

<b>Tab 1</b>	<b>SB 1722 by Stargel;</b> (Similar to CS/CS/H 1411) Termination of Pregnancies					
950510	PCS	S	RCS	FP, AHS		02/29 07:06 PM

<b>Tab 2</b>	<b>CS/SB 360 by CJ, Clemens;</b> (Similar to CS/H 0685) Victim Assistance					
832832	D	S	RCS	FP, Clemens	Delete everything after	02/29 07:06 PM

<b>Tab 3</b>	<b>SB 556 by Altman;</b> (Compare to CS/CS/H 0371) Florida Commission on Poverty					
628090	PCS	S	RCS	FP, ATD		02/29 07:06 PM

<b>Tab 4</b>	<b>CS/SB 704 by CA, Hutson;</b> (Similar to CS/CS/CS/H 0535) Building Codes					
554986	D	S	RCS	FP, Abruzzo	Delete everything after	02/29 07:06 PM
<del>626830</del>	AA	S	WD	FP, Abruzzo	Before L.5:	02/29 07:06 PM
744198	AA	S	RCS	FP, Abruzzo	Delete L.513 - 1220:	02/29 07:06 PM

<b>Tab 5</b>	<b>SB 858 by Legg;</b> (Similar to CS/H 0373) Clinical Social Worker, Marriage and Family Therapist, and Mental Health Counselor Interns					
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<b>Tab 6</b>	<b>CS/CS/SB 862 by CF, CJ, Legg;</b> (Similar to CS/CS/H 0769) Mental Health Treatment					
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<b>Tab 7</b>	<b>CS/SB 964 by HP, Grimsley;</b> (Similar to CS/H 0313) Prescription Drug Monitoring Program					
757136	A	S	RCS	FP, Bean	Delete L.20 - 88:	02/29 07:06 PM

<b>Tab 8</b>	<b>CS/SB 1044 by CJ, Brandes (CO-INTRODUCERS) Negron, Clemens, Bean;</b> (Similar to H 0883) Forfeiture of Contraband					
808816	PCS	S	RCS	FP		02/29 07:47 PM
681256	PCS:D	S	RCS	FP, Bradley	Delete everything after	02/29 07:47 PM
797394	PCS:AA	S	RCS	FP, Bradley	Delete L.20 - 54:	02/29 07:47 PM
970996	PCS:AA	S	RCS	FP, Bradley	Delete L.85:	02/29 07:47 PM
808958	PCS:AA	S	RCS	FP, Bradley	Delete L.91 - 112:	02/29 07:47 PM
880614	PCS:AA	S	RCS	FP, Bradley	Delete L.120 - 123:	02/29 07:47 PM

<b>Tab 9</b>	<b>CS/SB 1152 by CA, Diaz de la Portilla;</b> (Identical to CS/H 0067) Classified Advertisement Websites					
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<b>Tab 10</b>	<b>CS/CS/SB 1164 by CF, BI, Legg;</b> (Similar to CS/CS/1ST ENG/H 0965) Firesafety					
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<b>Tab 11</b>	<b>CS/SB 1192 by EP, Hays;</b> (Compare to H 1387) Waste Management					
939166	PCS	S	RCS	FP, AGG		02/29 07:06 PM

<b>Tab 12</b>	<b>CS/SB 1260 by EP, Simpson;</b> (Similar to CS/CS/H 1051) Anchoring Limitation Areas					
779014	A	S	WD	FP, Abruzzo	btw L.31 - 32:	02/29 07:06 PM

<b>Tab 13</b>	<b>CS/SB 1274 by BI, Latvala;</b> (Similar to CS/CS/H 1327) Limited Sinkhole Coverage Insurance					
424308	PCS	S	RCS	FP, AGG		02/29 07:06 PM

<b>Tab 14</b>	<b>SB 1294 by Grimsley;</b> (Identical to H 1367) Offenses Involving Minors and Vulnerable Persons					
475934	D	S	RCS	FP, Bean	Delete everything after	02/29 07:06 PM
922438	AA	S	RCS	FP, Bean	Delete L.368 - 403:	02/29 07:06 PM

<b>Tab 15</b>	<b>CS/SB 1378</b> by <b>HP, Garcia</b> ; (Similar to H 1329) Drug Safety					
799956	PCS	S	RCS	FP, AHS		02/29 07:06 PM

<b>Tab 16</b>	<b>CS/SB 1394</b> by <b>TR, Brandes</b> ; (Compare to CS/CS/1ST ENG/H 7061) Department of Highway Safety and Motor Vehicles					
726940	PCS	S	RCS	FP		02/29 07:06 PM
527882	PCS:A	S	RCS	FP, Bean	Delete L.144:	02/29 07:06 PM
510986	PCS:A	S	RCS	FP, Bean	Delete L.361:	02/29 07:06 PM
854912	PCS:A	S	RCS	FP, Bean	btw L.522 - 523:	02/29 07:06 PM
441664	PCS:AA	S	RCS	FP, Bean	Delete L.37:	02/29 07:06 PM
481820	PCS:A	S	RCS	FP, Bean	Delete L.878 - 958:	02/29 07:06 PM
<del>231632</del>	PCS:A	S	WD	FP, Bean	btw L.986 - 987:	02/29 07:06 PM

<b>Tab 17</b>	<b>CS/SB 1470</b> by <b>EP, Latvala</b> ; (Identical to CS/H 1227) Crustaceans					
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<b>Tab 18</b>	<b>CS/SB 1570</b> by <b>TR, Simmons</b> ; (Compare to CS/H 1373) School Bus Stop Safety					
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<b>Tab 19</b>	<b>CS/SB 1692</b> by <b>JU, Altman</b> ; (Identical to CS/H 0821) Reimbursement of Assessments					
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**The Florida Senate**  
**COMMITTEE MEETING EXPANDED AGENDA**

**FISCAL POLICY**  
**Senator Flores, Chair**  
**Senator Bradley, Vice Chair**

**MEETING DATE:** Monday, February 29, 2016  
**TIME:** 1:00—5:00 p.m.  
**PLACE:** Pat Thomas Committee Room, 412 Knott Building

**MEMBERS:** Senator Flores, Chair; Senator Bradley, Vice Chair; Senators Abruzzo, Bean, Clemens, Hays, Hukill, Legg, Margolis, Sachs, and Stargel

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
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**A proposed committee substitute** for the following bill (SB 1722) is available:

1	<b>SB 1722</b> Stargel (Similar CS/CS/H 1411)	Termination of Pregnancies; Defining the term "gestation" and revising the term "third trimester"; revising the requirements for disposal of fetal remains; prohibiting state agencies, local governmental entities, and Medicaid managed care plans from expending or paying funds to or initiating or renewing contracts under certain circumstances with certain organizations that perform abortions, etc.  HP     01/26/2016 Favorable AHS    02/17/2016 Fav/CS FP     02/29/2016 Fav/CS	Fav/CS Yeas 6 Nays 3
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With subcommittee recommendation – Health and Human Services

2	<b>CS/SB 360</b> Criminal Justice / Clemens (Similar CS/H 685)	Victim Assistance; Requiring a law enforcement agency to provide specified instructions to a victim; requiring a law enforcement agency to promptly make reasonable efforts to provide the victim with specified information under certain circumstances, etc.  CJ     02/08/2016 Not Considered CJ     02/16/2016 Fav/CS ACJ    02/24/2016 Favorable FP     02/29/2016 Fav/CS	Fav/CS Yeas 8 Nays 0
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With subcommittee recommendation – Criminal and Civil Justice

**A proposed committee substitute** for the following bill (SB 556) is available:

**COMMITTEE MEETING EXPANDED AGENDA**

Fiscal Policy

Monday, February 29, 2016, 1:00—5:00 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
3	<b>SB 556</b> Altman (Compare CS/CS/H 371)	Florida Commission on Poverty; Creating the commission within the Department of Economic Opportunity; specifying the membership of the commission and the duration of members' terms; authorizing reimbursement for per diem and travel expenses; prescribing the powers and duties of the commission; requiring the commission to annually submit a report to the Governor and the Legislature, etc.  CM 02/16/2016 Favorable ATD 02/24/2016 Fav/CS FP 02/29/2016 Fav/CS	Fav/CS Yeas 6 Nays 0
With subcommittee recommendation – Transportation, Tourism, and Economic Development			
4	<b>CS/SB 704</b> Community Affairs / Hutson (Similar CS/CS/H 535, Compare H 295, CS/CS/H 431, H 1187, S 530, CS/CS/S 822, CS/CS/S 1050)	Building Codes; Revising the certification examination requirements for building code inspectors, plans examiners, and building code administrators; authorizing local boards created to address specified issues to combine the appeals boards to create a single, local board; requiring all new and existing high-rise buildings to maintain a minimum radio signal strength for fire department communications; creating the Construction Industry Workforce Task Force within the University of Florida M.E. Rinker, Sr. School of Construction Management, etc.  CA 02/01/2016 Fav/CS AGG 02/17/2016 Favorable FP 02/29/2016 Fav/CS	Fav/CS Yeas 7 Nays 1
With subcommittee recommendation – General Government			
5	<b>SB 858</b> Legg (Similar CS/H 373, Compare CS/CS/H 7097, CS/S 12)	Clinical Social Worker, Marriage and Family Therapist, and Mental Health Counselor Interns; Revising clinical social worker, marriage and family therapist, and mental health counselor intern registration requirements; revising requirements for supervision of registered interns; deleting specified education and experience requirements; establishing validity periods and providing for expiration of intern registrations; establishing requirements for a subsequent intern registration and for an applicant who has held a provisional license; requiring a licensed mental health professional to be on the premises when a registered intern provides services in clinical social work, marriage and family therapy, or mental health counseling, etc.  HP 02/09/2016 Favorable AHS 02/17/2016 Favorable FP 02/29/2016 Favorable	Favorable Yeas 8 Nays 0



**COMMITTEE MEETING EXPANDED AGENDA**

Fiscal Policy

Monday, February 29, 2016, 1:00—5:00 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
With subcommittee recommendation – Health and Human Services			
6	<b>CS/CS/SB 862</b> Children, Families, and Elder Affairs / Criminal Justice / Legg (Similar CS/CS/H 769)	Mental Health Treatment; Authorizing forensic and civil facilities to order the continuation of psychotropic medications for clients receiving such medication in the jail before admission to those facilities under certain circumstances; requiring a jail physician to provide a current psychotropic medication order under certain circumstances; revising the time for dismissal of certain charges for defendants that remain incompetent to proceed to trial, etc.  CJ 02/01/2016 Fav/CS CF 02/10/2016 Fav/CS FP 02/29/2016 Favorable	Favorable Yeas 8 Nays 0
7	<b>CS/SB 964</b> Health Policy / Grimsley (Similar CS/H 313, Compare S 7038)	Prescription Drug Monitoring Program; Providing that certain acts of dispensing controlled substances in specified facilities are not required to be reported to the prescription drug monitoring program; requiring the Department of Health to disclose certain information from the prescription drug monitoring program to an impaired practitioner consultant under certain circumstances, etc.  HP 02/01/2016 Fav/CS CJ 02/22/2016 Favorable FP 02/29/2016 Fav/CS	Fav/CS Yeas 7 Nays 0
<b>A proposed committee substitute</b> for the following bill (CS/SB 1044) is available:			
8	<b>CS/SB 1044</b> Criminal Justice / Brandes (Similar H 883, Compare CS/CS/H 889, CS/S 220)	Forfeiture of Contraband; Providing for the acquisition of the provisional title of seized property under certain circumstances; prohibiting the seizure of property under the Florida Contraband Forfeiture Act until the owner of such property is arrested for a criminal offense that renders the property a contraband article; providing that the property is deemed a contraband article and forfeited subject to forfeiture proceedings under certain circumstances; specifying circumstances under which the seizing law enforcement agency must return the property to the owner, etc.  CJ 01/25/2016 Fav/CS ACJ 02/11/2016 Fav/CS FP 02/29/2016 Fav/CS	Fav/CS Yeas 8 Nays 0
With subcommittee recommendation – Criminal and Civil Justice			

**COMMITTEE MEETING EXPANDED AGENDA**

Fiscal Policy

Monday, February 29, 2016, 1:00—5:00 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
9	<b>CS/SB 1152</b> Community Affairs / Diaz de la Portilla (Identical CS/H 67)	Classified Advertisement Websites; Authorizing local governmental bodies to designate a specified number of safe-haven facilities in each county based upon population size; authorizing a local governmental body to approve the use of local government buildings to serve as safe-haven facilities, etc.  CA 02/16/2016 Fav/CS AGG 02/24/2016 Favorable FP 02/29/2016 Favorable	Favorable Yeas 7 Nays 0
With subcommittee recommendation – General Government			
10	<b>CS/CS/SB 1164</b> Children, Families, and Elder Affairs / Banking and Insurance / Legg (Similar CS/CS/H 965)	Firesafety; Requiring the State Fire Marshal to establish uniform firesafety standards for assisted living facilities; revising provisions relating to the minimum standards that must be adopted by the Department of Elderly Affairs for firesafety in assisted living facilities; clarifying the fees a utility may charge for the installation and maintenance of an automatic fire sprinkler system, etc.  BI 01/26/2016 Fav/CS CF 02/04/2016 Fav/CS FP 02/29/2016 Favorable	Favorable Yeas 8 Nays 0
A proposed committee substitute for the following bill (CS/SB 1192) is available:			
11	<b>CS/SB 1192</b> Environmental Preservation and Conservation / Hays (Compare H 1387)	Waste Management; Prohibiting a local government from preventing a private company from listing separately on an invoice for solid waste collection, disposal, or recycling any governmental taxes and fees; revising provisions relating to solid waste collection services to include disposal and recycling services; establishing the crime of theft of recyclable property, etc.  EP 02/09/2016 Fav/CS AGG 02/24/2016 Fav/CS FP 02/29/2016 Fav/CS	Fav/CS Yeas 7 Nays 0
With subcommittee recommendation – General Government			
12	<b>CS/SB 1260</b> Environmental Preservation and Conservation / Simpson (Similar CS/CS/H 1051)	Anchoring Limitation Areas; Prohibiting overnight anchoring or mooring of vessels in specified anchoring limitation areas; providing for the removal and impoundment of vessels under certain circumstances, etc.  EP 02/17/2016 Fav/CS ATD 02/24/2016 Favorable FP 02/29/2016 Favorable	Favorable Yeas 9 Nays 0

**COMMITTEE MEETING EXPANDED AGENDA**

Fiscal Policy

Monday, February 29, 2016, 1:00—5:00 p.m.

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TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
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With subcommittee recommendation – Transportation, Tourism, and Economic Development

**A proposed committee substitute** for the following bill (CS/SB 1274) is available:

13	<b>CS/SB 1274</b> Banking and Insurance / Latvala (Similar CS/CS/H 1327)	Limited Sinkhole Coverage Insurance; Specifying the amount of surplus funds required for domestic insurers applying for a certificate of authority to provide limited sinkhole coverage insurance; authorizing certain insurers to offer limited sinkhole coverage insurance in this state; requiring an insurer to provide a specified notice of changes to rates within a specified time frame to the Office of Insurance Regulation, etc.  BI 02/09/2016 Fav/CS AGG 02/24/2016 Fav/CS FP 02/29/2016 Fav/CS	Fav/CS Yeas 8 Nays 0
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With subcommittee recommendation – General Government

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14	<b>SB 1294</b> Grimsley (Identical H 1367, Compare CS/CS/H 545, H 7075, CS/S 784, S 1382)	Offenses Involving Minors and Vulnerable Persons; Increasing the maximum age at which a victim or witness may be allowed to testify via closed circuit television rather than in a courtroom in certain circumstances; including human trafficking as an underlying felony offense to support a felony murder conviction; providing increased criminal penalties for human trafficking offenses if the victim suffers great bodily harm, permanent disability, or permanent disfigurement, etc.  CJ 02/01/2016 Favorable JU 02/16/2016 Favorable FP 02/29/2016 Fav/CS	Fav/CS Yeas 7 Nays 0
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**A proposed committee substitute** for the following bill (CS/SB 1378) is available:

15	<b>CS/SB 1378</b> Health Policy / Garcia (Similar H 1329)	Drug Safety; Citing this act as "Victoria's Law"; requiring pharmacies to offer for sale prescription lock boxes; requiring the Department of Health to develop and distribute a pamphlet; prohibiting a pharmacy from charging a fee for the pamphlet, etc.  HP 02/01/2016 Fav/CS AHS 02/24/2016 Fav/CS FP 02/29/2016 Fav/CS	Fav/CS Yeas 7 Nays 0
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With subcommittee recommendation – Health and Human Services

**COMMITTEE MEETING EXPANDED AGENDA**

Fiscal Policy

Monday, February 29, 2016, 1:00—5:00 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
<b>A proposed committee substitute</b> for the following bill (CS/SB 1394) is available:			
16	<b>CS/SB 1394</b> Transportation / Brandes (Compare CS/CS/H 7061, CS/H 7063, CS/S 1392)	Department of Highway Safety and Motor Vehicles; Providing that provisions prohibiting a driver from following certain vehicles within a specified distance do not apply to truck tractor-semitrailer combinations under certain circumstances; requiring, as of a specified date, that the court order a certain qualified sobriety and drug monitoring program in addition to the placement of an ignition interlock device; prohibiting a law enforcement officer from issuing a citation for a specified violation until a certain date, etc.  TR 01/27/2016 Fav/CS ATD 02/11/2016 Temporarily Postponed ATD 02/17/2016 Fav/CS FP 02/29/2016 Fav/CS	Fav/CS Yeas 7 Nays 0
With subcommittee recommendation – Transportation, Tourism, and Economic Development			
17	<b>CS/SB 1470</b> Environmental Preservation and Conservation / Latvala (Identical CS/H 1227)	Crustaceans; Revising the administrative penalties for violations related to stone crab traps and spiny lobster traps; prohibiting the possession of undersized spiny lobsters by certain persons; specifying that each undersized spiny lobster may be charged as a separate offense of certain violations, etc.  EP 02/09/2016 Fav/CS ACJ 02/24/2016 Favorable FP 02/29/2016 Favorable	Favorable Yeas 8 Nays 0
With subcommittee recommendation – Criminal and Civil Justice			
18	<b>CS/SB 1570</b> Transportation / Simmons (Compare CS/H 1373)	School Bus Stop Safety; Revising the terms of violation and the penalties for failure to stop a vehicle upon approaching a school bus that displays a stop signal; requiring an additional fee to be added to a fine imposed for a specified violation, etc.  TR 02/17/2016 Fav/CS ATD 02/24/2016 Favorable FP 02/29/2016 Favorable	Favorable Yeas 8 Nays 0
With subcommittee recommendation – Transportation, Tourism, and Economic Development			

**COMMITTEE MEETING EXPANDED AGENDA**

Fiscal Policy

Monday, February 29, 2016, 1:00—5:00 p.m.

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TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
19	<b>CS/SB 1692</b> Judiciary / Altman (Identical CS/H 821)	Reimbursement of Assessments; Prohibiting an agent or attorney representing a claimant from directly or indirectly requesting, receiving, or obtaining reimbursement from the claimant for assessments charged to the agent or attorney by the United States Department of Veterans Affairs; providing penalties, etc.  JU 02/09/2016 Fav/CS ACJ 02/24/2016 Favorable FP 02/29/2016 Favorable	Favorable Yeas 6 Nays 0

With subcommittee recommendation – Criminal and Civil Justice

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Other Related Meeting Documents

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An electronic copy of the Appearance Request form is available to download from any Senate Committee page on the Senate's website, [www.flssenat.gov](http://www.flssenat.gov).

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**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.)

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Prepared By: The Professional Staff of the Committee on Fiscal Policy

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**BILL:** PCS/SB 1722 (950510)

**INTRODUCER:** Fiscal Policy Committee (Recommended by the Appropriations Subcommittee on Health and Human Services) and Senator Stargel

**SUBJECT:** Termination of Pregnancies

**DATE:** February 26, 2016      **REVISED:** \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Looke</u>	<u>Stovall</u>	<u>HP</u>	<b>Favorable</b>
2.	<u>Brown</u>	<u>Pigott</u>	<u>AHS</u>	<b>Recommend: Fav/CS</b>
3.	<u>Hrdlicka</u>	<u>Hrdlicka</u>	<u>FP</u>	<b>Pre-meeting</b>

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**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

PCS/SB 1722 amends various statutes relating to the termination of pregnancies. The bill:

- Defines the terms “gestation,” “first trimester,” “second trimester,” and “third trimester;”
- Prohibits the purchase, sale, and donation of fetal remains from an abortion and increases penalties for the improper disposal of fetal remains;
- Restricts state agencies, local governmental entities, and Medicaid managed care plans from contracting with, or expending funds for the benefit of, an organization that owns, operates, or is affiliated with one or more clinics that perform abortions, with some exceptions;
- Requires the Agency for Health Care Administration (AHCA) to collect certain data from medical facilities in which abortions are performed and to submit data to the federal Centers for Disease Control and Prevention (CDC);
- Requires the AHCA to:
  - Perform annual licensure inspections of abortion clinics;
  - Inspect at least 50 percent of abortion clinic records during a license inspection; and
  - Promptly investigate all credible allegations of unlicensed abortions being performed;
- Requires, in clinics that perform only first trimester abortions, that either:
  - The clinic must have a written patient transfer agreement with a hospital within reasonable proximity; or
  - All physicians who perform abortions in the clinic must have admitting privileges at a hospital within reasonable proximity of the clinic;

- Requires, in clinics that perform second trimester abortions, that all physicians who perform abortions in the clinic must have admitting privileges at a hospital within reasonable proximity of the clinic, unless the clinic has a written patient transfer agreement with a hospital within reasonable proximity of the clinic which includes the transfer of the patient's medical records held by both the clinic and the treating physician;
- Requires the AHCA to submit an annual report to the Legislature summarizing regulatory actions taken by the AHCA pursuant to its authority under ch. 390, F.S.; and
- Requires abortion referral and counseling agencies to register with the AHCA and pay a registration fee, with some exceptions, beginning January 1, 2017.

The bill authorizes the AHCA to collect fees for licensure of abortion clinics and registration of abortion referral and counseling agencies in an amount not to exceed the costs incurred to implement the law. The AHCA estimates the need for one-half of a full-time-position and \$245,183 (\$185,232 of which would be nonrecurring) in the 2016-2017 fiscal year in order to implement the bill. Revenues are deposited and expenses paid from the Health Care Trust Fund (see Section V.).

## II. Present Situation:

### Abortion in Florida

Under Florida law, abortion is defined as the termination of a human pregnancy with an intention other than to produce a live birth or remove a dead fetus.<sup>1</sup> The termination of a pregnancy must be performed by a physician<sup>2</sup> licensed under ch. 458, F.S., or ch. 459, F.S., or a physician practicing medicine or osteopathic medicine in the employment of the United States.<sup>3</sup>

The termination of a pregnancy may not be performed in the third trimester or if a physician determines that the fetus has achieved viability unless there is a medical necessity. Florida law defines the third trimester to mean the weeks of pregnancy after the 24th week and defines viability to mean the state of fetal development when the life of a fetus is sustainable outside the womb through standard medical measures.<sup>4</sup> Specifically, an abortion may not be performed after viability or within the third trimester unless two physicians certify in writing that, in reasonable medical judgment, the termination of the pregnancy is necessary to save the pregnant woman's life or avert a serious risk of substantial and irreversible physical impairment of a major bodily function of the pregnant woman other than a psychological condition. If a second physician is not available, one physician may certify in writing to the medical necessity for legitimate emergency medical procedures for the termination of the pregnancy.<sup>5</sup>

Sections 390.0111(4) and 390.01112(3), F.S., provide that if a termination of pregnancy is performed during the third trimester or during viability, the physician who performs or induces the termination of pregnancy must use that degree of professional skill, care, and diligence to preserve the life and health of the fetus, which the physician would be required to exercise in

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<sup>1</sup> Section 390.011(1), F.S.

<sup>2</sup> Section 390.0111(2), F.S.

<sup>3</sup> Section 390.011(8), F.S.

<sup>4</sup> Sections 390.011(11) and (12), F.S.

<sup>5</sup> Sections 390.0111(1) and 390.01112(1), F.S.

order to preserve the life and health of any fetus intended to be born and not aborted. However, the woman's life and health constitute an overriding and superior consideration to the concern for the life and health of the fetus when the concerns are in conflict. This termination of a pregnancy must be performed in a hospital.<sup>6</sup>

### **Case Law on Abortion**

#### ***Federal Case Law***

In 1973, the U.S. Supreme Court issued the landmark *Roe v. Wade* decision.<sup>7</sup> Using the strict scrutiny standard, the Court determined that a woman's right to terminate a pregnancy is protected by a fundamental right to privacy guaranteed under the Due Process Clause of the Fourteenth Amendment of the U.S. Constitution.<sup>8</sup> Further, the Court reasoned that state regulations limiting the exercise of this right must be justified by a compelling state interest, and must be narrowly drawn.<sup>9</sup>

In 1992, the U.S. Supreme Court ruled on the constitutionality of a Pennsylvania statute involving a 24-hour waiting period between the provision of information to a woman and the performance of an abortion. In that decision, *Planned Parenthood of Southeastern Pennsylvania v. Casey*,<sup>10</sup> the Court upheld the statute and relaxed the standard of review in abortion cases involving adult women from "strict scrutiny" to "unduly burdensome." An undue burden exists and makes a statute invalid if the statute's purpose or effect is to place a substantial obstacle in the way of a woman seeking an abortion before the fetus is viable.<sup>11</sup> The Court held that the undue burden standard is an appropriate means of reconciling a state's interest in human life with the woman's constitutionally protected liberty to decide whether to terminate a pregnancy. The Court determined that, prior to fetal viability, a woman has the right to an abortion without being unduly burdened by government interference. Before viability, a state's interests are not strong enough to support prohibiting an abortion or the imposition of a substantial obstacle to the woman's right to elect the procedure.<sup>12</sup> However, once viability occurs, a state has the power to restrict abortions if the law contains exceptions for pregnancies that endanger a woman's life or health.

#### ***Florida Law on Abortion***

Florida law embraces more privacy interests and expressly extends more privacy protection to its citizens than does the U.S. Constitution. Article I, s. 23 of the State Constitution provides an express right to privacy. The Florida Supreme Court has recognized that this constitutional right

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<sup>6</sup> Section 797.03(3), F.S.

<sup>7</sup> 410 U.S. 113 (1973).

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> 505 U.S. 833 (1992).

<sup>11</sup> *Id.* at 878.

<sup>12</sup> *Id.* at 846.



to privacy “is clearly implicated in a woman’s decision whether or not to continue her pregnancy.”<sup>13</sup> The Florida Supreme Court ruled in *In re T. W.*:<sup>14</sup>

Under Florida law, prior to the end of the first trimester, the abortion decision must be left to the woman and may not be significantly restricted by the state. Following this point, the state may impose significant restrictions only in the least intrusive manner designed to safeguard the health of the mother. Insignificant burdens during either period must substantially further important state interests... Under our Florida Constitution, the state’s interest becomes compelling upon viability .... Viability under Florida law occurs at that point in time when the fetus becomes capable of meaningful life outside the womb through standard medical measures.<sup>15</sup>

The Court concluded that, “following viability, the state may protect its interest in the potentiality of life by regulating abortion, provided that the mother’s health is not jeopardized.”<sup>16</sup>

Unlike the U.S. Supreme Court, however, the Florida Supreme Court reached a different standard of review for privacy laws involving abortion. The Florida Supreme Court held that, when determining the constitutionality of a statute that impinges upon a right of privacy under the Florida Constitution, the strict scrutiny standard of review applies.<sup>17</sup>

### **Abortion and Related Services Funding**

Currently, neither the federal government nor the state of Florida funds abortion procedures, except in limited situations.<sup>18</sup> Federal funding for abortions, including Medicaid funding, has been restricted since 1977 with the passage of the “Hyde amendment.”<sup>19</sup> The Hyde amendment restricts the federal government from spending funds or administrative expenses in connection with abortions unless the pregnancy was the result of rape or incest or if the life of the mother would be in danger if the fetus were carried to term.

However, the Hyde amendment and state law do not restrict federal or state funds from being expended for other services offered by abortion providers, such as family planning services, and Medicaid under fee-for-service arrangements may not exclude qualified health care providers because they separately provide abortion services.<sup>20</sup> This provision is often referred to as the

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<sup>13</sup> *In re T.W.*, 551 So. 2d 1186 (Fla. 1989).

<sup>14</sup> 551 So. 2d 1186, 1192 (Fla. 1989) (holding that a parental consent statute was unconstitutional because it intrudes on a minor’s right to privacy).

<sup>15</sup> *Id.* at 1193-94.

<sup>16</sup> *Id.* at 1194.

<sup>17</sup> *North Florida Women’s Health and Counseling Services, Inc., et al., v. State of Florida*, 866 So. 2d 612 (Fla. 2003).

<sup>18</sup> See ss. 627.64995, 627.66996, and 641.31099, F.S.

<sup>19</sup> For an example of Hyde amendment language passed in a Federal appropriations act, see Pub. L. No. 111-8, ss. 613 and 614 (March 11, 2009).

<sup>20</sup> U.S. Department of Health and Human Services, Centers for Medicare & Medicaid Services, Center for Medicaid, CHIP and Survey and Certification, *CMCS Informational Bulletin: Update on Medicaid/CHIP* (June 1, 2011), available at <https://www.medicare.gov/Federal-Policy-Guidance/downloads/6-1-11-Info-Bulletin.pdf> (last visited Feb. 23, 2016).

“any willing provider” provision. However, the Florida Medicaid managed care program is exempt from the any willing provider provision.<sup>21</sup>

### **Regulation of Clinics Providing Only First Trimester Abortions vs. Regulation of Clinics Providing Second Trimester Abortions**

As discussed above, courts have treated regulations on abortions performed in the first trimester differently from regulations on abortions performed in the second trimester. Florida statutes reflect this difference. Section 390.012, F.S., directs the Agency for Health Care Administration (AHCA) to adopt rules related to clinics that provide abortions. The statute sets forth numerous requirements for clinics providing second trimester abortions, but only requires the AHCA rules for clinics providing first trimester abortions to be “comparable to rules that apply to all surgical procedures requiring approximately the same degree of skill and care.” Currently, the AHCA has not adopted rules that are specific to first trimester clinics; however, guidelines issued for the survey of clinics establish requirements for clinics that offer only first trimester abortions and clinics that offer both first and second trimester abortions.<sup>22, 23</sup> In general, clinics providing only first trimester abortions must be licensed, inspected annually, and must adhere to the general restrictions on abortions, but are not required to meet specific regulations regarding clinic staffing, physical plant, equipment, medical screening, the abortion procedure, and recovery room standards.<sup>24</sup>

#### ***Definition of the First and Second Trimester***

Currently, AHCA rule defines the “first trimester” as “the first 12 weeks of pregnancy (the first 14 completed weeks from the last normal menstrual period)” and “second trimester” as “the portion of a pregnancy following the 12<sup>th</sup> week and extending through the 24<sup>th</sup> week of gestation.”<sup>25</sup> The timing within the definitions is important because clinics providing second trimester abortions are subject to more stringent regulations.

In late summer of 2015, the AHCA cited several clinics associated with Planned Parenthood for performing second trimester abortions without proper licensure. The clinics were licensed only to provide first trimester abortions but the AHCA found that several patient reports from the clinics indicated that abortions had been performed after 13 weeks of gestation. The AHCA

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<sup>21</sup> See s. 409.975, F.S., and Centers for Medicare and Medicaid Services, *Special Terms and Conditions Number 11-W-00206/4, Florida Medicaid Medical Assistance Program, Number 37 Freedom of Choice*, (amended Oct. 15, 2015) p. 22, available at <https://www.medicaid.gov/Medicaid-CHIP-Program-Information/By-Topics/Waivers/1115/downloads/fl/fl-medicaid-reform-ca.pdf> (last visited Feb. 23, 2016).

<sup>22</sup> See Rule ch. 59A-9, F.A.C., and AHCA, ASPEN State Regulation Set: A 4.00 Abortion Clinic (Aug. 11, 2015), available at [http://ahca.myflorida.com/mchq/Current\\_Reg\\_Files/Abortion\\_Clinic\\_ST\\_A.pdf](http://ahca.myflorida.com/mchq/Current_Reg_Files/Abortion_Clinic_ST_A.pdf) (last visited Feb. 23, 2016).

<sup>23</sup> See also Florida Department of Health, Rule 64B15-14.007, F.A.C., which regulates office surgery, which may be comparable to performance of a first trimester abortion. Specifically, a Level I office surgery has no requirements for patient transfer agreements or admitting privileges, whereas for a Level II office surgery, either the physician’s office must have a transfer agreement with a hospital within reasonable proximity or the physician performing the surgery must have privileges at hospital within reasonable proximity.

<sup>24</sup> Rule 59A-9.021, F.A.C. (Investigations and License and Validation Inspections). General restrictions include: the abortion must be performed by a physician; the physician must obtain informed consent before performing the abortion; fetal remains must be disposed of in certain manner; and the physician performing the abortion must notify the parent or guardian of a minor before performing an abortion. See ss. 390.0111 and 390.0114, F.S.

<sup>25</sup> Rule 59A-9.019(14), F.A.C.

issued notices of activity without property licensure to the clinics, requiring the clinics to cease the unlicensed operation and submit a corrective plan to the AHCA within 30 days.<sup>26</sup>

Planned Parenthood filed suit to challenge the citations, alleging that the clinics had not violated the law and that the AHCA redefined first trimester to mean 12 weeks from the last normal menstrual cycle, rather than 12 weeks from point of gestation, making abortions performed after the 12<sup>th</sup> week second trimester abortions.<sup>27</sup> The case is set for hearing in June 2016.<sup>28</sup>

### Disposal of Fetal Remains

Currently, Florida law requires that fetal remains be disposed of in a sanitary and appropriate manner and in accordance with standard health practices, as adopted by rule by the Department of Health (DOH) related to the disposal of biomedical waste.<sup>29</sup> An abortion clinic must obtain a biomedical waste generator permit from the DOH, unless the clinic generates less than 25 pounds of biomedical waste per month.<sup>30</sup>

Failure to dispose of fetal remains properly could subject the clinic to several penalties:

- Section 381.0098(7), F.S., provides that any person or public body that violates the section or applicable rules is subject to administrative action by the DOH and fines up to \$2,500 for each day of violation.
- Section 390.0111(7), F.S., provides that failure to dispose of fetal remains in a sanitary and appropriate manner and in accordance with DOH rules is a *second degree* misdemeanor.<sup>31</sup>
- Section 390.012(7), F.S., provides that failure by an owner, operator, or employee of an abortion clinic to dispose of fetal remains and tissue consistent with the disposal of other human tissue is a *first degree* misdemeanor and the AHCA may suspend or revoke the clinic's license.<sup>32</sup>
- Section 873.05, F.S., prohibits a person from knowingly advertising or offering to purchase or sell, or purchasing, selling, or otherwise transferring, a *human embryo* for valuable consideration.<sup>33</sup> A violation of this prohibition is a second degree felony.<sup>34</sup>

<sup>26</sup> AHCA, Press Release, *Planned Parenthood Inspections Find Deficiencies at Clinics*, (August 5, 2015), links to press release and citation reports available at [http://ahca.myflorida.com/Executive/Communications/Press\\_Releases/archive/2015\\_2016.shtml](http://ahca.myflorida.com/Executive/Communications/Press_Releases/archive/2015_2016.shtml) (last visited Feb. 23, 2016).

<sup>27</sup> Sexton, Christine, *Planned Parenthood sues, says state is trying to redefine 1<sup>st</sup> trimester*, PoliticoFlorida (Aug. 17, 2015), available at <http://www.capitalnewyork.com/article/florida/2015/08/8574447/planned-parenthood-sues-says-state-trying-define-1st-trimester> (last visited on Feb. 23, 2016).

<sup>28</sup> *Planned Parenthood of Southwest and Central Florida, Inc., v. Agency for Healthcare Administration*, 37 2015 CA 001919 (Fla. 2<sup>nd</sup> Judicial Circuit).

<sup>29</sup> Section 390.0111(7), F.S. See also Rule 59A-9.030, F.A.C. The laws governing the disposal of biomedical waste are in s. 381.0098, F.S., and Rule ch. 64E-16, F.A.C.

<sup>30</sup> Rule 64E-16.011(1)(a), F.A.C.

<sup>31</sup> A second degree misdemeanor is punishable by a term of imprisonment up to 60 days and a fine up to \$500. Sections 775.082 and 775.083, F.S.

<sup>32</sup> A first degree misdemeanor is punishable by a term of imprisonment up to 1 year and a fine up to \$10,000. Sections 775.082 and 775.083, F.S.

<sup>33</sup> "Valuable consideration" does not include the reasonable costs associate with the removal, storage, and transportation of human embryos.

<sup>34</sup> A second degree felony is punishable by a term of imprisonment up to 15 years (or up to 30 years for certain habitual or repeat violent offenders) and a fine up to \$500. Sections 775.082 and 775.083, F.S.

## **Abortion Referral and Counseling Agencies**

Section 390.025, F.S., defines an abortion referral and counseling agency as “any person, group, or organization, whether funded publicly or privately, that provides advice or help to persons in obtaining abortions.” Such an agency is required to provide a full and detailed explanation of abortion, including the effects and alternatives to abortion, to a person seeking an abortion before making a referral or aiding the person in obtaining an abortion. If the person seeking a referral is a minor, the agency must make a good-faith effort to furnish the required information to his or her parent or guardian. Additionally, the agency is prohibited from accepting fees, kickbacks, or other compensation from a physician, hospital, clinic, or other medical facility in return for referring a person for an abortion. Any violation of these provisions is a misdemeanor of the first degree.

## **Centers for Disease Control Abortion Surveillance**

In 1969, the Centers for Disease Control and Prevention (CDC) began abortion surveillance in order to document the number and characteristics of women obtaining legal induced abortions. States voluntarily report abortion data to the CDC and the CDC’s Division of Reproductive Health prepares surveillance reports as data becomes available. Information reported to the CDC includes maternal age, gestational age of the fetus in weeks at the time of the abortion, race, ethnicity, method of abortion, marital status, maternal residence, the number of previous live births, and the number of previous abortions. Because reporting is voluntary, some states, including Florida, do not report complete data to the CDC.<sup>35</sup>

## **Abortion Statistics in Florida**

According to the Agency for Health Care Administration, there are 62 licensed clinics in Florida that perform abortions.<sup>36</sup> In 2015, the state reported that 71,740 abortions were performed in the following stages of fetal development:<sup>37</sup>

- 66,110 abortions during the first 12 weeks of gestation;
- 5,630 abortions between 13 and 24 weeks of gestation; and
- None were performed after 24 weeks of gestation.

The majority of abortions, approximately 90 percent, were elective procedures, the majority of which were performed in the first 12 weeks. The remaining 10 percent were performed due to:

- Social or economic reasons – 4,497.
- Rape – 61.
- Serious fetal genetic defect, deformity, or abnormality – 478.
- Physical health of the mother that is not life endangering – 207.

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<sup>35</sup> CDC, *CDCs Abortion Surveillance System FAQs*, (last updated Feb. 10, 2016) available at [http://www.cdc.gov/reproductivehealth/Data\\_Stats/Abortion.htm](http://www.cdc.gov/reproductivehealth/Data_Stats/Abortion.htm), (last visited Feb. 23, 2016).

<sup>36</sup> AHCA, *Florida Health Finder Search: facility/provider type: Abortion Clinic*, (search conducted Feb. 23, 2016), available at <http://www.floridahealthfinder.gov/facilitylocator/FacilitySearch.aspx> (last visited Feb. 23, 2016).

<sup>37</sup> AHCA, *Reported Induced Terminations of Pregnancy (ITOP) by Reason, by Weeks of Gestation, Calendar Year 2016*, (Feb. 5, 2016) available at [http://ahca.myflorida.com/MCHQ/Central\\_Services/Training\\_Support/docs/ReasonGestation\\_2015.pdf](http://ahca.myflorida.com/MCHQ/Central_Services/Training_Support/docs/ReasonGestation_2015.pdf) (last visited Feb. 23, 2016).

- Emotion or psychological health of the mother – 211.
- Life endangering physical condition – 47.
- Incest – 1.

### III. Effect of Proposed Changes:

The bill amends various sections of law related to the termination of pregnancies. In addition to the substantive changes detailed below, the bill also makes various technical and conforming changes.

**Section 1** amends s. 390.011, F.S., to define the terms:

- “Gestation” to mean the development of a human embryo or fetus between fertilization and birth.
- “First trimester” to mean the period of time from fertilization through the end of the 11<sup>th</sup> week of gestation.
- “Second trimester” to mean the period of time from the beginning of the 12<sup>th</sup> week of gestation through the end of the 23<sup>rd</sup> week of gestation.
- “Third trimester” to mean the period of time from the beginning of the 24<sup>th</sup> week of gestation to birth.

**Section 2** amends s. 390.0111, F.S., to clarify that the disposal of fetal remains must be in accordance with s. 381.0098, F.S. (governing the disposal of biomedical waste), and DOH rules. The bill increases the penalty for failure to properly dispose of fetal remains from a second degree misdemeanor to a first degree misdemeanor, similar to the current penalty in s. 390.012, F.S.

The bill also restricts state agencies, local governmental entities, and Medicaid managed care plans from expending funds for the benefit of, paying funds to, or initiating or renewing a contract with any organization that owns, operates, or is affiliated with one or more clinics that are licensed under ch. 390, F.S., and perform abortions. However, the restriction does not apply to:

- Clinics that only perform abortions on fetuses that are the result of rape or incest; that are necessary to preserve the life of the mother; or that are necessary to avert a serious risk of substantial and irreversible physical impairment of a major bodily function of the mother, other than a psychological condition.
- Funds that must be expended to fulfill the terms of a contract entered into before July 1, 2016.
- Funds that must be expended as reimbursement for Medicaid services provided on a fee-for-service basis.

**Section 3** amends s. 390.0112, F.S., to update the reporting requirements for abortion clinics beginning no later than January 1, 2017, to include information consistent with the United States Standard Report of Induced Termination of Pregnancy adopted by the Centers for Disease Control and Prevention (CDC). Additionally, the bill requires the AHCA to submit all such reported data to the CDC as requested by the CDC.

**Section 4** of the bill amends s. 390.012, F.S., to require the AHCA to:

- Perform annual license inspections of all abortion clinics.<sup>38</sup>
- Review at least 50 percent of patient records generated since the clinic's last license inspection when performing a licensure inspection of an abortion clinic.
- Promptly investigate all credible allegations of abortions being performed at a clinic that is not licensed to perform such abortions.
- Beginning February 1, 2017, annually report to the Legislature on all regulatory actions taken during the prior year by the AHCA under ch. 390, F.S.

The bill requires the AHCA to adopt rules for clinics that only perform first trimester abortions that require either:

- The clinic to have a written patient transfer agreement with a hospital within reasonable proximity that includes the transfer of the patient's medical records; or
- All physicians who perform abortions in the clinic to have admitting privileges at a hospital within reasonable proximity of the clinic.

For clinics that perform abortions after the first trimester, the AHCA must adopt rules that require all physicians who perform abortions in the clinic to have admitting privileges at a hospital within reasonable proximity of the clinic, unless the clinic has a written patient transfer agreement with a hospital within reasonable proximity of the clinic which includes the transfer of the patient's medical records held by both the clinic and the treating physician.

The bill repeals the requirement that the AHCA rules prescribing minimum recovery room standards require for the abortion clinic to arrange hospitalization if any complications occur beyond the capabilities of the clinic staff.

The bill also clarifies that an owner, operator, or employee of an abortion clinic must dispose of fetal remains and tissue in accordance with s. 381.0098, F.S. (governing the disposal of biomedical waste), and DOH rules.

**Section 5** amends s. 390.014, F.S., to allow the AHCA to establish in rule a license fee that may not be more than required to pay for the costs incurred by the AHCA in administering ch. 390, F.S. Current law caps the license fee at \$500.

**Section 6** amends s. 390.025, F.S., to require that, effective January 1, 2017, abortion referral and counseling agencies must be registered with the AHCA and pay a registration fee. The amount of the initial and renewal fees are to be established in rule in an amount not to exceed the costs incurred by the AHCA in administering this section. Registration is required biennially. Registrants are required to include the registration number issued by the AHCA in any advertising materials.

The following are exempt from the requirement to register:

- Facilities licensed under chs. 390 (abortion clinics), 395 (hospitals), 400 (nursing homes and related health care facilities), and 408 (other health facilities), F.S.;

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<sup>38</sup> The AHCA currently performs annual inspections of abortion clinics; however, this requirement is not established in statute.

- Facilities that are exempt from the requirement to be licensed as a clinic and that refer 5 or fewer patients for abortions per month; and
- Health care practitioners who do not, in the course of their practice outside of a licensed facility, refer more than 5 patients for abortions each month.

The AHCA is authorized to assess costs for investigations related to the requirements for referrals, including the prohibition on accepting fees or kickbacks for referrals, that result in successful prosecutions.

The AHCA is authorized to adopt rules to implement these provisions.

**Section 7** amends s. 873.05, F.S., to prohibit a person to advertise or offer to purchase, sell, donate, or transfer, or purchase, sell, donate, or transfer fetal remains obtained from an abortion. A violation of this prohibition is a second degree felony. However, this does not prohibit the transportation or transfer of fetal remains for disposal pursuant to s. 381.0098, F.S., and DOH rules.

**Section 8** provides that, unless otherwise expressly provided, the bill is effective July 1, 2016.

#### **IV. Constitutional Issues:**

##### **A. Municipality/County Mandates Restrictions:**

This bill does not appear to have an impact on cities or counties and as such, does not appear to be a mandate for constitutional purposes.

##### **B. Public Records/Open Meetings Issues:**

None.

##### **C. Trust Funds Restrictions:**

None.

##### **D. Other Constitutional Issues:**

It is unclear, given Florida's stricter constitutional protections against regulations of abortions in the first trimester, whether or not the changes in the bill relating to clinics providing only first trimester abortions may be successfully challenged under Florida's constitution.

If the bill becomes law and is challenged, it is uncertain whether a court will apply the strict scrutiny or undue burden standard of review. Historically, the Florida Supreme Court has applied the strict scrutiny standard to legislation imposing abortion restrictions. In contrast, the U.S. Supreme Court adopted the undue burden standard in a challenge to a Pennsylvania law similar to this bill (See *Case Law on Abortion* above).

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

None.

**B. Private Sector Impact:**

The bill may have a negative fiscal impact on clinics providing abortions due to the additional requirements established in the bill. Additionally, the bill may have a negative fiscal impact on organizations affiliated with clinics providing abortions if such organizations currently receive funds which would be restricted by the bill.

The bill will likely have a negative fiscal impact on abortion referral and counseling agencies due to the requirement to register with the Agency for Health Care Administration (AHCA) and pay a registration fee.

**C. Government Sector Impact:**

The AHCA will incur additional costs due to the increased time required for inspections at licensed abortion clinics and for the registration and oversight functions of abortion referral and counseling agencies, as well as costs associated with technology upgrades for the AHCA's system of reporting abortion information to the CDC as required under the bill. The AHCA indicates the need for one-half of a full-time-position and \$245,183 (\$185,232 of which would be nonrecurring) in the 2016-2017 fiscal year in order to implement the bill. This sum includes \$187,964 (\$181,664 of which would be nonrecurring) for technology upgrades. These costs would be paid through the Health Care Trust Fund. The AHCA is required to set fees at a level that will not exceed these costs, which authorizes the AHCA to collect fees sufficient to cover the costs. The fee revenue would be deposited into the Health Care Trust Fund.<sup>39</sup>

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

The AHCA is required to adopt certain rules by the bill, and is granted rulemaking authority related to the registration of abortion referral and counseling agencies.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 390.011, 390.0111, 390.0112, 390.012, 390.014, 390.025, 873.05.

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<sup>39</sup> DOH, *2016 Agency Legislative Bill Analysis: SB 1722*, (Jan. 13, 2016).



**IX. Additional Information:**

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

**Recommended CS by Appropriations Subcommittee on Health and Human Services on February 17, 2016:**

The proposed CS revises the bill's requirements for clinics that perform abortions after the first trimester of pregnancy. The bill as originally filed required that in such clinics, all physicians who perform abortions in the clinic must have admitting privileges at a hospital within reasonable proximity to the clinic and that the clinic must have a written patient transfer agreement with a hospital within reasonable proximity to the clinic which includes the transfer of the patient's medical records held by both the clinic and the treating physician. The proposed CS instead requires that in such clinics, all physicians who perform abortions in the clinic must have admitting privileges at a hospital within reasonable proximity to the clinic, unless the clinic has such a written patient transfer agreement.

- B. **Amendments:**

None.



950510

594-03723-16

Proposed Committee Substitute by the Committee on Fiscal Policy  
(Appropriations Subcommittee on Health and Human Services)

A bill to be entitled

An act relating to termination of pregnancies;  
amending s. 390.011, F.S.; defining the term  
"gestation" and revising the term "third trimester";  
amending s. 390.0111, F.S.; revising the requirements  
for disposal of fetal remains; revising the criminal  
punishment for failure to properly dispose of fetal  
remains; prohibiting state agencies, local  
governmental entities, and Medicaid managed care plans  
from expending or paying funds to or initiating or  
renewing contracts under certain circumstances with  
certain organizations that perform abortions;  
providing exceptions; amending s. 390.0112, F.S.;  
requiring directors of certain hospitals and  
physicians' offices and licensed abortion clinics to  
submit monthly reports to the Agency for Health Care  
Administration on a specified form; prohibiting the  
report from including personal identifying  
information; requiring the agency to submit certain  
data to the Centers for Disease Control and Prevention  
on a quarterly basis; amending s. 390.012, F.S.;  
requiring the agency to develop and enforce rules  
relating to license inspections and investigations of  
certain clinics; requiring the agency to adopt rules  
that require certain clinics to have written  
agreements with local hospitals for certain  
contingencies; specifying that the rules must require



950510

594-03723-16

physicians who perform abortions at a clinic that  
performs abortions in the first trimester of pregnancy  
to have admitting privileges at a hospital within  
reasonable proximity of the clinic; specifying for  
clinics that perform or claim to perform abortions  
after the first trimester of pregnancy that the rules  
must require all physicians performing abortions at  
the clinic to have admitting privileges at a hospital  
within a reasonable proximity unless the clinic has a  
transfer agreement with such a hospital and the  
agreement includes certain provisions; revising  
requirements for rules that prescribe minimum recovery  
room standards; revising requirements for the disposal  
of fetal remains; requiring the agency to submit an  
annual report to the Legislature; amending s. 390.014,  
F.S.; providing a different limitation on the amount  
of a fee; amending s. 390.025, F.S.; requiring certain  
organizations that provide abortion referral services  
or abortion counseling services to register with the  
agency, pay a specified fee, and include certain  
information in advertisements; requiring biennial  
renewal of a registration; providing exemptions from  
the registration requirement; requiring the agency to  
adopt rules; providing for the assessment of costs in  
certain circumstances; amending s. 873.05, F.S.;  
prohibiting an offer to purchase, sell, donate, or  
transfer fetal remains obtained from an abortion and  
the purchase, sale, donation, or transfer of such  
remains, excluding costs associated with certain



594-03723-16

57 transportation of remains; providing effective dates.

58  
59 Be It Enacted by the Legislature of the State of Florida:

60  
61 Section 1. Present subsections (6) through (12) of section  
62 390.011, Florida Statutes, are redesignated as subsections (7)  
63 through (13), respectively, a new subsection (6) is added to  
64 that section, and present subsection (11) of that section is  
65 amended, to read:

66 390.011 Definitions.—As used in this chapter, the term:

67 (6) "Gestation" means the development of a human embryo or  
68 fetus between fertilization and birth.

69 (12)(11) "~~Third~~ Trimester" means one of the following three  
70 distinct periods of time in the duration of a pregnancy:

71 (a) "First trimester," which is the period of time from  
72 fertilization through the end of the 11th week of gestation.

73 (b) "Second trimester," which is the period of time from  
74 the beginning of the 12th week of gestation through the end of  
75 the 23rd week of gestation.

76 (c) "Third trimester," which is the period of time from the  
77 beginning of the 24th week of gestation through birth ~~the weeks~~  
78 ~~of pregnancy after the 24th week of pregnancy.~~

79 Section 2. Subsection (7) of section 390.0111, Florida  
80 Statutes, is amended, and subsection (15) is added to that  
81 section, to read:

82 390.0111 Termination of pregnancies.—

83 (7) FETAL REMAINS.—Fetal remains shall be disposed of in a  
84 sanitary and appropriate manner pursuant to s. 381.0098 and  
85 rules adopted thereunder ~~and in accordance with standard health~~



594-03723-16

86 ~~practices, as provided by rule of the Department of Health.~~

87 Failure to dispose of fetal remains in accordance with this  
88 subsection ~~department rules~~ is a misdemeanor of the first second  
89 degree, punishable as provided in s. 775.082 or s. 775.083.

90 (15) USE OF PUBLIC FUNDS RESTRICTED.—A state agency, a  
91 local governmental entity, or a managed care plan providing  
92 services under part IV of chapter 409 may not expend funds for  
93 the benefit of, pay funds to, or initiate or renew a contract  
94 with an organization that owns, operates, or is affiliated with  
95 one or more clinics that are licensed under this chapter and  
96 perform abortions unless one or more of the following applies:

97 (a) All abortions performed by such clinics are:

98 1. On fetuses that are conceived through rape or incest; or

99 2. Are medically necessary to preserve the life of the  
100 pregnant woman or to avert a serious risk of substantial and  
101 irreversible physical impairment of a major bodily function of  
102 the pregnant woman, other than a psychological condition.

103 (b) The funds must be expended to fulfill the terms of a  
104 contract entered into before July 1, 2016.

105 (c) The funds must be expended as reimbursement for  
106 Medicaid services provided on a fee-for-service basis.

107 Section 3. Subsection (1) of section 390.0112, Florida  
108 Statutes, is amended, present subsections (2), (3), and (4) of  
109 that section are redesignated as subsections (3), (4), and (5),  
110 respectively, and a new subsection (2) is added to that section,  
111 to read:

112 390.0112 Termination of pregnancies; reporting.—

113 (1) The director of any medical facility in which abortions  
114 are performed, including a physician's office, any pregnancy is



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594-03723-16

115 ~~terminated~~ shall submit a ~~monthly~~ report ~~each month~~ to the  
116 agency. ~~The report may be submitted electronically, may not~~  
117 ~~include personal identifying information, and must include:~~

118 (a) Until the agency begins collecting data under paragraph  
119 (e), the number of abortions performed.

120 (b) The reasons such abortions were performed.

121 (c) For each abortion, the period of gestation at the time  
122 the abortion was performed.

123 (d) which contains the number of procedures performed, the  
124 reason for same, the period of gestation at the time such  
125 procedures were performed, and The number of infants born alive  
126 or alive ~~during or~~ immediately after an attempted abortion.

127 (e) Beginning no later than January 1, 2017, information  
128 consistent with the United States Standard Report of Induced  
129 Termination of Pregnancy adopted by the Centers for Disease  
130 Control and Prevention.

131 (2) The agency shall ~~keep be responsible for keeping~~ such  
132 reports in a central ~~location for the purpose of compiling and~~  
133 ~~analyzing place from which~~ statistical data and ~~shall submit~~  
134 ~~data reported pursuant to paragraph (1)(e) to the Division of~~  
135 ~~Reproductive Health within the Centers for Disease Control and~~  
136 ~~Prevention, as requested by the Centers for Disease Control and~~  
137 ~~Prevention analysis can be made.~~

138 Section 4. Paragraph (c) of subsection (1), subsection (2),  
139 paragraphs (c) and (f) of subsection (3), and subsection (7) of  
140 section 390.012, Florida Statutes, are amended, and subsection  
141 (8) is added to that section, to read:

142 390.012 Powers of agency; rules; disposal of fetal  
143 remains.—



950510

594-03723-16

144 (1) The agency may develop and enforce rules pursuant to  
145 ss. 390.011-390.018 and part II of chapter 408 for the health,  
146 care, and treatment of persons in abortion clinics and for the  
147 safe operation of such clinics.

148 (c) The rules shall provide for:

149 1. The performance of pregnancy termination procedures only  
150 by a licensed physician.

151 2. The making, protection, and preservation of patient  
152 records, which shall be treated as medical records under chapter  
153 458. When performing a license inspection of a clinic, the  
154 agency shall inspect at least 50 percent of patient records  
155 generated since the clinic's last license inspection.

156 3. Annual inspections by the agency of all clinics licensed  
157 under this chapter to ensure that such clinics are in compliance  
158 with this chapter and agency rule.

159 4. The prompt investigation of credible allegations of  
160 abortions being performed at a clinic that is not licensed to  
161 perform such procedures.

162 (2) For clinics that perform abortions in the first  
163 trimester of pregnancy only, these rules ~~must shall~~ be  
164 comparable to rules that apply to all surgical procedures  
165 requiring approximately the same degree of skill and care as the  
166 performance of first trimester abortions and must require:

167 (a) Clinics to have a written patient transfer agreement  
168 with a hospital within reasonable proximity to the clinic which  
169 includes the transfer of the patient's medical records held by  
170 the clinic and the treating physician to the licensed hospital;  
171 or

172 (b) Physicians who perform abortions at the clinic to have



950510

594-03723-16

173 admitting privileges at a hospital within reasonable proximity  
174 to the clinic.

175 (3) For clinics that perform or claim to perform abortions  
176 after the first trimester of pregnancy, the agency shall adopt  
177 rules pursuant to ss. 120.536(1) and 120.54 to implement the  
178 provisions of this chapter, including the following:

179 (c) Rules relating to abortion clinic personnel. At a  
180 minimum, these rules shall require that:

181 1. The abortion clinic designate a medical director who is  
182 licensed to practice medicine in this state, and all physicians  
183 who perform abortions in the clinic have who has admitting  
184 privileges at a licensed hospital in this state within  
185 reasonable proximity of the clinic, unless the clinic ~~or~~ has a  
186 written patient transfer agreement with a licensed hospital  
187 within reasonable proximity of the clinic which includes the  
188 transfer of the patient's medical records held by both the  
189 clinic and the treating physician.

190 2. If a physician is not present after an abortion is  
191 performed, a registered nurse, licensed practical nurse,  
192 advanced registered nurse practitioner, or physician assistant  
193 ~~shall~~ be present and remain at the clinic to provide  
194 postoperative monitoring and care until the patient is  
195 discharged.

196 3. Surgical assistants receive training in counseling,  
197 patient advocacy, and the specific responsibilities associated  
198 with the services the surgical assistants provide.

199 4. Volunteers receive training in the specific  
200 responsibilities associated with the services the volunteers  
201 provide, including counseling and patient advocacy as provided



950510

594-03723-16

202 in the rules adopted by the director for different types of  
203 volunteers based on their responsibilities.

204 (f) Rules that prescribe minimum recovery room standards.  
205 At a minimum, these rules ~~must shall~~ require that:

206 1. Postprocedure recovery rooms ~~be are~~ supervised and  
207 staffed to meet the patients' needs.

208 2. Immediate postprocedure care ~~consist consists~~ of  
209 observation in a supervised recovery room for as long as the  
210 patient's condition warrants.

211 3. ~~The clinic arranges hospitalization if any complication~~  
212 ~~beyond the medical capability of the staff occurs or is~~  
213 ~~suspected.~~

214 4. A registered nurse, licensed practical nurse, advanced  
215 registered nurse practitioner, or physician assistant who is  
216 trained in the management of the recovery area and is capable of  
217 providing basic cardiopulmonary resuscitation and related  
218 emergency procedures ~~remain remains~~ on the premises of the  
219 abortion clinic until all patients are discharged.

220 ~~4.5-~~ A physician ~~shall~~ sign the discharge order and be  
221 readily accessible and available until the last patient is  
222 discharged to facilitate the transfer of emergency cases if  
223 hospitalization of the patient or viable fetus is necessary.

224 ~~5.6-~~ A physician ~~discuss discusses~~ Rho(D) immune globulin  
225 with each patient for whom it is indicated and ~~ensure ensures~~  
226 that it is offered to the patient in the immediate postoperative  
227 period or ~~that it~~ will be available to her within 72 hours after  
228 completion of the abortion procedure. If the patient refuses the  
229 Rho(D) immune globulin, she and a witness must sign a refusal  
230 form approved by the agency ~~which must be shall be signed by the~~



950510

594-03723-16

231 ~~patient and a witness and~~ included in the medical record.  
232 ~~6.7.~~ Written instructions with regard to postabortion  
233 coitus, signs of possible problems, and general aftercare which  
234 are specific to the patient be are given to each patient. The  
235 instructions must include information ~~Each patient shall have~~  
236 ~~specific written instructions~~ regarding access to medical care  
237 for complications, including a telephone number for use in the  
238 event of a to-call-for medical emergency emergencies.  
239 ~~7.8.~~ ~~There is~~ A ~~specified~~ minimum length of time be  
240 specified, by type of abortion procedure and duration of  
241 gestation, during which ~~that~~ a patient must remain remains in  
242 the recovery room by type of abortion procedure and duration of  
243 gestation.  
244 ~~8.9.~~ The physician ensure ensures that, with the patient's  
245 consent, a registered nurse, licensed practical nurse, advanced  
246 registered nurse practitioner, or physician assistant from the  
247 abortion clinic makes a good faith effort to contact the patient  
248 by telephone, with the patient's consent, within 24 hours after  
249 surgery to assess the patient's recovery.  
250 ~~9.10.~~ Equipment and services be are readily accessible to  
251 provide appropriate emergency resuscitative and life support  
252 procedures pending the transfer of the patient or viable fetus  
253 to the hospital.  
254 (7) If an any owner, operator, or employee of an abortion  
255 clinic fails to dispose of fetal remains and tissue in a  
256 sanitary manner pursuant to s. 381.0098, rules adopted  
257 thereunder, and rules adopted by the agency pursuant to this  
258 section consistent with the disposal of other human tissue in a  
259 competent professional manner, the license of such clinic may be



950510

594-03723-16

260 suspended or revoked, and such person commits is guilty of a  
261 misdemeanor of the first degree, punishable as provided in s.  
262 775.082 or s. 775.083.  
263 (8) Beginning February 1, 2017, and annually thereafter,  
264 the agency shall submit a report to the President of the Senate  
265 and the Speaker of the House of Representatives which summarizes  
266 all regulatory actions taken during the prior year by the agency  
267 under this chapter.  
268 Section 5. Subsection (3) of section 390.014, Florida  
269 Statutes, is amended to read:  
270 390.014 Licenses; fees.-  
271 (3) In accordance with s. 408.805, an applicant or licensee  
272 shall pay a fee for each license application submitted under  
273 this chapter and part II of chapter 408. The amount of the fee  
274 shall be established by rule and may not be more than required  
275 to pay for the costs incurred by the agency in administering  
276 this chapter less than \$70 or more than \$500.  
277 Section 6. Effective January 1, 2017, present subsection  
278 (3) of section 390.025, Florida Statutes, is amended, and new  
279 subsections (3), (4), and (5) are added to that section, to  
280 read:  
281 390.025 Abortion referral or counseling agencies;  
282 penalties.-  
283 (3) An abortion referral or counseling agency, as defined  
284 in subsection (1), shall register with the Agency for Health  
285 Care Administration. To register or renew a registration an  
286 applicant must pay an initial or renewal registration fee  
287 established by rule, which must not exceed the costs incurred by  
288 the agency in administering this section. Registrants must



950510

594-03723-16

289 include in any advertising materials the registration number  
290 issued by the agency and must renew their registration  
291 biennially.

292 (4) The following are exempt from the requirement to  
293 register pursuant to subsection (3):

294 (a) Facilities licensed pursuant to chapter 390, chapter  
295 395, chapter 400, or chapter 408;

296 (b) Facilities that are exempt from licensure as a clinic  
297 under s. 400.9905(4) and that refer five or fewer patients for  
298 abortions per month; and

299 (c) Health care practitioners, as defined in s. 456.001,  
300 who, in the course of their practice outside of a facility  
301 licensed pursuant to chapter 390, chapter 395, chapter 400, or  
302 chapter 408, refer five or fewer patients for abortions each  
303 month.

304 (5) The agency shall adopt rules to administer this section  
305 and part II of chapter 408.

306 (6) ~~(3)~~ Any person who violates the provisions of subsection  
307 (2) ~~this section~~ is guilty of a misdemeanor of the first degree,  
308 punishable as provided in s. 775.082 or s. 775.083. In addition  
309 to any other penalties imposed pursuant to this chapter, the  
310 Agency for Health Care Administration may assess costs related  
311 to an investigation of violations of this section which results  
312 in a successful prosecution. Such costs may not include attorney  
313 fees.

314 Section 7. Section 873.05, Florida Statutes, is amended to  
315 read:

316 873.05 Advertising, purchase, ~~or~~ sale, or transfer of human  
317 embryos or fetal remains prohibited.-



950510

594-03723-16

318 (1) ~~A~~ ~~No~~ person ~~may not~~ ~~shall~~ knowingly advertise or offer  
319 to purchase or sell, or purchase, sell, or otherwise transfer, a  
320 ~~any~~ human embryo for valuable consideration.

321 ~~(2)~~ As used in this subsection ~~section~~, the term "valuable  
322 consideration" does not include the reasonable costs associated  
323 with the removal, storage, and transportation of a human embryo.

324 (2) A person may not advertise or offer to purchase, sell,  
325 donate, or transfer, or purchase, sell, donate, or transfer,  
326 fetal remains obtained from an abortion, as defined in s.  
327 390.011. This subsection does not prohibit the transportation or  
328 transfer of fetal remains for disposal pursuant to s. 381.0098  
329 or rules adopted thereunder.

330 (3) A person who violates ~~the provisions of~~ this section is  
331 guilty of a felony of the second degree, punishable as provided  
332 in s. 775.082, s. 775.083, or s. 775.084.

333 Section 8. Except as otherwise expressly provided in this  
334 act, this act shall take effect July 1, 2016.

**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.)

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Prepared By: The Professional Staff of the Committee on Fiscal Policy

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BILL: CS/SB 1722

INTRODUCER: Fiscal Policy Committee (Recommended by the Appropriations Subcommittee on Health and Human Services) and Senator Stargel

SUBJECT: Termination of Pregnancies

DATE: March 1, 2016

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Looke</u>	<u>Stovall</u>	<u>HP</u>	<u>Favorable</u>
2.	<u>Brown</u>	<u>Pigott</u>	<u>AHS</u>	<u>Recommend: Fav/CS</u>
3.	<u>Hrdlicka</u>	<u>Hrdlicka</u>	<u>FP</u>	<u>Fav/CS</u>

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**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 1722 amends various statutes relating to the termination of pregnancies. The bill:

- Defines the terms “gestation,” “first trimester,” “second trimester,” and “third trimester;”
- Prohibits the purchase, sale, and donation of fetal remains from an abortion and increases penalties for the improper disposal of fetal remains;
- Restricts state agencies, local governmental entities, and Medicaid managed care plans from contracting with, or expending funds for the benefit of, an organization that owns, operates, or is affiliated with one or more clinics that perform abortions, with some exceptions;
- Requires the Agency for Health Care Administration (AHCA) to collect certain data from medical facilities in which abortions are performed and to submit data to the federal Centers for Disease Control and Prevention (CDC);
- Requires the AHCA to:
  - Perform annual licensure inspections of abortion clinics;
  - Inspect at least 50 percent of abortion clinic records during a license inspection; and
  - Promptly investigate all credible allegations of unlicensed abortions being performed;
- Requires, in clinics that perform only first trimester abortions, that either:
  - The clinic must have a written patient transfer agreement with a hospital within reasonable proximity; or
  - All physicians who perform abortions in the clinic must have admitting privileges at a hospital within reasonable proximity of the clinic;



- Requires, in clinics that perform second trimester abortions, that all physicians who perform abortions in the clinic must have admitting privileges at a hospital within reasonable proximity of the clinic, unless the clinic has a written patient transfer agreement with a hospital within reasonable proximity of the clinic which includes the transfer of the patient's medical records held by both the clinic and the treating physician;
- Requires the AHCA to submit an annual report to the Legislature summarizing regulatory actions taken by the AHCA pursuant to its authority under ch. 390, F.S.; and
- Requires abortion referral and counseling agencies to register with the AHCA and pay a registration fee, with some exceptions, beginning January 1, 2017.

The bill authorizes the AHCA to collect fees for licensure of abortion clinics and registration of abortion referral and counseling agencies in an amount not to exceed the costs incurred to implement the law. The AHCA estimates the need for one-half of a full-time-position and \$245,183 (\$185,232 of which would be nonrecurring) in the 2016-2017 fiscal year in order to implement the bill. Revenues are deposited and expenses paid from the Health Care Trust Fund (see Section V.).

## II. Present Situation:

### Abortion in Florida

Under Florida law, abortion is defined as the termination of a human pregnancy with an intention other than to produce a live birth or remove a dead fetus.<sup>1</sup> The termination of a pregnancy must be performed by a physician<sup>2</sup> licensed under ch. 458, F.S., or ch. 459, F.S., or a physician practicing medicine or osteopathic medicine in the employment of the United States.<sup>3</sup>

The termination of a pregnancy may not be performed in the third trimester or if a physician determines that the fetus has achieved viability unless there is a medical necessity. Florida law defines the third trimester to mean the weeks of pregnancy after the 24th week and defines viability to mean the state of fetal development when the life of a fetus is sustainable outside the womb through standard medical measures.<sup>4</sup> Specifically, an abortion may not be performed after viability or within the third trimester unless two physicians certify in writing that, in reasonable medical judgment, the termination of the pregnancy is necessary to save the pregnant woman's life or avert a serious risk of substantial and irreversible physical impairment of a major bodily function of the pregnant woman other than a psychological condition. If a second physician is not available, one physician may certify in writing to the medical necessity for legitimate emergency medical procedures for the termination of the pregnancy.<sup>5</sup>

Sections 390.0111(4) and 390.01112(3), F.S., provide that if a termination of pregnancy is performed during the third trimester or during viability, the physician who performs or induces the termination of pregnancy must use that degree of professional skill, care, and diligence to preserve the life and health of the fetus, which the physician would be required to exercise in

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<sup>1</sup> Section 390.011(1), F.S.

<sup>2</sup> Section 390.0111(2), F.S.

<sup>3</sup> Section 390.011(8), F.S.

<sup>4</sup> Sections 390.011(11) and (12), F.S.

<sup>5</sup> Sections 390.0111(1) and 390.01112(1), F.S.

order to preserve the life and health of any fetus intended to be born and not aborted. However, the woman's life and health constitute an overriding and superior consideration to the concern for the life and health of the fetus when the concerns are in conflict. This termination of a pregnancy must be performed in a hospital.<sup>6</sup>

### **Case Law on Abortion**

#### ***Federal Case Law***

In 1973, the U.S. Supreme Court issued the landmark *Roe v. Wade* decision.<sup>7</sup> Using the strict scrutiny standard, the Court determined that a woman's right to terminate a pregnancy is protected by a fundamental right to privacy guaranteed under the Due Process Clause of the Fourteenth Amendment of the U.S. Constitution.<sup>8</sup> Further, the Court reasoned that state regulations limiting the exercise of this right must be justified by a compelling state interest, and must be narrowly drawn.<sup>9</sup>

In 1992, the U.S. Supreme Court ruled on the constitutionality of a Pennsylvania statute involving a 24-hour waiting period between the provision of information to a woman and the performance of an abortion. In that decision, *Planned Parenthood of Southeastern Pennsylvania v. Casey*,<sup>10</sup> the Court upheld the statute and relaxed the standard of review in abortion cases involving adult women from "strict scrutiny" to "unduly burdensome." An undue burden exists and makes a statute invalid if the statute's purpose or effect is to place a substantial obstacle in the way of a woman seeking an abortion before the fetus is viable.<sup>11</sup> The Court held that the undue burden standard is an appropriate means of reconciling a state's interest in human life with the woman's constitutionally protected liberty to decide whether to terminate a pregnancy. The Court determined that, prior to fetal viability, a woman has the right to an abortion without being unduly burdened by government interference. Before viability, a state's interests are not strong enough to support prohibiting an abortion or the imposition of a substantial obstacle to the woman's right to elect the procedure.<sup>12</sup> However, once viability occurs, a state has the power to restrict abortions if the law contains exceptions for pregnancies that endanger a woman's life or health.

#### ***Florida Law on Abortion***

Florida law embraces more privacy interests and expressly extends more privacy protection to its citizens than does the U.S. Constitution. Article I, s. 23 of the State Constitution provides an express right to privacy. The Florida Supreme Court has recognized that this constitutional right

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<sup>6</sup> Section 797.03(3), F.S.

<sup>7</sup> 410 U.S. 113 (1973).

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> 505 U.S. 833 (1992).

<sup>11</sup> *Id.* at 878.

<sup>12</sup> *Id.* at 846.

to privacy “is clearly implicated in a woman’s decision whether or not to continue her pregnancy.”<sup>13</sup> The Florida Supreme Court ruled in *In re T. W.*:<sup>14</sup>

Under Florida law, prior to the end of the first trimester, the abortion decision must be left to the woman and may not be significantly restricted by the state. Following this point, the state may impose significant restrictions only in the least intrusive manner designed to safeguard the health of the mother. Insignificant burdens during either period must substantially further important state interests... Under our Florida Constitution, the state’s interest becomes compelling upon viability .... Viability under Florida law occurs at that point in time when the fetus becomes capable of meaningful life outside the womb through standard medical measures.<sup>15</sup>

The Court concluded that, “following viability, the state may protect its interest in the potentiality of life by regulating abortion, provided that the mother’s health is not jeopardized.”<sup>16</sup>

Unlike the U.S. Supreme Court, however, the Florida Supreme Court reached a different standard of review for privacy laws involving abortion. The Florida Supreme Court held that, when determining the constitutionality of a statute that impinges upon a right of privacy under the Florida Constitution, the strict scrutiny standard of review applies.<sup>17</sup>

### **Abortion and Related Services Funding**

Currently, neither the federal government nor the state of Florida funds abortion procedures, except in limited situations.<sup>18</sup> Federal funding for abortions, including Medicaid funding, has been restricted since 1977 with the passage of the “Hyde amendment.”<sup>19</sup> The Hyde amendment restricts the federal government from spending funds or administrative expenses in connection with abortions unless the pregnancy was the result of rape or incest or if the life of the mother would be in danger if the fetus were carried to term.

However, the Hyde amendment and state law do not restrict federal or state funds from being expended for other services offered by abortion providers, such as family planning services, and Medicaid under fee-for-service arrangements may not exclude qualified health care providers because they separately provide abortion services.<sup>20</sup> This provision is often referred to as the

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<sup>13</sup> *In re T.W.*, 551 So. 2d 1186 (Fla. 1989).

<sup>14</sup> 551 So. 2d 1186, 1192 (Fla. 1989) (holding that a parental consent statute was unconstitutional because it intrudes on a minor’s right to privacy).

<sup>15</sup> *Id.* at 1193-94.

<sup>16</sup> *Id.* at 1194.

<sup>17</sup> *North Florida Women’s Health and Counseling Services, Inc., et al., v. State of Florida*, 866 So. 2d 612 (Fla. 2003).

<sup>18</sup> See ss. 627.64995, 627.66996, and 641.31099, F.S.

<sup>19</sup> For an example of Hyde amendment language passed in a Federal appropriations act, see Pub. L. No. 111-8, ss. 613 and 614 (March 11, 2009).

<sup>20</sup> U.S. Department of Health and Human Services, Centers for Medicare & Medicaid Services, Center for Medicaid, CHIP and Survey and Certification, *CMCS Informational Bulletin: Update on Medicaid/CHIP* (June 1, 2011), available at <https://www.medicare.gov/Federal-Policy-Guidance/downloads/6-1-11-Info-Bulletin.pdf> (last visited Feb. 23, 2016).

“any willing provider” provision. However, the Florida Medicaid managed care program is exempt from the any willing provider provision.<sup>21</sup>

### **Regulation of Clinics Providing Only First Trimester Abortions vs. Regulation of Clinics Providing Second Trimester Abortions**

As discussed above, courts have treated regulations on abortions performed in the first trimester differently from regulations on abortions performed in the second trimester. Florida statutes reflect this difference. Section 390.012, F.S., directs the Agency for Health Care Administration (AHCA) to adopt rules related to clinics that provide abortions. The statute sets forth numerous requirements for clinics providing second trimester abortions, but only requires the AHCA rules for clinics providing first trimester abortions to be “comparable to rules that apply to all surgical procedures requiring approximately the same degree of skill and care.” Currently, the AHCA has not adopted rules that are specific to first trimester clinics; however, guidelines issued for the survey of clinics establish requirements for clinics that offer only first trimester abortions and clinics that offer both first and second trimester abortions.<sup>22, 23</sup> In general, clinics providing only first trimester abortions must be licensed, inspected annually, and must adhere to the general restrictions on abortions, but are not required to meet specific regulations regarding clinic staffing, physical plant, equipment, medical screening, the abortion procedure, and recovery room standards.<sup>24</sup>

#### ***Definition of the First and Second Trimester***

Currently, AHCA rule defines the “first trimester” as “the first 12 weeks of pregnancy (the first 14 completed weeks from the last normal menstrual period)” and “second trimester” as “the portion of a pregnancy following the 12<sup>th</sup> week and extending through the 24<sup>th</sup> week of gestation.”<sup>25</sup> The timing within the definitions is important because clinics providing second trimester abortions are subject to more stringent regulations.

In late summer of 2015, the AHCA cited several clinics associated with Planned Parenthood for performing second trimester abortions without proper licensure. The clinics were licensed only to provide first trimester abortions but the AHCA found that several patient reports from the clinics indicated that abortions had been performed after 13 weeks of gestation. The AHCA

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<sup>21</sup> See s. 409.975, F.S., and Centers for Medicare and Medicaid Services, *Special Terms and Conditions Number 11-W-00206/4, Florida Medicaid Medical Assistance Program, Number 37 Freedom of Choice*, (amended Oct. 15, 2015) p. 22, available at <https://www.medicaid.gov/Medicaid-CHIP-Program-Information/By-Topics/Waivers/1115/downloads/fl/fl-medicaid-reform-ca.pdf> (last visited Feb. 23, 2016).

<sup>22</sup> See Rule ch. 59A-9, F.A.C., and AHCA, ASPEN State Regulation Set: A 4.00 Abortion Clinic (Aug. 11, 2015), available at [http://ahca.myflorida.com/mchq/Current\\_Reg\\_Files/Abortion\\_Clinic\\_ST\\_A.pdf](http://ahca.myflorida.com/mchq/Current_Reg_Files/Abortion_Clinic_ST_A.pdf) (last visited Feb. 23, 2016).

<sup>23</sup> See also Florida Department of Health, Rule 64B15-14.007, F.A.C., which regulates office surgery, which may be comparable to performance of a first trimester abortion. Specifically, a Level I office surgery has no requirements for patient transfer agreements or admitting privileges, whereas for a Level II office surgery, either the physician’s office must have a transfer agreement with a hospital within reasonable proximity or the physician performing the surgery must have privileges at hospital within reasonable proximity.

<sup>24</sup> Rule 59A-9.021, F.A.C. (Investigations and License and Validation Inspections). General restrictions include: the abortion must be performed by a physician; the physician must obtain informed consent before performing the abortion; fetal remains must be disposed of in certain manner; and the physician performing the abortion must notify the parent or guardian of a minor before performing an abortion. See ss. 390.0111 and 390.0114, F.S.

<sup>25</sup> Rule 59A-9.019(14), F.A.C.

issued notices of activity without property licensure to the clinics, requiring the clinics to cease the unlicensed operation and submit a corrective plan to the AHCA within 30 days.<sup>26</sup>

Planned Parenthood filed suit to challenge the citations, alleging that the clinics had not violated the law and that the AHCA redefined first trimester to mean 12 weeks from the last normal menstrual cycle, rather than 12 weeks from point of gestation, making abortions performed after the 12<sup>th</sup> week second trimester abortions.<sup>27</sup> The case is set for hearing in June 2016.<sup>28</sup>

### Disposal of Fetal Remains

Currently, Florida law requires that fetal remains be disposed of in a sanitary and appropriate manner and in accordance with standard health practices, as adopted by rule by the Department of Health (DOH) related to the disposal of biomedical waste.<sup>29</sup> An abortion clinic must obtain a biomedical waste generator permit from the DOH, unless the clinic generates less than 25 pounds of biomedical waste per month.<sup>30</sup>

Failure to dispose of fetal remains properly could subject the clinic to several penalties:

- Section 381.0098(7), F.S., provides that any person or public body that violates the section or applicable rules is subject to administrative action by the DOH and fines up to \$2,500 for each day of violation.
- Section 390.0111(7), F.S., provides that failure to dispose of fetal remains in a sanitary and appropriate manner and in accordance with DOH rules is a *second degree* misdemeanor.<sup>31</sup>
- Section 390.012(7), F.S., provides that failure by an owner, operator, or employee of an abortion clinic to dispose of fetal remains and tissue consistent with the disposal of other human tissue is a *first degree* misdemeanor and the AHCA may suspend or revoke the clinic's license.<sup>32</sup>
- Section 873.05, F.S., prohibits a person from knowingly advertising or offering to purchase or sell, or purchasing, selling, or otherwise transferring, a *human embryo* for valuable consideration.<sup>33</sup> A violation of this prohibition is a second degree felony.<sup>34</sup>

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<sup>26</sup> AHCA, Press Release, *Planned Parenthood Inspections Find Deficiencies at Clinics*, (August 5, 2015), links to press release and citation reports available at [http://ahca.myflorida.com/Executive/Communications/Press\\_Releases/archive/2015\\_2016.shtml](http://ahca.myflorida.com/Executive/Communications/Press_Releases/archive/2015_2016.shtml) (last visited Feb. 23, 2016).

<sup>27</sup> Sexton, Christine, *Planned Parenthood sues, says state is trying to redefine 1<sup>st</sup> trimester*, PoliticoFlorida (Aug. 17, 2015), available at <http://www.capitalnewyork.com/article/florida/2015/08/8574447/planned-parenthood-sues-says-state-trying-define-1st-trimester> (last visited on Feb. 23, 2016).

<sup>28</sup> *Planned Parenthood of Southwest and Central Florida, Inc., v. Agency for Healthcare Administration*, 37 2015 CA 001919 (Fla. 2<sup>nd</sup> Judicial Circuit).

<sup>29</sup> Section 390.0111(7), F.S. See also Rule 59A-9.030, F.A.C. The laws governing the disposal of biomedical waste are in s. 381.0098, F.S., and Rule ch. 64E-16, F.A.C.

<sup>30</sup> Rule 64E-16.011(1)(a), F.A.C.

<sup>31</sup> A second degree misdemeanor is punishable by a term of imprisonment up to 60 days and a fine up to \$500. Sections 775.082 and 775.083, F.S.

<sup>32</sup> A first degree misdemeanor is punishable by a term of imprisonment up to 1 year and a fine up to \$10,000. Sections 775.082 and 775.083, F.S.

<sup>33</sup> "Valuable consideration" does not include the reasonable costs associate with the removal, storage, and transportation of human embryos.

<sup>34</sup> A second degree felony is punishable by a term of imprisonment up to 15 years (or up to 30 years for certain habitual or repeat violent offenders) and a fine up to \$500. Sections 775.082 and 775.083, F.S.

## Abortion Referral and Counseling Agencies

Section 390.025, F.S., defines an abortion referral and counseling agency as “any person, group, or organization, whether funded publicly or privately, that provides advice or help to persons in obtaining abortions.” Such an agency is required to provide a full and detailed explanation of abortion, including the effects and alternatives to abortion, to a person seeking an abortion before making a referral or aiding the person in obtaining an abortion. If the person seeking a referral is a minor, the agency must make a good-faith effort to furnish the required information to his or her parent or guardian. Additionally, the agency is prohibited from accepting fees, kickbacks, or other compensation from a physician, hospital, clinic, or other medical facility in return for referring a person for an abortion. Any violation of these provisions is a misdemeanor of the first degree.

## Centers for Disease Control Abortion Surveillance

In 1969, the Centers for Disease Control and Prevention (CDC) began abortion surveillance in order to document the number and characteristics of women obtaining legal induced abortions. States voluntarily report abortion data to the CDC and the CDC’s Division of Reproductive Health prepares surveillance reports as data becomes available. Information reported to the CDC includes maternal age, gestational age of the fetus in weeks at the time of the abortion, race, ethnicity, method of abortion, marital status, maternal residence, the number of previous live births, and the number of previous abortions. Because reporting is voluntary, some states, including Florida, do not report complete data to the CDC.<sup>35</sup>

## Abortion Statistics in Florida

According to the Agency for Health Care Administration, there are 62 licensed clinics in Florida that perform abortions.<sup>36</sup> In 2015, the state reported that 71,740 abortions were performed in the following stages of fetal development:<sup>37</sup>

- 66,110 abortions during the first 12 weeks of gestation;
- 5,630 abortions between 13 and 24 weeks of gestation; and
- None were performed after 24 weeks of gestation.

The majority of abortions, approximately 90 percent, were elective procedures, the majority of which were performed in the first 12 weeks. The remaining 10 percent were performed due to:

- Social or economic reasons – 4,497.
- Rape – 61.
- Serious fetal genetic defect, deformity, or abnormality – 478.
- Physical health of the mother that is not life endangering – 207.

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<sup>35</sup> CDC, *CDCs Abortion Surveillance System FAQs*, (last updated Feb. 10, 2016) available at [http://www.cdc.gov/reproductivehealth/Data\\_Stats/Abortion.htm](http://www.cdc.gov/reproductivehealth/Data_Stats/Abortion.htm), (last visited Feb. 23, 2016).

<sup>36</sup> AHCA, *Florida Health Finder Search: facility/provider type: Abortion Clinic*, (search conducted Feb. 23, 2016), available at <http://www.floridahealthfinder.gov/facilitylocator/FacilitySearch.aspx> (last visited Feb. 23, 2016).

<sup>37</sup> AHCA, *Reported Induced Terminations of Pregnancy (ITOP) by Reason, by Weeks of Gestation, Calendar Year 2016*, (Feb. 5, 2016) available at [http://ahca.myflorida.com/MCHQ/Central\\_Services/Training\\_Support/docs/ReasonGestation\\_2015.pdf](http://ahca.myflorida.com/MCHQ/Central_Services/Training_Support/docs/ReasonGestation_2015.pdf) (last visited Feb. 23, 2016).

- Emotion or psychological health of the mother – 211.
- Life endangering physical condition – 47.
- Incest – 1.

### III. Effect of Proposed Changes:

The bill amends various sections of law related to the termination of pregnancies. In addition to the substantive changes detailed below, the bill also makes various technical and conforming changes.

**Section 1** amends s. 390.011, F.S., to define the terms:

- “Gestation” to mean the development of a human embryo or fetus between fertilization and birth.
- “First trimester” to mean the period of time from fertilization through the end of the 11<sup>th</sup> week of gestation.
- “Second trimester” to mean the period of time from the beginning of the 12<sup>th</sup> week of gestation through the end of the 23<sup>rd</sup> week of gestation.
- “Third trimester” to mean the period of time from the beginning of the 24<sup>th</sup> week of gestation to birth.

**Section 2** amends s. 390.0111, F.S., to clarify that the disposal of fetal remains must be in accordance with s. 381.0098, F.S. (governing the disposal of biomedical waste), and DOH rules. The bill increases the penalty for failure to properly dispose of fetal remains from a second degree misdemeanor to a first degree misdemeanor, similar to the current penalty in s. 390.012, F.S.

The bill also restricts state agencies, local governmental entities, and Medicaid managed care plans from expending funds for the benefit of, paying funds to, or initiating or renewing a contract with any organization that owns, operates, or is affiliated with one or more clinics that are licensed under ch. 390, F.S., and perform abortions. However, the restriction does not apply to:

- Clinics that only perform abortions on fetuses that are the result of rape or incest; that are necessary to preserve the life of the mother; or that are necessary to avert a serious risk of substantial and irreversible physical impairment of a major bodily function of the mother, other than a psychological condition.
- Funds that must be expended to fulfill the terms of a contract entered into before July 1, 2016.
- Funds that must be expended as reimbursement for Medicaid services provided on a fee-for-service basis.

**Section 3** amends s. 390.0112, F.S., to update the reporting requirements for abortion clinics beginning no later than January 1, 2017, to include information consistent with the United States Standard Report of Induced Termination of Pregnancy adopted by the Centers for Disease Control and Prevention (CDC). Additionally, the bill requires the AHCA to submit all such reported data to the CDC as requested by the CDC.

**Section 4** of the bill amends s. 390.012, F.S., to require the AHCA to:

- Perform annual license inspections of all abortion clinics.<sup>38</sup>
- Review at least 50 percent of patient records generated since the clinic's last license inspection when performing a licensure inspection of an abortion clinic.
- Promptly investigate all credible allegations of abortions being performed at a clinic that is not licensed to perform such abortions.
- Beginning February 1, 2017, annually report to the Legislature on all regulatory actions taken during the prior year by the AHCA under ch. 390, F.S.

The bill requires the AHCA to adopt rules for clinics that only perform first trimester abortions that require either:

- The clinic to have a written patient transfer agreement with a hospital within reasonable proximity that includes the transfer of the patient's medical records; or
- All physicians who perform abortions in the clinic to have admitting privileges at a hospital within reasonable proximity of the clinic.

For clinics that perform abortions after the first trimester, the AHCA must adopt rules that require all physicians who perform abortions in the clinic to have admitting privileges at a hospital within reasonable proximity of the clinic, unless the clinic has a written patient transfer agreement with a hospital within reasonable proximity of the clinic which includes the transfer of the patient's medical records held by both the clinic and the treating physician.

The bill repeals the requirement that the AHCA rules prescribing minimum recovery room standards require for the abortion clinic to arrange hospitalization if any complications occur beyond the capabilities of the clinic staff.

The bill also clarifies that an owner, operator, or employee of an abortion clinic must dispose of fetal remains and tissue in accordance with s. 381.0098, F.S. (governing the disposal of biomedical waste), and DOH rules.

**Section 5** amends s. 390.014, F.S., to allow the AHCA to establish in rule a license fee that may not be more than required to pay for the costs incurred by the AHCA in administering ch. 390, F.S. Current law caps the license fee at \$500.

**Section 6** amends s. 390.025, F.S., to require that, effective January 1, 2017, abortion referral and counseling agencies must be registered with the AHCA and pay a registration fee. The amount of the initial and renewal fees are to be established in rule in an amount not to exceed the costs incurred by the AHCA in administering this section. Registration is required biennially. Registrants are required to include the registration number issued by the AHCA in any advertising materials.

The following are exempt from the requirement to register:

- Facilities licensed under chs. 390 (abortion clinics), 395 (hospitals), 400 (nursing homes and related health care facilities), and 408 (other health facilities), F.S.;

---

<sup>38</sup> The AHCA currently performs annual inspections of abortion clinics; however, this requirement is not established in statute.



- Facilities that are exempt from the requirement to be licensed as a clinic and that refer 5 or fewer patients for abortions per month; and
- Health care practitioners who do not, in the course of their practice outside of a licensed facility, refer more than 5 patients for abortions each month.

The AHCA is authorized to assess costs for investigations related to the requirements for referrals, including the prohibition on accepting fees or kickbacks for referrals, that result in successful prosecutions.

The AHCA is authorized to adopt rules to implement these provisions.

**Section 7** amends s. 873.05, F.S., to prohibit a person to advertise or offer to purchase, sell, donate, or transfer, or purchase, sell, donate, or transfer fetal remains obtained from an abortion. A violation of this prohibition is a second degree felony. However, this does not prohibit the transportation or transfer of fetal remains for disposal pursuant to s. 381.0098, F.S., and DOH rules.

**Section 8** provides that, unless otherwise expressly provided, the bill is effective July 1, 2016.

#### **IV. Constitutional Issues:**

##### **A. Municipality/County Mandates Restrictions:**

This bill does not appear to have an impact on cities or counties and as such, does not appear to be a mandate for constitutional purposes.

##### **B. Public Records/Open Meetings Issues:**

None.

##### **C. Trust Funds Restrictions:**

None.

##### **D. Other Constitutional Issues:**

It is unclear, given Florida's stricter constitutional protections against regulations of abortions in the first trimester, whether or not the changes in the bill relating to clinics providing only first trimester abortions may be successfully challenged under Florida's constitution.

If the bill becomes law and is challenged, it is uncertain whether a court will apply the strict scrutiny or undue burden standard of review. Historically, the Florida Supreme Court has applied the strict scrutiny standard to legislation imposing abortion restrictions. In contrast, the U.S. Supreme Court adopted the undue burden standard in a challenge to a Pennsylvania law similar to this bill (See *Case Law on Abortion* above).

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

None.

**B. Private Sector Impact:**

The bill may have a negative fiscal impact on clinics providing abortions due to the additional requirements established in the bill. Additionally, the bill may have a negative fiscal impact on organizations affiliated with clinics providing abortions if such organizations currently receive funds which would be restricted by the bill.

The bill will likely have a negative fiscal impact on abortion referral and counseling agencies due to the requirement to register with the Agency for Health Care Administration (AHCA) and pay a registration fee.

**C. Government Sector Impact:**

The AHCA will incur additional costs due to the increased time required for inspections at licensed abortion clinics and for the registration and oversight functions of abortion referral and counseling agencies, as well as costs associated with technology upgrades for the AHCA's system of reporting abortion information to the CDC as required under the bill. The AHCA indicates the need for one-half of a full-time-position and \$245,183 (\$185,232 of which would be nonrecurring) in the 2016-2017 fiscal year in order to implement the bill. This sum includes \$187,964 (\$181,664 of which would be nonrecurring) for technology upgrades. These costs would be paid through the Health Care Trust Fund. The AHCA is required to set fees at a level that will not exceed these costs, which authorizes the AHCA to collect fees sufficient to cover the costs. The fee revenue would be deposited into the Health Care Trust Fund.<sup>39</sup>

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

The AHCA is required to adopt certain rules by the bill, and is granted rulemaking authority related to the registration of abortion referral and counseling agencies.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 390.011, 390.0111, 390.0112, 390.012, 390.014, 390.025, 873.05.

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<sup>39</sup> DOH, *2016 Agency Legislative Bill Analysis: SB 1722*, (Jan. 13, 2016).

**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 Fiscal Policy on February 29, 2016:**

As recommended by the Appropriations Subcommittee on Health and Human Services, the committee substitute revises the bill's requirements for clinics that perform abortions after the first trimester of pregnancy. The bill as originally filed required that in such clinics, all physicians who perform abortions in the clinic must have admitting privileges at a hospital within reasonable proximity to the clinic and that the clinic must have a written patient transfer agreement with a hospital within reasonable proximity to the clinic which includes the transfer of the patient's medical records held by both the clinic and the treating physician. The proposed CS instead requires that in such clinics, all physicians who perform abortions in the clinic must have admitting privileges at a hospital within reasonable proximity to the clinic, unless the clinic has such a written patient transfer agreement.

- B. **Amendments:**

None.

By Senator Stargel

15-01209E-16

20161722\_\_

1 A bill to be entitled  
 2 An act relating to termination of pregnancies;  
 3 amending s. 390.011, F.S.; defining the term  
 4 "gestation" and revising the term "third trimester";  
 5 amending s. 390.0111, F.S.; revising the requirements  
 6 for disposal of fetal remains; revising the criminal  
 7 punishment for failure to properly dispose of fetal  
 8 remains; prohibiting state agencies, local  
 9 governmental entities, and Medicaid managed care plans  
 10 from expending or paying funds to or initiating or  
 11 renewing contracts under certain circumstances with  
 12 certain organizations that perform abortions;  
 13 providing exceptions; amending s. 390.0112, F.S.;  
 14 requiring directors of certain hospitals and  
 15 physicians' offices and licensed abortion clinics to  
 16 submit monthly reports to the Agency for Health Care  
 17 Administration on a specified form; prohibiting the  
 18 report from including personal identifying  
 19 information; requiring the agency to submit certain  
 20 data to the Centers for Disease Control and Prevention  
 21 on a quarterly basis; amending s. 390.012, F.S.;  
 22 requiring the agency to develop and enforce rules  
 23 relating to license inspections and investigations of  
 24 certain clinics; requiring the agency to adopt rules  
 25 that require certain clinics to have written  
 26 agreements with local hospitals for certain  
 27 contingencies; specifying that the rules must require  
 28 physicians who perform abortions at a clinic that  
 29 performs abortions in the first trimester of pregnancy  
 30 to have admitting privileges at a hospital within  
 31 reasonable proximity to the clinic; revising  
 32 requirements for rules that prescribe minimum recovery

Page 1 of 12

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15-01209E-16

20161722\_\_

33 room standards; revising requirements for the disposal  
 34 of fetal remains; requiring the agency to submit an  
 35 annual report to the Legislature; amending s. 390.014,  
 36 F.S.; providing a different limitation on the amount  
 37 of a fee; amending s. 390.025, F.S.; requiring certain  
 38 organizations that provide abortion referral services  
 39 or abortion counseling services to register with the  
 40 agency, pay a specified fee, and include certain  
 41 information in advertisements; requiring biennial  
 42 renewal of a registration; providing exemptions from  
 43 the registration requirement; requiring the agency to  
 44 adopt rules; providing for the assessment of costs in  
 45 certain circumstances; amending s. 873.05, F.S.;  
 46 prohibiting an offer to purchase, sell, donate, or  
 47 transfer fetal remains obtained from an abortion and  
 48 the purchase, sale, donation, or transfer of such  
 49 remains, excluding costs associated with certain  
 50 transportation of remains; providing effective dates.

51  
 52 Be It Enacted by the Legislature of the State of Florida:

53  
 54 Section 1. Present subsections (6) through (12) of section  
 55 390.011, Florida Statutes, are redesignated as subsections (7)  
 56 through (13), respectively, a new subsection (6) is added to  
 57 that section, and present subsection (11) of that section is  
 58 amended, to read:

59 390.011 Definitions.—As used in this chapter, the term:  
 60 (6) "Gestation" means the development of a human embryo or  
 61 fetus between fertilization and birth.

Page 2 of 12

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15-01209E-16

20161722\_\_

62 (12)(11) "Third Trimester" means one of the following three  
 63 distinct periods of time in the duration of a pregnancy:

64 (a) "First trimester," which is the period of time from  
 65 fertilization through the end of the 11th week of gestation.

66 (b) "Second trimester," which is the period of time from  
 67 the beginning of the 12th week of gestation through the end of  
 68 the 23rd week of gestation.

69 (c) "Third trimester," which is the period of time from the  
 70 beginning of the 24th week of gestation through birth the weeks  
 71 of pregnancy after the 24th week of pregnancy.

72 Section 2. Subsection (7) of section 390.0111, Florida  
 73 Statutes, is amended, and subsection (15) is added to that  
 74 section, to read:

75 390.0111 Termination of pregnancies.—

76 (7) FETAL REMAINS.—Fetal remains shall be disposed of in a  
 77 sanitary and appropriate manner pursuant to s. 381.0098 and  
 78 rules adopted thereunder and in accordance with standard health  
 79 practices, as provided by rule of the Department of Health.  
 80 Failure to dispose of fetal remains in accordance with this  
 81 subsection ~~department rules~~ is a misdemeanor of the first ~~second~~  
 82 degree, punishable as provided in s. 775.082 or s. 775.083.

83 (15) USE OF PUBLIC FUNDS RESTRICTED.—A state agency, a  
 84 local governmental entity, or a managed care plan providing  
 85 services under part IV of chapter 409 may not expend funds for  
 86 the benefit of, pay funds to, or initiate or renew a contract  
 87 with an organization that owns, operates, or is affiliated with  
 88 one or more clinics that are licensed under this chapter and  
 89 perform abortions unless one or more of the following applies:

90 (a) All abortions performed by such clinics are:

Page 3 of 12

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15-01209E-16

20161722\_\_

91 1. On fetuses that are conceived through rape or incest; or

92 2. Are medically necessary to preserve the life of the  
 93 pregnant woman or to avert a serious risk of substantial and  
 94 irreversible physical impairment of a major bodily function of  
 95 the pregnant woman, other than a psychological condition.

96 (b) The funds must be expended to fulfill the terms of a  
 97 contract entered into before July 1, 2016.

98 (c) The funds must be expended as reimbursement for  
 99 Medicaid services provided on a fee-for-service basis.

100 Section 3. Subsection (1) of section 390.0112, Florida  
 101 Statutes, is amended, present subsections (2), (3), and (4) of  
 102 that section are redesignated as subsections (3), (4), and (5),  
 103 respectively, and a new subsection (2) is added to that section,  
 104 to read:

105 390.0112 Termination of pregnancies; reporting.—

106 (1) The director of any medical facility in which abortions  
 107 are performed, including a physician's office, any pregnancy is  
 108 terminated shall submit a monthly report each month to the  
 109 agency. The report may be submitted electronically, may not  
 110 include personal identifying information, and must include:

111 (a) Until the agency begins collecting data under paragraph  
 112 (e), the number of abortions performed.

113 (b) The reasons such abortions were performed.

114 (c) For each abortion, the period of gestation at the time  
 115 the abortion was performed.

116 (d) ~~which contains the number of procedures performed, the~~  
 117 ~~reason for same, the period of gestation at the time such~~  
 118 ~~procedures were performed, and~~ The number of infants born alive  
 119 ~~or alive during or~~ immediately after an attempted abortion.

Page 4 of 12

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15-01209E-16

20161722\_\_

120 (e) Beginning no later than January 1, 2017, information  
 121 consistent with the United States Standard Report of Induced  
 122 Termination of Pregnancy adopted by the Centers for Disease  
 123 Control and Prevention.

124 (2) The agency shall ~~keep be responsible for keeping~~ such  
 125 reports in a central location for the purpose of compiling and  
 126 analyzing ~~place from which~~ statistical data and shall submit  
 127 data reported pursuant to paragraph (1) (e) to the Division of  
 128 Reproductive Health within the Centers for Disease Control and  
 129 Prevention, as requested by the Centers for Disease Control and  
 130 Prevention analysis can be made.

131 Section 4. Paragraph (c) of subsection (1), subsection (2),  
 132 and paragraphs (c) and (f) of subsection (3) of section 390.012,  
 133 Florida Statutes, are amended, present paragraphs (g) and (h) of  
 134 subsection (3) are redesignated as paragraphs (h) and (i),  
 135 respectively, a new paragraph (g) is added to that subsection,  
 136 subsection (7) of that section is amended, and subsection (8) is  
 137 added to that section, to read:

138 390.012 Powers of agency; rules; disposal of fetal  
 139 remains.—

140 (1) The agency may develop and enforce rules pursuant to  
 141 ss. 390.011-390.018 and part II of chapter 408 for the health,  
 142 care, and treatment of persons in abortion clinics and for the  
 143 safe operation of such clinics.

144 (c) The rules shall provide for:

145 1. The performance of pregnancy termination procedures only  
 146 by a licensed physician.

147 2. The making, protection, and preservation of patient  
 148 records, which shall be treated as medical records under chapter

15-01209E-16

20161722\_\_

149 458. When performing a license inspection of a clinic, the  
 150 agency shall inspect at least 50 percent of patient records  
 151 generated since the clinic's last license inspection.

152 3. Annual inspections by the agency of all clinics licensed  
 153 under this chapter to ensure that such clinics are in compliance  
 154 with this chapter and agency rule.

155 4. The prompt investigation of credible allegations of  
 156 abortions being performed at a clinic that is not licensed to  
 157 perform such procedures.

158 (2) For clinics that perform abortions in the first  
 159 trimester of pregnancy only, these rules ~~must~~ shall be  
 160 comparable to rules that apply to all surgical procedures  
 161 requiring approximately the same degree of skill and care as the  
 162 performance of first trimester abortions and must require:

163 (a) Clinics to have a written patient transfer agreement  
 164 with a hospital within reasonable proximity to the clinic which  
 165 includes the transfer of the patient's medical records held by  
 166 the clinic and the treating physician to the licensed hospital;  
 167 or

168 (b) Physicians who perform abortions at the clinic to have  
 169 admitting privileges at a hospital within reasonable proximity  
 170 to the clinic.

171 (3) For clinics that perform or claim to perform abortions  
 172 after the first trimester of pregnancy, the agency shall adopt  
 173 rules pursuant to ss. 120.536(1) and 120.54 to implement the  
 174 provisions of this chapter, including the following:

175 (c) Rules relating to abortion clinic personnel. At a  
 176 minimum, these rules shall require that:

177 1. The abortion clinic designate a medical director who is

15-01209E-16 20161722\_\_

178 licensed to practice medicine in this state, and all physicians  
 179 who perform abortions in the clinic have ~~who has~~ admitting  
 180 privileges at a ~~licensed hospital in this state within~~  
 181 reasonable proximity to the clinic ~~or has a transfer agreement~~  
 182 ~~with a licensed hospital within reasonable proximity of the~~  
 183 ~~elinie.~~

184 2. If a physician is not present after an abortion is  
 185 performed, a registered nurse, licensed practical nurse,  
 186 advanced registered nurse practitioner, or physician assistant  
 187 shall be present and remain at the clinic to provide  
 188 postoperative monitoring and care until the patient is  
 189 discharged.

190 3. Surgical assistants receive training in counseling,  
 191 patient advocacy, and the specific responsibilities associated  
 192 with the services the surgical assistants provide.

193 4. Volunteers receive training in the specific  
 194 responsibilities associated with the services the volunteers  
 195 provide, including counseling and patient advocacy as provided  
 196 in the rules adopted by the director for different types of  
 197 volunteers based on their responsibilities.

198 (f) Rules that prescribe minimum recovery room standards.  
 199 At a minimum, these rules must ~~shall~~ require that:

200 1. Postprocedure recovery rooms be ~~are~~ supervised and  
 201 staffed to meet the patients' needs.

202 2. Immediate postprocedure care consist ~~consists~~ of  
 203 observation in a supervised recovery room for as long as the  
 204 patient's condition warrants.

205 3. ~~The clinic arranges hospitalization if any complication~~  
 206 ~~beyond the medical capability of the staff occurs or is~~

15-01209E-16 20161722\_\_

207 ~~suspected.~~

208 4. A registered nurse, licensed practical nurse, advanced  
 209 registered nurse practitioner, or physician assistant who is  
 210 trained in the management of the recovery area and is capable of  
 211 providing basic cardiopulmonary resuscitation and related  
 212 emergency procedures remain ~~remains~~ on the premises of the  
 213 abortion clinic until all patients are discharged.

214 ~~4.5.~~ A physician ~~shall~~ sign the discharge order and be  
 215 readily accessible and available until the last patient is  
 216 discharged to facilitate the transfer of emergency cases if  
 217 hospitalization of the patient or viable fetus is necessary.

218 ~~5.6.~~ A physician discuss ~~discusses~~ Rho(D) immune globulin  
 219 with each patient for whom it is indicated and ensure ~~ensures~~  
 220 that it is offered to the patient in the immediate postoperative  
 221 period or ~~that it~~ will be available to her within 72 hours after  
 222 completion of the abortion procedure. If the patient refuses the  
 223 Rho(D) immune globulin, she and a witness must sign a refusal  
 224 form approved by the agency which must be ~~shall be signed by the~~  
 225 ~~patient and a witness and~~ included in the medical record.

226 ~~6.7.~~ Written instructions with regard to postabortion  
 227 coitus, signs of possible problems, and general aftercare which  
 228 are specific to the patient be ~~are~~ given to each patient. The  
 229 instructions must include information ~~Each patient shall have~~  
 230 ~~specific written instructions~~ regarding access to medical care  
 231 for complications, including a telephone number for use in the  
 232 event of a to-call-for medical emergency emergencies.

233 ~~7.8.~~ ~~There is~~ A ~~specified~~ minimum length of time be  
 234 specified, by type of abortion procedure and duration of  
 235 gestation, during which ~~that~~ a patient must remain ~~remains~~ in

15-01209E-16 20161722\_\_

236 the recovery room ~~by type of abortion procedure and duration of~~  
237 ~~gestation.~~

238 ~~8.9-~~ The physician ~~ensure~~ ensures that, with the patient's  
239 consent, a registered nurse, licensed practical nurse, advanced  
240 registered nurse practitioner, or physician assistant from the  
241 abortion clinic makes a good faith effort to contact the patient  
242 by telephone, ~~with the patient's consent~~, within 24 hours after  
243 surgery to assess the patient's recovery.

244 ~~9.10-~~ Equipment and services ~~be~~ are readily accessible to  
245 provide appropriate emergency resuscitative and life support  
246 procedures pending the transfer of the patient or viable fetus  
247 to the hospital.

248 (g) Rules that require clinics to have a written patient  
249 transfer agreement with a hospital within reasonable proximity  
250 to the clinic which includes the transfer of the patient's  
251 medical records held by both the clinic and the treating  
252 physician.

253 (7) If ~~an any~~ owner, operator, or employee of an abortion  
254 clinic fails to dispose of fetal remains and tissue in a  
255 sanitary manner pursuant to s. 381.0098, rules adopted  
256 thereunder, and rules adopted by the agency pursuant to this  
257 section consistent with the disposal of other human tissue in a  
258 ~~competent professional manner~~, the license of such clinic may be  
259 suspended or revoked, and such person ~~commits is guilty of~~ a  
260 misdemeanor of the first degree, punishable as provided in s.  
261 775.082 or s. 775.083.

262 (8) Beginning February 1, 2017, and annually thereafter,  
263 the agency shall submit a report to the President of the Senate  
264 and the Speaker of the House of Representatives which summarizes

15-01209E-16 20161722\_\_

265 all regulatory actions taken during the prior year by the agency  
266 under this chapter.

267 Section 5. Subsection (3) of section 390.014, Florida  
268 Statutes, is amended to read:

269 390.014 Licenses; fees.—

270 (3) In accordance with s. 408.805, an applicant or licensee  
271 shall pay a fee for each license application submitted under  
272 this chapter and part II of chapter 408. The amount of the fee  
273 shall be established by rule and may not be more than required  
274 to pay for the costs incurred by the agency in administering  
275 this chapter less than \$70 or more than \$500.

276 Section 6. Effective January 1, 2017, present subsection  
277 (3) of section 390.025, Florida Statutes, is amended, and new  
278 subsections (3), (4), and (5) are added to that section, to  
279 read:

280 390.025 Abortion referral or counseling agencies;  
281 penalties.—

282 (3) An abortion referral or counseling agency, as defined  
283 in subsection (1), shall register with the Agency for Health  
284 Care Administration. To register or renew a registration an  
285 applicant must pay an initial or renewal registration fee  
286 established by rule, which must not exceed the costs incurred by  
287 the agency in administering this section. Registrants must  
288 include in any advertising materials the registration number  
289 issued by the agency and must renew their registration  
290 biennially.

291 (4) The following are exempt from the requirement to  
292 register pursuant to subsection (3):

293 (a) Facilities licensed pursuant to chapter 390, chapter



15-01209E-16

20161722\_\_

294 395, chapter 400, or chapter 408;

295 (b) Facilities that are exempt from licensure as a clinic  
 296 under s. 400.9905(4) and that refer five or fewer patients for  
 297 abortions per month; and

298 (c) Health care practitioners, as defined in s. 456.001,  
 299 who, in the course of their practice outside of a facility  
 300 licensed pursuant to chapter 390, chapter 395, chapter 400, or  
 301 chapter 408, refer five or fewer patients for abortions each  
 302 month.

303 (5) The agency shall adopt rules to administer this section  
 304 and part II of chapter 408.

305 ~~(6)(3)~~ Any person who violates the provisions of subsection  
 306 (2) this section is guilty of a misdemeanor of the first degree,  
 307 punishable as provided in s. 775.082 or s. 775.083. In addition  
 308 to any other penalties imposed pursuant to this chapter, the  
 309 Agency for Health Care Administration may assess costs related  
 310 to an investigation of violations of this section which results  
 311 in a successful prosecution. Such costs may not include attorney  
 312 fees.

313 Section 7. Section 873.05, Florida Statutes, is amended to  
 314 read:

315 873.05 Advertising, purchase, ~~or~~ sale, or transfer of human  
 316 embryos or fetal remains prohibited.-

317 (1) ~~A~~ No person may not ~~shall~~ knowingly advertise or offer  
 318 to purchase or sell, or purchase, sell, or otherwise transfer, a  
 319 ~~any~~ human embryo for valuable consideration.

320 ~~(2)~~ As used in this subsection ~~section~~, the term "valuable  
 321 consideration" does not include the reasonable costs associated  
 322 with the removal, storage, and transportation of a human embryo.

15-01209E-16

20161722\_\_

323 (2) A person may not advertise or offer to purchase, sell,  
 324 donate, or transfer, or purchase, sell, donate, or transfer,  
 325 fetal remains obtained from an abortion, as defined in s.  
 326 390.011. This subsection does not prohibit the transportation or  
 327 transfer of fetal remains for disposal pursuant to s. 381.0098  
 328 or rules adopted thereunder.

329 (3) A person who violates ~~the provisions of~~ this section is  
 330 guilty of a felony of the second degree, punishable as provided  
 331 in s. 775.082, s. 775.083, or s. 775.084.

332 Section 8. Except as otherwise expressly provided in this  
 333 act, this act shall take effect July 1, 2016.



## THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

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

**JOINT COMMITTEE:**  
Joint Committee on Public Counsel Oversight

**SENATOR KELLI STARGEL**  
15th District

February 24, 2016

The Honorable Anitere Flores  
Senate Fiscal Policy Committee, Chair  
413 Senate Office Building  
404 S. Monroe Street  
Tallahassee, FL 32399

Dear Chair Flores:

I respectfully request that SB 1722, related to *Termination of Pregnancies*, be placed on the next committee agenda.

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

Sincerely,

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

Kelli Stargel  
State Senator, District 15

Cc: Jennifer Hrdlicka/ Staff Director  
Tamra Lyon/ AA

**REPLY TO:**

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

Senate's Website: [www.flsenate.gov](http://www.flsenate.gov)

**ANDY GARDINER**  
President of the Senate

**GARRETT RICHTER**  
President Pro Tempore

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

2/29/16

Meeting Date

1722

Bill Number (if applicable)

Topic Termination of Pregnancies

Amendment Barcode (if applicable)

Name Bill Bunkley

Job Title President

Address PO Box 341644

Phone (813) 264-2977

Street

Tampa

City

FL

State

33694

Zip

Email \_\_\_\_\_

Speaking:  For  Against  Information

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

Representing FL Ethics & Religious Liberty Commission

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

2/29/16

Meeting Date

1722

Bill Number (if applicable)

Topic Terminating Preg.

Amendment Barcode (if applicable)

Name Pam Olsen

Job Title Pastor

Address PO Box 14017

Phone 850-339-6190

Street

TLH

City

FL

State

3

Zip

Email pamolsen33@gmail.com

Speaking:  For  Against  Information

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

Representing self

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/29/16

Meeting Date

SB/722

Bill Number (if applicable)

Topic \_\_\_\_\_

Amendment Barcode (if applicable)

Name Tracy Yacobellis

Job Title \_\_\_\_\_

Address \_\_\_\_\_

Phone \_\_\_\_\_

Street

Tallahassee

City

FL

State

32301

Zip

Email \_\_\_\_\_

Speaking:  For  Against  Information

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

Representing \_\_\_\_\_

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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THE FLORIDA SENATE

APPEARANCE RECORD

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

2/29/16

Meeting Date

SB1722

Bill Number (if applicable)

Topic \_\_\_\_\_

Amendment Barcode (if applicable)

Name Madison Dickmon

Job Title \_\_\_\_\_

Address \_\_\_\_\_

Phone \_\_\_\_\_

Street

Tallahassee

FL

State

32301

Zip

Email \_\_\_\_\_

City

Speaking:  For  Against  Information

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

Representing \_\_\_\_\_

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

2/29/16  
Meeting Date

SB1722  
Bill Number (if applicable)

Topic \_\_\_\_\_

Amendment Barcode (if applicable)

Name Christopher Bilbao

Job Title \_\_\_\_\_

Address \_\_\_\_\_

Phone \_\_\_\_\_

Street

Tallahassee

City

FL

State

32304

Zip

Email: \_\_\_\_\_

Speaking:  For  Against  Information

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

Representing \_\_\_\_\_

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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S-001 (10/14/14)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

2/29/16  
Meeting Date

SB1722  
Bill Number (if applicable)

Topic \_\_\_\_\_

Amendment Barcode (if applicable)

Name ~~████~~ Kelly Small

Job Title \_\_\_\_\_

Address \_\_\_\_\_

Phone \_\_\_\_\_

Street

Tallahassee

FL  
State

32304  
Zip

City

Email \_\_\_\_\_

Speaking:  For  Against  Information

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

Representing \_\_\_\_\_

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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THE FLORIDA SENATE

APPEARANCE RECORD

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

2/29/16

Meeting Date

SB 1722

Bill Number (if applicable)

Topic \_\_\_\_\_

Amendment Barcode (if applicable)

Name  Jose Palacios

Job Title \_\_\_\_\_

Address  \_\_\_\_\_

Phone \_\_\_\_\_

Street

Seffner

FL

State

33587

Zip

Email \_\_\_\_\_

City

Speaking:  For  Against  Information

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

Representing \_\_\_\_\_

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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THE FLORIDA SENATE

APPEARANCE RECORD

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

02/29/2016  
Meeting Date

SB 1722  
Bill Number (if applicable)

Topic Termination of Pregnancies

Amendment Barcode (if applicable)

Name Francesca Menes

Job Title Director of Policy and Advocacy

Address \_\_\_\_\_  
Street

Phone 786-340-1646

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

Email \_\_\_\_\_

Speaking:  For  Against  Information

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

Representing \_\_\_\_\_

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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THE FLORIDA SENATE

APPEARANCE RECORD

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

2/29/16

Meeting Date

SB 1722

Bill Number (if applicable)

Topic \_\_\_\_\_

Amendment Barcode (if applicable)

Name Christine J. White

Job Title \_\_\_\_\_

Address 2019 Ted Hines Ct.

Phone 570-3327

Tallahassee, FL 32308  
Street City State Zip

Email \_\_\_\_\_

Speaking:  For  Against  Information

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

Representing self

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

2/29/16

Meeting Date

SB1722

Bill Number (if applicable)

Topic SB1722

Amendment Barcode (if applicable)

\*Name Renee Sessions

Job Title Business Analyst

Address 1111 ~~101~~ Mountbatten Rd.

Phone 8132402611

\*

Street

Tallahassee

FL

323

City

State

Zip

Email rsessi@gmail.com

Speaking:  For  Against  Information

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

Representing myself / ~~Planned Parenthood~~

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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S-001 (10/14/14)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

Meeting Date \_\_\_\_\_

SB 1722  
Bill Number (if applicable)

Topic \_\_\_\_\_

Amendment Barcode (if applicable) \_\_\_\_\_

\*Name Cyrelle Bustamante

Job Title \_\_\_\_\_

Address 1100 Greentree Lane Apt D

Phone (863) 206-3468

\* Tallahassee FL  
City State Zip

Email CYRELLEAP@GMAIL.COM

Speaking:  For  Against  Information

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

Representing Myself

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

2/29/16

Meeting Date

SB 1722

Bill Number (if applicable)

Topic \_\_\_\_\_

Amendment Barcode (if applicable)

Name Kayla Goldstein

Job Title \_\_\_\_\_

Address 400 Hayden Rd.

Phone (561) 876-8327

Tallahassee FL 32304  
City State Zip

Email Kayla.Goldstein@yahoo.com

Speaking:  For  Against  Information

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

Representing myself

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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THE FLORIDA SENATE

APPEARANCE RECORD

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

2/29/16

Meeting Date

SB 1722

Bill Number (if applicable)

Topic Termination of Pregnancy

Amendment Barcode (if applicable)

Name Gabriel Garcia-Vera

Job Title FL Field Coordinator

Address 8330 Biscayne Blvd

Phone /

Street

Miami FL 33138

Email /

City

State

Zip

Speaking:  For  Against  Information

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

Representing Nat. Latina Institute for Reproductive Health

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

2/29/16

Meeting Date

SB 1722

Bill Number (if applicable)

Topic \_\_\_\_\_

Amendment Barcode (if applicable)

Name Greg Pound

Job Title \_\_\_\_\_

Address 9166 Sunrise Dr.

Phone \_\_\_\_\_

Street

Largo

Fla.

33773

Email \_\_\_\_\_

City

State

Zip

Speaking:  For  Against  Information

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

Representing Pinellas County Florida Government Corruption

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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THE FLORIDA SENATE

APPEARANCE RECORD

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

2/29/16  
Meeting Date

1722  
Bill Number (if applicable)

Topic Termination of Pregnancies

Amendment Barcode (if applicable)

Name Pamela Burch Fort

Job Title

Address 104 S. Monroe Street  
Tallahassee FL 32301  
Street City State Zip

Phone 850/425-1344

Email TcgLobby@aol.com

Speaking:  For  Against  Information

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

Representing ACLU of Florida

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

2/29/16  
Meeting Date

SB1722  
Bill Number (if applicable)

Topic \_\_\_\_\_

Amendment Barcode (if applicable)

Name Regina Sheridan

Job Title Project Assistant

Address 1578 Coldwell dr  
Street

Phone 850 212 8664

Tallahassee FL 32310  
City State Zip

Email \_\_\_\_\_

Speaking:  For  Against  Information

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

Representing \_\_\_\_\_

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

2/29/16

Meeting Date

1722

Bill Number (if applicable)

Topic Termination of Pregnancies

Amendment Barcode (if applicable)

Name Amber Kelly

Job Title Legislative Affairs

Address 4853 S. Orange Ave.

Phone (407) 418-0250

Street

Orlando

City

FL

State

32806

Zip

Email

Speaking:  For  Against  Information

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

Representing Florida Family Action

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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S-001 (10/14/14)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

2/29/16  
Meeting Date

SB 1722  
Bill Number (if applicable)

Topic SB 1722

Amendment Barcode (if applicable)

Name Kimberly Diaz

Job Title Legislative Representative

Address 2300 N FL. Mango Road  
Street

Phone 561-472-9942

West Palm Beach FL 33409  
City State Zip

Email Kimberly.diaz@ppscnr.org

Speaking:  For  Against  Information

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

Representing FL Alliance of Planned Parenthood Affiliates

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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THE FLORIDA SENATE

APPEARANCE RECORD

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

2/29/2016

Meeting Date

SB 1722

Bill Number (if applicable)

Topic Termination of Pregnancies

Amendment Barcode (if applicable)

Name Pamela Gomez

Job Title

Address Street

Phone 913-850-1076

City

State

Zip

Email

Speaking: For [ ] Against [x] Information [ ]

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

Representing

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

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

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THE FLORIDA SENATE  
**APPEARANCE RECORD**

2/29/16  
Meeting Date

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

SB 1722  
Bill Number (if applicable)

Topic 24 Hr Delay Amendment Barcode (if applicable)

Name Cynthia A Schwartz

Job Title Retired Provider Relations Liaison - Dept. of Health

Address 3980 Robbin Brook Circle Phone 850-509-0735  
Tallahassee, FL 32312 Email fasn2012@gmail.com  
Street City State Zip

Speaking:  For  Against  Information

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

Representing 2221 Members - Democratic Women's Club of Florida

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

SB1722  
Bill Number (if applicable)

Meeting Date \_\_\_\_\_

Amendment Barcode (if applicable) \_\_\_\_\_

Topic \_\_\_\_\_

Name Alex Bradbury

Job Title \_\_\_\_\_

Address \_\_\_\_\_

Phone \_\_\_\_\_

Street

Tallahassee

FL

32304

City

State

Zip

Email \_\_\_\_\_

Speaking:  For  Against  Information

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

Representing \_\_\_\_\_

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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THE FLORIDA SENATE

APPEARANCE RECORD

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

2/29/16  
Meeting Date

SB 1722  
Bill Number (if applicable)

Topic \_\_\_\_\_

Amendment Barcode (if applicable)

Name Jamie Clift

Job Title \_\_\_\_\_

Address \_\_\_\_\_

Phone \_\_\_\_\_

Street  
Tallahassee  
City  
State FL  
Zip 32301

Email \_\_\_\_\_

Speaking:  For  Against  Information

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

Representing \_\_\_\_\_

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

2/29/10  
Meeting Date

SB1722  
Bill Number (if applicable)

Topic \_\_\_\_\_

Amendment Barcode (if applicable)

Name Chris Wilkey

Job Title \_\_\_\_\_

Address \_\_\_\_\_

Phone \_\_\_\_\_

Street

T&M

City

FL

State

32310

Zip

Email \_\_\_\_\_

Speaking:  For  Against  Information

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

Representing \_\_\_\_\_

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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THE FLORIDA SENATE

APPEARANCE RECORD

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

2-29-16

Meeting Date

1722

Bill Number (if applicable)

Topic Termination of Alimony

Amendment Barcode (if applicable)

Name Barbara DeBane

Job Title Ms

Address 625 E. Broadway St

Phone 222-3969

City Tall State 32308

Email barbaradebane1@yahoo.com

Speaking: For [ ] Against [x] Information [ ]

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

Representing FL NOW

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

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

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

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THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

2/29/16  
Meeting Date

1722  
Bill Number (if applicable)

Topic Termination of Pregnancies

Amendment Barcode (if applicable)

Name Ingrid Delgado

Job Title Associate for Social Concerns & Respect Life

Address 201 W Park AV Phone \_\_\_\_\_  
Street

Tallahassee FL 32301 Email \_\_\_\_\_  
City State Zip

Speaking:  For  Against  Information

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

Representing Florida Conference of Catholic Bishops

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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S-001 (10/14/14)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

2-29-16

Meeting Date

1722

Bill Number (if applicable)

Topic Abortion Clinics

Amendment Barcode (if applicable)

Name Concerned Women for America of FL (Cathy Fruit)

Job Title \_\_\_\_\_

Address 3313 Dartmoor Dr  
Street

Phone \_\_\_\_\_

Tallahassee FL 32312  
City State Zip

Email Cm.fruit@yahoo.com

Speaking:  For  Against  Information

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

Representing \_\_\_\_\_

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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S-001 (10/14/14)

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

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

---

Prepared By: The Professional Staff of the Committee on Fiscal Policy

---

BILL: CS/CS/SB 360

INTRODUCER: Fiscal Policy Committee; Criminal Justice Committee; and Senator Clemens

SUBJECT: Victim Assistance

DATE: March 1, 2016

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Sumner</u>	<u>Cannon</u>	<u>CJ</u>	<b>Fav/CS</b>
2.	<u>Harkness</u>	<u>Sadberry</u>	<u>ACJ</u>	<b>Recommend: Favorable</b>
3.	<u>Pace</u>	<u>Hrdlicka</u>	<u>FP</u>	<b>Fav/CS</b>

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**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/CS/SB 360 requires a law enforcement agency to give instructions outlining the replevin process for obtaining possession of the victim's property located in a pawnshop. The law enforcement agency is also required to promptly make reasonable efforts to give the victim the name and location of the pawn shop.

The bill makes several conforming changes to reflect the new name of the "Florida Commission on Offender Review." The bill also repeals obsolete provisions related to Florida Commission on Offender Review.

The bill has no significant fiscal impact.

**II. Present Situation:**

**Victim Notification**

Currently, Florida law provides for notifying victims regarding a variety of matters that affect them, such as:

- The state attorney or Department of Corrections (DOC) must notify victims within 6 months before the release of an inmate from the DOC, a private correctional facility, a release program, or parole;<sup>1</sup> and

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<sup>1</sup> Section 944.605(1), F.S.

- The Department of Children and Families must notify the victim as soon as practicable when a person is released from involuntary civil commitment under ch. 394, F.S.<sup>2</sup>

Section 960.001, F.S., places a number of requirements on various government entities to ensure that victims are treated fairly and notified of important matters. For example:

- Victims are generally provided the right to be informed, be present, and be heard when relevant, at all crucial stages of criminal and juvenile proceedings.<sup>3</sup>
- In cases involving specified offenses, the arresting law enforcement officer or victim assistance personnel must request a victim notification card with various contact information from the victim or the victim's next of kin.<sup>4</sup>
- The appropriate party shall make a reasonable attempt to notify an alleged victim or an alleged victim's next of kin within 4 hours following a defendant's release.<sup>5</sup>
- A victim or witness must be provided information explaining the steps available to law enforcement officers and state attorneys to shield the victim or witness from intimidation.<sup>6</sup>
- Law enforcement agencies and the state attorney shall promptly return the victim's property when there is no compelling law enforcement reason for retaining it.<sup>7</sup>

While Florida requires victim notification for a variety of circumstances, it does not currently require any entity to notify a victim that his or her property has been located in the possession of a pawnbroker.

### **Florida Pawnbroker Act**

“Pawn” means any advancement of funds on the security of pledged goods on condition that the pledged goods are left in the possession of the pawnbroker for the duration of the pawn and may be redeemed by the pledgor on the terms and conditions contained in s. 539.001, F.S.<sup>8</sup>

“Pawnbroker” means any person who is engaged in the business of making pawns; who makes a public display containing the term “pawn,” “pawnbroker,” or “pawnshop” or any derivative thereof; or who publicly displays a sign or symbol historically identified with pawns. A pawnbroker may also engage in the business of purchasing goods which includes consignment and trade.<sup>9</sup>

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<sup>2</sup> Section 394.926(1), F.S.

<sup>3</sup> Section 960.001(1)(a)5., F.S. Victims who are incarcerated are provided the right to be informed and to submit written statements. *See* s. 960.001(1)(a)6., F.S.

<sup>4</sup> Section 960.001(1)(b)1., F.S. Specified offenses include homicide, pursuant to ch. 782, F.S.; sexual offense, pursuant to ch. 794, F.S.; attempted murder or sexual offense, pursuant to ch. 777, F.S.; stalking, pursuant to s. 784.048, F.S.; or domestic violence, pursuant to s. 25.385, F.S.

<sup>5</sup> Section 960.001(1)(b)3., F.S. The appropriate party to provide notice is the chief administrator, or a person designated by the chief administrator, of a county jail, municipal jail, juvenile detention facility, or residential commitment facility.

<sup>6</sup> Section 960.001(1)(c), F.S.

<sup>7</sup> Section 960.001(1)(h), F.S.

<sup>8</sup> Section 539.001(2)(h), F.S.

<sup>9</sup> Section 539.001(2)(i), F.S.

A pawnbroker must maintain a copy of each completed pawnbroker transaction form for at least 1 year after the date of the transaction.<sup>10</sup> On or before the end of each business day, the pawnbroker must deliver all original transaction forms for the previous business day to law enforcement. If the original transaction form is lost or destroyed by a law enforcement official, a copy may be used by the pawnbroker as evidence in court. When an electronic image of a seller identification is accepted for a transaction, the pawnbroker must maintain the electronic image in order to meet the same recordkeeping requirements as for the original transaction form. If a criminal investigation occurs, the pawnbroker must provide a clear and legible copy of the image to the appropriate law enforcement official.<sup>11</sup>

To obtain possession of purchased or pledged goods held by a pawnbroker which a claimant claims to be misappropriated:<sup>12</sup>

- The claimant must notify the pawnbroker by certified mail or in person of the claim to the goods and the notice must include the law enforcement report concerning the misappropriation of the goods;
- If the claim isn't settled within 10 days of the notice, the claimant may file a lawsuit, and must serve the pawnbroker with a copy of the petition; and
- If the court finds that the property was misappropriated, the claimant may recover the cost of the action, including attorney fees from the pawnbroker.<sup>13</sup>

However, if the court finds that the claimant failed to comply with the above procedures, or finds against the claimant on any basis, the claimant is liable for the defendant's costs, including attorney fees.<sup>14</sup>

### **III. Effect of Proposed Changes:**

#### **Victim Notification**

The bill amends s. 960.001(1)(h), F.S., to require a law enforcement agency to give instructions outlining the replevin process for obtaining possession of the victim's property located in a pawnshop. The law enforcement agency is also required to promptly make reasonable efforts to give the victim the name and location of the pawn shop. This section of the bill takes effect on July 1, 2016.

#### **Florida Commission on Offender Review**

Chapter 2014-191, L.O.F., renamed the "Parole Commission" the "Florida Commission on Offender Review" (commission). The bill makes several conforming changes to reflect the new name. Specifically, the bill updates statutory references to "hearing examiner" or "parole

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<sup>10</sup> Section 539.001(8), F.S. defines a "pawnbroker transaction form" as the instrument on which a pawnbroker records pawns and purchases. The form must contain information such as name, address, home telephone number, place of employment, date of birth, physical description, and right thumbprint of the seller.

<sup>11</sup> Section 539.001(9), F.S.

<sup>12</sup> Section 539.001(2)(f), F.S., defines "misappropriated" as stolen, embezzled, converted, or otherwise wrongfully appropriated against the will of the rightful owner.

<sup>13</sup> Section 539.001(15), F.S.

<sup>14</sup> Section 539.001(15)(c), F.S.



examiner” to reference a “commission investigator.” The bill also updates references to the “parole qualifications committee,” to the “commissioner qualifications committee.”

The bill repeals several obsolete provisions related to the commission:

- Section 947.021, F.S., provides that whenever the Legislature decreases the membership of the commission, all terms of office expire and the Governor and Cabinet must expedite the appointment of commissioners to the commission. On July 1, 1996, the commission was reduced from 6 to 3 members.<sup>15</sup> Members are appointed by the Governor and the Cabinet.<sup>16</sup> The bill repeals s. 947.021, F.S., because it is no longer necessary.
- The bill repeals provisions related to the Secretary of Corrections serving on the commission.
- Under current law, commission investigators recommend to a panel of no fewer than 2 commissioners a presumptive parole release date for an inmate.<sup>17</sup> The chair of the commission must assign the cases randomly without regard to the inmate or to the commissioners sitting on the panel. The bill deletes the requirement that the chair assign the cases randomly because there are only 3 commissioners on the commission.

Except as otherwise expressly provided, the bill is effective upon becoming law.

#### **IV. Constitutional Issues:**

##### **A. Municipality/County Mandates Restrictions:**

None.

##### **B. Public Records/Open Meetings Issues:**

None.

##### **C. Trust Funds Restrictions:**

None.

#### **V. Fiscal Impact Statement:**

##### **A. Tax/Fee Issues:**

None.

##### **B. Private Sector Impact:**

None.

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<sup>15</sup> Section 947.01, F.S.

<sup>16</sup> Section 947.02, F.S.

<sup>17</sup> Section 947.172(2), F.S.

C. **Government Sector Impact:**

The bill requires law enforcement agencies to comply with new victim notice requirements. To the extent that state and local law enforcement agencies must carry out the new notification requirements, the bill may have a minimal workload impact on local government expenditures, but no significant fiscal impact.

VI. **Technical Deficiencies:**

None.

VII. **Related Issues:**

None.

VIII. **Statutes Affected:**

This bill substantially amends section 960.001 of the Florida Statutes.

IX. **Additional Information:**

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

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

**CS/CS by Fiscal Policy on February 29, 2016:**

The committee substitute makes several conforming changes to reflect the new name of the “Florida Commission on Offender Review.” The committee substitute also repeals obsolete provisions related to the Florida Commission on Offender Review.

**CS by Criminal Justice on February 16, 2016:**

The committee substitute amends the notification time by a law enforcement agency to victims whose property is in the possession of a pawnbroker. The bill required law enforcement to “immediately” notify the victim of the name and location of the pawnshop. The Committee Substitute requires that law enforcement “promptly make reasonable efforts” to provide the victim with the name and location of the pawnshop.

B. **Amendments:**

None.



832832

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/29/2016	.	
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	.	
	.	

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The Committee on Fiscal Policy (Clemens) recommended the following:

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause  
and insert:

Section 1. Paragraph (b) of subsection (2) of section  
784.078, Florida Statutes, is amended to read:

784.078 Battery of facility employee by throwing, tossing,  
or expelling certain fluids or materials.—

(2)

(b) "Employee" includes any person who is a commission



832832

11 ~~investigator parole examiner~~ with the Florida Commission on  
12 Offender Review.

13 Section 2. Paragraph (a) of subsection (1) of section  
14 800.09, Florida Statutes, is amended to read:

15 800.09 Lewd or lascivious exhibition in the presence of an  
16 employee.—

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

18 (a) "Employee" means any person employed by or performing  
19 contractual services for a public or private entity operating a  
20 facility or any person employed by or performing contractual  
21 services for the corporation operating the prison industry  
22 enhancement programs or the correctional work programs under  
23 part II of chapter 946. The term also includes any person who is  
24 a commission investigator ~~parole examiner~~ with the Florida  
25 Commission on Offender Review.

26 Section 3. Subsection (4) of section 947.002, Florida  
27 Statutes, is amended to read:

28 947.002 Intent.—

29 (4) Commission investigators ~~Hearing examiners~~ are assigned  
30 on the basis of caseload needs as determined by the chair.

31 Section 4. Section 947.02, Florida Statutes, is amended to  
32 read:

33 947.02 Florida Commission on Offender Review; members,  
34 appointment.—

35 (1) ~~Except as provided in s. 947.021,~~ The members of the  
36 Florida Commission on Offender Review shall be appointed by the  
37 Governor and Cabinet from a list of eligible applicants  
38 submitted by a commissioner ~~parole~~ qualifications committee. The  
39 appointments of members of the commission shall be certified to



832832

40 the Senate by the Governor and Cabinet for confirmation, and the  
41 membership of the commission shall include representation from  
42 minority persons as defined in s. 288.703.

43 (2) A commissioner ~~parole~~ qualifications committee shall  
44 consist of five persons who are appointed by the Governor and  
45 Cabinet. One member shall be designated as chair by the Governor  
46 and Cabinet. The committee shall provide for statewide  
47 advertisement and the receiving of applications for any position  
48 or positions on the commission and shall devise a plan for the  
49 determination of the qualifications of the applicants by  
50 investigations and comprehensive evaluations, including, but not  
51 limited to, investigation and evaluation of the character,  
52 habits, and philosophy of each applicant. Each commissioner  
53 ~~parole~~ qualifications committee shall exist for 2 years. If  
54 additional vacancies on the commission occur during this 2-year  
55 period, the committee may advertise and accept additional  
56 applications; however, all previously submitted applications  
57 shall be considered along with the new applications according to  
58 the previously established plan for the evaluation of the  
59 qualifications of applicants.

60 (3) Within 90 days before an anticipated vacancy by  
61 expiration of term pursuant to s. 947.03 or upon any other  
62 vacancy, the Governor and Cabinet shall appoint a commissioner  
63 ~~parole~~ qualifications committee if one has not been appointed  
64 during the previous 2 years. The committee shall consider  
65 applications for the commission seat, including the application  
66 of an incumbent commissioner if he or she applies, according to  
67 subsection (2). The committee shall submit a list of three  
68 eligible applicants, which may include the incumbent if the



832832

69 committee so decides, without recommendation, to the Governor  
70 and Cabinet for appointment to the commission. In the case of an  
71 unexpired term, the appointment must be for the remainder of the  
72 unexpired term and until a successor is appointed and qualified.  
73 If more than one seat is vacant, the committee shall submit a  
74 list of eligible applicants, without recommendation, containing  
75 a number of names equal to three times the number of vacant  
76 seats; however, the names submitted may not be distinguished by  
77 seat, and each submitted applicant shall be considered eligible  
78 for each vacancy.

79 (4) Upon receiving a list of eligible persons from the  
80 commissioner parole qualifications committee, the Governor and  
81 Cabinet may reject the list. If the list is rejected, the  
82 committee shall reinitiate the application and examination  
83 procedure according to subsection (2).

84 (5) Section 120.525 and chapters 119 and 286 apply to all  
85 activities and proceedings of a commissioner parole  
86 qualifications committee.

87 Section 5. Section 947.021, Florida Statutes, is repealed.

88 Section 6. Section 947.10, Florida Statutes, is amended to  
89 read:

90 947.10 Business and political activity upon part of members  
91 and full-time employees of commission.—No member of the  
92 commission and no full-time employee thereof shall, during her  
93 or his service upon or under the commission, engage in any other  
94 business or profession or hold any other public office, nor  
95 shall she or he serve as the representative of any political  
96 party, or any political executive committee or other political  
97 governing body thereof, or as an executive officer or employee



832832

98 of any political committee, organization, or association or be  
99 engaged on the behalf of any candidate for public office in the  
100 solicitation of votes or otherwise. ~~However, this shall not be~~  
101 ~~deemed to exclude the appointment of the Secretary of~~  
102 ~~Corrections to the commission under the terms and conditions set~~  
103 ~~forth in this chapter.~~

104 Section 7. Subsections (1) and (2) of section 947.172,  
105 Florida Statutes, are amended to read:

106 947.172 Establishment of presumptive parole release date.—

107 (1) The commission investigator ~~hearing examiner~~ shall  
108 conduct an initial interview in accordance with the provisions  
109 of s. 947.16. This interview shall include introduction and  
110 explanation of the objective parole guidelines as they relate to  
111 presumptive and effective parole release dates and an  
112 explanation of the institutional conduct record and satisfactory  
113 release plan for parole supervision as each relates to parole  
114 release.

115 (2) Based on the objective parole guidelines and any other  
116 competent evidence relevant to aggravating and mitigating  
117 circumstances, the commission investigator ~~hearing examiner~~  
118 shall, within 10 days after the interview, recommend in writing  
119 to a panel of no fewer than two commissioners appointed by the  
120 chair a presumptive parole release date for the inmate. ~~The~~  
121 ~~chair shall assign cases to such panels on a random basis,~~  
122 ~~without regard to the inmate or to the commissioners sitting on~~  
123 ~~the panel.~~ If the recommended presumptive parole release date  
124 falls outside the matrix time ranges as determined by the  
125 objective parole guidelines, the commission investigator ~~hearing~~  
126 ~~examiner~~ shall include with the recommendation a statement in



832832

127 writing as to the reasons for the decision, specifying  
128 individual particularities. If a panel fails to reach a decision  
129 on a recommended presumptive parole release date, the chair or  
130 any other commissioner designated by the chair shall cast the  
131 deciding vote. Within 90 days after the date of the initial  
132 interview, the inmate shall be notified in writing of the  
133 decision as to the inmate's presumptive parole release date.

134 Section 8. Subsection (1) and paragraph (e) of subsection  
135 (4) of section 947.16, Florida Statutes, is amended to read:

136 947.16 Eligibility for parole; initial parole interviews;  
137 powers and duties of commission.-

138 (1) Every person who has been convicted of a felony or who  
139 has been convicted of one or more misdemeanors and whose  
140 sentence or cumulative sentences total 12 months or more, who is  
141 confined in execution of the judgment of the court, and whose  
142 record during confinement or while under supervision is good,  
143 shall, unless otherwise provided by law, be eligible for  
144 interview for parole consideration of her or his cumulative  
145 sentence structure as follows:

146 (a) An inmate who has been sentenced for an indeterminate  
147 term or a term of 3 years or less shall have an initial  
148 interview conducted by a commission investigator ~~hearing~~  
149 ~~examiner~~ within 8 months after the initial date of confinement  
150 in execution of the judgment.

151 (b) An inmate who has been sentenced for a minimum term in  
152 excess of 3 years but of less than 6 years shall have an initial  
153 interview conducted by a commission investigator ~~hearing~~  
154 ~~examiner~~ within 14 months after the initial date of confinement  
155 in execution of the judgment.





832832

156 (c) An inmate who has been sentenced for a minimum term of  
157 6 or more years but other than for a life term shall have an  
158 initial interview conducted by a commission investigator ~~hearing~~  
159 ~~examiner~~ within 24 months after the initial date of confinement  
160 in execution of the judgment.

161 (d) An inmate who has been sentenced for a term of life  
162 shall have an initial interview conducted by a commission  
163 investigator ~~hearing examiner~~ within 5 years after the initial  
164 date of confinement in execution of the judgment.

165 (e) An inmate who has been convicted and sentenced under  
166 ss. 958.011-958.15, or any other inmate who has been determined  
167 by the department to be a youthful offender, shall be  
168 interviewed by a commission investigator ~~parole examiner~~ within  
169 8 months after the initial date of confinement in execution of  
170 the judgment.

171 (4) A person who has become eligible for an initial parole  
172 interview and who may, according to the objective parole  
173 guidelines of the commission, be granted parole shall be placed  
174 on parole in accordance with the provisions of this law; except  
175 that, in any case of a person convicted of murder, robbery,  
176 burglary of a dwelling or burglary of a structure or conveyance  
177 in which a human being is present, aggravated assault,  
178 aggravated battery, kidnapping, sexual battery or attempted  
179 sexual battery, incest or attempted incest, an unnatural and  
180 lascivious act or an attempted unnatural and lascivious act,  
181 lewd and lascivious behavior, assault or aggravated assault when  
182 a sexual act is completed or attempted, battery or aggravated  
183 battery when a sexual act is completed or attempted, arson, or  
184 any felony involving the use of a firearm or other deadly weapon



832832

185 or the use of intentional violence, at the time of sentencing  
186 the judge may enter an order retaining jurisdiction over the  
187 offender for review of a commission release order. This  
188 jurisdiction of the trial court judge is limited to the first  
189 one-third of the maximum sentence imposed. When any person is  
190 convicted of two or more felonies and concurrent sentences are  
191 imposed, then the jurisdiction of the trial court judge as  
192 provided herein applies to the first one-third of the maximum  
193 sentence imposed for the highest felony of which the person was  
194 convicted. When any person is convicted of two or more felonies  
195 and consecutive sentences are imposed, then the jurisdiction of  
196 the trial court judge as provided herein applies to one-third of  
197 the total consecutive sentences imposed.

198 (e) Upon receipt of notice of intent to retain jurisdiction  
199 from the original sentencing judge or her or his replacement,  
200 the commission shall, within 10 days, forward to the court its  
201 release order, the findings of fact, the commission  
202 investigator's ~~parole hearing examiner's~~ report and  
203 recommendation, and all supporting information upon which its  
204 release order was based.

205 Section 9. Subsections (1), (2), and (4) of section  
206 947.174, Florida Statutes, are amended to read:

207 947.174 Subsequent interviews.—

208 (1) (a) For any inmate, except an inmate convicted of an  
209 offense enumerated in paragraph (b), whose presumptive parole  
210 release date falls more than 2 years after the date of the  
211 initial interview, a commission investigator ~~hearing examiner~~  
212 shall schedule an interview for review of the presumptive parole  
213 release date. Such interview shall take place within 2 years



832832

214 after the initial interview and every 2 years thereafter.

215 (b) For any inmate convicted of murder or attempted murder;  
216 sexual battery or attempted sexual battery; kidnapping or  
217 attempted kidnapping; or robbery, burglary of a dwelling,  
218 burglary of a structure or conveyance, or breaking and entering,  
219 or the attempt thereof of any of these crimes, in which a human  
220 being is present and a sexual act is attempted or completed, or  
221 any inmate who has been sentenced to a 25-year minimum mandatory  
222 sentence previously provided in s. 775.082, and whose  
223 presumptive parole release date is more than 7 years after the  
224 date of the initial interview, a commission investigator ~~hearing~~  
225 ~~examiner~~ shall schedule an interview for review of the  
226 presumptive parole release date. The interview shall take place  
227 once within 7 years after the initial interview and once every 7  
228 years thereafter if the commission finds that it is not  
229 reasonable to expect that parole will be granted at a hearing  
230 during the following years and states the bases for the finding  
231 in writing. For an inmate who is within 7 years of his or her  
232 tentative release date, the commission may establish an  
233 interview date before the 7-year schedule.

234 (c) Such interviews shall be limited to determining whether  
235 or not information has been gathered which might affect the  
236 presumptive parole release date. The provisions of this  
237 subsection shall not apply to an inmate serving a concurrent  
238 sentence in another jurisdiction pursuant to s. 921.16(2).

239 (2) The commission, for good cause, may at any time request  
240 that a commission investigator ~~hearing examiner~~ conduct a  
241 subsequent hearing according to the procedures outlined in this  
242 section. Such request shall specify in writing the reasons for



832832

243 such review.

244 (4) The department or a commission investigator ~~hearing~~  
245 ~~examiner~~ may recommend that an inmate be placed in a work-  
246 release program prior to the last 18 months of her or his  
247 confinement before the presumptive parole release date. If the  
248 commission does not deny the recommendation within 30 days of  
249 the receipt of the recommendation, the inmate may be placed in  
250 such a program, and the department shall advise the commission  
251 of the fact prior to such placement.

252 Section 10. Subsection (1) of section 947.1745, Florida  
253 Statutes, is amended to read:

254 947.1745 Establishment of effective parole release date.—If  
255 the inmate's institutional conduct has been satisfactory, the  
256 presumptive parole release date shall become the effective  
257 parole release date as follows:

258 (1) Within 90 days before the presumptive parole release  
259 date, a commission investigator ~~hearing examiner~~ shall conduct a  
260 final interview with the inmate in order to establish an  
261 effective parole release date and parole release plan. If it is  
262 determined that the inmate's institutional conduct has been  
263 unsatisfactory, a statement to this effect shall be made in  
264 writing with particularity and shall be forwarded to a panel of  
265 no fewer than two commissioners appointed by the chair.

266 Section 11. Subsection (1) of section 947.22, Florida  
267 Statutes, is amended to read:

268 947.22 Authority to arrest parole violators with or without  
269 warrant.—

270 (1) If a member of the commission or a duly authorized  
271 representative of the commission has reasonable grounds to



832832

272 believe that a parolee has violated the terms and conditions of  
273 her or his parole in a material respect, such member or  
274 representative may issue a warrant for the arrest of such  
275 parolee. The warrant shall be returnable before a member of the  
276 commission or a duly authorized representative of the  
277 commission. The commission, a commissioner, or a commission  
278 investigator ~~parole examiner~~ with approval of the commission  
279 ~~parole examiner supervisor~~, may release the parolee on bail or  
280 her or his own recognizance, conditioned upon her or his  
281 appearance at any hearings noticed by the commission. If not  
282 released on bail or her or his own recognizance, the parolee  
283 shall be committed to jail pending hearings pursuant to s.  
284 947.23. The commission, at its election, may have the hearing  
285 conducted by one or more commissioners or by a duly authorized  
286 representative of the commission. Any parole and probation  
287 officer, any officer authorized to serve criminal process, or  
288 any peace officer of this state is authorized to execute the  
289 warrant.

290 Section 12. Effective July 1, 2016, paragraph (h) of  
291 subsection (1) of section 960.001, Florida Statutes, is amended  
292 to read:

293 960.001 Guidelines for fair treatment of victims and  
294 witnesses in the criminal justice and juvenile justice systems.-

295 (1) The Department of Legal Affairs, the state attorneys,  
296 the Department of Corrections, the Department of Juvenile  
297 Justice, the Florida Commission on Offender Review, the State  
298 Courts Administrator and circuit court administrators, the  
299 Department of Law Enforcement, and every sheriff's department,  
300 police department, or other law enforcement agency as defined in



832832

301 s. 943.10(4) shall develop and implement guidelines for the use  
302 of their respective agencies, which guidelines are consistent  
303 with the purposes of this act and s. 16(b), Art. I of the State  
304 Constitution and are designed to implement s. 16(b), Art. I of  
305 the State Constitution and to achieve the following objectives:

306 (h) *Return of property to victim.*—

307 1. A law enforcement agency ~~agencies~~ and the state attorney  
308 shall promptly return a victim's property held for evidentiary  
309 purposes unless there is a compelling law enforcement reason for  
310 retaining it. The trial or juvenile court exercising  
311 jurisdiction over the criminal or juvenile proceeding may enter  
312 appropriate orders to implement this subsection, including  
313 allowing photographs of the victim's property to be used as  
314 evidence at the criminal trial or the juvenile proceeding in  
315 place of the victim's property if no related substantial  
316 evidentiary issue ~~related thereto~~ is in dispute.

317 2. A law enforcement agency shall give a victim  
318 instructions that outline the process for a replevin action and  
319 the procedures specified in s. 539.001(15) for obtaining  
320 possession of the victim's property located in a pawnshop. If a  
321 law enforcement agency locates the property in the possession of  
322 a pawnbroker, the law enforcement agency shall promptly make  
323 reasonable efforts to provide the victim with the name and  
324 location of the pawnshop.

325 Section 13. Subsection (2) of section 20.32, Florida  
326 Statutes, is amended to read:

327 20.32 Florida Commission on Offender Review.—

328 (2) All powers, duties, and functions relating to the  
329 appointment of the Florida Commission on Offender Review as



832832

330 provided in s. 947.02 ~~or s. 947.021~~ shall be exercised and  
331 performed by the Governor and Cabinet. ~~Except as provided in s.~~  
332 ~~947.021~~, Each appointment shall be made from among the first  
333 three eligible persons on the list of the persons eligible for  
334 said position.

335 Section 14. Except as otherwise expressly provided in this  
336 act, this act shall take effect upon becoming a law.

337

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

339 And the title is amended as follows:

340 Delete everything before the enacting clause  
341 and insert:

342 A bill to be entitled  
343 An act relating to criminal justice; amending ss.  
344 784.078, 800.09, 947.002, and 947.02, F.S.; conforming  
345 provisions to changes made by chapter 2014-191, Laws  
346 of Florida; repealing s. 947.021, F.S., relating to  
347 expedited appointments to the Florida Commission on  
348 Offender Review; amending s. 947.10, F.S.; conforming  
349 provisions to changes made by chapter 2014-191, Laws  
350 of Florida; deleting an applicability provision;  
351 amending s. 947.172, F.S.; conforming provisions to  
352 changes made by chapter 2014-191, Laws of Florida;  
353 deleting a provision requiring the assigning of cases  
354 on a random basis; amending ss. 947.16, 947.174,  
355 947.1745, and 947.22, F.S.; conforming provisions to  
356 changes made by chapter 2014-191, Laws of Florida;  
357 amending s. 960.001, F.S.; requiring a law enforcement  
358 agency to provide specified instructions to a victim;



832832

359        requiring a law enforcement agency to promptly make  
360        reasonable efforts to provide the victim with  
361        specified information under certain circumstances;  
362        amending s. 20.32, F.S.; conforming provisions to  
363        changes made by the act; providing effective dates.



By the Committee on Criminal Justice; and Senator Clemens

591-03592-16

2016360c1

1 A bill to be entitled  
 2 An act relating to victim assistance; amending s.  
 3 960.001, F.S.; requiring a law enforcement agency to  
 4 provide specified instructions to a victim; requiring  
 5 a law enforcement agency to promptly make reasonable  
 6 efforts to provide the victim with specified  
 7 information under certain circumstances; providing an  
 8 effective date.  
 9  
 10 Be It Enacted by the Legislature of the State of Florida:  
 11  
 12 Section 1. Paragraph (h) of subsection (1) of section  
 13 960.001, Florida Statutes, is amended to read:  
 14 960.001 Guidelines for fair treatment of victims and  
 15 witnesses in the criminal justice and juvenile justice systems.—  
 16 (1) The Department of Legal Affairs, the state attorneys,  
 17 the Department of Corrections, the Department of Juvenile  
 18 Justice, the Florida Commission on Offender Review, the State  
 19 Courts Administrator and circuit court administrators, the  
 20 Department of Law Enforcement, and every sheriff's department,  
 21 police department, or other law enforcement agency as defined in  
 22 s. 943.10(4) shall develop and implement guidelines for the use  
 23 of their respective agencies, which guidelines are consistent  
 24 with the purposes of this act and s. 16(b), Art. I of the State  
 25 Constitution and are designed to implement s. 16(b), Art. I of  
 26 the State Constitution and to achieve the following objectives:  
 27 (h) *Return of property to victim.*—  
 28 1. A law enforcement agency ~~agencies~~ and the state attorney  
 29 shall promptly return a victim's property held for evidentiary  
 30 purposes unless there is a compelling law enforcement reason for  
 31 retaining it. The trial or juvenile court exercising  
 32 jurisdiction over the criminal or juvenile proceeding may enter

Page 1 of 2

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

591-03592-16

2016360c1

33 appropriate orders to implement this subsection, including  
 34 allowing photographs of the victim's property to be used as  
 35 evidence at the criminal trial or the juvenile proceeding in  
 36 place of the victim's property if no related substantial  
 37 evidentiary issue ~~related thereto~~ is in dispute.  
 38 2. A law enforcement agency shall give a victim  
 39 instructions that outline the process for a replevin action and  
 40 the procedures specified in s. 539.001(15) for obtaining  
 41 possession of the victim's property located in a pawnshop. If a  
 42 law enforcement agency locates the property in the possession of  
 43 a pawnbroker, the law enforcement agency shall promptly make  
 44 reasonable efforts to provide the victim with the name and  
 45 location of the pawnshop.  
 46 Section 2. This act shall take effect July 1, 2016.

Page 2 of 2

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

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

2/29  
Meeting Date

360  
Bill Number (if applicable)

Topic FCOR

832832  
Amendment Barcode (if applicable)

Name Peter Murray

Job Title LAD

Address \_\_\_\_\_  
Street

Phone \_\_\_\_\_

Tallahassee  
City

FL  
State

32399  
Zip

Email Peter.Murray@FCOR.State.FL.US

Speaking:  For  Against  Information

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

Representing FCOR

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

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

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Prepared By: The Professional Staff of the Committee on Fiscal Policy

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BILL: PCS/SB 556 (628090)

INTRODUCER: Fiscal Policy Committee (Recommended by the Appropriations Subcommittee on Transportation, Tourism, and Economic Development); and Senator Altman

SUBJECT: Florida Commission on Poverty

DATE: February 26, 2016

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>McKay</u>	<u>McKay</u>	<u>CM</u>	<b>Favorable</b>
2.	<u>Gusky</u>	<u>Miller</u>	<u>ATD</u>	<b>Recommend: Fav/CS</b>
3.	<u>Pace</u>	<u>Hrdlicka</u>	<u>FP</u>	<b>Pre-meeting</b>

**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

PCS/SB 556 establishes the Florida Council on Poverty (council) as an advisory council, administratively housed within the Department of Economic Opportunity (DEO). The council must:

- Conduct a review of policies and programs that work to move people out of poverty;
- Develop strategies to address the causes of poverty in Florida;
- Develop recommendations to reduce the percentage of people living in poverty in Florida;
- Study the academic outcomes for children in poverty and develop recommendations on how to improve such outcomes; and
- Submit an annual report to the Governor, President of the Senate, and the Speaker of the House of Representatives.

The bill provides for the appointment of five members to the council. The Governor must appoint one member from the Florida Association for Community Action, Inc., and the Chief Financial Officer, the Commissioner of Agriculture, the President of the Senate, and the Speaker of the House of Representative must each appoint one member. The council must meet at least twice a year, beginning August 1, 2016, and may meet by teleconference or other electronic means.

The council is abolished on July 1, 2019.

The bill has an indeterminate, but expected to be minimal, negative fiscal impact to the DEO.

## II. Present Situation:

The United States Census Bureau (bureau) tracks income and poverty in the United States. The bureau estimates that in 2014 there were 46.7 million Americans living in poverty, which equates to 14.8 percent of the country's population.<sup>1</sup> As of 2014, Florida had approximately 3.2 million persons living below the poverty line, with a poverty rate of 16.6 percent, and of Florida's 67 counties, 48 counties had poverty rates exceeding the national average.<sup>2</sup>

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

- The Legislative Commission to End Poverty in Minnesota by 2020 was created in 2006 to develop guidelines and prepare recommendations to end poverty.<sup>3</sup>
- The Speaker of the House of Representatives for Alabama created a poverty task force in September 2007 to identify and assess conditions that create or worsen poverty throughout Alabama and to develop and propose policy initiatives to reduce or eliminate those conditions.<sup>4</sup>
- The Illinois Commission on the Elimination of Poverty was established in 2008 to reduce extreme poverty in Illinois by 50 percent or more by 2015.<sup>5</sup>
- The Child Poverty Prevention Council for Louisiana was created in 2008 to pursue programs to reduce child poverty in the state by 50 percent over the following decade.<sup>6</sup>
- The Connecticut Legislature created a Child Poverty Council in 2004 to develop a 10-year plan to reduce the number of children living in poverty in Connecticut by 50 percent.<sup>7</sup>
- The Rhode Island Legislature created a legislative commission on family income and asset building in 2007 to conduct a comprehensive review of Rhode Island laws, policies, and activities that benefit those in poverty.<sup>8</sup>

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<sup>1</sup> U.S. Census Bureau, Current Population Reports, P60-252, *Income and Poverty in the United States: 2014* (Sept. 2015), p. 12, available at <http://www.census.gov/content/dam/Census/library/publications/2015/demo/p60-252.pdf> (last visited Feb. 23, 2016).

<sup>2</sup> United States Department of Agriculture, Economic Research Service, *County-level Poverty Data Sets*, available at <http://www.ers.usda.gov/data-products/county-level-data-sets/poverty.aspx> (last visited Feb. 23, 2016).

<sup>3</sup> Minnesota Laws 2006, ch. 282, part. 2, s. 27, available at <https://www.revisor.mn.gov/laws/?year=2006&type=0&doctype=Chapter&id=282> (last visited Feb. 23, 2016).

<sup>4</sup> Alabama House of Representatives, *Poverty Task Force Final Report* (2008), available at <http://www.clasp.org/documents/PTF-Final-Report.pdf> (last visited Feb. 23, 2016).

<sup>5</sup> 20 ILL. COMP. STAT. 4080/10 (2008), available at <http://www.ilga.gov/legislation/ilcs/ilcs3.asp?ActID=2994&ChapterID=5> (last visited Feb. 23, 2016).

<sup>6</sup> LA. REV. STAT. ANN. s. 46:2801 (2008), available at <http://legis.la.gov/Legis/Law.aspx?d=631413> (last visited Feb. 23, 2016).

<sup>7</sup> CONN. GEN. STAT. s. 4-67x (2004). See NCSL, *State Child Welfare Legislation 2004*, available at <https://www.cga.ct.gov/2011/pub/chap050.htm#Sec4-67x.htm> (last visited Feb. 23, 2016).

<sup>8</sup> 2007 RI H 6561 (2007) available at <http://webserver.rilin.state.ri.us/PublicLaws/law07/res07/res07404.htm> (last visited Feb. 23, 2016).

### Advisory Bodies

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

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

- Its powers and responsibilities conform with the definitions for governmental units in s. 20.03, F.S.;<sup>11</sup>
- Its members are appointed for 4-year staggered terms; and
- Its members serve without additional compensation or honorarium, but may receive per diem and reimbursement for travel expenses.<sup>12</sup>

The private citizen members of an *advisory body* that is adjunct to an executive agency must be appointed by the Governor, the head of the department, the executive director of the department, or a Cabinet officer. The private citizen members of a *commission or board* that is adjunct to an executive agency must be appointed by the Governor unless otherwise provided, must be confirmed by the Senate, and must be subject to the dual-office-holding prohibition of Art. II, s. 5(a) of the Florida Constitution.<sup>13</sup>

### III. Effect of Proposed Changes:

The bill establishes the Florida Council on Poverty (council) as an advisory council, administratively housed within the Department of Economic Opportunity (DEO). The council must:

- Conduct a review of policies and programs that work to move people out of poverty;
- Develop strategies to address the causes of poverty in Florida;
- Develop recommendations to reduce the percentage of people living in poverty in Florida; and
- Study the academic outcomes for children in poverty and develop recommendations on how to improve such outcomes.

The council consists of 5 members who must be residents of Florida. The Governor must appoint one member from the Florida Association for Community Action, Inc., and the Chief Financial Officer, the Commissioner of Agriculture, the President of the Senate, and the Speaker of the

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<sup>9</sup> Section 20.052(1), F.S.

<sup>10</sup> Section 20.052(2), F.S.

<sup>11</sup> Section 20.03(7), F.S., defines “council” or “advisory council” as an advisory body created by specific statutory enactment and appointed to function on a continuing basis for the study of the problems arising in a specified functional or program area of state government and to provide recommendations and policy alternatives. Section 20.03(10), F.S., defines “commission” as a body created by specific statutory enactment within a department, the office of the Governor, or the Executive Office of the Governor and exercising limited quasi-legislative or quasi-judicial powers, or both, independently of the head of the department or the Governor.

<sup>12</sup> Section 20.052(4), F.S.

<sup>13</sup> Section 20.052(5), F.S.

House of Representative must each appoint one member. Members of the council serve without compensation, but may be reimbursed for per diem and travel expenses. The council must annually elect a chair and a vice chair.

The first meeting of the council must be held no later than August 1, 2016. Thereafter, the council must meet at least twice a year, or at the call of the chair or at such times that may be prescribed by council. Three members of the council constitute a quorum, and the affirmative vote of a majority of a quorum is necessary to take official action. Meetings of the council may be held via teleconference or other electronic means.

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

The council is abolished on July 1, 2019.

The bill is effective July 1, 2016.

#### **IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

#### **V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill authorizes members of the council to receive per diem and travel expenses in accordance with s. 112.061, F.S. The council is administratively housed in the DEO. The bill has an indeterminate, but expected to be minimal, negative fiscal impact to the DEO.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

The bill creates an unnumbered section of Florida law.

**IX. Additional Information:**

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

**Recommend CS by Appropriations Subcommittee on Transportation, Tourism, and Economic Development on February 24, 2016:**

The committee substitute:

- Creates a council, as defined in s. 20.03, F.S., instead of a commission;
- Provides that the council is administratively housed in the DEO;
- Changes the membership of the council by:
  - Removing an undesigned number of non-voting members appointed by the Governor;
  - Giving the Commissioner of Agriculture an appointment to the council;
  - Directing the Governor to appoint one member from the Florida Association for Community Action, Inc.; and
  - Removing the requirement that appointees be confirmed by the Senate;
- Requires the council to hold its first meeting on or before August 1, 2016;
- Removes the council's ability to procure, contract, and accept funds and services;
- Directs the council to conduct specific activities; and
- Terminates the council on July 1, 2019.

- B. **Amendments:**

None.



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594-04140-16

Proposed Committee Substitute by the Committee on Fiscal Policy  
(Appropriations Subcommittee on Transportation, Tourism, and  
Economic Development)

A bill to be entitled

An act relating to the Florida Council on Poverty;  
establishing the council within the Department of  
Economic Opportunity; specifying the membership of the  
council; providing for organization of the council;  
authorizing reimbursement for per diem and travel  
expenses; prescribing the scope of the council's  
activities; requiring the council to annually submit a  
report to the Governor and Legislature; requiring the  
council's abolition by a specific date; providing an  
effective date.

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

Section 1. Florida Council on Poverty.—

(1) ESTABLISHMENT OF THE COUNCIL.—The Florida Council on  
Poverty is established and assigned to the Department of  
Economic Opportunity as an advisory council, as defined in s.  
20.03, Florida Statutes. The council shall be administratively  
housed within the Department of Economic Opportunity.

(2) COUNCIL MEMBERSHIP.—The council shall consist of five  
members who shall be residents of this state. The members shall  
be appointed as follows:

(a) The Governor shall appoint one member who must be from  
the Florida Association for Community Action, Inc.

(b) The Chief Financial Officer shall appoint one member.



628090

594-04140-16

(c) The Commissioner of Agriculture shall appoint one  
member.

(d) The President of the Senate shall appoint one member.

(e) The Speaker of the House of Representatives shall  
appoint one member.

(3) MEETINGS; ORGANIZATION.—

(a) The first meeting of the council shall be held no later  
than August 1, 2016. Thereafter, the council shall meet at least  
twice each year. Meetings may be held via teleconference or  
other electronic means.

(b) Members of the council shall annually elect from its  
membership a chair and vice chair. The council shall meet at the  
call of the chair or at such times as may be prescribed by the  
council.

(c) Three members of the council constitute a quorum, and a  
meeting may not be held unless a quorum is present. The  
affirmative vote of a majority of the members of the council  
present is necessary for any official action by the council.

(d) Members of the council shall serve without compensation  
but may be reimbursed for per diem and travel expenses in  
accordance with s. 112.061, Florida Statutes.

(4) SCOPE OF ACTIVITIES.—The council shall:

(a) Conduct a review of policies and programs that work to  
move people out of poverty.

(b) Develop strategies to address the causes of poverty in  
the state.

(c) Develop recommendations to reduce the percentage of  
people living in poverty in the state.

(d) Study the academic outcomes for children in poverty and





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594-04140-16

56 develop recommendations on how to improve such outcomes.  
57 (5) REPORT.—By January 15 of each year, beginning in 2018,  
58 the council shall submit an annual report to the Governor, the  
59 President of the Senate, and the Speaker of the House of  
60 Representatives containing an accounting of its activities and  
61 recommendations for legislative, administrative, and regulatory  
62 reforms to facilitate efforts in mitigating the existence of  
63 poverty in this state.

64 (6) TERMINATION.—The Florida Council on Poverty shall be  
65 abolished on July 1, 2019.

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

**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.)

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Prepared By: The Professional Staff of the Committee on Fiscal Policy

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BILL: CS/SB 556

INTRODUCER: Fiscal Policy Committee (Recommended by the Appropriations Subcommittee on Transportation, Tourism, and Economic Development); and Senator Altman

SUBJECT: Florida Commission on Poverty

DATE: February 29, 2016

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>McKay</u>	<u>McKay</u>	<u>CM</u>	<b>Favorable</b>
2.	<u>Gusky</u>	<u>Miller</u>	<u>ATD</u>	<b>Recommend: Fav/CS</b>
3.	<u>Pace</u>	<u>Hrdlicka</u>	<u>FP</u>	<b>Fav/CS</b>

**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

---

**I. Summary:**

CS/SB 556 establishes the Florida Council on Poverty (council) as an advisory council, administratively housed within the Department of Economic Opportunity (DEO). The council must:

- Conduct a review of policies and programs that work to move people out of poverty;
- Develop strategies to address the causes of poverty in Florida;
- Develop recommendations to reduce the percentage of people living in poverty in Florida;
- Study the academic outcomes for children in poverty and develop recommendations on how to improve such outcomes; and
- Submit an annual report to the Governor, President of the Senate, and the Speaker of the House of Representatives.

The bill provides for the appointment of five members to the council. The Governor must appoint one member from the Florida Association for Community Action, Inc., and the Chief Financial Officer, the Commissioner of Agriculture, the President of the Senate, and the Speaker of the House of Representative must each appoint one member. The council must meet at least twice a year, beginning August 1, 2016, and may meet by teleconference or other electronic means.

The council is abolished on July 1, 2019.

The bill has an indeterminate, but expected to be minimal, negative fiscal impact to the DEO.

## II. Present Situation:

The United States Census Bureau (bureau) tracks income and poverty in the United States. The bureau estimates that in 2014 there were 46.7 million Americans living in poverty, which equates to 14.8 percent of the country's population.<sup>1</sup> As of 2014, Florida had approximately 3.2 million persons living below the poverty line, with a poverty rate of 16.6 percent, and of Florida's 67 counties, 48 counties had poverty rates exceeding the national average.<sup>2</sup>

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

- The Legislative Commission to End Poverty in Minnesota by 2020 was created in 2006 to develop guidelines and prepare recommendations to end poverty.<sup>3</sup>
- The Speaker of the House of Representatives for Alabama created a poverty task force in September 2007 to identify and assess conditions that create or worsen poverty throughout Alabama and to develop and propose policy initiatives to reduce or eliminate those conditions.<sup>4</sup>
- The Illinois Commission on the Elimination of Poverty was established in 2008 to reduce extreme poverty in Illinois by 50 percent or more by 2015.<sup>5</sup>
- The Child Poverty Prevention Council for Louisiana was created in 2008 to pursue programs to reduce child poverty in the state by 50 percent over the following decade.<sup>6</sup>
- The Connecticut Legislature created a Child Poverty Council in 2004 to develop a 10-year plan to reduce the number of children living in poverty in Connecticut by 50 percent.<sup>7</sup>
- The Rhode Island Legislature created a legislative commission on family income and asset building in 2007 to conduct a comprehensive review of Rhode Island laws, policies, and activities that benefit those in poverty.<sup>8</sup>

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<sup>1</sup> U.S. Census Bureau, Current Population Reports, P60-252, *Income and Poverty in the United States: 2014* (Sept. 2015), p. 12, available at <http://www.census.gov/content/dam/Census/library/publications/2015/demo/p60-252.pdf> (last visited Feb. 23, 2016).

<sup>2</sup> United States Department of Agriculture, Economic Research Service, *County-level Poverty Data Sets*, available at <http://www.ers.usda.gov/data-products/county-level-data-sets/poverty.aspx> (last visited Feb. 23, 2016).

<sup>3</sup> Minnesota Laws 2006, ch. 282, part. 2, s. 27, available at <https://www.revisor.mn.gov/laws/?year=2006&type=0&doctype=Chapter&id=282> (last visited Feb. 23, 2016).

<sup>4</sup> Alabama House of Representatives, *Poverty Task Force Final Report* (2008), available at <http://www.clasp.org/documents/PTF-Final-Report.pdf> (last visited Feb. 23, 2016).

<sup>5</sup> 20 ILL. COMP. STAT. 4080/10 (2008), available at <http://www.ilga.gov/legislation/ilcs/ilcs3.asp?ActID=2994&ChapterID=5> (last visited Feb. 23, 2016).

<sup>6</sup> LA. REV. STAT. ANN. s. 46:2801 (2008), available at <http://legis.la.gov/Legis/Law.aspx?d=631413> (last visited Feb. 23, 2016).

<sup>7</sup> CONN. GEN. STAT. s. 4-67x (2004). See NCSL, *State Child Welfare Legislation 2004*, available at <https://www.cga.ct.gov/2011/pub/chap050.htm#Sec4-67x.htm> (last visited Feb. 23, 2016).

<sup>8</sup> 2007 RI H 6561 (2007) available at <http://webserver.rilin.state.ri.us/PublicLaws/law07/res07/res07404.htm> (last visited Feb. 23, 2016).

### Advisory Bodies

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

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

- Its powers and responsibilities conform with the definitions for governmental units in s. 20.03, F.S.;<sup>11</sup>
- Its members are appointed for 4-year staggered terms; and
- Its members serve without additional compensation or honorarium, but may receive per diem and reimbursement for travel expenses.<sup>12</sup>

The private citizen members of an *advisory body* that is adjunct to an executive agency must be appointed by the Governor, the head of the department, the executive director of the department, or a Cabinet officer. The private citizen members of a *commission or board* that is adjunct to an executive agency must be appointed by the Governor unless otherwise provided, must be confirmed by the Senate, and must be subject to the dual-office-holding prohibition of Art. II, s. 5(a) of the Florida Constitution.<sup>13</sup>

### III. Effect of Proposed Changes:

The bill establishes the Florida Council on Poverty (council) as an advisory council, administratively housed within the Department of Economic Opportunity (DEO). The council must:

- Conduct a review of policies and programs that work to move people out of poverty;
- Develop strategies to address the causes of poverty in Florida;
- Develop recommendations to reduce the percentage of people living in poverty in Florida; and
- Study the academic outcomes for children in poverty and develop recommendations on how to improve such outcomes.

The council consists of 5 members who must be residents of Florida. The Governor must appoint one member from the Florida Association for Community Action, Inc., and the Chief Financial Officer, the Commissioner of Agriculture, the President of the Senate, and the Speaker of the

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<sup>9</sup> Section 20.052(1), F.S.

<sup>10</sup> Section 20.052(2), F.S.

<sup>11</sup> Section 20.03(7), F.S., defines “council” or “advisory council” as an advisory body created by specific statutory enactment and appointed to function on a continuing basis for the study of the problems arising in a specified functional or program area of state government and to provide recommendations and policy alternatives. Section 20.03(10), F.S., defines “commission” as a body created by specific statutory enactment within a department, the office of the Governor, or the Executive Office of the Governor and exercising limited quasi-legislative or quasi-judicial powers, or both, independently of the head of the department or the Governor.

<sup>12</sup> Section 20.052(4), F.S.

<sup>13</sup> Section 20.052(5), F.S.

House of Representative must each appoint one member. Members of the council serve without compensation, but may be reimbursed for per diem and travel expenses. The council must annually elect a chair and a vice chair.

The first meeting of the council must be held no later than August 1, 2016. Thereafter, the council must meet at least twice a year, or at the call of the chair or at such times that may be prescribed by council. Three members of the council constitute a quorum, and the affirmative vote of a majority of a quorum is necessary to take official action. Meetings of the council may be held via teleconference or other electronic means.

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

The council is abolished on July 1, 2019.

The bill is effective July 1, 2016.

#### **IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

#### **V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill authorizes members of the council to receive per diem and travel expenses in accordance with s. 112.061, F.S. The council is administratively housed in the DEO. The bill has an indeterminate, but expected to be minimal, negative fiscal impact to the DEO.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

The bill creates an unnumbered section of Florida law.

**IX. Additional Information:**

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

**CS by Fiscal Policy on February 29, 2016:**

As recommend by the Appropriations Subcommittee on Transportation, Tourism, and Economic Development the committee substitute:

- Creates a council, as defined in s. 20.03, F.S., instead of a commission;
- Provides that the council is administratively housed in the DEO;
- Changes the membership of the council by:
  - Removing an undesigned number of non-voting members appointed by the Governor;
  - Giving the Commissioner of Agriculture an appointment to the council;
  - Directing the Governor to appoint one member from the Florida Association for Community Action, Inc.; and
  - Removing the requirement that appointees be confirmed by the Senate;
- Requires the council to hold its first meeting on or before August 1, 2016;
- Removes the council's ability to procure, contract, and accept funds and services;
- Directs the council to conduct specific activities; and
- Terminates the council on July 1, 2019.

- B. **Amendments:**

None.

By Senator Altman

16-00283A-16

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A bill to be entitled

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

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

Section 1. Florida Commission on Poverty.—

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

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

Page 1 of 3

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

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

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

(6) The commission shall:

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

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

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

(7) The commission may:

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

(b) Contract for necessary goods and services.

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

Page 2 of 3

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

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

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





# THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

**COMMITTEES:**

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

**SENATOR THAD ALTMAN**

16th District

February 24, 2016

The Honorable Anitere Flores  
Senate Committee on Fiscal Policy, Chair  
225 Knott Building  
404 South Monroe Street  
Tallahassee, FL 32399

Dear Chairman Flores:

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

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

Sincerely,

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

Thad Altman

CC: Jennifer Hrdlicka, Staff Director, 225 Knott Building  
Tamra Lyon, Committee Administrative Assistant

TA/dw

**REPLY TO:**

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

Senate's Website: [www.flsenate.gov](http://www.flsenate.gov)

**ANDY GARDINER**  
President of the Senate

**GARRETT RICHTER**  
President Pro Tempore

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

2/29/16  
Meeting Date

556  
Bill Number (if applicable)

Topic Poverty

Amendment Barcode (if applicable)

Name TIM CENTER

Job Title CEO CAPITAL AREA COMMUNITY ACTION AGENCY

Address 309 Office Plaza D

Phone 813 222 2043

TLH FL 32301  
City State Zip

Email tim-center@cacaa-inc.org

Speaking:  For  Against  Information

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

Representing FL ASSOCIATION FOR COMMUNITY ACTION

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/29/16  
Meeting Date

SB 556  
Bill Number (if applicable)

Topic Commission on Poverty

Amendment Barcode (if applicable)

Name Karen Woodall

Job Title Executive Director

Address 579 E. Call St.

Phone 850-321-9386

Tallahassee FL 32301  
City State Zip

Email fefep@yahoo.com

Speaking:  For  Against  Information

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

Representing Florida Center for Fiscal & Economic Policy

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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



# THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

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

**SENATOR THAD ALTMAN**  
16th District

February 29, 2016

The Honorable Anitere Flores  
Senate Committee on Fiscal Policy  
225 Knott Building  
404 S. Monroe Street  
Tallahassee, FL 32399-1100

Dear Chair Flores:

Senate Bill 556, related to the *Florida Commission on Poverty* and Senate Bill 1692, related to Reimbursement of Assessments, are on the Fiscal Policy committee agenda on February 29, 2016.

Please recognize my Legislative Aide Devon West to present **SB 556** and SB 1692 on my behalf. Please feel free to contact me if you have any questions.

Sincerely,

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

Thad Altman

CC: Jennifer Hrdlicka, Staff Director, 225 Knott Building  
Tamra Lyon, Committee Administrative Assistant

TA/dv

REPLY TO:  
 8910 Astronaut Blvd, Cape Canaveral, FL 32920 (321) 868-2132  
 314 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5016

Senate's Website: [www.flsenate.gov](http://www.flsenate.gov)

**ANDY GARDINER**  
President of the Senate

**GARRETT RICHTER**  
President Pro Tempore

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

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

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Prepared By: The Professional Staff of the Committee on Fiscal Policy

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BILL: CS/CS/SB 704

INTRODUCER: Fiscal Policy Committee; Community Affairs Committee; and Senator Hutson

SUBJECT: Building Codes

DATE: March 1, 2016

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Present	Yeatman	CA	<b>Fav/CS</b>
2.	Davis	DeLoach	AGG	<b>Recommend: Favorable</b>
3.	Present	Hrdlicka	FP	<b>Fav/CS</b>

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**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

**I. Summary:**

CS/CS/SB 704 makes the following changes to law:

- Makes several adjustments to the training and experience required to take the certification examinations for building code inspector, plans examiner, and building code administrator;
- Exempts employees of apartment communities with 100 or more units from contractor licensing requirements if making minor repairs to existing electric water heaters or existing electric heating, ventilation, and air conditioning (HVAC) systems, if they meet certain training and experience criteria and the repair involves parts costing under \$1,000;
- Allows Category I liquefied petroleum gas dealers, liquefied petroleum gas installers, and specialty installers to disconnect and reconnect water lines in the servicing or replacement of existing water heaters;
- Adds Division II contractors to the Florida Homeowners' Construction Recovery Fund section, which would allow homeowners to make a claim and receive restitution from the fund when they have been harmed by a Division II contractor, subject to certain requirements and financial caps;
- Exempts specific low-voltage landscape lighting from having to be installed by a licensed electrical contractor;
- Clarifies that temporary pools that are used for swimming lessons that are sponsored or provided by school districts and temporary pools used in conjunction with a sanctioned national or international swimming or diving event are considered private pools and not subject to regulation;
- Provides that a residential pool that is equipped with a pool alarm that, when placed in the pool, will sound if it detects an accidental or unauthorized entrance into the water meets the safety requirements for residential pools;

- Creates the Calder Sloan Swimming Pool Electrical-Safety Task Force to study and report on specific standards, especially with regard to minimizing risks of electrocutions linked to swimming pools;
- Replaces a representative on the Accessibility Advisory Council for a defunct organization with the new organization;
- Revises the panels designated to review interpretations of the Florida Building Code and the Florida Accessibility Code for Building Construction;
- Provides funding for the recommendations made by the Building Code System Uniform Implementation Evaluation Workgroup and provides funding for Florida Fire Prevention Code informal interpretations;
- Allows local boards created to address conflicts between the Florida Building Code and the Florida Fire Prevention Code to combine to create a single local board that must include at least one fire professional;
- Requires the Florida Building Code to mandate having two fire service access elevators in all buildings above a certain height;
- Authorizes local building officials to issue phased permits for construction;
- Subjects certain building officials to discipline if they deny, revoke, or modify a specified permit without providing a reason for the denial, revocation, or modification;
- Requires a contractor and an alarm system monitoring company to provide notice to a property owner regarding the obligation to register their alarm system, if applicable;
- Provides that a contractor or an alarm system monitoring company is not liable for any penalties assessed or imposed by the applicable local government for failure to register the alarm, dispatch to an unregistered user, or excessive false alarms;
- Prohibits local enforcement agencies from requiring payment of any additional fees, charges, or expenses associated with providing proof of licensure as a contractor, recording a contractor license, or providing or recording evidence of workers' compensation insurance covered by a contractor;
- Adds Underwriters Laboratories, LLC, and Intertek Testing Services NA, Inc., to the list of entities that are authorized to produce information on which product approvals are based, related to the Florida Building Code;
- Reinstates a wind mitigation exemption for professional engineer certification of HVAC units being installed;
- Exempts Wi-Fi smoke alarms and those that contain multiple sensors, such as those combined with carbon monoxide alarms, from the 10-year, nonremovable, nonreplaceable battery provision;
- Provides that the mandatory blower door testing for residential buildings or dwellings does not take effect until July 1, 2016, and does not apply to construction permitted before July 1, 2017;
- Adds provisions to the Fire Prevention Code to:
  - Require new high-rise buildings to comply with minimum radio signal strength for fire department communications set by the local authority with jurisdiction. Existing high-rise buildings must comply by 2022 and existing apartment buildings must comply by 2025;
  - Require areas of refuge to be provided when required by the Accessibility volume of the Florida Building Code;
  - Authorize fire officials to use the Fire Safety Evaluation System to identify low-cost alternatives for compliance; and

- Require technicians that work on fire pump control panels and drivers to be under contract with a licensed fire protection contractor;
- Requires a restaurant, a cafeteria, or a similar dining facility, including an associated commercial kitchen, to have sprinklers only if it has a fire area occupancy load of over 200 patrons;
- Adds provisions to the Florida Building Code regarding fire separation distance and roof overhang projections;
- Creates the Construction Industry Task Force within the University of Florida Rinker School of Construction;
- Provides exceptions to the residential shower lining requirements in the Florida Building Code; and
- Allows a specific energy rating index as an option for compliance with the Energy Conservation volume of the Florida Building Code.

The bill has an indeterminate fiscal impact to the Department of Business and Professional Regulation (DBPR) and local governments (see Section V. Fiscal Impact Statement).

This bill is effective July 1, 2016.

## II. Present Situation:

### **The Florida Building Code and the Florida Building Commission**

In 1974, Florida adopted a state minimum building code law requiring all local governments to adopt and enforce a building code that would ensure minimum standards for the public's health and safety. Four separate model codes were available that local governments could consider and adopt. In that system, the state's role was limited to adopting all or relevant parts of new editions of the four model codes. Local governments could amend and enforce their local codes as they desired.<sup>1</sup>

In 1996, a study commission was appointed to review the system of local codes and to make recommendations for modernizing the entire system. The 1998 Legislature adopted the study commission's recommendations for a single state building code and an enhanced oversight role for the state in local code enforcement. The 2000 Legislature authorized implementation of the Florida Building Code (Code) and that first edition replaced all local codes on March 1, 2002. In 2004, for the second edition of the Code, the state adopted the International Code Council's I-Codes.<sup>2</sup> All subsequent Codes have been adopted utilizing the International Code Council I-Codes as the base code. The most recent Code is the fifth edition which is referred to as the 2014 Code. The 2014 Code went into effect June 30, 2015.<sup>3</sup>

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<sup>1</sup> DBPR, *Florida Building Codes and Standards: Building Code*, available at <http://www.myfloridalicense.com/dbpr/bcs/buildingcode.html> (last visited Feb. 21, 2016).

<sup>2</sup> The International Code Council (ICC) is an association that develops model codes and standards used in the design, building, and compliance process to "construct safe, sustainable, affordable and resilient structures." The ICC publishes I-Codes: a complete set of model comprehensive, coordinated building safety and fire prevention codes, for all aspects of construction, that have been developed by ICC members. All 50 states have adopted the I-Codes.

<sup>3</sup> ICC, *Florida Building Codes*, available at [http://www2.iccsafe.org/states/florida\\_codes/](http://www2.iccsafe.org/states/florida_codes/) (last visited Feb. 21, 2016).

The Florida Building Commission (FBC) was statutorily created to implement the Code. The FBC, which is housed within the DBPR, is a 27-member technical body responsible for the development, maintenance, and interpretation of the Code.<sup>4</sup> Most substantive issues before the FBC are vetted through a workgroup process where consensus recommendations are developed and submitted by appointed representative stakeholder groups in an open process with several opportunities for public input. According to the FBC, through this participatory process, the members “strive for agreements which all of the members can accept, support, live with or agree not to oppose;” when the FBC finds that 100 percent acceptance or support is not achievable, “final decisions require at least 75 percent favorable vote of all members present and voting.”<sup>5</sup>

Due to the number of issues addressed in the bill, the present situation for each section is discussed below in Effect of Proposed Changes.

### III. Effect of Proposed Changes:

#### **Building Code Administrators, Plans Examiners, and Inspectors Certifications**

##### *Building Code Inspector and Plans Examiner*

In order to take the examination for building code inspector or plans examiner certification, s. 468.609(2), F.S., provides that a person must be at least 18, be of good moral character, and meet one of the following eligibility requirements:

- Option 1: Demonstrate 5 years of combined experience in the field of construction or a related field, building code inspection, or plans review corresponding to the certification category sought.
- Option 2: Demonstrate 4 years of a combination of postsecondary education in the field of construction or a related field and experience, with at least 1 year of experience in construction, building code inspection, or plans review.
- Option 3: Demonstrate 4 years of a combination of technical education in the field of construction or a related field and experience, with at least 1 year of experience in construction, building code inspection, or plans review.
- Option 4: Currently hold a standard certificate as issued by the Florida Building Code Administrators and Inspectors Board (FBCAIB), or a fire safety inspector license issued pursuant to ch. 633, F.S.; have a minimum of 5 years of verifiable full-time experience in inspection or plan review; and satisfactorily complete an approved building code inspector or plans examiner training program of not less than 200 hours in the certification category sought.
- Option 5: Demonstrate a minimum of 2 years combined experience in the field of building code inspection, plan review, fire code inspections and fire plans review of new buildings as a firesafety inspector, or construction; and the completion of an approved training program in the field of building code inspection or plan review of not less than 300 hours in the certification category sought, with not less than 20 hours of instruction in state laws, rules,

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<sup>4</sup> Section 553.74, F.S. See DBPR, *Florida Building Codes and Standards: Florida Building Commission*, available at <http://www.myfloridalicense.com/dbpr/bcs/buildingcomm.html> (last visited Feb. 21, 2016).

<sup>5</sup> FBC, *Consensus-Building Process*, available at [http://www.floridabuilding.org/fbc/commission/FBC\\_0608/Commission/FBC\\_Discussion\\_and\\_Public\\_Input\\_Processes.htm](http://www.floridabuilding.org/fbc/commission/FBC_0608/Commission/FBC_Discussion_and_Public_Input_Processes.htm) (last visited Feb. 21, 2016).



and ethics relating to professional standards of practice, duties, and responsibilities of a certificate holder.

Although individuals have been able to meet the above requirements for a single certification, it is difficult to earn additional certifications while employed as an inspector or plans examiner.

### ***Building Code Administrator***

In order to take the examination for building code administrator certification, s. 468.609(3), F.S., provides that a person must be at least 18, be of good moral character, and meet one of the following eligibility requirements:

- Option 1: Demonstrate 10 years of combined experience as an architect, engineer, plans examiner, building code inspector, registered or certified contractor, or construction superintendent, with at least 5 years of experience in supervisory positions; or
- Option 2: Demonstrate 10 years of a combination of experience as an architect, engineer, plans examiner, building code inspector, registered or certified contractor, or construction superintendent, with at least 5 years of supervisory experience, and postsecondary education in the field of construction or related field, of which no more than 5 years may be applied.

### ***Effect of Proposed Changes***

**Section 1** amends s. 468.609, F.S., to modify the training requirements required for building code inspectors, plan examiners, and building code administrators to take the certification exams.

Related to certain training requirements for building code inspectors and plans examiners, the bill amends:

- Option 4 to reduce the number of years' experience in inspection or plan review from 5 to 3 years and requires the training program to be between 100 and 200 hours of cross-training.
- Option 5 to require the training program to be between 200 and 300 hours of cross-training and limits the required hours of instruction in state law to between 20 and 30 hours.

The bill creates a new option (Option 6) for individuals who currently hold a standard certificate or a firesafety inspector license to qualify to take the exam, if the person also:

- Has at least 5 years of verifiable full-time experience under the certificate or license; and
- Satisfactorily completes a building code inspector or plans examiner classroom training course or program that provides between 200 and 300 hours in the certification category sought, except for one-family and two-family dwelling training programs which are required to provide between 500 and 800 hours of training as prescribed by the FBCAIB.

The FBCAIB must accept all classroom training offered by an approved provider if the content substantially meets the intent of the classroom component of the training program.

Related to the training requirements for a building code administrator who is demonstrating a combination of years' experience and education under Option 2, the bill adds a requirement that the individual must have also completed between 20 and 30 hours training in state laws, rules, and ethics relating to professional standards of practice, duties, and responsibilities of a certificate holder.

The bill requires, rather than authorizes, the FBCAIB to provide for the issuance of provisional 1-year certificates for certain newly employed or promoted building code inspectors or plans examiners; and to provide appropriate levels of such provisional certificates.

### **Apartment Maintenance Employees**

Part I of ch. 489, F.S., regulates licensed construction contractors and provides that it is “necessary in the interest of the public health, safety, and welfare to regulate the construction industry.”<sup>6</sup> Exemptions to Part I of ch. 489, F.S., are provided in s. 489.103, F.S., including a “handyman exemption.” Specifically, s. 489.103(9), F.S., provides an exemption for any work or operation of a casual, minor, or inconsequential nature in which the aggregate contract price for labor, materials, and all other items is less than \$1,000. The exemption does not apply:

- If the construction, repair, remodeling, or improvement is a part of a larger or major operation, whether undertaken by the same or a different contractor, or in which a division of the operation is made in contracts of amounts less than \$1,000 for the purpose of evading Part I; or
- To a person who advertises that he or she is a contractor or otherwise represents that he or she is qualified to engage in contracting.

### ***Effect of Proposed Changes***

**Section 2** amends s. 489.103, F.S., to add a new exemption for an employee of an apartment community or apartment community management company who makes minor repairs to existing electric water heaters or to existing electric heating, venting, and air-conditioning systems when the repair costs do not exceed \$1,000 and are not the functional equivalent of replacing the system.<sup>7</sup> Such an employee is required to have 1 year of apartment maintenance experience and hold an apartment maintenance technician’s certificate from the National Apartment Association (NAA) to qualify for the exemption. The NAA certification course must be accredited by the American National Standards Institute and consist of a 90 hour training course covering identified topics and completion of examination requirements. The exemption only applies to employees of apartment communities of 100 apartments or greater.

The exemption provided does not limit the authority of a municipality or county to adopt or enforce an ordinance, a rule, or a regulation requiring licensure, certification, or registration of persons employed as an apartment maintenance technician, apartment repair worker, or any term or position that includes a similar scope of work.

### **Propane Gas Water Heater Installations**

Currently, a person licensed as a liquid petroleum gas Installer C by the Department of Agriculture and Consumer Services (DACCS) is authorized to install, service, alter, or modify appliances, equipment, piping, or tubing to convey liquefied petroleum gas to appliances or equipment.<sup>8</sup> A person with such a license is authorized to service or replace a liquid petroleum gas water heater and to hook up the water heater to the source of the gas; however, he or she may

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<sup>6</sup> Section 498.101, F.S.

<sup>7</sup> The bill prohibits a “larger or major project” from being divided into parts in order to avoid the restriction.

<sup>8</sup> Rule 5J-20.012, F.A.C. *See also* ch. 527, F.S.

not hook the water heater to the home's plumbing without being certified as a plumbing contractor. This creates additional costs for the customer, because a plumber must be paid to complete the hook up. Currently, public and private natural gas utility employees are exempt from the requirement to be certified as a plumbing contractor when servicing or replacing a water heater.<sup>9</sup> Natural gas and propane are piped in the same manner and have the same properties and pressures inside homes, and the Florida Natural Gas Association reports that the same skill set is used by installers to hook up both natural gas and propane appliances to a home's plumbing.<sup>10</sup>

### ***Effect of Proposed Changes***

**Section 3** amends s. 489.105(3)(m), F.S., relating to plumbing contractors, to extend the authority to disconnect and reconnect water lines in the servicing or replacement of an existing water heater to licensed Category I liquefied petroleum gas dealers, liquefied petroleum gas installers, and specialty installers.

### **Contractors and the Construction Industry Licensing Board**

The Construction Industry Licensing Board (CILB), within the DBPR, is responsible for licensing and regulating the construction industry in this state.<sup>11</sup> The CILB is divided into Division I and Division II members based on the definitions of Division I and Division II contractors.

Division I contractors are described under s. 489.105, F.S., as general contractors, building contractors, and residential contractors. Division II contractors are described as sheet metal contractors, roofing contractors, class A, B, and C air-conditioning contractors, mechanical contractors, commercial pool/spa contractors, residential pool/spa contractors, swimming pool/spa servicing contractors, plumbing contractors, underground utility and excavation contractors, solar contractors, pollutant storage systems contractors, and specialty contractors.

Section 489.129, F.S., grants the CILB the authority to take actions against any certificate holder or registrant if the contractor, or a related party, is found guilty of specific acts, including the acts that may qualify a claim to the Florida Homeowner's Construction Fund, which is discussed below.

### **Florida Homeowner's Construction Recovery Fund**

The Florida Homeowner's Construction Recovery Fund (fund) was created by the Legislature in 1993 after Hurricane Andrew. The fund is the last resort to compensate homeowners who have suffered a covered financial loss at the hands of state-licensed general, building, and residential contractors. Covered losses include financial mismanagement or misconduct, project

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<sup>9</sup> Section 489.105(3)(m), F.S.

<sup>10</sup> Email from Dale Calhoun, President of the Florida Natural Gas Association, RE: propane tank installations (Mar. 13, 2015).

<sup>11</sup> Section 489.107, F.S. DBPR, *Construction Industry Licensing Board*, available at <http://www.myfloridalicense.com/DBPR/pro/cilb/index.html> (last visited Feb. 21, 2016).

abandonment, or fraudulent statement of a contractor or related party.<sup>12</sup> A claimant must be a homeowner and the damage must have been caused by a Division I contractor.<sup>13</sup>

A claim must involve an act by a contractor under s. 489.129(1)(g), (j), and (k), F.S., which relate to actions that give rise to disciplinary actions by the CILB against a contractor.

- Section 489.129(1)(g), F.S., allows disciplinary proceedings for committing mismanagement or misconduct in the practice of contracting that causes financial harm to a customer. Generally, financial mismanagement or misconduct occurs when the contractor fails to remove a valid lien after payment; the contractor has abandoned the job and has been paid for more than is completed; and the customer is made to pay more than the contract price.
- Section 489.129(1)(j), F.S., allows disciplinary proceedings for abandoning a construction project, under certain conditions.
- Section 489.129(1)(k), F.S., allows disciplinary proceedings for signing a false statement with respect to a project or contract indicating that the work is bonded, subcontractors have been paid, or workers' compensation and public liability insurance are provided.

If the violation is not expressly based on s. 489.129(1)(g), (j), or (k), F.S., the claimant must demonstrate that the contractor engaged in activity that is described in those subsections.<sup>14</sup>

The fund is financed by a 1.5 percent surcharge on all building permit fees associated with the enforcement of the Code.<sup>15</sup> The proceeds from the surcharge are allocated equally to the fund and support the operations of the Building Code Administrators and Inspectors Board.<sup>16</sup>

### ***Duty of Contractor to give Notice of Fund***

Section 489.1425, F.S., creates a duty for a contractor to provide notice to a customer of rights under the recovery fund. Any agreement or contract for repair, restoration, improvement, or construction to residential real property must contain a written statement explaining the consumer's rights under the recovery fund, except where the value of all labor and materials does not exceed \$2,500. The written statement must be substantially in the form provided for in the statute.

### ***Requirements to Make a Claim***

The claimant must have obtained a final judgment, arbitration award, or CILB-issued restitution order against the contractor for damages that are a direct result of a compensable violation. The statute of limitations to make a claim is 1 year after the conclusion of an action or award in arbitration that is based on the misconduct.<sup>17</sup> Certain claimants may not make claims, including a

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<sup>12</sup> See ss. 489.140-489.144, F.S.

<sup>13</sup> Section 489.1402, F.S.

<sup>14</sup> Rule 61G4-21.003(3), F.A.C.

<sup>15</sup> Section 468.631(1), F.S.

<sup>16</sup> The DBPR has the authority to transfer excess cash to the fund if it determines it is not needed to support the operation of the FBCAIB; the amount transferred cannot exceed the amount appropriated in the General Appropriations Act or approved by the Legislative Budget Commission for payment of claims from the fund.

<sup>17</sup> Section 489.141(1)(f), F.S.

claimant that contracted with a Division II contractor and a claimant that suffered damages as a result of making improper payments to a contractor under the Florida Construction Lien Law.<sup>18</sup>

### ***Limits***

Pursuant to s. 489.143, F.S., payment to a claimant from the recovery fund will be an amount equal to the judgment, award, or restitution order or \$25,000, whichever is less, or an amount equal to the unsatisfied portion of such person's judgment, award, or restitution order, but only to the extent and amount of actual damages suffered by the claimant.<sup>19</sup> Each recovery claim is limited to both a per-claim maximum amount and a total lifetime per-contractor maximum.<sup>20</sup> For contracts entered prior to July 1, 2004, the fund claims are limited to \$25,000 per claimant with a total lifetime aggregate limit of \$250,000 per licensee.<sup>21</sup> For contracts entered after July 1, 2004, the per-claim payment limits are increased to \$50,000 with a total lifetime aggregate of \$500,000 per licensee.<sup>22</sup> Claims are paid in the order that they are filed.<sup>23</sup>

### ***Effect of Proposed Changes***

**Sections 4, 5, 6, 7, and 8** amend ss. 489.1401, 489.1402, 489.141, 489.1425, and 489.143, F.S., related to the Florida Homeowners' Construction Recovery Fund to include Division II contractors within the parameters of the fund. The bill revises the statutory limits on recovery payments to include Division II contractors beginning January 1, 2017, for any contract entered into after July 1, 2016.<sup>24</sup> The bill limits claims against Division II contractors to \$15,000 per claim with a \$150,000 lifetime maximum.

The bill also:

- Clarifies that a "residence" includes a single-family residence.
- Repeals the prohibition against paying claims where the damages resulted from payments made in violation of the Florida Construction Lien Law.
- Clarifies that the prohibition against paying claims against Division II contractors applies only to contracts entered into before July 1, 2016.
- Revises the notice that contractors must give to homeowners informing them of their rights under the recovery fund, to advise that payments from the fund are up to a limited amount.

### **Low-Voltage Landscape Lighting**

Part II of ch. 489, F.S., regulates electrical and alarm system contractors. This regulation seeks to enable qualified persons to obtain licensure, while ensuring that applicants have sufficient

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<sup>18</sup> The term "contractor" is defined as a person other than a materialman or laborer who enters into a contract with the owner of real property for improving it, or who takes over from a contractor as so defined the entire remaining work under such contract. It includes an architect, landscape architect, or engineer who improves real property pursuant to a design-build contract authorized by s. 489.103(16), F.S. *See* s. 713.01(8), F.S.

<sup>19</sup> Section 489.143(2), F.S.

<sup>20</sup> Department of Business and Professional Regulation, *Legislative Bill Analysis for SB 704* (Feb. 10, 2016).

<sup>21</sup> Section 489.143(2) and (5), F.S.

<sup>22</sup> *Id.*

<sup>23</sup> Section 489.143(6), F.S.

<sup>24</sup> The bill includes Division II contractors whose services fall within s. 489.105(3)(d)-(q), F.S.

technical experience in the applicable trade prior to licensure, are tested on technical and business matters, and upon licensure are made subject to disciplinary procedures and effective policing of the profession.<sup>25</sup> Section 489.503, F.S., provides exemptions to licensure for persons performing various tasks such as someone licensed as a fire protection system contractor while engaged in work as a fire protection system contractor, an employee monitoring an alarm system of a business, and a lightning rod or related systems installer.

### *Effect of Proposed Changes*

**Section 9** amends s. 489.503, F.S., to exempt persons who install certain low-voltage landscape lighting from the requirement to be certified as an electrical contractor. The low-voltage landscape lighting must have a factory-installed electrical cord and plug and not require installation, wiring, or modification to the electrical wiring of a structure.

### **Swimming Pools**

The FBC has included standards for the construction of public swimming pools in the Code which are enforced by local building departments throughout the state. The Department of Health (DOH) is responsible for the oversight and regulation of water quality and safety of certain swimming pools in Florida under ch. 514, F.S. Inspections and permitting for swimming pools are conducted by the county health departments.

Some local governments provide swimming lessons using temporary swimming pools. However, such pools may not meet requirements established by the DOH.

Current construction rules for public pools require that written approval must be received from the DOH before construction can begin.<sup>26</sup> Plans are required that show the pool layout, tile markings, size of the pool ladder, gutter heights and if night swimming is permitted, an engineer in Florida must provide certification that the underwater lighting meets the requirements of Rule 64E-9.006(2)(c)3. of the Florida Administrative Code, which sets the maximum lighting at 15 volts. The rule also permits all underwater lighting requirements to be waived if overhead lighting provides at least 15 foot candles of illumination at the pool water surface and wet pool deck.<sup>27</sup>

Electrical equipment and wiring must meet national standards relating to the grounding of pool components. The standards that are incorporated into the rule are those of the National Fire Protection Association 70, National Electrical Code (NEC), 2008 Edition, and with any applicable local code. Finally, as part of the plan approval, the electrical contractor or electrical inspector must certify as to a pool's compliance, on the form designated by the DOH.<sup>28</sup>

The United States Consumer Product Union issued a Safety Alert in August 2012 recommending the installation of ground-fault circuit interrupter (GFCI) protections for pools, spas, and hot tubs for protection against electrocution hazards involving electrical circuits and underwater lighting

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<sup>25</sup> Section 489.501, F.S.

<sup>26</sup> Section 514.03, F.S., and Rule 64E-9.005, F.A.C.

<sup>27</sup> Rules 64E-9.006(1)(i)3. and 64E-9.006(2)(c)3., F.A.C.

<sup>28</sup> Rule 64E-9.006(2)(d), F.A.C.

circuits in and around pools, spas, and hot tubs.<sup>29</sup> The Safety Alert noted that pools older than 30 years may not have the proper GFCI protection. Underwater pool lighting electrical incidents happened more frequently than any other consumer product used in or around pools, spas, or hot tubs.

Several news stories in south Florida in the past year have also highlighted the issue. Three children were shocked in a Hialeah condominium community pool in April 2014. The building inspector's report found that the pool pump was not properly grounded.<sup>30</sup> During the same month in Miami, a 7 year-old boy, Calder Sloan, was electrocuted in his family's swimming pool from faulty wiring.<sup>31</sup>

In October 2014, the Miami-Dade Board of County Commissioners passed the Swimming Pool Light Ordinance 14-95. The ordinance modifies two sections of the Florida Building Code to make requirements for underwater lighting in commercial pools applicable to residential pools.<sup>32</sup> Existing pools will be required to comply with the new low voltage requirements at the time of repair or alteration or to remove the underwater pool light. The county permit to change an existing pool light to low voltage light or to remove a light without a replacement in unincorporated Miami-Dade County is \$65.

Section 515.27, F.S., provides that residential swimming pools must meet one of the following requirements in order to pass a final safety inspection and receive a certification of completion:

- The pool must be isolated from access to a home by an enclosure that meets the pool barrier requirements of s. 515.29, F.S.;
- The pool must be equipped with an approved safety pool cover;
- All doors and windows providing direct access from the home to the pool must be equipped with an exit alarm that has a minimum sound pressure of 85 db A at 10 feet; or
- All doors providing direct access from the home to the pool must be equipped with a self-closing, self-latching device with a release mechanism at least 54 inches above the floor.

### *Effect of Proposed Changes*

**Sections 10, 11, and 12** amend ss. 514.011, 514.0115, and 514.031, F.S., to add temporary pools used for educational programs established by county school districts and temporary pools used in conjunction with sanctioned national or international swimming or diving competition events<sup>33</sup> to the definition of "private pool," and exempt such pools from regulation as a public pool.

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<sup>29</sup> U.S. Consumer Product Safety Commission, *Safety Alert: Install Ground-Fault Circuit-Interrupter Protection for Pools, Spas and Hot Tubs*, CPSC Document #5059, <http://www.cpsc.gov/PageFiles/118868/5039.pdf> (last visited Feb. 21, 2016).

<sup>30</sup> Roger Lohse, *Shoddy Electrical Work Lead to 3 Kids' Injuries at a Pool in Hialeah*, Policy Say, Local10.com (May 8, 2014), available at <http://www.local10.com/news/police-photos-show-shoddy-electrical-work-at-pool-that-caused-three-kids-to-be-shocked/25861796> (last visited Feb. 21, 2016).

<sup>31</sup> Roger Lohse, *South Fla. Boy Electrocuted by Pool Light While Swimming*, Local10.com (April 17, 2014), available at <http://www.local10.com/news/south-fla-boy-electrocuted-by-pool-light-while-swimming/25538944> (last visited Feb. 29, 2016).

<sup>32</sup> Miami-Dade County Regulatory and Economic Resources Department, *Is My Pool Safe?*, available at <http://www.miamidade.gov/permits/library/brochures/swimming-pool-light.pdf> (last visited Feb. 29, 2016).

<sup>33</sup> The event may not exceed 30 consecutive days of use.

**Section 13** amends s. 515.27, F.S., to add an additional safety feature option to meet the residential swimming pool requirements for final inspection. If a residential swimming pool is equipped with an alarm that, when placed in the pool, will sound after it detects an accidental or unauthorized entrance into the water, the pool meets the safety requirements of this section. These pool alarms must meet and be independently certified to the ASTM Standard F 2208 “Standards Specification for Pool Alarms.” This option does not include individual-use alarms.

**Section 29** establishes the Calder Sloan Swimming Pool Electrical-Safety Task Force within the FBC. The purpose of the task force is to study and report to the Governor, the President of the Senate, and the Speaker of the House of Representatives by November 1, 2016, on recommended revisions to the Florida Statutes concerning standards pertaining to grounding, bonding, lighting, wiring, and all electrical aspects for safety in and around public and private swimming pools. The task force is comprised of the Swimming Pool and Electrical Technical Advisory Committees of the FBC, and chaired by the Swimming Pool Contractor appointed to the FBC.

The bill requires the FBC to provide staff, information, and other assistance as reasonably necessary to assist the task force in carrying out its responsibilities. Members of the task force serve without compensation<sup>34</sup> and are required to meet as often as necessary to fulfill the responsibilities of the task force. Meetings may be conducted by conference call, teleconferencing, or other similar technology. The section expires December 31, 2016.

### **Florida Accessibility Code for Building Construction**

The Florida Building Code incorporates the architectural accessibility requirements of the Americans with Disabilities Act of 1990.<sup>35</sup> The Florida Accessibility Code for Building Construction contains scoping and technical requirements for accessibility to sites, facilities, buildings, and elements by individuals with disabilities.<sup>36</sup> Pursuant to s. 553.512, F.S., the FBC can provide criteria for allowing waivers for modification of or exception from the accessibility requirements. The Accessibility Advisory Council must review such waivers.

The Accessibility Advisory Council consists of seven members appointed by the Secretary of DBPR, who are to be knowledgeable in the area of accessibility for persons with disabilities and represent:

- The Advocacy Center for Persons with Disabilities, Inc.;
- The Division of Blind Services of the Department of Education;
- The Division of Vocational Rehabilitation of the Department of Education;
- A statewide organization representing the physically handicapped;
- The hearing impaired;
- The President of the Florida Council of Handicapped Organizations; and
- The Paralyzed Veterans of America.

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<sup>34</sup> Members may be reimbursed for per diem and travel expenses. Section 112.061, F.S.

<sup>35</sup> Florida Building Code, 5<sup>th</sup> Edition (2014) Accessibility, *Preface*.

<sup>36</sup> Section 101.1, 2012 Florida Accessibility Code for Building Construction.



The Department of State administratively dissolved the Florida Council of Handicapped Organizations in 2003.<sup>37</sup>

Section 553.775, F.S., provides procedures that may be invoked regarding interpretations of the Florida Accessibility Code for Building Construction, which include requiring the FBC to coordinate with the Building Officials Association of Florida, Inc., to designate *panels* of five members each to hear requests to review decisions of local building officials. The members must be licensed building code administrators and be experienced in interpreting *and* enforcing the codes.

### ***Effect of Proposed Changes***

**Section 14** amends s. 553.512, F.S., to replace the representative of the President of the Florida Council of Handicapped Organizations with a representative of Pensacola Pen Wheels, Inc., Employ the Handicapped Council.

**Section 17** amends s. 553.775, F.S., to revise the panels designated to review interpretations of the Florida Building Code and the Florida Accessibility Code for Building Construction. The bill establishes one *panel* of seven members. Five of the members must be licensed as building code administrators, one member must be a licensed architect, and one member must be a licensed engineer. Members must be experienced in interpreting *or* enforcing the codes.

### **Building Code Compliance and Mitigation Program**

The DBPR administers the Florida Building Code Compliance and Mitigation Program (program), which was created to develop, coordinate, and maintain education and outreach to people who are required to comply with the code and ensure consistent education, training, and communication of the code's requirements, including, but not limited to, methods for mitigation of storm-related damage.<sup>38</sup> The program is geared toward persons licensed and employed in the design and construction industries. The services and materials under the program must be provided by a private, nonprofit corporation under contract with DBPR.<sup>39</sup> The FBC implemented the accreditation process required by statute through its standard process of gathering input from all affected stakeholders and has continued to regularly modify the process based on concerns identified by its users. The FBC also accredits advanced continuing education courses on the Florida Building Code. To date, the FBC has accredited approximately 300 courses finding that the courses' content to be an accurate reflection of the Florida Building Code or related processes.<sup>40</sup>

Section 553.721, F.S., allows a surcharge to be imposed of 1.5 percent of building permit fees, with a minimum of \$2 charged on each permit. Local governments remit the collections to the DBPR, less 10 percent for specific local uses, for deposit in the Professional Regulation Trust

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<sup>37</sup> See Department of State, Division of Corporations, search for Florida Council of Handicapped Organizations, Inc., at <http://www.sunbiz.org/> (last visited Feb. 21, 2016).

<sup>38</sup> Section 553.841(2), F.S.

<sup>39</sup> Section 553.841(3), F.S.

<sup>40</sup> Department of Business and Professional Regulation, *Legislative Bill Analysis for SB 704* (Feb. 10, 2016).

Fund. These monies fund the FBC and the Florida Building Code Compliance Mitigation Program. Annually, the program must be allocated \$925,000 from collections.<sup>41</sup>

### *Effect of Proposed Changes*

**Section 15** amends s. 553.721, F.S., to require the Florida Building Code Compliance Mitigation Fund to:

- Fund up to \$30,000 in Fiscal Year 2015-2016, from existing resources, the recommendations made by the Building Code System Uniform Implementation Evaluation Workshop; and
- Fund up to \$15,000 annually, from surcharge collections, the Florida Fire Code informal interpretations managed by the State Fire Marshal. The State Fire Marshal is required to adopt rules to address the implementation and expenditure of such funds for Florida Fire Prevention Code informal interpretations.

### **Florida Building Code and the Florida Fire Prevention Code**

Currently, s. 553.73(11), F.S., requires local building code enforcement officials and local fire code enforcement officials to resolve conflicts between the Florida Building Code, the Florida Fire Prevention Code, and the Florida Life Safety Code by agreement as to the code that offers the greatest degree of lifesafety or alternatives which would provide an equivalent degree of lifesafety and equivalent method of construction. Additionally, decisions made by local fire officials and the local building officials may be appealed to local administrative boards having firesafety responsibilities. All such decisions are subject to review by a joint committee composed of members of the FBC and the Fire Code Advisory Council.

Prior to June 30, 2015, the Florida Building Code required that high-rise buildings with occupied floors in excess of 120 feet above the lowest level of fire department vehicle access have at least one fire service access elevator.<sup>42</sup> On June 30, 2015, the 2014 Code went into effect and requires two fire services access elevators.<sup>43</sup> In Special Session 2015-A, prior to the effective date of the provision, the Legislature enacted legislation to delay the effective date of the provision until July 1, 2016.<sup>44</sup>

### *Effect of Proposed Changes*

**Section 16** amends s. 553.73, F.S., related to the Florida Building Code.

The bill allows local boards created to address conflicts between the Florida Building Code and the Florida Fire Prevention Code to combine to create a single local board to address both codes. The combined board must have representation by at least one fire official<sup>45</sup> at every meeting of the local board. The board can grant alternatives, but may not waive provisions of the Florida

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<sup>41</sup> However, authority to use these funds must be appropriated in the annual General Appropriations Act.

<sup>42</sup> Section 403.6.1 of the 2010 Florida Building Code, Building.

<sup>43</sup> Section 403.6.1 of the 2014 Florida Building Code, Building.

<sup>44</sup> See s. 69, ch. 2015-222, L.O.F. 2015 (SB 2502-A, the Implementing Bill for 2015-2016 General Appropriations Act).

<sup>45</sup> At every meeting there must be at least one member of the board who is a fire protection contractor, a fire protection design professional, a fire department operations professional, or a fire code enforcement professional.

Fire Prevention Code. Board decisions may still be reviewed by a joint committee of the FBC and the Fire Code Advisory Council.

The bill provides the following requirements regarding fire service access elevators:

- The Florida Building Code must require two fire service access elevators in all buildings with a height greater than 120-feet from the elevation of street-level access to the highest occupiable floor;
- Remaining elevators must be provided with specified emergency operations; and
- With a transient residential occupiable floor more than 420 feet above the level of fire service access, specific requirements related to fire service access elevator lobbies and exit access corridors apply.

### **Phased Permitting**

Section 553.79, F.S., prohibits any person, firm, corporation, or governmental entity to construct, erect, alter, modify, repair, or demolish any building within the state without first obtaining a permit from the appropriate enforcing agency. Further, a permit may not be issued for any activity unless the applicant for the permit complies with the requirements for plan review established by the FBC within the Florida Building Code. However, the Florida Building Code sets standards and criteria to authorize preliminary construction before completion of all building plans review, including, but not limited to, special permits for the foundation only.

Section 105.13 (phased permit approval) of the Florida Building Code provides the following:

After submittal of the appropriate construction documents, the building official is authorized to issue a permit for the construction of foundations or any other part of a building or structure before the construction documents for the whole building or structure have been submitted. The holder of such permit for the foundation or other parts of a building or structure shall proceed at the holder's own risk with the building operation and without assurance that a permit for the entire structure will be granted. Corrections may be required to meet the requirements of the technical codes.

Section 553.79(1), F.S., provides that the enforcing agency is authorized to revoke a permit upon a determination by the agency that the construction, erection, alteration, modification, repair, or demolition of the building for which the permit was issued is in violation of, or not in conformity with, the provisions of the Florida Building Code. However, the local enforcing agency must identify the specific plan or project features that do not comply with the applicable codes, identify the specific code chapters and sections upon which the finding is based, and provide this information to the permit applicant.

Section 468.621, F.S., provides that failing to lawfully execute the duties and responsibilities specified in part XII of ch. 468, F.S., or ss. 553.73, 553.781, 553.79, and 553.791, F.S., constitute grounds for which disciplinary actions may be taken.

### *Effect of Proposed Changes*

**Section 18** amends s. 553.79, F.S., to provide that failure to provide a reason, based on compliance with the Florida Building Code or local ordinance, for a denial, revocation or modification of a permit for an applicant subjects the plans reviewer or building code administrator who is responsible for creating the denial, revocation, or modification of the permit to disciplinary action against his or her license.

The bill also allows a local building official to issue a phased permit after an applicant submits the appropriate construction documents. The phased permit may be issued for the construction of foundations or any other part of a building or structure before construction documents for the whole have been submitted. The holder of a phased permit may proceed with permitted activities at the holder's own risk and without assurance that a master building permit for the entire structure will be granted. The building official may require corrections to the phased permit to meet the requirements of the technical codes.

### **Local Alarm System Registration**

Local enforcement agencies may require a permit or registration of a burglar alarm system to address the volume of false alarms reported to law enforcement.<sup>46</sup> For example, Palm Beach County requires an application to be submitted to the Palm Beach County Sheriff's Office with a \$25 application fee for a burglar alarm permit.<sup>47</sup> The permit must be renewed annually. Failure to submit an application for a permit results in a "no response" to the alarm system and a fine of \$250 per incident.<sup>48</sup> The purpose of the Palm Beach County alarm permitting process is to prevent false alarm activations that require the sheriff's office to respond. The ordinance states that "[d]eputies responding to false alarms are more wisely utilized preventing crime and solving neighborhood crime problems."<sup>49</sup>

### *Effect of Proposed Changes*

**Section 19** creates s. 553.7931, F.S., to require the owner, lessee, or occupant, or an authorized representative thereof, of a property to register the alarm system with the applicable local governmental entity if such entity requires registration of an alarm system. A contractor<sup>50</sup> or an alarm system monitoring company that installs a system must provide written notice that an obligation to register the alarm system may exist before activation or reactivation of the alarm system. An alarm system monitoring company that activates a system installed by the owner,

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<sup>46</sup> Staff of the Senate Regulated Industries Committee conducted research in 2015 and found that 5 counties (Alachua, Lee, Martin, Palm Beach, and St. Lucie) and 25 cities (Boca Raton, Cape Coral, Clearwater, Cutler Bay, Deerfield Beach, Doral, Gainesville, Hollywood, Largo, Miami, Miami Beach, Miami Gardens, Miramar, North Lauderdale, North Miami Beach, Palatka, Palm Bay, Pembroke Pines, Plantation, Pompano Beach, Riviera Beach, St. Petersburg, Sarasota, Sunny Isles, and West Palm Beach) require permits for burglar alarm systems.

<sup>47</sup> See Palm Beach County Sheriff's Office, *Burglar Alarm Permit*, available at: [http://www.pbso.org/documents/Burglar\\_Alarm\\_Permit\\_Form.pdf](http://www.pbso.org/documents/Burglar_Alarm_Permit_Form.pdf) (last visited Feb. 29, 2016) and Palm Beach County, Code of Ordinances, Ord. No. 08-038, s. 16-54.

<sup>48</sup> *Id.*

<sup>49</sup> Palm Beach County, Code of Ordinances, Ord. No. 08-038, s. 16-52.

<sup>50</sup> The term "contractor" is defined in s. 553.793, F.S., as "a person who is qualified to engage in the business of electrical or alarm system contracting pursuant to a certificate or registration issued by the [DBPR] under part II of chapter 489."

lessee, or occupant, or an authorized representative thereof, must provide verbal notice of the same potential obligation before activation or reactivation of the alarm system.

The bill provides that a contractor or an alarm system monitoring company is not liable for any penalties assessed or imposed by the applicable local governmental entity for failure to register an alarm system, dispatch to an unregistered user, or for excessive false alarms not attributed to alarm system monitoring company error or improper installation by the contractor or alarm system monitoring company.

The bill also provides that a municipality, county, district, or other local government may not:

- Require an alarm system registration form to be notarized before an alarm system may be registered; or
- Adopt or maintain any ordinance or rule regarding alarm system registration that is inconsistent with this section.

### **Local Government Fees**

To provide contractor services in Florida, an individual must be certified or registered and pay the required fee.<sup>51</sup> Section 553.80, F.S., provides that, except for construction regarding correctional and mental health facilities, elevators, storage facilities, educational institutions, and toll collection facilities, each local government and each legally constituted enforcement district with statutory authority shall regulate building construction. Section 553.80(7), F.S., authorizes local governments to provide a schedule of consistent reasonable fees to be used solely for carrying out the local government's responsibilities in enforcing the Florida Building Code. The basis for the fee structure must relate to the level of service provided by the local government.

Local governments have created schedules of fees to be submitted by contractors at the time of application for a building permit. These fees can include inspection fees, plan examination fees, site examination fees, building permit fees (based on square footage of the building), and various administrative fees including repermitting fees, time extension fees, reinspection fees, and licensure and workers' compensation recording fees.

### ***Effect of Proposed Changes***

**Section 20** amends s. 553.80, F.S., to prohibit local governments from requiring payment of any additional fees, charges, or expenses associated with providing proof of licensure as a contractor, recording a contractor license, or providing, recording, or filing evidence of workers' compensation insurance coverage by a contractor.

### **Product Approval**

The State Product Approval System provides manufacturers an opportunity to have building products approved for use in Florida by the FBC rather than seeking approval in each local jurisdiction where the product is used. One method of obtaining a state approval uses product evaluation reports from an approved evaluation entity. Section 553.842(8)(a), F.S., explicitly names the National Evaluation Service, the International Association of Plumbing and

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<sup>51</sup> See ss. 489.113(4)(a) and 489.117, F.S.

Mechanical Officials Evaluation Service, the International Code Council Evaluation Services, and the Miami-Dade County Building Code Compliance Office Product Control as evaluation entities.

Underwriters Laboratories (UL) is a safety science company established in 1890 which certifies, validates, tests, inspects, audits, advises, and trains. According to their webpage, UL is “dedicated to promoting safe living and working environments, UL helps safeguard people, products and places in important ways, facilitating trade and providing peace of mind.”<sup>52</sup>

Intertek Testing Services NA, Inc., is another testing company that tests that “products meet quality, health, environmental, safety, and social accountability standards.” The company has evolved over 130 years from the merger of other testing companies, starting in the 1880s.<sup>53</sup>

### *Effect of Proposed Changes*

**Section 21** amends s. 553.842, F.S., to add Underwriters Laboratories, LLC, and Intertek Testing Services NA, Inc., to the list of evaluation entities approved by the FBC.

### **Windstorm Loss Mitigation**

Section 553.844, F.S., requires the FBC to implement windstorm loss mitigation techniques into the Florida Building Code to combat property damage associated with hurricanes. The code requires buildings located in wind-borne debris regions to be designed to withstand the minimum wind loads prescribed for that region.<sup>54</sup>

Notwithstanding other provisions of law, exposed mechanical equipment or appliances fastened on roofs or installed on the ground using rated stands, platforms, curbs, or slabs are deemed to comply with wind resistance requirements of the 2007 Florida Building Code.<sup>55</sup> Further support or enclosure of the exposed mechanical equipment and appliances fastened on roofs or installed on the ground using rated stands, platforms, curbs, or slabs is not required. These provisions were set to expire on the effective date of the 2013 Florida Building Code.<sup>56</sup>

### *Effect of Proposed Changes*

**Section 22** revives and amends s. 553.844(4), F.S., to reinstate the windstorm mitigation exemption from the requirements of the section so that exposed mechanical equipment or appliances fastened on roofs or installed on the ground using rated stands, platforms, curbs, walls, or slabs are deemed to comply with wind resistance requirements of the 2007 Florida Building Code. The provision no longer has an expiration date.

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<sup>52</sup> Underwriters Laboratories, *About UL*, available at <http://ul.com/aboutul/> (last visited Feb. 21, 2016).

<sup>53</sup> Intertek, *About Us*, available at <http://www.intertek.com/about/> (last visited Feb. 29, 2016).

<sup>54</sup> Section 1609 of the 2014 Florida Building Code, Building.

<sup>55</sup> When enacted in 2010, the provision was set to expire on the effective date of the 2010 Code (March 15, 2012). Section 40, ch. 2010-176, F.S.

<sup>56</sup> The most recent code is the 2014 version, which was effective June 30, 2015.

The bill also excludes work associated with the prevention of degradation of the residence from the requirement that any activity requiring a building permit that is applied for on or after July 1, 2008, and for which the estimated cost is over \$50,000, include provision of opening protections as required within the Florida Building Code.

### **Smoke Alarms in One-Family and Two-Family Homes**

In relation to smoke alarms in one-family and two-family dwellings and townhomes, the Florida Building Code provides that, “when alterations, repairs, or additions requiring a permit occur, or when one or more sleeping rooms are added or created in existing dwellings, the individual dwelling unit shall be equipped with smoke alarms located as required for new dwellings.”<sup>57</sup>

Section 553.883, F.S., allows owners of one-family and two-family dwellings and townhomes undergoing a repair, or a level 1 alteration as defined in the Florida Building Code, to use a smoke alarm powered by a 10-year non-removable, non-replaceable battery in lieu of retrofitting the dwelling with a smoke alarm powered by the electrical system. Any battery-powered smoke alarm that is installed or that replaces an existing battery-powered smoke alarm must be powered by a non-removable, non-replaceable battery that powers the alarm for a minimum of 10 years. These battery requirements do not apply to a fire alarm, smoke detector, smoke alarm, or ancillary component that is electronically connected as a part of a centrally monitored or supervised alarm system.

### ***Effect of Proposed Changes***

**Section 23** amends s. 553.883, F.S., to add the following exceptions to the smoke alarm battery requirements for alarms that:

- Use a low-power or radio frequency wireless communication signal (Wi-Fi); or
- Contain multiple sensors, such as a smoke alarm combined with a carbon monoxide alarm or other multi-sensor devices, and are approved and listed by a nationally recognized testing laboratory.

The bill also provides that a battery-powered smoke alarm that is newly installed or replaces an existing battery-powered smoke alarm as a result of a level 1 alteration, must be powered by a nonremovable, nonreplaceable battery that powers the alarm for at least 10 years.

### **Blower Door/Air Infiltration Tests and Mechanical Ventilation Devices**

Building contractors install certain features to intentionally ventilate and exhaust unwanted odors or combustion byproducts from a home, such as exhaust fans in the bathroom and above the stove. Unintentional air leakage can occur because of the construction techniques used and/or lack of attention to proper air sealing during construction. Air leakage can cause homes to be less energy efficient; however, a home that has very little leakage can also cause poor indoor air quality. In order to prevent poor indoor air quality caused by a house that does not have proper

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<sup>57</sup> Section R314.3.1 of the 2014 Florida Building Code, Residential.

ventilation or is sealed too tight, contractors use mechanical ventilation devices to filter outside air through the home HVAC system.<sup>58</sup>

To identify and measure the cracks and holes present in a building's envelope, a "blower door test" or an air infiltration test is used which measures the airtightness of a building by changing the building's static pressure with respect to the outdoors and recording the amount of air flow required for that change. A home constructed to the 2014 Florida Building Code is required to be tested via a blower door test/air infiltration test to demonstrate specific air infiltration levels.<sup>59</sup> Additionally, the code requires installation of a mechanical ventilation device designed to filter outside air through an HVAC system under certain circumstances. However, in Special Session 2015-A, prior to the code going into effect, the Legislature enacted legislation to delay the effective date of these two provisions until June 30, 2016.<sup>60</sup>

### *Effect of Proposed Changes*

**Section 24** amends s. 553.908, F.S., relating to blower door and air infiltration tests and mechanical ventilation devices, to increase the maximum tested air leaked measure in a building or dwelling unit in Climate Zones 1 and 2 under the Energy Conservation volume of the Florida Building Code. The mandatory blower door testing for residential buildings or dwelling units as contained in the 2014 Florida Building Code may not take effect until July 1, 2016, and does not apply to construction permitted before July 1, 2017. The bill also decreases the air filtration rate in a dwelling unit in section M401.2 of the Florida Building Code, Mechanical.

**Section 25** amends s. 553.993, F.S., to revise the definition of the term "building energy-efficiency rating system" to specify the subject matter expertise necessary for a group of professionals who perform oversight under the building energy-efficiency rating system.

### **Division of the State Fire Marshal**

State law on fire prevention and control is provided in ch. 633, F.S. The Chief Financial Officer is designated as the State Fire Marshal, operating through the Division of the State Fire Marshal.<sup>61</sup> Pursuant to this authority, the State Fire Marshal regulates, trains, and certifies fire service personnel; investigates the causes of fires; enforces arson laws; regulates the installation of fire equipment; conducts firesafety inspections of state property; develops firesafety standards; provides facilities for the analysis of fire debris; and operates the Florida State Fire College.

The State Fire Marshal is required to adopt the Florida Fire Prevention Code by rule every 3 years. The code contains or references all firesafety laws and rules regarding public and private buildings that pertain to and govern the design, construction, erection, alteration, modification,

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<sup>58</sup> Department of Agriculture and Consumer Services, *My Florida Home Energy: Testing for Air Leakage*, available at <http://www.myfloridahomeenergy.com/help/library/contractors-certifications/testing-for-air-leakage/#sthash.mL09s4Q2.PRqx71HZ.dpbs> (last visited Feb. 21, 2016).

<sup>59</sup> Section R402.4.1.2 (testing) of the 2014 Florida Building Code, Energy Conservation.

<sup>60</sup> See s. 69, ch. 2015-222, L.O.F. 2015 (SB 2502-A, the Implementing Bill for 2015-2016 General Appropriations Act).

<sup>61</sup> The head of the Department of Financial Services (DFS) is the Chief Financial Officer. The Division of State Fire Marshal is located within the DFS. s. 633.104, F.S.



repair, and demolition of public and private buildings, structures, and facilities and the enforcement of such firesafety laws and rules.<sup>62</sup>

### *Effect of Proposed Changes*

**Section 26** amends s. 633.202, F.S., to add the following provisions to the Florida Fire Prevention Code which:

- Require new high-rise buildings to comply with minimum radio signal strength for fire department communications set by the local authority with jurisdiction. Existing high-rise buildings must comply by January 1, 2022 (permit must be applied for by December 31, 2019) and existing apartment buildings must comply by January 1, 2025 (permit must be applied for by December 31, 2022); and
- Require areas of refuge to be provided when required by the Accessibility volume of the Florida Building Code.

**Section 27** amends s. 633.208, F.S., relating to minimum firesafety standards and the application to existing buildings. The local fire official may consider the Fire Safety Evaluation System<sup>63</sup> as an acceptable tool to identify low cost alternatives. It is acceptable to use the Fire Safety Evaluation System for Board and Care Facilities using prompt evacuation capabilities parameter values on existing residential high-rise buildings.

**Section 28** amends s. 633.336, F.S., relating to fire protection contracting, and provides that it is acceptable for a fire protection contractor licensed under ch. 633, F.S., to subcontract with companies providing advanced technical services for installing, servicing, and maintaining fire pump control panels and fire pump drivers. To ensure the integrity of the system and to protect the interests of the property owner, those providing technical support services for fire pump control panels and drivers must be under contract with a licensed fire protection contractor.

### **Impetus for the Construction Industry Workforce Task Force**

Single-family building permit activity, an indicator of new construction, reached its peak in Florida in 2005. During the recent recession, new construction declined significantly, bottoming out in 2009. New construction has increased in recent years, but there are antidotal reports that contractors are having a hard time finding skilled labor.

### *Effect of Proposed Changes*

**Section 30** creates the Construction Industry Workforce Task Force within the University of Florida M.E. Rinker, Sr., School of Construction Management. The goals of the task force are to:

- Address the critical shortage of individuals trained in building construction and inspection.
- Develop a consensus path for training the next generation of construction workers in the state.
- Determine the causes for the current shortage of a trained construction industry work force and address the impact of the shortages on the recovery of the real estate market.
- Review current methods and resources available for construction training.

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<sup>62</sup> Section 633.202, F.S.

<sup>63</sup> NFPA 101A, Guide on Alternative Solutions to Life Safety, adopted by the State Fire Marshal.

- Review the state of construction training available in K-12 schools.
- Address training issues relating to building code inspectors to increase the number of qualified inspectors.

The task force consists of 23 members, representing various construction industries and the Legislature. The task force will elect a chair from among its members. The University of Florida M.E. Rinker, Sr., School of Construction Management must provide assistance to the task force in carrying out its responsibilities. The task force must meet by September 1, 2016, and then meet as often as necessary to fulfill its responsibilities, but not fewer than three times. The meetings may be conducted via conference call, teleconferencing, or similar technology.

The task force will submit a final report to the Governor, the President of the Senate, and the Speaker of the House of Representatives by February 1, 2017. The DBPR must provide \$50,000 from funds available for the Florida Building Code Compliance and Mitigation Program to the University of Florida M.E. Rinker, Sr., School of Construction Management. This section expires July 1, 2017.

### **Fire Separation Distance and Roof Overhang Projections**

Pursuant to s. 553.73(7)(a), F.S., the FBC must update the Florida Building Code every 3 years. When updating the code, the FBC is required to use the most current version of the International Building Code, the International Fuel Gas Code, the International Mechanical Code, the International Plumbing Code, the International Residential Code, and the international Electrical Code. These codes form the “foundation codes” of the updated Florida Building Code.

Any amendments or modifications to the foundation codes found within the Florida Building Code remain in effect only until the effective date of a new edition of the Florida Building Code. At that point, such amendments or modifications to the foundation codes are removed from the foundation code. However, amendments or modifications that are related to state agency regulations or are related to the wind-resistance design of buildings and structures within the high-velocity hurricane zone of Miami-Dade and Broward Counties are carried forward into the next edition of the Florida Building Code.<sup>64</sup>

When a provision of the current Florida Building Code is not part of the foundation codes, an industry member or another interested party must resubmit the provision to the FBC during the Florida Building Code adoption process in order to be considered for the next edition of the code.<sup>65</sup>

### ***Fire Separation Distance***

With regard to fire safety, an external wall is a

special kind of wall that is different from ordinary internal walls, and may be different from fire walls and fire partitions. Within flame contact range,

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<sup>64</sup> Section 553.73(7)(g), F.S.

<sup>65</sup> Section 553.73(7)(g), F.S.

the external wall needs to function like a fire wall and cope with fire from both sides. Beyond flame contact range, but within radiation danger range, the external wall needs to cope with fire from inside and radiation on the outside.<sup>66</sup>

The risk of fire spreading from one building to another reduces as the distance between them increases. In the 2014 Florida Building Code, fire separation distance is defined as the distance measured from the building face to one of the following:<sup>67</sup>

- To the closest interior lot line;
- To the centerline of a street, an alley or public way; or
- To an imaginary line between two buildings on the lot.<sup>68</sup>

### ***Roof Overhang Projections***

A Florida-specific code provision related to roof overhang projections was adopted by the FBC in the 2010 Florida Building Code. Section R302 Fire-Resistant Construction provides that “construction, projections, openings, and penetrations of exterior walls of dwellings and accessory buildings shall comply with table R302.1.” Table R301.1(1) of the 2010 Florida Building Code sets forth the minimum fire-resistance rating and minimum fire separation distance for fire-resistance rated and non-fire-resistance rated walls, depending on the exterior wall element (such as walls, projections, openings in walls, and penetrations).

A number of exceptions were provided for in the 2010 code, including one that provides:

Openings and roof overhang projections shall be permitted on the exterior wall of a building located on a zero lot line when the building exterior wall is separated from an adjacent building exterior wall by a distance of 6 feet or more, and the roof overhang projection is separated from an adjacent building projection by a distance of 4 feet or more, with 1 hour fire resistive construction on the underside of the overhang required, unless the separation between projections is 6 feet or more.<sup>69</sup>

During the adoption process of the 2014 Florida Building Code, the industry failed to request that the exception to the Fire-Resistant Construction be included in the updated code. Because there was no request from the building industry to include the exception, the exception was not included when the 2014 Florida Building Code became effective.

### ***Effect of Proposed Changes***

**Section 31** directs the FBC to add to the Fire Separation Distance definition in the 2014 Florida Building Code a fourth option of measurement of an imaginary line between two buildings when the exterior wall of one building is located on a zero lot line.

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<sup>66</sup> C.R. Barnett, *Fire Separation Between External Walls of Buildings*, [Fire Safety Science - Proceedings of the Second International Symposium](#), International Association for Fire Safety Science, p. 841.

<sup>67</sup> Section R202 of the 2010 Florida Building Code, Residential.

<sup>68</sup> The distance must be measured at right angles from the face of the wall.

<sup>69</sup> Section R302.1 of the 2010 Florida Building Code, Residential.

**Section 32** directs the FBC to reinsert a provision in the 2014 Florida Building Code identical to the provision in the 2010 Florida Building Code related to exceptions to fire-resistant construction standards, discussed above.

**Section 35** directs the FBC to amend the 2014 Florida Building Code, to provide a minimum fire separation distance for non-fire resistant rated exterior walls and non-fire resistant rated projections.

### **Energy Rating**

The Energy Conservation volume of the Florida Building Code prescribes a variety of energy efficiency and conservation requirements that buildings and homes must meet in order to comply with the code. Currently, the International Code Council I-Codes, which are adopted triennially by the FBC as the foundation code for Florida, include an alternative Energy Rating Index that may be used as an option for meeting the energy conservation demands of the Florida Building Code. The 2014 Florida Building Code does not include this option.

#### *Effect of Proposed Changes*

**Section 33** directs the FBC to insert in the Energy Conservation volume of the 2014 Florida Building Code, the Alternative Performance Path, Energy Rating Index of the 2015 International Energy Conservation Code as an option for demonstrating compliance with the Energy Conservation requirements of the Florida Building Code.

### **Shower Lining**

The Residential volume of the Florida Building Code prescribes a variety of plumbing requirements that homes must meet in order to comply with the code. Section P2709 of the Florida Building Code specifically governs the required lining of showers.

#### *Effect of Proposed Changes*

**Section 34** directs the Florida Building Commission to adopt into the Residential volume of the Florida Building Code two exceptions to the showering lining requirements.

### **Automatic Sprinkler Systems for Fire Areas**

The Florida Fire Prevention Code requires a building containing one or more assembly occupancies where the aggregate occupant load of the assembly occupancies exceeds 300 to be protected by an approved automatic sprinkler system in accordance with NFPA 13.<sup>70</sup> However, the Code contains a more stringent standard for certain buildings. Specifically, the Code requires restaurants, cafeteria, and similar dining facilities, including associated commercial kitchens, which contain assembly occupancies with occupant loads greater than 100 to be protected by an approved automatic sprinkler system.<sup>71</sup>

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<sup>70</sup> Section 13.3.2.7.2, New Assembly Occupancies, Florida Fire Prevention Code, Fifth Edition, I-92.

<sup>71</sup> Section 903.2.1.2 of the 2014 Florida Building Code, Fire Protection Systems.

*Effect of Proposed Changes*

**Section 36** provides that notwithstanding any law, rule, or regulation to the contrary, a restaurant, a cafeteria, or a similar dining facility, including an associated commercial kitchen, is required to have sprinklers only if it has a fire occupancy load of 200 patrons or more.

**Section 37** provides an effective date of July 1, 2016.

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

None.

**B. Public Records/Open Meetings Issues:**

None.

**C. Trust Funds Restrictions:**

None.

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

None.

**B. Private Sector Impact:**

The bill has an indeterminate fiscal impact to the private sector.

- Apartment owners with communities of 100 or more apartments who have employees make minor repairs to existing electric water heaters or existing electric HVAC systems may experience savings if they meet the requirements of and utilize the contractor licensing requirements exemption.
- The provision allowing certain licensed gas dealers and installers to disconnect and reconnect water lines of existing water heaters may reduce the costs of servicing or replacing water heaters.
- Homeowners who have been harmed by Division II contractors and receive restitution from the Florida Homeowners' Construction Recovery Fund will benefit from the bill.
- The exemption from the requirement to be certified as an electrical contractor may reduce the costs of installing low-voltage landscape lighting.
- Alarm contractors and alarm monitoring companies will no longer be liable for fines or penalties for excessive false alarms.

**C. Government Sector Impact:**

The Department of Business and Professional Regulation (DBPR) is authorized to collect a surcharge of 1.5 percent of the permit fees associated with enforcement of the building code. This revenue is deposited into the Professional Regulation Trust Fund within the DBPR. The Florida Building Code Compliance and Mitigation Program receives \$925,000 annually from the surcharge. The bill permits the following distributions of funds from the Program:

- Up to \$30,000 in Fiscal Year 2016-2017 from existing resources to fund recommendations made by the Building Code System Uniform Implementation Evaluation Workgroup; and
- Up to \$15,000 annually from surcharge collections to fund the Florida Fire Prevention Code informal interpretations managed by the State Fire Marshal.

In addition, the bill provides \$50,000 from the Florida Building Code Compliance and Mitigation Program to the University of Florida M.E. Rinker, Sr., School of Construction Management for the Construction Industry Workforce Task Force.<sup>72</sup>

The impact of permitting claims related to Division II contractors from the Recovery Fund is indeterminate. The amount of annual recovery fund payments is limited by the amount of funding received from the 1.5 percent surcharge on building permit fees. Due to the funding limits, the inclusion of additional claims may extend the amount of time it takes to pay each individual claim.

According to the DBPR, changes in licensing and renewal requirements will require programming modifications which can be handled with existing resources.<sup>73</sup>

The bill has an indeterminate fiscal impact on local governments. Counties and municipalities that currently require a fee for recording a contracting license or workers' compensation insurance information will lose this source of revenue. It is unknown how many counties require these fees.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

The DBPR, FBC, various licensing boards, and the State Fire Marshal are granted rulemaking authority related to the various changes in the bill to the Florida Building Code and programs.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 468.609, 489.103, 489.105, 489.1401, 489.1402, 489.141, 489.1425, 489.143, 489.503, 514.011, 514.0115,

<sup>72</sup> The bill does not address whether task force members will receive per diem.

<sup>73</sup> Department of Business and Professional Regulation, *Legislative Bill Analysis for SB 704* (Feb. 10, 2016).

514.031, 515.27, 553.512, 553.721, 553.73, 553.775, 553.79, 553.80, 553.842, 553.844, 553.883, 553.908, 553.993, 633.202, 633.208, and 633.336.

The bill creates section 553.7931 of the Florida Statutes and eight undesignated sections of Florida law.

## **IX. Additional Information:**

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

### **CS/CS by Fiscal Policy on February 29, 2016:**

The committee substitute:

- Removes a provision that authorized a local jurisdiction to allow an individual who possesses a residential certification issued by the International Code Council to be a residential building code inspector or plans examiner within the jurisdiction;
- Removes a provision that prohibited a municipality from denying development permit applications for single-family homes solely because a lot or combination of lots did not meet the current underlying zoning dimensional standards for minimum lot size and area;
- Removes several provisions that replaced advance course provisions for Florida Building Code training with code-related training regarding the Florida Building Code Compliance and Mitigation program and accreditation of courses related to the code;
- Removes a provision that allowed the home environment provisions of the most recent codes adopted by the Division of State Fire Marshal to be applied to existing assisted living facilities;
- Provides that temporary pools used in conjunction with a sanctioned national or international swimming or diving event are considered private pools and not subject to regulation;
- Provides that a residential pool that is equipped with a pool alarm that, when placed in the pool, will sound if it detects an accidental or unauthorized entrance into the water meets the safety requirements for residential pools;
- Requires the Florida Building Code to mandate having two fire service access elevators in all buildings above a certain height;
- Subjects certain building officials to discipline if they deny, revoke, or modify a specified permit without providing a reason for the denial, revocation, or modification;
- Requires a contractor and an alarm system monitoring company to provide notice to a property owner regarding the obligation to register their alarm system if applicable;
- Provides that a contractor or an alarm system monitoring company is not liable for any penalties assessed or imposed by the applicable local government for failure to register the alarm, dispatch to an unregistered user, or excessive false alarms;
- Adds Intertek Testing Services NA, Inc., to the list of entities that are authorized to produce information on which product approvals are based, related to the Florida Building Code;

- Provides exceptions to the residential shower lining requirements in the Florida Building Code;
- Increases from 19 to 23 the number of members on the Construction Industry Workforce Task Force;
- Provides that the mandatory blower door testing for residential buildings or dwellings does not take effect until July 1, 2016, and does not apply to construction permitted before July 1, 2017;
- Revises the definition of the term “building energy-efficiency rating system” to specify the subject matter expertise necessary for a group of professionals who perform oversight under the building energy-efficiency rating system;
- Provides that a restaurant, cafeteria, or similar dining facility, including an associated commercial kitchen, is required to have sprinklers only if it has a fire area occupancy load of 200 patrons or more; and
- Directs the Florida Building Commission to amend the 2014 Florida Building Code to provide a minimum fire separation distance for non-fire resistant exterior walls and non-fire resistant rated projections.

**CS by Community Affairs on February 1, 2016:**

- Prohibits a municipality from denying development permit applications for a single-family home solely because a lot or combination of lots does not meet the current underlying zoning dimensional standards for minimum lot size and area;
- Prohibits a local enforcement agency from charging additional fees, charges, or expenses related to the recording of a contractor’s license or workers’ compensation insurance;
- Reinstates the wind mitigation exemption for professional engineer certification of HVAC units being installed;
- Removes provisions that previously deleted exemptions from legislative ratification for certain updates and amendments to the Florida Building Code and the Florida Fire Prevention Code and required a statement of estimated regulatory costs to evaluate new sections of certain codes;
- Requires the Florida Building Commission to adopt a specified definition of the term “fire separation distance” in the Florida Building Code;
- Requires the Florida Building Commission to amend the Florida Building Code to allow specified openings and roof overhang projections on the exterior wall of a building located on a zero lot line in certain circumstances;
- Creates the Construction Industry Workforce Task Force within the University of Florida Rinker School of Construction Management;
- Requires the Florida Building Commission to adopt into the Florida Building Code a specific energy rating index as an option for compliance with the energy code;
- Requires a restaurant, a cafeteria, or a similar dining facility, including an associated commercial kitchen, to have a fire area occupancy load requiring sprinklers consistent with the Florida Fire Prevention Code; and
- Authorizes a local jurisdiction to allow an individual who possesses a residential certification issued by the International Code Council to be a residential building code inspector or plans examiner within said jurisdiction.



B. Amendments:

None.

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

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LEGISLATIVE ACTION

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02/29/2016	.	
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The Committee on Fiscal Policy (Abruzzo) recommended the following:

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause  
and insert:

Section 1. Subsections (2), (3), and (7) of section  
468.609, Florida Statutes, are amended to read:

468.609 Administration of this part; standards for  
certification; additional categories of certification.—

(2) A person may take the examination for certification as  
a building code inspector or plans examiner pursuant to this



554986

11 part if the person:

12 (a) Is at least 18 years of age.

13 (b) Is of good moral character.

14 (c) Meets eligibility requirements according to one of the  
15 following criteria:

16 1. Demonstrates 5 years' combined experience in the field  
17 of construction or a related field, building code inspection, or  
18 plans review corresponding to the certification category sought;

19 2. Demonstrates a combination of postsecondary education in  
20 the field of construction or a related field and experience  
21 which totals 4 years, with at least 1 year of such total being  
22 experience in construction, building code inspection, or plans  
23 review;

24 3. Demonstrates a combination of technical education in the  
25 field of construction or a related field and experience which  
26 totals 4 years, with at least 1 year of such total being  
27 experience in construction, building code inspection, or plans  
28 review;

29 4. Currently holds a standard certificate ~~as~~ issued by the  
30 board, or a firesafety ~~fire-safety~~ inspector license issued  
31 pursuant to chapter 633, has a minimum of 3 ~~5~~ years' verifiable  
32 full-time experience in inspection or plan review, and has  
33 satisfactorily completed ~~completes~~ a building code inspector or  
34 plans examiner training program that provides at least 100 hours  
35 but not more ~~of not less~~ than 200 hours of cross-training in the  
36 certification category sought. The board shall establish by rule  
37 criteria for the development and implementation of the training  
38 programs. The board shall accept all classroom training offered  
39 by an approved provider if the content substantially meets the



554986

40 intent of the classroom component of the training program; or  
41 5. Demonstrates a combination of the completion of an  
42 approved training program in the field of building code  
43 inspection or plan review and a minimum of 2 years' experience  
44 in the field of building code inspection, plan review, fire code  
45 inspections and fire plans review of new buildings as a  
46 firesafety inspector certified under s. 633.216, or  
47 construction. The approved training portion of this requirement  
48 shall include proof of satisfactory completion of a training  
49 program that provides at least 200 hours but not more ~~of not~~  
50 ~~less~~ than 300 hours of cross-training that ~~which~~ is approved by  
51 the board in the chosen category of building code inspection or  
52 plan review in the certification category sought with at least  
53 ~~not less than~~ 20 hours but not more than 30 hours of instruction  
54 in state laws, rules, and ethics relating to professional  
55 standards of practice, duties, and responsibilities of a  
56 certificateholder. The board shall coordinate with the Building  
57 Officials Association of Florida, Inc., to establish by rule the  
58 development and implementation of the training program. However,  
59 the board shall accept all classroom training offered by an  
60 approved provider if the content substantially meets the intent  
61 of the classroom component of the training program; or  
62 6. Currently holds a standard certificate issued by the  
63 board or a firesafety inspector license issued pursuant to  
64 chapter 633 and:  
65 a. Has at least 5 years' verifiable full-time experience as  
66 an inspector or plans examiner in a standard certification  
67 category currently held or has a minimum of 5 years' verifiable  
68 full-time experience as a firesafety inspector licensed pursuant



554986

69 to chapter 633.

70 b. Has satisfactorily completed a building code inspector  
71 or plans examiner classroom training course or program that  
72 provides at least 200 but not more than 300 hours in the  
73 certification category sought, except for one-family and two-  
74 family dwelling training programs, which are required to provide  
75 at least 500 but not more than 800 hours of training as  
76 prescribed by the board. The board shall establish by rule  
77 criteria for the development and implementation of classroom  
78 training courses and programs in each certification category.

79 (3) A person may take the examination for certification as  
80 a building code administrator pursuant to this part if the  
81 person:

82 (a) Is at least 18 years of age.

83 (b) Is of good moral character.

84 (c) Meets eligibility requirements according to one of the  
85 following criteria:

86 1. Demonstrates 10 years' combined experience as an  
87 architect, engineer, plans examiner, building code inspector,  
88 registered or certified contractor, or construction  
89 superintendent, with at least 5 years of such experience in  
90 supervisory positions; or

91 2. Demonstrates a combination of postsecondary education in  
92 the field of construction or related field, no more than 5 years  
93 of which may be applied, and experience as an architect,  
94 engineer, plans examiner, building code inspector, registered or  
95 certified contractor, or construction superintendent which  
96 totals 10 years, with at least 5 years of such total being  
97 experience in supervisory positions. In addition, the applicant



554986

98 must have completed training consisting of at least 20 hours,  
99 but not more than 30 hours, of instruction in state laws, rules,  
100 and ethics relating to the professional standards of practice,  
101 duties, and responsibilities of a certificateholder.

102 (7) (a) The board shall ~~may~~ provide for the issuance of  
103 provisional certificates valid for 1 year, as specified by board  
104 rule, to any newly employed or promoted building code inspector  
105 or plans examiner who meets the eligibility requirements  
106 described in subsection (2) and any newly employed or promoted  
107 building code administrator who meets the eligibility  
108 requirements described in subsection (3). The provisional  
109 license may be renewed by the board for just cause; however, a  
110 provisional license is not valid for a period longer than 3  
111 years.

112 (b) A ~~No~~ building code administrator, plans examiner, or  
113 building code inspector may not have a provisional certificate  
114 extended beyond the specified period by renewal or otherwise.

115 (c) The board shall ~~may~~ provide for appropriate levels of  
116 provisional certificates and may issue these certificates with  
117 such special conditions or requirements relating to the place of  
118 employment of the person holding the certificate, the  
119 supervision of such person on a consulting or advisory basis, or  
120 other matters as the board may deem necessary to protect the  
121 public safety and health.

122 (d) A newly employed or hired person may perform the duties  
123 of a plans examiner or building code inspector for 120 days if a  
124 provisional certificate application has been submitted if such  
125 person is under the direct supervision of a certified building  
126 code administrator who holds a standard certification and who



554986

127 has found such person qualified for a provisional certificate.  
128 Direct supervision and the determination of qualifications may  
129 also be provided by a building code administrator who holds a  
130 limited or provisional certificate in a county having a  
131 population of fewer than 75,000 and in a municipality located  
132 within such county.

133 Section 2. Subsection (23) is added to section 489.103,  
134 Florida Statutes, to read:

135 489.103 Exemptions.—This part does not apply to:

136 (23) An employee of an apartment community or apartment  
137 community management company who makes minor repairs to existing  
138 electric water heaters or to existing electric heating, venting,  
139 and air-conditioning systems if:

140 (a) The employee:

141 1. Does not hold himself or herself or his or her employer  
142 out to be licensed or qualified by a licensee.

143 2. Does not perform any acts, other than acts authorized by  
144 this exemption, which constitute contracting.

145 3. Receives compensation from and is under the supervision  
146 and control of an employer who deducts the FICA and withholding  
147 tax and who provides workers' compensation, as prescribed by  
148 law.

149 4. Holds a current certificate for apartment maintenance  
150 technicians issued by the National Apartment Association and  
151 accredited by the American National Standards Institute.

152 Requirements for obtaining such certificate must include at  
153 least:

154 a. One year of apartment or rental housing maintenance  
155 experience.



554986

156 b. Successful completion of at least 90 hours of courses or  
157 online content that covers electrical maintenance and repair;  
158 plumbing maintenance and repair; heating, venting, or air-  
159 conditioning system maintenance and repair; appliance  
160 maintenance and repair; and interior and exterior maintenance  
161 and repair.

162 c. Completion of all examination requirements.

163 (b) The equipment:

164 1. Is already installed on the property owned by the  
165 apartment community or managed by the apartment community  
166 management company.

167 2. Is not being modified except to replace components  
168 necessary to return the equipment to its original condition and  
169 the partial disassembly associated with the replacement.

170 3. Is a type of equipment commonly installed in similar  
171 locations.

172 4. Is repaired with new parts that are functionally  
173 identical to the parts being replaced.

174 (c) An individual repair does not involve replacement parts  
175 that cost more than \$1,000. An individual repair may not be so  
176 extensive as to be a functional replacement of the electric  
177 water heater or the existing electric heating, venting, or air-  
178 conditioning system being repaired. For purposes of this  
179 paragraph, an individual repair must not be part of a larger or  
180 major project that is divided into parts to avoid this  
181 restriction.

182 (d) The property owned by the apartment community or  
183 managed by the apartment community management company includes  
184 at least 100 apartments.





554986

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This exemption does not limit the authority of a municipality or county to adopt or enforce an ordinance, a rule, or a regulation requiring licensure, certification, or registration of persons employed as an apartment maintenance technician, apartment repair worker, or any term or position that includes any part of the scope of work described by the exemption in this subsection.

Section 3. Paragraph (m) of subsection (3) of section 489.105, Florida Statutes, is amended to read:

489.105 Definitions.—As used in this part:

(3) "Contractor" means the person who is qualified for, and is only responsible for, the project contracted for and means, except as exempted in this part, the person who, for compensation, undertakes to, submits a bid to, or does himself or herself or by others construct, repair, alter, remodel, add to, demolish, subtract from, or improve any building or structure, including related improvements to real estate, for others or for resale to others; and whose job scope is substantially similar to the job scope described in one of the paragraphs of this subsection. For the purposes of regulation under this part, the term "demolish" applies only to demolition of steel tanks more than 50 feet in height; towers more than 50 feet in height; other structures more than 50 feet in height; and all buildings or residences. Contractors are subdivided into two divisions, Division I, consisting of those contractors defined in paragraphs (a)-(c), and Division II, consisting of those contractors defined in paragraphs (d)-(q):

(m) "Plumbing contractor" means a contractor whose services are unlimited in the plumbing trade and includes contracting



554986

214 business consisting of the execution of contracts requiring the  
215 experience, financial means, knowledge, and skill to install,  
216 maintain, repair, alter, extend, or, if not prohibited by law,  
217 design plumbing. A plumbing contractor may install, maintain,  
218 repair, alter, extend, or, if not prohibited by law, design the  
219 following without obtaining an additional local regulatory  
220 license, certificate, or registration: sanitary drainage or  
221 storm drainage facilities, water and sewer plants and  
222 substations, venting systems, public or private water supply  
223 systems, septic tanks, drainage and supply wells, swimming pool  
224 piping, irrigation systems, and solar heating water systems and  
225 all appurtenances, apparatus, or equipment used in connection  
226 therewith, including boilers and pressure process piping and  
227 including the installation of water, natural gas, liquefied  
228 petroleum gas and related venting, and storm and sanitary sewer  
229 lines. The scope of work of the plumbing contractor also  
230 includes the design, if not prohibited by law, and installation,  
231 maintenance, repair, alteration, or extension of air-piping,  
232 vacuum line piping, oxygen line piping, nitrous oxide piping,  
233 and all related medical gas systems; fire line standpipes and  
234 fire sprinklers if authorized by law; ink and chemical lines;  
235 fuel oil and gasoline piping and tank and pump installation,  
236 except bulk storage plants; and pneumatic control piping  
237 systems, all in a manner that complies with all plans,  
238 specifications, codes, laws, and regulations applicable. The  
239 scope of work of the plumbing contractor applies to private  
240 property and public property, including any excavation work  
241 incidental thereto, and includes the work of the specialty  
242 plumbing contractor. Such contractor shall subcontract, with a



554986

243 qualified contractor in the field concerned, all other work  
244 incidental to the work but which is specified as being the work  
245 of a trade other than that of a plumbing contractor. This  
246 definition does not limit the scope of work of any specialty  
247 contractor certified pursuant to s. 489.113(6), and does not  
248 require certification or registration under this part as a  
249 category I liquefied petroleum gas dealer, LP gas installer, or  
250 specialty installer who is licensed under chapter 527 or an ~~of~~  
251 any authorized employee of a public natural gas utility or of a  
252 private natural gas utility regulated by the Public Service  
253 Commission when disconnecting and reconnecting water lines in  
254 the servicing or replacement of an existing water heater. A  
255 plumbing contractor may perform drain cleaning and clearing and  
256 install or repair rainwater catchment systems; however, a  
257 mandatory licensing requirement is not established for the  
258 performance of these specific services.

259 Section 4. Subsections (2) and (3) of section 489.1401,  
260 Florida Statutes, are amended to read:

261 489.1401 Legislative intent.—

262 (2) It is the intent of the Legislature that the sole  
263 purpose of the Florida Homeowners' Construction Recovery Fund is  
264 to compensate an ~~any~~ aggrieved claimant who contracted for the  
265 construction or improvement of the homeowner's residence located  
266 within this state and who has obtained a final judgment in a ~~any~~  
267 court of competent jurisdiction, was awarded restitution by the  
268 Construction Industry Licensing Board, or received an award in  
269 arbitration against a licensee on grounds of financial  
270 mismanagement or misconduct, abandoning a construction project,  
271 or making a false statement with respect to a project. Such



554986

272 grievance must arise ~~and arising~~ directly out of a any  
273 transaction conducted when the judgment debtor was licensed and  
274 must involve an act performed ~~any of the activities~~ enumerated  
275 under s. 489.129(1)(g), (j) or (k) ~~on the homeowner's residence.~~

276 (3) It is the intent of the Legislature that Division I and  
277 Division II contractors set apart funds for the specific  
278 objective of participating in the fund.

279 Section 5. Paragraphs (d), (i), (k), and (l) of subsection  
280 (1) of section 489.1402, Florida Statutes, are amended to read:

281 489.1402 Homeowners' Construction Recovery Fund;  
282 definitions.-

283 (1) The following definitions apply to ss. 489.140-489.144:

284 (d) "Contractor" means a Division I or Division II  
285 contractor performing his or her respective services described  
286 in s. 489.105(3)(a)-(q) ~~489.105(3)(a)-(e)~~.

287 (i) "Residence" means a single-family residence, an  
288 individual residential condominium or cooperative unit, or a  
289 residential building containing not more than two residential  
290 units in which the owner contracting for the improvement is  
291 residing or will reside 6 months or more each calendar year upon  
292 completion of the improvement.

293 (k) "Same transaction" means a contract, or a any series of  
294 contracts, between a claimant and a contractor or qualified  
295 business, when such contract or contracts involve the same  
296 property or contiguous properties and are entered into either at  
297 one time or serially.

298 (l) "Valid and current license," for the purpose of s.  
299 489.141(2)(d), means a any license issued pursuant to this part  
300 to a licensee, including a license in an active, inactive,



554986

301 delinquent, or suspended status.

302 Section 6. Subsections (1) and (2) of section 489.141,  
303 Florida Statutes, are amended to read:

304 489.141 Conditions for recovery; eligibility.—

305 (1) ~~A~~ Any claimant is eligible to seek recovery from the  
306 recovery fund after making ~~having made~~ a claim and exhausting  
307 the limits of any available bond, cash bond, surety, guarantee,  
308 warranty, letter of credit, or policy of insurance if, provided  
309 ~~that~~ each of the following conditions is satisfied:

310 (a) The claimant has received a final judgment in a court  
311 of competent jurisdiction in this state or has received an award  
312 in arbitration or the Construction Industry Licensing Board has  
313 issued a final order directing the licensee to pay restitution  
314 to the claimant. The board may waive this requirement if:

315 1. The claimant is unable to secure a final judgment  
316 against the licensee due to the death of the licensee; or

317 2. The claimant has sought to have assets involving the  
318 transaction that gave rise to the claim removed from the  
319 bankruptcy proceedings so that the matter might be heard in a  
320 court of competent jurisdiction in this state and, after due  
321 diligence, the claimant is precluded by action of the bankruptcy  
322 court from securing a final judgment against the licensee.

323 (b) The judgment, award, or restitution is based upon a  
324 violation of s. 489.129(1)(g), (j), or (k) or s. 713.35.

325 (c) The violation was committed by a licensee.

326 (d) The judgment, award, or restitution order specifies the  
327 actual damages suffered as a consequence of such violation.

328 (e) The contract was executed and the violation occurred on  
329 or after July 1, 1993, and provided that:



554986

330           1. The claimant has caused to be issued a writ of execution  
331 upon such judgment, and the officer executing the writ has made  
332 a return showing that no personal or real property of the  
333 judgment debtor or licensee liable to be levied upon in  
334 satisfaction of the judgment can be found or that the amount  
335 realized on the sale of the judgment debtor's or licensee's  
336 property pursuant to such execution was insufficient to satisfy  
337 the judgment;

338           2. If the claimant is unable to comply with subparagraph 1.  
339 for a valid reason to be determined by the board, the claimant  
340 has made all reasonable searches and inquiries to ascertain  
341 whether the judgment debtor or licensee is possessed of real or  
342 personal property or other assets subject to being sold or  
343 applied in satisfaction of the judgment and by his or her search  
344 has discovered no property or assets or has discovered property  
345 and assets and has taken all necessary action and proceedings  
346 for the application thereof to the judgment but the amount  
347 thereby realized was insufficient to satisfy the judgment; and

348           3. The claimant has made a diligent attempt, as defined by  
349 board rule, to collect the restitution awarded by the board.

350           (f) A claim for recovery is made within 1 year after the  
351 conclusion of any civil, criminal, or administrative action or  
352 award in arbitration based on the act. This paragraph applies to  
353 any claim filed with the board after October 1, 1998.

354           (g) Any amounts recovered by the claimant from the judgment  
355 debtor or licensee, or from any other source, have been applied  
356 to the damages awarded by the court or the amount of restitution  
357 ordered by the board.

358           (h) The claimant is not a person who is precluded by this



554986

359 act from making a claim for recovery.

360 (2) A claimant is not qualified to make a claim for  
361 recovery from the recovery fund, if:

362 (a) The claimant is the spouse of the judgment debtor or  
363 licensee or a personal representative of such spouse;

364 (b) The claimant is a licensee who acted as the contractor  
365 in the transaction that ~~which~~ is the subject of the claim;

366 (c) The claim is based upon a construction contract in  
367 which the licensee was acting with respect to the property owned  
368 or controlled by the licensee;

369 (d) The claim is based upon a construction contract in  
370 which the contractor did not hold a valid and current license at  
371 the time of the construction contract;

372 (e) The claimant was associated in a business relationship  
373 with the licensee other than the contract at issue; or

374 ~~(f) The claimant has suffered damages as the result of~~  
375 ~~making improper payments to a contractor as defined in part I of~~  
376 ~~chapter 713; or~~

377 (f) (g) The claimant entered into a contract ~~has contracted~~  
378 ~~with a licensee to perform a scope of work described in s.~~  
379 ~~489.105(3)(d)-(q) before July 1, 2016 489.105(3)(d)-(p).~~

380 Section 7. Subsection (1) of section 489.1425, Florida  
381 Statutes, is amended to read:

382 489.1425 Duty of contractor to notify residential property  
383 owner of recovery fund.—

384 (1) Each ~~Any~~ agreement or contract for repair, restoration,  
385 improvement, or construction to residential real property must  
386 contain a written statement explaining the consumer's rights  
387 under the recovery fund, except where the value of all labor and



554986

388 materials does not exceed \$2,500. The written statement must be  
389 substantially in the following form:

390

391 FLORIDA HOMEOWNERS' CONSTRUCTION

392 RECOVERY FUND

393

394 PAYMENT, UP TO A LIMITED AMOUNT, MAY BE AVAILABLE FROM THE  
395 FLORIDA HOMEOWNERS' CONSTRUCTION RECOVERY FUND IF YOU LOSE MONEY  
396 ON A PROJECT PERFORMED UNDER CONTRACT, WHERE THE LOSS RESULTS  
397 FROM SPECIFIED VIOLATIONS OF FLORIDA LAW BY A LICENSED  
398 CONTRACTOR. FOR INFORMATION ABOUT THE RECOVERY FUND AND FILING A  
399 CLAIM, CONTACT THE FLORIDA CONSTRUCTION INDUSTRY LICENSING BOARD  
400 AT THE FOLLOWING TELEPHONE NUMBER AND ADDRESS:

401

402 The statement must ~~shall~~ be immediately followed by the board's  
403 address and telephone number as established by board rule.

404 Section 8. Section 489.143, Florida Statutes, is amended to  
405 read:

406 489.143 Payment from the fund.—

407 (1) The fund shall be disbursed as provided in s. 489.141  
408 on a final order of the board.

409 (2) A ~~Any~~ claimant who meets all of the conditions  
410 prescribed in s. 489.141 may apply to the board to cause payment  
411 to be made to a claimant from the recovery fund in an amount  
412 equal to the judgment, award, or restitution order or \$25,000,  
413 whichever is less, or an amount equal to the unsatisfied portion  
414 of such person's judgment, award, or restitution order, but only  
415 to the extent and amount of actual damages suffered by the  
416 claimant, and only up to the maximum payment allowed for each





554986

417 respective Division I and Division II claim. Payment from the  
418 fund for other costs related to or pursuant to civil proceedings  
419 such as postjudgment interest, attorney ~~attorney's~~ fees, court  
420 costs, medical damages, and punitive damages is prohibited. The  
421 recovery fund is not obligated to pay a ~~any~~ judgment, an award,  
422 or a restitution order, or any portion thereof, which is not  
423 expressly based on one of the grounds for recovery set forth in  
424 s. 489.141.

425 (3) Beginning January 1, 2005, for each Division I contract  
426 entered into after July 1, 2004, payment from the recovery fund  
427 is ~~shall be~~ subject to a \$50,000 maximum payment for each  
428 Division I claim. Beginning January 1, 2017, for each Division  
429 II contract entered into on or after July 1, 2016, payment from  
430 the recovery fund is subject to a \$15,000 maximum payment for  
431 each Division II claim.

432 (4)~~(3)~~ Upon receipt by a claimant under subsection (2) of  
433 payment from the recovery fund, the claimant shall assign his or  
434 her additional right, title, and interest in the judgment,  
435 award, or restitution order, to the extent of such payment, to  
436 the board, and thereupon the board shall be subrogated to the  
437 right, title, and interest of the claimant; and any amount  
438 subsequently recovered on the judgment, award, or restitution  
439 order, to the extent of the right, title, and interest of the  
440 board therein, shall be for the purpose of reimbursing the  
441 recovery fund.

442 (5)~~(4)~~ Payments for claims arising out of the same  
443 transaction shall be limited, in the aggregate, to the lesser of  
444 the judgment, award, or restitution order or the maximum payment  
445 allowed for a Division I or Division II claim, regardless of the



554986

446 number of claimants involved in the transaction.

447 (6)-(5) For contracts entered into before July 1, 2004,  
448 payments for claims against any one licensee may shall not  
449 exceed, in the aggregate, \$100,000 annually, up to a total  
450 aggregate of \$250,000. For any claim approved by the board which  
451 is in excess of the annual cap, the amount in excess of \$100,000  
452 up to the total aggregate cap of \$250,000 is eligible for  
453 payment in the next and succeeding fiscal years, but only after  
454 all claims for the then-current calendar year have been paid.  
455 Payments may not exceed the aggregate annual or per claimant  
456 limits under law. Beginning January 1, 2005, for each Division I  
457 contract entered into after July 1, 2004, payment from the  
458 recovery fund is subject only to a total aggregate cap of  
459 \$500,000 for each Division I licensee. Beginning January 1,  
460 2017, for each Division II contract entered into on or after  
461 July 1, 2016, payment from the recovery fund is subject only to  
462 a total aggregate cap of \$150,000 for each Division II licensee.

463 (7)-(6) Claims shall be paid in the order filed, up to the  
464 aggregate limits for each transaction and licensee and to the  
465 limits of the amount appropriated to pay claims against the fund  
466 for the fiscal year in which the claims were filed. Payments may  
467 not exceed the total aggregate cap per license or per claimant  
468 limits under this section.

469 (8)-(7) If the annual appropriation is exhausted with claims  
470 pending, such claims shall be carried forward to the next fiscal  
471 year. Any moneys in excess of pending claims remaining in the  
472 recovery fund at the end of the fiscal year shall be paid as  
473 provided in s. 468.631.

474 (9)-(8) Upon the payment of any amount from the recovery



554986

475 fund in settlement of a claim in satisfaction of a judgment,  
476 award, or restitution order against a licensee as described in  
477 s. 489.141, the license of such licensee shall be automatically  
478 suspended, without further administrative action, upon the date  
479 of payment from the fund. The license of such licensee may ~~shall~~  
480 not be reinstated until he or she has repaid in full, plus  
481 interest, the amount paid from the fund. A discharge of  
482 bankruptcy does not relieve a person from the penalties and  
483 disabilities provided in this section.

484 (10) ~~(9)~~ A ~~Any~~ firm, a corporation, a partnership, or an  
485 association, or a ~~any~~ person acting in his or her individual  
486 capacity, who aids, abets, solicits, or conspires with another  
487 ~~any~~ person to knowingly present or cause to be presented a ~~any~~  
488 false or fraudulent claim for the payment of a loss under this  
489 act commits ~~is guilty of~~ a third-degree felony, punishable as  
490 provided in s. 775.082 or s. 775.084 and by a fine of up to ~~not~~  
491 ~~exceeding~~ \$30,000, unless the value of the fraud exceeds that  
492 amount, ~~\$30,000~~ in which event the fine may not exceed double  
493 the value of the fraud.

494 (11) ~~(10)~~ Each payment ~~All payments~~ and disbursement  
495 ~~disbursements~~ from the recovery fund shall be made by the Chief  
496 Financial Officer upon a voucher signed by the secretary of the  
497 department or the secretary's designee.

498 Section 9. Subsection (24) is added to section 489.503,  
499 Florida Statutes, to read:

500 489.503 Exemptions.—This part does not apply to:

501 (24) A person who installs low-voltage landscape lighting  
502 that contains a factory-installed electrical cord with plug that  
503 does not require installation, wiring, or other modification to



554986

504 the electrical wiring of a structure.

505 Section 10. Subsection (3) of section 514.011, Florida  
506 Statutes, is amended to read:

507 514.011 Definitions.—As used in this chapter:

508 (3) "Private pool" means a facility used only by an  
509 individual, family, or living unit members and their guests  
510 which does not serve any type of cooperative housing or joint  
511 tenancy of five or more living units. For purposes of the  
512 exemptions provided under s. 514.0115, the term includes a  
513 portable pool used exclusively for providing swimming lessons or  
514 related instruction in support of an established educational  
515 program sponsored or provided by a county school district and a  
516 portable pool used in conjunction with a sanctioned national or  
517 international swimming or diving competition event not to exceed  
518 consecutive 30 days of use.

519 Section 11. Subsection (3) of section 514.0115, Florida  
520 Statutes, is amended to read:

521 514.0115 Exemptions from supervision or regulation;  
522 variances.—

523 (3) A private pool used for instructional purposes in  
524 swimming ~~may shall~~ not be regulated as a public pool. A portable  
525 pool used for instructional purposes or to further an approved  
526 educational program or used for a sanctioned national or  
527 international swimming or diving competition event, for a period  
528 of 30 consecutive days or less, may not be regulated as a public  
529 pool.

530 Section 12. Subsection (5) of section 514.031, Florida  
531 Statutes, is amended to read:

532 514.031 Permit necessary to operate public swimming pool.—



554986

533 (5) An owner or operator of a public swimming pool,  
534 including, but not limited to, a spa, wading, or special purpose  
535 pool, to which admittance is obtained by membership for a fee  
536 shall post in a prominent location within the facility the most  
537 recent pool inspection report issued by the department  
538 pertaining to the health and safety conditions of such facility.  
539 The report shall be legible and readily accessible to members or  
540 potential members. The department shall adopt rules to enforce  
541 this subsection. A portable pool may not be used as a public  
542 pool unless it is exempt under s. 514.0115.

543 Section 13. Section 515.27, Florida Statutes, is amended to  
544 read:

545 515.27 Residential swimming pool safety feature options;  
546 penalties.—

547 (1) In order to pass final inspection and receive a  
548 certificate of completion, a residential swimming pool must meet  
549 at least one of the following requirements relating to pool  
550 safety features:

551 (a) The pool must be isolated from access to a home by an  
552 enclosure that meets the pool barrier requirements of s. 515.29;

553 (b) The pool must be equipped with an approved safety pool  
554 cover;

555 (c) All doors and windows providing direct access from the  
556 home to the pool must be equipped with an exit alarm that has a  
557 minimum sound pressure rating of 85 dB A at 10 feet; ~~or~~

558 (d) All doors providing direct access from the home to the  
559 pool must be equipped with a self-closing, self-latching device  
560 with a release mechanism placed no lower than 54 inches above  
561 the floor; or



554986

562       (e) The pool must be equipped with a swimming pool alarm  
563 that, when placed in the pool, will sound upon detection of  
564 accidental or unauthorized entrance into the water. These pool  
565 alarms must meet and be independently certified to the ASTM  
566 Standard F 2208 "Standards Specification for Pool Alarms," which  
567 includes surface motion, pressure, sonar, laser, and infrared  
568 type alarms. For purposes of this paragraph, the term "swimming  
569 pool alarm" does not include a swimming protection alarm device  
570 designed for individual use, such as an alarm attached to a  
571 child that sounds when the child's movement exceeds a certain  
572 distance or the child becomes submerged in water.

573       (2) A person who fails to equip a new residential swimming  
574 pool with at least one pool safety feature as required in  
575 subsection (1) commits a misdemeanor of the second degree,  
576 punishable as provided in s. 775.082 or s. 775.083, except that  
577 no penalty shall be imposed if the person, within 45 days after  
578 arrest or issuance of a summons or a notice to appear, has  
579 equipped the pool with at least one safety feature as required  
580 in subsection (1) and has attended a drowning prevention  
581 education program established by s. 515.31. However, the  
582 requirement of attending a drowning prevention education program  
583 is waived if such program is not offered within 45 days after  
584 issuance of the citation.

585       Section 14. Subsection (2) of section 553.512, Florida  
586 Statutes, is amended to read:

587       553.512 Modifications and waivers; advisory council.—

588       (2) The Accessibility Advisory Council shall consist of the  
589 following seven members, who shall be knowledgeable in the area  
590 of accessibility for persons with disabilities. The Secretary of



554986

591 Business and Professional Regulation shall appoint the  
592 following: a representative from the Advocacy Center for Persons  
593 with Disabilities, Inc.; a representative from the Division of  
594 Blind Services; a representative from the Division of Vocational  
595 Rehabilitation; a representative from a statewide organization  
596 representing the physically handicapped; a representative from  
597 the hearing impaired; a representative from the Pensacola Pen  
598 Wheels Inc. Employ the Handicapped Council ~~President, Florida  
599 Council of Handicapped Organizations~~; and a representative of  
600 the Paralyzed Veterans of America. The terms for the first three  
601 council members appointed subsequent to October 1, 1991, shall  
602 be for 4 years, the terms for the next two council members  
603 appointed shall be for 3 years, and the terms for the next two  
604 members shall be for 2 years. Thereafter, all council member  
605 appointments shall be for terms of 4 years. No council member  
606 shall serve more than two 4-year terms subsequent to October 1,  
607 1991. Any member of the council may be replaced by the secretary  
608 upon three unexcused absences. Upon application made in the form  
609 provided, an individual waiver or modification may be granted by  
610 the commission so long as such modification or waiver is not in  
611 conflict with more stringent standards provided in another  
612 chapter.

613 Section 15. Section 553.721, Florida Statutes, is amended  
614 to read:

615 553.721 Surcharge.—In order for the Department of Business  
616 and Professional Regulation to administer and carry out the  
617 purposes of this part and related activities, there is created a  
618 surcharge, to be assessed at the rate of 1.5 percent of the  
619 permit fees associated with enforcement of the Florida Building



554986

620 Code as defined by the uniform account criteria and specifically  
621 the uniform account code for building permits adopted for local  
622 government financial reporting pursuant to s. 218.32. The  
623 minimum amount collected on any permit issued shall be \$2. The  
624 unit of government responsible for collecting a permit fee  
625 pursuant to s. 125.56(4) or s. 166.201 shall collect the  
626 surcharge and electronically remit the funds collected to the  
627 department on a quarterly calendar basis for the preceding  
628 quarter and continuing each third month thereafter. The unit of  
629 government shall retain 10 percent of the surcharge collected to  
630 fund the participation of building departments in the national  
631 and state building code adoption processes and to provide  
632 education related to enforcement of the Florida Building Code.  
633 All funds remitted to the department pursuant to this section  
634 shall be deposited in the Professional Regulation Trust Fund.  
635 Funds collected from the surcharge shall be allocated to fund  
636 the Florida Building Commission and the Florida Building Code  
637 Compliance and Mitigation Program under s. 553.841. Funds  
638 allocated to the Florida Building Code Compliance and Mitigation  
639 Program shall be \$925,000 each fiscal year. The Florida Building  
640 Code Compliance and Mitigation Program shall fund the  
641 recommendations made by the Building Code System Uniform  
642 Implementation Evaluation Workgroup, dated April 8, 2013, from  
643 existing resources, not to exceed \$30,000 in the 2016-2017  
644 fiscal year. Funds collected from the surcharge shall also be  
645 used to fund Florida Fire Prevention Code informal  
646 interpretations managed by the State Fire Marshal and shall be  
647 limited to \$15,000 each fiscal year. The State Fire Marshal  
648 shall adopt rules to address the implementation and expenditure





554986

649 of the funds allocated to fund the Florida Fire Prevention Code  
650 informal interpretations under this section. The funds collected  
651 from the surcharge may not be used to fund research on  
652 techniques for mitigation of radon in existing buildings. Funds  
653 used by the department as well as funds to be transferred to the  
654 Department of Health and the State Fire Marshal shall be as  
655 prescribed in the annual General Appropriations Act. The  
656 department shall adopt rules governing the collection and  
657 remittance of surcharges pursuant to chapter 120.

658 Section 16. Paragraph (a) of subsection (7) and subsections  
659 (8), (11), and (15) of section 553.73, Florida Statutes, are  
660 amended, and subsection (19) is added to that section, to read:

661 553.73 Florida Building Code.—

662 (7) (a) The commission, by rule adopted pursuant to ss.  
663 120.536(1) and 120.54, shall update the Florida Building Code  
664 every 6 ~~3~~ years. When updating the Florida Building Code, the  
665 commission shall select the most current version of the  
666 International Building Code, the International Fuel Gas Code,  
667 the International Mechanical Code, the International Plumbing  
668 Code, and the International Residential Code, all of which are  
669 adopted by the International Code Council, and the National  
670 Electrical Code, which is adopted by the National Fire  
671 Protection Association, to form the foundation codes of the  
672 updated Florida Building Code, if the version has been adopted  
673 by the applicable model code entity. The commission shall select  
674 the most current version of the International Energy  
675 Conservation Code (IECC) as a foundation code; however, the IECC  
676 shall be modified by the commission to maintain the efficiencies  
677 of the Florida Energy Efficiency Code for Building Construction



554986

678 adopted and amended pursuant to s. 553.901.

679 (8) Notwithstanding the provisions of subsection (3) or  
680 subsection (7), the commission may address issues identified in  
681 this subsection by amending the code pursuant only to the rule  
682 adoption procedures contained in chapter 120. Provisions of the  
683 Florida Building Code, including those contained in referenced  
684 standards and criteria, relating to wind resistance or the  
685 prevention of water intrusion may not be amended pursuant to  
686 this subsection to diminish those construction requirements;  
687 however, the commission may, subject to conditions in this  
688 subsection, amend the provisions to enhance those construction  
689 requirements. Following the approval of any amendments to the  
690 Florida Building Code by the commission and publication of the  
691 amendments on the commission's website, authorities having  
692 jurisdiction to enforce the Florida Building Code may enforce  
693 the amendments. The commission may approve amendments that are  
694 needed to address:

695 (a) Conflicts within the updated code;

696 (b) Conflicts between the updated code and the Florida Fire  
697 Prevention Code adopted pursuant to chapter 633;

698 (c) Unintended results from the integration of previously  
699 adopted Florida-specific amendments with the model code;

700 (d) Equivalency of standards;

701 (e) Changes to or inconsistencies with federal or state  
702 law; ~~or~~

703 (f) Adoption of an updated edition of the National  
704 Electrical Code if the commission finds that delay of  
705 implementing the updated edition causes undue hardship to  
706 stakeholders or otherwise threatens the public health, safety,



554986

707 and welfare;-

708 (g) Potential risks to the public health, safety, or  
709 welfare;

710 (h) Significant economic impact as determined by the  
711 commission;

712 (i) Existing provisions which require products or services  
713 that are not readily or consistently available to meet code  
714 requirements;

715 (j) Existing provisions which cannot technically be  
716 enforced due to infeasibility;

717 (k) Existing provisions which have not provided sufficient  
718 time needed to ensure adequate training for licensed  
719 professionals and their employees prior to enforcement; and

720 (l) Provisions of previous editions of the Florida Building  
721 Code not provided for in the current code and found by the  
722 commission to be necessary.

723 (11) (a) In the event of a conflict between the Florida  
724 Building Code and the Florida Fire Prevention Code and the Life  
725 Safety Code as applied to a specific project, the conflict shall  
726 be resolved by agreement between the local building code  
727 enforcement official and the local fire code enforcement  
728 official in favor of the requirement of the code which offers  
729 the greatest degree of lifesafety or alternatives which would  
730 provide an equivalent degree of lifesafety and an equivalent  
731 method of construction. Local boards created to address issues  
732 arising under the Florida Building Code or the Florida Fire  
733 Prevention Code may combine their appeals boards to create a  
734 single, local board having jurisdiction over matters arising  
735 under either code or both codes. The combined local appeals



554986

736 board may grant alternatives or modifications through procedures  
737 outlined in NFPA 1, Section 1.4, but may not waive the  
738 requirements of the Florida Fire Prevention Code. To meet the  
739 quorum requirement for convening the combined local appeals  
740 board, at least one member of the board who is a fire protection  
741 contractor, a fire protection design professional, a fire  
742 department operations professional, or a fire code enforcement  
743 professional must be present.

744 (b) Any decision made by the local fire official regarding  
745 application, interpretation, or enforcement of the Florida Fire  
746 Prevention Code, by ~~and~~ the local building official regarding  
747 application, interpretation, or enforcement of the Florida  
748 Building Code, or the appropriate application of either code or  
749 both codes in the case of a conflict between the codes may be  
750 appealed to a local administrative board designated by the  
751 municipality, county, or special district having firesafety  
752 responsibilities. If the decision of the local fire official and  
753 the local building official is to apply the provisions of either  
754 the Florida Building Code or the Florida Fire Prevention Code  
755 and the Life Safety Code, the board may not alter the decision  
756 unless the board determines that the application of such code is  
757 not reasonable. If the decision of the local fire official and  
758 the local building official is to adopt an alternative to the  
759 codes, the local administrative board shall give due regard to  
760 the decision rendered by the local officials and may modify that  
761 decision if the administrative board adopts a better  
762 alternative, taking into consideration all relevant  
763 circumstances. In any case in which the local administrative  
764 board adopts alternatives to the decision rendered by the local



554986

765 fire official and the local building official, such alternatives  
766 shall provide an equivalent degree of lifesafety and an  
767 equivalent method of construction as the decision rendered by  
768 the local officials.

769 (c) If the local building official and the local fire  
770 official are unable to agree on a resolution of the conflict  
771 between the Florida Building Code and the Florida Fire  
772 Prevention Code and the Life Safety Code, the local  
773 administrative board shall resolve the conflict in favor of the  
774 code which offers the greatest degree of lifesafety or  
775 alternatives which would provide an equivalent degree of  
776 lifesafety and an equivalent method of construction.

777 (d) All decisions of the local administrative board<sup>7</sup> or, if  
778 none exists, ~~the decisions of~~ the local building official and  
779 the local fire official in regard to the application,  
780 enforcement, or interpretation of the Florida Fire Prevention  
781 Code, or conflicts between the Florida Fire Prevention Code and  
782 the Florida Building Code, are subject to review by a joint  
783 committee composed of members of the Florida Building Commission  
784 and the Fire Code Advisory Council. If the joint committee is  
785 unable to resolve conflicts between the codes as applied to a  
786 specific project, the matter shall be resolved pursuant to ~~the~~  
787 ~~provisions of~~ paragraph (1) (d). Decisions of the local  
788 administrative board related solely to the Florida Building Code  
789 are subject to review as set forth in s. 553.775.

790 (e) The local administrative board shall, to the greatest  
791 extent possible, be composed of members with expertise in  
792 building construction and firesafety standards.

793 (f) All decisions of the local building official and local



554986

794 fire official and all decisions of the administrative board  
795 shall be in writing and shall be binding upon a person but do  
796 not limit the authority of the State Fire Marshal or the Florida  
797 Building Commission pursuant to paragraph (1)(d) and ss. 633.104  
798 and 633.228. Decisions of general application shall be indexed  
799 by building and fire code sections and shall be available for  
800 inspection during normal business hours.

801 (15) An agency or local government may not require that  
802 existing mechanical equipment located on or above the surface of  
803 a roof be installed in compliance with the requirements of the  
804 Florida Building Code except during reroofing when the equipment  
805 is being replaced or moved ~~during reroofing~~ and is not in  
806 compliance with the provisions of the Florida Building Code  
807 relating to roof-mounted mechanical units.

808 (19) The Florida Building Code must require two fire  
809 service access elevators in all buildings with a height greater  
810 than 120-feet from the elevation of street-level access to the  
811 level of the highest occupiable floor. Any remaining elevators  
812 must be equipped for Phase I and Phase II emergency operations.  
813 If a fire service access elevator is required in a building, a  
814 1-hour fire-rated fire service access elevator lobby with direct  
815 access from the fire service access elevator is not required if  
816 the fire service access elevator opens into an exit access  
817 corridor, which cannot be less than 6 feet wide for its entire  
818 length, must have at least 150 square feet with the exception of  
819 door openings, and must have a minimum 1-hour fire rating with  
820 three-quarter-hour fire- and smoke-rated openings. During a fire  
821 event the fire service access elevator must be pressurized and  
822 floor-to-floor smoke control must be provided. However, if



554986

823 transient residential occupancies occur at floor levels more  
824 than 420 feet above the level of fire service access, a 1-hour  
825 fire-rated service access elevator lobby with direct access from  
826 the fire service access elevator is required.

827 Section 17. Paragraph (c) of subsection (3) of section  
828 553.775, Florida Statutes, is amended to read:

829 553.775 Interpretations.—

830 (3) The following procedures may be invoked regarding  
831 interpretations of the Florida Building Code or the Florida  
832 Accessibility Code for Building Construction:

833 (c) The commission shall review decisions of local building  
834 officials and local enforcement agencies regarding  
835 interpretations of the Florida Building Code or the Florida  
836 Accessibility Code for Building Construction after the local  
837 board of appeals has considered the decision, if such board  
838 exists, and if such appeals process is concluded within 25  
839 business days.

840 1. The commission shall coordinate with the Building  
841 Officials Association of Florida, Inc., to designate a panel  
842 ~~panels~~ composed of seven ~~five~~ members to hear requests to review  
843 decisions of local building officials. Five ~~The~~ members must be  
844 licensed as building code administrators under part XII of  
845 chapter 468, one member must be licensed as an architect under  
846 chapter 481, and one member must be licensed as an engineer  
847 under chapter 471. Each member ~~and~~ must have experience  
848 interpreting or ~~and~~ enforcing provisions of the Florida Building  
849 Code and the Florida Accessibility Code for Building  
850 Construction.

851 2. Requests to review a decision of a local building



554986

852 official interpreting provisions of the Florida Building Code or  
853 the Florida Accessibility Code for Building Construction may be  
854 initiated by any substantially affected person, including an  
855 owner or builder subject to a decision of a local building  
856 official or an association of owners or builders having members  
857 who are subject to a decision of a local building official. In  
858 order to initiate review, the substantially affected person must  
859 file a petition with the commission. The commission shall adopt  
860 a form for the petition, which shall be published on the  
861 Building Code Information System. The form shall, at a minimum,  
862 require the following:

863       a. The name and address of the county or municipality in  
864 which provisions of the Florida Building Code or the Florida  
865 Accessibility Code for Building Construction are being  
866 interpreted.

867       b. The name and address of the local building official who  
868 has made the interpretation being appealed.

869       c. The name, address, and telephone number of the  
870 petitioner; the name, address, and telephone number of the  
871 petitioner's representative, if any; and an explanation of how  
872 the petitioner's substantial interests are being affected by the  
873 local interpretation of the Florida Building Code or the Florida  
874 Accessibility Code for Building Construction.

875       d. A statement of the provisions of the Florida Building  
876 Code or the Florida Accessibility Code for Building Construction  
877 which are being interpreted by the local building official.

878       e. A statement of the interpretation given to provisions of  
879 the Florida Building Code or the Florida Accessibility Code for  
880 Building Construction by the local building official and the





554986

881 manner in which the interpretation was rendered.

882 f. A statement of the interpretation that the petitioner  
883 contends should be given to the provisions of the Florida  
884 Building Code or the Florida Accessibility Code for Building  
885 Construction and a statement supporting the petitioner's  
886 interpretation.

887 g. Space for the local building official to respond in  
888 writing. The space shall, at a minimum, require the local  
889 building official to respond by providing a statement admitting  
890 or denying the statements contained in the petition and a  
891 statement of the interpretation of the provisions of the Florida  
892 Building Code or the Florida Accessibility Code for Building  
893 Construction which the local jurisdiction or the local building  
894 official contends is correct, including the basis for the  
895 interpretation.

896 3. The petitioner shall submit the petition to the local  
897 building official, who shall place the date of receipt on the  
898 petition. The local building official shall respond to the  
899 petition in accordance with the form and shall return the  
900 petition along with his or her response to the petitioner within  
901 5 days after receipt, exclusive of Saturdays, Sundays, and legal  
902 holidays. The petitioner may file the petition with the  
903 commission at any time after the local building official  
904 provides a response. If no response is provided by the local  
905 building official, the petitioner may file the petition with the  
906 commission 10 days after submission of the petition to the local  
907 building official and shall note that the local building  
908 official did not respond.

909 4. Upon receipt of a petition that meets the requirements



554986

910 of subparagraph 2., the commission shall immediately provide  
911 copies of the petition to the a panel, and the commission shall  
912 publish the petition, including any response submitted by the  
913 local building official, on the Building Code Information System  
914 in a manner that allows interested persons to address the issues  
915 by posting comments.

916 5. The panel shall conduct proceedings as necessary to  
917 resolve the issues; shall give due regard to the petitions, the  
918 response, and to comments posed on the Building Code Information  
919 System; and shall issue an interpretation regarding the  
920 provisions of the Florida Building Code or the Florida  
921 Accessibility Code for Building Construction within 21 days  
922 after the filing of the petition. The panel shall render a  
923 determination based upon the Florida Building Code or the  
924 Florida Accessibility Code for Building Construction or, if the  
925 code is ambiguous, the intent of the code. The panel's  
926 interpretation shall be provided to the commission, which shall  
927 publish the interpretation on the Building Code Information  
928 System and in the Florida Administrative Register. The  
929 interpretation shall be considered an interpretation entered by  
930 the commission, and shall be binding upon the parties and upon  
931 all jurisdictions subject to the Florida Building Code or the  
932 Florida Accessibility Code for Building Construction, unless it  
933 is superseded by a declaratory statement issued by the Florida  
934 Building Commission or by a final order entered after an appeal  
935 proceeding conducted in accordance with subparagraph 7.

936 6. It is the intent of the Legislature that review  
937 proceedings be completed within 21 days after the date that a  
938 petition seeking review is filed with the commission, and the



554986

939 time periods set forth in this paragraph may be waived only upon  
940 consent of all parties.

941         7. Any substantially affected person may appeal an  
942 interpretation rendered by the ~~a hearing officer~~ panel by filing  
943 a petition with the commission. Such appeals shall be initiated  
944 in accordance with chapter 120 and the uniform rules of  
945 procedure and must be filed within 30 days after publication of  
946 the interpretation on the Building Code Information System or in  
947 the Florida Administrative Register. Hearings shall be conducted  
948 pursuant to chapter 120 and the uniform rules of procedure.  
949 Decisions of the commission are subject to judicial review  
950 pursuant to s. 120.68. The final order of the commission is  
951 binding upon the parties and upon all jurisdictions subject to  
952 the Florida Building Code or the Florida Accessibility Code for  
953 Building Construction.

954         8. The burden of proof in any proceeding initiated in  
955 accordance with subparagraph 7. is on the party who initiated  
956 the appeal.

957         9. In any review proceeding initiated in accordance with  
958 this paragraph, including any proceeding initiated in accordance  
959 with subparagraph 7., the fact that an owner or builder has  
960 proceeded with construction may not be grounds for determining  
961 an issue to be moot if the issue is one that is likely to arise  
962 in the future.

963  
964 This paragraph provides the exclusive remedy for addressing  
965 requests to review local interpretations of the Florida Building  
966 Code or the Florida Accessibility Code for Building Construction  
967 and appeals from review proceedings.



554986

968 Section 18. Subsection(1) and (6) of section 553.79,  
969 Florida Statutes, are amended to read:

970 553.79 Permits; applications; issuance; inspections.—

971 (1) After the effective date of the Florida Building Code  
972 adopted as herein provided, it shall be unlawful for any person,  
973 firm, corporation, or governmental entity to construct, erect,  
974 alter, modify, repair, or demolish any building within this  
975 state without first obtaining a permit therefor from the  
976 appropriate enforcing agency or from such persons as may, by  
977 appropriate resolution or regulation of the authorized state or  
978 local enforcing agency, be delegated authority to issue such  
979 permits, upon the payment of such reasonable fees adopted by the  
980 enforcing agency. The enforcing agency is empowered to revoke  
981 any such permit upon a determination by the agency that the  
982 construction, erection, alteration, modification, repair, or  
983 demolition of the building for which the permit was issued is in  
984 violation of, or not in conformity with, the provisions of the  
985 Florida Building Code. Whenever a permit required under this  
986 section is denied or revoked because the plan, or the  
987 construction, erection, alteration, modification, repair, or  
988 demolition of a building, is found by the local enforcing agency  
989 to be not in compliance with the Florida Building Code, the  
990 local enforcing agency shall identify the specific plan or  
991 project features that do not comply with the applicable codes,  
992 identify the specific code chapters and sections upon which the  
993 finding is based, and provide this information to the permit  
994 applicant. Failure to provide a reason, based on compliance with  
995 the Florida Building Code or local ordinance, for a denial,  
996 revocation, or modification request to the applicant shall



554986

997 subject the plans reviewer or building code administrator  
998 responsible with creating the denial, revocation, or  
999 modification request to disciplinary action against his or her  
1000 license pursuant to s. 468.621(1)(j). Installation, replacement,  
1001 removal, or metering of any load management control device is  
1002 exempt from and shall not be subject to the permit process and  
1003 fees otherwise required by this section.

1004 (6) A permit may not be issued for any building  
1005 construction, erection, alteration, modification, repair, or  
1006 addition unless the applicant for such permit complies with the  
1007 requirements for plan review established by the Florida Building  
1008 Commission within the Florida Building Code. However, the code  
1009 shall set standards and criteria to authorize preliminary  
1010 construction before completion of all building plans review,  
1011 including, but not limited to, special permits for the  
1012 foundation only, and such standards shall take effect concurrent  
1013 with the first effective date of the Florida Building Code.  
1014 After submittal of the appropriate construction documents, the  
1015 building official may issue a permit for the construction of  
1016 foundations or any other part of a building or structure before  
1017 the construction documents for the whole building or structure  
1018 have been submitted. If such a permit is issued, the  
1019 permitholder may proceed at its own risk and without assurance  
1020 that a permit for the entire structure will be granted.  
1021 Corrections may be required to meet the requirements of the  
1022 technical codes.

1023 Section 19. Section 553.7931, Florida Statutes, is created  
1024 to read:

1025 553.7931 Alarm system registrations.-



554986

1026           (1) As used in this section, the term "applicable local  
1027 governmental entity" means the local enforcement agency or local  
1028 law enforcement agency responsible for the administration of  
1029 alarm system registration in a jurisdiction.

1030           (a) The owner, lessee, or occupant, or an authorized  
1031 representative thereof, of a property must register their alarm  
1032 system with the applicable local governmental entity if such  
1033 entity requires registration of an alarm system.

1034           (b)1. A contractor, as defined in s. 553.793, or an alarm  
1035 system monitoring company that installs a monitored alarm system  
1036 shall provide written notice, on paper or electronically, to an  
1037 owner, a lessee, or an occupant, or an authorized representative  
1038 thereof, before activation or reactivation of an alarm system,  
1039 that an obligation to register the alarm system with an  
1040 applicable local governmental entity may exist.

1041           2. An alarm system monitoring company that activates an  
1042 alarm system installed by an owner, a lessee, or an occupant, or  
1043 an authorized representative thereof, shall provide verbal  
1044 notice to the owner, lessee, or occupant, or authorized  
1045 representative thereof, before activation or reactivation of an  
1046 alarm system, that an obligation to register the alarm system  
1047 with an applicable local governmental entity may exist.

1048           (2) A contractor or an alarm system monitoring company  
1049 shall not be liable for civil penalties and fines assessed or  
1050 imposed by the applicable local governmental entity for failure  
1051 to register an alarm system, dispatch to an unregistered user,  
1052 or for excessive false alarms not attributed to alarm system  
1053 monitoring company error or improper installation by the  
1054 contractor or alarm system monitoring company.



554986

1055           (3) A municipality, county, district, or other local  
1056 governmental entity may not require that an alarm system  
1057 registration form be notarized before an alarm system may be  
1058 registered.

1059           (4) A municipality, county, district, or other local  
1060 governmental entity may not adopt or maintain in effect any  
1061 ordinance or rule regarding alarm system registration that is  
1062 inconsistent with this section.

1063           Section 20. Paragraph (d) is added to subsection (7) of  
1064 section 553.80, Florida Statutes, to read:

1065           553.80 Enforcement.—

1066           (7) The governing bodies of local governments may provide a  
1067 schedule of reasonable fees, as authorized by s. 125.56(2) or s.  
1068 166.222 and this section, for enforcing this part. These fees,  
1069 and any fines or investment earnings related to the fees, shall  
1070 be used solely for carrying out the local government's  
1071 responsibilities in enforcing the Florida Building Code. When  
1072 providing a schedule of reasonable fees, the total estimated  
1073 annual revenue derived from fees, and the fines and investment  
1074 earnings related to the fees, may not exceed the total estimated  
1075 annual costs of allowable activities. Any unexpended balances  
1076 shall be carried forward to future years for allowable  
1077 activities or shall be refunded at the discretion of the local  
1078 government. The basis for a fee structure for allowable  
1079 activities shall relate to the level of service provided by the  
1080 local government and shall include consideration for refunding  
1081 fees due to reduced services based on services provided as  
1082 prescribed by s. 553.791, but not provided by the local  
1083 government. Fees charged shall be consistently applied.



554986

1084           (d) The local enforcement agency may not require the  
1085 payment of any additional fees, charges, or expenses associated  
1086 with:

1087           1. Providing proof of licensure pursuant to chapter 489;  
1088           2. Recording or filing a license issued pursuant to this  
1089 chapter; or

1090           3. Providing, recording, or filing evidence of workers'  
1091 compensation insurance coverage as required by chapter 440.

1092           Section 21. Paragraph (a) of subsection (8) of section  
1093 553.842, Florida Statutes, is amended to read:

1094           553.842 Product evaluation and approval.—

1095           (8) The commission may adopt rules to approve the following  
1096 types of entities that produce information on which product  
1097 approvals are based. All of the following entities, including  
1098 engineers and architects, must comply with a nationally  
1099 recognized standard demonstrating independence or no conflict of  
1100 interest:

1101           (a) Evaluation entities approved pursuant to this  
1102 paragraph. The commission shall specifically approve the  
1103 National Evaluation Service, the International Association of  
1104 Plumbing and Mechanical Officials Evaluation Service, the  
1105 International Code Council Evaluation Services, Underwriters  
1106 Laboratories, LLC, Intertek Testing Services NA, Inc., and the  
1107 Miami-Dade County Building Code Compliance Office Product  
1108 Control Division. Architects and engineers licensed in this  
1109 state are also approved to conduct product evaluations as  
1110 provided in subsection (5).

1111           Section 22. Paragraph (c) of subsection (3) of section  
1112 553.844, Florida Statutes, is amended and subsection (4) of that





554986

1113 section is revived, readopted, and amended to read:

1114 553.844 Windstorm loss mitigation; requirements for roofs  
1115 and opening protection.—

1116 (3) The Legislature finds that the integration of these  
1117 specifically identified mitigation measures is critical to  
1118 addressing the serious problem facing the state from damage  
1119 caused by windstorms and that delay in the adoption and  
1120 implementation constitutes a threat to the health, safety, and  
1121 welfare of the state. Accordingly, the Florida Building  
1122 Commission shall develop and adopt these measures by October 1,  
1123 2007, by rule separate from the Florida Building Code, which  
1124 take immediate effect and shall incorporate such requirements  
1125 into the next edition of the Florida Building Code. Such rules  
1126 shall require or otherwise clarify that for site-built, single-  
1127 family residential structures:

1128 (c) Any activity requiring a building permit, not including  
1129 work associated with the prevention of degradation of the  
1130 residence, that is applied for on or after July 1, 2008, and for  
1131 which the estimated cost is \$50,000 or more, must include  
1132 provision of opening protections as required within the Florida  
1133 Building Code for new construction for a building that is  
1134 located in the wind-borne debris region as defined in s. 1609.2  
1135 of the International Building Code (2006) and that has an  
1136 insured value of \$750,000 or more, or, if the building is  
1137 uninsured or for which documentation of insured value is not  
1138 presented, has a just valuation for the structure for purposes  
1139 of ad valorem taxation of \$750,000 or more.

1140 (4) Notwithstanding the provisions of this section, exposed  
1141 mechanical equipment or appliances fastened to a roof or



554986

1142 installed on the ground in compliance with the code using rated  
1143 stands, platforms, curbs, slabs, walls, or other means are  
1144 deemed to comply with the wind resistance requirements of the  
1145 2007 Florida Building Code, as amended. Further support or  
1146 enclosure of such mechanical equipment or appliances is not  
1147 required by a state or local official having authority to  
1148 enforce the Florida Building Code. ~~This subsection expires on~~  
1149 ~~the effective date of the 2013 Florida Building Code.~~

1150 Section 23. Section 553.883, Florida Statutes, is amended  
1151 to read:

1152 553.883 Smoke alarms in one-family and two-family dwellings  
1153 and townhomes.—One-family and two-family dwellings and townhomes  
1154 undergoing a repair, or a level 1 alteration as defined in the  
1155 Florida Building Code, may use smoke alarms powered by 10-year  
1156 nonremovable, nonreplaceable batteries in lieu of retrofitting  
1157 such dwelling with smoke alarms powered by the dwelling's  
1158 electrical system. ~~Effective January 1, 2015,~~ A battery-powered  
1159 smoke alarm that is newly installed or replaces an existing  
1160 battery-powered smoke alarm as a result of a level 1 alteration,  
1161 must be powered by a nonremovable, nonreplaceable battery that  
1162 powers the alarm for at least 10 years. This does not prohibit a  
1163 homeowner from replacing an existing smoke alarm or installing a  
1164 new smoke alarm that is not powered by a 10-year nonremovable,  
1165 nonreplaceable battery or by the dwelling's electrical system.  
1166 The battery requirements of this section do not apply to a fire  
1167 alarm, smoke detector, smoke alarm, or ancillary component that  
1168 is electronically connected as a part of a centrally monitored  
1169 or supervised alarm system; that uses a low-power radio  
1170 frequency wireless communication signal; or that contains



554986

1171 multiple sensors, such as a smoke alarm combined with a carbon  
1172 monoxide alarm or other multi-sensor devices, and is approved  
1173 and listed by a nationally recognized testing laboratory.

1174 Section 24. Section 553.908, Florida Statutes, is amended  
1175 to read:

1176 553.908 Inspection.—Before construction or renovation is  
1177 completed, the local enforcement agency shall inspect buildings  
1178 for compliance with the standards of this part. Notwithstanding  
1179 any other provision of the code or law, effective July 1, 2016,  
1180 section R402.4.1.2 of the Florida Building Code, 5th Edition  
1181 (2014) Energy Conservation, which became effective on June 30,  
1182 2015, shall increase the building's or dwelling unit's maximum  
1183 tested air leakage measure from "not exceeding 5 air changes per  
1184 hour" to "not exceeding 7 air changes per hour" in Climate Zones  
1185 1 and 2. The mandatory blower door testing for residential  
1186 buildings or dwelling units as contained in section R402.1.2 of  
1187 the Florida Building Code, 5th Edition (2014) Energy  
1188 Conservation, may not take effect until July 1, 2017, and does  
1189 not apply to construction permitted before July 1, 2017.

1190 Additionally, section M401.2 of the Florida Building Code, 5th  
1191 Edition (2014) Mechanical, which became effective on June 30,  
1192 2015, shall decrease the air filtration rate in a dwelling unit  
1193 from "less than 5" to "less than 3" air changes per hour when  
1194 tested with a blower door at a pressure of 0.2-inch water column  
1195 (50 Pascals) in accordance with Section R402.4.1.2 of the  
1196 Florida Building Code, 5th Edition (2014) Energy Conservation.

1197 Section 25. Subsection (3) of section 553.993, Florida  
1198 Statutes, is amended to read:

1199 553.993 Definitions.—For purposes of this part:



554986

1200 (3) "Building energy-efficiency rating system" means a  
1201 whole building energy evaluation system that provides a reliable  
1202 and scientifically based analysis of a building's energy  
1203 consumption or energy features and allows a comparison to  
1204 similar building types in similar climate zones where  
1205 applicable. Specifically, the rating system shall use standard  
1206 calculations, formulas, and scoring methods; be applicable  
1207 nationally; compare a building to a clearly defined and  
1208 researched baseline or benchmark; require qualified  
1209 professionals to conduct the rating or assessment; and provide a  
1210 labeling and recognition program with specific criteria or  
1211 levels. Residential program benchmarks for new construction must  
1212 be consistent with national building standards. Residential  
1213 building program benchmarks for existing construction must be  
1214 consistent with national home energy rating standards. The  
1215 building energy-efficiency rating system shall require at least  
1216 one level of oversight performed by an organized and balanced  
1217 group of professionals with subject matter expertise in energy  
1218 efficiency, energy rating, and evaluation methods established by  
1219 the Residential Energy Services Network, the Commercial Energy  
1220 Services Network, the Building Performance Institute, or the  
1221 Florida Solar Energy Center.

1222 Section 26. Subsections (17) and (18) are added to section  
1223 633.202, Florida Statutes, to read:

1224 633.202 Florida Fire Prevention Code.—

1225 (17) The authority having jurisdiction shall determine the  
1226 minimum radio signal strength for fire department communications  
1227 in all new high-rise and existing high-rise buildings. Existing  
1228 buildings are not required to comply with minimum radio strength



554986

1229 for fire department communications and two-way radio system  
1230 enhancement communications as required by the Florida Fire  
1231 Prevention Code until January 1, 2022. However, by December 31,  
1232 2019, an existing building that is not in compliance with the  
1233 requirements for minimum radio strength for fire department  
1234 communications must apply for an appropriate permit for the  
1235 required installation with the local government agency having  
1236 jurisdiction and must demonstrate that the building will become  
1237 compliant by January 1, 2022. Existing apartment buildings are  
1238 not required to comply until January 1, 2025. However, existing  
1239 apartment buildings are required to apply for the appropriate  
1240 permit for the required communications installation by December  
1241 31, 2022.

1242 (18) Areas of refuge must be provided if required by the  
1243 Florida Building Code, Accessibility. Required portions of an  
1244 area of refuge shall be accessible from the space they serve by  
1245 an accessible means of egress.

1246 Section 27. Subsection (5) of section 633.208, Florida  
1247 Statutes, is amended to read:

1248 633.208 Minimum firesafety standards.—

1249 (5) With regard to existing buildings, the Legislature  
1250 recognizes that it is not always practical to apply any or all  
1251 of the provisions of the Florida Fire Prevention Code and that  
1252 physical limitations may require disproportionate effort or  
1253 expense with little increase in fire or life safety. Before  
1254 ~~Prior to~~ applying the minimum firesafety code to an existing  
1255 building, the local fire official shall determine whether ~~that~~ a  
1256 threat to lifesafety or property exists. If a threat to  
1257 lifesafety or property exists, the fire official shall apply the



554986

1258 applicable firesafety code for existing buildings to the extent  
1259 practical to ensure ~~assure~~ a reasonable degree of lifesafety and  
1260 safety of property or the fire official shall fashion a  
1261 reasonable alternative that ~~which~~ affords an equivalent degree  
1262 of lifesafety and safety of property. The local fire official  
1263 may consider the fire safety evaluation systems found in NFPA  
1264 101A, Guide on Alternative Solutions to Life Safety, adopted by  
1265 the State Fire Marshal, as acceptable systems for the  
1266 identification of low-cost, reasonable alternatives. It is  
1267 acceptable to use the Fire Safety Evaluation System for Board  
1268 and Care Facilities using prompt evacuation capabilities  
1269 parameter values on existing residential high-rise buildings.  
1270 The decision of the local fire official may be appealed to the  
1271 local administrative board described in s. 553.73.

1272 Section 28. Section 633.336, Florida Statutes, is amended  
1273 to read:

1274 633.336 Contracting without certificate prohibited;  
1275 violations; penalty.—

1276 (1) It is unlawful for any organization or individual to  
1277 engage in the business of layout, fabrication, installation,  
1278 inspection, alteration, repair, or service of a fire protection  
1279 system, other than a preengineered system, act in the capacity  
1280 of a fire protection contractor, or advertise itself as being a  
1281 fire protection contractor without having been duly certified  
1282 and holding a valid and existing certificate, except as  
1283 hereinafter provided. The holder of a certificate used to  
1284 qualify an organization must be a full-time employee of the  
1285 qualified organization or business. A certificateholder who is  
1286 employed by more than one fire protection contractor during the



554986

1287 same time is deemed not to be a full-time employee of either  
1288 contractor. The State Fire Marshal shall revoke, for a period  
1289 determined by the State Fire Marshal, the certificate of a  
1290 certificateholder who allows the use of the certificate to  
1291 qualify a company of which the certificateholder is not a full-  
1292 time employee. A contractor who maintains more than one place of  
1293 business must employ a certificateholder at each location. This  
1294 subsection does not prohibit an employee acting on behalf of  
1295 governmental entities from inspecting and enforcing firesafety  
1296 codes, provided such employee is certified under s. 633.216.

1297 (2) A fire protection contractor certified under this  
1298 chapter may not:

1299 (a) Enter into a written or oral agreement to authorize, or  
1300 otherwise knowingly allow, a contractor who is not certified  
1301 under this chapter to engage in the business of, or act in the  
1302 capacity of, a fire protection contractor.

1303 (b) Apply for or obtain a construction permit for fire  
1304 protection work unless the fire protection contractor or the  
1305 business organization qualified by the fire protection  
1306 contractor has contracted to conduct the work specified in the  
1307 application for the permit.

1308 (3) The Legislature recognizes that special expertise is  
1309 required for fire pump control panels and maintenance of  
1310 electric and diesel pump drivers and that it is not economically  
1311 feasible for all contractors to employ these experts full-time  
1312 whose work may be limited. It is therefore deemed acceptable for  
1313 a fire protection contractor licensed under this chapter to  
1314 subcontract with companies providing advanced technical services  
1315 for the installation, servicing, and maintenance of fire pump



554986

1316 control panels and pump drivers. To ensure the integrity of the  
1317 system and to protect the interests of the property owner, those  
1318 providing technical support services for fire pump control  
1319 panels and pump drivers must be under contract with a licensed  
1320 fire protection contractor.

1321 (4) ~~(3)~~ A person who violates any provision of this act or  
1322 commits any of the acts constituting cause for disciplinary  
1323 action as herein set forth commits a misdemeanor of the second  
1324 degree, punishable as provided in s. 775.082 or s. 775.083.

1325 (5) ~~(4)~~ In addition to the penalties provided in subsection  
1326 (4) ~~(3)~~, a fire protection contractor certified under this  
1327 chapter who violates any provision of this section or who  
1328 commits any act constituting cause for disciplinary action is  
1329 subject to suspension or revocation of the certificate and  
1330 administrative fines pursuant to s. 633.338.

1331 Section 29. The Calder Sloan Swimming Pool Electrical-  
1332 Safety Task Force.-There is established within the Florida  
1333 Building Commission the Calder Sloan Swimming Pool Electrical-  
1334 Safety Task Force.

1335 (1) The purpose of the task force is to study standards on  
1336 grounding, bonding, lighting, wiring, and all electrical aspects  
1337 for safety in and around public and private swimming pools,  
1338 especially with regard to minimizing risks of electrocutions  
1339 linked to swimming pools. The task force shall submit a report  
1340 of its findings, including recommended revisions to state law,  
1341 if any, to the Governor, the President of the Senate, and the  
1342 Speaker of the House of Representatives by November 1, 2016.

1343 (2) The task force shall consist of the swimming pool and  
1344 electrical technical advisory committees of the Florida Building





554986

1345 Commission.

1346 (3) The task force shall be chaired by the swimming pool  
1347 contractor appointed to the Florida Building Commission pursuant  
1348 to s. 553.74, Florida Statutes.

1349 (4) The Florida Building Commission shall provide such  
1350 staff, information, and other assistance as is reasonably  
1351 necessary to assist the task force in carrying out its  
1352 responsibilities.

1353 (5) Members of the task force shall serve without  
1354 compensation.

1355 (6) The task force shall meet as often as necessary to  
1356 fulfill its responsibilities. Meetings may be conducted by  
1357 conference call, teleconferencing, or similar technology.

1358 (7) This section expires December 31, 2016.

1359 Section 30. Construction Industry Workforce Task Force.—

1360 (1) The Construction Industry Workforce Task Force is  
1361 created within the University of Florida M.E. Rinker, Sr.,  
1362 School of Construction Management. The goals of the task force  
1363 are to:

1364 (a) Address the critical shortage of individuals trained in  
1365 building construction and inspection.

1366 (b) Develop a consensus path for training the next  
1367 generation of construction workers in the state.

1368 (c) Determine the causes for the current shortage of a  
1369 trained construction industry work force and address the impact  
1370 of the shortages on the recovery of the real estate market.

1371 (d) Review current methods and resources available for  
1372 construction training.

1373 (e) Review the state of construction training available in



554986

1374 K-12 schools.  
1375 (f) Address training issues relating to building code  
1376 inspectors to increase the number of qualified inspectors.  
1377 (2) The task force shall consist of 23 members. Except as  
1378 otherwise specified, each member shall be chosen by the  
1379 association that he or she represents, as follows:  
1380 (a) A member of the House of Representatives appointed by  
1381 the Speaker of the House of Representatives.  
1382 (b) A member of the Senate appointed by the President of  
1383 the Senate.  
1384 (c) A member representing the Florida Associated General  
1385 Contractors Council.  
1386 (d) A member representing the Associated Builders and  
1387 Contractors of Florida.  
1388 (e) A member representing the Florida Home Builders  
1389 Association.  
1390 (f) A member representing the Florida Fire Sprinkler  
1391 Association.  
1392 (g) A member representing the Florida Roofing, Sheet Metal  
1393 and Air Conditioning Contractors Association.  
1394 (h) A member representing the Florida Refrigeration and Air  
1395 Conditioning Contractors Association.  
1396 (i) A member representing the Florida Plumbing-Heating-  
1397 Cooling Contractors Association.  
1398 (j) A member representing the Florida Swimming Pool  
1399 Association.  
1400 (k) A member representing the National Utility Contractors  
1401 Association of Florida.  
1402 (l) A member representing the Florida Concrete and Products



554986

1403 Association.  
1404 (m) A member representing the Alarm Association of Florida.  
1405 (n) A member representing the Independent Electrical  
1406 Contractors.  
1407 (o) A member representing the Florida Building and  
1408 Construction Trades Council within the Florida AFL-CIO.  
1409 (p) A member representing the Building Officials  
1410 Association of Florida.  
1411 (q) A member representing the Asphalt Contractors  
1412 Association of Florida.  
1413 (r) A member representing the American Fire Sprinkler  
1414 Association-Florida Chapter.  
1415 (s) The chair of the Florida Building Commission.  
1416 (t) A member representing the Florida Carpenters Regional  
1417 Council.  
1418 (u) A member representing the National Electrical  
1419 Contractors Association-Florida Chapter.  
1420 (v) A member representing the Florida Electrical Workers  
1421 Association.  
1422 (3) The task force shall elect a chair from among its  
1423 members.  
1424 (4) The University of Florida M.E. Rinker, Sr., School of  
1425 Construction Management shall provide such assistance as is  
1426 reasonably necessary to assist the task force in carrying out  
1427 its responsibilities.  
1428 (5) The task force shall meet as often as necessary to  
1429 fulfill its responsibilities but not fewer than three times. The  
1430 first meeting must be held no later than September 1, 2016.  
1431 Meetings may be conducted by conference call, teleconferencing,



554986

1432 or similar technology.

1433 (6) The task force shall submit a final report to the  
1434 Governor, the President of the Senate, and the Speaker of the  
1435 House of Representatives by February 1, 2017.

1436 (7) The Department of Business and Professional Regulation  
1437 shall provide \$50,000 from funds available for the Florida  
1438 Building Code Compliance and Mitigation Program under s.  
1439 553.841(5), Florida Statutes, to the University of Florida M.E.  
1440 Rinker, Sr., School of Construction Management for purposes of  
1441 implementing this section.

1442 (8) This section expires July 1, 2017.

1443 Section 31. The Florida Building Commission shall define  
1444 the term "fire separation distance" in Chapter 2, Definitions,  
1445 of the Florida Building Code, 5th Edition (2014) Residential, as  
1446 follows:

1447  
1448 "FIRE SEPARATION DISTANCE. The distance measured from the  
1449 building face to one of the following:

- 1450 1. To the closest interior lot line;  
1451 2. To the centerline of a street, an alley, or a public way;  
1452 3. To an imaginary line between two buildings on the lot; or  
1453 4. To an imaginary line between two buildings when the exterior  
1454 wall of one building is located on a zero lot line.

1455  
1456 The distance must be measured at a right angle from the face of  
1457 the wall."

1458 Section 32. The Florida Building Commission shall amend the  
1459 Florida Building Code, 5th Edition (2014) Residential, to allow  
1460 openings and roof overhang projections on the exterior wall of a



554986

1461 building located on a zero lot line, when the building exterior  
1462 wall is separated from an adjacent building exterior wall by a  
1463 distance of 6 feet or more and the roof overhang projection is  
1464 separated from an adjacent building projection by a distance of  
1465 4 feet or more, with 1-hour fire-resistive construction on the  
1466 underside of the overhang required, unless the separation  
1467 between projections is 6 feet or more.

1468 Section 33. The Florida Building Commission shall adopt  
1469 into the Florida Building Code, 5th Edition (2014) Energy  
1470 Conservation, the following:

1471  
1472 "Section 406 relating to the Alternative Performance Path,  
1473 Energy Rating Index of the 2015 International Energy  
1474 Conservation Code (IECC) may be used unmodified except as  
1475 follows for Table R406.4 as an option for demonstrating  
1476 compliance with the Florida Building Code, Energy Conservation.  
1477 TABLE R406.4 MAXIMUM ENERGY RATING INDEX shall reflect the  
1478 following energy rating index: for Climate Zone 1, an index of  
1479 58; for Climate Zone 2, an index of 58."

1480 Section 34. The Florida Building Commission shall adopt  
1481 into the Florida Building Code, 5th Edition (2014) Residential,  
1482 the following, which shall be effective on July 1, 2016:

1483  
1484 "Notwithstanding any other provision of code or law, the section  
1485 setting forth shower lining requirements will include the  
1486 following exceptions:

1487 Exceptions:

1488 1. Floor surfaces under showerheads provided for rinsing laid  
1489 directly on the ground.



554986

1490 2. Shower compartments where the finished shower drain is  
1491 depressed a minimum of 2 inches (51 mm) below the surrounding  
1492 finished floor on the first floor level and the shower recess is  
1493 poured integrally with the adjoining floor.”

1494 Section 35. The Florida Building Commission shall amend the  
1495 Florida Building Code, 5th Edition (2014) Residential, to  
1496 provide that the minimum fire separation distance for non-fire  
1497 resistant rated exterior walls shall be 3 feet or greater and  
1498 non-fire resistant rated projections shall have a minimum fire  
1499 separation distance of 3 feet or greater. Projections within 2  
1500 feet and less than 3 feet shall include a one-hour fire-  
1501 resistance rated on the underside. Projections less than 2 feet  
1502 are not permitted. Penetrations of the exterior wall within less  
1503 than 3 feet must comply with Dwelling Unit Rated Penetration.  
1504 Penetrations 3 feet or greater are not required to have a fire-  
1505 resistance rating. Openings in walls are unlimited with a fire  
1506 separation distance of 3 feet or greater.

1507 Section 36. Notwithstanding any law, rule, or regulation to  
1508 the contrary, a restaurant, cafeteria, or similar dining  
1509 facility, including an associated commercial kitchen, is  
1510 required to have sprinklers only if it has a fire area occupancy  
1511 load of 200 patrons or more.

1512 Section 37. This act shall take effect July 1, 2016.

1513  
1514 ===== T I T L E A M E N D M E N T =====

1515 And the title is amended as follows:

1516 Delete everything before the enacting clause  
1517 and insert:

1518 A bill to be entitled



554986

1519 An act relating to building codes; amending s.  
1520 468.609, F.S.; revising the certification examination  
1521 requirements for building code inspectors, plans  
1522 examiners, and building code administrators; requiring  
1523 the Florida Building Code Administrators and  
1524 Inspectors Board to provide for issuance of certain  
1525 provisional certificates; amending s. 489.103, F.S.;  
1526 providing an exemption for certain employees who make  
1527 minor repairs to existing electric water heaters and  
1528 to existing electric heating, venting, and air-  
1529 conditioning systems under specified circumstances;  
1530 providing that the exemption does not limit the  
1531 authority of a municipality or county to adopt or  
1532 enforce certain ordinances, rules, or regulations;  
1533 amending s. 489.105, F.S.; revising the definition of  
1534 the term "plumbing contractor"; amending s. 489.1401,  
1535 F.S.; revising legislative intent with respect to the  
1536 purpose of the Florida Homeowners' Construction  
1537 Recovery Fund; providing legislative intent that  
1538 Division II contractors set apart funds to participate  
1539 in the fund; amending s. 489.1402, F.S.; revising  
1540 definitions; amending s. 489.141, F.S.; authorizing  
1541 certain claimants to make a claim against the recovery  
1542 fund for certain contracts entered into before a  
1543 specified date; amending s. 489.1425, F.S.; revising a  
1544 notification provided by contractors to certain  
1545 residential property owners to state that payment from  
1546 the recovery fund is limited; amending s. 489.143,  
1547 F.S.; revising provisions concerning payments from the



554986

1548 recovery fund; specifying claim amounts for certain  
1549 contracts entered into before or after specified  
1550 dates; providing aggregate caps for payments; amending  
1551 s. 489.503, F.S.; exempting certain low-voltage  
1552 landscape lighting from licensed electrical contractor  
1553 installation requirements; amending s. 514.011, F.S.;  
1554 revising the definition of the term "private pool";  
1555 amending s. 514.0115, F.S.; prohibiting a portable  
1556 pool from being regulated as a public pool in certain  
1557 circumstances; amending s. 514.031, F.S.; providing  
1558 that a portable pool may not be used as a public pool  
1559 unless it is exempt under s. 514.0115, F.S.; amending  
1560 s. 515.27, F.S.; adding swimming pool alarms as a  
1561 safety feature that satisfies requirements for final  
1562 inspection and issuance of a certificate of  
1563 completion; amending s. 553.512, F.S.; revising the  
1564 membership of the Accessibility Advisory Council;  
1565 amending s. 553.721, F.S.; directing the Florida  
1566 Building Code Compliance and Mitigation Program to  
1567 fund, from existing resources, the recommendations  
1568 made by the Building Code System Uniform  
1569 Implementation Evaluation Workgroup; providing a  
1570 limitation; requiring that a specified amount of funds  
1571 from the surcharge be used to fund certain Florida  
1572 Fire Prevention Code informal interpretations;  
1573 requiring the State Fire Marshal to adopt specified  
1574 rules; amending s. 553.73, F.S.; requiring the  
1575 commission to update the Florida Building Code every 6  
1576 years; providing the commission may address additional





554986

1577 issues in the code; authorizing local boards created  
1578 to address specified issues to combine the appeals  
1579 boards to create a single, local board; authorizing  
1580 the local board to grant alternatives or modifications  
1581 through specified procedures; requiring at least one  
1582 member of a board to be a fire protection contractor,  
1583 a fire protection design professional, a fire  
1584 department operations professional, or a fire code  
1585 enforcement professional in order to meet a specified  
1586 quorum requirement; authorizing the appeal to a local  
1587 administrative board of specified decisions made by a  
1588 local fire official; specifying the decisions of the  
1589 local building official and the local fire official  
1590 which are subject to review; prohibiting an agency or  
1591 local government from requiring that existing  
1592 mechanical equipment located on or above the surface  
1593 of a roof be installed in compliance with the Florida  
1594 Building Code under certain circumstances; requiring  
1595 the Florida Building Code to require two fire service  
1596 access elevators in certain buildings; providing that  
1597 a 1-hour fire-rated fire service access elevator lobby  
1598 is not required in certain circumstances; requiring a  
1599 1-hour fire-related fire service access elevator lobby  
1600 in certain circumstances; amending s. 553.775, F.S.;  
1601 revising the membership of a panel that hears requests  
1602 to review decisions of local building officials;  
1603 amending s. 553.79, F.S.; providing that an applicant  
1604 that resubmits a building permit does not have to pay  
1605 application fees to a local enforcement agency under



1606 certain circumstances; providing that failure of a  
1607 plans reviewer or building code administrator to  
1608 provide a reason for denial or revocation of a  
1609 building permit must result in disciplinary action;  
1610 authorizing a building official to issue a permit for  
1611 the construction of the foundation or any other part  
1612 of a building or structure before the construction  
1613 documents for the whole building or structure have  
1614 been submitted; providing that the holder of such a  
1615 permit may begin building at the holder's own risk  
1616 with the building operation and without assurance that  
1617 a permit for the entire structure will be granted;  
1618 creating s. 553.7931, F.S.; defining the term  
1619 "applicable local governmental entity"; requiring the  
1620 owner, lessee, or occupant, or an authorized  
1621 representative thereof, of a property to register an  
1622 alarm system under certain circumstances; requiring a  
1623 contractor to provide written notice to an owner,  
1624 lessee, or occupant, or an authorized representative  
1625 thereof, that an obligation to register the alarm  
1626 system may exist; requiring alarm system companies to  
1627 provide written or verbal notice, in certain  
1628 circumstances, to an owner, lessee, or occupant, or an  
1629 authorized representative thereof, that an obligation  
1630 to register the alarm system may exist; providing that  
1631 a contractor or alarm system monitoring company is not  
1632 liable for specified fines and penalties; prohibiting  
1633 local governmental entities from requiring  
1634 notarization of an alarm system registration form;



554986

1635 providing for preemption; amending s. 553.80, F.S.;

1636 prohibiting a local enforcement agency from charging

1637 additional fees related to the recording of a

1638 contractor's license or workers' compensation

1639 insurance; amending s. 553.842, F.S.; providing that

1640 Underwriters Laboratories, LLC, and Intertek Testing

1641 Services NA, Inc., are approved evaluation entities;

1642 amending s. 553.844, F.S.; excluding work associated

1643 with the prevention of degradation of a residence from

1644 certain building permit requirements; deleting an

1645 obsolete provision providing for expiration of

1646 requirements for the adoption of certain mitigation

1647 techniques by the Florida Building Commission within

1648 the Florida Building Code for certain structures and

1649 revising the requirements; amending s. 553.883, F.S.;

1650 providing that a homeowner is not prohibited from

1651 using certain smoke alarms under certain

1652 circumstances; exempting certain devices from certain

1653 smoke alarm battery requirements; amending s. 553.908,

1654 F.S.; providing for the amendment of portions of the

1655 Florida Building Code, Energy Conservation, related to

1656 certain buildings and dwelling units after a specified

1657 date; delaying the effective date of certain portions

1658 of the Florida Building Code, Energy Conservation,

1659 related to blower door testing; providing for the

1660 amendment of portions of the Florida Building Code,

1661 Mechanical, related to air filtration rates for

1662 dwelling units after a specified date; amending s.

1663 553.993, F.S.; revising the definition of the term



554986

1664 "building energy-efficiency rating system" to require  
1665 that oversight is performed using evaluation materials  
1666 from certain identified entities; amending s. 633.202,  
1667 F.S.; requiring all new and existing high-rise  
1668 buildings to maintain a minimum radio signal strength  
1669 for fire department communications; providing a  
1670 transitory period for compliance; requiring existing  
1671 buildings and existing apartment buildings that are  
1672 not in compliance to initiate an application for an  
1673 appropriate permit by a specified date; requiring  
1674 areas of refuge as determined by the Florida Building  
1675 Code, Accessibility; amending s. 633.208, F.S.;  
1676 authorizing fire officials to consider certain systems  
1677 acceptable for identifying low-cost alternatives;  
1678 amending s. 633.336, F.S.; authorizing a licensed fire  
1679 protection contractor to subcontract for advanced  
1680 technical services under certain circumstances;  
1681 creating the Calder Sloan Swimming Pool Electrical-  
1682 Safety Task Force within the Florida Building  
1683 Commission; specifying the purpose of the task force;  
1684 requiring a report to the Governor and the Legislature  
1685 by a specified date; providing for membership;  
1686 requiring the Florida Building Commission to provide  
1687 staff, information, and other assistance to the task  
1688 force; providing that members of the task force serve  
1689 without compensation; authorizing the task force to  
1690 meet as often as necessary; providing for expiration  
1691 of the task force; creating the Construction Industry  
1692 Workforce Task Force within the University of Florida



554986

1693 M.E. Rinker, Sr., School of Construction Management;  
1694 specifying the goals of the task force; providing for  
1695 membership; requiring the University of Florida Rinker  
1696 School of Construction to provide assistance to the  
1697 task force; providing for meetings; requiring a report  
1698 to the Governor and Legislature by a specified date;  
1699 providing an appropriation from specified funds  
1700 available to the Department of Business and  
1701 Professional Regulation; providing for expiration of  
1702 the task force; requiring the Florida Building  
1703 Commission to amend the Florida Building Code to  
1704 define the term "fire separation distance," to specify  
1705 openings and roof overhang projection requirements, to  
1706 adopt a specific energy rating index as an option for  
1707 compliance, to provide for Climate Zone indices, to  
1708 provide exceptions to the shower lining requirements,  
1709 and to provide minimum fire separation distances;  
1710 requiring a restaurant, cafeteria, or similar dining  
1711 facility to have sprinklers only under specified  
1712 circumstances; providing an effective date.



626830

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
02/29/2016	.	
	.	
	.	
	.	

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The Committee on Fiscal Policy (Abruzzo) recommended the following:

1           **Senate Amendment to Amendment (554986) (with title**  
2 **amendment)**

3  
4           Before line 5  
5 insert:

6           Section 1. Section 377.705, Florida Statutes, is amended to  
7 read:

8           377.705 Solar Energy Center; development of solar energy  
9 standards.—

10           (1) SHORT TITLE.—This act shall be known and may be cited



626830

11 as the Solar Energy Standards Act of 1976.

12 (2) LEGISLATIVE FINDINGS AND INTENT.—

13 ~~(a) Because of increases in the cost of conventional fuel,~~  
14 ~~certain applications of solar energy are becoming competitive,~~  
15 ~~particularly when life-cycle costs are considered. It is the~~  
16 ~~intent of the Legislature in formulating a sound and balanced~~  
17 ~~energy policy for the state to encourage the development of an~~  
18 ~~alternative energy capability in the form of incident solar~~  
19 ~~energy.~~

20 ~~(b) Toward this purpose, the Legislature intends to provide~~  
21 ~~incentives for the production and sale of, and to set standards~~  
22 ~~for, solar energy systems. Such standards shall~~ It is the intent  
23 of the Florida Legislature to ensure that solar energy systems  
24 manufactured or sold within the state are effective and  
25 represent a high level of quality of materials, workmanship, and  
26 design.

27 (3) DEFINITIONS.—

28 (a) "Center" is defined as the Florida Solar Energy Center  
29 of the Board of Governors.

30 (b) "Solar energy systems" is defined as equipment which  
31 provides for the collection and use of incident solar energy for  
32 water heating, space heating or cooling, or other applications  
33 which normally require or would require a conventional source of  
34 energy such as petroleum products, natural gas, or electricity  
35 and which performs primarily with solar energy. In such other  
36 systems in which solar energy is used in a supplemental way,  
37 only those components which collect and transfer solar energy  
38 shall be included in this definition.

39 (c) "Recognized certifying entity" is any entity that



40 certifies equipment that collects and uses incident solar  
41 energy, pursuant to standards as established by the National  
42 Renewable Energy Laboratory.

43 (4) FLORIDA SOLAR ENERGY CENTER TO SET STANDARDS, REQUIRE  
44 DISCLOSURE, SET TESTING FEES.—

45 (a) The center shall develop and promulgate standards for  
46 solar energy systems manufactured or sold in this state not  
47 certified pursuant to National Renewable Energy Laboratory  
48 standards, based on the best currently available information and  
49 shall consult with scientists, engineers, or persons in research  
50 centers who are engaged in the construction of, experimentation  
51 with, and research of solar energy systems to properly identify  
52 the most reliable designs and types of solar energy systems.

53 (b) The center shall establish criteria for testing  
54 performance of solar energy systems not certified pursuant to  
55 National Renewable Energy Laboratory standards, and shall  
56 maintain the necessary capability for testing or evaluating  
57 performance of solar energy systems. The center may accept  
58 results of tests on solar energy systems made by other  
59 organizations, companies, or persons when such tests are  
60 conducted according to the criteria established by the center  
61 and when the testing entity has no vested interest in the  
62 manufacture, distribution or sale of solar energy systems.

63 (c) The center shall be entitled to receive a testing fee  
64 sufficient to cover the costs of such testing. All testing fees  
65 shall be transmitted by the center to the Chief Financial  
66 Officer to be deposited in the Solar Energy Center Testing Trust  
67 Fund, which is hereby created in the State Treasury, and  
68 disbursed for the payment of expenses incurred in testing solar





626830

69 energy systems.

70 (d) All solar energy systems manufactured or sold in the  
71 state must meet the standards established by the center or by a  
72 recognized certifying entity pursuant to National Renewable  
73 Energy Laboratory standards ~~and shall display accepted results~~  
74 ~~of approved performance tests in a manner prescribed by the~~  
75 ~~center.~~

76

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

78 And the title is amended as follows:

79 Between lines 1519 and 1520

80 insert:

81 377.705, F.S.; revising legislative intent; revising  
82 definitions; revising the solar energy systems to  
83 which specified standards apply; amending s.



744198

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/29/2016	.	
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The Committee on Fiscal Policy (Abruzzo) recommended the following:

1           **Senate Amendment to Amendment (554986) (with title**  
2 **amendment)**

3  
4           Delete lines 513 - 1220  
5 and insert:

6 temporary pool used exclusively for providing swimming lessons  
7 or related instruction in support of an established educational  
8 program sponsored or provided by a county school district and a  
9 temporary pool used in conjunction with a sanctioned national or  
10 international swimming or diving competition event not to exceed



744198

11 30 consecutive days of use.

12 Section 11. Subsection (3) of section 514.0115, Florida  
13 Statutes, is amended to read:

14 514.0115 Exemptions from supervision or regulation;  
15 variances.—

16 (3) A private pool used for instructional purposes in  
17 swimming may ~~shall~~ not be regulated as a public pool. A  
18 temporary pool used for instructional purposes or to further an  
19 approved educational program or used for a sanctioned national  
20 or international swimming or diving competition event, for a  
21 period of 30 consecutive days or less, may not be regulated as a  
22 public pool.

23 Section 12. Subsection (5) of section 514.031, Florida  
24 Statutes, is amended to read:

25 514.031 Permit necessary to operate public swimming pool.—

26 (5) An owner or operator of a public swimming pool,  
27 including, but not limited to, a spa, wading, or special purpose  
28 pool, to which admittance is obtained by membership for a fee  
29 shall post in a prominent location within the facility the most  
30 recent pool inspection report issued by the department  
31 pertaining to the health and safety conditions of such facility.  
32 The report shall be legible and readily accessible to members or  
33 potential members. The department shall adopt rules to enforce  
34 this subsection. A temporary ~~portable~~ pool may not be used as a  
35 public pool unless it is exempt under s. 514.0115.

36 Section 13. Section 515.27, Florida Statutes, is amended to  
37 read:

38 515.27 Residential swimming pool safety feature options;  
39 penalties.—



744198

40 (1) In order to pass final inspection and receive a  
41 certificate of completion, a residential swimming pool must meet  
42 at least one of the following requirements relating to pool  
43 safety features:

44 (a) The pool must be isolated from access to a home by an  
45 enclosure that meets the pool barrier requirements of s. 515.29;

46 (b) The pool must be equipped with an approved safety pool  
47 cover;

48 (c) All doors and windows providing direct access from the  
49 home to the pool must be equipped with an exit alarm that has a  
50 minimum sound pressure rating of 85 dB A at 10 feet; ~~or~~

51 (d) All doors providing direct access from the home to the  
52 pool must be equipped with a self-closing, self-latching device  
53 with a release mechanism placed no lower than 54 inches above  
54 the floor; or

55 (e) The pool must be equipped with a swimming pool alarm  
56 that, when placed in the pool, will sound upon detection of  
57 accidental or unauthorized entrance into the water. These pool  
58 alarms must meet and be independently certified to the ASTM  
59 Standard F 2208 "Standards Specification for Pool Alarms," which  
60 includes surface motion, pressure, sonar, laser, and infrared  
61 type alarms. For purposes of this paragraph, the term "swimming  
62 pool alarm" does not include a swimming protection alarm device  
63 designed for individual use, such as an alarm attached to a  
64 child that sounds when the child's movement exceeds a certain  
65 distance or the child becomes submerged in water.

66 (2) A person who fails to equip a new residential swimming  
67 pool with at least one pool safety feature as required in  
68 subsection (1) commits a misdemeanor of the second degree,



744198

69 punishable as provided in s. 775.082 or s. 775.083, except that  
70 no penalty shall be imposed if the person, within 45 days after  
71 arrest or issuance of a summons or a notice to appear, has  
72 equipped the pool with at least one safety feature as required  
73 in subsection (1) and has attended a drowning prevention  
74 education program established by s. 515.31. However, the  
75 requirement of attending a drowning prevention education program  
76 is waived if such program is not offered within 45 days after  
77 issuance of the citation.

78 Section 14. Subsection (2) of section 553.512, Florida  
79 Statutes, is amended to read:

80 553.512 Modifications and waivers; advisory council.—

81 (2) The Accessibility Advisory Council shall consist of the  
82 following seven members, who shall be knowledgeable in the area  
83 of accessibility for persons with disabilities. The Secretary of  
84 Business and Professional Regulation shall appoint the  
85 following: a representative from the Advocacy Center for Persons  
86 with Disabilities, Inc.; a representative from the Division of  
87 Blind Services; a representative from the Division of Vocational  
88 Rehabilitation; a representative from a statewide organization  
89 representing the physically handicapped; a representative from  
90 the hearing impaired; a representative from the Pensacola Pen  
91 Wheels Inc. Employ the Handicapped Council President, Florida  
92 Council of Handicapped Organizations; and a representative of  
93 the Paralyzed Veterans of America. The terms for the first three  
94 council members appointed subsequent to October 1, 1991, shall  
95 be for 4 years, the terms for the next two council members  
96 appointed shall be for 3 years, and the terms for the next two  
97 members shall be for 2 years. Thereafter, all council member



744198

98 appointments shall be for terms of 4 years. No council member  
99 shall serve more than two 4-year terms subsequent to October 1,  
100 1991. Any member of the council may be replaced by the secretary  
101 upon three unexcused absences. Upon application made in the form  
102 provided, an individual waiver or modification may be granted by  
103 the commission so long as such modification or waiver is not in  
104 conflict with more stringent standards provided in another  
105 chapter.

106 Section 15. Section 553.721, Florida Statutes, is amended  
107 to read:

108 553.721 Surcharge.—In order for the Department of Business  
109 and Professional Regulation to administer and carry out the  
110 purposes of this part and related activities, there is created a  
111 surcharge, to be assessed at the rate of 1.5 percent of the  
112 permit fees associated with enforcement of the Florida Building  
113 Code as defined by the uniform account criteria and specifically  
114 the uniform account code for building permits adopted for local  
115 government financial reporting pursuant to s. 218.32. The  
116 minimum amount collected on any permit issued shall be \$2. The  
117 unit of government responsible for collecting a permit fee  
118 pursuant to s. 125.56(4) or s. 166.201 shall collect the  
119 surcharge and electronically remit the funds collected to the  
120 department on a quarterly calendar basis for the preceding  
121 quarter and continuing each third month thereafter. The unit of  
122 government shall retain 10 percent of the surcharge collected to  
123 fund the participation of building departments in the national  
124 and state building code adoption processes and to provide  
125 education related to enforcement of the Florida Building Code.  
126 All funds remitted to the department pursuant to this section



744198

127 shall be deposited in the Professional Regulation Trust Fund.  
128 Funds collected from the surcharge shall be allocated to fund  
129 the Florida Building Commission and the Florida Building Code  
130 Compliance and Mitigation Program under s. 553.841. Funds  
131 allocated to the Florida Building Code Compliance and Mitigation  
132 Program shall be \$925,000 each fiscal year. The Florida Building  
133 Code Compliance and Mitigation Program shall fund the  
134 recommendations made by the Building Code System Uniform  
135 Implementation Evaluation Workgroup, dated April 8, 2013, from  
136 existing resources, not to exceed \$30,000 in the 2016-2017  
137 fiscal year. Funds collected from the surcharge shall also be  
138 used to fund Florida Fire Prevention Code informal  
139 interpretations managed by the State Fire Marshal and shall be  
140 limited to \$15,000 each fiscal year. The State Fire Marshal  
141 shall adopt rules to address the implementation and expenditure  
142 of the funds allocated to fund the Florida Fire Prevention Code  
143 informal interpretations under this section. The funds collected  
144 from the surcharge may not be used to fund research on  
145 techniques for mitigation of radon in existing buildings. Funds  
146 used by the department as well as funds to be transferred to the  
147 Department of Health and the State Fire Marshal shall be as  
148 prescribed in the annual General Appropriations Act. The  
149 department shall adopt rules governing the collection and  
150 remittance of surcharges pursuant to chapter 120.

151 Section 16. Subsections (11) and (15) of section 553.73,  
152 Florida Statutes, are amended, and subsection (19) is added to  
153 that section, to read:

154 553.73 Florida Building Code.—

155 (11) (a) In the event of a conflict between the Florida



744198

156 Building Code and the Florida Fire Prevention Code and the Life  
157 Safety Code as applied to a specific project, the conflict shall  
158 be resolved by agreement between the local building code  
159 enforcement official and the local fire code enforcement  
160 official in favor of the requirement of the code which offers  
161 the greatest degree of lifesafety or alternatives which would  
162 provide an equivalent degree of lifesafety and an equivalent  
163 method of construction. Local boards created to address issues  
164 arising under the Florida Building Code or the Florida Fire  
165 Prevention Code may combine their appeals boards to create a  
166 single, local board having jurisdiction over matters arising  
167 under either code or both codes. The combined local appeals  
168 board may grant alternatives or modifications through procedures  
169 outlined in NFPA 1, Section 1.4, but may not waive the  
170 requirements of the Florida Fire Prevention Code. To meet the  
171 quorum requirement for convening the combined local appeals  
172 board, at least one member of the board who is a fire protection  
173 contractor, a fire protection design professional, a fire  
174 department operations professional, or a fire code enforcement  
175 professional must be present.

176 (b) Any decision made by the local fire official regarding  
177 application, interpretation, or enforcement of the Florida Fire  
178 Prevention Code, by ~~and~~ the local building official regarding  
179 application, interpretation, or enforcement of the Florida  
180 Building Code, or the appropriate application of either code or  
181 both codes in the case of a conflict between the codes may be  
182 appealed to a local administrative board designated by the  
183 municipality, county, or special district having firesafety  
184 responsibilities. If the decision of the local fire official and





744198

185 the local building official is to apply the provisions of either  
186 the Florida Building Code or the Florida Fire Prevention Code  
187 and the Life Safety Code, the board may not alter the decision  
188 unless the board determines that the application of such code is  
189 not reasonable. If the decision of the local fire official and  
190 the local building official is to adopt an alternative to the  
191 codes, the local administrative board shall give due regard to  
192 the decision rendered by the local officials and may modify that  
193 decision if the administrative board adopts a better  
194 alternative, taking into consideration all relevant  
195 circumstances. In any case in which the local administrative  
196 board adopts alternatives to the decision rendered by the local  
197 fire official and the local building official, such alternatives  
198 shall provide an equivalent degree of lifesafety and an  
199 equivalent method of construction as the decision rendered by  
200 the local officials.

201 (c) If the local building official and the local fire  
202 official are unable to agree on a resolution of the conflict  
203 between the Florida Building Code and the Florida Fire  
204 Prevention Code and the Life Safety Code, the local  
205 administrative board shall resolve the conflict in favor of the  
206 code which offers the greatest degree of lifesafety or  
207 alternatives which would provide an equivalent degree of  
208 lifesafety and an equivalent method of construction.

209 (d) All decisions of the local administrative board ~~7~~ or, if  
210 none exists, ~~the decisions of~~ the local building official and  
211 the local fire official in regard to the application,  
212 enforcement, or interpretation of the Florida Fire Prevention  
213 Code, or conflicts between the Florida Fire Prevention Code and



744198

214 the Florida Building Code, are subject to review by a joint  
215 committee composed of members of the Florida Building Commission  
216 and the Fire Code Advisory Council. If the joint committee is  
217 unable to resolve conflicts between the codes as applied to a  
218 specific project, the matter shall be resolved pursuant to ~~the~~  
219 ~~provisions of~~ paragraph (1) (d). Decisions of the local  
220 administrative board related solely to the Florida Building Code  
221 are subject to review as set forth in s. 553.775.

222 (e) The local administrative board shall, to the greatest  
223 extent possible, be composed of members with expertise in  
224 building construction and firesafety standards.

225 (f) All decisions of the local building official and local  
226 fire official and all decisions of the administrative board  
227 shall be in writing and shall be binding upon a person but do  
228 not limit the authority of the State Fire Marshal or the Florida  
229 Building Commission pursuant to paragraph (1) (d) and ss. 633.104  
230 and 633.228. Decisions of general application shall be indexed  
231 by building and fire code sections and shall be available for  
232 inspection during normal business hours.

233 (15) An agency or local government may not require that  
234 existing mechanical equipment located on or above the surface of  
235 a roof be installed in compliance with the requirements of the  
236 Florida Building Code except during reroofing when the equipment  
237 is being replaced or moved ~~during reroofing~~ and is not in  
238 compliance with the provisions of the Florida Building Code  
239 relating to roof-mounted mechanical units.

240 (19) The Florida Building Code must require two fire  
241 service access elevators in all buildings with a height greater  
242 than 120 feet from the elevation of street-level access to the



744198

243 level of the highest occupiable floor. Any remaining elevators  
244 must be equipped for Phase I and Phase II emergency operations.  
245 If a fire service access elevator is required in a building, a  
246 1-hour fire-rated fire service access elevator lobby with direct  
247 access from the fire service access elevator is not required if  
248 the fire service access elevator opens into an exit access  
249 corridor, which cannot be less than 6 feet wide for its entire  
250 length, must have at least 150 square feet with the exception of  
251 door openings, and must have a minimum 1-hour fire rating with  
252 three-quarter-hour fire- and smoke-rated openings. During a fire  
253 event the fire service access elevator must be pressurized and  
254 floor-to-floor smoke control must be provided. However, if  
255 transient residential occupancies occur at floor levels more  
256 than 420 feet above the level of fire service access, a 1-hour  
257 fire-rated service access elevator lobby with direct access from  
258 the fire service access elevator is required.

259 Section 17. Paragraph (c) of subsection (3) of section  
260 553.775, Florida Statutes, is amended to read:

261 553.775 Interpretations.—

262 (3) The following procedures may be invoked regarding  
263 interpretations of the Florida Building Code or the Florida  
264 Accessibility Code for Building Construction:

265 (c) The commission shall review decisions of local building  
266 officials and local enforcement agencies regarding  
267 interpretations of the Florida Building Code or the Florida  
268 Accessibility Code for Building Construction after the local  
269 board of appeals has considered the decision, if such board  
270 exists, and if such appeals process is concluded within 25  
271 business days.



744198

272           1. The commission shall coordinate with the Building  
273 Officials Association of Florida, Inc., to designate a panel  
274 ~~panels~~ composed of seven ~~five~~ members to hear requests to review  
275 decisions of local building officials. Five ~~The~~ members must be  
276 licensed as building code administrators under part XII of  
277 chapter 468, one member must be licensed as an architect under  
278 chapter 481, and one member must be licensed as an engineer  
279 under chapter 471. Each member ~~and~~ must have experience  
280 interpreting or ~~and~~ enforcing provisions of the Florida Building  
281 Code and the Florida Accessibility Code for Building  
282 Construction.

283           2. Requests to review a decision of a local building  
284 official interpreting provisions of the Florida Building Code or  
285 the Florida Accessibility Code for Building Construction may be  
286 initiated by any substantially affected person, including an  
287 owner or builder subject to a decision of a local building  
288 official or an association of owners or builders having members  
289 who are subject to a decision of a local building official. In  
290 order to initiate review, the substantially affected person must  
291 file a petition with the commission. The commission shall adopt  
292 a form for the petition, which shall be published on the  
293 Building Code Information System. The form shall, at a minimum,  
294 require the following:

295           a. The name and address of the county or municipality in  
296 which provisions of the Florida Building Code or the Florida  
297 Accessibility Code for Building Construction are being  
298 interpreted.

299           b. The name and address of the local building official who  
300 has made the interpretation being appealed.



301 c. The name, address, and telephone number of the  
302 petitioner; the name, address, and telephone number of the  
303 petitioner's representative, if any; and an explanation of how  
304 the petitioner's substantial interests are being affected by the  
305 local interpretation of the Florida Building Code or the Florida  
306 Accessibility Code for Building Construction.

307 d. A statement of the provisions of the Florida Building  
308 Code or the Florida Accessibility Code for Building Construction  
309 which are being interpreted by the local building official.

310 e. A statement of the interpretation given to provisions of  
311 the Florida Building Code or the Florida Accessibility Code for  
312 Building Construction by the local building official and the  
313 manner in which the interpretation was rendered.

314 f. A statement of the interpretation that the petitioner  
315 contends should be given to the provisions of the Florida  
316 Building Code or the Florida Accessibility Code for Building  
317 Construction and a statement supporting the petitioner's  
318 interpretation.

319 g. Space for the local building official to respond in  
320 writing. The space shall, at a minimum, require the local  
321 building official to respond by providing a statement admitting  
322 or denying the statements contained in the petition and a  
323 statement of the interpretation of the provisions of the Florida  
324 Building Code or the Florida Accessibility Code for Building  
325 Construction which the local jurisdiction or the local building  
326 official contends is correct, including the basis for the  
327 interpretation.

328 3. The petitioner shall submit the petition to the local  
329 building official, who shall place the date of receipt on the



744198

330 petition. The local building official shall respond to the  
331 petition in accordance with the form and shall return the  
332 petition along with his or her response to the petitioner within  
333 5 days after receipt, exclusive of Saturdays, Sundays, and legal  
334 holidays. The petitioner may file the petition with the  
335 commission at any time after the local building official  
336 provides a response. If no response is provided by the local  
337 building official, the petitioner may file the petition with the  
338 commission 10 days after submission of the petition to the local  
339 building official and shall note that the local building  
340 official did not respond.

341 4. Upon receipt of a petition that meets the requirements  
342 of subparagraph 2., the commission shall immediately provide  
343 copies of the petition to the a panel, and the commission shall  
344 publish the petition, including any response submitted by the  
345 local building official, on the Building Code Information System  
346 in a manner that allows interested persons to address the issues  
347 by posting comments.

348 5. The panel shall conduct proceedings as necessary to  
349 resolve the issues; shall give due regard to the petitions, the  
350 response, and to comments posed on the Building Code Information  
351 System; and shall issue an interpretation regarding the  
352 provisions of the Florida Building Code or the Florida  
353 Accessibility Code for Building Construction within 21 days  
354 after the filing of the petition. The panel shall render a  
355 determination based upon the Florida Building Code or the  
356 Florida Accessibility Code for Building Construction or, if the  
357 code is ambiguous, the intent of the code. The panel's  
358 interpretation shall be provided to the commission, which shall



744198

359 publish the interpretation on the Building Code Information  
360 System and in the Florida Administrative Register. The  
361 interpretation shall be considered an interpretation entered by  
362 the commission, and shall be binding upon the parties and upon  
363 all jurisdictions subject to the Florida Building Code or the  
364 Florida Accessibility Code for Building Construction, unless it  
365 is superseded by a declaratory statement issued by the Florida  
366 Building Commission or by a final order entered after an appeal  
367 proceeding conducted in accordance with subparagraph 7.

368         6. It is the intent of the Legislature that review  
369 proceedings be completed within 21 days after the date that a  
370 petition seeking review is filed with the commission, and the  
371 time periods set forth in this paragraph may be waived only upon  
372 consent of all parties.

373         7. Any substantially affected person may appeal an  
374 interpretation rendered by the ~~a hearing officer~~ panel by filing  
375 a petition with the commission. Such appeals shall be initiated  
376 in accordance with chapter 120 and the uniform rules of  
377 procedure and must be filed within 30 days after publication of  
378 the interpretation on the Building Code Information System or in  
379 the Florida Administrative Register. Hearings shall be conducted  
380 pursuant to chapter 120 and the uniform rules of procedure.  
381 Decisions of the commission are subject to judicial review  
382 pursuant to s. 120.68. The final order of the commission is  
383 binding upon the parties and upon all jurisdictions subject to  
384 the Florida Building Code or the Florida Accessibility Code for  
385 Building Construction.

386         8. The burden of proof in any proceeding initiated in  
387 accordance with subparagraph 7. is on the party who initiated



744198

388 the appeal.

389         9. In any review proceeding initiated in accordance with  
390 this paragraph, including any proceeding initiated in accordance  
391 with subparagraph 7., the fact that an owner or builder has  
392 proceeded with construction may not be grounds for determining  
393 an issue to be moot if the issue is one that is likely to arise  
394 in the future.

395

396 This paragraph provides the exclusive remedy for addressing  
397 requests to review local interpretations of the Florida Building  
398 Code or the Florida Accessibility Code for Building Construction  
399 and appeals from review proceedings.

400         Section 18. Subsection(1) and (6) of section 553.79,  
401 Florida Statutes, are amended to read:

402         553.79 Permits; applications; issuance; inspections.—

403         (1) After the effective date of the Florida Building Code  
404 adopted as herein provided, it shall be unlawful for any person,  
405 firm, corporation, or governmental entity to construct, erect,  
406 alter, modify, repair, or demolish any building within this  
407 state without first obtaining a permit therefor from the  
408 appropriate enforcing agency or from such persons as may, by  
409 appropriate resolution or regulation of the authorized state or  
410 local enforcing agency, be delegated authority to issue such  
411 permits, upon the payment of such reasonable fees adopted by the  
412 enforcing agency. The enforcing agency is empowered to revoke  
413 any such permit upon a determination by the agency that the  
414 construction, erection, alteration, modification, repair, or  
415 demolition of the building for which the permit was issued is in  
416 violation of, or not in conformity with, the provisions of the





417 Florida Building Code. Whenever a permit required under this  
418 section is denied or revoked because the plan, or the  
419 construction, erection, alteration, modification, repair, or  
420 demolition of a building, is found by the local enforcing agency  
421 to be not in compliance with the Florida Building Code, the  
422 local enforcing agency shall identify the specific plan or  
423 project features that do not comply with the applicable codes,  
424 identify the specific code chapters and sections upon which the  
425 finding is based, and provide this information to the permit  
426 applicant. Failure to provide a reason, based on compliance with  
427 the Florida Building Code or local ordinance, for a denial,  
428 revocation, or modification request to the applicant shall  
429 subject the plans reviewer or building code administrator  
430 responsible with creating the denial, revocation, or  
431 modification request to disciplinary action against his or her  
432 license pursuant to s. 468.621(1)(j). Installation, replacement,  
433 removal, or metering of any load management control device is  
434 exempt from and shall not be subject to the permit process and  
435 fees otherwise required by this section.

436 (6) A permit may not be issued for any building  
437 construction, erection, alteration, modification, repair, or  
438 addition unless the applicant for such permit complies with the  
439 requirements for plan review established by the Florida Building  
440 Commission within the Florida Building Code. However, the code  
441 shall set standards and criteria to authorize preliminary  
442 construction before completion of all building plans review,  
443 including, but not limited to, special permits for the  
444 foundation only, and such standards shall take effect concurrent  
445 with the first effective date of the Florida Building Code.



744198

446 After submittal of the appropriate construction documents, the  
447 building official may issue a permit for the construction of  
448 foundations or any other part of a building or structure before  
449 the construction documents for the whole building or structure  
450 have been submitted. If such a permit is issued, the  
451 permitholder may proceed at its own risk and without assurance  
452 that a permit for the entire structure will be granted.  
453 Corrections may be required to meet the requirements of the  
454 technical codes.

455 Section 19. Section 553.7931, Florida Statutes, is created  
456 to read:

457 553.7931 Alarm system registrations.-

458 (1) As used in this section, the term "applicable local  
459 governmental entity" means the local enforcement agency or local  
460 law enforcement agency responsible for the administration of  
461 alarm system registration in a jurisdiction.

462 (a) The owner, lessee, or occupant, or an authorized  
463 representative thereof, of a property must register their alarm  
464 system with the applicable local governmental entity if such  
465 entity requires registration of an alarm system.

466 (b)1. A contractor, as defined in s. 553.793, or an alarm  
467 system monitoring company that installs a monitored alarm system  
468 shall provide written notice, on paper or electronically, to an  
469 owner, a lessee, or an occupant, or an authorized representative  
470 thereof, before activation or reactivation of an alarm system,  
471 that an obligation to register the alarm system with an  
472 applicable local governmental entity may exist.

473 2. An alarm system monitoring company that activates an  
474 alarm system installed by an owner, a lessee, or an occupant, or



744198

475 an authorized representative thereof, shall provide verbal  
476 notice to the owner, lessee, or occupant, or authorized  
477 representative thereof, before activation or reactivation of an  
478 alarm system, that an obligation to register the alarm system  
479 with an applicable local governmental entity may exist.

480 (2) A contractor or an alarm system monitoring company  
481 shall not be liable for civil penalties and fines assessed or  
482 imposed by the applicable local governmental entity for failure  
483 to register an alarm system, dispatch to an unregistered user,  
484 or for excessive false alarms not attributed to alarm system  
485 monitoring company error or improper installation by the  
486 contractor or alarm system monitoring company.

487 (3) A municipality, county, district, or other local  
488 governmental entity may not require that an alarm system  
489 registration form be notarized before an alarm system may be  
490 registered.

491 (4) A municipality, county, district, or other local  
492 governmental entity may not adopt or maintain in effect any  
493 ordinance or rule regarding alarm system registration that is  
494 inconsistent with this section.

495 Section 20. Paragraph (d) is added to subsection (7) of  
496 section 553.80, Florida Statutes, to read:

497 553.80 Enforcement.—

498 (7) The governing bodies of local governments may provide a  
499 schedule of reasonable fees, as authorized by s. 125.56(2) or s.  
500 166.222 and this section, for enforcing this part. These fees,  
501 and any fines or investment earnings related to the fees, shall  
502 be used solely for carrying out the local government's  
503 responsibilities in enforcing the Florida Building Code. When



744198

504 providing a schedule of reasonable fees, the total estimated  
505 annual revenue derived from fees, and the fines and investment  
506 earnings related to the fees, may not exceed the total estimated  
507 annual costs of allowable activities. Any unexpended balances  
508 shall be carried forward to future years for allowable  
509 activities or shall be refunded at the discretion of the local  
510 government. The basis for a fee structure for allowable  
511 activities shall relate to the level of service provided by the  
512 local government and shall include consideration for refunding  
513 fees due to reduced services based on services provided as  
514 prescribed by s. 553.791, but not provided by the local  
515 government. Fees charged shall be consistently applied.

516 (d) The local enforcement agency may not require the  
517 payment of any additional fees, charges, or expenses associated  
518 with:

- 519 1. Providing proof of licensure pursuant to chapter 489;  
520 2. Recording or filing a license issued pursuant to this  
521 chapter; or  
522 3. Providing, recording, or filing evidence of workers'  
523 compensation insurance coverage as required by chapter 440.

524 Section 21. Paragraph (a) of subsection (8) of section  
525 553.842, Florida Statutes, is amended to read:

526 553.842 Product evaluation and approval.—

527 (8) The commission may adopt rules to approve the following  
528 types of entities that produce information on which product  
529 approvals are based. All of the following entities, including  
530 engineers and architects, must comply with a nationally  
531 recognized standard demonstrating independence or no conflict of  
532 interest:



744198

533 (a) Evaluation entities approved pursuant to this  
534 paragraph. The commission shall specifically approve the  
535 National Evaluation Service, the International Association of  
536 Plumbing and Mechanical Officials Evaluation Service, the  
537 International Code Council Evaluation Services, Underwriters  
538 Laboratories, LLC, Intertek Testing Services NA, Inc., and the  
539 Miami-Dade County Building Code Compliance Office Product  
540 Control Division. Architects and engineers licensed in this  
541 state are also approved to conduct product evaluations as  
542 provided in subsection (5).

543 Section 22. Paragraph (c) of subsection (3) of section  
544 553.844, Florida Statutes, is amended and subsection (4) of that  
545 section is revived, readopted, and amended to read:

546 553.844 Windstorm loss mitigation; requirements for roofs  
547 and opening protection.—

548 (3) The Legislature finds that the integration of these  
549 specifically identified mitigation measures is critical to  
550 addressing the serious problem facing the state from damage  
551 caused by windstorms and that delay in the adoption and  
552 implementation constitutes a threat to the health, safety, and  
553 welfare of the state. Accordingly, the Florida Building  
554 Commission shall develop and adopt these measures by October 1,  
555 2007, by rule separate from the Florida Building Code, which  
556 take immediate effect and shall incorporate such requirements  
557 into the next edition of the Florida Building Code. Such rules  
558 shall require or otherwise clarify that for site-built, single-  
559 family residential structures:

560 (c) Any activity requiring a building permit, not including  
561 work associated with the prevention of degradation of the



744198

562 residence, that is applied for on or after July 1, 2008, and for  
563 which the estimated cost is \$50,000 or more, must include  
564 provision of opening protections as required within the Florida  
565 Building Code for new construction for a building that is  
566 located in the wind-borne debris region as defined in s. 1609.2  
567 of the International Building Code (2006) and that has an  
568 insured value of \$750,000 or more, or, if the building is  
569 uninsured or for which documentation of insured value is not  
570 presented, has a just valuation for the structure for purposes  
571 of ad valorem taxation of \$750,000 or more.

572 (4) Notwithstanding the provisions of this section, exposed  
573 mechanical equipment or appliances fastened to a roof or  
574 installed on the ground in compliance with the code using rated  
575 stands, platforms, curbs, slabs, walls, or other means are  
576 deemed to comply with the wind resistance requirements of the  
577 2007 Florida Building Code, as amended. Further support or  
578 enclosure of such mechanical equipment or appliances is not  
579 required by a state or local official having authority to  
580 enforce the Florida Building Code. ~~This subsection expires on~~  
581 ~~the effective date of the 2013 Florida Building Code.~~

582 Section 23. Section 553.883, Florida Statutes, is amended  
583 to read:

584 553.883 Smoke alarms in one-family and two-family dwellings  
585 and townhomes.—One-family and two-family dwellings and townhomes  
586 undergoing a repair, or a level 1 alteration as defined in the  
587 Florida Building Code, may use smoke alarms powered by 10-year  
588 nonremovable, nonreplaceable batteries in lieu of retrofitting  
589 such dwelling with smoke alarms powered by the dwelling's  
590 electrical system. ~~Effective January 1, 2015,~~ A battery-powered



744198

591 smoke alarm that is newly installed or replaces an existing  
592 battery-powered smoke alarm as a result of a level 1 alteration,  
593 must be powered by a nonremovable, nonreplaceable battery that  
594 powers the alarm for at least 10 years. The battery requirements  
595 of this section do not apply to a fire alarm, smoke detector,  
596 smoke alarm, or ancillary component that is electronically  
597 connected as a part of a centrally monitored or supervised alarm  
598 system; that uses a low-power radio frequency wireless  
599 communication signal; or that contains multiple sensors, such as  
600 a smoke alarm combined with a carbon monoxide alarm or other  
601 multi-sensor devices, and is approved and listed by a nationally  
602 recognized testing laboratory.

603 Section 24. Section 553.908, Florida Statutes, is amended  
604 to read:

605 553.908 Inspection.—Before construction or renovation is  
606 completed, the local enforcement agency shall inspect buildings  
607 for compliance with the standards of this part. Notwithstanding  
608 any other provision of the code or law, effective July 1, 2016,  
609 section R402.4.1.2 of the Florida Building Code, 5th Edition  
610 (2014) Energy Conservation, which became effective on June 30,  
611 2015, shall increase the building's or dwelling unit's maximum  
612 tested air leakage measure from "not exceeding 5 air changes per  
613 hour" to "not exceeding 7 air changes per hour" in Climate Zones  
614 1 and 2. The mandatory blower door testing for residential  
615 buildings or dwelling units as contained in section R402.1.2 of  
616 the Florida Building Code, 5th Edition (2014) Energy  
617 Conservation, may not take effect until July 1, 2016, and does  
618 not apply to construction permitted before July 1, 2017.  
619 Additionally, section M401.2 of the Florida Building Code, 5th



744198

620 Edition (2014) Mechanical, which became effective on June 30,  
621 2015, shall decrease the air filtration rate in a dwelling unit  
622 from "less than 5" to "less than 3" air changes per hour when  
623 tested with a blower door at a pressure of 0.2-inch water column  
624 (50 Pascals) in accordance with Section R402.4.1.2 of the  
625 Florida Building Code, 5th Edition (2014) Energy Conservation.

626 Section 25. Subsection (3) of section 553.993, Florida  
627 Statutes, is amended to read:

628 553.993 Definitions.—For purposes of this part:

629 (3) "Building energy-efficiency rating system" means a  
630 whole building energy evaluation system that provides a reliable  
631 and scientifically based analysis of a building's energy  
632 consumption or energy features and allows a comparison to  
633 similar building types in similar climate zones where  
634 applicable. Specifically, the rating system shall use standard  
635 calculations, formulas, and scoring methods; be applicable  
636 nationally; compare a building to a clearly defined and  
637 researched baseline or benchmark; require qualified  
638 professionals to conduct the rating or assessment; and provide a  
639 labeling and recognition program with specific criteria or  
640 levels. Residential program benchmarks for new construction must  
641 be consistent with national building standards. Residential  
642 building program benchmarks for existing construction must be  
643 consistent with national home energy rating standards. The  
644 building energy-efficiency rating system shall require at least  
645 one level of oversight performed by an organized and balanced  
646 group of professionals with subject matter expertise in energy  
647 efficiency, energy rating, and evaluation methods established by  
648 the Residential Energy Services Network, the Commercial Energy





744198

649 Services Network, the Building Performance Institute, the  
650 American Society of Heating, Refrigerating and Air-Conditioning  
651 Engineers, or the

652  
653 ===== T I T L E A M E N D M E N T =====

654 And the title is amended as follows:

655 Delete lines 1555 - 1652

656 and insert:

657 amending s. 514.0115, F.S.; prohibiting a temporary  
658 pool from being regulated as a public pool in certain  
659 circumstances; amending s. 514.031, F.S.; providing  
660 that a temporary pool may not be used as a public pool  
661 unless it is exempt under s. 514.0115, F.S.; amending  
662 s. 515.27, F.S.; adding swimming pool alarms as a  
663 safety feature that satisfies requirements for final  
664 inspection and issuance of a certificate of  
665 completion; amending s. 553.512, F.S.; revising the  
666 membership of the Accessibility Advisory Council;  
667 amending s. 553.721, F.S.; directing the Florida  
668 Building Code Compliance and Mitigation Program to  
669 fund, from existing resources, the recommendations  
670 made by the Building Code System Uniform  
671 Implementation Evaluation Workgroup; providing a  
672 limitation; requiring that a specified amount of funds  
673 from the surcharge be used to fund certain Florida  
674 Fire Prevention Code informal interpretations;  
675 requiring the State Fire Marshal to adopt specified  
676 rules; amending s. 553.73, F.S.; authorizing local  
677 boards created to address specified issues to combine



744198

678 the appeals boards to create a single, local board;  
679 authorizing the local board to grant alternatives or  
680 modifications through specified procedures; requiring  
681 at least one member of a board to be a fire protection  
682 contractor, a fire protection design professional, a  
683 fire department operations professional, or a fire  
684 code enforcement professional in order to meet a  
685 specified quorum requirement; authorizing the appeal  
686 to a local administrative board of specified decisions  
687 made by a local fire official; specifying the  
688 decisions of the local building official and the local  
689 fire official which are subject to review; prohibiting  
690 an agency or local government from requiring that  
691 existing mechanical equipment located on or above the  
692 surface of a roof be installed in compliance with the  
693 Florida Building Code under certain circumstances;  
694 requiring the Florida Building Code to require two  
695 fire service access elevators in certain buildings;  
696 providing that a 1-hour fire-rated fire service access  
697 elevator lobby is not required in certain  
698 circumstances; requiring a 1-hour fire-related fire  
699 service access elevator lobby in certain  
700 circumstances; amending s. 553.775, F.S.; revising the  
701 membership of a panel that hears requests to review  
702 decisions of local building officials; amending s.  
703 553.79, F.S.; providing that failure of a plans  
704 reviewer or building code administrator to provide a  
705 reason for denial or revocation of a building permit  
706 must result in disciplinary action; authorizing a



744198

707 building official to issue a permit for the  
708 construction of the foundation or any other part of a  
709 building or structure before the construction  
710 documents for the whole building or structure have  
711 been submitted; providing that the holder of such a  
712 permit may begin building at the holder's own risk  
713 with the building operation and without assurance that  
714 a permit for the entire structure will be granted;  
715 creating s. 553.7931, F.S.; defining the term  
716 "applicable local governmental entity"; requiring the  
717 owner, lessee, or occupant, or an authorized  
718 representative thereof, of a property to register an  
719 alarm system under certain circumstances; requiring a  
720 contractor to provide written notice to an owner,  
721 lessee, or occupant, or an authorized representative  
722 thereof, that an obligation to register the alarm  
723 system may exist; requiring alarm system monitoring  
724 companies to provide written or verbal notice, in  
725 certain circumstances, to an owner, lessee, or  
726 occupant, or an authorized representative thereof,  
727 that an obligation to register the alarm system may  
728 exist; providing that a contractor or alarm system  
729 monitoring company is not liable for specified fines  
730 and penalties; prohibiting local governmental entities  
731 from requiring notarization of an alarm system  
732 registration form; providing for preemption; amending  
733 s. 553.80, F.S.; prohibiting a local enforcement  
734 agency from charging additional fees related to the  
735 recording of a contractor's license or workers'



744198

736 compensation insurance; amending s. 553.842, F.S.;

737 providing that Underwriters Laboratories, LLC, and

738 Intertek Testing Services NA, Inc., are approved

739 evaluation entities; amending s. 553.844, F.S.;

740 excluding work associated with the prevention of

741 degradation of a residence from certain building

742 permit requirements; deleting an obsolete provision

743 providing for expiration of requirements for the

744 adoption of certain mitigation techniques by the

745 Florida Building Commission within the Florida

746 Building Code for certain structures and revising the

747 requirements; amending s. 553.883, F.S.; exempting

748 certain devices from certain

By the Committee on Community Affairs; and Senator Hutson

578-02878-16

2016704c1

1 A bill to be entitled  
 2 An act relating to building codes; amending s.  
 3 468.609, F.S.; revising the certification examination  
 4 requirements for building code inspectors, plans  
 5 examiners, and building code administrators;  
 6 authorizing a local jurisdiction to allow an  
 7 individual who possesses a specified certification to  
 8 be a residential building code inspector or plans  
 9 examiner within the jurisdiction; requiring, rather  
 10 than authorizing, the Florida Building Code  
 11 Administrators and Inspectors Board to provide for  
 12 issuance of certain provisional certificates;  
 13 conforming a cross-reference; amending ss. 468.627,  
 14 471.0195, 481.215, and 481.313, F.S.; requiring a  
 15 licensee or certificateholder to undergo code-related  
 16 training as part of his or her continuing education  
 17 courses; amending s. 489.103, F.S.; providing an  
 18 exemption for certain employees who make minor repairs  
 19 to existing electric water heaters and to existing  
 20 electric heating, venting, and air-conditioning  
 21 systems under specified circumstances; amending s.  
 22 489.105, F.S.; revising the definition of the term  
 23 "plumbing contractor"; amending s. 489.115, F.S.;  
 24 requiring a certificateholder or registrant to undergo  
 25 code-related training as part of his or her continuing  
 26 education requirements; amending s. 489.1401, F.S.;  
 27 revising legislative intent with respect to the  
 28 purpose of the Florida Homeowners' Construction  
 29 Recovery Fund; providing legislative intent that  
 30 Division II contractors set apart funds to participate  
 31 in the fund; amending s. 489.1402, F.S.; revising  
 32 definitions; amending s. 489.141, F.S.; authorizing

Page 1 of 55

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578-02878-16

2016704c1

33 certain claimants to make a claim against the recovery  
 34 fund for certain contracts entered into before a  
 35 specified date; amending s. 489.1425, F.S.; revising a  
 36 notification provided by contractors to certain  
 37 residential property owners to state that payment from  
 38 the recovery fund is limited; amending s. 489.143,  
 39 F.S.; revising provisions concerning payments from the  
 40 recovery fund; specifying claim amounts for certain  
 41 contracts entered into before or after specified  
 42 dates; providing aggregate caps for payments; amending  
 43 s. 489.503, F.S.; exempting certain low-voltage  
 44 landscape lighting from licensed electrical contractor  
 45 installation requirements; amending s. 489.517, F.S.;  
 46 requiring a certificateholder or registrant to undergo  
 47 code-related training as part of his or her continuing  
 48 education requirements; amending s. 514.011, F.S.;  
 49 revising the definition of the term "private pool";  
 50 amending s. 514.0115, F.S.; prohibiting a portable  
 51 pool from being regulated as a public pool in certain  
 52 circumstances; amending s. 514.031, F.S.; providing  
 53 that a portable pool may not be used as a public pool  
 54 unless it is exempt under s. 514.0115, F.S.; amending  
 55 s. 553.512, F.S.; revising the membership of the  
 56 Accessibility Advisory Council; amending s. 553.721,  
 57 F.S.; directing the Florida Building Code Compliance  
 58 and Mitigation Program to fund, from existing  
 59 resources, the recommendations made by the Building  
 60 Code System Uniform Implementation Evaluation  
 61 Workgroup; providing a limitation; requiring that a

Page 2 of 55

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578-02878-16

2016704c1

62 specified amount of funds from the surcharge be used  
 63 to fund certain Florida Fire Prevention Code informal  
 64 interpretations; requiring the State Fire Marshal to  
 65 adopt specified rules; amending s. 553.73, F.S.;  
 66 authorizing local boards created to address specified  
 67 issues to combine the appeals boards to create a  
 68 single, local board; authorizing the local board to  
 69 grant alternatives or modifications through specified  
 70 procedures; requiring at least one member of a board  
 71 to be a fire protection contractor, a fire protection  
 72 design professional, a fire department operations  
 73 professional, or a fire code enforcement professional  
 74 in order to meet a specified quorum requirement;  
 75 authorizing the appeal to a local administrative board  
 76 of specified decisions made by a local fire official;  
 77 specifying the decisions of the local building  
 78 official and the local fire official which are subject  
 79 to review; prohibiting the Florida Building Code from  
 80 requiring more than one fire access elevator in  
 81 certain buildings; prohibiting a 1-hour fire-rated  
 82 fire service access elevator lobby from being required  
 83 in certain circumstances; requiring a 1-hour fire-  
 84 related fire service access elevator lobby in certain  
 85 circumstances; providing that the requirement for a  
 86 second fire service access elevator is not considered  
 87 a part of the Florida Building Code; amending s.  
 88 553.775, F.S.; revising the membership of a panel that  
 89 hears requests to review decisions of local building  
 90 officials; amending s. 553.79, F.S.; authorizing a

Page 3 of 55

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578-02878-16

2016704c1

91 building official to issue a permit for the  
 92 construction of the foundation or any other part of a  
 93 building or structure before the construction  
 94 documents for the whole building or structure have  
 95 been submitted; providing that the holder of such  
 96 permit shall begin building at the holder's own risk  
 97 and without assurance that a permit for the entire  
 98 structure will be granted; prohibiting a municipality  
 99 from denying certain development permit applications  
 100 under certain circumstances; amending s. 553.80, F.S.;  
 101 prohibiting a local enforcement agency from charging  
 102 additional fees related to proof or recording of a  
 103 contractor's license or workers' compensation  
 104 insurance; amending s. 553.841, F.S.; authorizing,  
 105 rather than requiring, the Department of Business and  
 106 Professional Regulation to maintain, update, develop,  
 107 or cause to be developed code-related training and  
 108 education; deleting provisions related to the  
 109 development of advanced courses with respect to the  
 110 Florida Building Code Compliance and Mitigation  
 111 Program and the accreditation of courses related to  
 112 the Florida Building Code; amending s. 553.842, F.S.;  
 113 providing that Underwriters Laboratories, Inc., is an  
 114 approved evaluation entity; reviving, readopting, and  
 115 amending s. 553.844, F.S.; deleting an obsolete  
 116 provision; amending s. 553.883, F.S.; exempting  
 117 certain devices from certain smoke alarm battery  
 118 requirements; amending s. 553.908, F.S.; providing  
 119 that certain provisions of the Florida Building Code

Page 4 of 55

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578-02878-16

2016704c1

120 or laws relating to air sealing and insulation cease  
 121 to be effective on a specified date; providing for  
 122 application of a specified section of the Florida  
 123 Building Code (2010) in lieu of the later version of  
 124 the code; prohibiting certain governmental entities  
 125 from requiring certain HVAC type tests in specific  
 126 buildings; authorizing such testing if a certain code  
 127 is voluntarily used; amending s. 633.202, F.S.;  
 128 requiring all new and existing high-rise buildings to  
 129 maintain a minimum radio signal strength for fire  
 130 department communications; providing a transitory  
 131 period for compliance; requiring existing buildings  
 132 and existing apartment buildings that are not in  
 133 compliance to initiate an application for an  
 134 appropriate permit by a specified date; requiring  
 135 areas of refuge to be required as determined by the  
 136 Florida Accessibility Code for Building Construction;  
 137 amending s. 633.206, F.S.; providing that certain  
 138 provisions may be applied to existing assisted living  
 139 facilities notwithstanding the edition of the codes  
 140 applied at the time of construction; amending s.  
 141 633.208, F.S.; authorizing fire officials to consider  
 142 certain systems as acceptable systems when identifying  
 143 low-cost alternatives; amending s. 633.336, F.S.;  
 144 authorizing a licensed fire protection contractor to  
 145 subcontract for advanced technical services under  
 146 certain circumstances; requiring the Florida Building  
 147 Commission to adopt a specified definition of the term  
 148 "fire separation distance" in the Florida Building

Page 5 of 55

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578-02878-16

2016704c1

149 Code; requiring the commission to amend the Florida  
 150 Building Code to allow specified openings and roof  
 151 overhang projections in certain circumstances;  
 152 creating the Construction Industry Workforce Task  
 153 Force within the University of Florida M.E. Rinker,  
 154 Sr. School of Construction Management; specifying the  
 155 goals of the task force; providing for membership;  
 156 requiring the University of Florida M.E. Rinker, Sr.  
 157 School of Construction Management to provide  
 158 assistance to the task force; providing for meetings;  
 159 requiring a report to the Governor and Legislature by  
 160 a specified date; providing an appropriation from  
 161 specified funds available to the Department of  
 162 Business and Professional Regulation; providing for  
 163 expiration of the task force; requiring a restaurant,  
 164 a cafeteria, or a similar dining facility, including  
 165 an associated commercial kitchen, to have a specified  
 166 fire area occupancy load; creating the Calder Sloan  
 167 Swimming Pool Electrical-Safety Task Force within the  
 168 Florida Building Commission; specifying the purpose of  
 169 the task force; requiring a report to the Governor and  
 170 the Legislature by a specified date; providing for  
 171 membership; requiring the Florida Building Commission  
 172 to provide staff, information, and other assistance to  
 173 the task force; providing that members of the task  
 174 force serve without compensation; authorizing the task  
 175 force to meet as often as necessary; providing for  
 176 future repeal of the task force; directing the Florida  
 177 Building Commission to adopt a specific energy rating

Page 6 of 55

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578-02878-16

2016704c1

178 index as an option for code compliance; specifying  
179 Climate Zone indices; providing an effective date.

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

182  
183 Section 1. Subsection (2) of section 468.609, Florida  
184 Statutes, is amended, present subsections (4) through (10) of  
185 that section are redesignated as subsections (5) through (11),  
186 respectively, a new subsection (3) is added to that section, and  
187 present subsections (3), (4), and (7) of that section are  
188 amended, to read:

189 468.609 Administration of this part; standards for  
190 certification; additional categories of certification.-

191 (2) A person may take the examination for certification as  
192 a building code inspector or plans examiner pursuant to this  
193 part if the person:

194 (a) Is at least 18 years of age.

195 (b) Is of good moral character.

196 (c) Meets eligibility requirements according to one of the  
197 following criteria:

198 1. Demonstrates 5 years' combined experience in the field  
199 of construction or a related field, building code inspection, or  
200 plans review corresponding to the certification category sought;

201 2. Demonstrates a combination of postsecondary education in  
202 the field of construction or a related field and experience  
203 which totals 4 years, with at least 1 year of such total being  
204 experience in construction, building code inspection, or plans  
205 review;

206 3. Demonstrates a combination of technical education in the

578-02878-16

2016704c1

207 field of construction or a related field and experience which  
208 totals 4 years, with at least 1 year of such total being  
209 experience in construction, building code inspection, or plans  
210 review;

211 4. Currently holds a standard certificate ~~as~~ issued by the  
212 board, or a firesafety ~~fire-safety~~ inspector license issued  
213 pursuant to chapter 633, has a minimum of 3 ~~5~~ years' verifiable  
214 full-time experience in inspection or plan review, and has  
215 satisfactorily completed ~~completes~~ a building code inspector or  
216 plans examiner training program that provides at least 100  
217 hours, but not more of not less than 200 hours, of cross-  
218 training in the certification category sought. The board shall  
219 establish by rule criteria for the development and  
220 implementation of the training programs. The board shall accept  
221 all classroom training offered by an approved provider if the  
222 content substantially meets the intent of the classroom  
223 component of the training program; ~~or~~

224 5. Demonstrates a combination of the completion of an  
225 approved training program in the field of building code  
226 inspection or plan review and a minimum of 2 years' experience  
227 in the field of building code inspection, plan review, fire code  
228 inspections and fire plans review of new buildings as a  
229 firesafety inspector certified under s. 633.216, or  
230 construction. The approved training portion of this requirement  
231 must ~~shall~~ include proof of satisfactory completion of a  
232 training program that provides at least 200 hours, but not more  
233 of not less than 300 hours, of cross-training that which is  
234 approved by the board in the chosen category of building code  
235 inspection or plan review in the certification category sought



578-02878-16

2016704c1

236 with at least not less than 20 hours, but not more than 30  
 237 hours, of instruction in state laws, rules, and ethics relating  
 238 to professional standards of practice, duties, and  
 239 responsibilities of a certificateholder. The board shall  
 240 coordinate with the Building Officials Association of Florida,  
 241 Inc., to establish by rule the development and implementation of  
 242 the training program. However, the board shall accept all  
 243 classroom training offered by an approved provider if the  
 244 content substantially meets the intent of the classroom  
 245 component of the training program; or

246 6. Currently holds a standard certificate issued by the  
 247 board or a firesafety inspector license issued pursuant to  
 248 chapter 633 and:

249 a. Has at least 5 years' verifiable full-time experience as  
 250 an inspector or a plans examiner in a standard certification  
 251 category currently held or has a minimum of 5 years' verifiable  
 252 full-time experience as a firesafety inspector licensed pursuant  
 253 to chapter 633.

254 b. Has satisfactorily completed a building code inspector  
 255 or plans examiner classroom training course or program that  
 256 provides at least 200 hours, but not more than 300 hours, in the  
 257 certification category sought, except for one-family and two-  
 258 family dwelling training programs, which are required to provide  
 259 at least 500 hours, but not more than 800 hours, of training as  
 260 prescribed by the board. The board shall establish by rule  
 261 criteria for the development and implementation of classroom  
 262 training courses and programs in each certification category.

263 (3) Notwithstanding any law to the contrary, a local  
 264 jurisdiction may allow an individual who possesses a residential

578-02878-16

2016704c1

265 certification issued by the International Code Council to be a  
 266 residential building code inspector or plans examiner within the  
 267 jurisdiction.

268 (4)-(3) A person may take the examination for certification  
 269 as a building code administrator pursuant to this part if the  
 270 person:

271 (a) Is at least 18 years of age.

272 (b) Is of good moral character.

273 (c) Meets eligibility requirements according to one of the  
 274 following criteria:

275 1. Demonstrates 10 years' combined experience as an  
 276 architect, engineer, plans examiner, building code inspector,  
 277 registered or certified contractor, or construction  
 278 superintendent, with at least 5 years of such experience in  
 279 supervisory positions; or

280 2. Demonstrates a combination of postsecondary education in  
 281 the field of construction or related field, no more than 5 years  
 282 of which may be applied, and experience as an architect,  
 283 engineer, plans examiner, building code inspector, registered or  
 284 certified contractor, or construction superintendent which  
 285 totals 10 years, with at least 5 years of such total being  
 286 experience in supervisory positions. In addition, the applicant  
 287 must have completed training consisting of at least 20 hours,  
 288 but not more than 30 hours, of instruction in state laws, rules,  
 289 and ethics relating to the professional standards of practice,  
 290 duties, and responsibilities of a certificateholder.

291 (5)-(4) A ~~no~~ person may not engage in the duties of a  
 292 building code administrator, plans examiner, or building code  
 293 inspector pursuant to this part after October 1, 1993, unless

578-02878-16

2016704c1

294 such person possesses one of the following types of  
 295 certificates, currently valid, issued by the board attesting to  
 296 the person's qualifications to hold such position:

297 (a) A standard certificate.

298 (b) A limited certificate.

299 (c) A provisional certificate.

300 (d) A residential certificate pursuant to subsection (3).

301 (8) (a) (7) (a) The board shall ~~may~~ provide for the issuance  
 302 of provisional certificates valid for 1 year, as specified by  
 303 board rule, to any newly employed or promoted building code  
 304 inspector or plans examiner who meets the eligibility  
 305 requirements described in subsection (2) and any newly employed  
 306 or promoted building code administrator who meets the  
 307 eligibility requirements described in subsection (4) ~~(3)~~. The  
 308 provisional license may be renewed by the board for just cause;  
 309 however, a provisional license is not valid for a period longer  
 310 than 3 years.

311 (b) ~~A~~ No building code administrator, plans examiner, or  
 312 building code inspector may not have a provisional certificate  
 313 extended beyond the specified period by renewal or otherwise.

314 (c) The board shall ~~may~~ provide for appropriate levels of  
 315 provisional certificates and may issue these certificates with  
 316 such special conditions or requirements relating to the place of  
 317 employment of the person holding the certificate, the  
 318 supervision of such person on a consulting or advisory basis, or  
 319 other matters as the board may deem necessary to protect the  
 320 public safety and health.

321 (d) A newly employed or hired person may perform the duties  
 322 of a plans examiner or building code inspector for 120 days if a

Page 11 of 55

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578-02878-16

2016704c1

323 provisional certificate application has been submitted if such  
 324 person is under the direct supervision of a certified building  
 325 code administrator who holds a standard certification and who  
 326 has found such person qualified for a provisional certificate.  
 327 Direct supervision and the determination of qualifications may  
 328 also be provided by a building code administrator who holds a  
 329 limited or provisional certificate in a county having a  
 330 population of fewer than 75,000 and in a municipality located  
 331 within such county.

332 Section 2. Subsection (5) of section 468.627, Florida  
 333 Statutes, is amended to read:

334 468.627 Application; examination; renewal; fees.—

335 (5) The certificateholder shall provide proof, in a form  
 336 established by board rule, that the certificateholder has  
 337 completed at least 14 classroom hours of at least 50 minutes  
 338 each of continuing education courses during each biennium since  
 339 the issuance or renewal of the certificate, including code-  
 340 related training ~~the specialized or advanced coursework approved~~  
 341 ~~by the Florida Building Commission~~, as part of the building code  
 342 training program established pursuant to s. 553.841, appropriate  
 343 to the licensing category sought. A minimum of 3 of the required  
 344 14 classroom hours must be on state law, rules, and ethics  
 345 relating to professional standards of practice, duties, and  
 346 responsibilities of the certificateholder. The board shall by  
 347 rule establish criteria for approval of continuing education  
 348 courses and providers, and may by rule establish criteria for  
 349 accepting alternative nonclassroom continuing education on an  
 350 hour-for-hour basis.

351 Section 3. Section 471.0195, Florida Statutes, is amended

Page 12 of 55

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578-02878-16

2016704c1

352 to read:

353 471.0195 Florida Building Code training for engineers.—All  
 354 licensees actively participating in the design of engineering  
 355 works or systems in connection with buildings, structures, or  
 356 facilities and systems covered by the Florida Building Code  
 357 shall take continuing education courses and submit proof to the  
 358 board, at such times and in such manner as established by the  
 359 board by rule, that the licensee has completed any specialized  
 360 or code-related training advanced courses on any portion of the  
 361 Florida Building Code applicable to the licensee's area of  
 362 practice. The board shall record reported continuing education  
 363 courses on a system easily accessed by code enforcement  
 364 jurisdictions for evaluation when determining license status for  
 365 purposes of processing design documents. Local jurisdictions  
 366 shall be responsible for notifying the board when design  
 367 documents are submitted for building construction permits by  
 368 persons who are not in compliance with this section. The board  
 369 shall take appropriate action as provided by its rules when such  
 370 noncompliance is determined to exist.

371 Section 4. Subsection (5) of section 481.215, Florida  
 372 Statutes, is amended to read:

373 481.215 Renewal of license.—

374 (5) The board shall require, by rule adopted pursuant to  
 375 ss. 120.536(1) and 120.54, a specified number of hours in  
 376 specialized or code-related training advanced courses, approved  
 377 by the Florida Building Commission, on any portion of the  
 378 Florida Building Code, adopted pursuant to part IV of chapter  
 379 553, relating to the licensee's respective area of practice.

380 Section 5. Subsection (5) of section 481.313, Florida

Page 13 of 55

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578-02878-16

2016704c1

381 Statutes, is amended to read:

382 481.313 Renewal of license.—

383 (5) The board shall require, by rule adopted pursuant to  
 384 ss. 120.536(1) and 120.54, a specified number of hours in  
 385 specialized or code-related training advanced courses, approved  
 386 by the Florida Building Commission, on any portion of the  
 387 Florida Building Code, adopted pursuant to part IV of chapter  
 388 553, relating to the licensee's respective area of practice.

389 Section 6. Subsection (23) is added to section 489.103,  
 390 Florida Statutes, to read:

391 489.103 Exemptions.—This part does not apply to:

392 (23) An employee of an apartment community or apartment  
 393 community management company who makes minor repairs to existing  
 394 electric water heaters or to existing electric heating, venting,  
 395 and air-conditioning systems if:

396 (a) The employee:

- 397 1. Does not hold himself or herself or his or her employer  
 398 out to be licensed or qualified by a licensee.
- 399 2. Does not perform any acts, other than acts authorized by  
 400 this exemption, which constitute contracting.
- 401 3. Receives compensation from and is under the supervision  
 402 and control of an employer who deducts the FICA and withholding  
 403 tax and who provides workers' compensation, as prescribed by  
 404 law.
- 405 4. Holds a current certificate for apartment maintenance  
 406 technicians issued by the National Apartment Association and  
 407 accredited by the American National Standards Institute.  
 408 Requirements for obtaining such certificate must include at  
 409 least:

Page 14 of 55

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578-02878-16

2016704c1

- 410 a. One year of apartment or rental housing maintenance  
 411 experience.
- 412 b. Successful completion of at least 90 hours of courses or  
 413 online content that covers electrical maintenance and repair;  
 414 plumbing maintenance and repair; heating, venting, or air-  
 415 conditioning system maintenance and repair; appliance  
 416 maintenance and repair; and interior and exterior maintenance  
 417 and repair.
- 418 c. Completion of all examination requirements.
- 419 (b) The equipment:
- 420 1. Is already installed on the property owned by the  
 421 apartment community or managed by the apartment community  
 422 management company.
- 423 2. Is not being modified except to replace components  
 424 necessary to return the equipment to its original condition and  
 425 the partial disassembly associated with the replacement.
- 426 3. Is a type of equipment commonly installed in similar  
 427 locations.
- 428 4. Is repaired with new parts that are functionally  
 429 identical to the parts being replaced.
- 430 (c) An individual repair does not involve replacement parts  
 431 that cost more than \$1,000. An individual repair may not be so  
 432 extensive as to be a functional replacement of the electric  
 433 water heater or the existing electric heating, venting, or air-  
 434 conditioning system being repaired.
- 435 (d) The property owned by the apartment community or  
 436 managed by the apartment community management company includes  
 437 at least 100 apartments.
- 438 Section 7. Paragraph (m) of subsection (3) of section

Page 15 of 55

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578-02878-16

2016704c1

- 439 489.105, Florida Statutes, is amended to read:
- 440 489.105 Definitions.—As used in this part:
- 441 (3) "Contractor" means the person who is qualified for, and  
 442 is only responsible for, the project contracted for and means,  
 443 except as exempted in this part, the person who, for  
 444 compensation, undertakes to, submits a bid to, or does himself  
 445 or herself or by others construct, repair, alter, remodel, add  
 446 to, demolish, subtract from, or improve any building or  
 447 structure, including related improvements to real estate, for  
 448 others or for resale to others; and whose job scope is  
 449 substantially similar to the job scope described in one of the  
 450 paragraphs of this subsection. For the purposes of regulation  
 451 under this part, the term "demolish" applies only to demolition  
 452 of steel tanks more than 50 feet in height; towers more than 50  
 453 feet in height; other structures more than 50 feet in height;  
 454 and all buildings or residences. Contractors are subdivided into  
 455 two divisions, Division I, consisting of those contractors  
 456 defined in paragraphs (a)-(c), and Division II, consisting of  
 457 those contractors defined in paragraphs (d)-(q):
- 458 (m) "Plumbing contractor" means a contractor whose services  
 459 are unlimited in the plumbing trade and includes contracting  
 460 business consisting of the execution of contracts requiring the  
 461 experience, financial means, knowledge, and skill to install,  
 462 maintain, repair, alter, extend, or, if not prohibited by law,  
 463 design plumbing. A plumbing contractor may install, maintain,  
 464 repair, alter, extend, or, if not prohibited by law, design the  
 465 following without obtaining an additional local regulatory  
 466 license, certificate, or registration: sanitary drainage or  
 467 storm drainage facilities, water and sewer plants and

Page 16 of 55

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578-02878-16

2016704c1

468 substations, venting systems, public or private water supply  
 469 systems, septic tanks, drainage and supply wells, swimming pool  
 470 piping, irrigation systems, and solar heating water systems and  
 471 all appurtenances, apparatus, or equipment used in connection  
 472 therewith, including boilers and pressure process piping and  
 473 including the installation of water, natural gas, liquefied  
 474 petroleum gas and related venting, and storm and sanitary sewer  
 475 lines. The scope of work of the plumbing contractor also  
 476 includes the design, if not prohibited by law, and installation,  
 477 maintenance, repair, alteration, or extension of air-piping,  
 478 vacuum line piping, oxygen line piping, nitrous oxide piping,  
 479 and all related medical gas systems; fire line standpipes and  
 480 fire sprinklers if authorized by law; ink and chemical lines;  
 481 fuel oil and gasoline piping and tank and pump installation,  
 482 except bulk storage plants; and pneumatic control piping  
 483 systems, all in a manner that complies with all plans,  
 484 specifications, codes, laws, and regulations applicable. The  
 485 scope of work of the plumbing contractor applies to private  
 486 property and public property, including any excavation work  
 487 incidental thereto, and includes the work of the specialty  
 488 plumbing contractor. Such contractor shall subcontract, with a  
 489 qualified contractor in the field concerned, all other work  
 490 incidental to the work but which is specified as being the work  
 491 of a trade other than that of a plumbing contractor. This  
 492 definition does not limit the scope of work of any specialty  
 493 contractor certified pursuant to s. 489.113(6), and does not  
 494 require certification or registration under this part as a  
 495 category I liquefied petroleum gas dealer, LP gas installer, or  
 496 specialty installer who is licensed under chapter 527 or an ef

Page 17 of 55

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578-02878-16

2016704c1

497 ~~any~~ authorized employee of a public natural gas utility or of a  
 498 private natural gas utility regulated by the Public Service  
 499 Commission when disconnecting and reconnecting water lines in  
 500 the servicing or replacement of an existing water heater. A  
 501 plumbing contractor may perform drain cleaning and clearing and  
 502 install or repair rainwater catchment systems; however, a  
 503 mandatory licensing requirement is not established for the  
 504 performance of these specific services.

505 Section 8. Paragraph (b) of subsection (4) of section  
 506 489.115, Florida Statutes, is amended to read:

507 489.115 Certification and registration; endorsement;  
 508 reciprocity; renewals; continuing education.-

509 (4)

510 (b)1. Each certificateholder or registrant shall provide  
 511 proof, in a form established by rule of the board, that the  
 512 certificateholder or registrant has completed at least 14  
 513 classroom hours of at least 50 minutes each of continuing  
 514 education courses during each biennium since the issuance or  
 515 renewal of the certificate or registration. The board shall  
 516 establish by rule that a portion of the required 14 hours must  
 517 deal with the subject of workers' compensation, business  
 518 practices, workplace safety, and, for applicable licensure  
 519 categories, wind mitigation methodologies, and 1 hour of which  
 520 must deal with laws and rules. The board shall by rule establish  
 521 criteria for the approval of continuing education courses and  
 522 providers, including requirements relating to the content of  
 523 courses and standards for approval of providers, and may by rule  
 524 establish criteria for accepting alternative nonclassroom  
 525 continuing education on an hour-for-hour basis. The board shall

Page 18 of 55

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578-02878-16 2016704c1

526 prescribe by rule the continuing education, if any, which is  
 527 required during the first biennium of initial licensure. A  
 528 person who has been licensed for less than an entire biennium  
 529 must not be required to complete the full 14 hours of continuing  
 530 education.

531 2. In addition, the board may approve specialized  
 532 continuing education courses on compliance with the wind  
 533 resistance provisions for one and two family dwellings contained  
 534 in the Florida Building Code and any alternate methodologies for  
 535 providing such wind resistance which have been approved for use  
 536 by the Florida Building Commission. Division I  
 537 certificateholders or registrants who demonstrate proficiency  
 538 upon completion of such specialized courses may certify plans  
 539 and specifications for one and two family dwellings to be in  
 540 compliance with the code or alternate methodologies, as  
 541 appropriate, except for dwellings located in floodways or  
 542 coastal hazard areas as defined in ss. 60.3D and E of the  
 543 National Flood Insurance Program.

544 3. The board shall require, by rule adopted pursuant to ss.  
 545 120.536(1) and 120.54, a specified number of hours in  
 546 specialized or code-related training advanced module courses,  
 547 ~~approved by the Florida Building Commission,~~ on any portion of  
 548 the Florida Building Code, adopted pursuant to part IV of  
 549 chapter 553, relating to the contractor's respective discipline.

550 Section 9. Subsections (2) and (3) of section 489.1401,  
 551 Florida Statutes, are amended to read:

552 489.1401 Legislative intent.—

553 (2) It is the intent of the Legislature that the sole  
 554 purpose of the Florida Homeowners' Construction Recovery Fund is

578-02878-16 2016704c1

555 to compensate an ~~any~~ aggrieved claimant who contracted for the  
 556 construction or improvement of the homeowner's residence located  
 557 within this state and who has obtained a final judgment in a ~~any~~  
 558 court of competent jurisdiction, was awarded restitution by the  
 559 Construction Industry Licensing Board, or received an award in  
 560 arbitration against a licensee on grounds of financial  
 561 mismanagement or misconduct, abandoning a construction project,  
 562 or making a false statement with respect to a project. Such  
 563 grievance must arise ~~and arising~~ directly out of a ~~any~~  
 564 transaction conducted when the judgment debtor was licensed and  
 565 must involve an act performed ~~any of the activities~~ enumerated  
 566 under s. 489.129(1)(g), (j) or (k) ~~on the homeowner's residence.~~

567 (3) It is the intent of the Legislature that Division I and  
 568 Division II contractors set apart funds for the specific  
 569 objective of participating in the fund.

570 Section 10. Paragraphs (d), (i), (k), and (l) of subsection  
 571 (1) of section 489.1402, Florida Statutes, are amended to read:  
 572 489.1402 Homeowners' Construction Recovery Fund;  
 573 definitions.—

574 (1) The following definitions apply to ss. 489.140-489.144:

575 (d) "Contractor" means a Division I or Division II  
 576 contractor performing his or her respective services described  
 577 in s. 489.105(3) ~~s. 489.105(3)(a)-(c)~~.

578 (i) "Residence" means a single-family residence, an  
 579 individual residential condominium or cooperative unit, or a  
 580 residential building containing not more than two residential  
 581 units in which the owner contracting for the improvement is  
 582 residing or will reside 6 months or more each calendar year upon  
 583 completion of the improvement.

578-02878-16

2016704c1

584 (k) "Same transaction" means a contract, or a ~~any~~ series of  
 585 contracts, between a claimant and a contractor or qualified  
 586 business, when such contract or contracts involve the same  
 587 property or contiguous properties and are entered into either at  
 588 one time or serially.

589 (l) "Valid and current license," for the purpose of s.  
 590 489.141(2)(d), means a ~~any~~ license issued pursuant to this part  
 591 to a licensee, including a license in an active, inactive,  
 592 delinquent, or suspended status.

593 Section 11. Subsections (1) and (2) of section 489.141,  
 594 Florida Statutes, are amended to read:

595 489.141 Conditions for recovery; eligibility.-

596 (1) A ~~Any~~ claimant is eligible to seek recovery from the  
 597 recovery fund after making ~~having made~~ a claim and exhausting  
 598 the limits of any available bond, cash bond, surety, guarantee,  
 599 warranty, letter of credit, or policy of insurance if, provided  
 600 ~~that~~ each of the following conditions is satisfied:

601 (a) The claimant has received a final judgment in a court  
 602 of competent jurisdiction in this state or has received an award  
 603 in arbitration or the Construction Industry Licensing Board has  
 604 issued a final order directing the licensee to pay restitution  
 605 to the claimant. The board may waive this requirement if:

606 1. The claimant is unable to secure a final judgment  
 607 against the licensee due to the death of the licensee; or

608 2. The claimant has sought to have assets involving the  
 609 transaction that gave rise to the claim removed from the  
 610 bankruptcy proceedings so that the matter might be heard in a  
 611 court of competent jurisdiction in this state and, after due  
 612 diligence, the claimant is precluded by action of the bankruptcy

578-02878-16

2016704c1

613 court from securing a final judgment against the licensee.

614 (b) The judgment, award, or restitution is based upon a  
 615 violation of s. 489.129(1)(g), (j), or (k) or s. 713.35.

616 (c) The violation was committed by a licensee.

617 (d) The judgment, award, or restitution order specifies the  
 618 actual damages suffered as a consequence of such violation.

619 (e) The contract was executed and the violation occurred on  
 620 or after July 1, 1993, and provided that:

621 1. The claimant has caused to be issued a writ of execution  
 622 upon such judgment, and the officer executing the writ has made  
 623 a return showing that no personal or real property of the  
 624 judgment debtor or licensee liable to be levied upon in  
 625 satisfaction of the judgment can be found or that the amount  
 626 realized on the sale of the judgment debtor's or licensee's  
 627 property pursuant to such execution was insufficient to satisfy  
 628 the judgment;

629 2. If the claimant is unable to comply with subparagraph 1.  
 630 for a valid reason to be determined by the board, the claimant  
 631 has made all reasonable searches and inquiries to ascertain  
 632 whether the judgment debtor or licensee is possessed of real or  
 633 personal property or other assets subject to being sold or  
 634 applied in satisfaction of the judgment and by his or her search  
 635 has discovered no property or assets or has discovered property  
 636 and assets and has taken all necessary action and proceedings  
 637 for the application thereof to the judgment but the amount  
 638 thereby realized was insufficient to satisfy the judgment; and

639 3. The claimant has made a diligent attempt, as defined by  
 640 board rule, to collect the restitution awarded by the board.

641 (f) A claim for recovery is made within 1 year after the

578-02878-16

2016704c1

642 conclusion of any civil, criminal, or administrative action or  
643 award in arbitration based on the act. This paragraph applies to  
644 any claim filed with the board after October 1, 1998.

645 (g) Any amounts recovered by the claimant from the judgment  
646 debtor or licensee, or from any other source, have been applied  
647 to the damages awarded by the court or the amount of restitution  
648 ordered by the board.

649 (h) The claimant is not a person who is precluded by this  
650 act from making a claim for recovery.

651 (2) A claimant is not qualified to make a claim for  
652 recovery from the recovery fund, if:

653 (a) The claimant is the spouse of the judgment debtor or  
654 licensee or a personal representative of such spouse;

655 (b) The claimant is a licensee who acted as the contractor  
656 in the transaction that ~~which~~ is the subject of the claim;

657 (c) The claim is based upon a construction contract in  
658 which the licensee was acting with respect to the property owned  
659 or controlled by the licensee;

660 (d) The claim is based upon a construction contract in  
661 which the contractor did not hold a valid and current license at  
662 the time of the construction contract;

663 (e) The claimant was associated in a business relationship  
664 with the licensee other than the contract at issue; or

665 ~~(f) The claimant has suffered damages as the result of~~  
666 ~~making improper payments to a contractor as defined in part I of~~  
667 ~~chapter 713; or~~

668 ~~(f)(g) The claimant had entered into a contract has~~  
669 ~~contracted with a licensee to perform a scope of work described~~  
670 ~~in s. 489.105(3)(d)-(g) before July 1, 2016 s. 489.105(3)(d)-~~

578-02878-16

2016704c1

671 ~~(p)~~.

672 Section 12. Subsection (1) of section 489.1425, Florida  
673 Statutes, is amended to read:

674 489.1425 Duty of contractor to notify residential property  
675 owner of recovery fund.—

676 (1) Each ~~Any~~ agreement or contract for repair, restoration,  
677 improvement, or construction to residential real property must  
678 contain a written statement explaining the consumer's rights  
679 under the recovery fund, except where the value of all labor and  
680 materials does not exceed \$2,500. The written statement must be  
681 substantially in the following form:

682  
683 FLORIDA HOMEOWNERS' CONSTRUCTION  
684 RECOVERY FUND

685  
686 PAYMENT, UP TO A LIMITED AMOUNT, MAY BE AVAILABLE FROM THE  
687 FLORIDA HOMEOWNERS' CONSTRUCTION RECOVERY FUND IF YOU LOSE MONEY  
688 ON A PROJECT PERFORMED UNDER CONTRACT, WHERE THE LOSS RESULTS  
689 FROM SPECIFIED VIOLATIONS OF FLORIDA LAW BY A LICENSED  
690 CONTRACTOR. FOR INFORMATION ABOUT THE RECOVERY FUND AND FILING A  
691 CLAIM, CONTACT THE FLORIDA CONSTRUCTION INDUSTRY LICENSING BOARD  
692 AT THE FOLLOWING TELEPHONE NUMBER AND ADDRESS:

693  
694 The statement must ~~shall~~ be immediately followed by the board's  
695 address and telephone number as established by board rule.

696 Section 13. Section 489.143, Florida Statutes, is amended  
697 to read:

698 489.143 Payment from the fund.—

699 (1) The fund shall be disbursed as provided in s. 489.141



578-02878-16

2016704c1

700 on a final order of the board.

701 (2) ~~A~~ Any claimant who meets all of the conditions  
 702 prescribed in s. 489.141 may apply to the board to cause payment  
 703 to be made to a claimant from the recovery fund in an amount  
 704 equal to the judgment, award, or restitution order or \$25,000,  
 705 whichever is less, or an amount equal to the unsatisfied portion  
 706 of such person's judgment, award, or restitution order, but only  
 707 to the extent and amount of actual damages suffered by the  
 708 claimant, and only up to the maximum payment allowed for each  
 709 respective Division I and Division II claim. Payment from the  
 710 fund for other costs related to or pursuant to civil proceedings  
 711 such as postjudgment interest, ~~attorney~~ attorney's fees, court  
 712 costs, medical damages, and punitive damages is prohibited. The  
 713 recovery fund is not obligated to pay a ~~any~~ judgment, an award,  
 714 or a restitution order, or any portion thereof, which is not  
 715 expressly based on one of the grounds for recovery set forth in  
 716 s. 489.141.

717 (3) Beginning January 1, 2005, for each Division I contract  
 718 entered into after July 1, 2004, payment from the recovery fund  
 719 is shall be subject to a \$50,000 maximum payment for each  
 720 Division I claim. Beginning January 1, 2017, for each Division  
 721 II contract entered into on or after July 1, 2016, payment from  
 722 the recovery fund is subject to a \$15,000 maximum payment for  
 723 each Division II claim.

724 ~~(4)(3)~~ Upon receipt by a claimant under subsection (2) of  
 725 payment from the recovery fund, the claimant shall assign his or  
 726 her additional right, title, and interest in the judgment,  
 727 award, or restitution order, to the extent of such payment, to  
 728 the board, and thereupon the board shall be subrogated to the

Page 25 of 55

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578-02878-16

2016704c1

729 right, title, and interest of the claimant; and any amount  
 730 subsequently recovered on the judgment, award, or restitution  
 731 order, to the extent of the right, title, and interest of the  
 732 board therein, shall be for the purpose of reimbursing the  
 733 recovery fund.

734 ~~(5)(4)~~ Payments for claims arising out of the same  
 735 transaction are shall be limited, in the aggregate, to the  
 736 lesser of the judgment, award, or restitution order or the  
 737 maximum payment allowed for a Division I or Division II claim,  
 738 regardless of the number of claimants involved in the  
 739 transaction.

740 ~~(6)(5)~~ For contracts entered into before July 1, 2004,  
 741 payments for claims against any one licensee may shall not  
 742 exceed, in the aggregate, \$100,000 annually, up to a total  
 743 aggregate of \$250,000. For any claim approved by the board which  
 744 is in excess of the annual cap, the amount in excess of \$100,000  
 745 up to the total aggregate cap of \$250,000 is eligible for  
 746 payment in the next and succeeding fiscal years, but only after  
 747 all claims for the then-current calendar year have been paid.  
 748 Payments may not exceed the aggregate annual or per claimant  
 749 limits under law. Beginning January 1, 2005, for each Division I  
 750 contract entered into after July 1, 2004, payment from the  
 751 recovery fund is subject only to a total aggregate cap of  
 752 \$500,000 for each Division I licensee. Beginning January 1,  
 753 2017, for each Division II contract entered into on or after  
 754 July 1, 2016, payment from the recovery fund is subject only to  
 755 a total aggregate cap of \$150,000 for each Division II licensee.

756 ~~(7)(6)~~ Claims shall be paid in the order filed, up to the  
 757 aggregate limits for each transaction and licensee and to the

Page 26 of 55

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578-02878-16 2016704c1

758 limits of the amount appropriated to pay claims against the fund  
 759 ~~for the fiscal year in which the claims were filed. Payments may~~  
 760 ~~not exceed the total aggregate cap per license or per claimant~~  
 761 limits under this section.

762 ~~(8)(7)~~ If the annual appropriation is exhausted with claims  
 763 pending, such claims shall be carried forward to the next fiscal  
 764 year. Any moneys in excess of pending claims remaining in the  
 765 recovery fund at the end of the fiscal year shall be paid as  
 766 provided in s. 468.631.

767 ~~(9)(8)~~ Upon the payment of any amount from the recovery  
 768 fund in settlement of a claim in satisfaction of a judgment,  
 769 award, or restitution order against a licensee as described in  
 770 s. 489.141, the license of such licensee shall be automatically  
 771 suspended, without further administrative action, upon the date  
 772 of payment from the fund. The license of such licensee ~~may shall~~  
 773 not be reinstated until he or she has repaid in full, plus  
 774 interest, the amount paid from the fund. A discharge of  
 775 bankruptcy does not relieve a person from the penalties and  
 776 disabilities provided in this section.

777 ~~(10)(9)~~ A ~~Any~~ firm, a corporation, a partnership, or an  
 778 association, or a ~~any~~ person acting in his or her individual  
 779 capacity, who aids, abets, solicits, or conspires with another  
 780 ~~any~~ person to knowingly present or cause to be presented a ~~any~~  
 781 false or fraudulent claim for the payment of a loss under this  
 782 act ~~commits is guilty of~~ a third-degree felony, punishable as  
 783 provided in s. 775.082 or s. 775.084 and by a fine of up to not  
 784 ~~exceeding~~ \$30,000, unless the value of the fraud exceeds that  
 785 amount, \$30,000 in which event the fine may not exceed double  
 786 the value of the fraud.

Page 27 of 55

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578-02878-16 2016704c1

787 ~~(11)(10)~~ Each payment ~~All payments~~ and disbursement  
 788 ~~disbursements~~ from the recovery fund shall be made by the Chief  
 789 Financial Officer upon a voucher signed by the secretary of the  
 790 department or the secretary's designee.

791 Section 14. Subsection (24) is added to section 489.503,  
 792 Florida Statutes, to read:

793 489.503 Exemptions.—This part does not apply to:

794 (24) A person who installs low-voltage landscape lighting  
 795 that contains a factory-installed electrical cord with plug  
 796 which does not require installation, wiring, or other  
 797 modification to the electrical wiring of a structure.

798 Section 15. Subsection (6) of section 489.517, Florida  
 799 Statutes, is amended to read:

800 489.517 Renewal of certificate or registration; continuing  
 801 education.—

802 (6) The board shall require, by rule adopted pursuant to  
 803 ss. 120.536(1) and 120.54, a specialized number of hours in  
 804 specialized or code-related training advanced module courses,  
 805 ~~approved by the Florida Building Commission,~~ on any portion of  
 806 the Florida Building Code, adopted pursuant to part IV of  
 807 chapter 553, relating to the contractor's respective discipline.

808 Section 16. Subsection (3) of section 514.011, Florida  
 809 Statutes, is amended to read:

810 514.011 Definitions.—As used in this chapter:

811 (3) "Private pool" means a facility used only by an  
 812 individual, family, or living unit members and their guests  
 813 which does not serve any type of cooperative housing or joint  
 814 tenancy of five or more living units. For purposes of the  
 815 exemptions provided under s. 514.0115, the term includes a

Page 28 of 55

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578-02878-16

2016704c1

816 portable pool used exclusively for providing swimming lessons or  
 817 related instruction in support of an established educational  
 818 program sponsored or provided by a county school district.

819 Section 17. Subsection (3) of section 514.0115, Florida  
 820 Statutes, is amended to read:

821 514.0115 Exemptions from supervision or regulation;  
 822 variances.—

823 (3) A private pool used for instructional purposes in  
 824 swimming ~~may shall~~ not be regulated as a public pool. A portable  
 825 pool used for instructional purposes or to further an approved  
 826 educational program may not be regulated as a public pool.

827 Section 18. Subsection (5) of section 514.031, Florida  
 828 Statutes, is amended to read:

829 514.031 Permit necessary to operate public swimming pool.—

830 (5) An owner or operator of a public swimming pool,  
 831 including, but not limited to, a spa, wading, or special purpose  
 832 pool, to which admittance is obtained by membership for a fee  
 833 shall post in a prominent location within the facility the most  
 834 recent pool inspection report issued by the department  
 835 pertaining to the health and safety conditions of such facility.  
 836 The report shall be legible and readily accessible to members or  
 837 potential members. The department shall adopt rules to enforce  
 838 this subsection. A portable pool may not be used as a public  
 839 pool unless it is exempt under s. 514.0115.

840 Section 19. Subsection (2) of section 553.512, Florida  
 841 Statutes, is amended to read:

842 553.512 Modifications and waivers; advisory council.—

843 (2) The Accessibility Advisory Council shall consist of the  
 844 following seven members, who shall be knowledgeable in the area

578-02878-16

2016704c1

845 of accessibility for persons with disabilities. The Secretary of  
 846 Business and Professional Regulation shall appoint the  
 847 following: a representative from the Advocacy Center for Persons  
 848 with Disabilities, Inc.; a representative from the Division of  
 849 Blind Services; a representative from the Division of Vocational  
 850 Rehabilitation; a representative from a statewide organization  
 851 representing the physically handicapped; a representative from  
 852 the hearing impaired; a representative from the Pensacola Pen  
 853 Wheels, Inc., Employ the Handicapped Council President, Florida  
 854 Council of Handicapped Organizations; and a representative of  
 855 the Paralyzed Veterans of America. The terms for the first three  
 856 council members appointed subsequent to October 1, 1991, shall  
 857 be for 4 years, the terms for the next two council members  
 858 appointed shall be for 3 years, and the terms for the next two  
 859 members shall be for 2 years. Thereafter, all council member  
 860 appointments shall be for terms of 4 years. No council member  
 861 shall serve more than two 4-year terms subsequent to October 1,  
 862 1991. Any member of the council may be replaced by the secretary  
 863 upon three unexcused absences. Upon application made in the form  
 864 provided, an individual waiver or modification may be granted by  
 865 the commission so long as such modification or waiver is not in  
 866 conflict with more stringent standards provided in another  
 867 chapter.

868 Section 20. Section 553.721, Florida Statutes, is amended  
 869 to read:

870 553.721 Surcharge.—In order for the Department of Business  
 871 and Professional Regulation to administer and carry out the  
 872 purposes of this part and related activities, there is created a  
 873 surcharge, to be assessed at the rate of 1.5 percent of the

578-02878-16 2016704c1

874 permit fees associated with enforcement of the Florida Building  
 875 Code as defined by the uniform account criteria and specifically  
 876 the uniform account code for building permits adopted for local  
 877 government financial reporting pursuant to s. 218.32. The  
 878 minimum amount collected on any permit issued shall be \$2. The  
 879 unit of government responsible for collecting a permit fee  
 880 pursuant to s. 125.56(4) or s. 166.201 shall collect the  
 881 surcharge and electronically remit the funds collected to the  
 882 department on a quarterly calendar basis for the preceding  
 883 quarter and continuing each third month thereafter. The unit of  
 884 government shall retain 10 percent of the surcharge collected to  
 885 fund the participation of building departments in the national  
 886 and state building code adoption processes and to provide  
 887 education related to enforcement of the Florida Building Code.  
 888 All funds remitted to the department pursuant to this section  
 889 shall be deposited in the Professional Regulation Trust Fund.  
 890 Funds collected from the surcharge shall be allocated to fund  
 891 the Florida Building Commission and the Florida Building Code  
 892 Compliance and Mitigation Program under s. 553.841. Funds  
 893 allocated to the Florida Building Code Compliance and Mitigation  
 894 Program shall be \$925,000 each fiscal year. The Florida Building  
 895 Code Compliance and Mitigation Program shall fund the  
 896 recommendations made by the Building Code System Uniform  
 897 Implementation Evaluation Workgroup, dated April 8, 2013, from  
 898 existing resources, not to exceed \$30,000 in the 2016-2017  
 899 fiscal year. Funds collected from the surcharge shall also be  
 900 used to fund Florida Fire Prevention Code informal  
 901 interpretations managed by the State Fire Marshal and shall be  
 902 limited to \$15,000 each fiscal year. The State Fire Marshal

578-02878-16 2016704c1

903 shall adopt rules to address the implementation and expenditure  
 904 of the funds allocated to fund the Florida Fire Prevention Code  
 905 informal interpretations under this section. The funds collected  
 906 from the surcharge may not be used to fund research on  
 907 techniques for mitigation of radon in existing buildings. Funds  
 908 used by the department as well as funds to be transferred to the  
 909 Department of Health and the State Fire Marshal shall be as  
 910 prescribed in the annual General Appropriations Act. The  
 911 department shall adopt rules governing the collection and  
 912 remittance of surcharges pursuant to chapter 120.  
 913 Section 21. Subsections (11) and (15) of section 553.73,  
 914 Florida Statutes, are amended, and subsection (19) is added to  
 915 that section, to read:  
 916 553.73 Florida Building Code.—  
 917 (11) (a) In the event of a conflict between the Florida  
 918 Building Code and the Florida Fire Prevention Code and the Life  
 919 Safety Code as applied to a specific project, the conflict shall  
 920 be resolved by agreement between the local building code  
 921 enforcement official and the local fire code enforcement  
 922 official in favor of the requirement of the code which offers  
 923 the greatest degree of lifesafety or alternatives which would  
 924 provide an equivalent degree of lifesafety and an equivalent  
 925 method of construction. Local boards created to address issues  
 926 arising under the Florida Building Code or the Florida Fire  
 927 Prevention Code may combine the appeals boards to create a  
 928 single, local board having jurisdiction over matters arising  
 929 under either code or both codes. The combined local appeals  
 930 board may grant alternatives or modifications through procedures  
 931 outlined in NFPA 1, Section 1.4, but may not waive the

578-02878-16

2016704c1

932 requirements of the Florida Fire Prevention Code. To meet the  
 933 quorum requirement for convening the combined local appeals  
 934 board, at least one member of the board who is a fire protection  
 935 contractor, a fire protection design professional, a fire  
 936 department operations professional, or a fire code enforcement  
 937 professional must be present.

938 (b) Any decision made by the local fire official regarding  
 939 application, interpretation, or enforcement of the Florida Fire  
 940 Prevention Code, by and the local building official regarding  
 941 application, interpretation, or enforcement of the Florida  
 942 Building Code, or the appropriate application of either code or  
 943 both codes in the case of a conflict between the codes may be  
 944 appealed to a local administrative board designated by the  
 945 municipality, county, or special district having firesafety  
 946 responsibilities. If the decision of the local fire official and  
 947 the local building official is to apply the provisions of either  
 948 the Florida Building Code or the Florida Fire Prevention Code  
 949 and the Life Safety Code, the board may not alter the decision  
 950 unless the board determines that the application of such code is  
 951 not reasonable. If the decision of the local fire official and  
 952 the local building official is to adopt an alternative to the  
 953 codes, the local administrative board shall give due regard to  
 954 the decision rendered by the local officials and may modify that  
 955 decision if the administrative board adopts a better  
 956 alternative, taking into consideration all relevant  
 957 circumstances. In any case in which the local administrative  
 958 board adopts alternatives to the decision rendered by the local  
 959 fire official and the local building official, such alternatives  
 960 shall provide an equivalent degree of lifesafety and an

Page 33 of 55

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578-02878-16

2016704c1

961 equivalent method of construction as the decision rendered by  
 962 the local officials.

963 (c) If the local building official and the local fire  
 964 official are unable to agree on a resolution of the conflict  
 965 between the Florida Building Code and the Florida Fire  
 966 Prevention Code and the Life Safety Code, the local  
 967 administrative board shall resolve the conflict in favor of the  
 968 code which offers the greatest degree of lifesafety or  
 969 alternatives which would provide an equivalent degree of  
 970 lifesafety and an equivalent method of construction.

971 (d) All decisions of the local administrative board, ~~or, if~~  
 972 ~~none exists, the decisions of~~ the local building official and  
 973 the local fire official in regard to the application,  
 974 enforcement, or interpretation of the Florida Fire Prevention  
 975 Code, or conflicts between the Florida Fire Prevention Code and  
 976 the Florida Building Code, are subject to review by a joint  
 977 committee composed of members of the Florida Building Commission  
 978 and the Fire Code Advisory Council. If the joint committee is  
 979 unable to resolve conflicts between the codes as applied to a  
 980 specific project, the matter shall be resolved pursuant to ~~the~~  
 981 ~~provisions of~~ paragraph (1)(d). Decisions of the local  
 982 administrative board related solely to the Florida Building Code  
 983 are subject to review as set forth in s. 553.775.

984 (e) The local administrative board shall, to the greatest  
 985 extent possible, be composed of members with expertise in  
 986 building construction and firesafety standards.

987 (f) All decisions of the local building official and local  
 988 fire official and all decisions of the administrative board  
 989 shall be in writing and shall be binding upon a person but do

Page 34 of 55

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578-02878-16 2016704c1

990 not limit the authority of the State Fire Marshal or the Florida  
 991 Building Commission pursuant to paragraph (1)(d) and ss. 633.104  
 992 and 633.228. Decisions of general application shall be indexed  
 993 by building and fire code sections and shall be available for  
 994 inspection during normal business hours.

995 (15) An agency or local government may not require that  
 996 existing mechanical equipment located on or above the surface of  
 997 a roof be installed in compliance with the requirements of the  
 998 Florida Building Code except during reroofing when the equipment  
 999 is being replaced or moved ~~during reroofing~~ and is not in  
 1000 compliance with the provisions of the Florida Building Code  
 1001 relating to roof-mounted mechanical units.

1002 (19) The Florida Building Code may not require more than  
 1003 one fire service access elevator in a residential occupancy  
 1004 where the highest occupiable floor is less than 420 feet above  
 1005 the level of fire service access and all remaining elevators are  
 1006 provided with Phase I and II emergency operations. Where fire  
 1007 service access elevators are required, the code may not require  
 1008 a 1-hour fire-rated fire service access elevator lobby with  
 1009 direct access from the fire service access elevators if the fire  
 1010 service access elevators open into an exit access corridor that  
 1011 is at least 150 square feet with the exception of door openings;  
 1012 is no less than 6 feet wide for its entire length; and has a  
 1013 minimum 1-hour fire rating with three-quarter hour fire and  
 1014 smoke rated openings and if, and during a fire event, the fire  
 1015 service access elevators are pressurized and floor-to-floor  
 1016 smoke control is provided. However, where transient residential  
 1017 occupancies occur at floor levels above 420 feet above the level  
 1018 of fire service access, a 1-hour fire-rated fire service access

Page 35 of 55

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578-02878-16 2016704c1

1019 elevator lobby with direct access from the fire service access  
 1020 elevators is required. The requirement for a second fire service  
 1021 access elevator is not considered a part of the Florida Building  
 1022 Code and therefore does not take effect until July 1, 2017.

1023 Section 22. Paragraph (c) of subsection (3) of section  
 1024 553.775, Florida Statutes, is amended to read:

1025 553.775 Interpretations.—

1026 (3) The following procedures may be invoked regarding  
 1027 interpretations of the Florida Building Code or the Florida  
 1028 Accessibility Code for Building Construction:

1029 (c) The commission shall review decisions of local building  
 1030 officials and local enforcement agencies regarding  
 1031 interpretations of the Florida Building Code or the Florida  
 1032 Accessibility Code for Building Construction after the local  
 1033 board of appeals has considered the decision, if such board  
 1034 exists, and if such appeals process is concluded within 25  
 1035 business days.

1036 1. The commission shall coordinate with the Building  
 1037 Officials Association of Florida, Inc., to designate a panel  
 1038 ~~panels~~ composed of seven ~~five~~ members to hear requests to review  
 1039 decisions of local building officials. Five ~~The~~ members must be  
 1040 licensed as building code administrators under part XII of  
 1041 chapter 468, one member must be licensed as an architect under  
 1042 chapter 481, and one member must be licensed as an engineer  
 1043 under chapter 471. Each member ~~and~~ must have experience  
 1044 interpreting ~~or~~ ~~and~~ enforcing provisions of the Florida Building  
 1045 Code and the Florida Accessibility Code for Building  
 1046 Construction.

1047 2. Requests to review a decision of a local building

Page 36 of 55

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578-02878-16 2016704c1

1048 official interpreting provisions of the Florida Building Code or  
 1049 the Florida Accessibility Code for Building Construction may be  
 1050 initiated by any substantially affected person, including an  
 1051 owner or builder subject to a decision of a local building  
 1052 official or an association of owners or builders having members  
 1053 who are subject to a decision of a local building official. In  
 1054 order to initiate review, the substantially affected person must  
 1055 file a petition with the commission. The commission shall adopt  
 1056 a form for the petition, which shall be published on the  
 1057 Building Code Information System. The form shall, at a minimum,  
 1058 require the following:

1059 a. The name and address of the county or municipality in  
 1060 which provisions of the Florida Building Code or the Florida  
 1061 Accessibility Code for Building Construction are being  
 1062 interpreted.

1063 b. The name and address of the local building official who  
 1064 has made the interpretation being appealed.

1065 c. The name, address, and telephone number of the  
 1066 petitioner; the name, address, and telephone number of the  
 1067 petitioner's representative, if any; and an explanation of how  
 1068 the petitioner's substantial interests are being affected by the  
 1069 local interpretation of the Florida Building Code or the Florida  
 1070 Accessibility Code for Building Construction.

1071 d. A statement of the provisions of the Florida Building  
 1072 Code or the Florida Accessibility Code for Building Construction  
 1073 which are being interpreted by the local building official.

1074 e. A statement of the interpretation given to provisions of  
 1075 the Florida Building Code or the Florida Accessibility Code for  
 1076 Building Construction by the local building official and the

578-02878-16 2016704c1

1077 manner in which the interpretation was rendered.

1078 f. A statement of the interpretation that the petitioner  
 1079 contends should be given to the provisions of the Florida  
 1080 Building Code or the Florida Accessibility Code for Building  
 1081 Construction and a statement supporting the petitioner's  
 1082 interpretation.

1083 g. Space for the local building official to respond in  
 1084 writing. The space shall, at a minimum, require the local  
 1085 building official to respond by providing a statement admitting  
 1086 or denying the statements contained in the petition and a  
 1087 statement of the interpretation of the provisions of the Florida  
 1088 Building Code or the Florida Accessibility Code for Building  
 1089 Construction which the local jurisdiction or the local building  
 1090 official contends is correct, including the basis for the  
 1091 interpretation.

1092 3. The petitioner shall submit the petition to the local  
 1093 building official, who shall place the date of receipt on the  
 1094 petition. The local building official shall respond to the  
 1095 petition in accordance with the form and shall return the  
 1096 petition along with his or her response to the petitioner within  
 1097 5 days after receipt, exclusive of Saturdays, Sundays, and legal  
 1098 holidays. The petitioner may file the petition with the  
 1099 commission at any time after the local building official  
 1100 provides a response. If no response is provided by the local  
 1101 building official, the petitioner may file the petition with the  
 1102 commission 10 days after submission of the petition to the local  
 1103 building official and shall note that the local building  
 1104 official did not respond.

1105 4. Upon receipt of a petition that meets the requirements

578-02878-16

2016704c1

1106 of subparagraph 2., the commission shall immediately provide  
 1107 copies of the petition to the a panel, and the commission shall  
 1108 publish the petition, including any response submitted by the  
 1109 local building official, on the Building Code Information System  
 1110 in a manner that allows interested persons to address the issues  
 1111 by posting comments.

1112 5. The panel shall conduct proceedings as necessary to  
 1113 resolve the issues; shall give due regard to the petitions, the  
 1114 response, and to comments posed on the Building Code Information  
 1115 System; and shall issue an interpretation regarding the  
 1116 provisions of the Florida Building Code or the Florida  
 1117 Accessibility Code for Building Construction within 21 days  
 1118 after the filing of the petition. The panel shall render a  
 1119 determination based upon the Florida Building Code or the  
 1120 Florida Accessibility Code for Building Construction or, if the  
 1121 code is ambiguous, the intent of the code. The panel's  
 1122 interpretation shall be provided to the commission, which shall  
 1123 publish the interpretation on the Building Code Information  
 1124 System and in the Florida Administrative Register. The  
 1125 interpretation shall be considered an interpretation entered by  
 1126 the commission, and shall be binding upon the parties and upon  
 1127 all jurisdictions subject to the Florida Building Code or the  
 1128 Florida Accessibility Code for Building Construction, unless it  
 1129 is superseded by a declaratory statement issued by the Florida  
 1130 Building Commission or by a final order entered after an appeal  
 1131 proceeding conducted in accordance with subparagraph 7.

1132 6. It is the intent of the Legislature that review  
 1133 proceedings be completed within 21 days after the date that a  
 1134 petition seeking review is filed with the commission, and the

578-02878-16

2016704c1

1135 time periods set forth in this paragraph may be waived only upon  
 1136 consent of all parties.

1137 7. Any substantially affected person may appeal an  
 1138 interpretation rendered by ~~the a hearing officer~~ panel by filing  
 1139 a petition with the commission. Such appeals shall be initiated  
 1140 in accordance with chapter 120 and the uniform rules of  
 1141 procedure and must be filed within 30 days after publication of  
 1142 the interpretation on the Building Code Information System or in  
 1143 the Florida Administrative Register. Hearings shall be conducted  
 1144 pursuant to chapter 120 and the uniform rules of procedure.  
 1145 Decisions of the commission are subject to judicial review  
 1146 pursuant to s. 120.68. The final order of the commission is  
 1147 binding upon the parties and upon all jurisdictions subject to  
 1148 the Florida Building Code or the Florida Accessibility Code for  
 1149 Building Construction.

1150 8. The burden of proof in any proceeding initiated in  
 1151 accordance with subparagraph 7. is on the party who initiated  
 1152 the appeal.

1153 9. In any review proceeding initiated in accordance with  
 1154 this paragraph, including any proceeding initiated in accordance  
 1155 with subparagraph 7., the fact that an owner or builder has  
 1156 proceeded with construction may not be grounds for determining  
 1157 an issue to be moot if the issue is one that is likely to arise  
 1158 in the future.

1159 This paragraph provides the exclusive remedy for addressing  
 1160 requests to review local interpretations of the Florida Building  
 1161 Code or the Florida Accessibility Code for Building Construction  
 1162 and appeals from review proceedings.  
 1163



578-02878-16

2016704c1

1164 Section 23. Subsection (6) of section 553.79, Florida  
 1165 Statutes, is amended, and subsection (20) is added to that  
 1166 section, to read:

1167 553.79 Permits; applications; issuance; inspections.—

1168 (6) A permit may not be issued for any building  
 1169 construction, erection, alteration, modification, repair, or  
 1170 addition unless the applicant for such permit complies with the  
 1171 requirements for plan review established by the Florida Building  
 1172 Commission within the Florida Building Code. However, the code  
 1173 shall set standards and criteria to authorize preliminary  
 1174 construction before completion of all building plans review,  
 1175 including, but not limited to, special permits for the  
 1176 foundation only, and such standards shall take effect concurrent  
 1177 with the first effective date of the Florida Building Code.  
 1178 After submittal of the appropriate construction documents, the  
 1179 building official may issue a permit for the construction of  
 1180 foundations or any other part of a building or structure before  
 1181 the construction documents for the whole building or structure  
 1182 have been submitted. The holder of such permit for the  
 1183 foundation or other parts of a building or structure shall  
 1184 proceed at the holder's own risk and without assurance that a  
 1185 permit for the entire structure will be granted. Corrections may  
 1186 be required to meet the requirements of the technical codes.

1187 (20) Notwithstanding any municipal ordinance to the  
 1188 contrary, a municipality may not deny a development permit  
 1189 application for a single-family home on any lot or combination  
 1190 of lots solely because such lot or combination of lots does not  
 1191 meet the current underlying zoning dimensional standards for  
 1192 minimum lot size and area. For the purposes of this subsection,

Page 41 of 55

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578-02878-16

2016704c1

1193 the term "combination of lots" means a parcel of property which  
 1194 consists of more than one lot and which is under common  
 1195 ownership.

1196 Section 24. Paragraph (d) is added to subsection (7) of  
 1197 section 553.80, Florida Statutes, to read:

1198 553.80 Enforcement.—

1199 (7) The governing bodies of local governments may provide a  
 1200 schedule of reasonable fees, as authorized by s. 125.56(2) or s.  
 1201 166.222 and this section, for enforcing this part. These fees,  
 1202 and any fines or investment earnings related to the fees, shall  
 1203 be used solely for carrying out the local government's  
 1204 responsibilities in enforcing the Florida Building Code. When  
 1205 providing a schedule of reasonable fees, the total estimated  
 1206 annual revenue derived from fees, and the fines and investment  
 1207 earnings related to the fees, may not exceed the total estimated  
 1208 annual costs of allowable activities. Any unexpended balances  
 1209 shall be carried forward to future years for allowable  
 1210 activities or shall be refunded at the discretion of the local  
 1211 government. The basis for a fee structure for allowable  
 1212 activities shall relate to the level of service provided by the  
 1213 local government and shall include consideration for refunding  
 1214 fees due to reduced services based on services provided as  
 1215 prescribed by s. 553.791, but not provided by the local  
 1216 government. Fees charged shall be consistently applied.

1217 (d) The local enforcement agency may not require the  
 1218 payment of any additional fees, charges, or expenses associated  
 1219 with:

- 1220 1. Providing proof of licensure pursuant to this chapter;
- 1221 2. Recording or filing a license issued pursuant to this

Page 42 of 55

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578-02878-16

2016704c1

1222 chapter; or

1223 3. Providing, recording, or filing evidence of workers'  
 1224 compensation insurance coverage as required by chapter 440.

1225 Section 25. Subsections (4) and (7) of section 553.841,  
 1226 Florida Statutes, are amended to read:

1227 553.841 Building code compliance and mitigation program.—

1228 (4) In administering the Florida Building Code Compliance  
 1229 and Mitigation Program, the department may shall maintain,  
 1230 update, develop, or cause to be developed code-related training  
 1231 and education advanced modules designed for use by each  
 1232 profession.

1233 ~~(7) The Florida Building Commission shall provide by rule~~  
 1234 ~~for the accreditation of courses related to the Florida Building~~  
 1235 ~~Code by accreditors approved by the commission. The commission~~  
 1236 ~~shall establish qualifications of accreditors and criteria for~~  
 1237 ~~the accreditation of courses by rule. The commission may revoke~~  
 1238 ~~the accreditation of a course by an accreditor if the~~  
 1239 ~~accreditation is demonstrated to violate this part or the rules~~  
 1240 ~~of the commission.~~

1241 Section 26. Paragraph (a) of subsection (8) of section  
 1242 553.842, Florida Statutes, is amended to read:

1243 553.842 Product evaluation and approval.—

1244 (8) The commission may adopt rules to approve the following  
 1245 types of entities that produce information on which product  
 1246 approvals are based. All of the following entities, including  
 1247 engineers and architects, must comply with a nationally  
 1248 recognized standard demonstrating independence or no conflict of  
 1249 interest:

1250 (a) Evaluation entities approved pursuant to this

578-02878-16

2016704c1

1251 paragraph. The commission shall specifically approve the  
 1252 National Evaluation Service, the International Association of  
 1253 Plumbing and Mechanical Officials Evaluation Service, the  
 1254 International Code Council Evaluation Services, Underwriters  
 1255 Laboratories, Inc., and the Miami-Dade County Building Code  
 1256 Compliance Office Product Control Division. Architects and  
 1257 engineers licensed in this state are also approved to conduct  
 1258 product evaluations as provided in subsection (5).

1259 Section 27. Subsection (4) of section 553.844, Florida  
 1260 Statutes, is revived, readopted, and amended to read:

1261 553.844 Windstorm loss mitigation; requirements for roofs  
 1262 and opening protection.—

1263 (4) Notwithstanding the provisions of this section, exposed  
 1264 mechanical equipment or appliances fastened to a roof or  
 1265 installed on the ground in compliance with the code using rated  
 1266 stands, platforms, curbs, slabs, walls, or other means are  
 1267 deemed to comply with the wind resistance requirements of the  
 1268 2007 Florida Building Code, as amended. Further support or  
 1269 enclosure of such mechanical equipment or appliances is not  
 1270 required by a state or local official having authority to  
 1271 enforce the Florida Building Code. ~~This subsection expires on~~  
 1272 ~~the effective date of the 2013 Florida Building Code.~~

1273 Section 28. Section 553.883, Florida Statutes, is amended  
 1274 to read:

1275 553.883 Smoke alarms in one-family and two-family dwellings  
 1276 and townhomes.—One-family and two-family dwellings and townhomes  
 1277 undergoing a repair, or a level 1 alteration as defined in the  
 1278 Florida Building Code, may use smoke alarms powered by 10-year  
 1279 nonremovable, nonreplaceable batteries in lieu of retrofitting

578-02878-16 2016704c1

1280 such dwelling with smoke alarms powered by the dwelling's  
 1281 electrical system. Effective January 1, 2015, a battery-powered  
 1282 smoke alarm that is newly installed or replaces an existing  
 1283 battery-powered smoke alarm must be powered by a nonremovable,  
 1284 nonreplaceable battery that powers the alarm for at least 10  
 1285 years. The battery requirements of this section do not apply to  
 1286 a fire alarm, smoke detector, smoke alarm, or ancillary  
 1287 component that is electronically connected as a part of a  
 1288 centrally monitored or supervised alarm system; that uses a low-  
 1289 power radio frequency wireless communication signal; or that  
 1290 contains multiple sensors, such as a smoke alarm combined with a  
 1291 carbon monoxide alarm or other devices, as the State Fire  
 1292 Marshal designates by rule.

1293 Section 29. Section 553.908, Florida Statutes, is amended  
 1294 to read:

1295 553.908 Inspection.—Before construction or renovation is  
 1296 completed, the local enforcement agency shall inspect buildings  
 1297 for compliance with the standards of this part. Notwithstanding  
 1298 any other provision of the code or law, effective July 1, 2016,  
 1299 section R402.4.1 of the Florida Building Code, 5th Edition  
 1300 (2014) Energy Conservation, which became effective on June 30,  
 1301 2015, shall cease to be effective. Instead, section 402.4.2 of  
 1302 the Florida Building Code (2010) Energy Conservation, relating  
 1303 to air sealing and insulation, in effect before June 30, 2015,  
 1304 shall govern and apply, effective June 30, 2016, and thereafter.  
 1305 Additionally, a state or local enforcement agency or code  
 1306 official may not require any type of mandatory blower door test  
 1307 or air infiltration test to determine specific air infiltration  
 1308 levels or air leakage rates in a residential building or

578-02878-16 2016704c1

1309 dwelling unit and may not require the installation of any  
 1310 mechanical ventilation devices designed to filter outside air  
 1311 through an HVAC system as a condition of a permit or to  
 1312 determine compliance with the code. However, if section R402.4.1  
 1313 of the 5th Edition (2014) of the Florida Building Code, Energy  
 1314 Conservation is voluntarily used, the local enforcement agency  
 1315 shall inspect the construction or renovation for compliance with  
 1316 that section.

1317 Section 30. Subsections (17) and (18) are added to section  
 1318 633.202, Florida Statutes, to read:

1319 633.202 Florida Fire Prevention Code.—

1320 (17) The authority having jurisdiction shall determine the  
 1321 minimum radio signal strength for fire department communications  
 1322 in all new high-rise and existing high-rise buildings. Existing  
 1323 buildings are not required to comply with minimum radio strength  
 1324 for fire department communications and two-way radio system  
 1325 enhancement communications as required by the Florida Fire  
 1326 Prevention Code until January 1, 2022. However, by December 31,  
 1327 2019, an existing building that is not in compliance with the  
 1328 requirements for minimum radio strength for fire department  
 1329 communications must apply for an appropriate permit for the  
 1330 required installation with the local governmental agency having  
 1331 jurisdiction and must demonstrate that the building will become  
 1332 compliant by January 1, 2022. Existing apartment buildings are  
 1333 not required to comply until January 1, 2025. However, existing  
 1334 apartment buildings are required to apply for the appropriate  
 1335 permit for the required communications installation by December  
 1336 31, 2022.

1337 (18) Areas of refuge shall be provided if required by the

578-02878-16

2016704c1

1338 Florida Accessibility Code for Building Construction. Required  
 1339 portions of an area of refuge shall be accessible from the space  
 1340 they serve by an accessible means of egress.

1341 Section 31. Subsection (5) is added to section 633.206,  
 1342 Florida Statutes, to read:

1343 633.206 Uniform firesafety standards—The Legislature hereby  
 1344 determines that to protect the public health, safety, and  
 1345 welfare it is necessary to provide for firesafety standards  
 1346 governing the construction and utilization of certain buildings  
 1347 and structures. The Legislature further determines that certain  
 1348 buildings or structures, due to their specialized use or to the  
 1349 special characteristics of the person utilizing or occupying  
 1350 these buildings or structures, should be subject to firesafety  
 1351 standards reflecting these special needs as may be appropriate.

1352 (5) The home environment provisions in the most current  
 1353 edition of the codes adopted by the division may be applied to  
 1354 existing assisted living facilities, at the option of each  
 1355 facility, notwithstanding the edition of the codes applied at  
 1356 the time of construction.

1357 Section 32. Subsection (5) of section 633.208, Florida  
 1358 Statutes, is amended to read:

1359 633.208 Minimum firesafety standards.—

1360 (5) With regard to existing buildings, the Legislature  
 1361 recognizes that it is not always practical to apply any or all  
 1362 of the provisions of the Florida Fire Prevention Code and that  
 1363 physical limitations may require disproportionate effort or  
 1364 expense with little increase in fire or life safety. Before  
 1365 ~~Prior to~~ applying the minimum firesafety code to an existing  
 1366 building, the local fire official shall determine whether ~~that~~ a

Page 47 of 55

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578-02878-16

2016704c1

1367 threat to lifesafety or property exists. If a threat to  
 1368 lifesafety or property exists, the fire official shall apply the  
 1369 applicable firesafety code for existing buildings to the extent  
 1370 practical to ~~ensure~~ assure a reasonable degree of lifesafety and  
 1371 safety of property or the fire official shall fashion a  
 1372 reasonable alternative ~~that which~~ affords an equivalent degree  
 1373 of lifesafety and safety of property. The local fire official  
 1374 may consider the firesafety evaluation systems found in NFPA  
 1375 101A, Guide on Alternative Solutions to Life Safety, adopted by  
 1376 the State Fire Marshal, as acceptable systems for the  
 1377 identification of low-cost, reasonable alternatives. It is  
 1378 acceptable to use the Fire Safety Evaluation System for Board  
 1379 and Care Facilities using prompt evacuation capabilities  
 1380 parameter values on existing residential high-rise buildings.  
 1381 The decision of the local fire official may be appealed to the  
 1382 local administrative board described in s. 553.73.

1383 Section 33. Section 633.336, Florida Statutes, is amended  
 1384 to read:

1385 633.336 Contracting without certificate prohibited;  
 1386 violations; penalty.—

1387 (1) It is unlawful for any organization or individual to  
 1388 engage in the business of layout, fabrication, installation,  
 1389 inspection, alteration, repair, or service of a fire protection  
 1390 system, other than a preengineered system, act in the capacity  
 1391 of a fire protection contractor, or advertise itself as being a  
 1392 fire protection contractor without having been duly certified  
 1393 and holding a valid and existing certificate, except as  
 1394 hereinafter provided. The holder of a certificate used to  
 1395 qualify an organization must be a full-time employee of the

Page 48 of 55

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578-02878-16

2016704c1

1396 qualified organization or business. A certificateholder who is  
 1397 employed by more than one fire protection contractor during the  
 1398 same time is deemed not to be a full-time employee of either  
 1399 contractor. The State Fire Marshal shall revoke, for a period  
 1400 determined by the State Fire Marshal, the certificate of a  
 1401 certificateholder who allows the use of the certificate to  
 1402 qualify a company of which the certificateholder is not a full-  
 1403 time employee. A contractor who maintains more than one place of  
 1404 business must employ a certificateholder at each location. This  
 1405 subsection does not prohibit an employee acting on behalf of  
 1406 governmental entities from inspecting and enforcing firesafety  
 1407 codes, provided such employee is certified under s. 633.216.

1408 (2) A fire protection contractor certified under this  
 1409 chapter may not:

1410 (a) Enter into a written or oral agreement to authorize, or  
 1411 otherwise knowingly allow, a contractor who is not certified  
 1412 under this chapter to engage in the business of, or act in the  
 1413 capacity of, a fire protection contractor.

1414 (b) Apply for or obtain a construction permit for fire  
 1415 protection work unless the fire protection contractor or the  
 1416 business organization qualified by the fire protection  
 1417 contractor has contracted to conduct the work specified in the  
 1418 application for the permit.

1419 (3) The Legislature recognizes that special expertise is  
 1420 required for fire pump control panels and maintenance of  
 1421 electric and diesel pump drivers and that it is not economically  
 1422 feasible for all contractors to employ these experts full-time  
 1423 whose work may be limited. It is therefore deemed acceptable for  
 1424 a fire protection contractor licensed under this chapter to

578-02878-16

2016704c1

1425 subcontract with companies providing advanced technical services  
 1426 for the installation, servicing, and maintenance of fire pump  
 1427 control panels and pump drivers. To ensure the integrity of the  
 1428 system and to protect the interests of the property owner, those  
 1429 providing technical support services for fire pump control  
 1430 panels and pump drivers must be under contract with a licensed  
 1431 fire protection contractor.

1432 ~~(4)(3)~~ A person who violates any provision of this act or  
 1433 commits any of the acts constituting cause for disciplinary  
 1434 action as herein set forth commits a misdemeanor of the second  
 1435 degree, punishable as provided in s. 775.082 or s. 775.083.

1436 ~~(5)(4)~~ In addition to the penalties provided in subsection  
 1437 ~~(4)(3)~~, a fire protection contractor certified under this  
 1438 chapter who violates any provision of this section or who  
 1439 commits any act constituting cause for disciplinary action is  
 1440 subject to suspension or revocation of the certificate and  
 1441 administrative fines pursuant to s. 633.338.

1442 Section 34. The Florida Building Commission shall define  
 1443 the term "fire separation distance" in Chapter 2, Definitions,  
 1444 of the Florida Building Code, 5th Edition (2014) Residential, as  
 1445 follows:

1446 "FIRE SEPARATION DISTANCE. The distance measured from the  
 1447 building face to one of the following:

- 1449 1. To the closest interior lot line;
- 1450 2. To the centerline of a street, an alley, or a public way;
- 1451 3. To an imaginary line between two buildings on the lot; or
- 1452 4. To an imaginary line between two buildings when the exterior  
 1453 wall of one building is located on a zero lot line.

578-02878-16

2016704c1

1454  
1455 The distance shall be measured at a right angle from the face of  
1456 the wall."

1457 Section 35. The Florida Building Commission shall amend the  
1458 Florida Building Code, 5th Edition (2014) Residential, to allow  
1459 openings and roof overhang projections on the exterior wall of a  
1460 building located on a zero lot line, when the building exterior  
1461 wall is separated from an adjacent building exterior wall by a  
1462 distance of 6 feet or more and the roof overhang projection is  
1463 separated from an adjacent building projection by a distance of  
1464 4 feet or more, with 1-hour fire-resistant construction on the  
1465 underside of the overhang required, unless the separation  
1466 between projections is 6 feet or more.

1467 Section 36. Construction Industry Workforce Task Force.-

1468 (1) The Construction Industry Workforce Task Force is  
1469 created within the University of Florida M.E. Rinker, Sr. School  
1470 of Construction Management. The goals of the task force are to:

1471 (a) Address the critical shortage of individuals trained in  
1472 building construction and inspection.

1473 (b) Develop a consensus path for training the next  
1474 generation of construction workers in the state.

1475 (c) Determine the causes for the current shortage of a  
1476 trained construction industry work force and address the impact  
1477 of the shortages on the recovery of the real estate market.

1478 (d) Review current methods and resources available for  
1479 construction training.

1480 (e) Review the state of construction training available in  
1481 K-12 schools.

1482 (f) Address training issues relating to building code

578-02878-16

2016704c1

1483 inspectors to increase the number of qualified inspectors.

1484 (2) The task force shall consist of 19 members. Except as  
1485 otherwise specified, each member shall be chosen by the  
1486 association that he or she represents, as follows:

1487 (a) A member of the House of Representatives appointed by  
1488 the Speaker of the House of Representatives.

1489 (b) A member of the Senate appointed by the President of  
1490 the Senate.

1491 (c) A member representing the Associated General  
1492 Contractors of Greater Florida.

1493 (d) A member representing the Associated Builders and  
1494 Contractors of Florida.

1495 (e) A member representing the Florida Home Builders  
1496 Association.

1497 (f) A member representing the Florida Fire Sprinkler  
1498 Association.

1499 (g) A member representing the Florida Roofing, Sheet Metal  
1500 and Air Conditioning Contractors Association.

1501 (h) A member representing the Florida Refrigeration and Air  
1502 Conditioning Contractors Association.

1503 (i) A member representing the Florida Association of  
1504 Plumbing, Heating, and Cooling Contractors.

1505 (j) A member representing the Florida Swimming Pool  
1506 Association.

1507 (k) A member representing the National Utility Contractors  
1508 Association of Florida.

1509 (l) A member representing the Florida Concrete and Products  
1510 Association.

1511 (m) A member representing the Alarm Association of Florida.

578-02878-16

2016704c1

1512 (n) A member representing the Independent Electrical  
 1513 Contractors.  
 1514 (o) A member representing the Florida AFL-CIO.  
 1515 (p) A member representing the Building Officials  
 1516 Association of Florida.  
 1517 (q) A member representing the Asphalt Contractors  
 1518 Association of Florida.  
 1519 (r) A member representing the American Fire Sprinkler  
 1520 Association-Florida Chapter.  
 1521 (s) The chair of the Florida Building Commission.  
 1522 (3) The task force shall elect a chair from among its  
 1523 members.  
 1524 (4) The University of Florida M.E. Rinker, Sr. School of  
 1525 Construction Management shall provide such assistance as is  
 1526 reasonably necessary to assist the task force in carrying out  
 1527 its responsibilities.  
 1528 (5) The task force shall meet as often as necessary to  
 1529 fulfill its responsibilities, but not fewer than three times.  
 1530 The first meeting must be held no later than September 1, 2016.  
 1531 Meetings may be conducted by conference call, teleconferencing,  
 1532 or similar technology.  
 1533 (6) The task force shall submit a final report to the  
 1534 Governor, the President of the Senate, and the Speaker of the  
 1535 House of Representatives by February 1, 2017.  
 1536 (7) The Department of Business and Professional Regulation  
 1537 shall provide \$50,000 from funds available for the Florida  
 1538 Building Code Compliance and Mitigation Program under s.  
 1539 553.841(5), Florida Statutes, to the University of Florida M.E.  
 1540 Rinker, Sr. School of Construction Management for purposes of

Page 53 of 55

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578-02878-16

2016704c1

1541 implementing this section.  
 1542 (8) This section expires July 1, 2017.  
 1543 Section 37. Notwithstanding any law, rule, or regulation to  
 1544 the contrary, a restaurant, a cafeteria, or a similar dining  
 1545 facility, including an associated commercial kitchen, must have  
 1546 a fire area occupancy load requiring sprinklers which is  
 1547 consistent with the Florida Fire Prevention Code.  
 1548 Section 38. The Calder Sloan Swimming Pool Electrical-  
 1549 Safety Task Force.-There is established within the Florida  
 1550 Building Commission the Calder Sloan Swimming Pool Electrical-  
 1551 Safety Task Force.  
 1552 (1) The purpose of the task force is to study standards on  
 1553 grounding, bonding, lighting, wiring, and all electrical aspects  
 1554 for safety in and around public and private swimming pools,  
 1555 especially with regard to minimizing risks of electrocutions  
 1556 linked to swimming pools. The task force shall submit a report  
 1557 of its findings, including recommended revisions to state law,  
 1558 if any, to the Governor, the President of the Senate, and the  
 1559 Speaker of the House of Representatives by November 1, 2016.  
 1560 (2) The task force shall consist of the swimming pool and  
 1561 electrical technical advisory committees of the Florida Building  
 1562 Commission.  
 1563 (3) The task force shall be chaired by the swimming pool  
 1564 contractor appointed to the Florida Building Commission pursuant  
 1565 to s. 553.74, Florida Statutes.  
 1566 (4) The Florida Building Commission shall provide such  
 1567 staff, information, and other assistance as is reasonably  
 1568 necessary to assist the task force in carrying out its  
 1569 responsibilities.

Page 54 of 55

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578-02878-16

2016704c1

1570 (5) Members of the task force shall serve without  
1571 compensation.

1572 (6) The task force shall meet as often as necessary to  
1573 fulfill its responsibilities. Meetings may be conducted by  
1574 conference call, teleconferencing, or similar technology.

1575 (7) This section expires December 31, 2016.

1576 Section 39. The Florida Building Commission shall adopt  
1577 into the Florida Building Code the following:

1578

1579 "Section 406 relating to the Alternative Performance Path,  
1580 Energy Rating Index of the 2015 International Energy  
1581 Conservation Code (IECC) may be used as an option for chapter  
1582 553 and Florida Building Code compliance. TABLE R406.4 MAXIMUM  
1583 ENERGY RATING INDEX shall reflect for Climate Zone 1, an index  
1584 of 65; for Climate Zone 2, an index of 65."

1585 Section 40. This act shall take effect July 1, 2016.



THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

2/29/16  
Meeting Date

704  
Bill Number (if applicable)

554986  
Amendment Barcode (if applicable)

Topic FIRE SAFETY / RUDL CONC

Name JON PASQUAIONE

Job Title EXECUTIVE DIRECTOR

Address PO BOX 325  
Street

Phone 772-348-1507

HOBE SOUND FL 37475  
City State Zip

Email jon.pasquaione@ffma.org

Speaking:  For  Against  Information

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

Representing FL. FIRE MARSHALS & INSPECTORS & FL FIRE CHIEFS ASSOCIATIONS

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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THE FLORIDA SENATE  
**APPEARANCE RECORD**

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2-29-16

Meeting Date

704

Bill Number (if applicable)

554986

Amendment Barcode (if applicable)

Topic Building Codes / Strike ALL Amendment

Name Theresa King

Job Title President

Address PO Box 10888

Street

Phone 850-228-8940

Tallahassee

FL

32302

Email sbt.tking@gmail.com

City

State

Zip

Speaking:  For  Against  Information

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

Representing Florida Building & Construction Trades

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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S-001 (10/14/14)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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2/29/16  
Meeting Date

704  
Bill Number (if applicable)

Topic Building Code Bill

Amendment Barcode (if applicable)

Name Richard Watson

Job Title Chief Counsel

Address 1412 Elm Court  
Street

Phone (850) 591-4770

Saint George Island FL 32328  
City State Zip

Email rw@rwatsonandassociates.com

Speaking:  For  Against  Information

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

Representing Associated Builders and Contractors

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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THE FLORIDA SENATE  
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~~Meeting Date~~ 2/29/12  
Meeting Date

704  
Bill Number (if applicable)

Topic BUILDING CODE

Amendment Barcode (if applicable)

Name DAVID RAMBA

Job Title \_\_\_\_\_

Address 120 S. MONROE ST  
Street

Phone 850.727.7087

TALLAHASSEE FL 32301  
City State Zip

Email david@rambalaw.com

Speaking:  For  Against  Information

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

Representing NEAL COMMUNITIES

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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THE FLORIDA SENATE  
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2/29/14

Meeting Date

704

Bill Number (if applicable)

Topic \_\_\_\_\_

Amendment Barcode (if applicable)

Name Greg YANTORNO

Job Title President - BOAF

Address 2817 SEASPRAY ST

Phone 941-374-8959

Street

SARASOTA FL

City

State

Zip

Email \_\_\_\_\_

Speaking:  For  Against  Information

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

Representing \_\_\_\_\_

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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THE FLORIDA SENATE

APPEARANCE RECORD

2/29/14

Meeting Date

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

SB 704  
Bill Number (if applicable)

Topic Bldg. Codes

Amendment Barcode (if applicable)

Name Bruce Kershner

Job Title

Address 231 West Bay Ave

Phone 407 830 1882

Street

Lengwood FL

Email RBKershner@att.net

City

State

Zip

Speaking:  For  Against  Information

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

Representing National Utility Contractors Assn. of Florida

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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THE FLORIDA SENATE  
**APPEARANCE RECORD**

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2/29/16

Meeting Date

SB-704

Bill Number (if applicable)

Topic STEELER AN AMENDMENT

Amendment Barcode (if applicable)

Name J. B. CLARK

Job Title LOBBYIST

Address 2071 CYNTHIA DRIVE

Phone 850-556-8143

Street

TAUPASSA

City

FL

State

32303

Zip

Email JBCCLARK5@EATZTJ4WR.NET

Speaking:  For  Against  Information

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

Representing FL ELECTRICAL WORKERS ASSN,

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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S-001 (10/14/14)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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2/29/16

Meeting Date

704

Bill Number (if applicable)

Topic Building Code

Amendment Barcode (if applicable)

Name Kelly Mallette

Job Title \_\_\_\_\_

Address 104 West Jefferson Street

Phone (850) 224-3427

Street

Tallahassee FL 32301

Email kelly@rlbookpa.com

City

State

Zip

Speaking:  For  Against  Information

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

Representing Florida Apartment Association

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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S-001 (10/14/14)



THE FLORIDA SENATE  
**APPEARANCE RECORD**

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2/29/16

Meeting Date

704

Bill Number (if applicable)

Topic Building Codes

Amendment Barcode (if applicable)

Name Cameron Yarbrough

Job Title Government Affairs

Address 215 S. Monroe St. Suite 601

Phone 850-521-1980

Street

Tallahassee

City

FL

State

32301

Zip

Email cyarbrough@gunster.com

Speaking:  For  Against  Information

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

Representing Air Conditioning, Heating, & Refrigeration Institute

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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2/29/16

Meeting Date

704

Bill Number (if applicable)

Topic Building Codes

Amendment Barcode (if applicable)

Name Jeremy Susac

Job Title Vice President of Government Affairs

Address 900 NW 107<sup>th</sup> Ave

Phone 305-485-3814

Street Miami FL 33172

Email Jeremy.SUSAC@

City Miami State FL Zip 33172

lennar.com

Speaking:  For  Against  Information

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

Representing Lennar Ventures

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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THE FLORIDA SENATE  
**APPEARANCE RECORD**

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2-29-16

Meeting Date

704

Bill Number (if applicable)

Topic Building Codes

Amendment Barcode (if applicable)

Name Natalie King

Job Title VP

Address 235 W Brandon Blvd 640

Phone 813 924 8218

Street  
Brandon FL 33511  
City State Zip

Email Natalie@resconnectfl.com

Speaking:  For  Against  Information

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

Representing Highland Homes

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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THE FLORIDA SENATE  
**APPEARANCE RECORD**

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2-29-14

Meeting Date

2B 704

Bill Number (if applicable)

Topic BUILDING CODES

Amendment Barcode (if applicable)

Name MARI HERBANK

Job Title \_\_\_\_\_

Address 113 EAST COLLEGE AVE, SUITE 200

Phone 850-566-7824

Street

TALLAHASSEE FL 32301

City

State

Zip

Email \_\_\_\_\_

Speaking:  For  Against  Information

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

Representing FLORIDA HOME BUILDERS ASSOC.

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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THE FLORIDA SENATE

APPEARANCE RECORD

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2/29/14

Meeting Date

704

Bill Number (if applicable)

744198

Amendment Barcode (if applicable)

Topic BUILDING CODES - INSPECTION

Name DAVID CULLEN

Job Title

Address 1674 UNIVERSITY Fwy

Street

Phone 941-323-2404

SARASOTA FL 34243

City

State

Zip

Email cullevesee

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

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

Representing SIERRA CLUB FLORIDA

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

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

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

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**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

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2/29/2016

Meeting Date

CS/SB 704

Bill Number (if applicable)

~~554986 - Strike All~~

Amendment Barcode (if applicable)

749198

Topic Building Code

Name Jorge Chamizo

Job Title Attorney

Address 108 South Monroe Street

Street

Tallahassee,

City

FL

State

32301

Zip

Phone (850) 681-0024

Email jorge@flapartners.com

Speaking:  For  Against  Information

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

Representing ADT and the Florida Cable Telecommunications Association (FCTA)

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

2-29-16

Meeting Date

704

Bill Number (if applicable)

Topic Solar Energy Systems Certification

AA # 626830  
Amendment Barcode (if applicable)

Name Richard Pinsky

Job Title \_\_\_\_\_

Address 106 E College Ave. #1200 Phone \_\_\_\_\_

Street

Tallahassee FL 32301

City

State

Zip

Email \_\_\_\_\_

Speaking:  For  Against  Information

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

Representing FL Solar Energy Industry Association

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

**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.)

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Prepared By: The Professional Staff of the Committee on Fiscal Policy

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BILL: SB 858

INTRODUCER: Senator Legg

SUBJECT: Clinical Social Worker, Marriage and Family Therapist, and Mental Health Counselor Interns

DATE: February 26, 2016

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Rossitto-Van Winkle	Stovall	HP	<b>Favorable</b>
2.	Brown	Pigott	AHS	<b>Recommend: Favorable</b>
3.	Pace	Hrdlicka	FP	<b>Favorable</b>

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**I. Summary:**

SB 858 requires clinical social worker, marriage and family therapist, and mental health counselor interns to practice under the supervision of a licensed clinical social worker, marriage and family therapist, or mental health counselor, as applicable, at all times. The bill provides that an intern may practice only if the supervising professional or another licensed mental health professional is on-site.

The bill limits the duration of a registered internship to 5 years. The internship may be renewed only if the registration is issued after April 1, 2017, and the intern has passed the theory and practice examination required for full licensure. The bill prohibits a person who has held a provisional license from applying for an intern registration in the same profession.

The bill is estimated to have an indeterminate but likely insignificant fiscal impact on state government.

**II. Present Situation:**

The Board of Clinical Social Work, Marriage and Family Therapy, and Mental Health Counseling (board) within the Department of Health (DOH) implements and enforces rules that regulate the practice of clinical social work, marriage and family therapy, and mental health counseling. The board is composed of nine members appointed by the Governor and confirmed



by the Senate.<sup>1</sup> Currently, the board regulates 9,762 licensed clinical social workers, 2,017 marriage and family therapists, and 10,578 mental health counselors.<sup>2</sup>

The practices of clinical social work, marriage and family therapy, and mental health counseling include methods used to evaluate, assess, diagnose, and treat emotional and mental dysfunctions or disorders (whether cognitive, affective, or behavioral), behavioral disorders, interpersonal relationships, sexual dysfunctions, alcoholism, and substance abuse. Each of the practices incorporates psychotherapy, hypnotherapy, sex therapy, counseling, behavior modification, consultation, client-centered advocacy, crisis intervention, and the provision of information and education to clients.<sup>3</sup>

### **Clinical Social Work**

The practice of clinical social work uses scientific and applied knowledge, theories, and methods for the purpose of describing, preventing, evaluating, and treating individual, couple, marital, family, or group behavior to prevent and treat undesired behavior and to enhance mental health.<sup>4</sup>

### **Marriage and Family Therapy**

The practice of marriage and family therapy uses scientific and applied methods and procedures for the purpose of describing, evaluating, and modifying marital, family, and individual behavior, within the context of marital and family systems. The practice is based on marriage and family systems theory, marriage and family development, human development, normal and abnormal behavior, psychopathology, human sexuality, psychotherapeutic and marriage and family therapy theories and technique.<sup>5</sup>

### **Mental Health Counseling**

The practice of mental health counseling uses scientific and applied behavioral science theories, methods, and techniques for the purpose of describing, preventing, and treating undesired behaviors and enhancing mental health and human development. The practice is based on the person-in-situation perspectives derived from research and theory in personality, family, group, and organizational dynamics and development, career planning, cultural diversity, human growth and development, human sexuality, normal and abnormal behavior, psychopathology, psychotherapy, and rehabilitation.<sup>6</sup>

### **Internship**

To be licensed as a clinical social worker, marriage and family therapist, or mental health counselor an individual must meet educational requirements, complete a 2-year supervised

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<sup>1</sup> Section 491.004(1), F.S.

<sup>2</sup> DOH, Division of Medical Quality Assurance, *Annual Report and Long Range Plan Fiscal Year 2014-2015*, p. 13, Table 1: Summary of Licensed Practitioners, available at <http://www.floridahealth.gov/licensing-and-regulation/reports-and-publications/documents/annual-report-1415.pdf> (last visited Feb. 23, 2016).

<sup>3</sup> See ss. 491.003(7), (8), and (9), F.S.

<sup>4</sup> Section 491.003(7), F.S.

<sup>5</sup> Section 491.003(8), F.S.

<sup>6</sup> Section 491.003(9), F.S.

postgraduate or postmaster's clinical experience, and pass a theory and practice examination.<sup>7</sup> An internship may be applied toward postgraduate or postmaster's clinical work experience.<sup>8</sup> The supervised clinical experience may be met by providing at least 1,500 hours of face-to-face psychotherapy with clients in the applicable field and may not be accrued in less than 100 weeks.<sup>9</sup> During the time in which an applicant is completing the required supervised clinical experience or internship, he or she must register with the DOH as an intern.<sup>10</sup>

An applicant seeking registration as an intern must:

- Submit a completed application form and a nonrefundable fee;
- Complete education requirements;
- Submit an acceptable supervision plan for meeting the practicum, internship, or field work required for licensure that was not satisfied by graduate studies; and
- Identify a qualified supervisor.<sup>11</sup>

Currently, a registered intern may renew his or her registration every 2 years, with no limit to the number of times it may be renewed.<sup>12</sup> An intern may perform work on or off the premises of the supervising mental health professional, provided the off-premises work is not located at an independent private practice without a licensed mental health professional present when the intern is providing services.<sup>13</sup>

Currently, there are 3,949 clinical social work interns, 1,039 marriage and family therapy interns, and 4,966 registered mental health counselor interns.<sup>14</sup> According to the DOH, more than 700 interns have continued to renew their intern registration for more than 10 years, and 150 of them have renewed their registrations since the inception of the registration in 1998. The renewal fee for an intern is \$80 every 2 years and continuing education is not required. Comparatively, the renewal fee for a mental health professional's license is \$130 every 2 years and 30 hours of continuing education.<sup>15</sup>

The DOH reviewed disciplinary cases against registered interns and found that some interns who have held an intern registration for many years do not remain under the required supervision of a licensed practitioner and many are in sole practitioner private practice without meeting minimum competency standards, such as passing the national clinical examination. The DOH has received an increasing number of complaints against these interns for various infractions including filing false reports, failing to meet minimum standards, boundary violations, sexual misconduct, Medicaid fraud, and false advertising.<sup>16</sup>

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<sup>7</sup> Section 491.005, F.S.

<sup>8</sup> Section 491.005(1)(c), F.S.

<sup>9</sup> Rule 64B4-2.001, F.A.C

<sup>10</sup> Section 491.0045, F.S.

<sup>11</sup> Section 491.0045(2), F.S.

<sup>12</sup> *Infra* note 15.

<sup>13</sup> Section 491.005(1)(c), F.S.

<sup>14</sup> *Supra* note 2.

<sup>15</sup> DOH, *Senate Bill 858 Analysis* (November 17, 2015) (on file with the Senate Committee on Health Policy).

<sup>16</sup> *Id.*

### **Provisional Licenses**

A provisional license allows an individual applying for licensure by examination or licensure by endorsement<sup>17</sup> who has satisfied the clinical experience requirements, to practice under the supervision of a licensed professional while meeting additional coursework or examination requirements for licensure.<sup>18</sup> Individuals must meet minimum coursework requirements and possess the respective graduate degree.<sup>19</sup> A provisional license is valid for 24 months, after which it may not be renewed or reissued.<sup>20</sup>

Currently, there are 53 provisionally licensed clinical social workers, 25 provisionally licensed marriage and family therapists, and 152 provisionally licensed mental health counselors.<sup>21</sup> The board accepts applications for intern registrations from provisionally licensed practitioners whose provisional licenses have expired but who have not met licensure requirements. Currently, there is no prohibition against a provisional licensee applying for an intern registration.<sup>22</sup>

### **III. Effect of Proposed Changes:**

The bill amends ss. 491.0045 to require that a clinical social worker, marriage and family therapist, or mental health counselor intern must practice under the supervision of a licensed clinical social worker, marriage and family therapist, or mental health counselor, as applicable, at all times. The bill limits the duration of a registered internship to 5 years (60 months) from the date the intern registration is issued. An intern registration issued on or before April 1, 2017, will expire on March 31, 2022, and may not be renewed or reissued. Registrations issued after April 1, 2017, expire 60 months after the date of issuance and may be renewed only if the candidate has passed the theory and practice examination required for full licensure. The bill prohibits a person who has held a provisional license from applying for an intern registration in the same profession.

The bill amends s. 491.005, F.S., to clarify that an intern may only practice if there is a licensed mental health professional on-site.

The bill reenacts s. 491.012, F.S., related to prohibitions on practicing clinical social work, marriage and family therapy, or mental health counseling unless the practitioner is licensed to practice that profession or is a registered intern.

The bill is effective July 1, 2016.

### **IV. Constitutional Issues:**

#### **A. Municipality/County Mandates Restrictions:**

None.

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<sup>17</sup> The procedure for licensure by endorsement is provided in s. 491.006, F.S.

<sup>18</sup> See s. 491.0046(1), F.S., and Rule 64B4-3.0075, F.A.C.

<sup>19</sup> Section 491.0046(2), F.S.

<sup>20</sup> Section 491.0046(4), F.S.

<sup>21</sup> *Supra* note 2.

<sup>22</sup> *Supra* note 15.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Under the bill clinical social worker, marriage and family therapist, and mental health counselor interns must meet new minimum qualifications for practice and requirements for supervision, which will have an indeterminate impact on their ability to practice.

C. Government Sector Impact:

The DOH reports that it will experience a decrease in revenue associated with the elimination of the biennial renewal fee for interns. However, with the internship restricted to 5 years, it is anticipated that interns will apply for full licensure, which will likely offset the decrease in intern registration renewal revenue.

The DOH will also be required to update its licensure system to accommodate the 5-year intern license, which current resources can absorb.<sup>23</sup>

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 491.0045 and 491.005.

This bill reenacts section 491.012 of the Florida Statutes.

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<sup>23</sup> *Supra* note 15.

**IX. Additional Information:**

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

None.

- B. **Amendments:**

None.

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

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By Senator Legg

17-00689A-16

2016858\_\_

A bill to be entitled

An act relating to clinical social worker, marriage and family therapist, and mental health counselor interns; amending s. 491.0045, F.S.; revising clinical social worker, marriage and family therapist, and mental health counselor intern registration requirements; revising requirements for supervision of registered interns; deleting specified education and experience requirements; establishing validity periods and providing for expiration of intern registrations; establishing requirements for a subsequent intern registration and for an applicant who has held a provisional license; amending s. 491.005, F.S.; requiring a licensed mental health professional to be on the premises when a registered intern provides services in clinical social work, marriage and family therapy, or mental health counseling; deleting a clinical experience requirement for such registered interns; deleting a provision requiring that certain registered interns meet educational requirements for licensure; reenacting s. 491.012(1)(i), (j), and (k), F.S., relating to penalties, to incorporate the amendment made to s. 491.0045, F.S., in a reference thereto; providing an effective date.

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

Section 1. Section 491.0045, Florida Statutes, is amended to read:

Page 1 of 9

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

17-00689A-16

2016858\_\_

491.0045 Intern registration; requirements.-

(1) ~~Effective January 1, 1998,~~ An individual who has not satisfied intends to practice in Florida to satisfy the postgraduate or post-master's level experience requirements, as specified in s. 491.005(1)(c), (3)(c), or (4)(c), must register as an intern in the profession for which he or she is seeking licensure before ~~prior to~~ commencing the post-master's experience requirement. ~~or~~ An individual who intends to satisfy part of the required graduate-level practicum, internship, or field experience, outside the academic arena for any profession, must register as an intern in the profession for which he or she is seeking licensure before ~~prior to~~ commencing the practicum, internship, or field experience.

(2) The department shall register as a clinical social worker intern, marriage and family therapist intern, or mental health counselor intern each applicant who the board certifies has:

(a) Completed the application form and remitted a nonrefundable application fee not to exceed \$200, as set by board rule;

(b)1. Completed the education requirements as specified in s. 491.005(1)(c), (3)(c), or (4)(c) for the profession for which he or she is applying for licensure, if needed; and

2. Submitted an acceptable supervision plan, as determined by the board, for meeting the practicum, internship, or field work required for licensure that was not satisfied in his or her graduate program.

(c) Identified a qualified supervisor.

(3) An individual registered under this section must remain

Page 2 of 9

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17-00689A-16

2016858\_\_

59 under supervision while practicing under registered intern  
 60 status until he or she is in receipt of a license or a letter  
 61 from the department stating that he or she is licensed to  
 62 practice the profession for which he or she applied.

63 ~~(4) An individual who has applied for intern registration~~  
 64 ~~on or before December 31, 2001, and has satisfied the education~~  
 65 ~~requirements of s. 491.005 that are in effect through December~~  
 66 ~~31, 2000, will have met the educational requirements for~~  
 67 ~~licensure for the profession for which he or she has applied.~~

68 ~~(4)(5) Individuals who have commenced the experience~~  
 69 ~~requirement as specified in s. 491.005(1)(e), (3)(e), or (4)(e)~~  
 70 ~~but failed to register as required by subsection (1) shall~~  
 71 ~~register with the department before January 1, 2000. Individuals~~  
 72 ~~who fail to comply with this section may subsection shall not be~~  
 73 ~~granted a license under this chapter, and any time spent by the~~  
 74 ~~individual completing the experience requirement as specified in~~  
 75 ~~s. 491.005(1)(c), (3)(c), or (4)(c) before prior to registering~~  
 76 ~~as an intern does shall not count toward completion of the such~~  
 77 ~~requirement.~~

78 (5) An intern registration issued on or before April 1,  
 79 2017, expires March 31, 2022, and may not be renewed or  
 80 reissued. An intern registration issued after April 1, 2017,  
 81 expires 60 months after the date of issuance. No subsequent  
 82 intern registration may be issued unless the candidate has  
 83 passed the theory and practice examination described in s.  
 84 491.005 (1)(d), (3)(d), and (4)(d).

85 (6) An individual who has held a provisional license issued  
 86 by the board may not apply for an intern registration in the  
 87 same profession.

17-00689A-16

2016858\_\_

88 Section 2. Paragraphs (a) and (c) of subsection (1),  
 89 paragraphs (a) and (c) of subsection (3), paragraphs (a) and (c)  
 90 of subsection (4), and subsections (5) and (6) of section  
 91 491.005, Florida Statutes, are amended to read:

92 491.005 Licensure by examination.—

93 (1) CLINICAL SOCIAL WORK.—Upon verification of  
 94 documentation and payment of a fee not to exceed \$200, as set by  
 95 board rule, plus the actual per applicant cost to the department  
 96 for purchase of the examination from the American Association of  
 97 State Social Worker's Boards or a similar national organization,  
 98 the department shall issue a license as a clinical social worker  
 99 to an applicant who the board certifies:

100 (a) Has submitted an ~~made~~ application ~~therefor~~ and paid the  
 101 appropriate fee.

102 (c) Has had at least ~~not less than~~ 2 years of clinical  
 103 social work experience, which took place subsequent to  
 104 completion of a graduate degree in social work at an institution  
 105 meeting the accreditation requirements of this section, under  
 106 the supervision of a licensed clinical social worker or the  
 107 equivalent who is a qualified supervisor as determined by the  
 108 board. An individual who intends to practice in Florida to  
 109 satisfy clinical experience requirements must register pursuant  
 110 to s. 491.0045 ~~before prior to~~ commencing practice. If the  
 111 applicant's graduate program was not a program which emphasized  
 112 direct clinical patient or client health care services as  
 113 described in subparagraph (b)2., the supervised experience  
 114 requirement must take place after the applicant has completed a  
 115 minimum of 15 semester hours or 22 quarter hours of the  
 116 coursework required. A doctoral internship may be applied toward

17-00689A-16

2016858\_\_

117 the clinical social work experience requirement. A licensed  
 118 mental health professional must be on the premises when clinical  
 119 services are provided by a registered intern in a private  
 120 practice setting. The experience requirement may be met by work  
 121 ~~performed on or off the premises of the supervising clinical~~  
 122 ~~social worker or the equivalent, provided the off-premises work~~  
 123 ~~is not the independent private practice rendering of clinical~~  
 124 ~~social work that does not have a licensed mental health~~  
 125 ~~professional, as determined by the board, on the premises at the~~  
 126 ~~same time the intern is providing services.~~

127 (3) MARRIAGE AND FAMILY THERAPY.—Upon verification of  
 128 documentation and payment of a fee not to exceed \$200, as set by  
 129 board rule, plus the actual cost to the department for the  
 130 purchase of the examination from the Association of Marital and  
 131 Family Therapy Regulatory Board, or similar national  
 132 organization, the department shall issue a license as a marriage  
 133 and family therapist to an applicant who the board certifies:

134 (a) Has submitted an ~~made~~ application ~~therefor~~ and paid the  
 135 appropriate fee.

136 (c) Has had at least ~~not less than~~ 2 years of clinical  
 137 experience during which 50 percent of the applicant's clients  
 138 were receiving marriage and family therapy services, which must  
 139 be at the post-master's level under the supervision of a  
 140 licensed marriage and family therapist with at least 5 years of  
 141 experience, or the equivalent, who is a qualified supervisor as  
 142 determined by the board. An individual who intends to practice  
 143 in Florida to satisfy the clinical experience requirements must  
 144 register pursuant to s. 491.0045 before ~~prior to~~ commencing  
 145 practice. If a graduate has a master's degree with a major

17-00689A-16

2016858\_\_

146 emphasis in marriage and family therapy or a closely related  
 147 field that did not include all the coursework required under  
 148 sub-subparagraphs (b)1.a.-c., credit for the post-master's level  
 149 clinical experience shall not commence until the applicant has  
 150 completed a minimum of 10 of the courses required under sub-  
 151 subparagraphs (b)1.a.-c., as determined by the board, and at  
 152 least 6 semester hours or 9 quarter hours of the course credits  
 153 must have been completed in the area of marriage and family  
 154 systems, theories, or techniques. Within the 3 years of required  
 155 experience, the applicant shall provide direct individual,  
 156 group, or family therapy and counseling, to include the  
 157 following categories of cases: unmarried dyads, married couples,  
 158 separating and divorcing couples, and family groups including  
 159 children. A doctoral internship may be applied toward the  
 160 clinical experience requirement. A licensed mental health  
 161 professional must be on the premises when clinical services are  
 162 provided by a registered intern in a private practice setting.  
 163 ~~The clinical experience requirement may be met by work performed~~  
 164 ~~on or off the premises of the supervising marriage and family~~  
 165 ~~therapist or the equivalent, provided the off-premises work is~~  
 166 ~~not the independent private practice rendering of marriage and~~  
 167 ~~family therapy services that does not have a licensed mental~~  
 168 ~~health professional, as determined by the board, on the premises~~  
 169 ~~at the same time the intern is providing services.~~

170 (4) MENTAL HEALTH COUNSELING.—Upon verification of  
 171 documentation and payment of a fee not to exceed \$200, as set by  
 172 board rule, plus the actual per applicant cost to the department  
 173 for purchase of the examination from the Professional  
 174 Examination Service for the National Academy of Certified



17-00689A-16

2016858\_\_

175 Clinical Mental Health Counselors or a similar national  
 176 organization, the department shall issue a license as a mental  
 177 health counselor to an applicant who the board certifies:

178 (a) Has submitted an ~~made~~ application ~~therefor~~ and paid the  
 179 appropriate fee.

180 (c) Has had at least ~~not less than~~ 2 years of clinical  
 181 experience in mental health counseling, which must be at the  
 182 post-master's level under the supervision of a licensed mental  
 183 health counselor or the equivalent who is a qualified supervisor  
 184 as determined by the board. An individual who intends to  
 185 practice in Florida to satisfy the clinical experience  
 186 requirements must register pursuant to s. 491.0045 before ~~prior~~  
 187 ~~to~~ commencing practice. If a graduate has a master's degree with  
 188 a major related to the practice of mental health counseling that  
 189 did not include all the coursework required under sub-  
 190 subparagraphs (b)1.a.-b., credit for the post-master's level  
 191 clinical experience shall not commence until the applicant has  
 192 completed a minimum of seven of the courses required under sub-  
 193 subparagraphs (b)1.a.-b., as determined by the board, one of  
 194 which must be a course in psychopathology or abnormal  
 195 psychology. A doctoral internship may be applied toward the  
 196 clinical experience requirement. A licensed mental health  
 197 professional must be on the premises when clinical services are  
 198 provided by a registered intern in a private practice setting.  
 199 ~~The clinical experience requirement may be met by work performed~~  
 200 ~~on or off the premises of the supervising mental health~~  
 201 ~~counselor or the equivalent, provided the off premises work is~~  
 202 ~~not the independent private practice rendering of services that~~  
 203 ~~does not have a licensed mental health professional, as~~

Page 7 of 9

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17-00689A-16

2016858\_\_

204 ~~determined by the board, on the premises at the same time the~~  
 205 ~~intern is providing services.~~

206 ~~(5) INTERNSHIP. An individual who is registered as an~~  
 207 ~~intern and has satisfied all of the educational requirements for~~  
 208 ~~the profession for which the applicant seeks licensure shall be~~  
 209 ~~certified as having met the educational requirements for~~  
 210 ~~licensure under this section.~~

211 ~~(5)(6)~~ RULES.—The board may adopt rules necessary to  
 212 implement any education or experience requirement of this  
 213 section for licensure as a clinical social worker, marriage and  
 214 family therapist, or mental health counselor.

215 Section 3. For the purpose of incorporating the amendment  
 216 made by this act to section 491.0045, Florida Statutes, in a  
 217 reference thereto, paragraphs (i), (j), and (k) of subsection  
 218 (1) of section 491.012, Florida Statutes, are reenacted to read:  
 219 491.012 Violations; penalty; injunction.—

220 (1) It is unlawful and a violation of this chapter for any  
 221 person to:

222 (i) Practice clinical social work in this state for  
 223 compensation, unless the person holds a valid, active license to  
 224 practice clinical social work issued pursuant to this chapter or  
 225 is an intern registered pursuant to s. 491.0045.

226 (j) Practice marriage and family therapy in this state for  
 227 compensation, unless the person holds a valid, active license to  
 228 practice marriage and family therapy issued pursuant to this  
 229 chapter or is an intern registered pursuant to s. 491.0045.

230 (k) Practice mental health counseling in this state for  
 231 compensation, unless the person holds a valid, active license to  
 232 practice mental health counseling issued pursuant to this

Page 8 of 9

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17-00689A-16

2016858\_\_

233 chapter or is an intern registered pursuant to s. 491.0045.

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/29/16  
Meeting Date

858  
Bill Number (if applicable)

Topic Mental Health Counseling Interns

Amendment Barcode (if applicable)

Name Corinne Nixon

Job Title Lobbyist

Address 119 E. Park Ave  
Street

Phone (850) 766-5725

Tallahassee FL 32301  
City State Zip

Email corinnemixon@gmail.com

Speaking:  For  Against  Information

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

Representing Florida Mental Health Counseling Association

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

**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.)

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Prepared By: The Professional Staff of the Committee on Fiscal Policy

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BILL: CS/CS/SB 862

INTRODUCER: Children, Families, and Elder Affairs Committee; Criminal Justice Committee; and Senator Legg

SUBJECT: Mental Health Treatment

DATE: February 26, 2016

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Sumner</u>	<u>Cannon</u>	<u>CJ</u>	<u>Fav/CS</u>
2.	<u>Hendon</u>	<u>Hendon</u>	<u>CF</u>	<u>Fav/CS</u>
3.	<u>Pace</u>	<u>Hrdlicka</u>	<u>FP</u>	<u>Favorable</u>

**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/CS/SB 862 authorizes a physician in a forensic or civil facility to continue the administration of psychotropic medication previously prescribed in jail under certain circumstances.

The bill requires a competency hearing to be held within 30 days after the court has been notified that a defendant is competent to proceed, or no longer meets the criteria for continued involuntary commitment.

The bill also permits a court to dismiss charges for an incompetent individual who remains incompetent for at least 3 years rather than 5 years after the original determination, unless the charge is for certain violent crimes. The bill clarifies that the timeframe for mandatory dismissal of all charges for an incompetent individual who remains incompetent is 5 continuous, uninterrupted years since the court's original determination.

The bill may have a positive fiscal impact to the state.

## II. Present Situation:

### Competency

The Due Process Clause of the 14th Amendment prohibits the states from trying and convicting defendants who are incompetent to stand trial.<sup>1</sup> The states must have procedures in place that adequately protect the defendant's right to a fair trial, which includes his or her participation in all material stages of the process.<sup>2</sup> Defendants must have the capacity to appreciate the range and nature of the charges and possible penalties, understand the adversarial nature of the legal process, disclose to counsel facts pertinent to the proceedings, manifest appropriate courtroom behavior, and be able to testify relevantly.<sup>3</sup>

If a defendant is suspected of being incompetent, the court, counsel for the defendant, or the state may file a motion for examination to have the defendant's cognitive state assessed.<sup>4</sup> If the motion is well-founded the court will appoint experts to evaluate the defendant's cognitive state. The defendant's competency is then determined by the judge in a subsequent hearing.<sup>5</sup> If the defendant is found to be competent, the criminal proceeding resumes.<sup>6</sup> If the defendant is found to be incompetent to proceed, the proceeding may not resume unless competency is restored.<sup>7</sup>

Defendants adjudicated incompetent to proceed<sup>8</sup> or not guilty by reason of insanity may be involuntarily committed to a state civil<sup>9</sup> or forensic<sup>10</sup> treatment facility by the court.<sup>11</sup> The committing court retains jurisdiction over the defendant while the defendant is under involuntary commitment and the defendant may not be released except by order of the committing court.<sup>12</sup>

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<sup>1</sup> See *Pate v. Robinson*, 383 U.S. 375, (1966) and *Jones v. State*, 740 So.2d 520 (Fla. 1999).

<sup>2</sup> *Id.* See also Rule 3.210(a)(1), Fla.R.Crim.P.

<sup>3</sup> *Id.* See also ss. 916.12, 916.3012, and 985.19, F.S.

<sup>4</sup> Rule 3.210, Fla.R.Crim.P.

<sup>5</sup> *Id.*

<sup>6</sup> Rule 3.212(b), Fla.R.Crim.P.

<sup>7</sup> *Id.*

<sup>8</sup> "Incompetent to proceed" means "the defendant does not have sufficient present ability to consult with her or his lawyer with a reasonable degree of rational understanding" or "the defendant has no rational, as well as factual, understanding of the proceedings against her or him." See s. 916.12(1), F.S.

<sup>9</sup> A "civil facility" is a mental health facility established within the DCF or by contract with DCF to serve individuals committed pursuant to ch. 394, F.S. (the Baker Act), and defendants pursuant to ch. 916, F.S. (the Forensic Client Service Act), who do not require the security provided in a forensic facility; or an intermediate care facility for the developmentally disabled, a foster care facility, a group home facility, or a supported living setting designated by the APD to serve defendants who do not require the security provided in a forensic facility. See s. 916.106(4), F.S.

<sup>10</sup> A "forensic facility" is a separate and secure facility established within DCF or APD to serve forensic clients. A separate and secure facility means a security-grade building for the purpose of separately housing persons who have mental illness from persons who have intellectual disabilities or autism and separately housing persons who have been involuntarily committed pursuant to ch. 916, F.S., from non-forensic residents. See s. 916.106(10), F.S. DCF oversees two state-operated forensic facilities, Florida State Hospital and North Florida Evaluation and Treatment Center, and two privately-operated, maximum security forensic treatment facilities, South Florida Evaluation and Treatment Center and Treasure Coast Treatment Center.

<sup>11</sup> See ss. 916.13, 916.15, and 916.302, F.S.

<sup>12</sup> Section 916.16(1), F.S.

The defendant may be committed for treatment to restore competency if the court believes competency can be restored in the foreseeable future.<sup>13</sup> The administrator of the commitment facility must submit a report to the court no later than 6 months after a defendant's admission date and at the end of any period of extended commitment, or at any time the administrator has determined that the defendant has regained competency or no longer meets the criteria for involuntary commitment.<sup>14</sup>

The Florida Rules of Criminal Procedure require the court to hold a hearing within 30 days of receiving a report from a facility administrator that indicates that a defendant has regained competency and no longer meets the criteria for involuntary commitment.<sup>15</sup> Currently, Florida statutes are silent on the time frame in which a court must hold a hearing to determine competency or the continued need for involuntary commitment. Additionally, Florida statutes and the Florida Rules of Criminal Procedure are silent as to transportation of the defendant to the committing court's jurisdiction for these hearings.<sup>16</sup>

### **Dismissal of Charges**

All charges against a defendant adjudicated incompetent to proceed due to mental illness are dismissed if the defendant remains incompetent to proceed 5 years after the initial determination, unless the court believes that a defendant will become competent within the foreseeable future. The court must specify the reasons and the time frame within which a defendant is expected to become competent to proceed. The state may refile the charges should a defendant be declared competent to proceed in the future.<sup>17</sup>

### **Rights of Forensic Clients**

A defendant adjudicated incompetent to proceed or not guilty by reason of insanity, and involuntarily committed by the court may be held in a jail for up to 15 days. Evaluation, treatment, or training may be provided in jail until the client is transferred to a civil or forensic facility.<sup>18</sup>

Forensic clients<sup>19</sup> are asked to give express and informed written consent for treatment.<sup>20</sup> If a client refuses treatment, such treatment can be provided without consent under the following circumstances:

- In emergency situations in which there is an immediate danger to the safety of the client and others, a physician may order treatment for a period not to exceed 48 hours. After the 48 hour period, if the client continues to refuse treatment, then the facility administrator must petition

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<sup>13</sup> Rule 3.212(c)(3), Fl.R.Crim.P.

<sup>14</sup> See ss. 916.13(2), F.S. and 916.15(3), F.S.

<sup>15</sup> See Rules 3.212(c)(6) and 3.218(b), Fl.R.Crim.P.

<sup>16</sup> According to the DCF, a statutorily mandated timeframe to hold a competency hearing and guidelines for transportation may create vacancies at civil and forensic facilities for incoming clients. See *infra* note 22.

<sup>17</sup> Section 916.145, F.S.

<sup>18</sup> Section 916.107(1)(a), F.S.

<sup>19</sup> Forensic clients are individuals who have been committed to the DCF, pursuant to ch. 916, F.S., because they have been charged with a felony and adjudicated incompetent, adjudicated not guilty by reason of insanity, or determined to be incompetent to proceed. See s. 916.106(9), F.S.

<sup>20</sup> Section 916.107(3)(a), F.S.

the court for an order authorizing the continuation of the treatment. In the interim, treatment may be provided upon the continued written order of a physician who has determined that the emergency situation persists.

- In non-emergency situations, treatment may not be given without the client's consent. The facility administrator must petition the court for an order authorizing treatment, including the administration of psychotropic medication. The court order may allow treatment for a period not to exceed 90 days. The facility administrator may request a continuation of treatment for an additional 90 days and this process may be repeated until the client provides consent or is discharged by the committing court.<sup>21</sup>

Typically, there is a delay between the time a facility administrator files a petition requesting court authorization to provide treatment and a hearing for the petition. During this delay, a client does not receive treatment, including psychotropic medication, even if he or she was receiving this medication while in jail. The delay can create a lapse in treatment which could potentially lead to a client's decompensation, instability, and prolonged stay at the facility.<sup>22</sup>

### III. Effect of Proposed Changes:

#### Competency

**Sections 2 and 4** of the bill amends ss. 916.13 and 916.15, F.S., respectively, to require a competency hearing to be held within 30 days after the court has been notified by a facility administrator that a defendant is competent to proceed, or no longer meets the criteria for continued involuntary commitment. This timeframe is consistent with Rule 3.212(c)(6), Florida Rules of Criminal Procedure. The bill also requires that the defendant be transported back to the committing court's jurisdiction for the competency hearing.

**Sections 5 and 6** of the bill reenact ss. 916.106 and 394.467, F.S., respectively, to incorporate the changes made in the bill to ss. 916.13 and 916.15, F.S.

#### Dismissal of Charges

**Section 3** of the bill amends s. 916.145, F.S., to clarify that the timeframe for mandatory dismissal of all charges for an incompetent individual who remains incompetent is 5 *continuous, uninterrupted* years since the court's original determination. The bill also permits a court to dismiss charges for an incompetent individual who remains incompetent for at least 3 years after the original determination, unless the charge is:

- Arson;
- Sexual battery;
- Robbery;
- Kidnapping;
- Aggravated child abuse;
- Aggravated abuse of an elderly person or disabled adult;
- Aggravated assault with a deadly weapon;

<sup>21</sup> *Id.*

<sup>22</sup> DCF, 2016 Agency Bill Analysis SB 862, (Feb. 2, 2016) (on file with the Senate Health Policy Committee).

- Murder;
- Manslaughter;
- Aggravated manslaughter of an elderly person or disabled adult;
- Aggravated manslaughter of a child;
- Unlawful throwing, projecting, placing, or discharging of a destructive device or bomb;
- Armed burglary;
- Aggravated battery;
- Aggravated stalking;
- A forcible felony as defined in s. 776.08, F.S., that is not otherwise listed;
- An offense involving the possession, use, or discharge of a firearm;
- An attempt to commit any of these offenses listed above;
- Any offense allegedly committed by a defendant who has had a forcible or violent felony conviction within the five years preceding the date of arrest for the nonviolent felony sought to be dismissed;
- Any offense allegedly committed by a defendant who, after having been found incompetent and under court supervision in a community-based program, is formally charged by a state attorney with a new felony offense; or
- An offense for which there is an identifiable victim and the victim has not consented to the dismissal.

### **Rights of Forensic Clients**

**Section 1** of the bill amends s. 916.107(3), F.S., to authorize a physician of a state forensic or civil facility to continue the administration of psychotropic medication without the consent of the client under all the following circumstances:

- It is a non-emergency situation;
- A petition has been filed with the court for an order authorizing the treatment for the client;
- The client has been receiving psychotropic medication while in jail;
- The client lacks the capacity to make an informed decision regarding mental health treatment; and
- In the physician's opinion, the abrupt cessation of the medication could pose a risk to the health or safety of the client.

This authority to provide psychotropic medication without consent is limited to the time period required to obtain a court order for the medication. Within 5 days after admission, the administrator of the forensic or civil facility may petition the committing court or the circuit court of the county where the facility is located, for an order authorizing the continued treatment of a client using the psychotropic medication. The jail physician must provide a current psychotropic medication order at the time of transfer from the jail to the forensic or civil facility or upon request of the admitting physician after the client is evaluated.

**Section 7** provides that the bill is effective on July 1, 2016.



**IV. Constitutional Issues:**

## A. Municipality/County Mandates Restrictions:

None.

## B. Public Records/Open Meetings Issues:

None.

## C. Trust Funds Restrictions:

None.

**V. Fiscal Impact Statement:**

## A. Tax/Fee Issues:

None.

## B. Private Sector Impact:

None.

## C. Government Sector Impact:

The bill may have a positive fiscal impact to the state if individuals charged with nonviolent offenses who have not regained competency after 3 years have their charges dismissed.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 916.107, 916.13, 916.145, and 916.15.

This bill reenacts sections 916.106 and 394.467 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/CS by Children, Families, and Elder Affairs on February 10, 2016:**

The Committee Substitute clarifies when a court can dismiss charges for individuals whose competency has not been restored after 3 years.

**CS by Criminal Justice on February 1, 2016:**

The Committee Substitute permits a court to dismiss charges for specified nonviolent offenses for an individual whom the court has determined to be incompetent to proceed and who remains incompetent for 3 years after the original determination.

It also changes the timeframe for mandatory dismissal of all charges for an individual whom the court has determined to be incompetent to proceed and who remains incompetent to 5 continuous, uninterrupted years since the court's original determination of incompetency.

- B. **Amendments:**

None.

By the Committees on Children, Families, and Elder Affairs; and  
Criminal Justice; and Senator Legg

586-03329-16

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A bill to be entitled

An act relating to mental health treatment; amending s. 916.107, F.S.; authorizing forensic and civil facilities to order the continuation of psychotropic medications for clients receiving such medication in the jail before admission to those facilities under certain circumstances; requiring a jail physician to provide a current psychotropic medication order under certain circumstances; amending s. 916.13, F.S.; requiring that a competency hearing be held within a specified time; amending s. 916.145, F.S.; revising the time for dismissal of certain charges for defendants that remain incompetent to proceed to trial; providing exceptions; amending s. 916.15, F.S.; requiring that a commitment hearing be held within a specified time; reenacting s. 916.106(9), F.S., relating to the definition of the terms "forensic client" or "client," to incorporate the amendments made to ss. 916.13 and 916.15, F.S., in references thereto; reenacting s. 394.467(7)(a), F.S., relating to involuntary inpatient placement, to incorporate the amendments made to s. 916.15, F.S., in a reference thereto; providing an effective date.

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

Section 1. Paragraph (a) of subsection (3) of section 916.107, Florida Statutes, is amended to read:

916.107 Rights of forensic clients.—

(3) RIGHT TO EXPRESS AND INFORMED CONSENT.—

(a) A forensic client shall be asked to give express and

Page 1 of 8

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586-03329-16

2016862c2

informed written consent for treatment. If a client refuses such treatment as is deemed necessary and essential by the client's multidisciplinary treatment team for the appropriate care of the client, such treatment may be provided under the following circumstances:

1. In an emergency situation in which there is immediate danger to the safety of the client or others, such treatment may be provided upon the written order of a physician for up to a period not to exceed 48 hours, excluding weekends and legal holidays. If, after the 48-hour period, the client has not given express and informed consent to the treatment initially refused, the administrator or designee of the civil or forensic facility shall, within 48 hours, excluding weekends and legal holidays, petition the committing court or the circuit court serving the county in which the facility is located, at the option of the facility administrator or designee, for an order authorizing the continued treatment of the client. In the interim, the need for treatment shall be reviewed every 48 hours and may be continued without the consent of the client upon the continued written order of a physician who has determined that the emergency situation continues to present a danger to the safety of the client or others.

2. In a situation other than an emergency situation, the administrator or designee of the facility shall petition the court for an order authorizing necessary and essential treatment for the client.

a. If the client has been receiving psychotropic medication while incarcerated at the time of transfer to the forensic or civil facility and lacks the capacity to make an informed

Page 2 of 8

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586-03329-16

2016862c2

61 decision regarding mental health treatment at the time of  
 62 admission, the admitting physician may order continued  
 63 administration of psychotropic medication if, in the clinical  
 64 judgment of the physician, abrupt cessation of psychotropic  
 65 medication could pose a risk to the health or safety of the  
 66 client while a court order to medicate is pursued. The  
 67 administrator or designee of the civil or forensic facility may,  
 68 within 5 days after admission, excluding weekends and legal  
 69 holidays, petition the committing court or the circuit court  
 70 servng the county in which the facility is located, at the  
 71 option of the facility administrator or designee, for an order  
 72 authorizing the continued treatment of a client using the  
 73 psychotropic medication. The jail physician shall provide a  
 74 current psychotropic medication order at the time of transfer to  
 75 the forensic or civil facility or upon request of the admitting  
 76 physician after the client is evaluated.

77       b. The court order shall allow such treatment for up to a  
 78 period not to exceed 90 days after following the date that of  
 79 the entry of the order was entered. Unless the court is notified  
 80 in writing that the client has provided express and informed  
 81 written consent in writing or that the client has been  
 82 discharged by the committing court, the administrator or  
 83 designee of the facility shall, before the expiration of the  
 84 initial 90-day order, petition the court for an order  
 85 authorizing the continuation of treatment for an additional 90  
 86 days another 90-day period. This procedure shall be repeated  
 87 until the client provides consent or is discharged by the  
 88 committing court.

89       3. At the hearing on the issue of whether the court should

Page 3 of 8

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586-03329-16

2016862c2

90 enter an order authorizing treatment for which a client was  
 91 unable to or refused to give express and informed consent, the  
 92 court shall determine by clear and convincing evidence that the  
 93 client has mental illness, intellectual disability, or autism,  
 94 that the treatment not consented to is essential to the care of  
 95 the client, and that the treatment not consented to is not  
 96 experimental and does not present an unreasonable risk of  
 97 serious, hazardous, or irreversible side effects. In arriving at  
 98 the substitute judgment decision, the court must consider at  
 99 least the following factors:

- 100       a. The client's expressed preference regarding treatment;
- 101       b. The probability of adverse side effects;
- 102       c. The prognosis without treatment; and
- 103       d. The prognosis with treatment.

104  
 105 The hearing shall be as convenient to the client as may be  
 106 consistent with orderly procedure and shall be conducted in  
 107 physical settings not likely to be injurious to the client's  
 108 condition. The court may appoint a general or special magistrate  
 109 to preside at the hearing. The client or the client's guardian,  
 110 and the representative, shall be provided with a copy of the  
 111 petition and the date, time, and location of the hearing. The  
 112 client has the right to have an attorney represent him or her at  
 113 the hearing, and, if the client is indigent, the court shall  
 114 appoint the office of the public defender to represent the  
 115 client at the hearing. The client may testify or not, as he or  
 116 she chooses, and has the right to cross-examine witnesses and  
 117 may present his or her own witnesses.

118       Section 2. Subsection (2) of section 916.13, Florida

Page 4 of 8

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586-03329-16

2016862c2

119 Statutes, is amended to read:

120 916.13 Involuntary commitment of defendant adjudicated  
121 incompetent.—

122 (2) A defendant who has been charged with a felony and ~~who~~  
123 ~~has been~~ adjudicated incompetent to proceed due to mental  
124 illness, ~~and~~ who meets the criteria for involuntary commitment  
125 ~~to the department under the provisions of~~ this chapter, may be  
126 committed to the department, and the department shall retain and  
127 treat the defendant.

128 (a) Within ~~No later than~~ 6 months after the date of  
129 admission and at the end of any period of extended commitment,  
130 or at any time the administrator or designee determines ~~shall~~  
131 ~~have determined~~ that the defendant has regained competency to  
132 proceed or no longer meets the criteria for continued  
133 commitment, the administrator or designee shall file a report  
134 with the court pursuant to the applicable Florida Rules of  
135 Criminal Procedure.

136 (b) A competency hearing shall be held within 30 days after  
137 the court receives notification that the defendant is competent  
138 to proceed or no longer meets the criteria for continued  
139 commitment. The defendant must be transported back to the  
140 committing court's jurisdiction for the hearing.

141 Section 3. Section 916.145, Florida Statutes, is amended to  
142 read:

143 916.145 Dismissal of charges.—

144 (1) The charges against a ~~any~~ defendant adjudicated  
145 incompetent to proceed due to ~~the defendant's~~ mental illness  
146 shall be dismissed without prejudice to the state if the  
147 defendant remains incompetent to proceed 5 continuous

Page 5 of 8

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586-03329-16

2016862c2

148 uninterrupted years after such determination, unless the court  
149 in its order specifies its reasons for believing that the  
150 defendant will become competent to proceed within the  
151 foreseeable future and specifies the time within which the  
152 defendant is expected to become competent to proceed. The court  
153 may dismiss such charges at least 3 years after such  
154 determination, unless the charge is:

155 (a) Arson;

156 (b) Sexual battery;

157 (c) Robbery;

158 (d) Kidnapping;

159 (e) Aggravated child abuse;

160 (f) Aggravated abuse of an elderly person or disabled  
161 adult;

162 (g) Aggravated assault with a deadly weapon;

163 (h) Murder;

164 (i) Manslaughter;

165 (j) Aggravated manslaughter of an elderly person or  
166 disabled adult;

167 (k) Aggravated manslaughter of a child;

168 (l) Unlawful throwing, projecting, placing, or discharging  
169 of a destructive device or bomb;

170 (m) Armed burglary;

171 (n) Aggravated battery;

172 (o) Aggravated stalking;

173 (p) A forcible felony as defined in s. 776.08 and not  
174 listed elsewhere in this subsection;

175 (q) An offense involving the possession, use, or discharge  
176 of a firearm;

Page 6 of 8

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586-03329-16

2016862c2

177 (r) An attempt to commit an offense listed in this  
 178 subsection;

179 (s) An offense allegedly committed by a defendant who has  
 180 had a forcible or violent felony conviction within the 5 years  
 181 preceding the date of arrest for the nonviolent felony sought to  
 182 be dismissed;

183 (t) An offense allegedly committed by a defendant who,  
 184 after having been found incompetent and under court supervision  
 185 in a community-based program, is formally charged by a State  
 186 Attorney with a new felony offense; or

187 (u) One for which there is an identifiable victim and such  
 188 victim has not consented to the dismissal.

189 (2) This section does not prohibit the state from refileing  
 190 dismissed charges if the defendant is declared to be competent  
 191 to proceed in the future against the defendant are dismissed  
 192 without prejudice to the state to refile the charges should the  
 193 defendant be declared competent to proceed in the future.

194 Section 4. Subsection (5) is added to section 916.15,  
 195 Florida Statutes, to read:

196 916.15 Involuntary commitment of defendant adjudicated not  
 197 guilty by reason of insanity.—

198 (5) The commitment hearing shall be held within 30 days  
 199 after the court receives notification that the defendant is  
 200 competent to proceed and no longer meets the criteria for  
 201 continued commitment. The defendant must be transported back to  
 202 the committing court's jurisdiction for the hearing.

203 Section 5. For the purpose of incorporating the amendments  
 204 made by this act to sections 916.13 and 916.15, Florida  
 205 Statutes, in references thereto, subsection (9) of section

586-03329-16

2016862c2

206 916.106, Florida Statutes, is reenacted to read:

207 916.106 Definitions.—For the purposes of this chapter, the  
 208 term:

209 (9) "Forensic client" or "client" means any defendant who  
 210 has been committed to the department or agency pursuant to s.  
 211 916.13, s. 916.15, or s. 916.302.

212 Section 6. For the purpose of incorporating the amendment  
 213 made by this act to section 916.15, Florida Statutes, in a  
 214 reference thereto, paragraph (a) of subsection (7) of section  
 215 394.467, Florida Statutes, is reenacted to read:

216 394.467 Involuntary inpatient placement.—

217 (7) PROCEDURE FOR CONTINUED INVOLUNTARY INPATIENT  
 218 PLACEMENT.—

219 (a) Hearings on petitions for continued involuntary  
 220 inpatient placement shall be administrative hearings and shall  
 221 be conducted in accordance with the provisions of s. 120.57(1),  
 222 except that any order entered by the administrative law judge  
 223 shall be final and subject to judicial review in accordance with  
 224 s. 120.68. Orders concerning patients committed after  
 225 successfully pleading not guilty by reason of insanity shall be  
 226 governed by the provisions of s. 916.15.

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



# THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

**COMMITTEES:**  
Education Pre-K - 12, Chair  
Ethics and Elections, Vice Chair  
Appropriations Subcommittee on Education  
Fiscal Policy  
Government Oversight and Accountability  
Higher Education

**SENATOR JOHN LEGG**  
17th District

Legg.John.web@FLSenate.gov

February 11, 2016

The Honorable Anitere Flores  
Committee on Fiscal Policy, Chair  
225 Knott Building  
404 South Monroe Street  
Tallahassee, FL 32399

**RE: CS/CS/SB 862 - Mental Health Treatment**  
**CS/CS/SB 1164 - Firesafety**

Dear Chair Flores:

CS/CS/SB 862: Mental Health Treatment and CS/CS/SB 1164 – Firesafety have been referred to your committee. I respectfully request that they be placed on the Committee on Fiscal Policy Agenda, at your convenience. Your leadership and consideration are appreciated.

Sincerely,

A handwritten signature in black ink, appearing to read "John Legg".

John Legg  
State Senator, District 17

cc: Jennifer Hrdlicka, Staff Director  
Tamra Lyon, Administrative Assistant

**REPLY TO:**

- 262 Crystal Grove Boulevard, Lutz, Florida 33548 (813) 909-9919
- 316 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5017

Senate's Website: [www.flSenate.gov](http://www.flSenate.gov)

**ANDY GARDINER**  
President of the Senate

**GARRETT RICHTER**  
President Pro Tempore

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

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

2/29/2016

*Meeting Date*

862

*Bill Number (if applicable)*

Topic Mental Health Treatment

*Amendment Barcode (if applicable)*

Name Nancy Daniels

Job Title Public Defender, 2nd Circuit

Address 301 South Monroe Street

Phone 850.606.1000

*Street*

Tallahassee

Florida

32301

Email nancy.daniels@flpd2.com

*City*

*State*

*Zip*

Speaking:  For  Against  Information

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

Representing Florida Public Defender Association, Inc.

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

S-001 (10/14/14)



THE FLORIDA SENATE

APPEARANCE RECORD

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

2/29/16  
Meeting Date

862  
Bill Number (if applicable)

Topic SB 862

Amendment Barcode (if applicable)

Name Michael Nickersheim

Job Title Director of Legislative Affairs

Address Street

Phone

City State Zip

Email Michael.Nickersheim@flda.com

Speaking:  For  Against  Information

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

Representing Florida Department of Children + Families

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

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

2 29 16

*Meeting Date*

862

*Bill Number (if applicable)*

Topic Forensic mental health

*Amendment Barcode (if applicable)*

Name Dan Hendrickson

Job Title Advocacy Committee Chair

Address 319 E Park Ave, PO Box 1201

Phone 850 570-1967

*Street*

Tallahassee

FL

32302

Email danbhendrickson@comcast.net

*City*

*State*

*Zip*

Speaking:  For  Against  Information

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

Representing Big Bend Mental Health Coalition, NAMI Tallahassee,

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

2-29-16

Meeting Date

862

Bill Number (if applicable)

Topic FORENSIC MENTAL HEALTH

Amendment Barcode (if applicable)

Name RICK SMITH

Job Title VOLUNTEER, ADVOCACY COMMITTEE

Address 6451 WEEPING WILLOW WAY

Phone 850-999-1180

Street

TALLAHASSEE, FL

32311

Email RICKPERC46@GMAIL.COM

City

State

Zip

Speaking:  For  Against  Information

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

Representing BIG BEND MENTAL HEALTH COALITION + NAMI, TALLAHASSEE

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

S-001 (10/14/14)

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

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

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Prepared By: The Professional Staff of the Committee on Fiscal Policy

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**BILL:** CS/SB 964

**INTRODUCER:** Fiscal Policy Committee; Health Policy Committee; and Senator Grimsley

**SUBJECT:** Prescription Drug Monitoring Program

**DATE:** February 29, 2016      **REVISED:** \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Stovall</u>	<u>Stovall</u>	<u>HP</u>	<b>Fav/CS</b>
2.	<u>Erickson</u>	<u>Cannon</u>	<u>CJ</u>	<b>Favorable</b>
3.	<u>Jones</u>	<u>Hrdlicka</u>	<u>FP</u>	<b>Fav/CS</b>

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**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/CS/SB 964 exempts a rehabilitative hospital, assisted living facility, or nursing home that dispenses a dosage of a controlled substance to a patient from reporting that act of dispensing to the prescription drug monitoring program (PDMP).

Section 893.055, F.S., is amended to allow the designee of a pharmacy, prescriber, or dispenser's to have access to information in the PDMP database that relates to a patient of the pharmacy, prescriber, or dispenser. The bill also allows a designee of a prescriber or dispenser to have access to information that relates to a patient of the prescriber or dispenser for the purpose of reviewing a patient's controlled drug prescription history.

The bill amends s. 893.0551, F.S., to require the DOH to disclose confidential and exempt information in the PDMP to the designee of a health care practitioner, pharmacist, pharmacy, prescriber, or dispenser, upon receiving the request and verifying the legitimacy of the request.

The bill also authorizes impaired practitioner consultants to request access to the PDMP information relating to impaired practitioner program participants, or a person who is referred to the program, agreed to be evaluated or monitored through the program, and has separately agreed in writing to the consultant access to the information.

The bill has a positive fiscal impact on the private sector and a negative fiscal impact on the Department of Health. See Section V. Fiscal Impact Statement.

The bill is effective July 1, 2016.

## II. Present Situation:

### The Prescription Drug Monitoring Program

Starting in the early 2000s, Florida began experiencing an increase in deaths resulting from prescription drug abuse. In 2010, the former Florida Office of Drug Control (FODC) identified prescription drug abuse as “the most threatening substance abuse issue in Florida.”<sup>1</sup> According to the FODC, between 2003 and 2009, the number of deaths caused by at least one prescription drug increased by 102 percent (from 1,234 to 2,488). The FODC remarked that these numbers translated into seven Floridians dying from prescription drug overdoses per day.<sup>2</sup>

Between 2009 and 2011, the Legislature enacted a series of reforms to combat prescription drug abuse. These reforms included strict regulation of pain management clinics; creating the Prescription Drug Monitoring Program (PDMP); and stricter regulation on selling, distributing, and dispensing controlled substances.<sup>3</sup>

The PDMP uses a comprehensive electronic system/database to monitor the prescribing and dispensing of certain controlled substances.<sup>4</sup> The PDMP became operational on September 1, 2011, and began receiving prescription data from pharmacies and dispensing practitioners.<sup>5</sup> Dispensers have reported over 163 million controlled substance prescriptions to the PDMP since its inception.<sup>6</sup> Health care practitioners began accessing the PDMP on October 17, 2011. Law enforcement agencies began requesting data from the PDMP in support of active criminal investigations on November 14, 2011.<sup>7</sup>

Dispensers of controlled substances listed in Schedule II, Schedule III, or Schedule IV of s. 893.03, F.S., must report specified information to the PDMP database within 7 days after dispensing, each time the controlled substance is dispensed. The information required to be reported includes:

- Name of the dispensing practitioner and Drug Enforcement Administration registration number, National Provider Identification, or other applicable identifier;
- Date the prescription is dispensed and method of payment;
- Full name, address, and date of birth of the person for whom the prescription was written;
- Name, national drug code, quantity, and strength of the controlled substance dispensed;

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<sup>1</sup> Executive Office of the Governor, *Florida Office of Drug Control 2010 Annual Report*, p. 8 (on file with the Senate Committee on Health Policy and the Senate Committee on Criminal Justice).

<sup>2</sup> *Id.*

<sup>3</sup> See chs. 2009-198, 2010-211, and 2011-141, L.O.F.

<sup>4</sup> Section 893.055(2)(a), F.S.

<sup>5</sup> Florida Department of Health, *2012-2013 Prescription Drug Monitoring Program Annual Report*, p. 3, (December 1, 2013), available at <http://www.floridahealth.gov/reports-and-data/e-forcse/news-reports/documents/2012-2013pdmp-annual-report.pdf> (last visited on Feb. 23, 2016).

<sup>6</sup> Florida Department of Health, *2014-2015 Prescription Drug Monitoring Program Annual Report*, p. 4, (December 1, 2015), available at <http://www.floridahealth.gov/statistics-and-data/e-forcse/news-reports/documents/2015-pdmp-annual-report.pdf> (last visited on Feb. 23, 2016).

<sup>7</sup> *Supra* note 5.

- Full name, Drug Enforcement Administration registration number, and address of the pharmacy or other location from which the controlled substance was dispensed;
- Name of the pharmacy or practitioner, other than a pharmacist, dispensing the controlled substance and the practitioner's National Provider Identification; and
- Other appropriate identifying information as determined by the Department of Health (DOH) rule.<sup>8</sup>

Current law exempts certain acts of dispensing or administering from PDMP reporting:

- A health care practitioner when administering a controlled substance directly to a patient if the amount of the controlled substance is adequate to treat the patient during that particular treatment session;
- A pharmacist or health care practitioner when administering a controlled substance to a patient or resident receiving care as a patient at a hospital, nursing home, ambulatory surgical center, hospice, or intermediate care facility for the developmentally disabled which is licensed in this state;
- A practitioner when administering or dispensing a controlled substance in the health care system of the Department of Corrections;
- A practitioner when administering a controlled substance in the emergency room of a licensed hospital;
- A health care practitioner when administering or dispensing a controlled substance to a person under the age of 16; and
- A pharmacist or a dispensing practitioner when dispensing a one-time, 72-hour emergency resupply of a controlled substance to a patient.<sup>9</sup>

### Accessing the PDMP database

Section 893.0551, F.S., makes certain identifying information of a patient or patient's agent, a health care practitioner, a dispenser, an employee of the practitioner who is acting on behalf of and at the direction of the practitioner, a pharmacist, or a pharmacy that is contained in records held by the DOH under s. 893.055, F.S., confidential and exempt from the public records laws in s. 119.07(1), F.S., and in Art. I, s. 24(a) of the State Constitution.<sup>10</sup>

Direct access to the PDMP database is presently limited to medical doctors, osteopathic physicians, dentists, podiatric physicians, naturopathic physicians, optometrists, advanced registered nurse practitioners, physician assistants, and pharmacists.<sup>11</sup> Currently, prescribers are not required to consult the PDMP database before prescribing a controlled substance for a patient, however physicians and pharmacists have made over 21 million requests to view patients' controlled substance history.<sup>12</sup>

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<sup>8</sup> Section 893.055(3), F.S.

<sup>9</sup> Section 893.055(5), F.S.

<sup>10</sup> Such information includes name, address, telephone number, insurance plan number, government-issued identification number, provider number, and Drug Enforcement Administration number, or any other unique identifying information or number. Section 893.0551(2), F.S.

<sup>11</sup> Section 893.055(7)(b), F.S.

<sup>12</sup> *Supra* note 6.

The following entities do not have direct access to the PDMP database but can request access from the PDMP manager:

- The DOH or certain health care regulatory boards;
- The Attorney General for Medicaid fraud cases;
- Law enforcement agencies during active investigations<sup>13</sup> involving potential criminal activity, fraud, or theft regarding prescribed controlled substances if the law enforcement agency has entered into a user agreement with the DOH; and
- Patients, or the legal guardians or designated health care surrogates of incapacitated patients.<sup>14</sup>

After an extensive process to validate and authenticate the request and the requestor, the PDMP manager or support staff provides the specific information requested.<sup>15</sup>

### **Impaired Practitioner Consultants**

The DOH administers the impaired practitioner treatment program to ensure that licensed health care practitioners, applicants for licensure, and students enrolled in prelicensure education programs who are impaired and may pose a threat to the public if allowed to obtain or retain a license are evaluated and referred for treatment. Impaired practitioner consultants (IPC) are retained by the DOH to monitor the treatment of an impaired practitioner and coordinate services.<sup>16</sup> An IPC must be a licensed physician, a licensed nurse, or an entity with a licensed physician or nurse as its medical director.<sup>17</sup> The IPCs assist the DOH in determining if the practitioner is actually impaired, connecting the practitioner to appropriate resources for treatment of the impairment, and monitoring the practitioner's progress.<sup>18</sup> There are two IPC entities currently retained by the DOH: the Intervention Project for Nurses and the Professionals Resource Network for other health care professions.

### **III. Effect of Proposed Changes:**

The bill amends s. 893.055, F.S., to exempt a rehabilitative hospital, assisted living facility, or nursing home that dispenses a certain dosage of a controlled substance, as needed, to a patient as ordered by the patient's treating physician from reporting that act of dispensing to the PDMP database.

Section 893.055, F.S., is also amended to allow the designee of a pharmacy, prescriber, or dispenser's to have access to information in the PDMP database that relates to a patient of the pharmacy, prescriber, or dispenser. The bill also allows a designee of a prescriber or dispenser to have access to information that relates to a patient of the prescriber or dispenser for the purpose of reviewing a patient's controlled drug prescription history.

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<sup>13</sup> Section 893.055(1)(h), F.S., defines "active investigation" as an investigation that is being conducted with a reasonable, good faith belief that it could lead to the filing of administrative, civil, or criminal proceedings, or that is ongoing and continuing and for which there is a reasonable, good faith anticipation of securing an arrest or prosecution in the foreseeable future.

<sup>14</sup> Section 893.055(7)(c)1.-4., F.S.

<sup>15</sup> See s. 893.055(7)(c), F.S., and R. 64k-1.003, F.A.C.

<sup>16</sup> Section 456.076(2)(a), F.S.

<sup>17</sup> *Id.*

<sup>18</sup> Section 456.076(2)(c)1., F.S.

The bill amends s. 893.0551, F.S., to require the DOH to disclose confidential and exempt information in the PDMP to the designee of a health care practitioner, pharmacist, pharmacy, prescriber, or dispenser, upon receiving the request and verifying the legitimacy of the request.

The bill amends ss. 893.055 and 893.0551, F.S., to permit IPCs to request access to the information in the PDMP relating to impaired practitioner program participants, or a person who is referred to the program, agreed to be evaluated or monitored through the program, and has separately agreed in writing to the consultant access to the information.

The bill is effective July 1, 2016.

#### **IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

The bill does not create or expand a public records exemption and therefore does not require a two-thirds vote for passage.

C. Trust Funds Restrictions:

None.

#### **V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Eliminating the reporting requirement will have a positive fiscal impact on rehabilitative hospitals, assisted living facilities, and nursing homes due to increased efficiencies and reduced administrative costs.

C. Government Sector Impact:

The bill may have a negative fiscal impact on the DOH because it may have to modify the PDMP in order to allow access to prescriber, dispenser, and pharmacy designees as well as impaired practitioner consultants.

#### **VI. Technical Deficiencies:**

None.



**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 893.055 and 893.0551.

**IX. Additional Information:**

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

**CS/CS by Fiscal Policy on February 29, 2016:**

The CS:

- Allows the designee of a pharmacy, prescriber, or dispenser's to have access to information in the PDMP database that relates to a patient of the pharmacy, prescriber, or dispenser;
- Allows a designee of a prescriber or dispenser to have access to information that relates to a patient of the prescriber or dispenser for the purpose of reviewing a patient's controlled drug prescription history; and
- Requires the DOH to disclose confidential and exempt information to the designee of a health care practitioner, pharmacist, pharmacy, prescriber, or dispenser, upon receiving the request and verifying the legitimacy of the request.

**CS by Health Policy on February 1, 2016:**

The CS authorizes a consultant in the impaired practitioner program indirect access to information in the PDMP concerning a participant or person referred to the PRN or IPN program.

- B. **Amendments:**

None.



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/29/2016	.	
	.	
	.	
	.	

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The Committee on Fiscal Policy (Bean) recommended the following:

**Senate Amendment (with title amendment)**

Delete lines 20 - 88

and insert:

section 893.055, Florida Statutes, and paragraphs (b) and (c) of subsection (7) and subsection (12) of that section are amended, to read:

893.055 Prescription drug monitoring program.—

(5) When the following acts of dispensing or administering occur, the following are exempt from reporting under this section for that specific act of dispensing or administration:



757136

12           (g) A rehabilitative hospital, assisted living facility, or  
13 nursing home dispensing a certain dosage of a controlled  
14 substance, as needed, to a patient as ordered by the patient's  
15 treating physician.

16           (7)

17           (b) A pharmacy, prescriber, or dispenser, or the designee  
18 of a pharmacy, prescriber, or dispenser, shall have access to  
19 information in the prescription drug monitoring program's  
20 database which relates to a patient of that pharmacy,  
21 prescriber, or dispenser in a manner established by the  
22 department as needed for the purpose of reviewing the patient's  
23 controlled substance prescription history. Other access to the  
24 program's database shall be limited to the program's manager and  
25 to the designated program and support staff, who may act only at  
26 the direction of the program manager or, in the absence of the  
27 program manager, as authorized. Access by the program manager or  
28 such designated staff is for prescription drug program  
29 management only or for management of the program's database and  
30 its system in support of the requirements of this section and in  
31 furtherance of the prescription drug monitoring program.  
32 Confidential and exempt information in the database shall be  
33 released only as provided in paragraph (c) and s. 893.0551. The  
34 program manager, designated program and support staff who act at  
35 the direction of or in the absence of the program manager, and  
36 any individual who has similar access regarding the management  
37 of the database from the prescription drug monitoring program  
38 shall submit fingerprints to the department for background  
39 screening. The department shall follow the procedure established  
40 by the Department of Law Enforcement to request a statewide



757136

41 criminal history record check and to request that the Department  
42 of Law Enforcement forward the fingerprints to the Federal  
43 Bureau of Investigation for a national criminal history record  
44 check.

45 (c) The following entities are ~~shall~~ not ~~be~~ allowed direct  
46 access to information in the prescription drug monitoring  
47 program database but may request from the program manager and,  
48 when authorized by the program manager, the program manager's  
49 program and support staff, information that is confidential and  
50 exempt under s. 893.0551. Before ~~Prior to~~ release, a ~~the~~ request  
51 by the following entities shall be verified as authentic and  
52 authorized with the requesting organization by the program  
53 manager, the program manager's program and support staff, or as  
54 determined in rules by the department as being authentic and as  
55 having been authorized by the requesting entity:

56 1. The department or its relevant health care regulatory  
57 boards responsible for the licensure, regulation, or discipline  
58 of practitioners, pharmacists, or other persons who are  
59 authorized to prescribe, administer, or dispense controlled  
60 substances and who are involved in a specific controlled  
61 substance investigation involving a designated person for one or  
62 more prescribed controlled substances.

63 2. The Attorney General for Medicaid fraud cases involving  
64 prescribed controlled substances.

65 3. A law enforcement agency during active investigations of  
66 ~~regarding~~ potential criminal activity, fraud, or theft regarding  
67 prescribed controlled substances.

68 4. A patient or the legal guardian or designated health  
69 care surrogate of an incapacitated patient as described in s.



757136

70 893.0551 who, for the purpose of verifying the accuracy of the  
71 database information, submits a written and notarized request  
72 that includes the patient's full name, address, and date of  
73 birth, and includes the same information if the legal guardian  
74 or health care surrogate submits the request. The request shall  
75 be validated by the department to verify the identity of the  
76 patient and the legal guardian or health care surrogate, if the  
77 patient's legal guardian or health care surrogate is the  
78 requestor. Such verification is also required for any request to  
79 change a patient's prescription history or other information  
80 related to his or her information in the electronic database.

81 5. An impaired practitioner consultant who is retained by  
82 the department under s. 456.076 for the purpose of reviewing the  
83 database information of an impaired practitioner program  
84 participant or a referral who has agreed to be evaluated or  
85 monitored through the program and who has separately agreed in  
86 writing to the consultant's access to and review of such  
87 information.

88  
89 Information in the database for the electronic prescription drug  
90 monitoring system is not discoverable or admissible in any civil  
91 or administrative action, except in an investigation and  
92 disciplinary proceeding by the department or the appropriate  
93 regulatory board.

94 (12) A prescriber or dispenser, or his or her designee, may  
95 have access to the information under this section which relates  
96 to a patient of that prescriber or dispenser as needed for the  
97 purpose of reviewing the patient's controlled drug prescription  
98 history. A prescriber or dispenser acting in good faith is



757136

99 immune from any civil, criminal, or administrative liability  
100 that might otherwise be incurred or imposed for receiving or  
101 using information from the prescription drug monitoring program.  
102 This subsection does not create a private cause of action, and a  
103 person may not recover damages against a prescriber or dispenser  
104 authorized to access information under this subsection for  
105 accessing or failing to access such information.

106 Section 2. Paragraphs (d), (e), and (g) of subsection (3)  
107 of section 893.0551, Florida Statutes, are amended, paragraph  
108 (h) is added to subsection (3) of that section, and subsections  
109 (6) and (7) of that section are republished, to read:

110 893.0551 Public records exemption for the prescription drug  
111 monitoring program.—

112 (3) The department shall disclose such confidential and  
113 exempt information to the following persons or entities upon  
114 request and after using a verification process to ensure the  
115 legitimacy of the request as provided in s. 893.055:

116 (d) A health care practitioner, or his or her designee, who  
117 certifies that the information is necessary to provide medical  
118 treatment to a current patient in accordance with ss. 893.05 and  
119 893.055.

120 (e) A pharmacist, or his or her designee, who certifies  
121 that the requested information will be used to dispense  
122 controlled substances to a current patient in accordance with  
123 ss. 893.04 and 893.055.

124 (g) The patient's pharmacy, prescriber, or dispenser, or  
125 the designee of the pharmacy, prescriber, or dispenser, who  
126 certifies that the information is necessary to provide medical  
127 treatment to his or her current patient in accordance with s.



757136

128 893.055.

129

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

131 And the title is amended as follows:

132 Delete lines 7 - 11

133 and insert:

134 authorizing the designee of a pharmacy, prescriber, or  
135 dispenser to have access to a patient's record in the  
136 prescription drug monitoring program's database for a  
137 specified purpose; authorizing an impaired  
138 practitioner consultant to access an impaired  
139 practitioner program participant's or referral's  
140 record in the prescription drug monitoring program's  
141 database; amending s. 893.0551, F.S.; authorizing the  
142 designee of a health care practitioner, pharmacist,  
143 pharmacy, prescriber, or dispenser and an impaired  
144 practitioner consultant to receive certain information  
145 from the prescription drug monitoring program;  
146 requiring the Department of Health to disclose

By the Committee on Health Policy; and Senator Grimsley

588-02886-16

2016964c1

A bill to be entitled

An act relating to the prescription drug monitoring program; amending s. 893.055, F.S.; providing that certain acts of dispensing controlled substances in specified facilities are not required to be reported to the prescription drug monitoring program; authorizing an impaired practitioner consultant to access an impaired practitioner program participant's or referral's record in the prescription drug monitoring program's database; amending s. 893.0551, F.S.; requiring the Department of Health to disclose certain information from the prescription drug monitoring program to an impaired practitioner consultant under certain circumstances; providing an effective date.

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

Section 1. Paragraph (g) is added to subsection (5) of section 893.055, Florida Statutes, and paragraph (c) of subsection (7) of that section is amended, to read:

893.055 Prescription drug monitoring program.—

(5) When the following acts of dispensing or administering occur, the following are exempt from reporting under this section for that specific act of dispensing or administration:

(g) A rehabilitative hospital, assisted living facility, or nursing home dispensing a certain dosage of a controlled substance, as needed, to a patient as ordered by the patient's treating physician.

(7)

(c) The following entities ~~are shall~~ not be allowed direct access to information in the prescription drug monitoring

Page 1 of 4

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

588-02886-16

2016964c1

program database but may request from the program manager and, when authorized by the program manager, the program manager's program and support staff, information that is confidential and exempt under s. 893.0551. ~~Before~~ ~~Prior~~ ~~to~~ release, a the request by the following entities shall be verified as authentic and authorized with the requesting organization by the program manager, the program manager's program and support staff, or as determined in rules by the department as being authentic and as having been authorized by the requesting entity:

1. The department or its relevant health care regulatory boards responsible for the licensure, regulation, or discipline of practitioners, pharmacists, or other persons who are authorized to prescribe, administer, or dispense controlled substances and who are involved in a specific controlled substance investigation involving a designated person for one or more prescribed controlled substances.

2. The Attorney General for Medicaid fraud cases involving prescribed controlled substances.

3. A law enforcement agency during active investigations of ~~regarding~~ potential criminal activity, fraud, or theft regarding prescribed controlled substances.

4. A patient or the legal guardian or designated health care surrogate of an incapacitated patient as described in s. 893.0551 who, for the purpose of verifying the accuracy of the database information, submits a written and notarized request that includes the patient's full name, address, and date of birth, and includes the same information if the legal guardian or health care surrogate submits the request. The request shall be validated by the department to verify the identity of the

Page 2 of 4

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



588-02886-16 2016964c1

62 patient and the legal guardian or health care surrogate, if the  
 63 patient's legal guardian or health care surrogate is the  
 64 requestor. Such verification is also required for any request to  
 65 change a patient's prescription history or other information  
 66 related to his or her information in the electronic database.

67 5. An impaired practitioner consultant who is retained by  
 68 the department under s. 456.076 for the purpose of reviewing the  
 69 database information of an impaired practitioner program  
 70 participant or a referral who has agreed to be evaluated or  
 71 monitored through the program and who has separately agreed in  
 72 writing to the consultant's access to and review of such  
 73 information.

74  
 75 Information in the database for the electronic prescription drug  
 76 monitoring system is not discoverable or admissible in any civil  
 77 or administrative action, except in an investigation and  
 78 disciplinary proceeding by the department or the appropriate  
 79 regulatory board.

80 Section 2. Paragraph (h) is added to subsection (3) of  
 81 section 893.0551, Florida Statutes, and subsections (6) and (7)  
 82 of that section are republished, to read:

83 893.0551 Public records exemption for the prescription drug  
 84 monitoring program.—

85 (3) The department shall disclose such confidential and  
 86 exempt information to the following persons or entities upon  
 87 request and after using a verification process to ensure the  
 88 legitimacy of the request as provided in s. 893.055:

89 (h) An impaired practitioner consultant who has been  
 90 authorized in writing by a participant in, or by a referral to,

Page 3 of 4

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588-02886-16 2016964c1

91 the impaired practitioner program to access and review  
 92 information as provided in s. 893.055(7)(c)5.

93 (6) An agency or person who obtains any confidential and  
 94 exempt information pursuant to this section must maintain the  
 95 confidential and exempt status of that information and may not  
 96 disclose such information unless authorized by law. Information  
 97 shared with a state attorney pursuant to paragraph (3)(a) or  
 98 paragraph (3)(c) may be released only in response to a discovery  
 99 demand if such information is directly related to the criminal  
 100 case for which the information was requested. Unrelated  
 101 information may be released only upon an order of a court of  
 102 competent jurisdiction.

103 (7) A person who willfully and knowingly violates this  
 104 section commits a felony of the third degree, punishable as  
 105 provided in s. 775.082, s. 775.083, or s. 775.084.

106 Section 3. This act shall take effect July 1, 2016.

Page 4 of 4

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The Florida Senate

## Committee Agenda Request

**To:** Senator Anitere Flores, Chair  
Committee on Fiscal Policy

**Subject:** Committee Agenda Request

**Date:** February 22, 2016

---

I respectfully request that **CS/Senate Bill #964**, relating to Prescription Drug Monitoring Program, be placed on the:

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

A handwritten signature in cursive script that reads "Denise Grimsley".

---

Senator Denise Grimsley  
Florida Senate, District 21

THE FLORIDA SENATE  
**APPEARANCE RECORD**

2-29-16

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

964

Meeting Date

Bill Number (if applicable)

Topic PDMP

Amendment Barcode (if applicable)

Name Dr. Martha E. Brown, MD

Job Title Associate Medical Professionals Resource Network (PRN)

Address P.O. Box 16510

Phone 1-904-277-8004

Street

Fernandine Beach FL 32035

Email drbrown@flprn.org

City

State

Zip

Speaking:  For  Against  Information

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

Representing PRN

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

964

Bill Number (if applicable)

Meeting Date

Topic PDMP

Amendment Barcode (if applicable)

Name Lisa Henning

Job Title Consultant

Address 242 Office Plaza Dr.

Phone 850-766-8808

Tallahassee FL 32301  
City State Zip

Email lisa@finminconsulting.com

Speaking:  For  Against  Information

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

Representing PRN

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/29/16  
Meeting Date

964  
Bill Number (if applicable)

Topic PUMP

Amendment Barcode (if applicable)

Name Myrtle Greene

Job Title Chief operations officer

Address 900 3rd Street  
Street

Phone 904-270-1620

Jacksonville Beach FL 32250  
City State Zip

Email mgreene@ipnfl.org

Speaking:  For  Against  Information

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

Representing IPN

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/29

Meeting Date

964

Bill Number (if applicable)

Topic PDMP

Amendment Barcode (if applicable)

Name Alisa LaPorte

Job Title Lobbyist

Address PO Box 1344

Phone 850-443-1319

Street

Tallahassee FL

Email

City

State

Zip

Speaking:  For  Against  Information

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

Representing Intervention Project for Nurses

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

2/29/16  
Meeting Date

964  
Bill Number (if applicable)

Topic PDMP

Amendment Barcode (if applicable)

Name Melody Arnold

Job Title Govt Affairs Mgr

Address 302 West Park Ave  
Street

Phone 850-224-3907

JLH FL 32304  
City State Zip

Email marnud@hca.org

Speaking:  For  Against  Information

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

Representing FL Health Care Assoc

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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



## THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

**COMMITTEES:**  
Communications, Energy, and Public Utilities, *Chair*  
Agriculture  
Appropriations  
Appropriations Subcommittee on Health  
and Human Services  
Health Policy  
Transportation

**JOINT COMMITTEES:**  
Joint Administrative Procedures Committee,  
*Alternating Chair*  
Joint Legislative Budget Commission

### SENATOR DENISE GRIMSLEY

*Deputy Majority Leader*  
21st District

February 25, 2016

The Honorable Anitere Flores, Chair  
Committee on Fiscal Policy  
225 Knott Building  
404 S. Monroe Street  
Tallahassee, FL 32399-1100

Dear Chair Flores:

I have two bills on the agenda Monday, February 29<sup>th</sup> at 1:00 p.m., SB 964 relating to Prescription Drug Monitoring Program and SB 1294 relating to Offenses Involving Minors and Vulnerable Persons. I am respectfully requesting permission for staff to present my bills on my behalf. Staff presenting will be Marty Mielke (SB 964) and Anne Bell (SB 1294). I have a bill up in Rules Committee scheduled at the same time.

Sincerely,

A handwritten signature in cursive script that reads "Denise Grimsley".

Denise Grimsley  
State Senate, District 21

**REPLY TO:**

- 205 South Commerce Avenue, Suite A, Sebring, Florida 33870 (863) 386-6016
- 212 East Stuart Avenue, Lake Wales, Florida 33853 (863) 679-4847
- 306 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5021

Senate's Website: [www.flsenate.gov](http://www.flsenate.gov)

**ANDY GARDINER**  
President of the Senate

**GARRETT RICHTER**  
President Pro Tempore



**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

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

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Prepared By: The Professional Staff of the Committee on Fiscal Policy

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BILL: PCS/CS/SB 1044 (808816)

INTRODUCER: Fiscal Policy Committee (Recommended by Appropriations Subcommittee on Criminal and Civil Justice); Criminal Justice Committee; and Senator Brandes and others

SUBJECT: Forfeiture of Contraband

DATE: February 26, 2016

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Dugger</u>	<u>Cannon</u>	<u>CJ</u>	<u>Fav/CS</u>
2.	<u>Harkness</u>	<u>Sadberry</u>	<u>ACJ</u>	<u>Recommend: Fav/CS</u>
3.	<u>Jones</u>	<u>Hrdlicka</u>	<u>FP</u>	<u>Pre-meeting</u>

**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

PCS/CS/SB 1044 amends the Florida Contraband Forfeiture Act to require that the owner of seized property be prosecuted and convicted of or plead guilty or nolo contendere to a criminal act, without regard to whether adjudication is withheld, before the civil forfeiture of the property becomes final. Until then, the state acquires provisional title to the property upon seizure.

In addition, the bill requires that the property owner be arrested before property may be seized under the act, unless the owner cannot be identified, there is probable cause to arrest an individual but he or she is a fugitive or dies before an arrest is made, or the property owner agrees to become an active confidential informant. Under these exceptions, a law enforcement agency may seize the property through a probable cause order issued by the court.

If the owner of the seized property cannot be found after 90 days, after a diligent effort by the seizing agency, the property is deemed a contraband article and forfeited pursuant to the provisions of the act. If the owner is found, the agency must return the property to the owner within 5 days after a court finding that the owner has a bona fide security interest, is an innocent owner, or has had the criminal charges dropped or dismissed.

The bill also requires that 70 percent of net proceeds from motor vehicle seizures associated with certain driving under the influence of alcohol or drug offenses first be applied to payment of

court costs, fines, and fees associated with the offense and the remainder deposited in the General Revenue Fund for use by regional workforce boards in providing transportation services.

This bill has an indeterminate state fiscal impact and reduces revenues currently accruing to the General Revenue Fund. See Section V. Fiscal Impact Statement.

The bill is effective July 1, 2016.

## II. Present Situation:

The Florida Contraband Forfeiture Act, ss. 932.701-932.706, F.S., provides for the seizure and civil forfeiture of property related to criminal and non-criminal violations of law. Contraband and other property may be seized when utilized during a violation of, or for the purpose of violating, the act. Property constituting a “contraband article” includes:

- A controlled substance as defined in ch. 893, F.S., or a substance, device, paraphernalia, or currency or other means of exchange that was used, attempted, or intended to be used in violation of ch. 893, F.S.;<sup>1</sup>
- Gambling paraphernalia, lottery tickets, money, currency, or other means of exchange which was used, attempted, or intended to be used in violation of Florida gambling laws;
- Equipment, liquid or solid, which was used, attempted, or intended to be used, in violation of Florida beverage or tobacco laws;
- Motor fuel upon which the motor fuel tax has not been paid;
- Personal property that was used or attempted to be used as an instrumentality in, or to aid or abet the commission of, any felony, or which is acquired by proceeds obtained from a violation of the act;
- Real property that was used or attempted to be used as an instrumentality in, or to aid or abet the commission of, any felony, or which is acquired by proceeds from a violation of the Act;
- Any personal property in the possession of or belonging to any person who takes aquaculture products in violation of s. 812.014(2)(c), F.S.;
- A motor vehicle offered for sale in violation of s. 320.28, F.S.;
- A motor vehicle used in the course of committing a violation of s. 322.34(9)(a), F.S.;
- Photographs, films, or other recorded images, recorded in violation of s. 810.145, F.S., and possessed for amusement, entertainment, sexual arousal, gratification, or profit, or for the purpose of degrading or abusing another person;
- Real property which is acquired by the proceeds of Medicaid fraud under ss. 409.920, F.S., or 409.9201, F.S.;
- Personal property in the possession of, or belonging to, any person which is acquired by the proceeds of Medicaid fraud under ss. 409.920, F.S., or 409.9201, F.S.; and
- Personal property that is used or attempted to be used as an instrumentality in the commission of, or in aiding and abetting in the commission of, a person’s third or subsequent violation of s. 509.144, F.S.<sup>2</sup>

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<sup>1</sup> The totality of the facts presented by the State must clearly establish probable cause to believe that a nexus exists between the article seized and the narcotics activity. Section 932.701(2)(a)1., F.S.

<sup>2</sup> Section 932.701(2)(a), F.S.

Currently, any contraband article, vessel, motor vehicle, aircraft, other personal property, or real property used in violation of the act, or in, upon, or by means of which any violation of the act has taken or is taking place, may be seized and forfeited subject to the provisions of the act.<sup>3</sup> All rights to, interest in, and title to contraband articles used in violation of the act immediately vest in the seizing law enforcement agency upon seizure.<sup>4</sup>

### **Seizure Process**

Personal property may be seized at the time of the violation or subsequent to the violation based upon a law enforcement officer's determination that probable cause exists to believe the property is being used in violation of the act. A person is entitled to notice<sup>5</sup> must be given notice, at the time of seizure or within 5 days of the seizure by certified mail, of his or her right to have a court review such determination in a postseizure adversarial preliminary hearing.<sup>6</sup> When a court review is desired, the person entitled to notice must request it in writing by certified mail. The agency must hold a hearing within 10 days after receiving the request.

Unlike personal property, the seizure of real property may not occur until the person entitled to notice has the opportunity to attend a pre-seizure adversarial hearing, at which time the court determines whether or not probable cause exists to justify the seizure.<sup>7</sup> The seizing agency must make a diligent effort to notify persons entitled to notice of the seizure.

If the court finds probable cause that the property was used in violation of the act, it must authorize the seizure or continued seizure of the contraband article.<sup>8</sup>

### **Forfeiture Proceedings**

If the person entitled to notice does not request a hearing, the seizing law enforcement agency must promptly proceed against the contraband article by filing a complaint in the circuit court within 45 days after the seizure, requesting the court to issue a judgment of forfeiture.<sup>9</sup>

Under the act, the civil forfeiture trial must be decided by a jury unless that right is waived by the claimant.<sup>10</sup> At trial, the seizing agency must prove that the contraband article was being used in violation of the act by clear and convincing evidence. Property may not be forfeited under the act unless the seizing agency shows by the preponderance of the evidence that the owner or any co-owner knew or should have known, that the property was being used in criminal activity.<sup>11</sup>

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<sup>3</sup> Section 932.703(1), F.S.

<sup>4</sup> Section 932.703(1)(c), F.S.

<sup>5</sup> Section 932.701(2)(e), F.S., defines a "person entitled to notice" as any owner, entity, bona fide lienholder, or person in possession of the property subject to forfeiture when seized, who is known to the seizing agency after a diligent search and inquiry. Interests of bona fide lienholders, property held jointly by a husband and wife, interests in property held jointly, and rental cars may not be forfeited under s. 932.703, F.S.

<sup>6</sup> The court review must occur within 15 days after the notice is received. Section 932.703(2), F.S.

<sup>7</sup> The hearing must occur within 10 days of the filing of the lis pendens or as soon as practicable. Section 932.703(2)(b), F.S.

<sup>8</sup> Section 932.703(2)(c), F.S.

<sup>9</sup> Sections 932.701(2)(c), and 932.704(4), F.S.

<sup>10</sup> Section 932.704(5), F.S. The act authorizes the claimant and the seizing law enforcement agency to settle the forfeiture action prior to the conclusion of the forfeiture proceeding. Section 932.704(7), F.S.

<sup>11</sup> Sections 932.703(6)(a), F.S.

Once this occurs, the right, title, and interest in and to such property shall be perfected in the seizing agency, subject only to the rights of bona fide lienholders.<sup>12</sup> The act also provides that it is an affirmative defense to forfeiture that the nexus between the property and the underlying violation was incidental or entirely accidental.<sup>13</sup>

If the claimant prevails, the seizing agency must pay claimants the reasonable loss of value of the property or loss of income. The agency cannot assess fees and costs against a successful claimant and is required to pay reasonable attorney fees and costs up to \$1,000 if the claimant prevails at the adversarial preliminary hearing.<sup>14</sup>

### **Disposition of Forfeited Property**

Once a seizing agency has been awarded a final judgment granting of forfeiture of the property it may:

- Retain the property for the agency's use;
- Sell the property at a public auction or by sealed bid to the highest bidder; or
- Salvage, trade, or transfer the property to any public or nonprofit organization.<sup>15</sup>

If the property has a lien attached and the agency sells the property, the proceeds of the sale are to be distributed in this order:

- Payment of the balance due on any lien preserved by the court in the forfeiture proceedings.
- Payment of the cost incurred by the seizing agency in connection with the storage, maintenance, security, and forfeiture of such property.
- Payment of court costs incurred in the forfeiture proceeding.<sup>16</sup>

The proceeds which remain after all liens and debts against the forfeited property are paid are then deposited into a special law enforcement trust fund established by the governing body of a county or municipality. These proceeds and interest may not be used to meet normal operation expenses.<sup>17</sup>

Any local law enforcement agency that acquires at least \$15,000 under the act within a fiscal year must expend or donate no less than 15 percent of these proceeds for the support or operation of any drug treatment, drug abuse education, drug prevention, crime prevention, safe neighborhood, or school resource officer program. The agency has discretion to determine which program receives the funds.<sup>18</sup>

If the seizing agency is a state agency, the remaining proceeds are deposited into the General Revenue Fund.<sup>19</sup>

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<sup>12</sup> Section 932.704(8), F.S.

<sup>13</sup> Section 932.703(8), F.S.

<sup>14</sup> Sections 932.704(9) and (10), F.S.

<sup>15</sup> Section 932.7055(1), F.S.

<sup>16</sup> Sections 932.7055(3) and (4), F.S.

<sup>17</sup> Section 932.7055(5)(a), F.S.

<sup>18</sup> Section 932.7055(5)(c)3., F.S.

<sup>19</sup> The following agencies have their own forfeiture trust funds: FDLE; Department of Business and Professional Regulation, Division of Alcoholic Beverages and Tobacco; Department of Highway Safety and Motor Vehicles; Fish and Wildlife

**Section 322.34, F.S.**

A motor vehicle driven by a person under the influence of alcohol or drugs is subject to seizure and forfeiture and to liens for recovering, towing, or storing vehicles, if, at the time of the offense, the person's driver license is suspended, revoked, or canceled as a result of a prior conviction for driving under the influence.<sup>20</sup>

When the seizing agency obtains a final judgment granting forfeiture of a motor vehicle associated with that offense, 30 percent of the net proceeds from the sale of the motor vehicle are retained by the seizing law enforcement agency and 70 percent are deposited in the General Revenue Fund for use by regional workforce boards in providing transportation services for participants of the welfare transition program.<sup>21</sup>

**III. Effect of Proposed Changes:**

The bill amends s. 932.703, F.S., to require that the owner of seized property be prosecuted and convicted of or plead guilty or nolo contendere to a criminal act, without regard to whether adjudication is withheld, before the civil forfeiture of the property becomes final. Final forfeiture occurs when title or other indicia of ownership passes to the state. Until then, the state acquires provisional title to the property upon seizure.

In addition, the bill requires the property owner be arrested before property may be seized under the act. Currently, there is no requirement that the owner of seized property be arrested or convicted of a criminal act before the property may be seized and forfeited.

Property may be seized immediately in lieu of an arrest if the property owner:

- Cannot be readily identified;
- There is probable cause to arrest an individual but he or she is a fugitive or dies before an arrest is made; or
- Agrees with the state to become a confidential informant and:
  - The confidential informant status is agreed upon between the seizing agency and the property owner and the property owner actively participates in gathering criminal intelligence or investigative information for an active criminal investigation.
  - The seizing agency may not use the threat of property seizure or forfeiture when offering the property owner the status of a confidential informant in lieu of an arrest.
  - If charges are brought against the property owner, the property is returned to the owner at the end of the active criminal investigation or the cessation of the status of confidential informant.
  - Final forfeiture of the property may be included in the agreement to serve as a confidential informant.

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Conservation Commission; state attorney offices; school board security agencies; State University System police departments; Department of Agriculture and Consumer Services; Department of Military Affairs; Medicaid Fraud Control Unit of the Department of Legal Affairs; Division of State Fire Marshal of the Department of Financial Services; and Division of Insurance Fraud of the Department of Financial Services. Section 932.7055(6), F.S.

<sup>20</sup> Section 322.34(9)(a), F.S.

<sup>21</sup> Section 322.34(9)(c), F.S.

If a seizure is made based on one of the above 3 exceptions, then the seizing law enforcement agency must, within 10 business days, apply to court for an order determining whether probable cause exists for the seizure of the property. The application must establish probable cause for the seizure of the property under the act and can be filed electronically.

If the court finds that probable cause exists for the seizure, the property shall be held until the issue of a determination of title is resolved pursuant to the act. Upon a finding of good cause shown, the court may order that the court order finding probable cause be sealed for as long as reasonably necessary to preserve the integrity of an active criminal investigation. If probable cause does not exist for seizure, then any forfeiture hold, lien, lis pendens, or other civil encumbrance must be released.

If after a diligent effort by the seizing agency, the owner of the seized property cannot be found after 90 days, the property is deemed a contraband article and forfeited subject to the act. If the owner is found within 90 days, the agency must return the property to the owner within 5 days after a:

- Court finding that the owner has a bona fide security interest in the property;
- Court finding that the owner was an innocent owner;
- Acquittal or dismissal of the criminal charge against the owner that was the basis of the forfeiture proceedings; or
- Disposal of the criminal charge that was the basis of the forfeiture proceedings by nolle prosequi.

The bill provides that the seizing agency is responsible for any damage, storage fee, and related cost applicable to the property.

The bill removes the provision that all rights to, interest in, and title to contraband articles used in violation of the act immediately vest in the seizing law enforcement agency upon seizure.

The bill specifies that it does not affect any other requirements or rights in the act and does not affect any party's discovery obligations under the Florida Rules of Civil Procedure.

Section 403.413, F.S., is reenacted to incorporate the amendment made to s. 932.703, F.S.

### **Section 322.34, F.S.**

The bill also modifies how proceeds from a seized motor vehicle may be distributed. The bill provides 70 percent of the net proceeds from the seizure must first be applied to payment of court costs, fines, and fees remaining due which are associated with the offense. Any remaining balance of the proceeds must be deposited into the General Revenue Fund to be used by regional workforce boards in providing transportation services, as directed in current law.

The bill is effective July 1, 2016.

**IV. Constitutional Issues:**

## A. Municipality/County Mandates Restrictions:

None.

## B. Public Records/Open Meetings Issues:

None.

## C. Trust Funds Restrictions:

None.

**V. Fiscal Impact Statement:**

## A. Tax/Fee Issues:

None.

## B. Private Sector Impact:

The bill requiring an arrest and criminal conviction may result in a reduction of property being seized by and forfeited to law enforcement agencies.

## C. Government Sector Impact:

This bill has an indeterminate state fiscal impact. The bill requires that 70 percent of the net proceeds from motor vehicle seizures must first be applied to payment of court costs, fines, and fees which are associated with the offense rather than being deposited into General Revenue to be used by regional workforce boards in providing transportation services. The bill reduces revenues accruing to the General Revenue Fund. Proceeds applied to court costs, fines, and fees will primarily benefit the clerks of the court and state trust funds.

In addition, the bill may reduce the number of seizures and forfeitures under the act because of the criminal nexus requirement, thereby reducing revenue to seizing law enforcement agencies.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

The Office of Program Policy Analysis and Government Accountability (OPPAGA) recently reviewed Florida's current civil asset forfeiture practices by local law enforcement agencies and

released its findings in a report entitled *Civil Asset Forfeiture in Florida: Policies and Practices*.<sup>22</sup> Some of the findings in the report included the following:

- There is no current requirement for law enforcement agencies to report seizures and forfeitures under the act and without statewide information, the Legislature does not know the extent of civil asset forfeiture practices in Florida.<sup>23</sup>
- Vehicles and currency were the most commonly seized assets, related primarily to drug offenses.<sup>24</sup>
- An arrest was made in conjunction with most seizures during Fiscal Year 2013-2014.<sup>25</sup>
- Many assets were returned to the owners, either in whole or in part.<sup>26</sup>
- Sixteen percent of seizure actions were contested by an adversarial hearing request, and one percent resulted in a civil trial.<sup>27</sup>
- Responding agencies reported spending over \$12 million in forfeited assets during Fiscal Year 2013-2014.<sup>28</sup>

Also included in the report were the following options that could be considered by the Legislature when making changes to the Florida Contraband Forfeiture Act:

- Require law enforcement agencies to report seizure actions and forfeitures to the state at least annually;<sup>29</sup>
- Require a criminal conviction before forfeiture;<sup>30</sup>
- Increase the evidentiary standard of proof from clear and convincing to beyond a reasonable doubt;<sup>31</sup> and
- Restrict the use of civil asset forfeiture proceeds.<sup>32</sup>

The bill codifies the option of requiring a criminal conviction before final forfeiture.

## VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 322.34, 403.413, and 932.703.

<sup>22</sup> Florida Legislature, Office of Program Policy Analysis and Government Accountability, Report No. 15-10 (Nov. 2015), available at <http://www.oppaga.state.fl.us/MonitorDocs/Reports/pdf/1510rpt.pdf> (last visited Feb. 25, 2016).

<sup>23</sup> *Id.* at 11.

<sup>24</sup> *Id.* at 4.

<sup>25</sup> *Id.* at 5. Responding agencies gave the following examples of when an arrest is not possible to make at the time of seizure: an arrest is premature because the officer was unable to positively identify the owner of the cash and illegal drugs; an arrest is premature during an ongoing economic crime investigation but the seizure of currency is ripe; and an arrest is premature when owners of property subject to seizure are willing to give information on higher level crimes leading to later related arrests.

<sup>26</sup> *Id.* at 7 and 8.

<sup>27</sup> *Id.* at 7.

<sup>28</sup> *Id.* at 9. Responding agencies indicated they used forfeiture money primarily for supporting substance abuse and crime prevention programs, buying additional equipment, defraying costs of complex investigations, providing additional expertise, providing matching funds to obtain federal grants, and buying automatic external defibrillators. *Id.* at 10.

<sup>29</sup> Thirty-three states have some sort of reporting requirement. *Id.* at 11.

<sup>30</sup> Several states, including Minnesota, Montana, Nevada, New Mexico, and North Carolina, have this requirement. *Id.* at 12.

<sup>31</sup> Florida is one of 11 states that has a clear and convincing proof standard, which is higher than most other states. Nebraska, North Carolina, and Wisconsin use the criminal standard of proof, beyond a reasonable doubt. *Id.* at 12.

<sup>32</sup> *Id.* at 13.



**IX. Additional Information:**

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

**Recommended CS by Appropriations Subcommittee on Criminal and Civil Justice on February 11, 2016:**

- Adds exceptions in which law enforcement can immediately seize property in lieu of arrest.
- Requires law enforcement within ten days of seizure to apply to court for an order determining whether probable cause exists for the seizure of the property.
- Amends current law to require that 70 percent of net proceeds from seizures first be applied to payment of court costs, fines, and fees and the remainder shall be deposited in the General Revenue Fund for use by regional workforce boards in providing transportation services for participants of the welfare transition program.

**CS by Criminal Justice on January 25, 2016:**

- Requires that a property owner be arrested before the property may be seized, unless the owner and state agree that the property owner will become a confidential informant.
- Requires that the property be returned to the confidential informant if charges are not brought against him or her at the conclusion of the criminal investigation.
- Clarifies that forfeiture is final when the property owner is convicted of or pleads guilty or nolo contendere to a criminal offense, without regard to whether adjudication is withheld.

- B. **Amendments:**

None.



681256

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/29/2016	.	
	.	
	.	
	.	

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The Committee on Fiscal Policy (Bradley) recommended the following:

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause  
and insert:

Section 1. Subsection (1) of section 932.701, Florida  
Statutes, is amended to read:

932.701 Short title; definitions.—

(1) Sections 932.701-932.7062 ~~932.706~~ shall be known and  
may be cited as the "Florida Contraband Forfeiture Act."

Section 2. Subsection (1) of section 932.703, Florida



681256

11 Statutes, is amended, a new subsection (2) is added, and present  
12 subsections (2) through (8) are redesignated as subsections (3)  
13 through (9), respectively, to read:

14 932.703 Forfeiture of contraband article; exceptions.-

15 (1) (a) A ~~Any~~ contraband article, vessel, motor vehicle,  
16 aircraft, other personal property, or real property used in  
17 violation of any provision of the Florida Contraband Forfeiture  
18 Act, or in, upon, or by means of which any violation of the  
19 Florida Contraband Forfeiture Act has taken or is taking place,  
20 may be seized only if:

21 1. The owner of the property is arrested for a criminal  
22 violation that renders the property a contraband article; or

23 2. A criminal violation occurs that renders the property a  
24 contraband article and one or more of the following  
25 circumstances applies: and shall be forfeited subject to the  
26 provisions of the Florida Contraband Forfeiture Act.

27 a. The owner of the property cannot be identified after a  
28 diligent search;

29 b. The owner of the property is a fugitive from justice or  
30 deceased;

31 c. An individual who does not own the property is arrested  
32 for the criminal violation that renders the property a  
33 contraband article, and the owner of the property had actual  
34 knowledge of the criminal activity;

35 d. The owner of the property agrees to be a confidential  
36 informant, as defined in s. 914.28. The seizing agency may not  
37 use the threat of property seizure or forfeiture to coerce the  
38 owner of the property into entering a confidential informant  
39 agreement. The agency may include the final forfeiture of the



681256

40 property as a component of the confidential informant agreement.  
41 The seizing agency shall return the property to the owner if  
42 criminal charges are not filed against the owner and the active  
43 criminal investigation ends or the owner ceases being a  
44 confidential informant; or

45 e. The property is a monetary instrument. For purposes of  
46 this sub-subparagraph, the term "monetary instrument" means coin  
47 or currency of the United States or any other country; a  
48 traveler's check; a personal check; a bank check; a cashier's  
49 check; a money order; a bank draft of any country; an investment  
50 security or negotiable instrument in bearer form or in other  
51 form such that title passes upon delivery; a prepaid or stored  
52 value card or other device that is the equivalent of money and  
53 can be used to obtain cash, property, or services; gold, silver,  
54 or platinum bullion or coins.

55 (b) After property is seized pursuant to the Florida  
56 Contraband Forfeiture Act, regardless of whether the civil  
57 complaint has been filed, all settlements must be personally  
58 approved by the head of the law enforcement agency that seized  
59 the property. If the agency head is unavailable and a delay  
60 would adversely affect the settlement, approval may be given by  
61 a subordinate of the agency head who is designated to grant such  
62 approval ~~Notwithstanding any other provision of the Florida~~  
63 ~~Contraband Forfeiture Act, except the provisions of paragraph~~  
64 ~~(a), contraband articles set forth in s. 932.701(2)(a)7. used in~~  
65 ~~violation of any provision of the Florida Contraband Forfeiture~~  
66 ~~Act, or in, upon, or by means of which any violation of the~~  
67 ~~Florida Contraband Forfeiture Act has taken or is taking place,~~  
68 ~~shall be seized and shall be forfeited subject to the provisions~~



681256

69 ~~of the Florida Contraband Forfeiture Act.~~

70 (c) If at least 90 days have elapsed since the initial  
71 seizure of the property and the seizing agency has failed to  
72 locate the owner after making a diligent effort, the seized  
73 property is deemed a contraband article that is subject to  
74 forfeiture under the Florida Contraband Forfeiture Act ~~All~~  
75 rights to, interest in, and title to contraband articles used in  
76 violation of s. 932.702 shall immediately vest in the seizing  
77 law enforcement agency upon seizure.

78 (d)1. The seizing agency may not use the seized property  
79 for any purpose until the rights to, interest in, and title to  
80 the seized property are perfected in accordance with the Florida  
81 Contraband Forfeiture Act. This section does not prohibit use or  
82 operation necessary for reasonable maintenance of seized  
83 property. Reasonable efforts shall be made to maintain seized  
84 property in such a manner as to minimize loss of value.

85 2. The agency seeking to forfeit the seized property is  
86 responsible for any damage to the property and any storage fees  
87 or maintenance costs applicable to the property. If more than  
88 one agency seeks forfeiture of the property, the division of  
89 liability under this subparagraph may be governed by the terms  
90 of an agreement between the agencies.

91 (2) (a) A seizing agency shall submit a written petition to  
92 the court within 10 days after a seizure of property under the  
93 Florida Contraband Forfeiture Act which requests a finding of:

94 1. Compliance with subparagraph (1) (a)1. or subparagraph  
95 (1) (a)2.; and

96 2. Probable cause that the seized property was used in  
97 violation of the Florida Contraband Forfeiture Act.



681256

98 (b) If the court issues an order finding that:

99 1. Compliance and probable cause under paragraph (a)  
100 exists, the seized property may be held by the seizing agency  
101 pending the completion of proceedings in accordance with the  
102 Florida Contraband Forfeiture Act.

103 2. Compliance or probable cause under paragraph (a) does  
104 not exist, any seizure, forfeiture hold, lien, lis pendens, or  
105 other civil encumbrance shall be released within 5 days after  
106 issuance of the order.

107 (c) The court may seal any portion of the petition and the  
108 record of any proceeding under the Florida Contraband Forfeiture  
109 Act which is exempt or confidential and exempt from s. 119.07(1)  
110 and s. 24(a), Art. I of the State Constitution or may otherwise  
111 be sealed pursuant to Rule 2.420, Rules of Judicial  
112 Administration.

113 Section 3. Subsection (4), paragraph (b) of subsection (5),  
114 paragraph (b) of subsection (6), subsections (8), (10), and (11)  
115 of section 932.704, Florida Statutes, are amended to read:

116 932.704 Forfeiture proceedings.—

117 (4) The seizing agency shall promptly proceed against the  
118 contraband article by filing a complaint in the circuit court  
119 within the jurisdiction where the seizure or the offense  
120 occurred. The seizing agency shall pay a filing fee of at least  
121 \$1,000 and deposit a bond of \$1,500 to the clerk of the court.  
122 The bond shall be payable to the claimant, as determined by the  
123 court, if the forfeiture is not awarded to the seizing agency.

124 (5)

125 (b) If no person entitled to notice requests an adversarial  
126 preliminary hearing, as provided in s. 932.703(3)(a)



681256

127 ~~932.703(2)(a)~~, the court, upon receipt of the complaint, shall  
128 review the complaint and the verified supporting affidavit to  
129 determine whether there was probable cause for the seizure. Upon  
130 a finding of probable cause, the court shall enter an order  
131 showing the probable cause finding.

132 (6)

133 (b) The complaint must, in addition to stating that which  
134 is required by s. 932.703(3)(a) and (b) ~~932.703(2)(a) and (b)~~,  
135 as appropriate, describe the property; state the county, place,  
136 and date of seizure; state the name of the law enforcement  
137 agency holding the seized property; and state the name of the  
138 court in which the complaint will be filed.

139 (8) Upon proof beyond a reasonable doubt ~~clear and~~  
140 ~~convincing evidence~~ that the contraband article was being used  
141 in violation of the Florida Contraband Forfeiture Act, the court  
142 shall order the seized property forfeited to the seizing law  
143 enforcement agency. The final order of forfeiture by the court  
144 shall perfect in the law enforcement agency right, title, and  
145 interest in and to such property, subject only to the rights and  
146 interests of bona fide lienholders, and shall relate back to the  
147 date of seizure.

148 (10) The court shall award reasonable attorney's fees and  
149 costs, up to a limit of \$2,000 ~~\$1,000~~, to the claimant at the  
150 close of the adversarial preliminary hearing if the court makes  
151 a finding of no probable cause. When the claimant prevails, at  
152 the close of forfeiture proceedings and any appeal, the court  
153 shall award reasonable trial attorney's fees and costs to the  
154 claimant if the court finds that the seizing agency has not  
155 proceeded at any stage of the proceedings in good faith or that



681256

156 the seizing agency's action which precipitated the forfeiture  
157 proceedings was a gross abuse of the agency's discretion. The  
158 court may order the seizing agency to pay the awarded attorney's  
159 fees and costs from the appropriate contraband forfeiture trust  
160 fund. Nothing in this subsection precludes any party from  
161 electing to seek attorney's fees and costs under chapter 57 or  
162 other applicable law.

163 (11) (a) The Department of Law Enforcement, in consultation  
164 with the Florida Sheriffs Association and the Florida Police  
165 Chiefs Association, shall develop guidelines and training  
166 procedures to be used by state and local law enforcement  
167 agencies and state attorneys in implementing the Florida  
168 Contraband Forfeiture Act. At least annually, each state or  
169 local law enforcement agency that seizes property for the  
170 purpose of forfeiture shall ~~periodically~~ review such seizures ~~of~~  
171 ~~assets made by the agency's law enforcement officers,~~ any  
172 settlements, and any forfeiture proceedings initiated by the law  
173 enforcement agency, to determine whether they such seizures,  
174 ~~settlements, and forfeitures~~ comply with the Florida Contraband  
175 Forfeiture Act and the guidelines adopted under this subsection.  
176 If the review suggests deficiencies, the state or local law  
177 enforcement agency shall promptly take action to comply with the  
178 Florida Contraband Forfeiture Act.

179 (b) The determination as to ~~of~~ whether an agency will file  
180 a civil forfeiture action is ~~must be~~ the sole responsibility of  
181 the head of the agency or his or her designee.

182 (c) ~~(b)~~ The determination as to ~~of~~ whether to seize currency  
183 must be made by supervisory personnel. The agency's legal  
184 counsel must be notified as soon as possible after a





681256

185 determination is made.

186 (d) The employment, salary, promotion, or other  
187 compensation of any law enforcement officer may not be dependent  
188 on the ability of the officer to meet a quota for seizures.

189 (e) A seizing agency shall adopt and implement written  
190 policies, procedures, and training to ensure compliance with all  
191 applicable legal requirements regarding seizing, maintaining,  
192 and the forfeiture of property under the Florida Contraband  
193 Forfeiture Act.

194 (f) When property is seized for forfeiture, the probable  
195 cause supporting the seizure must be promptly reviewed by  
196 supervisory personnel. The seizing agency's legal counsel must  
197 be notified as soon as possible of all seizures and shall  
198 conduct a review to determine whether there is legal sufficiency  
199 to proceed with a forfeiture action.

200 (g) Each seizing agency shall adopt and implement written  
201 policies and procedures promoting the prompt release of seized  
202 property as may be required by the act or by agency  
203 determination when there is no legitimate basis for holding  
204 seized property. To help ensure that property is not wrongfully  
205 held after seizure, each law enforcement agency must adopt  
206 written policies and procedures ensuring that all asserted  
207 claims of interest in seized property are promptly reviewed for  
208 potential validity.

209 (h) The settlement of any forfeiture action must be  
210 consistent with the Florida Contraband Forfeiture Act and the  
211 policy of the seizing agency.

212 (i) Law enforcement agency personnel involved in the  
213 seizure of property for forfeiture shall receive basic training



681256

214 and continuing education as required by the Florida Contraband  
215 Forfeiture Act. Each agency shall maintain records demonstrating  
216 each law enforcement officer's compliance with this requirement.  
217 Among other things, the training must address the legal aspects  
218 of forfeiture, including, but not limited to, search and seizure  
219 and other constitutional considerations.

220 Section 4. Subsection (3) and paragraph (c) of subsection  
221 (5) of section 932.7055, Florida Statutes, are amended to read:

222 932.7055 Disposition of liens and forfeited property.—

223 (3) If the forfeited property is subject to a lien  
224 preserved by the court as provided in s. 932.703(7)(b)

225 ~~932.703(6)(b)~~, the agency shall:

226 (a) Sell the property with the proceeds being used towards  
227 satisfaction of any liens; or

228 (b) Have the lien satisfied prior to taking any action  
229 authorized by subsection (1).

230 (5)

231 (c) An agency or organization, other than the seizing  
232 agency, that wishes to receive such funds shall apply to the  
233 sheriff or chief of police for an appropriation and its  
234 application shall be accompanied by a written certification that  
235 the moneys will be used for an authorized purpose. Such requests  
236 for expenditures shall include a statement describing  
237 anticipated recurring costs for the agency for subsequent fiscal  
238 years. An agency or organization that receives money pursuant to  
239 this subsection shall provide an accounting for such moneys and  
240 shall furnish the same reports as an agency of the county or  
241 municipality that receives public funds. Such funds may be  
242 expended in accordance with the following procedures:



681256

243           1. Such funds may be used only for school resource officer,  
244 crime prevention, safe neighborhood, drug abuse education, or  
245 drug prevention programs or such other law enforcement purposes  
246 as the board of county commissioners or governing body of the  
247 municipality deems appropriate.

248           2. Such funds shall not be a source of revenue to meet  
249 normal operating needs of the law enforcement agency.

250           3. ~~After July 1, 1992, and during every fiscal year~~  
251 ~~thereafter,~~ Any local law enforcement agency that acquires at  
252 least \$15,000 pursuant to the Florida Contraband Forfeiture Act  
253 within a fiscal year must expend or donate no less than 25 ~~15~~  
254 percent of such proceeds for the support or operation of any  
255 drug treatment, drug abuse education, drug prevention, crime  
256 prevention, safe neighborhood, or school resource officer  
257 program or programs ~~program(s)~~. The local law enforcement agency  
258 has the discretion to determine which program or programs  
259 ~~program(s)~~ will receive the designated proceeds.

260  
261 Notwithstanding the drug abuse education, drug treatment, drug  
262 prevention, crime prevention, safe neighborhood, or school  
263 resource officer minimum expenditures or donations, the sheriff  
264 and the board of county commissioners or the chief of police and  
265 the governing body of the municipality may agree to expend or  
266 donate such funds over a period of years if the expenditure or  
267 donation of such minimum amount in any given fiscal year would  
268 exceed the needs of the county or municipality for such program  
269 or programs ~~program(s)~~. ~~Nothing in this section precludes~~ The  
270 minimum requirement for expenditure or donation of forfeiture  
271 ~~proceeds in excess of the minimum amounts established in this~~



681256

272 subparagraph does not preclude expenditures or donations in  
273 excess of that amount herein.

274 Section 5. Section 932.7061, Florida Statutes, is created  
275 to read:

276 932.7061 Reporting seized property for forfeiture.-

277 (1) Every law enforcement agency shall submit an annual  
278 report to the Department of Law Enforcement indicating whether  
279 the agency has seized or forfeited property under the Florida  
280 Contraband Forfeiture Act. A law enforcement agency receiving or  
281 expending forfeited property or proceeds from the sale of  
282 forfeited property in accordance with the Florida Contraband  
283 Forfeiture Act shall submit a completed annual report by October  
284 10 documenting the receipts and expenditures. The report shall  
285 be submitted in an electronic form, maintained by the Department  
286 of Law Enforcement in consultation with the Office of Program  
287 Policy Analysis and Government Accountability, to the entity  
288 that has budgetary authority over such agency and to the  
289 Department of Law Enforcement. The annual report must, at a  
290 minimum, specify the type, approximate value, court case number,  
291 type of offense, disposition of property received, and amount of  
292 any proceeds received or expended.

293 (2) The Department of Law Enforcement shall submit an  
294 annual report to the Office of Program Policy Analysis and  
295 Government Accountability compiling the information and data in  
296 the annual reports submitted by the law enforcement agencies.  
297 The annual report shall also contain a list of law enforcement  
298 agencies that have failed to meet the reporting requirements and  
299 a summary of any action taken against the noncomplying agency by  
300 the office of Chief Financial Officer.



681256

301       (3) The law enforcement agency and the entity having  
302 budgetary control over the law enforcement agency may not  
303 anticipate future forfeitures or proceeds therefrom in the  
304 adoption and approval of the budget for the law enforcement  
305 agency.

306       Section 6. Section 932.7062, Florida Statutes, is created  
307 to read:

308       932.7062 Penalty for noncompliance with reporting  
309 requirements.—A seizing agency that fails to comply with the  
310 reporting requirements in s. 932.7061 is subject to a civil fine  
311 of \$5,000, to be determined by the Chief Financial Officer and  
312 payable to the General Revenue Fund. However, such agency is not  
313 subject to the fine if, within 60 days after receipt of written  
314 notification from the Department of Law Enforcement of  
315 noncompliance with the reporting requirements of the Florida  
316 Contraband Forfeiture Act, the agency substantially complies  
317 with those requirements. The Department of Law Enforcement shall  
318 submit any substantial noncompliance to the office of Chief  
319 Financial Officer, which shall be responsible for the  
320 enforcement of this section.

321       Section 7. Paragraphs (a) and (c) of subsection (9) of  
322 section 322.34, Florida Statutes, are amended to read:

323       322.34 Driving while license suspended, revoked, canceled,  
324 or disqualified.—

325       (9) (a) A motor vehicle that is driven by a person under the  
326 influence of alcohol or drugs in violation of s. 316.193 is  
327 subject to seizure and forfeiture under ss. 932.701-932.7062  
328 ~~932.706~~ and is subject to liens for recovering, towing, or  
329 storing vehicles under s. 713.78 if, at the time of the offense,



681256

330 the person's driver license is suspended, revoked, or canceled  
331 as a result of a prior conviction for driving under the  
332 influence.

333 (c) Notwithstanding ~~s. 932.703(1)(e) or~~ s. 932.7055, when  
334 the seizing agency obtains a final judgment granting forfeiture  
335 of the motor vehicle under this section, 30 percent of the net  
336 proceeds from the sale of the motor vehicle shall be retained by  
337 the seizing law enforcement agency. The remaining 70 percent of  
338 the proceeds shall first be applied to payment of court costs,  
339 finest, and fees remaining due, and any remaining balance of  
340 proceeds ~~and 70 percent~~ shall be deposited in the General  
341 Revenue Fund for use by regional workforce boards in providing  
342 transportation services for participants of the welfare  
343 transition program. In a forfeiture proceeding under this  
344 section, the court may consider the extent that the family of  
345 the owner has other public or private means of transportation.

346 Section 8. Paragraph (a) of subsection (4) of section  
347 323.001, Florida Statutes, is amended to read:

348 323.001 Wrecker operator storage facilities; vehicle  
349 holds.-

350 (4) The requirements for a written hold apply when the  
351 following conditions are present:

352 (a) The officer has probable cause to believe the vehicle  
353 should be seized and forfeited under the Florida Contraband  
354 Forfeiture Act, ss. 932.701-932.7062 ~~932.706~~;

355 Section 9. Paragraph (b) of subsection (3) of section  
356 328.07, Florida Statutes, is amended to read:

357 328.07 Hull identification number required.-

358 (3)



681256

359 (b) If any of the hull identification numbers required by  
360 the United States Coast Guard for a vessel manufactured after  
361 October 31, 1972, do not exist or have been altered, removed,  
362 destroyed, covered, or defaced or the real identity of the  
363 vessel cannot be determined, the vessel may be seized as  
364 contraband property by a law enforcement agency or the division,  
365 and shall be subject to forfeiture pursuant to ss. 932.701-  
366 932.7062 ~~932.706~~. Such vessel may not be sold or operated on the  
367 waters of the state unless the division receives a request from  
368 a law enforcement agency providing adequate documentation or is  
369 directed by written order of a court of competent jurisdiction  
370 to issue to the vessel a replacement hull identification number  
371 which shall thereafter be used for identification purposes. No  
372 vessel shall be forfeited under the Florida Contraband  
373 Forfeiture Act when the owner unknowingly, inadvertently, or  
374 neglectfully altered, removed, destroyed, covered, or defaced  
375 the vessel hull identification number.

376 Section 10. Paragraph (c) of subsection (2) of section  
377 817.625, Florida Statutes, is amended to read:

378 817.625 Use of scanning device or reencoder to defraud;  
379 penalties.—

380 (2)

381 (c) Any person who violates subparagraph (a)1. or  
382 subparagraph (a)2. shall also be subject to the provisions of  
383 ss. 932.701-932.7062 ~~932.706~~.

384 Section 11. This act shall take effect July 1, 2016.

385

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

387 And the title is amended as follows:



681256

388 Delete everything before the enacting clause  
389 and insert:

390 A bill to be entitled  
391 An act relating to contraband forfeiture; amending s.  
392 932.701, F.S.; conforming provisions to changes made  
393 by the act; amending s. 932.703, F.S.; specifying that  
394 property may be seized under certain circumstances;  
395 requiring that specified persons approve a settlement;  
396 providing circumstances when property may be deemed  
397 contraband; allocating responsibility for damage to  
398 seized property and payment of storage and maintenance  
399 expenses; providing a procedure for judicial review of  
400 seizures; amending s. 932.704, F.S.; providing  
401 requirements for a filing fee and a bond to be paid to  
402 the clerk of court; specifying the circumstances when  
403 a court shall order the forfeiture of seized property;  
404 amending s. 932.7055, F.S.; conforming provisions to  
405 changes made by the act; creating s. 932.7061, F.S.;  
406 providing reporting requirements for seized property  
407 for forfeiture; creating s. 932.7062, F.S.; providing  
408 penalties for noncompliance with reporting  
409 requirements; amending s. 322.34, F.S.; providing for  
410 payment of court costs, fines, and fees from proceeds  
411 of certain forfeitures; conforming provisions to  
412 changes made by the act; amending ss. 323.001, 328.07,  
413 and 817.625, F.S.; conforming provisions to changes  
414 made by the act ; providing an effective date.





797394

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/29/2016	.	
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The Committee on Fiscal Policy (Bradley) recommended the following:

1           **Senate Amendment to Amendment (681256) (with title**  
2 **amendment)**

3  
4           Delete lines 20 - 54  
5 and insert:

6 may be seized and shall be forfeited subject to the provisions  
7 of the Florida Contraband Forfeiture Act. A seizure may occur  
8 only if the owner of the property is arrested or if one or more  
9 of the following circumstances apply:

- 10           1. The owner of the property cannot be identified after a



797394

11 diligent search;

12 2. The owner of the property is a fugitive from justice or  
13 is deceased;

14 3. An individual who does not own the property is arrested  
15 for the criminal violation that renders the property a  
16 contraband article and the owner of the property had actual  
17 knowledge of the criminal activity. Evidence that an owner  
18 received written notification from a law enforcement agency and  
19 acknowledged receipt of the notification in writing, that the  
20 seized asset had been used in violation of the Florida  
21 Contraband Forfeiture Act on a prior occasion by the arrested  
22 person, may be used to establish actual knowledge;

23 4. The owner of the property agrees to be a confidential  
24 informant as defined in s. 914.28. The seizing agency may not  
25 use the threat of property seizure or forfeiture to coerce the  
26 owner of the property into entering a confidential informant  
27 agreement. The seizing agency shall return the property to the  
28 owner if criminal charges are not filed against the owner and  
29 the active criminal investigation ends or if the owner ceases  
30 being a confidential informant, unless the agency includes the  
31 final forfeiture of the property as a component of the  
32 confidential informant agreement; or

33 5. The property is a monetary instrument. For purposes of  
34 this sub-subparagraph, the term "monetary instrument" means coin  
35 or currency of the United States or any other country; a  
36 traveler's check; a personal check; a bank check; a cashier's  
37 check; a money order; a bank draft of any country; an investment  
38 security or negotiable instrument in bearer form or in other  
39 form such that title passes upon delivery; a prepaid or stored



797394

40 value card or other device that is the equivalent of money and  
41 can be used to obtain cash, property, or services; or gold,  
42 silver, or platinum bullion or coins.

43

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

45 And the title is amended as follows:

46       Delete line 394

47 and insert:

48       property may be seized only under certain  
49       circumstances; defining the term "monetary  
50       instrument";



970996

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/29/2016	.	
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The Committee on Fiscal Policy (Bradley) recommended the following:

**Senate Amendment to Amendment (681256)**

Delete line 85

and insert:

2. Unless the parties agree in writing to a different assignment of responsibility, the agency seeking to forfeit the seized property is



808958

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/29/2016	.	
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The Committee on Fiscal Policy (Bradley) recommended the following:

1           **Senate Amendment to Amendment (681256) (with title**  
2 **amendment)**

3  
4           Delete lines 91 - 112  
5 and insert:

6           (2) (a) When a seizure of property is made under the Florida  
7 Contraband Forfeiture Act, the seizing agency shall apply,  
8 within 10 business days after the date of the seizure, to a  
9 court of competent jurisdiction for an order determining whether  
10 probable cause exists for the seizure of the property. The



808958

11 application for the probable cause determination must be  
12 accompanied by a sworn affidavit and may be filed electronically  
13 by reliable electronic means.

14 (b) The court must determine whether:

15 1. The owner was arrested and if not, whether an exception  
16 to the arrest requirement specified in paragraph (1)(a) applies;  
17 and

18 2. Probable cause exists for the property seizure under the  
19 Florida Contraband Forfeiture Act.

20 (c) If the court finds that the requirements in paragraph  
21 (1)(a) were met and that probable cause exists for the seizure,  
22 the forfeiture may proceed as set forth in the Florida  
23 Contraband Forfeiture Act, and no further probable cause  
24 determination is required unless the claimant requests an  
25 adversarial preliminary hearing as set forth in the act. Upon  
26 such a finding, the court shall issue a written order finding  
27 probable cause for the seizure and order the property held until  
28 the issue of a determination of title is resolved pursuant to  
29 the procedures defined in the act.

30 (d) If the court finds that no probable cause exists for  
31 the seizure, any forfeiture hold, lien, lis pendens, or other  
32 civil encumbrance must be released within 5 days.

33 (e) The court may seal any portion of the application and  
34 the record of any proceeding under the Florida Contraband  
35 Forfeiture Act which is exempt or confidential and exempt from  
36 s. 119.07(1) and s. 24(a), Art. I of the State Constitution or  
37 may otherwise be sealed pursuant to Rule 2.420, Florida Rules of  
38 Judicial Administration.

39 (f) The provisions of this subsection do not affect any



808958

40 other requirement or right set forth in the Florida Contraband  
41 Forfeiture Act.

42  
43 ===== T I T L E   A M E N D M E N T =====

44 And the title is amended as follows:

45       Delete lines 399 - 400

46 and insert:

47       expenses; requiring the seizing agency to apply for an  
48       order, within a certain timeframe, making a probable  
49       cause determination after the agency seizes property;  
50       providing application requirements; requiring a court  
51       to make specified determinations; providing procedures  
52       upon certain court findings; authorizing the court to  
53       seal any portion of the application and of specified  
54       proceedings under certain circumstances; providing  
55       construction; amending s. 932.704, F.S.; providing



880614

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/29/2016	.	
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The Committee on Fiscal Policy (Bradley) recommended the following:

**Senate Amendment to Amendment (681256)**

Delete lines 120 - 123  
and insert:  
occurred, paying a filing fee of at least \$1,000 and depositing a bond of \$1,500 to the clerk of the court. The bond shall be payable to the claimant if the claimant prevails at the close of the forfeiture proceedings and any appeal.





808816

594-03401-16

Proposed Committee Substitute by the Committee on Fiscal Policy  
(Appropriations Subcommittee on Criminal and Civil Justice)

A bill to be entitled

An act relating to forfeiture of contraband; amending s. 932.703, F.S.; providing for the acquisition of the provisional title of seized property under certain circumstances; prohibiting the seizure of property under the Florida Contraband Forfeiture Act until the owner of such property is arrested for a criminal offense that renders the property a contraband article; providing exceptions; prohibiting the seizing law enforcement agency from threatening a property owner with property seizure or forfeiture under certain circumstances; requiring a seizing law enforcement agency to follow specified procedures under certain circumstances; requiring a court to issue a written order finding probable cause under certain circumstances; authorizing a court to order that the written order of probable cause be sealed under certain circumstances; providing that the property is deemed a contraband article and forfeited subject to forfeiture proceedings under certain circumstances; requiring the return of property by the seizing law enforcement agency to the property owner under certain circumstances; prohibiting a forfeiture under the Florida Contraband Forfeiture Act from being final until the owner of the seized property is prosecuted and convicted of or pleads guilty or nolo contendere to a criminal offense that renders the



808816

594-03401-16

property a contraband article; providing construction; deleting a provision vesting rights, interests, and title to contraband articles in the seizing law enforcement agency; amending s. 322.34, F.S.; providing for payment of court costs, fines, and fees from proceeds of certain forfeitures; conforming a provision to changes made by the act; reenacting s. 403.413(6)(e), F.S., relating to forfeiture under the Florida Litter Law, to incorporate the amendment made to s. 932.703, F.S., in a reference thereto; providing an effective date.

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

Section 1. Subsection (1) of section 932.703, Florida Statutes, is amended to read:

932.703 Forfeiture of contraband article; exceptions.—

(1)(a) Any contraband article, vessel, motor vehicle, aircraft, other personal property, or real property used in violation of ~~any provision of~~ the Florida Contraband Forfeiture Act, or in, upon, or by means of which any violation of the Florida Contraband Forfeiture Act has taken or is taking place, may be seized and shall be forfeited subject to ~~the provisions of~~ the Florida Contraband Forfeiture Act.

(b) Notwithstanding any other provision of the Florida Contraband Forfeiture Act, except ~~the provisions of~~ paragraph (a), contraband articles set forth in s. 932.701(2)(a)7. used in violation of ~~any provision of~~ the Florida Contraband Forfeiture Act, or in, upon, or by means of which any violation of the



594-03401-16

57 Florida Contraband Forfeiture Act has taken or is taking place,  
58 shall be seized and shall be forfeited subject to ~~the provisions~~  
59 ~~of~~ the Florida Contraband Forfeiture Act.

60 (c)1. At the time of seizure, the state acquires  
61 provisional title to the seized property. Property may not be  
62 seized under the Florida Contraband Forfeiture Act until an  
63 owner of such property is arrested for a criminal offense that  
64 renders the property a contraband article. However, property may  
65 be immediately seized if:

66 a. The owner of the contraband article cannot be readily  
67 identified;

68 b. There is probable cause to arrest an individual, but he  
69 or she is a fugitive or dies before an arrest is made; or

70 c. The owner of property subject to seizure agrees to  
71 cooperate as a confidential informant in lieu of an arrest. The  
72 confidential informant status must be agreed upon between the  
73 seizing agency and the property owner, and the property owner  
74 must actively participate as a confidential informant in  
75 gathering criminal intelligence or investigative information for  
76 an active criminal investigation. The seizing agency may not use  
77 the threat of property seizure or forfeiture when offering the  
78 property owner the status of confidential informant in lieu of  
79 an arrest. If charges are not brought against the property  
80 owner, the property must be returned to the owner at the  
81 conclusion of the active criminal investigation or the cessation  
82 of the status of criminal informant. Final forfeiture of  
83 property may be included as a component of the agreement to  
84 serve as a confidential informant.

85 2. If a seizure is made under one of the exceptions



594-03401-16

86 specified in subparagraph 1., the law enforcement agency that  
87 seizes the contraband article, vessel, motor vehicle, aircraft,  
88 other personal property, or real property used in violation of  
89 the Florida Contraband Forfeiture Act shall, within 10 business  
90 days, apply to a court of competent jurisdiction for an order  
91 determining whether probable cause exists for the seizure of the  
92 property. The application for the probable cause determination  
93 must establish probable cause that the property that has been  
94 seized is subject to seizure under the Florida Contraband  
95 Forfeiture Act and may be filed by reliable electronic means. If  
96 the court finds that probable cause exists for the seizure, it  
97 shall enter a written order to that effect and order that the  
98 property be held until the issue of a determination of title is  
99 resolved pursuant to the procedures established in the Florida  
100 Contraband Forfeiture Act. Upon a finding of good cause shown,  
101 the court may order that the court order finding probable cause  
102 be sealed for as long as reasonably necessary to preserve the  
103 integrity of an active criminal investigation. If the court  
104 determines that probable cause does not exist for the seizure,  
105 any forfeiture hold, lien, lis pendens, or other civil  
106 encumbrance must be released.

107 3. If, after 90 days after the date of the initial seizure,  
108 the seizing agency cannot find the owner of the seized property  
109 after a diligent effort, the seized property is deemed a  
110 contraband article and forfeited subject to s. 932.704. However,  
111 if the seizing agency finds the owner within 90 days after the  
112 date of the initial seizure, the seizing agency shall return the  
113 property to the owner within 5 days after:

114 a. The court finding that the owner had a bona fide



594-03401-16

115 security interest;

116 b. The court finding that the owner was an innocent owner;

117 c. The acquittal or dismissal of the owner of the criminal  
118 charge that was the basis of the forfeiture proceedings; or

119 d. The disposal of the criminal charge that was the basis  
120 of the forfeiture proceedings by nolle prosequi. The seizing  
121 agency is responsible for any damage, storage fee, and related  
122 cost applicable to the property.

123 4. A forfeiture under the Florida Contraband Forfeiture Act  
124 is not final, and title or other indicia of ownership, other  
125 than provisional title, does not pass to the state or  
126 jurisdiction seeking forfeiture until the owner of the seized  
127 property is prosecuted and convicted of or pleads guilty or nolo  
128 contendere to a criminal offense, without regard to whether  
129 adjudication is withheld, that renders the property a contraband  
130 article.

131 5. This paragraph is in addition to all other requirements  
132 and rights in the Florida Contraband Forfeiture Act and does not  
133 affect any other requirement or right set forth in this act.  
134 This paragraph does not affect any party's discovery obligations  
135 under the Florida Rules of Civil Procedure All rights to,  
136 interest in, and title to contraband articles used in violation  
137 of s. 932.702 shall immediately vest in the seizing law  
138 enforcement agency upon seizure.

139 (d) The seizing agency may not use the seized property for  
140 any purpose until the rights to, interest in, and title to the  
141 seized property are perfected in accordance with the Florida  
142 Contraband Forfeiture Act. This section does not prohibit use or  
143 operation necessary for reasonable maintenance of seized



594-03401-16

144 property. Reasonable efforts shall be made to maintain seized  
145 property in such a manner as to minimize loss of value.

146 Section 2. Paragraph (c) of subsection (9) of section  
147 322.34, Florida Statutes, is amended to read:

148 322.34 Driving while license suspended, revoked, canceled,  
149 or disqualified.—

150 (9)

151 (c) Notwithstanding ~~s. 932.703(1)(e)~~ ~~or~~ s. 932.7055, when  
152 the seizing agency obtains a final judgment granting forfeiture  
153 of the motor vehicle under this section, 30 percent of the net  
154 proceeds from the sale of the motor vehicle shall be retained by  
155 the seizing law enforcement agency. The remaining 70 percent of  
156 the proceeds shall first be applied to payment of court costs,  
157 finest, and fees remaining due, and any remaining balance of  
158 proceeds and 70 percent shall be deposited in the General

159 Revenue Fund for use by regional workforce boards in providing  
160 transportation services for participants of the welfare  
161 transition program. In a forfeiture proceeding under this  
162 section, the court may consider the extent that the family of  
163 the owner has other public or private means of transportation.

164 Section 3. For the purpose of incorporating the amendment  
165 made by this act to section 932.703, Florida Statutes, in a  
166 reference thereto, paragraph (e) of subsection (6) of section  
167 403.413, Florida Statutes, is reenacted to read:

168 403.413 Florida Litter Law.—

169 (6) PENALTIES; ENFORCEMENT.—

170 (e) A motor vehicle, vessel, aircraft, container, crane,  
171 winch, or machine used to dump litter that exceeds 500 pounds in  
172 weight or 100 cubic feet in volume is declared contraband and is



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594-03401-16

173 subject to forfeiture in the same manner as provided in ss.

174 932.703 and 932.704.

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

**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.)

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Prepared By: The Professional Staff of the Committee on Fiscal Policy

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BILL: CS/CS/SB 1044

INTRODUCER: Fiscal Policy Committee (Recommended by Appropriations Subcommittee on Criminal and Civil Justice); Criminal Justice Committee; and Senator Brandes and others

SUBJECT: Forfeiture of Contraband

DATE: March 2, 2016

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Dugger</u>	<u>Cannon</u>	<u>CJ</u>	<u>Fav/CS</u>
2.	<u>Harkness</u>	<u>Sadberry</u>	<u>ACJ</u>	<u>Recommend: Fav/CS</u>
3.	<u>Jones</u>	<u>Hrdlicka</u>	<u>FP</u>	<u>Fav/CS</u>

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**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/CS/SB 1044 amends the Florida Contraband Forfeiture Act to specify that a seizure may occur only if the property owner is arrested or if one or more of the following circumstances apply:

- The owner of the property cannot be identified after a diligent search;
- The owner of the property is a fugitive from justice or is deceased;
- An individual who does not own the property is arrested for the criminal violation that renders the property a contraband article and the owner of the property had actual knowledge of the criminal activity;
- The owner of the property agrees to be a confidential informant as defined in s. 914.28, F.S.;  
or
- The property is a monetary instrument.

If after a diligent effort by the seizing agency, the owner of the seized property cannot be found after 90 days, the property is deemed a contraband article and forfeited subject to the act.

The bill also:

- Requires that 70 percent of net proceeds from seizures first be applied to payment of court costs, fines, and fees and the remainder deposited in the General Revenue Fund for use by regional workforce boards in providing transportation services for participants of the welfare transition program;

- Requires specified persons approve all settlement agreements concerning the seized property;
- Provides that if more than one agency seeks forfeiture of the property, the division of liability may be governed by the terms of the agreement between the agencies;
- Specifies the procedures for judicial review of seizures;
- Requires proof beyond a reasonable doubt that contraband item was being used in violation of the act;
- Provides reporting requirements for seized property for forfeiture;
- Provides penalties for noncompliance with the reporting requirements, to be enforced by the Department of Financial Services;
- Requires parties to agree in writing to a different assignment of responsibility;
- Specifies when a seizing agency must apply for a probable cause determination and the findings a court must make regarding probable cause; and
- Clarifies that bond shall be payable to the claimant if the claimant prevails at the close of the forfeiture proceedings and any appeal.

This bill has an indeterminate state fiscal impact. See Section V. Fiscal Impact Statement.

The bill is effective July 1, 2016.

## II. Present Situation:

The Florida Contraband Forfeiture Act, (act), ss. 932.701-932.706, F.S., provides for the seizure and civil forfeiture of property related to criminal and non-criminal violations of law.

Contraband and other property may be seized when utilized during a violation of, or for the purpose of violating, the act. Property constituting a “contraband article” includes:

- A controlled substance as defined in ch. 893, F.S., or a substance, device, paraphernalia, or currency or other means of exchange that was used, attempted, or intended to be used in violation of ch. 893, F.S.;<sup>1</sup>
- Gambling paraphernalia, lottery tickets, money, currency, or other means of exchange which was used, attempted, or intended to be used in violation of Florida gambling laws;
- Equipment, liquid or solid, which was used, attempted, or intended to be used, in violation of Florida beverage or tobacco laws;
- Motor fuel upon which the motor fuel tax has not been paid;
- Personal property that was used or attempted to be used as an instrumentality in, or to aid or abet the commission of, any felony, or which is acquired by proceeds obtained from a violation of the act;
- Real property that was used or attempted to be used as an instrumentality in, or to aid or abet the commission of, any felony, or which is acquired by proceeds from a violation of the Act;
- Any personal property in the possession of or belonging to any person who takes aquaculture products in violation of s. 812.014(2)(c), F.S.;
- A motor vehicle offered for sale in violation of s. 320.28, F.S.;
- A motor vehicle used in the course of committing a violation of s. 322.34(9)(a), F.S.;

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<sup>1</sup> The totality of the facts presented by the State must clearly establish probable cause to believe that a nexus exists between the article seized and the narcotics activity. Section 932.701(2)(a)1., F.S.

- Photographs, films, or other recorded images, recorded in violation of s. 810.145, F.S., and possessed for amusement, entertainment, sexual arousal, gratification, or profit, or for the purpose of degrading or abusing another person;
- Real property which is acquired by the proceeds of Medicaid fraud under ss. 409.920, F.S., or 409.9201, F.S.;
- Personal property in the possession of, or belonging to, any person which is acquired by the proceeds of Medicaid fraud under ss. 409.920, F.S., or 409.9201, F.S.; and
- Personal property that is used or attempted to be used as an instrumentality in the commission of, or in aiding and abetting in the commission of, a person's third or subsequent violation of s. 509.144, F.S.<sup>2</sup>

Currently, any contraband article, vessel, motor vehicle, aircraft, other personal property, or real property used in violation of the act, or in, upon, or by means of which any violation of the act has taken or is taking place, may be seized and forfeited subject to the provisions of the act.<sup>3</sup> All rights to, interest in, and title to contraband articles used in violation of the act immediately vest in the seizing law enforcement agency upon seizure.<sup>4</sup>

### **Seizure Process**

Personal property may be seized at the time of the violation or subsequent to the violation based upon a law enforcement officer's determination that probable cause exists to believe the property is being used in violation of the act. A person is entitled to notice<sup>5</sup> must be given notice, at the time of seizure or within 5 days of the seizure by certified mail, of his or her right to have a court review such determination in a postseizure adversarial preliminary hearing.<sup>6</sup> When a court review is desired, the person entitled to notice must request it in writing by certified mail. The agency must hold a hearing within 10 days after receiving the request.

Unlike personal property, the seizure of real property may not occur until the person entitled to notice has the opportunity to attend a pre-seizure adversarial hearing, at which time the court determines whether or not probable cause exists to justify the seizure.<sup>7</sup> The seizing agency must make a diligent effort to notify persons entitled to notice of the seizure.

If the court finds probable cause that the property was used in violation of the act, it must authorize the seizure or continued seizure of the contraband article.<sup>8</sup>

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<sup>2</sup> Section 932.701(2)(a), F.S.

<sup>3</sup> Section 932.703(1), F.S.

<sup>4</sup> Section 932.703(1)(c), F.S.

<sup>5</sup> Section 932.701(2)(e), F.S., defines a "person entitled to notice" as any owner, entity, bona fide lienholder, or person in possession of the property subject to forfeiture when seized, who is known to the seizing agency after a diligent search and inquiry. Interests of bona fide lienholders, property held jointly by a husband and wife, interests in property held jointly, and rental cars may not be forfeited under s. 932.703, F.S.

<sup>6</sup> The court review must occur within 15 days after the notice is received. Section 932.703(2), F.S.

<sup>7</sup> The hearing must occur within 10 days of the filing of the lis pendens or as soon as practicable. Section 932.703(2)(b), F.S.

<sup>8</sup> Section 932.703(2)(c), F.S.

## **Forfeiture Proceedings**

If the person entitled to notice does not request a hearing, the seizing law enforcement agency must promptly proceed against the contraband article by filing a complaint in the circuit court within 45 days after the seizure, requesting the court to issue a judgment of forfeiture.<sup>9</sup>

Under the act, the civil forfeiture trial must be decided by a jury unless that right is waived by the claimant.<sup>10</sup> At trial, the seizing agency must prove that the contraband article was being used in violation of the act by clear and convincing evidence. Property may not be forfeited under the act unless the seizing agency shows by the preponderance of the evidence that the owner or any co-owner knew or should have known, that the property was being used in criminal activity.<sup>11</sup>

Once this occurs, the right, title, and interest in and to such property must be perfected in the seizing agency, subject only to the rights of bona fide lienholders.<sup>12</sup> The act also provides that it is an affirmative defense to forfeiture that the nexus between the property and the underlying violation was incidental or entirely accidental.<sup>13</sup>

If the claimant prevails, the seizing agency must pay claimants the reasonable loss of value of the property or loss of income. The agency cannot assess fees and costs against a successful claimant and is required to pay reasonable attorney fees and costs up to \$1,000 if the claimant prevails at the adversarial preliminary hearing.<sup>14</sup>

## **Disposition of Forfeited Property**

Once a seizing agency has been awarded a final judgment granting of forfeiture of the property it may:

- Retain the property for the agency's use;
- Sell the property at a public auction or by sealed bid to the highest bidder; or
- Salvage, trade, or transfer the property to any public or nonprofit organization.<sup>15</sup>

If the property has a lien attached and the agency sells the property, the proceeds of the sale are to be distributed in this order:

- Payment of the balance due on any lien preserved by the court in the forfeiture proceedings.
- Payment of the cost incurred by the seizing agency in connection with the storage, maintenance, security, and forfeiture of such property.
- Payment of court costs incurred in the forfeiture proceeding.<sup>16</sup>

The proceeds which remain after all liens and debts against the forfeited property are paid are then deposited into a special law enforcement trust fund established by the governing body of a

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<sup>9</sup> Sections 932.701(2)(c), and 932.704(4), F.S.

<sup>10</sup> Section 932.704(5), F.S. The act authorizes the claimant and the seizing law enforcement agency to settle the forfeiture action prior to the conclusion of the forfeiture proceeding. Section 932.704(7), F.S.

<sup>11</sup> Sections 932.703(6)(a), F.S.

<sup>12</sup> Section 932.704(8), F.S.

<sup>13</sup> Section 932.703(8), F.S.

<sup>14</sup> Sections 932.704(9) and (10), F.S.

<sup>15</sup> Section 932.7055(1), F.S.

<sup>16</sup> Sections 932.7055(3) and (4), F.S.



county or municipality. These proceeds and interest may not be used to meet normal operation expenses.<sup>17</sup>

Any local law enforcement agency that acquires at least \$15,000 under the act within a fiscal year must expend or donate no less than 15 percent of these proceeds for the support or operation of any drug treatment, drug abuse education, drug prevention, crime prevention, safe neighborhood, or school resource officer program. The agency has discretion to determine which program receives the funds.<sup>18</sup>

If the seizing agency is a state agency, the remaining proceeds are deposited into the General Revenue Fund.<sup>19</sup>

### **Section 322.34, F.S.**

A motor vehicle driven by a person under the influence of alcohol or drugs is subject to seizure and forfeiture and to liens for recovering, towing, or storing vehicles, if, at the time of the offense, the person's driver license is suspended, revoked, or canceled as a result of a prior conviction for driving under the influence.<sup>20</sup>

When the seizing agency obtains a final judgment granting forfeiture of a motor vehicle associated with that offense, 30 percent of the net proceeds from the sale of the motor vehicle are retained by the seizing law enforcement agency and 70 percent are deposited in the General Revenue Fund for use by regional workforce boards in providing transportation services for participants of the welfare transition program.<sup>21</sup>

### **III. Effect of Proposed Changes:**

The bill amends s. 932.703, F.S., to specify that a seizure may occur only if the property owner is arrested or if one or more of the following circumstances apply:

- The owner of the property cannot be identified after a diligent search;
- The owner of the property is a fugitive from justice or is deceased;
- An individual who does not own the property is arrested for the criminal violation that renders the property a contraband article and the owner of the property had actual knowledge of the criminal activity;<sup>22</sup>

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<sup>17</sup> Section 932.7055(5)(a), F.S.

<sup>18</sup> Section 932.7055(5)(c)3., F.S.

<sup>19</sup> The following agencies have their own forfeiture trust funds: FDLE; Department of Business and Professional Regulation, Division of Alcoholic Beverages and Tobacco; Department of Highway Safety and Motor Vehicles; Fish and Wildlife Conservation Commission; state attorney offices; school board security agencies; State University System police departments; Department of Agriculture and Consumer Services; Department of Military Affairs; Medicaid Fraud Control Unit of the Department of Legal Affairs; Division of State Fire Marshal of the Department of Financial Services; and Division of Insurance Fraud of the Department of Financial Services. Section 932.7055(6), F.S.

<sup>20</sup> Section 322.34(9)(a), F.S.

<sup>21</sup> Section 322.34(9)(c), F.S.

<sup>22</sup> Evidence that an owner received written notification from a law enforcement agency and acknowledged receipt of the notification in writing, that the seized asset had been used in violation of the act on a prior occasion by the arrested person, may be used to establish actual knowledge.

- The owner of the property agrees to be a confidential informant as defined in s. 914.28, F.S.;<sup>23</sup> or
- The property is a monetary instrument.<sup>24</sup>

If after a diligent effort by the seizing agency, the owner of the seized property cannot be found after 90 days, the property is deemed a contraband article and forfeited subject to the act.

Unless the parties agree in writing to a different assignment of responsibility, the agency seeking to forfeit the seized property is responsible for any damage to the property and any storage fees or maintenance costs applicable to the property. If more than one agency seeks forfeiture of the property, the division of liability may be governed by the terms of an agreement between the agencies.

### **Probable Cause for Seizure of Property**

The bill requires when a seizure of property is made, the seizing agency must apply within 10 business days after the seizure to a court of competent jurisdiction for an order determining whether probable cause exists for the seizure of the property. The application for the probable cause determination must be accompanied by a sworn affidavit and may be filed electronically. The court must determine whether:

- The owner was arrested and if not, whether an exception to the arrest requirement specified above applies; and
- Probable cause exists for property seizure under act.

If the court finds that the requirements stated above were met and that probable cause exists for the seizure, the forfeiture may proceed and no further probable cause determination is required unless the claimant requests an adversarial preliminary hearing as set forth in the act. Upon such a finding, the court must issue a written order finding probable cause for the seizure and order the property held until the issue of a determination of title is resolved pursuant to the procedures defined in the act.

If the court finds that no probable cause exists for the seizure, any forfeiture hold, lien, lis pendens, or other civil encumbrance must be released within 5 days. The court may seal any portion of the application and the record of any proceeding under the act which is exempt or confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution or may otherwise be sealed pursuant to Rule 2.420, Florida Rules of Judicial Administration.

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<sup>23</sup> The seizing agency may not use the threat of property seizure or forfeiture to coerce the owner of the property to enter into a confidential informant agreement. The seizing agency must return the property to the owner if criminal charges are not filed against the owner and the active criminal investigation ends or if the owner ceases being a confidential informant, unless the agency includes the final forfeiture of the property as a component of the confidential informant agreement.

<sup>24</sup> "Monetary instrument" is defined to mean coin or currency of the United States or any other country; a traveler's check; a personal check; a bank check; a cashier's check; a money order; a bank draft of any country; an investment security or negotiable instrument in bearer form or in other form such that title passes upon delivery; a prepaid or stored value card or other device that is the equivalent of money and can be used to obtain cash, property, or services; or gold, silver, or platinum bullion or coins.

The seizing agency must promptly proceed against the contraband article by filing a complaint in the circuit court within the jurisdiction where the seizure or the offense occurred, paying a filing fee of at least \$1,000 and depositing a bond of \$1,500 to the clerk of the court. The bond must be payable to the claimant (property owner) if the claimant prevails at the close of the forfeiture proceedings and any appeal.

The bill increases the standard of proof from clear and convincing to beyond a reasonable doubt that the contraband article was being used in violation of act. If the contraband article was used in violation of the act the court must order the seized property forfeited to the seizing law enforcement agency. The bill also increases reasonable attorney's fees and costs a claimant can receive if the court makes a finding of no probable cause from \$1,000, to \$2,000.

### **Guidelines for Implementing the Florida Contraband Forfeiture Act**

Currently, the Florida Department of Law Enforcement (FDLE), in consultation with the Florida Sheriffs Association and the Florida Police Chiefs Association, must develop guidelines and training procedures to be used by state and local law enforcement agencies and state attorneys in implementing the act. The bill adds the following requirements:

- Each state or local law enforcement agency that seizes property for the purpose of forfeiture must annually review the seizures, any settlements, and any forfeiture proceedings initiated by a law enforcement agency. If the review suggests deficiencies, the state or local law enforcement agency must take action to comply with the act.
- The employment, salary, promotion, or other compensation of any law enforcement officer may not be dependent on the ability of the officer to meet a quota for seizures
- A seizing agency must adopt and implement written policies, procedures, and training to ensure compliance with all applicable legal requirements regarding seizing, maintaining, and the forfeiture of property under the act.
- When property is seized for forfeiture, the probable cause supporting the seizure must be promptly reviewed by supervisory personnel. The seizing agency's legal counsel must be notified as soon as possible of all seizures and conduct a review to determine whether there is legal sufficiency to proceed with a forfeiture action.
- Each seizing agency must adopt and implement written policies and procedures promoting the prompt release of seized property. To help ensure that property is not wrongfully held after seizure, each law enforcement agency must adopt written policies and procedures ensuring that all asserted claims of interest in seized property are promptly reviewed for potential validity.
- The settlement of any forfeiture action must be consistent with the act and the policy of the seizing agency.<sup>25</sup>
- Law enforcement agency personnel involved in the seizure of property for forfeiture must receive basic training and continuing education as required by the act. Each agency must maintain records demonstrating each law enforcement officer's compliance with this requirement. The training must address the legal aspects of forfeiture, including search and seizure and other constitutional considerations.

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<sup>25</sup> The bill requires all settlements to be approved by the head of the seizing law enforcement agency, except in cases where the head is unavailable and delay would have an adverse impact; in such situations a designated subordinate may grant approval.

## Reporting Requirements

The bill requires the following reporting requirements for seized property for forfeiture:

- Every law enforcement agency must submit an annual report to the FDLE indicating whether the agency has seized or forfeited property under the act. A law enforcement agency receiving or expending forfeited property or proceeds from the sale of forfeited property in accordance with the act must submit a completed annual report by October 10 documenting the receipts and expenditures. The report must:
  - Be submitted in an electronic form;
  - Be maintained by the FDLE in consultation with the Office of Program Policy Analysis and Government Accountability (OPPAGA);
  - Be submitted to the entity that has budgetary authority over the law enforcement agency and to the FDLE; and
  - At a minimum, specify the type, approximate value, court case number, type of offense, disposition of property received, and amount of any proceeds received or expended.
- The FDLE must submit an annual report to the OPPAGA compiling the information and data in the annual reports submitted by the law enforcement agencies. The annual report must contain a list of law enforcement agencies that have failed to meet the reporting requirements and a summary of any action taken against the noncomplying agency by the office of Chief Financial Officer (Department of Financial Services).
- The law enforcement agency and the entity having budgetary control over the law enforcement agency may not anticipate future forfeitures or proceeds therefrom in the adoption and approval of the budget for the law enforcement agency.

The bill provides that a seizing agency that fails to comply with the reporting requirements stated above is subject to a civil fine of \$5,000. The fine is determined by the Chief Financial Officer and payable to the General Revenue Fund. However, such agency is not subject to the fine if, within 60 days after receipt of written notification of noncompliance with the reporting requirements, the agency substantially complies with those requirements. The FDLE must submit any substantial noncompliance to the Department of Financial Services.

The bill repeals the provision that all rights to, interest in, and title to contraband articles used in violation of the act immediately vest in the seizing law enforcement agency upon seizure.

The bill also corrects cross-references to the act in several statutes.

### **Section 322.34, F.S.**

The bill also modifies how proceeds from a seized motor vehicle may be distributed. The bill provides 70 percent of the net proceeds from the seizure must first be applied to payment of court costs, fines, and fees remaining due which are associated with the offense. Any remaining balance of the proceeds must be deposited into the General Revenue Fund to be used by regional workforce boards in providing transportation services, as directed in current law.

The bill is effective July 1, 2016.

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

To the extent the bill requires a local government to expend funds, provisions of art. VII, s. 18(a) of the Florida Constitution, may apply. If those provisions do apply, for the law to be binding upon the cities and counties, the Legislature must find that it fulfills an important state interest and one of the exceptions must apply:

- The expenditure is required to comply with a law that applies to all persons similarly situated; or
- The law must be approved by two-thirds of the membership of each house of the Legislature.

Both state and local law enforcement agencies must comply with the new reporting requirements and are subject to a fine for noncompliance.

**B. Public Records/Open Meetings Issues:**

None.

**C. Trust Funds Restrictions:**

None.

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

None.

**B. Private Sector Impact:**

The bill requiring an arrest may result in a reduction of property being seized by and forfeited to law enforcement agencies.

**C. Government Sector Impact:**

This bill has an indeterminate state fiscal impact. The bill requires that 70 percent of the net proceeds from motor vehicle seizures must first be applied to payment of court costs, fines, and fees which are associated with the offense rather than being deposited into General Revenue to be used by regional workforce boards in providing transportation services. The bill reduces revenues accruing to the General Revenue Fund. Proceeds applied to court costs, fines, and fees will primarily benefit the clerks of the court and state trust funds.

In addition, the bill may reduce the number of seizures and forfeitures under the act because of the criminal nexus requirement, thereby reducing revenue to seizing law enforcement agencies.

The bill requires the Chief Financial Officer and the Department of Financial Services to enforce noncompliance with the reporting requirement and permits the Chief Financial Officer to impose a civil fine of \$5,000 on the law enforcement agency, payable to the General Revenue fund. This may have a negative, indeterminate fiscal impact. The amount of fines collected and deposited into General Revenue will likely be minimal and insignificant.

## VI. Technical Deficiencies:

None.

## VII. Related Issues:

The Office of Program Policy Analysis and Government Accountability (OPPAGA) recently reviewed Florida's current civil asset forfeiture practices by local law enforcement agencies and released its findings in a report entitled *Civil Asset Forfeiture in Florida: Policies and Practices*.<sup>26</sup> Some of the findings in the report included the following:

- There is no current requirement for law enforcement agencies to report seizures and forfeitures under the act and without statewide information, the Legislature does not know the extent of civil asset forfeiture practices in Florida.<sup>27</sup>
- Vehicles and currency were the most commonly seized assets, related primarily to drug offenses.<sup>28</sup>
- An arrest was made in conjunction with most seizures during Fiscal Year 2013-2014.<sup>29</sup>
- Many assets were returned to the owners, either in whole or in part.<sup>30</sup>
- Sixteen percent of seizure actions were contested by an adversarial hearing request, and one percent resulted in a civil trial.<sup>31</sup>
- Responding agencies reported spending over \$12 million in forfeited assets during Fiscal Year 2013-2014.<sup>32</sup>

Also included in the report were the following options that could be considered by the Legislature when making changes to the act:

- Require law enforcement agencies to report seizure actions and forfeitures to the state at least annually,<sup>33</sup>

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<sup>26</sup> Florida Legislature, Office of Program Policy Analysis and Government Accountability, Report No. 15-10 (Nov. 2015), available at <http://www.oppaga.state.fl.us/MonitorDocs/Reports/pdf/1510rpt.pdf> (last visited Feb. 25, 2016).

<sup>27</sup> *Id.* at 11.

<sup>28</sup> *Id.* at 4.

<sup>29</sup> *Id.* at 5. Responding agencies gave the following examples of when an arrest is not possible to make at the time of seizure: an arrest is premature because the officer was unable to positively identify the owner of the cash and illegal drugs; an arrest is premature during an ongoing economic crime investigation but the seizure of currency is ripe; and an arrest is premature when owners of property subject to seizure are willing to give information on higher level crimes leading to later related arrests.

<sup>30</sup> *Id.* at 7 and 8.

<sup>31</sup> *Id.* at 7.

<sup>32</sup> *Id.* at 9. Responding agencies indicated they used forfeiture money primarily for supporting substance abuse and crime prevention programs, buying additional equipment, defraying costs of complex investigations, providing additional expertise, providing matching funds to obtain federal grants, and buying automatic external defibrillators. *Id.* at 10.

<sup>33</sup> Thirty-three states have some sort of reporting requirement. *Id.* at 11.

- Require a criminal conviction before forfeiture;<sup>34</sup>
- Increase the evidentiary standard of proof from clear and convincing to beyond a reasonable doubt;<sup>35</sup> and
- Restrict the use of civil asset forfeiture proceeds.<sup>36</sup>

The bill codifies the option of requiring a criminal conviction before final forfeiture.

### VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 322.34, 323.001, 328.07, 403.413, 817.625, 932.701, 932.703, 932.704, and 932.7055.

The bill creates sections 932.7061 and 932.7062 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/CS by Fiscal Policy on February 29, 2016:**

The CS:

- Requires that 70 percent of net proceeds from seizures first be applied to payment of court costs, fines, and fees and the remainder deposited in the General Revenue Fund for use by regional workforce boards in providing transportation services for participants of the welfare transition program;
- Requires specified persons approve all settlement agreements concerning the seized property;
- Provides that if more than one agency seeks forfeiture of the property, the division of liability may be governed by the terms of the agreement between the agencies;
- Specifies the procedures for judicial review of seizures;
- Requires proof beyond a reasonable doubt that contraband item was being used in violation of the act;
- Provides reporting requirements for seized property for forfeiture;
- Provides penalties for noncompliance with the reporting requirements, to be enforced by the Department of Financial Services;
- Requires parties to agree in writing to a different assignment of responsibility;
- Specifies when a seizing agency must apply for a probable cause determination and the findings a court must make regarding probable cause; and
- Clarifies that bond shall be payable to the claimant if the claimant prevails at the close of the forfeiture proceedings and any appeal.

<sup>34</sup> Several states, including Minnesota, Montana, Nevada, New Mexico, and North Carolina, have this requirement. *Id.* at 12.

<sup>35</sup> Florida is one of 11 states that has a clear and convincing proof standard, which is higher than most other states. Nebraska, North Carolina, and Wisconsin use the criminal standard of proof, beyond a reasonable doubt. *Id.* at 12.

<sup>36</sup> *Id.* at 13.

**CS by Criminal Justice on January 25, 2016:**

- Requires that a property owner be arrested before the property may be seized, unless the owner and state agree that the property owner will become a confidential informant.
- Requires that the property be returned to the confidential informant if charges are not brought against him or her at the conclusion of the criminal investigation.
- Clarifies that forfeiture is final when the property owner is convicted of or pleads guilty or nolo contendere to a criminal offense, without regard to whether adjudication is withheld.

**B. Amendments:**

None.



By the Committee on Criminal Justice; and Senators Brandes,  
Negron, and Clemens

591-02558-16

20161044c1

A bill to be entitled

An act relating to forfeiture of contraband; amending s. 932.703, F.S.; providing for the acquisition of the provisional title of seized property under certain circumstances; prohibiting the seizure of property under the Florida Contraband Forfeiture Act until the owner of such property is arrested for a criminal offense that renders the property a contraband article; providing an exception; prohibiting the seizing law enforcement agency from threatening a property owner with property seizure or forfeiture under certain circumstances; requiring the return of property by the seizing law enforcement agency to the property owner under certain circumstances; prohibiting a forfeiture under the Florida Contraband Forfeiture Act from being final until the owner of the seized property is prosecuted and convicted of or pleads guilty or nolo contendere to a criminal offense that renders the property a contraband article; providing that the property is deemed a contraband article and forfeited subject to forfeiture proceedings under certain circumstances; specifying circumstances under which the seizing law enforcement agency must return the property to the owner; deleting a provision vesting rights, interests, and title to contraband articles in the seizing law enforcement agency; amending s. 322.34, F.S.; conforming a provision to changes made by the act; reenacting s. 403.413(6)(e), F.S., relating to forfeiture under the Florida Litter Law, to incorporate the amendment made to s. 932.703, F.S., in a reference thereto; providing

Page 1 of 5

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

591-02558-16

20161044c1

an effective date.

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

Section 1. Subsection (1) of section 932.703, Florida Statutes, is amended to read:

932.703 Forfeiture of contraband article; exceptions.—

(1)(a) Any contraband article, vessel, motor vehicle, aircraft, other personal property, or real property used in violation of ~~any provision~~ of the Florida Contraband Forfeiture Act, or in, upon, or by means of which any violation of the Florida Contraband Forfeiture Act has taken or is taking place, may be seized and shall be forfeited subject to ~~the provisions~~ ~~of~~ the Florida Contraband Forfeiture Act.

(b) Notwithstanding any other provision of the Florida Contraband Forfeiture Act, except ~~the provisions~~ of paragraph (a), contraband articles set forth in s. 932.701(2)(a)7. used in violation of ~~any provision~~ of the Florida Contraband Forfeiture Act, or in, upon, or by means of which any violation of the Florida Contraband Forfeiture Act has taken or is taking place, shall be seized and shall be forfeited subject to ~~the provisions~~ ~~of~~ the Florida Contraband Forfeiture Act.

(c) At the time of seizure or entry of a restraining order, the state acquires provisional title to the seized property. Property may not be seized under the Florida Contraband Forfeiture Act until the owner of such property is arrested for a criminal offense that renders the property a contraband article. However, property may be seized if the owner of the property is a confidential informant in lieu of an arrest. The

Page 2 of 5

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

591-02558-16 20161044c1

61 confidential informant status must be agreed upon between the  
 62 seizing agency and the property owner, and the property owner  
 63 must actively participate as a confidential informant in  
 64 gathering criminal intelligence or investigative information for  
 65 an active criminal investigation. The seizing agency may not use  
 66 the threat of property seizure or forfeiture when offering the  
 67 property owner the status of confidential informant in lieu of  
 68 an arrest. If charges are not brought against the property  
 69 owner, the property must be returned to the owner at the  
 70 conclusion of the active criminal investigation or the cessation  
 71 of the status of criminal informant. Final forfeiture of  
 72 property may be included as a component of the agreement to  
 73 serve as a confidential informant. A forfeiture under the  
 74 Florida Contraband Forfeiture Act is not final, and title or  
 75 other indicia of ownership, other than provisional title, does  
 76 not pass to the state or jurisdiction seeking forfeiture until  
 77 the owner of the seized property is prosecuted and convicted of  
 78 or pleads guilty or nolo contendere to a criminal offense,  
 79 without regard to whether adjudication is withheld, that renders  
 80 the property a contraband article. If, after 3 months, the  
 81 seizing agency cannot find the owner of the seized property  
 82 after a diligent effort, the seized property is deemed a  
 83 contraband article and forfeited subject to s. 932.704. However,  
 84 if the seizing agency finds the owner, the seizing agency shall  
 85 return the property to the owner within 5 days after:

- 86 1. The court finding that the owner had a bona fide
- 87 security interest;
- 88 2. The court finding that the owner was an innocent owner;
- 89 3. The acquittal or dismissal of the owner of the criminal

591-02558-16 20161044c1

90 charge that was the basis of the forfeiture proceedings; or  
 91 4. The disposal of the criminal charge that was the basis  
 92 of the forfeiture proceedings by nolle prosequi. The seizing  
 93 agency is responsible for any damage, storage fee, and related  
 94 cost applicable to the property ~~All rights to, interest in, and~~  
 95 title to contraband articles used in violation of s. 932.702  
 96 shall immediately vest in the seizing law enforcement agency  
 97 upon seizure.

98 (d) The seizing agency may not use the seized property for  
 99 any purpose until the rights to, interest in, and title to the  
 100 seized property are perfected in accordance with the Florida  
 101 Contraband Forfeiture Act. This section does not prohibit use or  
 102 operation necessary for reasonable maintenance of seized  
 103 property. Reasonable efforts shall be made to maintain seized  
 104 property in such a manner as to minimize loss of value.

105 Section 2. Paragraph (c) of subsection (9) of section  
 106 322.34, Florida Statutes, is amended to read:  
 107 322.34 Driving while license suspended, revoked, canceled,  
 108 or disqualified.—  
 109 (9)  
 110 (c) Notwithstanding ~~s. 932.703(1)(e)~~ ~~or~~ s. 932.7055, when  
 111 the seizing agency obtains a final judgment granting forfeiture  
 112 of the motor vehicle under this section, 30 percent of the net  
 113 proceeds from the sale of the motor vehicle shall be retained by  
 114 the seizing law enforcement agency and 70 percent shall be  
 115 deposited in the General Revenue Fund for use by regional  
 116 workforce boards in providing transportation services for  
 117 participants of the welfare transition program. In a forfeiture  
 118 proceeding under this section, the court may consider the extent

591-02558-16

20161044c1

119 that the family of the owner has other public or private means  
120 of transportation.

121 Section 3. For the purpose of incorporating the amendment  
122 made by this act to section 932.703, Florida Statutes, in a  
123 reference thereto, paragraph (e) of subsection (6) of section  
124 403.413, Florida Statutes, is reenacted to read:

125 403.413 Florida Litter Law.—

126 (6) PENALTIES; ENFORCEMENT.—

127 (e) A motor vehicle, vessel, aircraft, container, crane,  
128 winch, or machine used to dump litter that exceeds 500 pounds in  
129 weight or 100 cubic feet in volume is declared contraband and is  
130 subject to forfeiture in the same manner as provided in ss.  
131 932.703 and 932.704.

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



The Florida Senate

## Committee Agenda Request

**To:** Senator Anitere Flores, Chair  
Committee on Fiscal Policy

**Subject:** Committee Agenda Request

**Date:** February 11, 2016

---

I respectfully request that **Senate Bill #1044**, relating to **Forfeiture of Contraband**, be placed on the:

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

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

Senator Jeff Brandes  
Florida Senate, District 22

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/29/16

Meeting Date

1044

Bill Number (if applicable)

797394

Amendment Barcode (if applicable)

Topic Forfeiture of Contraband

Name Amy Mercer

Job Title Executive Director

Address 2636 Mitcham

Street

Phone 850 219 3631

Tallahassee FL 32308

City

State

Zip

Email amercer@fpca.com

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against

(The Chair will read this information into the record.)

Representing Florida Police Chiefs Association

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

2/29/16

Meeting Date

1044

Bill Number (if applicable)

797394

Amendment Barcode (if applicable)

Topic Foster care

Name BOB GUANTIERI

Job Title Sheriff

Address 10750 WINTER RD

Street

Phone 727-582-6200

Largo

City

FL

State

34647

Zip

Email \_\_\_\_\_

Speaking:  For  Against  Information

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

Representing Florida Sheriff's Assoc

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/29/16  
Meeting Date

1044  
Bill Number (if applicable)  
970 996  
Amendment Barcode (if applicable)

Topic Foster Care

Name Bob Guantiari

Job Title Sheriff

Address 10200 Venetian Ave  
Street

Phone 77-582-6200

Waco FL 34677  
City State Zip

Email \_\_\_\_\_

Speaking:  For  Against  Information

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

Representing Florida Sheriffs Assoc.

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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THE FLORIDA SENATE

APPEARANCE RECORD

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2/29/16  
Meeting Date

1044  
Bill Number (if applicable)

970996  
Amendment Barcode (if applicable)

Topic Contraband Forfeiture

Name Amy Mercer

Job Title Executive Director

Address 2636 Mitcham DR

Phone 8502193631

Tallahassee, FL 32308  
City State Zip

Email amercer@fpa.com

Speaking:  For  Against  Information

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

Representing Florida Police Chiefs Association

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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THE FLORIDA SENATE  
**APPEARANCE RECORD**

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2/29/16

Meeting Date

1044

Bill Number (if applicable)

908958

Amendment Barcode (if applicable)

Topic Forfeiture of Contraband

Name Amy Mercer

Job Title Executive Director

Address 2636 Mitcham

Street

Phone 850 219 3631

Tallahassee, FL 32308

City

State

Zip

Email amerceer@fpca.com

Speaking:  For  Against  Information

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

Representing Florida Police Chiefs Association

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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S-001 (10/14/14)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

2/29/16  
Meeting Date

1044  
Bill Number (if applicable)  
80895B  
Amendment Barcode (if applicable)

Topic Fortentune

Name BOB GUANTERI

Job Title Sherriff

Address 10750 Ulmerton Dr  
Street

Phone \_\_\_\_\_

LA  
City State Zip

Email \_\_\_\_\_

Speaking:  For  Against  Information

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

Representing Florida Sheriffs Assoc.

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

2/29/2016

Meeting Date

1044

Bill Number (if applicable)

880614

Amendment Barcode (if applicable)

Topic Forfeiture of Contraband

Name Amy Mercer

Job Title Executive Director

Address 2636 Mitcham Drive

Street

Tallahassee FL 32308

City

State

Zip

Phone 850-219-3631

Email amercer@fpla.com

Speaking:  For  Against  Information

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

Representing The Florida Police Chiefs Association

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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2/29/16  
Meeting Date

1044  
Bill Number (if applicable)  
880614  
Amendment Barcode (if applicable)

Topic Forfeiture

Name POSS CANTINI

Job Title Sheriff

Address 10750 WINTERBURY DR  
Street

Phone 727-582-6206

Largo FL 34677  
City State Zip

Email \_\_\_\_\_

Speaking:  For  Against  Information

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

Representing Florida Sheriff's Assoc.

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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THE FLORIDA SENATE

APPEARANCE RECORD

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2/29/16  
Meeting Date

1044  
Bill Number (if applicable)

Topic Forfeiture of Contraband  
Amendment Barcode (if applicable) 681256

Name Amy Mercer

Job Title Executive Director

Address 2636 Mitcham

Phone 8502193631

Street

Tallahassee, FL 32308

City

State

Zip

Email amercer@fpca.com

Speaking:  For  Against  Information

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

Representing Florida Police Chiefs Association

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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THE FLORIDA SENATE

APPEARANCE RECORD

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2/29/16

Meeting Date

1044

Bill Number (if applicable)

681256

Amendment Barcode (if applicable)

Topic Asset Forfeiture

Name Bob Gualtheri

Job Title Sheriff, Pinellas County

Address \_\_\_\_\_ Phone \_\_\_\_\_  
Street

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_ Email \_\_\_\_\_

Speaking:  For  Against  Information

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

Representing Florida Sheriffs Association

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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THE FLORIDA SENATE

APPEARANCE RECORD

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2-29-16

Meeting Date

1044

Bill Number (if applicable)

Topic Civil Forfeiture

Amendment Barcode (if applicable)

Name Tim Nungesser

Job Title Legislative Director

Address 110 E. Jefferson St

Phone 850-445-5367

Street

Tallahassee FL

City

State

32301

Zip

Email tim.nungesser@flsen.gov

Speaking:  For  Against  Information

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

Representing National Federation of ~~Business~~ Independent Business

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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THE FLORIDA SENATE

APPEARANCE RECORD

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2/29/16

Meeting Date

1044

Bill Number (if applicable)

Topic CIVIL FORFEITURE

Amendment Barcode (if applicable)

Name DAN PETERSON

Job Title Director - Property Rights Center

Address 100 N Duval

Phone 907-258-2491

Street

Tallahassee FL

City

State

Zip

Email dpeterson@jamesmadison.org

Speaking:  For  Against  Information

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

Representing JAMES MADISON INSTITUTE

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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THE FLORIDA SENATE  
**APPEARANCE RECORD**

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2/29/16  
Meeting Date

1044  
Bill Number (if applicable)

Topic Forfeiture of Contraband

Amendment Barcode (if applicable)

Name Pamela Burch Fort

Job Title \_\_\_\_\_

Address 104 S. Monroe Street

Phone 850/425-1344

Tallahassee FL 32301  
City State Zip

Email TcgLobby@aol.com

Speaking:  For  Against  Information

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

Representing ACLU of Florida

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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THE FLORIDA SENATE

APPEARANCE RECORD

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2-29-16

Meeting Date

1044

Bill Number (if applicable)

Topic Forfeiture of Contraband

Amendment Barcode (if applicable)

Name Catherine Baer

Job Title Chair

Address 1421 Woodgate Way

Phone

Street

Tallahassee

Fl

32308

Email

City

State

Zip

Speaking: [ ] For [ ] Against [ ] Information

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

Representing The Tea Party Network

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

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

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

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S-001 (10/14/14)

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

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

2-29-16

*Meeting Date*

1044

*Bill Number (if applicable)*

Topic Forfeiture of Contraband

*Amendment Barcode (if applicable)*

Name John Hallman

Job Title Legislative Affairs Director

Address P.O. Box 2349

Phone \_\_\_\_\_

*Street*

Bushnell

FL

33513

Email \_\_\_\_\_

*City*

*State*

*Zip*

Speaking:  For  Against  Information

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

Representing Liberty First

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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S-001 (10/14/14)

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

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

2/29/2016

1044

*Meeting Date*

*Bill Number (if applicable)*

Topic Forfeiture of Contraband

*Amendment Barcode (if applicable)*

Name Nancy Daniels

Job Title Public Defender, 2nd Circuit

Address 301 South Monroe Street

Phone 850.606.1000

*Street*

Tallahassee

Florida

32301

Email nancy.daniels@flpd2.com

*City*

*State*

*Zip*

Speaking:  For  Against  Information

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

Representing Florida Public Defender Association, Inc.

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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S-001 (10/14/14)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

2/29/16  
Meeting Date

1044  
Bill Number (if applicable)

Topic SB 1044

Amendment Barcode (if applicable)

Name Ari Bargil

Job Title Attorney

Address 999 Brickell Ave.  
Street

Phone 305-721-6600

Miami FL 33131  
City State Zip

Email abargil@ij.org

Speaking:  For  Against  Information

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

Representing Institute for Justice

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

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

2/29/2019

*Meeting Date*

CS/SB 1044

*Bill Number (if applicable)*

Topic Contraband Forfeiture

*Amendment Barcode (if applicable)*

Name Jorge Chamizo

Job Title Attorney

Address 108 South Monroe Street

Phone (850) 681-0024

*Street*

Tallahassee

FL

32301

Email jorge@flapartners.com

*City*

*State*

*Zip*

Speaking:  For  Against  Information

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

Representing Florida Association of Criminal Defense Lawyers (FACDL)

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

2/29/14  
Meeting Date

1044  
Bill Number (if applicable)

Topic Forfeiture

Amendment Barcode (if applicable)

Name Bob Gualtieri

Job Title Sheriff

Address 10750 Ulmerton Rd

Phone 727-582-6200

Largo FL 34677  
City State Zip

Email \_\_\_\_\_

Speaking:  For  Against  Information

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

Representing Florida Sheriffs Assoc

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

2/29/16

Meeting Date

1044

Bill Number (if applicable)

Topic FORFEITURE

Amendment Barcode (if applicable)

Name Dennis Strange

Job Title CAPTAIN

Address 2400 West Colonial Dr

Phone 407-254-7000

Street

Del

City

Fl

State

32804

Zip

Email: dennis.strange@ocfl.net

Speaking:  For  Against  Information

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

Representing Orange County Sheriff's Office

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

2/29/16  
Meeting Date

1044  
Bill Number (if applicable)

Topic CONTRABAND FORFEITURE

Amendment Barcode (if applicable)

Name AMY MERCER

Job Title EXECUTIVE DIRECTOR

Address 2636 MITCHAM DR

Phone 850 219 3631

TALLAHASSEE, FL 32317  
City State Zip

Email amerccr@fpca.com

Speaking:  For  Against  Information

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

Representing FLORIDA POLICE CHIEFS ASSOCIATION

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

**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.)

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Prepared By: The Professional Staff of the Committee on Fiscal Policy

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BILL: CS/SB 1152

INTRODUCER: Community Affairs Committee and Senator Diaz de la Portilla

SUBJECT: Classified Advertisement Websites

DATE: February 26, 2016

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Cochran</u>	<u>Yeatman</u>	<u>CA</u>	<b>Fav/CS</b>
2.	<u>Davis</u>	<u>DeLoach</u>	<u>AGG</u>	<b>Recommend: Favorable</b>
3.	<u>Jones</u>	<u>Hrdlicka</u>	<u>FP</u>	<b>Favorable</b>

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**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 1152 encourages local governments to designate safe-haven facilities for sales transactions for items or services advertised on classified advertisement websites.

There is no fiscal impact on state funds.

The bill is effective July 1, 2016.

**II. Present Situation:**

**Online Transaction Safe-Haven Laws**

In response to a continuing trend of crimes stemming from transactions related to online classified advertisement websites, such as Craigslist, a number of police departments have opened their lobbies and parking lots to citizens to complete the sales transactions. Conducting transactions in police lobbies or parking lots deters crime for obvious reasons, including the proximity of police officers and the likelihood of surveillance by security cameras.<sup>1</sup>

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<sup>1</sup> Peter Holley, THE WASHINGTON POST, *After Craigslist Crimes, police across U.S. are opening safe havens for transactions*, (March 2, 2015), available at <https://www.washingtonpost.com/news/morning-mix/wp/2015/03/02/following-craigslist-crimes-police-across-the-country-are-opening-safe-havens-for-transactions> (last visited February 25, 2016).

After a series of robberies related to Craigslist transactions, the East Chicago Police Department began “Operation Safe Sale” where the police department offered its parking lot and lobby to be used at any time for these transactions. If a person wanted police to oversee the transaction, the department offered supervision during certain hours.<sup>2</sup>

The Virginia Beach Police Department launched the “Find a Safe Place” initiative, in which it offered the use of the police department’s lobby for transactions arranged through classified advertisement websites. Police lobbies are available for use daily during certain times. However, the police department prohibited transactions involving “large, cumbersome household items, appliances and landscape care equipment,” or “the sale of any contraband, stolen property, or other illegal items.”<sup>3</sup>

The Toledo Police Department announced it would be making designated parking spots in front of one of its stations available for anyone to complete an online sales transaction.<sup>4</sup>

Florida police departments have also created safe havens at their facilities. In July 2014, the Boca Raton Police Department, in response to “at least three cases in June where people were ripped off by buyers when trying to sell something off Craigslist,” offered the police department’s lobby and parking lot for these transactions.<sup>5</sup> Several other police departments across the state are also implementing safe havens, including Port Orange, Flagler, and Pinecrest.<sup>6</sup> Miami-Dade has designated 11 safe haven locations, of which eight are open 24 hours, seven days a week.<sup>7</sup>

### III. Effect of Proposed Changes:

This bill encourages local governments to establish safe-haven facilities to conduct sales transactions related to classified advertisement websites. Safe-haven facilities are those public local government buildings designated by a local government to be used by the public for the

---

<sup>2</sup> Juan Perez Jr., CHICAGO TRIBUNE, *East Chicago police offer up their lobby, parking lot for Craigslist transactions*, (May 1, 2014), available at [http://articles.chicagotribune.com/2014-05-01/news/chi-east-chicago-police-offer-up-their-lobby-parking-lot-for-craigslist-transactions-20140501\\_1\\_craigslist-transactions-becker-lobby](http://articles.chicagotribune.com/2014-05-01/news/chi-east-chicago-police-offer-up-their-lobby-parking-lot-for-craigslist-transactions-20140501_1_craigslist-transactions-becker-lobby) (last visited February 25, 2016).

<sup>3</sup> Becca Mitchell and Todd Corillo, WTKR NEWS CHANNEL 3, *Virginia Beach Police offering precinct lobbies as a safe place for Craigslist transactions*, (January 27, 2015), available at <http://wtkr.com/2015/01/27/virginia-beach-police-offering-precinct-lobby-as-a-safe-place-for-craigslist-transactions/> (last visited February 25, 2016).

<sup>4</sup> Angi Gonzalez, WNWO NBC 24, *Toledo Police to offer safe haven to Craigslist users*, (February 24, 2015), available at <http://nbc24.com/news/local/toledo-police-to-offer-safe-haven-to-craigslist-users> (last visited February 25, 2016).

<sup>5</sup> Kate Jacobsen, THE SUN-SENTINEL, *Boca Raton police ask Craigslist sellers to use station lobby*, (July 5, 2014), available at [http://articles.sun-sentinel.com/2014-07-05/news/fl-boca-raton-craigslist-lobby-20140701\\_1\\_boca-raton-police-station-lobby-craigslist-sellers](http://articles.sun-sentinel.com/2014-07-05/news/fl-boca-raton-craigslist-lobby-20140701_1_boca-raton-police-station-lobby-craigslist-sellers) (last visited February 25, 2016).

<sup>6</sup> See Matt Bruce, The Daytona Beach News Journal, *Flagler Beach police station doubles as safe haven for online deals*, (May 13, 2015), available at <http://www.news-journalonline.com/article/20150513/NEWS/150519775?p=1&tc=pg> (last visited February 25, 2016); Lyda Longa, The Daytona Beach News Journal, *Port Orange Police sets up safe spot for Craigslist transactions*, (August 25, 2015), available at <http://www.news-journalonline.com/article/20150825/NEWS/150829664> (last visited February 25, 2016); and CBS Miami, *Pinecrest Police Now A Safe Haven For Craigslist Transactions*, (October 15, 2015), available at <http://miami.cbslocal.com/2015/10/15/pinecrest-police-now-a-safe-haven-for-craigslist-transactions/> (last visited February 25, 2016).

<sup>7</sup> [www.miamidade.gov](http://www.miamidade.gov), Miami-Dade Police Department, *Using the Internet to buy or sell items?*, (January 5, 2016), available at <http://www.miamidade.gov/police/safe-haven-for-exchanges.asp> (last visited February 25, 2016).

purpose of conducting a sales transaction involving an item or service that was offered for sale on a classified advertisement website.

Local governmental bodies may designate at least:

- One safe-haven facility in each county having a population of less than 250,000 residents.
- Two safe-haven facilities in each county having a population from 250,000 to less than 800,000 residents.
- Four safe-haven facilities in each county having a population of 800,000 or more residents.<sup>8</sup>

A safe-haven facility must be easily accessible so that an individual is not discouraged from using the location. A local governmental body may approve the use of a public local government building, such as a sheriff's office or county courthouse, to serve as a safe-haven facility.

A local government entity or its officers, employees, or agents that provide a safe-haven facility is not responsible for overseeing the sales transaction and is not otherwise liable for the actions of the parties involved in the transaction or nonparties present at the transaction.

The bill specifies that an action may not be initiated on a claim against the state or local government or any of its agencies or subdivisions based on an incident that occurs during a sales transaction at a safe-haven facility involving an individual who is not an officer, employee, or agent of the state or local government or of its agencies or subdivisions.

The bill is effective July 1, 2016.

#### **IV. Constitutional Issues:**

##### **A. Municipality/County Mandates Restrictions:**

The mandate provisions of art. VII, s. 18(a) of the Florida Constitution do not apply because the bill only encourages local governments to establish safe-haven facilities for sales transactions related to classified advertisement websites.

##### **B. Public Records/Open Meetings Issues:**

None.

##### **C. Trust Funds Restrictions:**

None.

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<sup>8</sup> Based on the 2010 census, six counties would designate four safe-haven facilities per county, 15 counties would designate two safe-haven facilities per county, and 46 counties would designate one safe-haven facility per county. Department of Management Services, *Senate Bill 1152 Analysis* (February 11, 2016) (on file with the Senate Committee on Community Affairs).

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

None.

**B. Private Sector Impact:**

The bill may encourage more private buyers and sellers to engage in sales transactions through websites if a safe location exists for the actual exchange of goods for money.

**C. Government Sector Impact:**

Local governments could incur a fiscal impact relating to the voluntary designation and operation of safe-haven facilities for sales transactions from classified advertising websites. This fiscal impact is indeterminate.

There is no fiscal impact to state funds.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill creates section 501.180 of the Florida Statutes.

**IX. Additional Information:****A. Committee Substitute – Statement of Substantial Changes:**  
(Summarizing differences between the Committee Substitute and the prior version of the bill.)**CS by Community Affairs on February 16, 2016:**

Removes DMS from the bill, and authorizes local governmental bodies to designate safe-haven facilities.

**B. Amendments:**

None.

By the Committee on Community Affairs; and Senator Diaz de la Portilla

578-03639-16

20161152c1

A bill to be entitled

An act relating to classified advertisement websites; creating s. 501.180, F.S.; defining the term "safe-haven facility"; authorizing local governmental bodies to designate a specified number of safe-haven facilities in each county based upon population size; authorizing a local governmental body to approve the use of local government buildings to serve as safe-haven facilities; limiting the liability of any local governmental entity that provides a safe-haven facility; limiting actions against the state or local government related to transactions taking place at a safe-haven facility; providing an effective date.

WHEREAS, there have been a number of cases throughout this state in which people selling cellphones, computers, or other valuable goods through classified advertisement websites have been targeted by criminals who intended to rob them when they met to exchange goods for cash, and

WHEREAS, even when the victims of these crimes select public and populated locations for the transactions that they feel are safe, such as shopping centers or parks, they still fall prey to these criminals, and

WHEREAS, identifying locations to serve as safe havens for transactions related to classified advertisement websites will deter these crimes and provide greater safety throughout the state, NOW, THEREFORE,

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

Section 1. Section 501.180, Florida Statutes, is created to read:

Page 1 of 3

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

578-03639-16

20161152c1

501.180 Safe-haven facilities.-

(1) As used in this section, the term "safe-haven facility" means a public local government building approved by the local governmental body to be used by the public for the purpose of conducting a sales transaction involving an item or a service that was offered for sale on a classified advertisement website.

(2) Local governmental bodies may designate at least:

(a) One safe-haven facility in each county with a population of less than 250,000 residents.

(b) Two safe-haven facilities in each county with at least 250,000 but less than 800,000 residents.

(c) Four safe-haven facilities in each county with 800,000 or more residents.

(3) A safe-haven facility must be easily accessible so that an individual is not discouraged from using the location. A local governmental body may approve the use of a public local government building, such as a sheriff's office or a county courthouse, to serve as a safe-haven facility.

(4) A local governmental entity, or its officers, employees, or agents, that provides a safe-haven facility is not responsible for overseeing the sales transaction and is not otherwise liable for the actions of the parties involved in the transaction or nonparties present at the transaction.

(5) An action may not be initiated on a claim against the state or local government or any of its agencies or subdivisions based on an incident that occurs during a sales transaction at a safe-haven facility involving an individual who is not an officer, employee, or agent of the state or local government or of its agencies or subdivisions.

Page 2 of 3

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

578-03639-16

20161152c1

61  
62

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

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

2-29-16

Meeting Date

1152

Bill Number (if applicable)

Topic CLASSIFIED AD WEBSITES

Amendment Barcode (if applicable)

Name LAURA YOUMANS

Job Title \_\_\_\_\_

Address \_\_\_\_\_  
Street

Phone \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

Email \_\_\_\_\_

Speaking:  For  Against  Information

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

Representing FLORIDA ASSOCIATION OF COUNTIES

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

1152

Meeting Date \_\_\_\_\_

Bill Number (if applicable) \_\_\_\_\_

Topic \_\_\_\_\_

Amendment Barcode (if applicable) \_\_\_\_\_

Name JESS MCCARTY

Job Title \_\_\_\_\_

Address W NW 1<sup>ST</sup> ST 2810

Phone 305-979-7110

Street MIAMI 33128

Email JMCCARTY@MIAMI-DADE.GOV

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

Speaking:  For  Against  Information

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

Representing MIAMI-DADE COUNTY

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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



## THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:  
Judiciary, *Chair*  
Appropriations Subcommittee on Transportation,  
Tourism, and Economic Development  
Community Affairs  
Finance and Tax  
Regulated Industries  
Rules

**SENATOR MIGUEL DIAZ de la PORTILLA**  
40th District

February 24, 2016

The Honorable Anitere Flores  
Chair  
Fiscal Policy Committee

Via Email

Dear Chair Flores:

I would appreciate it if you would agenda the following bill at your next committee meeting:  
Thank you for your consideration.

CS/SB 1152, Classified Advertisement Websites

Sincerely,

Miguel Diaz de la Portilla  
Senator, District 40

Cc: Ms Jennifer Hrdlicka, Staff Director; Ms. Tamra Lyon, Committee Administrative Assistant

REPLY TO:

- 2100 Coral Way, Suite 505, Miami, Florida 33145 (305) 643-7200
- 406 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5040

Senate's Website: [www.flsenate.gov](http://www.flsenate.gov)

**ANDY GARDINER**  
President of the Senate

**GARRETT RICHTER**  
President Pro Tempore



## THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

### COMMITTEES:

Judiciary, *Chair*  
Appropriations Subcommittee on Transportation,  
Tourism, and Economic Development  
Community Affairs  
Finance and Tax  
Regulated Industries  
Rules

**SENATOR MIGUEL DIAZ de la PORTILLA**  
40th District

February 29, 2016

The Honorable Antitere Flores  
Chair  
Fiscal Policy Committee

Re: SB1152

Dear Chair Flores:

Due to a conflict in my schedule with the Rules committee meeting at the same time as Fiscal Policy, I respectfully request that my assistant, Patricia Gosney, be permitted to present CS/SB 1152 on my behalf.

Thank you for your consideration.

Sincerely,

Miguel Diaz de la Portilla  
Senator, District 40

### REPLY TO:

- 2100 Coral Way, Suite 505, Miami, Florida 33145 (305) 643-7200
- 406 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5040

Senate's Website: [www.flsenate.gov](http://www.flsenate.gov)

**ANDY GARDINER**  
President of the Senate

**GARRETT RICHTER**  
President Pro Tempore

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

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

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Prepared By: The Professional Staff of the Committee on Fiscal Policy

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BILL: CS/CS/SB 1164

INTRODUCER: Children, Families, and Elder Affairs Committee; Banking and Insurance Committee;  
and Senator Legg

SUBJECT: Firesafety

DATE: February 26, 2016

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Matiyow</u>	<u>Knudson</u>	<u>BI</u>	<u>Fav/CS</u>
2.	<u>Hendon</u>	<u>Hendon</u>	<u>CF</u>	<u>Fav/CS</u>
3.	<u>Pace</u>	<u>Hrdlicka</u>	<u>FP</u>	<u>Favorable</u>

**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/CS/SB 1164 amends s. 429.41, F.S., relating to the uniform firesafety standards for assisted living facilities. The bill repeals reference to the utilization of fire code requirements that are more than 20 years old and allows for the utilization of the most current addition of the Life Safety Code adopted by the State Fire Marshal.

This bill has no fiscal impact on state funds.

**II. Present Situation:**

**Assisted Living Facilities**

An assisted living facility (ALF) is a residential facility that provides housing, meals, and one or more personal services for a period exceeding 24 hours to one or more adults who are not relatives of the owner or administrator.<sup>1</sup> A personal service is direct physical assistance with, or supervision of, the activities of daily living and the self-administration of medication.<sup>2</sup> Activities of daily living are functions and tasks for self-care, including ambulation, bathing, dressing,

---

<sup>1</sup> Section 429.02(5), F.S.

<sup>2</sup> Section 429.02(17), F.S.

eating, grooming, toileting, and other similar tasks.<sup>3</sup> An ALF is required to provide care and services appropriate to the needs of the residents accepted for admission into the facility.<sup>4</sup>

An ALF must have a license issued by the Agency for Health Care Administration (AHCA) under part I of ch. 429, F.S., and part II of ch. 408, F.S. Currently, there are approximately 3,080 licensed ALFs in Florida.<sup>5</sup>

### ***Firesafety***

The Department of Elderly Affairs (DOEA), in consultation with the AHCA, the Department of Children and Families, and the Department of Health (DOH), is required to adopt rules to ensure the safety of residents living within an ALF, including fire safety standards. The State Fire Marshal establishes and enforces uniform fire safety standards, in cooperation with the AHCA, the DOEA, and the DOH.<sup>6</sup>

Current law requires the State Fire Marshall to adopt the National Fire Protection Association (NFPA)<sup>7</sup> Life Safety Code, NFPA 101, 1994 edition, as the uniform fire code for ALFs.<sup>8</sup>

The Office of the State Fire Marshal is also responsible for providing training and education on the proper application of Chapter 5, NFPA 101A, 1995 edition, to AHCA employees who are responsible for regulating ALFs, and local government inspectors.<sup>9</sup>

All licensed facilities must have an annual fire inspection conducted by the local fire marshal or authority having jurisdiction and must be in compliance with the appropriate fire code at the time of inspection.

The current requirement to adopt the NFPA Life Safety Code, NFPA 101, 1994 edition, prohibits an ALF from utilizing more recent editions of the NFPA code that have been developed and adopted since 1994.

### ***Automatic Fire Sprinkler Systems***

Currently, a local government is prohibited from charging fees in excess of the actual expenses incurred in the installation and maintenance of an automatic fire sprinkler system in an existing and licensed ALF.<sup>10</sup>

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<sup>3</sup> Section 429.02(1), F.S.

<sup>4</sup> See Rule 58A-5.0182, F.A.C.

<sup>5</sup> Agency for Health Care Administration, *Florida Health Finder Search, facility/provider type: Assisted Living Facility*, (search conducted Feb. 8, 2016), available at: <http://www.floridahealthfinder.gov/facilitylocator/FacilitySearch.aspx> (last visited Feb 8, 2016).

<sup>6</sup> Section 429.41(1), F.S.

<sup>7</sup> The NFPA 101, or the Life Safety Code, is the most widely used source of strategies to protect people and minimize the effects of fire and related hazards. See NFPA, *NFPA 101: Life Safety Code*, (2015) available at: <http://www.nfpa.org/codes-and-standards/document-information-pages?mode=code&code=101> (last visited Feb. 8, 2016).

<sup>8</sup> Section 429.41(1)(a)2., F.S.

<sup>9</sup> Section 429.41(1)(a)1.b., F.S.

<sup>10</sup> Section 429.41(1)(a)2.g., F.S.

### III. Effect of Proposed Changes:

The bill amends s. 429.41, F.S., to repeal fire safety requirements related to previous editions of the NFPA Life Safety Code, including NFPA 101, *1994 edition*. Instead, the bill authorizes the State Fire Marshal to use the *most current edition* of the NFPA Life Safety Code, 101 *and 101A*, in determining the uniform safety fire code adopted for ALFs.

According to the NFPA, the NFPA 101A, “Guide on Alternative Approaches to Life Safety” provides alternative approaches to life safety and is to be used in conjunction with the NFPA 101, Life Safety Code, not as a substitute.<sup>11</sup>

The bill exempts ALFs licensed before July 1, 2016, from any requirement in the uniform firesafety code established and adopted by the State Fire Marshal for ALFs which exceeds the firesafety requirements of NFPA 101, 1994 edition, Chapter 23, Existing Residential Board and Care Occupancies. However, a facility that undergoes building renovation must thereafter be in compliance with the uniform firesafety code in effect for ALFs.

The bill removes the requirement that the Office of the State Fire Marshall provide specified training and education to AHCA employees and local government inspectors.

#### *Automatic Fire Sprinkler Systems*

The bill prohibits a local government *or a utility* from charging fees in excess of the actual expenses incurred in the installation and maintenance of an automatic fire sprinkler system in an existing ALF.

The bill is effective on July 1, 2016.

### IV. Constitutional Issues:

#### A. Municipality/County Mandates Restrictions:

None.

#### B. Public Records/Open Meetings Issues:

None.

#### C. Trust Funds Restrictions:

None.

### V. Fiscal Impact Statement:

#### A. Tax/Fee Issues:

None.

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<sup>11</sup> See NFPA, *NFPA 101A: Guide on Alternative Approaches to Life Safety*, (2016) available at: <http://www.nfpa.org/codes-and-standards/document-information-pages?mode=code&code=101A> (last visited Feb. 8, 2016).

**B. Private Sector Impact:**

ALF communities will be able to add improvements and other amenities that are allowed under the current Life Safety Code.

**C. Government Sector Impact:**

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends section 429.41 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/CS by Children, Families, and Elder Affairs on February 4, 2016:**

Clarifies that ALFs must meet the new firesafety codes when an ALF undergoes building rehabilitation.

**CS by Banking and Insurance on January 26, 2016:**

Technical amendment restating lines 27-28 that the State Fire Marshal shall “establish” not “adopt” fire safety standards for ALF communities.

**B. Amendments:**

None.

By the Committees on Children, Families, and Elder Affairs; and  
Banking and Insurance; and Senator Legg

586-03042-16

20161164c2

A bill to be entitled

An act relating to firesafety; amending s. 429.41,  
F.S.; requiring the State Fire Marshal to establish  
uniform firesafety standards for assisted living  
facilities; revising provisions relating to the  
minimum standards that must be adopted by the  
Department of Elderly Affairs for firesafety in  
assisted living facilities; clarifying the fees a  
utility may charge for the installation and  
maintenance of an automatic fire sprinkler system;  
providing an exemption from uniform firesafety code  
requirements for certain assisted living facilities;  
providing an effective date.

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

Section 1. Subsection (1) of section 429.41, Florida  
Statutes, is amended to read:

429.41 Rules establishing standards.—

(1) It is the intent of the Legislature that rules  
published and enforced pursuant to this section shall include  
criteria by which a reasonable and consistent quality of  
resident care and quality of life may be ensured and the results  
of such resident care may be demonstrated. Such rules shall also  
ensure a safe and sanitary environment that is residential and  
noninstitutional in design or nature. It is further intended  
that reasonable efforts be made to accommodate the needs and  
preferences of residents to enhance the quality of life in a  
facility. Uniform firesafety standards for assisted living  
facilities shall be established by the State Fire Marshal  
pursuant to s. 633.206. The agency, in consultation with the

Page 1 of 12

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586-03042-16

20161164c2

department, may adopt rules to administer the requirements of  
part II of chapter 408. In order to provide safe and sanitary  
facilities and the highest quality of resident care  
accommodating the needs and preferences of residents, the  
department, in consultation with the agency, the Department of  
Children and Families, and the Department of Health, shall adopt  
rules, policies, and procedures to administer this part, which  
must include reasonable and fair minimum standards in relation  
to:

(a) The requirements for and maintenance of facilities, not  
in conflict with chapter 553, relating to plumbing, heating,  
cooling, lighting, ventilation, living space, and other housing  
conditions, which will ensure the health, safety, and comfort of  
residents ~~and protection from fire hazard, including adequate  
provisions for fire alarm and other fire protection suitable to  
the size of the structure. Uniform firesafety standards shall be  
established and enforced by the State Fire Marshal in  
cooperation with the agency, the department, and the Department  
of Health.~~

1. Firesafety evacuation capability determination.—

a. ~~The National Fire Protection Association, NFPA 101A,  
Chapter 5, 1995 edition, shall be used for determining the  
ability of the residents, with or without staff assistance, to  
relocate from or within a licensed facility to a point of safety  
as provided in the fire codes adopted herein. An evacuation  
capability evaluation for initial licensure shall be conducted  
within 6 months after the date of licensure. For existing  
licensed facilities that are not equipped with an automatic fire  
sprinkler system, the administrator shall evaluate the~~

Page 2 of 12

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586-03042-16

20161164c2

61 evacuation capability of residents at least annually. The  
 62 evacuation capability evaluation for each facility not equipped  
 63 with an automatic fire sprinkler system shall be validated,  
 64 without liability, by the State Fire Marshal, by the local fire  
 65 marshal, or by the local authority having jurisdiction over  
 66 firesafety, before the license renewal date. If the State Fire  
 67 Marshal, local fire marshal, or local authority having  
 68 jurisdiction over firesafety has reason to believe that the  
 69 evacuation capability of a facility as reported by the  
 70 administrator may have changed, it may, with assistance from the  
 71 facility administrator, reevaluate the evacuation capability  
 72 through timed exiting drills. Translation of timed fire exiting  
 73 drills to evacuation capability may be determined:

74 ~~(I) Three minutes or less: prompt.~~

75 ~~(II) More than 3 minutes, but not more than 13 minutes:~~  
 76 ~~slow.~~

77 ~~(III) More than 13 minutes: impractical.~~

78 ~~b. The Office of the State Fire Marshal shall provide or~~  
 79 ~~cause the provision of training and education on the proper~~  
 80 ~~application of Chapter 5, NFPA 101A, 1995 edition, to its~~  
 81 ~~employees, to staff of the Agency for Health Care Administration~~  
 82 ~~who are responsible for regulating facilities under this part,~~  
 83 ~~and to local governmental inspectors. The Office of the State~~  
 84 ~~Fire Marshal shall provide or cause the provision of this~~  
 85 ~~training within its existing budget, but may charge a fee for~~  
 86 ~~this training to offset its costs. The initial training must be~~  
 87 ~~delivered within 6 months after July 1, 1995, and as needed~~  
 88 ~~thereafter.~~

89 ~~c. The Office of the State Fire Marshal, in cooperation~~

Page 3 of 12

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586-03042-16

20161164c2

90 ~~with provider associations, shall provide or cause the provision~~  
 91 ~~of a training program designed to inform facility operators on~~  
 92 ~~how to properly review bid documents relating to the~~  
 93 ~~installation of automatic fire sprinklers. The Office of the~~  
 94 ~~State Fire Marshal shall provide or cause the provision of this~~  
 95 ~~training within its existing budget, but may charge a fee for~~  
 96 ~~this training to offset its costs. The initial training must be~~  
 97 ~~delivered within 6 months after July 1, 1995, and as needed~~  
 98 ~~thereafter.~~

99 ~~d. The administrator of a licensed facility shall sign an~~  
 100 ~~affidavit verifying the number of residents occupying the~~  
 101 ~~facility at the time of the evacuation capability evaluation.~~

102 ~~2. Firesafety requirements.-~~

103 ~~a. Except for the special applications provided herein,~~  
 104 ~~effective January 1, 1996, The National Fire Protection~~  
 105 ~~Association, Life Safety Code, NFPA 101 and 101A, current~~  
 106 ~~editions 1994 edition, Chapter 22 for new facilities and Chapter~~  
 107 ~~23 for existing facilities shall be used in determining the~~  
 108 ~~uniform firesafety fire code adopted applied by the State Fire~~  
 109 ~~Marshal for assisted living facilities, pursuant to s. 633.206.~~

110 ~~b. Any new facility, regardless of size, that applies for a~~  
 111 ~~license on or after January 1, 1996, must be equipped with an~~  
 112 ~~automatic fire sprinkler system. The exceptions as provided in~~  
 113 ~~s. 22-2.3.5.1, NFPA 101, 1994 edition, as adopted herein, apply~~  
 114 ~~to any new facility housing eight or fewer residents. On July 1,~~  
 115 ~~1995, local governmental entities responsible for the issuance~~  
 116 ~~of permits for construction shall inform, without liability, any~~  
 117 ~~facility whose permit for construction is obtained before~~  
 118 ~~January 1, 1996, of this automatic fire sprinkler requirement.~~

Page 4 of 12

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586-03042-16

20161164c2

119 As used in this part, the term "a new facility" does not mean an  
 120 existing facility that has undergone change of ownership.

121 ~~e. Notwithstanding any provision of s. 633.206 or of the~~  
 122 ~~National Fire Protection Association, NFPA 101A, Chapter 5, 1995~~  
 123 ~~edition, to the contrary, any existing facility housing eight or~~  
 124 ~~fewer residents is not required to install an automatic fire~~  
 125 ~~sprinkler system, nor to comply with any other requirement in~~  
 126 ~~Chapter 23, NFPA 101, 1994 edition, that exceeds the firesafety~~  
 127 ~~requirements of NFPA 101, 1988 edition, that applies to this~~  
 128 ~~size facility, unless the facility has been classified as~~  
 129 ~~impractical to evacuate. Any existing facility housing eight or~~  
 130 ~~fewer residents that is classified as impractical to evacuate~~  
 131 ~~must install an automatic fire sprinkler system within the~~  
 132 ~~timeframes granted in this section.~~

133 ~~d. Any existing facility that is required to install an~~  
 134 ~~automatic fire sprinkler system under this paragraph need not~~  
 135 ~~meet other firesafety requirements of Chapter 23, NFPA 101, 1994~~  
 136 ~~edition, which exceed the provisions of NFPA 101, 1988 edition.~~  
 137 ~~The mandate contained in this paragraph which requires certain~~  
 138 ~~facilities to install an automatic fire sprinkler system~~  
 139 ~~supersedes any other requirement.~~

140 ~~e. This paragraph does not supersede the exceptions granted~~  
 141 ~~in NFPA 101, 1988 edition or 1994 edition.~~

142 ~~f. This paragraph does not exempt facilities from other~~  
 143 ~~firesafety provisions adopted under s. 633.206 and local~~  
 144 ~~building code requirements in effect before July 1, 1995.~~

145 ~~b.g.~~ A local government or a utility may charge fees only  
 146 in an amount not to exceed the actual expenses incurred by the  
 147 local government or the utility relating to the installation and

586-03042-16

20161164c2

148 maintenance of an automatic fire sprinkler system in an existing  
 149 and properly licensed assisted living facility structure as of  
 150 January 1, 1996.

151 ~~h. If a licensed facility undergoes major reconstruction or~~  
 152 ~~addition to an existing building on or after January 1, 1996,~~  
 153 ~~the entire building must be equipped with an automatic fire~~  
 154 ~~sprinkler system. Major reconstruction of a building means~~  
 155 ~~repair or restoration that costs in excess of 50 percent of the~~  
 156 ~~value of the building as reported on the tax rolls, excluding~~  
 157 ~~land, before reconstruction. Multiple reconstruction projects~~  
 158 ~~within a 5-year period the total costs of which exceed 50~~  
 159 ~~percent of the initial value of the building when the first~~  
 160 ~~reconstruction project was permitted are to be considered as~~  
 161 ~~major reconstruction. Application for a permit for an automatic~~  
 162 ~~fire sprinkler system is required upon application for a permit~~  
 163 ~~for a reconstruction project that creates costs that go over the~~  
 164 ~~50-percent threshold.~~

165 ~~i. Any facility licensed before January 1, 1996, that is~~  
 166 ~~required to install an automatic fire sprinkler system shall~~  
 167 ~~ensure that the installation is completed within the following~~  
 168 ~~timeframes based upon evacuation capability of the facility as~~  
 169 ~~determined under subparagraph 1.:~~

170 ~~(I) Impractical evacuation capability, 24 months.~~

171 ~~(II) Slow evacuation capability, 48 months.~~

172 ~~(III) Prompt evacuation capability, 60 months.~~

173  
 174 ~~The beginning date from which the deadline for the automatic~~  
 175 ~~fire sprinkler installation requirement must be calculated is~~  
 176 ~~upon receipt of written notice from the local fire official that~~

586-03042-16

20161164c2

177 an automatic fire sprinkler system must be installed. The local  
178 fire official shall send a copy of the document indicating the  
179 requirement of a fire sprinkler system to the Agency for Health  
180 Care Administration.

181 ~~j. It is recognized that the installation of an automatic~~  
182 ~~fire sprinkler system may create financial hardship for some~~  
183 ~~facilities. The appropriate local fire official shall, without~~  
184 ~~liability, grant two 1-year extensions to the timeframes for~~  
185 ~~installation established herein, if an automatic fire sprinkler~~  
186 ~~installation cost estimate and proof of denial from two~~  
187 ~~financial institutions for a construction loan to install the~~  
188 ~~automatic fire sprinkler system are submitted. However, for any~~  
189 ~~facility with a class I or class II, or a history of uncorrected~~  
190 ~~class III, firesafety deficiencies, an extension must not be~~  
191 ~~granted. The local fire official shall send a copy of the~~  
192 ~~document granting the time extension to the Agency for Health~~  
193 ~~Care Administration.~~

194 ~~k. A facility owner whose facility is required to be~~  
195 ~~equipped with an automatic fire sprinkler system under Chapter~~  
196 ~~23, NFPA 101, 1994 edition, as adopted herein, must disclose to~~  
197 ~~any potential buyer of the facility that an installation of an~~  
198 ~~automatic fire sprinkler requirement exists. The sale of the~~  
199 ~~facility does not alter the timeframe for the installation of~~  
200 ~~the automatic fire sprinkler system.~~

201 ~~l. Existing facilities required to install an automatic~~  
202 ~~fire sprinkler system as a result of construction-type~~  
203 ~~restrictions in Chapter 23, NFPA 101, 1994 edition, as adopted~~  
204 ~~herein, or evacuation capability requirements shall be notified~~  
205 ~~by the local fire official in writing of the automatic fire~~

Page 7 of 12

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586-03042-16

20161164c2

206 ~~sprinkler requirement, as well as the appropriate date for final~~  
207 ~~compliance as provided in this subparagraph. The local fire~~  
208 ~~official shall send a copy of the document to the Agency for~~  
209 ~~Health Care Administration.~~

210 ~~m. Except in cases of life threatening fire hazards, if an~~  
211 ~~existing facility experiences a change in the evacuation~~  
212 ~~capability, or if the local authority having jurisdiction~~  
213 ~~identifies a construction-type restriction, such that an~~  
214 ~~automatic fire sprinkler system is required, it shall be given~~  
215 ~~time for installation as provided in this subparagraph.~~

216 ~~Facilities that are fully sprinkled and in compliance with other~~  
217 ~~firesafety standards are not required to conduct more than one~~  
218 ~~of the required fire drills between the hours of 11 p.m. and 7~~  
219 ~~a.m., per year. In lieu of the remaining drills, staff~~  
220 ~~responsible for residents during such hours may be required to~~  
221 ~~participate in a mock drill that includes a review of evacuation~~  
222 ~~procedures. Such standards must be included or referenced in the~~  
223 ~~rules adopted by the State Fire Marshal. Pursuant to s.~~  
224 ~~633.206(1)(b), the State Fire Marshal is the final~~  
225 ~~administrative authority for firesafety standards established~~  
226 ~~and enforced pursuant to this section.~~

227 ~~c. All licensed facilities must have an annual fire~~  
228 ~~inspection conducted by the local fire marshal or authority~~  
229 ~~having jurisdiction.~~

230 ~~d. An assisted living facility licensed before July 1,~~  
231 ~~2016, is exempt from any requirement in the uniform firesafety~~  
232 ~~code established and adopted pursuant to s. 633.206 by the State~~  
233 ~~Fire Marshal for assisted living facilities which exceeds the~~  
234 ~~code established and adopted pursuant to s. 633.206 by the State~~

Page 8 of 12

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586-03042-16

20161164c2

235 firesafety requirements of NFPA 101, 1994 edition, Chapter 23,  
 236 Existing Residential Board and Care Occupancies. However, a  
 237 facility that undergoes building rehabilitation as described by  
 238 the uniform firesafety code established by the State Fire  
 239 Marshal must thereafter be in compliance with the uniform  
 240 firesafety code in effect for assisted living facilities under  
 241 sub-subparagraph a.

242 3. Resident elopement requirements.—Facilities are required  
 243 to conduct a minimum of two resident elopement prevention and  
 244 response drills per year. All administrators and direct care  
 245 staff must participate in the drills which shall include a  
 246 review of procedures to address resident elopement. Facilities  
 247 must document the implementation of the drills and ensure that  
 248 the drills are conducted in a manner consistent with the  
 249 facility's resident elopement policies and procedures.

250 (b) The preparation and annual update of a comprehensive  
 251 emergency management plan. Such standards must be included in  
 252 the rules adopted by the department after consultation with the  
 253 Division of Emergency Management. At a minimum, the rules must  
 254 provide for plan components that address emergency evacuation  
 255 transportation; adequate sheltering arrangements; postdisaster  
 256 activities, including provision of emergency power, food, and  
 257 water; postdisaster transportation; supplies; staffing;  
 258 emergency equipment; individual identification of residents and  
 259 transfer of records; communication with families; and responses  
 260 to family inquiries. The comprehensive emergency management plan  
 261 is subject to review and approval by the local emergency  
 262 management agency. During its review, the local emergency  
 263 management agency shall ensure that the following agencies, at a

586-03042-16

20161164c2

264 minimum, are given the opportunity to review the plan: the  
 265 Department of Elderly Affairs, the Department of Health, the  
 266 Agency for Health Care Administration, and the Division of  
 267 Emergency Management. Also, appropriate volunteer organizations  
 268 must be given the opportunity to review the plan. The local  
 269 emergency management agency shall complete its review within 60  
 270 days and either approve the plan or advise the facility of  
 271 necessary revisions.

272 (c) The number, training, and qualifications of all  
 273 personnel having responsibility for the care of residents. The  
 274 rules must require adequate staff to provide for the safety of  
 275 all residents. Facilities licensed for 17 or more residents are  
 276 required to maintain an alert staff for 24 hours per day.

277 (d) All sanitary conditions within the facility and its  
 278 surroundings which will ensure the health and comfort of  
 279 residents. The rules must clearly delineate the responsibilities  
 280 of the agency's licensure and survey staff, the county health  
 281 departments, and the local authority having jurisdiction over  
 282 firesafety and ensure that inspections are not duplicative. The  
 283 agency may collect fees for food service inspections conducted  
 284 by the county health departments and transfer such fees to the  
 285 Department of Health.

286 (e) License application and license renewal, transfer of  
 287 ownership, proper management of resident funds and personal  
 288 property, surety bonds, resident contracts, refund policies,  
 289 financial ability to operate, and facility and staff records.

290 (f) Inspections, complaint investigations, moratoriums,  
 291 classification of deficiencies, levying and enforcement of  
 292 penalties, and use of income from fees and fines.

586-03042-16

20161164c2

293 (g) The enforcement of the resident bill of rights  
 294 specified in s. 429.28.

295 (h) The care and maintenance of residents, which must  
 296 include, but is not limited to:

- 297 1. The supervision of residents;
- 298 2. The provision of personal services;
- 299 3. The provision of, or arrangement for, social and leisure  
 300 activities;
- 301 4. The arrangement for appointments and transportation to  
 302 appropriate medical, dental, nursing, or mental health services,  
 303 as needed by residents;
- 304 5. The management of medication;
- 305 6. The nutritional needs of residents;
- 306 7. Resident records; and
- 307 8. Internal risk management and quality assurance.

308 (i) Facilities holding a limited nursing, extended  
 309 congregate care, or limited mental health license.

310 (j) The establishment of specific criteria to define  
 311 appropriateness of resident admission and continued residency in  
 312 a facility holding a standard, limited nursing, extended  
 313 congregate care, and limited mental health license.

314 (k) The use of physical or chemical restraints. The use of  
 315 physical restraints is limited to half-bed rails as prescribed  
 316 and documented by the resident's physician with the consent of  
 317 the resident or, if applicable, the resident's representative or  
 318 designee or the resident's surrogate, guardian, or attorney in  
 319 fact. The use of chemical restraints is limited to prescribed  
 320 dosages of medications authorized by the resident's physician  
 321 and must be consistent with the resident's diagnosis. Residents

Page 11 of 12

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586-03042-16

20161164c2

322 who are receiving medications that can serve as chemical  
 323 restraints must be evaluated by their physician at least  
 324 annually to assess:

- 325 1. The continued need for the medication.
- 326 2. The level of the medication in the resident's blood.
- 327 3. The need for adjustments in the prescription.

328 (l) The establishment of specific policies and procedures  
 329 on resident elopement. Facilities shall conduct a minimum of two  
 330 resident elopement drills each year. All administrators and  
 331 direct care staff shall participate in the drills. Facilities  
 332 shall document the drills.

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

Page 12 of 12

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# THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

**COMMITTEES:**  
Education Pre-K - 12, Chair  
Ethics and Elections, Vice Chair  
Appropriations Subcommittee on Education  
Fiscal Policy  
Government Oversight and Accountability  
Higher Education

**SENATOR JOHN LEGG**  
17th District

Legg.John.web@FLSenate.gov

February 11, 2016

The Honorable Anitere Flores  
Committee on Fiscal Policy, Chair  
225 Knott Building  
404 South Monroe Street  
Tallahassee, FL 32399

**RE: CS/CS/SB 862 - Mental Health Treatment**  
**CS/CS/SB 1164 - Firesafety**

Dear Chair Flores:

CS/CS/SB 862: Mental Health Treatment and CS/CS/SB 1164 – Firesafety have been referred to your committee. I respectfully request that they be placed on the Committee on Fiscal Policy Agenda, at your convenience. Your leadership and consideration are appreciated.

Sincerely,

A handwritten signature in black ink, appearing to read "John Legg".

John Legg  
State Senator, District 17

cc: Jennifer Hrdlicka, Staff Director  
Tamra Lyon, Administrative Assistant

**REPLY TO:**

- 262 Crystal Grove Boulevard, Lutz, Florida 33548 (813) 909-9919
- 316 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5017

Senate's Website: [www.flSenate.gov](http://www.flSenate.gov)

**ANDY GARDINER**  
President of the Senate

**GARRETT RICHTER**  
President Pro Tempore

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/29/2016  
Meeting Date

SB 1164  
Bill Number (if applicable)

Topic Fire Safety

Amendment Barcode (if applicable)

Name Buddy Dewar

Job Title CEO, BDA Fire Safety Consultants

Address 5501 Touraine Dr

Phone 850-566-8733

Tallahassee FL 32308

Email gsbud@aol.com

Street City State Zip

Speaking:  For  Against  Information

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

Representing Self

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/21/16  
Meeting Date

SB1164  
Bill Number (if applicable)

Topic Fire Safety

Amendment Barcode (if applicable)

Name Gail Matillo

Job Title President / CEO

Address 9445 Buck Haven Tr.

Phone 850-496-2562

Tallahassee FL 32312

Email gmatillo@falfa.org

City State Zip

Speaking:  For  Against  Information

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

Representing FL ALFA

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

2/29/16  
Meeting Date

1164  
Bill Number (if applicable)

Topic Firesafety

Amendment Barcode (if applicable)

Name Melody Arnold

Job Title Govt Affairs Manager

Address 307 West Park Ave

Phone marnold@fhea.org

Street

ILH  
City

FL  
State

32301  
Zip

Email 850-224-3907

Speaking:  For  Against  Information

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

Representing Florida Health Care Assoc.

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

2/29/16

Meeting Date

1107

Bill Number (if applicable)

Topic Fire Safety

Amendment Barcode (if applicable)

Name Elizabeth Boyd

Job Title Legislative Affairs Director - Dept. of Financial Svcs

Address 400 S. Monroe St.

Phone 850 - 413-2863

Street

Tallahassee

FL

32399

City

State

Zip

Email Elizabeth.Boyd@myfloridafacts.com

Speaking:  For  Against  Information

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

Representing Department of Financial Services

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/29/16  
Meeting Date

SB 1164  
Bill Number (if applicable)

Topic Firesafety in Assisted Living

Amendment Barcode (if applicable)

Name Shad Haston

Job Title

Address 32443 Millcreek Ct. Suite 3  
Street  
Tallahassee, Florida 32308  
City State Zip

Phone 850.383.1159

Email shadh@falamaail.org

Speaking:  For  Against  Information

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

Representing Florida Assisted Living Association

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

**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 Fiscal Policy

---

**BILL:** PCS/CS/SB 1192 (939166)

**INTRODUCER:** Fiscal Policy Committee (Recommended by Appropriations Subcommittee on General Government); Environmental Preservation and Conservation Committee; and Senator Hays

**SUBJECT:** Waste Management

**DATE:** February 26, 2016      **REVISED:** \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Hinton</u>	<u>Rogers</u>	<u>EP</u>	<b>Fav/CS</b>
2.	<u>Howard</u>	<u>DeLoach</u>	<u>AGG</u>	<b>Recommend: Fav/CS</b>
3.	<u>Hrdlicka</u>	<u>Hrdlicka</u>	<u>FP</u>	<b>Pre-meeting</b>

**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

---

**I. Summary:**

PCS/CS/SB 1192:

- Precludes a local government from preventing a private company from listing separately on the company's invoice for solid waste collection, disposal, or recycling any governmental taxes or fees;
- Amends provisions regulating local government competition with solid waste collection companies to include disposal and recycling; and
- Creates the crime of theft of recyclable property and provides for a civil right of action for violations.

The Criminal Justice Impact Conference has not yet estimated the impact of this bill. This bill is not expected to have an impact on state government.

The bill is effective July 1, 2016.

## II. Present Situation:

### Home Rule Authority

The Florida Constitution grants local governments broad home rule authority. Specifically, non-charter county governments may exercise those powers of self-government that are provided by general or special law.<sup>1</sup> Counties operating under a county charter have all powers of self-government not inconsistent with general law, or special law approved by the vote of the electors.<sup>2</sup> Likewise, municipalities have governmental, corporate, and proprietary powers that enable them to conduct municipal government, perform their functions and provide services, and exercise any power for municipal purposes except as otherwise provided by law.<sup>3</sup>

The Florida Constitution preempts all forms of taxation to the state except for ad valorem taxes on real estate and tangible personal property or as otherwise provided by general law.<sup>4</sup> Local governments may levy special assessments or fees under their home rule authority. Many governments levy franchise fees on waste collection companies in exchange for the right to be the sole provider to a specific service area.<sup>5</sup> Others levy special assessments on the property owner to ensure service for that area.<sup>6</sup>

Current law enumerates the powers and duties of all county governments, unless preempted on a particular subject by general or special law.<sup>7</sup> Those powers include the provision of fire protection, ambulance services, parks and recreation, libraries, museums and other cultural facilities, waste and sewage collection and disposal, and water and alternative water supplies. Municipalities are afforded broad home rule powers except: annexation, merger, exercise of extraterritorial power, and subjects prohibited or preempted by the federal, state, or county constitutions or law.<sup>8</sup>

### Solid Waste

Counties are granted the power to provide and regulate waste and sewage collection and disposal. A county may require that any person within the county demonstrate the existence of some arrangement or contract by which the person's solid waste will be disposed of in a manner consistent with county ordinance or state or federal law.<sup>9</sup> Counties also have authority to adopt ordinances that govern the disposal of solid waste generated outside the county at the county's solid waste disposal facility.<sup>10</sup> Counties and municipalities are expressly prohibited from discriminating against privately owned solid waste management facilities.<sup>11</sup>

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<sup>1</sup> FLA. CONST. art VIII, s. 1(f).

<sup>2</sup> FLA. CONST. art VIII, s. 1(g).

<sup>3</sup> FLA. CONST. art VIII, s. 2(b). *See also* s. 166.021(1), F.S.

<sup>4</sup> FLA. CONST. art VII, s. 1(a).

<sup>5</sup> *See, e.g.*, City of Tampa, Resolution No. 2012-309.

<sup>6</sup> *See, e.g.*, Orange County Code of Ordinances, ch. 32, art. IV, s. 32-157 (Ordinance No. 2008-03) (providing that all property entitled to full waste collection services shall be subject to special assessments).

<sup>7</sup> Section 125.01, F.S.

<sup>8</sup> Section 166.021, F.S.

<sup>9</sup> Section 125.01(1)(k)2., F.S.

<sup>10</sup> Section 403.706(1), F.S.

<sup>11</sup> Section 403.7063, F.S.

The Department of Environmental Protection (DEP) is responsible for implementing and enforcing the solid waste management program, which provides guidelines for the storage, separation, processing, recovery, recycling, and disposal of solid waste throughout the state.<sup>12</sup> The program is required to include procedures and requirements to ensure cooperative efforts in solid waste management by counties and municipalities and groups of counties and municipalities where appropriate.<sup>13</sup>

Counties are responsible for operating solid waste disposal facilities, which are permitted through the DEP, in order to meet the needs of the incorporated and unincorporated areas of the county.<sup>14</sup> Each county must ensure that municipalities within its boundaries participate in the preparation and implementation of recycling and solid waste management programs through interlocal agreements or other means.<sup>15</sup> In providing services or programs for solid waste management, local governments and state agencies are encouraged to use the most cost-effective means for providing services and are encouraged to contract with private entities for any or all such services or programs to assure that those services are provided on the most cost-effective basis.<sup>16</sup>

### ***Recycled and Recovered Materials***

Economically recovering material and energy resources from solid waste can eliminate unnecessary waste and slow the depletion of natural resources. The Legislature has declared that maximizing recycling and reuse of resources are high-priority goals of the state.<sup>17</sup> In 2014, 12,684,860 tons of municipal solid waste was recycled in Florida.<sup>18</sup> Section 403.7032(2), F.S., provides that by the year 2020, the long-term goal for the recycling efforts of state and local governmental entities, private companies and organizations, and the general public is to recycle at least 75 percent of the municipal solid waste that would otherwise be disposed of in waste management facilities, landfills, or incineration facilities.

### **Competition with Private Companies**

Section 403.70605, F.S., was enacted in 2000 to require local governments that provide solid waste management services to be subject to the same requirements as private industry and to impose requirements on local governments providing services outside of their jurisdictions.<sup>19</sup> The law addressed concerns of private waste management companies about competition with local government solid waste departments for contracts; the private companies were concerned that in instances where they were competing for services, public entities were able to subsidize

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<sup>12</sup> See s. 403.705, F.S.

<sup>13</sup> Section 403.705(2)(a), F.S.

<sup>14</sup> Section 403.706(1), F.S.

<sup>15</sup> Section 403.706(3), F.S.

<sup>16</sup> Section 403.7063, F.S.

<sup>17</sup> Section 403.7032, F.S.

<sup>18</sup> DEP, *Solid Waste Management in Florida 2014 Annual Report: Florida Municipal Solid Waste Collected and Recycled (2014)*, available at [ftp://ftp.dep.state.fl.us/pub/reports/Recycling/Reports/2014AnnualReport/MSW-Composition\\_2014.pdf](ftp://ftp.dep.state.fl.us/pub/reports/Recycling/Reports/2014AnnualReport/MSW-Composition_2014.pdf) (last visited Feb. 1, 2016).

<sup>19</sup> Chapter 00-304, s. 1, L.O.F.

their costs with funds from other government operations, allowing the public entities to unfairly compete for contracts.<sup>20</sup>

### ***Solid Waste Collection Services in Direct Competition***

Section 403.70605(1)(a), F.S., requires a local government that provides specific solid waste collection services in direct competition with a private company to comply with the provisions of local environmental, health, and safety standards that also are applicable to a private company providing such collection services in competition with the local government. The local government may not enact or enforce any license, permit, registration procedure, or associated fee that:

- Does not apply to the local government and for which there is not a substantially similar requirement that applies to the local government; and
- Provides the local government with a material advantage in its ability to compete with a private company in terms of cost or ability to promptly or efficiently provide such collection services. This does not apply to any zoning, land use, or comprehensive plan requirements.

Section 403.70605(1)(b), F.S., authorizes a private company in competition with a local government to bring an action to enjoin violations of the above requirements against any local government. The private company must provide the local government with notice of complaint of a violation, and if the local government does not respond with corrective action within 30 days, then the private company may file suit. Injunctive relief will not be granted if the official action that forms the basis of the suit has a reasonable relationship to the health, safety, or welfare of the citizens of the local government unless the court finds that the actual or potential anticompetitive effects outweigh the public benefits of the challenged action. The court may award the prevailing party costs and reasonable attorney fees.

The Department of Management Services has verified that no state agencies provide solid waste collection, disposal, or recycling services.<sup>21</sup>

### ***Solid Waste Collection Services Outside Jurisdiction***

Section 403.70605(2), F.S., subjects a local government that provides solid waste collection services outside its jurisdiction in direct competition with private companies to the same prohibitions against predatory pricing as private companies.<sup>22</sup> Any person injured by a violation of this provision may bring an action to enjoin violations and recover damages and costs within 4 years of the injury. The person must provide the local government with notice of complaint of a violation, and if the local government does not respond with corrective action within 30 days, then the person may file suit. Injunctive relief will not be granted when the action taken by the local government was in direct response to a natural disaster or emergency declaration order by the Governor. The court may award the prevailing party costs and reasonable attorney fees.

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<sup>20</sup> Florida House of Representatives, *CS/HB 1425 Final Analysis*, (May 12, 2000) p. 2, available at <http://archive.flsenate.gov/data/session/2000/House/bills/analysis/pdf/HB1425S1Z.CA.pdf> (last visited Feb. 25, 2016).

<sup>21</sup> E-mail from Ricky Moulton, Deputy Director of Legislative Affairs, Department of Management Services (Feb. 4, 2016) (on file with the Senate Committee on Environmental Preservation and Conservation).

<sup>22</sup> See ss. 542.18 and 542.19, F.S.

### ***Displacement of Garbage, Trash, or Refuse Collection Services***

Section 403.70605(3), F.S., prohibits a local government from displacing a private company that provides garbage, trash, or refuse collection without first holding at least one public hearing, publically noticed and notice provided to private companies providing service in the jurisdiction by mail at least 45 days before the hearing. “Displacement” refers to a local government’s provision of a collection service that prohibits or displaces a private company from continuing to provide the same service.<sup>23</sup> The local government must provide 3 years’ notice to a private company before it engages in the actual provision of the service that displaces the company, or, in the alternative, the local government can pay a displaced company an amount equal to the company’s preceding 15 months’ gross receipts for the displaced service in the displacement area or the local government and the private company can voluntarily negotiate a different notice period or amount of compensation.

### **Theft**

Section 812.014, F.S., defines and categorizes thefts into misdemeanor or felony criminal violations. Whether a theft is a misdemeanor or a felony generally depends upon the value of the property taken by the defendant, the defendant’s history of theft convictions or, in some cases, the type of property taken. A person commits theft if he or she knowingly obtains or uses, or endeavors to obtain or use, the property of another with intent to, either temporarily or permanently:

- Deprive the other person of a right to the property or a benefit from the property; or
- Appropriate the property to his or her own use or to the use of any person not entitled to the use of the property.<sup>24</sup>

Second degree petit theft, a second degree misdemeanor, is theft of property valued at less than \$100.<sup>25</sup> First degree petit theft, a first degree misdemeanor, is theft of property valued at \$100 or more but less than \$300.<sup>26</sup> Petit theft incurs greater penalties if there is a prior theft conviction: a first degree misdemeanor if there was a prior conviction,<sup>27</sup> and a third degree felony if there are two or more prior convictions.<sup>28</sup>

Third degree grand theft, a third degree felony, is theft of property valued at \$300 or more but less than \$20,000; or theft of specified property (e.g., a firearm or fire extinguisher).<sup>29</sup> Theft of

<sup>23</sup> Section 403.70605(3)(a), F.S., provides several exclusions.

<sup>24</sup> Section 812.014(1), F.S.

<sup>25</sup> Section 812.014(3)(a), F.S. A second degree misdemeanor is punishable by up to 60 days in jail and a fine of up to \$500. Sections 775.082 and 775.083, F.S.

<sup>26</sup> Section 812.014(2)(e), F.S. A first degree misdemeanor is punishable by up to one year in jail and a fine of up to \$1,000. Sections 775.082 and 775.083, F.S.

<sup>27</sup> Section 812.014(3)(b), F.S.

<sup>28</sup> Section 812.014(3)(c), F.S. A third degree felony is punishable by up to 5 years in state prison and a fine of up to \$5,000. Sections 775.082 and 775.083, F.S. However, if the third degree felony is not a forcible felony (excluding a third degree felony under ch. 810, F.S.) and total sentence points are 22 points or fewer, the court must sentence the offender to a nonstate prison sanction unless the court makes written findings that a nonstate prison sanction could present a danger to the public. Section 775.082(10), F.S.

<sup>29</sup> Section 812.014(2)(c), F.S.



property from a dwelling or its unenclosed curtilage is third degree grand theft, a third degree felony, if the property is valued at \$100 or more, but less than \$300.<sup>30</sup>

Second degree grand theft, a second degree felony, is theft of:

- Property valued at \$20,000 or more but less than \$100,000;
- Cargo valued at less than \$50,000 in specified circumstances; or
- Emergency medical equipment or law enforcement equipment valued at \$300 or more in specified circumstances.<sup>31</sup>

First degree grand theft, a first degree felony, is:

- Theft of property valued at \$100,000 or more;
- Theft of a semitrailer deployed by a law enforcement officer;
- Theft of cargo valued at \$50,000 or more in specified circumstances; or
- Grand theft and, in the course of committing the offense, a motor vehicle is used as specified or the offender causes damage to the real or personal property of another in excess of \$1,000.<sup>32</sup>

### **Civil Remedy for Theft**

Section 772.11(1), F.S., provides that any person who proves by clear and convincing evidence that he or she has been injured in any fashion by reason of any violation of statutes concerning theft is entitled to three times the actual damages sustained, a minimum damage award of \$200, and reasonable attorney fees and court costs in the trial and appellate courts.

Before a person may file an action for damages, the person claiming to be injured must make a written demand for \$200 or the treble damage amount to the person liable for the damages. If the person liable for damages complies with the demand within 30 days, that person is released from further civil liability for the act of theft or exploitation by the person making the demand. A defendant may recovery reasonable attorney fees and court costs in the trial and appellate courts if the claim raised was without substantial fact or legal support.<sup>33</sup>

### ***Clear and Convincing Standard***

The clear and convincing standard of evidence requires that the evidence must be found to be credible, the facts to which the witnesses testify must be distinctly remembered, the testimony must be precise and explicit, and the witnesses must be lacking in confusion as to the facts at issue. The evidence must be of such weight that it produces in the mind of the trier of fact a firm belief or conviction, without hesitancy, as to the truth of the allegations sought to be established.<sup>34</sup>

<sup>30</sup> Section 812.014(3)(d), F.S.

<sup>31</sup> Section 812.014(2)(b), F.S. However, this theft is reclassified from a second degree felony to a first degree felony if the theft occurs within a county subject to a state of emergency declared by the Governor, is committed after the declaration is made, and is facilitated by conditions arising from the emergency. *Id.* A second degree felony is punishable by up to 15 years in state prison and a fine of up to \$10,000. Sections 775.082 and 775.083, F.S.

<sup>32</sup> Section 812.014(2)(a), F.S. A first degree felony is generally punishable by up to 30 years in state prison and a fine of up to \$10,000. Sections 775.082 and 775.083, F.S.

<sup>33</sup> Section 772.11, F.S.

<sup>34</sup> Florida Bar Journal, *Considerations before Implementing Florida's Civil Theft Statute*, 77-MAR Fla. B.J. 28 (Mar. 2003).

### III. Effect of Proposed Changes:

**Section 1** creates s. 403.70491, F.S., to preclude a local government from preventing a private company from listing separately on the company's invoice for solid waste collection, disposal, or recycling any governmental taxes or fees, including any franchise fees.

**Section 2** amends s. 403.70605, F.S., to expand the scope of s. 403.70605(1), F.S., which currently applies only to solid waste collection, to include solid waste disposal and recycling services. Under the bill, a local government that provides specific solid waste disposal and recycling services in direct competition with a private company must comply with the provisions of local environmental, health, and safety standards that also are applicable to a private company providing such services in competition with the local government.

However, the bill amends the terms "in competition" and "in direct competition" and "private company" to include disposal and recycling services for the purpose of the entire statute. The definition of "in competition" or "in direct competition" is effectively "the competition between a local government and a private company to provide substantially similar solid waste collection, disposal, or recycling services to the same customer." The definition of "private company" is effectively "an entity other than a local government which provides solid waste collection, disposal, or recycling services." See Technical Deficiencies below.

**Section 3** creates s. 812.0141, F.S., to create the crime of theft of recyclable property. The bill defines "recyclable property" to mean recovered materials, as defined in s. 403.703, F.S., in addition to wooden or plastic pallets.<sup>35</sup>

The bill provides that a person commits theft if he or she knowingly obtains or uses, or endeavors to obtain or to use, the recyclable property of another with intent to, either temporarily or permanently:

- Deprive the other person of a right to possess the recyclable property or of a benefit derived therefrom; or
- Appropriate the recyclable property for his or her own use or to the use of a person not entitled to the use of the recyclable property.

A first or second violation is punished as a first degree misdemeanor, punishable by a term of imprisonment not to exceed one year and a fine not to exceed \$1,000. A third or subsequent violation within three years of a prior conviction is punishable as a third degree felony, which is punishable by a term of imprisonment not to exceed 5 years and a fine not to exceed \$5,000. Prosecution for violation of the provision does not preclude prosecution for theft pursuant to s. 812.014, F.S.

The bill provides that a person who proves by clear and convincing evidence that he or she has been injured in any manner by reason of a violation of the provisions of this section may pursue

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<sup>35</sup> Section 403.703, F.S., defines "recovered materials" as metal, paper, glass, plastic, textile, or rubber materials that have known recycling potential, can be feasibly recycled, and have been diverted and source separated or have been removed from the solid waste stream for sale, use, or reuse as raw materials, whether or not the materials require subsequent processing or separation from each other. The term does not include materials destined for any use that constitutes disposal. Recovered materials as described are not solid waste.

a civil remedy; however, the minimum damage award is \$5,000 in addition to reasonable attorney fees and costs in the trial and appellate courts.

**Section 4** provides that the bill is effective July 1, 2016.

**IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Individuals found to be guilty of theft of recyclable property would be subject to new penalties in addition to punishment for the crime of theft.

C. Government Sector Impact:

Expanding the applicability of s. 403.70605, F.S., could result in more litigation costs for local governments that are found to be in violation of the statute due to the addition of solid waste disposal and recycling services. Similarly, restricting the defenses available to local governments could also lead to increased litigation costs.

The Criminal Justice Impact Conference has not yet estimated the impact of this bill.

**VI. Technical Deficiencies:**

The bill amends s. 403.70605(1), F.S., to include solid waste disposal and recycling services. Subsections (2) and (3) of s. 403.70605, F.S., are not amended, and thus still apply only to solid waste collection services. However, the bill amends the definitions of the terms “in competition,” “in direct competition,” and “private company” to include solid waste disposal and recycling services for the purpose of the entire statute. The definitions as amended create an internal conflict within the statute, especially where provisions appear to apply only to solid waste collection services.

**VII. Related Issues:**

Typically bills that create new crimes are effective on October 1.

**VIII. Statutes Affected:**

This bill substantially amends section 403.70605 of the Florida Statutes.

This bill creates sections 403.70491 and 812.0141 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.)

**Recommended CS/CS by Appropriations Subcommittee on General Government on February 24, 2016:**

The committee substitute removes state agencies as entities that private companies may bring an action against. The CS also removes provisions limiting the application of the amended definitions of “in competition,” “in direct competition,” and “private company” to subsection (1) of s. 403.70605, F.S., and instead amends the terms to apply to the entire statute.

**CS by Environmental Preservation and Conservation on February 9, 2016:**

The committee substitute:

- Removes provision concerning conditions under which commercial vehicle weight limits may be suspended;
- Removes requirement for certain information to be included on invoices for solid waste disposal, collection, and recycling services;
- Adds a provision prohibiting a local government from preventing a private company from listing certain information on a company’s invoice for solid waste collection, disposal, or recycling;
- Restores original law by removing the word “immediate” in the provision limiting the condition under which a local government may avoid being enjoined by a private company to actions related to the immediate health, safety, or welfare of its citizens;
- Restores a provision that was struck in the bill that provided that a local government that exclusively provides solid waste collection services or pursuant to an exclusive franchise was not subject to the provisions of 403.70605(1), F.S., concerning competition with private companies over solid waste collection, disposal, or recycling services. The change in the bill made them subject to those provisions under those circumstances;
- Removes the following provisions from the bill related to solid waste collection services outside a local governments jurisdiction:
  - Local governments that compete with private companies must remit certain funds to the Solid Waste Management Trust Fund; and
  - A reporting requirement;

- Removes changes made by the bill to 403.70605(2) and (3), F.S., regarding Solid Waste Collection Services Outside Jurisdiction and Displacement of Private Waste Companies so that instead of applying to solid waste collection, disposal, or recycling services, the original language is retained so that both subsections apply solely to solid waste collection services; and
- Makes conforming changes to the definitions of “‘in competition’ or ‘in direct competition’” and “‘private company.’”

B. Amendments:

None.



594-04149-16

Proposed Committee Substitute by the Committee on Fiscal Policy  
(Appropriations Subcommittee on General Government)

A bill to be entitled

An act relating to waste management; creating s.  
403.70491, F.S.; prohibiting a local government from  
preventing a private company from listing separately  
on an invoice for solid waste collection, disposal, or  
recycling any governmental taxes and fees; amending s.  
403.70605, F.S.; revising provisions relating to solid  
waste collection services to include disposal and  
recycling services; revising definitions; creating s.  
812.0141, F.S.; defining a term; establishing the  
crime of theft of recyclable property; providing  
penalties; providing for a civil remedy; providing for  
attorney fees and costs under certain conditions;  
providing an effective date.

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

Section 1. Section 403.70491, Florida Statutes, is created  
to read:

403.70491 Invoices for solid waste collection, disposal, or  
recycling.—A local government may not prevent a private company  
from listing separately on the company's invoice for solid waste  
collection, disposal, or recycling any governmental taxes or  
fees, including, but not limited to, any franchise fee.

Section 2. Subsections (1) and (4) of section 403.70605,  
Florida Statutes, are amended to read:

403.70605 Solid waste collection, disposal, or recycling



594-04149-16

services in competition with private companies.—

(1) SOLID WASTE COLLECTION, DISPOSAL, OR RECYCLING SERVICES  
IN COMPETITION WITH PRIVATE COMPANIES.—

(a) A local government that provides specific solid waste  
collection, disposal, or recycling services in direct  
competition with a private company:

1. Shall comply with the provisions of local environmental,  
health, and safety standards that also are applicable to a  
private company providing such collection, disposal, or  
recycling services in competition with the local government.

2. May ~~shall~~ not enact or enforce any license, permit,  
registration procedure, or associated fee that:

a. Does not apply to the local government and for which  
there is not a substantially similar requirement that applies to  
the local government; and

b. Provides the local government with a material advantage  
in its ability to compete with a private company in terms of  
cost or ability to promptly or efficiently provide such  
collection, disposal, or recycling services. Nothing in this  
sub-subparagraph shall apply to any zoning, land use, or  
comprehensive plan requirement.

(b)1. A private company with which a local government is in  
competition may bring an action to enjoin a violation of  
paragraph (a) against any local government. No injunctive relief  
shall be granted if the official action that ~~which~~ forms the  
basis for the suit bears a reasonable relationship to the  
health, safety, or welfare of the citizens of the local  
government unless the court finds that the actual or potential  
anticompetitive effects outweigh the public benefits of the



939166

594-04149-16

57 challenged action.

58 2. As a condition precedent to the institution of an action  
59 pursuant to this paragraph, the complaining party shall first  
60 file with the local government a notice referencing this  
61 paragraph and setting forth the specific facts upon which the  
62 complaint is based and the manner in which the complaining party  
63 is affected. The complaining party may provide evidence to  
64 substantiate the claims made in the complaint. Within 30 days  
65 after receipt of such a complaint, the local government shall  
66 respond in writing to the complaining party explaining the  
67 corrective action taken, if any. If no response is received  
68 within 30 days or if appropriate corrective action is not taken  
69 within a reasonable time, the complaining party may institute  
70 the judicial proceedings authorized in this paragraph. However,  
71 failure to comply with this subparagraph ~~may shall~~ not bar an  
72 action for a temporary restraining order to prevent immediate  
73 and irreparable harm from the conduct or activity complained of.

74 3. The court may, in its discretion, award to the  
75 prevailing party or parties costs and reasonable attorney  
76 ~~attorneys'~~ fees.

77 (c) This subsection does not apply when the local  
78 government is exclusively providing the specific solid waste  
79 collection, disposal, or recycling services itself or pursuant  
80 to an exclusive franchise.

81 (2) SOLID WASTE COLLECTION SERVICES OUTSIDE JURISDICTION.—

82 (a) Notwithstanding s. 542.235, or any other provision of  
83 law, a local government that provides solid waste collection  
84 services outside its jurisdiction in direct competition with  
85 private companies is subject to the same prohibitions against



939166

594-04149-16

86 predatory pricing applicable to private companies under ss.  
87 542.18 and 542.19.

88 (b) Any person injured by reason of violation of this  
89 subsection may sue therefor in the circuit courts of this state  
90 and shall be entitled to injunctive relief and to recover the  
91 damages and the costs of suit. The court may, in its discretion,  
92 award to the prevailing party or parties reasonable attorneys'  
93 fees. An action for damages under this subsection must be  
94 commenced within 4 years. No person may obtain injunctive relief  
95 or recover damages under this subsection for any injury that  
96 results from actions taken by a local government in direct  
97 response to a natural disaster or similar occurrence for which  
98 an emergency is declared by executive order or proclamation of  
99 the Governor pursuant to s. 252.36 or for which such a  
100 declaration might be reasonably anticipated within the area  
101 covered by such executive order or proclamation.

102 (c) As a condition precedent to the institution of an  
103 action pursuant to this subsection, the complaining party shall  
104 first file with the local government a notice referencing this  
105 subsection and setting forth the specific facts upon which the  
106 complaint is based and the manner in which the complaining party  
107 is affected. Within 30 days after receipt of such complaint, the  
108 local government shall respond in writing to the complaining  
109 party explaining the corrective action taken, if any. If the  
110 local government denies that it has engaged in conduct that is  
111 prohibited by this subsection, its response shall include an  
112 explanation showing why the conduct complained of does not  
113 constitute predatory pricing.

114 (d) For the purposes of this subsection, the jurisdiction



939166

594-04149-16

115 of a county, special district, or solid waste authority shall  
116 include all incorporated and unincorporated areas within the  
117 county, special district, or solid waste authority.

118 (3) DISPLACEMENT OF PRIVATE WASTE COMPANIES.—

119 (a) As used in this subsection, the term "displacement"  
120 means a local government's provision of a collection service  
121 which prohibits a private company from continuing to provide the  
122 same service that it was providing when the decision to displace  
123 was made. The term does not include:

124 1. Competition between the public sector and private  
125 companies for individual contracts;

126 2. Actions by which a local government, at the end of a  
127 contract with a private company, refuses to renew the contract  
128 and either awards the contract to another private company or  
129 decides for any reason to provide the collection service itself;

130 3. Actions taken against a private company because the  
131 company has acted in a manner threatening to the public health  
132 or safety or resulting in a substantial public nuisance;

133 4. Actions taken against a private company because the  
134 company has materially breached its contract with the local  
135 government;

136 5. Refusal by a private company to continue operations  
137 under the terms and conditions of its existing agreement during  
138 the 3-year notice period;

139 6. Entering into a contract with a private company to  
140 provide garbage, trash, or refuse collection which contract is  
141 not entered into under an ordinance that displaces or authorizes  
142 the displacement of another private company providing garbage,  
143 trash, or refuse collection;



939166

594-04149-16

144 7. Situations in which a majority of the property owners in  
145 the displacement area petition the governing body to take over  
146 the collection service;

147 8. Situations in which the private companies are licensed  
148 or permitted to do business within the local government for a  
149 limited time and such license or permit expires and is not  
150 renewed by the local government. This subparagraph does not  
151 apply to licensing or permitting processes enacted after May 1,  
152 1999, or to occupational licenses; or

153 9. Annexations, but only to the extent that the provisions  
154 of s. 171.062(4) apply.

155 (b) A local government or combination of local governments  
156 may not displace a private company that provides garbage, trash,  
157 or refuse collection service without first:

158 1. Holding at least one public hearing seeking comment on  
159 the advisability of the local government or combination of local  
160 governments providing the service.

161 2. Providing at least 45 days' written notice of the  
162 hearing, delivered by first-class mail to all private companies  
163 that provide the service within the jurisdiction.

164 3. Providing public notice of the hearing.

165 (c) Following the final public hearing held under paragraph  
166 (b), but not later than 1 year after the hearing, the local  
167 government may proceed to take those measures necessary to  
168 provide the service. A local government shall provide 3 years'  
169 notice to a private company before it engages in the actual  
170 provision of the service that displaces the company. As an  
171 alternative to delaying displacement 3 years, a local government  
172 may pay a displaced company an amount equal to the company's





939166

594-04149-16

173 preceding 15 months' gross receipts for the displaced service in  
174 the displacement area. The 3-year notice period shall lapse as  
175 to any private company being displaced when the company ceases  
176 to provide service within the displacement area. Nothing in this  
177 paragraph prohibits the local government and the company from  
178 voluntarily negotiating a different notice period or amount of  
179 compensation.

180 (4) DEFINITIONS.—As used in this section, the term:

181 (a) "In competition" or "in direct competition" means the  
182 competition ~~vying~~ between a local government and a private  
183 company to provide substantially similar solid waste collection,  
184 disposal, or recycling services to the same customer.

185 (b) "Private company" means an any entity other than a  
186 local government or other unit of government which that provides  
187 solid waste collection, disposal, or recycling services.

188 Section 3. Section 812.0141, Florida Statutes, is created  
189 to read:

190 812.0141 Theft of recyclable property.—

191 (1) As used in this section, the term "recyclable property"  
192 means recovered materials, as defined in s. 403.703, in addition  
193 to wooden or plastic pallets.

194 (2) A person commits theft if he or she knowingly obtains  
195 or uses, or endeavors to obtain or to use, the recyclable  
196 property of another with intent to, either temporarily or  
197 permanently:

198 (a) Deprive the other person of a right to possess the  
199 recyclable property or of a benefit derived therefrom.

200 (b) Appropriate the recyclable property for his or her own  
201 use or to the use of a person not entitled to the use of the



939166

594-04149-16

202 recyclable property.

203 (3) A person who violates this section is guilty of a  
204 misdemeanor of the first degree, punishable as provided in s.  
205 775.082 or s. 775.083. Prosecution for a violation of subsection  
206 (2) does not preclude prosecution for theft pursuant to s.  
207 812.014.

208 (4) A person who commits a third or subsequent violation of  
209 subsection (2) within 3 years after the date of a prior  
210 violation that resulted in a conviction for a violation of  
211 subsection (2) commits a felony of the third degree, punishable  
212 as provided in s. 775.082 or s. 775.083.

213 (5) A person who proves by clear and convincing evidence  
214 that he or she has been injured in any manner by reason of a  
215 violation of this section may pursue a civil remedy under s.  
216 772.11. However, notwithstanding s. 772.11, the minimum damage  
217 award under this subsection is \$5,000, plus reasonable attorney  
218 fees and costs in the trial and appellate courts.

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

**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.)

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Prepared By: The Professional Staff of the Committee on Fiscal Policy

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**BILL:** CS/CS/SB 1192

**INTRODUCER:** Fiscal Policy Committee (Recommended by Appropriations Subcommittee on General Government); Environmental Preservation and Conservation Committee; and Senator Hays

**SUBJECT:** Waste Management

**DATE:** March 1, 2016

**REVISED:** \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Hinton</u>	<u>Rogers</u>	<u>EP</u>	<b>Fav/CS</b>
2.	<u>Howard</u>	<u>DeLoach</u>	<u>AGG</u>	<b>Recommend: Fav/CS</b>
3.	<u>Hrdlicka</u>	<u>Hrdlicka</u>	<u>FP</u>	<b>Fav/CS</b>

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**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/CS/SB 1192:

- Precludes a local government from preventing a private company from listing separately on the company's invoice for solid waste collection, disposal, or recycling any governmental taxes or fees;
- Amends provisions regulating local government competition with solid waste collection companies to include disposal and recycling; and
- Creates the crime of theft of recyclable property and provides for a civil right of action for violations.

The Criminal Justice Impact Conference has not yet estimated the impact of this bill. This bill is not expected to have an impact on state government.

The bill is effective July 1, 2016.

## II. Present Situation:

### Home Rule Authority

The Florida Constitution grants local governments broad home rule authority. Specifically, non-charter county governments may exercise those powers of self-government that are provided by general or special law.<sup>1</sup> Counties operating under a county charter have all powers of self-government not inconsistent with general law, or special law approved by the vote of the electors.<sup>2</sup> Likewise, municipalities have governmental, corporate, and proprietary powers that enable them to conduct municipal government, perform their functions and provide services, and exercise any power for municipal purposes except as otherwise provided by law.<sup>3</sup>

The Florida Constitution preempts all forms of taxation to the state except for ad valorem taxes on real estate and tangible personal property or as otherwise provided by general law.<sup>4</sup> Local governments may levy special assessments or fees under their home rule authority. Many governments levy franchise fees on waste collection companies in exchange for the right to be the sole provider to a specific service area.<sup>5</sup> Others levy special assessments on the property owner to ensure service for that area.<sup>6</sup>

Current law enumerates the powers and duties of all county governments, unless preempted on a particular subject by general or special law.<sup>7</sup> Those powers include the provision of fire protection, ambulance services, parks and recreation, libraries, museums and other cultural facilities, waste and sewage collection and disposal, and water and alternative water supplies. Municipalities are afforded broad home rule powers except: annexation, merger, exercise of extraterritorial power, and subjects prohibited or preempted by the federal, state, or county constitutions or law.<sup>8</sup>

### Solid Waste

Counties are granted the power to provide and regulate waste and sewage collection and disposal. A county may require that any person within the county demonstrate the existence of some arrangement or contract by which the person's solid waste will be disposed of in a manner consistent with county ordinance or state or federal law.<sup>9</sup> Counties also have authority to adopt ordinances that govern the disposal of solid waste generated outside the county at the county's solid waste disposal facility.<sup>10</sup> Counties and municipalities are expressly prohibited from discriminating against privately owned solid waste management facilities.<sup>11</sup>

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<sup>1</sup> FLA. CONST. art VIII, s. 1(f).

<sup>2</sup> FLA. CONST. art VIII, s. 1(g).

<sup>3</sup> FLA. CONST. art VIII, s. 2(b). *See also* s. 166.021(1), F.S.

<sup>4</sup> FLA. CONST. art VII, s. 1(a).

<sup>5</sup> *See, e.g.*, City of Tampa, Resolution No. 2012-309.

<sup>6</sup> *See, e.g.*, Orange County Code of Ordinances, ch. 32, art. IV, s. 32-157 (Ordinance No. 2008-03) (providing that all property entitled to full waste collection services shall be subject to special assessments).

<sup>7</sup> Section 125.01, F.S.

<sup>8</sup> Section 166.021, F.S.

<sup>9</sup> Section 125.01(1)(k)2., F.S.

<sup>10</sup> Section 403.706(1), F.S.

<sup>11</sup> Section 403.7063, F.S.

The Department of Environmental Protection (DEP) is responsible for implementing and enforcing the solid waste management program, which provides guidelines for the storage, separation, processing, recovery, recycling, and disposal of solid waste throughout the state.<sup>12</sup> The program is required to include procedures and requirements to ensure cooperative efforts in solid waste management by counties and municipalities and groups of counties and municipalities where appropriate.<sup>13</sup>

Counties are responsible for operating solid waste disposal facilities, which are permitted through the DEP, in order to meet the needs of the incorporated and unincorporated areas of the county.<sup>14</sup> Each county must ensure that municipalities within its boundaries participate in the preparation and implementation of recycling and solid waste management programs through interlocal agreements or other means.<sup>15</sup> In providing services or programs for solid waste management, local governments and state agencies are encouraged to use the most cost-effective means for providing services and are encouraged to contract with private entities for any or all such services or programs to assure that those services are provided on the most cost-effective basis.<sup>16</sup>

### ***Recycled and Recovered Materials***

Economically recovering material and energy resources from solid waste can eliminate unnecessary waste and slow the depletion of natural resources. The Legislature has declared that maximizing recycling and reuse of resources are high-priority goals of the state.<sup>17</sup> In 2014, 12,684,860 tons of municipal solid waste was recycled in Florida.<sup>18</sup> Section 403.7032(2), F.S., provides that by the year 2020, the long-term goal for the recycling efforts of state and local governmental entities, private companies and organizations, and the general public is to recycle at least 75 percent of the municipal solid waste that would otherwise be disposed of in waste management facilities, landfills, or incineration facilities.

### **Competition with Private Companies**

Section 403.70605, F.S., was enacted in 2000 to require local governments that provide solid waste management services to be subject to the same requirements as private industry and to impose requirements on local governments providing services outside of their jurisdictions.<sup>19</sup> The law addressed concerns of private waste management companies about competition with local government solid waste departments for contracts; the private companies were concerned that in instances where they were competing for services, public entities were able to subsidize

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<sup>12</sup> See s. 403.705, F.S.

<sup>13</sup> Section 403.705(2)(a), F.S.

<sup>14</sup> Section 403.706(1), F.S.

<sup>15</sup> Section 403.706(3), F.S.

<sup>16</sup> Section 403.7063, F.S.

<sup>17</sup> Section 403.7032, F.S.

<sup>18</sup> DEP, *Solid Waste Management in Florida 2014 Annual Report: Florida Municipal Solid Waste Collected and Recycled (2014)*, available at [ftp://ftp.dep.state.fl.us/pub/reports/Recycling/Reports/2014AnnualReport/MSW-Composition\\_2014.pdf](ftp://ftp.dep.state.fl.us/pub/reports/Recycling/Reports/2014AnnualReport/MSW-Composition_2014.pdf) (last visited Feb. 1, 2016).

<sup>19</sup> Chapter 00-304, s. 1, L.O.F.

their costs with funds from other government operations, allowing the public entities to unfairly compete for contracts.<sup>20</sup>

### ***Solid Waste Collection Services in Direct Competition***

Section 403.70605(1)(a), F.S., requires a local government that provides specific solid waste collection services in direct competition with a private company to comply with the provisions of local environmental, health, and safety standards that also are applicable to a private company providing such collection services in competition with the local government. The local government may not enact or enforce any license, permit, registration procedure, or associated fee that:

- Does not apply to the local government and for which there is not a substantially similar requirement that applies to the local government; and
- Provides the local government with a material advantage in its ability to compete with a private company in terms of cost or ability to promptly or efficiently provide such collection services. This does not apply to any zoning, land use, or comprehensive plan requirements.

Section 403.70605(1)(b), F.S., authorizes a private company in competition with a local government to bring an action to enjoin violations of the above requirements against any local government. The private company must provide the local government with notice of complaint of a violation, and if the local government does not respond with corrective action within 30 days, then the private company may file suit. Injunctive relief will not be granted if the official action that forms the basis of the suit has a reasonable relationship to the health, safety, or welfare of the citizens of the local government unless the court finds that the actual or potential anticompetitive effects outweigh the public benefits of the challenged action. The court may award the prevailing party costs and reasonable attorney fees.

The Department of Management Services has verified that no state agencies provide solid waste collection, disposal, or recycling services.<sup>21</sup>

### ***Solid Waste Collection Services Outside Jurisdiction***

Section 403.70605(2), F.S., subjects a local government that provides solid waste collection services outside its jurisdiction in direct competition with private companies to the same prohibitions against predatory pricing as private companies.<sup>22</sup> Any person injured by a violation of this provision may bring an action to enjoin violations and recover damages and costs within 4 years of the injury. The person must provide the local government with notice of complaint of a violation, and if the local government does not respond with corrective action within 30 days, then the person may file suit. Injunctive relief will not be granted when the action taken by the local government was in direct response to a natural disaster or emergency declaration order by the Governor. The court may award the prevailing party costs and reasonable attorney fees.

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<sup>20</sup> Florida House of Representatives, *CS/HB 1425 Final Analysis*, (May 12, 2000) p. 2, available at <http://archive.flsenate.gov/data/session/2000/House/bills/analysis/pdf/HB1425S1Z.CA.pdf> (last visited Feb. 25, 2016).

<sup>21</sup> E-mail from Ricky Moulton, Deputy Director of Legislative Affairs, Department of Management Services (Feb. 4, 2016) (on file with the Senate Committee on Environmental Preservation and Conservation).

<sup>22</sup> See ss. 542.18 and 542.19, F.S.

### ***Displacement of Garbage, Trash, or Refuse Collection Services***

Section 403.70605(3), F.S., prohibits a local government from displacing a private company that provides garbage, trash, or refuse collection without first holding at least one public hearing, publically noticed and notice provided to private companies providing service in the jurisdiction by mail at least 45 days before the hearing. “Displacement” refers to a local government’s provision of a collection service that prohibits or displaces a private company from continuing to provide the same service.<sup>23</sup> The local government must provide 3 years’ notice to a private company before it engages in the actual provision of the service that displaces the company, or, in the alternative, the local government can pay a displaced company an amount equal to the company’s preceding 15 months’ gross receipts for the displaced service in the displacement area or the local government and the private company can voluntarily negotiate a different notice period or amount of compensation.

### **Theft**

Section 812.014, F.S., defines and categorizes thefts into misdemeanor or felony criminal violations. Whether a theft is a misdemeanor or a felony generally depends upon the value of the property taken by the defendant, the defendant’s history of theft convictions or, in some cases, the type of property taken. A person commits theft if he or she knowingly obtains or uses, or endeavors to obtain or use, the property of another with intent to, either temporarily or permanently:

- Deprive the other person of a right to the property or a benefit from the property; or
- Appropriate the property to his or her own use or to the use of any person not entitled to the use of the property.<sup>24</sup>

Second degree petit theft, a second degree misdemeanor, is theft of property valued at less than \$100.<sup>25</sup> First degree petit theft, a first degree misdemeanor, is theft of property valued at \$100 or more but less than \$300.<sup>26</sup> Petit theft incurs greater penalties if there is a prior theft conviction: a first degree misdemeanor if there was a prior conviction,<sup>27</sup> and a third degree felony if there are two or more prior convictions.<sup>28</sup>

Third degree grand theft, a third degree felony, is theft of property valued at \$300 or more but less than \$20,000; or theft of specified property (e.g., a firearm or fire extinguisher).<sup>29</sup> Theft of

<sup>23</sup> Section 403.70605(3)(a), F.S., provides several exclusions.

<sup>24</sup> Section 812.014(1), F.S.

<sup>25</sup> Section 812.014(3)(a), F.S. A second degree misdemeanor is punishable by up to 60 days in jail and a fine of up to \$500. Sections 775.082 and 775.083, F.S.

<sup>26</sup> Section 812.014(2)(e), F.S. A first degree misdemeanor is punishable by up to one year in jail and a fine of up to \$1,000. Sections 775.082 and 775.083, F.S.

<sup>27</sup> Section 812.014(3)(b), F.S.

<sup>28</sup> Section 812.014(3)(c), F.S. A third degree felony is punishable by up to 5 years in state prison and a fine of up to \$5,000. Sections 775.082 and 775.083, F.S. However, if the third degree felony is not a forcible felony (excluding a third degree felony under ch. 810, F.S.) and total sentence points are 22 points or fewer, the court must sentence the offender to a nonstate prison sanction unless the court makes written findings that a nonstate prison sanction could present a danger to the public. Section 775.082(10), F.S.

<sup>29</sup> Section 812.014(2)(c), F.S.

property from a dwelling or its unenclosed curtilage is third degree grand theft, a third degree felony, if the property is valued at \$100 or more, but less than \$300.<sup>30</sup>

Second degree grand theft, a second degree felony, is theft of:

- Property valued at \$20,000 or more but less than \$100,000;
- Cargo valued at less than \$50,000 in specified circumstances; or
- Emergency medical equipment or law enforcement equipment valued at \$300 or more in specified circumstances.<sup>31</sup>

First degree grand theft, a first degree felony, is:

- Theft of property valued at \$100,000 or more;
- Theft of a semitrailer deployed by a law enforcement officer;
- Theft of cargo valued at \$50,000 or more in specified circumstances; or
- Grand theft and, in the course of committing the offense, a motor vehicle is used as specified or the offender causes damage to the real or personal property of another in excess of \$1,000.<sup>32</sup>

### **Civil Remedy for Theft**

Section 772.11(1), F.S., provides that any person who proves by clear and convincing evidence that he or she has been injured in any fashion by reason of any violation of statutes concerning theft is entitled to three times the actual damages sustained, a minimum damage award of \$200, and reasonable attorney fees and court costs in the trial and appellate courts.

Before a person may file an action for damages, the person claiming to be injured must make a written demand for \$200 or the treble damage amount to the person liable for the damages. If the person liable for damages complies with the demand within 30 days, that person is released from further civil liability for the act of theft or exploitation by the person making the demand. A defendant may recovery reasonable attorney fees and court costs in the trial and appellate courts if the claim raised was without substantial fact or legal support.<sup>33</sup>

### ***Clear and Convincing Standard***

The clear and convincing standard of evidence requires that the evidence must be found to be credible, the facts to which the witnesses testify must be distinctly remembered, the testimony must be precise and explicit, and the witnesses must be lacking in confusion as to the facts at issue. The evidence must be of such weight that it produces in the mind of the trier of fact a firm belief or conviction, without hesitancy, as to the truth of the allegations sought to be established.<sup>34</sup>

<sup>30</sup> Section 812.014(3)(d), F.S.

<sup>31</sup> Section 812.014(2)(b), F.S. However, this theft is reclassified from a second degree felony to a first degree felony if the theft occurs within a county subject to a state of emergency declared by the Governor, is committed after the declaration is made, and is facilitated by conditions arising from the emergency. *Id.* A second degree felony is punishable by up to 15 years in state prison and a fine of up to \$10,000. Sections 775.082 and 775.083, F.S.

<sup>32</sup> Section 812.014(2)(a), F.S. A first degree felony is generally punishable by up to 30 years in state prison and a fine of up to \$10,000. Sections 775.082 and 775.083, F.S.

<sup>33</sup> Section 772.11, F.S.

<sup>34</sup> Florida Bar Journal, *Considerations before Implementing Florida's Civil Theft Statute*, 77-MAR Fla. B.J. 28 (Mar. 2003).

### III. Effect of Proposed Changes:

**Section 1** creates s. 403.70491, F.S., to preclude a local government from preventing a private company from listing separately on the company's invoice for solid waste collection, disposal, or recycling any governmental taxes or fees, including any franchise fees.

**Section 2** amends s. 403.70605, F.S., to expand the scope of s. 403.70605(1), F.S., which currently applies only to solid waste collection, to include solid waste disposal and recycling services. Under the bill, a local government that provides specific solid waste disposal and recycling services in direct competition with a private company must comply with the provisions of local environmental, health, and safety standards that also are applicable to a private company providing such services in competition with the local government.

However, the bill amends the terms "in competition" and "in direct competition" and "private company" to include disposal and recycling services for the purpose of the entire statute. The definition of "in competition" or "in direct competition" is effectively "the competition between a local government and a private company to provide substantially similar solid waste collection, disposal, or recycling services to the same customer." The definition of "private company" is effectively "an entity other than a local government which provides solid waste collection, disposal, or recycling services." See Technical Deficiencies below.

**Section 3** creates s. 812.0141, F.S., to create the crime of theft of recyclable property. The bill defines "recyclable property" to mean recovered materials, as defined in s. 403.703, F.S., in addition to wooden or plastic pallets.<sup>35</sup>

The bill provides that a person commits theft if he or she knowingly obtains or uses, or endeavors to obtain or to use, the recyclable property of another with intent to, either temporarily or permanently:

- Deprive the other person of a right to possess the recyclable property or of a benefit derived therefrom; or
- Appropriate the recyclable property for his or her own use or to the use of a person not entitled to the use of the recyclable property.

A first or second violation is punished as a first degree misdemeanor, punishable by a term of imprisonment not to exceed one year and a fine not to exceed \$1,000. A third or subsequent violation within three years of a prior conviction is punishable as a third degree felony, which is punishable by a term of imprisonment not to exceed 5 years and a fine not to exceed \$5,000. Prosecution for violation of the provision does not preclude prosecution for theft pursuant to s. 812.014, F.S.

The bill provides that a person who proves by clear and convincing evidence that he or she has been injured in any manner by reason of a violation of the provisions of this section may pursue

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<sup>35</sup> Section 403.703, F.S., defines "recovered materials" as metal, paper, glass, plastic, textile, or rubber materials that have known recycling potential, can be feasibly recycled, and have been diverted and source separated or have been removed from the solid waste stream for sale, use, or reuse as raw materials, whether or not the materials require subsequent processing or separation from each other. The term does not include materials destined for any use that constitutes disposal. Recovered materials as described are not solid waste.



a civil remedy; however, the minimum damage award is \$5,000 in addition to reasonable attorney fees and costs in the trial and appellate courts.

**Section 4** provides that the bill is effective July 1, 2016.

**IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Individuals found to be guilty of theft of recyclable property would be subject to new penalties in addition to punishment for the crime of theft.

C. Government Sector Impact:

Expanding the applicability of s. 403.70605, F.S., could result in more litigation costs for local governments that are found to be in violation of the statute due to the addition of solid waste disposal and recycling services. Similarly, restricting the defenses available to local governments could also lead to increased litigation costs.

The Criminal Justice Impact Conference has not yet estimated the impact of this bill.

**VI. Technical Deficiencies:**

The bill amends s. 403.70605(1), F.S., to include solid waste disposal and recycling services. Subsections (2) and (3) of s. 403.70605, F.S., are not amended, and thus still apply only to solid waste collection services. However, the bill amends the definitions of the terms “in competition,” “in direct competition,” and “private company” to include solid waste disposal and recycling services for the purpose of the entire statute. The definitions as amended create an internal conflict within the statute, especially where provisions appear to apply only to solid waste collection services.

**VII. Related Issues:**

Typically bills that create new crimes are effective on October 1.

**VIII. Statutes Affected:**

This bill substantially amends section 403.70605 of the Florida Statutes.

This bill creates sections 403.70491 and 812.0141 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/CS by Fiscal Policy on February 29, 2016:**

As recommended by the Appropriations Subcommittee on General Government, the committee substitute removes state agencies as entities that private companies may bring an action against. The CS also removes provisions limiting the application of the amended definitions of “in competition,” “in direct competition,” and “private company” to subsection (1) of s. 403.70605, F.S., and instead amends the terms to apply to the entire statute.

**CS by Environmental Preservation and Conservation on February 9, 2016:**

The committee substitute:

- Removes provision concerning conditions under which commercial vehicle weight limits may be suspended;
- Removes requirement for certain information to be included on invoices for solid waste disposal, collection, and recycling services;
- Adds a provision prohibiting a local government from preventing a private company from listing certain information on a company’s invoice for solid waste collection, disposal, or recycling;
- Restores original law by removing the word “immediate” in the provision limiting the condition under which a local government may avoid being enjoined by a private company to actions related to the immediate health, safety, or welfare of its citizens;
- Restores a provision that was struck in the bill that provided that a local government that exclusively provides solid waste collection services or pursuant to an exclusive franchise was not subject to the provisions of 403.70605(1), F.S., concerning competition with private companies over solid waste collection, disposal, or recycling services. The change in the bill made them subject to those provisions under those circumstances;
- Removes the following provisions from the bill related to solid waste collection services outside a local governments jurisdiction:
  - Local governments that compete with private companies must remit certain funds to the Solid Waste Management Trust Fund; and
  - A reporting requirement;

- Removes changes made by the bill to 403.70605(2) and (3), F.S., regarding Solid Waste Collection Services Outside Jurisdiction and Displacement of Private Waste Companies so that instead of applying to solid waste collection, disposal, or recycling services, the original language is retained so that both subsections apply solely to solid waste collection services; and
- Makes conforming changes to the definitions of “‘in competition’ or ‘in direct competition’” and “‘private company.’”

B. Amendments:

None.

By the Committee on Environmental Preservation and Conservation;  
and Senator Hays

592-03276-16

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A bill to be entitled

An act relating to waste management; creating s. 403.70491, F.S.; prohibiting a local government from preventing a private company from listing separately on an invoice for solid waste collection, disposal, or recycling any governmental taxes and fees; amending s. 403.70605, F.S.; revising provisions relating to solid waste collection services to include disposal and recycling services; providing that certain private companies may bring an action against a state agency for specified violations; revising definitions; creating s. 812.0141, F.S.; defining a term; establishing the crime of theft of recyclable property; providing penalties; providing for a civil remedy; providing for attorney fees and costs under certain conditions; providing an effective date.

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

Section 1. Section 403.70491, Florida Statutes, is created to read:

403.70491 Invoices for solid waste collection, disposal, or recycling.—A local government may not prevent a private company from listing separately on the company's invoice for solid waste collection, disposal, or recycling any governmental taxes or fees, including, but not limited to, any franchise fee.

Section 2. Subsections (1) and (4) of section 403.70605, Florida Statutes, are amended to read:

403.70605 Solid waste collection, disposal, or recycling services in competition with private companies.—

(1) SOLID WASTE COLLECTION, DISPOSAL, OR RECYCLING SERVICES

Page 1 of 8

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

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IN COMPETITION WITH PRIVATE COMPANIES.—

(a) A local government that provides specific solid waste collection, disposal, or recycling services in direct competition with a private company:

1. Shall comply with the provisions of local environmental, health, and safety standards that also are applicable to a private company providing such collection, disposal, or recycling services in competition with the local government.

2. May shall not enact or enforce any license, permit, registration procedure, or associated fee that:

a. Does not apply to the local government and for which there is not a substantially similar requirement that applies to the local government; and

b. Provides the local government with a material advantage in its ability to compete with a private company in terms of cost or ability to promptly or efficiently provide such collection, disposal, or recycling services. Nothing in this sub-subparagraph shall apply to any zoning, land use, or comprehensive plan requirement.

(b)1. A private company with which a local government is in competition may bring an action to enjoin a violation of paragraph (a) against any local government or state agency. No injunctive relief shall be granted if the official action that ~~which~~ forms the basis for the suit bears a reasonable relationship to the health, safety, or welfare of the citizens of the local government unless the court finds that the actual or potential anticompetitive effects outweigh the public benefits of the challenged action.

2. As a condition precedent to the institution of an action

Page 2 of 8

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

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61 pursuant to this paragraph, the complaining party shall first  
 62 file with the local government a notice referencing this  
 63 paragraph and setting forth the specific facts upon which the  
 64 complaint is based and the manner in which the complaining party  
 65 is affected. The complaining party may provide evidence to  
 66 substantiate the claims made in the complaint. Within 30 days  
 67 after receipt of such a complaint, the local government shall  
 68 respond in writing to the complaining party explaining the  
 69 corrective action taken, if any. If no response is received  
 70 within 30 days or if appropriate corrective action is not taken  
 71 within a reasonable time, the complaining party may institute  
 72 the judicial proceedings authorized in this paragraph. However,  
 73 failure to comply with this subparagraph may ~~shall~~ not bar an  
 74 action for a temporary restraining order to prevent immediate  
 75 and irreparable harm from the conduct or activity complained of.

76 3. The court may, in its discretion, award to the  
 77 prevailing party or parties costs and reasonable attorney  
 78 ~~attorneys'~~ fees.

79 (c) This subsection does not apply when the local  
 80 government is exclusively providing the specific solid waste  
 81 collection, disposal, or recycling services itself or pursuant  
 82 to an exclusive franchise.

83 (2) SOLID WASTE COLLECTION SERVICES OUTSIDE JURISDICTION.—

84 (a) Notwithstanding s. 542.235, or any other provision of  
 85 law, a local government that provides solid waste collection  
 86 services outside its jurisdiction in direct competition with  
 87 private companies is subject to the same prohibitions against  
 88 predatory pricing applicable to private companies under ss.  
 89 542.18 and 542.19.

592-03276-16

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90 (b) Any person injured by reason of violation of this  
 91 subsection may sue therefor in the circuit courts of this state  
 92 and shall be entitled to injunctive relief and to recover the  
 93 damages and the costs of suit. The court may, in its discretion,  
 94 award to the prevailing party or parties reasonable attorneys'  
 95 fees. An action for damages under this subsection must be  
 96 commenced within 4 years. No person may obtain injunctive relief  
 97 or recover damages under this subsection for any injury that  
 98 results from actions taken by a local government in direct  
 99 response to a natural disaster or similar occurrence for which  
 100 an emergency is declared by executive order or proclamation of  
 101 the Governor pursuant to s. 252.36 or for which such a  
 102 declaration might be reasonably anticipated within the area  
 103 covered by such executive order or proclamation.

104 (c) As a condition precedent to the institution of an  
 105 action pursuant to this subsection, the complaining party shall  
 106 first file with the local government a notice referencing this  
 107 subsection and setting forth the specific facts upon which the  
 108 complaint is based and the manner in which the complaining party  
 109 is affected. Within 30 days after receipt of such complaint, the  
 110 local government shall respond in writing to the complaining  
 111 party explaining the corrective action taken, if any. If the  
 112 local government denies that it has engaged in conduct that is  
 113 prohibited by this subsection, its response shall include an  
 114 explanation showing why the conduct complained of does not  
 115 constitute predatory pricing.

116 (d) For the purposes of this subsection, the jurisdiction  
 117 of a county, special district, or solid waste authority shall  
 118 include all incorporated and unincorporated areas within the

592-03276-16

20161192c1

119 county, special district, or solid waste authority.

120 (3) DISPLACEMENT OF PRIVATE WASTE COMPANIES.—

121 (a) As used in this subsection, the term "displacement"  
122 means a local government's provision of a collection service  
123 which prohibits a private company from continuing to provide the  
124 same service that it was providing when the decision to displace  
125 was made. The term does not include:

126 1. Competition between the public sector and private  
127 companies for individual contracts;

128 2. Actions by which a local government, at the end of a  
129 contract with a private company, refuses to renew the contract  
130 and either awards the contract to another private company or  
131 decides for any reason to provide the collection service itself;

132 3. Actions taken against a private company because the  
133 company has acted in a manner threatening to the public health  
134 or safety or resulting in a substantial public nuisance;

135 4. Actions taken against a private company because the  
136 company has materially breached its contract with the local  
137 government;

138 5. Refusal by a private company to continue operations  
139 under the terms and conditions of its existing agreement during  
140 the 3-year notice period;

141 6. Entering into a contract with a private company to  
142 provide garbage, trash, or refuse collection which contract is  
143 not entered into under an ordinance that displaces or authorizes  
144 the displacement of another private company providing garbage,  
145 trash, or refuse collection;

146 7. Situations in which a majority of the property owners in  
147 the displacement area petition the governing body to take over

592-03276-16

20161192c1

148 the collection service;

149 8. Situations in which the private companies are licensed  
150 or permitted to do business within the local government for a  
151 limited time and such license or permit expires and is not  
152 renewed by the local government. This subparagraph does not  
153 apply to licensing or permitting processes enacted after May 1,  
154 1999, or to occupational licenses; or

155 9. Annexations, but only to the extent that the provisions  
156 of s. 171.062(4) apply.

157 (b) A local government or combination of local governments  
158 may not displace a private company that provides garbage, trash,  
159 or refuse collection service without first:

160 1. Holding at least one public hearing seeking comment on  
161 the advisability of the local government or combination of local  
162 governments providing the service.

163 2. Providing at least 45 days' written notice of the  
164 hearing, delivered by first-class mail to all private companies  
165 that provide the service within the jurisdiction.

166 3. Providing public notice of the hearing.

167 (c) Following the final public hearing held under paragraph  
168 (b), but not later than 1 year after the hearing, the local  
169 government may proceed to take those measures necessary to  
170 provide the service. A local government shall provide 3 years'  
171 notice to a private company before it engages in the actual  
172 provision of the service that displaces the company. As an  
173 alternative to delaying displacement 3 years, a local government  
174 may pay a displaced company an amount equal to the company's  
175 preceding 15 months' gross receipts for the displaced service in  
176 the displacement area. The 3-year notice period shall lapse as

592-03276-16 20161192c1

177 to any private company being displaced when the company ceases  
178 to provide service within the displacement area. Nothing in this  
179 paragraph prohibits the local government and the company from  
180 voluntarily negotiating a different notice period or amount of  
181 compensation.

182 (4) DEFINITIONS.—As used in this section, the term:

183 (a) "In competition" or "in direct competition" means the  
184 competition ~~vying~~ between a local government and a private  
185 company to provide substantially similar solid waste collection  
186 services to the same customer. For the purposes of subsection  
187 (1), the term also refers to the competition between private  
188 companies to provide disposal or recycling services to the same  
189 customer.

190 (b) "Private company" means an any entity other than a  
191 local government or other unit of government which that provides  
192 solid waste collection services. For the purposes of subsection  
193 (1), the term also includes entities other than a local  
194 government or other unit of government which provide disposal or  
195 recycling services.

196 Section 3. Section 812.0141, Florida Statutes, is created  
197 to read:

198 812.0141 Theft of recyclable property.—

199 (1) As used in this section, the term "recyclable property"  
200 means recovered materials, as defined in s. 403.703, in addition  
201 to wooden or plastic pallets.

202 (2) A person commits theft if he or she knowingly obtains  
203 or uses, or endeavors to obtain or to use, the recyclable  
204 property of another with intent to, either temporarily or  
205 permanently:

592-03276-16 20161192c1

206 (a) Deprive the other person of a right to possess the  
207 recyclable property or of a benefit derived therefrom.

208 (b) Appropriate the recyclable property for his or her own  
209 use or to the use of a person not entitled to the use of the  
210 recyclable property.

211 (3) A person who violates this section is guilty of a  
212 misdemeanor of the first degree, punishable as provided in s.  
213 775.082 or s. 775.083. Prosecution for a violation of subsection  
214 (2) does not preclude prosecution for theft pursuant to s.  
215 812.014.

216 (4) A person who commits a third or subsequent violation of  
217 subsection (2) within 3 years after the date of a prior  
218 violation that resulted in a conviction for a violation of  
219 subsection (2) commits a felony of the third degree, punishable  
220 as provided in s. 775.082 or s. 775.083.

221 (5) A person who proves by clear and convincing evidence  
222 that he or she has been injured in any manner by reason of a  
223 violation of this section may pursue a civil remedy under s.  
224 772.11. However, notwithstanding s. 772.11, the minimum damage  
225 award under this subsection is \$5,000, plus reasonable attorney  
226 fees and costs in the trial and appellate courts.

227 Section 4. This act shall take effect July 1, 2016.  
228



# THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

## COMMITTEES:

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

## JOINT COMMITTEE:

Joint Select Committee on Collective Bargaining, *Alternating Chair*

**SENATOR ALAN HAYS**

11th District

## MEMORANDUM

**To:** Senator Anitere Flores, Chair  
Committee on Fiscal Policy  
CC: Jennifer Hrdlicka, Staff Director  
Tamra Lyon, Committee Administrative Assistant

**From:** Senator D. Alan Hays

**Subject:** Request to agenda SB 1192 Waste Management

**Date:** February 24, 2016

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

Sincerely,

A handwritten signature in black ink that reads "D. Alan Hays" with a stylized flourish at the end.

D. Alan Hays, DMD  
State Senator, District 11

### REPLY TO:

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

Senate's Website: [www.flsenate.gov](http://www.flsenate.gov)

**ANDY GARDINER**  
President of the Senate

**GARRETT RICHTER**  
President Pro Tempore



THE FLORIDA SENATE

APPEARANCE RECORD

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

2/29/16

Meeting Date

SB 1192

Bill Number (if applicable)

Topic SOLID WASTE MANAGEMENT

Amendment Barcode (if applicable)

Name KEYNA CORY

Job Title LOBBYIST

Address 110 E. COLLEGE AVE

Phone 850 681-1065

Street

TALLAHASSEE FL 32301

City

State

Zip

Email Keynacory@pacconsultants.com

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

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

Representing NATIONAL WASTE + RECYCLING ASSN - FL CHAPTER

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

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

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

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



# THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

**SENATOR ALAN HAYS**  
11th District

**COMMITTEES:**

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

**JOINT COMMITTEE:**

Joint Select Committee on Collective Bargaining, *Alternating Chair*

## MEMORANDUM

February 29, 2016

Senator Anitere Flores, Chair  
Committee on Fiscal Policy  
225 Knott Building  
404 S. Monroe Street  
Tallahassee, FL 32399-1100

RE: SB 1192- Waste Management

Dear Chair Flores,

I am unable to attend the Committee on Fiscal Policy scheduled for February 29th at 1:00pm. Please allow my aide, Amy Nicotra, to present the above referenced bill before your committee.

Thank you for favorable consideration of this request.

Sincerely,

A handwritten signature in black ink that reads "D. Alan Hays, DMD".

D. Alan Hays, DMD  
State Senator District 11

CC: Jennifer Hrdlicka, Staff Director  
Tamra Lyon, Committee Administrative Assistant

**REPLY TO:**

- 871 South Central Avenue, Umatilla, Florida 32784-9290 (352) 742-6441
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**ANDY GARDINER**  
President of the Senate

**GARRETT RICHTER**  
President Pro Tempore

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

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

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Prepared By: The Professional Staff of the Committee on Fiscal Policy

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BILL: CS/SB 1260

INTRODUCER: Environmental Preservation and Conservation Committee and Senator Simpson

SUBJECT: Anchoring Limitation Areas

DATE: February 26, 2016

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Istler	Rogers	EP	<b>Fav/CS</b>
2.	Gusky	Miller	ATD	<b>Recommend: Favorable</b>
3.	Pace	Hrdlicka	FP	<b>Favorable</b>

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**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 1260 establishes anchoring limitation areas in sections of Broward and Miami-Dade Counties. The bill prohibits a person from anchoring a vessel at any time between the hours from one-half hour after sunset to one-half hour before sunrise in any such anchoring limitation area. The bill authorizes vessels under certain circumstances to anchor overnight in an anchoring limitation area and provides an exemption for certain vessels.

The Florida Fish and Wildlife Conservation Commission (FWC) or other law enforcement agencies that monitor anchoring may experience an indeterminate positive fiscal impact resulting from the issuance of boating citations for violations relating to the unlawful anchoring of vessels in an anchoring limitation area. Additionally, the FWC or other law enforcement agencies may experience increased costs as a result of enforcing anchoring in these areas. It is expected that any enforcement costs will be covered within existing resources.

**II. Present Situation:**

Article X, s. 11 of the Florida Constitution authorizes the private use of portions of sovereign lands, but only if the use is not contrary to the public interest.<sup>1</sup> The term “sovereignty submerged lands” are “those lands including but not limited to, tidal lands, islands, sand bars, shallow banks,

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<sup>1</sup> Rule 18-21.003(51), F.A.C., defines the term “public interest” as demonstrable environmental, social, and economic benefits which would accrue to the public at large as a result of a proposed action, and which would clearly exceed all demonstrable environmental, social, and economic costs of the proposed action.

and lands waterward of the ordinary or mean high water line, beneath navigable fresh water or beneath tidally-influenced waters, to which the State of Florida acquired title on March 3, 1845, by virtue of statehood, and which have not been heretofore conveyed or alienated.”<sup>2</sup>

Riparian rights are those incidental to land bordering upon navigable waters and include the right to an unobstructed view, of ingress to and egress from the water, boating, bathing, and fishing.<sup>3</sup>

Riparian rights are:

- Inured to the owner of the riparian land but are not owned by him or her;
- Appurtenant to and are inseparable from the riparian land.<sup>4</sup>

A riparian owner’s rights to use navigable waters and the lands beneath is concurrent with that of the public, not superior to the public right.<sup>5</sup> A riparian owner’s right to use the navigable waters abutting his or her property may not obstruct or unreasonably impede lawful navigation by others.<sup>6</sup> The public has the right to use navigable waters for navigation or commerce.<sup>7</sup> Anchoring is considered to be incidental to the right of navigation.<sup>8</sup>

Anchoring refers to a boater’s practice of seeking and using safe harbor on the public waterway system for an undefined duration. This may be accomplished using an anchor carried on the vessel, or through the utilization of moorings permanently affixed to the bottom. Anchorages are areas that boaters regularly use for anchoring or mooring, whether designated or managed for that purpose or not. Mooring fields are areas designated and used for a system of properly spaced moorings.<sup>9</sup>

The anchoring of vessels has created conflicts in some areas of the state related to the use and enjoyment of the waters for many years. These issues include, but are not limited to:

- The locations where anchored vessels accumulate;
- Unattended vessels;
- Anchored vessels that are dragging anchor or not showing proper lighting;
- Vessels that are not maintained properly or become derelict;
- Interpretation of state laws leading to inconsistent regulation of anchoring on state waters and confusion among the boating community; and
- Questions about local governmental authority to regulate anchoring.<sup>10</sup>

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<sup>2</sup> See Rule 18-21.003(61), F.A.C., and the Submerged Lands Act, 43 U.S.C. ss. 1301 and 1311(a) (confirmed state ownership).

<sup>3</sup> See *Hayes v. Bowman*, 91 So.2d 795 (Fla. 1957), and s. 253.141, F.S.

<sup>4</sup> Section 253.141, F.S.

<sup>5</sup> *Harbor Beach Surf Club, Inc., v. Water Taxi of Ft. Lauderdale, Inc.*, 711 So.2d 1230 (Fla. 4th DCA 1998).

<sup>6</sup> *Id.*

<sup>7</sup> See *Brannon v. Boldt*, 958 So.2d 367, 372 (Fla. 2d DCA 2007), and s. 253.03(7), F.S.

<sup>8</sup> Ankersen, Hamann, & Flagg, *Anchoring Away: Government Regulation and the Rights of Navigation in Florida*, pg. 2 (Rev. May 2012) available at <http://nsgl.gso.uri.edu/flsgp/flsgpt12001.pdf> (last visited Feb. 25, 2016).

<sup>9</sup> *Id.*

<sup>10</sup> FWC, *Anchoring Mooring Pilot Program, Report of Findings and Recommendations*, pg. 3 (Dec. 31, 2013) available at <http://myfwc.com/media/2704721/FindingsRecommendations.pdf> (last visited Feb. 25, 2016).

## State Regulation of the Anchoring or Mooring of Vessels

The Board of Trustees of the Internal Improvement Trust Fund (board), which consists of the Governor and the Cabinet, is responsible for administering, controlling, and managing sovereignty submerged lands.<sup>11</sup> The board is authorized to adopt rules governing all uses of sovereignty submerged lands including rules for anchoring, mooring, or otherwise attaching to the bottom, the establishment of anchorages, the discharge of sewage, pump-out requirements, and facilities associated with anchorages. Such rules must control the use of sovereignty submerged lands as a place of business or residence but are prohibited from interfering with commerce or the transitory operation of vessels through navigable water.<sup>12</sup> Currently, there are no rules regarding the anchoring of vessels.

Section 327.44, F.S., prohibits a person from anchoring a vessel, except in case of emergency, in a manner which unreasonably or unnecessarily constitutes a navigational hazard or interferes with another vessel. Anchoring under bridges or in or adjacent to heavily traveled channels constitutes interference, if unreasonable under the prevailing circumstances.<sup>13</sup> Interference with navigation is a noncriminal infraction, punishable by a civil penalty of \$50.<sup>14</sup>

The FWC and other law enforcement agencies are authorized to relocate or remove a vessel that unreasonably or unnecessarily constitutes a navigational hazard or interferes with another vessel. The FWC or any law enforcement agency the relocates or removes a vessel under these circumstances must be held harmless for all damages to the vessel resulting from the relocation or removal unless the damage results from gross negligence or willful misconduct.<sup>15</sup> The costs to relocate or remove a vessel under these circumstances are recoverable against the vessel owner.<sup>16</sup>

## Local Regulation of the Anchoring or Mooring of Vessels

Local governments are authorized by general permit to construct, operate, and maintain public mooring fields, each for up to 100 vessels.<sup>17</sup> Mooring fields are required to be located where navigational access already exists between the mooring field and the nearest customarily used access channel or navigable waters for which the mooring field is designed to serve. Each mooring field must be associated with a land-based support facility that provides amenities and conveniences, such as parking, bathrooms, showers, and laundry facilities. Major boat repairs and maintenance, fueling activities other than from the land-based support facility, and boat hull scrapping and painting are not authorized within such mooring fields.<sup>18</sup>

Local governments are authorized to enact and enforce ordinances that prohibit or restrict the mooring or anchoring of floating structures or live-aboard vessels within their jurisdictions and

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<sup>11</sup> Section 253.03(7), F.S.

<sup>12</sup> See ch. 18-21, F.A.C.

<sup>13</sup> Section 327.44(2), F.S.

<sup>14</sup> Section 327.73, F.S.

<sup>15</sup> Section 327.44(3), F.S.

<sup>16</sup> Section 327.44(5), F.S.

<sup>17</sup> See s. 373.118, F.S., and Rule 62-330.420(1), F.A.C.

<sup>18</sup> See Rule 62-330.420, F.A.C.

vessels that are within the marked boundaries of permitted mooring fields.<sup>19</sup> However, local governments are prohibited from enacting, continuing in effect, or enforcing any ordinance or local regulation that regulates the anchoring of vessels other than live-aboard vessels outside the marked boundaries of permitted mooring fields.<sup>20</sup>

### **Anchoring and Mooring Pilot Program**

In 2009, the Legislature created the Anchoring and Mooring Pilot Program to explore options for local government to regulate the anchoring and mooring of non-live-aboard vessels outside the marked boundaries of public mooring fields.<sup>21</sup> The pilot program is administered by the FWC in cooperation with the Department of Environmental Preservation (DEP).<sup>22</sup>

The following local governments were selected as participants in the pilot program and are authorized to regulate anchoring and mooring outside the marked boundaries of permitted mooring fields:

- The city of St. Augustine;
- The city of St. Petersburg;
- The city of Sarasota;
- Monroe County in partnership with the cities of Marathon and Key West; and
- Martin County in partnership with the city of Stuart.<sup>23</sup>

The pilot program and the local government ordinances developed under the program are set to expire July 1, 2017, unless reenacted by the Legislature.<sup>24</sup>

### ***FWC Public Survey***

In 2014, the FWC held public meetings to explore options for regulating the anchoring of non-live-aboard vessels outside the marked boundaries of public mooring fields.<sup>25</sup> The results of the meetings led to 6 concepts which contemplated the granting of limited authority to local governments to regulate anchoring within their jurisdiction:

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<sup>19</sup> Section 327.60(3), F.S.; *See* s. 327.02, F.S., which defines the term “floating structure” as a floating entity, with or without accommodations built thereon, which is not primarily used as a means of transportation on water but which serves purposes or provides services typically associated with a structure or other improvement to real property. The term includes an entity used as a residence, place of business, or office with public access; a hotel or motel; a restaurant or lounge; a clubhouse; a meeting facility; a storage or parking facility; or a mining platform, dredge, dragline, or similar facility or entity represented as such.

<sup>20</sup> Section 327.60(2)(f), F.S.; *See* s. 327.02, F.S., which defines the term “live-aboard vessel” as a vessel used solely as a residence and not for navigation; a vessel represented as a place of business or a professional or other commercial enterprise; or a vessel for which a declaration of domicile has been filed. The definition expressly excludes commercial fishing boats.

<sup>21</sup> Chapter 2009-86, s. 48, L.O.F.; the law is codified in s. 327.4105, F.S.

<sup>22</sup> *See* s. 327.4105, F.S., and *supra* note 12.

<sup>23</sup> *Supra* note 12.

<sup>24</sup> Section 327.4105(6), F.S. The pilot program was originally set to expire on July 1, 2014. However, the program was extended, on recommendation of the FWC, to provide more time to fully evaluate each pilot program location. *See* ch. 2014-136, s. 2, F.S.

<sup>25</sup> FWC, *Stakeholder Survey-Anchoring, Executive Summary*, pg. 1 (Jan. 29, 2015) available at <http://myfwc.com/media/2981012/Anchoring-Survey-Executive-Summary.pdf> (last visited Feb. 25, 2016).

1. A setback distance where the anchoring of vessels would be prohibited in the vicinity of public boating access infrastructure, such as boat ramps, hoists, mooring fields and marinas;<sup>26</sup>
2. A setback distance where the anchoring of vessels overnight in close proximity to waterfront residential property would be prohibited;<sup>27</sup>
3. The storing of vessels on the water in deteriorating condition would be prohibited;<sup>28</sup>
4. The timeframe for storing vessels on the water would be limited unless relocated a specified distance away;<sup>29</sup>
5. If authority was granted to local governments to regulate anchoring in their jurisdiction, an allowance could be created for other anchoring regulations where need is demonstrated,<sup>30</sup> and
6. If authority was granted to local governments to regulate anchoring in their jurisdiction, the creation of an online, interactive map to help boat operators know which local areas were covered under local anchoring restrictions.<sup>31</sup>

### III. Effect of Proposed Changes:

**Section 1** creates s. 327.4108, F.S., to designate the following densely populated urban areas, which have narrow state waterways, residential docking facilities, and significant recreational boating traffic and which are located in counties with populations exceeding 1.5 million residents as anchoring limitation areas:

- The section of Middle River lying between Northeast 21st Court and the Intracoastal Waterway in Broward County;
- Sunset Lake in Miami-Dade County;
- The sections of Biscayne Bay in Miami-Dade County lying between:
  - Rivo Alto Island and Di Lido Island;
  - San Marino Island and San Marco Island;
  - San Marco Island and Biscayne Island.

The bill prohibits a person from anchoring a vessel at any time during the period between one-half hour after sunset and one-half hour before sunrise in an anchoring limitation area to promote the public's use and enjoyment of the designated waterways.

The bill authorizes vessels to anchor overnight in an anchoring limitation area under the following circumstances:

- If a vessel suffers a mechanical failure that poses an unreasonable risk of harm to the vessel or persons onboard the vessel unless the vessel anchors:

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<sup>26</sup> *Id.* at pg. 4. Sixty-six percent of respondents somewhat or strongly agreed that this concept was appropriate and 44 percent of respondents identified 150 feet as the most appropriate setback distance.

<sup>27</sup> *Id.* Fifty-one percent of respondents somewhat or strongly agreed that this concept was appropriate and 32 percent of respondents identified 150 feet as the most appropriate setback distance.

<sup>28</sup> *Id.* Eighty-six percent of respondents somewhat or strongly agreed that this concept was appropriate.

<sup>29</sup> *Id.* Sixty-six percent of respondents somewhat or strongly agreed that this concept was appropriate and 31 percent of the respondents identified 60 days as most appropriate.

<sup>30</sup> *Id.* Forty-eight percent of respondents somewhat or strongly agreed that this concept was appropriate.

<sup>31</sup> *Id.* Eighty-eight percent of respondents somewhat or strongly agreed that this concept was appropriate.

- A vessel may anchor for three business days or until the vessel is repaired, whichever occurs first.
- If imminent or existing weather conditions in the vicinity of the vessel pose an unreasonable risk of harm to the vessel or the persons onboard the vessel unless the vessel anchors:
  - A vessel may anchor until weather conditions no longer pose such risk. During a hurricane or a tropical storm, weather conditions are deemed to no longer pose an unreasonable risk of harm when the hurricane or tropical storm warning affecting the area has expired.
- During events described in s. 327.48, F.S., relating to regattas, races, marine parades, tournaments, and exhibitions, or other special events including, but not limited to, public music performances, local government waterfront activities, or fireworks displays:
  - A vessel may anchor for the duration of the special event or for three days, whichever duration is less.

The bill exempts the following vessels:

- Vessels owned or operated by a governmental entity for law enforcement, firefighting, military, or rescue purposes;
- Construction or dredging vessels on an active job site;
- Vessels actively engaged in commercial fishing; and
- Vessels engaged in recreational fishing, if the persons onboard are actively tending hook and line fishing gear or nets.

The bill authorizes a law enforcement officer or agency to remove a vessel from an anchoring limitation area and impound the vessel for up to 48 hours, or cause such removal and impoundment, if the vessel operator, after being issued a citation for a violation:

- Anchors the vessel unlawfully in an anchoring limitation area within 12 hours after being issued the citation; or
- Refuses to leave the anchoring limitation area after being directed to do so by a law enforcement officer or agency.

The bill provides a limitation on liability to a law enforcement officer or agency for any damage to the vessel, other than damage resulting from gross negligence or willful misconduct, resulting from the removal or impoundment of the vessel.

For the purposes of such removal or impoundment, the bill defines the term “law enforcement officer or agency” to mean the following officers or agencies:

- The Division of Law Enforcement of the Fish and Wildlife Conservation Commission and its officers;
- The sheriffs of the various counties and their deputies;
- Municipal police officers; and
- Any other law enforcement officer described in s. 943.10, F.S.<sup>32</sup>

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<sup>32</sup> Section 943.10, F.S., defines the term “law enforcement officer” as any person who is elected, appointed, or employed full time by any municipality or the state or any political subdivision thereof; who is vested with authority to bear arms and make arrests; and whose primary responsibility is the prevention and detection of crime or the enforcement of the penal, criminal, traffic, or highway laws of the state.



The bill provides that contractors performing removal or impoundment services at the direction of a law enforcement officer or agency must:

- Be licensed in accordance with United States Coast Guard regulations, as applicable;
- Obtain and carry a current policy issued by a licensed insurance carrier in this state to insure against any accident, loss, injury, property damage, or other casualty caused by or resulting from the contractor's actions; and
- Be properly equipped to perform such services.

The bill requires the operator of a vessel that is removed and impounded, in addition to a civil penalty, to pay all removal and storage fees before the vessel may be released.

**Section 2** amends s. 327.70, F.S., providing that a violation of s. 327.4108, F.S., relating to the anchoring of vessels in anchoring limitation areas, may be enforced by a uniform boating citation issued to the operator of a vessel unlawfully anchored in an anchoring limitation area.

**Section 3** amends s. 327.73, F.S., to provide the following civil penalties for the unlawful anchoring of vessels in an anchoring limitation area:

- For a first offense, a maximum fine of \$50;
- For a second offense, a maximum fine of \$100; and
- For a third or subsequent offense, a maximum fine of \$250.

The bill is effective July 1, 2016.

#### **IV. Constitutional Issues:**

##### **A. Municipality/County Mandates Restrictions:**

None.

##### **B. Public Records/Open Meetings Issues:**

None.

##### **C. Trust Funds Restrictions:**

None.

##### **D. Other Constitutional Issues:**

Art. III, s. 10 of the Florida Constitution prohibits the Legislature from enacting any special law unless notice is first published or a referendum is conducted. A special law or "local law" relates to or operates upon a particular person, thing, or part of the state; it does not apply with geographic uniformity across the state and bears no reasonable relationship to differences in population or other legitimate criteria.<sup>33</sup> On the other hand, a general law of local application relates to a class of persons or things or subdivisions of

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<sup>33</sup> See *State ex rel. Landis v. Harris*, 163 So. 237, 240 (Fla. 1934); and *Lawnwood Medical Center, Inc. v. Seeger*, 990 So.2d 503 (Fla. 2008).

the state, based upon distinctions or differences that are inherent or particular to the class or location. The Legislature is granted wide discretion in making such classifications.<sup>34</sup> If a particular condition exists in only a portion of the state, enactments that reference the limited geographic area may be general laws.<sup>35</sup> “[I]f a law utilizes a classification that is geographical in its terms but the purpose of the statute is one of statewide importance and impact, and the classification is reasonably related to the law’s purpose, it is a valid general law.”<sup>36</sup>

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Vessel operators that unlawfully anchor a vessel in an anchoring limitation area would be required to pay a civil penalty and may be required to pay vessel removal and storage costs.

C. Government Sector Impact:

The FWC or other law enforcement agencies that monitor anchoring may experience an indeterminate positive fiscal impact resulting from the issuance of boating citations for violations relating to the unlawful anchoring of vessels in an anchoring limitation area. Additionally, the FWC or other law enforcement agencies may experience increased costs as a result of enforcing anchoring in these areas. It is expected that any enforcement costs will be covered within existing resources.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 327.73 and 327.70.

The bill creates section 327.4108 of the Florida Statutes.

<sup>34</sup> *Shelton v. Reeder*, 121 So. 2d 145, 151 (Fla. 1960). *But see also* Art. X, s. 11 of the Florida Constitution.

<sup>35</sup> *Schrader v. Florida Keys Aqueduct Authority*, 840 So.2d 1050, 1055 (Fla. 2003).

<sup>36</sup> *Id.* at 1056.

**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 Environmental Preservation and Conservation on February 17, 2016:**

The CS:

- Designates anchoring limitation areas, rather than recreational boating zones, and provides a limitation to areas that are in densely populated urban areas, which have narrow state waterways, residential docking facilities, and significant boating traffic and are located in counties with populations exceeding 1.5 million residents.
- Removes Crab Island in Okaloosa County as a designated area.
- Authorizes vessels under certain circumstances to anchor overnight in anchoring limitation areas.
- Exempts certain vessels.
- Authorizes law enforcement officers or agencies to remove or cause the removal of vessels from an anchoring limitation area and impound such vessels for up to 48 hours under certain circumstances.
- Provides a limitation on liability for law enforcement officers or agencies that remove or impound a vessel.
- Provides requirements for contractors performing removal or impoundment services.
- Requires a vessel operator to pay all removal and storage fees for removed or impounded vessels.
- Amends s. 327.70, F.S., to authorize violations of s. 327.4108, F.S. to be enforced by a uniform boating citation.
- Increases the penalty for violations for repeat offenders.

- B. **Amendments:**

None.



779014

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
02/29/2016	.	
	.	
	.	
	.	

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The Committee on Fiscal Policy (Abruzzo) recommended the following:

**Senate Amendment**

Between lines 31 and 32

insert:

(d) Lake Boca Raton in Palm Beach County.

By the Committee on Environmental Preservation and Conservation;  
and Senator Simpson

592-03733A-16

20161260c1

A bill to be entitled

An act relating to anchoring limitation areas;  
creating s. 327.4108, F.S.; prohibiting overnight  
anchoring or mooring of vessels in specified anchoring  
limitation areas; providing exceptions; providing for  
the removal and impoundment of vessels under certain  
circumstances; providing penalties; amending s.  
327.70, F.S.; providing for violations to be enforced  
by the issuance of a uniform boating citation;  
amending s. 327.73, F.S.; providing penalties;  
providing an effective date.

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

Section 1. Section 327.4108, Florida Statutes, is created  
to read:

327.4108 Anchoring or mooring of vessels in anchoring  
limitation areas.-

(1) The following densely populated urban areas, which have  
narrow state waterways, residential docking facilities, and  
significant recreational boating traffic and are located in  
counties with populations exceeding 1.5 million residents, are  
designated as anchoring limitation areas:

(a) The section of Middle River lying between Northeast  
21st Court and the Intracoastal Waterway in Broward County.

(b) Sunset Lake in Miami-Dade County.

(c) The sections of Biscayne Bay in Miami-Dade County lying  
between:

1. Rivo Alto Island and Di Lido Island.

2. San Marino Island and San Marco Island.

3. San Marco Island and Biscayne Island.

592-03733A-16

20161260c1

(2) To promote the public's use and enjoyment of the  
designated waterway, except as provided in subsections (3) and  
(4), a person may not anchor a vessel at any time during the  
period between one-half hour after sunset and one-half hour  
before sunrise in an anchorage limitation area.

(3) Notwithstanding subsection (2), a person may anchor a  
vessel in an anchorage limitation area:

(a) If the vessel suffers a mechanical failure that poses  
an unreasonable risk of harm to the vessel or the persons  
onboard unless the vessel anchors. The vessel may anchor for 3  
business days or until the vessel is repaired, whichever occurs  
first.

(b) If imminent or existing weather conditions in the  
vicinity of the vessel pose an unreasonable risk of harm to the  
vessel or the persons onboard unless the vessel anchors. The  
vessel may anchor until weather conditions no longer pose such  
risk. During a hurricane or a tropical storm, weather conditions  
are deemed to no longer pose an unreasonable risk of harm when  
the hurricane or tropical storm warning affecting the area has  
expired.

(c) During events described in s. 327.48 or other special  
events, including, but not limited to, public music  
performances, local government waterfront activities, or  
fireworks displays. A vessel may anchor for the lesser of the  
duration of the special event or for 3 days.

(4) This section does not apply to:

(a) Vessels owned or operated by a governmental entity for  
law enforcement, firefighting, military, or rescue purposes.

(b) Construction or dredging vessels on an active job site.

592-03733A-16

20161260c1

61 (c) Vessels actively engaged in commercial fishing.  
 62 (d) Vessels engaged in recreational fishing, if the persons  
 63 onboard are actively tending hook and line fishing gear or nets.  
 64 (5) (a) As used in this subsection, the term "law  
 65 enforcement officer or agency" means an officer or agency  
 66 authorized to enforce this section pursuant to s. 327.70.  
 67 (b) A law enforcement officer or agency may remove a vessel  
 68 from an anchorage limitation area and impound the vessel for up  
 69 to 48 hours, or cause such removal and impoundment, if the  
 70 vessel operator, after being issued a citation for a violation  
 71 of this section:  
 72 1. Anchors the vessel in violation of this section within  
 73 12 hours after being issued the citation; or  
 74 2. Refuses to leave the anchorage limitation area after  
 75 being directed to do so by a law enforcement officer or agency.  
 76 (c) A law enforcement officer or agency acting under this  
 77 subsection to remove or impound a vessel, or to cause such  
 78 removal or impoundment, shall be held harmless for any damage to  
 79 the vessel resulting from such removal or impoundment unless the  
 80 damage results from gross negligence or willful misconduct.  
 81 (d) A contractor performing removal or impoundment services  
 82 at the direction of a law enforcement officer or agency pursuant  
 83 to this subsection must:  
 84 1. Be licensed in accordance with United States Coast Guard  
 85 regulations, as applicable.  
 86 2. Obtain and carry a current policy issued by a licensed  
 87 insurance carrier in this state to insure against any accident,  
 88 loss, injury, property damage, or other casualty caused by or  
 89 resulting from the contractor's actions.

Page 3 of 5

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

592-03733A-16

20161260c1

90 3. Be properly equipped to perform such services.  
 91 (e) In addition to the civil penalty imposed under s.  
 92 327.73(1) (y), the operator of a vessel that is removed and  
 93 impounded pursuant to paragraph (b) must pay all removal and  
 94 storage fees before the vessel is released. A vessel removed  
 95 pursuant to paragraph (b) may not be impounded for longer than  
 96 48 hours.  
 97 (6) A violation of this section is punishable as provided  
 98 in s. 327.73(1) (y).  
 99 Section 2. Paragraph (c) is added to subsection (2) of  
 100 section 327.70, Florida Statutes, to read:  
 101 327.70 Enforcement of this chapter and chapter 328.-  
 102 (2)  
 103 (c) A noncriminal violation of s. 327.4108 may be enforced  
 104 by a uniform boating citation issued to the operator of a vessel  
 105 unlawfully anchored in an anchoring limitation area.  
 106 Section 3. Paragraph (y) is added to subsection (1) of  
 107 section 327.73, Florida Statutes, to read:  
 108 327.73 Noncriminal infractions.-  
 109 (1) Violations of the following provisions of the vessel  
 110 laws of this state are noncriminal infractions:  
 111 (y) Section 327.4108, relating to the anchoring of vessels  
 112 in anchoring limitation areas, for which the penalty is:  
 113 1. For a first offense, up to a maximum of \$50.  
 114 2. For a second offense, up to a maximum of \$100.  
 115 3. For a third or subsequent offense, up to a maximum of  
 116 \$250.  
 117  
 118 Any person cited for a violation of any provision of this

Page 4 of 5

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

592-03733A-16

20161260c1

119 subsection shall be deemed to be charged with a noncriminal  
120 infraction, shall be cited for such an infraction, and shall be  
121 cited to appear before the county court. The civil penalty for  
122 any such infraction is \$50, except as otherwise provided in this  
123 section. Any person who fails to appear or otherwise properly  
124 respond to a uniform boating citation shall, in addition to the  
125 charge relating to the violation of the boating laws of this  
126 state, be charged with the offense of failing to respond to such  
127 citation and, upon conviction, be guilty of a misdemeanor of the  
128 second degree, punishable as provided in s. 775.082 or s.  
129 775.083. A written warning to this effect shall be provided at  
130 the time such uniform boating citation is issued.

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

132

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/29/16

Meeting Date

CS/SB/260

Bill Number (if applicable)

Topic Recreational Boating Zones

Amendment Barcode (if applicable)

Name Phillip Werndli

Job Title Member, Concerned Cruisers Committee

Address 1028 Apollo Beach Blvd. #3

Phone 850 519 8398

Street

Apollo Beach

City

FL

State

33572

Zip

Email pwerndli@gmail.com

Speaking:  For  Against  Information

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

Representing Seven Seas Cruising Association

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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



THE FLORIDA SENATE

APPEARANCE RECORD

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

2/29/16  
Meeting Date

1260  
Bill Number (if applicable)

Topic Anchoring

Amendment Barcode (if applicable)

Name BONNIE BASHAM

Job Title \_\_\_\_\_

Address 133 OAK ST #15

880  
Phone 933 7277

Street  
Tallahassee FL 32301  
City State Zip

Email \_\_\_\_\_

Speaking:  For  Against  Information

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

Representing BOAT US

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/29/16

Meeting Date

1260

Bill Number (if applicable)

Topic Anchoring Limitation Areas

Amendment Barcode (if applicable)

Name Kelly Mallette

Job Title

Address 104 West Jefferson Street

Phone (850) 224-3427

Street

Tallahassee, FL 32301

Email Kelly@rlbookpa.com

City

State

Zip

Speaking:  For  Against  Information

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

Representing City of Fl. Lauderdale, Concerned Waterfront Homeowners

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

2/29  
Meeting Date

1260  
Bill Number (if applicable)

Topic Limitations on Anchoring

Amendment Barcode (if applicable)

Name Michael Cantens

Job Title \_\_\_\_\_

Address 2000 Ponce de Leon Blvd  
Street  
Coral Gables, FL 33143  
City State Zip

Phone 813-527-1782

Email \_\_\_\_\_

Speaking:  For  Against  Information

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

Representing City of Miami Beach

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

Feb 29, 2016  
Meeting Date

1260  
Bill Number (if applicable)  
779014  
Amendment Barcode (if applicable)

Topic Anchoring (Senator Abruzzo Amendment)

Name DAVID CHILDS

Job Title Counsel

Address 119 S. Monroe St Suite 300  
Street  
Tallahassee FL 32303  
City State Zip

Phone 850 222-7500

Email DAVIDC@HGSLAW.COM

Speaking:  For  Against  Information  
Amendment

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

Representing National Marine Manufacturing Association

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

2-29-16

Meeting Date

1266

Bill Number (if applicable)

779014

Amendment Barcode (if applicable)

Topic Anchoring CAKuzzo Amendment

Name Missy Timmins

Job Title

Address 2910 Kerry Forest Pkwy D4-368

Phone 668-8000

TLH  
City

FL  
State

32909  
Zip

Email

Speaking:  For  Against  Information

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

Representing Marine Industries Assoc. of Palm Beach + Assoc of FIA  
Marine Industries

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

THE FLORIDA SENATE  
**APPEARANCE RECORD**

*Amendment during  
the Meeting*  
SB 12600

7/29/16  
Meeting Date

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

Bill Number (if applicable)

779014?

Amendment Barcode (if applicable)

Topic Anchoring

Name BONNIE BASTAM

Job Title \_\_\_\_\_

Address 133 oat st # 15

Street

Tallahassee, FL 32301

City

State

Zip

Phone 8509337277

Email Capital.Ideas@ATT.net

Speaking:  For  Against  Information

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

Representing Boat US

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

2/29/16  
Meeting Date

CS/SB/260  
Bill Number (if applicable)

Topic Recreational Boating Zones

Amendment  
Amendment Barcode (if applicable)

Name Phillip Weindli

during meeting  
(779014?)

Job Title Member Concerned Cruisers Committee

Address 1028 Apollo Beach Blvd. #3  
Street

Phone 850 519 8398

Apollo Beach FL 33572  
City State Zip

pwerndli@gmail.com  
Email

**Speaking:**  For  Against  Information

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

Representing Seven Seas Cruising Association

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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



## THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

**COMMITTEES:**  
Community Affairs, *Chair*  
Environmental Preservation and Conservation,  
*Vice Chair*  
Appropriations Subcommittee on General Government  
Finance and Tax  
Judiciary  
Transportation

**JOINT COMMITTEE:**  
Joint Legislative Auditing Committee

**SENATOR WILTON SIMPSON**  
18th District

February 28, 2016

The Honorable Anitere Flores  
Senate Fiscal Policy Committee, Chair  
404 South Monroe Street  
Tallahassee, FL 32399

Dear Chair Flores:

Per our conversation, please allow Rachel Perrin Rogers to present Senate Bill 1260 in your committee on Monday afternoon.

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

Sincerely,

A handwritten signature in black ink, appearing to read "Wilton Simpson".

Wilton Simpson, State Senator, 18<sup>th</sup> District

CC: Senate Fiscal Policy Staff

**REPLY TO:**

- 322 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5018
- Post Office Box 938, Brooksville, Florida 34605
- Post Office Box 787, New Port Richey, Florida 34656-0787 (727) 816-1120 FAX: (888) 263-4821

Senate's Website: [www.flsenate.gov](http://www.flsenate.gov)

**ANDY GARDINER**  
President of the Senate

**GARRETT RICHTER**  
President Pro Tempore



**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

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

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Prepared By: The Professional Staff of the Committee on Fiscal Policy

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BILL: PCS/CS/SB 1274 (424308)

INTRODUCER: Fiscal Policy Committee (Recommended by Appropriations Subcommittee on General Government); Banking and Insurance Committee; and Senator Latvala

SUBJECT: Limited Sinkhole Coverage Insurance

DATE: February 26, 2016

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Knudson</u>	<u>Knudson</u>	<u>BI</u>	<u>Fav/CS</u>
2.	<u>Betta</u>	<u>DeLoach</u>	<u>AGG</u>	<u>Recommend: Fav/CS</u>
3.	<u>Pace</u>	<u>Hrdlicka</u>	<u>FP</u>	<u>Pre-meeting</u>

**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

PCS/CS/SB 1274 creates s. 627.7151, F.S., which allows insurers to offer a new type of sinkhole insurance coverage. Limited sinkhole coverage would, as under current law, only provide coverage for “sinkhole loss,” which is structural damage to the covered building, including the foundation, caused by sinkhole activity. Limited sinkhole coverage would also be subject to the statutory requirements for sinkhole insurance in ss. 627.706-627.7074, F.S., with the following exceptions:

- Coverage is only available for personal lines residential insurance;
- Coverage may be limited to repairs to stabilize the building and repair the foundation;
- Deductibles may be in an amount agreed to by the insured and insurer;
- Policy limits may be in an amount agreed to by the insured and insurer, provided policy limits below \$50,000 are not allowed unless that amount exceeds full replacement costs of the property;
- A notice signed by the applicant is required that the applicant has read and understands the coverages of limited sinkhole coverage, including when insuring for less than replacement cost or agreeing to a deductible greater than allowed in s. 627.706(1)(b), F.S.;
- Insurers are allowed to establish limited sinkhole policy forms not subject to filing with and approval by the Office of Insurance Regulation (OIR);
- Until October 1, 2019, insurers may file rates for limited sinkhole coverage that are not subject to the filing and review requirements of s. 627.062(2)(a) and (f), F.S.; and

- Until July 1, 2020, surplus lines agents may export coverage to eligible surplus lines insurers without obtaining three declinations from admitted insurers.

The bill establishes surplus requirements of \$7.5 million for new and existing insurers that solely transact limited sinkhole coverage insurance. Insurers providing limited sinkhole coverage must notify the OIR at least 30 days prior to offering the coverage in the state. Such insurers must file a plan of operation and financial projections or revisions to such plan, as applicable, with the office.

The bill has no fiscal impact on state funds.

## II. Present Situation:

### 2011 Sinkhole Insurance Reforms

From 2006 to 2010 there was a significant increase in the number and cost of sinkhole claims, which impacted the financial stability of property insurers in Florida, including Citizens Property Insurance Corporation (Citizens),<sup>1</sup> and were used by insurers to justify property insurance rate increases.<sup>2</sup> In response, a number of revisions and clarifications were made to ss. 627.706-627.7074, F.S., which govern sinkhole and catastrophic ground cover collapse insurance. The goal of the revisions was to ensure availability of sinkhole loss coverage for homeowners and provide more certainty in sinkhole claims for insurers.

An actuarial analysis showed that the 2011 reforms would reduce Citizens' expected incurred sinkhole losses for 2013 by almost 55 percent. In Citizens' rate filing for 2014, their actuary projected Citizens' sinkhole losses would decrease by over 52 percent relative to what they would have been without the 2011 reforms.<sup>3</sup> The actuary further noted, however, that even with the projected reduction in sinkhole losses, Citizens still has a significant rate deficiency in the sinkhole area. In fact, in 2012, Citizens earned almost \$57 million in sinkhole premium but paid almost \$188 million in sinkhole losses and expenses.

According to data accompanying Citizens 2016 rate filing, in 2014, new sinkhole claim volume was down 68 percent from 2013.<sup>4</sup> This continued a trend of annual reductions in the number of sinkhole claims filed with the corporation. In 2011, over 4,500 sinkhole claims were reported to Citizens. In 2012, that number decreased to approximately 3,100 claims and in 2013 the total

---

<sup>1</sup> Citizens Property Insurance Corporation is a state-created, not-for-profit, tax-exempt governmental entity whose public purpose is to provide property insurance coverage to those unable to find affordable coverage in the voluntary admitted market. It is not a private insurance company. *See* s. 627.351(6), F.S.

<sup>2</sup> OIR, *Report on Review of the 2010 Sinkhole Data Call by the Office of Insurance Regulation*, Nov. 8, 2010, available at [http://www.floir.com/siteDocuments/Sinkholes/2010\\_Sinkhole\\_Data\\_Call\\_Report.pdf](http://www.floir.com/siteDocuments/Sinkholes/2010_Sinkhole_Data_Call_Report.pdf) (last visited Feb. 25, 2016).

<sup>3</sup> Citizens, *2014 Rate Kit*, pg. 4, available at <https://www.citizensfla.com/documents/20702/124817/2014+Rate+Kit.pdf/7564c271-8e83-427d-8cb4-ca41b67a2e57> (last visited Feb. 25, 2016).

<sup>4</sup> Citizens, *2016 Rate Kit*, pg. 10, available at <https://www.citizensfla.com/documents/20702/30286/2016+Rate+Hearing+Kit/479c1ab7-f120-47ca-a158-6f908ff36d1a> (last visited Feb. 25, 2016).

claims received was approximately 1,200.<sup>5</sup> Total incurred losses and allocated loss adjustment expenses have dropped substantially from approximately \$537 million in 2011 to approximately \$83 million in 2014.<sup>6</sup>

### **Insurance for Sinkholes**

A sinkhole is defined as a landform created by subsidence of soil, sediment, or rock as underlying strata are dissolved by groundwater. Sinkholes occur in certain parts of Florida due to the unique geological structure of the land. Sinkholes are formed by movement of rock or sediment into voids created by the dissolution of water-soluble rock.<sup>7</sup>

A sinkhole loss is any structural damage to a covered building, including the foundation, caused by sinkhole activity.<sup>8</sup> There are five distinct types of damage that constitute structural damage for purposes of determining whether a sinkhole loss has occurred.<sup>9</sup> Each type of damage is tied to standards contained in the Florida Building Code or used in the construction industry. Accordingly, in order for a policyholder to obtain policy benefits for sinkhole loss, the insured structure must sustain structural damage that is caused by sinkhole activity.

### ***Coverage for Catastrophic Ground Cover Collapse***

Currently, property insurers are required to cover catastrophic ground cover collapse, rather than all sinkhole loss, in a base property insurance policy.<sup>10</sup> Catastrophic ground cover collapse is more severe than sinkhole loss. Catastrophic ground cover collapse means geological activity that results in all the following:

- The abrupt collapse of the ground cover;
- A depression in the ground cover clearly visible to the naked eye;
- Structural damage to the covered building, including the foundation; and
- The insured structure being condemned and ordered to be vacated by the governmental agency authorized by law to issue such an order for that structure.<sup>11</sup>

Insurers may restrict catastrophic ground cover collapse and sinkhole loss coverage to the principal building as defined in the insurance policy.<sup>12</sup>

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<sup>5</sup> Citizens, *Citizens Property Insurance Corporation Actuarial & Underwriting Committee Recommended Rate Filing Executive Summary*, Jun. 23, 2015, pg. 5, available at [https://www.citizensfla.com/documents/20702/27059/02\\_2016\\_Annual\\_Recommended\\_Rate\\_Filing\\_Exec\\_Summary.pdf/57019cdf-e272-4307-b78e-620883395be0](https://www.citizensfla.com/documents/20702/27059/02_2016_Annual_Recommended_Rate_Filing_Exec_Summary.pdf/57019cdf-e272-4307-b78e-620883395be0) (last visited Feb. 25, 2016).

<sup>6</sup> *Supra* note 4 at pg. 19.

<sup>7</sup> Section 627.706(2)(h), F.S.

<sup>8</sup> Section 627.706(2)(j), F.S. Sinkhole activity is defined as the settlement of systematic weakening of the earth supporting the covered building only if the settlement or systematic weakening results from contemporaneous movement or raveling of soils, sediments, or rock materials into subterranean voids created by the effect of water on a limestone or similar rock formation. Section 627.706(2)(i), F.S.

<sup>9</sup> Section 627.706(2)(k), F.S.

<sup>10</sup> Section 627.706(1)(a), F.S.

<sup>11</sup> Section 627.706(2)(a), F.S.

<sup>12</sup> Section 627.706(1)(c), F.S.

### *Coverage for Sinkhole losses*

Insurers must also offer policyholders, for an appropriate additional premium, sinkhole loss coverage covering any structure, including personal property contents. Such coverage is subject to the insurer's approved underwriting and insurability guidelines and insurers may require a property inspection prior to issuing sinkhole loss coverage.<sup>13</sup>

At a minimum, sinkhole loss coverage includes repairing the covered building, repairing the foundation, and stabilizing the underlying land. All property insurers can restrict catastrophic ground cover collapse and sinkhole loss coverage to the property's principal building. However, Citizens sinkhole loss coverage does not cover sinkhole losses to appurtenant structures, driveways, sidewalks, decks, or patios.

For sinkhole loss coverage in residential property insurance, current law allows insurers to include a deductible that applies only to sinkhole loss in the following amounts: 1 percent, 2 percent, 5 percent, or 10 percent of policy dwelling limits.<sup>14</sup> The insurer has the option to choose which sinkhole loss deductible is offered to policyholders and currently, most insurers, including Citizens, offer policyholders a 10 percent sinkhole loss deductible.

### *Investigation and Payment of Sinkhole Claims*

An insurer must inspect the policyholder's premises to determine if there is structural damage that may be the result of sinkhole activity. Coverage for sinkhole loss is not available if structural damage is not present or sinkhole activity is not the cause of structural damage. The process for payment of a sinkhole claim is as follows:<sup>15</sup>

- The insurer must perform an initial inspection and structural damage to determine if there is structural damage which may be the result of sinkhole activity;
- If the insurer cannot determine a valid cause of the structural damage or discovers that the structural damage is consistent with sinkhole loss, sinkhole testing must be performed by a professional engineer or professional geologist;
- The insurer must send a notice to the policyholder detailing the cause of the damage, a statement of the circumstances under which the insurer must conduct sinkhole testing, of the rights of the policyholder to demand sinkhole testing, and the circumstances under which the policyholder may incur costs associated with testing;
- The insurer may deny a sinkhole claim if a determination is made that there is no sinkhole loss;
- A policyholder may demand sinkhole testing in writing within 60 days after receiving a claim denial if the insurer denied the claim without performing sinkhole testing and coverage would be available if a sinkhole loss is confirmed;<sup>16</sup>
- The insurer must pay a sinkhole claims if a sinkhole loss is verified:
  - The insurer must pay to stabilize the land and building and repair the foundation in accordance with the recommendation of the professional engineer retained by the insurer;

<sup>13</sup> Section 627.706(1)(b), F.S.

<sup>14</sup> Section 627.706(1)(b), F.S.

<sup>15</sup> Section 627.707, F.S.

<sup>16</sup> A policyholder that demands sinkhole testing must pay the insurer 50 percent of the sinkhole testing costs up to \$2,500. If the testing confirms a sinkhole loss the insurer must reimburse the testing costs to the policyholder. *See s. 627.707(4)(b), F.S.*

- Payment for other repairs to the structure and contents are governed by the insurance policy;
- The insurer may limit payment to the actual cash value of the sinkhole loss, not including below ground repairs, until the policyholder enters into a contract for the performance of building stabilization repairs;
- The contract for below ground repairs must be made in accordance with the recommendations set forth in the insurer's sinkhole report issued by a professional engineer and entered into within 90 days after the policyholder receives notice that the insurer has confirmed coverage for sinkhole loss;
- The time period is tolled if either party invokes neutral evaluation;<sup>17</sup>
- If repairs cannot be completed within policy limits, the insurer may either pay to complete the recommended repairs or tender policy limits without a reduction for repair expenses already incurred.<sup>18</sup>

### ***Standards for Sinkhole Testing and Sinkhole Reports***

Sinkhole testing must be performed by a professional engineer and a professional geologist. The tests performed must be sufficient for the professional geologist and professional engineer to determine the presence of a sinkhole loss or other cause of damage and enable the professional engineer to make recommendations regarding necessary building stabilization and foundation repair.<sup>19</sup>

Upon the completion of sinkhole testing, the professional engineer or professional geologist must issue a report and certification to the insurer and the policyholder that details the testing performed, whether structural damage is present, whether sinkhole activity is the cause of the damage, and any recommendations for stabilizing the land and building and making foundation repairs. The findings and recommendations of the insurer's professional engineer or geologist are presumed to be correct. If an insurer pays a claim for sinkhole loss, the insurer must file a copy of the report and certification and other required documentation with the county clerk of court. Once building stabilization or foundation repairs are complete for a verified sinkhole loss, the engineer responsible for monitoring repairs must issue a report to the policyholder detailing the repairs performed and certify that the repairs were performed properly. The report must also be filed with the county clerk of court.<sup>20</sup>

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<sup>17</sup> Section 627.706(2)(b), F.S., defines "neutral evaluation" as alternative dispute resolution process for sinkhole insurance claims. A neutral evaluator is an engineer that determines the cause of the loss, all methods of above and below ground stabilization and repair, the costs for stabilization and all repairs, and issues a report of the findings and recommendations. Neutral evaluation is nonbinding, but the insurer and policyholder must participate if either party requests it. The recommendation of the neutral evaluator and his or her testimony must be admitted in any litigation relating to the insurance claim. *See* s. 627.7074, F.S.

<sup>18</sup> Section 627.707, F.S.

<sup>19</sup> Section 627.7072, F.S.

<sup>20</sup> *See* s. 627.7073, F.S.

## Surplus Requirements

To transact insurance in Florida, insurers must apply for a certificate of authority and meet certain surplus requirements. The surplus requirements for existing insurers are different than the requirements for new insurers.<sup>21</sup> The surplus requirement for current insurers is:

- \$4 million for property and casualty insurers, except for property and casualty insurers authorized to underwrite any line of residential property insurance;
- \$15 million for residential property insurers not holding a certificate of authority before July 1, 2011;
- \$5 million for residential property insurers holding a certificate of authority before July 1, 2011, and until June 30, 2016;
- \$10 million for residential property insurers holding a certificate of authority on or after July 1, 2016, and until June 30, 2021; and
- \$15 million for residential property insurers holding a certificate of authority on or after July 1, 2021.<sup>22</sup>

The surplus requirements for a new domestic insurer that transacts residential property insurance are:

- \$15 million if the insurer is not a wholly owned subsidiary of an insurer domiciled in any other state; and
- \$50 million if the insurer is a wholly owned subsidiary of an insurer domiciled in any other state.<sup>23</sup>

## Rate Filing Requirements

Insurance rates cannot be excessive, inadequate, or unfairly discriminatory.<sup>24</sup> The Office of Insurance Regulation (OIR) is responsible for review and approval or disapproval of insurance rates to ensure compliance with the rate standards.<sup>25</sup>

Insurers must file rates with the OIR pursuant to either the “file and use” or the “use and file” method. Under “file and use,” the insurer files its proposed rate to the OIR at least 90 days before the rate’s effective date but does not implement the rate until it is approved by the OIR. Under

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<sup>21</sup> See ss. 624.407 and 624.408, F.S.

<sup>22</sup> Section 624.408, F.S.

<sup>23</sup> Section 624.407(1)(e), F.S.

<sup>24</sup> Section 627.062(1), F.S. The rating requirements for property, casualty, and surety insurance are located in part I of ch. 627, F.S., entitled the “Rating Law,” and apply to property, casualty, and surety insurance.

<sup>25</sup> Section 627.062(2)(b), F.S. The OIR must determine if the rate is excessive, inadequate, or unfairly discriminatory. In making this determination the OIR must consider the following factors: past and prospective loss experience in Florida and in other jurisdictions; past and prospective expenses; degree of competition to insure the risk; investment income reasonably expected by the insurer; reasonableness of the judgment reflected in the filing; dividends, savings, or unabsorbed premium deposits returned to Florida insureds; adequacy of loss reserves; cost of reinsurance; trend factors, including those for actual losses per insured unit; catastrophe and conflagration hazards, when applicable; projected hurricane losses, if applicable; a reasonable margin for underwriting profit and contingencies; cost of medical services, when applicable; and other relevant factors impacting frequency and severity of claims or expenses.

“use and file,” the insurer may implement the rate before filing for OIR approval, but must submit the filing within 30 days of the rate’s effective date.<sup>26</sup>

### III. Effect of Proposed Changes:

#### Limited Sinkhole Coverage Insurance

The bill creates s. 627.7151, F.S., which allows insurers to offer limited sinkhole coverage insurance, a new type of sinkhole insurance coverage. Limited sinkhole coverage insurance would only provide coverage for the peril of sinkhole loss on any structure or the contents of personal property contained therein. Sinkhole loss is structural damage to the covered building, including the foundation, caused by sinkhole activity.<sup>27</sup> The bill provides that limited sinkhole coverage insurance:

- Is authorized for personal lines residential insurance;
- Is not authorized for commercial lines residential insurance (such as condominium association and homeowners association coverages) or commercial lines nonresidential insurance;
- May exclude coverage for contents and additional living expenses;
- Does not apply to excess coverage over any other insurance covering the peril of sinkhole loss; and
- Is subject to the statutory requirements for sinkhole insurance in ss. 627.706-627.7074, F.S., except as otherwise provided in the bill.

#### *Scope of Benefits Provided*

Currently, insurers are required to pay for building stabilization and foundation repair and other repairs to the structure and contents in accordance with the terms of the policy.<sup>28</sup> The bill limits coverage to repairs to stabilize the building and repair the foundation in accordance with recommendations of a professional engineer retained pursuant to s. 627.707(2), F.S.

Similar to current law in s. 627.707, F.S., the bill requires, if the insurer’s professional engineer determines that the repair cannot be completed within policy limits, the insurer to pay to complete the repairs recommended by the insurer’s professional engineer or tender the policy limits to the policyholder. However, when below-ground sinkhole remediation repairs begin and the engineer selected by the insurer determines that repairs cannot be completed within policy limits, the bill requires the insurer to complete the repairs regardless of the policy limit or tender the full policy limit. The bill does not address whether the insurer must tender the full policy limit without reduction for the repairs already performed, as required in current s. 627.707(5)(c), F.S.

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<sup>26</sup> Section 627.062(2)(a), F.S. Under “use and file,” if a portion of the rate is subsequently found by the OIR to be excessive, the insurer must refund to policyholders the portion of the rate that is excessive.

<sup>27</sup> Section 627.706(2)(j), F.S.

<sup>28</sup> Section 627.707(5), F.S.

### ***Deductibles and Policy Limits***

Currently, sinkhole deductibles may only be 1 percent, 2 percent, 5 percent, or 10 percent of the dwelling policy limits. In addition to these deductibles, limited sinkhole coverage insurance may offer a deductible in any amount agreed to by the insured and insurer.

Limited sinkhole coverage insurance may offer a policy limit in any amount agreed to by the insured and insurer as long as the limit is between \$50,000 and the full replacement cost of the property. A policy limit may be below \$50,000 if that amount exceeds the full replacement costs.

### ***Notice to Policyholders***

The bill requires insurance agent to obtain from an applicant for limited sinkhole coverage insurance a signed acknowledgment that contains the following statement in at least 12-point bold, uppercase type: “BY ACCEPTING THIS LIMITED SINKHOLE COVERAGE INSURANCE POLICY I HAVE READ AND UNDERSTAND THE LIMITATIONS THAT APPLY TO MY POLICY.”

The bill also requires the signed acknowledgment to include specific notices to the policyholder if the policy limit is less than replacement cost or contains a deductible greater than ten percent.

### ***Exemption from Form and Rate Approval***

The bill allows insurers to establish limited sinkhole coverage policy forms, which are not subject to filing and approval by the OIR.

The bill allows insurers to develop rates for limited sinkhole coverage under the OIR’s full filing and rate review process or for rates filed before October 1, 2019, to develop and use rates in accordance with the rates, rating schedules, and rating manuals filed by the insurer that allow for a reasonable rate of return on policies written in Florida.

Under the latter option the insurer’s rates are exempt from the OIR’s full filing and review process. However, these insurers must:

- Notify the OIR of any change to sinkhole insurance rates, within 30 days after the effective date of the rate change and include the average statewide percentage change in rates;
- Maintain actuarial data regarding sinkhole insurance rates for 2 years after the effective date of those rates; and
- Have their rates examined by the OIR to ensure that the rates are not excessive, inadequate, or unfairly discriminatory.<sup>29</sup> The OIR may require the insurer to pay for the examination.

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<sup>29</sup> See ss. 627.062(2)(b) and (e), F.S. During an examination, the OIR uses the rate factors and standards that apply to property, casualty and surety insurance rates filed with the OIR to determine whether the sinkhole insurance rate charged is excessive, inadequate, or unfairly discriminatory. Setting sinkhole rates using this method is similar to what is allowed in current law for flood insurance rates and certain types of commercial lines risks under s. 627.062(3)(d), F.S.



### ***Surplus Lines***

Currently, no insurance coverage is eligible for export to a surplus lines insurer<sup>30</sup> unless it meets certain conditions.<sup>31</sup> One condition is that an agent has sought coverage from and received 3 documented rejections from authorized insurers currently writing the same type of coverage. Until July 1, 2020, the bill allows this new sinkhole coverage for personal lines residential property to be written by a surplus lines insurer without the agent obtaining 3 declinations for insurance from Florida licensed sinkhole insurers. This provision is similar to the language in place for flood insurance regarding surplus lines insurers. However, the other requirements governing the exporting of coverage to the surplus lines continue to apply.

### ***Regulatory Requirements***

Insurers providing limited sinkhole coverage must notify the OIR at least 30 days before writing sinkhole insurance in Florida. Insurers must also file a plan of operation and financial projections or revisions to such plan, as applicable, with the OIR.

### **Surplus Requirements**

The bill amends ss. 624.407 and 624.408, F.S., to reduce the surplus requirement for new and existing insurers that only transact limited sinkhole coverage insurance for personal lines residential property to \$7.5 million.

### **Effective Date**

The bill is effective July 1, 2016.

## **IV. Constitutional Issues:**

### **A. Municipality/County Mandates Restrictions:**

None.

### **B. Public Records/Open Meetings Issues:**

None.

### **C. Trust Funds Restrictions:**

None.

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<sup>30</sup> Section 626.914, F.S., defines “surplus lines insurer” as an unauthorized insurer that has been made eligible by the OIR to write certain property and casualty insurance business when such insurance is not procurable to be written by an authorized insurer. *See also* s. 626.918, F.S.

<sup>31</sup> Under s. 626.915, F.S., surplus lines may be procured subject to the following conditions: the insurance must be eligible for export; the insurer must be an eligible surplus lines insurer; the insurance must be so placed through a licensed Florida surplus lines agent; and other applicable provisions of this surplus lines law must be met. *See also* s. 626.916, F.S.

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

None.

**B. Private Sector Impact:**

The fiscal impact on the private sector is unknown. The limited sinkhole insurance created by the bill may be more readily available in sinkhole-prone areas of the state such as Hillsborough, Pinellas, Pasco, and Hernando counties. If insurers offering this new sinkhole insurance raise deductibles and initiate limits on coverage, policyholders may have lower premiums. However, if a policyholder experienced a sinkhole, the out-of-pocket costs to the policyholder may be higher than if the policyholder currently has existing sinkhole insurance. For policyholders who currently lack sinkhole insurance, the coverage provided by limited sinkhole insurance would reduce out-of-pocket expenses.

**C. Government Sector Impact:**

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 624.407 and 624.408.

This bill creates section 627.7151 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.)

**Recommended CS/CS by Appropriations Subcommittee on General Government on February 24, 2016:**

The committee substitute removes language limiting the assignment of benefits from a policyholder to only a subsequent purchaser of the property who acquires an insurable interest following a loss.

**CS by Banking and Insurance on February 9, 2016:**

- Limited sinkhole coverage is not required to insure the contents of personal property or additional living expenses.
- Removes the requirement that contents of personal property be adjusted at replacement cost and not actual cash value.
- Allows for limited sinkhole coverage to repair and stabilize the building and foundation in accordance with the recommendations of a professional engineer. If repairs cannot be completed within policy limits, the insurer must pay to complete the repairs or tender the policy limits to the policyholder.
- Allows a deductible in an amount agreed to by the insured and insurer.
- Allows policy limits agreed to by the insured and insurer, provided policy limits below \$50,000 are not allowed unless that amount exceeds full replacement costs of the property.
- Requires a signed notice by an applicant that they have read and understand the coverages of limited sinkhole coverage, including when insuring for less than replacement cost or agreeing to a deductible greater than allowed in s. 627.706(1)(b), F.S.
- Allows limited sinkhole insurers to establish their own forms without needing approval by the Office of Insurance Regulation (OIR).
- Removes the prohibition that Citizens must stop writing sinkhole coverage after July 1, 2018.
- Removes the requirement that the Florida Commission on Hurricane Loss Projection Methodology approve sinkhole models.
- Removes an erroneous statement that the Florida Hurricane Catastrophe Fund cannot cover sinkhole loss.

**B. Amendments:**

None.



594-04151-16

Proposed Committee Substitute by the Committee on Fiscal Policy  
(Appropriations Subcommittee on General Government)

A bill to be entitled

An act relating to limited sinkhole coverage insurance; amending s. 624.407, F.S.; specifying the amount of surplus funds required for domestic insurers applying for a certificate of authority to provide limited sinkhole coverage insurance; amending s. 624.408, F.S.; specifying the minimum surplus that must be maintained by insurers that provide limited sinkhole coverage insurance; creating s. 627.7151, F.S.; authorizing certain insurers to offer limited sinkhole coverage insurance in this state; providing applicability; providing a limitation of coverage; authorizing a specified limitation of coverage subject to a certain condition; authorizing certain policy terms; requiring an insurance agent to obtain a specified signed acknowledgement from an applicant before issuing a policy; authorizing insurer forms and exempting forms from approval; authorizing an insurer to establish and use rates in accordance with specified rate standards; requiring an insurer to provide a specified notice of changes to rates within a specified time frame to the Office of Insurance Regulation; requiring an insurer to maintain certain actuarial data for a specified time frame; authorizing the office to require an insurer to incur the costs associated with examining such data; providing factors for the office in determining whether a rate is



594-04151-16

excessive, inadequate, or unfairly discriminatory; authorizing a surplus lines agent to export a contract or endorsement for sinkhole coverage to a surplus lines insurer without meeting certain requirements; requiring the insurer to notify the office before writing sinkhole insurance and to file a plan of operation with the office; providing an effective date.

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

Section 1. Subsection (1) of section 624.407, Florida Statutes, is amended to read:

624.407 Surplus required; new insurers.-

(1) To receive authority to transact any one kind or combinations of kinds of insurance, as defined in part V of this chapter, an insurer applying for its original certificate of authority in this state shall possess surplus as to policyholders at least the greater of:

(a) For a property and casualty insurer, \$5 million, or \$2.5 million for any other insurer;

(b) For life insurers, 4 percent of the insurer's total liabilities;

(c) For life and health insurers, 4 percent of the insurer's total liabilities, plus 6 percent of the insurer's liabilities relative to health insurance;

(d) For all insurers other than life insurers and life and health insurers, 10 percent of the insurer's total liabilities;

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424308

594-04151-16

57 (e) Notwithstanding paragraph (a) or paragraph (d), for a  
58 domestic insurer that transacts residential property insurance  
59 and is:

60 1. Not a wholly owned subsidiary of an insurer domiciled in  
61 any other state, \$15 million.

62 2. A wholly owned subsidiary of an insurer domiciled in any  
63 other state, \$50 million; or

64 (f) Notwithstanding paragraphs (a), (d), and (e), for a  
65 domestic insurer that only transacts limited sinkhole coverage  
66 insurance for personal lines residential property pursuant to s.  
67 627.7151, \$7.5 million.

68 Section 2. Paragraph (h) is added to subsection (1) of  
69 section 624.408, Florida Statutes, to read:

70 624.408 Surplus required; current insurers.-

71 (1) To maintain a certificate of authority to transact any  
72 one kind or combinations of kinds of insurance, as defined in  
73 part V of this chapter, an insurer in this state must at all  
74 times maintain surplus as to policyholders at least the greater  
75 of:

76 (h) Notwithstanding paragraphs (e), (f), and (g), for a  
77 domestic insurer that only transacts limited sinkhole coverage  
78 insurance for personal lines residential property pursuant to s.  
79 627.7151, \$7.5 million.

80  
81 The office may reduce the surplus requirement in paragraphs (f)  
82 and (g) if the insurer is not writing new business, has premiums  
83 in force of less than \$1 million per year in residential  
84 property insurance, or is a mutual insurance company.

85 Section 3. Section 627.7151, Florida Statutes, is created



424308

594-04151-16

86 to read:

87 627.7151 Limited sinkhole coverage insurance.-

88 (1) An authorized insurer may issue, but is not required to  
89 make available, a limited sinkhole coverage insurance policy  
90 providing personal lines residential coverage, subject to  
91 underwriting, for the peril of sinkhole loss on any structure or  
92 the contents of personal property contained therein, subject to  
93 this section and ss. 627.706-627.7074. This section does not  
94 apply to commercial lines residential or commercial lines  
95 nonresidential coverage for the peril of sinkhole loss. This  
96 section also does not apply to coverage for the peril of  
97 sinkhole loss that is excess coverage over any other insurance  
98 covering the peril of sinkhole loss.

99 (2) Limited sinkhole coverage insurance must cover only  
100 losses from the peril of sinkhole loss, as defined in s.  
101 627.706(2)(j); however, such coverage shall not be required to  
102 provide for contents and additional living expenses.

103 (3) Limited sinkhole coverage insurance may:

104 (a) Notwithstanding s. 627.707(5), limit coverage to  
105 repairs to stabilize the building and repair the foundation in  
106 accordance with the recommendations of the professional engineer  
107 retained pursuant to s. 627.707(2). However, if the insurer's  
108 professional engineer determines that the repair cannot be  
109 completed within policy limits, the insurer must pay to complete  
110 the repairs recommended by the insurer's professional engineer  
111 or tender the policy limits to the policyholder.

112 (b) In addition to the deductibles authorized under s.  
113 627.706(1)(b), offer deductibles agreed to by the insured and  
114 insurer.



424308

594-04151-16

115 (c) Offer policy limits agreed to by the insured and  
116 insurer, provided policy limits below \$50,000 are not allowed  
117 unless that amount exceeds full replacement costs of the  
118 property.

119 (4) Before issuing a limited sinkhole coverage insurance  
120 policy under this section, the insurance agent must obtain from  
121 an applicant an acknowledgement signed by the applicant that  
122 includes the following statement in at least 12-point bold,  
123 uppercase type: "BY ACCEPTING THIS LIMITED SINKHOLE COVERAGE  
124 INSURANCE POLICY I HAVE READ AND UNDERSTAND THE LIMITATIONS THAT  
125 MAY APPLY TO MY POLICY." The signed acknowledgment must also  
126 include, in at least 12-point bold, uppercase type, for a  
127 policy:

128 (a) That limits limited sinkhole coverage to an amount less  
129 than the full replacement cost of the property, the following  
130 statement: "THIS POLICY LIMITS SINKHOLE COVERAGE TO LESS THAN  
131 THE FULL COST OF REPLACEMENT FOR THE PROPERTY, WHICH MAY RESULT  
132 IN HIGH OUT-OF-POCKET EXPENSES TO YOU AND MAY PUT YOUR EQUITY IN  
133 THIS PROPERTY AT RISK."

134 (b) That provides for a deductible which exceeds the  
135 deductibles authorized under s. 627.706(1)(b), the following  
136 statement: "THIS POLICY EXCEEDS THE DEDUCTIBLE AMOUNT PERMITTED  
137 FOR OTHER AUTHORIZED SINKHOLE LOSS INSURANCE POLICIES WHICH MAY  
138 RESULT IN HIGH OUT-OF-POCKET EXPENSES TO YOU."

139 (5) An insurer may establish and use limited sinkhole  
140 coverage forms. Limited sinkhole coverage forms are not subject  
141 to filing and approval pursuant to s. 627.410.

142 (6) (a) An insurer may establish and use limited sinkhole  
143 coverage rates in accordance with the rate standards provided in



424308

594-04151-16

144 s. 627.062.

145 (b) For limited sinkhole coverage rates filed with the  
146 office before October 1, 2019, the insurer may also establish  
147 and use such rates in accordance with the rates, rating  
148 schedules, or rating manuals filed by the insurer with the  
149 office which allow the insurer a reasonable rate of return on  
150 limited sinkhole coverage written in this state. Limited  
151 sinkhole coverage rates established pursuant to this paragraph  
152 are not subject to s. 627.062(2)(a) or (f). An insurer shall  
153 notify the office of any change to such rates within 30 days  
154 after the effective date of the change. The notice must include  
155 the name of the insurer and the average statewide percentage  
156 change in rates. Actuarial data with regard to such rates for  
157 limited sinkhole coverage must be maintained by the insurer for  
158 2 years after the effective date of such rate change and is  
159 subject to examination by the office. The office may require the  
160 insurer to incur the costs associated with an examination. Upon  
161 examination, the office, in accordance with generally accepted  
162 and reasonable actuarial techniques, shall consider the rate  
163 factors in s. 627.062(2)(b) and (d), and the standards in s.  
164 627.062(2)(e), to determine whether the rate is excessive,  
165 inadequate, or unfairly discriminatory.

166 (7) A surplus lines agent may export limited sinkhole  
167 coverage insurance to an eligible surplus lines insurer without  
168 satisfying the conditions set forth in s. 626.916(1). This  
169 subsection expires July 1, 2020.

170 (8) In addition to any other applicable requirements, an  
171 insurer providing limited sinkhole coverage in this state must:

172 (a) Notify the office at least 30 days before writing



424308

594-04151-16

173 limited sinkhole coverage insurance in this state.

174 (b) File a plan of operation and financial projections or

175 revisions to such plan, as applicable, with the office.

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

**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.)

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Prepared By: The Professional Staff of the Committee on Fiscal Policy

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BILL: CS/CS/SB 1274

INTRODUCER: Fiscal Policy Committee (Recommended by Appropriations Subcommittee on General Government); Banking and Insurance Committee; and Senator Latvala

SUBJECT: Limited Sinkhole Coverage Insurance

DATE: February 29, 2016

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Knudson</u>	<u>Knudson</u>	<u>BI</u>	<u>Fav/CS</u>
2.	<u>Betta</u>	<u>DeLoach</u>	<u>AGG</u>	<u>Recommend: Fav/CS</u>
3.	<u>Pace</u>	<u>Hrdlicka</u>	<u>FP</u>	<u>Fav/CS</u>

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**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/CS/SB 1274 creates s. 627.7151, F.S., which allows insurers to offer a new type of sinkhole insurance coverage. Limited sinkhole coverage would, as under current law, only provide coverage for “sinkhole loss,” which is structural damage to the covered building, including the foundation, caused by sinkhole activity. Limited sinkhole coverage would also be subject to the statutory requirements for sinkhole insurance in ss. 627.706-627.7074, F.S., with the following exceptions:

- Coverage is only available for personal lines residential insurance;
- Coverage may be limited to repairs to stabilize the building and repair the foundation;
- Deductibles may be in an amount agreed to by the insured and insurer;
- Policy limits may be in an amount agreed to by the insured and insurer, provided policy limits below \$50,000 are not allowed unless that amount exceeds full replacement costs of the property;
- A notice signed by the applicant is required that the applicant has read and understands the coverages of limited sinkhole coverage, including when insuring for less than replacement cost or agreeing to a deductible greater than allowed in s. 627.706(1)(b), F.S.;
- Insurers are allowed to establish limited sinkhole policy forms not subject to filing with and approval by the Office of Insurance Regulation (OIR);
- Until October 1, 2019, insurers may file rates for limited sinkhole coverage that are not subject to the filing and review requirements of s. 627.062(2)(a) and (f), F.S.; and



- Until July 1, 2020, surplus lines agents may export coverage to eligible surplus lines insurers without obtaining three declinations from admitted insurers.

The bill establishes surplus requirements of \$7.5 million for new and existing insurers that solely transact limited sinkhole coverage insurance. Insurers providing limited sinkhole coverage must notify the OIR at least 30 days prior to offering the coverage in the state. Such insurers must file a plan of operation and financial projections or revisions to such plan, as applicable, with the office.

The bill has no fiscal impact on state funds.

## II. Present Situation:

### 2011 Sinkhole Insurance Reforms

From 2006 to 2010 there was a significant increase in the number and cost of sinkhole claims, which impacted the financial stability of property insurers in Florida, including Citizens Property Insurance Corporation (Citizens),<sup>1</sup> and were used by insurers to justify property insurance rate increases.<sup>2</sup> In response, a number of revisions and clarifications were made to ss. 627.706-627.7074, F.S., which govern sinkhole and catastrophic ground cover collapse insurance. The goal of the revisions was to ensure availability of sinkhole loss coverage for homeowners and provide more certainty in sinkhole claims for insurers.

An actuarial analysis showed that the 2011 reforms would reduce Citizens' expected incurred sinkhole losses for 2013 by almost 55 percent. In Citizens' rate filing for 2014, their actuary projected Citizens' sinkhole losses would decrease by over 52 percent relative to what they would have been without the 2011 reforms.<sup>3</sup> The actuary further noted, however, that even with the projected reduction in sinkhole losses, Citizens still has a significant rate deficiency in the sinkhole area. In fact, in 2012, Citizens earned almost \$57 million in sinkhole premium but paid almost \$188 million in sinkhole losses and expenses.

According to data accompanying Citizens 2016 rate filing, in 2014, new sinkhole claim volume was down 68 percent from 2013.<sup>4</sup> This continued a trend of annual reductions in the number of sinkhole claims filed with the corporation. In 2011, over 4,500 sinkhole claims were reported to Citizens. In 2012, that number decreased to approximately 3,100 claims and in 2013 the total

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<sup>1</sup> Citizens Property Insurance Corporation is a state-created, not-for-profit, tax-exempt governmental entity whose public purpose is to provide property insurance coverage to those unable to find affordable coverage in the voluntary admitted market. It is not a private insurance company. See s. 627.351(6), F.S.

<sup>2</sup> OIR, *Report on Review of the 2010 Sinkhole Data Call by the Office of Insurance Regulation*, Nov. 8, 2010, available at [http://www.floir.com/siteDocuments/Sinkholes/2010\\_Sinkhole\\_Data\\_Call\\_Report.pdf](http://www.floir.com/siteDocuments/Sinkholes/2010_Sinkhole_Data_Call_Report.pdf) (last visited Feb. 25, 2016).

<sup>3</sup> Citizens, *2014 Rate Kit*, pg. 4, available at <https://www.citizensfla.com/documents/20702/124817/2014+Rate+Kit.pdf/7564c271-8e83-427d-8cb4-ca41b67a2e57> (last visited Feb. 25, 2016).

<sup>4</sup> Citizens, *2016 Rate Kit*, pg. 10, available at <https://www.citizensfla.com/documents/20702/30286/2016+Rate+Hearing+Kit/479c1ab7-f120-47ca-a158-6f908ff36d1a> (last visited Feb. 25, 2016).

claims received was approximately 1,200.<sup>5</sup> Total incurred losses and allocated loss adjustment expenses have dropped substantially from approximately \$537 million in 2011 to approximately \$83 million in 2014.<sup>6</sup>

### **Insurance for Sinkholes**

A sinkhole is defined as a landform created by subsidence of soil, sediment, or rock as underlying strata are dissolved by groundwater. Sinkholes occur in certain parts of Florida due to the unique geological structure of the land. Sinkholes are formed by movement of rock or sediment into voids created by the dissolution of water-soluble rock.<sup>7</sup>

A sinkhole loss is any structural damage to a covered building, including the foundation, caused by sinkhole activity.<sup>8</sup> There are five distinct types of damage that constitute structural damage for purposes of determining whether a sinkhole loss has occurred.<sup>9</sup> Each type of damage is tied to standards contained in the Florida Building Code or used in the construction industry. Accordingly, in order for a policyholder to obtain policy benefits for sinkhole loss, the insured structure must sustain structural damage that is caused by sinkhole activity.

### ***Coverage for Catastrophic Ground Cover Collapse***

Currently, property insurers are required to cover catastrophic ground cover collapse, rather than all sinkhole loss, in a base property insurance policy.<sup>10</sup> Catastrophic ground cover collapse is more severe than sinkhole loss. Catastrophic ground cover collapse means geological activity that results in all the following:

- The abrupt collapse of the ground cover;
- A depression in the ground cover clearly visible to the naked eye;
- Structural damage to the covered building, including the foundation; and
- The insured structure being condemned and ordered to be vacated by the governmental agency authorized by law to issue such an order for that structure.<sup>11</sup>

Insurers may restrict catastrophic ground cover collapse and sinkhole loss coverage to the principal building as defined in the insurance policy.<sup>12</sup>

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<sup>5</sup> Citizens, *Citizens Property Insurance Corporation Actuarial & Underwriting Committee Recommended Rate Filing Executive Summary*, Jun. 23, 2015, pg. 5, available at [https://www.citizensfla.com/documents/20702/27059/02\\_2016\\_Annual\\_Recommended\\_Rate\\_Filing\\_Exec\\_Summary.pdf/57019cdf-e272-4307-b78e-620883395be0](https://www.citizensfla.com/documents/20702/27059/02_2016_Annual_Recommended_Rate_Filing_Exec_Summary.pdf/57019cdf-e272-4307-b78e-620883395be0) (last visited Feb. 25, 2016).

<sup>6</sup> *Supra* note 4 at pg. 19.

<sup>7</sup> Section 627.706(2)(h), F.S.

<sup>8</sup> Section 627.706(2)(j), F.S. Sinkhole activity is defined as the settlement of systematic weakening of the earth supporting the covered building only if the settlement or systematic weakening results from contemporaneous movement or raveling of soils, sediments, or rock materials into subterranean voids created by the effect of water on a limestone or similar rock formation. Section 627.706(2)(i), F.S.

<sup>9</sup> Section 627.706(2)(k), F.S.

<sup>10</sup> Section 627.706(1)(a), F.S.

<sup>11</sup> Section 627.706(2)(a), F.S.

<sup>12</sup> Section 627.706(1)(c), F.S.

### *Coverage for Sinkhole losses*

Insurers must also offer policyholders, for an appropriate additional premium, sinkhole loss coverage covering any structure, including personal property contents. Such coverage is subject to the insurer's approved underwriting and insurability guidelines and insurers may require a property inspection prior to issuing sinkhole loss coverage.<sup>13</sup>

At a minimum, sinkhole loss coverage includes repairing the covered building, repairing the foundation, and stabilizing the underlying land. All property insurers can restrict catastrophic ground cover collapse and sinkhole loss coverage to the property's principal building. However, Citizens sinkhole loss coverage does not cover sinkhole losses to appurtenant structures, driveways, sidewalks, decks, or patios.

For sinkhole loss coverage in residential property insurance, current law allows insurers to include a deductible that applies only to sinkhole loss in the following amounts: 1 percent, 2 percent, 5 percent, or 10 percent of policy dwelling limits.<sup>14</sup> The insurer has the option to choose which sinkhole loss deductible is offered to policyholders and currently, most insurers, including Citizens, offer policyholders a 10 percent sinkhole loss deductible.

### *Investigation and Payment of Sinkhole Claims*

An insurer must inspect the policyholder's premises to determine if there is structural damage that may be the result of sinkhole activity. Coverage for sinkhole loss is not available if structural damage is not present or sinkhole activity is not the cause of structural damage. The process for payment of a sinkhole claim is as follows:<sup>15</sup>

- The insurer must perform an initial inspection and structural damage to determine if there is structural damage which may be the result of sinkhole activity;
- If the insurer cannot determine a valid cause of the structural damage or discovers that the structural damage is consistent with sinkhole loss, sinkhole testing must be performed by a professional engineer or professional geologist;
- The insurer must send a notice to the policyholder detailing the cause of the damage, a statement of the circumstances under which the insurer must conduct sinkhole testing, of the rights of the policyholder to demand sinkhole testing, and the circumstances under which the policyholder may incur costs associated with testing;
- The insurer may deny a sinkhole claim if a determination is made that there is no sinkhole loss;
- A policyholder may demand sinkhole testing in writing within 60 days after receiving a claim denial if the insurer denied the claim without performing sinkhole testing and coverage would be available if a sinkhole loss is confirmed;<sup>16</sup>
- The insurer must pay a sinkhole claims if a sinkhole loss is verified:
  - The insurer must pay to stabilize the land and building and repair the foundation in accordance with the recommendation of the professional engineer retained by the insurer;

<sup>13</sup> Section 627.706(1)(b), F.S.

<sup>14</sup> Section 627.706(1)(b), F.S.

<sup>15</sup> Section 627.707, F.S.

<sup>16</sup> A policyholder that demands sinkhole testing must pay the insurer 50 percent of the sinkhole testing costs up to \$2,500. If the testing confirms a sinkhole loss the insurer must reimburse the testing costs to the policyholder. *See* s. 627.707(4)(b), F.S.

- Payment for other repairs to the structure and contents are governed by the insurance policy;
- The insurer may limit payment to the actual cash value of the sinkhole loss, not including below ground repairs, until the policyholder enters into a contract for the performance of building stabilization repairs;
- The contract for below ground repairs must be made in accordance with the recommendations set forth in the insurer's sinkhole report issued by a professional engineer and entered into within 90 days after the policyholder receives notice that the insurer has confirmed coverage for sinkhole loss;
- The time period is tolled if either party invokes neutral evaluation;<sup>17</sup>
- If repairs cannot be completed within policy limits, the insurer may either pay to complete the recommended repairs or tender policy limits without a reduction for repair expenses already incurred.<sup>18</sup>

### ***Standards for Sinkhole Testing and Sinkhole Reports***

Sinkhole testing must be performed by a professional engineer and a professional geologist. The tests performed must be sufficient for the professional geologist and professional engineer to determine the presence of a sinkhole loss or other cause of damage and enable the professional engineer to make recommendations regarding necessary building stabilization and foundation repair.<sup>19</sup>

Upon the completion of sinkhole testing, the professional engineer or professional geologist must issue a report and certification to the insurer and the policyholder that details the testing performed, whether structural damage is present, whether sinkhole activity is the cause of the damage, and any recommendations for stabilizing the land and building and making foundation repairs. The findings and recommendations of the insurer's professional engineer or geologist are presumed to be correct. If an insurer pays a claim for sinkhole loss, the insurer must file a copy of the report and certification and other required documentation with the county clerk of court. Once building stabilization or foundation repairs are complete for a verified sinkhole loss, the engineer responsible for monitoring repairs must issue a report to the policyholder detailing the repairs performed and certify that the repairs were performed properly. The report must also be filed with the county clerk of court.<sup>20</sup>

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<sup>17</sup> Section 627.706(2)(b), F.S., defines "neutral evaluation" as alternative dispute resolution process for sinkhole insurance claims. A neutral evaluator is an engineer that determines the cause of the loss, all methods of above and below ground stabilization and repair, the costs for stabilization and all repairs, and issues a report of the findings and recommendations. Neutral evaluation is nonbinding, but the insurer and policyholder must participate if either party requests it. The recommendation of the neutral evaluator and his or her testimony must be admitted in any litigation relating to the insurance claim. *See* s. 627.7074, F.S.

<sup>18</sup> Section 627.707, F.S.

<sup>19</sup> Section 627.7072, F.S.

<sup>20</sup> *See* s. 627.7073, F.S.

## Surplus Requirements

To transact insurance in Florida, insurers must apply for a certificate of authority and meet certain surplus requirements. The surplus requirements for existing insurers are different than the requirements for new insurers.<sup>21</sup> The surplus requirement for current insurers is:

- \$4 million for property and casualty insurers, except for property and casualty insurers authorized to underwrite any line of residential property insurance;
- \$15 million for residential property insurers not holding a certificate of authority before July 1, 2011;
- \$5 million for residential property insurers holding a certificate of authority before July 1, 2011, and until June 30, 2016;
- \$10 million for residential property insurers holding a certificate of authority on or after July 1, 2016, and until June 30, 2021; and
- \$15 million for residential property insurers holding a certificate of authority on or after July 1, 2021.<sup>22</sup>

The surplus requirements for a new domestic insurer that transacts residential property insurance are:

- \$15 million if the insurer is not a wholly owned subsidiary of an insurer domiciled in any other state; and
- \$50 million if the insurer is a wholly owned subsidiary of an insurer domiciled in any other state.<sup>23</sup>

## Rate Filing Requirements

Insurance rates cannot be excessive, inadequate, or unfairly discriminatory.<sup>24</sup> The Office of Insurance Regulation (OIR) is responsible for review and approval or disapproval of insurance rates to ensure compliance with the rate standards.<sup>25</sup>

Insurers must file rates with the OIR pursuant to either the “file and use” or the “use and file” method. Under “file and use,” the insurer files its proposed rate to the OIR at least 90 days before the rate’s effective date but does not implement the rate until it is approved by the OIR. Under

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<sup>21</sup> See ss. 624.407 and 624.408, F.S.

<sup>22</sup> Section 624.408, F.S.

<sup>23</sup> Section 624.407(1)(e), F.S.

<sup>24</sup> Section 627.062(1), F.S. The rating requirements for property, casualty, and surety insurance are located in part I of ch. 627, F.S., entitled the “Rating Law,” and apply to property, casualty, and surety insurance.

<sup>25</sup> Section 627.062(2)(b), F.S. The OIR must determine if the rate is excessive, inadequate, or unfairly discriminatory. In making this determination the OIR must consider the following factors: past and prospective loss experience in Florida and in other jurisdictions; past and prospective expenses; degree of competition to insure the risk; investment income reasonably expected by the insurer; reasonableness of the judgment reflected in the filing; dividends, savings, or unabsorbed premium deposits returned to Florida insureds; adequacy of loss reserves; cost of reinsurance; trend factors, including those for actual losses per insured unit; catastrophe and conflagration hazards, when applicable; projected hurricane losses, if applicable; a reasonable margin for underwriting profit and contingencies; cost of medical services, when applicable; and other relevant factors impacting frequency and severity of claims or expenses.

“use and file,” the insurer may implement the rate before filing for OIR approval, but must submit the filing within 30 days of the rate’s effective date.<sup>26</sup>

### III. Effect of Proposed Changes:

#### Limited Sinkhole Coverage Insurance

The bill creates s. 627.7151, F.S., which allows insurers to offer limited sinkhole coverage insurance, a new type of sinkhole insurance coverage. Limited sinkhole coverage insurance would only provide coverage for the peril of sinkhole loss on any structure or the contents of personal property contained therein. Sinkhole loss is structural damage to the covered building, including the foundation, caused by sinkhole activity.<sup>27</sup> The bill provides that limited sinkhole coverage insurance:

- Is authorized for personal lines residential insurance;
- Is not authorized for commercial lines residential insurance (such as condominium association and homeowners association coverages) or commercial lines nonresidential insurance;
- May exclude coverage for contents and additional living expenses;
- Does not apply to excess coverage over any other insurance covering the peril of sinkhole loss; and
- Is subject to the statutory requirements for sinkhole insurance in ss. 627.706-627.7074, F.S., except as otherwise provided in the bill.

#### *Scope of Benefits Provided*

Currently, insurers are required to pay for building stabilization and foundation repair and other repairs to the structure and contents in accordance with the terms of the policy.<sup>28</sup> The bill limits coverage to repairs to stabilize the building and repair the foundation in accordance with recommendations of a professional engineer retained pursuant to s. 627.707(2), F.S.

Similar to current law in s. 627.707, F.S., the bill requires, if the insurer’s professional engineer determines that the repair cannot be completed within policy limits, the insurer to pay to complete the repairs recommended by the insurer’s professional engineer or tender the policy limits to the policyholder. However, when below-ground sinkhole remediation repairs begin and the engineer selected by the insurer determines that repairs cannot be completed within policy limits, the bill requires the insurer to complete the repairs regardless of the policy limit or tender the full policy limit. The bill does not address whether the insurer must tender the full policy limit without reduction for the repairs already performed, as required in current s. 627.707(5)(c), F.S.

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<sup>26</sup> Section 627.062(2)(a), F.S. Under “use and file,” if a portion of the rate is subsequently found by the OIR to be excessive, the insurer must refund to policyholders the portion of the rate that is excessive.

<sup>27</sup> Section 627.706(2)(j), F.S.

<sup>28</sup> Section 627.707(5), F.S.

### ***Deductibles and Policy Limits***

Currently, sinkhole deductibles may only be 1 percent, 2 percent, 5 percent, or 10 percent of the dwelling policy limits. In addition to these deductibles, limited sinkhole coverage insurance may offer a deductible in any amount agreed to by the insured and insurer.

Limited sinkhole coverage insurance may offer a policy limit in any amount agreed to by the insured and insurer as long as the limit is between \$50,000 and the full replacement cost of the property. A policy limit may be below \$50,000 if that amount exceeds the full replacement costs.

### ***Notice to Policyholders***

The bill requires insurance agent to obtain from an applicant for limited sinkhole coverage insurance a signed acknowledgment that contains the following statement in at least 12-point bold, uppercase type: “BY ACCEPTING THIS LIMITED SINKHOLE COVERAGE INSURANCE POLICY I HAVE READ AND UNDERSTAND THE LIMITATIONS THAT APPLY TO MY POLICY.”

The bill also requires the signed acknowledgment to include specific notices to the policyholder if the policy limit is less than replacement cost or contains a deductible greater than ten percent.

### ***Exemption from Form and Rate Approval***

The bill allows insurers to establish limited sinkhole coverage policy forms, which are not subject to filing and approval by the OIR.

The bill allows insurers to develop rates for limited sinkhole coverage under the OIR’s full filing and rate review process or for rates filed before October 1, 2019, to develop and use rates in accordance with the rates, rating schedules, and rating manuals filed by the insurer that allow for a reasonable rate of return on policies written in Florida.

Under the latter option the insurer’s rates are exempt from the OIR’s full filing and review process. However, these insurers must:

- Notify the OIR of any change to sinkhole insurance rates, within 30 days after the effective date of the rate change and include the average statewide percentage change in rates;
- Maintain actuarial data regarding sinkhole insurance rates for 2 years after the effective date of those rates; and
- Have their rates examined by the OIR to ensure that the rates are not excessive, inadequate, or unfairly discriminatory.<sup>29</sup> The OIR may require the insurer to pay for the examination.

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<sup>29</sup> See ss. 627.062(2)(b) and (e), F.S. During an examination, the OIR uses the rate factors and standards that apply to property, casualty and surety insurance rates filed with the OIR to determine whether the sinkhole insurance rate charged is excessive, inadequate, or unfairly discriminatory. Setting sinkhole rates using this method is similar to what is allowed in current law for flood insurance rates and certain types of commercial lines risks under s. 627.062(3)(d), F.S.

### ***Surplus Lines***

Currently, no insurance coverage is eligible for export to a surplus lines insurer<sup>30</sup> unless it meets certain conditions.<sup>31</sup> One condition is that an agent has sought coverage from and received 3 documented rejections from authorized insurers currently writing the same type of coverage. Until July 1, 2020, the bill allows this new sinkhole coverage for personal lines residential property to be written by a surplus lines insurer without the agent obtaining 3 declinations for insurance from Florida licensed sinkhole insurers. This provision is similar to the language in place for flood insurance regarding surplus lines insurers. However, the other requirements governing the exporting of coverage to the surplus lines continue to apply.

### ***Regulatory Requirements***

Insurers providing limited sinkhole coverage must notify the OIR at least 30 days before writing sinkhole insurance in Florida. Insurers must also file a plan of operation and financial projections or revisions to such plan, as applicable, with the OIR.

### **Surplus Requirements**

The bill amends ss. 624.407 and 624.408, F.S., to reduce the surplus requirement for new and existing insurers that only transact limited sinkhole coverage insurance for personal lines residential property to \$7.5 million.

### **Effective Date**

The bill is effective July 1, 2016.

## **IV. Constitutional Issues:**

### **A. Municipality/County Mandates Restrictions:**

None.

### **B. Public Records/Open Meetings Issues:**

None.

### **C. Trust Funds Restrictions:**

None.

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<sup>30</sup> Section 626.914, F.S., defines “surplus lines insurer” as an unauthorized insurer that has been made eligible by the OIR to write certain property and casualty insurance business when such insurance is not procurable to be written by an authorized insurer. *See also* s. 626.918, F.S.

<sup>31</sup> Under s. 626.915, F.S., surplus lines may be procured subject to the following conditions: the insurance must be eligible for export; the insurer must be an eligible surplus lines insurer; the insurance must be so placed through a licensed Florida surplus lines agent; and other applicable provisions of this surplus lines law must be met. *See also* s. 626.916, F.S.



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

None.

**B. Private Sector Impact:**

The fiscal impact on the private sector is unknown. The limited sinkhole insurance created by the bill may be more readily available in sinkhole-prone areas of the state such as Hillsborough, Pinellas, Pasco, and Hernando counties. If insurers offering this new sinkhole insurance raise deductibles and initiate limits on coverage, policyholders may have lower premiums. However, if a policyholder experienced a sinkhole, the out-of-pocket costs to the policyholder may be higher than if the policyholder currently has existing sinkhole insurance. For policyholders who currently lack sinkhole insurance, the coverage provided by limited sinkhole insurance would reduce out-of-pocket expenses.

**C. Government Sector Impact:**

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 624.407 and 624.408.

This bill creates section 627.7151 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/CS by Fiscal Policy on February 29, 2016:**

As recommended by the Appropriations Subcommittee on General Government the committee substitute removes language limiting the assignment of benefits from a policyholder to only a subsequent purchaser of the property who acquires an insurable interest following a loss.

**CS by Banking and Insurance on February 9, 2016:**

- Limited sinkhole coverage is not required to insure the contents of personal property or additional living expenses.
- Removes the requirement that contents of personal property be adjusted at replacement cost and not actual cash value.
- Allows for limited sinkhole coverage to repair and stabilize the building and foundation in accordance with the recommendations of a professional engineer. If repairs cannot be completed within policy limits, the insurer must pay to complete the repairs or tender the policy limits to the policyholder.
- Allows a deductible in an amount agreed to by the insured and insurer.
- Allows policy limits agreed to by the insured and insurer, provided policy limits below \$50,000 are not allowed unless that amount exceeds full replacement costs of the property.
- Requires a signed notice by an applicant that they have read and understand the coverages of limited sinkhole coverage, including when insuring for less than replacement cost or agreeing to a deductible greater than allowed in s. 627.706(1)(b), F.S.
- Allows limited sinkhole insurers to establish their own forms without needing approval by the Office of Insurance Regulation (OIR).
- Removes the prohibition that Citizens must stop writing sinkhole coverage after July 1, 2018.
- Removes the requirement that the Florida Commission on Hurricane Loss Projection Methodology approve sinkhole models.
- Removes an erroneous statement that the Florida Hurricane Catastrophe Fund cannot cover sinkhole loss.

**B. Amendments:**

None.

By the Committee on Banking and Insurance; and Senator Latvala

597-03221-16

20161274c1

1 A bill to be entitled  
 2 An act relating to limited sinkhole coverage  
 3 insurance; amending s. 624.407, F.S.; specifying the  
 4 amount of surplus funds required for domestic insurers  
 5 applying for a certificate of authority to provide  
 6 limited sinkhole coverage insurance; amending s.  
 7 624.408, F.S.; specifying the minimum surplus that  
 8 must be maintained by insurers that provide limited  
 9 sinkhole coverage insurance; creating s. 627.7151,  
 10 F.S.; authorizing certain insurers to offer limited  
 11 sinkhole coverage insurance in this state; providing  
 12 applicability; providing a limitation of coverage;  
 13 authorizing a specified limitation of coverage subject  
 14 to a certain condition; authorizing certain policy  
 15 terms; requiring an insurance agent to obtain a  
 16 specified signed acknowledgement from an applicant  
 17 before issuing a policy; authorizing insurer forms and  
 18 exempting forms from approval; authorizing an insurer  
 19 to establish and use rates in accordance with  
 20 specified rate standards; requiring an insurer to  
 21 provide a specified notice of changes to rates within  
 22 a specified time frame to the Office of Insurance  
 23 Regulation; requiring an insurer to maintain certain  
 24 actuarial data for a specified time frame; authorizing  
 25 the office to require an insurer to incur the costs  
 26 associated with examining such data; providing factors  
 27 for the office in determining whether a rate is  
 28 excessive, inadequate, or unfairly discriminatory;  
 29 authorizing a surplus lines agent to export a contract  
 30 or endorsement for sinkhole coverage to a surplus  
 31 lines insurer without meeting certain requirements;  
 32 requiring the insurer to notify the office before

Page 1 of 7

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

597-03221-16

20161274c1

33 writing sinkhole insurance and to file a plan of  
 34 operation with the office; prohibiting assignments of  
 35 post-loss claims; providing an exception; providing an  
 36 effective date.

37  
 38 Be It Enacted by the Legislature of the State of Florida:

39  
 40 Section 1. Subsection (1) of section 624.407, Florida  
 41 Statutes, is amended to read:

42 624.407 Surplus required; new insurers.—

43 (1) To receive authority to transact any one kind or  
 44 combinations of kinds of insurance, as defined in part V of this  
 45 chapter, an insurer applying for its original certificate of  
 46 authority in this state shall possess surplus as to  
 47 policyholders at least the greater of:

48 (a) For a property and casualty insurer, \$5 million, or  
 49 \$2.5 million for any other insurer;

50 (b) For life insurers, 4 percent of the insurer's total  
 51 liabilities;

52 (c) For life and health insurers, 4 percent of the  
 53 insurer's total liabilities, plus 6 percent of the insurer's  
 54 liabilities relative to health insurance;

55 (d) For all insurers other than life insurers and life and  
 56 health insurers, 10 percent of the insurer's total liabilities;

57 ~~or~~

58 (e) Notwithstanding paragraph (a) or paragraph (d), for a  
 59 domestic insurer that transacts residential property insurance  
 60 and is:

61 1. Not a wholly owned subsidiary of an insurer domiciled in

Page 2 of 7

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

597-03221-16

20161274c1

62 any other state, \$15 million.

63 2. A wholly owned subsidiary of an insurer domiciled in any  
64 other state, \$50 million; or

65 (f) Notwithstanding paragraphs (a), (d), and (e), for a  
66 domestic insurer that only transacts limited sinkhole coverage  
67 insurance for personal lines residential property pursuant to s.  
68 627.7151, \$7.5 million.

69 Section 2. Paragraph (h) is added to subsection (1) of  
70 section 624.408, Florida Statutes, to read:

71 624.408 Surplus required; current insurers.-

72 (1) To maintain a certificate of authority to transact any  
73 one kind or combinations of kinds of insurance, as defined in  
74 part V of this chapter, an insurer in this state must at all  
75 times maintain surplus as to policyholders at least the greater  
76 of:

77 (h) Notwithstanding paragraphs (e), (f), and (g), for a  
78 domestic insurer that only transacts limited sinkhole coverage  
79 insurance for personal lines residential property pursuant to s.  
80 627.7151, \$7.5 million.

81  
82 The office may reduce the surplus requirement in paragraphs (f)  
83 and (g) if the insurer is not writing new business, has premiums  
84 in force of less than \$1 million per year in residential  
85 property insurance, or is a mutual insurance company.

86 Section 3. Section 627.7151, Florida Statutes, is created  
87 to read:

88 627.7151 Limited sinkhole coverage insurance.-

89 (1) An authorized insurer may issue, but is not required to  
90 make available, a limited sinkhole coverage insurance policy

597-03221-16

20161274c1

91 providing personal lines residential coverage, subject to  
92 underwriting, for the peril of sinkhole loss on any structure or  
93 the contents of personal property contained therein, subject to  
94 this section and ss. 627.706-627.7074. This section does not  
95 apply to commercial lines residential or commercial lines  
96 nonresidential coverage for the peril of sinkhole loss. This  
97 section also does not apply to coverage for the peril of  
98 sinkhole loss that is excess coverage over any other insurance  
99 covering the peril of sinkhole loss.

100 (2) Limited sinkhole coverage insurance must cover only  
101 losses from the peril of sinkhole loss, as defined in s.  
102 627.706(2)(j); however, such coverage shall not be required to  
103 provide for contents and additional living expenses.

104 (3) Limited sinkhole coverage insurance may:

105 (a) Notwithstanding s. 627.707(5), limit coverage to  
106 repairs to stabilize the building and repair the foundation in  
107 accordance with the recommendations of the professional engineer  
108 retained pursuant to s. 627.707(2). However, if the insurer's  
109 professional engineer determines that the repair cannot be  
110 completed within policy limits, the insurer must pay to complete  
111 the repairs recommended by the insurer's professional engineer  
112 or tender the policy limits to the policyholder.

113 (b) In addition to the deductibles authorized under s.  
114 627.706(1)(b), offer deductibles agreed to by the insured and  
115 insurer.

116 (c) Offer policy limits agreed to by the insured and  
117 insurer, provided policy limits below \$50,000 are not allowed  
118 unless that amount exceeds full replacement costs of the  
119 property.

597-03221-16

20161274c1

120 (4) Before issuing a limited sinkhole coverage insurance  
 121 policy under this section, the insurance agent must obtain from  
 122 an applicant an acknowledgement signed by the applicant that  
 123 includes the following statement in at least 12-point bold,  
 124 uppercase type: "BY ACCEPTING THIS LIMITED SINKHOLE COVERAGE  
 125 INSURANCE POLICY I HAVE READ AND UNDERSTAND THE LIMITATIONS THAT  
 126 MAY APPLY TO MY POLICY." The signed acknowledgment must also  
 127 include, in at least 12-point bold, uppercase type, for a  
 128 policy:

129 (a) That limits limited sinkhole coverage to an amount less  
 130 than the full replacement cost of the property, the following  
 131 statement: "THIS POLICY LIMITS SINKHOLE COVERAGE TO LESS THAN  
 132 THE FULL COST OF REPLACEMENT FOR THE PROPERTY, WHICH MAY RESULT  
 133 IN HIGH OUT-OF-POCKET EXPENSES TO YOU AND MAY PUT YOUR EQUITY IN  
 134 THIS PROPERTY AT RISK."

135 (b) That provides for a deductible which exceeds the  
 136 deductibles authorized under s. 627.706(1)(b), the following  
 137 statement: "THIS POLICY EXCEEDS THE DEDUCTIBLE AMOUNT PERMITTED  
 138 FOR OTHER AUTHORIZED SINKHOLE LOSS INSURANCE POLICIES WHICH MAY  
 139 RESULT IN HIGH OUT-OF-POCKET EXPENSES TO YOU."

140 (5) An insurer may establish and use limited sinkhole  
 141 coverage forms. Limited sinkhole coverage forms are not subject  
 142 to filing and approval pursuant to s. 627.410.

143 (6) (a) An insurer may establish and use limited sinkhole  
 144 coverage rates in accordance with the rate standards provided in  
 145 s. 627.062.

146 (b) For limited sinkhole coverage rates filed with the  
 147 office before October 1, 2019, the insurer may also establish  
 148 and use such rates in accordance with the rates, rating

597-03221-16

20161274c1

149 schedules, or rating manuals filed by the insurer with the  
 150 office which allow the insurer a reasonable rate of return on  
 151 limited sinkhole coverage written in this state. Limited  
 152 sinkhole coverage rates established pursuant to this paragraph  
 153 are not subject to s. 627.062(2)(a) or (f). An insurer shall  
 154 notify the office of any change to such rates within 30 days  
 155 after the effective date of the change. The notice must include  
 156 the name of the insurer and the average statewide percentage  
 157 change in rates. Actuarial data with regard to such rates for  
 158 limited sinkhole coverage must be maintained by the insurer for  
 159 2 years after the effective date of such rate change and is  
 160 subject to examination by the office. The office may require the  
 161 insurer to incur the costs associated with an examination. Upon  
 162 examination, the office, in accordance with generally accepted  
 163 and reasonable actuarial techniques, shall consider the rate  
 164 factors in s. 627.062(2)(b) and (d), and the standards in s.  
 165 627.062(2)(e), to determine whether the rate is excessive,  
 166 inadequate, or unfairly discriminatory.

167 (7) A surplus lines agent may export limited sinkhole  
 168 coverage insurance to an eligible surplus lines insurer without  
 169 satisfying the conditions set forth in s. 626.916(1). This  
 170 subsection expires July 1, 2020.

171 (8) In addition to any other applicable requirements, an  
 172 insurer providing limited sinkhole coverage in this state must:

173 (a) Notify the office at least 30 days before writing  
 174 limited sinkhole coverage insurance in this state.

175 (b) File a plan of operation and financial projections or  
 176 revisions to such plan, as applicable, with the office.

177 (9) A policyholder of a limited sinkhole coverage insurance

597-03221-16

20161274c1

178 policy authorized by this section who incurs a covered loss may  
179 not assign a post-loss claim except to a subsequent purchaser of  
180 the property who acquires insurable interest following a loss.

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

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

2/29/16

Meeting Date

1274

Bill Number (if applicable)

Topic Sinkhole

Amendment Barcode (if applicable)

Name Caitlin Murray

Job Title Director of Government Affairs

Address \_\_\_\_\_  
Street

Phone \_\_\_\_\_

City

State

Zip

Email \_\_\_\_\_

Speaking:  For  Against  Information

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

Representing Office of Insurance Regulation

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

S-001 (10/14/14)

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

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

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Prepared By: The Professional Staff of the Committee on Fiscal Policy

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BILL: CS/SB 1294

INTRODUCER: Fiscal Policy Committee and Senators Flores and Grimsley

SUBJECT: Offenses Involving Minors and Vulnerable Persons

DATE: March 1, 2016

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Cellon</u>	<u>Cannon</u>	<u>CJ</u>	<b>Favorable</b>
2.	<u>Brown</u>	<u>Cibula</u>	<u>JU</u>	<b>Favorable</b>
3.	<u>Jones</u>	<u>Hrdlicka</u>	<u>FP</u>	<b>Fav/CS</b>

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**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 1294 increases protections for minors and victims of human trafficking. Specifically the bill:

- Increases the eligible age of a child victim or witness who may have his or her testimony videotaped or who may testify by closed circuit television from under 16 years of age to under 18 years of age;
- Increases the age of under 16 to under 18 to extend the protections of court orders intended to protect a victim or witness from severe emotional or mental harm due to the presence of the defendant and in the definition of “sexual offense victim or witness;”
- Allows a person appointed by the court pursuant to s. 914.17, F.S., to make a motion to the court to enter a protective order on behalf of the victim or witness;
- Requires a defendant who is convicted or pleads guilty to a crime of domestic violence to complete a parenting course if the domestic violence was committed on or in the presence of a child;
- Increases the minimum term of imprisonment for a domestic violence crime when there is intentional bodily harm to another person, from 5 days in jail to 30 days;
- Specifies that a court may not withhold adjudication of guilt on a third degree felony offense of domestic violence unless the state attorney requests that adjudication be withheld or the court makes written findings justifying the withholding of adjudication;
- Increases the penalties when a person causes great bodily harm, permanent disability, or permanent disfigurement to another person from a second degree felony to a first degree felony; and a first degree felony to a life felony;



- Clarifies that it is a second-degree felony if a person permanently brands or directs another to permanently brand another *for the purpose of committing a human trafficking offense*;
- Eliminates a potential defense to human trafficking crimes by specifying that a victim's lack of chastity or the willingness or consent of a victim is not a defense to prosecution if the victim is under 18 years of age at the time of the offense;
- Amends the felony murder law to include the crime of human trafficking as a qualifying felony for the charge of felony murder; and
- Amends the Rape Shield Law include prosecutions for human trafficking and lewd or lascivious offenses in which the admission of certain evidence about the victim is limited.

The bill has a fiscal impact on both the private sector and state government. See Section V. Fiscal Impact Statement.

The bill is effective July 1, 2016.

## II. Present Situation:

### Victim or Witness Testimony by Closed Circuit Television

#### *Case Law*

The Sixth Amendment to the U.S. Constitution provides, in part: “[i]n all criminal prosecutions, the accused shall enjoy the right . . . to be confronted with the witnesses against him . . . .” In addition to ensuring the defendant the opportunity to cross-examine an adverse witness, the Sixth Amendment serves another role “of compelling [a witness] to stand face to face with the jury in order that they may look at him, and judge by his demeanor upon the stand and the manner in which he gives his testimony whether he is worthy of belief.”<sup>1</sup>

Courts have grappled in recent years with the Sixth Amendment right of confrontation in cases in which the testimony of child victims or witnesses is proffered in court. Children of abuse have been considered to be especially vulnerable to harm resulting from testifying in court before an abuser. In addressing the growing concern of the emotional harm to a child victim from testifying in court, many states have authorized the court to allow alternative measures of in-court testimony by a child victim.

In the 1988 United States Supreme Court case of *Coy v. Iowa*, the court reviewed a case in which the state tried a defendant for child sexual abuse.<sup>2</sup> The trial court allowed two child victims to testify in court from behind a screen, in accordance with state statute. The testimony ultimately led to the conviction of the defendant.<sup>3</sup> In ruling that the court unconstitutionally interfered with the defendant's right to confront the witnesses against him, the Court opined, “It is difficult to imagine a more obvious or damaging violation of the defendant's right to a face-to-face encounter.”<sup>4</sup>

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<sup>1</sup> *Mattox v. U.S.*, 156 U.S. 237, 242-243 (1895).

<sup>2</sup> *Coy v. Iowa*, 487 U.S. 1012 (1988).

<sup>3</sup> *Id.* at 1014.

<sup>4</sup> *Id.* at 1020.

In 1990, the United States Supreme Court took a more flexible approach in applying the Sixth Amendment testimony by child victims. In *Maryland v. Craig*, the Court started its analysis from the proposition that the constitutional right to confrontation is not an absolute right or one which requires a defendant to always have a face-to-face meeting with an adverse witness.<sup>5</sup> Rather, the court held, the purpose of the confrontation clause is to ensure that testimony is reliable and subject to rigorous adversarial testing.<sup>6</sup> The Court established a three-prong test to determine the necessity of allowing a child to testify in an alternative manner to traditional in-court direct and cross-examination. The court must find:

- That allowing the child to testify in an alternative manner is necessary to protect the welfare of the child;
- That the child would be traumatized by the presence of the defendant; and
- The emotional distress suffered by the child in the presence of the defendant is more than minimal.<sup>7</sup>

### ***Florida Law***

Florida allows testimony by closed circuit television in limited circumstances by child victims or witnesses and persons with intellectual disabilities. Section 92.54, F.S., requires the court to have a hearing to determine whether testimony may be proffered through closed circuit television. At the hearing the court must find that there is a substantial likelihood that a victim or witness under the age of 16 or who has an intellectual disability will suffer at least moderate emotional or mental harm due to the presence of the defendant if he or she is required to testify in open court.<sup>8</sup>

To initiate the hearing, a motion may be filed by the victim or witness; the attorney, parent, legal guardian, or guardian ad litem for the victim or witness; the prosecutor; the defendant or the defendant's counsel; or the trial judge.<sup>9</sup>

During the victim's or witness's testimony by closed circuit television, the court may require the defendant to view the testimony from the courtroom. If so, the court must authorize the defendant to see and hear the testimony of the victim or witness, while ensuring that the victim or witness does not hear or see the defendant.<sup>10</sup>

The same test is required for the admissibility of videotaped testimony of a victim or witness under the age of 16 or who has an intellectual disability.<sup>11</sup>

### **Domestic Violence**

Domestic violence is any assault or aggravated assault, battery or aggravated battery, sexual assault, sexual battery, stalking, aggravated stalking, kidnapping, false imprisonment, or any

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<sup>5</sup>*Maryland v. Craig*, 497 U.S. 836, 844 (1990). The Court indicated that it intended to expand upon, rather than overrule its decision in *Coy* regarding the application of the Sixth Amendment to child victim testimony. In fact, the Court in *Craig* cited *Coy* for stating, "We leave for another day, however, the question whether any exceptions exist." *Supra* note 2, at 1021.

<sup>6</sup> *Id.* at 846.

<sup>7</sup> *Id.* at 855-856.

<sup>8</sup> Section 92.54(1), F.S.

<sup>9</sup> *Id.* at (2).

<sup>10</sup> Section 92.54(4), F.S.

<sup>11</sup> Section 92.53(1), F.S.

criminal offense resulting in physical injury or death of one person which is caused by a family or household member.<sup>12</sup> A victim of domestic violence or a person who has reasonable cause to believe he or she is in imminent danger of becoming a victim of domestic violence may file a petition for an injunction for protection against domestic violence.<sup>13</sup>

Section 741.281, F.S., requires the court to order a defendant who is found guilty of, has adjudication withheld, or pleads nolo contendere to a crime of domestic violence to attend a batterers' intervention program as a condition of probation. The court is also required to order a defendant adjudicated guilty of a crime of domestic violence to serve 5 days in jail.<sup>14</sup>

### **Human Trafficking**

Section 787.06, F.S., is Florida's human trafficking statute and defines "human trafficking" as the "transporting, soliciting, recruiting, harboring, providing, enticing, maintaining, or obtaining of another person for the purpose of exploitation of that person." The statute contains a variety of provisions prohibiting persons from knowingly engaging in human trafficking by using labor or services or through commercial sexual activity.

It is a first-degree felony for any person who knowingly, or in reckless disregard of the facts, engages or attempts to engage in human trafficking, or benefits financially from human trafficking:

- For labor or services of any child, including an unauthorized alien, under the age of 18;
- Through the use of coercion for labor or services or commercial sexual activity of an adult, including an unauthorized alien; or
- Through the transport of a child or an adult from out-of-state for labor or services or commercial sexual activity.<sup>15</sup>

The penalty increases to a life felony if the human trafficking:

- Involves commercial sexual activity of a child under the age of 18 or a person who is mentally defective or incapacitated; or
- Involves a custodian of a child, including a parent or legal guardian, who sells or otherwise transfers custody or control of a child.<sup>16</sup>

It is a second degree felony for a person to permanently brand, or direct to be branded, a victim of human trafficking. To permanently brand a person is to mark a person's body in such a way that if it is able to removed or repaired, it can be done so only through surgery, laser treatment, or another medical procedure.<sup>17</sup>

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<sup>12</sup> Section 741.28(2), F.S.

<sup>13</sup> Section 741.30(1), F.S.

<sup>14</sup> Section 741.283, F.S.

<sup>15</sup> Section 787.06(3), F.S.

<sup>16</sup> Sections 787.06(3)(g) and (4)(a), F.S.

<sup>17</sup> Section 787.06(4)(b), F.S.

## Felony Murder

The felony murder rule is a long-standing doctrine that provides that if a person dies during the course of an enumerated felony, in addition to the underlying felony, any of the defendants may be charged with murder.

First degree felony murder is the unlawful killing of a human being when committed by a person engaged in the perpetration of, or in the attempt to perpetrate any felony offense listed in s. 782.04(1)(a)2., F.S. An example of such felony offenses in s. 782.04(1)(a)2., F.S., are drug trafficking, arson, and sexual battery. This offense is a capital felony punishable by death or life imprisonment.<sup>18</sup>

Second degree felony murder is when a human being is killed during the perpetration of, or in the attempt to perpetrate any felony offense listed in s. 782.04(3), F.S. The qualifying felony offenses are identical to the felony offenses listed above. This offense is a first degree felony punishable by life imprisonment.<sup>19</sup>

Third degree felony murder is the unlawful killing of a human being, when perpetrated without any design to effect death, by a person engaged in the perpetration of, or in the attempt to perpetrate any felony other than listed in s. 782.04(4), F.S. This offense is a second degree felony punishable by up to 15 years imprisonment.<sup>20</sup>

Currently, human trafficking is not a felony offense listed in s. 782.04, F.S.

## Rape Shield Law

In many U.S. jurisdictions, laws exist to prevent specific instances of the victim's prior sexual conduct from being admitted at trial in a prosecution for sexual battery or other sexual misconduct charges. These laws are commonly referred to as "Rape Shield" laws.<sup>21</sup> Section 794.022, F.S., is Florida's Rape Shield law which codifies of the rule of relevancy that a victim's prior sexual conduct is generally irrelevant in determining the defendant's guilt.<sup>22</sup>

Section 794.022, F.S., applies to prosecutions for sexual battery and provides:

- That the victim's testimony doesn't have to be corroborated by other evidence;
- Specific instances of the victim's prior consensual sexual activity with people other than the offender are inadmissible unless:
  - The evidence may prove that the defendant wasn't the source of physical evidence, such as semen; or
  - Consent by the victim is at issue, and the evidence proves a pattern of the victim's conduct or behavior so similar to the conduct or behavior in the case that it is relevant to the issue of consent;
- The victim's prior sexual conduct is inadmissible;

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<sup>18</sup> Section 782.04(1)(a), F.S.

<sup>19</sup> *Id.* at (3).

<sup>20</sup> Section 782.04(4), F.S.

<sup>21</sup> See National District Attorney's Association, National Center for Prosecution of Child Abuse, *Rape Shield Statutes* (March 2011), available at <http://www.ndaa.org/pdf/NCPCA%20Rape%20Shield%202011.pdf> (last visited Feb. 24, 2016).

<sup>22</sup> *Marr v. Florida*, 494 So. 2d 1139, 1142-1143 (Fla. 1986).

- Evidence presented to prove the victim’s manner of dress at the time of the offense incited the sexual battery is inadmissible;
- If consent is a defense, evidence of the victim’s mental incapacity or defect can be admitted to prove that consent was not given; and
- An offender’s use of a prophylactic device, or a victim’s request that an offender use a prophylactic device, is not independently relevant.<sup>23</sup>

The United States Code also has a Rape Shield statute. In contrast to Florida’s Rape Shield law, the federal statute is not limited to sexual battery offenses; rather, the federal statute applies to *any* criminal or civil proceeding involving alleged sexual misconduct.<sup>24</sup> As such, federal courts have repeatedly held that a victim’s prior history of sexual behavior, such as exotic dancing or prostitution, is irrelevant and inadmissible in prosecutions for crimes such as sex trafficking, forced labor, sex trafficking by force, fraud, or coercion, and sex trafficking of a child.<sup>25</sup>

### III. Effect of Proposed Changes:

#### **Victim or Witness Testimony (Sections 1, 2, and 3, amending ss. 92.53, 92.54, and 92.55, F.S.)**

The bill increases the age of a child victim or witness who can have their testimony videotaped or provide testimony by closed circuit television from under 16 years of age to under 18 years of age.

Likewise the age is increased from under the age of 16 to under the age of 18 in s. 92.55, F.S., to extend the protections of court orders intended to protect a victim or witness from severe emotional or mental harm due to the presence of the defendant. The definition of “sexual offense victim or witness” also increases the age from under the age of 16 to under the age of 18.

The bill also allows a person appointed by the court pursuant to s. 914.17, F.S., to motion the court to enter a protective order on behalf of the victim or witness.

#### **Domestic Violence (Sections 4, 5, and 6, amending ss. 741.281, 741.283, and 775.08435, F.S.)**

The bill requires that a defendant attend and complete a parenting course as a condition of probation, if a crime of domestic violence was committed upon or in the presence of a child. The bill allows the court to not impose the parenting course as a condition of probation if it finds it is inappropriate.

<sup>23</sup> Section 794.022, F.S.

<sup>24</sup> Rule 412, U.S.C.A

<sup>25</sup> See *United States v. Rivera*, 799 F.3d 180, 185 (2d Cir. 2015) (“[e]vidence of victims’ prior acts of commercial sex is irrelevant to whether those victims were coerced into working as prostitutes”); *United States v. Roy*, 781 F.3d 416, 420 (8th Cir. 2015) (the victim’s participation in prostitution before or after the alleged incident is irrelevant to whether the defendant threatened her, beat her, or took her money); *United States v. Cephus*, 684 F.3d 703, 708 (7th Cir. 2012) (the victim’s prior history of prostitution was irrelevant to proving that she consented to having her wages withheld and being beaten).

The bill also increases the jail time required for a defendant adjudicated guilty of a crime of domestic violence who intentionally caused bodily harm to another person, from 5 days jail to 30 days in jail.

The bill specifies that a court may not withhold adjudication of guilt on a third degree felony offense of domestic violence unless:

- The state attorney requests in writing that adjudication be withheld; or
- The court makes written findings that the withholding of adjudication is reasonably justified based on circumstances or factors in accordance with those set forth in s. 921.0026, F.S.

### **Human Trafficking (Section 8, amending s. 787.06, F.S.)**

The bill reclassifies an offense under s. 787.06, F.S., if a person causes great bodily harm, permanent disability, or permanent disfigurement to another person. The reclassification makes:

- A second degree felony<sup>26</sup> a first degree felony;<sup>27</sup> and
- A first degree felony a life felony.<sup>28</sup>

The bill clarifies that if a person permanently brands or directs another to permanently brand another *for the purpose of committing a human trafficking offense*, it is a second degree felony. This clarification limits the offense of branding to human trafficking circumstances.

The bill eliminates a potential defense to human trafficking crimes by specifying that a victim's lack of chastity or the willingness or consent of a victim is not a defense to prosecution if the victim is under 18 years of age at the time of the offense.

### **Felony Murder (Section 7, amending s. 782.04, F.S.)**

The bill amends the felony murder statutes to include human trafficking as a qualifying felony for all levels of felony murder.

### **Rape Shield Law (Section 9, amending s. 794.022, F.S.)**

The Rape Shield Law is amended to include prosecutions for human trafficking and lewd or lascivious offenses<sup>29</sup> in which the admission of certain evidence is limited. These evidentiary protections currently apply only to victims in prosecutions for sexual battery.

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<sup>26</sup> A second degree felony is punishable by up to fifteen years imprisonment and a \$10,000 fine. Sections 775.082 and 775.083, F.S.

<sup>27</sup> A first degree felony is punishable by up to thirty years imprisonment or when provided in statute by imprisonment for a term of years not exceeding life imprisonment and a \$10,000 fine. Sections 775.082 and 775.083, F.S.

<sup>28</sup> A life felony is punishable by life imprisonment or a term of years not exceeding life imprisonment and a \$15,000 fine. Sections 775.082 and 775.083, F.S.

<sup>29</sup> The offenses in s. 800.04, F.S., are: lewd or lascivious battery, lewd or lascivious molestation, and lewd or lascivious exhibition.

**Sections 10, 11, 12, 13, and 14**

Sections 90.404, 775.21, 943.0435, 944.606, and 944.607 are amended to correct and clarify cross-references to s. 787.06(3)(h), F.S., (2012).<sup>30</sup>

**Sections 15 and 16**

Section 924.07, F.S., is reenacted to incorporate the amendment made to s. 775.08435, F.S.

The bill is effective July 1, 2016.

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

This bill appears to be exempt from the requirements of art. VII, s. 18 of the Florida Constitution because it is a criminal law.

**B. Public Records/Open Meetings Issues:**

None.

**C. Trust Funds Restrictions:**

None.

**D. Other Constitutional Issues:**

Article III, s. 6 of the Florida Constitution provides that “[e]very law shall embrace but one subject and matter properly connected therewith, and the subject shall be briefly expressed in the title.” The Florida Supreme Court has determined three requirements for the single subject clause. First, each law must “embrace” only “one subject.” Second, the law may include any matter that is “properly connected.” And lastly, the subject must be “briefly expressed in the title.”<sup>31</sup>

An act may be as broad as the Legislature chooses, provided that the matters included have natural and logical connection.<sup>32</sup> To the extent that provisions in the bill do not have a natural and logical connection, the bill may violate the single subject clause of the Florida Constitution.<sup>33</sup>

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<sup>30</sup> See ch. 2014-160, L.O.F.

<sup>31</sup> *Franklin v. State*, 887 So.2d 1063, 1072 (Fla. 2004).

<sup>32</sup> *Chenoweth v. Kemp*, 396 So.2d 1122 (Fla. 1981).

<sup>33</sup> Article III, s. 6, Fla. Const.

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

None.

**B. Private Sector Impact:**

The bill requires that a defendant attend and complete a parenting course as a condition of probation, if a crime of domestic violence was committed upon or in the presences of a child. This will likely have a negative fiscal impact on defendants who are required to pay for this course as a condition of probation.

**C. Government Sector Impact:**

The bill increases the jail time required for a defendant adjudicated guilty of a crime of domestic violence who intentionally caused bodily harm to another person, from 5 days jail to 30 days in jail. The Criminal Justice Impact Conference (CJIC) has not yet considered this provision, however it will likely have a positive indeterminate jail bed impact.

The bill amends s. 787.06(4)(b), F.S., clarifying that a person can only be convicted of branding a victim of human trafficking if it is for the purpose of committing or facilitating an offense of human trafficking. In Fiscal Year 2014-15, there were no offenders sentenced under s. 787.06(4)(b), F.S. The CJIC estimated that the amendment to s. 787.06(4)(b), F.S., has a negative, but insignificant prison bed impact, meaning a decrease in the need for prison beds by 10 or fewer.<sup>34</sup>

This bill also amends s. 787.06, F.S., to provide that if a human trafficking offense causes great bodily harm, permanent disability, or permanent disfigurement to another person during the commission of the offense, the degree of that offense will be reclassified as follows: second degree felony increased to first degree felony and a first degree felony increased to life felony. In Fiscal Year 2014-15, there were 12 offenders sentenced under s. 787.06, F.S. (human trafficking), and 9 of these offenders were sentenced to prison (average sentence length 149.3 months). Two offenders were charged with felony battery in addition to human trafficking, and one was charged with domestic battery. The CJIC estimated that the amendment to s. 787.06, F.S., has a positive insignificant prison bed impact.<sup>35</sup>

The bill amends the felony murder statutes to include human trafficking as a qualifying felony for all levels of felony murder. The CJIC determined that the bill will have a positive insignificant prison bed impact, meaning the need for 10 or fewer additional prison beds.<sup>36</sup>

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<sup>34</sup> 2016 Criminal Justice Impact Conference, Conference Results, *CS/HB 545*, available at <http://www.edr.state.fl.us/Content/conferences/criminaljusticeimpact/CSHB545.pdf> (last visited March 1, 2016).

<sup>35</sup> *Id.*

<sup>36</sup> *Id.*



**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 90.404, 92.53, 92.54, 92.55, 741.281, 741.283, 775.08435, 775.21, 782.04, 787.06, 794.022, 924.07, 943.0435, 944.606, and 944.607.

**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 Fiscal Policy on February 29, 2016:**

The CS:

- Increases the eligible age of a child victim or witness who may have his or her testimony videotaped from under 16 to under 18 years old;
- Adds “any other advocate appointed by the court” as a person who can make a motion to protect a victim or witness who has to testify from severe emotional or mental harm due to the presence of the defendant;
- Requires a defendant who is convicted or pleads guilty to a crime of domestic violence to complete a parenting course if the domestic violence was committed on or in the presence of a child;
- Increases the minimum term of imprisonment for a domestic violence crime from 5 days in jail to 30 days;
- Specifies that a court may not withhold adjudication of guilt on a third degree felony offense of domestic violence unless the state attorney requests that adjudication be withheld or the court makes written findings justifying the withholding of adjudication; and
- Clarifies the penalty for human trafficking if a person causes great bodily harm, permanent disability, or permanent disfigurement.

**B. Amendments:**

None.



475934

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/29/2016	.	
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	.	
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The Committee on Fiscal Policy (Bean) recommended the following:

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause  
and insert:

Section 1. Section 92.53, Florida Statutes, is amended to  
read:

92.53 Videotaping the testimony of a victim or witness  
under age 18 ~~16~~ or who has an intellectual disability.—

(1) On motion and hearing in camera and a finding that  
there is a substantial likelihood that a victim or witness who  
is under the age of 18 ~~16~~ or who has an intellectual disability



475934

12 as defined in s. 393.063 would suffer at least moderate  
13 emotional or mental harm due to the presence of the defendant if  
14 such victim or witness is required to testify in open court, or  
15 is unavailable as defined in s. 90.804(1), the trial court may  
16 order the videotaping of the testimony of the victim or witness  
17 in a case, whether civil or criminal in nature, in which  
18 videotaped testimony is to be used at trial in lieu of trial  
19 testimony in open court.

20 (2) The motion may be filed by:

21 (a) The victim or witness, or the victim's or witness's  
22 attorney, parent, legal guardian, or guardian ad litem;

23 (b) A trial judge on his or her own motion;

24 (c) Any party in a civil proceeding; or

25 (d) The prosecuting attorney or the defendant, or the  
26 defendant's counsel.

27 (3) The judge shall preside, or shall appoint a special  
28 master to preside, at the videotaping unless:

29 (a) The child or the person who has the intellectual  
30 disability is represented by a guardian ad litem or counsel;

31 (b) The representative of the victim or witness and the  
32 counsel for each party stipulate that the requirement for the  
33 presence of the judge or special master may be waived; and

34 (c) The court finds at a hearing on the motion that the  
35 presence of a judge or special master is not necessary to  
36 protect the victim or witness.

37 (4) The defendant and the defendant's counsel must be  
38 present at the videotaping unless the defendant has waived this  
39 right. The court may require the defendant to view the testimony  
40 from outside the presence of the child or the person who has an



475934

41 intellectual disability by means of a two-way mirror or another  
42 similar method that ensures that the defendant can observe and  
43 hear the testimony of the victim or witness in person, but the  
44 victim or witness cannot hear or see the defendant. The  
45 defendant and the attorney for the defendant may communicate by  
46 any appropriate private method.

47 (5) Any party, or the court on its own motion, may request  
48 the aid of an interpreter, as provided in s. 90.606, to aid the  
49 parties in formulating methods of questioning the child or  
50 person who has the intellectual disability and in interpreting  
51 the answers of the child or person during proceedings conducted  
52 under this section.

53 (6) The motion referred to in subsection (1) may be made at  
54 any time with reasonable notice to each party to the cause, and  
55 videotaping of testimony may be made any time after the court  
56 grants the motion. The videotaped testimony is admissible as  
57 evidence in the trial of the cause; however, such testimony is  
58 not admissible in any trial or proceeding in which such witness  
59 testifies by use of closed circuit television pursuant to s.  
60 92.54.

61 (7) The court shall make specific findings of fact, on the  
62 record, as to the basis for its ruling under this section.

63 Section 2. Section 92.54, Florida Statutes, is amended to  
64 read:

65 92.54 Use of closed circuit television in proceedings  
66 involving a victim or witness under the age of 18 ~~16~~ or who has  
67 an intellectual disability.—

68 (1) Upon motion and hearing in camera and upon a finding  
69 that there is a substantial likelihood that a victim or witness



475934

70 under the age of 18 ~~16~~ or who has an intellectual disability  
71 will suffer at least moderate emotional or mental harm due to  
72 the presence of the defendant if such victim or witness is  
73 required to testify in open court, or is unavailable as defined  
74 in s. 90.804(1), the trial court may order that the testimony of  
75 the victim or witness be taken outside of the courtroom and  
76 shown by means of closed circuit television.

77 (2) The motion may be filed by the victim or witness; the  
78 attorney, parent, legal guardian, or guardian ad litem of the  
79 victim or witness; the prosecutor; the defendant or the  
80 defendant's counsel; or the trial judge on his or her own  
81 motion.

82 (3) Only the judge, the prosecutor, the defendant, the  
83 attorney for the defendant, the operators of the videotape  
84 equipment, an interpreter, and some other person who, in the  
85 opinion of the court, contributes to the well-being of the child  
86 or the person who has an intellectual disability and who will  
87 not be a witness in the case may be in the room during the  
88 recording of the testimony.

89 (4) During the victim's or witness's testimony by closed  
90 circuit television, the court may require the defendant to view  
91 the testimony from the courtroom. In such a case, the court  
92 shall permit the defendant to observe and hear the testimony of  
93 the victim or witness, but must ensure that the victim or  
94 witness cannot hear or see the defendant. The defendant's right  
95 to assistance of counsel, which includes the right to immediate  
96 and direct communication with counsel conducting cross-  
97 examination, must be protected and, upon the defendant's  
98 request, such communication must be provided by any appropriate



475934

99 electronic method.

100 (5) The court shall make specific findings of fact, on the  
101 record, as to the basis for its ruling under this section.

102 Section 3. Section 92.55, Florida Statutes, is amended to  
103 read:

104 92.55 Judicial or other proceedings involving victim or  
105 witness under the age of 18 ~~16~~, a person who has an intellectual  
106 disability, or a sexual offense victim or witness; special  
107 protections; use of registered service or therapy animals.—

108 (1) For purposes of this section, the term:

109 (a) "Sexual offense victim or witness" means a person who  
110 was under the age of 18 ~~16~~ when he or she was the victim of or a  
111 witness to a sexual offense.

112 (b) "Sexual offense" means any offense specified in s.  
113 775.21(4)(a)1. or s. 943.0435(1)(a)1.a.(I).

114 (2) Upon motion of any party, upon motion of a parent,  
115 guardian, attorney, ~~or~~ guardian ad litem, or other advocate  
116 appointed by the court under s. 914.17 for a victim or witness  
117 under the age of 18 ~~16~~, a person who has an intellectual  
118 disability, or a sexual offense victim or witness, or upon its  
119 own motion, the court may enter any order necessary to protect  
120 the victim or witness in any judicial proceeding or other  
121 official proceeding from severe emotional or mental harm due to  
122 the presence of the defendant if the victim or witness is  
123 required to testify in open court. Such orders must relate to  
124 the taking of testimony and include, but are not limited to:

125 (a) Interviewing or the taking of depositions as part of a  
126 civil or criminal proceeding.

127 (b) Examination and cross-examination for the purpose of



475934

128 qualifying as a witness or testifying in any proceeding.

129 (c) The use of testimony taken outside of the courtroom,  
130 including proceedings under ss. 92.53 and 92.54.

131 (3) In ruling upon the motion, the court shall consider:

132 (a) The age of the child, the nature of the offense or act,  
133 the relationship of the child to the parties in the case or to  
134 the defendant in a criminal action, the degree of emotional  
135 trauma that will result to the child as a consequence of the  
136 defendant's presence, and any other fact that the court deems  
137 relevant;

138 (b) The age of the person who has an intellectual  
139 disability, the functional capacity of such person, the nature  
140 of the offenses or act, the relationship of the person to the  
141 parties in the case or to the defendant in a criminal action,  
142 the degree of emotional trauma that will result to the person as  
143 a consequence of the defendant's presence, and any other fact  
144 that the court deems relevant; or

145 (c) The age of the sexual offense victim or witness when  
146 the sexual offense occurred, the relationship of the sexual  
147 offense victim or witness to the parties in the case or to the  
148 defendant in a criminal action, the degree of emotional trauma  
149 that will result to the sexual offense victim or witness as a  
150 consequence of the defendant's presence, and any other fact that  
151 the court deems relevant.

152 (4) In addition to such other relief provided by law, the  
153 court may enter orders limiting the number of times that a  
154 child, a person who has an intellectual disability, or a sexual  
155 offense victim or witness may be interviewed, prohibiting  
156 depositions of the victim or witness, requiring the submission



475934

157 of questions before the examination of the victim or witness,  
158 setting the place and conditions for interviewing the victim or  
159 witness or for conducting any other proceeding, or permitting or  
160 prohibiting the attendance of any person at any proceeding. The  
161 court shall enter any order necessary to protect the rights of  
162 all parties, including the defendant in any criminal action.

163 (5) The court may set any other conditions it finds just  
164 and appropriate when taking the testimony of a child victim or  
165 witness or a sexual offense victim or witness, including the use  
166 of a service or therapy animal that has been evaluated and  
167 registered according to national standards, in any proceeding  
168 involving a sexual offense. When deciding whether to permit a  
169 child victim or witness or sexual offense victim or witness to  
170 testify with the assistance of a registered service or therapy  
171 animal, the court shall consider the age of the child victim or  
172 witness, the age of the sexual offense victim or witness at the  
173 time the sexual offense occurred, the interests of the child  
174 victim or witness or sexual offense victim or witness, the  
175 rights of the parties to the litigation, and any other relevant  
176 factor that would facilitate the testimony by the child victim  
177 or witness or sexual offense victim or witness.

178 Section 4. Section 741.281, Florida Statutes, is amended to  
179 read:

180 741.281 Court to order batterers' intervention program  
181 attendance.—If a person is found guilty of, has adjudication  
182 withheld on, or pleads nolo contendere to a crime of domestic  
183 violence, as defined in s. 741.28, that person shall be ordered  
184 by the court to a minimum term of 1 year's probation and the  
185 court shall order that the defendant attend and complete a





475934

186 batterers' intervention program and, if a crime of domestic  
187 violence was committed upon or in the presence of a child, a  
188 parenting course as a condition of probation. The court must  
189 impose the condition of the batterers' intervention program and  
190 parenting course for a defendant under this section, but the  
191 court, in its discretion, may determine not to impose the  
192 condition if it states on the record why a batterers'  
193 intervention program and the parenting course might be  
194 inappropriate. The court must impose the condition of the  
195 batterers' intervention program for a defendant placed on  
196 probation unless the court determines that the person does not  
197 qualify for the batterers' intervention program pursuant to s.  
198 741.325. The imposition of probation under this section does not  
199 preclude the court from imposing any sentence of imprisonment  
200 authorized by s. 775.082.

201 Section 5. Section 741.283, Florida Statutes, is amended to  
202 read:

203 741.283 Minimum term of imprisonment for domestic  
204 violence.—If a person is adjudicated guilty of a crime of  
205 domestic violence, as defined in s. 741.28, and the person has  
206 intentionally caused bodily harm to another person, the court  
207 shall order the person to serve a minimum of 30 ~~5~~ days in the  
208 county jail as part of the sentence imposed, unless the court  
209 sentences the person to a nonsuspended period of incarceration  
210 in a state correctional facility. This section does not preclude  
211 the court from sentencing the person to probation, community  
212 control, or an additional period of incarceration.

213 Section 6. Subsection (1) of section 775.08435, Florida  
214 Statutes, is amended to read:



475934

215           775.08435 Prohibition on withholding adjudication in felony  
216 cases.—

217           (1) Notwithstanding the provisions of s. 948.01, the court  
218 may not withhold adjudication of guilt upon the defendant for:

219           (a) Any capital, life, or first degree felony offense.

220           (b) A second degree felony offense unless:

221           1. The state attorney requests in writing that adjudication  
222 be withheld; or

223           2. The court makes written findings that the withholding of  
224 adjudication is reasonably justified based on circumstances or  
225 factors in accordance with those set forth in s. 921.0026.

226

227 Notwithstanding any provision of this section, no adjudication  
228 of guilt shall be withheld for a second degree felony offense if  
229 the defendant has a prior withholding of adjudication for a  
230 felony that did not arise from the same transaction as the  
231 current felony offense.

232           (c) A third degree felony offense if the defendant has a  
233 prior withholding of adjudication for a felony offense that did  
234 not arise from the same transaction as the current felony  
235 offense unless:

236           1. The state attorney requests in writing that adjudication  
237 be withheld; or

238           2. The court makes written findings that the withholding of  
239 adjudication is reasonably justified based on circumstances or  
240 factors in accordance with those set forth in s. 921.0026.

241           (d) A third degree felony offense of domestic violence, as  
242 defined in s. 741.18, unless:

243           1. The state attorney requests in writing that adjudication



475934

244 be withheld; or

245 2. The court makes written findings that the withholding of  
246 adjudication is reasonably justified based on circumstances or  
247 factors in accordance with those set forth in s. 921.0026.

248

249 Notwithstanding any provision of this section, no adjudication  
250 of guilt shall be withheld for a third degree felony offense if  
251 the defendant has two or more prior withholdings of adjudication  
252 for a felony that did not arise from the same transaction as the  
253 current felony offense.

254 Section 7. Subsections (1), (3), and (4) of section 782.04,  
255 Florida Statutes, are amended to read:

256 782.04 Murder.—

257 (1) (a) The unlawful killing of a human being:

258 1. When perpetrated from a premeditated design to effect  
259 the death of the person killed or any human being;

260 2. When committed by a person engaged in the perpetration  
261 of, or in the attempt to perpetrate, any:

262 a. Trafficking offense prohibited by s. 893.135(1),

263 b. Arson,

264 c. Sexual battery,

265 d. Robbery,

266 e. Burglary,

267 f. Kidnapping,

268 g. Escape,

269 h. Aggravated child abuse,

270 i. Aggravated abuse of an elderly person or disabled adult,

271 j. Aircraft piracy,

272 k. Unlawful throwing, placing, or discharging of a



475934

273 destructive device or bomb,  
274       1. Carjacking,  
275       m. Home-invasion robbery,  
276       n. Aggravated stalking,  
277       o. Murder of another human being,  
278       p. Resisting an officer with violence to his or her person,  
279       q. Aggravated fleeing or eluding with serious bodily injury  
280 or death,  
281       r. Felony that is an act of terrorism or is in furtherance  
282 of an act of terrorism, ~~or~~  
283       s. Human trafficking, or  
284       3. Which resulted from the unlawful distribution of any  
285 substance controlled under s. 893.03(1), cocaine as described in  
286 s. 893.03(2)(a)4., opium or any synthetic or natural salt,  
287 compound, derivative, or preparation of opium, or methadone by a  
288 person 18 years of age or older, when such drug is proven to be  
289 the proximate cause of the death of the user,  
290  
291 is murder in the first degree and constitutes a capital felony,  
292 punishable as provided in s. 775.082.  
293       (b) In all cases under this section, the procedure set  
294 forth in s. 921.141 shall be followed in order to determine  
295 sentence of death or life imprisonment.  
296       (3) When a human being is killed during the perpetration  
297 of, or during the attempt to perpetrate, any:  
298       (a) Trafficking offense prohibited by s. 893.135(1),  
299       (b) Arson,  
300       (c) Sexual battery,  
301       (d) Robbery,



475934

- 302 (e) Burglary,  
303 (f) Kidnapping,  
304 (g) Escape,  
305 (h) Aggravated child abuse,  
306 (i) Aggravated abuse of an elderly person or disabled  
307 adult,  
308 (j) Aircraft piracy,  
309 (k) Unlawful throwing, placing, or discharging of a  
310 destructive device or bomb,  
311 (l) Carjacking,  
312 (m) Home-invasion robbery,  
313 (n) Aggravated stalking,  
314 (o) Murder of another human being,  
315 (p) Aggravated fleeing or eluding with serious bodily  
316 injury or death,  
317 (q) Resisting an officer with violence to his or her  
318 person, ~~or~~  
319 (r) Felony that is an act of terrorism or is in furtherance  
320 of an act of terrorism, or  
321 (s) Human trafficking,  
322  
323 by a person other than the person engaged in the perpetration of  
324 or in the attempt to perpetrate such felony, the person  
325 perpetrating or attempting to perpetrate such felony commits  
326 murder in the second degree, which constitutes a felony of the  
327 first degree, punishable by imprisonment for a term of years not  
328 exceeding life or as provided in s. 775.082, s. 775.083, or s.  
329 775.084.  
330 (4) The unlawful killing of a human being, when perpetrated



475934

331 without any design to effect death, by a person engaged in the  
332 perpetration of, or in the attempt to perpetrate, any felony  
333 other than any:

- 334 (a) Trafficking offense prohibited by s. 893.135(1),
- 335 (b) Arson,
- 336 (c) Sexual battery,
- 337 (d) Robbery,
- 338 (e) Burglary,
- 339 (f) Kidnapping,
- 340 (g) Escape,
- 341 (h) Aggravated child abuse,
- 342 (i) Aggravated abuse of an elderly person or disabled  
343 adult,
- 344 (j) Aircraft piracy,
- 345 (k) Unlawful throwing, placing, or discharging of a  
346 destructive device or bomb,
- 347 (l) Unlawful distribution of any substance controlled under  
348 s. 893.03(1), cocaine as described in s. 893.03(2)(a)4., or  
349 opium or any synthetic or natural salt, compound, derivative, or  
350 preparation of opium by a person 18 years of age or older, when  
351 such drug is proven to be the proximate cause of the death of  
352 the user,
- 353 (m) Carjacking,
- 354 (n) Home-invasion robbery,
- 355 (o) Aggravated stalking,
- 356 (p) Murder of another human being,
- 357 (q) Aggravated fleeing or eluding with serious bodily  
358 injury or death,
- 359 (r) Resisting an officer with violence to his or her



475934

360 person, ~~or~~  
361 (s) Felony that is an act of terrorism or is in furtherance  
362 of an act of terrorism, or

363 (t) Human trafficking,

364  
365 is murder in the third degree and constitutes a felony of the  
366 second degree, punishable as provided in s. 775.082, s. 775.083,  
367 or s. 775.084.

368 Section 8. Paragraph (h) is added to subsection (3) of  
369 section 787.06, Florida Statutes, paragraph (b) of subsection  
370 (4) is amended, subsections (5) through (9) are renumbered as  
371 subsections (6) through (10), respectively, and a new subsection  
372 (5) is added to that section, to read:

373 787.06 Human trafficking.—

374 (3) Any person who knowingly, or in reckless disregard of  
375 the facts, engages in human trafficking, or attempts to engage  
376 in human trafficking, or benefits financially by receiving  
377 anything of value from participation in a venture that has  
378 subjected a person to human trafficking:

379 (h) And during the commission or attempt to commit the  
380 offense of human trafficking causes great bodily harm, permanent  
381 disability, or permanent disfigurement to the victim of the  
382 human trafficking offense or attempted offense commits a felony  
383 of the first degree, punishable for a term of years not  
384 exceeding life, as provided in s. 775.082, s. 775.083, or s.  
385 775.084.

386  
387 For each instance of human trafficking of any individual under  
388 this subsection, a separate crime is committed and a separate



475934

389 punishment is authorized.

390 (4)

391 (b) Any person who permanently brands, or directs to be  
392 permanently branded, for the purpose of committing an offense  
393 under this section, a victim of an offense under this section  
394 commits a second degree felony, punishable as provided in s.  
395 775.082, s. 775.083, or s. 775.084. For purposes of this  
396 subsection, the term "permanently branded" means a mark on the  
397 individual's body that, if it can be removed or repaired at all,  
398 can only be removed or repaired by surgical means, laser  
399 treatment, or other medical procedure.

400 (5) A victim's lack of chastity or the willingness or  
401 consent of a victim is not a defense to prosecution under this  
402 section if the victim was under 18 years of age at the time of  
403 the offense.

404 Section 9. Section 794.022, Florida Statutes, is amended to  
405 read:

406 794.022 Rules of evidence.—

407 (1) The testimony of the victim need not be corroborated in  
408 a prosecution under s. 787.06, s. 794.011, or s. 800.04.

409 (2) Specific instances of prior consensual sexual activity  
410 between the victim and any person other than the offender may  
411 ~~shall~~ not be admitted into evidence in a prosecution under s.  
412 787.06, s. 794.011, or s. 800.04. However, such evidence may be  
413 admitted if it is first established to the court in a proceeding  
414 in camera that such evidence may prove that the defendant was  
415 not the source of the semen, pregnancy, injury, or disease; or,  
416 when consent by the victim is at issue, such evidence may be  
417 admitted if it is first established to the court in a proceeding





475934

418 in camera that such evidence tends to establish a pattern of  
419 conduct or behavior on the part of the victim which is so  
420 similar to the conduct or behavior in the case that it is  
421 relevant to the issue of consent.

422 (3) Notwithstanding any other provision of law, reputation  
423 evidence relating to a victim's prior sexual conduct or evidence  
424 presented for the purpose of showing that manner of dress of the  
425 victim at the time of the offense incited the sexual battery may  
426 ~~shall~~ not be admitted into evidence in a prosecution under s.  
427 787.06, s. 794.011, or s. 800.04.

428 (4) When consent of the victim is a defense to prosecution  
429 under s. 787.06, s. 794.011, or s. 800.04, evidence of the  
430 victim's mental incapacity or defect is admissible to prove that  
431 the consent was not intelligent, knowing, or voluntary; and the  
432 court shall instruct the jury accordingly.

433 (5) An offender's use of a prophylactic device, or a  
434 victim's request that an offender use a prophylactic device, is  
435 not, by itself, relevant to either the issue of whether or not  
436 the offense was committed or the issue of whether or not the  
437 victim consented.

438 Section 10. Paragraph (b) of subsection (1) of section  
439 90.404, Florida Statutes, is republished, and paragraphs (b) and  
440 (c) of subsection (2) of that section are amended, to read:

441 90.404 Character evidence; when admissible.—

442 (1) CHARACTER EVIDENCE GENERALLY.—Evidence of a person's  
443 character or a trait of character is inadmissible to prove  
444 action in conformity with it on a particular occasion, except:

445 (b) *Character of victim.*—

446 1. Except as provided in s. 794.022, evidence of a



475934

447 pertinent trait of character of the victim of the crime offered  
448 by an accused, or by the prosecution to rebut the trait; or

449 2. Evidence of a character trait of peacefulness of the  
450 victim offered by the prosecution in a homicide case to rebut  
451 evidence that the victim was the aggressor.

452 (2) OTHER CRIMES, WRONGS, OR ACTS.—

453 (b)1. In a criminal case in which the defendant is charged  
454 with a crime involving child molestation, evidence of the  
455 defendant's commission of other crimes, wrongs, or acts of child  
456 molestation is admissible and may be considered for its bearing  
457 on any matter to which it is relevant.

458 2. For the purposes of this paragraph, the term "child  
459 molestation" means conduct proscribed by s. 787.025(2)(c), s.  
460 787.06(3)(g), ~~former~~ s. 787.06(3)(h), Florida Statutes 2012, s.  
461 794.011, excluding s. 794.011(10), s. 794.05, former s. 796.03,  
462 former s. 796.035, s. 800.04, s. 827.071, s. 847.0135(5), s.  
463 847.0145, or s. 985.701(1) when committed against a person 16  
464 years of age or younger.

465 (c)1. In a criminal case in which the defendant is charged  
466 with a sexual offense, evidence of the defendant's commission of  
467 other crimes, wrongs, or acts involving a sexual offense is  
468 admissible and may be considered for its bearing on any matter  
469 to which it is relevant.

470 2. For the purposes of this paragraph, the term "sexual  
471 offense" means conduct proscribed by s. 787.025(2)(c), s.  
472 787.06(3)(b), (d), (f), or (g), ~~former~~ s. 787.06(3)(h), Florida  
473 Statutes 2012, s. 794.011, excluding s. 794.011(10), s. 794.05,  
474 former s. 796.03, former s. 796.035, s. 825.1025(2)(b), s.  
475 827.071, s. 847.0135(5), s. 847.0145, or s. 985.701(1).



475934

476 Section 11. Paragraph (a) of subsection (4) of section  
477 775.21, Florida Statutes, is amended to read:

478 775.21 The Florida Sexual Predators Act.—

479 (4) SEXUAL PREDATOR CRITERIA.—

480 (a) For a current offense committed on or after October 1,  
481 1993, upon conviction, an offender shall be designated as a  
482 “sexual predator” under subsection (5), and subject to  
483 registration under subsection (6) and community and public  
484 notification under subsection (7) if:

485 1. The felony is:

486 a. A capital, life, or first degree felony violation, or  
487 any attempt thereof, of s. 787.01 or s. 787.02, where the victim  
488 is a minor and the defendant is not the victim’s parent or  
489 guardian, or s. 794.011, s. 800.04, or s. 847.0145, or a  
490 violation of a similar law of another jurisdiction; or

491 b. Any felony violation, or any attempt thereof, of s.  
492 393.135(2); s. 394.4593(2); s. 787.01, s. 787.02, or s.  
493 787.025(2)(c), where the victim is a minor and the defendant is  
494 not the victim’s parent or guardian; s. 787.06(3)(b), (d), (f),  
495 or (g); ~~former~~ s. 787.06(3)(h), Florida Statutes 2012; s.  
496 794.011, excluding s. 794.011(10); s. 794.05; former s. 796.03;  
497 former s. 796.035; s. 800.04; s. 810.145(8)(b); s. 825.1025; s.  
498 827.071; s. 847.0135, excluding s. 847.0135(6); s. 847.0145; s.  
499 916.1075(2); or s. 985.701(1); or a violation of a similar law  
500 of another jurisdiction, and the offender has previously been  
501 convicted of or found to have committed, or has pled nolo  
502 contendere or guilty to, regardless of adjudication, any  
503 violation of s. 393.135(2); s. 394.4593(2); s. 787.01, s.  
504 787.02, or s. 787.025(2)(c), where the victim is a minor and the



475934

505 defendant is not the victim's parent or guardian; s.  
506 787.06(3)(b), (d), (f), or (g); ~~former~~ s. 787.06(3)(h), Florida  
507 Statutes 2012; s. 794.011, excluding s. 794.011(10); s. 794.05;  
508 former s. 796.03; former s. 796.035; s. 800.04; s. 825.1025; s.  
509 827.071; s. 847.0133; s. 847.0135, excluding s. 847.0135(6); s.  
510 847.0145; s. 916.1075(2); or s. 985.701(1); or a violation of a  
511 similar law of another jurisdiction;

512 2. The offender has not received a pardon for any felony or  
513 similar law of another jurisdiction that is necessary for the  
514 operation of this paragraph; and

515 3. A conviction of a felony or similar law of another  
516 jurisdiction necessary to the operation of this paragraph has  
517 not been set aside in any postconviction proceeding.

518 Section 12. Paragraph (a) of subsection (1) of section  
519 943.0435, Florida Statutes, is amended to read:

520 943.0435 Sexual offenders required to register with the  
521 department; penalty.—

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

523 (a)1. "Sexual offender" means a person who meets the  
524 criteria in sub-subparagraph a., sub-subparagraph b., sub-  
525 subparagraph c., or sub-subparagraph d., as follows:

526 a.(I) Has been convicted of committing, or attempting,  
527 soliciting, or conspiring to commit, any of the criminal  
528 offenses proscribed in the following statutes in this state or  
529 similar offenses in another jurisdiction: s. 393.135(2); s.  
530 394.4593(2); s. 787.01, s. 787.02, or s. 787.025(2)(c), where  
531 the victim is a minor and the defendant is not the victim's  
532 parent or guardian; s. 787.06(3)(b), (d), (f), or (g); ~~former~~ s.  
533 787.06(3)(h), Florida Statutes 2012; s. 794.011, excluding s.



534 794.011(10); s. 794.05; former s. 796.03; former s. 796.035; s.  
535 800.04; s. 810.145(8); s. 825.1025; s. 827.071; s. 847.0133; s.  
536 847.0135, excluding s. 847.0135(6); s. 847.0137; s. 847.0138; s.  
537 847.0145; s. 916.1075(2); or s. 985.701(1); or any similar  
538 offense committed in this state which has been redesignated from  
539 a former statute number to one of those listed in this sub-sub-  
540 subparagraph; and

541 (II) Has been released on or after October 1, 1997, from  
542 the sanction imposed for any conviction of an offense described  
543 in sub-sub-subparagraph (I). For purposes of sub-sub-  
544 subparagraph (I), a sanction imposed in this state or in any  
545 other jurisdiction includes, but is not limited to, a fine,  
546 probation, community control, parole, conditional release,  
547 control release, or incarceration in a state prison, federal  
548 prison, private correctional facility, or local detention  
549 facility;

550 b. Establishes or maintains a residence in this state and  
551 who has not been designated as a sexual predator by a court of  
552 this state but who has been designated as a sexual predator, as  
553 a sexually violent predator, or by another sexual offender  
554 designation in another state or jurisdiction and was, as a  
555 result of such designation, subjected to registration or  
556 community or public notification, or both, or would be if the  
557 person were a resident of that state or jurisdiction, without  
558 regard to whether the person otherwise meets the criteria for  
559 registration as a sexual offender;

560 c. Establishes or maintains a residence in this state who  
561 is in the custody or control of, or under the supervision of,  
562 any other state or jurisdiction as a result of a conviction for



475934

563 committing, or attempting, soliciting, or conspiring to commit,  
564 any of the criminal offenses proscribed in the following  
565 statutes or similar offense in another jurisdiction: s.  
566 393.135(2); s. 394.4593(2); s. 787.01, s. 787.02, or s.  
567 787.025(2)(c), where the victim is a minor and the defendant is  
568 not the victim's parent or guardian; s. 787.06(3)(b), (d), (f),  
569 or (g); ~~former~~ s. 787.06(3)(h), Florida Statutes 2012; s.  
570 794.011, excluding s. 794.011(10); s. 794.05; former s. 796.03;  
571 former s. 796.035; s. 800.04; s. 810.145(8); s. 825.1025; s.  
572 827.071; s. 847.0133; s. 847.0135, excluding s. 847.0135(6); s.  
573 847.0137; s. 847.0138; s. 847.0145; s. 916.1075(2); or s.  
574 985.701(1); or any similar offense committed in this state which  
575 has been redesignated from a former statute number to one of  
576 those listed in this sub-subparagraph; or

577 d. On or after July 1, 2007, has been adjudicated  
578 delinquent for committing, or attempting, soliciting, or  
579 conspiring to commit, any of the criminal offenses proscribed in  
580 the following statutes in this state or similar offenses in  
581 another jurisdiction when the juvenile was 14 years of age or  
582 older at the time of the offense:

583 (I) Section 794.011, excluding s. 794.011(10);

584 (II) Section 800.04(4)(a)2. where the victim is under 12  
585 years of age or where the court finds sexual activity by the use  
586 of force or coercion;

587 (III) Section 800.04(5)(c)1. where the court finds  
588 molestation involving unclothed genitals; or

589 (IV) Section 800.04(5)(d) where the court finds the use of  
590 force or coercion and unclothed genitals.

591 2. For all qualifying offenses listed in sub-subparagraph



475934

592 (1)(a)1.d., the court shall make a written finding of the age of  
593 the offender at the time of the offense.

594

595 For each violation of a qualifying offense listed in this  
596 subsection, except for a violation of s. 794.011, the court  
597 shall make a written finding of the age of the victim at the  
598 time of the offense. For a violation of s. 800.04(4), the court  
599 shall also make a written finding indicating whether the offense  
600 involved sexual activity and indicating whether the offense  
601 involved force or coercion. For a violation of s. 800.04(5), the  
602 court shall also make a written finding that the offense did or  
603 did not involve unclothed genitals or genital area and that the  
604 offense did or did not involve the use of force or coercion.

605 Section 13. Paragraph (b) of subsection (1) of section  
606 944.606, Florida Statutes, is amended to read:

607 944.606 Sexual offenders; notification upon release.—

608 (1) As used in this section:

609 (b) "Sexual offender" means a person who has been convicted  
610 of committing, or attempting, soliciting, or conspiring to  
611 commit, any of the criminal offenses proscribed in the following  
612 statutes in this state or similar offenses in another  
613 jurisdiction: s. 393.135(2); s. 394.4593(2); s. 787.01, s.  
614 787.02, or s. 787.025(2)(c), where the victim is a minor and the  
615 defendant is not the victim's parent or guardian; s.  
616 787.06(3)(b), (d), (f), or (g); ~~former~~ s. 787.06(3)(h), Florida  
617 Statutes 2012; s. 794.011, excluding s. 794.011(10); s. 794.05;  
618 former s. 796.03; former s. 796.035; s. 800.04; s. 810.145(8);  
619 s. 825.1025; s. 827.071; s. 847.0133; s. 847.0135, excluding s.  
620 847.0135(6); s. 847.0137; s. 847.0138; s. 847.0145; s.



475934

621 916.1075(2); or s. 985.701(1); or any similar offense committed  
622 in this state which has been redesignated from a former statute  
623 number to one of those listed in this subsection, when the  
624 department has received verified information regarding such  
625 conviction; an offender's computerized criminal history record  
626 is not, in and of itself, verified information.

627 Section 14. Paragraph (a) of subsection (1) of section  
628 944.607, Florida Statutes, is amended to read:

629 944.607 Notification to Department of Law Enforcement of  
630 information on sexual offenders.—

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

632 (a) "Sexual offender" means a person who is in the custody  
633 or control of, or under the supervision of, the department or is  
634 in the custody of a private correctional facility:

635 1. On or after October 1, 1997, as a result of a conviction  
636 for committing, or attempting, soliciting, or conspiring to  
637 commit, any of the criminal offenses proscribed in the following  
638 statutes in this state or similar offenses in another  
639 jurisdiction: s. 393.135(2); s. 394.4593(2); s. 787.01, s.  
640 787.02, or s. 787.025(2)(c), where the victim is a minor and the  
641 defendant is not the victim's parent or guardian; s.  
642 787.06(3)(b), (d), (f), or (g); ~~former~~ s. 787.06(3)(h), Florida  
643 Statutes 2012; s. 794.011, excluding s. 794.011(10); s. 794.05;  
644 former s. 796.03; former s. 796.035; s. 800.04; s. 810.145(8);  
645 s. 825.1025; s. 827.071; s. 847.0133; s. 847.0135, excluding s.  
646 847.0135(6); s. 847.0137; s. 847.0138; s. 847.0145; s.  
647 916.1075(2); or s. 985.701(1); or any similar offense committed  
648 in this state which has been redesignated from a former statute  
649 number to one of those listed in this paragraph; or





475934

650           2. Who establishes or maintains a residence in this state  
651 and who has not been designated as a sexual predator by a court  
652 of this state but who has been designated as a sexual predator,  
653 as a sexually violent predator, or by another sexual offender  
654 designation in another state or jurisdiction and was, as a  
655 result of such designation, subjected to registration or  
656 community or public notification, or both, or would be if the  
657 person were a resident of that state or jurisdiction, without  
658 regard as to whether the person otherwise meets the criteria for  
659 registration as a sexual offender.

660           Section 15. For the purpose of incorporating the amendment  
661 made by this act to section 775.08435, Florida Statutes, in a  
662 reference thereto, paragraph (m) of subsection (1) of section  
663 924.07, Florida Statutes, is reenacted to read:

664           924.07 Appeal by state.—

665           (1) The state may appeal from:

666           (m) An order withholding adjudication of guilt in violation  
667 of s. 775.08435.

668           Section 16. This act shall take effect July 1, 2016.

669  
670 ===== T I T L E   A M E N D M E N T =====

671 And the title is amended as follows:

672           Delete everything before the enacting clause  
673 and insert:

674                                   A bill to be entitled  
675           An act relating to offenses involving minors and  
676           vulnerable persons; amending ss. 92.53 and 92.54,  
677           F.S.; increasing the maximum age at which a victim or  
678           witness under may be allowed to testify via closed



475934

679 circuit television rather than in a courtroom in  
680 certain circumstances; amending s. 92.55, F.S.;  
681 revising the definition of the term "sexual offense  
682 victim or witness"; increasing the maximum age of  
683 victims and witnesses for whom the court may enter  
684 protective orders; authorizing certain advocates to  
685 file motions for such orders on behalf of certain  
686 persons; amending s. 741.281, F.S.; requiring a court  
687 to order that a defendant attend and complete a  
688 parenting course if domestic violence was committed  
689 upon or in the presence of a child; amending s.  
690 741.283, F.S.; increasing the minimum sentence that a  
691 court is required to order a person to serve if he or  
692 she is adjudicated guilty of domestic violence and  
693 intentionally causes bodily harm to another person;  
694 amending s. 775.08435, F.S.; prohibiting a court from  
695 withholding adjudication for a third degree felony  
696 offense of domestic violence; providing exceptions;  
697 amending s. 782.04, F.S.; including human trafficking  
698 as an underlying felony offense to support a felony  
699 murder conviction; amending s. 787.06, F.S.; providing  
700 increased criminal penalties for human trafficking  
701 offenses if the victim suffers great bodily harm,  
702 permanent disability, or permanent disfigurement;  
703 specifying that penalties for branding must be for the  
704 purpose of committing the offense of human  
705 trafficking; prohibiting certain defense to  
706 prosecution; amending s. 794.022, F.S.; including  
707 human trafficking and lewd and lascivious offenses in



475934

708 the rules of evidence applicable to sexually-related  
709 offenses; amending ss. 90.404, 775.21, 943.0435,  
710 944.606, and 944.607, F.S.; conforming provisions to  
711 changes made by the act; reenacting s. 924.07(1)(m),  
712 F.S., relating to an appeal by the state, to  
713 incorporate the amendment made to s. 775.08135, F.S.,  
714 in a reference thereto; providing an effective date.



922438

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/29/2016	.	
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The Committee on Fiscal Policy (Bean) recommended the following:

**Senate Amendment to Amendment (475934)**

Delete lines 368 - 403  
and insert:

Section 8. Paragraph (b) of subsection (4) of section 787.06, Florida Statutes, is amended, subsections (5) through (7) are renumbered as subsections (6) through (8), and subsections (8) through (9) are renumbered as subsections (9) through (11), respectively, and a new subsections (5) and (8) are added to that section, to read:

(4)



922438

12           (b) Any person who, for the purpose of committing or  
13 facilitating an offense under this section, permanently brands,  
14 or directs to be branded, a victim of an offense under this  
15 section commits a second degree felony, punishable as provided  
16 in s. 775.082, s. 775.083, or s. 775.084. For purposes of this  
17 subsection, the term "permanently branded" means a mark on the  
18 individual's body that, if it can be removed or repaired at all,  
19 can only be removed or repaired by surgical means, laser  
20 treatment, or other medical procedure.

21           (5) A victim's lack of chastity or the willingness or  
22 consent of a victim is not a defense to prosecution under this  
23 section if the victim was under 18 years of age at the time of  
24 the offense.

25           (8) The degree of an offense shall be reclassified as  
26 follows if a person causes great bodily harm, permanent  
27 disability, or permanent disfigurement to another person during  
28 the commission of an offense under this section:

29           (a) A felony of the second degree shall be reclassified as  
30 a felony of the first degree.

31           (b) A felony of the first degree shall be reclassified as a  
32 life felony.

By Senator Grimsley

21-01365-16

20161294\_\_

A bill to be entitled

An act relating to offenses involving minors and vulnerable persons; amending s. 92.54, F.S.; increasing the maximum age at which a victim or witness may be allowed to testify via closed circuit television rather than in a courtroom in certain circumstances; amending s. 782.04, F.S.; including human trafficking as an underlying felony offense to support a felony murder conviction; amending s. 787.06, F.S.; providing increased criminal penalties for human trafficking offenses if the victim suffers great bodily harm, permanent disability, or permanent disfigurement; specifying that penalties for branding must be for the purpose of committing the offense of human trafficking; prohibiting certain defense to prosecution; amending s. 794.022, F.S.; including human trafficking and lewd and lascivious offenses in the rules of evidence applicable to sexually-related offenses; amending ss. 90.404, 775.21, 943.0435, 944.606, and 944.607, F.S.; conforming provisions to changes made by the act; providing an effective date.

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

Section 1. Section 92.54, Florida Statutes, is amended to read:

92.54 Use of closed circuit television in proceedings involving a victim or witness under the age of 18 ~~16~~ or who has an intellectual disability.—

(1) Upon motion and hearing in camera and upon a finding that there is a substantial likelihood that a victim or witness under the age of 18 ~~16~~ or who has an intellectual disability

Page 1 of 16

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21-01365-16

20161294\_\_

will suffer at least moderate emotional or mental harm due to the presence of the defendant if such victim or witness is required to testify in open court, or is unavailable as defined in s. 90.804(1), the trial court may order that the testimony of the victim or witness be taken outside of the courtroom and shown by means of closed circuit television.

(2) The motion may be filed by the victim or witness; the attorney, parent, legal guardian, or guardian ad litem of the victim or witness; the prosecutor; the defendant or the defendant's counsel; or the trial judge on his or her own motion.

(3) Only the judge, the prosecutor, the defendant, the attorney for the defendant, the operators of the videotape equipment, an interpreter, and some other person who, in the opinion of the court, contributes to the well-being of the child or the person who has an intellectual disability and who will not be a witness in the case may be in the room during the recording of the testimony.

(4) During the victim's or witness's testimony by closed circuit television, the court may require the defendant to view the testimony from the courtroom. In such a case, the court shall permit the defendant to observe and hear the testimony of the victim or witness, but must ensure that the victim or witness cannot hear or see the defendant. The defendant's right to assistance of counsel, which includes the right to immediate and direct communication with counsel conducting cross-examination, must be protected and, upon the defendant's request, such communication must be provided by any appropriate electronic method.

Page 2 of 16

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21-01365-16

20161294\_\_

62 (5) The court shall make specific findings of fact, on the  
63 record, as to the basis for its ruling under this section.

64 Section 2. Subsections (1), (3), and (4) of section 782.04,  
65 Florida Statutes, are amended to read:

66 782.04 Murder.—

67 (1) (a) The unlawful killing of a human being:

68 1. When perpetrated from a premeditated design to effect  
69 the death of the person killed or any human being;

70 2. When committed by a person engaged in the perpetration  
71 of, or in the attempt to perpetrate, any:

72 a. Trafficking offense prohibited by s. 893.135(1),

73 b. Arson,

74 c. Sexual battery,

75 d. Robbery,

76 e. Burglary,

77 f. Kidnapping,

78 g. Escape,

79 h. Aggravated child abuse,

80 i. Aggravated abuse of an elderly person or disabled adult,

81 j. Aircraft piracy,

82 k. Unlawful throwing, placing, or discharging of a  
83 destructive device or bomb,

84 l. Carjacking,

85 m. Home-invasion robbery,

86 n. Aggravated stalking,

87 o. Murder of another human being,

88 p. Resisting an officer with violence to his or her person,

89 q. Aggravated fleeing or eluding with serious bodily injury  
90 or death,

Page 3 of 16

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21-01365-16

20161294\_\_

91 r. Felony that is an act of terrorism or is in furtherance  
92 of an act of terrorism, ~~or~~

93 s. Human trafficking; or

94 3. Which resulted from the unlawful distribution of any  
95 substance controlled under s. 893.03(1), cocaine as described in  
96 s. 893.03(2)(a)4., opium or any synthetic or natural salt,  
97 compound, derivative, or preparation of opium, or methadone by a  
98 person 18 years of age or older, when such drug is proven to be  
99 the proximate cause of the death of the user,

100 is murder in the first degree and constitutes a capital felony,  
101 punishable as provided in s. 775.082.

102 (b) In all cases under this section, the procedure set  
103 forth in s. 921.141 shall be followed in order to determine  
104 sentence of death or life imprisonment.

105 (3) When a human being is killed during the perpetration  
106 of, or during the attempt to perpetrate, any:

107 (a) Trafficking offense prohibited by s. 893.135(1),

108 (b) Arson,

109 (c) Sexual battery,

110 (d) Robbery,

111 (e) Burglary,

112 (f) Kidnapping,

113 (g) Escape,

114 (h) Aggravated child abuse,

115 (i) Aggravated abuse of an elderly person or disabled  
116 adult,

117 (j) Aircraft piracy,

118 (k) Unlawful throwing, placing, or discharging of a  
119

Page 4 of 16

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21-01365-16

20161294\_\_

120 destructive device or bomb,  
 121 (l) Carjacking,  
 122 (m) Home-invasion robbery,  
 123 (n) Aggravated stalking,  
 124 (o) Murder of another human being,  
 125 (p) Aggravated fleeing or eluding with serious bodily  
 126 injury or death,  
 127 (q) Resisting an officer with violence to his or her  
 128 person, ~~or~~  
 129 (r) Felony that is an act of terrorism or is in furtherance  
 130 of an act of terrorism, or  
 131 (s) Human trafficking,  
 132  
 133 by a person other than the person engaged in the perpetration of  
 134 or in the attempt to perpetrate such felony, the person  
 135 perpetrating or attempting to perpetrate such felony commits  
 136 murder in the second degree, which constitutes a felony of the  
 137 first degree, punishable by imprisonment for a term of years not  
 138 exceeding life or as provided in s. 775.082, s. 775.083, or s.  
 139 775.084.  
 140 (4) The unlawful killing of a human being, when perpetrated  
 141 without any design to effect death, by a person engaged in the  
 142 perpetration of, or in the attempt to perpetrate, any felony  
 143 other than any:  
 144 (a) Trafficking offense prohibited by s. 893.135(1),  
 145 (b) Arson,  
 146 (c) Sexual battery,  
 147 (d) Robbery,  
 148 (e) Burglary,

Page 5 of 16

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21-01365-16

20161294\_\_

149 (f) Kidnapping,  
 150 (g) Escape,  
 151 (h) Aggravated child abuse,  
 152 (i) Aggravated abuse of an elderly person or disabled  
 153 adult,  
 154 (j) Aircraft piracy,  
 155 (k) Unlawful throwing, placing, or discharging of a  
 156 destructive device or bomb,  
 157 (l) Unlawful distribution of any substance controlled under  
 158 s. 893.03(1), cocaine as described in s. 893.03(2)(a)4., or  
 159 opium or any synthetic or natural salt, compound, derivative, or  
 160 preparation of opium by a person 18 years of age or older, when  
 161 such drug is proven to be the proximate cause of the death of  
 162 the user,  
 163 (m) Carjacking,  
 164 (n) Home-invasion robbery,  
 165 (o) Aggravated stalking,  
 166 (p) Murder of another human being,  
 167 (q) Aggravated fleeing or eluding with serious bodily  
 168 injury or death,  
 169 (r) Resisting an officer with violence to his or her  
 170 person, ~~or~~  
 171 (s) Felony that is an act of terrorism or is in furtherance  
 172 of an act of terrorism, or  
 173 (t) Human trafficking,  
 174  
 175 is murder in the third degree and constitutes a felony of the  
 176 second degree, punishable as provided in s. 775.082, s. 775.083,  
 177 or s. 775.084.

Page 6 of 16

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21-01365-16

20161294\_\_

178 Section 3. Paragraph (h) is added to subsection (3) of  
 179 section 787.06, Florida Statutes, paragraph (b) of subsection  
 180 (4) is amended, subsections (5) through (9) are renumbered as  
 181 subsections (6) through (10), respectively, and a new subsection  
 182 (5) is added to that section, to read:

183 787.06 Human trafficking.—

184 (3) Any person who knowingly, or in reckless disregard of  
 185 the facts, engages in human trafficking, or attempts to engage  
 186 in human trafficking, or benefits financially by receiving  
 187 anything of value from participation in a venture that has  
 188 subjected a person to human trafficking:

189 (h) And during the commission or attempt to commit the  
 190 offense of human trafficking causes great bodily harm, permanent  
 191 disability, or permanent disfigurement to the victim of the  
 192 human trafficking offense or attempted offense commits a felony  
 193 of the first degree, punishable for a term of years not  
 194 exceeding life, as provided in s. 775.082, s. 775.083, or s.  
 195 775.084.

196  
 197 For each instance of human trafficking of any individual under  
 198 this subsection, a separate crime is committed and a separate  
 199 punishment is authorized.

200 (4)

201 (b) Any person who permanently brands, or directs to be  
 202 permanently branded, for the purpose of committing an offense  
 203 under this section, a victim of an offense under this section  
 204 commits a second degree felony, punishable as provided in s.  
 205 775.082, s. 775.083, or s. 775.084. For purposes of this  
 206 subsection, the term "permanently branded" means a mark on the

Page 7 of 16

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21-01365-16

20161294\_\_

207 individual's body that, if it can be removed or repaired at all,  
 208 can only be removed or repaired by surgical means, laser  
 209 treatment, or other medical procedure.

210 (5) A victim's lack of chastity or the willingness or  
 211 consent of a victim is not a defense to prosecution under this  
 212 section if the victim was under 18 years of age at the time of  
 213 the offense.

214 Section 4. Section 794.022, Florida Statutes, is amended to  
 215 read:

216 794.022 Rules of evidence.—

217 (1) The testimony of the victim need not be corroborated in  
 218 a prosecution under s. 787.06, s. 794.011, or s. 800.04.

219 (2) Specific instances of prior consensual sexual activity  
 220 between the victim and any person other than the offender may  
 221 ~~shall~~ not be admitted into evidence in a prosecution under s.  
 222 787.06, s. 794.011, or s. 800.04. However, such evidence may be  
 223 admitted if it is first established to the court in a proceeding  
 224 in camera that such evidence may prove that the defendant was  
 225 not the source of the semen, pregnancy, injury, or disease; or,  
 226 when consent by the victim is at issue, such evidence may be  
 227 admitted if it is first established to the court in a proceeding  
 228 in camera that such evidence tends to establish a pattern of  
 229 conduct or behavior on the part of the victim which is so  
 230 similar to the conduct or behavior in the case that it is  
 231 relevant to the issue of consent.

232 (3) Notwithstanding any other provision of law, reputation  
 233 evidence relating to a victim's prior sexual conduct or evidence  
 234 presented for the purpose of showing that manner of dress of the  
 235 victim at the time of the offense incited the sexual battery may

Page 8 of 16

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21-01365-16

20161294\_\_

236 ~~shall~~ not be admitted into evidence in a prosecution under s.  
 237 787.06, s. 794.011, or s. 800.04.

238 (4) When consent of the victim is a defense to prosecution  
 239 under s. 787.06, s. 794.011, or s. 800.04, evidence of the  
 240 victim's mental incapacity or defect is admissible to prove that  
 241 the consent was not intelligent, knowing, or voluntary; and the  
 242 court shall instruct the jury accordingly.

243 (5) An offender's use of a prophylactic device, or a  
 244 victim's request that an offender use a prophylactic device, is  
 245 not, by itself, relevant to either the issue of whether or not  
 246 the offense was committed or the issue of whether or not the  
 247 victim consented.

248 Section 5. Paragraphs (b) and (c) of subsection (2) of  
 249 section 90.404, Florida Statutes, are amended to read:

250 90.404 Character evidence; when admissible.—

251 (2) OTHER CRIMES, WRONGS, OR ACTS.—

252 (b)1. In a criminal case in which the defendant is charged  
 253 with a crime involving child molestation, evidence of the  
 254 defendant's commission of other crimes, wrongs, or acts of child  
 255 molestation is admissible and may be considered for its bearing  
 256 on any matter to which it is relevant.

257 2. For the purposes of this paragraph, the term "child  
 258 molestation" means conduct proscribed by s. 787.025(2)(c), s.  
 259 787.06(3)(g), ~~former~~ s. 787.06(3)(h), Florida Statutes 2012, s.  
 260 794.011, excluding s. 794.011(10), s. 794.05, former s. 796.03,  
 261 former s. 796.035, s. 800.04, s. 827.071, s. 847.0135(5), s.  
 262 847.0145, or s. 985.701(1) when committed against a person 16  
 263 years of age or younger.

264 (c)1. In a criminal case in which the defendant is charged

21-01365-16

20161294\_\_

265 with a sexual offense, evidence of the defendant's commission of  
 266 other crimes, wrongs, or acts involving a sexual offense is  
 267 admissible and may be considered for its bearing on any matter  
 268 to which it is relevant.

269 2. For the purposes of this paragraph, the term "sexual  
 270 offense" means conduct proscribed by s. 787.025(2)(c), s.  
 271 787.06(3)(b), (d), (f), or (g), ~~former~~ s. 787.06(3)(h), Florida  
 272 Statutes 2012, s. 794.011, excluding s. 794.011(10), s. 794.05,  
 273 former s. 796.03, former s. 796.035, s. 825.1025(2)(b), s.  
 274 827.071, s. 847.0135(5), s. 847.0145, or s. 985.701(1).

275 Section 6. Paragraph (a) of subsection (4) of section  
 276 775.21, Florida Statutes, is amended to read:

277 775.21 The Florida Sexual Predators Act.—

278 (4) SEXUAL PREDATOR CRITERIA.—

279 (a) For a current offense committed on or after October 1,  
 280 1993, upon conviction, an offender shall be designated as a  
 281 "sexual predator" under subsection (5), and subject to  
 282 registration under subsection (6) and community and public  
 283 notification under subsection (7) if:

284 1. The felony is:

285 a. A capital, life, or first degree felony violation, or  
 286 any attempt thereof, of s. 787.01 or s. 787.02, where the victim  
 287 is a minor and the defendant is not the victim's parent or  
 288 guardian, or s. 794.011, s. 800.04, or s. 847.0145, or a  
 289 violation of a similar law of another jurisdiction; or

290 b. Any felony violation, or any attempt thereof, of s.  
 291 393.135(2); s. 394.4593(2); s. 787.01, s. 787.02, or s.  
 292 787.025(2)(c), where the victim is a minor and the defendant is  
 293 not the victim's parent or guardian; s. 787.06(3)(b), (d), (f),

21-01365-16 20161294\_\_

294 or (g); ~~former~~ s. 787.06(3)(h), Florida Statutes 2012; s.  
 295 794.011, excluding s. 794.011(10); s. 794.05; former s. 796.03;  
 296 former s. 796.035; s. 800.04; s. 810.145(8)(b); s. 825.1025; s.  
 297 827.071; s. 847.0135, excluding s. 847.0135(6); s. 847.0145; s.  
 298 916.1075(2); or s. 985.701(1); or a violation of a similar law  
 299 of another jurisdiction, and the offender has previously been  
 300 convicted of or found to have committed, or has pled nolo  
 301 contendere or guilty to, regardless of adjudication, any  
 302 violation of s. 393.135(2); s. 394.4593(2); s. 787.01, s.  
 303 787.02, or s. 787.025(2)(c), where the victim is a minor and the  
 304 defendant is not the victim's parent or guardian; s.  
 305 787.06(3)(b), (d), (f), or (g); ~~former~~ s. 787.06(3)(h), Florida  
 306 Statutes 2012; s. 794.011, excluding s. 794.011(10); s. 794.05;  
 307 former s. 796.03; former s. 796.035; s. 800.04; s. 825.1025; s.  
 308 827.071; s. 847.0133; s. 847.0135, excluding s. 847.0135(6); s.  
 309 847.0145; s. 916.1075(2); or s. 985.701(1); or a violation of a  
 310 similar law of another jurisdiction;  
 311 2. The offender has not received a pardon for any felony or  
 312 similar law of another jurisdiction that is necessary for the  
 313 operation of this paragraph; and  
 314 3. A conviction of a felony or similar law of another  
 315 jurisdiction necessary to the operation of this paragraph has  
 316 not been set aside in any postconviction proceeding.  
 317 Section 7. Paragraph (a) of subsection (1) of section  
 318 943.0435, Florida Statutes, is amended to read:  
 319 943.0435 Sexual offenders required to register with the  
 320 department; penalty.—  
 321 (1) As used in this section, the term:  
 322 (a)1. "Sexual offender" means a person who meets the

21-01365-16 20161294\_\_

323 criteria in sub-subparagraph a., sub-subparagraph b., sub-  
 324 subparagraph c., or sub-subparagraph d., as follows:  
 325 a.(I) Has been convicted of committing, or attempting,  
 326 soliciting, or conspiring to commit, any of the criminal  
 327 offenses proscribed in the following statutes in this state or  
 328 similar offenses in another jurisdiction: s. 393.135(2); s.  
 329 394.4593(2); s. 787.01, s. 787.02, or s. 787.025(2)(c), where  
 330 the victim is a minor and the defendant is not the victim's  
 331 parent or guardian; s. 787.06(3)(b), (d), (f), or (g); ~~former~~ s.  
 332 787.06(3)(h), Florida Statutes 2012; s. 794.011, excluding s.  
 333 794.011(10); s. 794.05; former s. 796.03; former s. 796.035; s.  
 334 800.04; s. 810.145(8); s. 825.1025; s. 827.071; s. 847.0133; s.  
 335 847.0135, excluding s. 847.0135(6); s. 847.0137; s. 847.0138; s.  
 336 847.0145; s. 916.1075(2); or s. 985.701(1); or any similar  
 337 offense committed in this state which has been redesignated from  
 338 a former statute number to one of those listed in this sub-sub-  
 339 subparagraph; and  
 340 (II) Has been released on or after October 1, 1997, from  
 341 the sanction imposed for any conviction of an offense described  
 342 in sub-sub-subparagraph (I). For purposes of sub-sub-  
 343 subparagraph (I), a sanction imposed in this state or in any  
 344 other jurisdiction includes, but is not limited to, a fine,  
 345 probation, community control, parole, conditional release,  
 346 control release, or incarceration in a state prison, federal  
 347 prison, private correctional facility, or local detention  
 348 facility;  
 349 b. Establishes or maintains a residence in this state and  
 350 who has not been designated as a sexual predator by a court of  
 351 this state but who has been designated as a sexual predator, as

21-01365-16

20161294\_\_

352 a sexually violent predator, or by another sexual offender  
 353 designation in another state or jurisdiction and was, as a  
 354 result of such designation, subjected to registration or  
 355 community or public notification, or both, or would be if the  
 356 person were a resident of that state or jurisdiction, without  
 357 regard to whether the person otherwise meets the criteria for  
 358 registration as a sexual offender;

359 c. Establishes or maintains a residence in this state who  
 360 is in the custody or control of, or under the supervision of,  
 361 any other state or jurisdiction as a result of a conviction for  
 362 committing, or attempting, soliciting, or conspiring to commit,  
 363 any of the criminal offenses proscribed in the following  
 364 statutes or similar offense in another jurisdiction: s.  
 365 393.135(2); s. 394.4593(2); s. 787.01, s. 787.02, or s.  
 366 787.025(2)(c), where the victim is a minor and the defendant is  
 367 not the victim's parent or guardian; s. 787.06(3)(b), (d), (f),  
 368 or (g); ~~former~~ s. 787.06(3)(h), Florida Statutes 2012; s.  
 369 794.011, excluding s. 794.011(10); s. 794.05; former s. 796.03;  
 370 former s. 796.035; s. 800.04; s. 810.145(8); s. 825.1025; s.  
 371 827.071; s. 847.0133; s. 847.0135, excluding s. 847.0135(6); s.  
 372 847.0137; s. 847.0138; s. 847.0145; s. 916.1075(2); or s.  
 373 985.701(1); or any similar offense committed in this state which  
 374 has been redesignated from a former statute number to one of  
 375 those listed in this sub-subparagraph; or

376 d. On or after July 1, 2007, has been adjudicated  
 377 delinquent for committing, or attempting, soliciting, or  
 378 conspiring to commit, any of the criminal offenses proscribed in  
 379 the following statutes in this state or similar offenses in  
 380 another jurisdiction when the juvenile was 14 years of age or

Page 13 of 16

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21-01365-16

20161294\_\_

381 older at the time of the offense:

382 (I) Section 794.011, excluding s. 794.011(10);

383 (II) Section 800.04(4)(a)2. where the victim is under 12  
 384 years of age or where the court finds sexual activity by the use  
 385 of force or coercion;

386 (III) Section 800.04(5)(c)1. where the court finds  
 387 molestation involving unclothed genitals; or

388 (IV) Section 800.04(5)(d) where the court finds the use of  
 389 force or coercion and unclothed genitals.

390 2. For all qualifying offenses listed in sub-subparagraph  
 391 (1)(a)1.d., the court shall make a written finding of the age of  
 392 the offender at the time of the offense.

393  
 394 For each violation of a qualifying offense listed in this  
 395 subsection, except for a violation of s. 794.011, the court  
 396 shall make a written finding of the age of the victim at the  
 397 time of the offense. For a violation of s. 800.04(4), the court  
 398 shall also make a written finding indicating whether the offense  
 399 involved sexual activity and indicating whether the offense  
 400 involved force or coercion. For a violation of s. 800.04(5), the  
 401 court shall also make a written finding that the offense did or  
 402 did not involve unclothed genitals or genital area and that the  
 403 offense did or did not involve the use of force or coercion.

404 Section 8. Paragraph (b) of subsection (1) of section  
 405 944.606, Florida Statutes, is amended to read:

406 944.606 Sexual offenders; notification upon release.—

407 (1) As used in this section:

408 (b) "Sexual offender" means a person who has been convicted  
 409 of committing, or attempting, soliciting, or conspiring to

Page 14 of 16

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21-01365-16 20161294\_\_

410 commit, any of the criminal offenses proscribed in the following  
 411 statutes in this state or similar offenses in another  
 412 jurisdiction: s. 393.135(2); s. 394.4593(2); s. 787.01, s.  
 413 787.02, or s. 787.025(2)(c), where the victim is a minor and the  
 414 defendant is not the victim's parent or guardian; s.  
 415 787.06(3)(b), (d), (f), or (g); ~~former~~ s. 787.06(3)(h), Florida  
 416 Statutes 2012; s. 794.011, excluding s. 794.011(10); s. 794.05;  
 417 former s. 796.03; former s. 796.035; s. 800.04; s. 810.145(8);  
 418 s. 825.1025; s. 827.071; s. 847.0133; s. 847.0135, excluding s.  
 419 847.0135(6); s. 847.0137; s. 847.0138; s. 847.0145; s.  
 420 916.1075(2); or s. 985.701(1); or any similar offense committed  
 421 in this state which has been redesignated from a former statute  
 422 number to one of those listed in this subsection, when the  
 423 department has received verified information regarding such  
 424 conviction; an offender's computerized criminal history record  
 425 is not, in and of itself, verified information.

426 Section 9. Paragraph (a) of subsection (1) of section  
 427 944.607, Florida Statutes, is amended to read:  
 428 944.607 Notification to Department of Law Enforcement of  
 429 information on sexual offenders.—

430 (1) As used in this section, the term:  
 431 (a) "Sexual offender" means a person who is in the custody  
 432 or control of, or under the supervision of, the department or is  
 433 in the custody of a private correctional facility:  
 434 1. On or after October 1, 1997, as a result of a conviction  
 435 for committing, or attempting, soliciting, or conspiring to  
 436 commit, any of the criminal offenses proscribed in the following  
 437 statutes in this state or similar offenses in another  
 438 jurisdiction: s. 393.135(2); s. 394.4593(2); s. 787.01, s.

21-01365-16 20161294\_\_

439 787.02, or s. 787.025(2)(c), where the victim is a minor and the  
 440 defendant is not the victim's parent or guardian; s.  
 441 787.06(3)(b), (d), (f), or (g); ~~former~~ s. 787.06(3)(h), Florida  
 442 Statutes 2012; s. 794.011, excluding s. 794.011(10); s. 794.05;  
 443 former s. 796.03; former s. 796.035; s. 800.04; s. 810.145(8);  
 444 s. 825.1025; s. 827.071; s. 847.0133; s. 847.0135, excluding s.  
 445 847.0135(6); s. 847.0137; s. 847.0138; s. 847.0145; s.  
 446 916.1075(2); or s. 985.701(1); or any similar offense committed  
 447 in this state which has been redesignated from a former statute  
 448 number to one of those listed in this paragraph; or  
 449 2. Who establishes or maintains a residence in this state  
 450 and who has not been designated as a sexual predator by a court  
 451 of this state but who has been designated as a sexual predator,  
 452 as a sexually violent predator, or by another sexual offender  
 453 designation in another state or jurisdiction and was, as a  
 454 result of such designation, subjected to registration or  
 455 community or public notification, or both, or would be if the  
 456 person were a resident of that state or jurisdiction, without  
 457 regard as to whether the person otherwise meets the criteria for  
 458 registration as a sexual offender.

459 Section 10. This act shall take effect July 1, 2016.

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/29/16

Meeting Date

SB/1294

Bill Number (if applicable)

Topic \_\_\_\_\_

Amendment Barcode (if applicable)

Name Greg Pound

Job Title \_\_\_\_\_

Address 9166 Sunrise Dr.

Phone \_\_\_\_\_

Street

Largo

City

Fla.

State

33773

Zip

Email \_\_\_\_\_

Speaking:  For  Against  Information

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

Representing Pinellas Florida Government Corruption

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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



## THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

**COMMITTEES:**  
Communications, Energy, and Public Utilities, *Chair*  
Agriculture  
Appropriations  
Appropriations Subcommittee on Health  
and Human Services  
Health Policy  
Transportation

**JOINT COMMITTEES:**  
Joint Administrative Procedures Committee,  
*Alternating Chair*  
Joint Legislative Budget Commission

### SENATOR DENISE GRIMSLEY

*Deputy Majority Leader*  
21st District

February 25, 2016

The Honorable Anitere Flores, Chair  
Committee on Fiscal Policy  
225 Knott Building  
404 S. Monroe Street  
Tallahassee, FL 32399-1100

Dear Chair Flores:

I have two bills on the agenda Monday, February 29<sup>th</sup> at 1:00 p.m., SB 964 relating to Prescription Drug Monitoring Program and SB 1294 relating to Offenses Involving Minors and Vulnerable Persons. I am respectfully requesting permission for staff to present my bills on my behalf. Staff presenting will be Marty Mielke (SB 964) and Anne Bell (SB 1294). I have a bill up in Rules Committee scheduled at the same time.

Sincerely,

A handwritten signature in cursive script that reads "Denise Grimsley".

Denise Grimsley  
State Senate, District 21

**REPLY TO:**

- 205 South Commerce Avenue, Suite A, Sebring, Florida 33870 (863) 386-6016
- 212 East Stuart Avenue, Lake Wales, Florida 33853 (863) 679-4847
- 306 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5021

Senate's Website: [www.flsenate.gov](http://www.flsenate.gov)

**ANDY GARDINER**  
President of the Senate

**GARRETT RICHTER**  
President Pro Tempore

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

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

---

Prepared By: The Professional Staff of the Committee on Fiscal Policy

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**BILL:** PCS/CS/SB 1378 (799956)

**INTRODUCER:** Fiscal Policy Committee (Recommended by Appropriations Subcommittee on Health and Human Services); Health Policy Committee; and Senator Garcia

**SUBJECT:** Drug Safety

**DATE:** February 26, 2016

**REVISED:** \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Rossitto-Van Winkle	Stovall	HP	<b>Fav/CS</b>
2.	Brown	Pigott	AHS	<b>Recommend: Fav/CS</b>
3.	Pace	Hrdlicka	FP	<b>Pre-meeting</b>

**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

---

**I. Summary:**

PCS/CS/SB 1378 amends Florida’s Prescription Drug Monitoring Program (PDMP) to require pharmacies to sell prescription lock boxes and to display a sign indicating the boxes are available for sale. The bill authorizes the Department of Health (DOH) to develop and distribute statewide, and on its website, a pamphlet containing specific information regarding controlled substances. The bill also requires pharmacists to distribute the pamphlet, if available at no cost. The bill directs that this act may be cited as “Victoria’s Law.”

The bill has no fiscal impact on state government.

**II. Present Situation:**

Section 893.055, F.S, creates the PDMP within the DOH and requires the DOH to design and establish a comprehensive electronic database system to collect controlled substance prescription dispensing information, while not infringing upon the legitimate prescribing or dispensing of controlled substances by a prescriber or dispenser acting in good faith and in the course of professional practice.<sup>1</sup>

---

<sup>1</sup> Section 893.055(2)(a), F.S.



The DOH's 2014-2015 PDMP Annual Report shows that Florida experienced a steady rise in oxycodone-caused death rates from 2005 to a peak in 2010.<sup>2</sup> In 2014, the rate decreased to the lowest since 2006. Recent declines in overdose deaths may be attributed to safer, more effective pain management, changes in state regulatory policies, and promotion of the use of the information maintained in the PDMP.<sup>3</sup> “[w]hile Florida has been viewed as the epicenter of the nation’s ‘pill mill’ epidemic, new statistics reflect that the efforts of the [Drug Enforcement Administration] and its federal, state, and local law enforcement partners have made a significant difference in Florida.”<sup>4</sup> The PDMP, in combination with changes in regulation, has proven effective at reducing opioid use.<sup>5</sup>

In 2010, Massachusetts became the first state to require pharmacies to carry prescription lock boxes. The act requires all pharmacies in Massachusetts that dispense Schedule II, III, IV, or V prescription drugs to sell lock boxes at each pharmacy location.<sup>6</sup>

Florida currently does require pharmacies to sell prescription lock boxes or provide information on prescription drug abuse.

### III. Effect of Proposed Changes:

The bill amends s. 893.055, F.S., Florida’s PDMP, to require pharmacies to sell prescription lock boxes. The bill defines “prescription lock boxes” as a box or a bag with a locking mechanism that cannot be tampered with or opened without the application of extreme force. The bill requires pharmacies to display a sign on or near the pharmacy counter stating, “Prescription Lock Boxes for Securing Your Prescription Medications Are Available at This Pharmacy.”

The bill authorizes the DOH to develop and distribute a written pamphlet that contains educational information about the following:

- Precautions regarding the use of pain management prescriptions;
- The potential for misuse and abuse of controlled substances by adults and children;
- The risk of controlled substance dependency and addiction;
- The proper storage and disposal of controlled substances;
- Controlled substance addiction support and treatment resources; and
- Telephone help lines and website links that provide counseling and emergency assistance for individuals dealing with substance abuse.

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<sup>2</sup> DOH, *2014-2015 Prescription Drug Monitoring Program Annual Report*, (December 1, 2015) p. 7, available at: [http://www.floridahealth.gov/statistics-and-data/e-force/news-reports/\\_documents/2015-pdmp-annual-report.pdf](http://www.floridahealth.gov/statistics-and-data/e-force/news-reports/_documents/2015-pdmp-annual-report.pdf) (last visited Jan. 28, 2016).

<sup>3</sup> Centers for Disease Control and Prevention, *Injury Prevention & Control: Prescription Drug Overdose*, available at: <http://www.cdc.gov/drugoverdose/index.html> (last visited Feb. 24, 2016).

<sup>4</sup> U.S. Drug Enforcement Administration, Miami News, *Florida Doctors No Longer Among the Top Oxycodone Purchasers in the United States*, (April 5, 2013) available at: <http://www.dea.gov/divisions/mia/2013/mia040513.shtml> (last visited Feb. 24, 2016).

<sup>5</sup> Rutkow, L., et.al., *Effect of Florida’s Prescription Drug Monitoring Program and Pill Mill Laws on Opioid Prescribing and Use*, *JAMA Intern Med.*, 2015;175(10):1642-1649, (October 2015) available at: <http://archinte.jamanetwork.com/article.aspx?articleid=2429105> (last visited Feb. 24, 2016).

<sup>6</sup> See ch. 283, s. 11(b), Laws of Mass. (2010), *An Act Adding Safeguards to the Prescription Monitoring Program and Furthering Substance Abuse Education and Prevention*, available at: <https://malegislature.gov/Laws/SessionLaws/Acts/2010/Chapter283> (last visited Feb. 24, 2016).

If the DOH develops a written pamphlet, then it must distribute copies of the pamphlet to pharmacies throughout the state and make the contents of the pamphlet available in electronic form on its website. If copies of the pamphlet are provided by the DOH, a pharmacist must distribute this pamphlet to consumers when dispensing a prescription or controlled substance and must offer them to consumers in a display. Pharmacies may not charge for the pamphlets.

The bill directs that the act may be cited as “Victoria’s Law.”

The bill is effective July 1, 2016.

#### **IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

#### **V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill requires pharmacies to stock prescription lock boxes, increasing their costs to inventory the boxes. If the written pamphlets are provided by the DOH, the bill requires a pharmacist, not a non-pharmacist employee of the pharmacy, to distribute the pamphlet to a consumer each time any prescription is dispensed, thereby increasing the pharmacist’s workload.

C. Government Sector Impact:

Since the bill authorizes, but does not require, the DOH to develop the written pamphlet, the bill has no direct fiscal impact. The cost of developing and distributing the pamphlet statewide would be significant, and the DOH would presumably need a legislative appropriation before doing so.

**VI. Technical Deficiencies:**

The bill defines a “prescription lock box” as a box or a bag with a locking mechanism that cannot be tampered with or opened without the application of extreme force. The intent of the bill relating to “extreme force” is unclear. “Extreme force” is not defined, and the bill seems to indicate that opening the box should require the application of extreme force under any circumstances, regardless of who is seeking access.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends section 893.055 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.)

**Recommended CS/CS by the Appropriations Subcommittee on Health and Human Services on February 24, 2016:**

The CS authorizes, rather than requires, the DOH to develop a written pamphlet to be made available in pharmacies statewide and requires pharmacists to distribute the pamphlets only if they are made available by the DOH.

**CS by Health Policy on February 1, 2016**

The CS directs that the act may be cited as “Victoria’s Law.” All other provisions remain unchanged.

- B. **Amendments:**

None.



594-04129-16

Proposed Committee Substitute by the Committee on Fiscal Policy  
(Appropriations Subcommittee on Health and Human Services)

A bill to be entitled

An act relating to drug safety; providing a short title; amending s. 893.055, F.S.; requiring pharmacies to offer for sale prescription lock boxes; requiring pharmacies to display a certain sign; defining the term "prescription lock box"; requiring the Department of Health to develop and distribute a pamphlet; requiring the pamphlet to contain certain information; requiring pharmacists to distribute the pamphlet in certain circumstances; prohibiting a pharmacy from charging a fee for the pamphlet; providing an effective date.

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

Section 1. This act may be cited as "Victoria's Law."

Section 2. Present subsections (15), (16), and (17) of section 893.055, Florida Statutes, are redesignated as subsections (17), (18), and (19), respectively, and new subsections (15) and (16) are added to that section, to read:  
893.055 Prescription drug monitoring program.—

(15) Pharmacies shall offer for sale prescription lock boxes at each store location. Pharmacies shall make customers aware of the availability of the prescription lock boxes by displaying a sign on or near the pharmacy counter which measures at least 4 inches by 5 inches and includes the statement, in a legibly printed font, "Prescription Lock Boxes for Securing Your



594-04129-16

Prescription Medications Are Available at This Pharmacy." As used in this subsection, the term "prescription lock box" means a box or a bag with a locking mechanism that cannot be tampered with or opened without the application of extreme force.

(16) (a) The department may develop a written pamphlet relating to controlled substances which includes educational information about the following:

1. Precautions regarding the use of pain management prescriptions.

2. The potential for misuse and abuse of controlled substances by adults and children.

3. The risk of controlled substance dependency and addiction.

4. The proper storage and disposal of controlled substances.

5. Controlled substance addiction support and treatment resources.

6. Telephone helplines and website links that provide counseling and emergency assistance for individuals dealing with substance abuse.

(b) If the department develops a written pamphlet relating to controlled substances, the department shall distribute copies of the pamphlet to pharmacies throughout the state and make the contents of the pamphlet available in electronic form on its website. If copies of the pamphlet are provided by the department, a pharmacist shall distribute the pamphlet to a consumer when dispensing a prescription or a controlled substance and shall offer them to consumers in a display. Pharmacies may not charge consumers a fee for the pamphlet.



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Section 3. This act shall take effect July 1, 2016.

**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.)

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Prepared By: The Professional Staff of the Committee on Fiscal Policy

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**BILL:** CS/CS/SB 1378

**INTRODUCER:** Fiscal Policy Committee (Recommended by Appropriations Subcommittee on Health and Human Services); Health Policy Committee; and Senator Garcia

**SUBJECT:** Drug Safety

**DATE:** February 29, 2016

**REVISED:** \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Rossitto-Van Winkle	Stovall	HP	<b>Fav/CS</b>
2.	Brown	Pigott	AHS	<b>Recommend: Fav/CS</b>
3.	Pace	Hrdlicka	FP	<b>Fav/CS</b>

**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/CS/SB 1378 amends Florida’s Prescription Drug Monitoring Program (PDMP) to require pharmacies to sell prescription lock boxes and to display a sign indicating the boxes are available for sale. The bill authorizes the Department of Health (DOH) to develop and distribute statewide, and on its website, a pamphlet containing specific information regarding controlled substances. The bill also requires pharmacists to distribute the pamphlet, if available at no cost. The bill directs that this act may be cited as “Victoria’s Law.”

The bill has no fiscal impact on state government.

**II. Present Situation:**

Section 893.055, F.S, creates the PDMP within the DOH and requires the DOH to design and establish a comprehensive electronic database system to collect controlled substance prescription dispensing information, while not infringing upon the legitimate prescribing or dispensing of controlled substances by a prescriber or dispenser acting in good faith and in the course of professional practice.<sup>1</sup>

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<sup>1</sup> Section 893.055(2)(a), F.S.

The DOH's 2014-2015 PDMP Annual Report shows that Florida experienced a steady rise in oxycodone-caused death rates from 2005 to a peak in 2010.<sup>2</sup> In 2014, the rate decreased to the lowest since 2006. Recent declines in overdose deaths may be attributed to safer, more effective pain management, changes in state regulatory policies, and promotion of the use of the information maintained in the PDMP.<sup>3</sup> “[w]hile Florida has been viewed as the epicenter of the nation’s ‘pill mill’ epidemic, new statistics reflect that the efforts of the [Drug Enforcement Administration] and its federal, state, and local law enforcement partners have made a significant difference in Florida.”<sup>4</sup> The PDMP, in combination with changes in regulation, has proven effective at reducing opioid use.<sup>5</sup>

In 2010, Massachusetts became the first state to require pharmacies to carry prescription lock boxes. The act requires all pharmacies in Massachusetts that dispense Schedule II, III, IV, or V prescription drugs to sell lock boxes at each pharmacy location.<sup>6</sup>

Florida currently does require pharmacies to sell prescription lock boxes or provide information on prescription drug abuse.

### III. Effect of Proposed Changes:

The bill amends s. 893.055, F.S., Florida’s PDMP, to require pharmacies to sell prescription lock boxes. The bill defines “prescription lock boxes” as a box or a bag with a locking mechanism that cannot be tampered with or opened without the application of extreme force. The bill requires pharmacies to display a sign on or near the pharmacy counter stating, “Prescription Lock Boxes for Securing Your Prescription Medications Are Available at This Pharmacy.”

The bill authorizes the DOH to develop and distribute a written pamphlet that contains educational information about the following:

- Precautions regarding the use of pain management prescriptions;
- The potential for misuse and abuse of controlled substances by adults and children;
- The risk of controlled substance dependency and addiction;
- The proper storage and disposal of controlled substances;
- Controlled substance addiction support and treatment resources; and
- Telephone help lines and website links that provide counseling and emergency assistance for individuals dealing with substance abuse.

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<sup>2</sup> DOH, *2014-2015 Prescription Drug Monitoring Program Annual Report*, (December 1, 2015) p. 7, available at: [http://www.floridahealth.gov/statistics-and-data/e-force/news-reports/\\_documents/2015-pdmp-annual-report.pdf](http://www.floridahealth.gov/statistics-and-data/e-force/news-reports/_documents/2015-pdmp-annual-report.pdf) (last visited Jan. 28, 2016).

<sup>3</sup> Centers for Disease Control and Prevention, *Injury Prevention & Control: Prescription Drug Overdose*, available at: <http://www.cdc.gov/drugoverdose/index.html> (last visited Feb. 24, 2016).

<sup>4</sup> U.S. Drug Enforcement Administration, Miami News, *Florida Doctors No Longer Among the Top Oxycodone Purchasers in the United States*, (April 5, 2013) available at: <http://www.dea.gov/divisions/mia/2013/mia040513.shtml> (last visited Feb. 24, 2016).

<sup>5</sup> Rutkow, L., et.al., *Effect of Florida’s Prescription Drug Monitoring Program and Pill Mill Laws on Opioid Prescribing and Use*, *JAMA Intern Med.*, 2015;175(10):1642-1649, (October 2015) available at: <http://archinte.jamanetwork.com/article.aspx?articleid=2429105> (last visited Feb. 24, 2016).

<sup>6</sup> See ch. 283, s. 11(b), Laws of Mass. (2010), *An Act Adding Safeguards to the Prescription Monitoring Program and Furthering Substance Abuse Education and Prevention*, available at: <https://malegislature.gov/Laws/SessionLaws/Acts/2010/Chapter283> (last visited Feb. 24, 2016).

If the DOH develops a written pamphlet, then it must distribute copies of the pamphlet to pharmacies throughout the state and make the contents of the pamphlet available in electronic form on its website. If copies of the pamphlet are provided by the DOH, a pharmacist must distribute this pamphlet to consumers when dispensing a prescription or controlled substance and must offer them to consumers in a display. Pharmacies may not charge for the pamphlets.

The bill directs that the act may be cited as “Victoria’s Law.”

The bill is effective July 1, 2016.

#### **IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

#### **V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill requires pharmacies to stock prescription lock boxes, increasing their costs to inventory the boxes. If the written pamphlets are provided by the DOH, the bill requires a pharmacist, not a non-pharmacist employee of the pharmacy, to distribute the pamphlet to a consumer each time any prescription is dispensed, thereby increasing the pharmacist’s workload.

C. Government Sector Impact:

Since the bill authorizes, but does not require, the DOH to develop the written pamphlet, the bill has no direct fiscal impact. The cost of developing and distributing the pamphlet statewide would be significant, and the DOH would presumably need a legislative appropriation before doing so.



**VI. Technical Deficiencies:**

The bill defines a “prescription lock box” as a box or a bag with a locking mechanism that cannot be tampered with or opened without the application of extreme force. The intent of the bill relating to “extreme force” is unclear. “Extreme force” is not defined, and the bill seems to indicate that opening the box should require the application of extreme force under any circumstances, regardless of who is seeking access.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends section 893.055 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/CS by Fiscal Policy on February 29, 2016:**

As recommended the Appropriations Subcommittee on Health and Human Services the committee substitute authorizes, rather than requires, the DOH to develop a written pamphlet to be made available in pharmacies statewide and requires pharmacists to distribute the pamphlets only if they are made available by the DOH.

**CS by Health Policy on February 1, 2016:**

The CS directs that the act may be cited as “Victoria’s Law.” All other provisions remain unchanged.

- B. **Amendments:**

None.

By the Committee on Health Policy; and Senator Garcia

588-02908-16

20161378c1

1 A bill to be entitled  
 2 An act relating to drug safety; providing a short  
 3 title; amending s. 893.055, F.S.; requiring pharmacies  
 4 to offer for sale prescription lock boxes; requiring  
 5 pharmacies to display a certain sign; defining the  
 6 term "prescription lock box"; requiring the Department  
 7 of Health to develop and distribute a pamphlet;  
 8 requiring the pamphlet to contain certain information;  
 9 requiring pharmacists to distribute the pamphlet in  
 10 certain circumstances; prohibiting a pharmacy from  
 11 charging a fee for the pamphlet; providing an  
 12 effective date.

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

16 Section 1. This act may be cited as "Victoria's Law."  
 17 Section 2. Present subsections (15), (16), and (17) of  
 18 section 893.055, Florida Statutes, are redesignated as  
 19 subsections (17), (18), and (19), respectively, and new  
 20 subsections (15) and (16) are added to that section, to read:  
 21 893.055 Prescription drug monitoring program.—  
 22 (15) Pharmacies shall offer for sale prescription lock  
 23 boxes at each store location. Pharmacies shall make customers  
 24 aware of the availability of the prescription lock boxes by  
 25 displaying a sign on or near the pharmacy counter which measures  
 26 at least 4 inches by 5 inches and includes the statement, in a  
 27 legibly printed font, "Prescription Lock Boxes for Securing Your  
 28 Prescription Medications Are Available at This Pharmacy." As  
 29 used in this subsection, the term "prescription lock box" means  
 30 a box or a bag with a locking mechanism that cannot be tampered  
 31 with or opened without the application of extreme force.  
 32 (16) (a) The department shall develop a written pamphlet

Page 1 of 2

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

588-02908-16

20161378c1

33 relating to controlled substances which includes educational  
 34 information about the following:  
 35 1. Precautions regarding the use of pain management  
 36 prescriptions.  
 37 2. The potential for misuse and abuse of controlled  
 38 substances by adults and children.  
 39 3. The risk of controlled substance dependency and  
 40 addiction.  
 41 4. The proper storage and disposal of controlled  
 42 substances.  
 43 5. Controlled substance addiction support and treatment  
 44 resources.  
 45 6. Telephone helplines and website links that provide  
 46 counseling and emergency assistance for individuals dealing with  
 47 substance abuse.  
 48 (b) The department shall distribute copies of the pamphlet  
 49 to pharmacies throughout the state and make the contents of the  
 50 pamphlet available in electronic form on its website. A  
 51 pharmacist shall distribute the pamphlet to a consumer when  
 52 dispensing a prescription or a controlled substance and shall  
 53 offer them to consumers in a display. Pharmacies may not charge  
 54 consumers a fee for the pamphlet.  
 55 Section 3. This act shall take effect July 1, 2016.

Page 2 of 2

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

**The Florida Senate**  
State Senator René García  
38<sup>th</sup> District

District Office:  
1490 West 68 Street  
Suite # 201  
Hialeah, FL. 33014  
Phone# (305) 364-3100

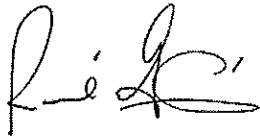
February 29, 2016

The Honorable Anitere Flores  
Chairwoman, Fiscal Policy  
225 Knott Building  
404 S. Monroe Street  
Tallahassee, FL 32399-1100

Dear Senator Flores:

I respectfully request that my aide, Miguel Abad, present **SB 1378: Drug Safety**, at the Fiscal Policy Committee Meeting due to a scheduling conflict. Should you have any questions or concerns, please do not hesitate to contact my office.

Sincerely,



State Senator René García  
District 38  
RG:AD

CC: Jennifer Hrdlicka, Tamra Lyon

**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.)

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Prepared By: The Professional Staff of the Committee on Fiscal Policy

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**BILL:** PCS/CS/SB 1394 (726940)

**INTRODUCER:** Fiscal Policy Committee (Recommended by Appropriations Subcommittee on Transportation, Tourism, and Economic Development); Transportation Committee; and Senator Brandes

**SUBJECT:** Department of Highway Safety and Motor Vehicles

**DATE:** February 26, 2016      **REVISED:** \_\_\_\_\_

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Jones	Eichin	TR	<b>Fav/CS</b>
2. Gusky	Miller	ATD	<b>Recommend: Fav/CS</b>
3. Jones	Hrdlicka	FP	<b>Pre-meeting</b>

**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

**I. Summary:**

PCS/CS/SB 1394 revises several laws administered by the Department of Highway Safety and Motor Vehicles (DHSMV). Specifically, the bill:

- Adds Service Patrol Vehicles engaged in certain activities to the “Move Over Act”;
- Requires the Fourth Judicial Circuit, in consultation with the DHSMV, to implement a qualified sobriety and drug monitoring pilot program;
- Allows buses to be equipped with red rear lights that indicate a bus is stopping;
- Allows operators of a vehicle operating with driver-assistive truck platooning technology or autonomous technology to have an electronic display while the vehicle is in motion;
- Modifies the amount of time which an individual must notify the DHSMV of an address or name change on a driver license, identification card, or motor vehicle registration;
- Allows individuals to have the international symbol for the deaf and hard of hearing exhibited on his or her driver license or identification card, upon payment of a fee and sufficient proof to the DHSMV that he or she is deaf or hard of hearing;
- Prohibits law enforcement from issuing a citation for an expired registration until the last day of the month of the year the registration expires;
- Requires authorized electronic filing system agents to disclose to customers that the agent may charge a fee for use of the electronic filing system when titling or registering a vehicle, vessel, mobile home, or other vehicle;

- Provides additional grounds to deny, suspend, or revoke a license held by a motor vehicle manufacturer and prohibits manufacturers from taking certain actions against motor vehicle dealers. Specifically, the manufacturer:
  - Is limited to a 12-month period following the date a claim was paid to perform audits of warranty, maintenance, service-related payments and incentive payments, and can only deny such claim if the manufacturer proves the claim was false or fraudulent;
  - May not take adverse action against a motor vehicle dealer due to a delivered motor vehicle being resold or exported by the customer unless the manufacturer provides written notification to the dealer within 12 months of delivery of the vehicle to a customer;
  - Must pay a dealer for temporary replacement vehicles provided to customers during service or repair provided the dealer complies with the manufacturer's written vehicle eligibility requirements relating to loaner vehicles; and
  - May not require or coerce a dealer to purchase goods or services from a vendor selected by the manufacturer without making available the option to obtain the goods or services from a vendor chosen by the dealer.
- Requires the Florida Department of Transportation to study, in consultation with the DHSMV, the use and safe operation of driver assistive truck platooning technology, and authorizes a pilot project to test vehicles equipped with such technology; and
- Requires the DHSMV to provide identification cards at no-charge to:
  - Offenders in custody or under the supervision of the Department of Juvenile Justice; and
  - Individuals whose driver license is suspended or revoked due to a physical or mental condition.

The Revenue Estimating Conference adopted the following estimates for the no-cost identification card/driver license provisions of the bill:

- Certain Juvenile Offenders – insignificant negative fiscal impact to the General Revenue Fund in Fiscal Year 2016-2017 and subsequent years.
- Individuals with a Medical Sanction – foregone revenue for Fiscal Year 2016-2017 is \$300,000, with a recurring negative impact of \$500,000 to the General Revenue fund; for the local tax collectors, foregone revenue for Fiscal Year 2016-2017 is \$100,000, with a recurring negative impact of \$100,000.

The bill has additional fiscal impacts to the state and private sector. See Section V. Fiscal Impact Statement.

The bill is effective October 1, 2016

## **II. Present Situation:**

Due to the number of issues addressed in the bill, the present situation for each section is discussed below in Effect of Proposed Changes.

### III. Effect of Proposed Changes:

#### Service Patrol Vehicles and the Move Over Act (Sections 1 and 2)

##### *Present Situation*

##### The Move Over Act

The Move Over Act relates to the operation of motor vehicles when approaching:

- An authorized emergency vehicle parked on the roadside and displaying any visual signals;
- A sanitation or utility vehicle performing services on the roadside; or
- A wrecker displaying amber rotating or flashing lights performing a recovery or loading on the roadside.<sup>1</sup>

When approaching these vehicles, if the driver is on a highway with more than two lanes, the driver must vacate the lane closest to the service provider, when safe to do so. If the driver cannot safely vacate the lane, the driver must reduce his or her speed to 20 miles per hour (mph) under the posted speed limit for speed limits greater than 25 mph, or to 5 mph if the posted speed limit is 20 mph or less.<sup>2</sup>

Section 316.126, F.S., requires a driver to yield to a moving emergency vehicle; however, these requirements do not relieve a driver of an emergency vehicle from the duty to drive with due regard for the safety of all persons using the highway.

A violation of the Move Over Act is a noncriminal traffic infraction punishable as a moving violation. Violators are subject to a \$30 penalty, court costs, and three points assessed against the violator's license.<sup>3</sup>

##### Service Patrol Vehicles

Service Patrol Vehicles, also known as Road Rangers, provide free highway assistance to motorists. Road Rangers provide services along Florida's highway systems, including assisting stranded motorists, removing debris from the roadway, and assisting during traffic accidents. Since the inception of the program in 2000, the Road Rangers have made over 4.3 million service assists.<sup>4</sup>

##### *Effect of Proposed Changes*

**Section 1** amends s. 316.003, F.S., to define the term:

- "Service patrol vehicle" as a motor vehicle that bears an emblem or markings with the wording "SERVICE VEHICLE" which is visible from the roadway and clearly indicates that the vehicle belongs to or is under contract with a person, an entity, a cooperative, a board, a

<sup>1</sup> Section 316.126(1)(b), F.S.

<sup>2</sup> *Id.*

<sup>3</sup> Sections 318.18(2)(d), and 322.27(3)(d)7., F.S. Depending on jurisdiction, court costs may increase the total penalty up to \$128; Florida Court Clerks and Comptrollers, *Distribution Schedule of Court-Related Filing Fees, Service Charges, Costs, and Fines, including a Fee Schedule for Recording*, p. 36, (July 1, 2015), available at [http://c.ymcdn.com/sites/www.flclerks.com/resource/resmgr/Public\\_Documents\\_/2015\\_Distribution\\_Schedule\\_w.pdf](http://c.ymcdn.com/sites/www.flclerks.com/resource/resmgr/Public_Documents_/2015_Distribution_Schedule_w.pdf) (last visited Feb. 23, 2016).

<sup>4</sup> Florida Department of Transportation, Traffic Engineering and Operations Office, *Road Rangers Service Patrol*, available at [http://www.dot.state.fl.us/trafficoperations/traf\\_incident/rrangers/rranger.shtm](http://www.dot.state.fl.us/trafficoperations/traf_incident/rrangers/rranger.shtm) (last visited Feb. 23, 2016).

commission, a district, or a unit of government that provides highway assistance services to motorists, clears travel lanes, or provides temporary maintenance of traffic support for incident response operations.

**Section 2** amends s. 316.126, F.S., to include service patrol vehicles performing official duties or services on the roadside that are displaying amber rotating or flashing lights in the Move Over Act. Motorists will be required to move over a lane or slow their vehicle while a service patrol vehicle is displaying their lights and performing official duties along the highway. The bill also requires a utility service vehicle to display visual signals to be part of the act.

### **Qualified Sobriety and Drug Monitoring Program (Sections 3, 4, and 17)**

#### *Present Situation*

For a second or subsequent driving under the influence (DUI) offense, the court may order a person to participate in a qualified sobriety and drug monitoring program in addition to the mandatory installation of an ignition interlock device (IID). A “qualified sobriety and drug monitoring program” is as an evidence-based program,<sup>5</sup> approved by the DHSMV, in which participants are regularly tested for alcohol and drug use. The program may monitor alcohol or drug use through:

- Breath testing twice a day;
- Continuous transdermal alcohol monitoring; or
- Random blood, breath, urine or oral fluid testing.<sup>6</sup>

Federal law requires states to provide a minimum penalty for drivers convicted of a second or subsequent DUI offense. Specifically, the offender must receive a driver license suspension for at least one year, or a combination of suspension followed by a reinstatement of limited driving privileges or participation in an alcohol treatment program if used with the installation of an IID.<sup>7</sup> In December 2015 Congress passed the Fixing America’s Surface Transportation Act (FAST). The FAST Act requires drivers convicted of a second or subsequent DUI to receive, for a period of not less than one year:

- A suspension of all driving privileges;
- A restriction on driving privileges that limits the individual operating only motor vehicles with an IID installed;<sup>8</sup>
- A restriction on driving privileges that limits the individual to operating a motor vehicle only if participating in and complying with a 24-7 sobriety program;<sup>9</sup> or

<sup>5</sup> Section 316.193(6)(j)3., F.S., defines an “evidence-based program” as one that satisfies at least two of the following requirements: (a) The program is included in the federal registry of evidence-based programs and practices; (b) The program has been reported in a peer reviewed journal as having positive effects on the primary targeted outcome; (c) The program has been documented as effective by informed experts and other sources.

<sup>6</sup> Section 316.193(6)(j)2., F.S. Preference is given to testing modalities that provide the best ability to sanction a violation as close in time as reasonably feasible to the occurrence of the violation.

<sup>7</sup> 23 U.S.C. s. 164(a)(5).

<sup>8</sup> Special exceptions apply for individuals required to operate employer’s motor vehicles and for individuals certified by a medical doctor as being unable to provide a deep lung breath sample.

<sup>9</sup> 23 U.S.C. 405(d)(7), defines a 24-7 sobriety program as a state law or program that requires an individual who plead guilty or was convicted of a DUI to abstain from alcohol or drugs for a period of time, and be subject to drug or alcohol testing at least twice per day, by continuous transdermal monitoring, or by an alternate method with the concurrence of the Secretary.

- Any combination of the above.<sup>10</sup>

According to the FAST Act, federal grants may be provided to states that provide a 24-7 sobriety program to offset expenditures designed to reduce impaired driving.<sup>11</sup>

#### Costs Associated with Sobriety and Drug Monitoring Programs

Participation in a qualified sobriety and drug monitoring program, as well as using an IID, is at the participant's sole expense.<sup>12</sup> The expense to the individual participating in a sobriety and drug monitoring program depends on the modalities used to monitor the individual. For example, twice a day breathalyzer testing is \$4 a day, transdermal alcohol monitoring bracelets are \$10 a day, and drug sweat patches are \$40 per patch (which is applied every 7-10 days).<sup>13</sup> By its nature, the monthly expense to individuals required to participate in random drug testing cannot be estimated.

An IID on average costs \$70-\$150 for installation and approximately \$60-\$80 per month for monitoring and calibration.<sup>14</sup> According to an Office of Program Policy Analysis and Government Accountability (OPPAGA) report, approximately 49 percent of the offenders required to install an IID do so. The costs associated with installing and monitoring an IID, in addition to the multiple costs associated with a DUI conviction, may be cost prohibitive for some individuals. Estimates of the number of DUI offenders who continue to drive illegally because they cannot afford to participate in a sobriety and drug monitoring program or have an IID installed are unavailable.<sup>15</sup>

#### Efficacy of Programs

According to the National Highway Traffic Safety Administration (NHTSA), there are three ways to prevent DUI offenses:

- Prevent driving (i.e. revoking the offender's privilege);
- Prevent driving after drinking (e.g. using IIDs); or
- Prevent drinking (e.g. 24-7 sobriety programs).<sup>16</sup>

South Dakota has been using a 24-7 Sobriety Program for "Driving While under the Influence" offenders since 2005.<sup>17</sup> Between 2005 and 2010, South Dakota had over 17,000 residents

<sup>10</sup> Congress.Gov, *H.R.22 – FAST Act*, Pub. L. No. 114-94, (Dec. 4, 2015), available at <https://www.congress.gov/bill/114th-congress/house-bill/22/text> (last visited Feb. 23, 2016).

<sup>11</sup> *Id.*

<sup>12</sup> Section 316.193, F.S.

<sup>13</sup> Florida Association of DUI Programs, Inc., *24-7 Sobriety Program*, p. 3, (on file with the Senate Committee on Transportation).

<sup>14</sup> MADD, *Ignition Interlock FAQ's*, available at <http://www.madd.org/drunken-driving/ignition-interlocks/interlockfaq.html> (last visited Feb. 23, 2016).

<sup>15</sup> Florida Legislature Office of Program Policy Analysis & Government Accountability, *Ignition Interlock Devices and DUI Recidivism Rates*, Report No. 14-14, p. 4, (Dec. 2014), available at <http://www.oppaga.state.fl.us/MonitorDocs/Reports/pdf/1414rpt.pdf> (last visited Feb. 23, 2016).

<sup>16</sup> U.S. Department of Transportation, National Highway Traffic Safety Administration, *Transdermal Alcohol Monitoring Case Studies*, p. 1, (Aug. 2012) (on file with the Senate Committee on Transportation).

<sup>17</sup> South Dakota Office of the Attorney General, *24/7 Sobriety Program*, available at <http://apps.sd.gov/atg/dui247/> (last visited Feb. 23, 2016).



participate in the program. Counties documented a 12 percent reduction in repeat DUI arrests and a 9 percent reduction in domestic violence arrests since adoption of the program.<sup>18</sup>

When compared to the administrative suspension of the driver license, IIDs reduce DUI recidivism while the device is installed in the vehicle; however, when the IID is removed re-arrest rates return to levels similar to those who did not have an IID.<sup>19</sup>

### *Effect of Proposed Changes*

**Section 3** of the bill amends s. 316.193, F.S., requiring the Fourth Judicial Circuit, in coordination with the Department of Highway Safety and Motor Vehicles (DHSMV), to implement a qualified sobriety and drug monitoring pilot program. Starting October 1, 2016, a court may order an offender to participate in a qualified sobriety and drug monitoring program as an alternative to an IID for a second or third DUI conviction.<sup>20</sup> The Fourth Judicial Circuit must provide a report on the results of the pilot program to the Governor, the President of the Senate, and the Speaker of the House of Representatives by March 1, 2018.

The bill defines a “qualified sobriety and drug monitoring program,” and “evidence-based program” and directs the DHSMV to adopt rules to implement qualified sobriety and drug monitoring programs.

The bill removes current provisions that allow a court to order a person to participate in a qualified sobriety and drug monitoring program in addition to the mandatory installation of an IID for second or subsequent DUI offenses.

**Section 4** amends s. 316.1937, F.S., to allow a court in the Fourth Judicial Circuit to order a qualified sobriety and drug monitoring program to be used as an alternative to an IID for offenses that require an IID.

**Section 17** amends s. 322.2715, F.S., to require the DHSMV, starting October 1, 2016, to use a qualified sobriety and drug monitoring program in addition to the placement of an IID. See Section VI. Technical Deficiencies.

### **Additional Lighting on Buses (Section 5)**

#### *Present Situation*

Section 316.235, F.S., allows buses to have additional lighting on the rear of the bus to indicate a bus is slowing down, preparing to stop, or is stopped. The deceleration lighting system consists of amber lights mounted horizontally on the back of the bus, which are visible from a distance of

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<sup>18</sup> Kilmer, Beau and others, American Journal of Public Health, *Efficacy of Frequent Monitoring with Swift, Certain, and Modest Sanctions for Violations: Insights from South Dakota’s 24/7 Sobriety Project*, (Jan. 2013), available at <http://ajph.aphapublications.org/doi/abs/10.2105/AJPH.2012.300989> (last visited Feb. 23, 2016).

<sup>19</sup> *Supra* note 16.

<sup>20</sup> Sections 316.193(2)(a)3., (2)(b)1., and (2)(b)2., F.S. The bill defines the term “qualified sobriety and drug monitoring program.”

not less than 300 feet to the rear in normal sunlight. The lights are permitted to light and flash during deceleration, braking, or idling of the bus.<sup>21</sup>

### *Effect of Proposed Changes*

**Section 5** of the bill amends s. 316.235, F.S., to provide that the bus deceleration lighting system must consist of *red or* amber lights mounted on the rear of a bus that are no greater than 12 inches apart, and increases the allowable height from the ground of the lights from no higher than 72 inches to no higher than 100 inches.

### **Driver-Assistive Truck Platooning (Sections 1, 6, and 18)**

#### *Present Situation*

In August of 2014, the NHTSA issued an advance notice of proposed rulemaking on vehicle-to-vehicle (V2V) communications technology.<sup>22</sup> V2V is a crash avoidance technology, relying on communication of information between nearby vehicles to warn drivers about dangerous situations that could lead to a crash.<sup>23</sup> NHTSA advises that, “Using V2V technology, vehicles ranging from cars to trucks and buses to trains could one day be able to communicate important safety and mobility information to one another that can help save lives, prevent injuries, ease traffic congestion, and improve the environment.”<sup>24</sup>

One form of V2V technology is known as driver-assistive truck platooning (DATP), which allows trucks to communicate with each other and to travel as close as 30 feet apart with automatic acceleration and braking. A draft is created, reducing wind resistance and cutting down on fuel consumption. The concept of DATP is based on a system that controls the spacing between the vehicles based on information from forward-looking radars and V2V communications. Information on braking and other operational data is exchanged between the vehicles allowing the system to automatically adjust engine and brakes in real-time.<sup>25</sup>

Another system uses integrated sensors, controls, and wireless communications to connect trucks. The system synchronizes acceleration and braking between vehicles, leaving steering to the drivers, but eliminating braking distance otherwise caused by lags in the front or rear driver’s response time. The system determines in real time whether traffic conditions are appropriate to allow specific trucks to engage in platooning operations. If another vehicle enters between platooning trucks, the system will automatically increase following distance or delink the trucks and then relink once the cut-in risk has passed. If data transfer between platooning trucks ceases,

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<sup>21</sup> Section 316.235(5), F.S.

<sup>22</sup> National Highway Traffic Safety Administration, *U.S. Department of Transportation Issues Advance Notice of Proposed Rulemaking to Begin Implementation of Vehicle-to-Vehicle Communications Technology*, (August 18, 2014), available at <http://www.nhtsa.gov/About+NHTSA/Press+Releases/2014/NHTSA-issues-advanced-notice-of-proposed-rulemaking-on-V2V-communications> (last visited Feb. 23, 2016).

<sup>23</sup> U.S. Department of Transportation, SAFETYPILOT Connected Vehicle Technology, *Fact Sheet: Improving Safety and Mobility Through Connected Vehicle Technology*, available at [http://www.its.dot.gov/safety\\_pilot/pdf/safetypilot\\_nhtsa\\_factsheet.pdf](http://www.its.dot.gov/safety_pilot/pdf/safetypilot_nhtsa_factsheet.pdf) (last visited Feb. 23, 2016).

<sup>24</sup> National Highway Traffic Safety Administration, *Vehicle-to-Vehicle Communications*, available at <http://www.safercar.gov/v2v/index.html> (last visited Feb. 23, 2016).

<sup>25</sup> Go by Truck, Global News, *Driver Survey: Platooning*, (November 18, 2014), available at <http://www.gobytrucknews.com/driver-survey-platooning/123> (last visited Feb. 23, 2016).

the driver is immediately notified that manual acceleration and braking control is about to resume.<sup>26</sup>

Section 316.0895, F.S., prohibits a driver of a motor vehicle to follow another vehicle more closely than is reasonable and prudent. It is unlawful, when traveling upon a roadway outside a business or residence district, for a motor truck, motor truck drawing another vehicle, or vehicle towing another vehicle or trailer to follow within 300 feet of another vehicle.<sup>27</sup>

Section 316.303, F.S. prohibits a motor vehicle operated on the highways of this state to be equipped with television-type receiving equipment that is visible from the driver's seat. This does not prohibit the use of an electronic display used in conjunction with a vehicle navigation system.

### *Effect of Proposed Changes*

**Section 1** amends s. 316.003, F.S., to define the term:

- “Driver-Assistive Truck Platooning Technology” as vehicle automation and safety technology that integrates sensor array, wireless vehicle-to-vehicle communications, active safety systems, and specialized software to link safety systems and synchronize acceleration and braking between two vehicles while leaving each vehicle's steering control and systems command in the control of the vehicle's driver in compliance with the National Highway Traffic Safety Administration rules regarding vehicle-to-vehicle platooning.

**Section 6** amends s. 316.303(3), F.S., to allow vehicles equipped and operating with driver-assistive truck platooning technology to be equipped with electronic displays visible from the driver's seat, and to authorize the operator of a vehicle equipped and operating with truck platooning technology to use an electronic display.

**Section 18** requires the Florida Department of Transportation (DOT) to study, in consultation with the DHSMV, the use and safe operation of driver-assistive truck platooning technology for the purpose of developing a pilot project to test vehicles equipped with such technology. Upon conclusion of the study, the DOT, in consultation with the DHSMV, may conduct a pilot project that tests the operation of vehicles equipped with driver-assistive truck platooning technology.<sup>28</sup> Prior to the start of the pilot project, manufacturers of the driver-assistive truck platooning technology being tested in the pilot project must submit to the DHSMV an instrument of insurance, surety bond, or proof of self-insurance acceptable to the DHSMV in the amount of \$5 million.

Upon conclusion of the pilot project, the DOT, in consultation with the DHSMV, must submit the results of the study and any findings or recommendations from the pilot project to the Governor, the President of the Senate, and the Speaker of the House of Representatives.

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<sup>26</sup> See Peloton, *FAQ*, available at <http://www.peloton-tech.com/faq/> (last visited Feb. 23, 2016).

<sup>27</sup> Section 316.0895(2), F.S.

<sup>28</sup> The pilot project may be conducted in such a manner and at such locations as determined by the DOT.

## **Autonomous Vehicles (Section 6)**

### ***Present Situation***

Autonomous or “self-driving” vehicles are those operated “without direct driver input to control the steering, acceleration, and braking and are designed so that the driver is not expected to constantly monitor the roadway while operating in self-driving mode.”<sup>29</sup> According to the NHTSA, autonomous vehicles have the potential to improve highway safety, increase environmental benefits, expand mobility, and create new economic opportunities for jobs and investment.<sup>30</sup> Some expect increased availability and use of autonomous vehicles within the next 5 years.<sup>31</sup>

Section 316.303, F.S. prohibits a motor vehicle operated on the highways of this state to be equipped with television-type receiving equipment that is visible from the driver’s seat. This does not prohibit the use of an electronic display used in conjunction with a vehicle navigation system.

### ***Effect of Proposed Changes***

**Section 6** amends s. 316.303(1), F.S. to allow vehicles equipped with autonomous technology to have television broadcast or pre-recorded video entertainment content visible from the driver’s seat if the vehicle is being operated in autonomous mode.

## **Updating Driver License, Identification Card, or Motor Vehicle Registration (Sections 7 and 14)**

### ***Present Situation***

The required timeframe to update a driver license or motor vehicle registration to reflect an address or legal name change varies depending on the specific action and residency of the individual. Specifically:

- A new resident of the state is required to obtain a Florida driver license within 30 days;<sup>32</sup>
- An owner of a motor vehicle registered in this state must notify the DHSMV in writing of an address change within 20 days;<sup>33</sup> and
- An individual who possesses a Florida driver license or identification card who changes his or her legal name or mailing address must obtain a replacement card or license reflecting the change within 10 days.<sup>34</sup>

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<sup>29</sup> National Highway Traffic Safety Administration, *U.S. Department of Transportation Releases Policy on Automated Vehicle Development*, (May 30, 2013), available at <http://www.nhtsa.gov/About+NHTSA/Press+Releases/U.S.+Department+of+Transportation+Releases+Policy+on+Automated+Vehicle+Development> (last visited Feb. 23, 2016).

<sup>30</sup> National Highway Traffic Safety Administration, *Preliminary Statement of Policy Concerning Automated Vehicles*, available at [http://www.nhtsa.gov/staticfiles/rulemaking/pdf/Automated\\_Vehicles\\_Policy.pdf](http://www.nhtsa.gov/staticfiles/rulemaking/pdf/Automated_Vehicles_Policy.pdf) (last visited Feb. 23, 2016).

<sup>31</sup> TechCrunch, *Autonomous Cars are Closer Than You Think* (Jan. 18, 2015), available at <http://techcrunch.com/2015/01/18/autonomous-cars-are-closer-than-you-think/> (last visited Feb. 23, 2016).

<sup>32</sup> Section 322.031, F.S.

<sup>33</sup> Section 320.02, F.S.

<sup>34</sup> Section 322.19, F.S.

### *Effect of Proposed Changes*

**Section 7** amends s. 320.02, F.S., to require the owner of a motor vehicle registered in this state to notify the DHSMV in writing of any address change within 30 days, rather than 20.

**Section 14** amends s. 322.19, F.S., to require an individual who possesses a Florida driver license or identification card who changes his or her legal name or mailing address card to obtain a replacement card or license reflecting the change within 30 days, rather than 10.

Both sections exclude these changes from affecting the 48 hour timeframe within which a Sexual Offender, Sexual Predator, or Career Offender must notify the DHSMV of such changes.

### **Titling and Registering Vehicles (Section 8)**

#### *Present Situation*

Section 320.03, F.S., provides for administration of the electronic filing system used to title or register motor vehicles, vessels, mobile homes, and other vehicles. This allows qualified entities that sell products required to be titled or registered to be authorized as an electronic filing system agent for the county. Such agents, typically motor vehicle dealers, are further authorized to charge a fee to the customer for use of the electronic filing system.

#### *Effect of Proposed Changes*

**Section 8** amends s. 320.03, F.S., to provide that if an authorized electronic filing system agent makes a disclosure required under s. 501.976(18), F.S., the agent may charge a fee for use of the electronic filing system. The disclosure must read: “This charge represents costs and profit to the dealer for items such as inspecting, cleaning, and adjusting vehicles, and preparing documents related to the sale.”<sup>35</sup>

### **Motor Vehicle Registrations (Section 9)**

#### *Present Situation*

Except as otherwise provided in law, every owner or person responsible for a motor vehicle that is operated in this state must register the vehicle in this state.<sup>36</sup> Most motor vehicles have a registration period of either 12 or 24 months during which the registration is valid.<sup>37</sup>

Section 320.07, F.S., provides that the vehicle registration expires at midnight on the owner’s birthday. An owner of a motor vehicle, requiring registration, who operates the vehicle on the roadways without a valid registration is subject to the following penalties:

- Registration expired for a period of six months or a first offense is a nonmoving violation (\$30 fine and court costs);
- Registration expired for a period of over six months and a second or subsequent offense is a second degree misdemeanor (a fine up to \$500 and up to 60 days imprisonment).<sup>38</sup>

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<sup>35</sup> Section 501.976(18), F.S.

<sup>36</sup> Section 320.02, F.S.

<sup>37</sup> Section 320.01(19)(a), F.S.

<sup>38</sup> Section 320.07, F.S.

Upon payment of the appropriate registration taxes and fees, a validation sticker is issued showing the owner's birth month and year of expiration, which is placed on the upper right corner of the license plate.<sup>39</sup> The sticker does not indicate the day the registration expires, it only specifies the month.

### *Effect of Proposed Changes*

**Section 9** amends s. 320.07, F.S., to prohibit a law enforcement officer from issuing a citation for an expired registration until midnight on the last day of the owner's birth month of the year the registration expires.

### **Vehicle Manufacturers and Dealers (Section 10)**

#### *Present Situation*

Florida has substantially regulated motor vehicle manufacturers and motor vehicle dealers since before 1950.<sup>40</sup> Initially, the Florida Legislature implemented consumer protections aimed at preventing consumer abuse by dealers.<sup>41</sup> In 1970, the Legislature passed more comprehensive legislation, which regulated the contractual relationship between manufacturers and dealers, required the licensing of manufacturers, and regulated numerous aspects of the contracts between manufacturers and dealers.<sup>42</sup>

A manufacturer, factory branch, distributor, or importer (licensee) must be licensed under ss. 320.60-320.70, F.S., to engage in business in this state.<sup>43</sup> To be licensed under ss. 320.60-320.70, F.S., a person must submit an application to the DHSMV along with required documents. The DHSMV must determine the fitness of the applicant or licensee to engage in the business for which the applicant or licensee desires to be licensed.<sup>44</sup> The DHSMV may allow for an abbreviated application for license renewal if the licensee has previously filed an initial application and includes information necessary to update the information required in the initial application.<sup>45</sup>

The requirements regulating the contractual business relationship between a dealer and a manufacturer are primarily found in ss. 320.60-320.070, F.S., (the Florida Automobile Dealers Act).<sup>46</sup> These sections of law specify, in part, the:

- Conditions and situations under which the DHSMV may grant, deny, suspend, or revoke a license;
- Process, timing, and notice requirements for manufacturers to discontinue, cancel, modify, or otherwise replace a franchise agreement with a dealer, and the conditions under which the DHSMV may deny such a change;

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<sup>39</sup> Section 320.06(1)(b)1., F.S.

<sup>40</sup> See chs. 9157, L.O.F. (1923), and 20236, L.O.F. (1941).

<sup>41</sup> Walter E. Forehand and John W. Forehand, *Motor Vehicle Dealer and Motor Vehicle Manufacturers: Florida Reacts to Pressures in the Marketplace*, 29 Fla. St. Univ. Law Rev. 1058, 1064 (2002), available at <http://law-wss-01.law.fsu.edu/journals/lawreview/downloads/293/Forehand.pdf> (last visited Feb. 23, 2016).

<sup>42</sup> See ch. 70-424, L.O.F.

<sup>43</sup> Section 320.61(1), F.S.

<sup>44</sup> Section 320.63, F.S.

<sup>45</sup> Section 320.61(2), F.S.

<sup>46</sup> *Supra* note 41 at p. 1065.

- Procedures a manufacturer must follow if it wants to add a dealership in an area already served by a dealer, the protest process, and the DHSMV's role in these circumstances;
- Amounts of damages that can be assessed against a manufacturer in violation of Florida statutes; and
- DHSMV's authority to adopt rules to implement these sections of law.<sup>47</sup>

In 2009, the DHSMV held in a final order in an administrative proceeding that amendments to the Florida Automobile Dealers Act do not apply to dealers having franchise agreements which were signed prior to the effective date of various amendments to that act.<sup>48</sup>

Section 320.64, F.S., provides 38 grounds for the DHSMV's denial, suspension, or revocation of a manufacturer's license. A violation of any of these provisions entitles a dealer to rights and remedies contained within the Florida Automobile Dealers Act.<sup>49</sup>

### *Effect of Proposed Changes*

**Section 10** amends s. 320.64, F.S., to modify and add acts an applicant or licensee is prohibited from committing.

The bill provides that an audit of service-related payments and incentive payments can be performed by an applicant or licensee only during the 12-month period, instead of an 18-month period, immediately following the date the claim or incentive was paid. An "incentive" is defined to include any bonus, incentive, or other monetary or nonmonetary thing of value.

The bill provides an applicant or licensee may deny a service-related claim or incentive claim, or subject a dealer to a chargeback *only* for the portion of a claim proven to be false or fraudulent by the licensee or for which the dealer failed to substantially comply with the reasonable written and uniformly applied procedures of the licensee for the repairs or incentives.

An applicant or licensee cannot take adverse action against a dealer because a motor vehicle sold, leased, or delivered to a customer was resold or exported unless the licensee notifies the dealer within 12 months after the vehicle was delivered to the customer.

An applicant or licensee may not fail to make any payment due to a dealer for temporary replacement vehicles loaned, rented, or provided by the dealer to or for its service or repair customers, provided the dealer complied with the terms of the franchise agreement or other contract with the licensee, even if the motor vehicle has been leased, rented, titled, or registered to an entity owned or controlled by the dealer.

The bill prohibits an applicant or licensee from requiring or coercing, or attempting to require or coerce, a dealer to purchase goods from any specific vendor. A dealer who desires to use like kind, design, and quality goods or services from a chosen vendor must provide written notice to

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<sup>47</sup> Sections 320.60-320.070, F.S.

<sup>48</sup> See *Motorsports of Delray, LLC v. Yamaha Motor Corp., U.S.A.*, Case No. 09-002129 (Fla. DOAH Dec. 11, 2009). The DHSMV has indicated it will be applying this holding to every amendment to the Florida Automobile Dealers Act. That means dealers have different protections under the law depending on when they signed their franchise agreements.

<sup>49</sup> Section 320.64, F.S.

the applicant or licensee along with samples or clear descriptions of the goods or services. The applicant or licensee has up to 30 days to respond and may not unreasonably withhold consent. If the dealer receives no response within 30 days, consent to use the alternative goods or services is deemed granted.

The term “goods or services” is limited to goods and services used to construct or renovate dealership facilities, and does not include any:

- Material related to the applicant’s or licensee’s trademark or copyright;
- Special tool or training required by the applicant or licensee;
- Part to be used in repairs under warranty obligations of an applicant or licensee;
- Good or service paid for entirely by the applicant or licensee; or
- Applicant’s or licensee’s design or architectural review service.

### **International Symbol for the Deaf or Hard of Hearing (Sections 11, 12 and 13)**

#### *Present Situation*

The Florida Department of Health estimates there are over 3.1 million persons in Florida who are deaf or hearing impaired. However, the 2014 census classified 211,049 people in Florida as having a hearing disability.<sup>50</sup>

#### *Effect of Proposed Changes*

**Sections 11 and 12** amend ss. 322.051 and 322.14, F.S., to allow individuals who are deaf or hard of hearing to receive the international symbol for the deaf and hard of hearing on his or her driver license or identification card. The individual will receive the symbol on his or her license upon payment of an additional fee and providing sufficient proof, determined by the DHSMV, that he or she is deaf or hard of hearing.

The symbol may be voluntarily added to the driver license or identification card by the applicant when the driver license or identification card is being issued, renewed, or replaced for a purpose other than solely including the symbol on the card (i.e., an address or name change) upon payment of a \$1 fee, in addition to the applicable issuance, renewal, or replacement fee.

An individual who surrenders and replaces his or her driver license or identification card for the sole purpose of adding the symbol is only required to pay a \$2 fee that will be deposited into the Highway Safety Operating Trust Fund. The replacement license or card is not subject to the \$25 replacement fee required by s. 322.21(1), F.S.

**Section 13** provides that the changes by this bill to authorize the international symbol for the deaf or hard of hearing on driver licenses and identification cards will apply upon implementation of new designs for the driver license and identification card by the DHSMV, which is currently anticipated to be in 2017.<sup>51</sup>

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<sup>50</sup> Department of Highway Safety and Motor Vehicles, *2016 Agency Legislative Bill Analysis for SB 740*, p. 2, (Jan. 10, 2016) (on file with the Senate Committee on Transportation).

<sup>51</sup> Department of Highway Safety and Motor Vehicles, *2016 Agency Legislative Bill Analysis for SB 158*, p. 7, (Sept. 15, 2015) (on file with the Senate Committee on Transportation).



## **No-Cost Identification Card for Certain Juvenile Offenders (Sections 11 and 15)**

### ***Present Situation***

The cost to obtain an original identification card is \$25, which is deposited into the General Revenue Fund. Applicants who present evidence satisfactory to the DHSMV that they are homeless or whose annual income is at or below 100 percent of the federal poverty level are exempt from such fee.<sup>52</sup>

Additionally, the DHSMV issues identification cards at no charge to Florida-born inmates prior to their release from the custody of the Department of Corrections or a private correctional facility, if the inmate does not have a valid identification card.<sup>53</sup>

### ***Effect of Proposed Changes***

**Sections 11 and 15** amend ss. 322.051 and 322.21, F.S., to add that the DHSMV will issue no-charge identification cards to juvenile offenders in the custody or under the supervision of the Department of Juvenile Justice and receiving adult transition services.<sup>54</sup> The cards will be processed by the DHSMV's mobile issuing units.

## **No-Cost Identification Card due to Medical Sanction of a Driver License (Section 16)**

### ***Present Situation***

Section 322.221, F.S., provides the DHSMV may require an examination or reexamination of a licensee if the DHSMV has good cause<sup>55</sup> to believe the driver is incompetent or otherwise not qualified to be licensed, including being physically or mentally unqualified to operate a motor vehicle. The examination may include determining the competence and driving ability of the driver as well as requiring the driver to submit medical records to be reviewed by the DHSMV's medical advisory board. Upon the conclusion of such examination, the DHSMV may suspend or revoke the driver license of such person, if the DHSMV deems that appropriate.<sup>56</sup>

### ***Effect of Proposed Changes***

**Section 16** amends s. 322.221, F.S., to require the DHSMV to issue an identification card at no charge to a person whose driver license has been suspended or revoked by the DHSMV due to his or her physical or mental condition.

### **Effective Date**

**Section 19** provides that the bill is effective October 1, 2016.

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<sup>52</sup> Section 322.21(1)(f), F.S.

<sup>53</sup> Sections 322.051(9) and 944.605(7)(a), F.S.

<sup>54</sup> See s. 985.461, F.S.

<sup>55</sup> Good cause means a licensee's driving record, report of disability to the DHSMV, or other evidence which is sufficient to indicate that his or her driving privilege is detrimental to public safety. Section 322.221, F.S.

<sup>56</sup> Section 322.221, F.S.

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

Because this bill requires Tax Collectors to issue a no-cost identification card to a person whose driver's license has been suspended or revoked for a medical reason, the bill falls within the purview of Art, VII, s. 18(a), of the Florida Constitution, which provides that counties are not bound by certain general laws that require the expenditure of funds unless certain exceptions or exemptions are met. Subsection (d) provides an exemption from this prohibition for laws determined to have an "insignificant fiscal impact," and this bill appears to have an insignificant impact.

**B. Public Records/Open Meetings Issues:**

None.

**C. Trust Funds Restrictions:**

None.

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

The Revenue Estimating Conference met January 22, 2016, and adopted the following estimates for the no-cost identification card/driver license provisions of the bill:

- Certain Juvenile Offenders – insignificant negative fiscal impact to the General Revenue Fund in Fiscal Year 2016-2017 and subsequent years (approximately 2,500 juvenile offenders annually could be issued a no-cost identification card); and
- Individuals with a Medical Sanction –
  - Foregone revenue for Fiscal Year 2016-2017 is \$300,000, with a recurring negative impact of \$500,000 to the General Revenue Fund;
  - For the local tax collectors, foregone revenue for Fiscal Year 2016-2017 is \$100,000, with a recurring negative impact of \$100,000. Approximately 18,390 medically sanctioned drivers could be issued a no-cost identification card in Fiscal Year 2016-2017 and that number is expected to increase as Florida's population increases.<sup>57</sup>

**B. Private Sector Impact:**

By authorizing participation in a qualified sobriety and drug monitoring pilot program for specified DUI offenders in the Fourth Judicial Circuit, the bill will have a positive fiscal impact on the providers of those programs.

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<sup>57</sup> Florida Revenue Estimating Conference, *HB 7063*, pp. 377-383 (Jan. 22, 2016), available at <http://edr.state.fl.us/content/conferences/revenueimpact/archives/2016/pdf/Impact0122.pdf> (last visited Feb. 23, 2016).

The bill is also expected to have a positive fiscal impact on:

- Juvenile offenders in custody or under the supervision of the DJJ who will receive a state identification card at no-charge; and
- Individuals whose license was suspended or revoked for a physical or mental condition (medical sanction) who will be provided a state identification card at no-charge.

Individuals who are deaf or hard of hearing who request to have the international symbol for the deaf and hard of hearing exhibited on his or her driver license or identification card will be required to pay an additional \$1 fee when a driver license or identification card is being issued, renewed or replaced for a purpose other than solely including the symbol on the card. The \$1 fee is in addition to the applicable issuance, renewal, or replacement fee. An individual who is deaf or hard of hearing who surrenders his or her driver license or identification card with the sole purpose of adding the symbol must pay a \$2 fee, which covers the cost of the cardstock used to print an identification card.

The fiscal impact of the provisions of the bill that address contractual relationships between motor vehicle licensees (manufacturers, distributors and importers) and motor vehicle dealers is indeterminate.

#### C. Government Sector Impact:

The DHSMV indicates that the cardstock used to print an identification card costs \$1.97. The estimated cost to the department for issuing identification cards to approximately 2,500 juvenile offenders and 18,390 individuals with a medical sanction is \$41,153 annually. The department will absorb the additional costs within existing resources.

The additional \$1 fee to place the international symbol for the deaf and hard of hearing on a driver license or identification card will have a positive fiscal impact on the DHSMV's Highway Safety Operating Trust Fund, to the extent that individuals apply for and obtain the designation.

#### VI. Technical Deficiencies:

Section 17 requires the DHSMV, starting October 1, 2016, to use a qualified sobriety and drug monitoring program in addition to the placement of an IID. The other sections of the bill do not require the use of both an IID and qualified sobriety and drug monitoring program for DUI offenses. This may cause confusion on whether both the device and program must be used by the DHSMV.

#### VII. Related Issues:

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 316.003, 316.126, 316.193, 316.1937, 316.235, 316.303, 320.02, 320.03, 320.07, 320.64, 322.051, 322.14, 322.19, 322.21, 322.221, and 322.2715.

This bill also creates one undesignated section of law.

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

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

**Recommended CS by Appropriations Subcommittee on Transportation, Tourism, and Economic Development on February 17, 2016:**

The recommended CS makes the following changes to the bill:

- Modifies the definition of “driver-assistive truck platooning technology” to include systems in compliance with the NHTSA rules regarding vehicle-to-vehicle platooning;
- Removes the exemption for driver-assistive truck platooning from the “Following too closely” provisions, and instead directs DOT to study, in consultation with the DHSMV, the use and safe operation of driver assistive truck platooning technology, and authorizes a pilot project to test vehicles equipped with such technology;
- Removes the requirement that a qualified sobriety and drug monitoring program be used in addition to an IID when such device is required, except in s. 322.2715, F.S.;
- Directs the Fourth Judicial Circuit, in consultation with the DHSMV, to implement a qualified sobriety and drug monitoring pilot program that allows the court to order participation in a qualified sobriety and drug monitoring pilot program as an alternative to an IID for specified DUI offenses;
- Removes that the bus deceleration lighting system can only have two red, rear lights, and changes the allowable height for the lighting placement from no higher than 72 inches from the ground to no higher than 100 inches from the ground;
- Removes language providing the registration renewal period ends the last day of the vehicle owner’s birth month;
- Allows individuals to choose to have the international symbol for the deaf and hard of hearing exhibited on his or her driver license or identification card, upon payment of a fee and proof, sufficient to the DHSMV, that he or she is deaf or hard of hearing;
- Requires authorized electronic filing system agents to disclose to customers that the agent may charge a fee for use of the electronic filing system when titling or registering a vehicle, vessel, mobile home, or other vehicle;
- Provides additional grounds to deny, suspend, or revoke a license held by a motor vehicle manufacturer, and prohibits manufacturers from taking certain actions against motor vehicle dealers.

**CS by Transportation on January 27, 2016:**

The CS:

- Removes language from the bill concerning booster seats;

- Replaces language that provided that vehicle registrations expire at midnight on the last day of the owner's birth month, with a prohibition on law enforcement from issuing a citation for an expired registration prior to midnight on the last day of the owner's birth month;
- Adds that buses may have, as part of its deceleration lighting system, two red or amber lights no greater than 12 inches apart located on the rear of a bus;
- Requires certain DUI offenders to participate in a qualified sobriety and drug monitoring program, in addition to placement of an IID, when an IID is required; and
- Directs the DHSMV to adopt rules to implement qualified sobriety and drug monitoring programs.

B. Amendments:

None.



527882

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/29/2016	.	
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The Committee on Fiscal Policy (Bean) recommended the following:

**Senate Amendment**

Delete line 144  
and insert:  
vehicle-to-vehicle communications.



510986

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/29/2016	.	
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The Committee on Fiscal Policy (Bean) recommended the following:

**Senate Amendment**

Delete line 361

and insert:

(15) As used in this chapter and chapter 322, the term:



854912

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/29/2016	.	
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The Committee on Fiscal Policy (Bean) recommended the following:

**Senate Amendment (with title amendment)**

Between lines 522 and 523  
insert:

Section 10. Effective July 1, 2016, section 320.08053,  
Florida Statutes, is amended to read:

320.08053 Establishment of Requirements for requests to  
~~establish~~ specialty license plates.-

(1) If a specialty license plate requested by an  
organization is approved by law, the organization must submit  
the proposed art design for the specialty license plate to the





854912

12 department, in a medium prescribed by the department, as soon as  
13 practicable, but no later than 60 days after the act approving  
14 the specialty license plate becomes a law.

15 (2) (a) Within 120 days following the specialty license  
16 plate becoming law, the department shall establish a method to  
17 issue a specialty license plate voucher to allow for the presale  
18 of the specialty license plate. The processing fee as prescribed  
19 in s. 320.08056, the service charge and branch fee as prescribed  
20 in s. 320.04, and the annual use fee as prescribed in s.  
21 320.08056 shall be charged for the voucher. All other applicable  
22 fees shall be charged at the time of issuance of the license  
23 plates.

24 (b) Within 24 months after the presale specialty license  
25 plate voucher is established, the approved specialty license  
26 plate organization must record with the department a minimum of  
27 4,000 ~~1,000~~ voucher sales before manufacture of the license  
28 plate may begin ~~commence~~. If, at the conclusion of the 24-month  
29 presale period, the minimum sales requirement has ~~requirements~~  
30 ~~have~~ not been met, the specialty plate is deauthorized and the  
31 department shall discontinue development of the plate and  
32 discontinue issuance of the presale vouchers. Upon  
33 deauthorization of the license plate, a purchaser of the license  
34 plate voucher may use the annual use fee collected as a credit  
35 towards any other specialty license plate or apply for a refund  
36 on a form prescribed by the department.

37 Section 11. Effective July 1, 2018, paragraph (a) of  
38 subsection (8) of section 320.08056, Florida Statutes, is  
39 amended to read:

40 320.08056 Specialty license plates.—



854912

41 (8) (a) The department must discontinue the issuance of an  
42 approved specialty license plate if the number of valid  
43 specialty plate registrations falls below 4,000 ~~1,000~~ plates for  
44 at least 12 consecutive months. A warning letter shall be mailed  
45 to the sponsoring organization following the first month in  
46 which the total number of valid specialty plate registrations is  
47 below 4,000 ~~1,000~~ plates. This paragraph does not apply to  
48 collegiate license plates established under s. 320.08058(3) or  
49 specialty license plates that have statutory eligibility  
50 limitations for purchase.

51 Delete line 987

52 and insert:

53 Section 21. Except as otherwise expressly provided in this  
54 act, and except for this section, which shall take effect July  
55 1, 2016, this act shall take effect on October 1, 2016.

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

57 And the title is amended as follows:

58 Delete line 50

59 and insert:

60 date; amending s. 320.08053, F.S.; revising presale  
61 requirements for issuance of a specialty plate;  
62 amending s. 320.08056, F.S.; revising conditions for  
63 discontinuing issuance of a specialty plate; providing  
64 an exception to the minimum requirements for certain  
65 specialty plates; amending s. 320.64, F.S.; revising  
66 provisions

67 Delete lines 117 - 118

68 and insert:

69 a report to the Governor and Legislature; providing



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70

effective dates.



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/29/2016	.	
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The Committee on Fiscal Policy (Bean) recommended the following:

**Senate Amendment to Amendment (854912)**

Delete line 37

and insert:

Section 11. Effective July 1, 2019, paragraph (a) of



481820

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/29/2016	.	
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The Committee on Fiscal Policy (Bean) recommended the following:

**Senate Amendment (with title amendment)**

Delete lines 878 - 958

and insert:

Section 17. Subsection (2) of section 322.251, Florida Statutes, is amended to read:

322.251 Notice of cancellation, suspension, revocation, or disqualification of license.—

(2) The giving of notice and an order of cancellation, suspension, revocation, or disqualification by mail is complete upon expiration of 20 days after deposit in the United States



481820

12 mail for all notices except those issued under chapter 324 or  
13 ss. 627.732-627.734, which are complete 15 days after deposit in  
14 the United States mail. Proof of the giving of notice and an  
15 order of cancellation, suspension, revocation, or  
16 disqualification in either manner shall be made by entry in the  
17 records of the department that such notice was given. The entry  
18 is admissible in the courts of this state and constitutes  
19 sufficient proof that such notice was given. Whenever notice is  
20 given that a driving privilege will be suspended for nonpayment  
21 of a fine, the department shall include in the notice a  
22 statement informing the violator that, if he or she is unable to  
23 pay the citation in full, he or she may avoid a suspension by  
24 agreeing to a payment plan, based on his or her ability to pay,  
25 which will be provided through the clerk of the court in the  
26 county in which the citation was written.

27 Section 18. Subsections (1), (3), and (4) of section  
28 322.2715, Florida Statutes, are amended to read:

29 322.2715 Ignition interlock device.—

30 (1) Before issuing a permanent or restricted driver license  
31 under this chapter, the department shall require the placement  
32 of a department-approved ignition interlock device for any  
33 person convicted of committing an offense of driving under the  
34 influence as specified in subsection (3), except that  
35 consideration may be given to those individuals having a  
36 documented medical condition that would prohibit the device from  
37 functioning normally. If a medical waiver has been granted for a  
38 convicted person seeking a restricted license, the convicted  
39 person is shall not be entitled to a restricted license until  
40 the required ignition interlock device installation period under



481820

41 subsection (3) expires, in addition to the time requirements  
42 under s. 322.271. If a medical waiver has been approved for a  
43 convicted person seeking permanent reinstatement of the driver  
44 license, the convicted person must be restricted to an  
45 employment-purposes-only license and be supervised by a licensed  
46 DUI program until the required ignition interlock device  
47 installation period under subsection (3) expires. An interlock  
48 device shall be placed on all vehicles that are individually or  
49 jointly leased or owned and routinely operated by the convicted  
50 person. Effective October 1, 2016, if a court in the Fourth  
51 Judicial Circuit orders a qualified sobriety and drug monitoring  
52 program as defined in s. 316.193(15) and authorized by 23 U.S.C.  
53 s. 164 under the pilot program implemented under s. 316.193(16),  
54 the department shall use the monitoring program as an  
55 alternative to the placement of an ignition interlock device  
56 required by this section.

57 (3) If the person is convicted of:

58 (a) A first offense of driving under the influence under s.  
59 316.193 and has an unlawful blood-alcohol level or breath-  
60 alcohol level as specified in s. 316.193(1), the ignition  
61 interlock device may be installed for at least 6 continuous  
62 months.

63 (b) A first offense of driving under the influence under s.  
64 316.193 and has an unlawful blood-alcohol level or breath-  
65 alcohol level as specified in s. 316.193(4), or if a person is  
66 convicted of a violation of s. 316.193 and was at the time of  
67 the offense accompanied in the vehicle by a person younger than  
68 18 years of age, the person shall have the ignition interlock  
69 device installed for at least 6 continuous months for the first



481820

70 offense and for at least 2 continuous years for a second  
71 offense.

72 (c) A second offense of driving under the influence, the  
73 ignition interlock device shall be installed for a period of at  
74 least 1 continuous year.

75 (d) A third offense of driving under the influence which  
76 occurs within 10 years after a prior conviction for a violation  
77 of s. 316.193, the ignition interlock device shall be installed  
78 for a period of at least 2 continuous years.

79 (e) A third offense of driving under the influence which  
80 occurs more than 10 years after the date of a prior conviction,  
81 the ignition interlock device shall be installed for a period of  
82 at least 2 continuous years.

83 (f) A fourth or subsequent offense of driving under the  
84 influence, the ignition interlock device shall be installed for  
85 a period of at least 5 years.

86

87 Effective October 1, 2016, if a court in the Fourth Judicial  
88 Circuit orders a qualified sobriety and drug monitoring program  
89 as defined in s. 316.193(15) and authorized by 23 U.S.C. s. 164  
90 under the pilot program implemented under s. 316.193(16), the  
91 department shall use the monitoring program as an alternative to  
92 the placement of an ignition interlock device required by this  
93 section.

94 (4) If the court fails to order the mandatory placement of  
95 the ignition interlock device or fails to order for the  
96 applicable period the mandatory placement of an ignition  
97 interlock device under s. 316.193 or s. 316.1937 at the time of  
98 imposing sentence or within 30 days thereafter, the department





481820

99 shall immediately require that the ignition interlock device be  
100 installed as provided in this section, except that consideration  
101 may be given to those individuals having a documented medical  
102 condition that would prohibit the device from functioning  
103 normally. Effective October 1, 2016, if a court in the Fourth  
104 Judicial Circuit orders a qualified sobriety and drug monitoring  
105 program as defined in s. 316.193(15) and authorized by 23 U.S.C.  
106 s. 164 under the pilot program implemented under s. 316.193(16),  
107 the department shall use the monitoring program as an  
108 alternative to the placement of an ignition interlock device  
109 required by this section. This subsection applies to the  
110 reinstatement of the driving privilege following a revocation,  
111 suspension, or cancellation that is based upon a conviction for  
112 the offense of driving under the influence which occurs on or  
113 after July 1, 2005.

114 Section 19. Present subsections (2) and (3) of section  
115 765.521, Florida Statutes, are redesignated as subsections (3)  
116 and (4), respectively, and a new subsection (2) is added to that  
117 section, to read:

118 765.521 Donations as part of driver license or  
119 identification card process.-

120 (2) The department shall maintain an integrated link on its  
121 website referring a visitor renewing a driver license or  
122 conducting other business to the donor registry operated under  
123 s. 765.5155.

124  
125 ===== T I T L E A M E N D M E N T =====

126 And the title is amended as follows:

127 Delete lines 108 - 112



481820

128 and insert:  
129       322.251, F.S.; requiring the department to include in  
130       a notice that a driving privilege will be suspended  
131       for nonpayment of a fine a statement informing  
132       violators that, if they are unable to pay their  
133       citation in full to avoid suspension of their driving  
134       privileges, they may avoid a suspension by agreeing to  
135       a certain payment plan; amending s. 322.2715, F.S.;  
136       requiring the department to use a certain qualified  
137       sobriety and drug monitoring program as an alternative  
138       to the placement of an ignition interlock device as of  
139       a specified date under certain circumstances; amending  
140       s. 765.521; requiring the department to maintain an  
141       integrated link on its website referring certain  
142       visitors to a donor registry; directing the Department  
143       of Transportation to



231632

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
02/29/2016	.	
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The Committee on Fiscal Policy (Bean) recommended the following:

**Senate Amendment (with title amendment)**

Between lines 986 and 987  
insert:

Section 19. Subsections (1) through (4) of section 322.055,  
Florida Statutes, are amended to read:

322.055 Revocation or suspension of, or delay of  
eligibility for, driver license for persons 18 years of age or  
older convicted of certain drug offenses.—

(1) Notwithstanding s. 322.28, upon the conviction of a  
person 18 years of age or older for possession or sale of,



231632

12 trafficking in, or conspiracy to possess, sell, or traffic in a  
13 controlled substance, the court shall direct the department to  
14 revoke the driver license or driving privilege of the person.  
15 The period of such revocation shall be 6 months ~~1 year~~ or until  
16 the person is evaluated for and, if deemed necessary by the  
17 evaluating agency, completes a drug treatment and rehabilitation  
18 program approved or regulated by the Department of Children and  
19 Families. However, the court may, in its sound discretion,  
20 direct the department to issue a license for driving privilege  
21 restricted to business or employment purposes only, as defined  
22 by s. 322.271, if the person is otherwise qualified for such a  
23 license. ~~A driver whose license or driving privilege has been~~  
24 ~~suspended or revoked under this section or s. 322.056 may, upon~~  
25 ~~the expiration of 6 months, petition the department for~~  
26 ~~restoration of the driving privilege on a restricted or~~  
27 ~~unrestricted basis depending on length of suspension or~~  
28 ~~revocation. In no case shall~~ A restricted license may not be  
29 available until 6 months of the suspension or revocation period  
30 has expired.

31 (2) If a person 18 years of age or older is convicted for  
32 the possession or sale of, trafficking in, or conspiracy to  
33 possess, sell, or traffic in a controlled substance and such  
34 person is eligible by reason of age for a driver license or  
35 privilege, the court shall direct the department to withhold  
36 issuance of such person's driver license or driving privilege  
37 for a period of 6 months ~~1 year~~ after the date the person was  
38 convicted or until the person is evaluated for and, if deemed  
39 necessary by the evaluating agency, completes a drug treatment  
40 and rehabilitation program approved or regulated by the



231632

41 Department of Children and Families. However, the court may, in  
42 its sound discretion, direct the department to issue a license  
43 for driving privilege restricted to business or employment  
44 purposes only, as defined by s. 322.271, if the person is  
45 otherwise qualified for such a license. ~~A driver whose license  
46 or driving privilege has been suspended or revoked under this  
47 section or s. 322.056 may, upon the expiration of 6 months,  
48 petition the department for restoration of the driving privilege  
49 on a restricted or unrestricted basis depending on the length of  
50 suspension or revocation. In no case shall A restricted license  
51 may not be available until 6 months of the suspension or  
52 revocation period has expired.~~

53 (3) If a person 18 years of age or older is convicted for  
54 the possession or sale of, trafficking in, or conspiracy to  
55 possess, sell, or traffic in a controlled substance and such  
56 person's driver license or driving privilege is already under  
57 suspension or revocation for any reason, the court shall direct  
58 the department to extend the period of such suspension or  
59 revocation by an additional period of 6 months ~~1 year~~ or until  
60 the person is evaluated for and, if deemed necessary by the  
61 evaluating agency, completes a drug treatment and rehabilitation  
62 program approved or regulated by the Department of Children and  
63 Families. However, the court may, in its sound discretion,  
64 direct the department to issue a license for driving privilege  
65 restricted to business or employment purposes only, as defined  
66 by s. 322.271, if the person is otherwise qualified for such a  
67 license. ~~A driver whose license or driving privilege has been  
68 suspended or revoked under this section or s. 322.056 may, upon  
69 the expiration of 6 months, petition the department for~~



231632

70 ~~restoration of the driving privilege on a restricted or~~  
71 ~~unrestricted basis depending on the length of suspension or~~  
72 ~~revocation. In no case shall A restricted license may not be~~  
73 available until 6 months of the suspension or revocation period  
74 has expired.

75 (4) If a person 18 years of age or older is convicted for  
76 the possession or sale of, trafficking in, or conspiracy to  
77 possess, sell, or traffic in a controlled substance and such  
78 person is ineligible by reason of age for a driver license or  
79 driving privilege, the court shall direct the department to  
80 withhold issuance of such person's driver license or driving  
81 privilege for a period of 6 months ~~1 year~~ after the date that he  
82 or she would otherwise have become eligible or until he or she  
83 becomes eligible by reason of age for a driver license and is  
84 evaluated for and, if deemed necessary by the evaluating agency,  
85 completes a drug treatment and rehabilitation program approved  
86 or regulated by the Department of Children and Families.

87 However, the court may, in its sound discretion, direct the  
88 department to issue a license for driving privilege restricted  
89 to business or employment purposes only, as defined by s.  
90 322.271, if the person is otherwise qualified for such a  
91 license. ~~A driver whose license or driving privilege has been~~  
92 ~~suspended or revoked under this section or s. 322.056 may, upon~~  
93 ~~the expiration of 6 months, petition the department for~~  
94 ~~restoration of the driving privilege on a restricted or~~  
95 ~~unrestricted basis depending on the length of suspension or~~  
96 ~~revocation. In no case shall A restricted license may not be~~  
97 available until 6 months of the suspension or revocation period  
98 has expired.



231632

99 Section 20. Section 322.056, Florida Statutes, is amended  
100 to read:

101 322.056 Mandatory revocation or suspension of, or delay of  
102 eligibility for, driver license for persons under age 18 found  
103 guilty of ~~certain alcohol, drug, or tobacco~~ offenses;  
104 prohibition.-

105 (1) Notwithstanding the provisions of s. 322.055, if a  
106 person under 18 years of age is found guilty of or delinquent  
107 for a violation of ~~s. 562.11(2), s. 562.111, or chapter 893,~~  
108 and:

109 (a) The person is eligible by reason of age for a driver  
110 license or driving privilege, the court shall direct the  
111 department to revoke or to withhold issuance of his or her  
112 driver license or driving privilege for a period of 6 months.÷

113 ~~1. Not less than 6 months and not more than 1 year for the~~  
114 ~~first violation.~~

115 ~~2. Two years, for a subsequent violation.~~

116 (b) The person's driver license or driving privilege is  
117 under suspension or revocation for any reason, the court shall  
118 direct the department to extend the period of suspension or  
119 revocation by an additional period of 6 months.÷

120 ~~1. Not less than 6 months and not more than 1 year for the~~  
121 ~~first violation.~~

122 ~~2. Two years, for a subsequent violation.~~

123 (c) The person is ineligible by reason of age for a driver  
124 license or driving privilege, the court shall direct the  
125 department to withhold issuance of his or her driver license or  
126 driving privilege for a period of÷

127 ~~1. Not less than 6 months and not more than 1 year after~~



231632

128 the date on which he or she would otherwise have become  
129 eligible, ~~for the first violation.~~

130 ~~2. Two years after the date on which he or she would~~  
131 ~~otherwise have become eligible, for a subsequent violation.~~

132  
133 ~~However, the court may, in its sound discretion, direct the~~  
134 ~~department to issue a license for driving privileges restricted~~  
135 ~~to business or employment purposes only, as defined in s.~~  
136 ~~322.271, if the person is otherwise qualified for such a~~  
137 ~~license.~~

138 ~~(2) If a person under 18 years of age is found by the court~~  
139 ~~to have committed a noncriminal violation under s. 569.11 or s.~~  
140 ~~877.112(6) or (7) and that person has failed to comply with the~~  
141 ~~procedures established in that section by failing to fulfill~~  
142 ~~community service requirements, failing to pay the applicable~~  
143 ~~fine, or failing to attend a locally available school-approved~~  
144 ~~anti-tobacco program, and:~~

145 ~~(a) The person is eligible by reason of age for a driver~~  
146 ~~license or driving privilege, the court shall direct the~~  
147 ~~department to revoke or to withhold issuance of his or her~~  
148 ~~driver license or driving privilege as follows:~~

149 ~~1. For the first violation, for 30 days.~~

150 ~~2. For the second violation within 12 weeks of the first~~  
151 ~~violation, for 45 days.~~

152 ~~(b) The person's driver license or driving privilege is~~  
153 ~~under suspension or revocation for any reason, the court shall~~  
154 ~~direct the department to extend the period of suspension or~~  
155 ~~revocation by an additional period as follows:~~

156 ~~1. For the first violation, for 30 days.~~





231632

157           ~~2. For the second violation within 12 weeks of the first~~  
158 ~~violation, for 45 days.~~

159           ~~(c) The person is ineligible by reason of age for a driver~~  
160 ~~license or driving privilege, the court shall direct the~~  
161 ~~department to withhold issuance of his or her driver license or~~  
162 ~~driving privilege as follows:~~

163           ~~1. For the first violation, for 30 days.~~

164           ~~2. For the second violation within 12 weeks of the first~~  
165 ~~violation, for 45 days.~~

166

167 ~~Any second violation of s. 569.11 or s. 877.112(6) or (7) not~~  
168 ~~within the 12-week period after the first violation will be~~  
169 ~~treated as a first violation and in the same manner as provided~~  
170 ~~in this subsection.~~

171           ~~(3) If a person under 18 years of age is found by the court~~  
172 ~~to have committed a third violation of s. 569.11 or s.~~  
173 ~~877.112(6) or (7) within 12 weeks of the first violation, the~~  
174 ~~court must direct the Department of Highway Safety and Motor~~  
175 ~~Vehicles to suspend or withhold issuance of his or her driver~~  
176 ~~license or driving privilege for 60 consecutive days. Any third~~  
177 ~~violation of s. 569.11 or s. 877.112(6) or (7) not within the~~  
178 ~~12-week period after the first violation will be treated as a~~  
179 ~~first violation and in the same manner as provided in subsection~~  
180 ~~(2).~~

181           ~~(2)-(4)~~ A penalty imposed under this section shall be in  
182 addition to any other penalty imposed by law.

183           ~~(5) The suspension or revocation of a person's driver~~  
184 ~~license imposed pursuant to subsection (2) or subsection (3),~~  
185 ~~shall not result in or be cause for an increase of the convicted~~



231632

186 ~~person's, or his or her parent's or legal guardian's, automobile~~  
187 ~~insurance rate or premium or result in points assessed against~~  
188 ~~the person's driving record.~~

189 Section 21. Section 322.057, Florida Statutes, is repealed.

190 Section 22. Subsection (3) of section 322.09, Florida  
191 Statutes, is amended, and present subsections (4) and (5) of  
192 that section are redesignated as subsections (3) and (4),  
193 respectively, to read:

194 322.09 Application of minors; responsibility for negligence  
195 or misconduct of minor.—

196 ~~(3) The department may not issue a driver license or~~  
197 ~~learner's driver license to any applicant under the age of 18~~  
198 ~~years who is not in compliance with the requirements of s.~~  
199 ~~322.091.~~

200 Section 23. Section 322.091, Florida Statutes, is repealed.

201 Section 24. Subsection (7) of section 322.251, Florida  
202 Statutes, is repealed.

203 Section 25. Subsection (10) of section 322.34, Florida  
204 Statutes, is amended to read:

205 322.34 Driving while license suspended, revoked, canceled,  
206 or disqualified.—

207 (10) (a) Notwithstanding any other provision of this  
208 section, if a person does not have a prior forcible felony  
209 conviction as defined in s. 776.08, the penalties provided in  
210 paragraph (b) apply if a person's driver license or driving  
211 privilege is canceled, suspended, or revoked for:

212 1. Failing to pay child support as provided in s. 322.245  
213 or s. 61.13016;

214 2. Failing to pay any other financial obligation as



231632

215 provided in s. 322.245 ~~other than those specified in s.~~  
216 ~~322.245(1);~~

217 3. Failing to comply with a civil penalty required in s.  
218 318.15;

219 4. Failing to maintain vehicular financial responsibility  
220 as required by chapter 324; or

221 ~~5. Failing to comply with attendance or other requirements~~  
222 ~~for minors as set forth in s. 322.091; or~~

223 5.6. Having been designated a habitual traffic offender  
224 under s. 322.264(1)(d) as a result of suspensions of his or her  
225 driver license or driver privilege for any underlying violation  
226 listed in subparagraphs 1.-4. ~~1.-5.~~

227 (b)1. Upon a first conviction for knowingly driving while  
228 his or her license is suspended, revoked, or canceled for any of  
229 the underlying violations listed in subparagraphs (a)1.-5.  
230 ~~(a)1.-6.~~, a person commits a misdemeanor of the second degree,  
231 punishable as provided in s. 775.082 or s. 775.083.

232 2. Upon a second or subsequent conviction for the same  
233 offense of knowingly driving while his or her license is  
234 suspended, revoked, or canceled for any of the underlying  
235 violations listed in subparagraphs (a)1.-5. ~~(a)1.-6.~~, a person  
236 commits a misdemeanor of the first degree, punishable as  
237 provided in s. 775.082 or s. 775.083.

238 Section 26. Paragraph (a) of subsection (1) of section  
239 562.11, Florida Statutes, is amended to read:

240 562.11 Selling, giving, or serving alcoholic beverages to  
241 person under age 21; providing a proper name; misrepresenting or  
242 misstating age or age of another to induce licensee to serve  
243 alcoholic beverages to person under 21; penalties.-



231632

244 (1) (a) ~~1.~~ A person may not sell, give, serve, or permit to  
245 be served alcoholic beverages to a person under 21 years of age  
246 or permit a person under 21 years of age to consume such  
247 beverages on the licensed premises. A person who violates this  
248 subparagraph commits a misdemeanor of the second degree,  
249 punishable as provided in s. 775.082 or s. 775.083. A person who  
250 violates this subparagraph a second or subsequent time within 1  
251 year after a prior conviction commits a misdemeanor of the first  
252 degree, punishable as provided in s. 775.082 or s. 775.083.

253 ~~2. In addition to any other penalty imposed for a violation~~  
254 ~~of subparagraph 1., the court may order the Department of~~  
255 ~~Highway Safety and Motor Vehicles to withhold the issuance of,~~  
256 ~~or suspend or revoke, the driver license or driving privilege,~~  
257 ~~as provided in s. 322.057, of any person who violates~~  
258 ~~subparagraph 1. This subparagraph does not apply to a licensee,~~  
259 ~~as defined in s. 561.01, who violates subparagraph 1. while~~  
260 ~~acting within the scope of his or her license or an employee or~~  
261 ~~agent of a licensee, as defined in s. 561.01, who violates~~  
262 ~~subparagraph 1. while engaged within the scope of his or her~~  
263 ~~employment or agency.~~

264 ~~3. A court that withholds the issuance of, or suspends or~~  
265 ~~revokes, the driver license or driving privilege of a person~~  
266 ~~pursuant to subparagraph 2. may direct the Department of Highway~~  
267 ~~Safety and Motor Vehicles to issue the person a license for~~  
268 ~~driving privilege restricted to business purposes only, as~~  
269 ~~defined in s. 322.271, if he or she is otherwise qualified.~~

270 Section 27. Subsection (3) of section 562.111, Florida  
271 Statutes, is repealed.

272 Section 28. Subsections (1), (2), and (5) of section



231632

273 569.11, Florida Statutes, are amended to read:

274 569.11 Possession, misrepresenting age or military service  
275 to purchase, and purchase of tobacco products by persons under  
276 18 years of age prohibited; penalties; jurisdiction; disposition  
277 of fines.-

278 (1) It is unlawful for any person under 18 years of age to  
279 knowingly possess any tobacco product. Any person under 18 years  
280 of age who violates the provisions of this subsection commits a  
281 noncriminal violation as provided in s. 775.08(3), punishable  
282 by:

283 (a) For a first violation, 16 hours of community service  
284 or, instead of community service, a \$25 fine. In addition, the  
285 person must attend a school-approved anti-tobacco program, if  
286 locally available; or

287 (b) For a second or subsequent violation within 12 weeks of  
288 the first violation, a \$25 fine. ~~or~~

289 ~~(c) For a third or subsequent violation within 12 weeks of~~  
290 ~~the first violation, the court must direct the Department of~~  
291 ~~Highway Safety and Motor Vehicles to withhold issuance of or~~  
292 ~~suspend or revoke the person's driver license or driving~~  
293 ~~privilege, as provided in s. 322.056.~~

294  
295 Any second or subsequent violation not within the 12-week time  
296 period after the first violation is punishable as provided for a  
297 first violation.

298 (2) It is unlawful for any person under 18 years of age to  
299 misrepresent his or her age or military service for the purpose  
300 of inducing a dealer or an agent or employee of the dealer to  
301 sell, give, barter, furnish, or deliver any tobacco product, or



231632

302 to purchase, or attempt to purchase, any tobacco product from a  
303 person or a vending machine. Any person under 18 years of age  
304 who violates a provision of this subsection commits a  
305 noncriminal violation as provided in s. 775.08(3), punishable  
306 by:

307 (a) For a first violation, 16 hours of community service  
308 or, instead of community service, a \$25 fine and, in addition,  
309 the person must attend a school-approved anti-tobacco program,  
310 if available; or

311 (b) For a second or subsequent violation within 12 weeks of  
312 the first violation, a \$25 fine. ~~or~~

313 ~~(c) For a third or subsequent violation within 12 weeks of~~  
314 ~~the first violation, the court must direct the Department of~~  
315 ~~Highway Safety and Motor Vehicles to withhold issuance of or~~  
316 ~~suspend or revoke the person's driver license or driving~~  
317 ~~privilege, as provided in s. 322.056.~~

318  
319 Any second or subsequent violation not within the 12-week time  
320 period after the first violation is punishable as provided for a  
321 first violation.

322 (5) (a) If a person under 18 years of age is found by the  
323 court to have committed a noncriminal violation under this  
324 section and that person has failed to complete community  
325 service, pay the fine as required by paragraph (1) (a) or  
326 paragraph (2) (a), or attend a school-approved anti-tobacco  
327 program, if locally available, the court may ~~must~~ direct the  
328 Department of Highway Safety and Motor Vehicles to withhold  
329 issuance of or suspend the driver license or driving privilege  
330 of that person for a period of 30 consecutive days.



231632

331 (b) If a person under 18 years of age is found by the court  
332 to have committed a noncriminal violation under this section and  
333 that person has failed to pay the applicable fine as required by  
334 paragraph (1)(b) or paragraph (2)(b), the court may ~~must~~ direct  
335 the Department of Highway Safety and Motor Vehicles to withhold  
336 issuance of or suspend the driver license or driving privilege  
337 of that person for a period of 45 consecutive days.

338 Section 29. Subsections (5) and (10) of section 790.22,  
339 Florida Statutes, are amended to read:

340 790.22 Use of BB guns, air or gas-operated guns, or  
341 electric weapons or devices by minor under 16; limitation;  
342 possession of firearms by minor under 18 prohibited; penalties.-

343 (5) (a) A minor who violates subsection (3) commits a  
344 misdemeanor of the first degree; for a first offense, may serve  
345 a period of detention of up to 3 days in a secure detention  
346 facility; and, in addition to any other penalty provided by law,  
347 shall be required to perform 100 hours of community service. ~~†~~  
348 and:

349 ~~1. If the minor is eligible by reason of age for a driver~~  
350 ~~license or driving privilege, the court shall direct the~~  
351 ~~Department of Highway Safety and Motor Vehicles to revoke or to~~  
352 ~~withhold issuance of the minor's driver license or driving~~  
353 ~~privilege for up to 1 year.~~

354 ~~2. If the minor's driver license or driving privilege is~~  
355 ~~under suspension or revocation for any reason, the court shall~~  
356 ~~direct the Department of Highway Safety and Motor Vehicles to~~  
357 ~~extend the period of suspension or revocation by an additional~~  
358 ~~period of up to 1 year.~~

359 ~~3. If the minor is ineligible by reason of age for a driver~~



231632

360 ~~license or driving privilege, the court shall direct the~~  
361 ~~Department of Highway Safety and Motor Vehicles to withhold~~  
362 ~~issuance of the minor's driver license or driving privilege for~~  
363 ~~up to 1 year after the date on which the minor would otherwise~~  
364 ~~have become eligible.~~

365 (b) For a second or subsequent offense, a minor who  
366 violates subsection (3) commits a felony of the third degree and  
367 shall serve a period of detention of up to 15 days in a secure  
368 detention facility and shall be required to perform not less  
369 than 100 or ~~nor~~ more than 250 hours of community service.~~7 and:~~

370 ~~1. If the minor is eligible by reason of age for a driver~~  
371 ~~license or driving privilege, the court shall direct the~~  
372 ~~Department of Highway Safety and Motor Vehicles to revoke or to~~  
373 ~~withhold issuance of the minor's driver license or driving~~  
374 ~~privilege for up to 2 years.~~

375 ~~2. If the minor's driver license or driving privilege is~~  
376 ~~under suspension or revocation for any reason, the court shall~~  
377 ~~direct the Department of Highway Safety and Motor Vehicles to~~  
378 ~~extend the period of suspension or revocation by an additional~~  
379 ~~period of up to 2 years.~~

380 ~~3. If the minor is ineligible by reason of age for a driver~~  
381 ~~license or driving privilege, the court shall direct the~~  
382 ~~Department of Highway Safety and Motor Vehicles to withhold~~  
383 ~~issuance of the minor's driver license or driving privilege for~~  
384 ~~up to 2 years after the date on which the minor would otherwise~~  
385 ~~have become eligible.~~

386  
387 For the purposes of this subsection, community service shall be  
388 performed, if possible, in a manner involving a hospital





231632

389 emergency room or other medical environment that deals on a  
390 regular basis with trauma patients and gunshot wounds.

391 ~~(10) If a minor is found to have committed an offense under~~  
392 ~~subsection (9), the court shall impose the following penalties~~  
393 ~~in addition to any penalty imposed under paragraph (9)(a) or~~  
394 ~~paragraph (9)(b):~~

395 ~~(a) For a first offense:~~

396 ~~1. If the minor is eligible by reason of age for a driver~~  
397 ~~license or driving privilege, the court shall direct the~~  
398 ~~Department of Highway Safety and Motor Vehicles to revoke or to~~  
399 ~~withhold issuance of the minor's driver license or driving~~  
400 ~~privilege for up to 1 year.~~

401 ~~2. If the minor's driver license or driving privilege is~~  
402 ~~under suspension or revocation for any reason, the court shall~~  
403 ~~direct the Department of Highway Safety and Motor Vehicles to~~  
404 ~~extend the period of suspension or revocation by an additional~~  
405 ~~period for up to 1 year.~~

406 ~~3. If the minor is ineligible by reason of age for a driver~~  
407 ~~license or driving privilege, the court shall direct the~~  
408 ~~Department of Highway Safety and Motor Vehicles to withhold~~  
409 ~~issuance of the minor's driver license or driving privilege for~~  
410 ~~up to 1 year after the date on which the minor would otherwise~~  
411 ~~have become eligible.~~

412 ~~(b) For a second or subsequent offense:~~

413 ~~1. If the minor is eligible by reason of age for a driver~~  
414 ~~license or driving privilege, the court shall direct the~~  
415 ~~Department of Highway Safety and Motor Vehicles to revoke or to~~  
416 ~~withhold issuance of the minor's driver license or driving~~  
417 ~~privilege for up to 2 years.~~



231632

418 ~~2. If the minor's driver license or driving privilege is~~  
419 ~~under suspension or revocation for any reason, the court shall~~  
420 ~~direct the Department of Highway Safety and Motor Vehicles to~~  
421 ~~extend the period of suspension or revocation by an additional~~  
422 ~~period for up to 2 years.~~

423 ~~3. If the minor is ineligible by reason of age for a driver~~  
424 ~~license or driving privilege, the court shall direct the~~  
425 ~~Department of Highway Safety and Motor Vehicles to withhold~~  
426 ~~issuance of the minor's driver license or driving privilege for~~  
427 ~~up to 2 years after the date on which the minor would otherwise~~  
428 ~~have become eligible.~~

429 Section 30. Subsections (7) and (8) of section 806.13,  
430 Florida Statutes, are amended, and present subsection (9) of  
431 that section is redesignated as subsection (7), to read:

432 806.13 Criminal mischief; penalties; penalty for minor.—

433 ~~(7) In addition to any other penalty provided by law, if a~~  
434 ~~minor is found to have committed a delinquent act under this~~  
435 ~~section for placing graffiti on any public property or private~~  
436 ~~property, and:~~

437 ~~(a) The minor is eligible by reason of age for a driver~~  
438 ~~license or driving privilege, the court shall direct the~~  
439 ~~Department of Highway Safety and Motor Vehicles to revoke or~~  
440 ~~withhold issuance of the minor's driver license or driving~~  
441 ~~privilege for not more than 1 year.~~

442 ~~(b) The minor's driver license or driving privilege is~~  
443 ~~under suspension or revocation for any reason, the court shall~~  
444 ~~direct the Department of Highway Safety and Motor Vehicles to~~  
445 ~~extend the period of suspension or revocation by an additional~~  
446 ~~period of not more than 1 year.~~



231632

447           ~~(c) The minor is ineligible by reason of age for a driver~~  
448 ~~license or driving privilege, the court shall direct the~~  
449 ~~Department of Highway Safety and Motor Vehicles to withhold~~  
450 ~~issuance of the minor's driver license or driving privilege for~~  
451 ~~not more than 1 year after the date on which he or she would~~  
452 ~~otherwise have become eligible.~~

453           ~~(8) A minor whose driver license or driving privilege is~~  
454 ~~revoked, suspended, or withheld under subsection (7) may elect~~  
455 ~~to reduce the period of revocation, suspension, or withholding~~  
456 ~~by performing community service at the rate of 1 day for each~~  
457 ~~hour of community service performed. In addition, if the court~~  
458 ~~determines that due to a family hardship, the minor's driver~~  
459 ~~license or driving privilege is necessary for employment or~~  
460 ~~medical purposes of the minor or a member of the minor's family,~~  
461 ~~the court shall order the minor to perform community service and~~  
462 ~~reduce the period of revocation, suspension, or withholding at~~  
463 ~~the rate of 1 day for each hour of community service performed.~~  
464 ~~As used in this subsection, the term "community service" means~~  
465 ~~cleaning graffiti from public property.~~

466           Section 31. Section 812.0155, Florida Statutes, is  
467 repealed.

468           Section 32. Section 832.09, Florida Statutes, is repealed.

469           Section 33. Subsections (6) and (7) and paragraphs (c) and  
470 (d) of subsection (8) of section 877.112, Florida Statutes, are  
471 amended to read:

472           877.112 Nicotine products and nicotine dispensing devices;  
473 prohibitions for minors; penalties; civil fines; signage  
474 requirements; preemption.—

475           (6) PROHIBITIONS ON POSSESSION OF NICOTINE PRODUCTS OR



231632

476 NICOTINE DISPENSING DEVICES BY MINORS.—It is unlawful for any  
477 person under 18 years of age to knowingly possess any nicotine  
478 product or a nicotine dispensing device. Any person under 18  
479 years of age who violates this subsection commits a noncriminal  
480 violation as defined in s. 775.08(3), punishable by:

481 (a) For a first violation, 16 hours of community service  
482 or, instead of community service, a \$25 fine. In addition, the  
483 person must attend a school-approved anti-tobacco and nicotine  
484 program, if locally available; or

485 (b) For a second or subsequent violation within 12 weeks of  
486 the first violation, a \$25 fine. ~~or~~

487 ~~(c) For a third or subsequent violation within 12 weeks of~~  
488 ~~the first violation, the court must direct the Department of~~  
489 ~~Highway Safety and Motor Vehicles to withhold issuance of or~~  
490 ~~suspend or revoke the person's driver license or driving~~  
491 ~~privilege, as provided in s. 322.056.~~

492  
493 Any second or subsequent violation not within the 12-week time  
494 period after the first violation is punishable as provided for a  
495 first violation.

496 (7) PROHIBITION ON MISREPRESENTING AGE.—It is unlawful for  
497 any person under 18 years of age to misrepresent his or her age  
498 or military service for the purpose of inducing a retailer of  
499 nicotine products or nicotine dispensing devices or an agent or  
500 employee of such retailer to sell, give, barter, furnish, or  
501 deliver any nicotine product or nicotine dispensing device, or  
502 to purchase, or attempt to purchase, any nicotine product or  
503 nicotine dispensing device from a person or a vending machine.  
504 Any person under 18 years of age who violates this subsection



231632

505 commits a noncriminal violation as defined in s. 775.08(3),  
506 punishable by:

507 (a) For a first violation, 16 hours of community service  
508 or, instead of community service, a \$25 fine and, in addition,  
509 the person must attend a school-approved anti-tobacco and  
510 nicotine program, if available; or

511 (b) For a second or subsequent violation within 12 weeks of  
512 the first violation, a \$25 fine. ~~or~~

513 ~~(c) For a third or subsequent violation within 12 weeks of~~  
514 ~~the first violation, the court must direct the Department of~~  
515 ~~Highway Safety and Motor Vehicles to withhold issuance of or~~  
516 ~~suspend or revoke the person's driver license or driving~~  
517 ~~privilege, as provided in s. 322.056.~~

518  
519 Any second or subsequent violation not within the 12-week time  
520 period after the first violation is punishable as provided for a  
521 first violation.

522 (8) PENALTIES FOR MINORS.—

523 (c) If a person under 18 years of age is found by the court  
524 to have committed a noncriminal violation under this section and  
525 that person has failed to complete community service, pay the  
526 fine as required by paragraph (6) (a) or paragraph (7) (a), or  
527 attend a school-approved anti-tobacco and nicotine program, if  
528 locally available, the court may ~~must~~ direct the Department of  
529 Highway Safety and Motor Vehicles to withhold issuance of or  
530 suspend the driver license or driving privilege of that person  
531 for 30 consecutive days.

532 (d) If a person under 18 years of age is found by the court  
533 to have committed a noncriminal violation under this section and



231632

534 that person has failed to pay the applicable fine as required by  
535 paragraph (6)(b) or paragraph (7)(b), the court may ~~must~~ direct  
536 the Department of Highway Safety and Motor Vehicles to withhold  
537 issuance of or suspend the driver license or driving privilege  
538 of that person for 45 consecutive days.

539 Section 34. Subsection (2) of section 1003.27, Florida  
540 Statutes, is amended to read:

541 1003.27 Court procedure and penalties.—The court procedure  
542 and penalties for the enforcement of the provisions of this  
543 part, relating to compulsory school attendance, shall be as  
544 follows:

545 (2) NONENROLLMENT AND NONATTENDANCE CASES.—

546 ~~(a)~~ In each case of nonenrollment or of nonattendance upon  
547 the part of a student who is required to attend some school,  
548 when no valid reason for such nonenrollment or nonattendance is  
549 found, the district school superintendent shall institute a  
550 criminal prosecution against the student's parent.

551 ~~(b) Each public school principal or the principal's~~  
552 ~~designee shall notify the district school board of each minor~~  
553 ~~student under its jurisdiction who accumulates 15 unexcused~~  
554 ~~absences in a period of 90 calendar days. Each designee of the~~  
555 ~~governing body of each private school, and each parent whose~~  
556 ~~child is enrolled in a home education program, may provide the~~  
557 ~~Department of Highway Safety and Motor Vehicles with the legal~~  
558 ~~name, sex, date of birth, and social security number of each~~  
559 ~~minor student under his or her jurisdiction who fails to satisfy~~  
560 ~~relevant attendance requirements and who fails to otherwise~~  
561 ~~satisfy the requirements of s. 322.091. The district school~~  
562 ~~superintendent must provide the Department of Highway Safety and~~



231632

563 ~~Motor Vehicles the legal name, sex, date of birth, and social~~  
564 ~~security number of each minor student who has been reported~~  
565 ~~under this paragraph and who fails to otherwise satisfy the~~  
566 ~~requirements of s. 322.091. The Department of Highway Safety and~~  
567 ~~Motor Vehicles may not issue a driver license or learner's~~  
568 ~~driver license to, and shall suspend any previously issued~~  
569 ~~driver license or learner's driver license of, any such minor~~  
570 ~~student, pursuant to the provisions of s. 322.091.~~

571 Section 35. Paragraph (a) of subsection (10) of section  
572 318.14, Florida Statutes, is amended to read:

573 318.14 Noncriminal traffic infractions; exception;  
574 procedures.-

575 (10) (a) Any person who does not hold a commercial driver  
576 license or commercial learner's permit and who is cited while  
577 driving a noncommercial motor vehicle for an offense listed  
578 under this subsection may, in lieu of payment of fine or court  
579 appearance, elect to enter a plea of nolo contendere and provide  
580 proof of compliance to the clerk of the court, designated  
581 official, or authorized operator of a traffic violations bureau.  
582 In such case, adjudication shall be withheld; however, a person  
583 may not make an election under this subsection if the person has  
584 made an election under this subsection in the preceding 12  
585 months. A person may not make more than three elections under  
586 this subsection. This subsection applies to the following  
587 offenses:

588 1. Operating a motor vehicle without a valid driver license  
589 in violation of s. 322.03, s. 322.065, or s. 322.15(1), or  
590 operating a motor vehicle with a license that has been suspended  
591 for failure to appear, failure to pay civil penalty, or failure



231632

592 to attend a driver improvement course pursuant to s. 322.291.

593 2. Operating a motor vehicle without a valid registration  
594 in violation of s. 320.0605, s. 320.07, or s. 320.131.

595 3. Operating a motor vehicle in violation of s. 316.646.

596 4. Operating a motor vehicle with a license that has been  
597 suspended under s. 61.13016 or s. 322.245 for failure to pay  
598 child support or for failure to pay any other financial  
599 obligation as provided in s. 322.245; however, this subparagraph  
600 does not apply if the license has been suspended pursuant to s.  
601 322.245(1).

602 ~~5. Operating a motor vehicle with a license that has been~~  
603 ~~suspended under s. 322.091 for failure to meet school attendance~~  
604 ~~requirements.~~

605 Section 36. Subsections (1) and (2) of section 322.05,  
606 Florida Statutes, are amended to read:

607 322.05 Persons not to be licensed.—The department may not  
608 issue a license:

609 (1) To a person who is under the age of 16 years, except  
610 that the department may issue a learner's driver license to a  
611 person who is at least 15 years of age and who meets the  
612 requirements of s. 322.1615 ~~ss. 322.091 and 322.1615~~ and of any  
613 other applicable law or rule.

614 (2) To a person who is at least 16 years of age but is  
615 under 18 years of age ~~unless the person meets the requirements~~  
616 ~~of s. 322.091~~ and holds a valid:

617 (a) Learner's driver license for at least 12 months, with  
618 no moving traffic convictions, before applying for a license;

619 (b) Learner's driver license for at least 12 months and who  
620 has a moving traffic conviction but elects to attend a traffic





231632

621 driving school for which adjudication must be withheld pursuant  
622 to s. 318.14; or

623 (c) License that was issued in another state or in a  
624 foreign jurisdiction and that would not be subject to suspension  
625 or revocation under the laws of this state.

626 Section 37. Paragraph (i) of subsection (2) of section  
627 397.951, Florida Statutes, is amended to read:

628 397.951 Treatment and sanctions.—The Legislature recognizes  
629 that the integration of treatment and sanctions greatly  
630 increases the effectiveness of substance abuse treatment. It is  
631 the responsibility of the department and the substance abuse  
632 treatment provider to employ the full measure of sanctions  
633 available to require participation and completion of treatment  
634 to ensure successful outcomes for children in substance abuse  
635 treatment.

636 (2) The department shall ensure that substance abuse  
637 treatment providers employ any and all appropriate available  
638 sanctions necessary to engage, motivate, and maintain a child in  
639 treatment, including, but not limited to, provisions in law  
640 that:

641 (i) Provide that, pursuant to s. 322.056, for any person  
642 under 18 years of age who is found guilty of or delinquent for a  
643 violation of ~~s. 562.11(2), s. 562.111, or~~ chapter 893, and is  
644 eligible by reason of age for a driver license or driving  
645 privilege, the court shall direct the Department of Highway  
646 Safety and Motor Vehicles to revoke or to withhold issuance of  
647 his or her driver license or driving privilege for a period of 6  
648 months.†

649 ~~1. Not less than 6 months and not more than 1 year for the~~



231632

650 ~~first violation.~~

651 ~~2. Two years, for a subsequent violation.~~

652 Section 38. Subsection (9) of section 1003.01, Florida  
653 Statutes, is amended to read:

654 1003.01 Definitions.—As used in this chapter, the term:

655 (9) "Dropout" means a student who meets any one or more of  
656 the following criteria:

657 (a) The student has voluntarily removed himself or herself  
658 from the school system before graduation for reasons that  
659 include, but are not limited to, marriage, or the student has  
660 withdrawn from school because he or she has failed the statewide  
661 student assessment test and thereby does not receive any of the  
662 certificates of completion;

663 (b) The student has not met the relevant attendance  
664 requirements of the school district pursuant to State Board of  
665 Education rules, or the student was expected to attend a school  
666 but did not enter as expected for unknown reasons, or the  
667 student's whereabouts are unknown;

668 (c) The student has withdrawn from school, but has not  
669 transferred to another public or private school or enrolled in  
670 any career, adult, home education, or alternative educational  
671 program;

672 (d) The student has withdrawn from school due to hardship,  
673 unless such withdrawal has been granted under ~~the provisions of~~  
674 ~~s. 322.091~~, court action, expulsion, medical reasons, or  
675 pregnancy; or

676 (e) The student is not eligible to attend school because of  
677 reaching the maximum age for an exceptional student program in  
678 accordance with the district's policy.



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The State Board of Education may adopt rules to implement  
~~the provisions of~~ this subsection.

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

And the title is amended as follows:

Delete line 117

and insert:

a report to the Governor and Legislature; amending s.  
322.055, F.S.; decreasing the period for revocation or  
suspension of, or delay of eligibility for, driver  
licenses or driving privileges for certain persons  
convicted of certain drug offenses; deleting  
provisions authorizing a driver to petition the  
department for restoration of the person's driving  
privilege; amending s. 322.056, F.S.; decreasing the  
period for revocation or suspension of, or delay of  
eligibility for, driver licenses or driving privileges  
for certain persons found guilty of certain drug  
offenses; deleting a provision authorizing a court to  
direct the Department of Highway Safety and Motor  
Vehicles to issue a license for certain restricted  
driving privileges under certain circumstances;  
deleting requirements relating to the revocation or  
suspension of, or delay of eligibility for, driver  
licenses or driving privileges for certain persons  
found guilty of certain alcohol or tobacco offenses;  
repealing s. 322.057, F.S., relating to discretionary  
revocation or suspension of a driver license for



231632

708 certain persons who provide alcohol to persons under a  
709 specified age; amending s. 322.09, F.S.; deleting a  
710 provision prohibiting the issuance of a driver license  
711 or learner's driver license under certain  
712 circumstances; repealing s. 322.091, F.S., relating to  
713 attendance requirements for driving privileges;  
714 repealing s. 322.251(7), F.S., relating to notice of  
715 suspension or revocation of driving privileges,  
716 reasons for reinstatement of such driving privileges,  
717 and certain electronic access to identify a person who  
718 is the subject of an outstanding warrant or capias for  
719 passing worthless bank checks; amending s. 322.34,  
720 F.S.; revising the underlying violations resulting in  
721 driver license or driving privilege cancellation,  
722 suspension, or revocation for which specified  
723 penalties apply; amending s. 562.11, F.S.; revising  
724 penalties for selling, giving, serving, or permitting  
725 to be served alcoholic beverages to a person under a  
726 specified age or permitting such person to consume  
727 such beverages on licensed premises; repealing s.  
728 562.111(3), F.S., relating to withholding issuance of,  
729 or suspending or revoking, a driver license or driving  
730 privilege for possession of alcoholic beverages by  
731 persons under a specified age; amending s. 569.11,  
732 F.S.; revising penalties for persons under a specified  
733 age who knowingly possess, misrepresent their age or  
734 military service to purchase, or purchase or attempt  
735 to purchase tobacco products; authorizing, rather than  
736 requiring, the court to direct the Department of



231632

737 Highway Safety and Motor Vehicles to withhold issuance  
738 of or suspend a person's driver license or driving  
739 privilege for certain violations; amending s. 790.22,  
740 F.S.; revising penalties relating to suspending,  
741 revoking, or withholding issuance of driver licenses  
742 or driving privileges for minors under a specified age  
743 who possess firearms under certain circumstances;  
744 deleting provisions relating to penalties for certain  
745 offenses involving the use or possession of a firearm  
746 by a minor under a specified age; amending s. 806.13,  
747 F.S.; deleting provisions relating to certain  
748 penalties for criminal mischief by a minor; repealing  
749 s. 812.0155, F.S., relating to suspension of a driver  
750 license following an adjudication of guilt for theft;  
751 repealing s. 832.09, F.S., relating to suspension of a  
752 driver license after warrant or capias is issued in  
753 worthless check cases; amending s. 877.112, F.S.;  
754 revising penalties for persons under a specified age  
755 who knowingly possess, misrepresent their age or  
756 military service to purchase, or purchase or attempt  
757 to purchase any nicotine product or nicotine  
758 dispensing device; authorizing, rather than requiring,  
759 the court to direct the department to withhold  
760 issuance of or suspend a person's driver license or  
761 driving privilege for certain violations; amending s.  
762 1003.27, F.S.; deleting provisions relating to  
763 procedures and penalties for nonenrollment and  
764 nonattendance cases; amending ss. 318.14, 322.05,  
765 397.951, and 1003.01, F.S.; conforming provisions to



231632

766

changes made by the act; providing an



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594-03711-16

Proposed Committee Substitute by the Committee on Fiscal Policy  
(Appropriations Subcommittee on Transportation, Tourism, and  
Economic Development)

A bill to be entitled

An act relating to the Department of Highway Safety  
and Motor Vehicles; amending s. 316.003, F.S.;  
defining the terms "service patrol vehicle" and  
"driver-assistive truck platooning technology";  
amending s. 316.126, F.S.; requiring the driver of  
every other vehicle to take specified actions if a  
utility service vehicle displaying any visual signals  
or a service patrol vehicle displaying amber rotating  
or flashing lights is performing certain tasks on the  
roadside; amending s. 316.193, F.S.; authorizing, as  
of a specified date, a specified court to order a  
certain qualified sobriety and drug monitoring program  
under a specified pilot program as an alternative to  
the placement of an ignition interlock device;  
deleting obsolete provisions; deleting provisions  
relating to a qualified sobriety and drug monitoring  
program; directing the department to adopt rules  
providing for the implementation of the use of certain  
qualified sobriety and drug monitoring programs;  
redefining the term "qualified sobriety and drug  
monitoring program"; creating a qualified sobriety and  
drug monitoring pilot program effective on a specified  
date, subject to certain requirements; requiring a  
specified court to provide a report to the Governor  
and the Legislature by a specified date; amending s.



726940

594-03711-16

316.1937, F.S.; authorizing, as of a specified date, a  
specified court to order a certain qualified sobriety  
and drug monitoring program under a specified pilot  
program as an alternative to the placement of an  
ignition interlock device; amending s. 316.235, F.S.;  
revising requirements relating to a deceleration  
lighting system for buses; amending s. 316.303, F.S.;  
revising the prohibition from operating, under certain  
circumstances, a motor vehicle that is equipped with  
television-type receiving equipment; providing  
exceptions to the prohibition against actively  
displaying moving television broadcast or pre-recorded  
video entertainment content in vehicles; amending s.  
320.02, F.S.; increasing the timeframe within which  
the owner of any motor vehicle registered in the state  
must notify the department of a change of address;  
providing exceptions to such notification; amending s.  
320.03, F.S.; providing that an authorized electronic  
filing agent may charge a fee to the customer for use  
of the electronic filing system if a specified  
disclosure is made; amending s. 320.07, F.S.;  
prohibiting a law enforcement officer from issuing a  
citation for a specified violation until a certain  
date; amending s. 320.64, F.S.; revising provisions  
for denial, suspension, or revocation of the license  
of a manufacturer, factory branch, distributor, or  
importer of motor vehicles; revising provisions for  
certain audits of service-related payments or  
incentive payments to a dealer by an applicant or



726940

594-03711-16

56 licensee and the timeframe for the performance of such  
57 audits; defining the term "incentive"; revising  
58 provisions for denial or chargeback of claims;  
59 revising provisions that prohibit certain adverse  
60 actions against a dealer that sold or leased a motor  
61 vehicle to a customer who exported the vehicle to a  
62 foreign country or who resold the vehicle; revising  
63 conditions for taking such adverse actions;  
64 prohibiting failure to make certain payments to a  
65 motor vehicle dealer for temporary replacement  
66 vehicles under certain circumstances; prohibiting  
67 requiring or coercing a dealer to purchase goods or  
68 services from a vendor designated by the applicant or  
69 licensee unless certain conditions are met; providing  
70 procedures for approval of a dealer to purchase goods  
71 or services from a vendor not designated by the  
72 applicant or licensee; defining the term "goods or  
73 services"; amending s. 322.051, F.S.; authorizing the  
74 international symbol for the deaf and hard of hearing  
75 to be exhibited on the identification card of a person  
76 who is deaf or hard of hearing; requiring a fee for  
77 the exhibition of the symbol on the card; authorizing  
78 a replacement identification card with the symbol  
79 without payment of a specified fee under certain  
80 circumstances; providing the international symbol for  
81 the deaf and hard of hearing; requiring the department  
82 to issue or renew an identification card to certain  
83 juvenile offenders; requiring that the department's  
84 mobile issuing units process certain identification



726940

594-03711-16

85 cards at no charge; amending s. 322.14, F.S.;

86 authorizing the international symbol for the deaf and  
87 hard of hearing to be exhibited on the driver license  
88 of a person who is deaf or hard of hearing; requiring  
89 a fee for the exhibition of the symbol on the license;  
90 authorizing a replacement license without payment of a  
91 specified fee under certain circumstances; providing  
92 applicability; amending s. 322.19, F.S.; increasing  
93 the timeframe within which certain persons must obtain  
94 a replacement driver license or identification card  
95 that reflects a change in his or her legal name;  
96 providing exceptions to such requirement; increasing  
97 the timeframe within which certain persons must obtain  
98 a replacement driver license or identification card  
99 that reflects a change in the legal residence or  
100 mailing address in his or her application, license, or  
101 card; amending s. 322.21, F.S.; exempting certain  
102 juvenile offenders from a specified fee for an  
103 original, renewal, or replacement identification card;  
104 amending s. 322.221, F.S.; requiring the department to  
105 issue an identification card at no cost at the time a  
106 person's driver license is suspended or revoked due to  
107 his or her physical or mental condition; amending s.  
108 322.2715, F.S.; providing that a certain qualified  
109 sobriety and drug monitoring program shall be used by  
110 the department on or after a specified date in  
111 addition to the placement of an ignition interlock  
112 device; directing the Department of Transportation to  
113 study the operation of driver-assistive truck





594-03711-16

114 platooning technology; authorizing the Department of  
115 Transportation to conduct a pilot project to test such  
116 operation; providing security requirements; requiring  
117 a report to the Governor and Legislature; providing an  
118 effective date.

119  
120 Be It Enacted by the Legislature of the State of Florida:

121  
122 Section 1. Subsections (94) and (95) are added to section  
123 316.003, Florida Statutes, to read:

124 316.003 Definitions.—The following words and phrases, when  
125 used in this chapter, shall have the meanings respectively  
126 ascribed to them in this section, except where the context  
127 otherwise requires:

128 (94) SERVICE PATROL VEHICLE.—A motor vehicle that bears an  
129 emblem or markings with the wording "SERVICE VEHICLE" which is  
130 visible from the roadway and clearly indicates that the vehicle  
131 belongs to or is under contract with a person, an entity, a  
132 cooperative, a board, a commission, a district, or a unit of  
133 government that provides highway assistance services to  
134 motorists, clears travel lanes, or provides temporary  
135 maintenance of traffic support for incident response operations.

136 (95) DRIVER-ASSISTIVE TRUCK PLATOONING TECHNOLOGY.—Vehicle  
137 automation and safety technology that integrates sensor array,  
138 wireless vehicle-to-vehicle communications, active safety  
139 systems, and specialized software to link safety systems and  
140 synchronize acceleration and braking between two vehicles while  
141 leaving each vehicle's steering control and systems command in  
142 the control of the vehicle's driver in compliance with the



594-03711-16

143 National Highway Traffic Safety Administration rules regarding  
144 vehicle-to-vehicle platooning.

145 Section 2. Section 316.126, Florida Statutes, is amended to  
146 read:

147 316.126 Operation of vehicles and actions of pedestrians on  
148 approach of an authorized emergency, sanitation, ~~or~~ utility  
149 service vehicle, or service patrol vehicle.—

150 (1) (a) Upon the immediate approach of an authorized  
151 emergency vehicle, while en route to meet an existing emergency,  
152 the driver of every other vehicle shall, when such emergency  
153 vehicle is giving audible signals by siren, exhaust whistle, or  
154 other adequate device, or visible signals by the use of  
155 displayed blue or red lights, yield the right-of-way to the  
156 emergency vehicle and shall immediately proceed to a position  
157 parallel to, and as close as reasonable to the closest edge of  
158 the curb of the roadway, clear of any intersection and shall  
159 stop and remain in position until the authorized emergency  
160 vehicle has passed, unless otherwise directed by a law  
161 enforcement officer.

162 (b) If an authorized emergency vehicle displaying any  
163 visual signals is parked on the roadside, a sanitation vehicle  
164 is performing a task related to the provision of sanitation  
165 services on the roadside, a utility service vehicle displaying  
166 any visual signals is performing a task related to the provision  
167 of utility services on the roadside, ~~or~~ a wrecker displaying  
168 amber rotating or flashing lights is performing a recovery or  
169 loading on the roadside, or a service patrol vehicle displaying  
170 amber rotating or flashing lights is performing official duties  
171 or services on the roadside, the driver of every other vehicle,



726940

594-03711-16

172 as soon as it is safe:

173 1. Shall vacate the lane closest to the emergency vehicle,  
174 sanitation vehicle, utility service vehicle, ~~or~~ wrecker, or  
175 service patrol vehicle when driving on an interstate highway or  
176 other highway with two or more lanes traveling in the direction  
177 of the emergency vehicle, sanitation vehicle, utility service  
178 vehicle, ~~or~~ wrecker, or service patrol vehicle except when  
179 otherwise directed by a law enforcement officer. If such  
180 movement cannot be safely accomplished, the driver shall reduce  
181 speed as provided in subparagraph 2.

182 2. Shall slow to a speed that is 20 miles per hour less  
183 than the posted speed limit when the posted speed limit is 25  
184 miles per hour or greater; or travel at 5 miles per hour when  
185 the posted speed limit is 20 miles per hour or less, when  
186 driving on a two-lane road, except when otherwise directed by a  
187 law enforcement officer.

188 (c) The Department of Highway Safety and Motor Vehicles  
189 shall provide an educational awareness campaign informing the  
190 motoring public about the Move Over Act. The department shall  
191 provide information about the Move Over Act in all newly printed  
192 driver license educational materials.

193 (2) Every pedestrian using the road right-of-way shall  
194 yield the right-of-way until the authorized emergency vehicle  
195 has passed, unless otherwise directed by a law enforcement  
196 officer.

197 (3) An authorized emergency vehicle, when en route to meet  
198 an existing emergency, shall warn all other vehicular traffic  
199 along the emergency route by an audible signal, siren, exhaust  
200 whistle, or other adequate device or by a visible signal by the



726940

594-03711-16

201 use of displayed blue or red lights. While en route to such  
202 emergency, the emergency vehicle shall otherwise proceed in a  
203 manner consistent with the laws regulating vehicular traffic  
204 upon the highways of this state.

205 (4) This section does not diminish or enlarge any rules of  
206 evidence or liability in any case involving the operation of an  
207 emergency vehicle.

208 (5) This section does not relieve the driver of an  
209 authorized emergency vehicle from the duty to drive with due  
210 regard for the safety of all persons using the highway.

211 (6) A violation of this section is a noncriminal traffic  
212 infraction, punishable pursuant to chapter 318 as either a  
213 moving violation for infractions of subsection (1) or subsection  
214 (3), or as a pedestrian violation for infractions of subsection  
215 (2).

216 Section 3. Subsection (2), present paragraph (j) of  
217 subsection (6), and subsection (11) of section 316.193, Florida  
218 Statutes, are amended, present paragraphs (k), (l), and (m) of  
219 subsection (6) are redesignated as paragraphs (j), (k), and (l),  
220 respectively, and subsections (15) and (16) are added to that  
221 section, to read:

222 316.193 Driving under the influence; penalties.—

223 (2) (a) Except as provided in paragraph (b), subsection (3),  
224 or subsection (4), any person who is convicted of a violation of  
225 subsection (1) shall be punished:

226 1. By a fine of:

227 a. Not less than \$500 or more than \$1,000 for a first  
228 conviction.

229 b. Not less than \$1,000 or more than \$2,000 for a second



726940

594-03711-16

230 conviction; and

231 2. By imprisonment for:

232 a. Not more than 6 months for a first conviction.

233 b. Not more than 9 months for a second conviction.

234 3. For a second conviction, by mandatory placement for a  
235 period of at least 1 year, at the convicted person's sole  
236 expense, of an ignition interlock device approved by the  
237 department in accordance with s. 316.1938 upon all vehicles that  
238 are individually or jointly leased or owned and routinely  
239 operated by the convicted person, when the convicted person  
240 qualifies for a permanent or restricted license. Effective  
241 October 1, 2016, the court in the Fourth Judicial Circuit may  
242 order an offender to participate in a qualified sobriety and  
243 drug monitoring program, as defined in subsection (15) and  
244 authorized by 23 U.S.C. s. 164, under the pilot program in  
245 subsection (16), as an alternative to the placement of an  
246 ignition interlock device required by this section ~~The~~  
247 ~~installation of such device may not occur before July 1, 2003.~~

248 (b)1. Any person who is convicted of a third violation of  
249 this section for an offense that occurs within 10 years after a  
250 prior conviction for a violation of this section commits a  
251 felony of the third degree, punishable as provided in s.  
252 775.082, s. 775.083, or s. 775.084. In addition, the court shall  
253 order the mandatory placement for a period of not less than 2  
254 years, at the convicted person's sole expense, of an ignition  
255 interlock device approved by the department in accordance with  
256 s. 316.1938 upon all vehicles that are individually or jointly  
257 leased or owned and routinely operated by the convicted person,  
258 when the convicted person qualifies for a permanent or



726940

594-03711-16

259 restricted license. Effective October 1, 2016, the court in the  
260 Fourth Judicial Circuit may order an offender to participate in  
261 a qualified sobriety and drug monitoring program, as defined in  
262 subsection (15) and authorized by 23 U.S.C. s. 164, under the  
263 pilot program in subsection (16), as an alternative to the  
264 placement of an ignition interlock device required by this  
265 section ~~The installation of such device may not occur before~~  
266 ~~July 1, 2003.~~

267 2. Any person who is convicted of a third violation of this  
268 section for an offense that occurs more than 10 years after the  
269 date of a prior conviction for a violation of this section shall  
270 be punished by a fine of not less than \$2,000 or more than  
271 \$5,000 and by imprisonment for not more than 12 months. In  
272 addition, the court shall order the mandatory placement for a  
273 period of at least 2 years, at the convicted person's sole  
274 expense, of an ignition interlock device approved by the  
275 department in accordance with s. 316.1938 upon all vehicles that  
276 are individually or jointly leased or owned and routinely  
277 operated by the convicted person, when the convicted person  
278 qualifies for a permanent or restricted license. Effective  
279 October 1, 2016, the court in the Fourth Judicial Circuit may  
280 order an offender to participate in a qualified sobriety and  
281 drug monitoring program, as defined in subsection (15) and  
282 authorized by 23 U.S.C. s. 164, under the pilot program in  
283 subsection (16), as an alternative to the placement of an  
284 ignition interlock device required by this section ~~The~~  
285 ~~installation of such device may not occur before July 1, 2003.~~

286 3. Any person who is convicted of a fourth or subsequent  
287 violation of this section, regardless of when any prior



726940

594-03711-16

288 conviction for a violation of this section occurred, commits a  
289 felony of the third degree, punishable as provided in s.  
290 775.082, s. 775.083, or s. 775.084. However, the fine imposed  
291 for such fourth or subsequent violation may be not less than  
292 \$2,000.

293 (c) In addition to the penalties in paragraph (a), the  
294 court may order placement, at the convicted person's sole  
295 expense, of an ignition interlock device approved by the  
296 department in accordance with s. 316.1938 for at least 6  
297 continuous months upon all vehicles that are individually or  
298 jointly leased or owned and routinely operated by the convicted  
299 person if, at the time of the offense, the person had a blood-  
300 alcohol level or breath-alcohol level of .08 or higher.

301 (6) With respect to any person convicted of a violation of  
302 subsection (1), regardless of any penalty imposed pursuant to  
303 subsection (2), subsection (3), or subsection (4):

304 ~~(j)1. Notwithstanding the provisions of this section, s.  
305 316.1937, and s. 322.2715 relating to ignition interlock devices  
306 required for second or subsequent offenders, in order to  
307 strengthen the pretrial and posttrial options available to  
308 prosecutors and judges, the court may order, if deemed  
309 appropriate, that a person participate in a qualified sobriety  
310 and drug monitoring program, as defined in subparagraph 2., in  
311 addition to the ignition interlock device requirement.  
312 Participation shall be at the person's sole expense.~~

313 ~~2. As used in this paragraph, the term "qualified sobriety  
314 and drug monitoring program" means an evidence-based program,  
315 approved by the department, in which participants are regularly  
316 tested for alcohol and drug use. As the court deems appropriate,~~



726940

594-03711-16

317 ~~the program may monitor alcohol or drugs through one or more of~~  
318 ~~the following modalities: breath testing twice a day; continuous~~  
319 ~~transdermal alcohol monitoring in cases of hardship; or random~~  
320 ~~blood, breath, urine, or oral fluid testing. Testing modalities~~  
321 ~~that provide the best ability to sanction a violation as close~~  
322 ~~in time as reasonably feasible to the occurrence of the~~  
323 ~~violation should be given preference. This paragraph does not~~  
324 ~~preclude a court from ordering an ignition interlock device as a~~  
325 ~~testing modality.~~

326 ~~3. For purposes of this paragraph, the term "evidence-based~~  
327 ~~program" means a program that satisfies the requirements of at~~  
328 ~~least two of the following:~~

329 ~~a. The program is included in the federal registry of~~  
330 ~~evidence-based programs and practices.~~

331 ~~b. The program has been reported in a peer-reviewed journal~~  
332 ~~as having positive effects on the primary targeted outcome.~~

333 ~~c. The program has been documented as effective by informed~~  
334 ~~experts and other sources.~~

335  
336 For the purposes of this section, any conviction for a violation  
337 of s. 327.35; a previous conviction for the violation of former  
338 s. 316.1931, former s. 860.01, or former s. 316.028; or a  
339 previous conviction outside this state for driving under the  
340 influence, driving while intoxicated, driving with an unlawful  
341 blood-alcohol level, driving with an unlawful breath-alcohol  
342 level, or any other similar alcohol-related or drug-related  
343 traffic offense, is also considered a previous conviction for  
344 violation of this section. However, in satisfaction of the fine  
345 imposed pursuant to this section, the court may, upon a finding



594-03711-16

346 that the defendant is financially unable to pay either all or  
347 part of the fine, order that the defendant participate for a  
348 specified additional period of time in public service or a  
349 community work project in lieu of payment of that portion of the  
350 fine which the court determines the defendant is unable to pay.  
351 In determining such additional sentence, the court shall  
352 consider the amount of the unpaid portion of the fine and the  
353 reasonable value of the services to be ordered; however, the  
354 court may not compute the reasonable value of services at a rate  
355 less than the federal minimum wage at the time of sentencing.

356 (11) The Department of Highway Safety and Motor Vehicles is  
357 directed to adopt rules providing for the implementation of the  
358 use of ignition interlock devices and qualified sobriety and  
359 drug monitoring programs, as defined in subsection (15), to be  
360 used in the pilot program under subsection (16).

361 (15) As used in this section, the term:

362 (a) "Qualified sobriety and drug monitoring program" means  
363 an evidence-based program approved by the department which  
364 authorizes a court or an agency with jurisdiction, as a  
365 condition of bond, sentence, probation, parole, or restricted  
366 driving privileges, to require a person who was arrested for,  
367 pleaded guilty to, or was convicted of driving under the  
368 influence of alcohol or drugs to be regularly tested for alcohol  
369 and drug use. As the court deems appropriate, the program shall  
370 monitor alcohol or drugs through one or more of the following  
371 modalities: breath testing twice a day at a testing location;  
372 continuous transdermal alcohol monitoring via an electronic  
373 monitoring device; random blood, breath, or urine testing; or  
374 drug patch or oral fluid testing. Testing modalities that



594-03711-16

375 provide the best ability to detect a violation as close in time  
376 as reasonably feasible to the occurrence of the violation should  
377 be given preference. Participation shall be at the person's sole  
378 expense.

379 (b) "Evidence-based program" means a program that satisfies  
380 the requirements of at least two of the following:

381 1. The program is included in the federal registry of  
382 evidence-based programs and practices.

383 2. The program has been reported in a peer-reviewed journal  
384 as having positive effects on the primary targeted outcome.

385 3. The program has been documented as effective by informed  
386 experts and other sources.

387 (16) The Fourth Judicial Circuit, in coordination with the  
388 department, shall implement a qualified sobriety and drug  
389 monitoring pilot program effective October 1, 2016, for offenses  
390 where an ignition interlock device is mandated under  
391 subparagraphs (2) (a)3., (2) (b)1., and (2) (b)2. The Fourth  
392 Judicial Circuit may order a qualified sobriety and drug  
393 monitoring program, as defined in subsection (15) and authorized  
394 by 23 U.S.C. s. 164, as an alternative to the ignition interlock  
395 device. The Fourth Judicial Circuit shall provide a report on  
396 the results of the pilot program to the Governor, the President  
397 of the Senate, and the Speaker of the House of Representatives  
398 by March 1, 2018.

399 Section 4. Subsection (1) of section 316.1937, Florida  
400 Statutes, is amended to read:

401 316.1937 Ignition interlock devices, requiring; unlawful  
402 acts.—

403 (1) In addition to any other authorized penalties, the



726940

594-03711-16

404 court may require that any person who is convicted of driving  
405 under the influence in violation of s. 316.193 shall not operate  
406 a motor vehicle unless that vehicle is equipped with a  
407 functioning ignition interlock device certified by the  
408 department as provided in s. 316.1938, and installed in such a  
409 manner that the vehicle will not start if the operator's blood  
410 alcohol level is in excess of 0.025 percent or as otherwise  
411 specified by the court. The court may require the use of an  
412 approved ignition interlock device for a period of at least 6  
413 continuous months, if the person is permitted to operate a motor  
414 vehicle, whether or not the privilege to operate a motor vehicle  
415 is restricted, as determined by the court. The court, however,  
416 shall order placement of an ignition interlock device in those  
417 circumstances required by s. 316.193. Effective October 1, 2016,  
418 for offenses where an ignition interlock device is mandated  
419 under s. 316.193(2)(a)3., (2)(b)1., and (2)(b)2., the court in  
420 the Fourth Judicial Circuit may order a qualified sobriety and  
421 drug monitoring program, as defined in s. 316.193(15) and  
422 authorized by 23 U.S.C. s. 164, under the pilot program in s.  
423 316.193(16) as an alternative to the ignition interlock device.

424 Section 5. Subsection (5) of section 316.235, Florida  
425 Statutes, is amended to read:

426 316.235 Additional lighting equipment.—

427 (5) A bus, ~~as defined in s. 316.003(3)~~, may be equipped  
428 with a deceleration lighting system ~~that~~ ~~which~~ cautions  
429 following vehicles that the bus is slowing, is preparing to  
430 stop, or is stopped. Such lighting system shall consist of red  
431 or amber lights mounted in horizontal alignment on the rear of  
432 the vehicle at ~~or near~~ the vertical centerline of the vehicle,



726940

594-03711-16

433 no greater than 12 inches apart, not higher than the lower edge  
434 of the rear window or, if the vehicle has no rear window, not  
435 higher than 100 ~~72~~ inches from the ground. Such lights shall be  
436 visible from a distance of not less than 300 feet to the rear in  
437 normal sunlight. Lights are permitted to light and flash during  
438 deceleration, braking, or standing and idling of the bus.  
439 Vehicular hazard warning flashers may be used in conjunction  
440 with or in lieu of a rear-mounted deceleration lighting system.

441 Section 6. Subsections (1) and (3) of section 316.303,  
442 Florida Statutes, are amended to read:

443 316.303 Television receivers.—

444 (1) No motor vehicle may be operated on the highways of  
445 this state if the vehicle is actively displaying moving  
446 television broadcast or pre-recorded video entertainment content  
447 that is ~~shall be equipped with television-type receiving~~  
448 ~~equipment so located that the viewer or screen is visible from~~  
449 ~~the driver's seat while the vehicle is in motion, unless the~~  
450 vehicle is equipped with autonomous technology, as defined in s.  
451 316.003(90), and is being operated in autonomous mode, as  
452 provided in s. 316.85(2).

453 (3) This section does not prohibit the use of an electronic  
454 display used in conjunction with a vehicle navigation system, or  
455 an electronic display used by an operator of a vehicle equipped  
456 and operating with driver-assistive truck platooning technology,  
457 as defined in s. 316.003.

458 Section 7. Subsection (4) of section 320.02, Florida  
459 Statutes, is amended to read:

460 320.02 Registration required; application for registration;  
461 forms.—



726940

594-03711-16

462 (4) Except as provided in ss. 775.21, 775.261, 943.0435,  
463 944.607, and 985.4815, the owner of any motor vehicle registered  
464 in the state shall notify the department in writing of any  
465 change of address within 30 ~~20~~ days of such change. The  
466 notification shall include the registration license plate  
467 number, the vehicle identification number (VIN) or title  
468 certificate number, year of vehicle make, and the owner's full  
469 name.

470 Section 8. Subsection (10) of section 320.03, Florida  
471 Statutes, is amended to read:

472 320.03 Registration; duties of tax collectors;  
473 International Registration Plan.-

474 (10) Jurisdiction over the electronic filing system for use  
475 by authorized electronic filing system agents to electronically  
476 title or register motor vehicles, vessels, mobile homes, or off-  
477 highway vehicles; issue or transfer registration license plates  
478 or decals; electronically transfer fees due for the title and  
479 registration process; and perform inquiries for title,  
480 registration, and lienholder verification and certification of  
481 service providers is expressly preempted to the state, and the  
482 department shall have regulatory authority over the system. The  
483 electronic filing system shall be available for use statewide  
484 and applied uniformly throughout the state. An entity that, in  
485 the normal course of its business, sells products that must be  
486 titled or registered, provides title and registration services  
487 on behalf of its consumers and meets all established  
488 requirements may be an authorized electronic filing system agent  
489 and shall not be precluded from participating in the electronic  
490 filing system in any county. Upon request from a qualified



726940

594-03711-16

491 entity, the tax collector shall appoint the entity as an  
492 authorized electronic filing system agent for that county. The  
493 department shall adopt rules in accordance with chapter 120 to  
494 replace the December 10, 2009, program standards and to  
495 administer the provisions of this section, including, but not  
496 limited to, establishing participation requirements,  
497 certification of service providers, electronic filing system  
498 requirements, and enforcement authority for noncompliance. The  
499 December 10, 2009, program standards, excluding any standards  
500 which conflict with this subsection, shall remain in effect  
501 until the rules are adopted. If an authorized electronic filing  
502 agent makes the disclosure required under s. 501.976(18), the an  
503 authorized electronic filing agent may charge a fee to the  
504 customer for use of the electronic filing system.

505 Section 9. Paragraph (a) of subsection (3) of section  
506 320.07, Florida Statutes, is amended to read:

507 320.07 Expiration of registration; renewal required;  
508 penalties.-

509 (3) The operation of any motor vehicle without having  
510 attached thereto a registration license plate and validation  
511 stickers, or the use of any mobile home without having attached  
512 thereto a mobile home sticker, for the current registration  
513 period shall subject the owner thereof, if he or she is present,  
514 or, if the owner is not present, the operator thereof to the  
515 following penalty provisions:

516 (a) Any person whose motor vehicle or mobile home  
517 registration has been expired for a period of 6 months or less  
518 commits a noncriminal traffic infraction, punishable as a  
519 nonmoving violation as provided in chapter 318. However, a law



594-03711-16

520 enforcement officer may not issue a citation for a violation  
521 under this paragraph until midnight on the last day of the  
522 owner's birth month of the year the registration expires.

523 Section 10. Subsections (25) and (26) of section 320.64,  
524 Florida Statutes, are amended, and subsections (39) and (40) are  
525 added to that section, to read:

526 320.64 Denial, suspension, or revocation of license;  
527 grounds.—A license of a licensee under s. 320.61 may be denied,  
528 suspended, or revoked within the entire state or at any specific  
529 location or locations within the state at which the applicant or  
530 licensee engages or proposes to engage in business, upon proof  
531 that the section was violated with sufficient frequency to  
532 establish a pattern of wrongdoing, and a licensee or applicant  
533 shall be liable for claims and remedies provided in ss. 320.695  
534 and 320.697 for any violation of any of the following  
535 provisions. A licensee is prohibited from committing the  
536 following acts:

537 (25) The applicant or licensee has undertaken or engaged in  
538 an audit of warranty, maintenance, and other service-related  
539 payments or incentive payments, including payments to a motor  
540 vehicle dealer under any licensee-issued program, policy, or  
541 other benefit, which were previously have been paid to a motor  
542 vehicle dealer in violation of this section or has failed to  
543 comply with any of its obligations under s. 320.696. An  
544 applicant or licensee may reasonably and periodically audit a  
545 motor vehicle dealer to determine the validity of paid claims as  
546 provided in s. 320.696. Audits of warranty, maintenance, and  
547 other service-related payments shall be performed by an  
548 applicant or licensee only during the 12-month ~~1-year~~ period



594-03711-16

549 immediately following the date the claim was paid. ~~Audits~~ Audit  
550 of incentive payments shall only be performed only during the  
551 12-month for an 18-month period immediately following the date  
552 the incentive was paid. As used in this section, the term  
553 "incentive" includes any bonus, incentive, or other monetary or  
554 nonmonetary consideration. After such time periods have elapsed,  
555 all warranty, maintenance, and other service-related payments  
556 and incentive payments shall be deemed final and  
557 incontrovertible for any reason notwithstanding any otherwise  
558 applicable law, and the motor vehicle dealer shall not be  
559 subject to any ~~chargeback~~ ~~charge-back~~ or repayment. An applicant  
560 or licensee may deny a claim or, as a result of a timely  
561 conducted audit, impose a ~~chargeback~~ ~~charge-back~~ against a motor  
562 vehicle dealer for warranty, maintenance, or other service-  
563 related payments or incentive payments only if the applicant or  
564 licensee can show that the warranty, maintenance, or other  
565 service-related claim or incentive claim was false or fraudulent  
566 or that the motor vehicle dealer failed to substantially comply  
567 with the reasonable written and uniformly applied procedures of  
568 the applicant or licensee for such repairs or incentives, but  
569 only for that portion of the claim so shown. Notwithstanding the  
570 terms of any franchise agreement, guideline, program, policy, or  
571 procedure, an applicant or licensee may deny or charge back only  
572 that portion of a warranty, maintenance, or other service-  
573 related claim or incentive claim which the applicant or licensee  
574 has proven to be false or fraudulent or for which the dealer  
575 failed to substantially comply with the reasonable written and  
576 uniformly applied procedures of the applicant or licensee for  
577 such repairs or incentives, as set forth in this subsection. An





594-03711-16

578 applicant or licensee may not charge back a motor vehicle dealer  
579 ~~back~~ subsequent to the payment of a warranty, maintenance, or  
580 service-related claim or incentive claim unless, within 30 days  
581 after a timely conducted audit, a representative of the  
582 applicant or licensee first meets in person, by telephone, or by  
583 video teleconference with an officer or employee of the dealer  
584 designated by the motor vehicle dealer. At such meeting the  
585 applicant or licensee must provide a detailed explanation, with  
586 supporting documentation, as to the basis for each of the claims  
587 for which the applicant or licensee proposed a chargeback  
588 ~~charge back~~ to the dealer and a written statement containing the  
589 basis upon which the motor vehicle dealer was selected for audit  
590 or review. Thereafter, the applicant or licensee must provide  
591 the motor vehicle dealer's representative a reasonable period  
592 after the meeting within which to respond to the proposed  
593 chargebacks ~~charge-backs~~, with such period to be commensurate  
594 with the volume of claims under consideration, but in no case  
595 less than 45 days after the meeting. The applicant or licensee  
596 is prohibited from changing or altering the basis for each of  
597 the proposed chargebacks ~~charge-backs~~ as presented to the motor  
598 vehicle dealer's representative following the conclusion of the  
599 audit unless the applicant or licensee receives new information  
600 affecting the basis for one or more chargebacks ~~charge-backs~~ and  
601 that new information is received within 30 days after the  
602 conclusion of the timely conducted audit. If the applicant or  
603 licensee claims the existence of new information, the dealer  
604 must be given the same right to a meeting and right to respond  
605 as when the chargeback ~~charge-back~~ was originally presented.  
606 After all internal dispute resolution processes provided through



594-03711-16

607 the applicant or licensee have been completed, the applicant or  
608 licensee shall give written notice to the motor vehicle dealer  
609 of the final amount of its proposed chargeback ~~charge-back~~. If  
610 the dealer disputes that amount, the dealer may file a protest  
611 with the department within 30 days after receipt of the notice.  
612 If a protest is timely filed, the department shall notify the  
613 applicant or licensee of the filing of the protest, and the  
614 applicant or licensee may not take any action to recover the  
615 amount of the proposed chargeback ~~charge-back~~ until the  
616 department renders a final determination, which is not subject  
617 to further appeal, that the chargeback ~~charge-back~~ is in  
618 compliance with the provisions of this section. In any hearing  
619 pursuant to this subsection, the applicant or licensee has the  
620 burden of proof that its audit and resulting chargeback ~~charge-~~  
621 ~~back~~ are in compliance with this subsection.

622 (26) Notwithstanding the terms of any franchise agreement,  
623 including any licensee's program, policy, or procedure, the  
624 applicant or licensee has refused to allocate, sell, or deliver  
625 motor vehicles; charged back or withheld payments or other  
626 things of value for which the dealer is otherwise eligible under  
627 a sales promotion, program, or contest; prevented a motor  
628 vehicle dealer from participating in any promotion, program, or  
629 contest; or has taken or threatened to take any adverse action  
630 against a dealer, including chargebacks ~~charge-backs~~, reducing  
631 vehicle allocations, or terminating or threatening to terminate  
632 a franchise because the dealer sold or leased a motor vehicle to  
633 a customer who exported the vehicle to a foreign country or who  
634 resold the vehicle, unless the licensee proves that the dealer  
635 knew or reasonably should have known that the customer intended



726940

594-03711-16

636 to export or resell the motor vehicle. There is a rebuttable  
637 presumption that the dealer neither knew nor reasonably should  
638 have known of its customer's intent to export or resell the  
639 vehicle if the vehicle is titled or registered in any state in  
640 this country. A licensee may not take any action against a motor  
641 vehicle dealer, including reducing its allocations or supply of  
642 motor vehicles to the dealer, or charging back to a dealer any  
643 ~~for an~~ incentive payment previously paid, unless the licensee  
644 first meets in person, by telephone, or video conference with an  
645 officer or other designated employee of the dealer. At such  
646 meeting, the licensee must provide a detailed explanation, with  
647 supporting documentation, as to the basis for its claim that the  
648 dealer knew or reasonably should have known of the customer's  
649 intent to export or resell the motor vehicle. Thereafter, the  
650 motor vehicle dealer shall have a reasonable period,  
651 commensurate with the number of motor vehicles at issue, but not  
652 less than 15 days, to respond to the licensee's claims. If,  
653 following the dealer's response and completion of all internal  
654 dispute resolution processes provided through the applicant or  
655 licensee, the dispute remains unresolved, the dealer may file a  
656 protest with the department within 30 days after receipt of a  
657 written notice from the licensee that it still intends to take  
658 adverse action against the dealer with respect to the motor  
659 vehicles still at issue. If a protest is timely filed, the  
660 department shall notify the applicant or licensee of the filing  
661 of the protest, and the applicant or licensee may not take any  
662 action adverse to the dealer until the department renders a  
663 final determination, which is not subject to further appeal,  
664 that the licensee's proposed action is in compliance with the



726940

594-03711-16

665 provisions of this subsection. In any hearing pursuant to this  
666 subsection, the applicant or licensee has the burden of proof on  
667 all issues raised by this subsection. An applicant or licensee  
668 may not take any adverse action against a motor vehicle dealer  
669 because the dealer sold or leased a motor vehicle to a customer  
670 who exported the vehicle to a foreign country or who resold the  
671 vehicle unless the applicant or licensee provides written  
672 notification to the motor vehicle dealer of such resale or  
673 export within 12 months after the date the dealer sold or leased  
674 the vehicle to the customer.

675 (39) Notwithstanding any agreement, program, incentive,  
676 bonus, policy, or rule, an applicant or licensee may not fail to  
677 make any payment pursuant to any agreement, program, incentive,  
678 bonus, policy, or rule for any temporary replacement motor  
679 vehicle loaned, rented, or provided by a motor vehicle dealer to  
680 or for its service or repair customers, even if the temporary  
681 replacement motor vehicle has been leased, rented, titled, or  
682 registered to the motor vehicle dealer's rental or leasing  
683 division or an entity that is owned or controlled by the motor  
684 vehicle dealer, provided that the motor vehicle dealer or its  
685 rental or leasing division or entity complies with the written  
686 and uniformly enforced vehicle eligibility, use, and reporting  
687 requirements specified by the applicant or licensee in its  
688 agreement, program, policy, bonus, incentive, or rule relating  
689 to loaner vehicles.

690 (40) Notwithstanding the terms of any franchise agreement,  
691 the applicant or licensee may not require or coerce, or attempt  
692 to require or coerce, a motor vehicle dealer to purchase goods  
693 or services from a vendor selected, identified, or designated by



726940

594-03711-16

694 the applicant or licensee, or one of its parents, subsidiaries,  
695 divisions, or affiliates, by agreement, standard, policy,  
696 program, incentive provision, or otherwise, without making  
697 available to the motor vehicle dealer the option to obtain the  
698 goods or services of substantially similar design and quality  
699 from a vendor chosen by the motor vehicle dealer. If the motor  
700 vehicle dealer exercises such option, the dealer must provide  
701 written notice of its desire to use the alternative goods or  
702 services to the applicant or licensee, along with samples or  
703 clear descriptions of the alternative goods or services that the  
704 dealer desires to use. The licensee or applicant shall have the  
705 opportunity to evaluate the alternative goods or services for up  
706 to 30 days to determine whether it will provide a written  
707 approval to the motor vehicle dealer to use the alternative  
708 goods or services. Approval may not be unreasonably withheld by  
709 the applicant or licensee. If the motor vehicle dealer does not  
710 receive a response from the applicant or licensee within 30  
711 days, approval to use the alternative goods or services is  
712 deemed granted. If a dealer using alternative goods or services  
713 complies with this subsection and has received approval from the  
714 licensee or applicant, the dealer is not ineligible for all  
715 benefits described in the agreement, standard, policy, program,  
716 incentive provision, or otherwise solely for having used such  
717 alternative goods or services. As used in this subsection, the  
718 term "goods or services" is limited to such goods and services  
719 used to construct or renovate dealership facilities or furniture  
720 and fixtures at the dealership facilities. The term does not  
721 include:

722 (a) Any materials subject to applicant's or licensee's



726940

594-03711-16

723 copyright, trademark, or trade dress rights;  
724 (b) Any special tool and training as required by the  
725 licensee or applicant;  
726 (c) Any part to be used in repairs under warranty  
727 obligations of an applicant or licensee;  
728 (d) Any good or service paid for entirely by the applicant  
729 or licensee; or  
730 (e) Any applicant's or licensee's design or architectural  
731 review service.  
732  
733 A motor vehicle dealer who can demonstrate that a violation of,  
734 or failure to comply with, any of the preceding provisions by an  
735 applicant or licensee will or can adversely and pecuniarily  
736 affect the complaining dealer, shall be entitled to pursue all  
737 of the remedies, procedures, and rights of recovery available  
738 under ss. 320.695 and 320.697.  
739 Section 11. Paragraph (c) is added to subsection (8) of  
740 section 322.051, Florida Statutes, and subsection (9) of that  
741 section is amended, to read:  
742 322.051 Identification cards.-  
743 (8)  
744 (c) The international symbol for the deaf and hard of  
745 hearing shall be exhibited on the identification card of a  
746 person who is deaf or hard of hearing upon the payment of an  
747 additional \$1 fee for the identification card and the  
748 presentation of sufficient proof that the person is deaf or hard  
749 of hearing as determined by the department. Until a person's  
750 identification card is next renewed, the person may have the  
751 symbol added to his or her identification card upon surrender of



594-03711-16

752 his or her current identification card, payment of a \$2 fee to  
753 be deposited into the Highway Safety Operating Trust Fund, and  
754 presentation of sufficient proof that the person is deaf or hard  
755 of hearing as determined by the department. If the applicant is  
756 not conducting any other transaction affecting the  
757 identification card, a replacement identification card may be  
758 issued with the symbol without payment of the fee required in s.  
759 322.21(1)(f)3. For purposes of this paragraph, the international  
760 symbol for the deaf and hard of hearing is substantially as  
761 follows:

762 Insert deaf and hard of hearing symbol

763 (9) Notwithstanding any other provision of this section or  
764 s. 322.21 to the contrary, the department shall issue or renew a  
765 card at no charge to a person who presents evidence satisfactory  
766 to the department that he or she is homeless as defined in s.  
767 414.0252(7), to a juvenile offender who is in the custody or  
768 under the supervision of the Department of Juvenile Justice and  
769 receiving services pursuant to s. 985.461, to an inmate  
770 receiving a card issued pursuant to s. 944.605(7), or, if  
771 necessary, to an inmate receiving a replacement card if the  
772 department determines that he or she has a valid state  
773 identification card. If the replacement state identification  
774 card is scheduled to expire within 6 months, the department may  
775 also issue a temporary permit valid for at least 6 months after  
776 the release date. The department's mobile issuing units shall  
777 process the identification cards for juvenile offenders and  
778 inmates at no charge, as provided by s. 944.605 (7)(a) and (b).

779 Section 12. Present paragraph (c) of subsection (1) of  
780 section 322.14, Florida Statutes, is redesignated as paragraph



594-03711-16

781 (d), and a new paragraph (c) is added to that subsection, to  
782 read:

783 322.14 Licenses issued to drivers.—

784 (1)

785 (c) The international symbol for the deaf and hard of  
786 hearing provided in s. 322.051(8)(c) shall be exhibited on the  
787 driver license of a person who is deaf or hard of hearing upon  
788 the payment of an additional \$1 fee for the license and the  
789 presentation of sufficient proof that the person is deaf or hard  
790 of hearing as determined by the department. Until a person's  
791 license is next renewed, the person may have the symbol added to  
792 his or her license upon the surrender of his or her current  
793 license, payment of a \$2 fee to be deposited into the Highway  
794 Safety Operating Trust Fund, and presentation of sufficient  
795 proof that the person is deaf or hard of hearing as determined  
796 by the department. If the applicant is not conducting any other  
797 transaction affecting the driver license, a replacement license  
798 may be issued with the symbol without payment of the fee  
799 required in s. 322.21(1)(e).

800 Section 13. The amendments made by this act to subsection  
801 (8) of s. 322.051, Florida Statutes, and s. 322.14, Florida  
802 Statutes, shall apply upon implementation of new designs for the  
803 identification card and driver license by the Department of  
804 Highway Safety and Motor Vehicles.

805 Section 14. Subsections (1) and (2) of section 322.19,  
806 Florida Statutes, are amended to read:

807 322.19 Change of address or name.—

808 (1) Except as provided in ss. 775.21, 775.261, 943.0435,  
809 944.607, and 985.4815, whenever any person, after applying for



726940

594-03711-16

810 or receiving a driver license or identification card, changes  
811 his or her legal name, that person must within 30 ~~40~~ days  
812 thereafter obtain a replacement license or card that reflects  
813 the change.

814 (2) ~~If a Whenever any~~ person, after applying for or  
815 receiving a driver license or identification card, changes the  
816 legal residence or mailing address in the application, ~~or~~  
817 license, or card, the person must, within 30 ~~40~~ calendar days  
818 after making the change, obtain a replacement license or card  
819 that reflects the change. A written request to the department  
820 must include the old and new addresses and the driver license or  
821 identification card number. Any person who has a valid, current  
822 student identification card issued by an educational institution  
823 in this state is presumed not to have changed his or her legal  
824 residence or mailing address. This subsection does not affect  
825 any person required to register a permanent or temporary address  
826 change pursuant to s. 775.13, s. 775.21, s. 775.25, or s.  
827 943.0435.

828 Section 15. Paragraph (f) of subsection (1) of section  
829 322.21, Florida Statutes, is amended to read:

830 322.21 License fees; procedure for handling and collecting  
831 fees.—

832 (1) Except as otherwise provided herein, the fee for:

833 (f) An original, renewal, or replacement identification  
834 card issued pursuant to s. 322.051 is \$25, except that an  
835 applicant who presents evidence satisfactory to the department  
836 that he or she is homeless as defined in s. 414.0252(7); ~~or~~ his  
837 or her annual income is at or below 100 percent of the federal  
838 poverty level; or he or she is a juvenile offender who is in the



726940

594-03711-16

839 custody or under the supervision of the Department of Juvenile  
840 Justice, is receiving services pursuant to s. 985.461, and whose  
841 identification card is issued by the department's mobile issuing  
842 units is exempt from such fee. Funds collected from fees for  
843 original, renewal, or replacement identification cards shall be  
844 distributed as follows:

845 1. For an original identification card issued pursuant to  
846 s. 322.051, the fee shall be deposited into the General Revenue  
847 Fund.

848 2. For a renewal identification card issued pursuant to s.  
849 322.051, \$6 shall be deposited into the Highway Safety Operating  
850 Trust Fund, and \$19 shall be deposited into the General Revenue  
851 Fund.

852 3. For a replacement identification card issued pursuant to  
853 s. 322.051, \$9 shall be deposited into the Highway Safety  
854 Operating Trust Fund, and \$16 shall be deposited into the  
855 General Revenue Fund. Beginning July 1, 2015, or upon completion  
856 of the transition of the driver license issuance services, if  
857 the replacement identification card is issued by the tax  
858 collector, the tax collector shall retain the \$9 that would  
859 otherwise be deposited into the Highway Safety Operating Trust  
860 Fund and the remaining revenues shall be deposited into the  
861 General Revenue Fund.

862 Section 16. Subsection (3) of section 322.221, Florida  
863 Statutes, is amended to read:

864 322.221 Department may require reexamination.—

865 (3) (a) Upon the conclusion of such examination or  
866 reexamination the department shall take action as may be  
867 appropriate and may suspend or revoke the license of such person



726940

594-03711-16

868 or permit him or her to retain such license, or may issue a  
869 license subject to restrictions as permitted under s. 322.16.  
870 Refusal or neglect of the licensee to submit to such examination  
871 or reexamination shall be ground for suspension or revocation of  
872 his or her license.

873 (b) If the department suspends or revokes the license of a  
874 person due to his or her physical or mental condition, the  
875 department shall issue an identification card to the person at  
876 the time of the license suspension or revocation. The department  
877 may not charge fees for the issuance of the identification card.

878 Section 17. Subsections (1), (3), and (4) of section  
879 322.2715, Florida Statutes, are amended to read:

880 322.2715 Ignition interlock device.-

881 (1) Before issuing a permanent or restricted driver license  
882 under this chapter, the department shall require the placement  
883 of a department-approved ignition interlock device for any  
884 person convicted of committing an offense of driving under the  
885 influence as specified in subsection (3), except that  
886 consideration may be given to those individuals having a  
887 documented medical condition that would prohibit the device from  
888 functioning normally. If a medical waiver has been granted for a  
889 convicted person seeking a restricted license, the convicted  
890 person shall not be entitled to a restricted license until the  
891 required ignition interlock device installation period under  
892 subsection (3) expires, in addition to the time requirements  
893 under s. 322.271. If a medical waiver has been approved for a  
894 convicted person seeking permanent reinstatement of the driver  
895 license, the convicted person must be restricted to an  
896 employment-purposes-only license and be supervised by a licensed



726940

594-03711-16

897 DUI program until the required ignition interlock device  
898 installation period under subsection (3) expires. An interlock  
899 device shall be placed on all vehicles that are individually or  
900 jointly leased or owned and routinely operated by the convicted  
901 person. Effective October 1, 2016, a qualified sobriety and drug  
902 monitoring program, as defined in s. 316.193(15) and authorized  
903 by 23 U.S.C. s. 164, shall be used by the department in addition  
904 to the placement of an ignition interlock device required by  
905 this section.

906 (3) If the person is convicted of:

907 (a) A first offense of driving under the influence under s.  
908 316.193 and has an unlawful blood-alcohol level or breath-  
909 alcohol level as specified in s. 316.193(1), the ignition  
910 interlock device may be installed for at least 6 continuous  
911 months.

912 (b) A first offense of driving under the influence under s.  
913 316.193 and has an unlawful blood-alcohol level or breath-  
914 alcohol level as specified in s. 316.193(4), or if a person is  
915 convicted of a violation of s. 316.193 and was at the time of  
916 the offense accompanied in the vehicle by a person younger than  
917 18 years of age, the person shall have the ignition interlock  
918 device installed for at least 6 continuous months for the first  
919 offense and for at least 2 continuous years for a second  
920 offense.

921 (c) A second offense of driving under the influence, the  
922 ignition interlock device shall be installed for a period of at  
923 least 1 continuous year.

924 (d) A third offense of driving under the influence which  
925 occurs within 10 years after a prior conviction for a violation



594-03711-16

926 of s. 316.193, the ignition interlock device shall be installed  
927 for a period of at least 2 continuous years.

928 (e) A third offense of driving under the influence which  
929 occurs more than 10 years after the date of a prior conviction,  
930 the ignition interlock device shall be installed for a period of  
931 at least 2 continuous years.

932 (f) A fourth or subsequent offense of driving under the  
933 influence, the ignition interlock device shall be installed for  
934 a period of at least 5 years.

935  
936 Effective October 1, 2016, for the offenses specified in this  
937 subsection, a qualified sobriety and drug monitoring program, as  
938 defined in s. 316.193(15) and authorized by 23 U.S.C. s. 164,  
939 shall be used by the department in addition to the placement of  
940 an ignition interlock device required by this section.

941 (4) If the court fails to order the mandatory placement of  
942 the ignition interlock device or fails to order for the  
943 applicable period the mandatory placement of an ignition  
944 interlock device under s. 316.193 or s. 316.1937 at the time of  
945 imposing sentence or within 30 days thereafter, the department  
946 shall immediately require that the ignition interlock device be  
947 installed as provided in this section, except that consideration  
948 may be given to those individuals having a documented medical  
949 condition that would prohibit the device from functioning  
950 normally. Effective October 1, 2016, a qualified sobriety and  
951 drug monitoring program, as defined in s. 316.193(15) and  
952 authorized by 23 U.S.C. s. 164, shall be used by the department  
953 in addition to the placement of an ignition interlock device  
954 required by this section. This subsection applies to the



594-03711-16

955 reinstatement of the driving privilege following a revocation,  
956 suspension, or cancellation that is based upon a conviction for  
957 the offense of driving under the influence which occurs on or  
958 after July 1, 2005.

959 Section 18. The Department of Transportation, in  
960 consultation with the Department of Highway Safety and Motor  
961 Vehicles, shall study the use and safe operation of driver-  
962 assistive truck platooning technology, as defined in s. 316.003,  
963 Florida Statutes, for the purpose of developing a pilot project  
964 to test vehicles that are equipped to operate using driver-  
965 assistive truck platooning technology.

966 (1) Upon conclusion of the study, the Department of  
967 Transportation, in consultation with the Department of Highway  
968 Safety and Motor Vehicles, may conduct a pilot project to test  
969 the use and safe operation of vehicles equipped with driver-  
970 assistive truck platooning technology.

971 (2) Notwithstanding ss. 316.0895 and 316.303, Florida  
972 Statutes, the Department of Transportation may conduct the pilot  
973 project in such a manner and at such locations as determined by  
974 the Department of Transportation based on the study.

975 (3) Before the start of the pilot project, manufacturers of  
976 driver-assistive truck platooning technology being tested in the  
977 pilot project must submit to the Department of Highway Safety  
978 and Motor Vehicles an instrument of insurance, surety bond, or  
979 proof of self-insurance acceptable to the department in the  
980 amount of \$5 million.

981 (4) Upon conclusion of the pilot project, the Department of  
982 Transportation, in consultation with the Department of Highway  
983 Safety and Motor Vehicles, shall submit the results of the study



726940

594-03711-16

984 and any findings or recommendations from the pilot project to  
985 the Governor, the President of the Senate, and the Speaker of  
986 the House of Representatives.

987 Section 19. This act shall take effect October 1, 2016.



**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.)

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Prepared By: The Professional Staff of the Committee on Fiscal Policy

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**BILL:** CS/CS/SB 1394

**INTRODUCER:** Fiscal Policy Committee (Recommended by Appropriations Subcommittee on Transportation, Tourism, and Economic Development); Transportation Committee; and Senator Brandes

**SUBJECT:** Department of Highway Safety and Motor Vehicles

**DATE:** March 2, 2016

**REVISED:** \_\_\_\_\_

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Jones	Eichin	TR	<b>Fav/CS</b>
2. Gusky	Miller	ATD	<b>Recommend: Fav/CS</b>
3. Jones	Hrdlicka	FP	<b>Fav/CS</b>

**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

**I. Summary:**

CS/CS/SB 1394 revises several laws administered by the Department of Highway Safety and Motor Vehicles (DHSMV). Specifically, the bill:

- Adds Service Patrol Vehicles engaged in certain activities to the “Move Over Act”;
- Requires the Fourth Judicial Circuit, in consultation with the DHSMV, to implement a qualified sobriety and drug monitoring pilot program;
- Allows buses to be equipped with red rear lights that indicate a bus is stopping;
- Allows operators of a vehicle operating with driver-assistive truck platooning technology or autonomous technology to have an electronic display while the vehicle is in motion;
- Modifies the amount of time which an individual must notify the DHSMV of an address or name change on a driver license, identification card, or motor vehicle registration;
- Allows individuals to have the international symbol for the deaf and hard of hearing exhibited on his or her driver license or identification card, upon payment of a fee and sufficient proof to the DHSMV that he or she is deaf or hard of hearing;
- Prohibits law enforcement from issuing a citation for an expired registration until the last day of the month of the year the registration expires;
- Requires authorized electronic filing system agents to disclose to customers that the agent may charge a fee for use of the electronic filing system when titling or registering a vehicle, vessel, mobile home, or other vehicle;

- Increases the presale and maintenance requirements for specialty plates from 1,000, to 4,000, effective July 1, 2016, and July 1, 2019, respectively;
- Provides additional grounds to deny, suspend, or revoke a license held by a motor vehicle manufacturer factory branch, distributor, or importer (the licensee) and prohibits the licensees' manufacturers from taking certain actions against motor vehicle dealers. Specifically, the licensee:
  - Is limited to a 12-month period following the date a claim was paid to perform audits of warranty, maintenance, service-related payments and incentive payments, and can only deny such claim if the manufacturer proves the claim was false or fraudulent;
  - May not take adverse action against a motor vehicle dealer due to a delivered motor vehicle being resold or exported by the customer unless the licensee provides written notification to the dealer within 12 months of delivery of the vehicle to a customer;
  - Must pay a dealer for temporary replacement vehicles provided to customers during service or repair provided the dealer complies with the licensee's written vehicle eligibility requirements relating to loaner vehicles; and
  - May not require or coerce a dealer to purchase goods or services from a vendor selected by the licensee without making available the option to obtain the goods or services from a vendor chosen by the dealer.
- Requires the DHSMV to include on driver license suspension notices issued to individuals for nonpayment of a fine that if the violator is unable to pay the citation in full, he or she may avoid suspension by entering a payment plan with the clerk of court;
- Requires the DHSMV to maintain a link on its website referring customers who are renewing their driver license or conducting other business to the organ donor registry;
- Requires the Florida Department of Transportation to study, in consultation with the DHSMV, the use and safe operation of driver assistive truck platooning technology, and authorizes a pilot project to test vehicles equipped with such technology; and
- Requires the DHSMV to provide identification cards at no-charge to:
  - Offenders in custody or under the supervision of the Department of Juvenile Justice; and
  - Individuals whose driver license is suspended or revoked due to a physical or mental condition.

The Revenue Estimating Conference adopted the following estimates for the no-cost identification card/driver license provisions of the bill:

- Certain Juvenile Offenders – insignificant negative fiscal impact to the General Revenue Fund in Fiscal Year 2016-2017 and subsequent years.
- Individuals with a Medical Sanction – foregone revenue for Fiscal Year 2016-2017 is \$300,000, with a recurring negative impact of \$500,000 to the General Revenue fund; for the local tax collectors, foregone revenue for Fiscal Year 2016-2017 is \$100,000, with a recurring negative impact of \$100,000.

The bill has additional fiscal impacts to the state and private sector. See Section V. Fiscal Impact Statement.

The bill is effective, except as otherwise expressly provided, on October 1, 2016. Section 10 of the bill, increasing minimum presale requirements of specialty license plates, takes effect July 1,

2016, and Section 11, increasing the minimum sale requirement on existing specialty license plates, takes effect July 1, 2019.

## II. Present Situation:

Due to the number of issues addressed in the bill, the present situation for each section is discussed below in Effect of Proposed Changes.

## III. Effect of Proposed Changes:

### Service Patrol Vehicles and the Move Over Act (Sections 1 and 2)

#### *Present Situation*

##### The Move Over Act

The Move Over Act relates to the operation of motor vehicles when approaching:

- An authorized emergency vehicle parked on the roadside and displaying any visual signals;
- A sanitation or utility vehicle performing services on the roadside; or
- A wrecker displaying amber rotating or flashing lights performing a recovery or loading on the roadside.<sup>1</sup>

When approaching these vehicles, if the driver is on a highway with more than two lanes, the driver must vacate the lane closest to the service provider, when safe to do so. If the driver cannot safely vacate the lane, the driver must reduce his or her speed to 20 miles per hour (mph) under the posted speed limit for speed limits greater than 25 mph, or to 5 mph if the posted speed limit is 20 mph or less.<sup>2</sup>

Section 316.126, F.S., requires a driver to yield to a moving emergency vehicle; however, these requirements do not relieve a driver of an emergency vehicle from the duty to drive with due regard for the safety of all persons using the highway.

A violation of the Move Over Act is a noncriminal traffic infraction punishable as a moving violation. Violators are subject to a \$30 penalty, court costs, and three points assessed against the violator's license.<sup>3</sup>

##### Service Patrol Vehicles

Service Patrol Vehicles, also known as Road Rangers, provide free highway assistance to motorists. Road Rangers provide services along Florida's highway systems, including assisting stranded motorists, removing debris from the roadway, and assisting during traffic accidents.

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<sup>1</sup> Section 316.126(1)(b), F.S.

<sup>2</sup> *Id.*

<sup>3</sup> Sections 318.18(2)(d), and 322.27(3)(d)7., F.S. Depending on jurisdiction, court costs may increase the total penalty up to \$128; Florida Court Clerks and Comptrollers, *Distribution Schedule of Court-Related Filing Fees, Service Charges, Costs, and Fines, including a Fee Schedule for Recording*, p. 36, (July 1, 2015), available at [http://c.ymcdn.com/sites/www.flclerks.com/resource/resmgr/Public\\_Documents\\_/2015\\_Distribution\\_Schedule\\_w.pdf](http://c.ymcdn.com/sites/www.flclerks.com/resource/resmgr/Public_Documents_/2015_Distribution_Schedule_w.pdf) (last visited Feb. 23, 2016).

Since the inception of the program in 2000, the Road Rangers have made over 4.3 million service assists.<sup>4</sup>

### *Effect of Proposed Changes*

**Section 1** amends s. 316.003, F.S., to define the term:

- “Service patrol vehicle” as a motor vehicle that bears an emblem or markings with the wording “SERVICE VEHICLE” which is visible from the roadway and clearly indicates that the vehicle belongs to or is under contract with a person, an entity, a cooperative, a board, a commission, a district, or a unit of government that provides highway assistance services to motorists, clears travel lanes, or provides temporary maintenance of traffic support for incident response operations.

**Section 2** amends s. 316.126, F.S., to include service patrol vehicles performing official duties or services on the roadside that are displaying amber rotating or flashing lights in the Move Over Act. Motorists will be required to move over a lane or slow their vehicle while a service patrol vehicle is displaying their lights and performing official duties along the highway. The bill also requires a utility service vehicle to display visual signals to be part of the act.

### **Qualified Sobriety and Drug Monitoring Program (Sections 3, 4, and 20)**

#### *Present Situation*

For a second or subsequent driving under the influence (DUI) offense, the court may order a person to participate in a qualified sobriety and drug monitoring program in addition to the mandatory installation of an ignition interlock device (IID). A “qualified sobriety and drug monitoring program” is as an evidence-based program,<sup>5</sup> approved by the DHSMV, in which participants are regularly tested for alcohol and drug use. The program may monitor alcohol or drug use through:

- Breath testing twice a day;
- Continuous transdermal alcohol monitoring; or
- Random blood, breath, urine or oral fluid testing.<sup>6</sup>

Federal law requires states to provide a minimum penalty for drivers convicted of a second or subsequent DUI offense. Specifically, the offender must receive a driver license suspension for at least one year, or a combination of suspension followed by a reinstatement of limited driving privileges or participation in an alcohol treatment program if used with the installation of an IID.<sup>7</sup> In December 2015 Congress passed the Fixing America’s Surface Transportation Act

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<sup>4</sup> Florida Department of Transportation, Traffic Engineering and Operations Office, *Road Rangers Service Patrol*, available at [http://www.dot.state.fl.us/trafficoperations/traf\\_incident/rangers/ranger.shtml](http://www.dot.state.fl.us/trafficoperations/traf_incident/rangers/ranger.shtml) (last visited Feb. 23, 2016).

<sup>5</sup> Section 316.193(6)(j)3., F.S., defines an “evidence-based program” as one that satisfies at least two of the following requirements: (a) The program is included in the federal registry of evidence-based programs and practices; (b) The program has been reported in a peer reviewed journal as having positive effects on the primary targeted outcome; (c) The program has been documented as effective by informed experts and other sources.

<sup>6</sup> Section 316.193(6)(j)2., F.S. Preference is given to testing modalities that provide the best ability to sanction a violation as close in time as reasonably feasible to the occurrence of the violation.

<sup>7</sup> 23 U.S.C. s. 164(a)(5).

(FAST). The FAST Act requires drivers convicted of a second or subsequent DUI to receive, for a period of not less than one year:

- A suspension of all driving privileges;
- A restriction on driving privileges that limits the individual operating only motor vehicles with an IID installed;<sup>8</sup>
- A restriction on driving privileges that limits the individual to operating a motor vehicle only if participating in and complying with a 24-7 sobriety program;<sup>9</sup> or
- Any combination of the above.<sup>10</sup>

According to the FAST Act, federal grants may be provided to states that provide a 24-7 sobriety program to offset expenditures designed to reduce impaired driving.<sup>11</sup>

#### Costs Associated with Sobriety and Drug Monitoring Programs

Participation in a qualified sobriety and drug monitoring program, as well as using an IID, is at the participant's sole expense.<sup>12</sup> The expense to the individual participating in a sobriety and drug monitoring program depends on the modalities used to monitor the individual. For example, twice a day breathalyzer testing is \$4 a day, transdermal alcohol monitoring bracelets are \$10 a day, and drug sweat patches are \$40 per patch (which is applied every 7-10 days).<sup>13</sup> By its nature, the monthly expense to individuals required to participate in random drug testing cannot be estimated.

An IID on average costs \$70-\$150 for installation and approximately \$60-\$80 per month for monitoring and calibration.<sup>14</sup> According to an Office of Program Policy Analysis and Government Accountability (OPPAGA) report, approximately 49 percent of the offenders required to install an IID do so. The costs associated with installing and monitoring an IID, in addition to the multiple costs associated with a DUI conviction, may be cost prohibitive for some individuals. Estimates of the number of DUI offenders who continue to drive illegally because they cannot afford to participate in a sobriety and drug monitoring program or have an IID installed are unavailable.<sup>15</sup>

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<sup>8</sup> Special exceptions apply for individuals required to operate employer's motor vehicles and for individuals certified by a medical doctor as being unable to provide a deep lung breath sample.

<sup>9</sup> 23 U.S.C. 405(d)(7), defines a 24-7 sobriety program as a state law or program that requires an individual who plead guilty or was convicted of a DUI to abstain from alcohol or drugs for a period of time, and be subject to drug or alcohol testing at least twice per day, by continuous transdermal monitoring, or by an alternate method with the concurrence of the Secretary.

<sup>10</sup> Congress.Gov, *H.R.22 – FAST Act*, Pub. L. No. 114-94, (Dec. 4, 2015), available at <https://www.congress.gov/bill/114th-congress/house-bill/22/text> (last visited Feb. 23, 2016).

<sup>11</sup> *Id.*

<sup>12</sup> Section 316.193, F.S.

<sup>13</sup> Florida Association of DUI Programs, Inc., *24-7 Sobriety Program*, p. 3, (on file with the Senate Committee on Transportation).

<sup>14</sup> MADD, *Ignition Interlock FAQ's*, available at <http://www.madd.org/drunken-driving/ignition-interlocks/interlockfaq.html> (last visited Feb. 23, 2016).

<sup>15</sup> Florida Legislature Office of Program Policy Analysis & Government Accountability, *Ignition Interlock Devices and DUI Recidivism Rates*, Report No. 14-14, p. 4, (Dec. 2014), available at <http://www.oppaga.state.fl.us/MonitorDocs/Reports/pdf/1414rpt.pdf> (last visited Feb. 23, 2016).

### Efficacy of Programs

According to the National Highway Traffic Safety Administration (NHTSA), there are three ways to prevent DUI offenses:

- Prevent driving (i.e. revoking the offender's privilege);
- Prevent driving after drinking (e.g. using IIDs); or
- Prevent drinking (e.g. 24-7 sobriety programs).<sup>16</sup>

South Dakota has been using a 24-7 Sobriety Program for "Driving While under the Influence" offenders since 2005.<sup>17</sup> Between 2005 and 2010, South Dakota had over 17,000 residents participate in the program. Counties documented a 12 percent reduction in repeat DUI arrests and a 9 percent reduction in domestic violence arrests since adoption of the program.<sup>18</sup>

When compared to the administrative suspension of the driver license, IIDs reduce DUI recidivism while the device is installed in the vehicle; however, when the IID is removed re-arrest rates return to levels similar to those who did not have an IID.<sup>19</sup>

### *Effect of Proposed Changes*

**Section 3** of the bill amends s. 316.193, F.S., requiring the Fourth Judicial Circuit, in coordination with the Department of Highway Safety and Motor Vehicles (DHSMV), to implement a qualified sobriety and drug monitoring pilot program. Starting October 1, 2016, a court may order an offender to participate in a qualified sobriety and drug monitoring program as an alternative to an IID for a second or third DUI conviction.<sup>20</sup> The Fourth Judicial Circuit must provide a report on the results of the pilot program to the Governor, the President of the Senate, and the Speaker of the House of Representatives by March 1, 2018.

The bill defines a "qualified sobriety and drug monitoring program," and "evidence-based program" and directs the DHSMV to adopt rules to implement qualified sobriety and drug monitoring programs.

The bill removes current provisions that allow a court to order a person to participate in a qualified sobriety and drug monitoring program in addition to the mandatory installation of an IID for second or subsequent DUI offenses.

**Section 4** amends s. 316.1937, F.S., to allow a court in the Fourth Judicial Circuit to order a qualified sobriety and drug monitoring program to be used as an alternative to an IID for offenses that require an IID, beginning October 1, 2016.

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<sup>16</sup> U.S. Department of Transportation, National Highway Traffic Safety Administration, *Transdermal Alcohol Monitoring Case Studies*, p. 1, (Aug. 2012) (on file with the Senate Committee on Transportation).

<sup>17</sup> South Dakota Office of the Attorney General, *24/7 Sobriety Program*, available at <http://apps.sd.gov/atg/dui247/> (last visited Feb. 23, 2016).

<sup>18</sup> Kilmer, Beau and others, *American Journal of Public Health, Efficacy of Frequent Monitoring with Swift, Certain, and Modest Sanctions for Violations: Insights from South Dakota's 24/7 Sobriety Project*, (Jan. 2013), available at <http://ajph.aphapublications.org/doi/abs/10.2105/AJPH.2012.300989> (last visited Feb. 23, 2016).

<sup>19</sup> *Supra* note 16.

<sup>20</sup> Sections 316.193(2)(a)3., (2)(b)1., and (2)(b)2., F.S. The bill defines the term "qualified sobriety and drug monitoring program."

**Section 20** amends s. 322.2715, F.S., to require the DHSMV, starting October 1, 2016, to use a qualified sobriety and drug monitoring program as an alternative to the placement of an IID, if such a program is ordered to be used for a defendant by a court in Fourth Judicial Circuit.

### **Additional Lighting on Buses (Section 5)**

#### *Present Situation*

Section 316.235, F.S., allows buses to have additional lighting on the rear of the bus to indicate a bus is slowing down, preparing to stop, or is stopped. The deceleration lighting system consists of amber lights mounted horizontally on the back of the bus, which are visible from a distance of not less than 300 feet to the rear in normal sunlight. The lights are permitted to light and flash during deceleration, braking, or idling of the bus.<sup>21</sup>

#### *Effect of Proposed Changes*

**Section 5** of the bill amends s. 316.235, F.S., to provide that the bus deceleration lighting system must consist of *red or* amber lights mounted on the rear of a bus that are no greater than 12 inches apart, and increases the allowable height from the ground of the lights from no higher than 72 inches to no higher than 100 inches.

### **Driver-Assistive Truck Platooning (Sections 1, 6, and 22)**

#### *Present Situation*

In August of 2014, the NHTSA issued an advance notice of proposed rulemaking on vehicle-to-vehicle (V2V) communications technology.<sup>22</sup> V2V is a crash avoidance technology, relying on communication of information between nearby vehicles to warn drivers about dangerous situations that could lead to a crash.<sup>23</sup> NHTSA advises that, “Using V2V technology, vehicles ranging from cars to trucks and buses to trains could one day be able to communicate important safety and mobility information to one another that can help save lives, prevent injuries, ease traffic congestion, and improve the environment.”<sup>24</sup>

One form of V2V technology is known as driver-assistive truck platooning (DATP), which allows trucks to communicate with each other and to travel as close as 30 feet apart with automatic acceleration and braking. A draft is created, reducing wind resistance and cutting down on fuel consumption. The concept of DATP is based on a system that controls the spacing between the vehicles based on information from forward-looking radars and V2V

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<sup>21</sup> Section 316.235(5), F.S.

<sup>22</sup> National Highway Traffic Safety Administration, *U.S. Department of Transportation Issues Advance Notice of Proposed Rulemaking to Begin Implementation of Vehicle-to-Vehicle Communications Technology*, (August 18, 2014), available at <http://www.nhtsa.gov/About+NHTSA/Press+Releases/2014/NHTSA-issues-advanced-notice-of-proposed-rulemaking-on-V2V-communications> (last visited Feb. 23, 2016).

<sup>23</sup> U.S. Department of Transportation, SAFETYPILOT Connected Vehicle Technology, *Fact Sheet: Improving Safety and Mobility Through Connected Vehicle Technology*, available at [http://www.its.dot.gov/safety\\_pilot/pdf/safetypilot\\_nhtsa\\_factsheet.pdf](http://www.its.dot.gov/safety_pilot/pdf/safetypilot_nhtsa_factsheet.pdf) (last visited Feb. 23, 2016).

<sup>24</sup> National Highway Traffic Safety Administration, *Vehicle-to-Vehicle Communications*, available at <http://www.safercar.gov/v2v/index.html> (last visited Feb. 23, 2016).



communications. Information on braking and other operational data is exchanged between the vehicles allowing the system to automatically adjust engine and brakes in real-time.<sup>25</sup>

Another system uses integrated sensors, controls, and wireless communications to connect trucks. The system synchronizes acceleration and braking between vehicles, leaving steering to the drivers, but eliminating braking distance otherwise caused by lags in the front or rear driver's response time. The system determines in real time whether traffic conditions are appropriate to allow specific trucks to engage in platooning operations. If another vehicle enters between platooning trucks, the system will automatically increase following distance or delink the trucks and then relink once the cut-in risk has passed. If data transfer between platooning trucks ceases, the driver is immediately notified that manual acceleration and braking control is about to resume.<sup>26</sup>

Section 316.0895, F.S., prohibits a driver of a motor vehicle to follow another vehicle more closely than is reasonable and prudent. It is unlawful, when traveling upon a roadway outside a business or residence district, for a motor truck, motor truck drawing another vehicle, or vehicle towing another vehicle or trailer to follow within 300 feet of another vehicle.<sup>27</sup>

Section 316.303, F.S. prohibits a motor vehicle operated on the highways of this state to be equipped with television-type receiving equipment that is visible from the driver's seat. This does not prohibit the use of an electronic display used in conjunction with a vehicle navigation system.

### *Effect of Proposed Changes*

**Section 1** amends s. 316.003, F.S., to define the term:

- “Driver-Assistive Truck Platooning Technology” as vehicle automation and safety technology that integrates sensor array, wireless vehicle-to-vehicle communications, active safety systems, and specialized software to link safety systems and synchronize acceleration and braking between two vehicles while leaving each vehicle's steering control and systems command in the control of the vehicle's driver in compliance with the National Highway Traffic Safety Administration rules regarding vehicle-to-vehicle communications.

**Section 6** amends s. 316.303(3), F.S., to allow vehicles equipped and operating with driver-assistive truck platooning technology to be equipped with electronic displays visible from the driver's seat, and to authorize the operator of a vehicle equipped and operating with truck platooning technology to use an electronic display.

**Section 22** requires the Florida Department of Transportation (DOT) to study, in consultation with the DHSMV, the use and safe operation of driver-assistive truck platooning technology for the purpose of developing a pilot project to test vehicles equipped with such technology. Upon conclusion of the study, the DOT, in consultation with the DHSMV, may conduct a pilot project that tests the operation of vehicles equipped with driver-assistive truck platooning

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<sup>25</sup> Go by Truck, Global News, *Driver Survey: Platooning*, (November 18, 2014), available at <http://www.gobytrucknews.com/driver-survey-platooning/123> (last visited Feb. 23, 2016).

<sup>26</sup> See Peloton, *FAQ*, available at <http://www.peloton-tech.com/faq/> (last visited Feb. 23, 2016).

<sup>27</sup> Section 316.0895(2), F.S.



technology.<sup>28</sup> Prior to the start of the pilot project, manufacturers of the driver-assistive truck platooning technology being tested in the pilot project must submit to the DHSMV an instrument of insurance, surety bond, or proof of self-insurance acceptable to the DHSMV in the amount of \$5 million.

Upon conclusion of the pilot project, the DOT, in consultation with the DHSMV, must submit the results of the study and any findings or recommendations from the pilot project to the Governor, the President of the Senate, and the Speaker of the House of Representatives.

## **Autonomous Vehicles (Section 6)**

### *Present Situation*

Autonomous or “self-driving” vehicles are those operated “without direct driver input to control the steering, acceleration, and braking and are designed so that the driver is not expected to constantly monitor the roadway while operating in self-driving mode.”<sup>29</sup> According to the NHTSA, autonomous vehicles have the potential to improve highway safety, increase environmental benefits, expand mobility, and create new economic opportunities for jobs and investment.<sup>30</sup> Some expect increased availability and use of autonomous vehicles within the next 5 years.<sup>31</sup>

Section 316.303, F.S. prohibits a motor vehicle operated on the highways of this state to be equipped with television-type receiving equipment that is visible from the driver’s seat. This does not prohibit the use of an electronic display used in conjunction with a vehicle navigation system.

### *Effect of Proposed Changes*

**Section 6** amends s. 316.303(1), F.S. to allow vehicles equipped with autonomous technology to have television broadcast or pre-recorded video entertainment content visible from the driver’s seat if the vehicle is being operated in autonomous mode.

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<sup>28</sup> The pilot project may be conducted in such a manner and at such locations as determined by the DOT.

<sup>29</sup> National Highway Traffic Safety Administration, *U.S. Department of Transportation Releases Policy on Automated Vehicle Development*, (May 30, 2013), available at <http://www.nhtsa.gov/About+NHTSA/Press+Releases/U.S.+Department+of+Transportation+Releases+Policy+on+Automated+Vehicle+Development> (last visited Feb. 23, 2016).

<sup>30</sup> National Highway Traffic Safety Administration, *Preliminary Statement of Policy Concerning Automated Vehicles*, available at [http://www.nhtsa.gov/staticfiles/rulemaking/pdf/Automated\\_Vehicles\\_Policy.pdf](http://www.nhtsa.gov/staticfiles/rulemaking/pdf/Automated_Vehicles_Policy.pdf) (last visited Feb. 23, 2016).

<sup>31</sup> TechCrunch, *Autonomous Cars are Closer Than You Think* (Jan. 18, 2015), available at <http://techcrunch.com/2015/01/18/autonomous-cars-are-closer-than-you-think/> (last visited Feb. 23, 2016).

## **Updating Driver License, Identification Card, or Motor Vehicle Registration (Sections 7 and 16)**

### *Present Situation*

The required timeframe to update a driver license or motor vehicle registration to reflect an address or legal name change varies depending on the specific action and residency of the individual. Specifically:

- A new resident of the state is required to obtain a Florida driver license within 30 days;<sup>32</sup>
- An owner of a motor vehicle registered in this state must notify the DHSMV in writing of an address change within 20 days;<sup>33</sup> and
- An individual who possesses a Florida driver license or identification card who changes his or her legal name or mailing address must obtain a replacement card or license reflecting the change within 10 days.<sup>34</sup>

### *Effect of Proposed Changes*

**Section 7** amends s. 320.02, F.S., to require the owner of a motor vehicle registered in this state to notify the DHSMV in writing of any address change within 30 days, rather than 20.

**Section 16** amends s. 322.19, F.S., to require an individual who possesses a Florida driver license or identification card who changes his or her legal name or mailing address card to obtain a replacement card or license reflecting the change within 30 days, rather than 10.

Both sections exclude these changes from affecting the 48 hour timeframe within which a Sexual Offender, Sexual Predator, or Career Offender must notify the DHSMV of such changes.

## **Titling and Registering Vehicles (Section 8)**

### *Present Situation*

Section 320.03, F.S., provides for administration of the electronic filing system used to title or register motor vehicles, vessels, mobile homes, and other vehicles. This allows qualified entities that sell products required to be titled or registered to be authorized as an electronic filing system agent for the county. Such agents, typically motor vehicle dealers, are further authorized to charge a fee to the customer for use of the electronic filing system.

### *Effect of Proposed Changes*

**Section 8** amends s. 320.03, F.S., to provide that if an authorized electronic filing system agent makes a disclosure required under s. 501.976(18), F.S., the agent may charge a fee for use of the electronic filing system. The disclosure must read: “This charge represents costs and profit to the dealer for items such as inspecting, cleaning, and adjusting vehicles, and preparing documents related to the sale.”<sup>35</sup>

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<sup>32</sup> Section 322.031, F.S.

<sup>33</sup> Section 320.02, F.S.

<sup>34</sup> Section 322.19, F.S.

<sup>35</sup> Section 501.976(18), F.S.

## **Motor Vehicle Registrations (Section 9)**

### ***Present Situation***

Except as otherwise provided in law, every owner or person responsible for a motor vehicle that is operated in this state must register the vehicle in this state.<sup>36</sup> Most motor vehicles have a registration period of either 12 or 24 months during which the registration is valid.<sup>37</sup>

Section 320.07, F.S., provides that the vehicle registration expires at midnight on the owner's birthday. An owner of a motor vehicle, requiring registration, who operates the vehicle on the roadways without a valid registration is subject to the following penalties:

- Registration expired for a period of six months or a first offense is a nonmoving violation (\$30 fine and court costs);
- Registration expired for a period of over six months and a second or subsequent offense is a second degree misdemeanor (a fine up to \$500 and up to 60 days imprisonment).<sup>38</sup>

Upon payment of the appropriate registration taxes and fees, a validation sticker is issued showing the owner's birth month and year of expiration, which is placed on the upper right corner of the license plate.<sup>39</sup> The sticker does not indicate the day the registration expires, it only specifies the month.

### ***Effect of Proposed Changes***

**Section 9** amends s. 320.07, F.S., to prohibit a law enforcement officer from issuing a citation for an expired registration until midnight on the last day of the owner's birth month of the year the registration expires.

## **Specialty License Plates – Minimum Sale Requirements (Sections 10 and 11)**

### ***Present Situation***

Presently, there are over 120 specialty license plates available for purchase, and two in the presale phase. Specialty license plates are available to an owner or lessee of a motor vehicle who is willing to pay an annual use fee, ranging from \$15 to \$25, paid in addition to required license taxes and service fees.<sup>40</sup> The annual use fees are distributed to an organization or organizations in support of a particular cause or charity signified in the plate's design and designated in statute.<sup>41</sup>

In order to establish a specialty license plate, the plate must first be adopted into statute by the Legislature. Upon becoming law:

- Within 60 days, the organization must submit an art design for the plate, in a medium prescribed by the DHSMV;
- Within 120 days, the DHSMV must establish a method to issue pre-sale vouchers for the approved specialty license plate; and

<sup>36</sup> Section 320.02, F.S.

<sup>37</sup> Section 320.01(19)(a), F.S.

<sup>38</sup> Section 320.07, F.S.

<sup>39</sup> Section 320.06(1)(b)1., F.S.

<sup>40</sup> Section 320.08056, F.S.

<sup>41</sup> Section 320.08058, F.S.

- Within 24 months after the pre-sale vouchers are established, the plate must obtain a minimum of 1,000 voucher sales before manufacturing may begin.

If, at the end of the 24-month pre-sale period, the minimum sales requirement has not been met, the department will de-authorize the specialty plate, discontinue development, and discontinue issuance of the presale voucher. Upon discontinuation of the plate, a purchaser of a presale voucher may use the annual use fee as a credit towards any other specialty license plate or apply for a refund with the DHSMV.<sup>42</sup>

The DHSMV must discontinue the issuance of an approved specialty license plate if the number of valid specialty plate registrations falls below 1,000 plates for at least 12 consecutive months. A warning letter is mailed to the sponsoring organization following the first month in which the total number of valid specialty plate registrations is below 1,000 plates. Collegiate plates established under s. 320.08058(3), F.S., are exempt from the minimum sales requirement.<sup>43</sup>

As of January 1, 2016, 28 specialty plates required to maintain minimum sales were below 4,000 valid registrations.<sup>44</sup> Those plates are:

<b>Specialty License Plates Below 4,000 Valid Registrations and Current Registrations</b>			
<b>Specialty License Plate</b>	<b>Registrations</b>	<b>Specialty License Plate</b>	<b>Registrations</b>
A State Of Vision	2,194	Lauren’s Kids	3,128
Agriculture Education	1,398	Miami Marlins	2,476
American Legion	791	Moffitt Cancer Center	674
American Red Cross	973	NASCAR	3,211
Big Brother Big Sister	554	Orlando Magic	3,372
Donate Organs	2,318	Parents Make a Difference	1,652
Fallen Law Enforcement	1,360	Play Tennis	3,144
Family Values	2,057	Protect Our Oceans	3,829
Florida Panthers	2,052	Scouting Teaches Values	2,509
Florida Sheriff’s Association	1,003	Special Olympics	3,346
Florida Sheriff’s Youth Ranches	3,944	St. John’s River	617
Fraternal Order of Police	2,895	Support Homeownership for All	3,827
Hispanic Achievers	375	Trees are Cool	3,830
Kids Deserve Justice	1,436	Visit our Lights	3,830

According to the DHSMV, of the plates below 4,000 registrations, the *American Legion*, *Big Brother Big Sister*, *Fallen Law Enforcement*, *Florida Sheriff’s Association*, *Lauren’s Kids*, and *Moffitt Cancer Center* specialty plates were recently created and continue to show good public

<sup>42</sup> Section 320.08053(2)(b), F.S.

<sup>43</sup> Section 320.08056(8)(a), F.S.

<sup>44</sup> Department of Highway Safety and Motor Vehicles, *2016 Agency Legislative Bill Analysis SB 1390* (Feb. 9, 2016) (on file with the Senate Committee on Transportation)

interest and growth.<sup>45</sup> Additionally, the *Hispanic Achievers* and *St. John's River* plates are still in presale and have not been manufactured.

### ***Effect of Proposed Changes***

**Sections 10 and 11** amend ss. 320.08053 and 320.08056, F.S., to increase the minimum sales requirement for specialty license plates from 1,000 to 4,000 plates. Effective July 1, 2016, specialty license plates in the presale process will be required to sell at least 4,000 presale vouchers in order to be manufactured. Effective July 1, 2019, any existing specialty plate that falls below 4,000 valid registrations for at least 12 consecutive months will be discontinued.

There are currently 28 specialty license plates that are below 4,000 valid registrations. If the plates remain under 4,000 valid registrations for 12 consecutive months after July 1, 2019, they will be discontinued. Collegiate plates representing state and independent universities domiciled in Florida are exempt from minimum sale requirements.

The bill also provides an exemption for established specialty plates from being discontinued by the DHSMV for not meeting the minimum sales requirement if the plate has statutory limitations on who may purchase the specialty plate. For example, a registrant must be a good-standing member or related to a member of the Fraternal Order of Police in order to purchase the *Fraternal Order of Police* plate.<sup>46</sup> This appears to be the only plate that is exempted by this change.

### **Vehicle Manufacturers and Dealers (Section 12)**

#### ***Present Situation***

Florida has substantially regulated motor vehicle manufacturers and motor vehicle dealers since before 1950.<sup>47</sup> Initially, the Florida Legislature implemented consumer protections aimed at preventing consumer abuse by dealers.<sup>48</sup> In 1970, the Legislature passed more comprehensive legislation, which regulated the contractual relationship between manufacturers and dealers, required the licensing of manufacturers, and regulated numerous aspects of the contracts between manufacturers and dealers.<sup>49</sup>

A manufacturer, factory branch, distributor, or importer (licensee) must be licensed under ss. 320.60-320.70, F.S., to engage in business in this state.<sup>50</sup> To be licensed under ss. 320.60-320.70, F.S., a person must submit an application to the DHSMV along with required documents. The DHSMV must determine the fitness of the applicant or licensee to engage in the business for which the applicant or licensee desires to be licensed.<sup>51</sup> The DHSMV may allow for an abbreviated application for license renewal if the licensee has previously filed an initial

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<sup>45</sup> *Id.*

<sup>46</sup> Section 320.08058(72), F.S.

<sup>47</sup> See chs. 9157, L.O.F. (1923), and 20236, L.O.F. (1941).

<sup>48</sup> Walter E. Forehand and John W. Forehand, *Motor Vehicle Dealer and Motor Vehicle Manufacturers: Florida Reacts to Pressures in the Marketplace*, 29 Fla. St. Univ. Law Rev. 1058, 1064 (2002), available at <http://law-wss-01.law.fsu.edu/journals/lawreview/downloads/293/Forehand.pdf> (last visited Feb. 23, 2016).

<sup>49</sup> See ch. 70-424, L.O.F.

<sup>50</sup> Section 320.61(1), F.S.

<sup>51</sup> Section 320.63, F.S.

application and includes information necessary to update the information required in the initial application.<sup>52</sup>

The requirements regulating the contractual business relationship between a dealer and a manufacturer are primarily found in ss. 320.60-320.070, F.S., (the Florida Automobile Dealers Act).<sup>53</sup> These sections of law specify, in part, the:

- Conditions and situations under which the DHSMV may grant, deny, suspend, or revoke a license;
- Process, timing, and notice requirements for manufacturers to discontinue, cancel, modify, or otherwise replace a franchise agreement with a dealer, and the conditions under which the DHSMV may deny such a change;
- Procedures a manufacturer must follow if it wants to add a dealership in an area already served by a dealer, the protest process, and the DHSMV's role in these circumstances;
- Amounts of damages that can be assessed against a manufacturer in violation of Florida statutes; and
- DHSMV's authority to adopt rules to implement these sections of law.<sup>54</sup>

In 2009, the DHSMV held in a final order in an administrative proceeding that amendments to the Florida Automobile Dealers Act do not apply to dealers having franchise agreements which were signed prior to the effective date of various amendments to that act.<sup>55</sup>

Section 320.64, F.S., provides 38 grounds for the DHSMV's denial, suspension, or revocation of a manufacturer's license. A violation of any of these provisions entitles a dealer to rights and remedies contained within the Florida Automobile Dealers Act.<sup>56</sup>

### *Effect of Proposed Changes*

**Section 12** amends s. 320.64, F.S., to modify and add acts an applicant or licensee is prohibited from committing.

The bill provides that an audit of service-related payments and incentive payments can be performed by an applicant or licensee only during the 12-month period, instead of an 18-month period, immediately following the date the claim or incentive was paid. An "incentive" is defined to include any bonus, incentive, or other monetary or nonmonetary thing of value.

The bill provides an applicant or licensee may deny a service-related claim or incentive claim, or subject a dealer to a chargeback *only* for the portion of a claim proven to be false or fraudulent by the licensee or for which the dealer failed to substantially comply with the reasonable written and uniformly applied procedures of the licensee for the repairs or incentives.

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<sup>52</sup> Section 320.61(2), F.S.

<sup>53</sup> *Supra* note 48 at p. 1065.

<sup>54</sup> Sections 320.60-320.070, F.S.

<sup>55</sup> See *Motorsports of Delray, LLC v. Yamaha Motor Corp., U.S.A.*, Case No. 09-002129 (Fla. DOAH Dec. 11, 2009). The DHSMV has indicated it will be applying this holding to every amendment to the Florida Automobile Dealers Act. That means dealers have different protections under the law depending on when they signed their franchise agreements.

<sup>56</sup> Section 320.64, F.S.

An applicant or licensee cannot take adverse action against a dealer because a motor vehicle sold, leased, or delivered to a customer was resold or exported unless the licensee notifies the dealer within 12 months after the vehicle was delivered to the customer.

An applicant or licensee may not fail to make any payment due to a dealer for temporary replacement vehicles loaned, rented, or provided by the dealer to or for its service or repair customers, provided the dealer complied with the terms of the franchise agreement or other contract with the licensee, even if the motor vehicle has been leased, rented, titled, or registered to an entity owned or controlled by the dealer.

The bill prohibits an applicant or licensee from requiring or coercing, or attempting to require or coerce, a dealer to purchase goods from any specific vendor. A dealer who desires to use like kind, design, and quality goods or services from a chosen vendor must provide written notice to the applicant or licensee along with samples or clear descriptions of the goods or services. The applicant or licensee has up to 30 days to respond and may not unreasonably withhold consent. If the dealer receives no response within 30 days, consent to use the alternative goods or services is deemed granted.

The term “goods or services” is limited to goods and services used to construct or renovate dealership facilities, and does not include any:

- Material related to the applicant’s or licensee’s trademark or copyright;
- Special tool or training required by the applicant or licensee;
- Part to be used in repairs under warranty obligations of an applicant or licensee;
- Good or service paid for entirely by the applicant or licensee; or
- Applicant’s or licensee’s design or architectural review service.

### **International Symbol for the Deaf or Hard of Hearing (Sections 13, 14 and 15)**

#### ***Present Situation***

The Florida Department of Health estimates there are over 3.1 million persons in Florida who are deaf or hearing impaired. However, the 2014 census classified 211,049 people in Florida as having a hearing disability.<sup>57</sup>

#### ***Effect of Proposed Changes***

**Sections 13 and 14** amend ss. 322.051 and 322.14, F.S., to allow individuals who are deaf or hard of hearing to receive the international symbol for the deaf and hard of hearing on his or her driver license or identification card. The individual will receive the symbol on his or her license upon payment of an additional fee and providing sufficient proof, determined by the DHSMV, that he or she is deaf or hard of hearing.

The symbol may be voluntarily added to the driver license or identification card by the applicant when the driver license or identification card is being issued, renewed, or replaced for a purpose

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<sup>57</sup> Department of Highway Safety and Motor Vehicles, *2016 Agency Legislative Bill Analysis for SB 740*, p. 2, (Jan. 10, 2016) (on file with the Senate Committee on Transportation).

other than solely including the symbol on the card (i.e., an address or name change) upon payment of a \$1 fee, in addition to the applicable issuance, renewal, or replacement fee.

An individual who surrenders and replaces his or her driver license or identification card for the sole purpose of adding the symbol is only required to pay a \$2 fee that will be deposited into the Highway Safety Operating Trust Fund. The replacement license or card is not subject to the \$25 replacement fee required by s. 322.21(1), F.S.

**Section 15** provides that the changes by this bill to authorize the international symbol for the deaf or hard of hearing on driver licenses and identification cards will apply upon implementation of new designs for the driver license and identification card by the DHSMV, which is currently anticipated to be in 2017.<sup>58</sup>

### **No-Cost Identification Card for Certain Juvenile Offenders (Sections 13 and 17)**

#### *Present Situation*

The cost to obtain an original identification card is \$25, which is deposited into the General Revenue Fund. Applicants who present evidence satisfactory to the DHSMV that they are homeless or whose annual income is at or below 100 percent of the federal poverty level are exempt from such fee.<sup>59</sup>

Additionally, the DHSMV issues identification cards at no charge to Florida-born inmates prior to their release from the custody of the Department of Corrections or a private correctional facility, if the inmate does not have a valid identification card.<sup>60</sup>

#### *Effect of Proposed Changes*

**Sections 13 and 17** amend ss. 322.051 and 322.21, F.S., to add that the DHSMV will issue no-charge identification cards to juvenile offenders in the custody or under the supervision of the Department of Juvenile Justice and receiving adult transition services.<sup>61</sup> The cards will be processed by the DHSMV's mobile issuing units.

### **No-Cost Identification Card due to Medical Sanction of a Driver License (Section 18)**

#### *Present Situation*

Section 322.221, F.S., provides the DHSMV may require an examination or reexamination of a licensee if the DHSMV has good cause<sup>62</sup> to believe the driver is incompetent or otherwise not qualified to be licensed, including being physically or mentally unqualified to operate a motor vehicle. The examination may include determining the competence and driving ability of the driver as well as requiring the driver to submit medical records to be reviewed by the DHSMV's

<sup>58</sup> Department of Highway Safety and Motor Vehicles, *2016 Agency Legislative Bill Analysis for SB 158*, p. 7, (Sept. 15, 2015) (on file with the Senate Committee on Transportation).

<sup>59</sup> Section 322.21(1)(f), F.S.

<sup>60</sup> Sections 322.051(9) and 944.605(7)(a), F.S.

<sup>61</sup> See s. 985.461, F.S.

<sup>62</sup> Good cause means a licensee's driving record, report of disability to the DHSMV, or other evidence which is sufficient to indicate that his or her driving privilege is detrimental to public safety. Section 322.221, F.S.



medical advisory board. Upon the conclusion of such examination, the DHSMV may suspend or revoke the driver license of such person, if the DHSMV deems that appropriate.<sup>63</sup>

### *Effect of Proposed Changes*

**Section 18** amends s. 322.221, F.S., to require the DHSMV to issue an identification card at no charge to a person whose driver license has been suspended or revoked by the DHSMV due to his or her physical or mental condition.

### **Notice of Suspension of Driver License (Section 19)**

#### *Present Situation*

The DHSMV is required to give notice of an order of cancellation, suspension, revocation, or disqualification of a driver license to the license holder prior to the sanction taking place.<sup>64</sup> Driver license suspensions issued under the provisions of chs. 318, 322, 324, or ss. 627.732-627.734, F.S., shall be given either by personal delivery to the licensee or by first class mail to the licensee's last known mailing address.<sup>65</sup>

### *Effect of Proposed Changes*

**Section 19** amends s. 322.251, F.S., to require the DHSMV, when issuing a notice of suspension to a licensee for the nonpayment of a fine, to include a statement in the notice informing the violator that, if he or she is unable to pay the citation in full, suspension may be avoided by agreeing to a payment plan through the clerk of the court in the county in which the citation was written.

### **Organ Donor Registry (Section 21)**

#### *Present Situation*

The Agency for Healthcare Administration (AHCA) and the DHSMV operate Florida's donor registry that allow for online donor registration and the recording of organ and tissue donation records submitted through the driver license identification program or through other sources. The AHCA contracted with Donate Life Florida to run the donor registry and maintain donor records.<sup>66</sup>

Floridians who are age 18 or older can join the donor registry online, at the DHSMV, at their local driver license office, or by contacting Donate Life Florida and requesting a registry form. Children ages 13 to 17 may join the registry, but the final decision on any organ donation of a minor rests with the parent or guardian. The registry collects personal information from each donor including, but not limited to, his or her name, address, date and place of birth, race, and driver license or identification card number.<sup>67</sup>

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<sup>63</sup> Section 322.221, F.S.

<sup>64</sup> See s. 322.251, F.S.

<sup>65</sup> Section 322.251(1), F.S.

<sup>66</sup> Donate Life Florida, *About Donate Life Florida*, available at <https://www.donateliflorida.org/content/about/> (last visited Jan. 26, 2016). Section 765.5155, F.S.

<sup>67</sup> Donate Life Florida, *Sign Me Up Today*, available at <https://www.donateliflorida.org/register/> (last visited Jan. 26, 2016).

As of February 2016 there are over 8.6 million people registered in the donor registry.<sup>68</sup> The large number of registered donors ranks the Joshua Abbott Organ and Tissue Donor Registry as the second largest donor registry in the United States in terms of enrollment.<sup>69</sup>

Section 765.521, F.S., which predates the establishment of the donor registry, requires that the AHCA and the DHSMV implement a system to encourage potential donors to make anatomical gifts through the process of issuing and renewing driver licenses or identification cards. Approximately 95 percent of people who enroll in Florida's registry do so while obtaining or renewing a driver license.<sup>70</sup>

### *Effect of Proposed Changes*

**Section 21** requires the DHSMV to maintain an integrated link on its website that refers customers who are renewing their driver licenses or conducting other business to the organ donor registry operated under s. 765.5155, F.S. The bill codifies into law a practice that has already been put into place by the DHSMV.<sup>71</sup>

### **Effective Date**

**Section 23** provides that, except as otherwise expressly provided, the bill is effective October 1, 2016. **Section 10** of the bill, increasing minimum presale requirements of specialty license plates, takes effect July 1, 2016, and **Section 11**, increasing the minimum sale requirement on existing specialty license plates, takes effect July 1, 2019.

## **IV. Constitutional Issues:**

### **A. Municipality/County Mandates Restrictions:**

Because this bill requires Tax Collectors to issue a no-cost identification card to a person whose driver's license has been suspended or revoked for a medical reason, the bill falls within the purview of Art, VII, s. 18(a), of the Florida Constitution, which provides that counties are not bound by certain general laws that require the expenditure of funds unless certain exceptions or exemptions are met. Subsection (d) provides an exemption from this prohibition for laws determined to have an "insignificant fiscal impact," and this bill appears to have an insignificant impact.

### **B. Public Records/Open Meetings Issues:**

None.

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<sup>68</sup> Donate Life Florida, Total Registrants as of February 2016, available at <https://www.donateliflorida.org/> (last visited Feb. 3, 2016).

<sup>69</sup> Donate Life Florida, *2014 Annual Report*, p. 7, available at [https://www.donateliflorida.org/files/52\\_file.pdf](https://www.donateliflorida.org/files/52_file.pdf) (last visited Jan 26, 2016).

<sup>70</sup> *Id.*

<sup>71</sup> Department of Highway Safety and Motor Vehicles, *SB 1066 Agency Bill Analysis* (Jan, 14, 2016) (on file with the Senate Committee on Fiscal Policy).

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

The Revenue Estimating Conference met January 22, 2016, and adopted the following estimates for the no-cost identification card/driver license provisions of the bill:

- Certain Juvenile Offenders – insignificant negative fiscal impact to the General Revenue Fund in Fiscal Year 2016-2017 and subsequent years (approximately 2,500 juvenile offenders annually could be issued a no-cost identification card); and
- Individuals with a Medical Sanction –
  - Foregone revenue for Fiscal Year 2016-2017 is \$300,000, with a recurring negative impact of \$500,000 to the General Revenue Fund;
  - For the local tax collectors, foregone revenue for Fiscal Year 2016-2017 is \$100,000, with a recurring negative impact of \$100,000. Approximately 18,390 medically sanctioned drivers could be issued a no-cost identification card in Fiscal Year 2016-2017 and that number is expected to increase as Florida's population increases.<sup>72</sup>

B. Private Sector Impact:

By authorizing participation in a qualified sobriety and drug monitoring pilot program for specified DUI offenders in the Fourth Judicial Circuit, the bill will have a positive fiscal impact on the providers of those programs.

The bill will have a negative impact on organizations and programs funded from a specialty plate that does not meet the increased minimum sales requirement and is subsequently discontinued. However, increasing the minimum sales requirement could reduce the number of different specialty plates, which could increase sales of the remaining specialty plates, thereby benefiting the organizations and programs supported by the remaining specialty plates.

The bill is also expected to have a positive fiscal impact on:

- Juvenile offenders in custody or under the supervision of the DJJ who will receive a state identification card at no-charge; and
- Individuals whose license was suspended or revoked for a physical or mental condition (medical sanction) who will be provided a state identification card at no-charge.

Individuals who are deaf or hard of hearing who request to have the international symbol for the deaf and hard of hearing exhibited on his or her driver license or identification card will be required to pay an additional \$1 fee when a driver license or identification

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<sup>72</sup> Florida Revenue Estimating Conference, *HB 7063*, pp. 377-383 (Jan. 22, 2016), available at <http://edr.state.fl.us/content/conferences/revenueimpact/archives/2016/pdf/Impact0122.pdf> (last visited Feb. 23, 2016).

card is being issued, renewed or replaced for a purpose other than solely including the symbol on the card. The \$1 fee is in addition to the applicable issuance, renewal, or replacement fee. An individual who is deaf or hard of hearing who surrenders his or her driver license or identification card with the sole purpose of adding the symbol must pay a \$2 fee, which covers the cost of the cardstock used to print an identification card.

The fiscal impact of the provisions of the bill that address contractual relationships between motor vehicle licensees (manufacturers, distributors and importers) and motor vehicle dealers is indeterminate.

**C. Government Sector Impact:**

Depending on specialty number of plates that will be discontinued starting in July 1, 2019, the DHSMV may incur minimal programming costs associated with discontinuing specialty license plates.<sup>73</sup>

The DHSMV indicates that the cardstock used to print an identification card costs \$1.97. The estimated cost to the department for issuing identification cards to approximately 2,500 juvenile offenders and 18,390 individuals with a medical sanction is \$41,153 annually. The department will absorb the additional costs within existing resources.

The additional \$1 fee to place the international symbol for the deaf and hard of hearing on a driver license or identification card will have a positive fiscal impact on the DHSMV's Highway Safety Operating Trust Fund, to the extent that individuals apply for and obtain the designation.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 316.003, 316.126, 316.193, 316.1937, 316.235, 316.303, 320.02, 320.03, 320.07, 320.08053, 320.08056, 320.64, 322.051, 322.14, 322.19, 322.21, 322.221, 322.251, 322.2715 and 765.521.

This bill also creates one undesignated section of law.

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<sup>73</sup> *Supra* note 44.

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

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

**CS/CS by Fiscal Policy on February 29, 2016:**

As recommended by the Appropriations Subcommittee on Transportation, Tourism, and Economic Development, the CS makes the following changes to the bill:

- Modifies the definition of “driver-assistive truck platooning technology” to include systems in compliance with the NHTSA rules regarding vehicle-to-vehicle communications;
- Removes the exemption for driver-assistive truck platooning from the “following too closely” provisions, and instead directs DOT to study, in consultation with the DHSMV, the use and safe operation of driver assistive truck platooning technology, and authorizes a pilot project to test vehicles equipped with such technology;
- Removes the requirement that a qualified sobriety and drug monitoring program be used in addition to an IID when such device is required;
- Directs the Fourth Judicial Circuit, in consultation with the DHSMV, to implement a qualified sobriety and drug monitoring pilot program that allows the court to order participation in a qualified sobriety and drug monitoring pilot program as an alternative to an IID for specified DUI offenses;
- Removes that the bus deceleration lighting system can only have two red, rear lights, and changes the allowable height for the lighting placement from no higher than 72 inches from the ground to no higher than 100 inches from the ground;
- Removes language providing that the registration renewal period ends the last day of the vehicle owner’s birth month;
- Allows individuals to choose to have the international symbol for the deaf and hard of hearing exhibited on his or her driver license or identification card, upon payment of a fee and proof, sufficient to the DHSMV, that he or she is deaf or hard of hearing;
- Requires authorized electronic filing system agents to disclose to customers that the agent may charge a fee for use of the electronic filing system when titling or registering a vehicle, vessel, mobile home, or other vehicle; and
- Provides additional grounds to deny, suspend, or revoke a license held by a motor vehicle manufacturer, and prohibits manufacturers from taking certain actions against motor vehicle dealers.

The CS also:

- Increases the presale and maintenance requirements for specialty plates from 1,000, to 4,000, effective July 1, 2016, and July 1, 2019, respectively;
- Clarifies that the term “qualified sobriety and drug monitoring program” applies to chs. 316 and 322, F.S.;
- Requires the department to include, in its notice that a driving privilege will be suspended for nonpayment for a fine, that if violators are unable to pay their citation in full to avoid a suspension of their driving privileges, they can agree to a payment plan; and
- Requires the department to maintain an integrated link on its website referring to a visitor renewing a driver license or conducting other business to the donor registry.

**CS by Transportation on January 27, 2016:**

## The CS:

- Removes language from the bill concerning booster seats;
- Replaces language that provided that vehicle registrations expire at midnight on the last day of the owner's birth month, with a prohibition on law enforcement from issuing a citation for an expired registration prior to midnight on the last day of the owner's birth month;
- Adds that buses may have, as part of its deceleration lighting system, two red or amber lights no greater than 12 inches apart located on the rear of a bus;
- Requires certain DUI offenders to participate in a qualified sobriety and drug monitoring program, in addition to placement of an IID, when an IID is required; and
- Directs the DHSMV to adopt rules to implement qualified sobriety and drug monitoring programs.

## B. Amendments:

None.

By the Committee on Transportation; and Senator Brandes

596-02694-16

20161394c1

1 A bill to be entitled  
 2 An act relating to the Department of Highway Safety  
 3 and Motor Vehicles; amending s. 316.003, F.S.;  
 4 defining the terms "service patrol vehicle" and  
 5 "driver-assistive truck platooning technology";  
 6 amending s. 316.0895, F.S.; providing that provisions  
 7 prohibiting a driver from following certain vehicles  
 8 within a specified distance do not apply to truck  
 9 tractor-semitrailer combinations under certain  
 10 circumstances; amending s. 316.126, F.S.; requiring  
 11 the driver of every other vehicle to take specified  
 12 actions if a utility service vehicle displaying any  
 13 visual signals or a service patrol vehicle displaying  
 14 amber rotating or flashing lights is performing  
 15 certain tasks on the roadside; amending s. 316.193,  
 16 F.S.; requiring, as of a specified date, that the  
 17 court order a certain qualified sobriety and drug  
 18 monitoring program in addition to the placement of an  
 19 ignition interlock device; deleting provisions  
 20 relating to a qualified sobriety and drug monitoring  
 21 program; directing the department to adopt rules  
 22 providing for the implementation of the use of certain  
 23 qualified sobriety and drug monitoring programs;  
 24 redefining the terms "qualified sobriety and drug  
 25 monitoring program" and "evidence-based program";  
 26 providing requirements for the program; amending s.  
 27 316.235, F.S.; revising requirements relating to a  
 28 deceleration lighting system for buses; amending s.  
 29 316.303, F.S.; providing exceptions to the prohibition  
 30 against certain television-type receiving equipment in  
 31 vehicles; amending s. 320.02, F.S.; increasing  
 32 the timeframe within which the owner of any motor

Page 1 of 23

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596-02694-16

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33 vehicle registered in the state must notify the  
 34 department of a change of address; providing  
 35 exceptions to such notification; amending s. 320.055,  
 36 F.S.; revising the renewal period for certain motor  
 37 vehicles subject to registration; amending s. 320.07,  
 38 F.S.; prohibiting a law enforcement officer from  
 39 issuing a citation for a specified violation until a  
 40 certain date; amending s. 322.051, F.S.; requiring the  
 41 department to issue or renew an identification card to  
 42 certain juvenile offenders; requiring that the  
 43 department's mobile issuing units process certain  
 44 identification cards; amending s. 322.19, F.S.;  
 45 increasing the timeframe within which certain persons  
 46 must obtain a replacement driver license or  
 47 identification card that reflects a change in his or  
 48 her legal name; providing exceptions to such  
 49 requirement; increasing the timeframe within which  
 50 certain persons must obtain a replacement driver  
 51 license or identification card that reflects a change  
 52 in the legal residence or mailing address in his or  
 53 her application, license, or card; amending s. 322.21,  
 54 F.S.; exempting certain juvenile offenders from a  
 55 specified fee for an original, renewal, or replacement  
 56 identification card; amending s. 322.221, F.S.;  
 57 requiring the department to issue an identification  
 58 card at no cost at the time a person's driver license  
 59 is suspended or revoked due to his or her physical or  
 60 mental condition; amending s. 322.271, F.S.; providing  
 61 that a certain qualified sobriety and drug monitoring

Page 2 of 23

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596-02694-16

20161394c1

62 program shall be ordered by the court on or after a  
 63 specified date in addition to the placement of an  
 64 ignition interlock device; amending s. 322.2715, F.S.;  
 65 providing that a certain qualified sobriety and drug  
 66 monitoring program shall be used by the department on  
 67 or after a specified date in addition to the placement  
 68 of an ignition interlock device; providing an  
 69 effective date.

70  
 71 Be It Enacted by the Legislature of the State of Florida:

72  
 73 Section 1. Subsections (94) and (95) are added to section  
 74 316.003, Florida Statutes, to read:

75 316.003 Definitions.—The following words and phrases, when  
 76 used in this chapter, shall have the meanings respectively  
 77 ascribed to them in this section, except where the context  
 78 otherwise requires:

79 (94) SERVICE PATROL VEHICLE.—A motor vehicle that bears an  
 80 emblem or markings with the wording "SERVICE VEHICLE" which is  
 81 visible from the roadway and clearly indicates that the vehicle  
 82 belongs to or is under contract with a person, an entity, a  
 83 cooperative, a board, a commission, a district, or a unit of  
 84 government that provides highway assistance services to  
 85 motorists, clears travel lanes, or provides temporary  
 86 maintenance of traffic support for incident response operations.

87 (95) DRIVER-ASSISTIVE TRUCK PLATOONING TECHNOLOGY.—Vehicle  
 88 automation technology that integrates a sensor array, wireless  
 89 communications, vehicle controls, and specialized software to  
 90 synchronize the acceleration and braking between no more than

Page 3 of 23

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596-02694-16

20161394c1

91 two truck tractor-semitrailer combinations, while leaving each  
 92 vehicle's steering control and systems command in the control of  
 93 the vehicle's driver.

94 Section 2. Subsection (2) of section 316.0895, Florida  
 95 Statutes, is amended to read:

96 316.0895 Following too closely.—

97 (2) It is unlawful for the driver of any motor truck, motor  
 98 truck drawing another vehicle, or vehicle towing another vehicle  
 99 or trailer, when traveling upon a roadway outside of a business  
 100 or residence district, to follow within 300 feet of another  
 101 motor truck, motor truck drawing another vehicle, or vehicle  
 102 towing another vehicle or trailer. ~~The provisions of This~~  
 103 ~~subsection may shall~~ not be construed to prevent overtaking and  
 104 passing, ~~nor does it nor shall the same~~ apply upon any lane  
 105 specially designated for use by motor trucks or other slow-  
 106 moving vehicles. This subsection does not apply to two truck  
 107 tractor-semitrailer combinations equipped and connected with  
 108 driver-assistive truck platooning technology, as defined in s.  
 109 316.003, and operating on a multilane limited access facility,  
 110 if:

111 (a) The owner or operator first submits to the department  
 112 an instrument of insurance, a surety bond, or proof of self-  
 113 insurance acceptable to the department in the amount of \$1  
 114 million;

115 (b) The vehicles are equipped with an external indication,  
 116 visible to surrounding motorists, that the vehicles are engaged  
 117 in truck platooning; and

118 (c) The vehicles are not required to be placarded pursuant  
 119 to 49 C.F.R. parts 171-179.

Page 4 of 23

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596-02694-16

20161394c1

120 Section 3. Section 316.126, Florida Statutes, is amended to  
121 read:

122 316.126 Operation of vehicles and actions of pedestrians on  
123 approach of an authorized emergency, sanitation, ~~or~~ utility  
124 service vehicle, or service patrol vehicle.-

125 (1) (a) Upon the immediate approach of an authorized  
126 emergency vehicle, while en route to meet an existing emergency,  
127 the driver of every other vehicle shall, when such emergency  
128 vehicle is giving audible signals by siren, exhaust whistle, or  
129 other adequate device, or visible signals by the use of  
130 displayed blue or red lights, yield the right-of-way to the  
131 emergency vehicle and shall immediately proceed to a position  
132 parallel to, and as close as reasonable to the closest edge of  
133 the curb of the roadway, clear of any intersection and shall  
134 stop and remain in position until the authorized emergency  
135 vehicle has passed, unless otherwise directed by a law  
136 enforcement officer.

137 (b) If an authorized emergency vehicle displaying any  
138 visual signals is parked on the roadside, a sanitation vehicle  
139 is performing a task related to the provision of sanitation  
140 services on the roadside, a utility service vehicle displaying  
141 any visual signals is performing a task related to the provision  
142 of utility services on the roadside, ~~or~~ a wrecker displaying  
143 amber rotating or flashing lights is performing a recovery or  
144 loading on the roadside, or a service patrol vehicle displaying  
145 amber rotating or flashing lights is performing official duties  
146 or services on the roadside, the driver of every other vehicle,  
147 as soon as it is safe:

148 1. Shall vacate the lane closest to the emergency vehicle,

Page 5 of 23

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596-02694-16

20161394c1

149 sanitation vehicle, utility service vehicle, ~~or~~ wrecker, or  
150 service patrol vehicle when driving on an interstate highway or  
151 other highway with two or more lanes traveling in the direction  
152 of the emergency vehicle, sanitation vehicle, utility service  
153 vehicle, ~~or~~ wrecker, or service patrol vehicle except when  
154 otherwise directed by a law enforcement officer. If such  
155 movement cannot be safely accomplished, the driver shall reduce  
156 speed as provided in subparagraph 2.

157 2. Shall slow to a speed that is 20 miles per hour less  
158 than the posted speed limit when the posted speed limit is 25  
159 miles per hour or greater; or travel at 5 miles per hour when  
160 the posted speed limit is 20 miles per hour or less, when  
161 driving on a two-lane road, except when otherwise directed by a  
162 law enforcement officer.

163 (c) The Department of Highway Safety and Motor Vehicles  
164 shall provide an educational awareness campaign informing the  
165 motoring public about the Move Over Act. The department shall  
166 provide information about the Move Over Act in all newly printed  
167 driver license educational materials.

168 (2) Every pedestrian using the road right-of-way shall  
169 yield the right-of-way until the authorized emergency vehicle  
170 has passed, unless otherwise directed by a law enforcement  
171 officer.

172 (3) An authorized emergency vehicle, when en route to meet  
173 an existing emergency, shall warn all other vehicular traffic  
174 along the emergency route by an audible signal, siren, exhaust  
175 whistle, or other adequate device or by a visible signal by the  
176 use of displayed blue or red lights. While en route to such  
177 emergency, the emergency vehicle shall otherwise proceed in a

Page 6 of 23

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596-02694-16

20161394c1

178 manner consistent with the laws regulating vehicular traffic  
179 upon the highways of this state.

180 (4) This section does not diminish or enlarge any rules of  
181 evidence or liability in any case involving the operation of an  
182 emergency vehicle.

183 (5) This section does not relieve the driver of an  
184 authorized emergency vehicle from the duty to drive with due  
185 regard for the safety of all persons using the highway.

186 (6) A violation of this section is a noncriminal traffic  
187 infraction, punishable pursuant to chapter 318 as either a  
188 moving violation for infractions of subsection (1) or subsection  
189 (3), or as a pedestrian violation for infractions of subsection  
190 (2).

191 Section 4. Subsection (2), paragraph (c) of subsection (4),  
192 paragraph (j) of subsection (6), and subsection (11) of section  
193 316.193, Florida Statutes, are amended, and subsection (15) is  
194 added to that section, to read:

195 316.193 Driving under the influence; penalties.—

196 (2) (a) Except as provided in paragraph (b), subsection (3),  
197 or subsection (4), any person who is convicted of a violation of  
198 subsection (1) shall be punished:

199 1. By a fine of:

200 a. Not less than \$500 or more than \$1,000 for a first  
201 conviction.

202 b. Not less than \$1,000 or more than \$2,000 for a second  
203 conviction; and

204 2. By imprisonment for:

205 a. Not more than 6 months for a first conviction.

206 b. Not more than 9 months for a second conviction.

596-02694-16

20161394c1

207 3. For a second conviction, by mandatory placement for a  
208 period of at least 1 year, at the convicted person's sole  
209 expense, of an ignition interlock device approved by the  
210 department in accordance with s. 316.1938 upon all vehicles that  
211 are individually or jointly leased or owned and routinely  
212 operated by the convicted person, when the convicted person  
213 qualifies for a permanent or restricted license. The  
214 installation of such device may not occur before July 1, 2003.  
215 Effective October 1, 2016, the court shall order a qualified  
216 sobriety and drug monitoring program as defined in subsection  
217 (15) and authorized by 23 U.S.C. s. 164 in addition to the  
218 placement of an ignition interlock device required by this  
219 section.

220 (b)1. Any person who is convicted of a third violation of  
221 this section for an offense that occurs within 10 years after a  
222 prior conviction for a violation of this section commits a  
223 felony of the third degree, punishable as provided in s.  
224 775.082, s. 775.083, or s. 775.084. In addition, the court shall  
225 order the mandatory placement for a period of not less than 2  
226 years, at the convicted person's sole expense, of an ignition  
227 interlock device approved by the department in accordance with  
228 s. 316.1938 upon all vehicles that are individually or jointly  
229 leased or owned and routinely operated by the convicted person,  
230 when the convicted person qualifies for a permanent or  
231 restricted license. The installation of such device may not  
232 occur before July 1, 2003. Effective October 1, 2016, the court  
233 shall order a qualified sobriety and drug monitoring program as  
234 defined in subsection (15) and authorized by 23 U.S.C. s. 164 in  
235 addition to the placement of an ignition interlock device

596-02694-16

20161394c1

236 required by this section.

237 2. Any person who is convicted of a third violation of this  
 238 section for an offense that occurs more than 10 years after the  
 239 date of a prior conviction for a violation of this section shall  
 240 be punished by a fine of not less than \$2,000 or more than  
 241 \$5,000 and by imprisonment for not more than 12 months. In  
 242 addition, the court shall order the mandatory placement for a  
 243 period of at least 2 years, at the convicted person's sole  
 244 expense, of an ignition interlock device approved by the  
 245 department in accordance with s. 316.1938 upon all vehicles that  
 246 are individually or jointly leased or owned and routinely  
 247 operated by the convicted person, when the convicted person  
 248 qualifies for a permanent or restricted license. The  
 249 installation of such device may not occur before July 1, 2003.  
 250 Effective October 1, 2016, the court shall order a qualified  
 251 sobriety and drug monitoring program as defined in subsection  
 252 (15) and authorized by 23 U.S.C. s. 164 in addition to the  
 253 placement of an ignition interlock device required by this  
 254 section.

255 3. Any person who is convicted of a fourth or subsequent  
 256 violation of this section, regardless of when any prior  
 257 conviction for a violation of this section occurred, commits a  
 258 felony of the third degree, punishable as provided in s.  
 259 775.082, s. 775.083, or s. 775.084. However, the fine imposed  
 260 for such fourth or subsequent violation may be not less than  
 261 \$2,000.

262 (c) In addition to the penalties in paragraph (a), the  
 263 court may order placement, at the convicted person's sole  
 264 expense, of an ignition interlock device approved by the

Page 9 of 23

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596-02694-16

20161394c1

265 department in accordance with s. 316.1938 for at least 6  
 266 continuous months upon all vehicles that are individually or  
 267 jointly leased or owned and routinely operated by the convicted  
 268 person if, at the time of the offense, the person had a blood-  
 269 alcohol level or breath-alcohol level of .08 or higher.  
 270 Effective October 1, 2016, the court shall order a qualified  
 271 sobriety and drug monitoring program as defined in subsection  
 272 (15) and authorized by 23 U.S.C. s. 164 in addition to the  
 273 placement of an ignition interlock device required by this  
 274 section.

275 (4) Any person who is convicted of a violation of  
 276 subsection (1) and who has a blood-alcohol level or breath-  
 277 alcohol level of 0.15 or higher, or any person who is convicted  
 278 of a violation of subsection (1) and who at the time of the  
 279 offense was accompanied in the vehicle by a person under the age  
 280 of 18 years, shall be punished:

281 (c) In addition to the penalties in paragraphs (a) and (b),  
 282 the court shall order the mandatory placement, at the convicted  
 283 person's sole expense, of an ignition interlock device approved  
 284 by the department in accordance with s. 316.1938 upon all  
 285 vehicles that are individually or jointly leased or owned and  
 286 routinely operated by the convicted person for not less than 6  
 287 continuous months for the first offense and for not less than 2  
 288 continuous years for a second offense, when the convicted person  
 289 qualifies for a permanent or restricted license. Effective  
 290 October 1, 2016, the court shall order a qualified sobriety and  
 291 drug monitoring program as defined in subsection (15) and  
 292 authorized by 23 U.S.C. s. 164 in addition to the placement of  
 293 an ignition interlock device required by this section.

Page 10 of 23

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596-02694-16

20161394c1

294 (6) With respect to any person convicted of a violation of  
 295 subsection (1), regardless of any penalty imposed pursuant to  
 296 subsection (2), subsection (3), or subsection (4):

297 (j)~~1~~. Notwithstanding the provisions of this section, s.  
 298 316.1937, and s. 322.2715 relating to ignition interlock devices  
 299 required for second or subsequent offenders, ~~in order to~~  
 300 ~~strengthen the pretrial and posttrial options available to~~  
 301 ~~prosecutors and judges~~, the court shall ~~may~~ order, ~~if deemed~~  
 302 ~~appropriate~~, that a person participate in a qualified sobriety  
 303 and drug monitoring program, as defined in subsection (15)  
 304 ~~subparagraph 2~~, in addition to the ignition interlock device  
 305 requirement. Participation is ~~shall be~~ at the person's sole  
 306 expense.

307 2. As used in this paragraph, the term "qualified sobriety  
 308 and drug monitoring program" means an evidence-based program,  
 309 approved by the department, in which participants are regularly  
 310 tested for alcohol and drug use. As the court deems appropriate,  
 311 the program may monitor alcohol or drugs through one or more of  
 312 the following modalities: ~~breath testing twice a day; continuous~~  
 313 ~~transdermal alcohol monitoring in cases of hardship; or random~~  
 314 ~~blood, breath, urine, or oral fluid testing. Testing modalities~~  
 315 ~~that provide the best ability to sanction a violation as close~~  
 316 ~~in time as reasonably feasible to the occurrence of the~~  
 317 ~~violation should be given preference. This paragraph does not~~  
 318 ~~preclude a court from ordering an ignition interlock device as a~~  
 319 ~~testing modality.~~

320 3. For purposes of this paragraph, the term "evidence based  
 321 program" means a program that satisfies the requirements of at  
 322 least two of the following:

596-02694-16

20161394c1

323 a. ~~The program is included in the federal registry of~~  
 324 ~~evidence-based programs and practices.~~  
 325 b. ~~The program has been reported in a peer-reviewed journal~~  
 326 ~~as having positive effects on the primary targeted outcome.~~  
 327 c. ~~The program has been documented as effective by informed~~  
 328 ~~experts and other sources.~~

329  
 330 For the purposes of this section, any conviction for a violation  
 331 of s. 327.35; a previous conviction for the violation of former  
 332 s. 316.1931, former s. 860.01, or former s. 316.028; or a  
 333 previous conviction outside this state for driving under the  
 334 influence, driving while intoxicated, driving with an unlawful  
 335 blood-alcohol level, driving with an unlawful breath-alcohol  
 336 level, or any other similar alcohol-related or drug-related  
 337 traffic offense, is also considered a previous conviction for  
 338 violation of this section. However, in satisfaction of the fine  
 339 imposed pursuant to this section, the court may, upon a finding  
 340 that the defendant is financially unable to pay either all or  
 341 part of the fine, order that the defendant participate for a  
 342 specified additional period of time in public service or a  
 343 community work project in lieu of payment of that portion of the  
 344 fine which the court determines the defendant is unable to pay.  
 345 In determining such additional sentence, the court shall  
 346 consider the amount of the unpaid portion of the fine and the  
 347 reasonable value of the services to be ordered; however, the  
 348 court may not compute the reasonable value of services at a rate  
 349 less than the federal minimum wage at the time of sentencing.

350 (11) The Department of Highway Safety and Motor Vehicles is  
 351 directed to adopt rules providing for the implementation of the

596-02694-16

20161394c1

352 use of ignition interlock devices and qualified sobriety and  
 353 drug monitoring programs defined in subsection (15).

354 (15) As used in this chapter and chapter 322, the term  
 355 "qualified sobriety and drug monitoring program" means an  
 356 evidence-based program, approved by the department, in which  
 357 participants are regularly tested for alcohol and drug use. As  
 358 the court deems appropriate, the program may monitor alcohol or  
 359 drugs through one or more of the following modalities: breath  
 360 testing twice a day; continuous transdermal alcohol monitoring  
 361 in cases of hardship; or random blood, breath, urine, drug  
 362 patch, or oral fluid testing. Testing modalities that detect a  
 363 violation as soon after it occurs as is reasonably feasible  
 364 should be given preference. Participation is at the person's  
 365 sole expense. The term "evidence-based program" means a program  
 366 that satisfies at least two of the following requirements:

367 (a) The program is included in the federal registry of  
 368 evidence-based programs and practices.

369 (b) The program has been reported in a peer-reviewed  
 370 journal as having positive effects on the primary targeted  
 371 outcome.

372 (c) The program has been documented as effective by  
 373 informed experts and other sources.

374 Section 5. Subsection (5) of section 316.235, Florida  
 375 Statutes, is amended to read:

376 316.235 Additional lighting equipment.—

377 (5) A bus, ~~as defined in s. 316.003(3)~~, may be equipped  
 378 with a deceleration lighting system that which cautions  
 379 following vehicles that the bus is slowing, is preparing to  
 380 stop, or is stopped. Such lighting system shall consist of two

596-02694-16

20161394c1

381 red or amber lights mounted in horizontal alignment on the rear  
 382 of the vehicle at ~~or near~~ the vertical centerline of the  
 383 vehicle, no greater than 12 inches apart, not higher than the  
 384 lower edge of the rear window or, if the vehicle has no rear  
 385 window, not higher than 72 inches from the ground. Such lights  
 386 shall be visible from a distance of not less than 300 feet to  
 387 the rear in normal sunlight. Lights are permitted to light and  
 388 flash during deceleration, braking, or standing and idling of  
 389 the bus. Vehicular hazard warning flashers may be used in  
 390 conjunction with or in lieu of a rear-mounted deceleration  
 391 lighting system.

392 Section 6. Subsections (1) and (3) of section 316.303,  
 393 Florida Statutes, are amended to read:

394 316.303 Television receivers.—

395 (1) A ~~no~~ motor vehicle may not be operated on the highways  
 396 of this state if the vehicle is ~~shall be~~ equipped with  
 397 television-type receiving equipment so located that the viewer  
 398 or screen is visible from the driver's seat, unless the vehicle  
 399 is equipped with autonomous technology, as defined in s.  
 400 316.003, and is being operated in autonomous mode, as provided  
 401 in s. 316.85(2).

402 (3) This section does not prohibit the use of an electronic  
 403 display used in conjunction with a vehicle navigation system, or  
 404 an electronic display used by an operator of a vehicle equipped  
 405 and operating with driver-assistive truck platooning technology,  
 406 as defined in s. 316.003.

407 Section 7. Subsection (4) of section 320.02, Florida  
 408 Statutes, is amended to read:

409 320.02 Registration required; application for registration;

596-02694-16

20161394c1

410 forms.-

411 (4) Except as provided in ss. 775.21, 775.261, 943.0435,  
 412 944.607, and 985.4815, the owner of any motor vehicle registered  
 413 in the state shall notify the department in writing of any  
 414 change of address within 30 ~~20~~ days of such change. The  
 415 notification shall include the registration license plate  
 416 number, the vehicle identification number (VIN) or title  
 417 certificate number, year of vehicle make, and the owner's full  
 418 name.

419 Section 8. Paragraph (a) of subsection (1) of section  
 420 320.055, Florida Statutes, is amended to read:

421 320.055 Registration periods; renewal periods.—The  
 422 following registration periods and renewal periods are  
 423 established:

424 (1) (a) For a motor vehicle subject to registration under s.  
 425 320.08(1), (2), (3), (5) (b), (c), (d), or (f), (6) (a), (7), (8),  
 426 (9), or (10) and owned by a natural person, the registration  
 427 period begins the first day of the birth month of the owner and  
 428 ends the last day of the month immediately preceding the owner's  
 429 birth month in the succeeding year. If such vehicle is  
 430 registered in the name of more than one person, the birth month  
 431 of the person whose name first appears on the registration shall  
 432 be used to determine the registration period. For a vehicle  
 433 subject to this registration period, the renewal period is the  
 434 ~~30-day~~ period ending at midnight on the last day of the vehicle  
 435 owner's date of birth month.

436 Section 9. Paragraph (a) of subsection (3) of section  
 437 320.07, Florida Statutes, is amended to read:

438 320.07 Expiration of registration; renewal required;

Page 15 of 23

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596-02694-16

20161394c1

439 penalties.-

440 (3) The operation of any motor vehicle without having  
 441 attached thereto a registration license plate and validation  
 442 stickers, or the use of any mobile home without having attached  
 443 thereto a mobile home sticker, for the current registration  
 444 period shall subject the owner thereof, if he or she is present,  
 445 or, if the owner is not present, the operator thereof to the  
 446 following penalty provisions:

447 (a) Any person whose motor vehicle or mobile home  
 448 registration has been expired for a period of 6 months or less  
 449 commits a noncriminal traffic infraction, punishable as a  
 450 nonmoving violation as provided in chapter 318. However, a law  
 451 enforcement officer may not issue a citation for a violation  
 452 under this paragraph until midnight on the last day of the  
 453 owner's birth month of the year the registration expires.

454 Section 10. Subsection (9) of section 322.051, Florida  
 455 Statutes, is amended to read:

456 322.051 Identification cards.—

457 (9) Notwithstanding any other provision of this section or  
 458 s. 322.21 to the contrary, the department shall issue or renew a  
 459 card at no charge to a person who presents evidence satisfactory  
 460 to the department that he or she is homeless as defined in s.  
 461 414.0252(7), to a juvenile offender who is in the custody or  
 462 under the supervision of the Department of Juvenile Justice and  
 463 receiving services pursuant to s. 985.461, to an inmate  
 464 receiving a card issued pursuant to s. 944.605(7), or, if  
 465 necessary, to an inmate receiving a replacement card if the  
 466 department determines that he or she has a valid state  
 467 identification card. If the replacement state identification

Page 16 of 23

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596-02694-16

20161394c1

468 card is scheduled to expire within 6 months, the department may  
 469 also issue a temporary permit valid for at least 6 months after  
 470 the release date. The department's mobile issuing units shall  
 471 process the identification cards for juvenile offenders and  
 472 inmates at no charge, as provided by s. 944.605 (7) (a) and (b).

473 Section 11. Subsections (1) and (2) of section 322.19,  
 474 Florida Statutes, are amended to read:

475 322.19 Change of address or name.—

476 (1) Except as provided in ss. 775.21, 775.261, 943.0435,  
 477 944.607, and 985.4815, whenever any person, after applying for  
 478 or receiving a driver license or identification card, changes  
 479 his or her legal name, that person must within 30 ~~40~~ days  
 480 thereafter obtain a replacement license or card that reflects  
 481 the change.

482 (2) If a ~~Whenever any~~ person, after applying for or  
 483 receiving a driver license or identification card, changes the  
 484 legal residence or mailing address in the application, ~~or~~  
 485 license, or card, the person must, within 30 ~~40~~ calendar days  
 486 after making the change, obtain a replacement license or card  
 487 that reflects the change. A written request to the department  
 488 must include the old and new addresses and the driver license or  
 489 identification card number. Any person who has a valid, current  
 490 student identification card issued by an educational institution  
 491 in this state is presumed not to have changed his or her legal  
 492 residence or mailing address. This subsection does not affect  
 493 any person required to register a permanent or temporary address  
 494 change pursuant to s. 775.13, s. 775.21, s. 775.25, or s.  
 495 943.0435.

496 Section 12. Paragraph (f) of subsection (1) of section

596-02694-16

20161394c1

497 322.21, Florida Statutes, is amended to read:

498 322.21 License fees; procedure for handling and collecting  
 499 fees.—

500 (1) Except as otherwise provided herein, the fee for:

501 (f) An original, renewal, or replacement identification  
 502 card issued pursuant to s. 322.051 is \$25, except that an  
 503 applicant who presents evidence satisfactory to the department  
 504 that he or she is homeless as defined in s. 414.0252(7); ~~or~~ his  
 505 or her annual income is at or below 100 percent of the federal  
 506 poverty level; or he or she is a juvenile offender who is in the  
 507 custody or under the supervision of the Department of Juvenile  
 508 Justice, is receiving services pursuant to s. 985.461, and whose  
 509 identification card is issued by the department's mobile issuing  
 510 units is exempt from such fee. Funds collected from fees for  
 511 original, renewal, or replacement identification cards shall be  
 512 distributed as follows:

513 1. For an original identification card issued pursuant to  
 514 s. 322.051, the fee shall be deposited into the General Revenue  
 515 Fund.

516 2. For a renewal identification card issued pursuant to s.  
 517 322.051, \$6 shall be deposited into the Highway Safety Operating  
 518 Trust Fund, and \$19 shall be deposited into the General Revenue  
 519 Fund.

520 3. For a replacement identification card issued pursuant to  
 521 s. 322.051, \$9 shall be deposited into the Highway Safety  
 522 Operating Trust Fund, and \$16 shall be deposited into the  
 523 General Revenue Fund. Beginning July 1, 2015, or upon completion  
 524 of the transition of the driver license issuance services, if  
 525 the replacement identification card is issued by the tax

596-02694-16

20161394c1

526 collector, the tax collector shall retain the \$9 that would  
 527 otherwise be deposited into the Highway Safety Operating Trust  
 528 Fund and the remaining revenues shall be deposited into the  
 529 General Revenue Fund.

530 Section 13. Subsection (3) of section 322.221, Florida  
 531 Statutes, is amended to read:

532 322.221 Department may require reexamination.—

533 (3) (a) Upon the conclusion of such examination or  
 534 reexamination the department shall take action as may be  
 535 appropriate and may suspend or revoke the license of such person  
 536 or permit him or her to retain such license, or may issue a  
 537 license subject to restrictions as permitted under s. 322.16.  
 538 Refusal or neglect of the licensee to submit to such examination  
 539 or reexamination shall be ground for suspension or revocation of  
 540 his or her license.

541 (b) If the department suspends or revokes the license of a  
 542 person due to his or her physical or mental condition, the  
 543 department shall issue an identification card to the person at  
 544 the time of the license suspension or revocation. The department  
 545 may not charge fees for the issuance of the identification card.

546 Section 14. Paragraph (e) of subsection (2) of section  
 547 322.271, Florida Statutes, is amended to read:

548 322.271 Authority to modify revocation, cancellation, or  
 549 suspension order.—

550 (2) At such hearing, the person whose license has been  
 551 suspended, canceled, or revoked may show that such suspension,  
 552 cancellation, or revocation causes a serious hardship and  
 553 precludes the person from carrying out his or her normal  
 554 business occupation, trade, or employment and that the use of

596-02694-16

20161394c1

555 the person's license in the normal course of his or her business  
 556 is necessary to the proper support of the person or his or her  
 557 family.

558 (e) The department, based upon review of the licensee's  
 559 application for reinstatement, may require use of an ignition  
 560 interlock device pursuant to s. 322.2715. Effective October 1,  
 561 2016, a qualified sobriety and drug monitoring program as  
 562 defined in s. 316.193(15) and authorized by 23 U.S.C. s. 164  
 563 shall be ordered by the court in addition to the placement of  
 564 the ignition interlock device.

565 Section 15. Subsections (1), (3), and (4) of section  
 566 322.2715, Florida Statutes, are amended to read:

567 322.2715 Ignition interlock device.—

568 (1) Before issuing a permanent or restricted driver license  
 569 under this chapter, the department shall require the placement  
 570 of a department-approved ignition interlock device for any  
 571 person convicted of committing an offense of driving under the  
 572 influence as specified in subsection (3), except that  
 573 consideration may be given to those individuals having a  
 574 documented medical condition that would prohibit the device from  
 575 functioning normally. If a medical waiver has been granted for a  
 576 convicted person seeking a restricted license, the convicted  
 577 person shall not be entitled to a restricted license until the  
 578 required ignition interlock device installation period under  
 579 subsection (3) expires, in addition to the time requirements  
 580 under s. 322.271. If a medical waiver has been approved for a  
 581 convicted person seeking permanent reinstatement of the driver  
 582 license, the convicted person must be restricted to an  
 583 employment-purposes-only license and be supervised by a licensed



596-02694-16 20161394c1

584 DUI program until the required ignition interlock device  
 585 installation period under subsection (3) expires. An interlock  
 586 device shall be placed on all vehicles that are individually or  
 587 jointly leased or owned and routinely operated by the convicted  
 588 person. Effective October 1, 2016, a qualified sobriety and drug  
 589 monitoring program as defined in s. 316.193(15) and authorized  
 590 by 23 U.S.C. s. 164 shall be used by the department in addition  
 591 to the placement of an ignition interlock device required by  
 592 this section.

593 (3) If the person is convicted of:

594 (a) A first offense of driving under the influence under s.  
 595 316.193 and has an unlawful blood-alcohol level or breath-  
 596 alcohol level as specified in s. 316.193(1), the ignition  
 597 interlock device may be installed for at least 6 continuous  
 598 months.

599 (b) A first offense of driving under the influence under s.  
 600 316.193 and has an unlawful blood-alcohol level or breath-  
 601 alcohol level as specified in s. 316.193(4), or if a person is  
 602 convicted of a violation of s. 316.193 and was at the time of  
 603 the offense accompanied in the vehicle by a person younger than  
 604 18 years of age, the person shall have the ignition interlock  
 605 device installed for at least 6 continuous months for the first  
 606 offense and for at least 2 continuous years for a second  
 607 offense.

608 (c) A second offense of driving under the influence, the  
 609 ignition interlock device shall be installed for a period of at  
 610 least 1 continuous year.

611 (d) A third offense of driving under the influence which  
 612 occurs within 10 years after a prior conviction for a violation

Page 21 of 23

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596-02694-16 20161394c1

613 of s. 316.193, the ignition interlock device shall be installed  
 614 for a period of at least 2 continuous years.

615 (e) A third offense of driving under the influence which  
 616 occurs more than 10 years after the date of a prior conviction,  
 617 the ignition interlock device shall be installed for a period of  
 618 at least 2 continuous years.

619 (f) A fourth or subsequent offense of driving under the  
 620 influence, the ignition interlock device shall be installed for  
 621 a period of at least 5 years.

622  
 623 Effective October 1, 2016, for the offenses specified in this  
 624 subsection, a qualified sobriety and drug monitoring program as  
 625 defined in s. 316.193(15) and authorized by 23 U.S.C. s. 164  
 626 shall be used by the department in addition to the placement of  
 627 an ignition interlock device required by this section.

628 (4) If the court fails to order the mandatory placement of  
 629 the ignition interlock device or fails to order for the  
 630 applicable period the mandatory placement of an ignition  
 631 interlock device under s. 316.193 or s. 316.1937 at the time of  
 632 imposing sentence or within 30 days thereafter, the department  
 633 shall immediately require that the ignition interlock device be  
 634 installed as provided in this section, except that consideration  
 635 may be given to those individuals having a documented medical  
 636 condition that would prohibit the device from functioning  
 637 normally. Effective October 1, 2016, a qualified sobriety and  
 638 drug monitoring program as defined in s. 316.193(15) and  
 639 authorized by 23 U.S.C. s. 164 shall be used by the department  
 640 in addition to the placement of an ignition interlock device  
 641 required by this section. This subsection applies to the

Page 22 of 23

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596-02694-16

20161394c1

642 reinstatement of the driving privilege following a revocation,  
643 suspension, or cancellation that is based upon a conviction for  
644 the offense of driving under the influence which occurs on or  
645 after July 1, 2005.

646 Section 16. This act shall take effect October 1, 2016.



The Florida Senate

## Committee Agenda Request

**To:** Senator Anitere Flores, Chair  
Committee on Fiscal Policy

**Subject:** Committee Agenda Request

**Date:** February 17, 2016

---

I respectfully request that **Senate Bill #1394**, relating to **Department of Highway Safety and Motor Vehicles**, be placed on the:

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

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

Senator Jeff Brandes  
Florida Senate, District 22

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/29/16

Meeting Date

1394

Bill Number (if applicable)

481826

Amendment Barcode (if applicable)

Topic DHS MV

Name Ingrid Delgado

Job Title Associate for Social Concerns & Respect Life

Address 201 W Park Av

Street

Phone

Tallahassee

City

FL

State

32301

Zip

Email

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against

(The Chair will read this information into the record.)

Representing Florida Conference of Catholic Bishops

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

2/29/16  
Meeting Date

1394  
Bill Number (if applicable)

231632  
Amendment Barcode (if applicable)

Topic DHS IV

Name Ingrid Delgado

Job Title Associate for Social Concerns & Respect Life

Address 201 W Park Av Phone \_\_\_\_\_  
Street

Tallahassee FL 32301 Email \_\_\_\_\_  
City State Zip

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

Representing Florida Conference of Catholic Bishops

Appearing at request of Chair:  Yes  No  
Lobbyist registered with Legislature:  Yes  No

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

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

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

2/29/16  
Meeting Date

1394  
Bill Number (if applicable)

726940  
Amendment Barcode (if applicable)

Topic \_\_\_\_\_

Name LAURA McLeod

Job Title Executive Director

Address 1725 Mahan Drive

Phone 850-671-3389

Tallahassee FL 32308  
City State Zip

Email lmcLeod@fladvi.org

Speaking:  For  Against  Information

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

Representing Florida Association of DUI Programs

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

2/29/14  
Meeting Date

1394  
Bill Number (if applicable)

Topic \_\_\_\_\_

Amendment Barcode (if applicable)

Name Laura McLeod

Job Title Executive Director

Address 1725 Mahan Drive  
Street

Phone 850-671-3384

Tallahassee FL 32308  
City State Zip

Email lmcLeod@fladvis.org

Speaking:  For  Against  Information

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

Representing Florida Association of DUI Programs

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

2/29

Meeting Date

1394

Bill Number (if applicable)

Topic AUTOMOBILE DEALERS . DHSMV

Amendment Barcode (if applicable)

Name DAVID RAMBA

Job Title \_\_\_\_\_

Address 120 S. MONROE ST

Phone 850.727.7087

Street

Tau

FL

32301

Email \_\_\_\_\_

City

State

Zip

Speaking:  For  Against  Information

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

Representing FLORIDA AUTO DEALERS ASSN.

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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



THE FLORIDA SENATE

APPEARANCE RECORD

2-29-16

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

SB1394

Meeting Date

Bill Number (if applicable)

Topic No cost Identification Cards for DJ Youth

Amendment Barcode (if applicable)

Name Meredith Stanfield

Job Title Legislative Affairs Director

Address 2737 Centerview Dr.

Phone 717-2716

Street

Tallahassee, FL

32399

City

State

Zip

Email meredith.stanfield@

djj.state.fl.us

Speaking:  For  Against  Information

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

Representing Department of Juvenile Justice

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/29/16

Meeting Date

1394

Bill Number (if applicable)

?

404110

Amendment Barcode (if applicable)

Topic DOT/Surety Bonds

Name Kelly Mallette

Job Title

Address 104 West Jefferson Street

Street

Phone (850) 224-3427

Tallahassee, FL 32301

City

State

Zip

Email Kelly@rthackpa.com

Speaking:  For  Against  Information

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

Representing Florida Association of Rehabilitation Facilities

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

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

---

Prepared By: The Professional Staff of the Committee on Fiscal Policy

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BILL: CS/SB 1470

INTRODUCER: Environmental Preservation and Conservation Committee and Senator Latvala

SUBJECT: Crustaceans

DATE: February 26, 2016

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Hinton</u>	<u>Rogers</u>	<u>EP</u>	<b>Fav/CS</b>
2.	<u>Harkness</u>	<u>Sadberry</u>	<u>ACJ</u>	<b>Recommend: Favorable</b>
3.	<u>Jones</u>	<u>Hrdlicka</u>	<u>FP</u>	<b>Favorable</b>

**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

---

**I. Summary:**

CS/SB 1470 amends s. 379.365, F.S., to clarify that the administrative penalties that the Florida Fish and Wildlife Conservation Commission (FWC) must assess for commercial harvesters are in addition to the criminal penalties related to stone crab trap certificates and trap tags.

The bill amends s. 379.3671, F.S., to revise the administrative penalties for subsequent violations that the FWC must assess for commercial harvesters related to spiny lobster traps.

The bill amends s. 379.407, F.S., to provide that it is a major violation for a recreational or commercial harvester to possess an undersized spiny lobster, unless authorized to do so by a FWC rule. The bill also provides for violations involving fewer than 100 undersized spiny lobsters, each undersized spiny lobster may be charged as a separate misdemeanor offense. However, the total misdemeanor penalties for any one scheme or course of conduct may not exceed 4 years imprisonment and a civil fine of \$4,000. The bill provides penalties for such a violation.

The bill amends s. 921.0022, F.S., to make the changes to Level 5 of the Offense Severity Ranking Chart relating to stone crabs and spiny lobsters.

The Criminal Justice Impact Conference determined that the bill is likely to result in a positive indeterminate impact on state prison beds, which would likely have a negative indeterminate

state fiscal impact. The bill also has a fiscal impact on the private sector. See Section V. Fiscal Impact Statement.

The bill is effective October 1, 2016.

## II. Present Situation:

The Caribbean spiny lobster is commonly referred to as the Florida spiny lobster and inhabits tropical and subtropical waters of the Atlantic Ocean, Caribbean Sea, and Gulf of Mexico. Spiny lobsters get their name from the forward-pointing spines that cover their bodies to help protect them from predators.<sup>1</sup>

Two species of stone crabs exist in the waters off Florida, the Florida stone crab and the gulf stone crab. However, these crabs were once one species. Changes in climate and sea level likely kept two populations separate over time until they became genetically distinct.<sup>2</sup> The Florida Fish and Wildlife Conservation Commission (FWC) regulates the seasons when spiny lobsters and stone crabs can be caught, including the minimum size and bag limits.<sup>3</sup>

### Commercial Fishing Licenses

In order to commercially harvest and sell spiny lobster or stone crab in Florida, a person must possess:

- A valid Saltwater Products License (SPL), which is Florida's commercial fishing license;
- A restricted species (RS) endorsement; and
- A Crawfish (C#) or (CD#) endorsement for spiny lobster:<sup>4</sup> or
- A Stone Crab endorsement (X).<sup>5</sup>

Florida offers three types of SPLs:

- An "Individual SPL" authorizes a person to engage in commercial fishing activities from shore or any commercially registered vessel.
- A "Crew SPL" is also issued in an individual's name and it authorizes commercial fishing by the person and anyone with them on a commercial vessel. The Crew SPL also allows the individual to fish commercially from shore or any commercially registered vessel.

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<sup>1</sup> Fish and Wildlife Conservation Commission, Research, Saltwater, Crustaceans – Marine Arthropods, Lobster, *Spiny Lobster – General Facts*, available at <http://myfwc.com/research/saltwater/crustaceans/lobster/facts/> (last visited Feb. 25, 2016).

<sup>2</sup> Fish and Wildlife Conservation Commission, Research, Saltwater, Crustaceans – Marine Arthropods, Stone Crabs, *Stone Crab Speciation*, available at <http://myfwc.com/research/saltwater/crustaceans/stone-crabs/proposed-evolutionary-history/> (last visited Feb. 25, 2016).

<sup>3</sup> See Fish and Wildlife Conservation Commission, Fishing, Saltwater Fishing, Commercial, *Commercial Regulations for Spiny Lobster (Crawfish)*, available at <http://myfwc.com/fishing/saltwater/commercial/spiny-lobster/> (last visited Feb. 25, 2016) and Fish and Wildlife Conservation Commission, Fishing, Saltwater Fishing, Commercial, *Stone Crab*, available at <http://myfwc.com/fishing/saltwater/commercial/stone-crab/> (last visited Feb. 25, 2016).

<sup>4</sup> Fish and Wildlife Conservation Commission, Fishing, Saltwater Fishing, Commercial, *Commercial Regulations for Spiny Lobster (Crawfish)*, available at <http://myfwc.com/fishing/saltwater/commercial/spiny-lobster/> (last visited Feb. 25, 2016).

<sup>5</sup> Fish and Wildlife Conservation Commission, Fishing, Saltwater Fishing, Commercial, *Stone Crab*, available at <http://myfwc.com/fishing/saltwater/commercial/stone-crab/> (last visited Feb. 25, 2016).

- A “Vessel SPL” is issued to a vessel registered for commercial use and authorizes each person aboard that registered vessel to engage in commercial fishing. This license differs from the two other SPLs in that it is not issued in an individual’s name, but is rather tied to a specific vessel.<sup>6</sup>

A restricted species (RS) endorsement on an SPL is required to sell to a licensed wholesale dealer species which the state, by law or rule, has designated as “restricted species.”<sup>7</sup> Spiny lobster<sup>8</sup> and stone crabs<sup>9</sup> are restricted species. An RS may be issued to a person who is at least 16 years of age, or to a firm certifying that over 25 percent of its income or \$5,000 of its income, whichever is less, is attributable to the sale of saltwater products pursuant to an SPL.<sup>10</sup>

### **Criminal Penalties for the Possession of Spiny Lobsters**

Section 379.407(5), F.S., provides that it is a major violation for any person, firm, or corporation to be in possession of spiny lobster during the closed season or, while on the water, to be in possession of spiny lobster tails that have been wrung or separated from the body, unless such possession is allowed by the FWC rule. It also provides the penalties for this violation, which include imprisonment, fines, civil penalties, and suspension and or revocation of a license.

### **Administrative Penalties Relating to Stone Crabs**

Section 379.365, F.S., provides administrative penalties for commercial harvesters, in addition to the criminal penalties discussed above, who violate the FWC rules regulating stone crab trap certificates and trap tags. The FWC must assess the following administrative penalties for:

- A first violation, a penalty up to \$1,000;
- A second violation within 24 months of any previous violation, a penalty up to \$2,000 and the FWC may suspend the stone crab endorsement for 12 months;
- A third violation within 36 months of any two previous violations, a penalty up to \$5,000 and the FWC may suspend the stone crab endorsement for 24 months; and
- A fourth violation within 48 months of any three previous violations, a permanent revocation of all the violator’s saltwater fishing privileges including having the FWC proceed against the endorsement holder’s SPL.<sup>11</sup>

### **Administrative Penalties Relating to Spiny Lobsters**

Section 379.3671, F.S., provides administrative penalties for commercial harvesters, in addition to the criminal penalties discussed above, who violate the FWC rules regulating spiny lobster

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<sup>6</sup> Florida Fish and Wildlife Conservation Commission, Licenses and Permits, *Commercial Saltwater Products - Fishing & Dealers Licenses*, available at <http://myfwc.com/license/saltwater/commercial-fishing/#spl> (last visited Feb. 25, 2016).

<sup>7</sup> Section 379.101, F.S., defines a “restricted species” as any species of saltwater products which the state by law, or the Fish and Wildlife Conservation Commission by rule, has found it necessary to so designate. The term includes a species of saltwater products designated by the FWC as restricted within a geographical area or during a particular time period of each year.

<sup>8</sup> Rule 68B-24.001, F.A.C.

<sup>9</sup> Rule 68B-13.005, F.A.C.

<sup>10</sup> Rule 68B-2.006, F.A.C.

<sup>11</sup> Section 379.365(2)(a)1., F.S.

traps and trap tags for commercial harvesters. The FWC must assess the administrative penalties for possessing or using:

- A spiny lobster trap without having trap tag affixed to the trap;
- Any other gear or device that is not a trap as defined by a FWC rule; or
- Spiny lobster trap tags without the necessary number of certificates on record as required.<sup>12</sup>

The FWC must assess the following administrative penalties:

- A first violation for the above listed offenses, a penalty of up to \$1,000, all other first violations, a penalty of up to \$500;
- A second violation of the above listed offenses within 24 months of any previous violation, a penalty of up to \$2,000 and the FWC may suspend the spiny lobster endorsement for the remainder of the current license year; and
- A third or subsequent violation of the above listed offenses or the offense of willfully molesting, taking possession of, or removing the contents of another harvester's spiny lobster trap, within 36 months of any two previous violations, a penalty of up to \$5,000 and the FWC may suspend the spiny lobster endorsement for up to 24 months or revoke the spiny lobster endorsement and if revoking the endorsement the FWC may proceed against the licenseholder's SPL.<sup>13</sup>

### **III. Effect of Proposed Changes:**

#### **Criminal Penalties for the Possession of Spiny Lobsters**

The bill amends s. 379.407, F.S., to provide that it is a major violation for a recreational or commercial harvester to possess an undersized spiny lobster, unless authorized to do so by a FWC rule. For violations involving fewer than 100 undersized spiny lobsters, each undersized spiny lobster may be charged as a separate misdemeanor offense. However, the total misdemeanor penalties for any one scheme or course of conduct may not exceed 4 years imprisonment and a civil fine of \$4,000. A violation this subjects a person to the following penalties:

- A first violation is a second degree misdemeanor punishable by a fine up to \$500 or imprisonment not exceeding 60 days;
- A second or subsequent violation is a first degree misdemeanor punishable by a fine up to \$1000 or imprisonment not exceeding 1 year;
- A violation involving 100 or more undersized spiny lobsters is a third degree felony punishable by a fine up to \$5,000 or imprisonment of up to 5 years and a mandatory civil fine of at least \$500. In addition, the FWC must assess an administrative penalty of up to \$2,000 and may suspend the violator's of license privileges under ch. 379, F.S., for up to 12 months.

#### **Administrative Penalties Relating to Stone Crabs**

The bill amends s. 379.365, F.S., to clarify that the administrative penalties that the FWC must assess for commercial harvesters are in addition to the criminal penalties related to stone crab trap certificates and trap tags.

<sup>12</sup> Section 379.3671(c), F.S.

<sup>13</sup> Section 379.3671(c)4., F.S.

### **Administrative Penalties Relating to Spiny Lobsters**

The bill amends s. 379.3671, F.S., to make the following changes to the administrative penalties that the FWC must assess for commercial harvesters related to spiny lobster traps:

- A second violation penalty, by changing the amount of time a spiny lobster endorsement may be suspended from “the remainder of the current license year” to 12 months.
- A third violation penalty, by:
  - Removing “or subsequent” so it applies only to a third violation within 36 months of any two previous violations;
  - Removing a reference to the offense of willfully molesting, taking possession of, or removing the contents of another harvester’s spiny lobster trap;
  - Providing a spiny lobster endorsement may be suspended for 24 months, rather than *up to* 24 months; and
  - Removing the FWC’s ability to revoke a violator’s spiny lobster endorsement and proceed against the licenseholder’s SPL.

The bill creates administrative penalties for a fourth violation that occurs within 48 months after any three previous violations, which must result in the permanent revocation of all the violator’s saltwater fishing privileges, including having the FWC proceed against the endorsement holder’s SPL.

### **Offense Severity Ranking Chart**

The bill amends s. 921.0022, F.S., to make the following changes to Level 5 of the Criminal Punishment Code Offense Severity Ranking Chart:

- The third degree felony offense in s. 379.365(2)(c)1., F.S., (a violation of rules relating to stone crab traps, trap tags, trap certificates, and engaging in the commercial harvest of stone crabs while a license is suspended or revoked) is added;
- The third degree felony offense in s. 379.3671(2)(c)3., F.S., (the molestation, possession, or removal of a commercial harvester’s trap contents or trap gear) is removed. Section 379.367, F.S., provides for the penalties for s. 379.3671(2)(c), F.S, and is already listed as a Level 5 offense in the Offense Severity Ranking Chart; and
- The third degree felony offense in s. 379.407(5)(b)3., F.S., (possession of more than 100 undersized spiny lobsters) is added.

### **Effective Date**

The bill is effective October 1, 2016.

## **IV. Constitutional Issues:**

### **A. Municipality/County Mandates Restrictions:**

None.

### **B. Public Records/Open Meetings Issues:**

None.

C. Trust Funds Restrictions:

None.

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Revised penalties provided for in the bill will have a negative, indeterminate impact on persons convicted of violations or assessed the administrative penalties amended or created in the bill.

C. Government Sector Impact:

The Marine Resources Conservation Trust Fund will see a positive impact as a result of the additional administrative penalties provided for in the bill. The clerks of the court would likely see a positive indeterminate impact as a result of the addition of criminal fines.

The Criminal Justice Impact Conference determined that the original bill language, containing language similar to the present form of the bill, is likely to result in a positive indeterminate impact on state prison beds (unknown increase in the number of additional prison beds needed), which would likely have a negative indeterminate state fiscal impact.<sup>14</sup>

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 379.365, 379.3671, 379.407, and 921.0022.

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<sup>14</sup> Criminal Justice Impact Conference, Narrative Analyses and Adopted Impacts, *SB 1470 – Crustaceans (Identical HB 1227)*, (Jan. 29, 2016), available at <http://edr.state.fl.us/content/conferences/criminaljusticeimpact/SB1470.pdf> (last visited on Feb. 25, 2016).



**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 Environmental Preservation and Conservation on February 9, 2016:**

Provisions concerning stone crab trap regulation, proposed language concerning criminal penalties are removed.

Concerning spiny lobster trap regulation, the CS:

- Removes proposed language concerning criminal penalties;
- Provides that a spiny lobster endorsement may be suspended for 12 months for a second violation of specified provisions;
- Provides that a spiny lobster endorsement may be suspended for 24 months for a third or subsequent violation of specified provisions. The following is removed from this provision:
  - suspension may be up to 24 months;
  - FWC may revoke the spiny lobster endorsement; and
  - FWC may also proceed against the violator's SPL;
- Provides penalties for a fourth violation within 48 months:
  - Results in a permanent revocation of all the violator's saltwater fishing privileges; and
  - FWC may proceed against the violator's SPL.

Concerning possession of undersized spiny lobsters, the CS:

- Changes "second violation" to "second or subsequent violation;" and
- Changes a provision concerning violations involving "more than 100" undersized spiny lobsters to "100 or more."

The amendment changes several items on the offense severity chart.

- B. **Amendments:**

None.

By the Committee on Environmental Preservation and Conservation;  
and Senator Latvala

592-03275-16

20161470c1

A bill to be entitled

An act relating to crustaceans; amending s. 379.365, F.S.; revising the administrative penalties for violations related to stone crab traps; amending s. 379.3671, F.S.; revising the administrative penalties for violations related to spiny lobster traps; amending s. 379.407, F.S.; prohibiting the possession of undersized spiny lobsters by certain persons; specifying that each undersized spiny lobster may be charged as a separate offense of certain violations; specifying maximum penalties for such violations; specifying the criminal and administrative penalties for violations related to undersized spiny lobsters; amending s. 921.0022, F.S.; revising the offense severity ranking chart to include certain violations related to stone crabs and spiny lobsters; providing an effective date.

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

Section 1. Paragraph (a) of subsection (2) of section 379.365, Florida Statutes, is amended to read:

379.365 Stone crab; regulation.—

(2) PENALTIES.—For purposes of this subsection, conviction is any disposition other than acquittal or dismissal, regardless of whether the violation was adjudicated under any state or federal law.

(a) It is unlawful to violate commission rules regulating stone crab trap certificates and trap tags. A ~~No~~ person may not use an expired tag or a stone crab trap tag not issued by the commission or possess or use a stone crab trap in or on state

Page 1 of 21

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592-03275-16

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waters or adjacent federal waters without having a trap tag required by the commission firmly attached thereto.

1. In addition to any other penalties provided in s. 379.407, for a ~~any~~ commercial harvester who violates this paragraph, the following administrative penalties apply:—

a. For a first violation, the commission shall assess an additional administrative penalty of up to \$1,000.

b. For a second violation that occurs within 24 months after ~~of~~ any previous such violation, the commission shall assess an additional administrative penalty of up to \$2,000, and the stone crab endorsement under which the violation was committed may be suspended for 12 ~~calendar~~ months.

c. For a third violation that occurs within 36 months after ~~of~~ any two previous ~~two~~ such violations, the commission shall assess an additional administrative penalty of up to \$5,000, and the stone crab endorsement under which the violation was committed may be suspended for 24 ~~calendar~~ months.

d. A fourth violation that occurs within 48 months after ~~of~~ any three previous such violations, shall result in permanent revocation of all of the violator's saltwater fishing privileges, including having the commission proceed against the endorsement holder's saltwater products license in accordance with s. 379.407.

2. Any other person who violates ~~the provisions of~~ this paragraph commits a Level Two violation under s. 379.401.

A ~~Any~~ commercial harvester assessed an administrative penalty under this paragraph shall, within 30 ~~calendar~~ days after notification, pay the administrative penalty to the commission,

Page 2 of 21

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592-03275-16

20161470c1

61 or request an administrative hearing under ss. 120.569 and  
 62 120.57. The proceeds of all administrative penalties collected  
 63 under this paragraph shall be deposited in the Marine Resources  
 64 Conservation Trust Fund.

65 Section 2. Paragraph (c) of subsection (2) of section  
 66 379.3671, Florida Statutes, is amended to read:

67 379.3671 Spiny lobster trap certificate program.—

68 (2) TRANSFERABLE TRAP CERTIFICATES; TRAP TAGS; FEES;  
 69 PENALTIES.—The Fish and Wildlife Conservation Commission shall  
 70 establish a trap certificate program for the spiny lobster  
 71 fishery of this state and shall be responsible for its  
 72 administration and enforcement as follows:

73 (c) *Prohibitions; penalties.*—

74 1. ~~It is unlawful for~~ A person may not ~~to~~ possess or use a  
 75 spiny lobster trap in or on state waters or adjacent federal  
 76 waters without having affixed thereto the trap tag required by  
 77 this section. ~~It is unlawful for~~ A person may not ~~to~~ possess or  
 78 use any other gear or device designed to attract and enclose or  
 79 otherwise aid in the taking of spiny lobster by trapping that is  
 80 not a trap as defined by commission rule.

81 2. ~~It is unlawful for~~ A person may not ~~to~~ possess or use  
 82 spiny lobster trap tags without having the necessary number of  
 83 certificates on record as required by this section.

84 3. ~~A~~ ~~It is unlawful for any~~ person may not ~~to~~ willfully  
 85 molest, take possession of, or remove the contents of another  
 86 harvester's spiny lobster trap without the express written  
 87 consent of the trap owner available for immediate inspection.  
 88 Unauthorized possession of another harvester's ~~another's~~ trap  
 89 gear or removal of another harvester's trap contents constitutes

Page 3 of 21

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592-03275-16

20161470c1

90 theft.

91 a. A commercial harvester who violates this subparagraph  
 92 shall be punished under ss. 379.367 and 379.407. ~~A~~ Any  
 93 commercial harvester receiving a judicial disposition other than  
 94 dismissal or acquittal on a charge of theft of or from a trap  
 95 pursuant to this subparagraph or s. 379.402 shall, in addition  
 96 to the penalties specified in ss. 379.367 and 379.407 and ~~the~~  
 97 ~~provisions of~~ this section, permanently lose all of his or her  
 98 saltwater fishing privileges, including his or her saltwater  
 99 products license, spiny lobster endorsement, and all trap  
 100 certificates allotted to him or her through this program. In  
 101 such cases, trap certificates and endorsements are  
 102 nontransferable.

103 b. ~~A~~ Any commercial harvester receiving a judicial  
 104 disposition other than dismissal or acquittal on a charge of  
 105 willful molestation of a trap, in addition to the penalties  
 106 specified in ss. 379.367 and 379.407, shall lose all of his or  
 107 her saltwater fishing privileges for a period of 24 ~~calendar~~  
 108 months.

109 c. In addition to any other penalties specified in this  
 110 subparagraph, ~~a~~ any commercial harvester charged with violating  
 111 this subparagraph and receiving a judicial disposition other  
 112 than dismissal or acquittal for violating this subparagraph or  
 113 s. 379.402 shall also be assessed an administrative penalty of  
 114 up to \$5,000.

115  
 116 Immediately upon receiving a citation for a violation involving  
 117 theft of or from a trap, or molestation of a trap, and until  
 118 adjudicated for such a violation or, upon receipt of a judicial

Page 4 of 21

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592-03275-16

20161470c1

119 disposition other than dismissal or acquittal of such a  
120 violation, the commercial harvester committing the violation is  
121 prohibited from transferring any of his or her spiny lobster  
122 trap certificates and endorsements.

123 4. In addition to any other penalties provided in s.  
124 379.407, a commercial harvester who violates ~~the provisions of~~  
125 this section or commission rules relating to spiny lobster traps  
126 shall be punished as follows:

127 a. If the first violation is for a violation of  
128 subparagraph 1. or subparagraph 2., the commission shall assess  
129 an additional administrative penalty of up to \$1,000. For all  
130 other first violations, the commission shall assess an  
131 additional administrative penalty of up to \$500.

132 b. For a second violation of subparagraph 1. or  
133 subparagraph 2. ~~that which~~ occurs within 24 months ~~after of~~ any  
134 previous such violation, the commission shall assess an  
135 additional administrative penalty of up to \$2,000, and the spiny  
136 lobster endorsement issued under s. 379.367(2) or (6) may be  
137 suspended for 12 months ~~the remainder of the current license~~  
138 ~~year.~~

139 c. For a third ~~or subsequent~~ violation of subparagraph 1.  
140 ~~or~~ subparagraph 2. ~~that, or subparagraph 3. which~~ occurs within  
141 36 months ~~after of~~ any two previous ~~two~~ such violations, the  
142 commission shall assess an additional administrative penalty of  
143 up to \$5,000, and ~~may suspend~~ the spiny lobster endorsement  
144 issued under s. 379.367(2) or (6) may be suspended for a period  
145 ~~of up to 24 months or may revoke the spiny lobster endorsement~~  
146 ~~and, if revoking the spiny lobster endorsement, may also proceed~~  
147 ~~against the licenseholder's saltwater products license in~~

Page 5 of 21

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592-03275-16

20161470c1

148 ~~accordance with the provisions of s. 379.407(2)(h).~~

149 d. A fourth violation that occurs within 48 months after  
150 any three previous such violations shall result in permanent  
151 revocation of all of the violator's saltwater fishing  
152 privileges, including having the commission proceed against the  
153 endorsement holder's saltwater products license in accordance  
154 with s. 379.407.

155 ~~e.d.~~ Within 30 days after notification, a ~~any~~ person  
156 assessed an additional administrative penalty pursuant to this  
157 section shall ~~within 30 calendar days after notification:~~

158 (I) Pay the administrative penalty to the commission; or  
159 (II) Request an administrative hearing pursuant to ~~the~~  
160 ~~provisions of~~ ss. 120.569 and 120.57.

161 ~~f.e.~~ The commission shall suspend the spiny lobster  
162 endorsement issued under s. 379.367(2) or (6) ~~if a for any~~  
163 person ~~fails failing~~ to comply with the provisions of sub-  
164 subparagraph e. ~~d.~~

165 5.a. ~~A It is unlawful for any person may not to~~ make,  
166 alter, forge, counterfeit, or reproduce a spiny lobster trap tag  
167 or certificate.

168 b. ~~A It is unlawful for any person may not to~~ knowingly  
169 have in his or her possession a forged, counterfeit, or  
170 imitation spiny lobster trap tag or certificate.

171 c. ~~A It is unlawful for any person may not to~~ barter,  
172 trade, sell, supply, agree to supply, aid in supplying, or give  
173 away a spiny lobster trap tag or certificate or ~~to~~ conspire to  
174 barter, trade, sell, supply, aid in supplying, or give away a  
175 spiny lobster trap tag or certificate unless such action is duly  
176 authorized by the commission as provided in this chapter or in

Page 6 of 21

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592-03275-16

20161470c1

177 the rules of the commission.

178 6.a. ~~A Any~~ commercial harvester who violates ~~the provisions~~  
 179 ~~of~~ subparagraph 5., or a any commercial harvester who engages in  
 180 the commercial harvest, trapping, or possession of spiny lobster  
 181 without a spiny lobster endorsement as required by s. 379.367(2)  
 182 or (6) or during any period while such spiny lobster endorsement  
 183 is under suspension or revocation, commits a felony of the third  
 184 degree, punishable as provided in s. 775.082, s. 775.083, or s.  
 185 775.084.

186 b. In addition to any penalty imposed pursuant to sub-  
 187 subparagraph a., the commission shall assess ~~levy~~ a fine of up  
 188 to twice the amount of the appropriate surcharge to be paid on  
 189 the fair market value of the transferred certificates, as  
 190 provided in subparagraph (a)1., on a any commercial harvester  
 191 who violates ~~the provisions of~~ sub-subparagraph 5.c.

192 c. In addition to any penalty imposed pursuant to sub-  
 193 subparagraph a., a any commercial harvester receiving any  
 194 judicial disposition other than acquittal or dismissal for a  
 195 violation of subparagraph 5. shall be assessed an administrative  
 196 penalty of up to \$5,000, and the spiny lobster endorsement under  
 197 which the violation was committed may be suspended for up to 24  
 198 ~~calendar~~ months. Immediately upon issuance of a citation  
 199 involving a violation of subparagraph 5. and until adjudication  
 200 of such a violation, and after receipt of any judicial  
 201 disposition other than acquittal or dismissal for such a  
 202 violation, the commercial harvester holding the spiny lobster  
 203 endorsement listed on the citation is prohibited from  
 204 transferring any spiny lobster trap certificates.

205 d. A Any ~~other~~ person who violates ~~the provisions of~~

Page 7 of 21

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592-03275-16

20161470c1

206 subparagraph 5. commits a Level Four violation under s. 379.401.

207 7. ~~Before~~ Prior to the 2010-2011 license year, any  
 208 certificates for which the annual certificate fee is not paid  
 209 for a period of 3 years shall be considered abandoned and shall  
 210 revert to the commission. Beginning with the 2010-2011 license  
 211 year, any certificate for which the annual certificate fee is  
 212 not paid for a period of 2 consecutive years shall be considered  
 213 abandoned and shall revert to the commission. During any period  
 214 of trap reduction, any certificates reverting to the commission  
 215 shall become permanently unavailable and be considered in that  
 216 amount to be reduced during the next license-year period.  
 217 Otherwise, any certificates that revert to the commission are to  
 218 be reallocated in such manner as provided by the commission.

219 8. The proceeds of all administrative penalties collected  
 220 pursuant to subparagraph 4. and all fines collected pursuant to  
 221 sub-subparagraph 6.b. shall be deposited into the Marine  
 222 Resources Conservation Trust Fund.

223 9. All traps shall be removed from the water during any  
 224 period of suspension or revocation.

225 10. Except as otherwise provided, a any person who violates  
 226 this paragraph commits a Level Two violation under s. 379.401.

227 Section 3. Subsection (5) of section 379.407, Florida  
 228 Statutes, is amended to read:

229 379.407 Administration; rules, publications, records;  
 230 penalties; injunctions.—

231 (5) PENALTIES FOR POSSESSION OF SPINY LOBSTER; CLOSED  
 232 SEASON AND WRUNG TAILS.—

233 (a) It is a major violation under this section for any  
 234 person, firm, or corporation to be in possession of spiny

Page 8 of 21

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592-03275-16

20161470c1

235 lobster during the closed season or, while on the water, to be  
 236 in possession of spiny lobster tails that have been wrung or  
 237 separated from the body, unless such possession is allowed by  
 238 commission rule. ~~A~~ Any person, firm, or corporation that  
 239 violates this ~~paragraph subsection~~ is subject to the following  
 240 penalties ~~as follows~~:

241 1.~~(a)~~ A first violation is a misdemeanor of the second  
 242 degree, punishable as provided in s. 775.082 or s. 775.083. If  
 243 the violation involves 25 or more lobster, the violation is a  
 244 misdemeanor of the first degree, punishable as provided in s.  
 245 775.082 or s. 775.083.

246 2.~~(b)~~ A second violation is a misdemeanor of the first  
 247 degree, punishable as provided in s. 775.082 or s. 775.083, and  
 248 such person is subject to a suspension of his or her ~~all~~ license  
 249 privileges under this chapter for a period not to exceed 90  
 250 days.

251 3.~~(c)~~ A third violation is a misdemeanor of the first  
 252 degree, punishable as provided in s. 775.082 or s. 775.083, with  
 253 a mandatory minimum term of imprisonment of 6 months, and such  
 254 person may be assessed a civil penalty of up to \$2,500 and is  
 255 subject to a suspension of all license privileges under this  
 256 chapter for a period not to exceed 6 months.

257 4.~~(d)~~ A third violation within 1 year after a second  
 258 violation is a felony of the third degree, punishable as  
 259 provided in s. 775.082 or s. 775.083, with a mandatory minimum  
 260 term of imprisonment of 1 year, and such person shall be  
 261 assessed a civil penalty of \$5,000 and all license privileges  
 262 under this chapter shall be permanently revoked.

263 5.~~(e)~~ A fourth or subsequent violation is a felony of the

592-03275-16

20161470c1

264 third degree, punishable as provided in s. 775.082 or s.  
 265 775.083, with a mandatory minimum term of imprisonment of 1  
 266 year, and such person shall be assessed a civil penalty of  
 267 \$5,000 and all license privileges under this chapter shall be  
 268 permanently revoked.

269 (b) It is a major violation under this section for a  
 270 recreational or commercial harvester to possess an undersized  
 271 spiny lobster, unless authorized by commission rule. For  
 272 violations of this paragraph involving fewer than 100 undersized  
 273 spiny lobsters, each undersized spiny lobster may be charged as  
 274 a separate offense under subparagraphs 1. and 2. However, the  
 275 total penalties assessed under subparagraphs 1. and 2. for any  
 276 one scheme or course of conduct may not exceed 4 years'  
 277 imprisonment and a fine of \$4,000 under such subparagraphs. A  
 278 person who violates this paragraph is subject to the following  
 279 penalties:

280 1. A first violation is a misdemeanor of the second degree,  
 281 punishable as provided in s. 775.082 or s. 775.083.

282 2. A second or subsequent violation is a misdemeanor of the  
 283 first degree, punishable as provided in s. 775.082 or s.  
 284 775.083.

285 3. If a violation involves 100 or more undersized spiny  
 286 lobsters, the violation is a felony of the third degree,  
 287 punishable as provided in s. 775.082, s. 775.083, or s. 775.084  
 288 and a mandatory civil fine of at least \$500. In addition, the  
 289 commission shall assess the violator with an administrative  
 290 penalty of up to \$2,000 and may suspend the violator's license  
 291 privileges under this chapter for a period of up to 12 months.

292 Section 4. Paragraph (e) of subsection (3) of section

592-03275-16 20161470c1

293 921.0022, Florida Statutes, is amended to read:  
 294 921.0022 Criminal Punishment Code; offense severity ranking  
 295 chart.-  
 296 (3) OFFENSE SEVERITY RANKING CHART  
 297 (e) LEVEL 5  
 298

Florida Statute	Felony Degree	Description
316.027(2)(a)	3rd	Accidents involving personal injuries other than serious bodily injury, failure to stop; leaving scene.
316.1935(4)(a)	2nd	Aggravated fleeing or eluding.
322.34(6)	3rd	Careless operation of motor vehicle with suspended license, resulting in death or serious bodily injury.
327.30(5)	3rd	Vessel accidents involving personal injury; leaving scene.
<u>379.365(2)(c)1.</u>	<u>3rd</u>	<u>Violation of rules</u>

592-03275-16 20161470c1

relating to: willful molestation of stone crab traps, lines, or buoys; illegal bartering, trading, or sale, conspiring or aiding in such barter, trade, or sale, or supplying, agreeing to supply, aiding in supplying, or giving away stone crab trap tags or certificates; making, altering, forging, counterfeiting, or reproducing stone crab trap tags; possession of forged, counterfeit, or imitation stone crab trap tags; and engaging in the commercial harvest of stone crabs while license is suspended or revoked.

304 379.367(4) 3rd Willful molestation of a commercial harvester's spiny lobster trap, line, or buoy.

	592-03275-16		20161470c1
	<del>379.3671(2)(e)3.</del>	3rd	<del>Willful molestation, possession, or removal of a commercial harvester's trap contents or trap gear by another harvester.</del>
306			
	<u>379.407(5)(b)3.</u>	3rd	<u>Possession of 100 or more undersized spiny lobsters.</u>
307			
	381.0041(11)(b)	3rd	Donate blood, plasma, or organs knowing HIV positive.
308			
	440.10(1)(g)	2nd	Failure to obtain workers' compensation coverage.
309			
	440.105(5)	2nd	Unlawful solicitation for the purpose of making workers' compensation claims.
310			
	440.381(2)	2nd	Submission of false, misleading, or incomplete information with the purpose of avoiding or reducing workers'

	592-03275-16		20161470c1
			compensation premiums.
311			
	624.401(4)(b)2.	2nd	Transacting insurance without a certificate or authority; premium collected \$20,000 or more but less than \$100,000.
312			
	626.902(1)(c)	2nd	Representing an unauthorized insurer; repeat offender.
313			
	790.01(2)	3rd	Carrying a concealed firearm.
314			
	790.162	2nd	Threat to throw or discharge destructive device.
315			
	790.163(1)	2nd	False report of deadly explosive or weapon of mass destruction.
316			
	790.221(1)	2nd	Possession of short-barreled shotgun or machine gun.
317			
	790.23	2nd	Felons in possession of firearms, ammunition, or



	592-03275-16		20161470c1	
			electronic weapons or devices.	
318	796.05(1)	2nd	Live on earnings of a prostitute; 1st offense.	
319	800.04(6)(c)	3rd	Lewd or lascivious conduct; offender less than 18 years of age.	
320	800.04(7)(b)	2nd	Lewd or lascivious exhibition; offender 18 years of age or older.	
321	806.111(1)	3rd	Possess, manufacture, or dispense fire bomb with intent to damage any structure or property.	
322	812.0145(2)(b)	2nd	Theft from person 65 years of age or older; \$10,000 or more but less than \$50,000.	
323	812.015(8)	3rd	Retail theft; property stolen is valued at \$300 or more and one or more specified acts.	
324				

Page 15 of 21

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	592-03275-16		20161470c1	
	812.019(1)	2nd	Stolen property; dealing in or trafficking in.	
325	812.131(2)(b)	3rd	Robbery by sudden snatching.	
326	812.16(2)	3rd	Owning, operating, or conducting a chop shop.	
327	817.034(4)(a)2.	2nd	Communications fraud, value \$20,000 to \$50,000.	
328	817.234(11)(b)	2nd	Insurance fraud; property value \$20,000 or more but less than \$100,000.	
329	817.2341(1), (2)(a) & (3)(a)	3rd	Filing false financial statements, making false entries of material fact or false statements regarding property values relating to the solvency of an insuring entity.	
330	817.568(2)(b)	2nd	Fraudulent use of personal identification information; value of benefit, services received, payment	

Page 16 of 21

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	592-03275-16		20161470c1	avoided, or amount of injury or fraud, \$5,000 or more or use of personal identification information of 10 or more persons.
331	817.625(2)(b)	2nd		Second or subsequent fraudulent use of scanning device or reencoder.
332	825.1025(4)	3rd		Lewd or lascivious exhibition in the presence of an elderly person or disabled adult.
333	827.071(4)	2nd		Possess with intent to promote any photographic material, motion picture, etc., which includes sexual conduct by a child.
334	827.071(5)	3rd		Possess, control, or intentionally view any photographic material, motion picture, etc., which includes sexual

	592-03275-16		20161470c1	conduct by a child.
335	839.13(2)(b)	2nd		Falsifying records of an individual in the care and custody of a state agency involving great bodily harm or death.
336	843.01	3rd		Resist officer with violence to person; resist arrest with violence.
337	847.0135(5)(b)	2nd		Lewd or lascivious exhibition using computer; offender 18 years or older.
338	847.0137(2) & (3)	3rd		Transmission of pornography by electronic device or equipment.
339	847.0138(2) & (3)	3rd		Transmission of material harmful to minors to a minor by electronic device or equipment.
340	874.05(1)(b)	2nd		Encouraging or recruiting another to join a

	592-03275-16		20161470c1	
			criminal gang; second or subsequent offense.	
341	874.05(2)(a)	2nd	Encouraging or recruiting person under 13 years of age to join a criminal gang.	
342	893.13(1)(a)1.	2nd	Sell, manufacture, or deliver cocaine (or other s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4. drugs).	
343	893.13(1)(c)2.	2nd	Sell, manufacture, or deliver cannabis (or other s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) drugs) within 1,000 feet of a child care facility, school, or state, county, or municipal park or publicly owned recreational facility or community center.	

	592-03275-16		20161470c1	
344	893.13(1)(d)1.	1st	Sell, manufacture, or deliver cocaine (or other s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4. drugs) within 1,000 feet of university.	
345	893.13(1)(e)2.	2nd	Sell, manufacture, or deliver cannabis or other drug prohibited under s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) within 1,000 feet of property used for religious services or a specified business site.	
346	893.13(1)(f)1.	1st	Sell, manufacture, or deliver cocaine (or other s. 893.03(1)(a), (1)(b), (1)(d), or (2)(a), (2)(b), or (2)(c)4. drugs) within 1,000 feet of public housing facility.	

592-03275-16

20161470c1

347

893.13(4)(b)	2nd	Deliver to minor cannabis (or other s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) drugs).
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348

893.1351(1)	3rd	Ownership, lease, or rental for trafficking in or manufacturing of controlled substance.
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349

350

351

352

Section 5. This act shall take effect October 1, 2016.

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/29/16

Meeting Date

SB 1470

Bill Number (if applicable)

Topic CRUSTACEANS

Amendment Barcode (if applicable)

Name JERRY SANSON

Job Title

Address PO Box 700

Phone 321-273-0210

Street

Cocoa

FL

32923

City

State

Zip

Email FISHERMEN @ AOL.COM

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

Waive Speaking: [X] In Support [ ] Against

(The Chair will read this information into the record.)

Representing ORGANIZED FISHERMEN OF FL.

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

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

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

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

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

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

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Prepared By: The Professional Staff of the Committee on Fiscal Policy

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BILL: CS/SB 1570

INTRODUCER: Transportation Committee and Senator Simmons

SUBJECT: School Bus Stop Safety

DATE: February 26, 2016

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Jones	Eichin	TR	<b>Fav/CS</b>
2.	Sneed	Miller	ATD	<b>Recommend: Favorable</b>
3.	Pace	Hrdlicka	FP	<b>Favorable</b>

**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 1570 increases the penalty for passing a stopped school bus on the side that children enter and exit while the bus is displaying a stop signal, from a noncriminal traffic infraction to the criminal offense of reckless driving.

The Office of State Courts Administrator (OSCA) has indicated that the change to the offense to a reckless driving charge may have a minimal impact on revenues in the State Court Revenue Trust Fund, which currently receives \$5 for each non-criminal traffic violation. However, OSCA anticipates this revenue reduction would have an insignificant fiscal impact on the trust fund.

The Department of Highway Safety and Motor Vehicles (DHSMV) estimates programming and implementing the changes would cost \$13,448. These costs are expected to be absorbed within existing resources.

**II. Present Situation:**

School buses are required to stop as far to the right of the street as possible and display warning lights and stop signals before discharging or loading passengers, and, when possible, to stop where visibility is obscured for a distance of 200 feet either way from the bus.<sup>1</sup>

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<sup>1</sup> Section 316.172(3), F.S.

Florida law requires that a person bring his or her vehicle to a full stop when approaching a stopped school bus displaying a stop signal, until the signal has been withdrawn.<sup>2</sup> Furthermore, it is unlawful to pass a school bus on the side that children enter and exit while the school bus displays a stop signal.<sup>3</sup>

At the hearing,<sup>4</sup> if a person is found to have failed to fully stop for or illegally passed a stopped school bus, both of which are noncriminal traffic infractions, the person must pay a minimum civil penalty of \$100 or \$200, respectively, plus an additional \$65.<sup>5</sup> For a subsequent violation, the DHSMV may suspend a person's driver license if such violation is committed within a period of 5 years after the first violation.<sup>6</sup>

In addition, if a court withholds adjudication of a person who receives a traffic citation for illegally passing a school bus, the driver is required to complete a driver improvement course. If the course is not completed within 90 days of receiving a notice of the requirement to attend, the driver's license will be canceled until the improvement course is successfully completed.<sup>7</sup>

### **School Bus Safety**

The National Highway Safety Transportation Safety Association (NHTSA) estimates approximately 24 children are killed in school bus accidents each year. However, few deaths occur while actually on the bus. Typically, one-third of the fatalities occur when a child is struck by the school bus in the loading or unloading zone, one-third are struck by motorists who fail to stop for the bus, and one-third are pedestrians killed while approaching or leaving the school bus.<sup>8</sup>

### **2015 Illegal Passing of School Buses**

Since 2011, the Florida Department of Education has posted survey results on its website of the number of vehicles that illegally pass a stopped school bus in a single day of the school year, as reported by school bus drivers.<sup>9</sup> In Academic Year 2014-2015, a total of 9,807 school bus drivers in the state completed the survey. The survey indicated that school buses were passed illegally by 10,987 vehicles throughout the day. Of those, 371 vehicles were reported passing to the right side of the bus, the side students generally enter and exit.<sup>10</sup>

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<sup>2</sup> Section 316.172(1)(a), F.S.

<sup>3</sup> Section 316.172(1)(b), F.S. A driver is not required to stop if the vehicle is traveling in the opposite direction of a stopped school bus "upon a divided highway with an unpaved space of at least 5 feet, a raised median, or a physical barrier." See s. 316.172(2), F.S.

<sup>4</sup> A person cited for passing a stopped school bus on the side children enter or exit must attend a mandatory hearing at a specified time and location. See ss. 316.172(1)(b) and 318.19(3), F.S.

<sup>5</sup> Section 318.18(5), F.S. The additional \$65 is remitted to the Department of Revenue for deposit into the Emergency Medical Services Trust Fund of the Department of Health for the purpose of funding trauma centers. See s. 395.4036, F.S.

<sup>6</sup> *Id.* A person who illegally passes a stopped school bus will receive 4 points on his or her driver license; and depending on the circumstances may have his or her driver license suspended or revoked. See s. 322.27(1)(f) and (3)(d)4., F.S.

<sup>7</sup> Section 322.0261(4)(c), F.S.

<sup>8</sup> See National Conference of State Legislatures (NCSL), *Transportation Review – School Bus Safety*, (July 2012) at p. 1, available at: [http://www.ncsl.org/documents/transportation/schoolbus\\_tranrev0810.pdf](http://www.ncsl.org/documents/transportation/schoolbus_tranrev0810.pdf) (last visited Feb. 24, 2016).

<sup>9</sup> See Florida Department of Education, *School Transportation, Illegal Passing of School Buses – Survey Results for 2015*, available at: <http://www.fldoe.org/schools/safe-healthy-schools/transportation/> (last visited Feb. 24, 2016).

<sup>10</sup> *Id.*

The DHSMV has indicated that in 2015, approximately 2,136 traffic citations were issued for failure to stop for a school bus, and 44 citations were issued for passing a school bus on the side children enter and exit.<sup>11</sup>

### **Reckless Driving**

A person “who drives any vehicle in willful or wanton disregard for the safety of persons or property” or flees from a law enforcement officer in a vehicle shall be charged with reckless driving, which is a criminal offense.<sup>12</sup>

If convicted of reckless driving, a person is subject to punishment by imprisonment for not more than 90 days or by a fine of at least \$25 and up to \$500, or both.<sup>13</sup> For any subsequent conviction, a person is subject to punishment by imprisonment for a maximum of 6 months or by a fine of at least \$50 and up to \$1,000, or both.<sup>14</sup> If a person’s reckless driving causes damage to a person or property, he or she commits a first degree misdemeanor, punishable by imprisonment not exceeding 1 year or a fine of up to \$1,000.<sup>15</sup> If a person’s reckless driving causes serious bodily injury to another person, he or she commits a third degree felony, punishable by imprisonment not to exceed 5 years, a fine of up to \$5,000 or, if a habitual felony offender, an extended term of imprisonment.<sup>16</sup>

If a person is convicted of a violation of illegally passing a school bus or reckless driving, four points are added to the person’s driver license.<sup>17</sup>

### **III. Effect of Proposed Changes:**

**Section 1** amends s. 316.172, F.S., to increase the penalty from a noncriminal moving violation to the criminal offense of reckless driving for a person operating a motor vehicle who passes a school bus on the side that children enter and exit when the bus displays a stop signal.

**Section 2** amends s. 316.192, F.S., to retain the \$65 penalty currently collected for a violation of passing a school bus on the side that children enter and exit when the bus is displaying a stop signal.

**Section 3** amends s. 318.17, F.S., to make conforming changes.

**Section 4** amends s. 318.18, F.S., to remove the civil penalty for illegally passing a school bus on the side children enter and exit, as that penalty is reclassified as reckless driving.

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<sup>11</sup> Email from the DHSMV (Feb. 15, 2016) (on file with the Senate Committee on Transportation).

<sup>12</sup> Sections 316.192(1) and 318.17(4), F.S.

<sup>13</sup> Section 316.192(2)(a), F.S.

<sup>14</sup> Section 316.192(2)(b), F.S..

<sup>15</sup> See ss. 316.192(3)(c)1., 775.082(4)(a), 775.083(1)(d), F.S. A court has the discretion to suspend or cancel a driver license and impose any other civil penalty it deems fit. See s. 775.082(7), F.S.

<sup>16</sup> See ss. 316.192(3)(c)2., 775.082(3)(e), 775.083(1)(c), and 775.084(1)(a), F.S. Section 316.192(3)(c)2., F.S., defines “serious bodily injury” as an injury to another person, which consists of a physical condition that creates a substantial risk of death, serious personal disfigurement, or protracted loss or impairment of the function of any bodily member or organ.

<sup>17</sup> Section 322.27(3)(d)4., F.S.



**Sections 5 and 6** conform cross-references to changes made by the bill.

**Section 7** provides the bill is effective October 1, 2016.

**IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Individuals cited for illegally passing a school bus will incur increased penalties.

C. Government Sector Impact:

Changing the violation for passing a school bus on the side children enter and exit from a noncriminal moving violation to a charge of reckless driving is expected to have an insignificant fiscal impact on state government.

The OSCA has indicated the change to the offense of passing a school bus on the side where children enter and exit from non-criminal traffic infraction to reckless driving could impact the revenues of the State Court Revenue Trust Fund, which currently receives \$5 for each non-criminal traffic infraction, but the OSCA anticipates that this revenue reduction would have a minimal impact on the trust fund. The State Court Revenue Trust Fund does not receive revenues associated with reckless driving penalties.<sup>18</sup>

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<sup>18</sup> See OSCA, *2015 Judicial Impact Statement for SB 346* (March 3, 2015) (on file with the Senate Committee on Transportation).

The DHSMV anticipates the bill will require approximately 298.5 hours of system programming and implementation, resulting in an estimated cost of \$13,448 to the DHSMV.<sup>19</sup> These costs are expected to be absorbed within existing resources.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 316.172, 316.192, 318.17, 318.18, 318.21, and 395.4036.

**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 Transportation on February 17, 2016:**

The CS modifies the bill by removing the penalty increase for failing to stop for a school bus under s. 318.18(5)(a), F.S., and removes provisions allowing a school district to use cameras and video recording devices to enforce s. 316.172, F.S.

**B. Amendments:**

None.

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

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<sup>19</sup> DHSMV, *2016 Agency Legislative Bill Analysis for SB 1570* (Feb. 11, 2016) (on file with the Senate Committee on Transportation).

By the Committee on Transportation; and Senator Simmons

596-03743-16

20161570c1

A bill to be entitled

An act relating to school bus stop safety; amending s. 316.172, F.S.; revising the terms of violation and the penalties for failure to stop a vehicle upon approaching a school bus that displays a stop signal; providing for criminal penalties under certain circumstances; amending s. 316.192, F.S.; requiring an additional fee to be added to a fine imposed for a specified violation; providing for distribution of the fee; amending s. 318.17, F.S.; conforming provisions to changes made by the act; amending s. 318.18, F.S.; removing provisions made obsolete by the act; amending s. 318.21, F.S.; conforming a cross-reference; amending s. 395.4036, F.S.; conforming a cross-reference; conforming provisions to changes made by the act; providing an effective date.

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

Section 1. Subsection (1) of section 316.172, Florida Statutes, is amended to read:

316.172 Traffic to stop for school bus.—

(1) (a) A ~~Any~~ person using, operating, or driving a vehicle on or over the roads or highways of this state shall, upon approaching a any school bus that ~~which~~ displays a stop signal, bring such vehicle to a full stop while the bus is stopped, and the vehicle may ~~shall~~ not pass the school bus until the signal has been withdrawn. A person who violates this paragraph ~~section~~ commits a moving violation, punishable as provided in chapter 318.

(b) A ~~Any~~ person using, operating, or driving a vehicle that passes a school bus on the side that children enter and

Page 1 of 5

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

596-03743-16

20161570c1

exit when the school bus displays a stop signal commits reckless driving ~~a moving violation~~, punishable as provided in s. 316.192 ~~chapter 318~~, and is ~~subject to a mandatory hearing under the provisions of s. 318.19.~~

Section 2. Subsection (6) is added to section 316.192, Florida Statutes, to read:

316.192 Reckless driving.—

(6) In addition to any other penalty provided under this section, \$65 shall be added to a fine imposed pursuant to this section for a violation of s. 316.172(1)(b). The clerk shall remit the \$65 to the Department of Revenue for deposit in the Emergency Medical Services Trust Fund, to be used as provided in s. 395.4036.

Section 3. Section 318.17, Florida Statutes, is amended to read:

318.17 Offenses excepted.—No provision of this chapter is available to a person who is charged with any of the following offenses:

(1) Fleeing or attempting to elude a police officer, in violation of s. 316.1935~~7~~.

(2) Leaving the scene of a crash, in violation of ss. 316.027 and 316.061~~7~~.

(3) Driving, or being in actual physical control of, any vehicle while under the influence of alcoholic beverages, any chemical substance set forth in s. 877.111, or any substance controlled under chapter 893, in violation of s. 316.193, or driving with an unlawful blood-alcohol level~~7~~.

(4) Reckless driving, in violation of s. 316.172(1)(b) or s. 316.192~~7~~.

Page 2 of 5

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

596-03743-16

20161570c1

62 (5) Making false crash reports, in violation of s.  
 63 316.067.~~+~~  
 64 (6) Willfully failing or refusing to comply with any lawful  
 65 order or direction of any police officer or member of the fire  
 66 department, in violation of s. 316.072(3).~~+~~  
 67 (7) Obstructing an officer, in violation of s. 316.545(1).~~+~~  
 68 ~~or~~  
 69 (8) Any other offense in chapter 316 which is classified as  
 70 a criminal violation.  
 71 Section 4. Paragraphs (b) and (c) of subsection (5) of  
 72 section 318.18, Florida Statutes, are amended to read:  
 73 318.18 Amount of penalties.—The penalties required for a  
 74 noncriminal disposition pursuant to s. 318.14 or a criminal  
 75 offense listed in s. 318.17 are as follows:  
 76 (5)  
 77 ~~(b) Two hundred dollars for a violation of s.~~  
 78 ~~316.172(1)(b), passing a school bus on the side that children~~  
 79 ~~enter and exit when the school bus displays a stop signal. If,~~  
 80 ~~at a hearing, the alleged offender is found to have committed~~  
 81 ~~this offense, the court shall impose a minimum civil penalty of~~  
 82 ~~\$200. In addition to this penalty, for a second or subsequent~~  
 83 ~~offense within a period of 5 years, the department shall suspend~~  
 84 ~~the driver license of the person for not less than 180 days and~~  
 85 ~~not more than 1 year.~~  
 86 (b)(c) In addition to the penalty under paragraph (a) ~~or~~  
 87 ~~paragraph (b)~~, \$65 for a violation of s. 316.172(1)(a) ~~or (b)~~.  
 88 If the alleged offender is found to have committed the offense,  
 89 the court shall impose the civil penalty under paragraph (a) ~~or~~  
 90 ~~paragraph (b)~~ plus an additional \$65. The additional \$65

Page 3 of 5

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596-03743-16

20161570c1

91 collected under this paragraph shall be remitted to the  
 92 Department of Revenue for deposit into the Emergency Medical  
 93 Services Trust Fund of the Department of Health to be used as  
 94 provided in s. 395.4036.  
 95 Section 5. Subsection (21) of section 318.21, Florida  
 96 Statutes, is amended to read:  
 97 318.21 Disposition of civil penalties by county courts.—All  
 98 civil penalties received by a county court pursuant to the  
 99 provisions of this chapter shall be distributed and paid monthly  
 100 as follows:  
 101 (21) Notwithstanding subsections (1) and (2), the proceeds  
 102 from the additional penalties imposed pursuant to s.  
 103 318.18(5)(b) ~~s. 318.18(5)(c)~~ and (20) shall be distributed as  
 104 provided in that section.  
 105 Section 6. Paragraph (b) of subsection (1) of section  
 106 395.4036, Florida Statutes, is amended to read:  
 107 395.4036 Trauma payments.—  
 108 (1) Recognizing the Legislature's stated intent to provide  
 109 financial support to the current verified trauma centers and to  
 110 provide incentives for the establishment of additional trauma  
 111 centers as part of a system of state-sponsored trauma centers,  
 112 the department shall utilize funds collected under s. 318.18 and  
 113 deposited into the Emergency Medical Services Trust Fund of the  
 114 department to ensure the availability and accessibility of  
 115 trauma services throughout the state as provided in this  
 116 subsection.  
 117 (b) Funds collected under ss. 316.192(6), 318.18(5)(b), and  
 118 318.18(20) ~~s. 318.18(5)(c) and (20)~~ shall be distributed as  
 119 follows:

Page 4 of 5

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

596-03743-16

20161570c1

120 1. Thirty percent of the total funds collected shall be  
121 distributed to Level II trauma centers operated by a public  
122 hospital governed by an elected board of directors as of  
123 December 31, 2008.

124 2. Thirty-five percent of the total funds collected shall  
125 be distributed to verified trauma centers based on trauma  
126 caseload volume for the most recent calendar year available. The  
127 determination of caseload volume for distribution of funds under  
128 this subparagraph shall be based on the department's Trauma  
129 Registry data.

130 3. Thirty-five percent of the total funds collected shall  
131 be distributed to verified trauma centers based on severity of  
132 trauma patients for the most recent calendar year available. The  
133 determination of severity for distribution of funds under this  
134 subparagraph shall be based on the department's International  
135 Classification Injury Severity Scores or another statistically  
136 valid and scientifically accepted method of stratifying a trauma  
137 patient's severity of injury, risk of mortality, and resource  
138 consumption as adopted by the department by rule, weighted based  
139 on the costs associated with and incurred by the trauma center  
140 in treating trauma patients. The weighting of scores shall be  
141 established by the department by rule.

142 Section 7. This act shall take effect October 1, 2016.



The Florida Senate

## Committee Agenda Request

**To:** Senator Anitere Flores, Chair  
Committee on Fiscal Policy

**Subject:** Committee Agenda Request

**Date:** February 24, 2016

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I respectfully request that **Senate Bill 1570**, relating to School Bus Stop Safety, be placed on the:

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

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

Senator David Simmons  
Florida Senate, District 10

**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.)

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Prepared By: The Professional Staff of the Committee on Fiscal Policy

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BILL: CS/SB 1692

INTRODUCER: Judiciary Committee and Senator Altman

SUBJECT: Reimbursement of Assessments

DATE: February 26, 2016

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>McAloon</u>	<u>Cibula</u>	<u>JU</u>	<b>Fav/CS</b>
2.	<u>Harkness</u>	<u>Sadberry</u>	<u>ACJ</u>	<b>Recommend: Favorable</b>
3.	<u>Hrdlicka</u>	<u>Hrdlicka</u>	<u>FP</u>	<b>Favorable</b>

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**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 1692 prohibits an agent or attorney from requesting or obtaining reimbursement of an assessment imposed by the United States Department of Veterans Affairs (VA) from a veteran claimant.

Under federal law, the VA may impose the assessment on an agent or attorney who represents a claimant seeking veteran's benefits. This assessment may not exceed the lesser of \$100 or 5 percent of the compensation of the attorney or agent. Under the bill, an agent or attorney who requests or obtains reimbursement of the assessment from the claimant commits a second degree misdemeanor.

The bill does not have a fiscal impact.

**II. Present Situation:**

**Background**

The United States Department of Veterans Affairs (VA) provides veterans with various benefits including disability, pension, health care, and life insurance. The purpose of the VA is to administer the laws providing benefits and other services to veterans and the dependents and the beneficiaries of veterans.<sup>1</sup> The Secretary of the VA is responsible for the proper execution and

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<sup>1</sup> 38 U.S.C. s. 301(b).

administration of all laws administered by the VA and for the control, direction, and management of the VA.<sup>2</sup>

The VA has authority to prescribe all rules and regulations which are necessary or appropriate to carry out the law it administers. This authority includes prescribing regulations related to the nature and extent of proof and evidence, including the methods of furnishing proof and evidence, in order to establish the right to benefits; the methods of making investigations and medical examinations; and the manner and form of adjudications and awards.<sup>3</sup> Decisions administered by the VA are subject to judicial review in the United States Court of Appeals for the Federal Circuit.<sup>4</sup>

### **Accredited Agent or Attorney**

The VA determines who is qualified to represent or assist veterans in their claims for benefits. A person may not assist claimants in the preparation, presentation, and prosecution of claims for VA benefits as an agent or attorney unless he or she has first applied and been accredited by the VA for such purpose.<sup>5</sup> A person does not have to be an attorney to become accredited as an agent. An individual desiring accreditation as an agent or attorney must establish that he or she is of good character and reputation, is qualified to render valuable assistance to claimants, and is otherwise competent to advise and assist claimants in the preparation, presentation, and prosecution of their claims.<sup>6</sup>

### **Accredited Agent or Attorney Fees**

The VA may prescribe reasonable restrictions on the amount of fees that an agent or attorney may charge a claimant for services rendered in the preparation, presentation, and prosecution of a claim.<sup>7</sup> A fee that does not exceed 20 percent of the past-due amount of benefits awarded on a claim is presumed to be reasonable. A fee that exceeds 33 1/3 percent of any past-due benefits awarded is presumed to be unreasonable.<sup>8</sup>

The fee agreement between the veteran and the agent or attorney may provide for the VA to pay the representation fee directly to the accredited agent or attorney out of the benefit award if the fee is 20 percent or less of the total benefit award.<sup>9</sup> The VA will charge and collect an assessment against an accredited agent or attorney when the fee agreement provides for a direct payment of the agent or attorney fee from past-due benefits owed to the veteran claimant.<sup>10</sup> The amount of the assessment is equal to 5 percent of the amount of the fee required to be paid to the

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<sup>2</sup> 38 U.S.C. s. 303.

<sup>3</sup> 38 U.S.C. s. 501(a).

<sup>4</sup> 38 U.S.C. s. 502.

<sup>5</sup> 38 U.S.C. s. 5901-5904; 38 C.F.R. s. 14.629(b)(1).

<sup>6</sup> 38 U.S.C. s. 5904(a)(2); 38 C.F.R. s. 14.629(b)(2).

<sup>7</sup> 38 U.S.C. s. 5904(a)(5); 38 C.F.R. s. 14.636(f).

<sup>8</sup> 38 C.F.R. s. 14.636(f).

<sup>9</sup> 38 C.F.R. s. 14.636(g) and (h).

<sup>10</sup> 38 U.S.C. s. 5904(a)(6)(A); 38 C.F.R. s. 14.636(h).



accredited agent or attorney, and may not exceed \$100.<sup>11</sup> The assessment collected is deposited in an account available for administrative expenses to administer veterans' benefits programs.<sup>12</sup>

An accredited agent or attorney may not directly or indirectly request or receive reimbursement for the assessment from the veteran he or she represents.<sup>13</sup> The United States Code provides, "[w]hoever wrongfully withholds from any claimant or beneficiary any part of a benefit or claim allowed and due to the claimant or beneficiary, shall be fined as provided in title 18, or imprisoned not more than one year, or both."<sup>14</sup> Therefore, it is possible that an accredited agent or attorney can face criminal penalties under federal law if he or she directly or indirectly requests or receives reimbursement from the veteran claimant for the assessment.

### **Board of Veterans Appeals Case Load**

The Board of Veterans Appeals handles a large volume of claims for veteran's benefits. In 2014, the board received 137,766 notices of disagreement.<sup>15</sup> In the same year, the board rendered 55,532 decisions. This figure is an increase from the amount of notices received in 2013 which was 118,053 and the figure for decisions rendered was 41,910. The VA estimates that the number of notices received in 2015 will be 146,032, and the figure for decisions rendered will reach 57,600.

### **III. Effect of Proposed Changes:**

Under federal law, the United States Department of Veterans Affairs may impose an assessment on an agent or attorney who represents a claimant seeking veteran's benefits. This assessment may not exceed the lesser of \$100 or 5 percent of the compensation of the attorney or agent.

The bill prohibits an agent or attorney from requesting or obtaining reimbursement of the assessment from the claimant. An agent or attorney who violates the prohibition commits a second degree misdemeanor, punishable by up to 60 days in jail, up to a \$500 fine, or both.<sup>16</sup>

The bill is effective October 1, 2016.

### **IV. Constitutional Issues:**

#### **A. Municipality/County Mandates Restrictions:**

None.

#### **B. Public Records/Open Meetings Issues:**

None.

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<sup>11</sup> 38 U.S.C. s. 5904(a)(6)(B); 38 C.F.R. s. 14.636(h).

<sup>12</sup> 38 U.S.C. s. 5904(a)(6)(E).

<sup>13</sup> 38 U.S.C. s. 5904 (a)(6)(D).

<sup>14</sup> 38 U.S.C. s. 5905.

<sup>15</sup> U.S. Dept. of Veterans Affairs, *Board of Veteran's Appeals Annual Report Fiscal Year 2014*, (July 2015), available at [http://www.bva.va.gov/Chairman\\_Annual\\_Rpts.asp](http://www.bva.va.gov/Chairman_Annual_Rpts.asp) (last visited Feb. 24, 2015). Years are federal fiscal years.

<sup>16</sup> Sections 775.082 and 775.083, F.S.

**C. Trust Funds Restrictions:**

None.

**D. Other Constitutional Issues:**

Article V, s. 15 of the Florida Constitution vests the power to discipline lawyers in the Florida Supreme Court, and Florida Bar Rule 4-1.5(a) prohibits fees that are illegal. Because charging the claimant the fee described in the bill is already illegal under federal law, the Florida Bar rules regulate this conduct. A court may find that this law is an indirect attempt to discipline a lawyer for what is otherwise an unethical billing practice that subjects the attorney to professional discipline. If so, the court could find the statute violates the court's exclusive jurisdiction to discipline attorneys.

However, the law is applied evenly to individuals who are not attorneys. An accredited representative does not have to be an attorney, and therefore, the law also regulates conduct by non-attorneys. Additionally, the law does not speak to whether or not an attorney found guilty of charging the administrative fee must be professionally disciplined. Therefore, a court may find that the law does not regulate attorneys at all.

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

None.

**B. Private Sector Impact:**

None.

**C. Government Sector Impact:**

To the extent that the bill results in additional enforcement actions against agents and attorneys, judicial workloads will increase. However, the bill is not expected to have a fiscal impact.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill creates section 295.24 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 Judiciary on February 9, 2016:**

Reduces the criminal penalty an agent or attorney may face for a violation of this section from a third degree felony to a second degree misdemeanor.

- B. **Amendments:**

None.

By the Committee on Judiciary; and Senator Altman

590-03313-16

20161692c1

1                           A bill to be entitled  
2           An act relating to reimbursement of assessments;  
3           creating s. 295.24, F.S.; prohibiting an agent or  
4           attorney representing a claimant from directly or  
5           indirectly requesting, receiving, or obtaining  
6           reimbursement from the claimant for assessments  
7           charged to the agent or attorney by the United States  
8           Department of Veterans Affairs; providing penalties;  
9           providing an effective date.

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

12  
13           Section 1. Section 295.24, Florida Statutes, is created to  
14   read:

15           ~~295.24 Prohibited reimbursement of assessments; penalty.—A~~  
16   ~~person who is recognized as an agent or attorney pursuant to 38~~  
17   ~~U.S.C. s. 5904 and representing a claimant may not, directly or~~  
18   ~~indirectly, request, receive, or obtain reimbursement from the~~  
19   ~~claimant for assessments charged to the agent or attorney by the~~  
20   ~~United States Department of Veterans Affairs pursuant to 38~~  
21   ~~U.S.C. s. 5904(6) (A). A person who violates this section commits~~  
22   ~~a misdemeanor of the second degree, punishable as provided in s.~~  
23   ~~775.082 or s. 775.083.~~

24           Section 2. This act shall take effect October 1, 2016.



## THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

### COMMITTEES:

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

**SENATOR THAD ALTMAN**

16th District

February 24, 2016

The Honorable Anitere Flores  
Senate Committee on Fiscal Policy, Chair  
225 Knott Building  
404 South Monroe Street  
Tallahassee, FL 32399

Dear Chairman Flores:

I respectfully request that SB 1692, related to *Reimbursement of Assessments*, be placed on the committee agenda at your earliest convenience.

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

Sincerely,

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

Thad Altman

CC: Jennifer Hrdlicka, Staff Director, 225 Knott Building  
Tamra Lyon, Committee Administrative Assistant

TA/dw

### REPLY TO:

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

Senate's Website: [www.flsenate.gov](http://www.flsenate.gov)

**ANDY GARDINER**  
President of the Senate

**GARRETT RICHTER**  
President Pro Tempore

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/29/16

Meeting Date

SB 1692

Bill Number (if applicable)

Topic REIMBURSEMENT OF ASSESSMENTS

Amendment Barcode (if applicable)

Name JESSICA KRAYNAK (CRAY-NACK)

Job Title LEGISLATIVE ANALYST

Address Suite 2105, the Capitol

Phone (850) 487-1533

Street

Tallahassee FL 32399

City

State

Zip

Email KRAYNAKjz@fdva.State.FL.US

Speaking:  For  Against  Information

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

Representing The Florida Dept. of Veterans' Affairs

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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



## THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

### COMMITTEES:

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

**SENATOR THAD ALTMAN**

16th District

February 29, 2016

The Honorable Anitere Flores  
Senate Committee on Fiscal Policy  
225 Knott Building  
404 S. Monroe Street  
Tallahassee, FL 32399-1100

Dear Chair Flores:

Senate Bill 556, related to the *Florida Commission on Poverty* and Senate Bill 1692, related to Reimbursement of Assessments, are on the Fiscal Policy committee agenda on February 29, 2016.

Please recognize my Legislative Aide Devon West to present SB 556 and SB 1692 on my behalf. Please feel free to contact me if you have any questions.

Sincerely,

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

Thad Altman

CC: Jennifer Hrdlicka, Staff Director, 225 Knott Building  
Tamra Lyon, Committee Administrative Assistant

TA/dv

### REPLY TO:

☐ 8910 Astronaut Blvd, Cape Canaveral, FL 32920 (321) 868-2132

☐ 314 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5016

Senate's Website: [www.flsenate.gov](http://www.flsenate.gov)

**ANDY GARDINER**  
President of the Senate

**GARRETT RICHTER**  
President Pro Tempore

# CourtSmart Tag Report

Room: KN 412  
Caption: Fiscal Policy

Case No.:  
Judge:

Type:

Started: 2/29/2016 1:07:05 PM

Ends: 2/29/2016 3:08:37 PM

Length: 02:01:33

1:07:03 PM Recording Resumed  
1:07:03 PM Call to Order  
1:07:04 PM Recording Paused  
1:07:37 PM Roll call  
1:07:57 PM Quorum present  
1:08:01 PM Chair Flores for comments  
1:09:27 PM Tab 1- SB 1722 by Senator Stargel  
1:09:41 PM Take up PCS by Senator Stargel  
1:09:51 PM Explanation  
1:10:42 PM Questions?  
1:10:46 PM Senator Clemens for a question  
1:10:57 PM Senator Stargel for a response  
1:11:05 PM Senator Clemens for a question  
1:11:30 PM Senator Stargel for a response  
1:11:42 PM Follow-up  
1:11:53 PM Response  
1:12:10 PM Follow-up  
1:12:22 PM Senator Soto has asked for permission to ask questions  
1:12:43 PM Senator Soto is recognized for a series of questions  
1:12:58 PM Senator Stargel for response  
1:13:29 PM Senator Soto continues his questions  
1:14:08 PM Senator Stargel continues her responses  
1:15:34 PM Senator Soto ask question regarding medical procedure  
1:15:47 PM Senator Stargel for a response  
1:16:30 PM Senator Soto for a follow up  
1:16:38 PM Senator Stargel for a response  
1:16:45 PM Senator Soto continues his questions  
1:16:53 PM Senator Stargel responds  
1:18:16 PM Senator Soto asks about clinics  
1:18:31 PM Senator Stargel responds  
1:18:53 PM Other questions?  
1:18:57 PM No amendments  
1:18:59 PM Appearance cards  
1:19:02 PM Pam Olsen waives  
1:19:06 PM Tracy Yacobellis waives in opposition  
1:19:14 PM Madison Dickmon waives  
1:19:17 PM Bill Bunkley waives in support  
1:19:25 PM Christopher Billaro waives in opposition  
1:19:33 PM Kelly Small waives in opposition  
1:19:39 PM Jose Palacios waives in opposition  
1:19:43 PM Francesca Menes speaks to the committee  
1:20:43 PM Nicole Mendez waives in opposition  
1:20:49 PM Christine White speaks before the committee  
1:22:11 PM Renee Sessions waives in opposition  
1:22:19 PM Cyrelle Bustamante waives against  
1:22:24 PM Kayla Goldstein waives in oppositoin  
1:22:31 PM Gabrel Garcia-Vera speaks against the bill  
1:24:33 PM Greg Pound speaks before the committee  
1:25:39 PM Objection by the members on his testimony  
1:25:49 PM Pamela Fort waives in opposition  
1:25:56 PM Regina Sheridan speaks before the committee  
1:27:14 PM Amber Kelly waives in support



1:27:19 PM Kimberly Diaz waives in opposition  
1:27:26 PM Pamela Gomez waives in opposition  
1:27:30 PM Cynthia Schwartz waives in opposition  
1:27:38 PM Alex Bradbury waives in opposition  
1:27:41 PM Jamie Clift waives in opposition  
1:27:48 PM Chris Wilkay waives in opposition  
1:27:57 PM Florida NOW Barbara DeVane speaks before the committee  
1:30:10 PM Ingrid Delgado waives in support  
1:30:18 PM Kathy Fruit waives in support  
1:30:43 PM Senator Clemens for a question  
1:31:19 PM Senator Stargel for a response  
1:31:53 PM Senator Clemens follow up  
1:32:08 PM Senator Stargel for response  
1:32:39 PM Follow up  
1:32:50 PM Senator Stargel for a response  
1:33:16 PM Senator Clemens for additional follow up question  
1:33:34 PM Senator Stargel for a response  
1:33:57 PM Senator Clemens for a follow up  
1:34:04 PM Senator Stargel for a response  
1:34:15 PM Senator Clemens for a question  
1:34:33 PM Senator Stargel for a response  
1:35:59 PM In Debate  
1:36:03 PM Senator Margolis in debate  
1:37:48 PM Senator Clemens in debate  
1:41:51 PM Senator Margolis for additional comment  
1:42:59 PM Senator Stargel to close  
1:45:47 PM Roll call on SB 1722  
1:46:06 PM SB 1722 passes  
1:46:10 PM SB 1260 by Senator Simpson  
1:46:18 PM Senator Simpson explains the bill  
1:47:31 PM Questions?  
1:47:39 PM Late filed amendment w/d by Senator Abruzzo  
1:48:00 PM Appearance cards  
1:48:04 PM Philip Weindi speaks before the committee  
1:50:25 PM Bonnie Basham speaks before the committee  
1:52:14 PM Senator Abruzzo for a comment  
1:52:36 PM Kelly Mallette speaks before the committee  
1:53:51 PM Michael Cantens waives in support  
1:54:05 PM Senator Simpson waives close  
1:54:12 PM Roll call  
1:54:21 PM SB 1260 passes  
1:54:33 PM SB 1570 by Senator Simmons  
1:54:42 PM Senator Simmons is recognized to explain the bill  
1:55:06 PM Questions?/Debate?/Close?  
1:55:15 PM Roll call SB 1570  
1:55:35 PM SB 1570 passes  
1:55:49 PM SB 704 by Senator Hudson  
1:55:56 PM Senator Hudson explains the bill  
1:56:12 PM Take up strike all amendment 554986  
1:56:25 PM Senator Hutson explains the strike all  
1:57:11 PM Questions?  
1:57:16 PM Amendment barcode 626830 explanation  
1:58:07 PM Richard Pinsky waives in support  
1:58:41 PM Senator Margolis for a question  
1:58:59 PM Pause for a moment  
1:59:32 PM Amendment 626830 by Senator Abruzzo explanation  
2:00:06 PM Questions?  
2:00:28 PM Questions on which amendment is discussed  
2:00:29 PM Senator Flores explains where we are  
2:01:02 PM Motion to TP for a moment  
2:01:07 PM Take up SB 858 by Senator Legg  
2:01:16 PM Senator Legg explains the bill

2:01:32 PM Questions?  
2:01:47 PM Corinne Mixon waives in support  
2:01:59 PM Debate?  
2:02:01 PM Waives close  
2:02:02 PM Roll call  
2:02:08 PM SB 858 passes  
2:02:26 PM SB 862 by Senator Legg  
2:02:31 PM Senator Legg explains  
2:02:48 PM Questions?  
2:02:53 PM No amendments  
2:02:57 PM Nancy Daniels speaks before the committee  
2:03:39 PM Michael Nickersheim waives in support  
2:03:54 PM Dan Hendrickson waives in support  
2:04:03 PM Rick Smith waives in support  
2:04:12 PM Debate?  
2:04:15 PM Senator Legg waives close  
2:04:20 PM Roll call  
2:04:24 PM SB 862 passes  
2:04:47 PM SB 1164 by Senator Legg  
2:04:53 PM Senator Legg explains the bill  
2:05:07 PM Questions?  
2:05:23 PM No amendments  
2:05:26 PM Buddy Dewar waives in support  
2:05:30 PM Gail Matillo waives in support  
2:05:38 PM Melanie Arnold waives in support  
2:05:46 PM Elizabeth Boyd waives in support  
2:05:53 PM Shad Haston speaks before the committee  
2:06:28 PM Debate?  
2:06:35 PM Senator Legg waives close  
2:06:40 PM SB 1164 roll call  
2:06:50 PM SB 1164 passes  
2:07:03 PM Return to tab 4 SB 704 by Senator Hutson  
2:07:19 PM Discussion on 626830 amendment by Senator Abruzzo  
2:07:51 PM Senator Abruzzo withdraws barcode: 626830  
2:08:04 PM On amendment 744198 by Senator Abruzzo  
2:08:18 PM Senator Hutson explains the amendment  
2:08:30 PM Questions?  
2:08:35 PM Speakers waive in support  
2:08:47 PM Dave Cullen  
2:08:59 PM Amendment adopted  
2:09:09 PM Jon Pasqualone speaks before the committee  
2:10:34 PM Theresa King waives in support  
2:10:52 PM Senator Margolis in debate  
2:13:19 PM Senator Hutson to close on strike all amendment  
2:14:29 PM Amendment passes - Senator Margolis objects  
2:14:43 PM David Ramba speaks before the committee  
2:15:58 PM Greg Yantorno speaks before the committee  
2:16:56 PM Bruce Kershner waives  
2:17:03 PM JD Clark waives  
2:17:11 PM Cameron Yarborough waives  
2:17:17 PM Jeremy Susac speaks before the committee  
2:18:04 PM Natalie King waives  
2:18:10 PM Kari Hebrank in support  
2:18:21 PM Debate?  
2:18:29 PM Senator Hudson waives close  
2:18:36 PM Roll call  
2:18:37 PM SB 704 passes  
2:19:02 PM SB 1274 by Senator Latvala  
2:19:27 PM Senator Latvala explains the bill  
2:20:42 PM Questions?  
2:20:50 PM Caitlin Murray speaks before the committee  
2:21:44 PM Debate?

2:21:53 PM Roll call  
2:21:58 PM SB 1274 passes  
2:22:16 PM SB 1470 by Senator Latvala  
2:22:52 PM Senator Latvala explains the bill  
2:23:45 PM Questions?  
2:23:48 PM Senator Clemmons for a question  
2:24:08 PM Jerry Samsom waives in support  
2:24:20 PM Debate?  
2:24:23 PM Senator Latvala waives close  
2:24:36 PM Roll call  
2:24:41 PM SB 1470 passes  
2:24:58 PM SB 1044 by Senator Brandes  
2:25:10 PM Senator Brandes explains the PCS  
2:27:03 PM Senator Brandes explained 681256  
2:27:15 PM Next amendment 797394 explanation  
2:27:33 PM Questions?  
2:27:37 PM Senator Abruzzo for a question  
2:27:50 PM Sponsor responds  
2:28:06 PM Senator Hukill for a question  
2:28:47 PM Senator Brandes for a response  
2:29:46 PM Amy Mercer waives in support  
2:29:54 PM Bob Guatteri waives in support  
2:30:06 PM amendment adopted  
2:30:09 PM Amendment 970996 explanation by the sponsor  
2:30:31 PM Senator Abruzzo for a question  
2:30:51 PM Speakers waive in support  
2:30:59 PM amendment adopted  
2:31:05 PM Amendment 808958 explanation  
2:31:23 PM Speakers waive in support  
2:31:26 PM amendment adopted  
2:31:30 PM Amendment 880614 explanation  
2:31:48 PM Speakers waive in support  
2:31:54 PM amendment adopted  
2:31:59 PM On the bill as amended  
2:32:03 PM Senator Abruzzo for a question  
2:32:47 PM Senator Brandes for response  
2:33:49 PM Senator Clemmons for a question  
2:34:43 PM Senator Brandes for a response  
2:34:54 PM Speakers waive in support  
2:35:07 PM Amendment 681256 adopted  
2:35:16 PM Questions?  
2:35:29 PM Speakers waive in support  
2:36:06 PM Bob Gualtieri speaks to the committee  
2:37:50 PM Amy Mercer speaks before the committee  
2:38:38 PM Debate?  
2:39:21 PM Senator Brandes for comments  
2:40:06 PM PCS adopted  
2:40:10 PM Roll call  
2:40:16 PM SB 1044 passes  
2:40:36 PM SB 360 by Senator Clemens  
2:40:48 PM Explanation of the bill  
2:41:00 PM Barcode: 832832 explanation  
2:41:57 PM Senator Hukill for a question  
2:42:37 PM Pete Maury answers the question  
2:43:17 PM Debate?  
2:43:26 PM Amendment adopted  
2:43:31 PM On the bill as amended  
2:43:37 PM Senator Clemens waives close  
2:43:42 PM roll call  
2:43:46 PM SB 360 passes  
2:44:04 PM SB 1394 by Senator Brandes  
2:44:25 PM On the PCS explanation by Senator Brandes

2:45:24 PM Questions?  
2:45:26 PM Amendment process:  
2:45:31 PM Barcode 527882 explanation  
2:45:51 PM amendment adopted  
2:45:55 PM Barcode 510986 explanation  
2:46:07 PM amendment adopted  
2:46:10 PM Barcode: 854912 explanation  
2:46:32 PM amendment adopted  
2:46:41 PM AA barcode 441664 explanation  
2:47:09 PM amendment adopted  
2:47:23 PM Barcode: 481820 explanation  
2:48:03 PM speaker waives in support  
2:48:14 PM amendment adopted  
2:48:20 PM Barcode: 231632 is withdrawn  
2:48:41 PM On the PCS as amended  
2:48:49 PM Speakers waive in support  
2:48:54 PM Debate?  
2:48:59 PM Speakers waive in support  
2:49:27 PM roll call  
2:49:42 PM SB 1394 passes  
2:50:04 PM SB 964 by Senator Grimsley  
2:50:24 PM Aide explains the bill  
2:51:08 PM Questions?  
2:51:13 PM Barcode 757136 explanation  
2:51:37 PM Questions?  
2:51:48 PM Amendment adopted  
2:52:01 PM Speakers waive in support  
2:52:25 PM Roll call  
2:52:32 PM SB 964 reported favorably  
2:52:59 PM Tab 14 SB 1294 presented by Senator Grimsley's aide  
2:54:23 PM Amendment 475934 presented  
2:55:28 PM Amendment 475934 adopted  
2:56:32 PM Amendment 922438 presented  
2:56:40 PM Amendment 922438 adopted  
2:56:59 PM Roll call on CS/SB 1294  
2:57:26 PM CS/SB 1294 reported favorably  
2:57:44 PM Tab 9 CS/SB 1152 presented by Senator Diaz de la Portilla's aide  
2:58:24 PM Laura Youmans with FL Association of Counties waives in support  
2:58:41 PM Jess McCarty waives in support  
2:58:48 PM Roll call on CS/SB 1152  
2:59:00 PM CS/SB 1152 reported favorably  
2:59:16 PM Tab 15 CS/SB 1378 PCS taken up, presented by Senator Garcia's aide  
2:59:49 PM PCS 799956 adopted  
3:00:27 PM Roll call on CS/CS/SB 1378  
3:00:38 PM CS/CS/SB 1378 reported favorably  
3:00:45 PM Tab 11 CS/SB 1192, PCS 939166 taken up, presented by Senator Hays's office  
3:01:18 PM Kenya Cory waives in support  
3:02:06 PM PCS adopted  
3:02:18 PM Roll call on CS/CS/SB 1192  
3:02:28 PM CS/CS/SB 1192 reported favorably  
3:02:41 PM Senators motion for voting records  
3:03:11 PM Tab 3 SB 556 presented by Senator Altman  
3:03:27 PM PCS 628090 taken up, presented  
3:04:04 PM Tim Center waives in support  
3:04:19 PM Karen Woodall waives in support  
3:04:22 PM PCS 628090 adopted  
3:04:39 PM Roll call on CS/SB 556  
3:04:46 PM CS/SB 556 reported favorably  
3:05:01 PM Tab 19 CS/SB 1692 presented by Senator Altman  
3:05:59 PM Jessica Kraynak with FL Dept. of Veterans' Affairs waives in support  
3:06:59 PM Senator Abruzzo recognized in debate  
3:07:19 PM Roll call on CS/SB 1692

**3:07:43 PM** CS/SB 1692 reported favorably  
**3:07:58 PM** Senator Flores comments  
**3:08:09 PM** Meeting adjourned



## THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

**SENATOR ALAN HAYS**  
11th District

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

**JOINT COMMITTEE:**  
Joint Select Committee on Collective Bargaining,  
*Alternating Chair*

# MEMORANDUM

February 29, 2016

Senator Anitere Flores, Chair  
Committee on Fiscal Policy  
225 Knott Building  
404 S. Monroe Street  
Tallahassee, FL 32399-1100

Dear Chair Flores:

I respectfully request to be excused from today's Fiscal Policy meeting. I have a conflict of another matter that requires my attention and I will be unable to attend the scheduled meeting. Thank you in advance for your consideration of this request.

If you have any questions, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink that reads "D. Alan Hays, DMD".

D. Alan Hays, DMD  
State Senator District 11

Cc: Jennifer Hrdlicka, Staff Director  
Tamra Lyon, Committee Administrative Assistant

**REPLY TO:**

- 871 South Central Avenue, Umatilla, Florida 32784-9290 (352) 742-6441
- 320 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5011
- 1104 Main Street, The Villages, Florida 32159 (352) 360-6739 FAX: (352) 360-6748
- 885 West Montrose Street, Suite 210, Clermont, Florida 34711 (352) 241-9344 FAX: (888) 283-3677

Senate's Website: [www.flsenate.gov](http://www.flsenate.gov)

**ANDY GARDINER**  
President of the Senate

**GARRETT RICHTER**  
President Pro Tempore



## THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

### COMMITTEES:

Higher Education, *Vice Chair*  
Appropriations Subcommittee on Transportation,  
Tourism, and Economic Development  
Communications, Energy, and Public Utilities  
Fiscal Policy  
Military and Veterans Affairs, Space, and  
Domestic Security  
Regulated Industries

### SENATOR MARIA LORTS SACHS

*Deputy Democratic Whip*  
34th District

February 29, 2016

Anitere Flores, Chairman Committee  
Committee on Fiscal Policy  
225 Knott Building  
404 S. Monroe Street  
Tallahassee, FL 32399-1100

Dear Chair Flores,

Please excuse Senator Maria Sachs from the Committee on Fiscal Policy on February 29, 2016 due to a commitment in her district.

Sincerely,

A large, stylized handwritten signature of Maria Sachs in black ink.

A small, handwritten signature or set of initials in black ink.

Senator Maria Sachs  
District 34

#### REPLY TO:

- Delray Beach City Hall, 100 NW 1st Avenue, Delray Beach, Florida 33444 (561) 279-1427 FAX: (561) 279-1429
- 216 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5034

Senate's Website: [www.flsenate.gov](http://www.flsenate.gov)

**ANDY GARDINER**  
President of the Senate

**GARRETT RICHTER**  
President Pro Tempore