephone number authorized to be called; and includes a specific informed disclosure statement.”

¹⁶ See, s. 501.059, F.S. DACS, *Florida Do Not Call*, <https://www.fdacs.gov/Consumer-Resources/Florida-Do-Not-Call> (last visited Jan. 24, 2022).

¹⁷ Section 501.059(3)-(4), F.S.

¹⁸ Section 501.059(1)(k), F.S.

¹⁹ Section 501.059(1)(i), F.S., defines a “telephone solicitor” as a natural person or business that does business in this state by making or causing to be made a telephone sales call.

²⁰ Section 501.059(9), F.S.

In addition, a private citizen may file a private civil action to either enjoin the violation or recover actual damages, or \$500, whichever is greater, in addition to attorney's fees and costs. This civil penalty may be tripled by the court if it finds that the defendant knowingly or willfully committed the violation.²¹

Federal Law

*Telephone Consumer Protection Act*²²

The Telephone Consumer Protection Act of 1991 (TCPA) protects U.S. consumers from unwanted communications by restricting the use of autodialers, prerecorded sales messages, and unsolicited sales calls, text messages, or faxes.

The TCPA prohibits telephone solicitations that:

- Are made to residences before 8 a.m. and after 9 p.m.;
- Fail to provide the consumer with the solicitor's identity, including his or her true phone number via caller identification service,²³ and an opportunity to opt out of the current call, and all future calls, made by that solicitor;
- Send pre-recorded messages to a residential line without the consumer's prior express consent, which may be on paper or through electronic means, including website forms or a telephone keypress;²⁴ and
- Use an autodialer or pre-recorded messages to a cellular, emergency, or hospital room line without prior express consent. Any telemarketing calls made to a cellular telephone number require *written* prior express consent; all others require either oral or written consent.²⁵ This specific provision does not apply to residential phone lines.²⁶

The TCPA's protections extend to text messaging in the same manner that they apply to telephone calls.²⁷

The TCPA defines autodialers as “equipment which has the capacity—(A) to store or produce telephone numbers to be called, using a random or sequential number generator; and (B) to dial

²¹ Sections 501.059(10)-(11), F.S.

²² 47 U.S.C. § 227. *See also*, 47 CFR § 64.1200 (2012).

²³ 47 U.S.C. § 227(b)(2)(d). *See also*, 47 C.F.R. § 64.1601(e). *See also*, Federal Communications Commission, *Public Notice: FCC's Caller ID Rules for Telemarketers Become Effective* (Jan. 29, 2004) https://apps.fcc.gov/edocs_public/attachmatch/DA-04-206A1.pdf (last visited Jan. 24, 2022).

²⁴ Federal Communication Commission, *Stop Unwanted Robocalls and Texts*, *supra* note 2. *See also*, 47 CFR § 64.1200(a)(7)(i)(B), (b)(3). Certain calls made to a residential line, such as those by a tax-exempt nonprofit organization or calls that are subject to HIPAA may be made without prior express consent.

²⁵ FCC, *2015 TCPA Declaratory Ruling and Order*, 30 FCC Rcd at 7999, para. 4 (Jun. 18, 2015).

²⁶ In 2015, language was added to the TCPA to allow robocalls and autodialed calls to cell phones for the purpose of collecting a debt owed to the U.S. government. *See* 47 U.S.C. § 227(b)(1)(A)(iii). This provision was severed from the law by the U.S. Supreme Court in 2020 based on their finding that it was a content-specific speech regulation in violation of the first amendment. The Court left the TCPA's prohibition of robocalls and autodialed calls to cell phones intact. *Barr v. American Assc. Of Political Consultants, Inc.*, 140 S. Ct. 2335 (2020). *See also*, 47 CFR § 64.1200(f)(8).

²⁷ FCC, *2015 TCPA Declaratory Ruling and Order*, 30 FCC Rcd at 7999, para. 2 (Jun. 18, 2015); FCC, *FCC Strengthens Consumer Protections Against Unwanted Calls and Texts* (Jun. 18, 2015) https://apps.fcc.gov/edocs_public/attachmatch/DOC-333993A1.pdf (last visited Jan. 24, 2022).

such numbers.”²⁸ The U.S. Supreme Court recently limited the effect of the TCPA by clarifying that it only regulates autodialers that have the capacity either to store, or to produce, a telephone number using a random or sequential number generator.²⁹ This limits the TCPA’s regulations to the now obsolete sequential number dialer style of autodialer, versus the predictive dialing technology that most businesses use today.³⁰

The TCPA grants a private right of action to pursue actual monetary damages or up to \$500 per violation.³¹ State attorneys general and the FCC also have jurisdiction to investigate and file civil claims based on violations of the TCPA.³²

Federal Do Not Call Program³³

The FTC, in concert with the FCC, administers the National Do Not Call Program.³⁴ Telephone solicitors may not contact a consumer who participates in the National Do Not Call Program, unless the calls are:³⁵

- Made with a consumer’s prior, express permission;
- Informational in nature, such as those made to convey a utility outage, school closing, or flight information; or
- Made by a tax-exempt organization.

Truth in Caller ID Act³⁶

The Truth in Caller ID Act of 2009 protects consumers by prohibiting any person from transmitting misleading or inaccurate caller ID information (call spoofing) with the intent to defraud, cause harm, or wrongfully obtain anything of value. The FCC investigates and prosecutes violations of the act under its rules.³⁷ The FCC has taken enforcement actions totaling \$450 million in fines, in recent years against telemarketers for call spoofing violations—of note, the FCC imposed its largest fine ever against a Florida-based timeshare marketing operation.³⁸

To protect individual privacy concerns, an individual caller may still request to hide his or her phone number when making a call.³⁹

²⁸ 47 U.S.C. § 227(b)(1)(A).

²⁹ *Facebook, Inc. v. Duguid*, 141 S. Ct. 193 (2020).

³⁰ Amanda Shanor, SCOTUSblog, *Supreme Court Sides with Facebook in Narrowing the Federal Robocall Ban* (Apr. 1, 2021), <https://www.scotusblog.com/2021/04/supreme-court-sides-with-facebook-in-narrowing-the-federal-robocall-ban/> (last visited Jan. 24, 2022).

³¹ 47 U.S.C. § 227 (c)(5).

³² 47 U.S.C. § 227 (f).

³³ *See*, 15 U.S.C. § 6101.

³⁴ Federal Communications Commission, *Stop Unwanted Calls and Texts* (Mar. 2, 2021), <https://www.fcc.gov/consumers/guides/stop-unwanted-calls-and-texts> (last visited Jan. 24, 2022).

³⁵ 47 U.S.C. § 227(a)(4); *See also*, 47 C.F.R. § 64.1200 (2012).

³⁶ 47 U.S.C. § 227 (e).

³⁷ *See*, 47 CFR § 64.1604.

³⁸ Federal Communications Commission, *The FCC’s Push to Combat Robocalls & Spoofing*, <https://www.fcc.gov/spoofed-robocalls> (last visited Jan. 24, 2022). *See also*, Federal Communications Commission, *FCC Fines Massive Neighbor Spoofing Robocall Operation \$120 Million* (May 10, 2018) <https://www.fcc.gov/document/fcc-fines-massive-neighbor-spoofing-robocall-operation-120-million> (last visited Jan. 24, 2022).

³⁹ 47 CFR § 64.1601.

III. Effect of Proposed Changes:

Prior Written Consent

The 2021 changes to s. 501.059, F.S., require prior express written consent to place a telephonic sales call to any consumer if the call would be made using an automated system to select *or* dial the telephone number, or to play a recorded message. This consent is required whether or not the caller and consumer had a prior business relationship.

CS/SB 1546 narrows the scope of those telephonic sales calls that are required to obtain the called party's prior express written consent prior to being placed by limiting the types of automated systems subject to s. 501.059, F.S., to those that select *and* dial telephone numbers, rather than those that select *or* dial the telephone numbers.⁴⁰

The bill clarifies that prior express written consent is an agreement that allows telephonic sales calls that use an automated system to *transmit text messages* in addition to telephonic sales calls that use an automated system to select *and* dial telephone numbers, play a recorded message, or transmit a prerecorded voicemail.

Additionally, the bill adds a provision that permits the use of an automated telephone dialing system with live messages or text messages if the call or message is made solely in response to an inquiry initiated by the called party. However, only two of these calls or messages may be made in response to each inquiry. This language is substantively similar to language deleted by SB 1120 (2021). It is unclear how this provision will interact with s. 501.059(8)(a), F.S.'s prohibition of telephonic sales calls that involve an automated system for the selection and dialing of telephone numbers...without the prior express written consent of the called party, since the terminology is similar, but not consistent.

Unsolicited Telephonic Sales Calls

The bill amends the term “unsolicited telephonic sales call” to additionally exclude:

- Telephonic sales calls made within 120 days after an express request of the called party, rather than “in response to the request;” and
- Telephonic sales calls other than those “limited to polling or soliciting the expression of ideas, opinions, or votes, including when such polling or soliciting is made by text message.”

Therefore, a person who makes a telephonic sales call that falls into one of the above exclusions from the definition of an “unsolicited telephonic sales call” is no longer required to:

- Identify himself or herself by his or her true first and last names and the business on whose behalf he or she is soliciting immediately upon making contact by telephone with the person who is the object of the telephone solicitation;⁴¹ or

⁴⁰ According to one article, the “or” definition is less likely to capture automated systems that select telephone numbers and then allow a human to dial the number. See Daniel Blynn and Liz Clark Rinehart, *Florida Legislature to the Rescue? House Bill Proposed to Fix the Florida Telephone Solicitation Act's Autodialer Provision* (Jan. 14, 2022), <https://www.jdsupra.com/legalnews/florida-legislature-to-the-rescue-house-7860376/> (last visited Jan. 24, 2022).

⁴¹ Section 501.059(2), F.S.

- Adhere to Florida’s Do-Not-Call list regulations.⁴²

Clarifications

The bill clarifies a term by substituting “person called” with the defined term, “called party.”

The bill clarifies that in order for a prevailing party to be awarded attorney fees and costs from a non-prevailing party in civil litigation cases, such litigation must result from a violation, instead of a transaction involving a violation.

Effective Date and Retroactivity

The bill provides that it is remedial in nature and applies retroactively to July 1, 2021, and to any proceeding pending or commenced on or after July 1, 2021.

The bill takes effect upon becoming law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

Retroactive Application of Law and Expression of Remedial Nature

Under Florida law, statutes are presumed to operate prospectively, not retroactively. In other words, statutes generally apply only to actions that occur on or after the effective date of the legislation, not before the legislation becomes effective.

The Florida Supreme Court has noted that, under the rules of statutory construction, if statutes are to operate retroactively, the Legislature must clearly express that intent for

⁴² Section 501.059(3)-(4), F.S.

the statute to be valid.⁴³ When statutes that are expressly retroactive have been litigated and appealed, the courts have been asked to determine whether the statute is remedial in nature so as to require application to cases that were pending at the time the statute went into effect. Generally, “the presumption applied to procedural and remedial statutes is that they are to apply to pending cases.”⁴⁴ Conversely, a law that affects substantive rights by creating substantive new rights or imposing new legal burdens is presumed to apply prospectively.⁴⁵

In a recent Florida Supreme Court case, the Court acknowledged that “[t]he distinction between substantive and procedural (remedial) law is neither simple nor certain.”⁴⁶ The Court further acknowledged that their previous pronouncements regarding the retroactivity of procedural laws have been less than precise and have been unclear.⁴⁷

Courts, however, have invalidated the retroactive application of a statute if the statute impairs vested rights, creates new obligations, or imposes new penalties.⁴⁸ Still, in other cases, the courts have permitted statutes to be applied retroactively if they do not create new, or take away, vested rights, but only operate to further a remedy or confirm rights that already exist.⁴⁹

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

The bill adds language to subsection 501.059(8)(e), F.S., which permits the use of “automated telephone dialing system with live messages or text messages” in specific instances. It is unclear how this will interact with the similar, but inconsistent, terminology found in section 501.059(8)(a), F.S., which requires prior express written consent to make a telephonic sales call

⁴³ *Walker & LaBerge, Inc., v. Halligan*, 344 So. 2d 239 (Fla. 1977). *See also, Alamo Rent-A-Car, Inc. v. Mancusi*, 632 So.2d 1352 (Fla. 1994). However, “[j]ust because the Legislature labels something as being remedial, however, does not make it so.” *See, e.g., State v. Smith*, 547 So2d 613 (Fla. 1989); *State, Dep’t of Transp. v. Knowles*, 402 So.2d 1155 (Fla. 1981).

⁴⁴ *Love* at 181, *citing Arrow Air, Inc. v. Walsh*, 645 So.2d 422, 424 (Fla. 1994).

⁴⁵ *Arrow Air, Inc.*, at 424.

⁴⁶ *Love v. State*, 286 So. 3d 177, 183 (Fla. 2019) quoting *Caple v. Tuttle’s Design-Build, Inc.*, 753 So. 2d 49, 53 (Fa. 2000).

⁴⁷ *Love* at 184.

⁴⁸ *R.A.M. of South Florida, Inc. v. WCI Communities, Inc.*, 869 So. 2d 1210 (Fla 2004).

⁴⁹ *Ziccardi v. Strother*, 570 So. 2d 1319 (Fla. 1990).

using an “automated system for the selection and dialing of telephone numbers or the playing of a recorded message...”.

The bill clarifies that prior express written consent means an agreement that authorizes the person to place a telephonic sales call using an automated system for transmissions of *text messages*, in addition to dialing telephone numbers, playing a recorded message, or transmitting prerecorded voicemails. However, when the same reference to an automated system is used elsewhere in 501.059, F.S., it does not make the same clarification.

The new language that excludes polling telephonic sales calls from the definition of an unsolicited telephonic sales call is not grammatically consistent with the other provisions.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 501.059 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 January 24, 2022:

- Adds clarifying language that “prior express written consent” is an agreement that authorizes a telephonic sales call, which includes text messages;
- Exempts from the definition of an “unsolicited telephonic sales call” those calls and text messages that are made to poll or solicit the expression of ideas, opinions, or votes;
- Re-instates the 2021 requirement that a consumer’s prior express written consent is needed to place a telephonic sales call that uses an automated system for the selection and dialing of telephone numbers, or playing of a recorded message;
- Expresses that s. 501.059(8), F.S.’s prohibited actions do not prohibit the use of an automated telephone dialing system with live messages or text messages if the call or message is made solely in response to an inquiry initiated by the called party. However, only two calls or messages are permitted in response to each inquiry;
- Narrows the provision that permits an award of attorney fees and costs from those civil actions “resulting from a transaction involving a violation of this section” to those “resulting from a violation of this section”; and
- Makes the proposed language retroactive to July 1, 2021, and specifically applies to “any proceeding pending or commenced on or after July 1, 2021.”

B. Amendments:

None.

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



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
01/25/2022	.	
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The Committee on Commerce and Tourism (Hutson) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Paragraphs (g) and (k) of subsection (1),
paragraph (a) of subsection (8), and subsection (11) of section
501.059, Florida Statutes, are amended, and paragraph (e) is
added to subsection (8) of that section, to read:

501.059 Telephone solicitation.—

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



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- 11 (g) "Prior express written consent" means a written
12 agreement that:
- 13 1. Bears the signature of the called party;
 - 14 2. Clearly authorizes the person making or allowing the
15 placement of a telephonic sales call by telephone call, text
16 message, or voicemail transmission to deliver or cause to be
17 delivered to the called party a telephonic sales call using an
18 automated system for the selection and ~~or~~ dialing of telephone
19 numbers, the playing of a recorded message when a connection is
20 completed to a number called, the transmission of a text
21 message, or the transmission of a prerecorded voicemail;
 - 22 3. Includes the telephone number to which the signatory
23 authorizes a telephonic sales call to be delivered; and
 - 24 4. Includes a clear and conspicuous disclosure informing
25 the called party that:
 - 26 a. By executing the agreement, the called party authorizes
27 the person making or allowing the placement of a telephonic
28 sales call to deliver or cause to be delivered a telephonic
29 sales call to the called party using an automated system for the
30 selection and ~~or~~ dialing of telephone numbers or the playing of
31 a recorded message when a connection is completed to a number
32 called; and
 - 33 b. He or she is not required to directly or indirectly sign
34 the written agreement or to agree to enter into such an
35 agreement as a condition of purchasing any property, goods, or
36 services.
- 37 (k) "Unsolicited telephonic sales call" means a telephonic
38 sales call other than a call made:
- 39 1. Within 120 days after ~~In response to~~ an express request



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40 of the ~~person~~ called party;

41 2. Primarily in connection with an existing debt or
42 contract, if payment or performance of such debt or contract has
43 not been completed at the time of such call;

44 3. To a person with whom the telephone solicitor has a
45 prior or existing business relationship; ~~or~~

46 4. By a newspaper publisher or his or her agent or employee
47 in connection with his or her business; or

48 5. Limited to polling or soliciting the expression of
49 ideas, opinions, or votes, including when such polling or
50 soliciting is made by text message.

51 (8) (a) A person may not make or knowingly allow a
52 telephonic sales call to be made if such call involves an
53 automated system for the selection and ~~or~~ dialing of telephone
54 numbers or the playing of a recorded message when a connection
55 is completed to a number called without the prior express
56 written consent of the called party.

57 (e) This subsection does not prohibit the use of an
58 automated telephone dialing system with live messages or text
59 messages if the call or message is made solely in response to an
60 inquiry initiated by the called party. However, only two such
61 calls or messages may be made in response to each inquiry.

62 (11) (a) In any civil litigation resulting from a
63 ~~transaction involving a~~ violation of this section, the
64 prevailing party, after judgment in the trial court and
65 exhaustion of all appeals, if any, shall receive his or her
66 reasonable attorney ~~attorney's~~ fees and costs from the
67 nonprevailing party.

68 (b) The attorney for the prevailing party shall submit a



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69 sworn affidavit of his or her time spent on the case and his or
70 her costs incurred for all the motions, hearings, and appeals to
71 the trial judge who presided over the civil case.

72 (c) The trial judge shall award the prevailing party the
73 sum of reasonable costs incurred in the action plus a reasonable
74 legal fee for the hours actually spent on the case as sworn to
75 in an affidavit.

76 (d) Any award of attorney ~~attorney's~~ fees or costs shall
77 become a part of the judgment and subject to execution as the
78 law allows.

79 (e) In any civil litigation initiated by the department or
80 the Department of Legal Affairs, the court may award to the
81 prevailing party reasonable attorney ~~attorney's~~ fees and costs
82 if the court finds that there was a complete absence of a
83 justiciable issue of either law or fact raised by the losing
84 party or if the court finds bad faith on the part of the losing
85 party.

86 Section 2. The amendments made by this act to s. 501.059,
87 Florida Statutes, are remedial in nature and apply retroactively
88 to July 1, 2021, and to any proceeding pending or commenced on
89 or after July 1, 2021.

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

91
92 ===== T I T L E A M E N D M E N T =====

93 And the title is amended as follows:

94 Delete everything before the enacting clause
95 and insert:

96 A bill to be entitled
97 An act relating to telephone solicitation; amending s.



183960

98 501.059, F.S.; redefining terms; conforming a
99 provision to changes made by the act; authorizing the
100 use of automated telephone dialing systems with live
101 messages in response to certain inquiries; providing a
102 limitation; revising provisions for the award of
103 attorney fees and costs; providing for retroactive
104 application; providing an effective date.

By Senator Hutson

7-01690-22

20221564__

1 A bill to be entitled
 2 An act relating to telephone solicitation; amending s.
 3 501.059, F.S.; revising the definitions of the terms
 4 "prior express written consent" and "unsolicited
 5 telephonic sales call"; revising the limitations on
 6 making unsolicited telephonic sales calls; providing
 7 an effective date.
 8
 9 Be It Enacted by the Legislature of the State of Florida:
 10
 11 Section 1. Paragraphs (g) and (k) of subsection (1) and
 12 paragraph (a) of subsection (8) of section 501.059, Florida
 13 Statutes, are amended to read:
 14 501.059 Telephone solicitation.—
 15 (1) As used in this section, the term:
 16 (g) "Prior express written consent" means a written
 17 agreement that:
 18 1. Bears the signature of the called party;
 19 2. Clearly authorizes the person making or allowing the
 20 placement of a telephonic sales call by telephone call, text
 21 message, or voicemail transmission to deliver or cause to be
 22 delivered to the called party a telephonic sales call using an
 23 automated system for the selection and ~~or~~ dialing of telephone
 24 numbers, the playing of a recorded message when a connection is
 25 completed to a number called, or the transmission of a
 26 prerecorded voicemail;
 27 3. Includes the telephone number to which the signatory
 28 authorizes a telephonic sales call to be delivered; and
 29 4. Includes a clear and conspicuous disclosure informing

Page 1 of 3

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

7-01690-22

20221564__

30 the called party that:
 31 a. By executing the agreement, the called party authorizes
 32 the person making or allowing the placement of a telephonic
 33 sales call to deliver or cause to be delivered a telephonic
 34 sales call to the called party using an automated system for the
 35 selection and ~~or~~ dialing of telephone numbers or the playing of
 36 a recorded message when a connection is completed to a number
 37 called; and
 38 b. He or she is not required to directly or indirectly sign
 39 the written agreement or to agree to enter into such an
 40 agreement as a condition of purchasing any property, goods, or
 41 services.
 42 (k) "Unsolicited telephonic sales call" means a telephonic
 43 sales call other than a call made:
 44 1. Within 120 days after ~~In response to~~ an express request
 45 of the ~~person~~ called party;
 46 2. Primarily in connection with an existing debt or
 47 contract, if payment or performance of such debt or contract has
 48 not been completed at the time of such call;
 49 3. To a person with whom the telephone solicitor has a
 50 prior or existing business relationship; or
 51 4. By a newspaper publisher or his or her agent or employee
 52 in connection with his or her business.
 53 (8) (a) A person may not make or knowingly allow an
 54 unsolicited ~~a~~ telephonic sales call to be made if such call
 55 involves an automated system for the selection and ~~or~~ dialing of
 56 telephone numbers or the playing of a recorded message when a
 57 connection is completed to a number called without the prior
 58 express written consent of the called party.

Page 2 of 3

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

7-01690-22

20221564__

59

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



The Florida Senate

Committee Agenda Request

To: Senator Ed Hooper, Chair
Committee on Commerce and Tourism

Subject: Committee Agenda Request

Date: January 13, 2022

I respectfully request that **Senate Bill #1878**, relating to Capital Investment Tax Credit, be placed on the:

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

Please let me know if you have any questions.

Sincerely,

A handwritten signature in black ink that reads "Joe Gruters".

Joe Gruters

Cc: Todd McKay, Staff Director
Kathryn Vigrass, Committee Administrative Assistant

1/24/22

APPEARANCE RECORD

1878

Meeting Date

Bill Number or Topic

Commerce and Tourism

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

Committee

Amendment Barcode (if applicable)

Name **Adam Basford**

Phone **850-224-7173**

Address **516 N Adams**

Email **abasford@aif.com**

Street

Tallahassee

FL

32301

City

State

Zip

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

PLEASE CHECK ONE OF THE FOLLOWING:

I am appearing without compensation or sponsorship.

I am a registered lobbyist, representing:

Associated Industries of Florida

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

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

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

S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

SB 1878

1/24/22

Meeting Date

Commerce & Tourism

Committee

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

Bill Number or Topic

Amendment Barcode (if applicable)

Name **Carolyn Johnson**

Phone **521-1200**

Address **136 S Bronough St**

Email **cjohnson@flchamber.com**

Street

Tallahassee

FL

32301

City

State

Zip

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

PLEASE CHECK ONE OF THE FOLLOWING:

I am appearing without compensation or sponsorship.

I am a registered lobbyist, representing:

FL Chamber of Commerce

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

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

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

S-001 (08/10/2021)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: SB 1878

INTRODUCER: Senator Gruters

SUBJECT: Capital Investment Tax Credit

DATE: January 21, 2022

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Renner	McKay	CM	Favorable
2.			FT	
3.			AP	

I. Summary:

SB 1878 amends s. 220.191, F.S. to expand an existing credit under the Capital Tax Credit (CITC) to include certain projects for the development or creation of intellectual property, and to create an additional tax credit under the CITC relating to intellectual property projects.

The bill amends an existing credit under the CITC for certain high-impact sector facilities, and enterprise zone and brownfield area headquarters facilities, which is granted against the state corporate income tax or insurance premium tax. The bill adds to such categories a project or projects that involve the development or creation of intellectual property and that meet a certain average wage requirement.

The bill creates a new tax credit for qualifying businesses relating to intellectual property projects if one or more project is at least an aggregate of \$500 million over a 3-year period. The tax credit is calculated as 20 percent of the eligible wages, salaries, employer-paid taxes and benefits, or other compensation paid to any individual, including amounts paid through an employee leasing company, and the direct production costs paid to any business, regardless of the location, generated by the qualifying project.

The credit is granted against the state corporate income tax, the state sales tax, or both.

The Revenue Estimating Conference has not yet determined the fiscal impact of the bill.

The bill takes effect July 1, 2022.

II. Present Situation:

Capital Investment Tax Credit

The Capital Investment Tax Credit (CITC) was established by the Legislature in 1998 to attract and grow capital-intensive industries in the state.¹ The CITC is currently comprised of two tax credits—one that is available for three categories of qualifying projects and that provides a credit against the state corporate income tax or insurance premium tax², and a second that is limited to certain headquarters facilities and that provides a credit against the corporate income tax.³ Both credits are granted to qualified businesses certified by the Department of Economic Opportunity (DEO).

Credit under s. 220.191(2), F.S.

The first credit under the CITC is available for three categories of qualifying projects:⁴

- A new or expanded Florida facility that is in a designated high-impact sector⁵ and that creates at least 100 new jobs in Florida (high-impact sector facilities).
- A new or expanded Florida facility that is in a qualified target industry⁶ and that creates or retains at least 1,000 jobs in Florida, provided that at least 100 of those jobs are new, pay an annual average wage of at least 130 percent of the average private sector wage in the area, and result in a cumulative capital investment of at least \$100 million (QTI facilities).
- A new or expanded Florida headquarters facility that is located in an enterprise zone and brownfield area; that creates at least 1,500 jobs, which on average pay at least 200 percent of the statewide average annual private sector wage; and that makes a cumulative capital investment in this state of at least \$250 million (headquarters facilities).

The annual credit amount is 5 percent of the eligible capital costs generated by the qualifying project for up to 20 years,⁷ beginning with the commencement of operations of the project.⁸ The credit is granted against state corporate income tax liability or premium tax liability generated by, or arising out of, the qualifying project. Annual limits for the tax credit apply, depending on the type of qualifying project:

¹ Chapter 98-61, Laws of Fla.

² Section 220.191(2), F.S.

³ Section 220.191(3), F.S.

⁴ Section 220.191(1)(g) and (2)(a), F.S.

⁵ The sectors currently designated as high impact are clean energy, life sciences, financial services, information technology, semi-conductors, transportation equipment manufacturing, advanced manufacturing, or a corporate headquarters facility. See Department of Economic Opportunity, *2021 Annual Incentives Report*, 41, available at https://floridajobs.org/docs/default-source/reports-and-legislation/2020-2021-annual-incentives-report-final.pdf?sfvrsn=287550b0_2 (last visited Jan. 21, 2022).

⁶ The current qualified target industries are aviation and aerospace; corporate headquarters; clean technology; defense and homeland security; financial and professional services; global logistics and trade; information technology; life sciences; manufacturing; and research and development. See Department of Economic Opportunity, *2021 Annual Incentives Report*, 12, available at https://floridajobs.org/docs/default-source/reports-and-legislation/2020-2021-annual-incentives-report-final.pdf?sfvrsn=287550b0_2 (last visited Jan. 21, 2022).

⁷ For qualified target industry facilities, the tax credit period is limited to 5 years. See s. 220.191(1)(g)2., F.S.

⁸ Section 220.191(2)(a), F.S. Eligible capital costs include all expenses incurred in the acquisition, construction, installation, and equipping of a project from the beginning of construction to the commencement of operations. They do not include the cost of any property previously owned or leased by the qualifying business. See s. 220.191(1)(c), F.S.

- For a QTI facility, annual credits against the state corporate income tax may not exceed 50 percent of the increased annual corporate income tax liability or the premium tax liability generated by, or arising out of, the qualifying project.⁹
- For high-impact sector facilities and headquarters facilities, the annual credit limits depend on the amount of cumulative capital investment resulting from the qualifying project:¹⁰
 - For a qualifying project resulting in a cumulative capital investment of at least \$100 million, the annual credit may not exceed 100 percent of the annual corporate income tax liability or premium tax liability generated by, or arising out of, the qualifying project.
 - For a qualifying project resulting in a cumulative capital investment of at least \$50 million to under \$100 million, the annual credit may not exceed 75 percent of the annual corporate income tax liability or premium tax liability generated by, or arising out of, the qualifying project.
 - For a qualifying project resulting in a cumulative capital investment of at least \$25 million to under \$50 million, the annual credit may not exceed 50 percent of the annual corporate income tax liability or premium tax liability generated by, or arising out of, the qualifying project.

A qualifying project with less than a \$25 million cumulative capital investment is not eligible for the credit.¹¹

Generally, an unused credit may not be carried backward or forward to apply to tax liabilities in previous or subsequent years, respectively.¹² However, a business with a qualifying project resulting in a cumulative capital investment of at least \$100 million may apply unused credits beginning with the 21st year after the commencement of the project's operations and ending the 30th year after the commencement of the project's operations.¹³

The credit may not be assigned or transferred, except by a qualifying business establishing a qualifying project that includes locating a new solar panel manufacturing facility in Florida and that generates a minimum of 400 jobs within 6 months after commencement of operations, with an average salary of at least \$50,000. Such business may assign or transfer its annual credit or any portion thereof to any other business, subject to certain limitations and conditions.¹⁴

Credit under s. 220.191(3), F.S.

The second credit under the CITC is limited to qualifying businesses that establish a headquarters facility qualifying project. The annual credit amount is the lesser of \$15 million or 5 percent of the eligible capital costs made in connection with a qualifying project for up to 20 years, beginning with the commencement of the project.¹⁵ The credit is granted against the

⁹ Section 220.191(1)(g)2., F.S.

¹⁰ Section 220.191(2)(a), F.S.

¹¹ Section 220.191(2)(b), F.S.

¹² Section 220.191(2)(a), F.S.

¹³ Section 220.191(2)(d), F.S.

¹⁴ Section 220.191(2)(c), F.S.

¹⁵ Section 220.191(3)(a), F.S.

state corporate income tax liability of the qualifying business. The total tax credit is limited to 100 percent of the qualifying project's eligible capital costs.¹⁶

Unused credits may be carried forward for up to 20 years after the commencement of the project's operations.¹⁷ The credit may be used by certain related entities of the qualifying business.¹⁸

Certification of Qualifying Businesses and Issuance of Tax Credits

The DEO must certify a business as eligible to receive either of the CITC tax credits before the commencement of operations of a qualifying project. If a business is certified, the DEO will enter into an agreement with the business that specifies the planned commencement date of operations and the total amount of credit the business can expect if the project proceeds as planned. Agreements are drafted so that a qualified business's annual credit amount begins on the date of commencement of operations, beginning the 20-year credit period. If for some reason operations do not commence on time, the 20-year window is not adjusted.¹⁹ Before receiving a tax credit each year, a qualifying business must achieve and maintain its minimum employment goals beginning with the commencement of operations of a qualifying project.²⁰ Qualifying businesses must also affirmatively demonstrate to the Department of Revenue (DOR) that they meet job creation and capital investment requirements.²¹

Economic Impact

According to the DEO, there were 65 active CITC awardees with 31 reporting performance as of Fiscal Year 2020-2021; the DEO confirmed 3,216 jobs created and over \$313 million in capital investment in said fiscal year.²² Over \$70 million in tax credits were approved to be claimed by qualified business in calendar year 2020.²³

¹⁶ *Id.*

¹⁷ Section 220.191(3)(b), F.S.

¹⁸ Section 220.191(3)(c), F.S.

¹⁹ Florida Senate Committee on Finance and Tax, *Issue Brief 2012-2014: Review of the Capital Investment Tax Credit* (September 2011), available at <https://www.flsenate.gov/PublishedContent/Session/2012/InterimReports/2012-204ft.pdf> (last visited Jan. 21, 2022). See also s. 220.191(5), F.S.

²⁰ Section 220.191(4), F.S.

²¹ Section 220.191(7), F.S.

²² Department of Economic Opportunity, *2021 Annual Incentives Report*, 8, available at https://floridajobs.org/docs/default-source/reports-and-legislation/2020-2021-annual-incentives-report-final.pdf?sfvrsn=287550b0_2 (last visited Jan. 21, 2022).

²³ *Id.* at 37.

Select State Taxes

The following describes select Florida taxes, which the bill provides credits against.

Corporate Income Tax

Florida imposes a tax on the taxable income of certain corporations and financial institutions doing business in Florida.²⁴ The current rate is 5.5 percent²⁵ of a taxpayer's net income for its taxable year (the calendar or fiscal year or period upon which its net income is computed).²⁶

The calculation of Florida corporate income tax starts with a corporation's federal taxable income.²⁷ Taxable income earned by corporations operating in more than one state is taxed in Florida on an apportioned basis using a formula based 25 percent on property, 25 percent on payroll, and 50 percent on sales.²⁸ Income that is apportioned to Florida using this formula is then subject to the Florida income tax. The first \$50,000 of net income is exempt, effective with taxable years beginning January 1, 2013.²⁹

Corporate income tax net collections in Fiscal Year 2020-2021 were a little over \$3 billion.³⁰

Insurance Premium Tax

Florida imposes on insurers a tax on insurance premiums. For the tax imposed by s. 624.509(1), F.S., tax is due on:

- Insurance premiums;
- Premiums for title insurance;
- Assessments, including membership fees and policy fees and gross deposits received from subscribers to reciprocal or interinsurance agreements; and
- Annuity premiums or considerations.

The general tax rate is 1.75 percent of gross receipts on account of life and health insurance policies covering Florida residents and on account of all other types of policies and contracts covering property, subjects, or risks located, resident, or to be performed in Florida, minus reinsurance and return premiums.³¹ Annuity policies or contracts held in Florida are taxed at 1 percent of gross receipts, and direct written premiums for bail bonds are taxed at 1.75 percent, excluding any amounts retained by licensed bail bond agents or appointed managing general agents.³² The insurance premium tax is collected by the DOR and distributed to the General

²⁴ Chapter 220, F.S.

²⁵ The tax rate was adjusted downward to 4.458 percent pursuant to s. 220.1105, F.S., for taxable years beginning on or after January 1, 2019. Pursuant to s. 220.1105(5), F.S., the rate returned to 5.5 percent for taxable years beginning on or after January 1, 2022.

²⁶ Sections 220.11(2) and 220.63(2), F.S.

²⁷ Section 220.12, F.S.

²⁸ Section 220.15, F.S.

²⁹ Section 220.14, F.S.

³⁰ Revenue Estimating Conference, *General Revenue Consensus Estimating Conference Comparison Report* (August 17, 2021), 27, available at <http://www.edr.state.fl.us/Content/conferences/generalrevenue/grpackage.pdf> (last visited Jan. 21, 2022).

³¹ Section 624.509(1), F.S.

³² *Id.*

Revenue Fund.³³ Total insurance premium tax collections in Fiscal Year 2020-2021 were \$1.1 billion.³⁴

Sales and Use Tax

Florida levies a 6 percent sales and use tax on the sale or rental of most tangible personal property, admissions,³⁵ transient rentals,³⁶ and a limited number of services, and a 5.5 percent sales and use tax on commercial real estate rentals³⁷ (state sales tax). Chapter 212, F.S., authorizes the levy and collection of the state sales tax, and provides exemptions and credits applicable to certain items or uses under specified circumstances.³⁸ Florida requires a dealer to add the tax to the sales price of the taxable good or service and collect it from the purchaser at the time of sale.³⁹ Total sales tax collections in Fiscal Year 2021-2022 is estimated at \$32.7 billion.⁴⁰

In addition to the state sales tax, county and municipal governments and school districts are authorized to levy certain local discretionary sales surtaxes (also referred to as local option sales taxes), subject to certain requirements and limitations.⁴¹

III. Effect of Proposed Changes:

The bill amends s. 220.191, F.S., to expand the credit under s. 220.191(2), F.S., to add certain projects involving the development or creation of intellectual property to the list of eligible categories, and to create one new tax credit under the CITC.

Expansion of the Credit

The bill expands the credit by adding to the categories of qualifying projects a project involving the development or creation of intellectual property, which may consist of one or more projects with different start and completion dates, provided that the project's jobs in Florida pay at least 150 percent of the annual average private sector wage in the area (intellectual property project).

The bill defines "intellectual property" as a qualifying copyrightable project for which the cumulative intellectual property investment is principally paid directly or indirectly for the creation of the project. The bill provides examples of "qualifying copyrightable projects," as television or streaming video projects that include only the following content: series, pilots, commercial advertisements, music videos, music, animation, interactive entertainment, or sound recording projects used in series or pilots. Projects are limited to being recorded in this state, in whole or in part. The term also includes projects provided for distribution using delivery systems

³³ Section 624.509(3), F.S.

³⁴ *Supra* note 30, at 34.

³⁵ Section 212.04, F.S.

³⁶ Section 212.03, F.S.

³⁷ Section 212.031, F.S.

³⁸ Section 212.02(14)(a), F.S.

³⁹ *See* ss. 212.07(2) and 212.06(3)(a), F.S.

⁴⁰ Office of Economic and Demographic Research, The Florida Legislature, *Florida Tax Handbook, Including Fiscal Impact of Potential Changes*, 155 (2021), available at <http://edr.state.fl.us/Content/revenues/reports/tax-handbook/taxhandbook2021.pdf> (last visited Jan. 21, 2022).

⁴¹ *See* ss. 212.054 and 212.055, F.S.

that include film, videotape, computer disc, laser disc, and any element of the digital domain from which the program is viewed or reproduced and which is intended for licensing for exhibition by individual television stations, groups of stations, networks, cable television stations, public broadcasting stations, corporations, live venues, the Internet, or any other channel or exhibition except for theaters. Software or feature-length films exceeding 80 minutes in length are excluded.

The bill also expands the definition of “eligible capital costs” to include a qualifying project for the development or creation of intellectual property during the period from the start date of the project to the completion of the project.

The bill defines “employer-paid taxes and benefits” to include social security tax; Medicare tax; federal unemployment and state reemployment assistance taxes; workers’ compensation premiums and benefits; vacation pay, holiday pay, and sick pay; payroll-handling fees; mileage; car allowances; housing allowances; and per diem. “Direct production costs” is defined to mean direct expenses related to the preproduction, development or filming, and postproduction of intellectual property, but does not include the distribution and marketing of intellectual property.

A qualifying business establishing an intellectual property project would be eligible for a corporate income tax credit or an insurance premium tax credit for 5 percent of the above expenses.

The current requirements, limitations, and other provisions of the s. 220.191(2), F.S., credit, as discussed above, apply to intellectual property projects. The applicable annual credit limits for intellectual property projects is the same as for high-impact sector facilities and headquarters facilities.

Creation of Credit for Intellectual Property Investment

The bill creates a tax credit for qualifying business establishing intellectual property projects that meet certain levels of cumulative intellectual property investment (IP investment credit).

The bill defines “cumulative intellectual property investment” as the total investment for the development of intellectual property during the period from the start date of the project to the completion of the project in buildings or equipment; in wages, salaries, or other compensation paid to employees, including amounts paid through an employee leasing company and any employer-paid taxes and benefits regardless of location.

Unlike existing CITC credits, the IP investment credit is granted against the state corporate income tax, the state sales tax, or a stated combination of the two.

To qualify for the credit, a qualifying business must elect to make a cumulative intellectual property investment of one or more projects is at least an aggregate of \$500 million over a 3-year period. The tax credit is calculated as 20 percent of the eligible wages, salaries, employer-paid taxes and benefits, or other compensation paid to any individual, including amounts paid through an employee leasing company, and the direct production costs paid to any business, regardless of

the location, generated by the qualifying project. The tax credit must be granted against the tax liability of the qualifying business.

The tax credit may be used in any one year or years beginning with the commencement of the project and ending the second year after the completion of the project.

The DEO must grant tax credits within 30 days after it certifies the costs. If the qualifying business fails to meet the required cumulative intellectual property investment level, any previously granted IP investment credit must be revoked and rescinded. A qualified business is subject to a 10 percent penalty and interest, along with repayment of the credit, if a revoked and rescinded credit has already been claimed on a return or transferred to another business.

Other Changes

The bill amends the definition of “cumulative investment” under the Innovation Incentive Program in s. 288.1089, F.S., to specify that the expanded definition of “eligible capital costs” for CITC made by the bill does not apply to that program, which incorporates the definition of “eligible capital costs” by reference.

The provisions of the bill do not apply to any qualifying project application certified before December 31, 2021.

The bill takes effect July 1, 2022.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

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

The Revenue Estimating Conference has not yet determined the fiscal impact of the bill.

B. Private Sector Impact:

A qualified business establishing a qualifying project involving the development or creation of intellectual property may benefit from substantial reductions in state corporate income tax, insurance premium tax, or state sales tax liabilities through the credits amended and created by the bill.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

On line 44 of the bill, cumulative intellectual property investment includes employer-paid taxes and benefits, regardless of location. On line 119 of the bill, a qualifying copyrightable project is limited to projects recorded in Florida, in whole or in part.

It is unclear if *regardless of location* or *in whole or in part* would allow a qualifying business establishing intellectual property projects outside of Florida to be eligible for the Florida tax credits.

VIII. Statutes Affected:

This bill substantially amends sections 220.191 and 288.1089 of the Florida Statutes.

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

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

None.

B. Amendments:

None.

By Senator Gruters

23-00592B-22

20221878__

A bill to be entitled

An act relating to the capital investment tax credit; amending s. 220.191, F.S.; defining and redefining terms; providing a credit against the corporate income tax, the sales and use tax, or a stated combination of the two taxes to a qualifying business that establishes a qualifying project for the creation of intellectual property which meets a certain capital investment threshold; specifying the calculation of the credit; authorizing use of the credit or portions of the credit by the business or members of its affiliated group of corporations; authorizing use of the credit within a certain timeframe; requiring the department to grant credits within a certain timeframe after costs are certified by the Department of Economic Opportunity; providing for revocation and rescindment of credits under certain circumstances; conforming provisions to changes made by the act; amending s. 288.1089, F.S.; revising the definition of the term "cumulative investment"; providing applicability; providing an effective date.

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

Section 1. Section 220.191, Florida Statutes, is amended to read:

220.191 Capital investment tax credit.—

(1) DEFINITIONS.—As used in ~~For purposes of~~ this section, the term:

Page 1 of 13

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

23-00592B-22

20221878__

(a) "Commencement of operations" means the beginning of active operations by a qualifying business of the principal function for which a qualifying project was constructed.

(b) "Cumulative capital investment" means the total capital investment in land, buildings, and equipment made in connection with a qualifying project during the period from the beginning of construction of the project to the commencement of operations.

(c) "Cumulative intellectual property investment" means the total investment for the development of intellectual property during the period from the start date of the project to the completion of the project in buildings or equipment; in wages, salaries, or other compensation paid to employees, including amounts paid through an employee leasing company; and any employer-paid taxes and benefits, regardless of location.

(d) "Direct production costs" means direct expenses related to the preproduction, development or filming, and postproduction of intellectual property. The term does not include the distribution and marketing of intellectual property.

(e)1. "Eligible capital costs" means all expenses incurred by a qualifying business in connection with:

a. The acquisition, construction, installation, and equipping of a qualifying project during the period from the beginning of construction of the project to the commencement of operations; or

b. A qualifying project for the development or creation of intellectual property during the period from the start date of the project to the completion of the project.

2. The term includes, ~~including,~~ but is not limited to:

Page 2 of 13

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59 a.1 The costs of acquiring, constructing, installing,
60 equipping, and financing a qualifying project, including all
61 obligations incurred for labor and obligations to contractors,
62 subcontractors, builders, and materialmen.

63 b.2 The costs of acquiring land or rights to land and any
64 cost incidental thereto, including recording fees.

65 c.3 The costs of architectural and engineering services,
66 including test borings, surveys, estimates, plans and
67 specifications, preliminary investigations, environmental
68 mitigation, and supervision of construction, as well as the
69 performance of all duties required by or consequent to the
70 acquisition, construction, installation, and equipping of a
71 qualifying project.

72 d.4 The costs associated with the installation of fixtures
73 and equipment; surveys, including archaeological and
74 environmental surveys; site tests and inspections; subsurface
75 site work and excavation; removal of structures, roadways, and
76 other surface obstructions; filling, grading, paving, and
77 provisions for drainage, storm water retention, and installation
78 of utilities, including water, sewer, sewage treatment, gas,
79 electricity, communications, and similar facilities; and offsite
80 construction of utility extensions to the boundaries of the
81 property.

82 Eligible capital costs ~~do shall~~ not include the cost of any
83 property previously owned or leased by the qualifying business.

84 (f) "Employer-paid taxes and benefits" includes social
85 security tax; Medicare tax; federal unemployment and state
86 reemployment assistance taxes; workers' compensation premiums
87

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88 and benefits; vacation pay, holiday pay, and sick pay; payroll-
89 handling fees; mileage; car allowances; housing allowances; and
90 per diem.

91 (g)(d) "Income generated by or arising out of the
92 qualifying project" means the qualifying project's annual
93 taxable income as determined by generally accepted accounting
94 principles and under s. 220.13. If a qualifying business has
95 more than one qualifying project pursuant to subparagraph
96 (2)(a)1., the term means the annual taxable income as determined
97 by generally accepted accounting principles and under s. 220.13
98 for each qualifying project, aggregated during the years that
99 more than one qualifying project is allowed to claim credits.

100 (h)(e) "Intellectual property" means a qualifying
101 copyrightable project for which the cumulative intellectual
102 property investment is principally paid directly or indirectly
103 for the creation of the project.

104 (i) "Jobs" means full-time equivalent positions, as that
105 term is consistent with terms used by the Department of Economic
106 Opportunity and the United States Department of Labor for
107 purposes of reemployment assistance tax administration and
108 employment estimation, resulting directly from a project in this
109 state. The term does not include temporary construction jobs
110 involved in the construction of the project facility.

111 (j)(f) "Qualifying business" means a business which
112 establishes a qualifying project in this state and which is
113 certified by the Department of Economic Opportunity to receive
114 tax credits pursuant to this section.

115 (k) "Qualifying copyrightable project" means television or
116 streaming video projects that include only the following

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117 content: series, pilots, commercial advertisements, music
 118 videos, music, animation, interactive entertainment, or sound
 119 recording projects used in series or pilots. The term is limited
 120 to projects recorded in this state, in whole or in part. The
 121 term includes projects provided for distribution using delivery
 122 systems that include film, videotape, computer disc, laser disc,
 123 and any element of the digital domain from which the program is
 124 viewed or reproduced and which is intended for licensing for
 125 exhibition by individual television stations, groups of
 126 stations, networks, cable television stations, public
 127 broadcasting stations, corporations, live venues, the Internet,
 128 or any other channel of exhibition except for theaters. The term
 129 does not include software or feature-length films exceeding 80
 130 minutes in length.

131 (1) ~~(g)~~ "Qualifying project" means a facility or project in
 132 this state meeting one or more of the following criteria:

133 1. A new or expanding facility in this state which creates
 134 at least 100 new jobs in this state and is in one of the high-
 135 impact sectors identified by Enterprise Florida, Inc., and
 136 certified by the Department of Economic Opportunity pursuant to
 137 s. 288.108(6), including, but not limited to, aviation,
 138 aerospace, automotive, and silicon technology industries.
 139 However, between July 1, 2011, and June 30, 2014, the
 140 requirement that a facility be in a high-impact sector is waived
 141 for any otherwise eligible business from another state which
 142 locates all or a portion of its business to a Disproportionally
 143 Affected County. For purposes of this section, the term
 144 "Disproportionally Affected County" means Bay County, Escambia
 145 County, Franklin County, Gulf County, Okaloosa County, Santa

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146 Rosa County, Walton County, or Wakulla County.

147 2. A new or expanded facility in this state which is
 148 engaged in a target industry designated pursuant to the
 149 procedure specified in s. 288.106(2) and which is induced by
 150 this credit to create or retain at least 1,000 jobs in this
 151 state, provided that at least 100 of those jobs are new, pay an
 152 annual average wage of at least 130 percent of the average
 153 private sector wage in the area as defined in s. 288.106(2), and
 154 make a cumulative capital investment of at least \$100 million.
 155 Jobs may be considered retained only if there is significant
 156 evidence that the loss of jobs is imminent. Notwithstanding
 157 subsection (2), annual credits against the tax imposed by this
 158 chapter may not exceed 50 percent of the increased annual
 159 corporate income tax liability or the premium tax liability
 160 generated by or arising out of a project qualifying under this
 161 subparagraph. A facility that qualifies under this subparagraph
 162 for an annual credit against the tax imposed by this chapter may
 163 take the tax credit for a period not to exceed 5 years.

164 3. A new or expanded headquarters facility in this state
 165 which locates in an enterprise zone and brownfield area and is
 166 induced by this credit to create at least 1,500 jobs which on
 167 average pay at least 200 percent of the statewide average annual
 168 private sector wage, as published by the Department of Economic
 169 Opportunity, and which new or expanded headquarters facility
 170 makes a cumulative capital investment in this state of at least
 171 \$250 million.

172 4. A project involving the development or creation of
 173 intellectual property, provided that the project's jobs in this
 174 state pay an annual average wage of at least 150 percent of the

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175 average private sector wage in the area as defined in s.
 176 288.106. A project that qualifies under this subparagraph may
 177 consist of one or more projects with different start and
 178 completion dates.

179 (2) (a) An annual credit against the tax imposed by this
 180 chapter shall be granted to any qualifying business in an amount
 181 equal to 5 percent of the eligible capital costs generated by a
 182 qualifying project, for a period not to exceed 20 years
 183 beginning with the commencement of operations of the project.
 184 Unless assigned as described in this subsection, the tax credit
 185 shall be granted against only the corporate income tax liability
 186 or the premium tax liability generated by or arising out of the
 187 qualifying project, and the sum of all tax credits provided
 188 pursuant to this section may ~~shall~~ not exceed 100 percent of the
 189 eligible capital costs of the project. In no event may any
 190 credit granted under this section be carried forward or backward
 191 by any qualifying business with respect to a subsequent or prior
 192 year. The annual tax credit granted under this section may ~~shall~~
 193 not exceed the following percentages of the annual corporate
 194 income tax liability or the premium tax liability generated by
 195 or arising out of a qualifying project:

196 1. One hundred percent for a qualifying project which
 197 results in a cumulative capital investment of at least \$100
 198 million.

199 2. Seventy-five percent for a qualifying project which
 200 results in a cumulative capital investment of at least \$50
 201 million but less than \$100 million.

202 3. Fifty percent for a qualifying project which results in
 203 a cumulative capital investment of at least \$25 million but less

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204 than \$50 million.

205 (b) A qualifying project which results in a cumulative
 206 capital investment of less than \$25 million is not eligible for
 207 the capital investment tax credit. An insurance company claiming
 208 a credit against premium tax liability under this program may
 209 ~~shall~~ not be required to pay any additional retaliatory tax
 210 levied pursuant to s. 624.5091 as a result of claiming such
 211 credit. Because credits under this section are available to an
 212 insurance company, s. 624.5091 does not limit such credit in any
 213 manner.

214 (c) A qualifying business that establishes a qualifying
 215 project that includes locating a new solar panel manufacturing
 216 facility in this state that generates a minimum of 400 jobs
 217 within 6 months after commencement of operations with an average
 218 salary of at least \$50,000 may assign or transfer the annual
 219 credit, or any portion thereof, granted under this section to
 220 any other business. However, the amount of the tax credit that
 221 may be transferred in any year shall be the lesser of the
 222 qualifying business's state corporate income tax liability for
 223 that year, as limited by the percentages applicable under
 224 paragraph (a) and as calculated before ~~prior to~~ taking any
 225 credit pursuant to this section, or the credit amount granted
 226 for that year. A business receiving the transferred or assigned
 227 credits may use the credits only in the year received, and the
 228 credits may not be carried forward or backward. To perfect the
 229 transfer, the transferor shall provide the department with a
 230 written transfer statement notifying the department of the
 231 transferor's intent to transfer the tax credits to the
 232 transferee; the date the transfer is effective; the transferee's

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233 name, address, and federal taxpayer identification number; the
 234 tax period; and the amount of tax credits to be transferred. The
 235 department shall, upon receipt of a transfer statement
 236 conforming to the requirements of this paragraph, provide the
 237 transferee with a certificate reflecting the tax credit amounts
 238 transferred. A copy of the certificate must be attached to each
 239 tax return for which the transferee seeks to apply such tax
 240 credits.

241 (d) If the credit granted under subparagraph (a)1. is not
 242 fully used in any one year because of insufficient tax liability
 243 on the part of the qualifying business, the unused amounts may
 244 be used in any one year or years beginning with the 21st year
 245 after the commencement of operations of the project and ending
 246 the 30th year after the commencement of operations of the
 247 project.

248 (3) (a) Notwithstanding subsection (2), a credit against the
 249 tax imposed by this chapter, against state taxes collected or
 250 accrued under chapter 212, or against a stated combination of
 251 the two taxes must be granted to a qualifying business that
 252 establishes a qualifying project pursuant to subparagraph
 253 (1) (1)4. for which the cumulative intellectual property
 254 investment of one or more projects is, at the election of the
 255 qualifying business, at least an aggregate of \$500 million over
 256 a 3-year period. The tax credit must be granted in an amount
 257 equal to 20 percent of the eligible wages, salaries, employer-
 258 paid taxes and benefits, or other compensation paid to any
 259 individual, including amounts paid through an employee leasing
 260 company, and the direct production costs paid to any business,
 261 regardless of the location, generated by the qualifying project.

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262 The tax credit must be granted against the tax liability of the
 263 qualifying business.

264 (b) The credit granted under this subsection may be used in
 265 whole or in part by the qualifying business or any corporation
 266 that is a member of that qualifying business' affiliated group
 267 of corporations. Any credit may be used by any of the affiliated
 268 corporations to the same extent as it could have been used by
 269 the qualifying business. However, any such use may not operate
 270 to increase the amount of the credit or extend the period within
 271 which the credit must be used.

272 (c) A qualifying business that elects to use the tax credit
 273 may use the tax credit in any one year or years beginning with
 274 the commencement of the project and ending the second year after
 275 the completion of the project.

276 (d) Notwithstanding the cumulative intellectual property
 277 investment threshold under paragraph (a), the department must
 278 grant tax credits to a qualifying business within 30 days after
 279 the date any costs described in this subsection are certified by
 280 the Department of Economic Opportunity.

281 (e)1. If the qualifying business fails to meet the level of
 282 cumulative intellectual property investment required by this
 283 subsection, then any previously granted tax credit issued
 284 pursuant to this subsection must be revoked and rescinded.

285 2. This paragraph may not result in the revocation or
 286 rescindment of any credits or incentives awarded to a project
 287 outside of this subsection.

288 3. If such revoked and rescinded credit has already been
 289 claimed on a return, the business must repay the credit plus the
 290 interest applicable under s. 213.235 and a 10 percent penalty.

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291 4. If such revoked and rescinded credit has already been
 292 transferred to another business, the transferor must repay the
 293 credit plus the interest applicable under s. 213.235 and a 10
 294 percent penalty.

295 (4) (a) Notwithstanding subsection (2), an annual credit
 296 against the tax imposed by this chapter must ~~shall~~ be granted to
 297 a qualifying business that ~~which~~ establishes a qualifying
 298 project pursuant to subparagraph (1) (1) 3. ~~(1) (g) 3.~~, in an amount
 299 equal to the lesser of \$15 million or 5 percent of the eligible
 300 capital costs made in connection with a qualifying project, for
 301 a period not to exceed 20 years beginning with the commencement
 302 of operations of the project. The tax credit must ~~shall~~ be
 303 granted against the corporate income tax liability of the
 304 qualifying business and as further provided in paragraph (c).
 305 The total tax credit provided pursuant to this subsection must
 306 ~~shall~~ be equal to no more than 100 percent of the eligible
 307 capital costs of the qualifying project.

308 (b) If the credit granted under this subsection is not
 309 fully used in any one year because of insufficient tax liability
 310 on the part of the qualifying business, the unused amount may be
 311 carried forward for a period not to exceed 20 years after the
 312 commencement of operations of the project. The carryover credit
 313 may be used in a subsequent year when the tax imposed by this
 314 chapter for that year exceeds the credit for which the
 315 qualifying business is eligible in that year under this
 316 subsection after applying the other credits and unused
 317 carryovers in the order provided by s. 220.02(8).

318 (c) The credit granted under this subsection may be used in
 319 whole or in part by the qualifying business or any corporation

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

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320 that is either a member of that qualifying business's affiliated
 321 group of corporations, is a related entity taxable as a
 322 cooperative under subchapter T of the Internal Revenue Code, or,
 323 if the qualifying business is an entity taxable as a cooperative
 324 under subchapter T of the Internal Revenue Code, is related to
 325 the qualifying business. Any entity related to the qualifying
 326 business may continue to file as a member of a Florida-nexus
 327 consolidated group pursuant to a prior election made under s.
 328 220.131(1), Florida Statutes (1985), even if the parent of the
 329 group changes due to a direct or indirect acquisition of the
 330 former common parent of the group. Any credit can be used by any
 331 of the affiliated companies or related entities referenced in
 332 this paragraph to the same extent as it could have been used by
 333 the qualifying business. However, any such use may ~~shall~~ not
 334 operate to increase the amount of the credit or extend the
 335 period within which the credit must be used.

336 (5) (4) ~~Before~~ Prior to receiving tax credits pursuant to
 337 this section, a qualifying business must achieve and maintain
 338 the minimum employment goals beginning with the commencement of
 339 operations or the completion date of ~~at~~ a qualifying project and
 340 continuing each year thereafter during which tax credits are
 341 available pursuant to this section.

342 (6) (5) Applications must ~~shall~~ be reviewed and certified
 343 pursuant to s. 288.061. The Department of Economic Opportunity,
 344 upon a recommendation by Enterprise Florida, Inc., shall first
 345 certify a business as eligible to receive tax credits pursuant
 346 to this section before ~~prior to~~ the commencement of operations
 347 or the completion date of a qualifying project, and such
 348 certification must ~~shall~~ be transmitted to the Department of

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349 Revenue. Upon receipt of the certification, the Department of
350 Revenue shall enter into a written agreement with the qualifying
351 business specifying, at a minimum, the method by which income
352 generated by or arising out of the qualifying project will be
353 determined.

354 ~~(7)(6)~~ The Department of Economic Opportunity, in
355 consultation with Enterprise Florida, Inc., is authorized to
356 develop the necessary guidelines and application materials for
357 the certification process described in subsection ~~(6) (5)~~.

358 ~~(8)(7)~~ It shall be the responsibility of the qualifying
359 business to affirmatively demonstrate to the satisfaction of the
360 Department of Revenue that such business meets the job creation
361 and capital investment requirements of this section.

362 ~~(9)(8)~~ The Department of Revenue may specify by rule the
363 methods by which a project's pro forma annual taxable income is
364 determined.

365 Section 2. Paragraph (d) of subsection (2) of section
366 288.1089, Florida Statutes, is amended to read:

367 288.1089 Innovation Incentive Program.—

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

369 (d) "Cumulative investment" means cumulative capital
370 investment and all eligible capital costs, as defined in s.
371 220.191, Florida Statutes (2021).

372 Section 3. The amendments made by this act to s. 220.191,
373 Florida Statutes, do not apply to any qualifying project
374 application certified before December 31, 2021.

375 Section 4. This act shall take effect July 1, 2022.

CourtSmart Tag Report

Room: SB 110

Case No.:

Type:

Caption: Senate Commerce and Tourism Committee

Judge:

Started: 1/24/2022 3:02:58 PM

Ends: 1/24/2022 5:00:23 PM

Length: 01:57:26

3:02:57 PM Meeting called to order by Chair Hooper
3:03:07 PM Roll call by Administrative Assistant
3:03:14 PM Quorum present
3:03:33 PM Comments by Chair Hooper
3:03:47 PM Tab 4 - SB 1718, Cosmetic Animal Testing by Senator Book
3:04:10 PM Senator Book explains the bill
3:04:54 PM Amendment 539134
3:05:08 PM Senator Book explains the amendment
3:05:25 PM Amendment is adopted
3:05:48 PM Travis Moore, Humane Society of the US, waives in support of the bill
3:06:02 PM Kate MacFall, Animal Legal Defense Fund, waives in support of the bill
3:06:06 PM Senator Book waives close on bill
3:06:15 PM Roll call on bill; CS/SB 1718 is reported favorably
3:06:39 PM Tab 2 - SB 1038, Florida Seaport Transportation and Economic Development Council by Senator Perry
3:06:48 PM Senator Hutson explains bill on behalf of Senator Perry
3:07:28 PM Nicole Kelly, Putnam County, waives time in support of the bill
3:07:36 PM Senator Hutson waives close on the bill
3:07:44 PM Roll call on bill; SB 1038 is reported favorably
3:08:01 PM Tab 8 - SB 1564, Telephone Solicitation by Senator Hutson
3:08:15 PM Delete-all Amendment 183960
3:08:47 PM Senator Hutson explains the delete-all amendment
3:10:50 PM Question on amendment by Senator Taddeo
3:11:01 PM Question by Senator Powell
3:11:10 PM Followup question
3:11:16 PM Response by Senator Hutson
3:11:42 PM Edda Fernandez, AARP, waive in support
3:11:43 PM Ted Smith, FL Auto Dealers Association, waive in support
3:11:46 PM Carolyn Johnson, FL Chamber of Commerce, waive in support
3:11:50 PM Adam Basford, Associated Industries of Florida, waive in support
3:12:11 PM Delete-all Amendment is adopted
3:12:17 PM Back on bill as amended
3:12:27 PM Senator Hutson waives close
3:12:35 PM Roll call on bill; CS/SB1564 is reported favorably
3:12:59 PM Tab 3 - SB 1618, Restrictions on Employment by Senator Broxson
3:13:27 PM Senator Broxson explains the bill
3:14:11 PM Late-filed Amendment 679300
3:14:56 PM Senator Broxson explains the late-filed amendment
3:15:29 PM No appearance cards on the amendment
3:15:41 PM Amendment is adopted
3:15:46 PM Back on bill as amended
3:15:54 PM Question by Senator Torres
3:16:08 PM Response from Senator Broxson
3:19:01 PM Question from Senator Pizzo
3:20:20 PM Response from Senator Broxson
3:20:41 PM Additonal comments and questions from Senator Pizzo
3:21:12 PM Response from Senator Broxson
3:22:03 PM Senator Pizzo in debate
3:23:04 PM Senator Broxson waives close on bill
3:23:15 PM Roll call on bill; CS/SB 1618 is reported favorably
3:23:32 PM Tab 9 - SB 1878, Capital Investment Tax Credit by Senator Gruters
3:23:47 PM Senator Gruters explains the bill
3:24:50 PM Senator Torres with questions

3:25:00 PM Response from Senator Gruters
3:25:13 PM Question from Senator Taddeo
3:25:32 PM Response from Senator Gruters
3:25:48 PM Followup question from Senator Taddeo
3:25:58 PM Response from Senator Gruters
3:26:33 PM Question from Senator Pizzo
3:26:49 PM Response from Senator Gruters
3:27:02 PM Followup question from Senator Pizzo
3:27:07 PM Response to followup question
3:28:14 PM Additional question from Senator Pizzo
3:28:24 PM Response from Senator Gruters
3:28:37 PM Senator Torres with additional question
3:28:47 PM Response from Senator Gruters
3:29:14 PM Question from Senator Powell
3:29:23 PM Response from Senator Gruters
3:30:05 PM Followup question from Senator Powell
3:30:14 PM Response to followup question
3:30:54 PM Senator Torres with an additional question
3:31:09 PM Response from Senator Gruters
3:31:42 PM Adam Basford, Associated Industries of Florida, waives speaking time in support of the bill
3:32:01 PM Carolyn Johnson, Florida Chamber of Commerce, waives speaking time in support of the bill
3:32:03 PM Senator Pizzo in debate
3:32:55 PM Senator Taddeo in debate
3:34:18 PM Senator Gruters closes on bill
3:35:00 PM Roll call on SB 1878
3:35:36 PM SB 1878 is reported favorably
3:36:03 PM Tab 1 - SB 634, Judicial Notice by Senator Bradley
3:36:18 PM Senator Bradley explains the bill
3:37:02 PM Question from Senator Brandes
3:38:04 PM Amendment 321424
3:38:15 PM Senator Bradley explains the amendment
3:38:35 PM No appearance cards for the amendment
3:38:49 PM The amendment is adopted
3:38:58 PM Back on bill as amended
3:39:03 PM Bob Harris, Trial Lawyers Section/Florida Bar, waive in support
3:39:15 PM John Hickey speaks in support of the bill
3:40:57 PM Nancy Daniels, Florida Public Defender Association, providing information
3:42:18 PM Senator Pizzo with question of speaker
3:42:38 PM Ms. Daniels responds to Senator Pizzo
3:43:02 PM Followup question of speaker from Senator Pizzo
3:43:33 PM Response from Ms. Daniels
3:44:18 PM No debate
3:44:28 PM Senator Bradley closes on bill
3:44:32 PM Roll call on bill CS/SB 634
3:45:11 PM CS/SB 634 is reported favorably
3:45:40 PM Tab 6 - SB 1800, Broadband Infrastructure by Senator Boyd
3:45:53 PM Senator Gruters explains bill on behalf of Senator Boyd
3:46:26 PM Question from Senator Powell on bill
3:46:55 PM No response to question
3:47:34 PM Question from Senator Torres
3:47:53 PM Senator Gruters defers question to someone else
3:48:31 PM Followup question on bill
3:48:50 PM Response from Senator Gruters
3:49:08 PM Question from Senator Torres
3:49:15 PM Response from Senator Gruters
3:49:53 PM Additional question from Senator Torres
3:50:06 PM Response from Senator Gruters
3:50:15 PM Amendment 240514
3:50:21 PM Senator Gruters explains the amendment
3:50:45 PM Amendment is adopted
3:50:50 PM Back on bill as amended
3:50:55 PM Senator Pizzo with question

3:51:36 PM Senator Pizzo with question
3:52:03 PM Edda Fernandez, AARP, waive in support
3:52:28 PM Speaker Albie Kaminsky, Charter Communications, speaks in support of the bill
3:55:43 PM Senator Pizzo with question to the speaker
3:55:58 PM Mr. Kaminsky responds to question
3:56:05 PM Back and forth in questions and responses
3:59:47 PM Senator Torres with question of speaker
4:00:06 PM Response from Mr. Kaminsky
4:00:56 PM Followup question from Senator Torres
4:01:06 PM Response from Mr. Kaminsky
4:02:12 PM Back and forth in questions and responses
4:02:38 PM Senator Powell with question of speaker
4:03:13 PM Mr. Kaminsky responds to Senator Powell
4:05:23 PM Allison Carter, Florida Electric Cooperatives Association, waives speaking time in support
4:05:32 PM Adam Basford, Associated Industries of Florida, waives speaking time in support of the bill
4:05:39 PM Chris Doolin, Small County Coalition, appearing with information
4:08:15 PM Senator Taddeo with question of Mr. Doolin
4:08:28 PM Mr. Doolin responds
4:08:35 PM Followup question from Senator Taddeo
4:08:57 PM Chris Doolin responds to Senator Taddeo
4:09:21 PM Senator Pizzo in debate
4:11:05 PM Senator Torres in debate
4:11:43 PM Senator Wright in debate
4:12:16 PM Senator Powell in debate
4:13:09 PM Senator Taddeo in debate
4:13:45 PM Senator Gruters to close on bill
4:13:53 PM Roll call on CS/SB 1800
4:14:31 PM CS/SB 1800 is reported favorably
4:14:51 PM Tab 7 - SB 1802, Broadband Pole Replacement Trust Fund by Senator Boyd
4:15:01 PM Senator Gruters explains the bill on behalf of Senator Boyd
4:15:27 PM Amendment 621096
4:15:50 PM Senator Gruters explains amendment
4:16:01 PM Senator Pizzo in debate on amendment
4:16:21 PM Amendment is adopted
4:16:28 PM Back on bill as amended
4:16:42 PM Adam Basford waive in support
4:16:44 PM Albie Kaminsky waive in support
4:17:01 PM Senator Gruters waives close on bill
4:17:10 PM Roll call on CS/SB 1802
4:17:19 PM CS/SB 1802 is reported favorably
4:17:31 PM Tab 5 - SB 1762, Solicitation of Nonmedical Services by Senator Brandes
4:17:46 PM Senator Brandes explains the bill
4:23:36 PM Senator Powell with question of Senator Brandes
4:23:48 PM Senator Brandes responds
4:23:55 PM Question from Senator Torres
4:24:07 PM Senator Brandes with response
4:25:16 PM Question from Senator Pizzo
4:25:34 PM Response from Senator Brandes
4:26:11 PM Followup questions from Senator Pizzo
4:27:19 PM Back and forth with questions and responses
4:31:13 PM Question from Senator Wright
4:31:43 PM Question from Chair Hooper
4:31:59 PM Senator Brandes responds to questions
4:33:45 PM Question from Senator Diaz
4:34:01 PM Response from Senator Brandes
4:34:53 PM Followup question from Senator Diaz
4:35:07 PM Response to followup
4:35:43 PM Senator Hooper announces numerous speakers waiving time in support of bill
4:36:35 PM Speaker Jared Willis, Alliance for Patient Access, speaks in support of bill
4:38:56 PM Senator Powell asks question of Mr. Willis
4:39:15 PM Mr. Willis responds to question
4:39:30 PM Followup question from Senator Powell

4:39:39 PM Mr. Willis responds to question
4:40:20 PM Speaker William Large, Florida Justice Reform Institute, speaks in support of the bill
4:44:13 PM Senator Taddeo asks question of speaker William Large
4:44:40 PM Mr. Large responds to question
4:45:10 PM Followup question from Senator Taddeo
4:45:22 PM Mr. Large responds to question
4:45:37 PM Senator Pizzo asks questions of Mr. Large
4:46:42 PM Back and forth in questions and responses
4:50:59 PM Speaker Joshua Harris speaks against the bill
4:54:43 PM Senator Pizzo with questions
4:55:15 PM Senator Pizzo with additional questions
4:55:16 PM Response from Speaker
4:57:18 PM Back and forth in questions and responses
4:57:28 PM Senator Torres with questions
4:57:39 PM Response from speaker
4:58:15 PM Senator Taddeo with question
4:58:32 PM Response from speaker
4:58:44 PM Senator Torres in debate
4:59:21 PM With time running out, meeting is adjourned