

Tab 1	SB 940 by Baxley ; (Identical to H 00375) Professional Structural Engineers					
Tab 2	CS/SB 942 by RI, Baxley ; (Identical to H 00565) Fees/Professional Structural Engineer Licensing					
Tab 3	SB 1018 by Burgess ; (Identical to H 01509) Private Investigative and Security Services					
902328	D	S	RCS	CM, Burgess	Delete everything after	02/08 11:24 AM
Tab 4	SB 1246 by Gruters ; (Similar to CS/H 00925) Benchmark Replacements for London Interbank Offered Rate					
235134	D	S	RCS	CM, Gruters	Delete everything after	02/08 11:24 AM
Tab 5	SB 1316 by Hooper ; (Identical to H 00969) Resale of Tickets					

The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA

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

MEETING DATE: Monday, February 7, 2022
TIME: 2:30—4:30 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 940 Baxley (Identical H 375, Compare H 565, Linked CS/S 942)	Professional Structural Engineers; Prohibiting a person who is not licensed as an engineer from using a specified name or title; authorizing the Board of Professional Engineers to refuse to certify an applicant for a professional structural engineer license for certain reasons; providing licensure and application requirements for a professional structural engineer license; specifying acts that constitute grounds for disciplinary action, including civil penalties, against a professional structural engineer, etc. RI 01/25/2022 Favorable CM 02/07/2022 Favorable RC	Favorable Yeas 9 Nays 0
2	CS/SB 942 Regulated Industries / Baxley (Identical H 565, Compare H 375, Linked S 940)	Fees/Professional Structural Engineer Licensing; Authorizing the Board of Professional Engineers to establish fees relating to professional structural engineer licensing; requiring applicants to pay a specified fee to be eligible to receive a professional structural engineer license, etc. RI 01/25/2022 Fav/CS CM 02/07/2022 Favorable AP	Favorable Yeas 10 Nays 0
3	SB 1018 Burgess (Identical H 1509)	Private Investigative and Security Services; Revising eligibility requirements for certain licensees to carry firearms, etc. CM 02/07/2022 Fav/CS JU RC	Fav/CS Yeas 6 Nays 3

COMMITTEE MEETING EXPANDED AGENDA

Commerce and Tourism

Monday, February 7, 2022, 2:30—4:30 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	SB 1246 Gruters (Similar CS/H 925, Compare H 639)	Benchmark Replacements for London Interbank Offered Rate; Requiring that recommended benchmark replacements selected or recommended by specified persons be benchmark replacements on the United States dollar London Interbank Offered Rate (LIBOR) replacement date for certain contracts, securities, and instruments; authorizing specified persons to select benchmark replacements under certain circumstances; requiring that benchmark replacement conforming changes become an integral part of contracts, securities, and instruments under certain circumstances; providing that a person is not liable for damages and is not subject to claims and requests for equitable relief under certain circumstances, etc. BI 02/02/2022 Favorable CM 02/07/2022 Fav/CS RC	Fav/CS Yeas 9 Nays 0

5	SB 1316 Hooper (Identical H 969)	Resale of Tickets; Providing that certain tickets may be sold as nontransferable tickets only under certain circumstances; providing exceptions; defining the term "nontransferable ticket"; prohibiting the original ticket seller from taking certain actions against a person who purchases or resells a ticket, etc. CM 02/07/2022 Favorable JU RC	Favorable Yeas 9 Nays 0
---	---	---	----------------------------

TAB	OFFICE and APPOINTMENT (HOME CITY)	FOR TERM ENDING	COMMITTEE ACTION
Senate Confirmation Hearing: A public hearing will be held for consideration of the below-named executive appointment to the office indicated.			
Board of Directors, Enterprise Florida, Inc.			
6	Cruise, Rodney (Enterprise)	09/30/2025	Recommend Confirm Yeas 9 Nays 0
7	Deen Hartley, Sonya (Tallahassee)	09/30/2023	Recommend Confirm Yeas 9 Nays 0
8	Ross, Scott (Tallahassee)	09/30/2024	Recommend Confirm Yeas 9 Nays 0

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

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Ethics and Elections, *Chair*
Appropriations
Appropriations Subcommittee on Criminal and Civil Justice
Community Affairs
Criminal Justice
Health Policy
Judiciary
Rules

SENATOR DENNIS BAXLEY

12th District

JOINT COMMITTEE:

Joint Legislative Auditing Committee, *Alternating Chair*

January 25, 2022

The Honorable Senator Ed Hooper
302 Senate Office Building
Tallahassee, FL 32399

Dear Chairman Hooper,

I would like to request that SB 940 Professional Structural Engineers & CS/SB 942 Fees for Structural Engineers Licensing be heard in the next Regulated Industries Committee meeting.

SB 940 authorizes the Florida Board of Professional Engineers (board) to establish minimum standards of practice for the profession of structural engineering, which includes the structural analysis and design of components for threshold buildings (those higher than 50 feet/three stories or with an occupancy of greater than 500 persons) as well as the practice of engineering under current law.

The bill prohibits, effective March 1, 2024, the practice of professional structural engineering by any person who is not a licensed professional structural engineer or otherwise exempted from licensure under ch. 471, F.S., related to engineering.

The bill authorizes the board to certify persons as qualified to practice structural engineering if they are licensed or qualify for licensure as an engineer, have at least 4 years of active structural engineering experience under the supervision of a licensed engineer, have passed certain professional examinations, and meet other administrative requirements.

CS/SB 942, relating to Fees/Professional Structural Engineer Licensing, is linked to this bill, and provides for the establishment of licensing fees by the Board of Professional Engineering to be paid by persons seeking licensure as a professional structural engineer.

I appreciate your favorable consideration.

Onward & Upward,



Senator Dennis Baxley
Senate District 12

cc: Todd McKay, Staff Director

REPLY TO:

- 206 South Hwy 27/441, Lady Lake, Florida 32159 (352) 750-3133
- 315 SE 25th Avenue, Ocala, Florida 34471 (352) 789-6720
- 412 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5012

Senate's Website: www.flsenate.gov

Wilton Simpson
President of the Senate

Aaron Bean
President Pro Tempore

The Florida Senate

APPEARANCE RECORD

2/7/22

Meeting Date

940

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

CHRIS CHILDERS

Phone

850 443 6667

Address

3144 FERNS GLEN DR.

Street

Email

c-childers@bniengineers.com

TALLAHASSEE FL

City

State

32309

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
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 940

INTRODUCER: Senator Baxley

SUBJECT: Professional Structural Engineers

DATE: February 7, 2022

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Kraemer</u>	<u>Imhof</u>	<u>RI</u>	Favorable
2.	<u>Renner</u>	<u>McKay</u>	<u>CM</u>	Favorable
3.	_____	_____	<u>RC</u>	_____

I. Summary:

SB 940 authorizes the Florida Board of Professional Engineers (board) to establish minimum standards of practice for the profession of structural engineering, which includes the structural analysis and design of components for threshold buildings (those higher than 50 feet/three stories or with an occupancy of greater than 500 persons), including engineering that requires significant structural engineering education, training, experience, and examination, as determined by the board.

The bill prohibits, effective March 1, 2024, the practice of professional structural engineering by any person who is not a licensed professional structural engineer or otherwise exempted from licensure under ch. 471, F.S., relating to engineering.

Under the bill, the following titles may not be used by persons who are not licensed or exempt from licensing under current law relating to engineering: “licensed structural engineer,” “professional structural engineer,” or “registered structural engineer,” or any designation that indicates a person holds an active license.

The bill authorizes the board to certify persons as qualified to be licensed to practice professional structural engineering if they are licensed or qualify for licensure as an engineer, have at least four years of active structural engineering experience under the supervision of a licensed professional engineer, have passed certain professional examinations, and meet other administrative requirements. The bill also requires the board to certify qualified foreign or out-of-state applicants for licensure by endorsement in certain circumstances.

SB 942, relating to Fees/Professional Structural Engineer Licensing, is linked to this bill, and provides for the establishment of licensing fees by the board to be paid by persons seeking licensure as a professional structural engineer.

See Section V, Fiscal Impact Statement.

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

II. Present Situation:

Regulation of Professional Engineers

The practice of engineering is regulated by the board. Section 471.005(7), F.S., defines the term “engineering” to include:

the term “professional engineering” and means any service or creative work, the adequate performance of which requires engineering education, training, and experience in the application of special knowledge of the mathematical, physical, and engineering sciences to such services or creative work as consultation, investigation, evaluation, planning, and design of engineering works and systems, planning the use of land and water, teaching of the principles and methods of engineering design, engineering surveys, and the inspection of construction for the purpose of determining in general if the work is proceeding in compliance with drawings and specifications, any of which embraces such services or work, either public or private, in connection with any utilities, structures, buildings, machines, equipment, processes, work systems, projects, and industrial or consumer products or equipment of a mechanical, electrical, hydraulic, pneumatic, or thermal nature, insofar as they involve safeguarding life, health, or property; and includes such other professional services as may be necessary to the planning, progress, and completion of any engineering services. A person who practices any branch of engineering; who, by verbal claim, sign, advertisement, letterhead, or card, or in any other way, represents himself or herself to be an engineer or, through the use of some other title, implies that he or she is an engineer or that he or she is licensed under this chapter; or who holds himself or herself out as able to perform, or does perform, any engineering service or work or any other service designated by the practitioner which is recognized as engineering shall be construed to practice or offer to practice engineering within the meaning and intent of this chapter [ch. 471, Engineering].

Unlike most Department of Business and Professional Regulation (DBPR) professions, the administrative, investigative, and prosecutorial services for the board are not provided by the DBPR. The DBPR contracts with the Florida Engineers Management Corporation (FEMC), a nonprofit corporation, to provide such services.¹ The FEMC is a public-private nonprofit association that has contracted with the DBPR to handle administrative, investigative, and prosecutorial services for the Board of Professional Engineers.²

¹ See s. 471.038, F.S., the Florida Engineers Management Corporation Act, for the duties and authority of the FEMC.

² See the Annual Report of the FEMC for FY 2020-2021, available at <https://fbpe.org/wp-content/uploads/2021/10/2020-21-FEMC-Annual-Report.pdf> (last visited Feb. 4, 2022), and the contract between the DBPR and the FEMC for the period

Section 471.008, F.S., authorizes the board to adopt rules to implement the provisions of ch. 471, F.S., and for ch. 455, F.S., which provides the general licensing procedures for professional licensing by the DBPR and its professional licensing boards. The board has adopted responsibility rules for the profession of engineering addressing a variety of issues, including the design of structures and fire protection systems.³

There were 62,909 licensed professional engineers in Fiscal Year 2020-2021.⁴ The FEMC processed 231 complaints regarding engineering practice during that period, with 137 of those complaints found to be legally sufficient to proceed, and filed 68 administrative complaints in cases where probable cause was found relating to a violation of the practice act.⁵

Professional Engineer License Qualifications and Exemptions

Section 471.013, F.S., provides the license qualifications for a professional engineer. In order to be licensed as a professional engineer, a person must successfully pass two examinations: the fundamentals examination and the principles and practices examination. Prior to being permitted to sit for the fundamentals examination, an applicant must have graduated from:

- An approved engineering science curriculum of four years or more in a board-approved school, college, or university; or
- An approved engineering technology curriculum of four years or more in a board-approved school, college, or university.⁶

The FEMC must issue a license to any applicant who the board certifies is qualified to practice engineering and who has passed the fundamentals examination and the principles and practice examination.⁷

Under s. 471.015(2), F.S., the board must certify for licensure any applicant who has submitted proof of being at least 18 years old and has the required engineering experience. For graduates of an approved engineering science curriculum, the applicant must have a record of at least four years of active engineering experience sufficient to indicate competence to be in responsible charge of engineering. Graduates of an approved engineering technology curriculum must have a record of at least six years of such qualified experience.⁸

between July 1, 2021 and June 30, 2025 at <https://fbpe.org/wp-content/uploads/2021/10/2021-25-DBPR-FEMC-Contract.pdf> (last visited Feb. 4, 2022).

³ The responsibility rules are in Fla. Admin. Code Chapters 61G15-30, 61G15-31, 61G15-32, and 61G15-33 (2021).

⁴ There were 530 inactive professional engineering licenses in that fiscal year. See Department of Business and Professional Regulation, *Annual Report, Fiscal Year 2020-2021, for the Divisions of Certified Public Accounting, Professions, Real Estate, and Regulation* (2020-2021 Annual Report) at p. 20, at

http://www.myfloridalicense.com/DBPR/os/documents/DivisionAnnualReport_FY2021.pdf (last visited Feb. 4, 2022).

⁵ See the Annual Report of the FEMC for FY 2020-2021, at <https://fbpe.org/wp-content/uploads/2021/10/2020-21-FEMC-Annual-Report.pdf>, at p. 2 (last visited Feb. 4, 2022). The FEMC also filed 89 Final Orders with the DBPR; entered into three negotiations, and tried one administrative hearing; dismissed two cases after re-consideration; issued 16 reprimands, three suspensions, four probations, three project reviews, and three license restrictions; and imposed \$44,765.23 in administrative costs and \$58,500 in fines. The board also issued 88 Final Orders against licensees.

⁶ Section 471.013(1)(a), F.S.

⁷ Section 471.015(1), F.S.

⁸ See ss. 471.015(2)(a)1. and 2., F.S.

Section 471.003(2), F.S., identifies those persons who are exempted from the licensing requirements of ch. 471, F.S.

Special Inspectors of Threshold Buildings

Section 471.015(7), F.S., authorizes the board to establish by rule the qualifications for certification of licensees as inspectors of threshold buildings. A “threshold building” is “any building which is greater than three stories or 50 feet in height, or which has an assembly occupancy classification as defined in the Florida Building Code which exceeds 5,000 square feet in area and an occupant content of greater than 500 persons.”⁹

The board is also authorized to establish minimum qualifications for the qualified representative of the special inspector who is authorized to perform inspections of threshold buildings on behalf of the special inspector.¹⁰

The agency charged with enforcing the building code (enforcing agency)¹¹ must require a special inspector to perform structural inspections on a threshold building pursuant to a structural inspection plan prepared by the engineer or architect of record.¹²

Use of Engineer Seals

Section 471.025(1), F.S., authorizes the board to prescribe, by rule, one or more forms of seal to be used by licensed engineers. Each licensee must obtain at least one seal.¹³ All final drawings, specifications, plans, reports, or documents prepared or issued by the licensee and filed for public record and all final documents provided to the owner or the owner’s representative must be signed by the licensee, dated, and sealed with the seal.¹⁴ The signature, date, and seal are evidence of the authenticity of the document to which they are affixed.¹⁵

A licensee may not affix or permit to be affixed his or her seal, name, or digital signature to any plan, specification, drawing, final bid document, or other document that depicts work which he or she is not licensed to perform or which is beyond his or her profession or specialty.¹⁶

A successor engineer seeking to reuse documents previously sealed by another engineer must be able to independently re-create all of the work done by the original engineer, and assumes full

⁹ See s. 553.71(12), F.S.

¹⁰ See s. 471.015(7), F.S.

¹¹ See s. 553.71(5), F.S., which defines the term “local enforcement agency” to mean “an agency of local government, a local school board, a community college board of trustees, or a university board of trustees in the State University System with jurisdiction to make inspections of buildings and to enforce the codes which establish standards for design, construction, erection, alteration, repair, modification, or demolition of public or private buildings, structures, or facilities.”

¹² Section 553.79(5)(a), F.S.

¹³ Section 471.025(1), F.S.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ Section 471.025(3), F.S.

professional and legal responsibility by signing and affixing his or her seal to the assumed documents.¹⁷

Use of Descriptive Titles

Section 471.031, F.S., sets forth the permissible and prohibited titles for persons licensed under ch. 471, F.S., and for persons who are otherwise exempted from such licensure. With certain exceptions for persons exempted from licensure, the use of the name “professional engineer” or any other title, designation, abbreviation, or indication that a person holds an active license as an engineer when the person is not licensed under ch. 471, F.S., is prohibited, along with use of the following titles:

- Agricultural engineer;
- Air-conditioning engineer;
- Architectural engineer;
- Building engineer;
- Chemical engineer;
- Civil engineer;
- Control systems engineer;
- Electrical engineer;
- Environmental engineer;
- Fire protection engineer;
- Industrial engineer;
- Manufacturing engineer;
- Mechanical engineer;
- Metallurgical engineer;
- Mining engineer;
- Minerals engineer;
- Marine engineer;
- Nuclear engineer;
- Petroleum engineer;
- Plumbing engineer;
- Structural engineer;
- Transportation engineer;
- Software engineer;
- Computer hardware engineer; and
- Systems engineer.¹⁸

Any person who violates the provisions commits a misdemeanor of the first degree.¹⁹

¹⁷ Section 471.025(4), F.S. The original engineer is released from any professional responsibility or civil liability for work that is assumed.

¹⁸ See s. 471.031(1)(b), F.S.

¹⁹ Section 471.031(2), F.S. A first degree misdemeanor is punishable by up to a year in county jail and a fine not exceeding \$1,000. Sections 775.082 and 775.083, F.S.

Imposition of Discipline by the Board

The conduct that constitutes grounds for the imposition of discipline by the board are set forth in s. 471.033, F.S. Such discipline includes denial of an application for licensure, suspension or revocation of a license, imposition of fines, reprimands, probation, or restitution, and restriction of the authorized scope of practice of a licensee.²⁰

Voluntary Structural Engineer Associations

The Florida Structural Engineers Association (FSEA) provides input on building codes and enforcement and sponsors technical seminars to address common concerns of the profession.²¹ Members of FSEA become members of the National Council of Structural Engineers Associations (NCSEA).²² The NCSEA was formed to improve the standard level of practice of the structural engineering profession and provide an identifiable resource for seeking communication with the profession.²³ It advocates for the practice of structural engineering on behalf of its 44 member organizations.²⁴ According to the NCSEA, two states restrict who may use the title “structural engineer,”²⁵ eight states have a partial practice act for structural engineers,²⁶ and two states have a full practice act for structural engineers.²⁷

The National Council of Examiners for Engineering and Surveying is a nonprofit organization composed of 69 engineering and surveying licensing boards from all 50 states, the District of Columbia, Guam, Northern Mariana Islands, Puerto Rico, and the U.S. Virgin Islands.²⁸ It provides services including engineering examinations, surveying examinations, exam preparation materials, records programs, and credentials evaluations among other services to licensing jurisdictions.²⁹

III. Effect of Proposed Changes:

Section 1 amends s. 471.003, F.S., to prohibit, effective March 1, 2024, the practice of professional structural engineering by any person who is not a licensed professional structural engineer or otherwise exempted from licensure under ch. 471, F.S., related to engineering.

The bill prohibits the use of the name or title of “licensed structural engineer,” “professional structural engineer,” or “registered structural engineer” or any other title that indicates an unlicensed person is a licensed professional structural engineer in this state. The bill amends s. 471.003(2), F.S., to clarify that certain persons are not required to be licensed as a licensed professional structural engineer, and this exemption includes contractors performing work designed by a professional structural engineer.

²⁰ Section 471.033(3), F.S.

²¹ See <http://www.flsea.com/> and https://flsea.com/Messages_from_the_President (last visited Feb. 4, 2022).

²² *Id.*

²³ See <http://www.ncsea.com/about/> (last visited Feb. 4, 2022).

²⁴ *Id.*

²⁵ Idaho and Nebraska. See <http://www.ncsea.com/resources/licensure/> (last visited Feb. 4, 2022).

²⁶ Alaska, California, Georgia, Nevada, Oklahoma, Oregon, Utah, and Washington. *Id.*

²⁷ Illinois and Hawaii. *Id.*

²⁸ See [The National Council of Examiners for Engineering and Surveying \(ncees.org\)](http://www.ncees.org) (last visited Feb. 4, 2022).

²⁹ *Id.*

Section 2 amends s. 471.005, F.S., to define the term “professional structural engineer” to mean a person who is licensed to engage in the practice of professional structural engineering in Florida under ch. 471, F.S.

The bill defines the term “professional structural engineering” to mean a service or creative work that includes the structural analysis and design of structural components or systems for threshold buildings.³⁰ The term includes engineering that requires significant structural engineering education, training, experience, and examination, as determined by the board.

The bill allows a retired professional structural engineer to be granted use of the title “professional engineer, retired” or “professional structural engineer, retired” by the board, if the retiree has:

- Been licensed as a professional engineer by the board;
- Relinquished or not renewed a license; and
- Applied to and been approved by the board to use such title.

Section 3 amends s. 471.013(2)(a), F.S., relating to licensure, to include a reference to licensed professional structural engineers.

Section 4 amends s. 471.015, F.S., to authorize the FEMC to license a person it certifies is qualified to practice professional structural engineering if they are licensed or qualify for licensure as an engineer, have at least four years of active professional structural engineering experience under the supervision of a licensed professional engineer, have passed certain professional examinations, and meet other administrative requirements.

Under the bill, an applicant for licensure as a professional structural engineer must:

- Be licensed as an engineer, or qualify for licensure, under ch. 471, F.S.;
- Submit an application in the format prescribed by the board;
- Provide satisfactory evidence of good moral character, as defined by the board;
- Provide a record of four years of active professional structural engineering experience, as defined by the board, under the supervision of a licensed professional engineer; and
- Have successfully passed the 16-hour National Council of Examiners for Engineering and Surveying Structural Engineering examination.

Before March 1, 2024, a qualified applicant may satisfy the 16-hour examination requirement by:

- Submitting a signed affidavit in the format prescribed by the board that states the applicant is currently a licensed engineer in Florida and has been engaged in the practice of structural engineering with a record of at least four years of active structural engineering design experience;
- Possessing a current professional engineering license and filing the necessary documentation as required by the board, or possessing a current threshold inspector license; and

³⁰ Section 553.71(12), F.S., provides a “threshold building” is “any building which is greater than three stories or 50 feet in height, or which has an assembly occupancy classification as defined in the Florida Building Code which exceeds 5,000 square feet in area and an occupant content of greater than 500 persons.”

- Agreeing to meet with the board or its representative, at the board's request, for the purpose of evaluating the applicant's qualifications for licensure.

An applicant who qualifies for licensure as an engineer may simultaneously apply for licensure as a professional structural engineer, if all the above requirements and all education, examination, experience, and good moral character requirements set forth in s. 471.013, F.S., are met.

The bill sets forth the following requirements for board certification of an applicant as qualified for licensure as a professional structural engineer by endorsement:

- An applicant who holds a license to practice either engineering or professional structural engineering issued by another state or territory of the United States, if the criteria for issuance of the license were substantially the same as the licensure criteria that existed in Florida at the time the license was issued; or
- An applicant who holds a valid license to practice professional structural engineering issued by another state or territory of the United States and who has successfully passed one of the following 16-hour examination combinations:
 - The 8-hour National Council of Examiners for Engineering and Surveying³¹ Structural Engineering I examination and the 8-hour National Council of Examiners for Engineering and Surveying Structural Engineering II examination.
 - The 8-hour National Council of Examiners for Engineering and Surveying Structural Engineering II examination and either the 8-hour National Council of Examiners for Engineering and Surveying Civil: Structural examination or the 8-hour National Council of Examiners for Engineering and Surveying Architectural Engineering examination.
 - The 16-hour Western States Structural Engineering examination.
 - The 8-hour National Council of Examiners for Engineering and Surveying Structural Engineering II examination, and either the 8-hour California Structural Engineering Seismic III examination, or the 8-hour Washington Structural Engineering III examination.

Section 5 amends s. 471.019, F.S., relating to reinstatement of void licenses, to include a reference to licensed professional structural engineers.

Section 6 amends s. 471.025(2), F.S., regarding the use of seals on documents, to include a reference to the use of seals when a professional structural engineer's license is revoked or suspended.

Section 7 amends s. 471.031, F.S., to provide that beginning March 1, 2024, no person may practice professional structural engineering unless the person is licensed as a professional structural engineer or exempt from licensure under ch. 471, F.S. The bill also provides that the

³¹ The National Council of Examiners for Engineering and Surveying (NCEES) is a nonprofit organization dedicated to advancing professional licensure for engineers and surveyors. In the United States, engineers and surveyors are licensed at the state and territory level. NCEES was created in 1920 and provides services for licensure and facilitation of mobility among licensing jurisdictions, including the development and scoring of examinations for licensure. See National Council of Examiners for Engineering and Surveying, *Advancing Licensure for Engineers and Surveyors*, available at <https://ncees.org/about/> (last visited Jan. 19, 2022).

following titles may not be used by persons who are not licensed, or otherwise exempt from licensing, under ch. 471, F.S., relating to engineering: “licensed structural engineer,” “professional structural engineer,” “registered structural engineer,” or “structural engineer.”

Section 8 amends s. 471.033, F.S., related to disciplinary proceedings, to revise the acts that constitute grounds for discipline, to include acts related to the practice of professional structural engineering.

Section 9 amends s. 471.037(1), F.S., related to the construction of provisions in ch. 471, F.S., to provide that local building codes, zoning laws, or ordinances may be more restrictive concerning the services of licensed professional structural engineers.

Section 10 amends s. 471.0385, F.S., related to certain authorizations granted to the Governor. The bill grants authority to the Governor to reestablish positions, budget authority, and salary rate necessary to carry out the DBPR’s responsibilities relating to “professional structural engineers,” in the event the Florida Engineers Management Corporation Act³² is held to be unconstitutional or to violate state or federal antitrust laws.

Section 11 provides an effective date of July 1, 2022.

The bill also includes technical drafting changes and conforming changes.

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.

³² See s. 471.038, F.S.

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

None.

B. Private Sector Impact:

Beginning March 1, 2024, persons who are licensed engineers in Florida and those who perform work that comes within the definition in the bill for “professional structural engineering” will be required to obtain additional licensing to perform such work.

C. Government Sector Impact:

The creation of an additional licensing and regulatory structure for professional structural engineers may result in a fiscal impact to the DBPR or the FEMC. To date, no analysis by the DBPR or the FEMC of the impact of the bill on their respective operations, revenue, and expenditures has been provided.

VI. Technical Deficiencies:

None.

VII. Related Issues:

SB 942, relating to Fees/Professional Structural Engineer Licensing, is linked to this bill.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 471.003, 471.005, 471.013, 471.015, 471.019, 471.025, 471.031, 471.033, 471.037, and 471.0385.

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 Baxley

12-00812A-22

2022940__

1 A bill to be entitled
 2 An act relating to professional structural engineers;
 3 amending s. 471.003, F.S.; prohibiting a person who is
 4 not licensed as an engineer from using a specified
 5 name or title; prohibiting, after a date certain,
 6 specified persons from using specified names and
 7 titles or practicing professional structural
 8 engineering; exempting certain persons from licensing
 9 requirements; amending s. 471.005, F.S.; providing and
 10 revising definitions; amending s. 471.013, F.S.;
 11 authorizing the Board of Professional Engineers to
 12 refuse to certify an applicant for a professional
 13 structural engineer license for certain reasons;
 14 amending s. 471.015, F.S.; providing licensure and
 15 application requirements for a professional structural
 16 engineer license; exempting certain applicants who
 17 apply for licensure before a date certain from having
 18 to pass a certain national examination, under certain
 19 conditions; requiring the board to certify certain
 20 applicants for licensure by endorsement; amending ss.
 21 471.019 and 471.025, F.S.; conforming provisions to
 22 changes made by the act; amending s. 471.031, F.S.;
 23 prohibiting certain persons from practicing
 24 professional structural engineering after a date
 25 certain; prohibiting specified persons from using
 26 specified names and titles; amending s. 471.033, F.S.;
 27 specifying acts that constitute grounds for
 28 disciplinary action, including civil penalties,
 29 against a professional structural engineer; amending

Page 1 of 14

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

12-00812A-22

2022940__

30 ss. 471.037 and 471.0385, F.S.; conforming provisions
 31 to changes made by the act; providing an effective
 32 date.
 33
 34 Be It Enacted by the Legislature of the State of Florida:
 35
 36 Section 1. Subsections (1) and (2) of section 471.003,
 37 Florida Statutes, are amended to read:
 38 471.003 Qualifications for practice; exemptions.—
 39 (1) (a) No person other than a duly licensed engineer shall
 40 practice engineering or use the name or title of "licensed
 41 engineer," "professional engineer," or "registered engineer" or
 42 any other title, designation, words, letters, abbreviations, or
 43 device tending to indicate that such person holds an active
 44 license as an engineer in this state.
 45 (b) Effective March 1, 2024, only a person who is a duly
 46 licensed professional structural engineer shall engage in the
 47 practice of professional structural engineering or use the name
 48 or title of "licensed structural engineer," "professional
 49 structural engineer," or "registered structural engineer" or any
 50 other title, designation, words, letters, abbreviations, or
 51 device tending to indicate that such person holds an active
 52 license as a professional structural engineer in this state.
 53 (2) The following persons are not required to be licensed
 54 under ~~the provisions of~~ this chapter as a licensed engineer or a
 55 licensed professional structural engineer:
 56 (a) Any person practicing engineering for the improvement
 57 of, or otherwise affecting, property legally owned by her or
 58 him, unless such practice involves a public utility or the

Page 2 of 14

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

12-00812A-22

2022940__

59 public health, safety, or welfare or the safety or health of
60 employees. This paragraph ~~may shall~~ not be construed as
61 authorizing the practice of engineering through an agent or
62 employee who is not duly licensed under ~~the provisions of~~ this
63 chapter.

64 (b)1. A person acting as a public officer employed by any
65 state, county, municipal, or other governmental unit of this
66 state when working on any project the total estimated cost of
67 which is \$10,000 or less.

68 2. Persons who are employees of any state, county,
69 municipal, or other governmental unit of this state and who are
70 the subordinates of a person in responsible charge licensed
71 under this chapter, to the extent that the supervision meets
72 standards adopted by rule of the board.

73 (c) Regular full-time employees of a corporation not
74 engaged in the practice of engineering as such, whose practice
75 of engineering for such corporation is limited to the design or
76 fabrication of manufactured products and servicing of such
77 products.

78 (d) Regular full-time employees of a public utility or
79 other entity subject to regulation by the Florida Public Service
80 Commission, Federal Energy Regulatory Commission, or Federal
81 Communications Commission.

82 (e) Employees of a firm, corporation, or partnership who
83 are the subordinates of a person in responsible charge, licensed
84 under this chapter.

85 (f) Any person as contractor in the execution of work
86 designed by a professional engineer or a professional structural
87 engineer or in the supervision of the construction of work as a

12-00812A-22

2022940__

88 foreman or superintendent.

89 (g) A licensed surveyor and mapper who takes, or contracts
90 for, professional engineering services incidental to her or his
91 practice of surveying and mapping and who delegates such
92 engineering services to a licensed professional engineer
93 qualified within her or his firm or contracts for such
94 professional engineering services to be performed by others who
95 are licensed professional engineers under ~~the provisions of~~ this
96 chapter.

97 (h) Any electrical, plumbing, air-conditioning, or
98 mechanical contractor whose practice includes the design and
99 fabrication of electrical, plumbing, air-conditioning, or
100 mechanical systems, respectively, which she or he installs by
101 virtue of a license issued under chapter 489, under former part
102 I of chapter 553, Florida Statutes 2001, or under any special
103 act or ordinance when working on any construction project which:

104 1. Requires an electrical or plumbing or air-conditioning
105 and refrigeration system with a value of \$125,000 or less; and

106 2.a. Requires an aggregate service capacity of 600 amperes
107 (240 volts) or less on a residential electrical system or 800
108 amperes (240 volts) or less on a commercial or industrial
109 electrical system;

110 b. Requires a plumbing system with fewer than 250 fixture
111 units; or

112 c. Requires a heating, ventilation, and air-conditioning
113 system not to exceed a 15-ton-per-system capacity, or if the
114 project is designed to accommodate 100 or fewer persons.

115 (i) Any general contractor, certified or registered
116 pursuant to ~~the provisions of~~ chapter 489, when negotiating or

12-00812A-22 2022940__
 117 performing services under a design-build contract as long as the
 118 engineering services offered or rendered in connection with the
 119 contract are offered and rendered by an engineer or a
 120 professional structural engineer licensed under ~~in accordance~~
 121 ~~with~~ this chapter.

(j) Any defense, space, or aerospace company, whether a
 sole proprietorship, firm, limited liability company,
 partnership, joint venture, joint stock association,
 corporation, or other business entity, subsidiary, or affiliate,
 or any employee, contract worker, subcontractor, or independent
 contractor of the defense, space, or aerospace company who
 provides engineering for aircraft, space launch vehicles, launch
 services, satellites, satellite services, or other defense,
 space, or aerospace-related product or services, or components
 thereof.

Section 2. Subsections (10) through (12) of section
 471.005, Florida Statutes, are renumbered as subsections (12)
 through (14), respectively, present subsection (10) is amended,
 and new subsections (10) and (11) are added to that section, to
 read:

471.005 Definitions.—As used in this chapter, the term:

(10) "Professional structural engineer" means a person who
is licensed to engage in the practice of professional structural
engineering under this chapter.

(11) "Professional structural engineering" means a service
or creative work that includes the structural analysis and
design of structural components or systems for threshold
buildings as defined in s. 553.71. The term includes engineering
which requires significant structural engineering education,

12-00812A-22 2022940__
 146 training, experience, and examination, as determined by the
 147 board.

~~(12)-(10)~~ "Retired professional engineer," ~~or~~ "professional
 engineer, retired," "retired professional structural engineer,"
 or "professional structural engineer, retired" means a person
 who has been duly licensed as a professional engineer by the
 board and who chooses to relinquish or not to renew his or her
 license and applies to and is approved by the board to be
 granted the title "Professional Engineer, Retired" or
"Professional Structural Engineer, Retired."

Section 3. Paragraph (a) of subsection (2) of section
 471.013, Florida Statutes, is amended to read:

471.013 Examinations; prerequisites.—

(2) (a) The board may refuse to certify an applicant for
 failure to satisfy the requirement of good moral character only
 if:

1. There is a substantial connection between the lack of
 good moral character of the applicant and the professional
 responsibilities of a licensed engineer or licensed professional
structural engineer; and

2. The finding by the board of lack of good moral character
 is supported by clear and convincing evidence.

Section 4. Subsections (3) through (7) of section 471.015,
 Florida Statutes, are renumbered as subsections (4) through (8),
 respectively, present subsection (3) is amended, and a new
 subsection (3) is added to that section, to read:

471.015 Licensure.—

(3) (a) The management corporation shall issue a
professional structural engineer license to any applicant whom

12-00812A-22 2022940__

175 the board certifies as qualified to practice professional
 176 structural engineering and who meets all of the following
 177 requirements:

- 178 1. Is licensed under this chapter as an engineer or is
 179 qualified for licensure as an engineer.
 180 2. Submits an application in the format prescribed by the
 181 board.
 182 3. Provides satisfactory evidence of good moral character,
 183 as defined by the board.
 184 4. Provides a record of 4 years of active structural
 185 engineering experience, as defined by the board, under the
 186 supervision of a licensed professional engineer.
 187 5. Has successfully passed the 16-hour National Council of
 188 Examiners for Engineering and Surveying Structural Engineering
 189 examination.

190 (b) Before March 1, 2024, an applicant who satisfies the
 191 requirements of subparagraphs (a)1.-4. may satisfy subparagraph
 192 (a)5. by:

- 193 1. Submitting a signed affidavit in the format prescribed
 194 by the board which states that the applicant is currently a
 195 licensed engineer in this state and has been engaged in the
 196 practice of structural engineering with a record of at least 4
 197 years of active structural engineering design experience;
 198 2. Possessing a current professional engineering license
 199 and filing the necessary documentation as required by the board,
 200 or possessing a current threshold inspector license; and
 201 3. Agreeing to meet with the board or a representative of
 202 the board, upon the board's request, for the purpose of
 203 evaluating the applicant's qualifications for licensure.

12-00812A-22 2022940__

204 (c) An applicant who qualifies for licensure as an engineer
 205 under s. 471.013 may simultaneously apply for licensure as a
 206 professional structural engineer if all requirements of s.
 207 471.013 and this subsection are met.

208 ~~(4)(3)~~ The board shall certify as qualified for a license
 209 ~~by endorsement an applicant who:~~

210 (a) In engineering, by endorsement, an applicant who
 211 qualifies to take the fundamentals examination and the
 212 principles and practice examination as set forth in s. 471.013,
 213 has passed a United States national, regional, state, or
 214 territorial licensing examination that is substantially
 215 equivalent to the fundamentals examination and principles and
 216 practice examination required by s. 471.013, and has satisfied
 217 the experience requirements set forth in paragraph (2)(a) and s.
 218 471.013; ~~or~~

219 (b) In engineering or professional structural engineering,
 220 by endorsement, an applicant who holds a valid license to
 221 practice engineering or, for professional structural
 222 engineering, an applicant who holds a valid license to practice
 223 professional structural engineering, issued by another state or
 224 territory of the United States, if the criteria for issuance of
 225 the license were substantially the same as the licensure
 226 criteria that existed in this state at the time the license was
 227 issued; or

228 (c) In professional structural engineering, by endorsement,
 229 an applicant who holds a valid license to practice professional
 230 structural engineering issued by another state or territory of
 231 the United States and who has successfully passed one of the
 232 following 16-hour examination combinations:

12-00812A-22

2022940__

233 1. The 8-hour National Council of Examiners for Engineering
 234 and Surveying Structural Engineering I examination and the 8-
 235 hour National Council of Examiners for Engineering and Surveying
 236 Structural Engineering II examination.

237 2. The 8-hour National Council of Examiners for Engineering
 238 and Surveying Structural Engineering II examination and either
 239 the 8-hour National Council of Examiners for Engineering and
 240 Surveying Civil: Structural examination or the 8-hour National
 241 Council of Examiners for Engineering and Surveying Architectural
 242 Engineering examination.

243 3. The 16-hour Western States Structural Engineering
 244 examination.

245 4. The 8-hour National Council of Examiners for Engineering
 246 and Surveying Structural Engineering II examination and either
 247 the 8-hour California Structural Engineering Seismic III
 248 examination or the 8-hour Washington Structural Engineering III
 249 examination.

250 Section 5. Section 471.019, Florida Statutes, is amended to
 251 read:

252 471.019 Reactivation.—The board shall establish by rule a
 253 reinstatement process for void licenses. The rule shall
 254 prescribe appropriate continuing education requirements for
 255 reactivating a license. The continuing education requirements
 256 for reactivating a license for a licensed engineer or a licensed
 257 professional structural engineer may not exceed the continuing
 258 education requirements prescribed pursuant to s. 471.017 for
 259 each year the license was inactive.

260 Section 6. Subsection (2) of section 471.025, Florida
 261 Statutes, is amended to read:

Page 9 of 14

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

12-00812A-22

2022940__

262 471.025 Seals.—

263 (2) It is unlawful for any person to seal or digitally sign
 264 any document with a seal or digital signature after his or her
 265 license has expired or been revoked or suspended, unless such
 266 license ~~is~~ ~~has been~~ reinstated or reissued. When an engineer's
 267 or a professional structural engineer's license ~~is~~ ~~has been~~
 268 revoked or suspended by the board, the licensee shall, within a
 269 period of 30 days after the revocation or suspension has become
 270 effective, surrender his or her seal to the executive director
 271 of the board and confirm to the executive director the
 272 cancellation of the licensee's digital signature in accordance
 273 with ss. 668.001-668.006. In the event the engineer's license
 274 has been suspended for a period of time, his or her seal shall
 275 be returned to him or her upon expiration of the suspension
 276 period.

277 Section 7. Paragraphs (b) through (g) of subsection (1) of
 278 section 471.031, Florida Statutes, are redesignated as
 279 paragraphs (c) through (h), respectively, present paragraph (b)
 280 of that subsection is amended, and a new paragraph (b) is added
 281 to that subsection, to read:

282 471.031 Prohibitions; penalties.—

283 (1) A person may not:

284 (b) Beginning March 1, 2024, practice professional
 285 structural engineering unless the person is licensed as a
 286 professional structural engineer or is exempt from licensure
 287 under this chapter.

288 (c) (b)1. Except as provided in subparagraph 2. or
 289 subparagraph 3., use the name or title "professional engineer"
 290 or any other title, designation, words, letters, abbreviations,

Page 10 of 14

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

12-00812A-22

2022940__

291 or device tending to indicate that such person holds an active
 292 license as an engineer when the person is not licensed under
 293 this chapter, including, but not limited to, the following
 294 titles: "agricultural engineer," "air-conditioning engineer,"
 295 "architectural engineer," "building engineer," "chemical
 296 engineer," "civil engineer," "control systems engineer,"
 297 "electrical engineer," "environmental engineer," "fire
 298 protection engineer," "industrial engineer," "manufacturing
 299 engineer," "mechanical engineer," "metallurgical engineer,"
 300 "mining engineer," "minerals engineer," "marine engineer,"
 301 "nuclear engineer," "petroleum engineer," "plumbing engineer,"
 302 "structural engineer," "transportation engineer," "software
 303 engineer," "computer hardware engineer," or "systems engineer."

304 2. Any person who is exempt from licensure under s.
 305 471.003(2)(j) may use the title or personnel classification of
 306 "engineer" in the scope of his or her work under that exemption
 307 if the title does not include or connote the term "professional
 308 engineer," "registered engineer," "licensed engineer,"
 309 "registered professional engineer," ~~or~~ "licensed professional
 310 engineer," "licensed structural engineer," "professional
 311 structural engineer," or "registered structural engineer."

312 3. Any person who is exempt from licensure under s.
 313 471.003(2)(c) or (e) may use the title or personnel
 314 classification of "engineer" in the scope of his or her work
 315 under that exemption if the title does not include or connote
 316 the term "professional engineer," "registered engineer,"
 317 "licensed engineer," "registered professional engineer," ~~or~~
 318 "licensed professional engineer," "licensed structural
 319 engineer," "professional structural engineer," "registered

Page 11 of 14

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

12-00812A-22

2022940__

320 structural engineer," or "structural engineer," and if that
 321 person is a graduate from an approved engineering curriculum of
 322 4 years or more in a school, college, or university which has
 323 been approved by the board.

324 Section 8. Paragraphs (b) through (e) and (g) of subsection
 325 (1) and subsection (4) of section 471.033, Florida Statutes, are
 326 amended to read:

327 471.033 Disciplinary proceedings.—

328 (1) The following acts constitute grounds for which the
 329 disciplinary actions in subsection (3) may be taken:

330 (b) Attempting to procure a license to practice engineering
 331 or professional structural engineering by bribery or fraudulent
 332 misrepresentations.

333 (c) Having a license to practice engineering or
 334 professional structural engineering revoked, suspended, or
 335 otherwise acted against, including the denial of licensure, by
 336 the licensing authority of another state, territory, or country,
 337 for any act that would constitute a violation of this chapter or
 338 chapter 455.

339 (d) Being convicted or found guilty of, or entering a plea
 340 of nolo contendere to, regardless of adjudication, a crime in
 341 any jurisdiction which directly relates to the practice of
 342 engineering, professional structural engineering, or the ability
 343 to practice engineering or professional structural engineering.

344 (e) Making or filing a report or record that the licensee
 345 knows to be false, willfully failing to file a report or record
 346 required by state or federal law, willfully impeding or
 347 obstructing such filing, or inducing another person to impede or
 348 obstruct such filing. Such reports or records include only those

Page 12 of 14

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

12-00812A-22 2022940__

349 that are signed in the capacity of a licensed engineer or
 350 licensed professional structural engineer.

351 (g) Engaging in fraud or deceit, negligence, incompetence,
 352 or misconduct, in the practice of engineering or professional
 353 structural engineering.

354 (4) The management corporation shall reissue the license of
 355 a disciplined engineer, professional structural engineer, or
 356 business upon certification by the board that the disciplined
 357 person has complied with all of the terms and conditions set
 358 forth in the final order.

359 Section 9. Subsection (1) of section 471.037, Florida
 360 Statutes, is amended to read:

361 471.037 Effect of chapter locally.-

362 (1) Nothing contained in this chapter shall be construed to
 363 repeal, amend, limit, or otherwise affect any local building
 364 code or zoning law or ordinance, now or hereafter enacted, which
 365 is more restrictive with respect to the services of licensed
 366 engineers or licensed professional structural engineers than the
 367 provisions of this chapter.

368 Section 10. Subsection (3) of section 471.0385, Florida
 369 Statutes, is amended to read:

370 471.0385 Court action; effect.-If any provision of s.
 371 471.038 is held to be unconstitutional or is held to violate the
 372 state or federal antitrust laws, the following shall occur:

373 (3) The Executive Office of the Governor, notwithstanding
 374 chapter 216, is authorized to reestablish positions, budget
 375 authority, and salary rate necessary to carry out the
 376 department's responsibilities related to the regulation of
 377 professional engineers and professional structural engineers.

12-00812A-22 2022940__

378 Section 11. This act shall take effect July 1, 2022.

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: CS/SB 942

INTRODUCER: Regulated Industries Committee and Senator Baxley

SUBJECT: Fees/Professional Structural Engineer Licensing

DATE: February 7, 2022

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Kraemer</u>	<u>Imhof</u>	<u>RI</u>	<u>Fav/CS</u>
2.	<u>Renner</u>	<u>McKay</u>	<u>CM</u>	<u>Favorable</u>
3.	_____	_____	<u>AP</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Technical Changes

I. Summary:

CS/SB 942 authorizes the Board of Professional Engineers (board) to establish fees for licensing of professional structural engineers.

SB 940, relating to professional structural engineers, is a linked bill that requires the board to determine whether applicants seeking to practice professional structural engineering are licensed or qualify for licensure as an engineer, have at least four years of active professional structural engineering experience under the supervision of a licensed professional engineer, have passed certain professional examinations, and meet other administrative requirements. The linked bill also addresses other issues related to professional structural engineers.

See Section V, Fiscal Impact Statement.

The bill is effective on the same date that SB 940 or similar legislation takes effect, if such legislation is adopted in the same legislative session or any extension and becomes a law.

II. Present Situation:

Linked Bill SB 940

This bill is linked to SB 940, relating to professional structural engineers, which amends s. 471.015(3), F.S. Under the linked bill, the board is authorized to certify persons as qualified to practice professional structural engineering if they are licensed or qualify for licensure as an engineer, have at least four years of active professional structural engineering experience under the supervision of a licensed professional engineer, have passed certain professional examinations, and meet other administrative requirements.

In addition, the linked bill provides an applicant for licensure as a professional structural engineer must:

- Be licensed as an engineer, or qualify for licensure, under ch. 471, F.S.;
- Submit an application in the format prescribed by the board;
- Provide satisfactory evidence of good moral character, as defined by the board;
- Provide a record of four years of active professional structural engineering experience, as defined by the board, under the supervision of a licensed professional engineer; and
- Have successfully passed the 16-hour National Council of Examiners for Engineering and Surveying Structural Engineering examination.

Fees

Section 471.011, F.S., authorizes the board to establish fees, by rule, to be paid for applications, examination, reexamination, licensing, renewal, reactivation, inactive status applications, and recordmaking and recordkeeping. Qualification of a business organization must not require payment of a fee.¹

Licensure fees may not exceed the following amounts:

- Initial license - \$125;²
- Biennial renewal - \$125;³
- Temporary registration or certificate - \$25 for an individual or \$50 for a business firm;⁴
- Licensure by endorsement - \$150;⁵ or
- Application for inactive status or for reactivation of an inactive license must - \$150.⁶

III. Effect of Proposed Changes:

Section 1 amends s. 471.011, F.S., to provide that fees for license applications, temporary licenses, license renewals, inactive licenses, examinations, and records are also applicable to the regulation of professional structural engineers.

¹ Section 471.011(4), F.S.

² Section 471.011(3), F.S.

³ Section 471.011(5), F.S.

⁴ Section 471.011(6), F.S.

⁵ Section 471.011(7), F.S.

⁶ Section 471.011(8), F.S.

Section 2 amends subsection s. 471.015(3), F.S., as amended in linked bill SB 940, to require payment by applicants seeking licensure to practice professional structural engineering, of a fee to be established by the board.

Section 3 provides the bill takes effect on the same date that SB 940 or similar legislation takes effect, if such legislation is adopted in the same legislative session or any extension and becomes a 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:

Section 19, Art. VII of the State Constitution limits the authority of the legislature to enact legislation that imposes or raises a state tax or fee by requiring such legislation to be approved by a 2/3 vote of each chamber of the legislature. Such state tax or fee imposed, authorized, or raised must be contained in a separate bill that contains no other subject.

For purposes of this limitation, the term “fee” is defined, in pertinent part, to mean any charge or payment required by law, including any fee for service, fee or cost for licenses, and charge for service.

The bill authorizes board to adopt, by rule, fees for applications, examination, reexamination, licensing and renewal, inactive status application and reactivation of inactive licenses, and recordmaking and recordkeeping, as well as a delinquency, and for a temporary registration or certificate to practice professional structural engineering. Because the board does not have the authority for fees for professional structural engineers or professional structural engineering under current law, the provisions of Section 19, Art. VII of the State Constitution appear to apply, requiring this legislation to be approved by a 2/3 vote of each house of the legislature.

E. Other Constitutional Issues:

None.

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

The bill requires the board to establish a fee for licensure as a professional structural engineer, as authorized in s. 471.011, F.S.

B. Private Sector Impact:

Beginning March 1, 2024, persons who are licensed engineers in Florida and those who perform work that comes within the definition in SB 940 for “professional structural engineering” (i.e., work that includes structural analysis and design of structural components or systems for threshold buildings) will be required to obtain additional licensing as a professional structural engineer to perform such work and pay the fee for such licensing established by the board.

C. Government Sector Impact:

Unlike most Department of Business and Professional Regulation (DBPR) professions, the administrative, investigative, and prosecutorial services for the board are not provided by the DBPR. The DBPR contracts with the Florida Engineers Management Corporation (FEMC), a nonprofit corporation, to provide such services.⁷

The creation of an additional licensing and regulatory structure for professional structural engineers may result in a fiscal impact to the DBPR or the FEMC. To date, no analysis by the DBPR or the FEMC of the impact of the bill on their respective operations, revenue, and expenditures has been provided.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 471.011 and 471.015.

⁷ The FEMC is a public-private nonprofit association that has contracted with the DBPR to handle administrative, investigative, and prosecutorial services for the Board of Professional Engineers *See* s. 471.038, F.S., for the duties and authority of the FEMC.

IX. Additional Information:

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

CS by Regulated Industries Committee on January 25, 2022:

The CS inserts the bill number for the linked bill, SB 940, Professional Structural Engineers, into the bill.

- B. **Amendments:**

None.

By the Committee on Regulated Industries; and Senator Baxley

580-02291-22

2022942c1

A bill to be entitled

An act relating to fees; amending s. 471.011, F.S.; authorizing the Board of Professional Engineers to establish fees relating to professional structural engineer licensing; amending s. 471.015, F.S.; requiring applicants to pay a specified fee to be eligible to receive a professional structural engineer license; providing a contingent effective date.

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

Section 1. Subsections (1) and (6) of section 471.011, Florida Statutes, are amended to read:

471.011 Fees.—

(1) The board by rule may establish fees to be paid for applications, examination, reexamination, licensing and renewal, inactive status application and reactivation of inactive licenses, and recordmaking and recordkeeping. The board may also establish by rule a delinquency fee. The board shall establish fees that are adequate to ensure the continued operation of the board. Fees shall be based on department estimates of the revenue required to implement this chapter and the provisions of law with respect to the regulation of engineers and professional structural engineers.

(6) The fee for a temporary registration or certificate to practice engineering or professional structural engineering shall not exceed \$25 for an individual or \$50 for a business firm.

Section 2. Paragraph (a) of subsection (3) of section

Page 1 of 2

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

580-02291-22

2022942c1

471.015, Florida Statutes, as amended by SB 940 or similar legislation, is amended to read:

471.015 Licensure.—

(3) (a) The management corporation shall issue a professional structural engineer license to any applicant whom the board certifies as qualified to practice professional structural engineering and who meets all of the following requirements:

1. Is licensed under this chapter as an engineer or is qualified for licensure as an engineer.

2. Submits an application in the format prescribed by the board.

3. Provides satisfactory evidence of good moral character, as defined by the board.

4. Provides a record of 4 years of active structural engineering experience, as defined by the board, under the supervision of a licensed professional engineer.

5. Has successfully passed the 16-hour National Council of Examiners for Engineering and Surveying Structural Engineering examination.

6. Pays a fee established by the board under s. 471.011.

Section 3. This act shall take effect on the same date that SB 940 or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes a law.

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: February 2, 2022

I respectfully request that **Senate Bill #1018**, relating to Private Investigative and Security Services, be placed on the:

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

A handwritten signature in blue ink that reads "Danny".

Senator Danny Burgess
Florida Senate, District 20

The Florida Senate

APPEARANCE RECORD

01/07/2022

Meeting Date

SB 1018

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 JOHN RAYMAKER Phone

Address 400 S. MONROE ST. Street Email

TAUATHASSEE FL 32399 City State Zip

Speaking: [] For [] Against [x] 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

APPEARANCE RECORD

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

7 Feb 22

Meeting Date

1088 1018

Bill Number or Topic

Commerce & Tourism

Committee

Amendment Barcode (if applicable)

Name Barney Bishop III

Phone 850.510.9922

Address 2215 Thomasville Road

Email Barney@BarneyBishop.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:

Florida Association of Private Investigators

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

2/7/2022

Meeting Date

~~1058~~ 1018

Bill Number or Topic

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

COMMERCE AND TOURISM

Committee

Amendment Barcode (if applicable)

ARI MORSE

Name

386-756-6100

Phone

2435 S. RIDGEWOOD AVE

Address

ARI@BESTPI.COM

Email

Street

S. DAYTONA

City

FL

State

32119

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

2/7/22

Meeting Date

1088

Bill Number or Topic

Connect Tourism

Committee

Amendment Barcode (if applicable)

Name John M. GASPAR

Phone 386-931-2745

Address 140 S BRETT ST STE 220

Email J.GASPAR@AFIPI.COM

Street

Daytona Beach FL 32114

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)



FLORIDA DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES
COMMISSIONER NICOLE "NIKKI" FRIED

January 24, 2022

Agency Affected: Dept. of Agriculture and Consumer Services

Telephone: 850-617-7000

Agency Contact: Carlos Nathan, Legislative Affairs Director

Telephone: 850-617-7700

Senate Bill Number: 1018

Senate Bill Sponsor: Senator Burgess

Bill Title: Private Investigative and Security Services

Effective Date: July 1, 2022

Similar Bill(s): Yes No

Similar Bill(s):

Identical Bill: Yes No

Identical Bill: HB 1509 by Byrd

1. SUMMARY

The bill amends section 493.6115:

- (2)(b)1 - Allows a Class "C" licensee who does not have a Class "G" license to bear a firearm if the licensee has a license to carry concealed firearms pursuant to s. 790.06.
- (2)(b)2 - Allows a private investigator, private investigator intern, security officer, or manager to carry a concealed weapon while on duty without either a Class "G" license or a concealed weapon or firearm license if the investigator/intern/security officer/manager is a *retired* law enforcement officer with 10 years' experience and maintains his/her annual firearms proficiency pursuant to the federal Law Enforcement Officer Safety Act (LEOSA).
- (2)(b)3 - Allows a private investigator, private investigator intern, security officer, or manager to carry a concealed weapon while on duty without either a class "G" license or a concealed weapon or firearm license if the investigator/intern/security officer/manager is an *active* law enforcement officer who maintains his/her annual firearms proficiency required by his/her agency.
- (4)(a)1 - Allows a private investigator or private investigator intern who is 21 years of age or older to carry a concealed firearm while on duty if he/she has been issued a

Class “G” license OR has a license to carry concealed firearms OR who meets the requirements of subparagraph (2)(b)2.

- (4)(a)2 - Allows a security officer who is 21 years of age or older to carry a concealed firearm while on duty under conditions specified in s. 493.6305(3) and (4) if he/she has been issued a Class “G” license OR who meets the requirements of subparagraph (2)(b)2
- Due to the bill’s provisions of allowing a private investigator (“C” licensee) or private investigator intern (“CC” licensee) to substitute a concealed weapon (CW) license for a statewide firearms license (“G” license), a net revenue increase of \$47K is estimated for the first year of implementation, followed by a \$115K revenue reduction for subsequent years. Expenditures are estimated to decrease by about \$7K for all years.

2. PRESENT SITUATION

Currently, a Class “C” licensed private investigator, a Class “CC” private investigator intern, and Class “D” security officer must possess a valid Class “G” statewide firearm license to perform investigative duties while armed.

Under 493.6115(17), F.S., an individual is not exempt from the requirement of holding a Class “G” license simply by holding a concealed weapon or concealed firearm license issued pursuant to 790.06. Additionally, there is no provision in chapter 493, F.S., that prohibits law enforcement and correctional officers from holding individual or agency licenses.

3. EFFECT OF PROPOSED CHANGES

The bill would alter the professional and training standards for some licensees in the private investigative and security services fields.

- This bill would effectively eliminate professional training requirements for armed (Class “G”) security officers and private investigators who would be exempted by virtue of holding a concealed weapon license. Initial Class “G” licensure requires successful completion of a rigorous 28-hour course focused on professional requirements, in addition to firearms training on the specific type and caliber of firearm to be carried on duty.
 - Current training for armed (Class “G”) security officers includes the legal authority for carrying a firearm on duty, the limitations of a security officer’s ability to carry a firearm and use deadly force, and crimes that may serve as justification for the use of deadly force. Applicants also learn about safe weapon handling, the identification of weapon parts and ammunition, the cleaning and maintenance of weapons, and basic shooting principles; and must obtain a qualifying score with a handgun on the shooting range.
- Additionally, a Class “G” license holder must receive four hours of requalifying firearms training annually where licensees learn updates in applicable laws, review

- appropriate use of the weapon, and demonstrate proficiency again with a scored live fire exercise.
- Concealed weapon licensure requires only a one-time completion of a firearm safety or education course offered by one of several agencies and organizations. Any course includes a minimal demonstration of firearm competence by live fire in the physical presence of an instructor. There are exemptions for active-duty and former military personnel.
 - Class “G” license training is more professional, expansive, and rigorous whereas concealed carry training only requires a showing of competence.
 - Again, the licensee must fire multiple courses of rounds to demonstrate consistent proficiency. Failure to complete the required annual training will result in either license suspension or the denial of the application to renew the license.
 - A concealed weapon licensee does not have to complete any annual training to renew his/her license, and the initial training is not required to cover the specific subjects of a Class “G” course.
 - Class “G” license requires training on the specific type and caliber of firearms to be carried on duty, whereas a concealed weapon license does not.
 - With this bill, those exempted from the requirement of holding a Class “G” license by virtue of holding a concealed carry permit would be able to avoid any annual requalification training.

There could be an increase in conflict-of-interest issues with more active law enforcement officers that carry concealed weapon when working as private investigator or security officer. Although there is currently no provision in chapter 493, F.S., that prohibits law enforcement and correctional officers from holding individual or agency licenses, the performance of such duties could present prohibited conflicts of interest according to the Florida Code of Ethics as set forth in [section 112.313\(7\)\(a\)](#), F.S.

The Florida Commission on Ethics has held that such arrangements may create a continuing or frequently recurring conflict between a law enforcement officer’s private interests and the performance of his public duties.

Class “G” licenses and applications would likely decline due to the bill’s option of substituting the concealed carry license for both their professional and personal life.

Due to the bill’s provisions of allowing a private investigator (“C” licensee) or private investigator intern (“CC” licensee) to substitute a concealed weapon (CW) license for a statewide firearms license (“G” license), a net revenue increase of \$47K is estimated for the first year of enactment, followed by a \$115K revenue reduction for subsequent years. The smaller net revenue increase in year one reflects a \$162K revenue increase from C/CC licensees with a G license allowing their G license to expire and replacing with a seven (7) year CW license, netted against the annual \$115K revenue reduction resulting from C/CC licensees no longer renewing their G licenses. Expenditures are estimated to decrease by

about \$7K for all years due to the reduction in fingerprint retention fees paid and license application forms no longer printer.

In summary, the enactment of this bill would reduce enforcement jurisdiction by effectively eliminating the traditional Class “G” training and licensure requirements for those relying instead on the concealed weapon license for concealed weapon carrying on duty; and potentially increase conflict-of-interest issues among active law enforcement officers who are private investigators.

4. FISCAL IMPACT ON FDACS

	(FY 22-23) Amount/ FTE	(FY 23-24) Amount/ FTE	(FY 24-25) Amount/ FTE
A. Revenues			
<u>Recurring</u>			
C/CCs Not Renewing G	(\$109,424)	(\$109,424)	(\$109,424)
Fingerprint Retention Revenue-FDLE	(5,862)	(5,862)	(5,862)
C/CCs w G Replacing G w CW (License Fee)	107,470		
C/CCs w G Replacing G w CW (Fingerprints)			
FDACS	26,868		
FDLE	27,356		
FBI	NA		
Non-Recurring			
TOTAL REVENUES	\$46,408	(\$115,286)	(\$115,286)
B. Expenditures			
Recurring			

Fingerprint Retention	(\$5,862)	(\$5,862)	(\$5,862)
Cost Forgone-FDLE	(1,031)	(1,031)	(1,031)
Forms Costs			
Non-Recurring			
TOTAL EXPENDITURES	(\$6,893)	(\$6,893)	(\$6,893)
C. NET TOTAL	\$53,301	(\$108,393)	(\$108,393)
COMMENTS:			
<p>This analysis reflects a scenario of the current population of 1,954 private investigators and private investigator interns holding Class “G” licenses allowing their licenses to lapse (not renew). These non-renewals would result in an estimated \$109K average annual revenue loss over each subsequent two-year license period. Fingerprint retention revenue losses associated with these non-renewals are estimated to average almost \$6K annually. These projected annual revenue reductions equaling \$115K would be more than offset by almost \$162K of additional estimated revenue collected in the first year of enactment, from these same C/CC licensees with G licenses, purchasing CW licenses to replace the more expensive G statewide firearm license. Note that CW licenses obtained by C/CC licensees to replace the G license could be obtained over the two-year period of a G license, but are reflected in year one above, for simplicity purposes.</p> <p>Annual expenditure reductions of \$7K are estimated based on foregone expenditures paid to FDLE of about \$6K for G license fingerprint retention and \$1K for forms costs no longer incurred for G license applications.</p>			

5. IS THERE AN ESTIMATED FISCAL IMPACT ON LOCAL GOVERNMENT(s)?

No.

6. IS THERE AN ESTIMATED FISCAL IMPACT ON THE PRIVATE SECTOR?

Class “K” firearms instructors who provide the qualifying training for the statewide firearm license would likely experience a reduction in demand for their services from private investigator and intern applicants. Class “K” firearms instructors would also see a reduction in demand for their services for the annual training required for a renewing Class G licensee. It is difficult to quantify exactly what this impact might be.

7. ARE THERE ESTIMATED TAXES, FEES, OR FINES ASSOCIATED WITH THE PROPOSED BILL? (If yes, please explain the impact in A and/or B below)

A. Does the proposed bill create new or increase existing taxes, fees, or fines? If so, please explain.

No.

B. Does the proposed bill repeal or decrease existing taxes, fees, or fines? If so, please explain.

As explained in section 4 above, this bill would allow armed private investigators and private investigator interns to substitute a concealed weapon license for a Class "G" statewide firearms license. This replacement of a Class "G" license with a concealed weapon license would save armed private investigators and private investigator interns \$112.00 every two years by not renewing the required G license. Replacement of the two-year G license with a seven-year concealed weapon license costing \$97.00 (\$55.00 for the license and \$42.00 for the fingerprint background check) would equate to a \$294.98 cost savings over the seven-year term of a concealed weapon license. (Two-year G license costing \$112.00 divided by 2 years equals \$56.00 annual savings per year, versus seven-year concealed weapon license costing \$97.00 divided by 7 years equals an average annual cost of \$13.86 per year. The annual cost difference of \$42.14 (\$56.00 - \$13.86 = \$42.14) multiplied by 7 years equals \$294.98.

Additional savings in training costs no longer incurred by Class "G" licensees opting to replace the G license with a concealed weapon license would be realized in the above scenario, based on required Class G firearms training that would no longer be incurred. Four hours of annual firearms training are required to renew a G license, or 28 hours of training from a Class "K" firearms instructor over the seven-year term of a concealed weapon license would no longer be incurred.

C. DOES THE BILL DIRECT OR ALLOW THE DEPARTMENT TO DEVELOP, ADOPT, OR ELIMINATE RULES, REGULATIONS, POLICIES, OR PROCEDURES?

a. Yes: No:

b. If yes please explain:

8. DOES THE PROPOSED BILL REQUIRE THE DEPARTMENT TO PARTICIPATE IN OR PRODUCE ANY REPORTS OR STUDIES?

a. Yes: No:

b. If yes please explain:

9. ARE THERE ANY APPOINTMENTS, CREATION OF, OR CHANGES TO ANY BOARDS, TASK FORCES, COUNCILS, COMMISSIONS, ETC. THAT WILL IMPACT THE DEPARTMENT?

a. Yes: No:

b. If yes please explain:

LEGAL ISSUES

10. Does the proposed bill conflict with existing federal law or regulations that impact the department? If so, what laws and/or regulations?

No.

11. Does the proposed bill raise significant constitutional concerns under the U.S. or Florida Constitutions (e.g. separation of powers, access to the courts, equal protection, free speech, establishment clause, impairment of contracts) that impacts the department?

No.

12. Is the proposed bill likely to generate litigation for the department and, if so, from what interest groups or parties?

No.

COMMENTS:

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 1018

INTRODUCER: Commerce and Tourism Committee and Senator Burgess

SUBJECT: Private Investigative and Security Services

DATE: February 8, 2022

REVISED: _____

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

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

Currently, licensees under ch. 493, F.S., cannot carry a firearm during the course of their licensed activities unless they have a supplemental Class “G” license. CS/SB 1018 allows Class “C” and “CC” licensees to bear a firearm during the course of their licensed duties if they qualify for a newly created Class “CG” license by meeting one of the following qualifications:

- Have an active Florida concealed weapon or firearm license issued pursuant to s. 790.06, F.S.;
- Be a retired law enforcement officer who separated from employment in good standing after at least 10 years of service, and who maintains an annual firearms proficiency qualification pursuant to the Federal Law Enforcement Officers Safety Act; or
- Be an active law enforcement officer who maintains an annual firearms proficiency qualification as required by his or her employing law enforcement agency.

This provision does not alter the firearm carry limitations found in s. 790.06, F.S., or the Federal Law Enforcement Officers Safety Act. Class “CG” licensees will be required to submit to a criminal background check as part of their application with the Department of Agriculture and Consumer Services, and maintain their underlying qualification during their Class “CG” licensure.

Class “CG” licensees are subject to the following Departmental regulations during the course of their licensed activities:

- A limit of 2 guns that the licensee may carry during the course of his or her licensed activity;

- A limit on the types of guns and ammunition that he or she may use; and
- Required incident reporting to the Department after a gun is discharged by a licensee during the course of his or her licensed activity; and

The bill takes effect on July 1, 2022.

II. Present Situation:

Chapter 493 Licensees, Generally

The Division of Licensing within the Florida Department of Agriculture and Consumer Services (Department) is responsible for investigating and issuing licenses to conduct private investigative services pursuant to ch. 493, F.S. As of January 31, 2022, there are 6,983 Class “C” private investigator licensees and 1,327 Class “CC” private investigator intern licensees.¹ A ch. 493, F.S., licensee must renew his or her individual license every 2 years.

A private investigator is an individual who investigates a person for the purpose of obtaining information with reference to the following specific matters:²

- Crimes or wrongdoings against the United States or any state or territory, when operating under express authority of a governmental official;
- The identity, habits, conduct, movement, and other characteristics of any society, person, or group of persons;
- The credibility of a witness or other person;
- The whereabouts of a missing person, owner of unclaimed or escheated property, or heirs to an estate;
- The location or recovery of lost or stolen property;
- The causes and origin of fires, libel, slander, losses, accidents, damage, or injuries to real or personal property; or
- Securing evidence to be used before an investigating committee or board, or in a civil or criminal trial.

A Class “CC” private investigator intern operates at the direction and under the control of a sponsoring Class “C” private investigator licensee.³

Class “G” Statewide Firearm License

A Class “G” license is a supplemental license that permits specific licensees to carry a firearm during the course of their licensed, employment-related activity. A Class “G” license is available only to individuals who currently hold one of the following licenses: private investigator (Class

¹ Florida Department of Agriculture and Consumer Services (FDACS), Division of Licensing, *Number of Licensees by Type* (Jan. 31, 2021), https://www.fdacs.gov/content/download/82618/file/Number_of_Licensees_By_Type.pdf (last visited Feb. 4, 2022).

² Section 493.6101(16), F.S. *See also*, FDACS, *Private Investigation* (Dec. 2017), <https://licensing.freshfromflorida.com/forms/P-01721.pdf> (last visited Feb. 4, 2022).

³ Section 493.6116, F.S. *See also*, FDACS, *Class “CC” Private Investigator Intern License Requirements*, <https://www.fdacs.gov/Business-Services/Private-Investigation-Licenses/Class-CC-Private-Investigator-Intern-License-Requirements> (last visited Feb. 8, 2022).

“C”), private investigator intern (Class “CC”), security officer (Class “D”), private investigative or security agency manager (Class “M”), private investigative agency manager (Class “MA”), or security agency manager (Class “MB”).⁴ The “Class G” license must be renewed every 2 years.

Application and Training Requirements for Class “G” Licensees

An initial applicant for a Class “G” license must complete firearm training, which must include at least 28 hours of range and classroom training (range training must be limited to no more than 8 hours) that is administered by a Class “K” licensee.⁵ An applicant who was discharged within the last 12 months from service as a military officer, and has completed specific military courses is deemed to have completed a substantially similar training, and is exempt from the 28 hours of range and classroom training required for a Class “G” initial license.

Class “G” licensees must annually complete 4 hours of firearms requalification training for each caliber of firearm that he or she carries in the course of his or her duties.⁶

A Class “G” licensee is subject to a biennial statewide firearm license fee of \$112, but there is no application fee.⁷ The applicant for a Class “G” license must submit a fingerprint processing (\$42) and retention (\$10.75) fee, however—this fee is waived if the applicant has otherwise paid these fees for any other license under ch. 493, F.S., within the last 6 months.⁸

Regulation of Class “G” Licensees

A Class “G” licensee may only carry two firearms when performing his or her licensed duties. Unless the Department grants specific approval otherwise, the types of weapons a Class “G” licensee may use are limited to the following: a .38 caliber revolver; a .380 caliber or .9 mm semiautomatic pistol; a .357 caliber revolver used with .38 caliber ammunition; a .40 caliber handgun; or a .45 ACP handgun.⁹

If a Class “G” licensee discharges his or her firearm during the course of her or his duties, the licensee must file an incident report with the Department.¹⁰

Class “G” licensees are subject to penalty, ranging from a fine to the suspension or revocation of their license, for the following violations of administrative rule:¹¹

- Conviction of, or adjudication of guilt withheld, on a crime directly related to the business for which the license is held;
- Improper exhibition of a firearm;
- Careless or improper handling of a firearm resulting in a discharge;

⁴ Section 493.6115(2), F.S.

⁵ Section 493.6105(5), F.S. *See also* Fla. Admin. Code R. 5N-1.132(1)(a).

⁶ Section 493.6113(3)(b), F.S.

⁷ Fla. Admin. Code R. 5N-1.116(2)(a)6. and (2)(c). *See also*, FDACS, *Chapter 493, F.S., Renewal License Fee Schedule*, https://www.fdacs.gov/content/download/73502/file/FS493_Renewal_License_Fees.pdf (last visited Feb. 4, 2022).

⁸ Fla. Admin. Code R. 5N-1.116(3)(a).

⁹ Section 493.6115(6), F.S. *See also*, FDACS, *Approved Firearms for Class “G” License Holders*, <https://www.fdacs.gov/Business-Services/Private-Investigation-Licenses/Approved-Firearms-for-Class-G-License-Holders> (last visited Feb. 4, 2022).

¹⁰ Section 493.6115(9), F.S.

¹¹ Fla. Admin. Code R. 5N-1.113. *See also*, s. 493.6118(1), F.S.

- Firing an unjustifiable warning shot while on duty;
- Impersonating a law enforcement officer or government employee; and
- Commission of an act of violence not in the lawful protection of one's self or another.

Concealed Weapon and Firearm Licenses

Florida is a “shall issue”¹² state for applications for concealed weapon and firearm licenses.¹³ The Department must review and either issue or deny a license within 90 days of receiving an application.¹⁴ As of December 31, 2021, there were 2,445,471 concealed weapon or firearm licensees in Florida.¹⁵

The Department must deny issuance of a license, which expires after 7 years,¹⁶ if an applicant:

- Is not a citizen of the United States, permanent resident alien, or consular security official of a foreign government;
- Is not 21 years of age or older;
- Suffers from a physical infirmity which prevents the safe handling of a weapon or firearm;
- Has been convicted of a felony;
- Has been found guilty of a controlled substances crime within the previous 3 years;
- Has been committed for the abuse of a controlled substance;¹⁷
- Suffers from chronic and habitual use of alcohol or other substances to the extent that their normal faculties are impaired;¹⁸
- Does not intend to carry a concealed weapon or firearm for lawful self-defense;
- Fails to demonstrate competency with a firearm;¹⁹
- Has been adjudicated as an incapacitated person;

¹² Generally, states issue a permit, or license, to carry a concealed weapon such as a firearm on either a “shall issue,” or “may issue” basis. The key difference is that shall issue states must issue the permit or license if the applicant meets the requirements; whereas, may issue states have much more discretion to deny an application even if the applicant meets the requirements under the law. New York may deny a license, for example, if the applicant fails to demonstrate “proper cause” or lacks “good moral character” as determined by a judge reviewing the application. N.Y. Penal Law s. 400.00.

¹³ Section 790.06(2), F.S.

¹⁴ Section 790.06(6)(c), F.S.

¹⁵ FDACS, Division of Licensing, *Number of Licensees by Type* (Dec. 31, 2021),

https://www.fdacs.gov/content/download/82618/file/Number_of_Licensees_By_Type.pdf (last visited Feb. 4, 2022).

¹⁶ Section 790.06(1), F.S.

¹⁷ An applicant granted relief of firearms disabilities pursuant to s. 790.065(2)(a)4.d., F.S., after having been adjudicated mentally defective or committed to a mental institution is deemed not to be committed for the abuse of a controlled substance.

¹⁸ The law presumes that a person chronically and habitually uses alcoholic beverages or other substances to the point of impairment if the applicant has been convicted of using a firearm while under the influence of alcoholic beverages, chemical substances, or controlled substances or has been deemed a habitual offender of disorderly intoxication under s. 856.011(3), F.S., or has had two or more convictions of driving under the influence within a 3-year period preceding the date which the application is submitted. *See*, s. 790.06(2)(f), F.S.

¹⁹ There are several methods of demonstrating competency with a firearm, including completion of a hunter education or safety course approved by the Fish and Wildlife Conservation Commission, completion of any law enforcement firearms safety or training course, or completion of firearms training safety courses using instructors certified by the National Rifle Association, Criminal Justice Standards and Training Commission, or the Department of Agriculture and Consumer Services.

- Has been committed to a mental institution;²⁰
- Has had an adjudication of guilt withheld or a suspended sentence on a felony unless 3 years have elapsed since probation or any other conditions set by the court have been fulfilled, or the record has been expunged;
- Has had an adjudication of guilt withheld or an imposition of sentence suspended on a misdemeanor crime of domestic violence, unless 3 years have elapsed since probation or any other conditions set by the court have been fulfilled, or the record has been expunged;
- Has been issued an injunction that is currently in force and effect that restrains that applicant from committing acts of domestic violence or acts of repeat violence; or
- Is prohibited from purchasing or possessing a firearm by any other provision of Florida or federal law.²¹

The Department must suspend a license or the processing of an application for a license if the licensee or applicant is arrested or formally charged with a crime that would disqualify such person from having a license until final disposition of the case.²² The Department is also required to suspend a license or the processing of an application for a license if the licensee or applicant is issued an injunction that restrains the licensee or applicant from committing acts of domestic violence or acts of repeat violence.²³

Once obtained, the licensee must carry the license with valid identification at all times when the licensee is in actual possession of a concealed weapon or firearm.²⁴ According to s. 790.06(12)(a), F.S, the license, however, “does not authorize any person to carry a concealed weapon or firearm into:”

- Any place of nuisance;²⁵
- Any police, sheriff, or highway patrol station;
- Any detention facility, prison, or jail;
- Any courthouse;
- Any courtroom;²⁶
- Any polling place;
- Any meeting of the governing body of a county, public school district, municipality, or special district;
- Any meeting of the Legislature or a committee thereof;
- Any school, college, or professional athletic event not related to firearms;
- Any elementary or secondary school facility or administration building;
- Any career center;

²⁰An applicant who has been granted relief from firearms disabilities pursuant to s. 790.065(2)(a)4.d., F.S., after having been adjudicated mentally defective or committed to a mental institution is deemed not to have been committed in a mental institution.

²¹ Section 790.06(2)(n), F.S.

²² Section 790.06(3), F.S.

²³ *Id.*

²⁴ Section 790.06(1), F.S.

²⁵ See s. 823.05, F.S., for an extensive description of places of nuisance.

²⁶ However, judges may carry a concealed weapon and allow others to do so within their courtroom. Section 790.06(12)(a)5., F.S.

- Any portion of an establishment licensed to dispense alcoholic beverages for consumption on the premises, which portion of the establishment is primarily devoted to such purpose;
- Any college or university facility;²⁷
- The inside of the passenger terminal and sterile area of any airport; or
- Any place where the carrying of firearms is prohibited by federal law.²⁸

Law Enforcement Officers Safety Act

The federal Law Enforcement Officers Safety Act (LEOSA) allows qualified law enforcement officers and qualified retired law enforcement officers to carry a concealed firearm in any jurisdiction in the United States, regardless of local laws to the contrary, with certain exceptions.²⁹ LEOSA does not supersede a private individual's right to restrict possession of a concealed firearm on his or her property, nor does it override a state or local government's restriction on the possession of firearms on state or local government property.

A qualified law enforcement officer is a current employee of a governmental agency who:³⁰

- Is authorized to engage in or supervise the prevention, detection, investigation, or prosecution of the incarceration of any person for a violation of law who also has statutory powers of arrest or apprehension;
- Is authorized by his or her employing agency to carry a firearm;
- Is not subject to any disciplinary action by his or her employing agency;
- Meets the qualifying standards established by his or her employing agency to use a firearm;
- Is not under the influence of alcohol or other intoxicating substances; and
- Is not prohibited by Federal law from receiving a firearm.

A qualified retired law enforcement officer is an individual who:³¹

- Separated from service in good standing from the public agency that employed him or her as a law enforcement officer;
- Was authorized to engage in or supervise the prevention, detection, investigation, or prosecution of the incarceration of any person for a violation of law and also had statutory powers of arrest or apprehension;
- Served for an aggregate 10 years or more as a law enforcement officer prior to his or her separation, or separated after an applicable probationary period of service due to a service-connected disability;
- Has met the firearms training standards applicable to active law enforcement officers within the last 12 months;

²⁷ However, a "student, employee, or faculty member" may carry a stun gun or nonlethal electric weapon designed for defensive purposes as long as the weapon does not fire a dart or projectile.

²⁸ Section 790.06(12)(a)1.-15., F.S.

²⁹ 18 U.S.C. §926 and 926C. *See also*, Florida Department of Law Enforcement, Thomas Kirwin, *H.R. 218 (The Law Enforcement Officers Safety Act) and S. 1132 (The Law Enforcement Safety Act Improvements Act of 2010) and 2013 Amendment By National Defense Authorization Act (NDAA) for Fiscal Year 2013, Public Law 112-239 (H.R. 4310), §1089 Summary and Overview* (Feb. 2015), <https://www.fdle.state.fl.us/OGC/Documents/Legal-Bulletins/2015-1-HR218Bulletin.aspx> (last visited Feb. 4, 2022).

³⁰ 18 U.S.C. §926(c).

³¹ 18 U.S.C. §926C(c).

- Has not been found by a medical professional to be unqualified for reasons relating to mental health;
- Is not under the influence of alcohol or other intoxicating substances; and
- Is not prohibited by Federal law from receiving a firearm.

Florida's Criminal Justice Standards and Training Commission has approved a statewide minimum firearms proficiency qualification course that serves as the minimum qualifications required to carry a firearm under LEOSA (although individual agencies can enhance their standards above this minimum requirement at their discretion).³² The qualifications require that a candidate achieve at least 32 out of 40 rounds in a range test.³³

III. Effect of Proposed Changes:

SB 1018 creates a Class "CG" license to allow individuals who hold either a Class "C" or a Class "CC" license, and who otherwise qualify for the Class "CG" license, to carry a firearm during the course of their licensed duties.

A Class "CG" applicant must qualify for the license by maintaining an active:

- Florida concealed weapon or firearm license issued pursuant to s. 790.06, F.S.;
- Federal law Enforcement Officers Safety Act annual firearms proficiency qualification, if the applicant is a retired law enforcement officer who separated from employment in good standing after at least 10 years of service; or
- Annual firearms proficiency qualification required by his or her employing law enforcement agency.

A Class "CG" licensee is not required to complete additional qualification or renewal training to qualify for her or his license. However, the Class "CG" license remains in effect only during the period the applicant is employed as a Class "C" or Class "CC" licensee and during which he or she keeps the underlying qualification for the Class "CG" license active.

Similar to Class "G" licensees, a Class "CG" licensee is subject to Departmental regulations, including:

- A limit on the number and type of firearms the licensee may carry during the course of her or his licensed duties;
- Required reporting if the licensee discharges a firearm during her or his licensed duties; and
- Administrative suspension or revocation of the license if the licensee is arrested for, or charged with specific firearms-related crimes.

This provision does not alter the firearm carry limitations found in s. 790.06, F.S., or the Federal Law Enforcement Officers Safety Act. Class "CG" licensees will be required to submit an application to the Department of Agriculture and Consumer Services, undergo a criminal background check, and maintain their underlying qualification during their licensure.

³² Florida Department of Law Enforcement, Thomas Kirwin, *supra* note 31 at 7.

³³ See, Florida Department of Law Enforcement, *Law Enforcement officer Firearms Qualifications Standard, Form CJSTC 86A*, <http://www.fdle.state.fl.us/CJSTC/Documents/Rules-Forms/Table-1-Forms/PDFs/CJSTC-86A.aspx> (last visited Feb. 4, 2022). See also, Fla. Admin. Code R. 11B-27.00212.

The bill takes effect on 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:

Class “C” and Class “CC” licensees will not be required to complete or pay for initial and renewal training relating to the Class “G” license in order to carry a firearm during their licensed duties.

C. Government Sector Impact:

The Department will likely see a decrease in the number of individuals who seek a class “G” license, and therefore will collect fewer Class “G” license fees.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends sections 493.6115 and 493.6305 of the Florida Statutes.

IX. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)**CS by Commerce and Tourism on February 7, 2022:**

- Creates the Class “CG” license, for which applicants qualify if they maintain an active maintaining an active:
 - Florida concealed weapon or firearm license;
 - Federal law Enforcement Officers Safety Act annual firearms proficiency qualification, if the applicant is a retired law enforcement officer who separated from employment in good standing after at least 10 years of service; or
 - Annual firearms proficiency qualification required by his or her employing law enforcement agency.
- Subjects Class “CG” licensees to many of the same regulations as Class “G” licensees, but does not require Class “CG” licensees to perform initial or renewal training to qualify for licensure; and
- Removes reference to Class “D” Security Officer licensees.

B. Amendments:

None.



902328

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/08/2022	.	
	.	
	.	
	.	

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

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Present subsections (5) through (8) of section 493.6105, Florida Statutes, are redesignated as subsections (6) through (9), respectively, a new subsection (5) is added to that section, and subsections (1) and (3) and paragraph (c) of present subsection (5) of that section are amended, to read:

493.6105 Initial application for license.—



11 (1) Each individual, partner, or principal officer in a
12 corporation, shall file with the department a complete
13 application accompanied by an application fee not to exceed \$60,
14 except that an applicant for a Class "CG," Class "D," or Class
15 "G" license is not required to submit an application fee. An
16 application fee is not required for an applicant who qualifies
17 for the fee waiver in s. 493.6107(6). The application fee is not
18 refundable.

19 (a) The application submitted by any individual, partner,
20 or corporate officer must be approved by the department before
21 the individual, partner, or corporate officer assumes his or her
22 duties.

23 (b) Individuals who invest in the ownership of a licensed
24 agency but do not participate in, direct, or control the
25 operations of the agency are not required to file an
26 application.

27 (3) The application must contain the following information
28 concerning the individual signing the application:

29 (a) Name and any aliases.

30 (b) Age and date of birth.

31 (c) Place of birth.

32 (d) Social security number or alien registration number,
33 whichever is applicable.

34 (e) Current residence address and mailing address.

35 (f) A statement of all criminal convictions, findings of
36 guilt, and pleas of guilty or nolo contendere, regardless of
37 adjudication of guilt. An applicant for a Class "CG," Class "G,"
38 or Class "K" license who is younger than 24 years of age shall
39 also include a statement regarding any finding of having



902328

40 committed a delinquent act in any state, territory, or country
41 which would be a felony if committed by an adult and which is
42 punishable by imprisonment for a term exceeding 1 year.

43 (g) One passport-type color photograph taken within the 6
44 months immediately preceding submission of the application.

45 (h) A statement whether he or she has ever been adjudicated
46 incompetent under chapter 744.

47 (i) A statement whether he or she has ever been committed
48 to a mental institution under chapter 394.

49 (j) A full set of fingerprints, a fingerprint processing
50 fee, and a fingerprint retention fee. The fingerprint processing
51 and retention fees shall be established by rule of the
52 department based upon costs determined by state and federal
53 agency charges and department processing costs, which must
54 include the cost of retaining the fingerprints in the statewide
55 automated biometric identification system established in s.
56 943.05(2)(b) and the cost of enrolling the fingerprints in the
57 national retained print arrest notification program as required
58 under s. 493.6108. An applicant who has, within the immediately
59 preceding 6 months, submitted such fingerprints and fees for
60 licensing purposes under this chapter and who still holds a
61 valid license is not required to submit another set of
62 fingerprints or another fingerprint processing fee. An applicant
63 who holds multiple licenses issued under this chapter is
64 required to pay only a single fingerprint retention fee.
65 Partners and corporate officers who do not possess licenses
66 subject to renewal under s. 493.6113 are exempt from the
67 fingerprint retention requirements of this chapter.

68 (k) A personal inquiry waiver that allows the department to



902328

69 conduct necessary investigations to satisfy the requirements of
70 this chapter.

71 (1) Such further facts as may be required by the department
72 to show that the individual signing the application is of good
73 moral character and qualified by experience and training to
74 satisfy the requirements of this chapter.

75 (5) In addition to the requirements under subsection (3),
76 an applicant for a Class "CG" license must submit proof that she
77 or he:

78 (a) Has an active license to carry a concealed firearm
79 issued pursuant to s. 790.06;

80 (b) Is a retired law enforcement officer who separated from
81 service in good standing; who, before such separation, served as
82 a law enforcement officer for at least 10 years; and who
83 maintains her or his annual firearms proficiency qualification
84 pursuant to the federal Law Enforcement Officers Safety Act; or

85 (c) Is an active law enforcement officer who maintains the
86 annual firearms proficiency qualification required by her or his
87 agency.

88 (6)~~(5)~~ In addition to the requirements outlined in
89 subsection (3), an applicant for a Class "G" license must
90 satisfy minimum training criteria for firearms established by
91 rule of the department, which training criteria includes, but is
92 not limited to, 28 hours of range and classroom training taught
93 and administered by a Class "K" licensee; however, no more than
94 8 hours of such training shall consist of range training. The
95 department may waive the foregoing firearms training requirement
96 if:

97 (c) The applicant submits a valid firearm certificate among



902328

98 those specified in paragraph (7) (a) ~~(6) (a)~~.

99 Section 2. Paragraphs (f) and (g) of subsection (1) and
100 subsection (3) of section 493.6106, Florida Statutes, are
101 amended to read:

102 493.6106 License requirements; posting.—

103 (1) Each individual licensed by the department must:

104 (f) Be a citizen or permanent legal resident alien of the
105 United States or have appropriate authorization issued by the
106 United States Citizenship and Immigration Services of the United
107 States Department of Homeland Security.

108 1. An applicant for a Class "C," Class "CC," Class "D,"
109 Class "DI," Class "E," Class "EE," Class "M," Class "MA," Class
110 "MB," Class "MR," or Class "RI" license who is not a United
111 States citizen must submit proof of current employment
112 authorization issued by the United States Citizenship and
113 Immigration Services or proof that she or he is deemed a
114 permanent legal resident alien by the United States Citizenship
115 and Immigration Services.

116 2. An applicant for a Class "CG," Class "G," or Class "K"
117 license who is not a United States citizen must submit proof
118 that she or he is deemed a permanent legal resident alien by the
119 United States Citizenship and Immigration Services.

120 3. An applicant for an agency or school license who is not
121 a United States citizen or permanent legal resident alien must
122 submit documentation issued by the United States Citizenship and
123 Immigration Services stating that she or he is lawfully in the
124 United States and is authorized to own and operate the type of
125 agency or school for which she or he is applying. An employment
126 authorization card issued by the United States Citizenship and



902328

127 Immigration Services is not sufficient documentation.

128 (g) Not be prohibited from purchasing or possessing a
129 firearm by state or federal law if the individual is applying
130 for a Class "CG," Class "G," ~~license~~ or a Class "K" license.

131 (3) Each Class "C," Class "CC," Class "CG," Class "D,"
132 Class "DI," Class "E," Class "EE," Class "G," Class "K," Class
133 "M," Class "MA," Class "MB," Class "MR," or Class "RI" licensee
134 shall notify the division in writing within 10 days of a change
135 in her or his residence or mailing address.

136 Section 3. Subsection (4) of section 493.6111, Florida
137 Statutes, is amended to read:

138 493.6111 License; contents; identification card.—

139 (4) Notwithstanding the existence of a valid Florida
140 corporate registration, an agency or school licensee may not
141 conduct activities regulated under this chapter under any
142 fictitious name without prior written authorization from the
143 department to use that name in the conduct of activities
144 regulated under this chapter. The department may not authorize
145 the use of a name that is so similar to that of a public officer
146 or agency, or of that used by another licensee, that the public
147 may be confused or misled thereby. The authorization for the use
148 of a fictitious name must require, as a condition precedent to
149 the use of such name, the filing of a certificate of engaging in
150 business under a fictitious name under s. 865.09. A licensee may
151 not conduct business under more than one name except as
152 separately licensed nor shall the license be valid to protect
153 any licensee who is engaged in the business under any name other
154 than that specified in the license. An agency desiring to change
155 its licensed name must notify the department and, except upon



902328

156 renewal, pay a fee not to exceed \$30 for each license requiring
157 revision including those of all licensed employees except Class
158 "CG," Class "D," or Class "G" licensees. Upon the return of such
159 licenses to the department, revised licenses shall be provided.

160 Section 4. Subsections (2), (4), (5), (6), (8), and (9) of
161 section 493.6115, Florida Statutes, are amended to read:

162 493.6115 Weapons and firearms.—

163 (2) (a) Only Class "C," Class "CC," Class "D," Class "M,"
164 Class "MA," or Class "MB" licensees are permitted to bear a
165 firearm in the performance of their duties only if and any such
166 licensee also has who bears a firearm shall also have a Class
167 "G" license.

168 (b) Class "C" and Class "CC" licensees are permitted to
169 bear a firearm in the performance of their duties only if such
170 licensee also has a "Class "CG" or Class "G" license.

171 (4) A Class "C" or Class "CC" licensee who is 21 years of
172 age or older and has also been issued a Class "CG" or Class "G"
173 license may carry, in the performance of her or his duties, a
174 concealed firearm. A Class "D" licensee who is 21 years of age
175 or older and has also been issued a Class "G" license may carry
176 a concealed firearm in the performance of her or his duties
177 under the conditions specified in s. 493.6305(3) and (4). The
178 Class "CG" or Class "G" license must clearly indicate such
179 authority. The authority of any such licensee to carry a
180 concealed firearm is valid in any location throughout the state
181 while performing services within the scope of the license.

182 (5) (a) The Class "G" license shall remain in effect only
183 during the period the applicant is employed as a Class "C,"
184 Class "CC," Class "D," Class "MA," Class "MB," or Class "M"



902328

185 licensee.

186 (b) The Class "CG" license shall remain in effect only
187 during the period the applicant is employed as a Class "C" or
188 Class "CC" licensee.

189 (6) In addition to any other firearm approved by the
190 department, a licensee who has been issued a Class "CG" or Class
191 "G" license may carry a .38 caliber revolver; or a .380 caliber
192 or 9 millimeter semiautomatic pistol; or a .357 caliber revolver
193 with .38 caliber ammunition only; or a .40 caliber handgun; or a
194 .45 ACP handgun while performing duties authorized under this
195 chapter. A licensee may not carry more than two firearms upon
196 her or his person when performing her or his duties. A licensee
197 may only carry a firearm of the specific type and caliber with
198 which she or he is qualified pursuant to the firearms training
199 referenced in subsection (8) or s. 493.6113(3)(b).

200 (8) A Class "G" applicant must satisfy the minimum training
201 criteria as set forth in s. 493.6105(6) ~~s. 493.6105(5)~~ and as
202 established by rule of the department.

203 (9) Whenever a Class "CG" or Class "G" licensee discharges
204 her or his firearm in the course of her or his duties, the Class
205 "CG" or Class "G" licensee and the agency by which she or he is
206 employed shall, within 5 working days, submit to the department
207 an explanation describing the nature of the incident, the
208 necessity for using the firearm, and a copy of any report
209 prepared by a law enforcement agency. The department may revoke
210 or suspend the Class "CG" or Class "G" licensee's license and
211 the licensed agency's agency license if this requirement is not
212 met.

213 Section 5. Present paragraphs (x), (y), and (z) of



902328

214 subsection (1) of section 493.6118, Florida Statutes, are
215 redesignated as paragraphs (y), (z), and (aa), respectively, a
216 new paragraph (x) is added to that subsection, and paragraphs
217 (v) and (w) of that subsection and paragraph (a) of subsection
218 (8) of that section are amended, to read:

219 493.6118 Grounds for disciplinary action.—

220 (1) The following constitute grounds for which disciplinary
221 action specified in subsection (2) may be taken by the
222 department against any licensee, agency, or applicant regulated
223 by this chapter, or any unlicensed person engaged in activities
224 regulated under this chapter:

225 (v) For a Class "K" licensee, failing to maintain active
226 certification specified under s. 493.6105(7) ~~s. 493.6105(6)~~.

227 (w) For a Class "CG," Class "G," or ~~a~~ Class "K" applicant
228 or licensee, being prohibited from purchasing or possessing a
229 firearm by state or federal law.

230 (x) For a Class "CG" licensee, failing to maintain active
231 certification or licensure under s. 493.6105(5).

232 (8) (a) Upon notification by a law enforcement agency, a
233 court, or the Department of Law Enforcement and upon subsequent
234 written verification, the department shall temporarily suspend a
235 Class "CG," Class "G," or Class "K" license if the licensee is
236 arrested or charged with a firearms-related crime that would
237 disqualify such person from licensure under this chapter. The
238 department shall notify the licensee suspended under this
239 section of his or her right to a hearing pursuant to chapter
240 120. A hearing conducted regarding the temporary suspension must
241 be for the limited purpose of determining whether the licensee
242 has been arrested or charged with a disqualifying firearms-



902328

243 related crime.

244 Section 6. Subsection (7) of section 493.6201, Florida
245 Statutes, is amended to read:

246 493.6201 Classes of licenses.—

247 (7) (a) Only Class "M," or Class "MA," Class "C," or Class
248 "CC" licensees are permitted to bear a firearm during the
249 performance of their duties only if, and any such licensee also
250 has who bears a firearm shall also have a Class "G" license.

251 (b) Class "C" and Class "CC" licensees are permitted to
252 bear a firearm during the performance of their duties only if
253 such licensee also has a "Class "CG" or Class "G" license.

254 Section 7. Paragraphs (b) and (d) of subsection (3) of
255 section 493.6113, Florida Statutes, is amended to read:

256 493.6113 Renewal application for licensure.—

257 (3) Each licensee is responsible for renewing his or her
258 license on or before its expiration by filing with the
259 department an application for renewal accompanied by payment of
260 the renewal fee and the fingerprint retention fee to cover the
261 cost of ongoing retention in the statewide automated biometric
262 identification system established in s. 943.05(2) (b). Upon the
263 first renewal of a license issued under this chapter before
264 January 1, 2017, the licensee shall submit a full set of
265 fingerprints and fingerprint processing fees to cover the cost
266 of entering the fingerprints into the statewide automated
267 biometric identification system pursuant to s. 493.6108(4) (a)
268 and the cost of enrollment in the Federal Bureau of
269 Investigation's national retained print arrest notification
270 program. Subsequent renewals may be completed without submission
271 of a new set of fingerprints.



902328

272 (b) Each Class "G" licensee shall additionally submit proof
273 that he or she has received during each year of the license
274 period a minimum of 4 hours of firearms requalification training
275 taught by a Class "K" licensee and has complied with such other
276 health and training requirements that the department shall adopt
277 by rule. Proof of completion of firearms requalification
278 training shall be submitted to the department upon completion of
279 the training. A Class "G" licensee must successfully complete
280 this requalification training for each type and caliber of
281 firearm carried in the course of performing his or her regulated
282 duties. If the licensee fails to complete the required 4 hours
283 of annual training during the first year of the 2-year term of
284 the license, the license shall be automatically suspended. The
285 licensee must complete the minimum number of hours of range and
286 classroom training required at the time of initial licensure and
287 submit proof of completion of such training to the department
288 before the license may be reinstated. If the licensee fails to
289 complete the required 4 hours of annual training during the
290 second year of the 2-year term of the license, the licensee must
291 complete the minimum number of hours of range and classroom
292 training required at the time of initial licensure and submit
293 proof of completion of such training to the department before
294 the license may be renewed. The department may waive the
295 firearms training requirement if:

296 1. The applicant provides proof that he or she is currently
297 certified as a law enforcement officer or correctional officer
298 under the Criminal Justice Standards and Training Commission and
299 has completed law enforcement firearms requalification training
300 annually during the previous 2 years of the licensure period;



902328

301 2. The applicant provides proof that he or she is currently
302 certified as a federal law enforcement officer and has received
303 law enforcement firearms training administered by a federal law
304 enforcement agency annually during the previous 2 years of the
305 licensure period; or

306 3. The applicant submits a valid firearm certificate among
307 those specified in s. 493.6105(7) (a) ~~s. 493.6105(6) (a)~~ and
308 provides proof of having completed requalification training
309 during the previous 2 years of the licensure period.

310 (d) Each Class "K" licensee shall additionally submit one
311 of the certificates specified under s. 493.6105(7) ~~s.~~
312 ~~493.6105(6)~~ as proof that he or she remains certified to provide
313 firearms instruction.

314 Section 8. This act shall take effect July 1, 2022.

315
316 ===== T I T L E A M E N D M E N T =====

317 And the title is amended as follows:

318 Delete everything before the enacting clause
319 and insert:

320 A bill to be entitled
321 An act relating to private investigative services;
322 amending s. 493.6105, F.S.; exempting Class "CG"
323 license applicants from an application fee; providing
324 application requirements for Class "CG" licenses;
325 amending s. 493.6106, F.S.; providing requirements for
326 Class "CG" licensees; amending s. 493.6111, F.S.;
327 exempting licensed agencies from certain fees relating
328 to license revisions; amending s. 493.6115, F.S.;
329 revising requirements relating to certain licensees



902328

330 carrying firearms; specifying that Class "CG" licenses
331 remain in effect only while the applicant is employed
332 as a Class "C" or Class "CC" licensee; conforming
333 provisions to changes made by the act; amending s.
334 493.6118, F.S.; specifying when the Department of
335 Agriculture and Consumer Services may take
336 disciplinary action against Class "CG" licensees;
337 conforming a cross-reference; amending s. 493.6201,
338 F.S.; revising requirements relating to certain
339 licensees carrying firearms; amending s. 493.6113,
340 F.S.; conforming cross-references; providing an
341 effective date.

By Senator Burgess

20-00709-22

20221018__

1 A bill to be entitled
2 An act relating to private investigative and security
3 services; amending s. 493.6115, F.S.; revising
4 eligibility requirements for certain licensees to
5 carry firearms; amending s. 493.6305, F.S.; conforming
6 provisions to changes made by the act; providing an
7 effective date.

8
9 Be It Enacted by the Legislature of the State of Florida:

10 Section 1. Subsections (2) and (4) of section 493.6115,
11 Florida Statutes, are amended to read:

12 493.6115 Weapons and firearms.—

13 (2) (a) Except as provided in paragraph (b), only Class "C,"
14 Class "CC," Class "D," Class "M," Class "MA," or Class "MB"
15 licensees are permitted to bear a firearm, and any such licensee
16 who bears a firearm shall also have a Class "G" license.

17 (b)1. A Class "C" licensee who does not have a Class "G"
18 license may bear a firearm if the licensee has a license to
19 carry concealed firearms issued pursuant to s. 790.06.

20 2. A Class "C," Class "CC," Class "D," Class "M," Class
21 "MA," or Class "MB" licensee who does not have a Class "G"
22 license but who is a retired law enforcement officer; who
23 separated from service in good standing; who, before such
24 separation, served as a law enforcement officer for at least 10
25 years; and who maintains her or his annual firearms proficiency
26 qualification pursuant to the federal Law Enforcement Officers
27 Safety Act, may bear a firearm in the performance of her or his
28 duties.
29

Page 1 of 3

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

20-00709-22

20221018__

30 3. A Class "C," Class "CC," Class "D," Class "M," Class
31 "MA," or Class "MB" licensee who does not have a Class "G"
32 license but who is an active law enforcement officer and who
33 maintains the annual firearms proficiency qualification required
34 by her or his agency, may bear a firearm in the performance of
35 her or his duties.

36 (4) (a)1. A Class "C" or Class "CC" licensee who is 21 years
37 of age or older and has also been issued a Class "G" license,
38 who has a license to carry concealed firearms, or who meets the
39 requirements of subparagraph (2) (b)2. may carry, in the
40 performance of her or his duties, a concealed firearm.

41 2. A Class "D" licensee who is 21 years of age or older and
42 has also been issued a Class "G" license or who meets the
43 requirements of subparagraph (2) (b)2. may carry a concealed
44 firearm in the performance of her or his duties under the
45 conditions specified in s. 493.6305(3) and (4).

46 (b) The Class "G" license must clearly indicate such
47 authority. The authority of any such licensee to carry a
48 concealed firearm is valid in any location throughout the state
49 while performing services within the scope of the license.

50 Section 2. Subsections (3) and (4) of section 493.6305,
51 Florida Statutes, are amended to read:

52 493.6305 Uniforms, required wear; exceptions.—

53 (3) Class "D" licensees who are authorized to carry a
54 concealed firearm under s. 493.6115(4) (a)2. ~~also Class "G"~~
55 ~~licensees~~ and who are performing limited, special assignment
56 duties may carry their authorized firearm concealed in the
57 conduct of such duties.

58 (4) Class "D" licensees who are authorized to carry a

Page 2 of 3

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

20-00709-22

20221018__

59 concealed firearm under s. 493.6115(4)(a)2. ~~also Class "C"~~
60 ~~licensees~~ and who are performing bodyguard or executive
61 protection services may carry their authorized firearm concealed
62 while in nonuniform as needed in the conduct of such services.
63 Section 3. 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 28, 2022

I respectfully request that **Senate Bill #1246**, relating to Benchmark Replacements for London Interbank Offered Rate, 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

The Florida Senate

APPEARANCE RECORD

1246

Feb 7, 2022

Meeting Date

Bill Number or Topic

Commerce

Committee

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

Amendment Barcode (if applicable)

Name Anthony Dillmarco

Phone (850) 228-2265

Address 100 / Thomasville Rd

Email adillmarco@floridabankers.com

Street

Tallahassee FL 32303

City

State

Zip

Speaking:

For

Against

Information

OR

Waive Speaking:

In Support

Against

PLEASE CHECK ONE OF THE FOLLOWING:

I am appearing without compensation or sponsorship.

I am a registered lobbyist, representing:

Florida Bankers Assoc

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

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 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 1246

INTRODUCER: Commerce and Tourism Committee and Senator Gruters

SUBJECT: Benchmark Replacements for London Interbank Offered Rate

DATE: February 8, 2022

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Arnold</u>	<u>Knudson</u>	<u>BI</u>	Favorable
2.	<u>Harmsen</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 1246 provides for a transition to the Secured Overnight Financing Rate (SOFR) as the replacement rate for the London Interbank Offered Rate (LIBOR) for contracts and instruments that lack transition provisions. The bill provides for conforming changes to be made to the contract or instrument, voids fallback provisions based on LIBOR, and provides for construction of rights and duties under contracts affected by the bill.

The bill precludes liability, a claim, or a cause of action that arises out of, or is related to the selection or use of a recommended benchmark replacement, or to the determination, implementation, or performance of a benchmark replacement conforming change.

The bill provides a statement of overpowering public necessity for the bill and a statement of legislative finding that there are no alternative means to meet this public necessity.

Finally, the bill contains a statement of legislative intent which indicates that the bill is remedial in nature and applies retroactively to all contracts, agreements, mortgages, deeds of trust, leases, instruments, obligations, or securities, whether representing debt or equity, and including all interests in a corporation, partnership, or limited liability company, in existence on December 31, 2021.

The bill takes effect upon becoming a law.

II. Present Situation:

Background on LIBOR

LIBOR is the reference rate at which large banks indicate that they can borrow short-term wholesale funds from one another on an unsecured basis in the interbank market.¹ The origins of LIBOR can be traced to a loan transaction in 1969 in which multiple banks were joint lenders (i.e., a syndicated loan) on a large loan of \$80 million.² The interest rate of the loan was based on the weighted average of the funding costs for each of the participating banks plus a spread for profit.³ The rate was recalculated periodically; hence, the rate was variable and reflected market conditions.⁴ The idea caught on, and eventually nearly all syndicated loans used LIBOR to calculate the interest charged.⁵ Soon the rate was adopted by bankers outside the loan market who were looking for an elegant proxy for bank borrowing costs that was simple, fair, and appeared to be independent.⁶

In addition to providing loans at rates tied to LIBOR, banks whose submissions determined the fixing of LIBOR had also begun to borrow heavily using LIBOR-based contracts by the mid-1980s, creating an incentive to underreport funding costs.⁷ As a result, the British Bankers' Association (BBA) took control of the rate in 1986 to formalize the data collection and governance process.⁸ In that year, LIBOR settings were calculated for the U.S. dollar, the British pound, and the Japanese yen.⁹ Over time, the inclusion of additional currencies and integration of existing currencies into the euro left the BBA with oversight of settings for over ten currencies as of 2012.¹⁰ Fifteen maturity terms were reported for each currency, ranging from overnight to a 1 year term.¹¹

Today, LIBOR is calculated daily by the Intercontinental Exchange (ICE) Benchmark Administration.¹² Eighteen international banks submit rates that each bank believes it would pay, not what it actually pays, if it had to borrow money from another bank on the interbank lending market in London.¹³ The four highest and four lowest submissions are then removed in order to calculate LIBOR.¹⁴ Prior to the end of 2021, the ICE Benchmark Administration calculated the rate in five currencies (UK Pound Sterling, the Swiss Franc, the Euro, Japanese Yen, and the

¹ David Hou and David Skeie, *LIBOR: Origins, Economics, Crisis, Scandal, and Reform*, Federal Reserve Bank of New York Staff Reports (March 2014), https://www.newyorkfed.org/medialibrary/media/research/staff_reports/sr667.pdf (last visited Feb. 4, 2022).

² *Id.* at 1.

³ Gavin Finch and Liam Vaughan, *The Man Who Invented the World's Most Important Number* (November 29, 2016), <https://www.bloomberg.com/news/features/2016-11-29/the-man-who-invented-libor-iw3fpmed> (last visited Feb. 4, 2022).

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ David Hou & David Skeie, *supra* note 1.

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² Miranda Marquit and Benjamin Curry, *What Is Libor And Why Is It Being Abandoned?*, Forbes (December 16, 2020), <https://www.forbes.com/advisor/investing/what-is-libor/> (last visited Feb. 4, 2022).

¹³ *Id.*

¹⁴ *Id.*

U.S. Dollar), and LIBOR was produced in seven maturity terms or “tenors” (overnight/spot next, 1-week, 1-month, 2-month, 3-month, 6-month, and 12-month).¹⁵

LIBOR has come under increasing scrutiny from regulators and financial markets alike following the 2008 financial crisis as well as documented patterns of manipulation by participating banks.¹⁶ Others have noted the declining correlations between LIBOR and actual bank funding costs.¹⁷ In 2017, the entity that regulates LIBOR, the Financial Conduct Authority (FCA) of the United Kingdom, stated that LIBOR would cease after the end of 2021.¹⁸ However, most U.S. Dollar LIBOR tenors have been extended to the end of June 2023 to enable time for the market to transition away from LIBOR.¹⁹ The 1-week and 2-month U.S. Dollar LIBOR ended at the end of 2021.²⁰ The FCA has recommended transitions to alternative rates before these dates.²¹

Adoption of the SOFR

In 2014, the Federal Reserve Board and the Federal Reserve Bank of New York convened the Alternative Reference Rates Committee (ARRC) to address risks related to the U.S. Dollar LIBOR.²² The ARRC’s initial objectives were to identify risk-free alternative reference rates for the U.S. Dollar LIBOR, identify best practices for contract robustness, and create an implementation plan with metrics of success and a timeline to support an orderly adoption.²³ The ARRC was reconstituted in 2018 with an expanded membership to serve as a forum to coordinate planning across cash and derivatives products as well as market participants that currently use the U.S. Dollar LIBOR.²⁴ The ARRC is comprised of a diverse set of private-sector entities, each with an important presence in markets affected by the U.S. Dollar LIBOR, and a wide array of official-sector entities, including banking and financial sector regulators, as ex-officio members.²⁵

In 2017, the ARRC identified SOFR as its recommended alternative to the U.S. Dollar LIBOR.²⁶ SOFR is fully transaction-based and is a broad measure of the cost of borrowing cash overnight collateralized by U.S. Treasury securities.²⁷ SOFR is based on transaction data from three segments of the Treasury repurchase agreement market: (1) tri-party repurchase agreements, (2) General Collateral Finance repurchase agreements; and (3) bilateral repurchase agreement

¹⁵ *Id.*; Financial Conduct Authority, *About LIBOR Transition*, <https://www.fca.org.uk/markets/libor-transition> (last visited Feb. 4, 2022).

¹⁶ Marquit and Curry, *supra* note 12.

¹⁷ Bowman et al., *How Correlated is LIBOR with Bank Funding Costs?* (June 29, 2020), <https://www.federalreserve.gov/econres/notes/feds-notes/how-correlated-is-libor-with-bank-funding-costs-20200629.htm> (last visited Feb. 4, 2022).

¹⁸ Financial Conduct Authority, *supra* note 15.

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

²² Alternative Reference Rates Committee, *Frequently Asked Questions* (August 27, 2021), <https://www.newyorkfed.org/medialibrary/Microsites/arrc/files/ARRC-faq.pdf> (last visited Feb. 4, 2022).

²³ *Id.*

²⁴ *Id.*

²⁵ Alternative Reference Rates Committee, *Alternative Reference Rates Committee: About*, <https://www.newyorkfed.org/arrc> (last visited Feb. 4, 2022).

²⁶ *Id.*

²⁷ *Id.*

transactions cleared through the Fixed Income Clearing Corporation.²⁸ The Federal Reserve Bank of New York currently publishes SOFR data daily, as well as SOFR Averages and a SOFR Index.²⁹

LIBOR Discontinuance

LIBOR has been used in setting interest rates for adjustable rate mortgages, asset-backed securities, municipal bonds, credit default swaps, private student loans, and other types of debt.³⁰ The total exposure to the U.S. Dollar LIBOR, as of the fourth quarter of 2020, was \$223 trillion.³¹ Although the derivatives market accounts for a large majority of the outstanding value of all financial products referencing the U.S. Dollar LIBOR, LIBOR is also referenced in several trillion dollars of corporate loans, floating-rate mortgages, floating-rate notes, and securitized products.³²

Financial institutions and other market participants have been in the process of assessing their exposure to the discontinuation of LIBOR, and various financial regulators have discouraged the use of LIBOR as a reference rate in new contracts after December 31, 2021.³³ Some financial contracts that reference LIBOR include robust fallback language that contemplates a replacement interest rate index or replacement interest rate calculation in the event that the rate referenced in the contract is discontinued. While an estimated 67 percent of current LIBOR exposures will mature before LIBOR ceases at the end of June 2023, an estimated \$74 trillion will remain outstanding.³⁴ This fact underscores the importance of finding solutions for legacy contracts, including legacy LIBOR contracts that have no provisions to replace LIBOR upon its cessation.³⁵ The ARRC posits that legislation is necessary to address those contracts.³⁶

Recent Legislative Reforms

Federal Legislation

Similar to the bill, federal legislation (H.R. 4616) has been proposed that would provide for the transition of certain financial contracts away from LIBOR.³⁷ In the event a contract referencing LIBOR does not have a fallback or replacement rate provision in effect when LIBOR is retired, or a replacement rate is not selected by a determining person as defined by H.R. 4616, H.R. 4616

²⁸ *Id.*

²⁹ *Id.*

³⁰ Marquit and Curry, *supra* note 12.

³¹ Alternative Reference Rates Committee, *supra* note 22.

³² *Id.*

³³ See, e.g., U.S. Securities and Exchange Commission Office of Compliance Inspections and Examinations, *Risk Alert* (June 18, 2020), https://www.sec.gov/files/Risk%20Alert%20-%20OCIE%20LIBOR%20Initiative_1.pdf (last visited Feb. 4, 2022); Board of Governors of the Federal Reserve System et al., *Statement on LIBOR Transition* (November 30, 2020), <https://www.federalreserve.gov/newsevents/pressreleases/files/bcreg20201130a1.pdf> (last visited Feb. 4, 2022); Rohit Chopra, *Joint Statement on Managing the LIBOR Transition* (Oct. 20, 2021), <https://www.consumerfinance.gov/about-us/newsroom/joint-statement-on-managing-the-libor-transition/#note5> (last visited Feb. 4, 2022).

³⁴ Alternative Reference Rates Committee, *supra* note 22.

³⁵ *Id.*

³⁶ *Id.*

³⁷ Adjustable Interest Rate (LIBOR) Act of 2021, H.R. 4616, 117th Cong., <https://www.congress.gov/bill/117th-congress/house-bill/4616/text> (last visited Feb. 4, 2022).

provides for a transition to SOFR as the replacement rate.³⁸ H.R. 4616 also provides for conforming changes to these contracts, the continuity and enforceability of these contracts, and protections against liability as a result of such a transition.³⁹ H.R. 4616 passed the House but has not yet been acted upon in the Senate.⁴⁰

State Legislation

New York⁴¹ and Alabama⁴² have passed similar legislation.

III. Effect of Proposed Changes:

Section 1 creates s. 687.15, F.S., “Benchmark Replacements for the London Interbank Offered Rate,” which provides for the transition to the Secured Overnight Financing Rate (SOFR) as the replacement rate for LIBOR for contracts and instruments that lack applicable transition provisions.

The bill provides the following legislative finding:

The Legislature finds that the discontinuation of (LIBOR)⁴³ as a viable interest rate threatens the continued viability of certain contracts, securities, and instruments and the rights of the parties to those contracts, securities, or instruments. Furthermore, the threat of unknown and potentially unbounded liability and the viability of contracts, securities, and instruments threatens the state's economy and has created an overpowering public necessity to provide an immediate and remedial legislative solution. Therefore, the Legislature intends for parties to certain contracts, securities, or instruments, as provided in [the bill], to enjoy heightened legal protections as a result of the discontinuation of LIBOR. The Legislature also finds that there are no alternative means to meet this public necessity. The Legislature finds that the public interest as a whole is best served by providing certainty to these contracts, securities, and instruments and the parties thereto, so that these contracts, securities, and instruments may remain viable and continue to be enforceable in the state.

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ See NY Assembly Bill 164B, <https://www.nysenate.gov/legislation/bills/2021/S297>, (last visited Feb. 4, 2022).

⁴² Financial transactions, Senate Bill 279, <https://legiscan.com/AL/text/SB279/id/2379813> (last visited Feb. 4, 2022).

⁴³ “LIBOR” means, for purposes of the application of the bill to any particular contract, security, or instrument, the United States Dollar LIBOR, formerly known as the London Interbank Offered Rate, as administered by ICE Benchmark Administration, or any predecessor or successor thereof, or any tenor thereof, as applicable, that is used in making any calculation or determination of benchmark rates.

Under the bill, various LIBOR discontinuance events⁴⁴ trigger a LIBOR replacement date⁴⁵ for a contract, security, or instrument⁴⁶ that uses LIBOR as a benchmark,⁴⁷ if the contract, security, or instrument also:

- Does not contain a fallback provision;⁴⁸ or
- Contains fallback provisions resulting in a benchmark replacement⁴⁹ that is based in any way on a LIBOR value.

These specific contracts, securities, and instruments that rely on LIBOR will, by operation of law on the LIBOR replacement date, replace LIBOR with the recommended benchmark replacement.

⁴⁴ “LIBOR discontinuance event” means the earliest to occur of any of the following:

a. A public statement or publication of information by, or on behalf of, the administrator of LIBOR announcing that the administrator has ceased or will cease to provide LIBOR permanently or indefinitely, if, at the time of the statement or publication, there is no successor administrator that will continue to provide LIBOR.

b. A public statement or publication of information by the regulatory supervisor for the administrator of LIBOR, the Federal Reserve System, an insolvency official with jurisdiction over the administrator of LIBOR, a resolution authority with jurisdiction over the administrator of LIBOR, or a court or an entity with similar insolvency or resolution authority over the administrator of LIBOR, announcing that the administrator of LIBOR has ceased or will cease to provide LIBOR permanently or indefinitely, if, at the time of the statement or publication, there is no successor administrator that will continue to provide LIBOR.

c. A public statement or publication of information by the regulatory supervisor for the administrator of LIBOR announcing that LIBOR is no longer representative.

A public statement or publication of information that affects one or more tenors of LIBOR does not constitute a LIBOR discontinuance event with respect to a contract, security, or instrument that:

a. Provides for only one tenor of LIBOR, if the contract, security, or instrument requires interpolation and the tenor can be interpolated from LIBOR tenors that are not so affected; or

b. Allows a party to choose from more than one tenor of LIBOR and any of the tenors is not so affected or, if the contract, security, or instrument requires interpolation, can be interpolated from LIBOR tenors that are not so affected.

⁴⁵ “LIBOR replacement date” means:

a. In the case of a LIBOR discontinuance event described in a. or b. (*supra* note 44), the later of:

(I) The date of the public statement or publication of information referenced in a. or b. (*supra* note 44); or

(II) The date on which the administrator of LIBOR permanently or indefinitely ceases to provide LIBOR.

b. In the case of a LIBOR discontinuance event described in c. (*supra* note 44), the date of the public statement or publication of information referenced in c. (*supra* note 44).

2. A date that affects one or more tenors of LIBOR does not constitute a LIBOR replacement date with respect to a contract, security, or instrument that:

a. Provides for only one tenor of LIBOR, if the contract, security, or instrument requires interpolation and the tenor can be interpolated from LIBOR tenors that are not so affected; or

b. Allows a party to choose from more than one tenor of LIBOR and any of the tenors is not so affected or, if the contract, security, or instrument requires interpolation, can be interpolated from LIBOR tenors that are not so affected.

⁴⁶ “Contract, security, or instrument” includes, without limitation, any contract, agreement, mortgage, deed of trust, lease, instrument, obligation, or security, whether representing debt or equity, and including any interest in a corporation, partnership, or limited liability company.

⁴⁷ “Benchmark” means an index of interest rates or dividend rates that is used, in whole or in part, as the basis of, or as a reference for, calculating or determining a valuation, payment, or other measurement under or with respect to a contract, security, or instrument.

⁴⁸ “Fallback provision” means a term in a contract, security, or instrument which sets forth a methodology or procedure for determining a benchmark replacement, including any term relating to the date on which the benchmark replacement becomes effective, without regard to whether a benchmark replacement can be determined in accordance with the methodology or procedure.

⁴⁹ “Benchmark replacement” means a benchmark, an interest rate, or a dividend rate that may or may not be based, in whole or in part, on a prior setting of LIBOR, to replace LIBOR or any interest rate or dividend rate based on LIBOR, whether on a temporary, permanent, or indefinite basis, under or with respect to a contract, security, or instrument.

The recommended benchmark is a benchmark replacement based on SOFR⁵⁰, which must include any recommended spread adjustment,⁵¹ and any benchmark replacement conforming change⁵² that has been selected or recommended by a relevant recommending body⁵³ with respect to the type of contract, security, or instrument.

After a LIBOR discontinuance event, any fallback provisions in a contract, security, or instrument that provides for a benchmark replacement based on or otherwise involving a poll, survey, or inquiry for quotes or information concerning interbank lending rates or any interest rate or dividend rate based on LIBOR will be void and of no force or effect.

For any contract, security, or instrument that uses LIBOR as a benchmark and that contains fallback provisions that allow or require the selection of a benchmark replacement that is based in any way on a LIBOR value or a benchmark replacement that is similar to LIBOR, a determining person⁵⁴ may select the recommended benchmark replacement as the benchmark replacement after the occurrence of a LIBOR discontinuance event. In such case, the selection of the recommended benchmark replacement must be:

- Irrevocable;

⁵⁰ “SOFR” means, with respect to any day, the secured overnight financing rate published for the day by the Federal Reserve Bank of New York as the administrator of the benchmark, or a successor administrator, on the Federal Reserve Bank of New York’s website.

⁵¹ “Recommended spread adjustment” means a spread adjustment, or method for calculating or determining the spread adjustment, which has been selected or recommended by a relevant recommending body for a recommended benchmark replacement for a particular type of contract, security, or instrument and for a particular term to account for the effects of the transition or change from LIBOR to a recommended benchmark replacement. This term may be a positive or negative value or zero.

⁵² “Benchmark replacement conforming change” means, with respect to any type of contract, security, or instrument, a technical, administrative, or operational change, alteration, or modification that is associated with and reasonably necessary to the use, adoption, calculation, or implementation of a recommended benchmark replacement and that has been selected or recommended by a relevant recommending body. However, if, in the reasonable judgment of a calculating person, the change, alteration, or modification selected or recommended by a relevant recommending body does not apply to the contract, security, or instrument or is insufficient to allow administration and calculation of the recommended benchmark replacement, the benchmark replacement conforming change may include other changes, alterations, or modifications that, in the reasonable judgment of the calculating person:

1. Are necessary to allow administration and calculation of the recommended benchmark replacement under or with respect to the contract, security, or instrument in a manner consistent with market practice for substantially similar contracts, securities, or instruments and, to the extent practicable, the manner in which the contract, security, or instrument was administered immediately before the LIBOR replacement date.

2. Would not result in a disposition of the contract, security, or instrument for federal income tax purposes.

“Calculating person” means, with respect to any contract, security, or instrument, a person responsible for calculating or determining a valuation, payment, or other measurement based on a benchmark. This person may be the determining person. See *infra* note 54 for the definition of “determining person”.

⁵³ “Relevant recommending body” means the Federal Reserve Board, the Federal Reserve Bank of New York, the ARRC, or a successor to any of these.

⁵⁴ “Determining person” means, with respect to any contract, security, or instrument, the following persons in decreasing order of priority:

1. A person so specified.
2. A person with the authority, right, or obligation to do any of the following:
 - a. Determine the benchmark replacement that will take effect on the LIBOR replacement date.
 - b. Calculate or determine a valuation, payment, or other measurement based on a benchmark.
 - c. Notify other persons of the occurrence of a LIBOR discontinuance event, a LIBOR replacement date, or a benchmark replacement.

- Made by the earlier of the LIBOR replacement date or the latest date for selecting a benchmark replacement according to the contract, security, or instrument; and
- Used in any determination of the benchmark under or with respect to the contract, security, or instrument occurring on and after the LIBOR replacement date.

If a recommended benchmark replacement becomes the benchmark replacement for a contract, security, or instrument under the bill, then all benchmark replacement conforming changes that are applicable to the recommended benchmark replacement must become an integral part of the contract, security, or instrument by operation of law.

The selection or use of a recommended benchmark replacement as a benchmark replacement under or with respect to a contract, security, or instrument, by operation of the bill, constitutes:

- A commercially reasonable replacement for and a commercially substantial equivalent to LIBOR.
- A reasonable, comparable, or analogous term for LIBOR under or with respect to the contract, security, or instrument.
- A replacement that is based on a methodology or information that is similar or comparable to LIBOR.
- Substantial performance by any person of any right or obligation relating to or based on LIBOR under or with respect to a contract, security, or instrument.

A LIBOR discontinuance event, a LIBOR replacement date, the selection or use of a recommended benchmark replacement as a benchmark replacement, or the determination, implementation, or performance of a benchmark replacement conforming change, in each case, by operation of the bill, may not:

- Be deemed to impair or affect the right of any person to receive a payment, or affect the amount or timing of the payment, under a contract, security, or instrument;
- Have the effect of discharging or excusing performance under a contract, security, or instrument for any reason, claim, or defense, including, but not limited to, any force majeure or other provision in a contract, security, or instrument;
- Have the effect of giving any person the right to unilaterally terminate or suspend performance under a contract, security, or instrument;
- Have the effect of constituting a breach of a contract, security, or instrument; or
- Have the effect of voiding or nullifying a contract, security, or instrument.

A person is not liable for damages to any other person, and is not subject to any claim or request for equitable relief, that arises out of, or is related to the selection or use of a recommended benchmark replacement or the determination, implementation, or performance of a benchmark replacement conforming change, in each case, by operation of the bill. The selection or use of the recommended benchmark replacement or the determination, implementation, or performance of a benchmark replacement conforming change may not give rise to any claim or cause of action by any person in law or in equity.

The selection or use of a recommended benchmark replacement or the determination, implementation, or performance of a benchmark replacement conforming change, by operation of the bill, may not be deemed to:

- Be an amendment or modification of a contract, security, or instrument.
- Prejudice, impair, or affect a person's rights, interests, or obligations under or with respect to a contract, security, or instrument.

Except as otherwise provided in the bill, the bill may not be interpreted as creating a negative inference or negative presumption regarding the validity or enforceability of any of the following:

- A benchmark replacement that is not a recommended benchmark replacement.
- A spread adjustment, or method for calculating or determining a spread adjustment, which is not a recommended spread adjustment.
- A change, alteration, or modification to or with respect to a contract, security, or instrument which is not a benchmark replacement conforming change.

The bill does not alter or impair any of the following:

- A written agreement by all required parties which, retrospectively or prospectively, provides that a contract, security, or instrument is not subject to the bill without necessarily referring specifically to the statute created by the bill.
- A contract, security, or instrument that contains fallback provisions that would result in a benchmark replacement that is not based on LIBOR, including, but not limited to, the prime rate or the federal funds rate. However, after the occurrence of a LIBOR discontinuance event, any fallback provisions in a contract, security, or instrument which provide for a benchmark replacement based on or otherwise involving a poll, survey, or inquiry for quotes or information concerning interbank lending rates or any interest rate or dividend rate based on LIBOR will be void and of no force or effect.
- A contract, security, or instrument as to which a determining person does not elect to use a recommended benchmark replacement or as to which a determining person elects to use a recommended benchmark replacement before the occurrence of a LIBOR discontinuance event. However, after the occurrence of a LIBOR discontinuance event, any fallback provisions in a contract, security, or instrument which provide for a benchmark replacement based on or otherwise involving a poll, survey, or inquiry for quotes or information concerning interbank lending rates or any interest rate or dividend rate based on LIBOR will be void and of no force or effect.
- The application to a recommended benchmark replacement of any cap, floor, modifier, or spread adjustment to which LIBOR had been subject pursuant to the terms of a contract, security, or instrument.

Notwithstanding the Uniform Commercial Code⁵⁵ or any other law of this state, and except as otherwise provided in the bill, the bill applies to all contracts, securities, and instruments, including contracts with respect to commercial transactions, and may not be superseded by any other law of this state.

Section 2 provides that the provisions of the bill are remedial in nature and apply retroactively to all contracts, agreements, mortgages, deeds of trust, leases, instruments, obligations, or

⁵⁵ Chapters 670-680, F.S., comprise the Uniform Commercial Code. Section 671.101, F.S.

securities, whether representing debt or equity, and including all interests in a corporation, partnership, or limited liability company, in existence on December 31, 2021.

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

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

Impairment of Contracts and Due Process

Both the Florida and the United States Constitutions prohibit the state from passing a law impairing contractual obligations.⁵⁶ However, the Legislature may provide that a non-criminal law, including one that affects existing contractual obligations, applies retroactively in certain situations.⁵⁷ In determining whether a law may be applied retroactively, courts first determine whether the law is procedural, remedial, or substantive in nature.⁵⁸ A purely procedural or remedial law may apply retroactively without offending the Constitution, but a substantive law generally may not apply retroactively absent clear legislative intent to the contrary.⁵⁹ However, even where the Legislature has expressly stated that a law will have retroactive application, a court may reject that application if the law impairs a vested right, creates a new obligation, or imposes a new penalty.⁶⁰ Further, where a law is designed to serve a remedial purpose, a court may decide not to apply the law retroactively where doing so “would attach new legal consequences to events completed before its enactment.”⁶¹

⁵⁶ U.S. Const. art. I, s. 10; Art. I, s. 10, Fla. Const.

⁵⁷ U.S. Const. art. I, ss. 9 and 10; Art. 1, s. 10, Fla. Const.

⁵⁸ A procedural law merely establishes the means and methods for applying or enforcing existing duties or rights. A remedial law confers or changes a remedy, i.e., the means employed in enforcing an existing right or in redressing an injury. A substantive law creates, alters, or impairs existing substantive rights. *Windom v. State*, 656 So. 2d 432 (Fla. 1995); *St. John's Village I, Ltd. v. Dept. of State*, 497 So. 2d 990 (Fla. 5th DCA 1986); *McMillen v. State Dept. of Revenue*, 74 So. 2d 1234 (Fla. 1st DCA 1999).

⁵⁹ *State Farm Mutual Automobile Ins. Co. v. Laforet*, 658 So. 2d 55 (Fla. 1995).

⁶⁰ *Menendez v. Progressive Exp. Ins. Co., Inc.*, 35 So. 3d 873 (Fla. 2010).

⁶¹ *L. Ross, Inc. v. R.W. Roberts Const. Co.*, 481 So. 2d 484 (Fla. 1986).

Moreover, both the Florida and United States Constitutions prohibit the taking of life, liberty, or property without due process of law.⁶² The right to contract, as long as no fraud or deception is involved and the contract is otherwise legal, is both a liberty and a property right subject to due process protections, and the impairment of contracts may, in certain instances, be viewed as the taking of property without due process.⁶³

For certain contracts and instruments, the bill provides for a transition to SOFR as the replacement rate for LIBOR, provides for conforming changes to be made to the contract or instrument, voids fallback provisions that are based on LIBOR, and provides for construction of rights and duties under contracts affected by the bill. Additionally, the bill contains a statement of legislative intent indicating that the bill is remedial in nature and applies retroactively to all contracts, agreements, mortgages, deeds of trust, leases, instruments, obligations, or securities, whether representing debt or equity, and including all interests in a corporation, partnership, or limited liability company, in existence on December 31, 2021. Whether the Legislature's retroactive modification of such contracts and instruments is procedural, remedial, or substantive, and whether such modification implicates the constitutional right to contract or the constitutional right to due process, is for the courts to decide.

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 the statute to be valid.⁶⁴ 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.”⁶⁵ Conversely, a law that affects substantive rights by creating substantive new rights or imposing new legal burdens is presumed to apply prospectively.⁶⁶

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.”⁶⁷ The

⁶² U.S. Const. amends. V and XIV; Art. I, s. 21, Fla. Const.

⁶³ *Miles v. City of Edgewater Police Dept.*, 190 So. 3d 171 (Fla. 1st DCA 2016); see, e.g., *Griffin v. Sharpe*, 65 So. 2d 751 (Fla. 1953) (finding that a statute removing a specific deed restriction's expiration date both impaired contracts and constituted a taking of private property without due process).

⁶⁴ *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).

⁶⁵ *Love* at 181, citing *Arrow Air, Inc. v. Walsh*, 645 So.2d 422, 424 (Fla. 1994).

⁶⁶ *Arrow Air, Inc.*, at 424.

⁶⁷ *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).

Court further acknowledged that their previous pronouncements regarding the retroactivity of procedural laws have been less than precise and have been unclear.⁶⁸

Courts, however, have invalidated the retroactive application of a statute if the statute impairs vested rights, creates new obligations, or imposes new penalties.⁶⁹ 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.⁷⁰

Access to Courts

In *Kluger v. White*,⁷¹ the Florida Supreme Court evaluated to what extent the Legislature may alter a civil cause of action. The Court stated that it would not completely prohibit the Legislature from altering a cause of action, but neither would it allow the Legislature "to destroy a traditional and long-standing cause of action upon mere legislative whim" The takeaway from *Kluger* and other relevant case law is that the Legislature may:

- Reduce the right to bring a cause of action as long as the right is not entirely abolished.⁷²
- Abolish a cause of action that is not "traditional and long-standing" – that is, a cause of action that did not exist at common law, and that did not exist in statute before the adoption of the Florida Constitution's Declaration of Rights.⁷³
- Abolish a cause of action if the Legislature either:
 - Provides a reasonable commensurate benefit in exchange;⁷⁴ or
 - Shows an "overpowering public necessity for the abolishment of such right, and no alternative method of meeting such public necessity can be shown."⁷⁵

The bill precludes liability, a claim, or a cause of action arising out of or related to the selection or use of a recommended benchmark replacement or the determination, implementation, or performance of a benchmark replacement conforming change. The bill also provides a statement demonstrating the overpowering public necessity for the bill and a finding that there are no alternative means to meet this public necessity.

⁶⁸ *Love* at 184.

⁶⁹ *R.A.M. of South Florida, Inc. v. WCI Communities, Inc.*, 869 So. 2d 1210 (Fla. 2004).

⁷⁰ *Ziccardi v. Strother*, 570 So. 2d 1319 (Fla. 1990).

⁷¹ *Kluger*, 281 So. 2d 1 (Fla. 1973).

⁷² See *Achord v. Osceola Farms Co.*, 52 So. 3d 699 (Fla. 2010).

⁷³ See *Anderson v. Gannett Comp.*, 994 So. 2d 1048 (Fla. 2008) (false light was not actionable under the common law); *McPhail v. Jenkins*, 382 So. 2d 1329 (Fla. 1980) (wrongful death was not actionable under the common law); see also *Kluger*, 281 So. 2d at 4 ("We hold, therefore, that where a right of access to the courts for redress for a particular injury has been provided by statutory law predating the adoption of the Declaration of Rights of the Constitution of the State of Florida, or where such right has become a part of the common law of the State . . . the Legislature is without power to abolish such a right without providing a reasonable alternative . . . unless the Legislature can show an overpowering public necessity . . .").

⁷⁴ *Kluger*, 281 So. 2d at 4; see *Univ. of Miami v. Echarte*, 618 So. 2d 189 (Fla. 1993) (upholding statutory cap on medical malpractice damages because the Legislature provided arbitration, which is a "commensurate benefit" for a claimant); *accord Lasky v. State Farm Ins. Co.*, 296 So. 2d 9 (Fla. 1974); but see *Smith v. Dept. of Ins.*, 507 So. 2d 1080 (Fla. 1992) (striking down noneconomic cap on damages, which, although not wholly abolishing a cause of action, did not provide a commensurate benefit).

⁷⁵ *Kluger*, 281 So. 2d at 4-5 (noting that in 1945, the Legislature abolished the right to sue for several causes of action, but successfully demonstrated "the public necessity required for the total abolition of a right to sue") (citing *Rotwein v. Gersten*, 36 So. 2d 419 (Fla. 1948); see *Echarte*, 618 So. 2d at 195 ("Even if the medical malpractice arbitration statutes at issue did not provide a commensurate benefit, we would find that the statutes satisfy the second prong of *Kluger* which requires a legislative finding that an 'overpowering public necessity' exists, and further that 'no alternative method of meeting such public necessity can be shown'").

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

None.

B. Private Sector Impact:

This bill changes terms of certain contracts by the effect of law. This may make the effectuation of these contracts more efficient, as the LIBOR benchmark is being discontinued.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 687.15 of the Florida Statutes.

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

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

CS by Commerce and Tourism on February 7, 2022:

- Clarifies the definition of a “benchmark replacement conforming change” to allow, but not require, additional changes to a contract, security, or instrument if the changes selected or recommended by the relevant recommending body are insufficient to allow for the administration and calculation of the recommended benchmark replacement; and
- Replaces the undefined term “recommended replacement benchmark” with the defined “recommended benchmark replacement.”

B. Amendments:

None.



235134

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/08/2022	.	
	.	
	.	
	.	

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

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Section 687.15, Florida Statutes, is created to
read:

687.15 Benchmark replacements for the London Interbank
Offered Rate.—

(1) The Legislature finds that the discontinuation of the
London Interbank Offered Rate (LIBOR) as a viable interest rate



235134

11 threatens the continued viability of certain contracts,
12 securities, and instruments and the rights of the parties to
13 those contracts, securities, or instruments. Furthermore, the
14 threat of unknown and potentially unbounded liability and the
15 viability of contracts, securities, and instruments threatens
16 the state's economy and has created an overpowering public
17 necessity to provide an immediate and remedial legislative
18 solution. Therefore, the Legislature intends for parties to
19 certain contracts, securities, or instruments, as provided in
20 this section, to enjoy heightened legal protections as a result
21 of the discontinuation of LIBOR. The Legislature also finds that
22 there are no alternative means to meet this public necessity.
23 The Legislature finds that the public interest as a whole is
24 best served by providing certainty to these contracts,
25 securities, and instruments and the parties thereto, so that
26 these contracts, securities, and instruments may remain viable
27 and continue to be enforceable in the state.

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

29 (a) "Benchmark" means an index of interest rates or
30 dividend rates that is used, in whole or in part, as the basis
31 of, or as a reference for, calculating or determining a
32 valuation, payment, or other measurement under or with respect
33 to a contract, security, or instrument.

34 (b) "Benchmark replacement" means a benchmark, an interest
35 rate, or a dividend rate that may or may not be based, in whole
36 or in part, on a prior setting of LIBOR, to replace LIBOR or any
37 interest rate or dividend rate based on LIBOR, whether on a
38 temporary, permanent, or indefinite basis, under or with respect
39 to a contract, security, or instrument.



235134

40 (c) "Benchmark replacement conforming change" means, with
41 respect to any type of contract, security, or instrument, a
42 technical, administrative, or operational change, alteration, or
43 modification that is associated with and reasonably necessary to
44 the use, adoption, calculation, or implementation of a
45 recommended benchmark replacement and that has been selected or
46 recommended by a relevant recommending body. However, if, in the
47 reasonable judgment of a calculating person, the change,
48 alteration, or modification selected or recommended by a
49 relevant recommending body does not apply to the contract,
50 security, or instrument or is insufficient to allow
51 administration and calculation of the recommended benchmark
52 replacement, the benchmark replacement conforming change may
53 include other changes, alterations, or modifications that, in
54 the reasonable judgment of the calculating person:

55 1. Are necessary to allow administration and calculation of
56 the recommended benchmark replacement under or with respect to
57 the contract, security, or instrument in a manner consistent
58 with market practice for substantially similar contracts,
59 securities, or instruments and, to the extent practicable, the
60 manner in which the contract, security, or instrument was
61 administered immediately before the LIBOR replacement date.

62 2. Would not result in a disposition of the contract,
63 security, or instrument for federal income tax purposes.

64 (d) "Calculating person" means, with respect to any
65 contract, security, or instrument, a person responsible for
66 calculating or determining a valuation, payment, or other
67 measurement based on a benchmark. This person may be the
68 determining person.



235134

69 (e) "Contract, security, or instrument" includes, without
70 limitation, any contract, agreement, mortgage, deed of trust,
71 lease, instrument, obligation, or security, whether representing
72 debt or equity, and including any interest in a corporation,
73 partnership, or limited liability company.

74 (f) "Determining person" means, with respect to any
75 contract, security, or instrument, the following persons in
76 decreasing order of priority:

77 1. A person so specified.

78 2. A person with the authority, right, or obligation to do
79 any of the following:

80 a. Determine the benchmark replacement that will take
81 effect on the LIBOR replacement date.

82 b. Calculate or determine a valuation, payment, or other
83 measurement based on a benchmark.

84 c. Notify other persons of the occurrence of a LIBOR
85 discontinuance event, a LIBOR replacement date, or a benchmark
86 replacement.

87 (g) "Fallback provision" means a term in a contract,
88 security, or instrument which sets forth a methodology or
89 procedure for determining a benchmark replacement, including any
90 term relating to the date on which the benchmark replacement
91 becomes effective, without regard to whether a benchmark
92 replacement can be determined in accordance with the methodology
93 or procedure.

94 (h) "LIBOR" means, for purposes of the application of this
95 section to any particular contract, security, or instrument, the
96 United States dollar LIBOR, formerly known as the London
97 Interbank Offered Rate, as administered by ICE Benchmark



235134

98 Administration, or any predecessor or successor thereof, or any
99 tenor thereof, as applicable, that is used in making any
100 calculation or determination of benchmark rates.

101 (i)1. "LIBOR discontinuance event" means the earliest to
102 occur of any of the following:

103 a. A public statement or publication of information by, or
104 on behalf of, the administrator of LIBOR announcing that the
105 administrator has ceased or will cease to provide LIBOR
106 permanently or indefinitely, if, at the time of the statement or
107 publication, there is no successor administrator that will
108 continue to provide LIBOR.

109 b. A public statement or publication of information by the
110 regulatory supervisor for the administrator of LIBOR, the
111 Federal Reserve System, an insolvency official with jurisdiction
112 over the administrator of LIBOR, a resolution authority with
113 jurisdiction over the administrator of LIBOR, or a court or an
114 entity with similar insolvency or resolution authority over the
115 administrator of LIBOR, announcing that the administrator of
116 LIBOR has ceased or will cease to provide LIBOR permanently or
117 indefinitely, if, at the time of the statement or publication,
118 there is no successor administrator that will continue to
119 provide LIBOR.

120 c. A public statement or publication of information by the
121 regulatory supervisor for the administrator of LIBOR announcing
122 that LIBOR is no longer representative.

123 2. A public statement or publication of information that
124 affects one or more tenors of LIBOR does not constitute a LIBOR
125 discontinuance event with respect to a contract, security, or
126 instrument that:



235134

127 a. Provides for only one tenor of LIBOR, if the contract,
128 security, or instrument requires interpolation and the tenor can
129 be interpolated from LIBOR tenors that are not so affected; or

130 b. Allows a party to choose from more than one tenor of
131 LIBOR and any of the tenors is not so affected or, if the
132 contract, security, or instrument requires interpolation, can be
133 interpolated from LIBOR tenors that are not so affected.

134 (j)1. "LIBOR replacement date" means:

135 a. In the case of a LIBOR discontinuance event described in
136 sub-subparagraph (i)1.a. or sub-subparagraph (i)1.b., the later
137 of:

138 (I) The date of the public statement or publication of
139 information referenced in sub-subparagraph (i)1.a. or sub-
140 paragraph (i)1.b.; or

141 (II) The date on which the administrator of LIBOR
142 permanently or indefinitely ceases to provide LIBOR.

143 b. In the case of a LIBOR discontinuance event described in
144 sub-subparagraph (i)1.c., the date of the public statement or
145 publication of information referenced in sub-subparagraph
146 (i)1.c.

147 2. A date that affects one or more tenors of LIBOR does not
148 constitute a LIBOR replacement date with respect to a contract,
149 security, or instrument that:

150 a. Provides for only one tenor of LIBOR, if the contract,
151 security, or instrument requires interpolation and the tenor can
152 be interpolated from LIBOR tenors that are not so affected; or

153 b. Allows a party to choose from more than one tenor of
154 LIBOR and any of the tenors is not so affected or, if the
155 contract, security, or instrument requires interpolation, can be



235134

156 interpolated from LIBOR tenors that are not so affected.

157 (k) "Recommended benchmark replacement" means, with respect
158 to any particular type of contract, security, or instrument, a
159 benchmark replacement based on SOFR that must include any
160 recommended spread adjustment and any benchmark replacement
161 conforming change that have been selected or recommended by a
162 relevant recommending body with respect to the type of contract,
163 security, or instrument.

164 (l) "Recommended spread adjustment" means a spread
165 adjustment, or method for calculating or determining the spread
166 adjustment, which has been selected or recommended by a relevant
167 recommending body for a recommended benchmark replacement for a
168 particular type of contract, security, or instrument and for a
169 particular term to account for the effects of the transition or
170 change from LIBOR to a recommended benchmark replacement. This
171 term may be a positive or negative value or zero.

172 (m) "Relevant recommending body" means the Federal Reserve
173 Board, the Federal Reserve Bank of New York, the Alternative
174 Reference Rates Committee, or a successor to any of them.

175 (n) "SOFR" means, with respect to any day, the secured
176 overnight financing rate published for the day by the Federal
177 Reserve Bank of New York as the administrator of the benchmark,
178 or a successor administrator, on the Federal Reserve Bank of New
179 York's website.

180 (3) On the LIBOR replacement date, the recommended
181 benchmark replacement, by operation of law, shall be the
182 benchmark replacement for a contract, security, or instrument
183 that uses LIBOR as a benchmark and that:

184 (a) Does not contain a fallback provision; or



235134

185 (b) Contains fallback provisions resulting in a benchmark
186 replacement, other than a recommended benchmark replacement,
187 that is based in any way on a LIBOR value.

188 (4) After the occurrence of a LIBOR discontinuance event,
189 any fallback provisions in a contract, security, or instrument
190 which provide for a benchmark replacement based on or otherwise
191 involving a poll, survey, or inquiry for quotes or information
192 concerning interbank lending rates or any interest rate or
193 dividend rate based on LIBOR shall be void and of no force or
194 effect.

195 (5) (a) A determining person may, but is not required to,
196 select the recommended benchmark replacement as the benchmark
197 replacement after the occurrence of a LIBOR discontinuance
198 event. The selection of the recommended benchmark replacement
199 must be:

200 1. Irrevocable;

201 2. Made by the earlier of the LIBOR replacement date or the
202 latest date for selecting a benchmark replacement according to
203 the contract, security, or instrument; and

204 3. Used in any determination of the benchmark under or with
205 respect to the contract, security, or instrument occurring on
206 and after the LIBOR replacement date.

207 (b) Paragraph (a) applies to a contract, security, or
208 instrument that uses LIBOR as a benchmark and that contains
209 fallback provisions allowing or requiring the selection of a
210 benchmark replacement that is:

211 1. Based in any way on a LIBOR value; or

212 2. The substantive equivalent of paragraph (7) (a),
213 paragraph (7) (b), or paragraph (7) (c).



235134

214 (6) If a recommended benchmark replacement becomes the
215 benchmark replacement for a contract, security, or instrument
216 under this section, then all benchmark replacement conforming
217 changes that are applicable to the recommended benchmark
218 replacement must become an integral part of the contract,
219 security, or instrument by operation of law.

220 (7) The selection or use of a recommended benchmark
221 replacement as a benchmark replacement under or with respect to
222 a contract, security, or instrument by operation of this section
223 constitutes all of the following:

224 (a) A commercially reasonable replacement for and a
225 commercially substantial equivalent to LIBOR.

226 (b) A reasonable, comparable, or analogous term for LIBOR
227 under or with respect to the contract, security, or instrument.

228 (c) A replacement that is based on a methodology or
229 information that is similar or comparable to LIBOR.

230 (d) Substantial performance by any person of any right or
231 obligation relating to or based on LIBOR under or with respect
232 to a contract, security, or instrument.

233 (8) A LIBOR discontinuance event, a LIBOR replacement date,
234 the selection or use of a recommended benchmark replacement as a
235 benchmark replacement, or the determination, implementation, or
236 performance of a benchmark replacement conforming change, in
237 each case, by operation of this section, may not:

238 (a) Be deemed to impair or affect the right of any person
239 to receive a payment, or affect the amount or timing of the
240 payment, under a contract, security, or instrument;

241 (b) Have the effect of discharging or excusing performance
242 under a contract, security, or instrument for any reason, claim,



235134

243 or defense, including, but not limited to, any force majeure or
244 other provision in a contract, security, or instrument;

245 (c) Have the effect of giving any person the right to
246 unilaterally terminate or suspend performance under a contract,
247 security, or instrument;

248 (d) Have the effect of constituting a breach of a contract,
249 security, or instrument; or

250 (e) Have the effect of voiding or nullifying a contract,
251 security, or instrument.

252 (9) A person is not liable for damages to any other person,
253 and is not subject to any claim or request for equitable relief,
254 arising out of or related to the selection or use of a
255 recommended benchmark replacement or the determination,
256 implementation, or performance of a benchmark replacement
257 conforming change, in each case, by operation of this section.

258 The selection or use of the recommended benchmark replacement or
259 the determination, implementation, or performance of a benchmark
260 replacement conforming change may not give rise to any claim or
261 cause of action by any person in law or in equity.

262 (10) The selection or use of a recommended benchmark
263 replacement or the determination, implementation, or performance
264 of a benchmark replacement conforming change, by operation of
265 this section, may not be deemed to:

266 (a) Be an amendment or modification of a contract,
267 security, or instrument.

268 (b) Prejudice, impair, or affect a person's rights,
269 interests, or obligations under or with respect to a contract,
270 security, or instrument.

271 (11) Except as provided in subsection (3) or subsection



235134

272 (5), this section may not be interpreted as creating a negative
273 inference or negative presumption regarding the validity or
274 enforceability of any of the following:

275 (a) A benchmark replacement that is not a recommended
276 benchmark replacement.

277 (b) A spread adjustment, or method for calculating or
278 determining a spread adjustment, which is not a recommended
279 spread adjustment.

280 (c) A change, alteration, or modification to or with
281 respect to a contract, security, or instrument which is not a
282 benchmark replacement conforming change.

283 (12) This section does not alter or impair any of the
284 following:

285 (a) A written agreement by all requisite parties which,
286 retrospectively or prospectively, provides that a contract,
287 security, or instrument is not subject to this section without
288 necessarily referring specifically to this section. As used in
289 this paragraph, the term "requisite parties" means all parties
290 required to amend the terms and provisions of a contract,
291 security, or instrument that would otherwise be altered or
292 affected by this section.

293 (b) A contract, security, or instrument that contains
294 fallback provisions that would result in a benchmark replacement
295 that is not based on LIBOR, including, but not limited to, the
296 prime rate or the federal funds rate. However, the contract,
297 security, or instrument is subject to subsection (4).

298 (c) A contract, security, or instrument subject to
299 subsection (5) as to which a determining person does not elect
300 to use a recommended benchmark replacement or as to which a



301 determining person elects to use a recommended benchmark
302 replacement before the occurrence of a LIBOR discontinuance
303 event. However, the contract, security, or instrument is subject
304 to subsection (4).

305 (d) The application to a recommended benchmark replacement
306 of any cap, floor, modifier, or spread adjustment to which LIBOR
307 had been subject pursuant to the terms of a contract, security,
308 or instrument.

309 (13) Notwithstanding the Uniform Commercial Code or any
310 other law of this state, and except as otherwise provided in
311 this section, this section applies to all contracts, securities,
312 and instruments, including contracts with respect to commercial
313 transactions, and may not be superseded by any other law of this
314 state.

315 Section 2. This act is remedial in nature and applies
316 retroactively to all contracts, agreements, mortgages, deeds of
317 trust, leases, instruments, obligations, or securities, whether
318 representing debt or equity, and including all interests in a
319 corporation, partnership, or limited liability company, in
320 existence on December 31, 2021.

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

322
323 ===== T I T L E A M E N D M E N T =====

324 And the title is amended as follows:

325 Delete everything before the enacting clause
326 and insert:

327 A bill to be entitled
328 An act relating to benchmark replacements for London
329 Interbank Offered Rate; creating s. 687.15, F.S.;



235134

330 providing legislative findings and intent and a
331 statement of public interest; providing definitions;
332 requiring that recommended benchmark replacements
333 selected or recommended by specified persons be
334 benchmark replacements on the United States dollar
335 London Interbank Offered Rate (LIBOR) replacement date
336 for certain contracts, securities, and instruments;
337 requiring certain fallback provisions in contracts,
338 securities, and instruments providing specified
339 benchmark replacements to be disregarded and void;
340 authorizing specified persons to select benchmark
341 replacements under certain circumstances; providing
342 requirements for such selection; providing
343 applicability; requiring benchmark replacement
344 conforming changes to become an integral part of
345 contracts, securities, and instruments under certain
346 circumstances; providing construction; providing that
347 a person is not liable for damages and is not subject
348 to claims and requests for equitable relief under
349 certain circumstances; providing applicability;
350 prohibiting other laws from superseding specified
351 provisions; providing that the act is remedial in
352 nature; providing retroactive applicability; providing
353 an effective date.

By Senator Gruters

23-01121-22

20221246__

1 A bill to be entitled
 2 An act relating to benchmark replacements for London
 3 Interbank Offered Rate; creating s. 687.15, F.S.;
 4 providing legislative findings and intent and a
 5 statement of public interest; defining terms;
 6 requiring that recommended benchmark replacements
 7 selected or recommended by specified persons be
 8 benchmark replacements on the United States dollar
 9 London Interbank Offered Rate (LIBOR) replacement date
 10 for certain contracts, securities, and instruments;
 11 requiring that certain fallback provisions in
 12 contracts, securities, and instruments providing
 13 specified benchmark replacements be disregarded and
 14 void; authorizing specified persons to select
 15 benchmark replacements under certain circumstances;
 16 providing requirements for such selection; providing
 17 applicability; requiring that benchmark replacement
 18 conforming changes become an integral part of
 19 contracts, securities, and instruments under certain
 20 circumstances; providing requirements for selections
 21 or uses of recommended benchmark replacements as
 22 benchmark replacements; providing construction;
 23 providing that a person is not liable for damages and
 24 is not subject to claims and requests for equitable
 25 relief under certain circumstances; providing
 26 applicability; prohibiting other laws from superseding
 27 specified provisions; providing that the act is
 28 remedial in nature; providing retroactive
 29 applicability; providing an effective date.

Page 1 of 13

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

23-01121-22

20221246__

30
 31 Be It Enacted by the Legislature of the State of Florida:
 32
 33 Section 1. Section 687.15, Florida Statutes, is created to
 34 read:
 35 687.15 Benchmark replacements for the London Interbank
 36 Offered Rate.—
 37 (1) The Legislature finds that the discontinuation of the
 38 London Interbank Offered Rate (LIBOR) as a viable interest rate
 39 threatens the continued viability of certain contracts,
 40 securities, and instruments and the rights of the parties to
 41 those contracts, securities, or instruments. Furthermore, the
 42 threat of unknown and potentially unbounded liability and the
 43 viability of contracts, securities, and instruments threatens
 44 the state's economy and has created an overpowering public
 45 necessity to provide an immediate and remedial legislative
 46 solution. Therefore, the Legislature intends for parties to
 47 certain contracts, securities, or instruments, as provided in
 48 this section, to enjoy heightened legal protections as a result
 49 of the discontinuation of LIBOR. The Legislature also finds that
 50 there are no alternative means to meet this public necessity.
 51 The Legislature finds that the public interest as a whole is
 52 best served by providing certainty to these contracts,
 53 securities, and instruments and the parties thereto, so that
 54 these contracts, securities, and instruments may remain viable
 55 and continue to be enforceable in the state.
 56 (2) As used in this section, the term:
 57 (a) "Benchmark" means an index of interest rates or
 58 dividend rates that is used, in whole or in part, as the basis

Page 2 of 13

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

23-01121-22 20221246__

59 of, or as a reference for, calculating or determining a
 60 valuation, payment, or other measurement under or in respect of
 61 a contract, security, or instrument.

62 (b) "Benchmark replacement" means a benchmark, an interest
 63 rate, or a dividend rate that may or may not be based, in whole
 64 or in part, on a prior setting of LIBOR, to replace LIBOR or any
 65 interest rate or dividend rate based on LIBOR, whether on a
 66 temporary, permanent, or indefinite basis, under or in respect
 67 of a contract, security, or instrument.

68 (c) "Benchmark replacement conforming change" means, with
 69 respect to any type of contract, security, or instrument, a
 70 technical, administrative, or operational change, alteration, or
 71 modification that is associated with and reasonably necessary to
 72 the use, adoption, calculation, or implementation of a
 73 recommended benchmark replacement and that meets the following
 74 conditions:

75 1. The change, alteration, or modification has been
 76 selected or recommended by a relevant recommending body.

77 2. If, in the reasonable judgment of the calculating
 78 person, the change, alteration, or modification selected or
 79 recommended under subparagraph 1. does not apply to the
 80 contract, security, or instrument or is insufficient to allow
 81 administration and calculation of the recommended benchmark
 82 replacement, the benchmark replacement conforming change must
 83 include other changes, alterations, or modifications that, in
 84 the reasonable judgment of the calculating person:

85 a. Are necessary to allow administration and calculation of
 86 the recommended benchmark replacement under or in respect of the
 87 contract, security, or instrument in a manner consistent with

23-01121-22 20221246__

88 market practice for substantially similar contracts, securities,
 89 or instruments and, to the extent practicable, the manner in
 90 which the contract, security, or instrument was administered
 91 immediately before the LIBOR replacement date; and

92 b. Would not result in a disposition of the contract,
 93 security, or instrument for federal income tax purposes.

94 (d) "Calculating person" means, with respect to any
 95 contract, security, or instrument, a person responsible for
 96 calculating or determining a valuation, payment, or other
 97 measurement based on a benchmark. This person may be the
 98 determining person.

99 (e) "Contract, security, or instrument" includes, without
 100 limitation, any contract, agreement, mortgage, deed of trust,
 101 lease, instrument, obligation, or security, whether representing
 102 debt or equity, and including any interest in a corporation,
 103 partnership, or limited liability company.

104 (f) "Determining person" means, with respect to any
 105 contract, security, or instrument, the following persons in
 106 decreasing order of priority:

107 1. A person so specified.

108 2. A person with the authority, right, or obligation to do
 109 any of the following:

110 a. Determine the benchmark replacement that will take
 111 effect on the LIBOR replacement date.

112 b. Calculate or determine a valuation, payment, or other
 113 measurement based on a benchmark.

114 c. Notify other persons of the occurrence of a LIBOR
 115 discontinuance event, a LIBOR replacement date, or a benchmark
 116 replacement.

23-01121-22

20221246__

117 (g) "Fallback provision" means a term in a contract,
 118 security, or instrument which sets forth a methodology or
 119 procedure for determining a benchmark replacement, including any
 120 term relating to the date on which the benchmark replacement
 121 becomes effective, without regard to whether a benchmark
 122 replacement can be determined in accordance with the methodology
 123 or procedure.

124 (h) "LIBOR" means, for purposes of the application of this
 125 section to any particular contract, security, or instrument, the
 126 United States dollar LIBOR, formerly known as the London
 127 Interbank Offered Rate, as administered by ICE Benchmark
 128 Administration, or any predecessor or successor thereof, or any
 129 tenor thereof, as applicable, that is used in making any
 130 calculation or determination of benchmark rates.

131 (i)1. "LIBOR discontinuance event" means the earliest to
 132 occur of any of the following:

133 a. A public statement or publication of information by, or
 134 on behalf of, the administrator of LIBOR announcing that the
 135 administrator has ceased or will cease to provide LIBOR
 136 permanently or indefinitely, if, at the time of the statement or
 137 publication, there is no successor administrator that will
 138 continue to provide LIBOR.

139 b. A public statement or publication of information by the
 140 regulatory supervisor for the administrator of LIBOR, the
 141 Federal Reserve System, an insolvency official with jurisdiction
 142 over the administrator of LIBOR, a resolution authority with
 143 jurisdiction over the administrator of LIBOR, or a court or an
 144 entity with similar insolvency or resolution authority over the
 145 administrator of LIBOR, announcing that the administrator of

Page 5 of 13

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

23-01121-22

20221246__

146 LIBOR has ceased or will cease to provide LIBOR permanently or
 147 indefinitely, if, at the time of the statement or publication,
 148 there is no successor administrator that will continue to
 149 provide LIBOR.

150 c. A public statement or publication of information by the
 151 regulatory supervisor for the administrator of LIBOR announcing
 152 that LIBOR is no longer representative.

153 2. A public statement or publication of information that
 154 affects one or more tenors of LIBOR does not constitute a LIBOR
 155 discontinuance event with respect to a contract, security, or
 156 instrument that:

157 a. Provides for only one tenor of LIBOR, if the contract,
 158 security, or instrument requires interpolation and the tenor can
 159 be interpolated from LIBOR tenors that are not so affected; or

160 b. Allows a party to choose from more than one tenor of
 161 LIBOR and any of the tenors is not so affected or, if the
 162 contract, security, or instrument requires interpolation, can be
 163 interpolated from LIBOR tenors that are not so affected.

164 (j)1. "LIBOR replacement date" means:

165 a. In the case of a LIBOR discontinuance event described in
 166 sub-subparagraph (i)1.a. or sub-subparagraph (i)1.b., the later
 167 of:

168 (I) The date of the public statement or publication of
 169 information referenced in sub-subparagraph (i)1.a. or sub-
 170 paragraph (i)1.b.; or

171 (II) The date on which the administrator of LIBOR
 172 permanently or indefinitely ceases to provide LIBOR.

173 b. In the case of a LIBOR discontinuance event described in
 174 sub-subparagraph (i)1.c., the date of the public statement or

Page 6 of 13

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

23-01121-22 20221246__

175 publication of information referenced in sub-subparagraph
 176 (i)1.c.
 177 2. A date that affects one or more tenors of LIBOR does not
 178 constitute a LIBOR replacement date with respect to a contract,
 179 security, or instrument that:
 180 a. Provides for only one tenor of LIBOR, if the contract,
 181 security, or instrument requires interpolation and the tenor can
 182 be interpolated from LIBOR tenors that are not so affected; or
 183 b. Allows a party to choose from more than one tenor of
 184 LIBOR and any of the tenors is not so affected or, if the
 185 contract, security, or instrument requires interpolation, can be
 186 interpolated from LIBOR tenors that are not so affected.
 187 (k) "Recommended benchmark replacement" means, with respect
 188 to any particular type of contract, security, or instrument, a
 189 benchmark replacement based on SOFR that must include any
 190 recommended spread adjustment and any benchmark replacement
 191 conforming change that have been selected or recommended by a
 192 relevant recommending body with respect to the type of contract,
 193 security, or instrument.
 194 (l) "Recommended spread adjustment" means a spread
 195 adjustment, or method for calculating or determining the spread
 196 adjustment, which has been selected or recommended by a relevant
 197 recommending body for a recommended benchmark replacement for a
 198 particular type of contract, security, or instrument and for a
 199 particular term to account for the effects of the transition or
 200 change from LIBOR to a recommended benchmark replacement. This
 201 term may be a positive or negative value or zero.
 202 (m) "Relevant recommending body" means the Federal Reserve
 203 Board, the Federal Reserve Bank of New York, the Alternative

23-01121-22 20221246__

204 Reference Rates Committee, or a successor to any of them.
 205 (n) "SOFR" means, with respect to any day, the secured
 206 overnight financing rate published for the day by the Federal
 207 Reserve Bank of New York as the administrator of the benchmark,
 208 or a successor administrator, on the Federal Reserve Bank of New
 209 York's website.
 210 (3) On the LIBOR replacement date, the recommended
 211 benchmark replacement, by operation of law, shall be the
 212 benchmark replacement for a contract, security, or instrument
 213 that uses LIBOR as a benchmark and that:
 214 (a) Does not contain a fallback provision; or
 215 (b) Contains fallback provisions resulting in a benchmark
 216 replacement, other than a recommended benchmark replacement,
 217 that is based in any way on a LIBOR value.
 218 (4) After the occurrence of a LIBOR discontinuance event,
 219 any fallback provisions in a contract, security, or instrument
 220 which provide for a benchmark replacement based on or otherwise
 221 involving a poll, survey, or inquiry for quotes or information
 222 concerning interbank lending rates or any interest rate or
 223 dividend rate based on LIBOR shall be void and of no force or
 224 effect.
 225 (5) (a) A determining person may, but is not required to,
 226 select the recommended benchmark replacement as the benchmark
 227 replacement after the occurrence of a LIBOR discontinuance
 228 event. The selection of the recommended benchmark replacement
 229 must be:
 230 1. Irrevocable;
 231 2. Made by the earlier of the LIBOR replacement date or the
 232 latest date for selecting a benchmark replacement according to

23-01121-22

20221246__

233 the contract, security, or instrument; and
 234 3. Used in any determination of the benchmark under or with
 235 respect to the contract, security, or instrument occurring on
 236 and after the LIBOR replacement date.
 237 (b) Paragraph (a) applies to a contract, security, or
 238 instrument that uses LIBOR as a benchmark and that contains
 239 fallback provisions allowing or requiring the selection of a
 240 benchmark replacement that is:
 241 1. Based in any way on a LIBOR value; or
 242 2. The substantive equivalent of paragraph (7) (a),
 243 paragraph (7) (b), or paragraph (7) (c).
 244 (6) If a recommended benchmark replacement becomes the
 245 benchmark replacement for a contract, security, or instrument
 246 under this section, then all benchmark replacement conforming
 247 changes that are applicable to the recommended benchmark
 248 replacement must become an integral part of the contract,
 249 security, or instrument by operation of law.
 250 (7) The selection or use of a recommended benchmark
 251 replacement as a benchmark replacement under or in respect of a
 252 contract, security, or instrument by operation of this section
 253 must constitute all of the following:
 254 (a) A commercially reasonable replacement for and a
 255 commercially substantial equivalent to LIBOR.
 256 (b) A reasonable, comparable, or analogous term for LIBOR
 257 under or in respect of the contract, security, or instrument.
 258 (c) A replacement that is based on a methodology or
 259 information that is similar or comparable to LIBOR.
 260 (d) Substantial performance by any person of any right or
 261 obligation relating to or based on LIBOR under or in respect of

Page 9 of 13

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

23-01121-22

20221246__

262 a contract, security, or instrument.
 263 (8) A LIBOR discontinuance event, a LIBOR replacement date,
 264 the selection or use of a recommended benchmark replacement as a
 265 benchmark replacement, or the determination, implementation, or
 266 performance of a benchmark replacement conforming change, in
 267 each case, by operation of this section, may not:
 268 (a) Be deemed to impair or affect the right of any person
 269 to receive a payment, or affect the amount or timing of the
 270 payment, under a contract, security, or instrument;
 271 (b) Have the effect of discharging or excusing performance
 272 under a contract, security, or instrument for any reason, claim,
 273 or defense, including, but not limited to, any force majeure or
 274 other provision in a contract, security, or instrument;
 275 (c) Have the effect of giving any person the right to
 276 unilaterally terminate or suspend performance under a contract,
 277 security, or instrument;
 278 (d) Have the effect of constituting a breach of a contract,
 279 security, or instrument; or
 280 (e) Have the effect of voiding or nullifying a contract,
 281 security, or instrument.
 282 (9) A person is not liable for damages to any other person,
 283 and is not subject to any claim or request for equitable relief,
 284 arising out of or related to the selection or use of a
 285 recommended benchmark replacement or the determination,
 286 implementation, or performance of a benchmark replacement
 287 conforming change, in each case, by operation of this section.
 288 The selection or use of the recommended benchmark replacement or
 289 the determination, implementation, or performance of a benchmark
 290 replacement conforming change may not give rise to any claim or

Page 10 of 13

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

23-01121-22 20221246__

291 cause of action by any person in law or in equity.
 292 (10) The selection or use of a recommended benchmark
 293 replacement or the determination, implementation, or performance
 294 of a benchmark replacement conforming change, by operation of
 295 this section, may not be deemed to:
 296 (a) Be an amendment or modification of a contract,
 297 security, or instrument.
 298 (b) Prejudice, impair, or affect a person's rights,
 299 interests, or obligations under or in respect of a contract,
 300 security, or instrument.
 301 (11) Except as provided in subsection (3) or subsection
 302 (5), this section may not be interpreted as creating a negative
 303 inference or negative presumption regarding the validity or
 304 enforceability of any of the following:
 305 (a) A benchmark replacement that is not a recommended
 306 replacement benchmark.
 307 (b) A spread adjustment, or method for calculating or
 308 determining a spread adjustment, which is not a recommended
 309 spread adjustment.
 310 (c) A change, alteration, or modification to or in respect
 311 of a contract, security, or instrument which is not a benchmark
 312 replacement conforming change.
 313 (12) This section does not alter or impair any of the
 314 following:
 315 (a) A written agreement by all requisite parties which,
 316 retrospectively or prospectively, provides that a contract,
 317 security, or instrument is not subject to this section without
 318 necessarily referring specifically to this section. As used in
 319 this paragraph, the term "requisite parties" means all parties

Page 11 of 13

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

23-01121-22 20221246__

320 required to amend the terms and provisions of a contract,
 321 security, or instrument that would otherwise be altered or
 322 affected by this section.
 323 (b) A contract, security, or instrument that contains
 324 fallback provisions that would result in a benchmark replacement
 325 that is not based on LIBOR, including, but not limited to, the
 326 prime rate or the federal funds rate. However, the contract,
 327 security, or instrument is subject to subsection (4).
 328 (c) A contract, security, or instrument subject to
 329 subsection (5) as to which a determining person does not elect
 330 to use a recommended benchmark replacement or as to which a
 331 determining person elects to use a recommended benchmark
 332 replacement before the occurrence of a LIBOR discontinuance
 333 event. However, the contract, security, or instrument is subject
 334 to subsection (4).
 335 (d) The application to a recommended benchmark replacement
 336 of any cap, floor, modifier, or spread adjustment to which LIBOR
 337 had been subject pursuant to the terms of a contract, security,
 338 or instrument.
 339 (13) Notwithstanding the Uniform Commercial Code or any
 340 other law of this state, and except as otherwise provided in
 341 this section, this section applies to all contracts, securities,
 342 and instruments, including contracts with respect to commercial
 343 transactions, and may not be superseded by any other law of this
 344 state.
 345 Section 2. This act is remedial in nature and applies
 346 retroactively to all contracts, agreements, mortgages, deeds of
 347 trust, leases, instruments, obligations, or securities, whether
 348 representing debt or equity, and including all interests in a

Page 12 of 13

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

23-01121-22

20221246__

349 corporation, partnership, or limited liability company, in
350 existence on December 31, 2021.

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

The Florida Senate

APPEARANCE RECORD

SB 1316

Feb. 7, 2022

Meeting Date

Commerce and Tourism

Committee

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

Bill Number or Topic

Amendment Barcode (if applicable)

Name **Laura Dooley, Stub Hub**

Phone

Address

Email

LauDooley@stubhub.com

Street

Washington DC

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

2/7/22

Meeting Date

1316

Bill Number or Topic

Commerce and Tourism

Committee

Amendment Barcode (if applicable)

Name Bruce Morris

Phone 203-979-9261

Address 75 Gerber Rd East

Email bruce.morris@ticketnetwork.com

Street

South Windsor CT

06074

City

State

Zip

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

PLEASE CHECK ONE OF THE FOLLOWING:

[X] 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

SB 1316

2/7/22

Meeting Date

Bill Number or Topic

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

Comm & Tourism

Committee

Amendment Barcode (if applicable)

Name CARL SZABO

Phone 202-420-7485

Address 1401 KST NW Suite 502

Email CSZABO@NETCHOICE

Street

WASHINGTON

DC

20005

City

State

Zip

ORC

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: NET CHOICE

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)

APPEARANCE RECORD

SB 1316

Bill Number or Topic

02-07-2022

Meeting Date

Commerce & Tourism

Committee

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

Amendment Barcode (if applicable)

Name Earl Ash Phone _____

Address 208 I St NE Email Earl@DCGoodfriend.Com

Street

Washington D.C. 20002

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.

2/7/22

The Florida Senate APPEARANCE RECORD

1316

Meeting Date

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

Bill Number or Topic

Commerce & Tourism

Committee

Amendment Barcode (if applicable)

Name Michael O'Neil

Phone 312-505-4899

Address 111 N Canal Suite 800

Email Michael.O'Neil@vividseats.com

Street

Chicago

IL

60606

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

2/7/22

Meeting Date

SB 1316

Bill Number or Topic

Sen. Commerce & Tourism

Committee

Amendment Barcode (if applicable)

Name Sal NUZZO, James Madison Inst

Phone 850-322-9941

Address 100 N Dural St

Email SNUZZO@jamesmadison.org

Street

Tallahassee

FL

32309

City

State

Zip

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

PLEASE CHECK ONE OF THE FOLLOWING:

[X] 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

2/7/22

Meeting Date

1316

Bill Number or Topic

Commerce

Committee

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

Amendment Barcode (if applicable)

Name Chris Van De Hoef

Phone 860-716-4461

Address 21 OAK STREET STE 210

Email CHRIS@PENNLINCOLN.COM

Street

HARTFORD

City

CT

State

06106

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
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 1316

INTRODUCER: Senator Hooper

SUBJECT: Resale of Tickets

DATE: February 4, 2022

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	McMillan	McKay	CM	Favorable
2.			JU	
3.			RC	

I. Summary:

SB 1316 requires any person or entity who offers specified nontransferable tickets for sale to also offer the ticket in a transferrable format. The bill does not address whether a ticket seller can charge an additional fee, or higher price for a transferrable ticket versus a nontransferable ticket.

The bill takes effect on July 1, 2022.

II. Present Situation:

Pricing of Resold Admission Tickets

The resale pricing of certain tickets is governed by Florida law. Section 817.36, F.S., provides that a person or entity that offers for resale or resells any ticket (with the exception of travel agencies under certain conditions¹) may charge only \$1.00 above the admission price charged by the original ticket seller, for the following:

- Passage or accommodations on any common carrier in this state;
- Multiday or multievent tickets to a park or entertainment complex, or to a concert, entertainment event, permanent exhibition, or recreational activity within such a park or complex, including an entertainment/resort complex;² and

¹ To qualify for this exception, travel agencies must have an established place of business in Florida and pay state, county, and city occupational license taxes. *See* s. 817.36(1)(a), F.S.

² An "Entertainment/resort complex" means a theme park comprised of at least 25 acres of land with permanent exhibitions and a variety of recreational activities, which has at least 1 million visitors annually who pay admission fees thereto, together with any lodging, dining, and recreational facilities located adjacent to, contiguous to, or in close proximity to the theme park, as long as the owner(s)/operator(s) of the theme park, or a parent or related company or subsidiary thereof, has an equity interest in the lodging, dining, or recreational facilities or is in privity therewith. Close proximity shall include an area within a 5-mile radius of the theme park complex. *See* s. 561.01(18), F.S.

- Event tickets originally issued by a tax-exempt charitable organization, when no more than 3,000 tickets are issued per performance. The following must be conspicuously printed on the face or back of each such ticket: “*Pursuant to s. 817.36, Florida Statutes, this ticket may not be resold for more than \$1 over the original admission price.*” This provision does not apply to tickets issued or sold by a third party ticketing service on behalf of a charitable organization, unless the statement is on the ticket.

The limitation of an additional \$1.00 above the original price of a ticket also applies to any tickets that are resold or offered through an Internet website (except those described above), unless the website:

- Is authorized by the original ticket seller; or
- Makes and posts the following guarantees and disclosures through Internet web pages, or links to web pages, in text to which a prospective purchaser is directed before completion of the resale transaction:
 - The website operator guarantees a full refund of the ticket price including any servicing, handling, or processing fees, if such fees are not disclosed, when:
 - The ticketed event is canceled;
 - The purchaser is denied admission to the ticketed event, unless such denial is due to the action or omission of the purchaser;
 - The ticket is not delivered to the purchaser as requested and pursuant to delivery guarantees made by the reseller and such failure results in the purchaser’s being unable to attend the event; and
 - The website operator discloses that it is not the issuer, original seller, or reseller of the ticket and does not control the pricing of the ticket, which may be resold for more than its original value.

Individual or entities are not authorized to sell or purchase tickets at any price on property where an event is being held (i.e., outside a stadium) without the prior express written consent of the owner of the property.³

Sales tax is due on resold tickets.⁴

A person who knowingly resells a ticket or tickets in violation of the requirements in s. 817.36, F.S., is liable to the state for a civil penalty equal to three times the amount of the price for which the ticket or tickets were resold.⁵

Persons who intentionally use or sell software to circumvent a security measure, an access control system, or any other control or measure on a ticket seller’s Internet website which is used to ensure an equitable ticket-buying process, is liable to the state for a civil penalty equal to three times the amount for which any ticket was sold.⁶

³ See s. 817.36(2), F.S.

⁴ See s. 817.36(3), F.S.

⁵ See s. 817.36(4), F.S.

⁶ *Id.* Section 817.36(5), F.S. See also s. 817.36(6), F.S., which defines the term “software” as “computer programs that are primarily designed or produced for the purpose of interfering with the operation of any person or entity that sells, over the Internet, tickets of admission to a sporting event, theater, musical performance, or place of public entertainment or amusement of any kind.” Similar federal legislation was enacted in 2016 to prohibit circumvention of ticket website security

Purchasers and resellers of tickets may also be subject to civil penalties under the Florida Deceptive and Unfair Trade Practices Act (FDUTPA).⁷ In the absence of a contract with the original ticket seller to distribute or sell tickets, a person who knowingly purchases from the original ticket seller, with the intent of resale, a quantity of event tickets which exceeds the posted⁸ maximum ticket limit per purchaser, violates FDUTPA.⁹

Effect of Proposed Changes:

The bill requires any person or entity who offers nontransferable tickets for sale to also offer the ticket in a transferrable format.¹⁰ The bill does not address whether a ticket seller can charge an additional fee, or higher price for a transferrable ticket versus a nontransferable ticket.

The bill defines “nontransferable ticket” as a ticket that may not be given away or resold in a method of the ticketholder’s choosing, or requires the ticketholder and the purchaser to facilitate the exchange exclusively through an application program by the original ticket seller.

The bill provides that the original ticket seller may not penalize, discriminate against, or deny access to an event to a person who purchases or resells a ticket in a manner authorized.

The bill takes effect on July 1, 2022.

III. 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.

or control measures and the subsequent sale of the fraudulently obtained tickets by someone who knew or should have known about the violation. *See* The Better Online Ticket Sales Act, at 15 U.S.C. s. 45c.

⁷ *See* part II of ch. 501, F.S., relating to consumer protection (ss. 501.201-501.213, F.S.).

⁸ Posting of a quantity limit occurs at the point of original sale or is printed on the tickets by or on behalf of the original ticket seller. *See* s. 817.357, F.S.

⁹ *See* s. 817.357, F.S.

¹⁰ The bill provides an exception for passage or accommodations on any common carrier in Florida, multiday or multievent tickets to a park or entertainment complex or to a concert, entertainment event, permanent exhibition, or recreational activity, and event tickets originally issued by a charitable organization exempt from taxation under s. 501(c)(3) or the Internal Revenue Code for which no more than 3,000 tickets are issued per performance.

E. Other Constitutional Issues:

None Identified.

IV. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

V. Technical Deficiencies:

None.

VI. Related Issues:

None.

VII. Statutes Affected:

This bill substantially amends section 817.36 of the Florida Statutes.

VIII. Additional Information:

A. Committee Substitute – Statement of Changes:

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

None.

B. Amendments:

None.

By Senator Hooper

16-01191-22

20221316__

1 A bill to be entitled
 2 An act relating to resale of tickets; amending s.
 3 817.36, F.S.; providing that certain tickets may be
 4 sold as nontransferable tickets only under certain
 5 circumstances; providing exceptions; defining the term
 6 "nontransferable ticket"; prohibiting the original
 7 ticket seller from taking certain actions against a
 8 person who purchases or resells a ticket; providing an
 9 effective date.

10

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

12

13 Section 1. Present subsections (1) through (5) of section
 14 817.36, Florida Statutes, are redesignated as subsections (2)
 15 through (6), respectively, present subsection (6) of that
 16 section is redesignated as new subsection (1), and subsections
 17 (7) and (8) are added to that section, to read:

18 817.36 Resale of tickets.—

19 (7) Other than a ticket identified in paragraph (2) (a),
 20 paragraph (2) (b), or paragraph (2) (c), any ticket may be sold as
 21 a nontransferable ticket only if, at the time of sale, the
 22 original ticket seller offers the option, prominently displayed,
 23 to purchase the same ticket with no limit on transferability. As
 24 used in this subsection, the term "nontransferable ticket" means
 25 a ticket that:

26 (a) May not be given away or resold in a method of the
 27 ticketholder's choosing; or

28 (b) Requires the ticketholder and the purchaser to
 29 facilitate the exchange exclusively through an application

Page 1 of 2

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

16-01191-22

20221316__

30 program operated by the original ticket seller.
 31 (8) The original ticket seller may not penalize,
 32 discriminate against, or deny access to an event to a person who
 33 purchases or resells a ticket in a manner authorized by this
 34 section.

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

Page 2 of 2

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

STATE OF FLORIDA
DEPARTMENT OF STATE

Division of Elections

I, Laurel M. Lee, Secretary of State,
do hereby certify that

Rodney Cruise

is duly appointed a member of the
**Board of Directors,
Enterprise Florida,
Inc.**

for a term beginning on the Fifth day of November, A.D., 2021,
until the Thirtieth day of September, A.D., 2025 and is subject
to be confirmed by the Senate during the next regular session of
the Legislature.

*Given under my hand and the Great Seal of the
State of Florida, at Tallahassee, the Capital, this
the Sixth day of December, A.D., 2021.*



Secretary of State



If photocopied or chemically altered, the word "VOID" will appear.

"State of Florida" appears in small letters across the face of this 8 1/2 x 11" document.



RON DESANTIS
GOVERNOR

RECEIVED

2021 NOV 10 AM 10:29

DIVISION OF ELECTIONS
TALLAHASSEE, FL

November 5, 2021

Secretary Laurel M. Lee
Department of State
R.A. Gray Building, Room 316
500 South Bronough Street
Tallahassee, Florida 32399-0250

Dear Secretary Lee:

Please be advised I have made the following appointment under the provisions of Section 288.901, Florida Statutes:

Mr. Rodney Cruise
1520 Stone Trail
Enterprise, Florida 32725

as a member of the Enterprise Florida Board of Directors, succeeding Jay Beyrouiti, subject to confirmation by the Senate. This appointment is effective November 5, 2021, for a term ending September 30, 2025.

Sincerely,

A handwritten signature in black ink, appearing to read "Ron DeSantis".

Ron DeSantis
Governor

RD/kk

OATH OF OFFICE
(Art. II, § 5(b), Fla. Const.)

RECEIVED

STATE OF FLORIDA

2021 DEC -6 AM 11:09

County of Volusia

DIVISION OF ELECTIONS
TALLAHASSEE, FL

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

Enterprise Florida Board
(Title of Office)

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

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

Signature

Sworn to and subscribed before me by means of physical presence or
online notarization, this 3rd day of December, 2021.

Signature of Officer Administering Oath or of Notary Public

Print, Type, or Stamp Commissioned Name of Notary Public

Personally Known OR Produced Identification

Type of Identification Produced



ACCEPTANCE

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

Mailing Address: Home Office

1520 Stone Trail Enterprise FL
Street or Post Office Box

Enterprise FL 32725
City, State, Zip Code

Rodney Cruise
Print Name

[Signature] 12/3/21
Signature

120

**STATE OF FLORIDA
DEPARTMENT OF STATE
Division of Elections**

I, Laurel M. Lee, Secretary of State,
do hereby certify that

Sonya Deen Hartley

is duly appointed a member of the

**Board of Directors,
Enterprise Florida,
Inc.**

for a term beginning on the Fourteenth day of June, A.D., 2021,
until the Thirtieth day of September, A.D., 2023 and is subject
to be confirmed by the Senate during the next regular session of
the Legislature.

*Given under my hand and the Great Seal of the
State of Florida, at Tallahassee, the Capital, this
the Fifteenth day of December, A.D., 2021.*



Secretary of State

If photocopied or chemically altered, the word "VOID" will appear.

State of Florida appears in small letters across the face of this 8 1/2 x 11 document



RON DESANTIS DEPARTMENT OF STATE
GOVERNOR

RECEIVED
2021 JUN 22 AM 10:37

FLORIDA DEPARTMENT OF STATE
TALLAHASSEE, FLORIDA 32399-0001

June 14, 2021

Secretary Laurel M. Lee
Department of State
R.A. Gray Building, Room 316
500 South Bronough Street
Tallahassee, Florida 32399-0250

Dear Secretary Lee:

Please be advised I have made the following reappointment under the provisions of Section 288.901, Florida Statutes:

Mrs. Sonya Deen Hartley
300 Jim Moran Boulevard
Deerfield Beach, Florida 33442

as a member of the Enterprise Florida Board of Directors, subject to confirmation by the Senate. This appointment is effective June 14, 2021, for a term ending September 30, 2023.

Sincerely,

A handwritten signature in black ink, appearing to read "Ron DeSantis".

Ron DeSantis
Governor

RD/kk

12/13/21

OATH OF OFFICE

(Art. II, § 5(b), Fla. Const.)

RECEIVED

STATE OF FLORIDA

2021 DEC 14 AM 10:50

County of Broward

DIVISION OF ELECTIONS
TALLAHASSEE, FL

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

Board Member - Enterprise FLORIDA
(Title of Office)

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

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

[Handwritten Signature]

Signature

Sworn to and subscribed before me by means of physical presence or
 online notarization, this 9th day of December, 2021.

[Handwritten Signature: Donna Lindner]

Signature of Officer Administering Oath or of Notary Public

DONNA LINDNER

Print, Type, or Stamp Commissioned Name of Notary Public

Personally Known OR

Produced Identification

Type of Identification Produced _____



ACCEPTANCE

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

Mailing Address: Home Office

100 Jim Moran Blvd
Street or Post Office Box

Deerfield Beach, FL 33442
City, State, Zip Code

[Handwritten Signature: Sonya Deen Hartley]
Print Name

[Handwritten Signature]
Signature

**The Florida Senate
Committee Notice Of Hearing**

IN THE FLORIDA SENATE
TALLAHASSEE, FLORIDA

IN RE: Executive Appointment of
Scott Ross
Board of Directors, Enterprise Florida, Inc.

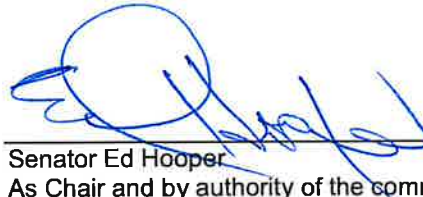
NOTICE OF HEARING

TO: Mr. Scott Ross

YOU ARE HEREBY NOTIFIED that the Committee on Commerce and Tourism of the Florida Senate will conduct a hearing on your executive appointment on Monday, February 7, 2022, in the Toni Jennings Committee Room, 110 Senate Building, commencing at 2:30 p.m., pursuant to Rule 12.7(1) of the Rules of the Florida Senate.

Please be present at the time of the hearing.
DATED this the 2nd day of February, 2022

Committee on Commerce and Tourism



Senator Ed Hooper
As Chair and by authority of the committee

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

**STATE OF FLORIDA
DEPARTMENT OF STATE
Division of Elections**

I, Laurel M. Lee, Secretary of State,
do hereby certify that

Scott Ross

is duly appointed a member of the
**Board of Directors,
Enterprise Florida,
Inc.**

for a term beginning on the Fourteenth day of June, A.D., 2021,
until the Thirtieth day of September, A.D., 2024 and is subject
to be confirmed by the Senate during the next regular session of
the Legislature.

*Given under my hand and the Great Seal of the
State of Florida, at Tallahassee, the Capital, this
The Twenty-Eighth day of January, A.D., 2022.*



Secretary of State

If photocopied or chemically altered, the word "VOID" will appear.

"State of Florida" appears in small letters across the face of this 8 1/2 x 11" document.



RON DESANTIS
GOVERNOR

RECEIVED
DEPARTMENT OF STATE

2021 JUN 22 AM 10:36

MAJORITY ELECTIONS
SPECIAL MEETING

June 14, 2021

Secretary Laurel M. Lee
Department of State
R.A. Gray Building, Room 316
500 South Bronough Street
Tallahassee, Florida 32399-0250

Dear Secretary Lee:

Please be advised I have made the following reappointment under the provisions of Section 288.901, Florida Statutes:

Mr. Scott Ross
3580 Mossy Creek Lane
Tallahassee, Florida 32311

as a member of the Enterprise Florida Board of Directors, subject to confirmation by the Senate. This appointment is effective June 14, 2021, for a term ending September 30, 2024.

Sincerely,

A handwritten signature in black ink, appearing to read "Ron DeSantis".

Ron DeSantis
Governor

RD/kk

OATH OF OFFICE

(Art. II, § 5(b), Fla. Const.)

RECEIVED

STATE OF FLORIDA

2022 JAN 18 PM 4:46

County of Leon

NOTARY PUBLIC
TALLAHASSEE, FL

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

Enterprise Florida Board of Directors

(Title of Office)

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

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

Scott Ross
Signature

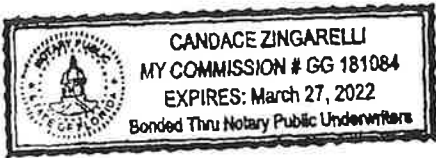
Sworn to and subscribed before me by means of physical presence or
online notarization, this 18 day of January, 2022

Candace Zingarelli
Signature of Officer Administering Oath of Notary Public

Candace Zingarelli
Print, Type, or Stamp Commissioned Name of Notary Public

Personally Known OR Produced Identification

Type of Identification Produced _____



ACCEPTANCE

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

Mailing Address: Home Office

8025 Oak Grove Plantation Rd.

Street or Post Office Box

Tallahassee, Florida 32312

City, State, Zip Code

Scott Ross

Print Name

Scott Ross
Signature

CourtSmart Tag Report

Room: SB 110
Caption: Senate Commerce and Tourism Committee

Case No.:

Type:
Judge:

Started: 2/7/2022 2:32:51 PM
Ends: 2/7/2022 4:07:28 PM **Length:** 01:34:38

2:33:13 PM A quorum is present
2:33:33 PM Tabs 6-8 are for appointees
2:34:01 PM we let them know that they were not required to be present
2:34:13 PM we'll take up 1 vote for all 3 appointees as part of the Board of Directors of Enterprise Fla, Inc.
2:34:25 PM any debate on Rodney Cruise, Sonya Deen Hartley, or Scott Ross?
2:34:26 PM Is there anyone in the audience wishing to speak on any of the appointees?
2:34:33 PM Is there any debate?
2:34:41 PM Vice Chair is recognized to speak
2:34:41 PM Sen. Wright mentions that Rodney Cruise is part of his constituency
2:34:56 PM Seeing none, Sen. Wright moves on all 3 appointees
2:35:13 PM Please call the roll
2:35:27 PM Confirmation of all 3 is recommended favorably
2:35:42 PM Tab 1 is SB 940 by Sen. Baxley
2:36:40 PM questions of sponsor?
2:36:45 PM seeing none, Chris Childers of BNI Engineers speaks in favor of the bill
2:37:39 PM is there debate?
2:37:44 PM Sen. Pizzo has a question for Mr. Childers
2:38:24 PM additional debate?
2:38:30 PM Sen. Baxley is recognized to close
2:38:54 PM SB 940 is favorable
2:39:28 PM Sen. Baxley introduces CS/SB 942
2:39:37 PM Sen. Baxley closes after no questions, appearance cards, or debate
2:39:46 PM CS/SB 942 is reported favorably
2:40:00 PM tab 3, SB 1018, is being presented by Sen. Hutson for Sen. Burgess
2:40:59 PM there is a strike all - barcode 902328
2:41:11 PM Sen. Hutson explains amendment
2:41:25 PM Sen. Pizzo has a question on strike all
2:41:54 PM Sen. Hutson answers
2:42:14 PM follow up from Pizzo
2:42:39 PM Sen. Hutson responds
2:43:03 PM he has a follow up to his answer
2:43:13 PM follow up question from Pizzo
2:43:21 PM follow up from Pizzo
2:43:58 PM Jessie Hamsen, analyst on this bill, helps explain
2:45:40 PM any other questions on the strike all amendment?
2:45:51 PM there are none
2:45:59 PM amendment is adopted - back on bill as amended
2:46:11 PM are there questions on the bill as amended?
2:46:12 PM appearance cards
2:46:27 PM John Gaspar speaks in favor of bill
2:49:02 PM Sen. Pizzo has a question for Mr. Gaspar
2:50:14 PM Mr. Gaspar attempts to clear up what Sen. Pizzo asked
2:51:02 PM Sen. Pizzo has a follow up
2:52:02 PM Mr. Childers responds
2:52:28 PM next up is Mr. Ari Morse speaking in favor of bill
2:54:34 PM Sen. Pizzo has a question
2:55:11 PM Mr. Morse responds
2:55:43 PM follow up from Pizzo
2:56:14 PM Sen. Hutson answers
2:56:14 PM
2:56:25 PM Sen. Pizzo has another question
2:56:58 PM Mr. Morse responds

2:57:20 PM Sen. Pizzo has final question
2:57:51 PM Sen. Powell has a question
2:58:24 PM Mr. Morse responds
2:58:42 PM next is Mr. Barney Bishop III representing the Fla. Assn. of Private Investigators
3:03:17 PM Sen. Pizzo has a question
3:03:32 PM Mr. Bishop answers
3:03:42 PM follow up from Pizzo
3:04:01 PM Mr. Bishop answers
3:04:33 PM Sen. Pizzo asks if there's someone from DACS to speak
3:04:50 PM Mr. John Raymaker comes forward to speak
3:05:12 PM Sen. Pizzo addresses Mr. Raymaker
3:05:29 PM Mr. Raymaker explains
3:05:52 PM follow up from Pizzo
3:06:16 PM Mr. Raymaker speaks
3:06:40 PM another question from Sen. Pizzo
3:07:21 PM Mr. Raymaker answers question
3:07:56 PM Sen. Pizzo has another question
3:08:33 PM Mr. Raymaker responds
3:09:00 PM final question from Pizzo
3:09:11 PM Mr. Raymaker explains the class G license
3:09:33 PM Sen. Torres in debate
3:11:07 PM add'l debate from Sen. Pizzo
3:11:46 PM Chair Hooper mentions next stop is Judiciary
3:12:00 PM Sen. Taddeo in debate
3:12:22 PM Sen. Hutson closes for Sen. Burgess
3:13:03 PM CS/SB 1018 is reported favorably
3:13:40 PM Sen. Gruters is here to introduce SB 1246
3:14:25 PM strike all barcode 235134 is explained by Gruters
3:14:51 PM Sen. Powell has a question the amendment
3:15:02 PM Sen. Gruters explains
3:15:39 PM follow up from Sen. Powell
3:15:52 PM Sen. Gruters responds
3:16:19 PM 1 appearance card from Anthony DiMarco, waiving in support
3:16:35 PM no debate
3:16:37 PM Gruters waives close on the amendment
3:16:46 PM amendment is adopted - back on bill as amended
3:16:57 PM Sen. Gruters closes
3:17:05 PM CS/SB 1246 is reported favorably
3:17:34 PM Vice chair Wright takes over gavel
3:17:43 PM Sen. Hooper introduces SB 1316
3:19:55 PM any questions?
3:20:04 PM Sen. Pizzo has a question
3:20:04 PM
3:20:19 PM Sen. Hooper explains answer
3:21:03 PM follow up from Sen. Pizzo
3:22:04 PM Sen. Hooper answers
3:23:45 PM Sen. Hutson has some questions
3:24:41 PM Sen. Hooper answers
3:24:48 PM Sen. Hutson asks another question
3:24:55 PM Sen. Hooper answers
3:25:32 PM Sen. Hutson asks follow up question
3:25:45 PM Sen. Hooper answers
3:26:45 PM 1 more question from Sen. Hutson
3:27:07 PM Sen. Hooper answers
3:27:07 PM 1 more question from Sen. Hutson
3:27:22 PM final question from Sen. Hutson
3:27:30 PM Sen. Hooper answers
3:27:49 PM Sen. Powell has a question
3:28:53 PM Sen. Hooper answers
3:31:15 PM follow up from Powell
3:31:52 PM Sen. Hooper responds
3:32:09 PM Sen. Taddeo has a question

3:32:43 PM Sen. Hooper responds
3:32:56 PM 1 more question from Sen. Taddeo
3:33:15 PM Sen. Hooper answers
3:34:06 PM There's no other questions; there is testimony
3:34:12 PM Ms. Laura Dooley w/ Stub Hub would like to speak in favor
3:38:37 PM question from Sen. Pizzo
3:38:55 PM Ms. Dooley answers
3:39:42 PM follow up from Sen. Pizzo
3:39:52 PM Ms. Dooley answers
3:40:05 PM Sen. Pizzo
3:40:34 PM Ms. Dooley
3:40:52 PM Sen. Pizzo
3:40:59 PM Ms. Dooley
3:41:31 PM Sen. Pizzo
3:42:04 PM Ms. Dooley
3:42:09 PM Sen. Pizzo has a follow up
3:42:43 PM Ms. Dooley
3:42:53 PM Sen. Pizzo
3:42:57 PM Ms. Dooley
3:43:10 PM Sen. Hutson has a question
3:43:53 PM Ms. Dooley responds
3:44:51 PM we need to limit to 5 minutes per speaker since there are many cards
3:45:04 PM Mr. Bruce Morris, who represents Ticket Network, speaks in favor
3:48:28 PM Sen. Pizzo has a question of Mr. Morris, who used to be a member of the Conn. legislature
3:48:43 PM Mr. Morris responds
3:49:15 PM Sen. Pizzo asks about the Connecticut bill
3:49:42 PM Mr. Morris responds
3:49:49 PM Mr. Carl Szabo, VP of Net Choice, speaks in favor
3:52:10 PM Sen. Pizzo interrupts to ask that Mr. Szabo explain what Net Choice does
3:52:45 PM Mr. Szabo explains they want to knock down barriers to commerce
3:53:19 PM Sen. Pizzo asks a question
3:53:36 PM Mr. Szabo responds
3:54:00 PM Sen. Pizzo asks another question
3:54:13 PM Mr. Szabo
3:54:19 PM Sen. Pizzo
3:54:22 PM Mr. Szabo
3:54:29 PM Sen. Wright mentions we're almost out of time
3:55:18 PM Mr. Szabo closes out his testimony
3:55:42 PM Mr. Earl Ash represents...speaks in favor
3:57:20 PM no questions
3:57:36 PM Michael O'Neil waives in support
3:57:51 PM Mr. Sal Nuzzo waives in support
3:58:06 PM Chris Van De Hoff waives in support
3:58:22 PM any debate?
3:58:27 PM Sen. Pizzo speaks in debate
4:00:11 PM
4:00:13 PM Sen. Diaz in debate
4:00:36 PM Sen. Powell in debate
4:01:23 PM Sen. Hutson in debate
4:02:29 PM Sen. Taddeo in debate
4:03:21 PM Sen. Torres is recognized to debate
4:03:47 PM Sen. Hooper closes on bill
4:05:50 PM roll call on SB 1316
4:05:56 PM SB 1316 is reported favorably
4:06:15 PM chair is yielded back to Chair Hooper
4:06:25 PM Sen. Gruters wants to be recorded as a yes vote on tabs 1, 2, & 6-8
4:06:35 PM Sen. Pizzo recognizes a couple of attorneys from his district in the audience
4:07:08 PM Sen. Hooper welcomes them to the Committee
4:07:14 PM Vice Chair Wright moves we adjourn