

<b>Tab 1</b>	<b>CS/SB 312 by HE, Gaetz (CO-INTRODUCERS) Harrell;</b> Compare to H 00179 Florida Institute for Human and Machine Cognition, Inc.				
943096	A	S	GO, Gaetz	btw L.67 - 68:	03/24 12:48 PM
<b>Tab 2</b>	<b>SB 440 by McClain;</b> Similar to H 01495 Gender Identity Employment Practices				
693704	A	S	GO, McClain	Delete L.92 - 117:	03/17 03:18 PM
<b>Tab 3</b>	<b>SB 582 by Leek;</b> Identical to H 00717 Unlawful Demolition of Historical Buildings and Structures				
<b>Tab 4</b>	<b>SB 1202 by McClain;</b> Similar to H 00749 Benefits for Firefighters Injured During Training Exercises				
104078	A	S	GO, McClain	btw L.72 - 73:	03/24 12:49 PM
<b>Tab 5</b>	<b>SB 1328 by Fine;</b> Similar to H 01217 Public Employee Collective Bargaining				
643072	A	S	GO, Fine	Delete L.329:	03/17 03:18 PM
<b>Tab 6</b>	<b>SB 1694 by Fine;</b> Compare to H 01125 Prohibited Preferences in Government Contracting				
<b>Tab 7</b>	<b>SB 1816 by McClain;</b> Similar to H 01599 Protection of Historic Monuments and Memorials				
975322	D	S	GO, McClain	Delete everything after	03/24 01:30 PM
<b>Tab 8</b>	<b>SB 1760 by Grall;</b> Identical to H 01445 Public Officers and Employees				
<b>Tab 9</b>	<b>CS/SB 676 by CM, Martin;</b> Similar to H 00541 Minimum Wage Requirements				
152346	A	S	GO, Martin	Delete L.27:	03/24 01:18 PM

**The Florida Senate**  
**COMMITTEE MEETING EXPANDED AGENDA**

**GOVERNMENTAL OVERSIGHT AND ACCOUNTABILITY**

**Senator Fine, Chair**  
**Senator DiCeglie, Vice Chair**

**MEETING DATE:** Tuesday, March 25, 2025  
**TIME:** 1:30—3:30 p.m.  
**PLACE:** *Toni Jennings Committee Room*, 110 Senate Building

**MEMBERS:** Senator Fine, Chair; Senator DiCeglie, Vice Chair; Senators Arrington, Brodeur, Grall, McClain, Polsky, and Rodriguez

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	<b>CS/SB 312</b> Education Postsecondary / Gaetz (Compare H 179)	Florida Institute for Human and Machine Cognition, Inc.; Requiring the board of directors of the Florida Institute for Human and Machine Cognition, Inc., rather than the Board of Governors, to authorize the creation of a subsidiary of the corporation; revising the composition of the board of directors of the corporation; authorizing subsidiaries of the corporation to enter into certain affiliation agreements, etc.	HE 02/18/2025 Temporarily Postponed HE 03/10/2025 Fav/CS GO 03/25/2025 RC
2	<b>SB 440</b> McClain (Similar H 1495)	Gender Identity Employment Practices; Citing this act as the "Freedom of Conscience in the Workplace Act"; specifying an employment policy of this state relating to a person's sex; providing applicability; prohibiting employees and contractors of certain employers from being required to use certain pronouns or requiring such employer to use a pronoun that does not correspond to the employee's or contractor's sex; providing that it is an unlawful employment practice for the state or any county, municipality, special district, or other political subdivision to require certain training, instruction, or activity as a condition of employment, etc.	GO 03/18/2025 Not Considered GO 03/25/2025 JU FP
3	<b>SB 582</b> Leek (Identical H 717)	Unlawful Demolition of Historical Buildings and Structures; Authorizing a code enforcement board or special magistrate to impose a fine that exceeds certain limits for the unlawful demolition of certain historical buildings or structures under certain circumstances; providing that such fine may not exceed a certain percentage of just market valuation, etc.	CA 03/11/2025 Favorable GO 03/25/2025 RC

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TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	<b>SB 1202</b> McClain (Similar H 749)	Benefits for Firefighters Injured During Training Exercises; Providing that a firefighter and his or her spouse and dependent children are eligible for certain insurance coverage if the firefighter is totally and permanently disabled during an official training exercise, etc.	CA 03/11/2025 Favorable GO 03/25/2025 AP
5	<b>SB 1328</b> Fine (Similar H 1217, Compare H 1387, S 1766)	Public Employee Collective Bargaining; Requiring employee organizations or public employees seeking to certify, recertify, or decertify a bargaining agent to file a petition with the Public Employees Relations Commission; authorizing registered employee organizations desiring placement on the ballot in a certification or recertification election to be permitted with a showing of interest from a certain percentage of public employees in the proposed or existing bargaining unit; providing that the showing of interest is confidential and exempt from public disclosure; repealing a provision relating to revocation of certification of employee organizations, etc.	GO 03/18/2025 Not Considered GO 03/25/2025 JU RC
6	<b>SB 1694</b> Fine (Compare H 1125, H 1185, H 1397, H 1613, S 1264, S 1532, S 1662)	Prohibited Preferences in Government Contracting; Prohibiting an awarding body from giving preference to a vendor on the basis of race or ethnicity; repealing provisions relating to minority participation for lottery retailers; deleting duties and responsibilities of the Office of Supplier Diversity to conform to its repeal by the act; repealing provisions relating to the procurement of personal property and services from funds set aside for minority business enterprises; repealing provisions relating to the Office of Supplier Diversity, etc.	GO 03/18/2025 Not Considered GO 03/25/2025 AEG FP

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**COMMITTEE MEETING EXPANDED AGENDA**

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TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
7	<b>SB 1816</b> McClain (Similar H 1599)	Protection of Historic Monuments and Memorials; Citing this act as the "Historic Florida Monuments and Memorials Protection Act"; preempting all removal, damage, and destruction of historic Florida monuments and memorials; providing that any existing or future ordinance, regulation, or rule to the contrary, and certain actions by elected or appointed local government officials, are void; providing that it is no defense that a local government was acting in good faith or upon the advice of counsel; prohibiting the use of public funds to defend or reimburse unlawful conduct of certain persons, etc.	GO 03/25/2025 CA RC
8	<b>SB 1760</b> Grall (Identical H 1445)	Public Officers and Employees; Requiring certain public officers and employees to be United States citizens and residents of this state, and, for specified public officers and employees, to reside in a certain county; defining the term "office" for purposes of s. 5(a), Art. II of the State Constitution, etc.	GO 03/25/2025 AEG RC
9	<b>CS/SB 676</b> Commerce and Tourism / Martin (Similar H 541)	Minimum Wage Requirements; Providing that an employer is not subject to certain minimum wage requirements for specified employees; authorizing employees to opt out of the minimum wage requirements in a specified manner; requiring that the parent or guardian of an employee who is younger than 18 years of age sign such waiver on behalf of the employee, etc.	CM 03/10/2025 Fav/CS GO 03/25/2025 RC

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Other Related Meeting Documents

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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 Governmental Oversight and Accountability

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BILL: CS/SB 312

INTRODUCER: Education Postsecondary Committee and Senators Gaetz and Harrell

SUBJECT: Florida Institute for Human and Machine Cognition, Inc.

DATE: March 24, 2025      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Jahnke</u>	<u>Bouck</u>	<u>HE</u>	<u>Fav/CS</u>
2.	<u>McVaney</u>	<u>McVaney</u>	<u>GO</u>	<u>Pre-meeting</u>
3.	_____	_____	<u>RC</u>	_____

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

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 312 modifies requirements related to the Florida Institute for Human and Machine Cognition, Inc. (IHMC) corporation. Specifically, the bill:

- Requires the board of directors of the IHMC to oversee the creation of not-for-profit subsidiaries rather than the Board of Governors.
- Removes the requirement that the Board of Governors approve the articles of incorporation for any authorized and approved subsidiary.
- Requires reporting by the IHMC, rather than the University of West Florida.
- Revises the composition of the board of directors by removing the chair of the Board of Trustees of the University of West Florida and increasing the number of public representatives from nine to ten.
- Grants subsidiaries the authority to enter into affiliation agreements.

This bill does not have an impact on state or local government revenues or expenditures.

This bill takes effect July 1, 2025.

## II. Present Situation:

### The Florida Institute for Human and Machine Cognition

The Florida Institute for Human and Machine Cognition, Inc. (IHMC) is a not-for-profit research institute established at the University of West Florida (UWF) and is affiliated with several Florida universities.<sup>1</sup> The IHMC was founded to advance research in human and machine cognition, with a focus on artificial intelligence, robotics, human performance, and information technology. Faculty and staff collaborate extensively with universities, research institutions, and private-sector partners to conduct cutting-edge scientific research.<sup>2</sup>

The IHMC is authorized to create not-for-profit corporate subsidiaries to support its mission, provided they are approved by the Board of Governors.<sup>3</sup> The corporation and its subsidiaries must comply with Florida's public records and open meetings laws, ensuring transparency in their operations.<sup>4</sup> However, certain records and meetings of the IHMC and its subsidiaries are exempt from Florida's public records and open meetings laws to protect trade secrets, patentable material, proprietary research, confidential business transactions, donor identities, and information received from government entities under confidentiality agreements, though governmental entities may access this information when necessary for official duties.<sup>5</sup>

The IHMC and its subsidiaries are authorized to:<sup>6</sup>

- Receive, invest, and administer funds from public and private sources, including state and federal grants, private donations, and income derived from research activities.
- Secure patents, trademarks, and copyrights for its research products.
- Obtain comprehensive general liability protection, including professional liability protection, for the corporation and its subsidiaries.
- Enter into affiliation agreements with universities and research organizations.

The IHMC's board of directors manages its affairs and serves without compensation, with each director having one vote. The board of directors consists of:<sup>7</sup>

- The chair of the Board of Governors or the chair's designee.
- The chair of the board of trustees of UWF or the chair's designee.
- The President of UWF or the president's designee.
- Three state university representatives.
- Nine public representatives, who are neither state university employees nor state employees.

The Governor, the President of the Senate, and the Speaker of the House of Representatives each appoint one state university representative for an initial three-year term, while they, along with the UWF Board of Trustees chair, appoint nine public representatives for initial two-year terms.

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<sup>1</sup> Sections 1004.447, F.S. and 1004.4471, F.S.

<sup>2</sup> Florida Institute for Human and Machine Cognition, *The IHMC Story*, <https://www.ihmc.us/aboutihmc/> (last visited Mar. 21, 2025).

<sup>3</sup> Section 1004.447(1)(b), F.S.

<sup>4</sup> Section 1004.447(2)(c), F.S.

<sup>5</sup> Section 1004.4472, F.S.

<sup>6</sup> Section 1004.447(2)(e)-(g), F.S.

<sup>7</sup> Section 1004.447(5)(a), F.S.

After the initial terms, directors are appointed under this process and are reappointed for three-year terms by a majority vote of the board.<sup>8</sup>

The Board of Trustees of UWF is responsible for certifying that IHMC operates in compliance with state regulations and must report annually to the Governor, Legislature, and Board of Governors.<sup>9</sup>

### **The Board of Governors**

The State University System of Florida consists of 12 public universities,<sup>10</sup> each governed by an individual board of trustees. The Board of Governors (BOG) is responsible for overseeing, regulating, and managing the entire State University System,<sup>11</sup> ensuring compliance with local, state, and federal laws that govern its institution.<sup>12</sup>

If the BOG determines that an institution is not in compliance with applicable laws or regulations, it has the authority to take disciplinary actions, including:<sup>13</sup>

- Withholding state or other funding.
- Requiring periodic reports until compliance is achieved.
- Reporting noncompliance to the Legislature.

The BOG has established regulation<sup>14</sup> that outlines the structure, oversight, and reporting requirements for institutes and centers within Florida's State University System. The regulation classifies institutes and centers into three main categories: State of Florida institutes and centers, legislatively established institutes and centers, and university institutes and centers.<sup>15</sup> While most institutes and centers require BOG approval and oversight, certain entities, such as incorporated institutes with university affiliations, including the IHMC, are explicitly excluded from these requirements.<sup>16</sup> Instead, the IHMC operates as an independent not-for-profit research institute affiliated with UWF, and its governance follows specific statutory provisions.<sup>17</sup> Despite this exemption, the host university, UWF, retains responsibilities related to financial oversight and compliance reporting to ensure accountability.

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

CS/SB 312 modifies s. 1004.447, F.S., by replacing the Board of Governors with the board of directors of the Florida Institute for Human and Machine Cognition, Inc. (IHMC) as the authority to approve the creation of not-for-profit subsidiaries. The bill removes the requirement that the

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<sup>8</sup> Section 1004.447(5)(b), F.S.

<sup>9</sup> Section 1004.447(9), F.S.

<sup>10</sup> See State University System of Florida, *Universities*, <https://www.flbog.edu/universities/> (last visited Mar. 12, 2025) (identifying 12 state universities).

<sup>11</sup> FLA. CONST. art. IX, s. 7(a)-(d).

<sup>12</sup> Section 1001.705(2), F.S.

<sup>13</sup> See generally s. 1008.322(5), F.S.

<sup>14</sup> Board of Governors Regulation 10.015.

<sup>15</sup> *Id.* at (1)(a)-(c).

<sup>16</sup> See *id.* at (1)(e).

<sup>17</sup> Section 1004.447, F.S.

Board of Governors approve the articles of incorporation for any authorized and approved subsidiary.

The bill maintains the requirement that records and meetings of the corporation and subsidiaries are subject to Florida's public records and open meetings laws but acknowledges the exemptions in s. 1004.4472, F.S., that make certain information of the corporation or subsidiary confidential or exempt from public disclosure requirements and certain portions of meetings exempt from public meetings requirements.

The bill revises the composition of the IHMC's board of directors. Specifically, the bill removes the chair of the Board of Trustees of the University of West Florida from the board of directors and increases the number of public representatives from nine to ten.

Additionally, the bill requires the IHMC, rather than the Board of Trustees of the University of West Florida, to certify compliance with state requirements.

The bill amends s. 1004. 4471, F.S., by authorizing IHMC subsidiaries to enter into affiliation agreements with certain universities. The bill includes conforming cross-references.

The bill is effective July 1, 2025.

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

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

Not applicable. The bill does not require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, or reduce the percentage of state tax shared with counties or municipalities.

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

None identified.

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

None identified.

##### **D. State Tax or Fee Increases:**

None identified.

##### **E. Other Constitutional Issues:**

None identified.



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

None identified.

**B. Private Sector Impact:**

None identified.

**C. Government Sector Impact:**

This bill does not have an impact on state or local government revenues or expenditures.

**VI. Technical Deficiencies:**

On lines 66-67, the number of public representatives to be appointed to the board of directors of the corporation is increased from nine to ten people. However, the bill does not address who has the authority to appoint this new representative.

**VII. Related Issues:**

None identified.

**VIII. Statutes Affected:**

This bill substantially amends sections 1004.447 and 1004.4471 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 Education Postsecondary on March 10, 2025:**

The committee substitute:

- Removes provisions from the bill that specified subsidiaries as not-for-profit.
- Revises the composition of the Florida Institute for Human and Machine Cognition's board of directors. Specifically:
  - Removes the chair of the Board of Trustees of the University of West Florida.
  - Increases the number of public representatives from nine to ten.

**B. Amendments:**

None.



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LEGISLATIVE ACTION

Senate

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House

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The Committee on Governmental Oversight and Accountability  
(Gaetz) recommended the following:

**Senate Amendment (with directory amendment)**

Between lines 67 and 68

insert:

(b) The Governor, the President of the Senate, and the  
Speaker of the House of Representatives shall each make one  
initial appointment of a state university representative to the  
board of directors. Each director who is a representative of a  
state university shall be appointed for an initial term of 3  
years. The Governor shall make three initial appointments of



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11 public representatives to the board of directors. The President  
12 of the Senate and the Speaker of the House of Representatives  
13 shall each make two initial appointments of public  
14 representatives to the board of directors. The chair of the  
15 Board of Trustees of the University of West Florida shall make  
16 two initial appointments of public representatives to the board  
17 of directors. The Board of Trustees of the University of West  
18 Florida shall make one appointment of a public representative to  
19 the board of directors. Each director who is a representative of  
20 the public shall be appointed to serve an initial term of 2  
21 years.

22  
23 ===== D I R E C T O R Y C L A U S E A M E N D M E N T =====

24 And the directory clause is amended as follows:

25 Delete lines 23 - 25

26 and insert:

27 Section 1. Paragraph (b) of subsection (1), subsection (4),  
28 paragraph (a) and (b) of subsection (5), and subsection (9) of  
29 section 1004.447, Florida Statutes, are amended to read:

By the Committee on Education Postsecondary; and Senators Gaetz  
and Harrell

589-02244-25

2025312c1

A bill to be entitled

An act relating to the Florida Institute for Human and Machine Cognition, Inc.; amending s. 1004.447, F.S.; requiring the board of directors of the Florida Institute for Human and Machine Cognition, Inc., rather than the Board of Governors, to authorize the creation of a subsidiary of the corporation; requiring that the articles of incorporation of the corporation, rather than of the corporation and any authorized and approved subsidiary, be approved in a written agreement by the Board of Governors; revising the composition of the board of directors of the corporation; requiring the corporation, rather than the Board of Trustees of the University of West Florida, to certify specified information annually to the Governor and Legislature; amending s. 1004.4471, F.S.; authorizing subsidiaries of the corporation to enter into certain affiliation agreements; providing an effective date.

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

Section 1. Paragraph (b) of subsection (1), subsection (4), paragraph (a) of subsection (5), and subsection (9) of section 1004.447, Florida Statutes, are amended to read:

1004.447 Florida Institute for Human and Machine Cognition, Inc.—

(1)

(b) The corporation is authorized to create not-for-profit

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

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corporate subsidiaries that are organized under the provisions of chapter 617 upon the prior approval of its board of directors ~~the Board of Governors~~, as necessary, to fulfill its mission.

(4) The articles of incorporation of the corporation ~~or any authorized and approved subsidiary~~ must be approved in a written agreement by the Board of Governors. The agreement and the articles of incorporation ~~must shall~~:

(a) Provide that the corporation and any authorized and approved subsidiary shall provide equal employment opportunities for all persons regardless of race, color, religion, gender, national origin, age, handicap, or marital status.

(b) Provide that the corporation and any authorized and approved subsidiary are subject to the public records and meeting requirements of s. 24, Art. I of the State Constitution.

(c) Provide that all officers, directors, and employees of the corporation and any authorized and approved subsidiary shall be governed by the code of ethics for public officers and employees as set forth in part III of chapter 112.

(d) Provide that members of the board of directors of the corporation are responsible for the prudent use of all public and private funds and that they will ensure that the use of funds is in accordance with all applicable laws, bylaws, and contractual requirements.

(e) Provide that the fiscal year of the corporation and any authorized and approved subsidiary is from July 1 to June 30.

(5) The affairs of the corporation shall be managed by a board of directors who shall serve without compensation. Each director shall have only one vote.

(a) The board of directors shall consist of:

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

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- 59 1. The chair of the Board of Governors or the chair's  
60 designee.
- 61 2. ~~The chair of the Board of Trustees of the University of~~  
62 ~~West Florida or the chair's designee.~~
- 63 ~~3.~~ The President of the University of West Florida or the  
64 president's designee.
- 65 ~~3.4.~~ Three state university representatives.
- 66 ~~4.5.~~ Ten ~~Nine~~ public representatives who are neither state  
67 university employees nor state employees.
- 68 (9) The corporation ~~Board of Trustees of the University of~~  
69 ~~West Florida~~ shall annually certify to the Governor, the  
70 President of the Senate, the Speaker of the House of  
71 Representatives, and the Board of Governors that the corporation  
72 and its authorized subsidiaries are complying with the  
73 requirements of this section and are acting in the best  
74 interests of the state.
- 75 Section 2. Section 1004.4471, Florida Statutes, is amended  
76 to read:
- 77 1004.4471 Florida Institute for Human and Machine  
78 Cognition; affiliation with other universities.—The corporation  
79 created pursuant to s. 1004.447(1) and any authorized and  
80 approved subsidiary of the corporation may enter into  
81 affiliation agreements similar to the agreement described in s.  
82 1004.447(6) with the boards of trustees of other public or  
83 private universities.
- 84 Section 3. This act shall take effect July 1, 2025.

**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 Governmental Oversight and Accountability

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BILL: SB 440

INTRODUCER: Senator McClain

SUBJECT: Gender Identity Employment Practices

DATE: March 17, 2025

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Harmsen	McVaney	GO	<b>Pre-meeting</b>
2.			JU	
3.			FP	

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**I. Summary:**

SB 440 creates the Freedom of Conscience in the Workplace Act, which prohibits specific behaviors that accommodate the use of preferred pronouns that do not correspond to a person’s sex within the context of employment by the state, a county, municipality, special district, or any subdivision or agency thereof.

Additionally, the bill makes it an unlawful employment practice for an employer to:

- Take an adverse personnel action against an applicant, employee, or contractor because of their deeply held religious, moral, conscience-based, or biology-based beliefs, including a belief in traditional or Biblical views of sexuality and marriage, or the employee’s or contractor’s disagreement with gender ideology, whether those views are expressed at or away from the worksite.
- Require, as a condition of employment, any training, instruction, or other activity on sexual orientation, gender identity, or gender expression.

The bill grants the Department of Management Services authority to adopt rules to implement portions of the bill.

The bill may result in increased costs to the state and local governments.

The bill takes effect July 1, 2025.

## II. Present Situation:

### **Unlawful Discrimination in Florida**

Florida has long guaranteed civil rights protections in the State Constitution, which prohibits, in relevant part, forms of discrimination on the basis of gender, race, religion, national origin, and physical disability, and guarantees equality under the laws to all peoples.<sup>1</sup>

In 2019, Governor DeSantis reaffirmed the policy of non-discrimination in government employment and declared it the policy of his administration to prohibit discrimination in employment based on age, sex, race, color, religion, national origin, marital status, or disability.<sup>2</sup>

### **Florida Civil Rights Act (Part I, Chapter 760, F.S.)**

The Florida Civil Rights Act (FCRA) protects persons from discrimination based on race, color, religion, sex, pregnancy, national origin, age, handicap, or marital status. The FCRA establishes the Florida Commission on Human Relations (the Commission) within the Department of Management Services. The Commission is empowered to receive, initiate, investigate, conciliate, hold hearings on, and act upon complaints alleging discriminatory practices.<sup>3</sup> Additionally, the Attorney General may initiate a civil action for damages, injunctive relief, civil penalties of up to \$10,000 per violation, and other appropriate relief.<sup>4</sup> The Governor appoints, and the Senate confirms, the 12 members of the Commission.<sup>5</sup>

### ***Unlawful Employment Practices***

Employers, employment agencies, labor organizations, and joint labor-management committees are prohibited from engaging in employment practices that discriminate against individuals based on race, color, religion, sex, pregnancy, national origin, age, disability, or marital status.<sup>6</sup>

### ***Administrative and Civil Remedies***

Following a potential violation of the FCRA, an aggrieved person, the Commission, a commissioner, or the Attorney General has 365 days to file a complaint with the Commission naming the person responsible for the violation and describing the violation.<sup>7</sup> Within 180 days of the filing, the Commission must make a determination of whether reasonable cause exists to believe that discriminatory practice has occurred.<sup>8</sup>

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<sup>1</sup> FLA. CONST. art. I *passim*.

<sup>2</sup> Office of the Governor, *Executive Order Number 19-10*, Jan. 8, 2019 (Reaffirming Commitment to Diversity in Government).

<sup>3</sup> Section 760.06(5), F.S.

<sup>4</sup> Section 760.021(1), F.S.

<sup>5</sup> Section 760.03(1), F.S.

<sup>6</sup> *See* s. 760.10, F.S. Limited exceptions apply in bona-fide scenarios where authorized by law or necessary for the performance of the particular employment. *See* s. 760.10(8), F.S.

<sup>7</sup> Section 760.11(1), F.S.

<sup>8</sup> Section 760.11(3), F.S.

If the Commission issues a finding of reasonable cause, the aggrieved person may request an administrative hearing or bring a civil action.<sup>9</sup> A civil action must be brought within 1 year after the determination of reasonable cause.<sup>10</sup> The FCRA expressly requires a plaintiff to exhaust his or her administrative remedy as a prerequisite to filing a civil action alleging unlawful discrimination, including housing discrimination.<sup>11</sup> The remedies available through an administrative hearing are affirmative relief from the effects of the practice, including back pay and attorney's fees; while remedies available through a civil action include affirmative relief such as back pay, injunctive relief, compensatory damages, punitive damages up to \$100,000, and attorney's fees.<sup>12</sup>

Alternatively, under s. 760.11(7), F.S., if the Commission makes a determination that there is not reasonable cause, the claimant may request an administrative hearing, but must do so within 35 days of the date of the "no cause" determination. If the claim is not made within 35 days, the claim is barred.<sup>13</sup>

### III. Effect of Proposed Changes:

**Section 1** provides the title "Freedom of Conscience in the Workplace Act," for the bill. This Act, in part, declares as the state's policy that a person's sex is an immutable biological trait and that it is false to ascribe to a person a pronoun that does not correspond to such person's sex.

**Section 2** addresses the use of pronouns in the context of the public workplace where those pronouns do not correspond with an individual's sex. Specifically, the bill provides that:

- An employer cannot require an applicant, employee, or contractor, within the context of their state or county employment, to use a person's preferred pronouns if they do not correspond to that person's sex;
- An applicant, employee, or contractor cannot require a public employer to use his or her preferred pronouns if they do not correspond to his or her sex; and
- An application or other employment form that asks about sex may *only* offer male or female as answers and cannot provide a nonbinary or other option.

An employer, for purposes of this section, is the state or any county, municipality, or special district or any subdivision or agency thereof. A "political subdivision" is further defined by s. 1.01(8) as cities, towns, villages, special tax school districts, special road and bridge districts, bridge districts, and all other districts in Florida.

Under this section, it is an unlawful employment practice for an employer to take any adverse personnel action against an applicant, employee, or contractor because of his or her deeply held religious, moral, conscience-based, or biology-based beliefs, including a belief in traditional or Biblical views of sexuality and marriage or disagreement with gender ideology. The applicant,

<sup>9</sup> Section 760.11(4), F.S.

<sup>10</sup> Section 760.11(5), F.S. If, however, the commission fails to make a determination of reasonable cause, the four-year statute of limitations for cause of action based on statutory liability applies. *Joshua v. City of Gainesville*, 768 So.2d 432 at 439 (Fla. 2000).

<sup>11</sup> Section 760.07, F.S.

<sup>12</sup> Section 760.11(5), (6), and (7), F.S.

<sup>13</sup> Section 760.11(7), F.S.



employee, or contractor's expression of such beliefs both at and away from the worksite is protected from adverse personnel action. A party aggrieved by this specific unlawful employment practice may seek a remedy for the violation pursuant to s. 760.11, F.S., of the Florida Civil Rights Act. Such a complaint must be filed with either the Florida Commission on Human Rights, the Equal Employment Opportunity Commission, or the fair-employment-practice agency under federal law within 365 days of the alleged violation. Additionally, the bill provides that a court must award reasonable attorney fees and costs to the prevailing party in such a matter.

The bill grants the Department of Management Services rulemaking authority to adopt rules implementing section 2.

**Section 3** amends s. 760.10, F.S., to classify as an unlawful employment practice under the Florida Civil Rights Act the requirement that one must, as a condition of employment, complete any training, instruction, or other activity on sexual orientation, gender identity, or gender expression.

**Section 4** reenacts s. 760.11, F.S., for the purpose of incorporating by reference the changes made to s. 760.10, F.S., by this act.

**Section 5** provides that the bill takes effect July 1, 2025.

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

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

Article VII, section 18(a) of the Florida Constitution provides in part that county or municipality may not be bound by a general law requiring a county or municipality to spend funds or take an action that requires the expenditure of funds unless certain specified exemptions or exceptions are met. Local governments may be subjected to litigation as a result of the implementation of employment practices required by the bill. If the bill does qualify as a mandate, in order to be binding upon cities and counties, the bill must contain a finding of important state interest and be approved by a two-thirds vote of the membership of each house.

The bill may be excepted from the mandates provision if the bill applies equally to all persons similarly situated, including state and local governments. However, the bill applies only to public employers, and excludes private employers. This is therefore unlikely to be found to affect all persons similarly situated. If it were, such exception would require a finding of important state interest on behalf of the legislature.

The mandate requirements do not apply to laws that have an insignificant fiscal impact, which for Fiscal Year 2025-2026 is forecast at approximately \$2.4 million.<sup>14, 15, 16</sup> The estimated costs for the bill are unknown at this time. If costs imposed by the bill exceed \$2.4 million, the mandates provisions may apply. If the bill does qualify as a mandate, in order to be binding upon cities and counties, the bill must contain a finding of important state interest and be approved by a two-thirds vote of the membership of each house.

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

None identified.

**C. Trust Funds Restrictions:**

None identified.

**D. State Tax or Fee Increases:**

None identified.

**E. Other Constitutional Issues:**

**Single Subject**

“Every law shall embrace but one subject and matter properly connected therewith, and the subject shall be briefly expressed in the title.”<sup>17</sup> Under this single subject clause, the full title of an act must be so worded as not to mislead a person of average intelligence as to the scope of the enactment, and must be sufficient to put that person on notice and cause him to inquire into the body of the statute itself.<sup>18</sup>

The bill is entitled “An act relating to gender identity employment practices.” Lines 92-100 of the bill, however, prohibit adverse actions for “religious, moral, conscience-based, or biology based beliefs...” While the bill does specify these beliefs could include belief relating to “gender ideology,” this is not an *exclusive* limitation that relates to a person's pronouns or gender identity. The bill may include actions that express racism, sexism, or anti-religious beliefs—actions not relating to gender identity.

A court may find the bill unconstitutional for failure to give notice that the bill governs employment practices beyond those relating to gender identity.

<sup>14</sup> FLA. CONST. art. VII, s. 18(d).

<sup>15</sup> An insignificant fiscal impact is the amount not greater than the average statewide population for the applicable fiscal year times \$0.10. See Florida Senate Committee on Community Affairs, *Interim Report 2012-115: Insignificant Impact*, (Sept. 2011), <http://www.flsenate.gov/PublishedContent/Session/2012/InterimReports/2012-115ca.pdf> (last visited Mar. 16, 2025).

<sup>16</sup> Based on the Florida Demographic Estimating Conference’s February 4, 2025 population forecast for 2025 of 23,332,606. [https://edr.state.fl.us/content/conferences/population/ConferenceResults\\_Tables.pdf](https://edr.state.fl.us/content/conferences/population/ConferenceResults_Tables.pdf) (last visited Mar. 16, 2025).

<sup>17</sup> FLA. CONST. art. III, s. 6.

<sup>18</sup> *Franklin v. State*, 887 So.3d 1063, 1076 (Fla. 2004), citing *Loxahatchee River Envtl. Control Dist. v. Sch. Bd. of Palm Beach County*, 515 So.2d 217, 219 (Fla. 1987).

## Freedom of Speech

The state and federal constitutions protect freedom of speech. The First Amendment to the U.S. Constitution guarantees that “Congress shall make no law ... abridging the freedom of speech;”<sup>19</sup> and the State Constitution’s free speech protections “is the same as is required under the First Amendment.”<sup>20</sup> If the government is able to meet the applicable level of judicial scrutiny, the law is constitutional, even if it restricts free speech.

Governments can typically restrict speech that is a part of an employee’s official duties without encroaching on the freedom of speech, but the restrictions must be on employee speech that has potential to affect the employer’s operations.<sup>21</sup> Courts apply a two-part inquiry to determine the constitutional protection afforded a public employee’s speech (the “Garcetti test”).<sup>22</sup>

- First, was the employee speaking as a citizen on a matter of public concern? If not, then there is no first amendment protection based on the employer’s reaction to the speech.
- If yes, then a more in-depth inquiry about the speech is required. Mainly, the second question to be addressed is whether the government entity has an adequate justification for treating the employee differently from any other member of the general public?<sup>23</sup> In particular, this question addresses whether the speech “impairs discipline by superiors or harmony among co-workers, has a detrimental impact on close working relationships for which personal loyalty and confidence are necessary, or impedes the performance of the speaker’s duties or interferes with the regular operation of the enterprise.”<sup>24</sup>

Section 1000.071(1), F.S., provides that “[a]n employee or contractor of a public K-12 educational institution may not provide to a student his or her preferred personal title or pronouns if [it does] not correspond to his or her sex.” The U.S. Northern District Federal Court found that this is a viewpoint discriminatory prohibition that chills subject employees’ First Amendment right to speak freely.<sup>25</sup> In its application of the Garcetti test, the court found that: (1)(a) An individual’s use of his or her preferred pronouns is not a government message, but a personal one, and therefore is made in the speaker’s capacity as a citizen—not an employee. (1)(b) That such usage is a matter of public concern,<sup>26</sup> invariably—at least—because it is the subject of state policy. (2) The usage did not

<sup>19</sup> U.S. CONST. amend. I.

<sup>20</sup> *Dep’t of Educ. v. Lewis*, 416 So. 2d 455, 461 (Fla. 1982); *Scott v. State*, 368 So. 3d 8, 10 (Fla. 4th DCA 2023), *review denied*, No. SC2023-1188 (Fla. Nov. 22, 2023), and *cert. denied sub nom.* *Scott v. Fla.*, No. 23-7786 (U.S. Oct. 7, 2024).

<sup>21</sup> *Connick v. Myers*, 461 U.S. 138, 143 (1983).

<sup>22</sup> *Garcetti v. Ceballos*, 547 U.S. 410 (2006).

<sup>23</sup> *Garcetti v. Ceballos*, 547 U.S. 410 (majority); 16A AM. JUR. 2D *Constitutional Law* s. 491 (2024); Legal Almanac: *The First Amendment: Freedom of Speech* s. 8:4; *Connick v. Myers*, 461 U.S. 138, 142-148 (1983); 63C AM. JUR. 2D *Public Officers and Employees* s. 195 (2024) (citing *Smith v. Gilchrist*, 749 F.3d 302, 309 (4th Cir. 2014)).

<sup>24</sup> *Rankin v. McPherson*, 483 U.S. 378, 388 (1987).

<sup>25</sup> *Wood v. Fl. Dep’t of Educ.*, 729 F. Supp. 3d 1255 (N.D. Fla. 2024).

<sup>26</sup> Factors used to determine this include “whether the speech communicates ‘a subject of legitimate news interest, a subject of general interest and of value and concern to the public at the time.’” *Mitchell v. Hillsborough Cnty.*, 468 F.3d 1276 (11<sup>th</sup> Cir 2006), quoting *Connick v. Myers*, 461 U.S. 138, at 147-48, (1983).

impair the normal operations of the workplace or impede the speaker's employment duties. This matter is on appeal.

**V. Fiscal Impact Statement:**

**A. Tax/Fee Issues:**

None identified.

**B. Private Sector Impact:**

Those companies that provide human resource training may be required to tailor their offerings to conform to the bill's requirement that no training be offered on sexual orientation, gender identity, or gender expression.

**C. Government Sector Impact:**

As a result of the bill's prohibition on adverse actions against employees who act in the workplace based on their deeply held beliefs, public employees may be subject to discriminatory acts on the basis of the employee's status in a protected class (race, national origin, color, age, religion) in the workplace that would constitute an unfair labor practice. An employee's "deeply held belief" may include racism, antisemitism, sexism, and others. The employer would not be legally permitted to take appropriate action to protect the employee from that unfair labor practice (or continued violations), and therefore is open to suit from the aggrieved employee who is discriminated against on the basis of his or her protected class. This could increase costs relating to litigation.

State agencies and local governments will be required to examine their employment requirements to remove prohibited trainings, amend employment forms, and adopt policies to conform to the law.

The DMS may be required to adopt rules to implement section 2 of the bill. The DMS should be able to absorb such duties into its current workload.

The Commission on Human Relations, EEOC, and similar agencies that can hear allegations of unfair labor practices may see an increase in workload as a result of the creation of new unfair labor practices.

**VI. Technical Deficiencies:**

None identified.

**VII. Related Issues:**

A statute, policy, or program that distributes benefits or burdens based on sex may invite equal-protection or other distinction-based challenges. Public debate, legal questions, and concerns exist regarding whether discrimination on the basis of transgender identity or sexual orientation constitutes discrimination "on the basis of sex." Interpretations of the protections are varied.

However, at least within in the context of the Federal Civil Rights Act, the Supreme Court of the United States held in *Bostock* that discrimination on the basis of sexual orientation or transgender status constitutes discrimination on the basis of sex.<sup>27</sup> Title VII of the Civil Rights Act of 1964 (Title VII) is a federal law that protects employees in both the private and public sectors against discrimination in the workplace based on certain specified characteristics, including sex, race, color, and national origin.<sup>28</sup> The *Bostock* opinion was based on the court’s interpretation of the phrase “based on sex” within Title VII. The Court explicitly limited its opinion to the context of firing an employee, side-stepping issues such as “bathrooms, locker rooms... or anything else of the kind.”<sup>29</sup>

The extent to which the *Bostock* holding will influence constitutional equal protection litigation is unclear. In particular, it is uncertain whether a requirement to use different pronouns in the workplace constitutes a “serious and material change in the terms, conditions, or privileges of employment.” Adverse employment actions are generally those which affect continued employment or pay, such as a termination, demotion, suspension without pay, and pay raises or cuts.<sup>30</sup> Alternatively, a plaintiff may argue that the policy creates a hostile work environment that creates mistreatment of the plaintiff based on his or her sex, and that the mistreatment is sufficiently severe or pervasive that it can be said to alter the terms, conditions, or privileges of employment.<sup>31</sup>

The Equal Protection Clause of the Fourteenth Amendment to the United States Constitution provides, “No State shall . . . deny to any person within its jurisdiction the equal protection of the laws.”<sup>32</sup> Florida’s Equal Protection Clause guarantees that “all natural persons, female and male alike, are equal before the law.”<sup>33</sup> Equal protection claims against government actors allege unconstitutionally unequal treatment between groups, and states “do not escape the strictures of the Equal Protection Clause in their role as employers.” Groups can be based on any form of classification, but discrimination based on certain classes—such as sex—are inherently suspect and therefore afforded a higher level of judicial scrutiny.<sup>34</sup> To withstand a constitutional challenge, classifications by sex must serve important governmental objectives and must be substantially related to the achievement of those objectives.<sup>35</sup> If classifications based on an

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<sup>27</sup> *Bostock v. Clay County*, 590 U.S. 644 (2020) (Title VII covers discrimination based on sexual orientation and reaches bias against transsexuals; Justice Gorsuch in writing for six Justices stated that by discriminating against homosexuals, the employer intentionally penalizes men for being attracted to men and women for being attracted to women; by discriminating against transgender persons, the employer unavoidably discriminates against persons with one sex identified at birth and another today; the employer intentionally refuses to hire applicants in part because of the affected individuals’ sex, even if it never learns any applicant’s sex; the ruling rejected the argument put forward by dissenting Justice Kavanaugh that because homosexuality and transgender status can’t be found on that the Title VII list and because they are conceptually distinct from sex, the employers reason, they are implicitly excluded from Title VII’s reach).

<sup>28</sup> 42 U.S.C. §§ 2000e - 2000e17 (as amended).

<sup>29</sup> *Id.* at 681.

<sup>30</sup> *Wood v. Fl. Dep’t of Educ.*, 729 F. Supp. 3d 1255 (N.D. Fla. 2024), citing *Crawford v. Carroll*, 529 F.3d 961, 970-71 (11<sup>th</sup> Cir. 2008).

<sup>31</sup> *Monaghan v. Worldpay US, Inc.*, 955 F.3d 855, 861 (11<sup>th</sup> Cir. 2020).

<sup>32</sup> U.S. CONST. amend. XIV, s. 1.

<sup>33</sup> FLA. CONST. art. I, s. 2.

<sup>34</sup> *Engquist v. Oregon Dep’t of Agr.*, 553 U.S. 591, 597-8 (2008).

individual's sexual orientation or transgender status trigger a sex based constitutional analysis, the bill may not be able to survive a constitutional challenge.

**VIII. Statutes Affected:**

This bill creates section 110.1051 and amends section 760.10, and reenacts s. 760.11 of the Florida Statutes.

**IX. Additional Information:**

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

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

None.

**B. Amendments:**

None.

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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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693704

LEGISLATIVE ACTION

Senate

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. .  
. .  
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House

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The Committee on Governmental Oversight and Accountability  
(McClain) recommended the following:

**Senate Amendment (with title amendment)**

Delete lines 92 - 117

and insert:

(7) The Department of Management Services may adopt rules  
to administer this section.

Section 3. Present subsections (10) and (11) of section  
760.10, Florida Statutes, are redesignated as subsections (11)  
and (12), respectively, and a new subsection (10) is added to  
that section, to read:



693704

11           760.10 Unlawful employment practices.-  
12           (10) It is an unlawful employment practice for the state or  
13 any county, municipality, special district, or other political  
14 subdivision to require, as a condition of employment, any  
15 training, instruction, or other activity on gender identity or  
16 gender expression.

17  
18 ===== T I T L E   A M E N D M E N T =====

19 And the title is amended as follows:

20           Delete lines 13 - 17

21 and insert:

22           authorizing the Department of Management



By Senator McClain

9-00748C-25

2025440\_\_

1 A bill to be entitled  
 2 An act relating to gender identity employment  
 3 practices; providing a short title; creating s.  
 4 110.1051, F.S.; defining terms; specifying an  
 5 employment policy of this state relating to a person's  
 6 sex; providing applicability; prohibiting employees  
 7 and contractors of certain employers from being  
 8 required to use certain pronouns or requiring such  
 9 employer to use a pronoun that does not correspond to  
 10 the employee's or contractor's sex; prohibiting  
 11 specified options relating to an applicant's sex from  
 12 being included on certain employment forms;  
 13 prohibiting adverse personnel action on the basis of  
 14 deeply held religious, moral, conscience-based, or  
 15 biology-based beliefs; providing administrative and  
 16 civil remedies; providing reasonable attorney fees and  
 17 costs; authorizing the Department of Management  
 18 Services to adopt rules; amending s. 760.10, F.S.;  
 19 providing that it is an unlawful employment practice  
 20 for the state or any county, municipality, special  
 21 district, or other political subdivision to require  
 22 certain training, instruction, or activity as a  
 23 condition of employment; reenacting s. 760.11(1) and  
 24 (15), F.S., relating to administrative and civil  
 25 remedies, to incorporate the amendment made to s.  
 26 760.10, F.S., in references thereto; providing an  
 27 effective date.  
 28  
 29 Be It Enacted by the Legislature of the State of Florida:

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

9-00748C-25

2025440\_\_

30  
 31 Section 1. This act may be cited as the "Freedom of  
 32 Conscience in the Workplace Act."  
 33 Section 2. Section 110.1051, Florida Statutes, is created  
 34 to read:  
 35 110.1051 Personal pronouns.—  
 36 (1) As used in this section, the term:  
 37 (a) "Adverse personnel action" means the discharge,  
 38 suspension, transfer, demotion, or lack of promotion of an  
 39 employee or a contractor or the withholding of bonuses, the  
 40 withholding of promotional opportunities, the reduction in  
 41 salary or benefits, or any other adverse action taken against an  
 42 employee or a contractor within the terms and conditions of  
 43 employment by an employer.  
 44 (b) "Contractor" means an individual, a partnership, a  
 45 corporation, or a business entity that enters or attempts to  
 46 enter into a contract for services with an employer.  
 47 (c) "Employee" means an individual employed by, or  
 48 attempting to be employed by, an employer.  
 49 (d) "Employer" means the state or any county, municipality,  
 50 or special district or any subdivision or agency thereof.  
 51 (e) "Gender identity" means a fully internal and subjective  
 52 sense of self, disconnected from biological reality and sex, and  
 53 existing on an infinite continuum that does not provide a  
 54 meaningful basis for identification and cannot be recognized as  
 55 a replacement for sex.  
 56 (f) "Gender ideology" means the false belief that replaces  
 57 the biological category of sex with an ever-shifting concept of  
 58 self-assessed gender identity, permitting the false claim that

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59 males can identify as and become women and vice versa, and  
 60 requiring all institutions of society to regard this false claim  
 61 as true. The term includes the idea that there is a vast  
 62 spectrum of genders that are disconnected from a person's sex.  
 63 The term is internally inconsistent in that it diminishes sex as  
 64 an identifiable or useful category but nevertheless maintains  
 65 that it is possible for a person to be born in the wrong sexed  
 66 body.

67 (g) "Sex" means the classification of a person as either  
 68 female or male based on the organization of the body of such  
 69 person for a specific reproductive role, as indicated by the  
 70 person's sex chromosomes, naturally occurring sex hormones, and  
 71 internal and external genitalia present at birth.

72 (2) It is the policy of this state that a person's sex is  
 73 an immutable biological trait and that it is false to ascribe to  
 74 a person a pronoun that does not correspond to such person's  
 75 sex. This section does not apply to individuals born with a  
 76 genetically or biochemically verifiable disorder of sex  
 77 development, including, but not limited to, 46,XX disorder of  
 78 sex development; 46,XY disorder of sex development; sex  
 79 chromosome disorder of sex development; XX or XY sex reversal;  
 80 and ovotesticular disorder.

81 (3) An employee or a contractor may not be required, as a  
 82 condition of employment or to avoid adverse personnel action, to  
 83 refer to another person using that person's preferred pronouns  
 84 if such pronouns do not correspond to that person's sex.

85 (4) An employee or a contractor may not require an employer  
 86 to use his or her preferred pronouns if such preferred pronouns  
 87 do not correspond to the employee's or contractor's sex.

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88 (5) A job application or other related employment form that  
 89 requires an applicant to mark his or her sex may only inquire if  
 90 the applicant is male or female and may not provide a nonbinary  
 91 or other option.

92 (6) (a) It is an unlawful employment practice for an  
 93 employer to take adverse personnel action against an employee or  
 94 a contractor because of the employee's or contractor's deeply  
 95 held religious, moral, conscience-based, or biology-based  
 96 beliefs, including a belief in traditional or Biblical views of  
 97 sexuality and marriage, or the employee's or contractor's  
 98 disagreement with gender ideology, whether those views are  
 99 expressed by the employee or contractor at or away from the  
 100 worksite.

101 (b) An employee or a contractor aggrieved by a violation of  
 102 this subsection may avail himself or herself of the  
 103 administrative and civil remedies provided in s. 760.11. The  
 104 court shall award reasonable attorney fees and costs to the  
 105 prevailing party.

106 (7) The Department of Management Services may adopt rules  
 107 to administer this section.

108 Section 3. Present subsections (10) and (11) of section  
 109 760.10, Florida Statutes, are redesignated as subsections (11)  
 110 and (12), respectively, and a new subsection (10) is added to  
 111 that section, to read:

112 760.10 Unlawful employment practices.-

113 (10) It is an unlawful employment practice for the state or  
 114 any county, municipality, special district, or other political  
 115 subdivision to require, as a condition of employment, any  
 116 training, instruction, or other activity on sexual orientation,

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117 gender identity, or gender expression.

118 Section 4. For the purpose of incorporating the amendment  
 119 made by this act to section 760.10, Florida Statutes, in  
 120 references thereto, subsections (1) and (15) of section 760.11,  
 121 Florida Statutes, are reenacted to read:

122 760.11 Administrative and civil remedies; construction.—

123 (1) Any person aggrieved by a violation of ss. 760.01-  
 124 760.10 may file a complaint with the commission within 365 days  
 125 of the alleged violation, naming the employer, employment  
 126 agency, labor organization, or joint labor-management committee,  
 127 or, in the case of an alleged violation of s. 760.10(5), the  
 128 person responsible for the violation and describing the  
 129 violation. Any person aggrieved by a violation of s. 509.092 may  
 130 file a complaint with the commission within 365 days of the  
 131 alleged violation naming the person responsible for the  
 132 violation and describing the violation. The commission, a  
 133 commissioner, or the Attorney General may in like manner file  
 134 such a complaint. On the same day the complaint is filed with  
 135 the commission, the commission shall clearly stamp on the face  
 136 of the complaint the date the complaint was filed with the  
 137 commission. In lieu of filing the complaint with the commission,  
 138 a complaint under this section may be filed with the federal  
 139 Equal Employment Opportunity Commission or with any unit of  
 140 government of the state which is a fair-employment-practice  
 141 agency under 29 C.F.R. ss. 1601.70-1601.80. If the date the  
 142 complaint is filed is clearly stamped on the face of the  
 143 complaint, that date is the date of filing. The date the  
 144 complaint is filed with the commission for purposes of this  
 145 section is the earliest date of filing with the Equal Employment

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146 Opportunity Commission, the fair-employment-practice agency, or  
 147 the commission. The complaint shall contain a short and plain  
 148 statement of the facts describing the violation and the relief  
 149 sought. The commission may require additional information to be  
 150 in the complaint. The commission, within 5 days of the complaint  
 151 being filed, shall by registered mail send a copy of the  
 152 complaint to the person who allegedly committed the violation.  
 153 The person who allegedly committed the violation may file an  
 154 answer to the complaint within 25 days of the date the complaint  
 155 was filed with the commission. Any answer filed shall be mailed  
 156 to the aggrieved person by the person filing the answer. Both  
 157 the complaint and the answer shall be verified.

158 (15) In any civil action or administrative proceeding  
 159 brought pursuant to this section, a finding that a person  
 160 employed by the state or any governmental entity or agency has  
 161 violated s. 760.10 shall as a matter of law constitute just or  
 162 substantial cause for such person's discharge.

163 Section 5. This act shall take effect July 1, 2025.

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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 Governmental Oversight and Accountability

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BILL: SB 582

INTRODUCER: Senator Leek

SUBJECT: Unlawful Demolition of Historical Buildings and Structures

DATE: March 24, 2025

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Shuler</u>	<u>Fleming</u>	<u>CA</u>	<b>Favorable</b>
2.	<u>McVaney</u>	<u>McVaney</u>	<u>GO</u>	<b>Pre-meeting</b>
3.	_____	_____	<u>RC</u>	_____

---

**I. Summary:**

SB 582 authorizes a code enforcement board or special magistrate to impose increased fines for the demolition of a structure listed on the National Register of Historic Places. To impose the fine, the demolition of the historic structure must have been knowing and willful, not permitted, and not the result of a natural disaster.

The bill is not expected to have a significant impact on state and local government revenues and expenditures.

The bill takes effect July 1, 2025.

**II. Present Situation:**

**County and Municipal Code Enforcement**

Code enforcement is a function of local government and affects people's daily lives. Its purpose is to enhance the quality of life and economy of local government by protecting the health, safety, and welfare of the community.<sup>1</sup> Chapters 125, 162, and 166 of the Florida Statutes<sup>2</sup> provide counties and municipalities with a mechanism to enforce their codes and ordinances. These statutes provide non-binding, permissible code enforcement mechanisms that may be used by local governments in any combination they choose, and they may enforce their codes by any other means.<sup>3</sup>

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<sup>1</sup> Section 162.02, F.S.

<sup>2</sup> Chapter 125, Part II, F.S. (county self-government), ch. 162, Part I, F.S. (the Code Enforcement Boards Act), ch. 162, Part II, F.S. (supplemental procedures for county or municipal code or ordinance enforcement procedures), and s. 166.0415, F.S. (city ordinance enforcement).

<sup>3</sup> Sections 125.69(4)(k), 162.13, 162.21(8), and 166.0415(7), F.S.

***Code Enforcement Boards Act (Part I, Ch. 162, F.S.)***

The Local Government Code Enforcement Boards Act (Act), located in Part I of ch. 162, F.S., allows each county and municipality to create by ordinance one or more local government code enforcement boards.<sup>4</sup> A code enforcement board is an administrative board made up of members appointed by the governing body of a county or municipality with the authority to hold hearings and impose administrative fines and other noncriminal penalties for violations of county or municipal codes or ordinances.<sup>5</sup> Members of the enforcement boards<sup>6</sup> must be residents of the respective municipality or county and, whenever possible, must include an architect, a businessperson, an engineer, a general contractor, a subcontractor, and a realtor.<sup>7</sup>

Code enforcement boards have the power to:

- Adopt rules for the conduct of its hearings;
- Subpoena alleged violators, witnesses, and evidence to its hearings;
- Take testimony under oath; and
- Issue orders that have the force of law to command steps necessary to bring a violation into compliance.<sup>8</sup>

Section 162.06, F.S., establishes the procedures for local governments to address violations of various codes using a code enforcement board. It begins with the county or municipal code inspector<sup>9</sup> who initiates code enforcement procedures by notifying the violator and giving him or her reasonable time to correct the violation.<sup>10</sup> If the violation continues to exist after such time period as specified by the code inspector,<sup>11</sup> then the inspector will notify the code enforcement board and request a hearing.<sup>12</sup>

In each case heard before a code enforcement board, the case is presented, and testimony is taken, from both the code inspector and alleged violator.<sup>13</sup> At the conclusion of the hearing, the board issues findings of fact and provides an order stating the proper relief granted.<sup>14</sup> All final administrative orders of the code enforcement board may be appealed to the circuit court 30 days after execution of the order.<sup>15</sup>

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<sup>4</sup> Section 162.03, F.S.

<sup>5</sup> Sections 162.02 and 162.05(1), F.S.

<sup>6</sup> Code enforcement boards are either five-member or seven-member boards. If a local government has a population over 5,000 persons, the board must be a seven-member board. Section 162.05, F.S.

<sup>7</sup> Section 162.05(2), F.S.

<sup>8</sup> Section 162.08, F.S.

<sup>9</sup> Section 162.04(2), F.S., defines the term “code inspector” to mean “any authorized agent or employee of the county or municipality whose duty it is to assure code compliance.”

<sup>10</sup> Section 162.06(2), F.S.

<sup>11</sup> The code inspector does not need to provide the violator reasonable time to remedy the violation if it is a repeat violation; the violation presents a serious threat to the public health, safety, and welfare; or the violation is irreparable or irreversible in nature. Sections. 162.06(3) and (4), F.S.

<sup>12</sup> Section 162.06(2), F.S. A hearing may also be called by written notice signed by at least three members of a seven-member enforcement board or signed by at least two members of a five-member enforcement board. Section 162.07(1), F.S.

<sup>13</sup> Section 162.07(2)-(3), F.S.

<sup>14</sup> Section 162.07(4), F.S.

<sup>15</sup> Section 162.11, F.S.

As an alternative to a code enforcement board, the Act allows counties and municipalities to adopt an alternate code enforcement system that gives code enforcement officials or special magistrates the authority to hold hearings and assess fines against violators of respective codes or ordinances.<sup>16</sup> Each of these methods are offered by statute as devices to be used at the local governments' discretion, but a local government may use any method they choose to enforce codes and ordinances.<sup>17</sup>

### **Administrative Fines for Code Enforcement Violations**

A code enforcement board may, upon notification by the code inspector that repairs have not been completed by a specified date or upon finding that repeat violations have occurred, order violators to pay a fine for each day of the continued violation.<sup>18</sup> If the violation presents a serious threat to the public health, safety, and welfare, the code enforcement board must notify the local governing body, which may make all reasonable repairs to bring the property in compliance and charge the violator the reasonable cost of those repairs in addition to the fine imposed.<sup>19</sup> If, after due notice and hearing, a code enforcement board finds a violation to be irreparable or irreversible in nature, it may order the violator to pay a fine.<sup>20</sup>

Administrative fines may not exceed \$250 per day for a first violation and may not exceed \$500 per day for a repeat violation.<sup>21</sup> If the board finds the violation is irreparable or irreversible in nature, the board may impose a fine of up to \$5,000.<sup>22</sup> When determining the amount of the fine, the board may consider the following factors:

- The gravity of the violation.
- Any actions taken by the violator to correct the violation.
- Any previous violations committed by the violator.<sup>23</sup>

A code enforcement board may choose to reduce the amount of the fine initially imposed.<sup>24</sup>

A county or municipality with a population of 50,000 or greater may adopt, by a majority vote plus one of the entire governing body, an ordinance that allows code enforcement boards or special magistrates to impose fines in excess of the above limits.<sup>25</sup> The ordinance may provide for fines of up to \$1,000 per day per violation for a first violation, \$5,000 per day per violation for a repeat violation, and up to \$15,000 per violation if the code enforcement board or special

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<sup>16</sup> Section 162.03, F.S.

<sup>17</sup> The Attorney General has opined that "once a municipality has adopted the procedures of Chapter 162, Florida Statutes, to enforce its municipal codes and ordinances, it may not alter or amend those statutorily prescribed procedures but must utilize them as they are set forth in the statutes." Op. Att'y Gen. 2000-53 (2000). A local government may, however, maintain a ch. 162, F.S., code enforcement board and still decide to enforce a particular violation by bringing a charge in county court, or any other means provided by law. *Goodman v. Cnty. Court in Broward Cnty., Fla.* 711 So. 2d 587 (Fla 4th DCA 1998).

<sup>18</sup> Section 162.09(1), F.S.

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

<sup>21</sup> Section 162.09(2)(a), F.S.

<sup>22</sup> *Id.*

<sup>23</sup> Section 162.09(2)(b), F.S.

<sup>24</sup> Section 162.09(2)(c), F.S.

<sup>25</sup> Section 162.09(2)(d), F.S.

magistrate finds the violation to be irreparable or irreversible in nature.<sup>26</sup> In addition to such fines, a code enforcement board or special magistrate may impose additional fines to cover all costs incurred by the local government in enforcing its codes and all costs of repairs.<sup>27</sup> Any ordinance imposing such fines must include criteria to be considered by the code enforcement board or special magistrate in determining the amount of the fines.<sup>28</sup>

A certified copy of an order imposing a fine, including any repair costs incurred by the local government, may be recorded in the public records and constitutes a lien against the land on which the violation exists and upon any other real or personal property owned by the violator.<sup>29</sup> Upon petition to the circuit court, the order is enforceable in the same manner as a court judgment, including execution and levy against the personal property of the violator, but such order cannot be deemed to be a court judgment except for enforcement purposes.<sup>30</sup> A lien arising from such a fine runs in favor of the local governing body, and the local governing body may execute a satisfaction or release of lien entered.<sup>31</sup>

### **National Register of Historic Places**

The National Register of Historic Places,<sup>32</sup> under the National Park Service is the official list of the Nation's historic places worthy of preservation is “part of a national program to coordinate and support public and private efforts to identify, evaluate, and protect America’s historic and archeological resources.”<sup>33</sup> The program reviews property nominations and lists eligible properties in the National Register; offers guidance on evaluating, documenting, and listing historic places; and helps qualified historic properties receive preservation benefits and incentives.<sup>34</sup>

In Florida, there are more than 1,700 properties and districts listed on the National Register.<sup>35</sup> Nominations for those properties must be submitted to the National Park Service through the Florida Department of State’s Division of Resources, following a review and recommendation by the Florida National Register Review Board.<sup>36</sup> Listing in the National Register does not, in itself, impose any obligation on the property owner, or restrict the owner's basic right to use and dispose of the property as he or she sees fit, but does encourage the preservation of significant historic resources.<sup>37</sup>

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<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

<sup>28</sup> *Id.*

<sup>29</sup> Section 162.09(3), F.S.

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

<sup>32</sup> 54 U.S.C. ch. 3021.

<sup>33</sup> U.S. Department of the Interior, National Park Service, National Register of Historic Places, *What is the National Register of Historic Places?*, <https://www.nps.gov/subjects/nationalregister/what-is-the-national-register.htm> (last visited Mar. 21, 2025).

<sup>34</sup> *Id.*

<sup>35</sup> Fla. Dep’t of State, *National Register of Historic Places*, <https://dos.myflorida.com/historical/preservation/national-register/> (last visited Mar. 21, 2025).

<sup>36</sup> *Id.*

<sup>37</sup> *Id.*

## Demolition Permits

It is unlawful for a person, firm, or corporation to construct, erect, alter, repair, secure, or demolish any building without first obtaining a building permit from the local government or from such persons as may, by resolution or regulation, be directed to issue such permit, upon the payment of reasonable fees as set forth in a schedule of fees adopted by the enforcing agency.<sup>38</sup> The enforcing agency may revoke any such permit if the demolition is in violation of, or not in conformity with, the provisions of the Building Code.<sup>39</sup>

A local law, ordinance, or regulation may not prohibit or otherwise restrict the ability of a private property owner to obtain a building permit to demolish his or her single-family residential structure provided that such structure is located in a coastal high-hazard area, moderate flood zone, or special flood hazard area according to a Flood Insurance Rate Map issued by the Federal Emergency Management Agency for the purpose of participating in the National Flood Insurance Program if the lowest finished floor elevation of such structure is at or below base flood elevation as established by the Building Code or a higher base flood elevation as may be required by local ordinance, whichever is higher, provided the permit complies with all applicable Building Code, Fire Prevention Code, and local amendments to such codes.<sup>40</sup>

However, a local law, ordinance, or regulation may restrict demolition permits for certain designated historic structures:

- Structure designated on the National Register of Historic Places;
- Privately owned single-family residential structure designated historic by a local, state, or federal governmental agency on or before January 1, 2022; or
- Privately owned single-family residential structure designated historic after January 1, 2022, by a local, state, or federal governmental agency with the consent of its owner.<sup>41</sup>

### III. Effect of Proposed Changes:

SB 582 authorizes a code enforcement board or special magistrate to impose a fine that exceeds the limits specified in s. 162.09, F.S., for the demolition of a structure that is individually listed on the National Register of Historic Places or is a contributing resource to a district listed on the National Register. To impose the fine, a code enforcement board or special magistrate must find, based on competent substantial evidence, that the demolition of the historic structure was knowing and willful and not permitted or the result of a natural disaster. The fine may not exceed 20 percent of the fair or just market value of the property as determined by the property appraiser.

The bill takes effect July 1, 2025.

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<sup>38</sup> Section 553.79(1)(a), F.S.

<sup>39</sup> *Id.*

<sup>40</sup> Section 553.79(25)(a), F.S.

<sup>41</sup> Section 553.79(25)(d), F.S.



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

Not applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditures of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

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

None identified.

**C. Trust Funds Restrictions:**

None identified.

**D. State Tax or Fee Increases:**

Article VII, s. 19 of the State Constitution requires that legislation that increases or creates taxes or fees be passed by a 2/3 vote of each chamber in a bill with no other subject. The bill does not increase or create new taxes or fees. Thus, the constitutional requirements related to new or increased taxes or fees do not apply.

**E. Other Constitutional Issues:**

None identified.

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

None identified.

**B. Private Sector Impact:**

None identified.

**C. Government Sector Impact:**

Local governments may receive increased revenues from additional fines for the demolition of buildings listed on the National Register without permits.

**VI. Technical Deficiencies:**

None identified.

**VII. Related Issues:**

None identified.

**VIII. Statutes Affected:**

This bill substantially amends section 162.09 of the Florida Statutes.

**IX. Additional Information:**

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

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

None.

**B. Amendments:**

None.

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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 Leek

7-00629B-25

2025582\_\_

1 A bill to be entitled  
 2 An act relating to unlawful demolition of historical  
 3 buildings and structures; amending s. 162.09, F.S.;  
 4 authorizing a code enforcement board or special  
 5 magistrate to impose a fine that exceeds certain  
 6 limits for the unlawful demolition of certain  
 7 historical buildings or structures under certain  
 8 circumstances; providing that such fine may not exceed  
 9 a certain percentage of just market valuation;  
 10 providing an effective date.

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

14 Section 1. Paragraph (e) is added to subsection (2) of  
 15 section 162.09, Florida Statutes, to read:

16 162.09 Administrative fines; costs of repair; liens.—

17 (2)

18 (e) For the demolition of a building or structure that is  
 19 individually listed in the National Register of Historic Places  
 20 as defined in s. 267.021 or is a contributing resource to a  
 21 National Register-listed district, a code enforcement board or  
 22 special magistrate may impose a fine that exceeds the limits of  
 23 this subsection if the code enforcement board or special  
 24 magistrate finds, based on competent substantial evidence, that  
 25 the demolition of the building or structure was knowing and  
 26 willful and was not permitted or the result of a natural  
 27 disaster. A fine imposed pursuant to this paragraph may not  
 28 exceed 20 percent of the fair or just market valuation of the  
 29 property before demolition of the building or structure, as

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

7-00629B-25

2025582\_\_

30 determined by the property appraiser.

31 Section 2. This act shall take effect July 1, 2025.

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

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

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

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Prepared By: The Professional Staff of the Committee on Governmental Oversight and Accountability

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BILL: SB 1202

INTRODUCER: Senator McClain

SUBJECT: Benefits for Firefighters Injured During Training Exercises

DATE: March 24, 2025

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Hackett</u>	<u>Fleming</u>	<u>CA</u>	<b>Favorable</b>
2.	<u>McVaney</u>	<u>McVaney</u>	<u>GO</u>	<b>Pre-meeting</b>
3.	_____	_____	<u>AP</u>	_____

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**I. Summary:**

SB 1202 provides that a firefighter, his or her spouse, and his or her dependent children can become eligible for family health insurance premium payments due to an injury which occurs during an official training exercise in which the firefighter became totally and permanently disabled.

The state and local governments will likely have to spend money to meet the new benefits established in this bill. The magnitude of this impact has not been determined at this time.

The bill takes effect July 1, 2025.

**II. Present Situation:**

**Firesafety Enforcement**

State law on fire prevention and control designates the Chief Financial Officer (CFO) as the State Fire Marshal, operating through the Division of State Fire Marshal (Division) within the Department of Financial Services.<sup>1</sup> The Division is comprised of two bureaus: the Bureau of Fire Prevention (BFP) and the Bureau of Fire Standards and Training (BFST).<sup>2</sup> The BFP reviews fire/life safety inspections and construction plans for all state-owned buildings, regulates the fireworks and the fire sprinkler industries, inspects and licenses boilers, and certifies suppression industry workers.<sup>3</sup>

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<sup>1</sup> Section 633.104, F.S.; see s. 633.102(5) (providing the definition of division).

<sup>2</sup> Department of Financial Services, Division of the State Fire Marshal, *What We Do*, <https://www.myfloridacfo.com/division/sfm/> (last visited Mar. 21, 2025).

<sup>3</sup> *Id.*

The State Fire Marshal adopts by rule the Florida Fire Prevention Code (FFPC), which contains all fire safety laws and rules that pertain to and govern the design, construction, erection, alteration, modification, repair, and demolition of public and private buildings, structures, and facilities and the enforcement of such fire safety laws and rules. The State Fire Marshal adopts a new edition of the FFPC every three years.<sup>4</sup>

State law requires all municipalities, counties, and special districts with fire safety responsibilities to enforce the FFPC as the minimum fire prevention code, which operates uniformly among local government and in conjunction with the Florida Building Code.<sup>5</sup> These local enforcing authorities may adopt more stringent firesafety standards, subject to certain requirements in s. 633.208, F.S., but may not enact firesafety ordinances which conflict with ch. 633, F.S., or any other state law.<sup>6</sup>

The chiefs of local government fire service providers (or their designees) are authorized to enforce ch. 633, F.S., and the rules prescribed by the State Fire Marshal within their respective jurisdictions as agents of those jurisdictions, not agents of the State Fire Marshal.<sup>7</sup> Each county, municipality, and special district with firesafety enforcement responsibilities is also required to employ or contract with a fire safety inspector (certified by the State Fire Marshal) to conduct all fire safety inspections required by law.<sup>8</sup>

### **Benefits Available under Chapter 112, F.S.**

Chapter 112, F.S., provides death benefits for law enforcement officers, correctional officers, correctional probation officers, firefighters, instructional staff and school administrators under specified circumstances.<sup>9</sup> As required by article X, section 31 of the State Constitution, payments are provided to a deceased's beneficiary, or next of kin if no beneficiary is designated, in the event of such a firefighter's death while engaged in the performance of official duties.<sup>10</sup>

Supplemental death benefits, other than direct payment, which are available to law enforcement, correctional officers, correctional probation officers, firefighters, and instructional staff and school administrators who are killed in the line of duty include the following:

- Funeral and burial expenses (full-time law enforcement, correctional, or correctional probation officer employed by a state agency under specified circumstances;<sup>11</sup> and instructional staff and school administrator employed by school district);<sup>12</sup>

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<sup>4</sup> Section 633.202(1), F.S.

<sup>5</sup> Sections 633.108 and 633.208, F.S.

<sup>6</sup> Section 633.214(4), F.S. The State Fire Marshal maintains a list of local amendments to the FFPC. This information is available at State Fire Marshal, Bureau of Fire Prevention, *Local Amendments to the Florida Fire Prevention Code*, MyFloridaCFO, <https://myfloridacfo.com/division/sfm/bfp/local-amendments> (last visited March 21, 2025).

<sup>7</sup> Section 633.118, F.S.

<sup>8</sup> Section 633.216(1), F.S.

<sup>9</sup> For definitions of these terms, see ss. 112.19(1) and 112.1915(1)(b), F.S.

<sup>10</sup> Section 112.191(2)(a)-(d), F.S. See s. 112.191(1)(b) for the relevant definition of firefighter.

<sup>11</sup> Section 112.19(2)(f), F.S.

<sup>12</sup> Section 112.1915(3)(b), F.S.

- Surviving family health insurance premiums payment by political subdivision of the state and local school district (full-time law enforcement officer or correctional officer;<sup>13</sup> full-time firefighter;<sup>14</sup> and instructional staff and school administrator);<sup>15</sup>
- *Family health insurance premium payments* for catastrophic injury (full-time law enforcement, correctional, correctional probation officer,<sup>16</sup> or firefighter<sup>17</sup> employed by state or a political subdivision of state); and
- Educational expenses of surviving spouse and children (law enforcement, correctional, or correctional probation officer;<sup>18</sup> firefighter;<sup>19</sup> and instructional staff or school administrator).<sup>20</sup>

### ***Health Insurance Premium Benefits***

In certain circumstances an employer may be required to pay for a firefighter's and their family's health insurance premiums.<sup>21</sup> In order for a firefighter, spouse, and dependent children to be eligible for family health insurance premium payments, the injury must have occurred as either the result of the firefighter's response to what is reasonably believed to have been an emergency involving the protection of life or property or an unlawful act perpetrated by another person. The coverage extends to the injured employee's spouse and dependent children until the child reaches the age of majority or 25 if the child continues to be dependent for support.

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

The bill amends s. 112.191, F.S., to provide that, in addition to the existing ways a firefighter and his or her spouse and dependent children can become eligible for family health insurance premium payments, they are also eligible for such benefits if due to an injury which occurs during an official training exercise the firefighter became totally and permanently disabled.

While the bill does not define the term totally and permanently disabled, other statutory provisions define it generally to mean a person certified by two unrelated physicians to be totally and permanently disabled.<sup>22</sup>

The bill contains no indication that it is intended to be retroactive in effect. Thus, the bill will have prospective application and should apply only to those injured on or after July 1, 2025.

The bill takes effect July 1, 2025.

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<sup>13</sup> Section 112.19(2)(g), F.S.

<sup>14</sup> Section 112.191(2)(f), F.S.

<sup>15</sup> Section 112.1915(3)(c), F.S.

<sup>16</sup> Section 112.19(2)(h), F.S.

<sup>17</sup> Section 112.191(2)(g), F.S.

<sup>18</sup> Section 112.19(3), F.S.

<sup>19</sup> Section 112.191(3), F.S.

<sup>20</sup> Section 112.1915(3)(d), F.S. (surviving children only, not spouse).

<sup>21</sup> Section 112.191(2)(g), F.S., this paragraph.

<sup>22</sup> See section 196.012(11), F.S.

#### IV. Constitutional Issues:

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

Article VII, section 18 (a) of the Florida Constitution provides in part that a county or municipality may not be bound by a general law requiring a county or municipality to spend funds or take an action that requires the expenditure of funds unless certain specified exemptions or exceptions are met. Under the bill local governments may be required to pay for additional health insurance premiums. If the bill does qualify as a mandate, in order to be binding upon cities and counties, the bill must contain a finding of important state interest and be approved by a two-thirds vote of the membership of each house.

The bill may be excepted from the mandates provision because the expenditure is required to comply with a law that applies to “all persons similarly situated” including state, counties, municipalities, and fire control districts. Such an exception also requires a legislative finding that the bill fulfills an important state interest.

The mandate requirements do not apply to laws having an insignificant fiscal impact, which for Fiscal Year 2025-2026 is forecast at approximately \$2.4 million.<sup>23,24,25</sup>

The estimated costs for the bill are unknown at this time. If costs imposed by the bill exceed \$2.4 million, the mandates provisions may apply. If the mandates provisions apply, in order to be binding upon cities and counties, the bill must contain a finding of important state interest and either apply to “all persons similarly situated” or be approved by a two-thirds vote of the membership of each house.

At this time, the bill does not include a legislative finding that the bill fulfills an important state interest.

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

None identified.

##### C. Trust Funds Restrictions:

None identified.

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<sup>23</sup> FLA. CONST. art. VII, s. 18(d).

<sup>24</sup> An insignificant fiscal impact is the amount not greater than the average statewide population for the applicable fiscal year times \$0.10. See Florida Senate Committee on Community Affairs, *Interim Report 2012-115: Insignificant Impact*, (Sept. 2011), available at <http://www.flsenate.gov/PublishedContent/Session/2012/InterimReports/2012-115ca.pdf> (last visited Mar. 21, 2025).

<sup>25</sup> Based on the Florida Demographic Estimating Conference’s February 4, 2025 population forecast for 2025 of 23,332,606. The conference packet is available at: [https://edr.state.fl.us/content/conferences/population/ConferenceResults\\_Tables.pdf](https://edr.state.fl.us/content/conferences/population/ConferenceResults_Tables.pdf) (last visited Mar. 21, 2025).

D. State Tax or Fee Increases:

None identified.

E. Other Constitutional Issues:

None identified.

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None identified.

B. Private Sector Impact:

A greater number of firefighters and their families may be eligible for coverage of health insurance premiums.

C. Government Sector Impact:

There will be a state and local impact on employers of firefighters newly required to cover health insurance premiums. The scope of this impact has not been fully studied at this time.

**VI. Technical Deficiencies:**

None identified.

**VII. Related Issues:**

None identified.

**VIII. Statutes Affected:**

This bill substantially amends section 112.191 of the Florida Statutes.

**IX. Additional Information:**

A. Committee Substitute – Statement of Changes:

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

None.

B. Amendments:

None.





104078

LEGISLATIVE ACTION

Senate

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. .  
. .  
. .  
. .

House

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The Committee on Governmental Oversight and Accountability  
(McClain) recommended the following:

**Senate Amendment (with title amendment)**

Between lines 72 and 73

insert:

Section 2. The Legislature determines and declares that  
this act fulfills an important state interest.

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

And the title is amended as follows:

Delete line 7



104078

11 and insert:

12       disabled during an official training exercise;  
13       providing a declaration of an important state  
14       interest;

By Senator McClain

9-01668-25

20251202\_\_

A bill to be entitled

An act relating to benefits for firefighters injured during training exercises; amending s. 112.191, F.S.; providing that a firefighter and his or her spouse and dependent children are eligible for certain insurance coverage if the firefighter is totally and permanently disabled during an official training exercise; providing an effective date.

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

Section 1. Paragraph (g) of subsection (2) of section 112.191, Florida Statutes, is amended to read:

112.191 Firefighters; death benefits.-

(2)

(g)1. Any employer who employs a full-time firefighter who, on or after January 1, 1995, suffers a catastrophic injury, as defined in s. 440.02, Florida Statutes 2002, in the line of duty shall pay the entire premium of the employer's health insurance plan for the injured employee, the injured employee's spouse, and for each dependent child of the injured employee until the child reaches the age of majority or until the end of the calendar year in which the child reaches the age of 25 if the child continues to be dependent for support, or the child is a full-time or part-time student and is dependent for support. The term "health insurance plan" does not include supplemental benefits that are not part of the basic group health insurance plan. If the injured employee subsequently dies, the employer shall continue to pay the entire health insurance premium for

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

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20251202\_\_

the surviving spouse until remarried, and for the dependent children, under the conditions outlined in this paragraph. However:

a. Health insurance benefits payable from any other source shall reduce benefits payable under this section.

b. It is unlawful for a person to willfully and knowingly make, or cause to be made, or to assist, conspire with, or urge another to make, or cause to be made, any false, fraudulent, or misleading oral or written statement to obtain health insurance coverage as provided under this paragraph. A person who violates this sub-subparagraph commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

c. In addition to any applicable criminal penalty, upon conviction for a violation as described in sub-subparagraph b., a firefighter or other beneficiary who receives or seeks to receive health insurance benefits under this paragraph shall forfeit the right to receive such health insurance benefits, and shall reimburse the employer for all benefits paid due to the fraud or other prohibited activity. For purposes of this sub-subparagraph, the term "conviction" means a determination of guilt that is the result of a plea or trial, regardless of whether adjudication is withheld.

2. In order for the firefighter, spouse, and dependent children to be eligible for such insurance coverage, the injury must have occurred as the result of the firefighter's response to what is reasonably believed to be an emergency involving the protection of life or property, or an unlawful act perpetrated by another, or the injury must have occurred during an official training exercise in which the firefighter became totally and

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

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20251202\_\_

59 permanently disabled. Except as otherwise provided herein, this  
60 paragraph may not be construed to limit health insurance  
61 coverage for which the firefighter, spouse, or dependent  
62 children may otherwise be eligible, except that a person who  
63 qualifies for benefits under this section is not eligible for  
64 the health insurance subsidy provided under chapter 121, chapter  
65 175, or chapter 185.

66  
67 Notwithstanding any provision of this section to the contrary,  
68 the death benefits provided in paragraphs (b), (c), and (f)  
69 shall also be applicable and paid in cases where a firefighter  
70 received bodily injury prior to July 1, 1993, and subsequently  
71 died on or after July 1, 1993, as a result of such in-line-of-  
72 duty injury.

73 Section 2. This act shall take effect July 1, 2025.

**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 Governmental Oversight and Accountability

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BILL: SB 1328

INTRODUCER: Senator Fine

SUBJECT: Public Employee Collective Bargaining

DATE: March 17, 2025

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Harmsen	McVaney	GO	<b>Pre-meeting</b>
2.			JU	
3.			RC	

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**I. Summary:**

SB 1328 amends several provisions relating to ch. 447, F.S., which governs public employee unions in the state. Specifically, the bill:

- Unifies many of the certification, recertification, and decertification processes and timeframes.
- Institutes a two-tier voting threshold for the certification and recertification of an employee organization where public safety employee organizations may be certified or recertified by a majority of the employees who voted in the election, and non-public safety employee organizations may be certified or recertified by a majority vote of the employees in the bargaining unit.
- Re-formats the decertification election of a bargaining agent by requiring non-public safety employee organizations to vote to retain the agent by a majority vote of its bargaining unit against decertification (therefore allowing a decertification by a minority's vote to decertify). Public safety employee bargaining agents are decertified upon a majority vote of those who participate in the election to revoke.
- Narrows paid union leave for non-public safety union members to only those situations where the union fully reimburses the public employer for the employee's time performing duties that are directly-related to the union, such as engaging in collective bargaining, participating in grievances, or representing other employees in disciplinary proceedings. Members of unions in public safety fields may still engage in paid union leave for these activities.
- Requires a public employer to allow equal access to any employee organization or not-for-profit organization to access their communal spaces, communications systems, or other resources as it provides for another employee organization or its affiliate.

The bill is not expected to affect state and local government revenues and expenditures.

The bill takes effect on July 1, 2025.

## II. Present Situation:

### Right-to-Work

The State Constitution provides that the “right of persons to work shall not be denied or abridged on account of membership or non-membership in any labor union or labor organization.”<sup>1</sup> Based on this constitutional right, Florida is regarded as a “right-to-work” state.

### Collective Bargaining

The State Constitution also guarantees that “the right of employees, by and through a labor organization, to bargain collectively shall not be denied or abridged.”<sup>2</sup> To implement this constitutional provision, the Legislature enacted ch. 447, F.S., which provides that the purpose of collective bargaining is to promote cooperative relationships between the government and its employees and to protect the public by assuring the orderly and uninterrupted operations and functions of government.<sup>3</sup> Public employees have the right to form, join, participate in, and be represented by an employee organization of their own choosing, or to refrain from forming, joining, participating in, or being represented by an employee organization.<sup>4</sup> Regardless of union membership, each employee is subject to the negotiated collective bargaining agreement that is applicable to the employee’s position. Through collective bargaining, public employees<sup>5</sup> collectively negotiate with their public employer<sup>6</sup> in the determination of the terms and conditions of their employment.<sup>7</sup> The Public Employees Relations Commission (PERC) is responsible for assisting in resolving disputes between public employees and public employers.<sup>8</sup>

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<sup>1</sup> FLA. CONST. art. 1, s. 6.

<sup>2</sup> *Id.*

<sup>3</sup> Section 447.201, F.S.

<sup>4</sup> Section 447.301(1) and (2), F.S.

<sup>5</sup> Section 447.203(3), F.S., defines the term “public employee” to mean any person employed by a public employer except:

- (a) Persons appointed by the Governor or elected by the people, agency heads, and members of boards and commissions.
- (b) Persons holding positions by appointment or employment in the organized militia.
- (c) Individuals acting as negotiating representatives for employer authorities.
- (d) Persons who are designated by the commission as managerial or confidential employees pursuant to criteria contained herein.
- (e) Persons holding positions of employment with the Florida Legislature.
- (f) Persons who have been convicted of a crime and are inmates confined to institutions within the state.
- (g) Persons appointed to inspection positions in federal/state fruit and vegetable inspection service whose conditions of appointment are affected by the following:
  1. Federal license requirement.
  2. Federal autonomy regarding investigation and disciplining of appointees.
  3. Frequent transfers due to harvesting conditions.
- (h) Persons employed by the Public Employees Relations Commission.
- (i) Persons enrolled as undergraduate students in a state university who perform part-time work for the state university.

<sup>6</sup> The term “public employer” means the state or any county, municipality, or special district or any subdivision or agency thereof that the commission determines has sufficient legal distinctiveness properly to carry out the functions of a public employer. Section 447.203(2), F.S.

<sup>7</sup> Section 447.301(2), F.S.

<sup>8</sup> Section 447.201(3), F.S.

### ***Registration of Employee Organization***

An employee organization<sup>9</sup> that seeks to become a certified bargaining agent for public employees must register with the PERC prior to (a) requesting recognition by a public employer for purposes of collective bargaining and (b) submitting a petition to the PERC to request certification as an exclusive bargaining agent.<sup>10</sup> The application for registration must include:

- The name and address of the organization and of any parent organization or organization with which it is affiliated;
- The names and addresses of the principal officers and all representatives of the organization;
- The amount of the initiation fee, and the amount and collection frequency of the monthly dues and uniform assessments that members must pay;
- The current annual financial statement of the organization as prepared by an independent certified public accountant who is licensed under ch. 473, F.S.;
- The name of its business agent, if any; the name of its local agent for service of process, if different from the business agent; and the addresses where such person or persons can be reached;
- A pledge, in a form prescribed by the commission, that the employee organization will conform to the laws of the state and that it will accept members without regard to age, race, sex, religion, or national origin;
- A copy of the current constitution and bylaws of the employee organization; and
- A copy of the current constitution and bylaws of the state and national groups with which the employee organization is affiliated or associated. In lieu of this provision, and upon adoption of a rule by the commission, a state or national affiliate or parent organization of any registering labor organization may annually submit a copy of its current constitution and bylaws.<sup>11</sup>

A registration granted to an employee organization is valid for one year from the date of issuance. A registration must be renewed annually by filing an application for renewal under oath with the PERC. An application for renewal must reflect any changes in the information provided to the PERC in conjunction with the employee organization's preceding application for registration or previous renewal. Each application for renewal of registration must include a current annual financial statement with the following information:<sup>12</sup>

- Assets and liabilities at the beginning and end of the fiscal year;
- Receipts of any kind and the sources thereof;
- Disbursements by category;
- Salary, allowances, and other direct or indirect disbursements to each officer and to each employee who received during the fiscal year more than \$10,000 in the aggregate from the employee organization and any affiliated employee organization;
- Direct and indirect loans made to any officer, employee, member which aggregated more than \$250 during the fiscal year; and

<sup>9</sup> Section 447.203(11), F.S., defines employee organization as any "labor organization, union, association, fraternal order, occupational or professional society, or group, however organized or constituted, which represents, or seeks to represent, any public employee or group of public employees concerning any matters relating to their employment relationship with a public employer."

<sup>10</sup> Section 447.305(1), F.S.

<sup>11</sup> Section 447.305(1)(a-h), F.S.

<sup>12</sup> Section 447.305(2), F.S.

- Direct and indirect loans to any business enterprise.

A registration fee of \$15 must be submitted for each registration and renewal.<sup>13</sup>

In addition to the information above, certain employee organizations<sup>14</sup> must submit the following information for any renewal of registration:

- The number of employees in the bargaining unit who are eligible for representation by the employee organization.
- The number of employees in the bargaining unit who have submitted signed membership authorization forms without a subsequent revocation of such membership.
- The number of employees in the bargaining unit who paid dues to the employee organization.
- The number of employees in the bargaining unit who did not pay dues to the employee organization.
- Documentation provided by an independent certified public accountant retained by the employee organization which verifies the information provided.<sup>15</sup>

### ***Certification of Employee Organization as Bargaining Agent***

After registering with the PERC, an employee organization may begin the certification process. Any employee organization that is selected by a majority of public employees in a designated unit as their representative for collective bargaining purposes can request recognition by the public employer.

The employer, if satisfied as to the majority status of the employee organization and the appropriateness of the unit, must recognize the employee organization as the collective bargaining representative of employees in the designated unit. Following recognition by the employer, the employee organization must immediately petition the commission for certification.<sup>16</sup> The PERC will review only the appropriateness of the unit proposed by the employee organization. Appropriateness is defined as the history of employee relations within the organization of the public employer concerning organization and negotiation and the interest of the employees and the employer.<sup>17</sup> If the unit is appropriate, the PERC will immediately certify the employee organization as the exclusive representative of all employees in the unit. If the unit is inappropriate, the PERC may dismiss the petition.

If the public employer refuses to recognize the employee organization, the employee organization may file a petition with the PERC for certification as the bargaining agent. The petition has to be accompanied by dated statements signed by at least 30 percent of the employees in the proposed unit. Both the employee organization's petition and the interested employees' dated signed statements are confidential and exempt from disclosure pursuant to public records laws.<sup>18</sup> The PERC will investigate the petition to determine its sufficiency, and

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<sup>13</sup> Section 447.305(10), F.S.

<sup>14</sup> Employee organizations that have been certified as the bargaining agent to represent law enforcement officers, correctional officers, correctional probation officers, or firefighters are exempt from providing this information. Section 447.305(9), F.S.

<sup>15</sup> Section 447.305(3), F.S.

<sup>16</sup> Section 447.307(1)(a), F.S.

<sup>17</sup> Section 447.307(4)(f), F.S.

<sup>18</sup> Section 447.307(2), F.S.



provide for an appropriate hearing upon notice, and may order an election by secret ballot. Any registered employee organization that desires to be placed on the ballot in any election may be permitted by the commission to intervene. If an employee organization is selected by the majority of the employees *who vote* in the election, the commission must certify the employee organization as the exclusive collective representative for all employees in the unit.<sup>19</sup>

### ***Authority of the Certified Bargaining Agent***

The certified bargaining agent and the chief executive of the public employer must bargain collectively and in good faith in the determination of wages, hours, and terms and conditions of employment of the employees.<sup>20</sup> Any collective bargaining agreement reached between the parties must be put in writing and signed by the chief executive officer and the bargaining agent.<sup>21</sup> Such agreement is not binding on the employer until the agreement has been ratified by the employer and the employees in the bargaining unit.<sup>22</sup> Current law prohibits a collective bargaining agreement from providing for a term of existence of more than three years and requires the agreement to contain all of the terms and conditions of employment of the employees during such term.<sup>23</sup> The bargaining agent also has the authority to process grievances to settle disputes between the employer and the employees in the bargaining unit.<sup>24</sup>

### **Revocation of Certification**

An employee or group of employees who no longer desires to be represented by the certified bargaining agent may file with the PERC a petition to revoke certification. The petition must be accompanied by dated statements signed by at least 30 percent of the employees in the unit, indicating that such employees no longer desire to be represented by the certified bargaining agent. If the PERC finds the petition to be sufficient, it must immediately order an election by secret ballot.<sup>25</sup>

If a majority of voting employees vote against the continuation of representation by the certified bargaining agent, the organization's certification is revoked.<sup>26</sup> Otherwise, the employee organization is retained as the exclusive bargaining agent for the unit.<sup>27</sup>

An employee organization that has applied for a renewal of its registration must petition for recertification as a bargaining unit if it has less than 60 percent of its unit members paying dues during the prior registration period. If the employee organization fails to petition the PERC for recertification as the exclusive representative of the bargaining unit within one month of its application of renewal of registration, the certification is revoked.<sup>28</sup>

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<sup>19</sup> Section 447.307(3)(a-d), F.S.

<sup>20</sup> Section 447.309(1), F.S.

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> Section 447.309(5), F.S.

<sup>24</sup> Section 447.401, F.S.

<sup>25</sup> Section 447.308(1), F.S.

<sup>26</sup> Section 447.308(2), F.S.

<sup>27</sup> Section 447.308(3), F.S.

<sup>28</sup> Section 447.305(6), F.S.

The PERC may initiate an investigation to confirm the validity of the information submitted in the registration or renewal of registration. The PERC may revoke or deny an employee organizations registration or certification if the PERC finds that the employee organization failed to cooperate with the investigation intentionally misrepresented the information submitted on the registration or renewal.<sup>29</sup>

### **Membership in an Employee Organization**

Employees eligible for union representation must sign a membership authorization form in order to be a member of an employee organization beginning July 1, 2023. The form must be prescribed by the PERC and contain certain information and statements. A member of an employee organization must be allowed to revoke membership at any time upon the employee organization's receipt of the written revocation. The PERC is granted rulemaking authority to implement the requirements of the membership authorization form and the revocation of membership.<sup>30</sup> The PERC has prescribed a membership authorization form<sup>31</sup> which requires certain information regarding the employee organization and other information specific to the employee. The employee organization or another person may assist the employee in completing the form. The employee must sign and date the form.

The requirement for a signed membership form, and the provisions relating to the revocation of membership do not apply to members of an employee organization certified as a bargaining agent to represent law enforcement officers, correctional officers, correctional probation officers, and firefighters.<sup>32</sup>

### **“Union Release Time” or “Paid Union Leave”**

Release time is a negotiated benefit wherein a public employer releases an employee from duty work during work hours to tend to union activities or business while being compensated by the public employer. The provision of release time is a contractual benefit, not statutory, that may be found in the collective bargaining agreement, school board policy, personnel manual, or other procedures and practices.<sup>33</sup>

Florida law provides that “a public employer or their agent or representative is prohibited from [...] contributing financial support to a union.”<sup>34</sup> Therefore, release time cannot constitute a payment or benefit to the union in the form of salary paid to the employee for union work. Employer-funded release time does not violate the law if the paid release time is used for official

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<sup>29</sup> Section 447.305(8), F.S.

<sup>30</sup> Section 447.301(1), F.S.

<sup>31</sup> PERC, *Employee Organization Membership Authorization Form*, <https://perc.myflorida.com/forms/PERC%20FORM%202023-1.101%20WITH%20INSTRUCTIONS.pdf> (last visited Mar. 14, 2025).

<sup>32</sup> Section 447.301(1)(b)6., F.S.

<sup>33</sup> School Board of Volusia County, Michael Dyer, *Avoiding Paid Union Leave Pitfalls After PERC's Decision in Allen v. United Faculty of Miami-Dade College*: A presentation to the Florida Education Negotiators, Volusia County Schools (Jan. 27, 2017), <https://www.flfen.org/wp-content/uploads/2017/02/Paid-union-leave-presentation-to-FEN-2017.pdf.pdf> (last visited Mar. 14, 2025).

<sup>34</sup> Section 457.501(1)(e), F.S.

union business,<sup>35</sup> such as the direct representation of employees in grievances, discipline meetings, or contract negotiations.<sup>36</sup> PERC has found other activities, such as attendance at a union-sponsored picnic, lobbying for political issues, coordinating with other unions, or the continued payment of a salary for unspecified union activities, to be an improper use of release time that constitutes an unfair labor violation prohibited by Florida law.<sup>37</sup>

Currently, collective bargaining agreements for public employee unions representing state employees provide for release time in the following manners:

- The Fraternal Order of Police provides administrative leave to union employees for the purposes of attending a consultation meeting with the Secretary of the Department of Management Services (DMS). Union representative employees may also use work hours to attend union negotiations with the State, and may use up to 8 hours of administrative leave to attend a negotiation preparatory meeting held during normal work hours.<sup>38</sup>
- The Florida State Fire Service Association “excuses [union representatives] without loss of pay” time used during a normal workday for the purposes of consultation with the Secretary of the DMS about non-grievance matters. The agreement further provides administrative leave with pay for up to 6 employees in the bargaining unit to attend each single-day session as Negotiation Committee members. For negotiation preparation, the FSFSA President is permitted up to 16 hours of leave with pay per fiscal year; the remaining five members of the negotiation committee are allowed to take up to eight hours of leave with pay, not to exceed 40 hours per fiscal year.<sup>39</sup>
- The Florida Police Benevolent Association (FPBA) provides to union members in its Highway Patrol unit up to eight hours of administrative leave for time spent in consultation with the Secretary of the DMS regarding non-grievance union matters, and, for up to four employees, administrative leave to attend negotiating sessions and negotiation preparatory meetings.<sup>40</sup>
- The FPBA provides to union members in its Law Enforcement unit deems time spent during normal work hours in consultation with the Secretary of the DMS regarding non-grievance union matters work hours. It additionally grants administrative leave for up to eight

<sup>35</sup> *In re City of Jacksonville*, 13 FPER 1118250 (1987).

<sup>36</sup> *United Faculty of Florida v. Florida A&M University Board of Trustees*, 32 FPER 34 (2006).

<sup>37</sup> *Del Pino Allen v. Miami-Dade College*, CA-2015-070 (May 27, 2016), <https://perc.myflorida.com/download.aspx?Prefix=CA&CaseYr=15&CaseNo=070&File=CA15070-Ord17-052716103809.pdf> (Last visited Mar. 12, 2025).

<sup>38</sup> The Florida State Lodge Fraternal Order of Police, Inc., *Special Agent Bargaining 2023-2026 Agreement, Article 5: Employee Representation and Union Activities*, 5-7, <https://dms-media.ccplatform.net/content/download/168301/file/SAU%20-Florida%20State%20Fraternal%20Order%20of%20Police%20FY%202024-2025%20Reopener%20Agreement.pdf> (last visited Mar. 17, 2025).

<sup>39</sup> Florida State Fire Service Association, *Fire Service Bargaining Unit 2024-2025 Imposed Agreement, Article 5: Representation Rights*, 5-7, <https://dms-media.ccplatform.net/content/download/171348/file/FSFSA-Fire%20Service%20Unit%20-%20FY%202024-2025%20Imposed%20Agreement%20%28corr%2012-16-24%29.pdf> (last visited Mar. 17, 2025).

<sup>40</sup> Florida Police Benevolent Association, *Florida Highway Patrol Bargaining Unit 2023-2026 Successor Agreement, Article 5: Employee Representation and PBA Activities*, 5-7, <https://dms-media.ccplatform.net/content/download/162095/file/PBA-Florida%20Highway%20Patrol%202023-2026%20Successor%20Agreement%20%2812-20-2023%29.pdf> (last visited Mar. 17, 2025).

employees to attend negotiation sessions with the state and up to a day of administrative leave for those employees who participate in a negotiation preparatory meeting.<sup>41</sup>

- The FBPA’s security services unit may use work hours to consult with the Secretary of DMS regarding non-grievance matters (limited for up to three union representatives), and to meet with the Step-1 Management Representative. The agreement further provides administrative leave to an unspecified number employees who serve on its Negotiation Committee for the purposes of attending negotiating sessions with the state and a negotiation preparatory meeting (if the preparatory meeting occurs during normal work hours). The total number of hours, including the hours spent in negotiation preparatory meetings, paid all employees on the PBA’s Negotiation Committee cannot exceed 1000 hours. The agreement lastly permits any employee in the unit to request leave without pay, annual, or compensatory leave for the purpose of attending PBA conventions, conferences, and meetings.<sup>42</sup>

### III. Effect of Proposed Changes:

#### Certification, Recertification and Decertification of Employee Organizations

**Section 2** removes a public employer’s option to recognize an employee organization as the employee’s appropriate representative for the purposes of collective bargaining, and instead routes all employee organization certifications, recertifications, and decertifications (a new process, discussed more fully below) immediately through the PERC.

This section distinguishes the vote requirement based on the type of employees comprising the union membership. Elections for the certification, recertification, or decertification of an employee organization in which a majority of the employees are law enforcement officers, correctional officers, correctional probation officers, firefighters, 911 public safety telecommunicators, emergency medical technicians or paramedics requires a majority vote of the employees *voting in the election*. All other employee organizations require a majority vote of the *total employees in the bargaining unit*.

The bill also distinguishes certification election runoffs based on the type of employee organization. Those organizations that represent public safety officers may proceed to a runoff election where none of the organizations received a majority vote (no matter how many organizations participate in the first election). All other employee organizations are permitted to proceed to a runoff election where there are *three or more choices on the ballot* and none receive a majority vote.

The bill replaces the term “dated statements” with “showing of interest.” The PERC still determines the sufficiency of the employee organization’s petition and sets the matter for a vote,

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<sup>41</sup> Florida Police Benevolent Association, *Law Enforcement Bargaining Unit 2023-2026 Successor Agreement, Article 5: Employee Representation and PBA Activities*, 5-7, [https://dms-media.ccplatform.net/content/download/163249/file/PBA-LA\\_2.PDF](https://dms-media.ccplatform.net/content/download/163249/file/PBA-LA_2.PDF) (last visited Mar. 17, 2025).

<sup>42</sup> Florida Police Benevolent Association, *Security Services Bargaining Unit 2023-2026 Successor Agreement, Article 5: PBA Activities and Employee Representation*, 6-7, <https://dms-media.ccplatform.net/content/download/162088/file/PBA-Security%20Service%20Unit%202023-2026%20Successor%20Agreement%20%2812-20-2023%29.pdf> (last visited Mar. 17, 2025).

as in current law. The PERC still grants, by final order, the certification, recertification, or decertification of the employee organization pursuant to the outcome of the election.

The bill updates the public record exemption provided for in s. 447.307, F.S., to exclude the petition submitted by the employee organization seeking certification as the bargaining agent for a proposed bargaining unit. The exemption would now only provide confidential and exempt status to an employee's showing of interest (vote) submitted with the employee organization's petition for certification, recertification, or decertification.

The bill also creates a process called "decertification" of employee organizations, which replaces the revocation of certification previously provided for in s. 447.308, F.S. Similar to the process for certification, employees of a bargaining unit that wish to decertify their employee organization must file a petition with the PERC and a showing of interest of at least 30 percent of the affected employees in the bargaining unit. The employees cannot file a petition for decertification within 12 months after an employee organization is certified by the PERC's order verifying the results of the certification election.

The bill changes the threshold question for decertification—requiring a majority of the bargaining unit to vote to retain the employee organization to prevent its revocation. Current law requires a majority of the voting employees to vote against the continued representation by the bargaining agent in order for revocation to occur.

For employee organizations in which a majority of the employees are law enforcement officers, correctional officers, correctional probation officers, firefighters, 911 public safety telecommunicators, emergency medical technicians or paramedics, an employee union is decertified if the majority of the employees voting in the election vote in favor of decertification. In all other employee organizations, the vote to decertify is approved where the bargaining agent fails to receive the votes of a majority of the bargaining unit.

**Section 3** repeals s. 447.308, F.S., dealing with the revocation of certification of employee organizations, to conform to the bill's decertification process instead.

### **Paid Union Leave (Also known as "Release Time" or "Official Time")**

**Section 4** amends s. 447.509, F.S., to explicitly bar a public employer from providing any form of compensation or paid leave to a public employee for the purpose of engaging in employee organization activities, unless that employee is a member of a bargaining unit in which the majority of its employees are members of the public safety sector. The employer may agree in collective bargaining to allow a public employee to perform such employee organization activities during the employee's compensated personal leave (which may be his or her own, or donated by employees in the bargaining unit) or during time off without pay or benefits. This will override case law determinations from the PERC which allowed direct organizational representation activities to occur during paid leave time.

**Section 1** defines "employee organization activities" as those activities undertaken at the direction of, on behalf of, or to advance the purposes of an employee organization or any parent organization or affiliate of the employee organization, including, but not limited to, the:

- Supporting or opposing any candidate for public office.
- Influencing the passage or defeat of state or federal legislation or regulation; local ordinance or resolution; or ballot measure.
- Promoting or soliciting membership or participation in, or financial support of, an employee organization of any parent organization or affiliate of the employee organization.
- Seeking certification as a bargaining agent.
- Participating in the administration, business, or internal governance of an employee organization or any parent organization or affiliate of the employee organization.
- Preparing, conducting, or attending employee organization events, conferences, conventions, meetings, or training, unless such training is directly related to the performance of public employees' job duties.
- Distributing communications of an employee organization or any parent organization or affiliate of the employee organization.
- Representing or speaking on behalf of an employee organization or any parent organization or affiliate of the employee organization in any setting, venue, or procedure in which the public employer is not a participant.
- The following subset of employee organization activities are also defined as "representational employee organization activities:"
  - Preparing, filing, or pursuing unfair labor practice charges or grievances.
  - Representing public employees in investigatory interviews, disciplinary proceedings or appeals, up to and including termination, or other administrative or legal proceedings.
  - Engaging in collective bargaining and any related mediation, factfinding, or arbitration.
  - Administering a collective bargaining agreement.
  - Participating in labor-management committees.

The bill further permits a public employee to engage in representational employee organization activities either (1) by taking leave as described above; or (2) by remaining in duty status during the activities with the bargaining agent paying a pro rata value of the employee's compensation, including wages and fringe benefits, to the public employer for the time the employee spent on representational employee organization activities. In the second instance, the bargaining agent must track the employees' time spent on such activities and submit an (at least) biannual report to the public employer, who must then invoice the bargaining agent for payment within 30 days.

These employee activity prohibitions (and exceptions therefrom) do not apply to an employee in a bargaining unit in which the majority of employees are law enforcement officers, correctional officers, correctional probation officers, firefighters, 911 public safety telecommunicators, emergency medical technicians or paramedics.

### **Use of Public Employer Facilities**

**Section 4** requires a public employer to allow any employee organization or entity governed by the Florida Not for Profit Corporation Act to access their communal spaces, communications systems, or other resources if the employer allows another employee organization or its affiliate such access or use. This would appear to allow an employer to prohibit an employee organization that is a for-profit corporation, rather than a not-for-profit, access to its communal spaces and other benefits.

## Miscellaneous

**Section 1** alphabetizes the defined terms provided in s. 447.203, F.S., and defines the terms “employee organization activities” and “representational employee organization activities” as described above. This section also defines a “signature card” as a written statement by a public employee which is submitted to the PERC in support of a petition filed under s. 447.307, F.S. However, s. 447.307 does not use the term “signature card.”

**Sections 6-12** update cross-references in various sections of statute to conform to the re-ordering of definitions in s. 447.203, F.S.

**Section 5** maintains the mass transit employee bargaining union exemption from specific provisions in ch. 447, F.S., and extends the exemption to include the provisions of this bill.

**Section 13** re-enacts s. 120.80, F.S., which excludes s. 120.60, F.S. from the certification of employee organizations process provided for in s. 447.307, F.S.

**Section 14** provides an effective date of July 1, 2025.

## IV. Constitutional Issues:

### A. Municipality/County Mandates Restrictions:

Article VII, s. 18(a) of the State Constitution provides, in pertinent part, that “no county or municipality shall be bound by any general law requiring such county or municipality to spend funds or take an action requiring the expenditure of funds unless the legislature has determined that such law fulfills an important state interest and unless”:

- The law requiring such expenditure is approved by two-thirds of the membership in each house of the legislature; or
- The expenditure is required to comply with a law that applies to all persons similarly situated, including state and local governments.

The State Constitution exempts a law from these requirements if the law has an insignificant fiscal impact on cities and counties.

Cities and counties will not be required to incur significant additional workload to comply with the changes in the release time process. They may incur some costs associated with recertification and decertification elections.

Based on these expected insignificant costs, it appears that the bill is exempt from the constitutional restrictions on mandates.

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

Article I, s. 24(c) of the State Constitution requires a two-thirds vote of the members present and voting for final passage of a bill creating or expanding an exemption to the public records disclosure requirements or public meeting requirements. This bill narrows

the current public records exemption for the petition and dated statements signed by employees to only showing of interest submitted by the employee, thus, the bill does not require an extraordinary vote for enactment.

C. Trust Funds Restrictions:

None identified.

D. State Tax or Fee Increases:

None identified.

E. Other Constitutional Issues:

**Equal Protection Clause**

The Equal Protection Clause of the Fourteenth Amendment to the United States Constitution provides, “No State shall . . . deny to any person within its jurisdiction the equal protection of the laws.”<sup>43</sup> Florida’s Equal Protection Clause guarantees that “all natural persons, female and male alike, are equal before the law and have inalienable rights.”<sup>44</sup> Equal protection claims against government actors allege unconstitutionally unequal treatment between groups, which can be based on any form of classification. Unless a statute provokes “strict judicial scrutiny” because it interferes with a “fundamental right” or discriminates against a “suspect class,” it will ordinarily survive an equal protection attack so long as the challenged classification is rationally related to a legitimate governmental purpose.<sup>45</sup> To withstand strict scrutiny, a law must be necessary to promote a compelling governmental interest and must be narrowly tailored to advance that interest.”<sup>46</sup>

This bill appears to create two distinct classes of public employees. These groups experience their right to associate freely and collectively bargain (in virtue of the higher threshold to certify and decertify an employee organization and thus be a member of a union), and to freedom of speech to speak on behalf of the union in grievance procedures and similar union activities (in virtue of the bar on use of release time for the use of representational employee organizational activities for one group, but not the other).

These rights of free speech and freedom of association are fundamental rights guaranteed by the State Constitution. The right to collectively bargain, while not declared a fundamental right specifically by any court, is a right guaranteed in the state constitution’s declaration of rights.

<sup>43</sup> U.S. CONST. amend. XIV, s. 1.

<sup>44</sup> FLA. CONST. art. I, s. 2.

<sup>45</sup> *Kardmas v. Dickinson Public Schools*, 487 U.S. 450, 457-458 (1988); *Fla. High Sch. Activities Ass’n v. Thomas By & Through Thomas*, 434 So.2d 306, 308 (Fla. 1983).

<sup>46</sup> *Westerheide v. State*, 831 So.2d 93, 110 (Fla. 2002).



## **Right to Collectively Bargain**

Article I, section 6 of the State Constitution states:

The right of persons to work shall not be denied or abridged on account of membership or non-membership in any labor union or labor organization. The right of employees, by and through a labor organization, to bargain collectively shall not be denied or abridged. Public employees shall not have the right to strike.

The Florida Supreme Court has recognized this constitutional provision endows public employees with the same constitutional rights to bargain collectively as private employees possess, excluding the right to strike.<sup>47</sup> Moreover, as part of the State Constitution's declaration of rights, the right to collectively bargain is considered to be a fundamental right. As such, the right may be abridged only upon the showing of a compelling state interest.<sup>48</sup>

Release time is a right subject to collective bargaining, and in its current form (as interpreted by case law), allows for the direct representation of employees during work hours for which the union employee is paid by his or her employer for normal work duties. Release time may be used for 'ancillary' union activities only where the union fully reimburses the public employer for its' employee's time.

An employer cannot impose through legislative action a waiver of the right to bargain over terms and conditions of employment.<sup>49</sup> However, it is not an unfair labor practice to impose language which constitutes a management right.<sup>50</sup>

The prohibition of the use of paid release time for direct representational activities on behalf of the union may constitute a legislative waiver of the right to bargain over terms and conditions of employment.

Additionally, the right to collectively bargain exists whether or not the bargaining agent is a not-for-profit corporation or a for-profit corporation. Differential treatment of bargaining agents on the basis of their corporate status could result negatively impact a bargaining agent's ability to represent the employees in the bargaining unit. This could be viewed as a harm to the employee's ability to collectively bargain and associate.

## **Freedom of Speech**

The First Amendment to the U.S. Constitution guarantees that "Congress shall make no law ... abridging the freedom of speech."<sup>51</sup> Generally, a government cannot restrict

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<sup>47</sup> *Dade County Classroom Teachers Ass'n. v. Ryan*, 225 So. 2d 903 (Fla. 1969).

<sup>48</sup> *Hillsborough County Governmental Employees Ass'n. v. Hillsborough County Aviation Authority*, 552 So. 2d 358 (1988).

<sup>49</sup> Section 447.203(14) and (17), F.S.

<sup>50</sup> Section 447.209, F.S. *Amalgamated Transit Union, Local 1593 v. HARTA*, 24 FPER para. 29247 (1998); *IAFF v. City of Cocoa*, 18 FPER, para. 23235 (1992).

<sup>51</sup> U.S. CONST. amend. I.

speech on the basis of the message expressed;<sup>52</sup> content-based restrictions are presumptively invalid.<sup>53</sup> The rights guaranteed by the First Amendment apply with equal force to state governments through the due process clause of the Fourteenth Amendment.<sup>54</sup> While the text of the state and federal constitutions differs, the protection and freedom of speech under the state constitution “is the same as is required under the First Amendment.”<sup>55</sup>

In general, there are two types of restrictions on speech – content-based and content-neutral. Content-based restrictions target speech based on its subject-matter and is viewed with disfavor by the courts. Such restrictions are presumptively invalid and evaluated under strict scrutiny.<sup>56</sup> Strict scrutiny requires the government to prove that the restriction is narrowly tailored to achieve a compelling government interest.<sup>57</sup>

The U.S. Supreme Court has “held time and again that freedom of speech ‘includes both the right to speak freely and the right to refrain from speaking at all.’”<sup>58</sup> Conversely, the right to eschew association for expressive purposes is protected, or stated another way, freedom of association presupposes a freedom not to associate.<sup>59</sup>

In the context of an election to determine the right of all individuals within the bargaining unit to be represented (or not) by a union, the requirement that the election question pass by a vote of the majority of the employees in the bargaining unit may constitute an infringement on the bargaining unit’s employees’ freedom of speech. In this case, the failure to cast a vote is imputed to mean a vote against the question (whether it be to recertify or decertify an employee organization) and may therefore be interpreted as compelling the speech of a “no” vote, where that may not be the intent.

## V. Fiscal Impact Statement:

### A. Tax/Fee Issues:

None identified.

### B. Private Sector Impact:

The increase in threshold to recertify an employee organization may result in fewer unions maintaining their certification to represent public employee bargaining units. Likewise, the lower standard (current law requires 50 percent of the unit members voting

<sup>52</sup> *Texas v. Johnson*, 491 U.S. 397 (1989); *State v. T.B.D.*, 656 So.2d 479 (Fla. 1995).

<sup>53</sup> *See, e.g., Police Dept. of Chicago v. Mosely*, 408 U.S. 92 (1972).

<sup>54</sup> U.S. CONST. amend. XIV; *see also* FLA. CONST., art. I.

<sup>55</sup> *Dep’t of Educ. v. Lewis*, 416 So.2d 455, 461 (Fla. 1982); *Scott v. State*, 368 So.3d 8, 10 (Fla. 4th DCA 2023), *review denied*, No. SC2023-1188 (Fla. Nov. 22, 2023), and *cert. denied sub nom.*; *Scott v. Fla.*, No. 23-7786 (U.S. Oct. 7, 2024).

<sup>56</sup> *Vidal v. Elster*, 602 U.S. 286, 292 (2024). In particular, the Supreme Court held that view-point discrimination, which targets not just the subject matter, “but particular views taken by the speakers,” is considered “a particularly egregious form of content discrimination.”

<sup>57</sup> *Reed v. Town of Gilbert, Ariz.*, 576 U.S. 155, 171 (2015).

<sup>58</sup> *Janus v. American Federation of State, County, and Mun. Employees, Council 31*, 558 U.S. 878, 892 (2018).

<sup>59</sup> *Id.*, citing *Roberts v. United States Jaycees*, 468 U.S. 609 (1984) and *Pacific Gas & Elec. Co. v. Public Util. Comm’n of Cal.*, 475 U.S. 1, 9 (1986).

in an election to decertify and the bill requires 50 percent of the bargaining unit to vote to retain the certification) to decertify (or revoke) may result in fewer unions representing public employee bargaining units.

**C. Government Sector Impact:**

The PERC may see an increase in elections it must administer as a result of the new provisions for recertification and decertification. This may increase the PERC's workload.

**VI. Technical Deficiencies:**

The bill provides for a runoff election in a certification, recertification, or decertification election in which there are three or more choices on the ballot, and none of the employee organizations receive a majority of the votes. It is unclear what should occur if there are only two employee organizations on the ballot, and neither receive a majority vote of the bargaining unit, as the bill requires a majority vote to be certified or recertified.

**VII. Related Issues:**

To the extent that an employee organization has a current contract that provides for paid release time, this legislation may impair that contracted right. The United States Constitution and the State Constitution prohibit the state from passing any law impairing the obligation of contracts.<sup>60</sup> The courts will subject state actions that impact state-held contracts to an elevated form of scrutiny when the Legislature passes laws that impact such contracts.<sup>61</sup> “[T]he first inquiry must be whether the state law has, in fact, operated as a substantial impairment of a contractual relationship. The severity of the impairment measures the height of the hurdle the state legislation must clear.”<sup>62</sup> If a law does impair contracts, the courts will assess whether the law is deemed reasonable and necessary to serve an important public purpose.<sup>63</sup>

**VIII. Statutes Affected:**

This bill substantially amends sections 110.114, 110.205, 112.3187, 121.031, 447.02, 447.203, 447.207, 447.305, 447.307, and 1011.60; and repeals section, 447.308 of the Florida Statutes.

This bill reenacts section 120.80 the Florida Statutes.

<sup>60</sup> U.S. CONST. art. I, s. 10; FLA. CONST., art. 1 s. 10.

<sup>61</sup> *Cf. Chiles v. United Faculty of Fla.*, 615 So.2d 671 (Fla. 1993).

<sup>62</sup> *Pomponio v. Claridge of Pompano Condominium, Inc.*, 378 So.2d 774 (Fla. 1980). See also *General Motors Corp. v. Romein*, 503 U.S. 181 (1992).

<sup>63</sup> *Park Benzinger & Co. v. Southern Wine & Spirits, Inc.*, 391 So. 2d 681 (Fla. 1980); *Yellow Cab C., v. Dade County*, 412 So. 2d 395 (Fla. 3rd DCA 1982). See also *Exxon Corp. v. Eagerton*, 462 U.S. 176 (1983). For the factors courts consider when balancing the impairment of contracts with the important public purpose, see *Pomponio*, 378 So.2d at 779.

**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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643072

LEGISLATIVE ACTION

Senate

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House

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The Committee on Governmental Oversight and Accountability  
(Fine) recommended the following:

**Senate Amendment**

Delete line 329

and insert:

(18) "Showing of interest" means a written statement by a  
public

By Senator Fine

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1 A bill to be entitled  
 2 An act relating to public employee collective  
 3 bargaining; reordering and amending s. 447.203, F.S.;  
 4 defining terms; amending s. 447.307, F.S.; requiring  
 5 employee organizations or public employees seeking to  
 6 certify, recertify, or decertify a bargaining agent to  
 7 file a petition with the Public Employees Relations  
 8 Commission; requiring that such petition be  
 9 accompanied by certain information; authorizing  
 10 registered employee organizations desiring placement  
 11 on the ballot in a certification or recertification  
 12 election to be permitted with a showing of interest  
 13 from a certain percentage of public employees in the  
 14 proposed or existing bargaining unit; providing that  
 15 the showing of interest is confidential and exempt  
 16 from public disclosure; prohibiting the filing of a  
 17 petition for certification or decertification for a  
 18 proposed or existing bargaining unit within a  
 19 specified timeframe after the commission verifies the  
 20 result of a certification election that covers any of  
 21 the employees of such proposed or existing bargaining  
 22 unit; requiring, rather than authorizing, the  
 23 dismissal of a petition for certification or  
 24 decertification if such petition is insufficient;  
 25 requiring the commission to take certain action if  
 26 such petition is sufficient; requiring certain  
 27 elections to be determined by a majority vote of the  
 28 employees in the bargaining unit; providing  
 29 exceptions; requiring that certain elections in

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30 bargaining units in which the majority of the  
 31 employees are public safety employees be determined by  
 32 a majority vote of employees voting in the election;  
 33 providing that certification, recertification, or  
 34 revocation is effective upon the issuance of a final  
 35 order by the commission, or at the time the appeal of  
 36 such order is exhausted; deleting a prohibition on the  
 37 filing of petitions seeking an election within a  
 38 specified timeframe after the commission order  
 39 verifies such election; deleting a provision that a  
 40 petition for certification may be filed under certain  
 41 circumstances when there is a valid collective  
 42 agreement already in effect; repealing s. 447.308,  
 43 F.S., relating to revocation of certification of  
 44 employee organizations; amending s. 447.509, F.S.;  
 45 prohibiting public employers, their agents or  
 46 representatives, or persons acting on their behalf  
 47 from denying access to or use of certain events,  
 48 facilities, equipment, and resources; prohibiting such  
 49 entities or persons acting on their behalf from  
 50 providing compensation or paid leave to public  
 51 employees for a specified purpose; authorizing public  
 52 employees to engage in specified employee organization  
 53 activities under certain circumstances; providing  
 54 applicability; amending s. 447.207, F.S.; conforming a  
 55 provision to changes made by the act; amending ss.  
 56 110.114, 110.205, 112.3187, 121.031, 447.02, 447.305,  
 57 and 1011.60, F.S.; conforming cross-references;  
 58 reenacting s. 120.80(12)(b), F.S., relating to the

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59 Public Employees Relations Commission, to incorporate  
60 the amendment made to s. 447.307, F.S., in a reference  
61 thereto; providing an effective date.

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

64  
65 Section 1. Section 447.203, Florida Statutes, is reordered  
66 and amended to read:

67 447.203 Definitions.—As used in this part:

68 (6)~~(1)~~ "Commission" means the Public Employees Relations  
69 Commission created by s. 447.205.

70 (16)~~(2)~~ "Public employer" or "employer" means the state or  
71 any county, municipality, or special district or any subdivision  
72 or agency thereof which the commission determines has sufficient  
73 legal distinctiveness properly to carry out the functions of a  
74 public employer. With respect to all public employees determined  
75 by the commission as properly belonging to a statewide  
76 bargaining unit composed of State Career Service System  
77 employees or Selected Professional Service employees, the  
78 Governor is deemed to be the public employer; and the Board of  
79 Governors of the State University System, or the board's  
80 designee, is deemed to be the public employer with respect to  
81 all public employees of each constituent state university. The  
82 board of trustees of a community college is deemed to be the  
83 public employer with respect to all employees of the community  
84 college. The district school board is deemed to be the public  
85 employer with respect to all employees of the school district.  
86 The Board of Trustees of the Florida School for the Deaf and the  
87 Blind is deemed to be the public employer with respect to the

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88 academic and academic administrative personnel of the Florida  
89 School for the Deaf and the Blind. The Board of Trustees of the  
90 Florida School for Competitive Academics is deemed to be the  
91 public employer with respect to the academic and academic  
92 administrative personnel of the Florida School for Competitive  
93 Academics. The Governor is deemed to be the public employer with  
94 respect to all employees in the Correctional Education Program  
95 of the Department of Corrections established pursuant to s.  
96 944.801.

97 (15)~~(3)~~ "Public employee" means any person employed by a  
98 public employer except:

99 (a) Those persons appointed by the Governor or elected by  
100 the people, agency heads, and members of boards and commissions.

101 (b) Those persons holding positions by appointment or  
102 employment in the organized militia.

103 (c) Those individuals acting as negotiating representatives  
104 for employer authorities.

105 (d) Those persons who are designated by the commission as  
106 managerial or confidential employees pursuant to criteria  
107 contained herein.

108 (e) Those persons holding positions of employment with the  
109 Florida Legislature.

110 (f) Those persons who have been convicted of a crime and  
111 are inmates confined to institutions within the state.

112 (g) Those persons appointed to inspection positions in  
113 federal/state fruit and vegetable inspection service whose  
114 conditions of appointment are affected by the following:

- 115 1. Federal license requirement.
- 116 2. Federal autonomy regarding investigation and

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117 disciplining of appointees.

118 3. Frequent transfers due to harvesting conditions.

119 (h) Those persons employed by the Public Employees

120 Relations Commission.

121 (i) Those persons enrolled as undergraduate students in a

122 state university who perform part-time work for the state

123 university.

124 (12)~~(4)~~ "Managerial employees" are those employees who:

125 (a) Perform jobs that are not of a routine, clerical, or

126 ministerial nature and require the exercise of independent

127 judgment in the performance of such jobs and to whom one or more

128 of the following applies:

129 1. They formulate or assist in formulating policies which

130 are applicable to bargaining unit employees.

131 2. They may reasonably be required on behalf of the

132 employer to assist in the preparation for the conduct of

133 collective bargaining negotiations.

134 3. They have a role in the administration of agreements

135 resulting from collective bargaining negotiations.

136 4. They have a significant role in personnel

137 administration.

138 5. They have a significant role in employee relations.

139 6. They are included in the definition of administrative

140 personnel contained in s. 1012.01(3).

141 7. They have a significant role in the preparation or

142 administration of budgets for any public agency or institution

143 or subdivision thereof.

144 (b) Serve as police chiefs, fire chiefs, or directors of

145 public safety of any police, fire, or public safety department.

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146 Other police officers, as defined in s. 943.10(1), and

147 firefighters, as defined in s. 633.102, may be determined by the

148 commission to be managerial employees of such departments. In

149 making such determinations, the commission shall consider, in

150 addition to the criteria established in paragraph (a), the

151 paramilitary organizational structure of the department

152 involved.

153

154 However, in determining whether an individual is a managerial

155 employee pursuant to paragraph (a) or paragraph (b), above, the

156 commission may consider historic relationships of the employee

157 to the public employer and to coemployees.

158 (7)~~(5)~~ "Confidential employees" are persons who act in a

159 confidential capacity to assist or aid managerial employees as

160 defined in subsection (12) ~~(4)~~.

161 (19)~~(6)~~ "Strike" means the concerted failure of employees

162 to report for duty; the concerted absence of employees from

163 their positions; the concerted stoppage of work by employees;

164 the concerted submission of resignations by employees; the

165 concerted abstinence in whole or in part by any group of

166 employees from the full and faithful performance of the duties

167 of employment with a public employer for the purpose of

168 inducing, influencing, condoning, or coercing a change in the

169 terms and conditions of employment or the rights, privileges, or

170 obligations of public employment, or participating in a

171 deliberate and concerted course of conduct which adversely

172 affects the services of the public employer; the concerted

173 failure of employees to report for work after the expiration of

174 a collective bargaining agreement; and picketing in furtherance



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175 of a work stoppage. The term "strike" shall also mean any overt  
 176 preparation, including, but not limited to, the establishment of  
 177 strike funds with regard to the above-listed activities.

178 ~~(20)(7)~~ "Strike funds" are any appropriations by an  
 179 employee organization which are established to directly or  
 180 indirectly aid any employee or employee organization to  
 181 participate in a strike in the state.

182 ~~(2)(8)~~ "Bargaining unit" means either that unit determined  
 183 by the commission, that unit determined through local  
 184 regulations promulgated pursuant to s. 447.603, or that unit  
 185 determined by the public employer and the public employee  
 186 organization and approved by the commission to be appropriate  
 187 for the purposes of collective bargaining. However, no  
 188 bargaining unit shall be defined as appropriate which includes  
 189 employees of two employers that are not departments or divisions  
 190 of the state, a county, a municipality, or other political  
 191 entity.

192 (9) "Employee organization activities" means activities  
 193 undertaken at the direction of, on behalf of, or to advance the  
 194 purposes of an employee organization or any parent organization  
 195 or affiliate of the employee organization, including, but not  
 196 limited to, by:

197 (a) Supporting or opposing any candidate for federal,  
 198 state, or local public office.

199 (b) Influencing the passage or defeat of any federal or  
 200 state legislation, federal or state regulation, local ordinance  
 201 or resolution, or ballot measure.

202 (c) Promoting or soliciting membership or participation in,  
 203 or financial support of, an employee organization or any parent

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204 organization or affiliate of the employee organization.

205 (d) Seeking certification as a bargaining agent.

206 (e) Participating in the administration, business, or  
 207 internal governance of an employee organization or any parent  
 208 organization or affiliate of the employee organization.

209 (f) Preparing, conducting, or attending employee  
 210 organization events, conferences, conventions, meetings, or  
 211 training, unless such training is directly related to the  
 212 performance of public employees' job duties.

213 (g) Distributing communications of an employee organization  
 214 or any parent organization or affiliate of the employee  
 215 organization.

216 (h) Representing or speaking on behalf of an employee  
 217 organization or any parent organization or affiliate of the  
 218 employee organization in any setting, venue, or procedure in  
 219 which the public employer is not a participant.

220 (i) Preparing, filing, or pursuing unfair labor practice  
 221 charges or grievances.

222 (j) Representing public employees in investigatory  
 223 interviews, disciplinary proceedings or appeals, up to and  
 224 including termination, or other administrative or legal  
 225 proceedings.

226 (k) Engaging in collective bargaining and any related  
 227 mediation, factfinding, or arbitration.

228 (l) Administering a collective bargaining agreement.

229 (m) Participating in labor-management committees.

230 ~~(3)(9)~~ "Chief executive officer" for the state shall mean  
 231 the Governor and for other public employers shall mean the  
 232 person, whether elected or appointed, who is responsible to the

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233 legislative body of the public employer for the administration  
234 of the governmental affairs of the public employer.

235 (11)~~(10)~~ "Legislative body" means the State Legislature,  
236 the board of county commissioners, the district school board,  
237 the governing body of a municipality, or the governing body of  
238 an instrumentality or unit of government having authority to  
239 appropriate funds and establish policy governing the terms and  
240 conditions of employment and which, as the case may be, is the  
241 appropriate legislative body for the bargaining unit. For  
242 purposes of s. 447.403, the Board of Governors of the State  
243 University System, or the board's designee, shall be deemed to  
244 be the legislative body with respect to all employees of each  
245 constituent state university. For purposes of s. 447.403 the  
246 board of trustees of a community college shall be deemed to be  
247 the legislative body with respect to all employees of the  
248 community college.

249 (8)~~(11)~~ "Employee organization" or "organization" means any  
250 labor organization, union, association, fraternal order,  
251 occupational or professional society, or group, however  
252 organized or constituted, which represents, or seeks to  
253 represent, any public employee or group of public employees  
254 concerning any matters relating to their employment relationship  
255 with a public employer.

256 (1)~~(12)~~ "Bargaining agent" means the employee organization  
257 which has been certified by the commission as representing the  
258 employees in the bargaining unit, as provided in s. 447.307, or  
259 its representative.

260 (14)~~(13)~~ "Professional employee" means:  
261 (a) Any employee engaged in work in any two or more of the

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262 following categories:

263 1. Work predominantly intellectual and varied in character  
264 as opposed to routine mental, manual, mechanical, or physical  
265 work;

266 2. Work involving the consistent exercise of discretion and  
267 judgment in its performance;

268 3. Work of such a character that the output produced or the  
269 result accomplished cannot be standardized in relation to a  
270 given period of time; and

271 4. Work requiring advanced knowledge in a field of science  
272 or learning customarily acquired by a prolonged course of  
273 specialized intellectual instruction and study in an institution  
274 of higher learning or a hospital, as distinguished from a  
275 general academic education, an apprenticeship, or training in  
276 the performance of routine mental or physical processes.

277 (b) Any employee who:

278 1. Has completed the course of specialized intellectual  
279 instruction and study described in subparagraph 4. of paragraph  
280 (a); and

281 2. Is performing related work under supervision of a  
282 professional person to qualify to become a professional employee  
283 as defined in paragraph (a).

284 (5)~~(14)~~ "Collective bargaining" means the performance of  
285 the mutual obligations of the public employer and the bargaining  
286 agent of the employee organization to meet at reasonable times,  
287 to negotiate in good faith, and to execute a written contract  
288 with respect to agreements reached concerning the terms and  
289 conditions of employment, except that neither party shall be  
290 compelled to agree to a proposal or be required to make a

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291 concession unless otherwise provided in this part.  
 292 ~~(13)-(15)~~ "Membership dues deduction" means the practice of  
 293 a public employer of deducting dues and uniform assessments from  
 294 the salary or wages of a public employee. Such term also means  
 295 the practice of a public employer of transmitting the sums so  
 296 deducted to such employee organization.  
 297 ~~(4)-(16)~~ "Civil service" means any career, civil, or merit  
 298 system used by any public employer.  
 299 ~~(10)-(17)~~ "Good faith bargaining" shall mean, but not be  
 300 limited to, the willingness of both parties to meet at  
 301 reasonable times and places, as mutually agreed upon, in order  
 302 to discuss issues which are proper subjects of bargaining, with  
 303 the intent of reaching a common accord. It shall include an  
 304 obligation for both parties to participate actively in the  
 305 negotiations with an open mind and a sincere desire, as well as  
 306 making a sincere effort, to resolve differences and come to an  
 307 agreement. In determining whether a party failed to bargain in  
 308 good faith, the commission shall consider the total conduct of  
 309 the parties during negotiations as well as the specific  
 310 incidents of alleged bad faith. Incidents indicative of bad  
 311 faith shall include, but not be limited to, the following  
 312 occurrences:  
 313 (a) Failure to meet at reasonable times and places with  
 314 representatives of the other party for the purpose of  
 315 negotiations.  
 316 (b) Placing unreasonable restrictions on the other party as  
 317 a prerequisite to meeting.  
 318 (c) Failure to discuss bargainable issues.  
 319 (d) Refusing, upon reasonable written request, to provide

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320 public information, excluding work products as defined in s.  
 321 447.605.  
 322 (e) Refusing to negotiate because of an unwanted person on  
 323 the opposing negotiating team.  
 324 (f) Negotiating directly with employees rather than with  
 325 their certified bargaining agent.  
 326 (g) Refusing to reduce a total agreement to writing.  
 327 (17) "Representational employee organization activities"  
 328 means those activities specified in paragraphs (9) (i)-(m).  
 329 (18) "Signature card" means a written statement by a public  
 330 employee in a bargaining unit or proposed bargaining unit which:  
 331 (a) Is submitted to the commission in support of a petition  
 332 filed under s. 447.307;  
 333 (b) Was signed and dated by the public employee within the  
 334 12 months preceding the filing of the petition; and  
 335 (c) Indicates:  
 336 1. The public employee's desire to be represented for  
 337 purposes of collective bargaining by the employee organization;  
 338 or  
 339 2. The public employee's desire to no longer be represented  
 340 for purposes of collective bargaining by the bargaining agent.  
 341 ~~(21)-(18)~~ "Student representative" means the representative  
 342 selected by each community college or university student  
 343 government association. Each representative may be present at  
 344 all negotiating sessions that take place between the appropriate  
 345 public employer and an exclusive bargaining agent. The  
 346 representative must be enrolled as a student with at least 8  
 347 credit hours in the respective community college or university  
 348 during his or her term as student representative.

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349 Section 2. Section 447.307, Florida Statutes, is amended to  
350 read:

351 447.307 Certification, recertification, and decertification  
352 of employee organizations ~~organization.~~-

353 (1)(a) An employee organization seeking certification as a  
354 bargaining agent, an employee organization seeking  
355 recertification as a bargaining agent pursuant to s. 447.305, or  
356 a public employee or group of public employees seeking to  
357 decertify a bargaining agent must Any employee organization  
358 which is designated or selected by a majority of public  
359 employees in an appropriate unit as their representative for  
360 purposes of collective bargaining shall request recognition by  
361 the public employer. The public employer shall, if satisfied as  
362 to the majority status of the employee organization and the  
363 appropriateness of the proposed unit, recognize the employee  
364 organization as the collective bargaining representative of  
365 employees in the designated unit. Upon recognition by a public  
366 employer, the employee organization shall immediately petition  
367 the commission for certification. The commission shall review  
368 only the appropriateness of the unit proposed by the employee  
369 organization. If the unit is appropriate according to the  
370 criteria used in this part, the commission shall immediately  
371 certify the employee organization as the exclusive  
372 representative of all employees in the unit. If the unit is  
373 inappropriate according to the criteria used in this part, the  
374 commission may dismiss the petition.

375 ~~(b) Whenever a public employer recognizes an employee~~  
376 ~~organization on the basis of majority status and on the basis of~~  
377 ~~appropriateness in accordance with subparagraph (4)(f)5. of this~~

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378 ~~section, the commission shall, in the absence of inclusion of a~~  
379 ~~prohibited category of employees or violation of s. 447.501,~~  
380 ~~certify the proposed unit.~~

381 ~~(2) If the public employer refuses to recognize the~~  
382 ~~employee organization, the employee organization may file a~~  
383 ~~petition with the commission for certification as the bargaining~~  
384 ~~agent for a proposed bargaining unit. The petition shall be~~  
385 ~~accompanied by a showing of interest from dated statements~~  
386 ~~signed by at least 30 percent of the public employees in the~~  
387 ~~proposed or existing bargaining unit, indicating that such~~  
388 ~~employees desire to be represented for purposes of collective~~  
389 ~~bargaining by the petitioning employee organization. Once a~~  
390 ~~petition for certification has been filed by an employee~~  
391 ~~organization, Any registered employee organization desiring~~  
392 ~~placement on the ballot in any certification or recertification~~  
393 ~~election to be conducted pursuant to this section may be~~  
394 ~~permitted by the commission to intervene in the proceeding upon~~  
395 ~~a motion accompanied by a showing of interest from dated~~  
396 ~~statements signed by at least 10 percent of the public employees~~  
397 ~~in the proposed or existing bargaining unit, indicating that~~  
398 ~~such employees desire to be represented for the purposes of~~  
399 ~~collective bargaining by the moving employee organization. A~~  
400 ~~showing of interest is~~ The petitions and dated statements signed  
401 by the employees are confidential and exempt from the provisions  
402 of s. 119.07(1), except that any employee, employer, or employee  
403 organization having sufficient reason to believe any of the  
404 employee signatures were obtained by collusion, coercion,  
405 intimidation, or misrepresentation or are otherwise invalid  
406 shall be given a reasonable opportunity to verify and challenge

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407 the signatures appearing on the petition.

408 (2) A petition for certification or decertification may not  
 409 be filed regarding any proposed or existing bargaining unit  
 410 within 12 months after the date of a commission order verifying  
 411 the results of a certification election covering any of the  
 412 employees of the proposed or existing bargaining unit.

413 ~~(3)(a)~~ The commission or one of its designated agents shall  
 414 investigate the petition to determine its sufficiency; ~~if it has~~  
 415 ~~reasonable cause to believe that the petition is sufficient, the~~  
 416 ~~commission shall provide for an appropriate hearing upon due~~  
 417 ~~notice. Such a hearing may be conducted by an agent of the~~  
 418 ~~commission. If the commission finds the petition is to be~~  
 419 ~~insufficient, it must be dismissed may dismiss the petition. If~~  
 420 ~~the commission finds upon the record of the hearing that the~~  
 421 ~~petition is sufficient, the commission must it shall immediately~~  
 422 ~~do all of the following:~~

423 ~~(a)1-~~ Define the proposed or existing bargaining unit and  
 424 determine which public employees shall be qualified and entitled  
 425 to vote at any election held by the commission. The commission  
 426 may provide for a hearing upon due notice.

427 ~~(b)2-~~ Identify the public employer or employers for  
 428 purposes of collective bargaining ~~with the bargaining agent.~~

429 ~~(c)3-~~ Order an election by secret ballot, the cost of said  
 430 election and any required runoff election to be borne equally by  
 431 the parties, except as the commission may provide by rule. The  
 432 commission's order assessing costs of an election may be  
 433 enforced pursuant to the provisions of this part.

434 ~~(4) (a) (b)-~~ Except with respect to bargaining units in which  
 435 the majority of the employees are law enforcement officers,

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436 correctional officers, or correctional probation officers as  
 437 those terms are defined in s. 943.10(1), (2), or (3),  
 438 respectively; firefighters as defined in s. 633.102; 911 public  
 439 safety telecommunicators as defined in s. 401.465(1)(a); or  
 440 emergency medical technicians or paramedics as those terms are  
 441 defined in s. 401.23, all elections must be determined by a  
 442 majority vote of the employees in the bargaining unit for all  
 443 petitions for certification, recertification, or decertification  
 444 filed on or after July 1, 2025, as follows:

445 1. In certification and recertification elections, when an  
 446 employee organization is selected by a majority vote of the  
 447 employees in the bargaining unit voting in an election, the  
 448 commission shall certify the employee organization as the  
 449 exclusive collective bargaining agent for the representative of  
 450 all employees in the bargaining unit. If there are three or more  
 451 Certification is effective upon the issuance of the final order  
 452 by the commission or, if the final order is appealed, at the  
 453 time the appeal is exhausted or any stay is vacated by the  
 454 commission or the court.

455 ~~(e)~~ ~~In any election in which none of the choices on the~~  
 456 ~~ballot and none receives a majority of the votes of the~~  
 457 ~~bargaining unit the vote of a majority of the employees voting,~~  
 458 ~~a runoff election shall be held between the two choices~~  
 459 ~~receiving the most votes according to rules promulgated by the~~  
 460 ~~commission.~~

461 2. In decertification elections, if the bargaining agent  
 462 fails to receive the votes of a majority of the bargaining unit,  
 463 the commission must revoke the bargaining agent's certification  
 464 for that bargaining unit. If a majority of the bargaining unit

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465 votes against decertification, the bargaining agent retains its  
466 certification for that bargaining unit.

467 3. An employee organization whose certification is revoked  
468 pursuant to this paragraph is not permitted to file a petition  
469 for certification covering any of the employees in the  
470 bargaining unit defined in the revoked certification for a  
471 period of 12 months after the date the employee organization's  
472 certification was revoked.

473 (b) With respect to bargaining units in which the majority  
474 of the employees are law enforcement officers, correctional  
475 officers, or correctional probation officers as those terms are  
476 defined in s. 943.10(1), (2), or (3), respectively; firefighters  
477 as defined in s. 633.102; 911 public safety telecommunicators as  
478 defined in s. 401.465(1) (a); or emergency medical technicians or  
479 paramedics as those terms are defined in s. 401.23, all  
480 elections shall be determined by a majority vote of the  
481 employees voting in an election, as follows:

482 1. In certification elections, when an employee  
483 organization is selected by a majority vote, the commission  
484 shall certify the employee organization as the bargaining agent  
485 for the employees in the bargaining unit. If none of the choices  
486 on the ballot receives a majority vote, a runoff election must  
487 be held according to rules adopted by the commission.

488 2. In decertification elections, if a majority votes in  
489 favor of decertification, the commission must revoke the  
490 bargaining agent's certification for that bargaining unit. If a  
491 majority votes against decertification, the bargaining agent  
492 retains its certification for that bargaining unit.

493 (c) Certification, recertification, or revocation pursuant

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494 to this section is effective upon the issuance of the final  
495 order by the commission or, if the final order is appealed, at  
496 the time the appeal is exhausted or any stay is vacated by the  
497 commission or the court

498 ~~(d) No petition may be filed seeking an election in any~~  
499 ~~proposed or existing appropriate bargaining unit to determine~~  
500 ~~the exclusive bargaining agent within 12 months after the date~~  
501 ~~of a commission order verifying a representation election or, if~~  
502 ~~an employee organization prevails, within 12 months after the~~  
503 ~~date of an effective certification covering any of the employees~~  
504 ~~in the proposed or existing bargaining unit. Furthermore, if a~~  
505 ~~valid collective bargaining agreement covering any of the~~  
506 ~~employees in a proposed unit is in effect, a petition for~~  
507 ~~certification may be filed with the commission only during the~~  
508 ~~period extending from 150 days to 90 days immediately preceding~~  
509 ~~the expiration date of that agreement, or at any time subsequent~~  
510 ~~to its expiration date but prior to the effective date of any~~  
511 ~~new agreement. The effective date of a collective bargaining~~  
512 ~~agreement means the date of ratification by both parties, if the~~  
513 ~~agreement becomes effective immediately or retroactively; or its~~  
514 ~~actual effective date, if the agreement becomes effective after~~  
515 ~~its ratification date.~~

516 (5)(4) In defining a proposed bargaining unit, the  
517 commission shall take into consideration:

518 (a) The principles of efficient administration of  
519 government.

520 (b) The number of employee organizations with which the  
521 employer might have to negotiate.

522 (c) The compatibility of the unit with the joint

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523 responsibilities of the public employer and public employees to  
 524 represent the public.

525 (d) The power of the officials of government at the level  
 526 of the unit to agree, or make effective recommendations to  
 527 another administrative authority or to a legislative body, with  
 528 respect to matters of employment upon which the employee desires  
 529 to negotiate.

530 (e) The organizational structure of the public employer.

531 (f) Community of interest among the employees to be  
 532 included in the unit, considering:

533 1. The manner in which wages and other terms of employment  
 534 are determined.

535 2. The method by which jobs and salary classifications are  
 536 determined.

537 3. The interdependence of jobs and interchange of  
 538 employees.

539 4. The desires of the employees.

540 5. The history of employee relations within the  
 541 organization of the public employer concerning organization and  
 542 negotiation and the interest of the employees and the employer  
 543 in the continuation of a traditional, workable, and accepted  
 544 negotiation relationship.

545 (g) The statutory authority of the public employer to  
 546 administer a classification and pay plan.

547 (h) Such other factors and policies as the commission may  
 548 deem appropriate.

549

550 However, no unit shall be established or approved for purposes  
 551 of collective bargaining which includes both professional and

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552 nonprofessional employees unless a majority of each group votes  
 553 for inclusion in such unit.

554 Section 3. Section 447.308, Florida Statutes, is repealed.

555 Section 4. Present subsection (3) of section 447.509,  
 556 Florida Statutes, is redesignated as subsection (6), and a new  
 557 subsection (3) and subsections (4) and (5) are added to that  
 558 section, to read:

559 447.509 Other unlawful acts.—

560 (3) Public employers, their agents or representatives, or  
 561 any persons acting on their behalf are prohibited from doing all  
 562 of the following:

563 (a) Denying any employee organization or entity governed by  
 564 the Florida Not For Profit Corporation Act access to or use of  
 565 the public employer's meetings, events, facilities,  
 566 communications systems, mailboxes, computer systems, equipment,  
 567 supplies, or other resources if the public employer permits  
 568 another employee organization or its affiliate such access or  
 569 use.

570 (b) Providing any form of compensation or paid leave to a  
 571 public employee, directly or indirectly, for the purpose of  
 572 engaging in employee organization activities.

573 (4) Upon agreement by a public employer and bargaining  
 574 agent in collective bargaining:

575 (a) A public employee may be granted time off without pay  
 576 or benefits to engage in employee organization activities. An  
 577 employee organization may, at its discretion, compensate a  
 578 public employee for engaging in employee organization  
 579 activities.

580 (b) A public employee may use compensated personal leave,

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581 whether their own or voluntarily donated by employees in the  
 582 bargaining unit, to engage in employee organization activities  
 583 if:

584 1. The leave is accrued at the same rate by similarly  
 585 situated public employees in the bargaining unit without regard  
 586 to membership in or participation with an employee organization.

587 2. The employee may freely choose how to use the leave.

588 (c) A public employee may engage in representational  
 589 employee organization activities on behalf of a bargaining agent  
 590 while in a duty status without loss of pay or benefits if:

591 1. The bargaining agent reports to the public employer not  
 592 less than twice per calendar year the amount of time, in  
 593 increments rounded to the nearest quarter of an hour, spent on  
 594 representational employee organization activities each day by  
 595 each public employee in the bargaining unit engaged in such  
 596 activities.

597 2. The public employer calculates the pro rata value of  
 598 compensation, including wages and fringe benefits, paid or  
 599 accruing to a public employee for time spent engaged in  
 600 representational employee organization activities and provides  
 601 an invoice to the bargaining agent not less than twice per  
 602 calendar year for the amounts so calculated.

603 3. Upon receipt of an invoice, the bargaining agent remits  
 604 full payment to the public employer within 30 days.

605 (5) Subsections (3) and (4) do not apply to employees in a  
 606 bargaining unit in which the majority of employees are law  
 607 enforcement officers, correctional officers, or correctional  
 608 probation officers as those terms are defined in s. 943.10(1),  
 609 (2), or (3), respectively; firefighters as defined in s.

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610 633.102; 911 public safety telecommunicators as defined in s.  
 611 401.465(1)(a); or emergency medical technicians or paramedics as  
 612 those terms are defined in s. 401.23.

613 Section 5. Paragraph (d) is added to subsection (12) of  
 614 section 447.207, Florida Statutes, and subsection (6) of that  
 615 section is reenacted, to read:

616 447.207 Commission; powers and duties.—

617 (6) Pursuant to its established procedures, the commission  
 618 shall resolve questions and controversies concerning claims for  
 619 recognition as the bargaining agent for a bargaining unit,  
 620 determine or approve units appropriate for purposes of  
 621 collective bargaining, expeditiously process charges of unfair  
 622 labor practices and violations of s. 447.505 by public  
 623 employees, and resolve such other questions and controversies as  
 624 it may be authorized herein to undertake. The petitioner,  
 625 charging party, respondent, and any intervenors shall be the  
 626 adversary parties before the commission in any adjudicatory  
 627 proceeding conducted pursuant to this part. Any commission  
 628 statement of general applicability that implements, interprets,  
 629 or prescribes law or policy, made in the course of adjudicating  
 630 a case pursuant to s. 447.307 or s. 447.503 shall not constitute  
 631 a rule within the meaning of s. 120.52.

632 (12) Upon a petition by a public employer after it has been  
 633 notified by the Department of Labor that the public employer's  
 634 protective arrangement covering mass transit employees does not  
 635 meet the requirements of 49 U.S.C. s. 5333(b) and would  
 636 jeopardize the employer's continued eligibility to receive  
 637 Federal Transit Administration funding, the commission may  
 638 waive, to the extent necessary for the public employer to comply



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639 with the requirements of 49 U.S.C. s. 5333(b), any of the  
640 following for an employee organization that has been certified  
641 as a bargaining agent to represent mass transit employees:

642 (d) The prohibited actions of public employers in s.  
643 447.509(3) and (4).

644 Section 6. Subsection (3) of section 110.114, Florida  
645 Statutes, is amended to read:

646 110.114 Employee wage deductions.—

647 (3) Notwithstanding the provisions of subsections (1) and  
648 (2), the deduction of an employee's membership dues deductions  
649 as defined in s. 447.203 ~~s. 447.203(15)~~ for an employee  
650 organization as defined in s. 447.203 ~~is s. 447.203(11)~~ shall be  
651 authorized or permitted only for an organization that has been  
652 certified as the exclusive bargaining agent pursuant to chapter  
653 447 for a unit of state employees in which the employee is  
654 included. Such deductions shall be subject to the provisions of  
655 s. 447.303.

656 Section 7. Paragraph (w) of subsection (2) of section  
657 110.205, Florida Statutes, is amended to read:

658 110.205 Career service; exemptions.—

659 (2) EXEMPT POSITIONS.—The exempt positions that are not  
660 covered by this part include the following:

661 (w) Managerial employees, as defined in s. 447.203 ~~s.~~  
662 ~~447.203(4)~~, confidential employees, as defined in s. 447.203 ~~s.~~  
663 ~~447.203(5)~~, and supervisory employees who spend the majority of  
664 their time communicating with, motivating, training, and  
665 evaluating employees, and planning and directing employees'  
666 work, and who have the authority to hire, transfer, suspend, lay  
667 off, recall, promote, discharge, assign, reward, or discipline

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668 subordinate employees or effectively recommend such action,  
669 including all employees serving as supervisors, administrators,  
670 and directors. Excluded are employees also designated as special  
671 risk or special risk administrative support and attorneys who  
672 serve as administrative law judges pursuant to s. 120.65 or for  
673 hearings conducted pursuant to s. 120.57(1)(a). Additionally,  
674 registered nurses licensed under chapter 464, dentists licensed  
675 under chapter 466, psychologists licensed under chapter 490 or  
676 chapter 491, nutritionists or dietitians licensed under part X  
677 of chapter 468, pharmacists licensed under chapter 465,  
678 psychological specialists licensed under chapter 491, physical  
679 therapists licensed under chapter 486, and speech therapists  
680 licensed under part I of chapter 468 are excluded, unless  
681 otherwise collectively bargained.

682 Section 8. Subsection (6) of section 112.3187, Florida  
683 Statutes, is amended to read:

684 112.3187 Adverse action against employee for disclosing  
685 information of specified nature prohibited; employee remedy and  
686 relief.—

687 (6) TO WHOM INFORMATION DISCLOSED.—The information  
688 disclosed under this section must be disclosed to any agency or  
689 federal government entity having the authority to investigate,  
690 police, manage, or otherwise remedy the violation or act,  
691 including, but not limited to, the Office of the Chief Inspector  
692 General, an agency inspector general or the employee designated  
693 as agency inspector general under s. 112.3189(1) or inspectors  
694 general under s. 20.055, the Florida Commission on Human  
695 Relations, and the whistle-blower's hotline created under s.  
696 112.3189. However, for disclosures concerning a local

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697 governmental entity, including any regional, county, or  
 698 municipal entity, special district, community college district,  
 699 or school district or any political subdivision of any of the  
 700 foregoing, the information must be disclosed to a chief  
 701 executive officer as defined in s. 447.203 ~~s. 447.203(9)~~ or  
 702 other appropriate local official.

703 Section 9. Subsection (5) of section 121.031, Florida  
 704 Statutes, is amended to read:

705 121.031 Administration of system; appropriation; oaths;  
 706 actuarial studies; public records.—

707 (5) The names and addresses of retirees are confidential  
 708 and exempt from the provisions of s. 119.07(1) to the extent  
 709 that no state or local governmental agency may provide the names  
 710 or addresses of such persons in aggregate, compiled, or list  
 711 form to any person except to a public agency engaged in official  
 712 business. However, a state or local government agency may  
 713 provide the names and addresses of retirees from that agency to  
 714 a bargaining agent as defined in s. 447.203 ~~s. 447.203(12)~~ or to  
 715 a retiree organization for official business use. Lists of names  
 716 or addresses of retirees may be exchanged by public agencies,  
 717 but such lists shall not be provided to, or open for inspection  
 718 by, the public. Any person may view or copy any individual's  
 719 retirement records at the Department of Management Services, one  
 720 record at a time, or may obtain information by a separate  
 721 written request for a named individual for which information is  
 722 desired.

723 Section 10. Subsection (1) of section 447.02, Florida  
 724 Statutes, is amended to read:

725 447.02 Definitions.—The following terms, when used in this

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726 chapter, shall have the meanings ascribed to them in this  
 727 section:

728 (1) The term "labor organization" means any organization of  
 729 employees or local or subdivision thereof, having within its  
 730 membership residents of the state, whether incorporated or not,  
 731 organized for the purpose of dealing with employers concerning  
 732 hours of employment, rate of pay, working conditions, or  
 733 grievances of any kind relating to employment and recognized as  
 734 a unit of bargaining by one or more employers doing business in  
 735 this state, except that an "employee organization," as defined  
 736 in s. 447.203 ~~s. 447.203(11)~~, shall be included in this  
 737 definition at such time as it seeks to register pursuant to s.  
 738 447.305.

739 Section 11. Subsection (6) of section 447.305, Florida  
 740 Statutes, is amended to read:

741 447.305 Registration of employee organization.—

742 (6) Notwithstanding the provisions of this chapter relating  
 743 to collective bargaining, an employee organization certified as  
 744 a bargaining agent to represent a bargaining unit for which less  
 745 than 60 percent of the unit employees have submitted membership  
 746 authorization forms without subsequent revocation and paid dues  
 747 to the organization during its last registration period must  
 748 petition the commission pursuant to s. 447.307 ~~s. 447.307(2)~~ and  
 749 ~~(3)~~ for recertification as the exclusive representative of all  
 750 employees in the bargaining unit within 30 days after the date  
 751 on which the employee organization applies for renewal of  
 752 registration pursuant to subsection (2). The certification of an  
 753 employee organization that does not comply with this section is  
 754 revoked.

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755 Section 12. Subsection (2) of section 1011.60, Florida  
756 Statutes, is amended to read:

757 1011.60 Minimum requirements of the Florida Education  
758 Finance Program.—Each district which participates in the state  
759 appropriations for the Florida Education Finance Program shall  
760 provide evidence of its effort to maintain an adequate school  
761 program throughout the district and shall meet at least the  
762 following requirements:

763 (2) MINIMUM TERM.—Operate all schools for a term of 180  
764 actual teaching days or the equivalent on an hourly basis as  
765 specified by rules of the State Board of Education each school  
766 year. The State Board of Education may prescribe procedures for  
767 altering, and, upon written application, may alter, this  
768 requirement during a national, state, or local emergency as it  
769 may apply to an individual school or schools in any district or  
770 districts if, in the opinion of the board, it is not feasible to  
771 make up lost days or hours, and the apportionment may, at the  
772 discretion of the Commissioner of Education and if the board  
773 determines that the reduction of school days or hours is caused  
774 by the existence of a bona fide emergency, be reduced for such  
775 district or districts in proportion to the decrease in the  
776 length of term in any such school or schools. A strike, as  
777 defined in s. 447.203 ~~s. 447.203(6)~~, by employees of the school  
778 district may not be considered an emergency.

779 Section 13. For the purpose of incorporating the amendment  
780 made by this act to section 447.307, Florida Statutes, in a  
781 reference thereto, paragraph (b) of subsection (12) of section  
782 120.80, Florida Statutes, is reenacted to read:

783 120.80 Exceptions and special requirements; agencies.—

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784 (12) PUBLIC EMPLOYEES RELATIONS COMMISSION.—

785 (b) Section 120.60 does not apply to certification of  
786 employee organizations pursuant to s. 447.307.

787 Section 14. This act shall take effect July 1, 2025.

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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 Governmental Oversight and Accountability

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BILL: SB 1694

INTRODUCER: Senator Fine

SUBJECT: Prohibited Preferences in Government Contracting

DATE: March 17, 2025

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	White	McVaney	GO	<b>Pre-meeting</b>
2.			AEG	
3.			FP	

---

**I. Summary:**

SB 1694 revises preferences that a governmental body can consider during its awarding of procurement contracts. Specifically, the bill prohibits preferential treatment on the basis of the racial and ethnic identity of the vendor or its subcontractors. The bill eliminates governmental programs that specifically support minority businesses and repeals the preferences given to minority business in procurement, as well as agency reporting duties and the government bodies relied on to enforce these preferences.

The bill likely has a negative fiscal impact on qualifying minority business enterprises and potentially positively impact other small businesses.<sup>1</sup>

The bill will likely have a cost-saving effect on state and local government.

The bill takes effect July 1, 2025.

**II. Present Situation:**

**Procurement Generally**

Part I of ch. 287, F.S., provides “a system of uniform procedures to be utilized by state agencies in managing and procuring commodities and contractual services” to protect the public by promoting “fair and open competition,” thereby reducing the appearance and opportunity for favoritism and misconduct.<sup>2</sup>

---

<sup>1</sup> See *infra* section VII. Related Issues.

<sup>2</sup> Section 287.001, F.S.

## Procurement of Commodities and Services

Chapter 287, F.S., regulates state agency procurement of personal property and services. The term “agency” is defined broadly to mean any unit of the executive branch of state government.<sup>3</sup> The Department of Management Services (DMS) is responsible for overseeing state purchasing activity, including professional and contractual services, as well as commodities needed to support agency activities.<sup>4</sup>

Section 287.017, F.S., establishes the following purchasing categories, which are threshold amounts linked to other requirements in ch. 287, F.S.:

- Category One: \$20,000.
- Category Two: \$35,000.
- Category Three: \$65,000.
- Category Four: \$195,000.
- Category Five: \$325,000.

### *Competitive-Solicitation*

With certain exceptions,<sup>5</sup> the procurement of commodities or contractual services in excess of Category Two, \$35,000, requires agencies to use a competitive solicitation process.<sup>6</sup> Any form of competitive solicitation must be made available simultaneously to all vendors, must include the time and date for the receipt of bids, proposals, or replies, and must include all contractual terms and conditions applicable to the procurement.<sup>7</sup> Agencies may use a variety of methods, depending on the cost and characteristics of the needed good or service, the complexity of the procurement, and the number of available vendors, including:

- Single source contracts,<sup>8</sup> used when an agency determines that only one vendor is available to provide a commodity or service at the time of purchase;
- Invitations to bid (ITB),<sup>9</sup> used when an agency determines that standard services or goods will meet needs, wide competition is available, and the vendor’s experience will not greatly influence the agency’s results;
- Requests for proposals (RFP),<sup>10</sup> which are used when the procurement requirements allow for consideration of various solutions and the agency believes more than two or three vendors exist who can provide the required goods or services; and
- Invitations to negotiate (ITN),<sup>11</sup> which are used when negotiations are determined to be necessary to obtain the best value and involve a request for highly complex, customized, mission-critical services, by an agency dealing with a limited number of vendors.

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<sup>3</sup> Section 287.012(1), F.S. The term “agency” is defined as “any of the various state officers, departments, boards, commissions, divisions, bureaus, and councils and any other unit of organization, however designated, of the executive branch of state government. “Agency” does not include the university and college boards of trustees or the state universities and colleges.”

<sup>4</sup> See ss. 287.032 and 287.042, F.S.

<sup>5</sup> Section 287.057(3)(e), F.S.

<sup>6</sup> Section 287.057(1), F.S.

<sup>7</sup> *Id.*

<sup>8</sup> Section 287.057(3)(c), F.S.

<sup>9</sup> Section 287.057(1)(a), F.S.

<sup>10</sup> Section 287.057(1)(b), F.S.

<sup>11</sup> Section 287.057(1)(c), F.S.

## Procurement of Public Works and Property Contracts

Chapter 255, F.S., provides the procurement process for public construction works. A public works project is an activity that is paid for with any state-appropriated funds and that consists of the construction, maintenance, repair, renovation, remodeling, or improvement of a building, road, street, sewer, storm drain, water system, site development, irrigation system, reclamation project, gas or electrical distribution system, gas or electrical substation, or other facility, project, or portion thereof owned in whole or in part by any political subdivision.<sup>12</sup>

Current law specifies construction services procurement procedures for public property and public owned buildings.<sup>13</sup> The DMS is responsible for establishing by rule procedures to:<sup>14</sup>

- Determine the qualifications and responsibility of potential bidders prior to advertising for and receiving bids for building construction contracts.<sup>15</sup>
- Award each state agency construction project to the lowest qualified bidder.<sup>16</sup>
- Govern negotiations for construction contracts and contract modifications when such negotiations are determined to be in the best interest of the state.<sup>17</sup>
- Enter into performance-based contracts for the development of public facilities when those contracts are determined to be in the best interest of the state.<sup>18</sup>

State contracts for construction projects that are projected to cost in excess of \$200,000 must be competitively bid.<sup>19</sup> A county, municipality, special district, or other political subdivision seeking to construct or improve a public building must competitively bid the project if the estimated cost is in excess of \$300,000.<sup>20</sup>

## Preferences for Certain Vendors

Chapter 287, F.S., grants an agency discretion in setting criteria for the award of a contract via competitive solicitation. For example, s. 287.057(1)(b)4., F.S., which governs the award of a contract via a RFP, provides that the “contract shall be awarded in writing to the *responsible*<sup>[21]</sup> and *responsive*<sup>[22]</sup> vendor whose proposal is determined... to be the most advantageous to the state, taking into consideration the price and other criteria set forth in the request for proposals.” Similarly, for an ITN, s. 287.057(1)(c)4., F.S., requires an agency to “award the contract to the

<sup>12</sup> Section 255.0992(1)(b), F.S.

<sup>13</sup> See ch. 255, F.S.

<sup>14</sup> Section 255.29, F.S.

<sup>15</sup> Rules 60D-5.004, F.A.C.

<sup>16</sup> Rule 60D-5.007, F.A.C.

<sup>17</sup> Rule 60D-5.008, F.A.C.

<sup>18</sup> Rule 60D-5.0082, F.A.C.

<sup>19</sup> See s. 255.0525, F.S.; see also Rules 60D-5.002 and 60D-5.0073, F.A.C.

<sup>20</sup> Section 255.20(1), F.S. For electrical work, local governments must competitively bid projects estimated to cost over \$75,000.

<sup>21</sup> Section 287.012(25), F.S., defines “responsible vendor” to mean a vendor who has the capability in all respects to fully perform the contract requirements and the integrity and reliability that will assure good faith performance. This definition includes the financial capacity of the vendor.

<sup>22</sup> Section 287.012(27), F.S., defines “responsive vendor” to mean a vendor that has submitted a bid, proposal, or reply that conforms in all material respects to the solicitation.

responsible and responsive vendor that the agency determines will provide the best value to the state.” In contrast, s.287.057(1)(a)4, F.S., mandates that under the ITB system, contracts are “awarded to the responsible and responsive vendor who submits the lowest responsive bid.” Chapter 287, F.S., however, mandates agencies give special consideration – preference – to certain types of contracts and contractors. For example, agencies must grant preferences to commodities manufactured, grown, or produced within Florida;<sup>23</sup> “All American” and “Genuine Florida” meat and meat products;<sup>24</sup> Florida businesses;<sup>25</sup> drug-free workplaces;<sup>26</sup> and foreign manufacturers with over 200 employees in the state.<sup>27</sup>

### **Chief Financial Officer (CFO) and Department of Financial Services**

As provided in the State Constitution,<sup>28</sup> the CFO is the chief fiscal officer of Florida and is responsible for settling and approving accounts against the state and keeping all state funds and securities.<sup>29</sup> The CFO is a member of the Cabinet.<sup>30</sup> The CFO, using generally accepted auditing procedures for testing or sampling, must examine, audit, and settle all accounts, claims, and demands, whatsoever, against the State, arising under any law or resolution of the Legislature, and issue a warrant directing the payment out of the State Treasury of such amount as he or she allows thereon.<sup>31</sup>

The CFO must submit at least quarterly a report from the Florida Accounting Information Resource Subsystem identifying the disbursements which agencies made to small businesses, as defined in the Florida Small and Minority Business Assistance Act of 1985; to certified minority business enterprises in the aggregate; and to certified minority business enterprises broken down into categories of minority persons, as well as gender and nationality subgroups. This information must be made available to the agencies, the Office of Supplier Diversity, the Governor of Florida, the President of the Senate, and the Speaker of the House of Representatives. Each agency is responsible for the accuracy of information entered into the Florida Accounting Information Resource Subsystem for use in this reporting.<sup>32</sup>

### **Disadvantaged, Small, and Minority Businesses**

Chapters 287 and 288, F.S., set forth Florida’s statutory scheme for small and minority owned business assistance. A “small business” is defined as an independently owned and operated business concern that employs 100 or fewer permanent full-time employees, has a net worth of not more than \$3 million, and an average net income of not more than \$2 million. A “minority business enterprise” (MBE) is defined as a “small business” which is domiciled in Florida and is at least 51% owned by minority persons. A “minority person” means a lawful, permanent

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<sup>23</sup> Section 287.082, F.S. *See also* s. 287.0823 (same but for food commodities purchased by a state agency, a state university, a Florida College System institution, or any contracted food service provider thereof).

<sup>24</sup> Section 287.0822, F.S.

<sup>25</sup> Section 287.084, F.S.

<sup>26</sup> Section 287.087, F.S.

<sup>27</sup> Section 287.092, F.S.

<sup>28</sup> FLA. CONST. Art. IV, s.4(c).

<sup>29</sup> Section 17.001, F.S.

<sup>30</sup> FLA. CONST. Art. IV, s.4(a).

<sup>31</sup> Section 17.03(1), F.S.

<sup>32</sup> Section 17.11(2), F.S.

resident of Florida who is an African American, a Hispanic American, an Asian American, a Native American, or an American woman.<sup>33</sup>

### ***The Office of Supplier Development***

The Office of Supplier Diversity, now renamed as the Office of Supplier Development (Office),<sup>34</sup> operates within the DMS. The Office assists Florida small businesses, including MBEs as well as women- and veteran-owned, in becoming suppliers of commodities, services, and construction to the state government.<sup>35</sup> In addition to other statutory powers and functions, the Office has the duty to adopt rules to determine what constitutes a “good faith effort” to meet minority business enterprise procurement goals, create a certification program for MBEs, and monitor agencies’ compliance with procurement goals.<sup>36</sup>

According to the DMS, the Office currently operates as “a specialized team that helps Florida’s small businesses.”<sup>37</sup> The Office provides Florida small businesses with education, outreach, and technical assistance wanting to do business with the state. Accordingly, the Office “plays an integral role in ensuring the small business vendor community is strong, viable, and able to provide goods and services to the State of Florida.”

### ***The Florida Advisory Council on Small and Minority Business Development***

The Florida Advisory Council on Small and Minority Business Development assists the Secretary of the DMS with his or her duties to minority businesses and economic and business development.<sup>38</sup> The Council has various powers and duties, including: researching and reviewing the role of small and minority businesses in the state’s economy; reviewing issues and emerging topics relating to small and minority business economic development; studying the ability of financial markets and institutions to meet small business credit needs and determining the impact of government demands on credit for small businesses; assessing the reasonableness and effectiveness of efforts by any state agency or by all state agencies collectively to assist minority business enterprises; and advising the Governor, the Secretary of DMS, and the Legislature on matters relating to small and minority business development that are of importance to the international strategic planning and activities of the state.<sup>39</sup>

Last year, DMS recommended this Council be repealed from statute.<sup>40</sup>

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<sup>33</sup> Section 288.703, F.S.

<sup>34</sup> See Dep’t of Management Services, *Office of Supplier Development*, [https://www.dms.myflorida.com/agency\\_administration/office\\_of\\_supplier\\_diversity\\_osd](https://www.dms.myflorida.com/agency_administration/office_of_supplier_diversity_osd) (last visited Mar. 11, 2025).

<sup>35</sup> 8 FLA. PRAC., CONSTR. LAW MANUAL s. 5:22 *Minority and disadvantaged business enterprise requirements* (2023-2024 ed.). For powers and duties of the Office, see s. 287.09451, F.S.

<sup>36</sup> Section 287.09451(4), F.S.

<sup>37</sup> Dep’t of Management Services, *Senate Bill 1532 Analysis* (Mar. 11, 2025), at 10 (on file with the Senate Committee on Government Oversight and Accountability) [hereinafter DMS Analysis of SB 1532].

<sup>38</sup> Section 287.0947(1), F.S.

<sup>39</sup> Section 287.0947(5), F.S.

<sup>40</sup> DMS Analysis of SB 1532, *supra* n. 37 at 11.



### ***Minority Business Certifications***

The Office creates and publishes a list of vendors of certified MBEs based on uniform criteria established by the Minority Business Certification Task Force (Task Force).<sup>41</sup> A certified MBE must perform a useful business function other than acting as a conduit to transfer funds to a non-minority business. A “useful business function” is defined as a business function which results in the provision of materials, supplies, equipment, or services to customers.<sup>42</sup> The DMS recommended the dissolution of the Task Force, asserting “the Task Force is defunct with its mission is completed.”<sup>43</sup>

A statewide and interlocal agreement on certification of business concerns for the status of a MBE has been enacted by statute and entered into with all jurisdictions or organizations legally joining them.<sup>44</sup> The certification criteria approved by the task force and adopted by the DMS must be included in a statewide and interlocal agreement and, accordingly, executed according to the terms of the agreement.<sup>45</sup> A business that is certified under the provisions of the statewide and interlocal agreement is be deemed a certified minority enterprise in all jurisdictions or organizations where the agreement is in effect.<sup>46</sup>

It is unlawful, and subject to criminal liability, for any individual to falsely claim to be a MBE for purposes of qualifying for certification with any governmental certifying organization as a MBE.<sup>47</sup> Such false representations qualify as a breach of contract.<sup>48</sup>

As of November 2024, there are a total of 4,304 certified MBEs.<sup>49</sup>

### ***Minority Business Enterprise Procurement Goals***

Agencies must consider the use of price preferences, weighted preference formulas, or other preferences for construction contracts as determined to be appropriate by the Office to increase minority participation.<sup>50</sup> MBEs may qualify for the following advantages in state contracting:

- Set aside programs,<sup>51</sup> which allow government entities to aside commodities and services contracts for competitive sealed bidding only among certified MBEs or only among bidders who agree to use certified MBEs as subcontractors.<sup>52</sup> Before a contract may be reserved for solicitation only among certified minority business enterprises, the agency head must find

<sup>41</sup> Section 287.0943(1), (2) and (6), F.S.

<sup>42</sup> Section 287.0943(2)(e)3., F.S.

<sup>43</sup> DMS Analysis of SB 1532, *supra* n. 37 at 11.

<sup>44</sup> Section 287.09431, F.S.; 8 FLA. JUR. 2D BUSINESSES AND OCCUPATIONS s. 20 *Business assistance to small and minority business enterprises, generally; set asides of contracts; Small Business Development Center* (2025).

<sup>45</sup> Section 287.0943(2)(g), F.S.

<sup>46</sup> Section 287.0943(2)(i), F.S.

<sup>47</sup> Section 287.094(1), F.S.

<sup>48</sup> Section 287.094(2), F.S.

<sup>49</sup> DMS Analysis of SB 1532, *supra* n. 37 at 10.

<sup>50</sup> Section 255.102, F.S.; 43 FLA. JUR. 2D PUBLIC WORKS AND CONTRACTS s. 6 *Generally* (2025).

<sup>51</sup> Set aside programs are intended to be used to redress present effects of past discriminatory practices and are subject to periodic reassessment to account for changing needs and circumstances.

<sup>52</sup> Section 287.057(8) and (9), F.S.

that such a reservation is in the best interests of the state<sup>53</sup> and, before receiving bids, estimate the expected amount of the contract based on fair market values and may reject bids above that value.<sup>54</sup>

- Price preference program, which, similar to the one for small and Florida businesses,<sup>55</sup> permit preference for MBEs where bid are otherwise equal.<sup>56</sup> Any county, municipality, community college, or district school board is statutorily authorized to set aside up to 10% or more of the total amount of funds allocated for the procurement of personal property and services for the purpose of entering into contracts with minority business enterprises.<sup>57</sup>

In addition to state agencies and local bodies that otherwise must abide by procurement guidelines, statutory authority encourages the following entities to make similar preferences or recognitions to MBEs in procuring contracts: the state lottery,<sup>58</sup> the Central Florida Expressway Authority,<sup>59</sup> water management districts,<sup>60</sup> brownfield redevelopment projects,<sup>61</sup> and the Board of Governors of the State University System.<sup>62</sup>

***Construction Contracts & Florida A.G.C. Council, Inc. v. Florida, 303 F. Supp. 2d 1307 (N.D. Fla. 2004)***

The Florida Associated General Contractors Council challenged the spending goals for minority- and women-owned business in certain industry categories, including construction in s. 287.09451, F.S., in federal district court in 2004. The Court held that the implementation of mandatory specific percentage and spending goals for minority- and women-owned business was unconstitutional.<sup>63</sup> It is unclear how far reaching the holding is, however the implication of dicta indicates that the manner in which the DMS asserts the Office currently functions is likely permissible under the holding.<sup>64</sup> Through the Office, however, the state continues to encourage small businesses, including minority- and women-owned small businesses, to participate in construction contracts.

<sup>53</sup> Section 287.093, F.S.; 8 FLA. PRAC., CONSTR. LAW MANUAL s. 5:22 *Minority and disadvantaged business enterprise requirements* (2023-2024 ed.). See also *Eng'g Contractors Ass'n of S. Fla. Inc. v. Metro. Dade Cnty.*, 122 F.3d 895 (11th Cir. 1997) for discussion of constitutionality.

<sup>54</sup> Section 287.057(8)(b), F.S. All determinations are subject to s. 287.09451(5), F.S., which requires agencies procuring contracts costing in excess of \$195,000, to forward a notice to the Office of Supplier Diversity who then determines whether the procurement method will “allow opportunities for minority business enterprises;” if not, the Office proposes alternatives that, if the agency disagrees with, there is an available protest process.

<sup>55</sup> See *supra* discussion of Preferences for Certain Vendors, p. 3-4.

<sup>56</sup> Sections 287.057(8)(c), (9), and (12) F.S.; see also s. 287.09451(4), F.S.

<sup>57</sup> Section 287.093, F.S.

<sup>58</sup> Section 24.113, F.S.

<sup>59</sup> Section 348.754, F.S.

<sup>60</sup> Sections 373.1135 and 373.607, F.S.

<sup>61</sup> Section 373.607, F.S.

<sup>62</sup> Section 1001.706, F.S.

<sup>63</sup> See s. 287.09451(4)(n) and (6), F.S.

<sup>64</sup> Compare *Florida A.G.C. Council, Inc. v. Florida*, 303 F. Supp. 2d 1307, 1312, 1315-1316 (N.D. Fla. 2004) with DMS Analysis of SB 1532, *supra* n. 37 at 10 (under ‘Current OSD Program Overview’). In particular, *Florida A.G.C., Inc.* specifically indicates that the state could have used “race-neutral means... such as simplification of bidding procedures, relaxation of bonding requirements, and training and financial aid for disadvantaged entrepreneurs of all races [which] would open the public contracting market to all those who have suffered the effects of past discrimination,” 303 F. Supp. 2d at 1315, which DMS asserts the Office does.

As a result of the holding *Florida A.G.C. Council, Inc.*, the state and Florida Associated General Contractors Council entered into a settlement agreement in February 2004. Under this agreement, the state agreed, for a period of 99-years, to abstain from using racial or gender specific set-asides, preferences, and quotas in construction contracts. While the state operationally functions according to the settlement agreement, construction procurement statutes have not been updates to reflect the changes by the settlement agreement.<sup>65</sup>

### ***The Florida Small and Minority Business Assistance Act***

Under the Florida Small and Minority Business Assistance Act,<sup>66</sup> all state agencies must timely provide the Florida Small Business Development Center Procurement System with all formal solicitations for contractual services, supplies, and commodities. The Small Business Development Center coordinates with Minority Business Development Centers to compile and distribute this information to small and minority businesses requesting such service for the period necessary to familiarize the business with the market represented by state agencies. On or before February 1 each year, the Small Business Development Center must provide the Department of Commerce with a report on utilization of the statewide contracts register. The report must include, among other information, information relating to the number of solicitations by state agencies and the method of distribution of the solicitations, the total number of businesses using the services, the percentage of those businesses owned and controlled by minorities, and the percentage of service-disabled veteran business enterprises using the service.

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

**Section 1** amends s. 287.05701, F.S., to update considerations prohibited in procurement to forbid an awarding body<sup>67</sup> from giving preference to a vendor on the basis of race or ethnicity of the vendor or associate. Additionally, the awarding body cannot permit vendors to use such considerations in awarding subcontracts.

**Sections 2-28** amend or repeal other sections of the Florida Statutes to delete references to preferences for minority business enterprise.

### **Procurement Relating to Public Property and Publicly Owned Buildings**

**Section 4** repeals s. 255.101, F.S., which encourages county officials, boards of county commissioners, school boards, city councils, city commissioners, and all other public officers of state boards or commissions to contract with minority business enterprises (MBEs) in public works contracts.

**Section 5** repeals s. 255.102, F.S., which directs agencies to use price preferences weighted preference formulas, or other preferences for construction contracts, as determined appropriate by the Office of Supplier Diversity to increase minority participation. The statute additionally addresses good faith effort to contract with MBEs.

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<sup>65</sup> DMS Analysis of SB 1532, *supra* n. 37 at 10.

<sup>66</sup> Section 288.702, F.S. (identifying ss. 288.703-288.706, F.S., as the “Florida Small and Minority Business Assistance Act”).

<sup>67</sup> In this instance, awarding body refers to the state agency, state department, or local government bodies awarding the contract to a vendor. *See* s. 287.05701(1), F.S.

**Section 6** amends s. 255.20, F.S., to remove the authority of a local government to consider the impact a procured construction or related contract will have on minority businesses.

### **Procurement of Personal Property and Services**

**Section 7** amends s. 287.012, F.S., which provides definitions applicable to the procurement of personal property and services. The bill deletes the definitions for MBE and office; the latter of which referred to the Office of Supplier Diversity (Office).

**Section 8** amends s. 287.042, F.S., which addresses the powers and duties of the Department of Management Services (DMS)<sup>68</sup> in procurement of personal property and services. The changes delete the DMS's current duties to, through the Office, monitor procurement of certain contracts to ensure that opportunities are afforded to MBEs, that agencies are exploring reasonable and economic means to utilize MBEs, that maximum distribution of procurement opportunities is afforded to MBEs, and that the development of procedures for solicitation of bids ensures that contracts are awarded in accordance with the Florida Small and Minority Business Act. The changes additionally eliminate reference to the Office by striking language addressing the Office's power to protest decisions relating to procurement.

**Section 9** amends s. 287.055, F.S., which deals with the acquisition of professional services for architecture and related fields. The changes eliminate the responsibility of agencies in procuring these services to consider or ensure compliance with preferences to MBEs.

**Section 10** amends s. 287.057, F.S., to remove references to set-asides and price preferences for MBEs.

**Section 11** amends s. 287.059, F.S., which deals with procurement of private attorney services. The amendment strikes language which encourages agencies to consider a firm's minority status.

**Sections 12-18** repeal ss. 287.093, 287.0931, and 287.094 through 287.0947, F.S., which, respectively, address:

- Set asides for 10 percent or more of the total amount of funds allocated for certain procurements by any county, municipality, community college, or district school board, entering into a contract with an MBE;
- Preferences to MBEs in bond underwriting;
- Penalties for potential contractors for false representations to obtain MBE certification or to mislead the state regarding good faith attempts to contract with MBEs, as well as prohibitions against discriminatory considerations by state agencies in procurement;
- Certification of MBEs and creation of the Minority Business Certification Task Force;
- Enactment of the statewide and interlocal agreement on certification of business concerns for the MBE status;
- The creation and powers of the Office of Supplier Diversity; and

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<sup>68</sup> See s. 287.012(9), F.S. (providing that the term department in s. 287.042, F.S., means the Department of Management Services).

- The creation and powers of the Florida Advisory Council on Small and Minority Business Development.

### **Small and Minority Business Assistance Act (Act)<sup>69</sup>**

**Section 20** amends s. 288.703, F.S., which provides definitions for the Act. The bill eliminates the definitions for certified minority business enterprise, minority business enterprise, and minority person; as well as references to the Office of Supplier Diversity and minority businesses in the definition of Ombudsman.

**Section 21** amends s. 288.7031, F.S., to update the statute's caption to reflect the amendments in section 20.

**Section 22** repeals s. 288.706, F.S., which establishes the Florida Minority Business Loan Mobilization Program. The goal of the program “ is to assist minority business enterprises by facilitating working capital loans to minority business enterprises that are vendors on state agency contracts.”<sup>70</sup>

### **Preferences to MBEs Required by Specific Agencies**

**Section 3** repeals s. 24.113, F.S., which encourages the state lottery to participate in business with MBEs.

**Section 19** repeals 288.1167, F.S, which encourage sport franchise contracts for food and beverage concessions to meet, or at least attempt to meet, specific percentage of contracts with MBEs and MBE procurement goals.

**Section 23** amends s. 348.754, F.S., to delete the encouragement for the Central Florida Expressway System to utilize MBEs in its procurement and contracting opportunities.

**Section 24** amends s. 373.1135, F.S., to delete reference to minority businesses in small business programs water management districts may create. These programs encourage the districts to utilize small businesses in procurement and contract activities.

**Section 25** repeals s. 373.607, F.S., which permits water management districts to implement the recommendations from legislative studies to meet MBE procurement goals.

**Section 26** amends s. 376.84, F.S., to delete the financial incentives for MBEs in brownfield redevelopment.

**Sections 27 and 28** amend ss. 1001.706 and 1013.46, F.S, respectively, to delete the requirements to the Board of Governors and school district boards to abide by MBE procurement goals for construction and public works contracts relating to education buildings and facilities.

<sup>69</sup> See s. 288.702, F.S.

<sup>70</sup> 8 FLA. JUR. 2D BUSINESSES AND OCCUPATIONS s. 25 *Florida Minority Business Loan Mobilization Program* (2025).

**Miscellaneous**

**Section 2** amends s. 17.11, F.S., to update the state's Chief Financial Officer's reporting responsibilities so he or she no longer has to have reported from the Florida Accounting Information Resource Subsystem the disbursements made to MBEs. The amendment additionally deletes references to the Office of Supplier Diversity.

**Sections 29-46** conform cross-references to changes made by the bill.

**Section 47** provides that, except where expressly provided, the act takes effect July 1, 2025.

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

Not applicable. The bill does not require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, or reduce the percentage of state tax shared with counties or municipalities.

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

None identified.

**C. Trust Funds Restrictions:**

None identified.

**D. State Tax or Fee Increases:**

None identified.

**E. Other Constitutional Issues:**

None identified.

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

None identified.

**B. Private Sector Impact:**

Minority businesses that had enjoyed preferences in contracting may be negatively impacted. On the hand, non-minority businesses may be positively impacted.

**C. Government Sector Impact:**

The government will likely save money in procurement processes by decreasing costs associated with complying with minority business procurement goal reporting and otherwise save money relating to the now eliminate price preferences.

The DMS may additionally save money by eliminating the jobs within the Office of Supplier Diversity (Office of Supplier Development); it is, however, unclear if eliminating the Office will lead to a decrease in appropriated funds or if these individuals would otherwise find work elsewhere in the DMS.

**VI. Technical Deficiencies:**

Currently, ss. 288.703 through 288.706, F.S., is still entitled the Small and Minority Business Assistance Act. As the bill deletes the assistance provided to minority businesses, the Senate may wish to amend s. 288.702, F.S., to update the title of the act as well.

**VII. Related Issues:**

The Office of Supplier Development (Office), named the Office of Supplier Diversity in s. 287.09451, F.S., focuses on assisting small businesses in numerous communities achieve business opportunities in the context of state procurement. The Office hosts various networking and outreach events across the state for small businesses to interact with state, local, and federal government representatives.<sup>71</sup> Some of these events are referred to as Supplier Development Exchanges, which connect small businesses with government procurement representatives through presentations, training sessions, networking opportunities, and one-on-one interactions. These events are open to various small businesses, including Florida-based woman-, veteran-, and minority-owned small businesses, as well as other small businesses in otherwise underserved communities.<sup>72</sup> It is unclear how repealing the statute creating the Office would otherwise affect the services the Office makes available to small businesses, other than MBEs, that benefit from the services provided by the Office.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 287.05701, 17.11, 287.012, 287.042, 287.055, 287.057, 287.059, 288.703, 288.7031, 348.754, 373.1135, 376.84, 1001.706, 1013.46, 43.16, 110.116, 212.096, 215.971, 282.201, 282.709, 286.101, 287.0571, 288.0001, 295.187, 320.63, 376.3072, 394.47865, 402.7305, 408.045, 473.3065, 570.07, and 627.351.

<sup>71</sup> Dep't of Management Services, Office of Supplier Development, *Events*, [https://www.dms.myflorida.com/business\\_operations/state\\_purchasing/office\\_of\\_supplier\\_diversity\\_osd/events](https://www.dms.myflorida.com/business_operations/state_purchasing/office_of_supplier_diversity_osd/events) (last visited Mar. 11, 2025); see Dep't of Management Services, *Office of Supplier Development*, [https://www.dms.myflorida.com/agency\\_administration/office\\_of\\_supplier\\_diversity\\_osd](https://www.dms.myflorida.com/agency_administration/office_of_supplier_diversity_osd) (last visited Mar. 11, 2025).

<sup>72</sup> See Dep't of Management Services, *Office of Supplier Development*, [https://www.dms.myflorida.com/agency\\_administration/office\\_of\\_supplier\\_diversity\\_osd](https://www.dms.myflorida.com/agency_administration/office_of_supplier_diversity_osd) (last visited Mar. 11, 2025).

This bill repeals the following sections of the Florida Statutes: 24.113, 255.101, 255.102, 287.093, 287.0931, 2897.094, 287.0943, 287.09431, 287.09451, 287.0947, 288.1167, 288.706, and 373.607.

**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 Fine

19-00869-25

20251694\_\_

1 A bill to be entitled  
 2 An act relating to prohibited preferences in  
 3 government contracting; amending s. 287.05701, F.S.;  
 4 prohibiting an awarding body from giving preference to  
 5 a vendor on the basis of race or ethnicity; conforming  
 6 a provision to changes made by the act; amending s.  
 7 17.11, F.S.; revising reporting requirements for the  
 8 Chief Financial Officer to conform to changes made by  
 9 the act; repealing s. 24.113, F.S., relating to  
 10 minority participation for lottery retailers;  
 11 repealing s. 255.101, F.S., relating to utilization of  
 12 minority business enterprises in contracts for public  
 13 construction works; repealing s. 255.102, F.S.,  
 14 relating to contractor utilization of minority  
 15 business enterprises; amending s. 255.20, F.S.;  
 16 revising the factors that a local government may  
 17 consider in awarding certain bids and contracts for  
 18 public construction works; amending s. 287.012, F.S.;  
 19 deleting definitions to conform to changes made by the  
 20 act; amending s. 287.042, F.S.; deleting duties and  
 21 responsibilities of the Office of Supplier Diversity  
 22 to conform to its repeal by the act; amending s.  
 23 287.055, F.S.; revising factors that an agency is  
 24 required to consider when acquiring professional  
 25 architectural, engineering, landscape architectural,  
 26 or surveying and mapping services; amending s.  
 27 287.057, F.S.; deleting requirements that an agency  
 28 reserve certain contracts for certified minority  
 29 business enterprises; revising qualifications for

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30 certain contract managers; conforming provisions to  
 31 changes made by the act; amending s. 287.059, F.S.;  
 32 revising the factors that an agency is encouraged to  
 33 consider when selecting outside firms for attorney  
 34 services; repealing s. 287.093, F.S., relating to the  
 35 procurement of personal property and services from  
 36 funds set aside for minority business enterprises;  
 37 repealing s. 287.0931, F.S., relating to participation  
 38 in bond underwriting by minority business enterprises;  
 39 repealing s. 287.094, F.S., relating to penalties for  
 40 discrimination and false representation in minority  
 41 business enterprise programs; repealing s. 287.0943,  
 42 F.S., relating to the certification of minority  
 43 business enterprises; repealing s. 287.09431, F.S.,  
 44 relating to statewide and interlocal agreements on  
 45 certification of business concerns for the status of  
 46 minority business enterprise; repealing s. 287.09451,  
 47 F.S., relating to the Office of Supplier Diversity;  
 48 repealing s. 287.0947, F.S., relating to the Florida  
 49 Advisory Council on Small and Minority Business  
 50 Development; repealing s. 288.1167, F.S., relating to  
 51 sports franchise contract provisions for food and  
 52 beverage concession and contract awards to minority  
 53 business enterprises; amending s. 288.703, F.S.;  
 54 deleting and revising definitions to conform to  
 55 changes made by the act; amending s. 288.7031, F.S.;  
 56 conforming a provision to changes made by the act;  
 57 repealing s. 288.706, F.S., relating to the Florida  
 58 Minority Business Loan Mobilization Program; amending

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59 s. 348.754, F.S.; revising the types of businesses  
 60 that the Central Florida Expressway Authority  
 61 encourage inclusion in procurement and contracting;  
 62 amending s. 373.1135, F.S.; revising the goals of  
 63 small business programs implemented by water  
 64 management districts; repealing s. 373.607, F.S.,  
 65 relating to minority business enterprise procurement  
 66 goals by water management districts; amending s.  
 67 376.84, F.S.; revising economic incentives available  
 68 for brownfield redevelopment; amending s. 1001.706,  
 69 F.S.; deleting certain requirements that the Board of  
 70 Governors of the State University System must take  
 71 regarding utilization of minority business  
 72 enterprises; amending s. 1013.46, F.S.; deleting a  
 73 provision authorizing a set-aside for minority  
 74 business enterprises for the award of certain  
 75 contracts; amending ss. 43.16, 110.116, 212.096,  
 76 215.971, 282.201, 282.709, 286.101, 287.0571,  
 77 288.0001, 295.187, 320.63, 376.3072, 394.47865,  
 78 402.7305, 408.045, 473.3065, 570.07, and 627.351,  
 79 F.S.; conforming provisions and cross-references to  
 80 changes made by the act; providing effective dates.

81  
 82 Be It Enacted by the Legislature of the State of Florida:

83  
 84 Section 1. Section 287.05701, Florida Statutes, is amended  
 85 to read:  
 86 287.05701 Prohibition against considering social,  
 87 political, ~~or~~ ideological, racial, or ethnic interests in

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88 government contracting.—

89 (1) As used in this section, the term "awarding body"  
 90 means:

91 (a) For state contracts, an agency or the department.

92 (b) For local government contracts, the governing body of a  
 93 county, a municipality, a special district, or any other  
 94 political subdivision of the state.

95 (2) (a) An awarding body may not request documentation of or  
 96 consider a vendor's social, political, or ideological interests  
 97 when determining if the vendor is a responsible vendor.

98 (b) An awarding body may not give preference to a vendor  
 99 based on the vendor's social, political, or ideological  
 100 interests.

101 (c) An awarding body may not give preference to a vendor on  
 102 the basis of the race or ethnicity of the vendor or an owner or  
 103 associate thereof and may not allow a vendor to award  
 104 subcontracts on such a basis.

105 (3) Beginning July 1, 2025 ~~2023~~, any solicitation for the  
 106 procurement of commodities or contractual services by an  
 107 awarding body must include a provision notifying vendors of the  
 108 provisions of this section.

109 Section 2. Subsection (2) of section 17.11, Florida  
 110 Statutes, is amended to read:

111 17.11 To report disbursements made.—

112 (2) The Chief Financial Officer shall also cause to have  
 113 reported from the Florida Accounting Information Resource  
 114 Subsystem no less than quarterly the disbursements which  
 115 agencies made to small businesses, as defined in s. 288.703 ~~the~~  
 116 ~~Florida Small and Minority Business Assistance Act; to certified~~

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117 ~~minority business enterprises in the aggregate, and to certified~~  
 118 ~~minority business enterprises broken down into categories of~~  
 119 ~~minority persons, as well as gender and nationality subgroups.~~

120 This information ~~must~~ shall be made available to the agencies,  
 121 ~~the Office of Supplier Diversity,~~ the Governor, the President of  
 122 the Senate, and the Speaker of the House of Representatives.

123 Each agency shall be responsible for the accuracy of information  
 124 entered into the Florida Accounting Information Resource  
 125 Subsystem for use in this reporting.

126 Section 3. Section 24.113, Florida Statutes, is repealed.

127 Section 4. Section 255.101, Florida Statutes, is repealed.

128 Section 5. Section 255.102, Florida Statutes, is repealed.

129 Section 6. Paragraph (c) of subsection (1) of section  
 130 255.20, Florida Statutes, is amended to read:

131 255.20 Local bids and contracts for public construction  
 132 works; specification of state-produced lumber.—

133 (1) A county, municipality, special district as defined in  
 134 chapter 189, or other political subdivision of the state seeking  
 135 to construct or improve a public building, structure, or other  
 136 public construction works must competitively award to an  
 137 appropriately licensed contractor each project that is estimated  
 138 to cost more than \$300,000. For electrical work, the local  
 139 government must competitively award to an appropriately licensed  
 140 contractor each project that is estimated to cost more than  
 141 \$75,000. As used in this section, the term “competitively award”  
 142 means to award contracts based on the submission of sealed bids,  
 143 proposals submitted in response to a request for proposal,  
 144 proposals submitted in response to a request for qualifications,  
 145 or proposals submitted for competitive negotiation. This

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146 subsection expressly allows contracts for construction  
 147 management services, design/build contracts, continuation  
 148 contracts based on unit prices, and any other contract  
 149 arrangement with a private sector contractor permitted by any  
 150 applicable municipal or county ordinance, by district  
 151 resolution, or by state law. For purposes of this section, cost  
 152 includes employee compensation and benefits, except inmate  
 153 labor, the cost of equipment and maintenance, insurance costs,  
 154 and the cost of direct materials to be used in the construction  
 155 of the project, including materials purchased by the local  
 156 government, and other direct costs, plus a factor of 20 percent  
 157 for management, overhead, and other indirect costs. Subject to  
 158 the provisions of subsection (3), the county, municipality,  
 159 special district, or other political subdivision may establish,  
 160 by municipal or county ordinance or special district resolution,  
 161 procedures for conducting the bidding process.

162 (c) The provisions of this subsection do not apply:

163 1. If the project is undertaken to replace, reconstruct, or  
 164 repair an existing public building, structure, or other public  
 165 construction works damaged or destroyed by a sudden unexpected  
 166 turn of events such as an act of God, riot, fire, flood,  
 167 accident, or other urgent circumstances, and such damage or  
 168 destruction creates:

- 169 a. An immediate danger to the public health or safety;  
 170 b. Other loss to public or private property which requires  
 171 emergency government action; or  
 172 c. An interruption of an essential governmental service.

173 2. If, after notice by publication in accordance with the  
 174 applicable ordinance or resolution, the governmental entity does

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175 not receive any responsive bids or proposals.

176 3. To construction, remodeling, repair, or improvement to a  
177 public electric or gas utility system if such work on the public  
178 utility system is performed by personnel of the system.

179 4. To construction, remodeling, repair, or improvement by a  
180 utility commission whose major contracts are to construct and  
181 operate a public electric utility system.

182 5. If the project is undertaken as repair or maintenance of  
183 an existing public facility. For the purposes of this paragraph,  
184 the term "repair" means a corrective action to restore an  
185 existing public facility to a safe and functional condition and  
186 the term "maintenance" means a preventive or corrective action  
187 to maintain an existing public facility in an operational state  
188 or to preserve the facility from failure or decline. Repair or  
189 maintenance includes activities that are necessarily incidental  
190 to repairing or maintaining the facility. Repair or maintenance  
191 does not include the construction of any new building,  
192 structure, or other public construction works or any substantial  
193 addition, extension, or upgrade to an existing public facility.  
194 Such additions, extensions, or upgrades shall be considered  
195 substantial if the estimated cost of the additions, extensions,  
196 or upgrades included as part of the repair or maintenance  
197 project exceeds the threshold amount in subsection (1) and  
198 exceeds 20 percent of the estimated total cost of the repair or  
199 maintenance project fully accounting for all costs associated  
200 with performing and completing the work, including employee  
201 compensation and benefits, equipment cost and maintenance,  
202 insurance costs, and the cost of direct materials to be used in  
203 the construction of the project, including materials purchased

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204 by the local government, and other direct costs, plus a factor  
205 of 20 percent for management, overhead, and other indirect  
206 costs. An addition, extension, or upgrade ~~may shall~~ not be  
207 considered substantial if it is undertaken pursuant to the  
208 conditions specified in subparagraph 1. Repair and maintenance  
209 projects and any related additions, extensions, or upgrades may  
210 not be divided into multiple projects for the purpose of evading  
211 the requirements of this subparagraph.

212 6. If the project is undertaken exclusively as part of a  
213 public educational program.

214 7. If the funding source of the project will be diminished  
215 or lost because the time required to competitively award the  
216 project after the funds become available exceeds the time within  
217 which the funding source must be spent.

218 8. If the local government competitively awarded a project  
219 to a private sector contractor and the contractor abandoned the  
220 project before completion or the local government terminated the  
221 contract.

222 9. If the governing board of the local government complies  
223 with all of the requirements of this subparagraph, conducts a  
224 public meeting under s. 286.011 after public notice, and finds  
225 by majority vote of the governing board that it is in the  
226 public's best interest to perform the project using its own  
227 services, employees, and equipment. The public notice must be  
228 published at least 21 days before the date of the public meeting  
229 at which the governing board takes final action. The notice must  
230 identify the project, the components and scope of the work, and  
231 the estimated cost of the project fully accounting for all costs  
232 associated with performing and completing the work, including

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233 employee compensation and benefits, equipment cost and  
 234 maintenance, insurance costs, and the cost of direct materials  
 235 to be used in the construction of the project, including  
 236 materials purchased by the local government, and other direct  
 237 costs, plus a factor of 20 percent for management, overhead, and  
 238 other indirect costs. The notice must specify that the purpose  
 239 for the public meeting is to consider whether it is in the  
 240 public's best interest to perform the project using the local  
 241 government's own services, employees, and equipment. Upon  
 242 publication of the public notice and for 21 days thereafter, the  
 243 local government shall make available for public inspection,  
 244 during normal business hours and at a location specified in the  
 245 public notice, a detailed itemization of each component of the  
 246 estimated cost of the project and documentation explaining the  
 247 methodology used to arrive at the estimated cost. At the public  
 248 meeting, any qualified contractor or vendor who could have been  
 249 awarded the project had the project been competitively bid shall  
 250 be provided with a reasonable opportunity to present evidence to  
 251 the governing board regarding the project and the accuracy of  
 252 the local government's estimated cost of the project. In  
 253 deciding whether it is in the public's best interest for the  
 254 local government to perform a project using its own services,  
 255 employees, and equipment, the governing board must consider the  
 256 estimated cost of the project fully accounting for all costs  
 257 associated with performing and completing the work, including  
 258 employee compensation and benefits, equipment cost and  
 259 maintenance, insurance costs, and the cost of direct materials  
 260 to be used in the construction of the project, including  
 261 materials purchased by the local government, and other direct

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262 costs, plus a factor of 20 percent for management, overhead, and  
 263 other indirect costs, and the accuracy of the estimated cost in  
 264 light of any other information that may be presented at the  
 265 public meeting and whether the project requires an increase in  
 266 the number of government employees or an increase in capital  
 267 expenditures for public facilities, equipment, or other capital  
 268 assets. The local government may further consider the impact on  
 269 local economic development, the impact on small ~~and minority~~  
 270 business owners, the impact on state and local tax revenues,  
 271 whether the private sector contractors provide health insurance  
 272 and other benefits equivalent to those provided by the local  
 273 government, and any other factor relevant to what is in the  
 274 public's best interest. A report summarizing completed projects  
 275 constructed by the local government pursuant to this subsection  
 276 shall be publicly reviewed each year by the governing body of  
 277 the local government. The report shall detail the estimated  
 278 costs and the actual costs of the projects constructed by the  
 279 local government pursuant to this subsection. The report shall  
 280 be made available for review by the public. The Auditor General  
 281 shall review the report as part of his or her audits of local  
 282 governments.

283 10. If the governing board of the local government  
 284 determines upon consideration of specific substantive criteria  
 285 that it is in the best interest of the local government to award  
 286 the project to an appropriately licensed private sector  
 287 contractor pursuant to administrative procedures established by  
 288 and expressly set forth in a charter, ordinance, or resolution  
 289 of the local government adopted before July 1, 1994. The  
 290 criteria and procedures must be set out in the charter,

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291 ordinance, or resolution and must be applied uniformly by the  
 292 local government to avoid awarding a project in an arbitrary or  
 293 capricious manner. This exception applies only if all of the  
 294 following occur:

295 a. The governing board of the local government, after  
 296 public notice, conducts a public meeting under s. 286.011 and  
 297 finds by a two-thirds vote of the governing board that it is in  
 298 the public's best interest to award the project according to the  
 299 criteria and procedures established by charter, ordinance, or  
 300 resolution. The public notice must be published at least 14 days  
 301 before the date of the public meeting at which the governing  
 302 board takes final action. The notice must identify the project,  
 303 the estimated cost of the project, and specify that the purpose  
 304 for the public meeting is to consider whether it is in the  
 305 public's best interest to award the project using the criteria  
 306 and procedures permitted by the preexisting charter, ordinance,  
 307 or resolution.

308 b. The project is to be awarded by any method other than a  
 309 competitive selection process, and the governing board finds  
 310 evidence that:

311 (I) There is one appropriately licensed contractor who is  
 312 uniquely qualified to undertake the project because that  
 313 contractor is currently under contract to perform work that is  
 314 affiliated with the project; or

315 (II) The time to competitively award the project will  
 316 jeopardize the funding for the project, materially increase the  
 317 cost of the project, or create an undue hardship on the public  
 318 health, safety, or welfare.

319 c. The project is to be awarded by any method other than a

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320 competitive selection process, and the published notice clearly  
 321 specifies the ordinance or resolution by which the private  
 322 sector contractor will be selected and the criteria to be  
 323 considered.

324 d. The project is to be awarded by a method other than a  
 325 competitive selection process, and the architect or engineer of  
 326 record has provided a written recommendation that the project be  
 327 awarded to the private sector contractor without competitive  
 328 selection, and the consideration by, and the justification of,  
 329 the government body are documented, in writing, in the project  
 330 file and are presented to the governing board prior to the  
 331 approval required in this paragraph.

332 11. To projects subject to chapter 336.

333 Section 7. Subsections (18) and (19) of section 287.012,  
 334 Florida Statutes, are amended to read:

335 287.012 Definitions.—As used in this part, the term:

336 ~~(18) "Minority business enterprise" has the same meaning as~~  
 337 ~~provided in s. 288.703.~~

338 ~~(19) "Office" means the Office of Supplier Diversity of the~~  
 339 ~~Department of Management Services.~~

340 Section 8. Paragraphs (a) and (c) of subsection (2) and  
 341 paragraphs (b) and (c) of subsection (3) of section 287.042,  
 342 Florida Statutes, are amended to read:

343 287.042 Powers, duties, and functions.—The department shall  
 344 have the following powers, duties, and functions:

345 (2) (a) To establish purchasing agreements and procure state  
 346 term contracts for commodities and contractual services,  
 347 pursuant to s. 287.057, under which state agencies shall, and  
 348 eligible users may, make purchases pursuant to s. 287.056. The

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349 department may restrict purchases from some term contracts to  
 350 state agencies only for those term contracts where the inclusion  
 351 of other governmental entities will have an adverse effect on  
 352 competition or to those federal facilities located in this  
 353 state. ~~In such planning or purchasing the Office of Supplier~~  
 354 ~~Diversity may monitor to ensure that opportunities are afforded~~  
 355 ~~for contracting with minority business enterprises. The~~  
 356 ~~department, for state term contracts, and all agencies, for~~  
 357 ~~multiyear contractual services or term contracts, shall explore~~  
 358 ~~reasonable and economical means to utilize certified minority~~  
 359 ~~business enterprises. Purchases by any county, municipality,~~  
 360 private nonprofit community transportation coordinator  
 361 designated pursuant to chapter 427, while conducting business  
 362 related solely to the Commission for the Transportation  
 363 Disadvantaged, or other local public agency under the provisions  
 364 in the state purchasing contracts, and purchases, from the  
 365 corporation operating the correctional work programs, of  
 366 products or services that are subject to paragraph (1)(f), are  
 367 exempt from the competitive solicitation requirements otherwise  
 368 applying to their purchases.

369 (c) Any person who files an action protesting a decision or  
 370 intended decision pertaining to contracts administered by the  
 371 department, a water management district, or an agency pursuant  
 372 to s. 120.57(3)(b) shall post with the department, the water  
 373 management district, or the agency at the time of filing the  
 374 formal written protest a bond payable to the department, the  
 375 water management district, or agency in an amount equal to 1  
 376 percent of the estimated contract amount. For protests of  
 377 decisions or intended decisions pertaining to exceptional

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378 purchases, the bond shall be in an amount equal to 1 percent of  
 379 the estimated contract amount for the exceptional purchase. The  
 380 estimated contract amount shall be based upon the contract price  
 381 submitted by the protestor or, if no contract price was  
 382 submitted, the department, water management district, or agency  
 383 shall estimate the contract amount based on factors including,  
 384 but not limited to, the price of previous or existing contracts  
 385 for similar commodities or contractual services, the amount  
 386 appropriated by the Legislature for the contract, or the fair  
 387 market value of similar commodities or contractual services. The  
 388 agency shall provide the estimated contract amount to the vendor  
 389 within 72 hours, excluding Saturdays, Sundays, and state  
 390 holidays, after the filing of the notice of protest by the  
 391 vendor. The estimated contract amount is not subject to protest  
 392 pursuant to s. 120.57(3). The bond shall be conditioned upon the  
 393 payment of all costs and charges that are adjudged against the  
 394 protestor in the administrative hearing in which the action is  
 395 brought and in any subsequent appellate court proceeding. In  
 396 lieu of a bond, the department, the water management district,  
 397 or agency may, in either case, accept a cashier's check,  
 398 official bank check, or money order in the amount of the bond.  
 399 If, after completion of the administrative hearing process and  
 400 any appellate court proceedings, the department, water  
 401 management district, or agency prevails, it shall recover all  
 402 costs and charges which shall be included in the final order or  
 403 judgment, excluding attorney's fees. ~~This section shall not~~  
 404 ~~apply to protests filed by the Office of Supplier Diversity.~~  
 405 Upon payment of such costs and charges by the protestor, the  
 406 bond, cashier's check, official bank check, or money order shall

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407 be returned to the protestor. If, after the completion of the  
 408 administrative hearing process and any appellate court  
 409 proceedings, the protestor prevails, the protestor shall recover  
 410 from the department, water management district, or agency all  
 411 costs and charges which shall be included in the final order or  
 412 judgment, excluding attorney's fees.

413 (3) To establish a system of coordinated, uniform  
 414 procurement policies, procedures, and practices to be used by  
 415 agencies in acquiring commodities and contractual services,  
 416 which shall include, but not be limited to:

417 (b)1. Development of procedures for advertising  
 418 solicitations. These procedures must provide for electronic  
 419 posting of solicitations for at least 10 days before the date  
 420 set for receipt of bids, proposals, or replies, unless the  
 421 department or other agency determines in writing that a shorter  
 422 period of time is necessary to avoid harming the interests of  
 423 the state. ~~The Office of Supplier Diversity may consult with the~~  
 424 ~~department regarding the development of solicitation~~  
 425 ~~distribution procedures to ensure that maximum distribution is~~  
 426 ~~afforded to certified minority business enterprises as defined~~  
 427 ~~in s. 288.703.~~

428 2. Development of procedures for electronic posting. The  
 429 department shall designate a centralized website on the Internet  
 430 for the department and other agencies to electronically post  
 431 solicitations, decisions or intended decisions, and other  
 432 matters relating to procurement.

433 (c) Development of procedures for the receipt and opening  
 434 of bids, proposals, or replies by an agency. ~~Such procedures~~  
 435 ~~shall provide the Office of Supplier Diversity an opportunity to~~

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436 ~~monitor and ensure that the contract award is consistent with~~  
 437 ~~the requirements of s. 287.09451.~~

438 Section 9. Paragraph (d) of subsection (3) and paragraph  
 439 (b) of subsection (4) of section 287.055, Florida Statutes, are  
 440 amended to read:

441 287.055 Acquisition of professional architectural,  
 442 engineering, landscape architectural, or surveying and mapping  
 443 services; definitions; procedures; contingent fees prohibited;  
 444 penalties.-

445 (3) PUBLIC ANNOUNCEMENT AND QUALIFICATION PROCEDURES.-

446 (d) Each agency shall evaluate professional services,  
 447 including capabilities, adequacy of personnel, past record,  
 448 experience, ~~whether the firm is a certified minority business~~  
 449 ~~enterprise as defined by the Florida Small and Minority Business~~  
 450 ~~Assistance Act,~~ and other factors determined by the agency to be  
 451 applicable to its particular requirements. ~~When securing~~  
 452 ~~professional services, an agency must endeavor to meet the~~  
 453 ~~minority business enterprise procurement goals under s.~~  
 454 ~~287.09451.~~

455 (4) COMPETITIVE SELECTION.-

456 (b) The agency shall select in order of preference no fewer  
 457 than three firms deemed to be the most highly qualified to  
 458 perform the required services. In determining whether a firm is  
 459 qualified, the agency shall consider such factors as the ability  
 460 of professional personnel; ~~whether a firm is a certified~~  
 461 ~~minority business enterprise,~~ past performance; willingness to  
 462 meet time and budget requirements; location; recent, current,  
 463 and projected workloads of the firms; and the volume of work  
 464 previously awarded to each firm by the agency, with the object

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465 of effecting an equitable distribution of contracts among  
 466 qualified firms, provided such distribution does not violate the  
 467 principle of selection of the most highly qualified firms. The  
 468 agency may request, accept, and consider proposals for the  
 469 compensation to be paid under the contract only during  
 470 competitive negotiations under subsection (5).

471 Section 10. Subsections (7) through (28) of section  
 472 287.057, Florida Statutes, are amended to read:

473 287.057 Procurement of commodities or contractual  
 474 services.—

475 (7) Upon issuance of any solicitation, an agency shall,  
 476 upon request by the department, forward to the department one  
 477 copy of each solicitation for all commodity and contractual  
 478 services purchases in excess of the threshold amount provided in  
 479 s. 287.017 for CATEGORY TWO. An agency shall also, upon request,  
 480 furnish a copy of all competitive-solicitation tabulations. The  
 481 Office of Supplier Diversity may also request from the agencies  
 482 any information submitted to the department pursuant to this  
 483 subsection.

484 ~~(8) (a) In order to strive to meet the minority business~~  
 485 ~~enterprise procurement goals set forth in s. 287.09451, an~~  
 486 ~~agency may reserve any contract for competitive solicitation~~  
 487 ~~only among certified minority business enterprises. Agencies~~  
 488 ~~shall review all their contracts each fiscal year and shall~~  
 489 ~~determine which contracts may be reserved for solicitation only~~  
 490 ~~among certified minority business enterprises. This reservation~~  
 491 ~~may only be used when it is determined, by reasonable and~~  
 492 ~~objective means, before the solicitation that there are capable,~~  
 493 ~~qualified certified minority business enterprises available to~~

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494 ~~submit a bid, proposal, or reply on a contract to provide for~~  
 495 ~~effective competition. The Office of Supplier Diversity shall~~  
 496 ~~consult with any agency in reaching such determination when~~  
 497 ~~deemed appropriate.~~

498 ~~(b) Before a contract may be reserved for solicitation only~~  
 499 ~~among certified minority business enterprises, the agency head~~  
 500 ~~must find that such a reservation is in the best interests of~~  
 501 ~~the state. All determinations shall be subject to s.~~  
 502 ~~287.09451(5). Once a decision has been made to reserve a~~  
 503 ~~contract, but before sealed bids, proposals, or replies are~~  
 504 ~~requested, the agency shall estimate what it expects the amount~~  
 505 ~~of the contract to be, based on the nature of the services or~~  
 506 ~~commodities involved and their value under prevailing market~~  
 507 ~~conditions. If all the sealed bids, proposals, or replies~~  
 508 ~~received are over this estimate, the agency may reject the bids,~~  
 509 ~~proposals, or replies and request new ones from certified~~  
 510 ~~minority business enterprises, or the agency may reject the~~  
 511 ~~bids, proposals, or replies and reopen the bidding to all~~  
 512 ~~eligible vendors.~~

513 ~~(c) All agencies shall consider the use of price~~  
 514 ~~preferences of up to 10 percent, weighted preference formulas,~~  
 515 ~~or other preferences for vendors as determined appropriate~~  
 516 ~~pursuant to guidelines established in accordance with s.~~  
 517 ~~287.09451(4) to increase the participation of minority business~~  
 518 ~~enterprises.~~

519 ~~(d) All agencies shall avoid any undue concentration of~~  
 520 ~~contracts or purchases in categories of commodities or~~  
 521 ~~contractual services in order to meet the minority business~~  
 522 ~~enterprise purchasing goals in s. 287.09451.~~

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523 ~~(9) An agency may reserve any contract for competitive~~  
 524 ~~solicitation only among vendors who agree to use certified~~  
 525 ~~minority business enterprises as subcontractors or subvendors.~~  
 526 ~~The percentage of funds, in terms of gross contract amount and~~  
 527 ~~revenues, which must be expended with the certified minority~~  
 528 ~~business enterprise subcontractors and subvendors shall be~~  
 529 ~~determined by the agency before such contracts may be reserved.~~  
 530 ~~In order to bid on a contract so reserved, the vendor shall~~  
 531 ~~identify those certified minority business enterprises which~~  
 532 ~~will be utilized as subcontractors or subvendors by sworn~~  
 533 ~~statement. At the time of performance or project completion, the~~  
 534 ~~contractor shall report by sworn statement the payments and~~  
 535 ~~completion of work for all certified minority business~~  
 536 ~~enterprises used in the contract.~~

537 (8)~~(10)~~ An agency may ~~shall~~ not divide the solicitation of  
 538 commodities or contractual services so as to avoid the  
 539 requirements of subsections (1)-(3).

540 (9)~~(11)~~ A contract for commodities or contractual services  
 541 may be awarded without competition if state or federal law  
 542 prescribes with whom the agency must contract or if the rate of  
 543 payment or the recipient of the funds is established during the  
 544 appropriations process.

545 ~~(12) If two equal responses to a solicitation or a request~~  
 546 ~~for quote are received and one response is from a certified~~  
 547 ~~minority business enterprise, the agency shall enter into a~~  
 548 ~~contract with the certified minority business enterprise.~~

549 (10)~~(13)~~ Extension of a contract for commodities or  
 550 contractual services must be in writing for a period not to  
 551 exceed 6 months and is subject to the same terms and conditions

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552 set forth in the initial contract and any written amendments  
 553 signed by the parties. There may be only one extension of a  
 554 contract unless the failure to meet the criteria set forth in  
 555 the contract for completion of the contract is due to events  
 556 beyond the control of the contractor.

557 (11)~~(14)~~ Contracts for commodities or contractual services  
 558 may be renewed for a period that may not exceed 3 years or the  
 559 term of the original contract, whichever is longer. Renewal of a  
 560 contract for commodities or contractual services must be in  
 561 writing and is subject to the same terms and conditions set  
 562 forth in the initial contract and any written amendments signed  
 563 by the parties. If the commodity or contractual service is  
 564 purchased as a result of the solicitation of bids, proposals, or  
 565 replies, the price of the commodity or contractual service to be  
 566 renewed must be specified in the bid, proposal, or reply, except  
 567 that an agency may negotiate lower pricing. A renewal contract  
 568 may not include any compensation for costs associated with the  
 569 renewal. Renewals are contingent upon satisfactory performance  
 570 evaluations by the agency and subject to the availability of  
 571 funds. Exceptional purchase contracts pursuant to paragraphs  
 572 (3) (a) and (c) may not be renewed. With the exception of  
 573 subsection (9) ~~(11)~~, if a contract amendment results in a longer  
 574 contract term or increased payments, a state agency may not  
 575 renew or amend a contract for the outsourcing of a service or  
 576 activity that has an original term value exceeding \$5 million  
 577 before submitting a written report concerning contract  
 578 performance to the Governor, the President of the Senate, and  
 579 the Speaker of the House of Representatives at least 90 days  
 580 before execution of the renewal or amendment.

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581 (12) (a) (15) (a) For each contractual services contract, the  
 582 agency shall designate an employee to function as contract  
 583 manager who is responsible for enforcing performance of the  
 584 contract terms and conditions and serves as a liaison between  
 585 the contractor and the agency. The contract manager may not be  
 586 an individual who has been employed, within the previous 5  
 587 years, by the vendor awarded the contractual services contract.  
 588 The primary responsibilities of a contract manager include:  
 589 1. Participating in the solicitation development and review  
 590 of contract documents.  
 591 2. Monitoring the contractor's progress and performance to  
 592 ensure procured products and services conform to the contract  
 593 requirements and keep timely records of findings.  
 594 3. Managing and documenting any changes to the contract  
 595 through the amendment process authorized by the terms of the  
 596 contract.  
 597 4. Monitoring the contract budget to ensure sufficient  
 598 funds are available throughout the term of the contract.  
 599 5. Exercising applicable remedies, as appropriate, when a  
 600 contractor's performance is deficient.  
 601 (b) Each contract manager who is responsible for contracts  
 602 in excess of the threshold amount for CATEGORY TWO must, at a  
 603 minimum, complete training conducted by the Chief Financial  
 604 Officer for accountability in contracts and grant management.  
 605 The Chief Financial Officer shall evaluate such training every 5  
 606 years to assess its effectiveness and update the training  
 607 curriculum. The Chief Financial Officer shall establish and  
 608 disseminate uniform procedures pursuant to s. 17.03(3) to ensure  
 609 that contractual services have been rendered in accordance with

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610 the contract terms before the agency processes the invoice for  
 611 payment. The procedures must include, but need not be limited  
 612 to, procedures for monitoring and documenting contractor  
 613 performance, reviewing and documenting all deliverables for  
 614 which payment is requested by vendors, and providing written  
 615 certification by contract managers of the agency's receipt of  
 616 goods and services.  
 617 (c) Each contract manager who is responsible for contracts  
 618 in excess of \$100,000 annually must, in addition to the  
 619 accountability in contracts and grant management training  
 620 required in paragraph (b) and within 6 months after being  
 621 assigned responsibility for such contracts, complete training in  
 622 contract management and become a certified contract manager. The  
 623 department is responsible for establishing and disseminating the  
 624 training and certification requirements for certified contract  
 625 managers. Training must promote best practices and procedures  
 626 related to negotiating, managing, and ensuring accountability in  
 627 agency contracts and grant agreements, which must include the  
 628 use of case studies based upon previous audits, contracts, and  
 629 grant agreements. A certified contract manager must complete  
 630 training every 5 years for certification renewal. Training and  
 631 certification must be coordinated by the department, and the  
 632 training must be conducted jointly by the department and the  
 633 Department of Financial Services. The department shall evaluate  
 634 such training every 5 years to assess its effectiveness and  
 635 update the training curriculum.  
 636 (d) Each contract manager who is responsible for contracts  
 637 in excess of \$10 million annually must, in addition to the  
 638 training required in paragraph (b) and the training and

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639 certification required in paragraph (c), possess at least 5  
640 years of experience managing contracts totaling at least ~~in~~  
641 ~~excess of~~ \$5 million annually.

642 ~~(13)-(16)~~ Each agency shall designate at least one employee  
643 who shall serve as a contract administrator responsible for  
644 maintaining a contract file and financial information on all  
645 contractual services contracts and who shall serve as a liaison  
646 with the contract managers and the department. For a contract of  
647 \$500,000 or less annually, the contract administrator may also  
648 serve as the contract manager if he or she has completed the  
649 required training. For a contract in excess of \$500,000  
650 annually, the contract administrator may not serve as both the  
651 contract administrator and the contract manager.

652 (14) (a) ~~(17) (a)~~ For a contract in excess of the threshold  
653 amount provided in s. 287.017 for CATEGORY FOUR, the agency head  
654 shall appoint:

655 1. At least three persons to independently evaluate  
656 proposals and replies who collectively have experience and  
657 knowledge in the program areas and service requirements for the  
658 commodity or contractual services sought.

659 2. At least three persons to a negotiation team to conduct  
660 negotiations during a competitive sealed reply procurement. The  
661 negotiation team members must collectively have experience and  
662 knowledge in negotiating contracts, contract procurement, and  
663 the program areas and service requirements for the commodity or  
664 contractual services sought.

665 (b)1. If the value of a contract is in excess of \$1 million  
666 in any fiscal year, at least one of the persons conducting  
667 negotiations must be a certified contract negotiator.

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668 2. If the value of a contract is in excess of \$10 million  
669 in any fiscal year, at least one of the persons conducting  
670 negotiations must be a Project Management Professional, as  
671 certified by the Project Management Institute. The Project  
672 Management Professional shall provide guidance based on his or  
673 her experience, education, and competency to lead and direct  
674 complex projects.

675 3. The department is responsible for establishing and  
676 disseminating the certification and training requirements for  
677 certified contract negotiators. Training must ensure that  
678 certified contract negotiators are knowledgeable about effective  
679 negotiation strategies, capable of successfully implementing  
680 those strategies, and involved appropriately in the procurement  
681 process. The department shall evaluate such training every 5  
682 years in order to assess its effectiveness and update the  
683 training curriculum. A certified contract negotiator is required  
684 to complete training every 5 years for certification renewal.  
685 Qualification requirements for certification must include:

686 a. At least 12 months' experience as a purchasing agent,  
687 contract manager, or contract administrator for an agency or a  
688 local governmental entity where at least 50 percent of the  
689 designated duties included procuring commodities or contractual  
690 services, participating in contract negotiation, contract  
691 management, or contract administration, or working as an agency  
692 attorney whose duties included providing legal counsel to the  
693 agency's purchasing or contracting staff.

694 b. Experience during the preceding 5 years in leading at  
695 least two federal, state, or local government negotiation teams  
696 through a negotiated procurement, or participation in at least

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697 three federal, state, or local government negotiated  
698 procurements.

699 ~~(15)-(18)~~ Any person who supervises contract administrators  
700 or contract or grant managers that meet criteria for  
701 certification in subsection (12) ~~(15)~~ shall annually complete  
702 public procurement training for supervisors within 12 months  
703 after appointment to the supervisory position. The department is  
704 responsible for establishing and disseminating the training  
705 course content required for supervisors.

706 (16) (a) 1. ~~(19) (a) 1.~~ Each agency must avoid, neutralize, or  
707 mitigate significant potential organizational conflicts of  
708 interest before a contract is awarded. If the agency elects to  
709 mitigate the significant potential organizational conflict or  
710 conflicts of interest, an adequate mitigation plan, including  
711 organizational, physical, and electronic barriers, shall be  
712 developed.

713 2. If a conflict cannot be avoided or mitigated, an agency  
714 may proceed with the contract award if the agency head certifies  
715 that the award is in the best interests of the state. The agency  
716 head must specify in writing the basis for the certification.

717 (b)1. An agency head may not proceed with a contract award  
718 under subparagraph (a)2. if a conflict of interest is based upon  
719 the vendor gaining an unfair competitive advantage.

720 2. An unfair competitive advantage exists when the vendor  
721 competing for the award of a contract obtained:

722 a. Access to information that is not available to the  
723 public and would assist the vendor in obtaining the contract; or

724 b. Source selection information that is relevant to the  
725 contract but is not available to all competitors and that would

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726 assist the vendor in obtaining the contract.

727 (c) A person who receives a contract that has not been  
728 procured pursuant to subsections (1)-(3) to perform a  
729 feasibility study of the potential implementation of a  
730 subsequent contract, who participates in the drafting of a  
731 solicitation or who develops a program for future  
732 implementation, is not eligible to contract with the agency for  
733 any other contracts dealing with that specific subject matter,  
734 and any firm in which such person has any interest is not  
735 eligible to receive such contract. However, this prohibition  
736 does not prevent a vendor who responds to a request for  
737 information from being eligible to contract with an agency.

738 (17)-(20) Each agency shall establish a review and approval  
739 process for all contractual services contracts costing more than  
740 the threshold amount provided for in s. 287.017 for CATEGORY  
741 THREE which shall include, but not be limited to, program,  
742 financial, and legal review and approval. Such reviews and  
743 approvals shall be obtained before the contract is executed.

744 (18)-(21) In any procurement that costs more than the  
745 threshold amount provided for in s. 287.017 for CATEGORY TWO and  
746 is accomplished without competition, the individuals taking part  
747 in the development or selection of criteria for evaluation, the  
748 evaluation process, and the award process shall attest in  
749 writing that they are independent of, and have no conflict of  
750 interest in, the entities evaluated and selected.

751 (19)-(22) Nothing in this section shall affect the validity  
752 or effect of any contract in existence on October 1, 1990.

753 (20)-(23) An agency may contract for services with any  
754 independent, nonprofit college or university which is located

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755 within the state on the same basis as it may contract with any  
 756 state university or college if the independent, nonprofit  
 757 college or university:

758 (a) Is accredited by the Southern Association of Colleges  
 759 and Schools; or

760 (b) Is authorized to operate within this state pursuant to  
 761 chapter 1005, offers a professional degree, and is accredited by  
 762 the Middle States Commission on Higher Education.

763 (21)(24) The department, in consultation with the Chief  
 764 Financial Officer and the state chief information officer, shall  
 765 maintain a program for online procurement of commodities and  
 766 contractual services. To enable the state to promote open  
 767 competition and leverage its buying power, agencies shall  
 768 participate in the online procurement program, and eligible  
 769 users may participate in the program. Only vendors prequalified  
 770 as meeting mandatory requirements and qualifications criteria  
 771 may participate in online procurement.

772 (a) The department may contract for equipment and services  
 773 necessary to develop and implement online procurement.

774 (b) The department shall adopt rules to administer the  
 775 program for online procurement. The rules must include, but not  
 776 be limited to:

777 1. Determining the requirements and qualification criteria  
 778 for prequalifying vendors.

779 2. Establishing the procedures for conducting online  
 780 procurement.

781 3. Establishing the criteria for eligible commodities and  
 782 contractual services.

783 4. Establishing the procedures for providing access to

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784 online procurement.

785 5. Determining the criteria warranting any exceptions to  
 786 participation in the online procurement program.

787 (c) The department may impose and shall collect all fees  
 788 for the use of the online procurement systems.

789 1. The fees may be imposed on an individual transaction  
 790 basis or as a fixed percentage of the cost savings generated. At  
 791 a minimum, the fees must be set in an amount sufficient to cover  
 792 the projected costs of the services, including administrative  
 793 and project service costs in accordance with the policies of the  
 794 department.

795 2. If the department contracts with a provider for online  
 796 procurement, the department, pursuant to appropriation, shall  
 797 compensate the provider from the fees after the department has  
 798 satisfied all ongoing costs. The provider shall report  
 799 transaction data to the department each month so that the  
 800 department may determine the amount due and payable to the  
 801 department from each vendor.

802 3. All fees that are due and payable to the state on a  
 803 transactional basis or as a fixed percentage of the cost savings  
 804 generated are subject to s. 215.31 and must be remitted within  
 805 40 days after receipt of payment for which the fees are due. For  
 806 fees that are not remitted within 40 days, the vendor shall pay  
 807 interest at the rate established under s. 55.03(1) on the unpaid  
 808 balance from the expiration of the 40-day period until the fees  
 809 are remitted.

810 4. All fees and surcharges collected under this paragraph  
 811 shall be deposited in the Operating Trust Fund as provided by  
 812 law.

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813 (22)~~(25)~~ Each solicitation for the procurement of  
 814 commodities or contractual services shall include the following  
 815 provision: "Respondents to this solicitation or persons acting  
 816 on their behalf may not contact, between the release of the  
 817 solicitation and the end of the 72-hour period following the  
 818 agency posting the notice of intended award, excluding  
 819 Saturdays, Sundays, and state holidays, any employee or officer  
 820 of the executive or legislative branch concerning any aspect of  
 821 this solicitation, except in writing to the procurement officer  
 822 or as provided in the solicitation documents. Violation of this  
 823 provision may be grounds for rejecting a response."  
 824 (23) (a)~~(26) (a)~~ For each contractual services contract of \$5  
 825 million or greater, the agency head shall establish a continuing  
 826 oversight team after the contract has been awarded. The agency  
 827 head shall appoint at least four persons, one of whom must be  
 828 the certified contract manager, to the continuing oversight  
 829 team. If the value of the contractual services contract is \$10  
 830 million or greater, at least one of the persons on the  
 831 continuing oversight team must possess at least 5 years of  
 832 experience in managing contracts of a similar scope or size. If  
 833 the value of the contractual services contract is \$20 million or  
 834 greater, the continuing oversight team shall consist of at least  
 835 five persons; at least one of the persons on the continuing  
 836 oversight team must be from an agency other than the agency or  
 837 agencies participating in the contract. Members of the  
 838 continuing oversight team must be agency employees and must  
 839 collectively have experience and knowledge in contract  
 840 management, contract administration, contract enforcement, and  
 841 the program areas and service requirements for the contractual

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842 services purchased.  
 843 (b)1. For contracts of \$5 million or greater, each  
 844 continuing oversight team must meet at least quarterly.  
 845 2. For contracts of \$10 million or greater, each continuing  
 846 oversight team must meet at least monthly. A representative of  
 847 the contractor must be made available to members of the  
 848 continuing oversight team for at least one meeting every  
 849 calendar quarter to respond to any questions or requests for  
 850 information from the continuing oversight team concerning  
 851 contractor performance.  
 852 (c)1. Within 30 days after the formation of the continuing  
 853 oversight team, the continuing oversight team must convene an  
 854 initial meeting with representatives of the contractor to  
 855 achieve a mutual understanding of the contract requirements; to  
 856 provide the contractor with an orientation to the contract  
 857 management process; and to provide an explanation of the role of  
 858 the continuing oversight team, contract manager, and contract  
 859 administrator.  
 860 2. The continuing oversight team must meet to discuss the  
 861 status of the contract, the pace of deliverables, the quality of  
 862 deliverables, contractor responsiveness, and contractor  
 863 performance. The contract administrator must be present at each  
 864 meeting with the contract file and all applicable financial  
 865 information. The continuing oversight team may submit written  
 866 questions to the contractor concerning any items discussed  
 867 during a continuing oversight team meeting. The contractor must  
 868 respond to the team's questions within 10 business days after  
 869 receiving the written questions. The questions and responses  
 870 must be included in the contract file.

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871 (d) The continuing oversight team must notify, in writing:

872 1. The agency head and the department of any deficiency in  
873 a contractor's performance which substantially affects the pace  
874 of deliverables or the likelihood of the successful completion  
875 of the contract.

876 2. The agency head, the department, and the Office of  
877 Policy and Budget in the Executive Office of the Governor of any  
878 significant change in contract scope or any increase in the cost  
879 of the contract that is 5 percent of the planned contract cost  
880 or greater within the fiscal year for contractual service  
881 contracts of at least \$5 million.

882 3. The agency head, the department, the Office of Policy  
883 and Budget in the Executive Office of the Governor, and the  
884 legislative appropriations committees of any significant change  
885 in contract scope or any increase in the cost of the contract  
886 that is 5 percent of the planned contract cost or greater within  
887 the fiscal year for contractual service contracts of \$10 million  
888 or greater.

889 (24) (a)-(27) (a) In determining whether a vendor is a  
890 responsible vendor, an agency may establish financial stability  
891 criteria and require a vendor to demonstrate its financial  
892 stability. If an agency requires a vendor to demonstrate its  
893 financial stability during the competitive solicitation process,  
894 the agency must accept any of the following as evidence of the  
895 vendor's financial stability:

896 1. Audited financial statements that demonstrate the  
897 vendor's satisfaction of financial stability criteria.

898 2. Documentation of an investment grade rating from a  
899 credit rating agency designated as a nationally recognized

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900 statistical rating organization by the Securities and Exchange  
901 Commission.

902 3.a. For a vendor with annual revenues exceeding \$1  
903 billion, a letter containing a written declaration, pursuant to  
904 s. 92.525, issued by the chief financial officer or controller  
905 attesting that the vendor is financially stable and meets the  
906 definition of financial stability in paragraph (b).

907 b. For a vendor with annual revenues of \$1 billion or less,  
908 documentation, based on criteria established by the agency,  
909 evidencing that the vendor is financially stable and meets the  
910 definition of financial stability in paragraph (b). The criteria  
911 established by the agency shall be reasonably related to the  
912 value of the contract and may not include audited financial  
913 statements.

914 (b) For purposes of this subsection, the term "financial  
915 stability" means, at a minimum, having adequate income and  
916 capital and the capacity to efficiently allocate resources,  
917 assess and manage financial risks, and maintain financial  
918 soundness through the term of the contract.

919 (c) This subsection does not preclude an agency from  
920 requiring a performance bond for the duration of the contract,  
921 when appropriate.

922 (25)-(28) An agency may substitute verifiable, related work  
923 experience in lieu of postsecondary education requirements for  
924 contractual services pursuant to s. 112.219 if the person  
925 seeking the contract for services is otherwise qualified for  
926 such contract.

927 Section 11. Paragraph (c) of subsection (10) of section  
928 287.059, Florida Statutes, is amended to read:



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929 287.059 Private attorney services.-

930 (10) Agencies are encouraged to use the following criteria

931 when selecting outside firms for attorney services:

932 ~~(c) The firm's minority status.~~

933 Section 12. Section 287.093, Florida Statutes, is repealed.

934 Section 13. Section 287.0931, Florida Statutes, is

935 repealed.

936 Section 14. Section 287.094, Florida Statutes, is repealed.

937 Section 15. Section 287.0943, Florida Statutes, is

938 repealed.

939 Section 16. Section 287.09431, Florida Statutes, is

940 repealed.

941 Section 17. Section 287.09451, Florida Statutes, is

942 repealed.

943 Section 18. Section 287.0947, Florida Statutes, is

944 repealed.

945 Section 19. Section 288.1167, Florida Statutes, is

946 repealed.

947 Section 20. Subsections (1), (3), (4), and (5) of section

948 288.703, Florida Statutes, are amended to read:

949 288.703 Definitions.—As used in ss. 288.702-288.706, the

950 term:

951 ~~(1) "Certified minority business enterprise" means a~~

952 ~~business which has been certified by the certifying organization~~

953 ~~or jurisdiction in accordance with s. 287.0943(1) and (2).~~

954 ~~(3) "Minority business enterprise" means any small business~~

955 ~~concern as defined in subsection (6) which is organized to~~

956 ~~engage in commercial transactions, which is domiciled in~~

957 ~~Florida, and which is at least 51-percent-owned by minority~~

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958 ~~persons who are members of an insular group that is of a~~

959 ~~particular racial, ethnic, or gender makeup or national origin,~~

960 ~~which has been subjected historically to disparate treatment due~~

961 ~~to identification in and with that group resulting in an~~

962 ~~underrepresentation of commercial enterprises under the group's~~

963 ~~control, and whose management and daily operations are~~

964 ~~controlled by such persons. A minority business enterprise may~~

965 ~~primarily involve the practice of a profession. Ownership by a~~

966 ~~minority person does not include ownership which is the result~~

967 ~~of a transfer from a nonminority person to a minority person~~

968 ~~within a related immediate family group if the combined total~~

969 ~~net asset value of all members of such family group exceeds \$1~~

970 ~~million. For purposes of this subsection, the term "related~~

971 ~~immediate family group" means one or more children under 16~~

972 ~~years of age and a parent of such children or the spouse of such~~

973 ~~parent residing in the same house or living unit.~~

974 ~~(4) "Minority person" means a lawful, permanent resident of~~

975 ~~Florida who is:~~

976 ~~(a) An African American, a person having origins in any of~~

977 ~~the black racial groups of the African Diaspora, regardless of~~

978 ~~cultural origin.~~

979 ~~(b) A Hispanic American, a person of Spanish or Portuguese~~

980 ~~culture with origins in Spain, Portugal, Mexico, South America,~~

981 ~~Central America, or the Caribbean, regardless of race.~~

982 ~~(c) An Asian American, a person having origins in any of~~

983 ~~the original peoples of the Far East, Southeast Asia, the Indian~~

984 ~~Subcontinent, or the Pacific Islands, including the Hawaiian~~

985 ~~Islands before 1778.~~

986 ~~(d) A Native American, a person who has origins in any of~~

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987 ~~the Indian Tribes of North America before 1835, upon~~  
 988 ~~presentation of proper documentation thereof as established by~~  
 989 ~~rule of the Department of Management Services.~~  
 990 ~~(c) An American woman.~~  
 991 (2)(5) "Ombudsman" means an office or individual whose  
 992 responsibilities include ~~coordinating with the Office of~~  
 993 ~~Supplier Diversity for the interests of and~~ providing assistance  
 994 to small ~~and minority~~ business enterprises in dealing with  
 995 governmental agencies and in developing proposals for changes in  
 996 state agency rules.  
 997 Section 21. Section 288.7031, Florida Statutes, is amended  
 998 to read:  
 999 288.7031 Application of definition of small business  
 1000 ~~certain definitions.~~~~The definition definitions~~ of "small  
 1001 business," ~~"minority business enterprise," and "certified~~  
 1002 ~~minority business enterprise"~~ provided in s. 288.703 applies  
 1003 apply to the state and all political subdivisions of the state.  
 1004 Section 22. Section 288.706, Florida Statutes, is repealed.  
 1005 Section 23. Subsection (5) of section 348.754, Florida  
 1006 Statutes, is amended to read:  
 1007 348.754 Purposes and powers.—  
 1008 (5) The authority shall encourage the inclusion of local-,  
 1009 small-, ~~minority~~, and women-owned businesses in its procurement  
 1010 and contracting opportunities.  
 1011 Section 24. Section 373.1135, Florida Statutes, is amended  
 1012 to read:  
 1013 373.1135 Small business program.—Each water management  
 1014 district, as created in this chapter, may implement a small  
 1015 business program designed to help small businesses, including

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1016 those owned by women ~~and minorities~~, to participate in district  
 1017 procurement and contract activities. The purpose of the program  
 1018 is to spur economic development and support small businesses,  
 1019 including women-owned ~~and minority-owned~~ businesses, to  
 1020 successfully expand in the marketplace. Program specifics shall  
 1021 be provided by rule pursuant to s. 373.113.  
 1022 Section 25. Section 373.607, Florida Statutes, is repealed.  
 1023 Section 26. Paragraph (g) of subsection (1) of section  
 1024 376.84, Florida Statutes, is amended to read:  
 1025 376.84 Brownfield redevelopment economic incentives.—It is  
 1026 the intent of the Legislature that brownfield redevelopment  
 1027 activities be viewed as opportunities to significantly improve  
 1028 the utilization, general condition, and appearance of these  
 1029 sites. Different standards than those in place for new  
 1030 development, as allowed under current state and local laws,  
 1031 should be used to the fullest extent to encourage the  
 1032 redevelopment of a brownfield. State and local governments are  
 1033 encouraged to offer redevelopment incentives for this purpose,  
 1034 as an ongoing public investment in infrastructure and services,  
 1035 to help eliminate the public health and environmental hazards,  
 1036 and to promote the creation of jobs in these areas. Such  
 1037 incentives may include financial, regulatory, and technical  
 1038 assistance to persons and businesses involved in the  
 1039 redevelopment of the brownfield pursuant to this act.  
 1040 (1) Financial incentives and local incentives for  
 1041 redevelopment may include, but not be limited to:  
 1042 ~~(g) Minority business enterprise programs as provided in s.~~  
 1043 ~~287.0943.~~  
 1044 Section 27. Paragraph (d) of subsection (7) of section

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1045 1001.706, Florida Statutes, is amended to read:  
 1046 1001.706 Powers and duties of the Board of Governors.—  
 1047 (7) POWERS AND DUTIES RELATING TO PROPERTY.—  
 1048 ~~(d) The Board of Governors, or the board's designee, shall~~  
 1049 ~~ensure compliance with the provisions of s. 287.09451 for all~~  
 1050 ~~procurement and ss. 255.101 and 255.102 for construction~~  
 1051 ~~contracts, and rules adopted pursuant thereto, relating to the~~  
 1052 ~~utilization of minority business enterprises, except that~~  
 1053 ~~procurements costing less than the amount provided for in~~  
 1054 ~~CATEGORY FIVE as provided in s. 287.017 shall not be subject to~~  
 1055 ~~s. 287.09451.~~  
 1056 Section 28. Paragraph (c) of subsection (1) of section  
 1057 1013.46, Florida Statutes, is amended to read:  
 1058 1013.46 Advertising and awarding contracts;  
 1059 prequalification of contractor.—  
 1060 (1)  
 1061 ~~(c) As an option, any county, municipality, or board may~~  
 1062 ~~set aside up to 10 percent of the total amount of funds~~  
 1063 ~~allocated for the purpose of entering into construction capital~~  
 1064 ~~project contracts with minority business enterprises, as defined~~  
 1065 ~~in s. 287.094. Such contracts shall be competitively bid only~~  
 1066 ~~among minority business enterprises. The set-aside shall be used~~  
 1067 ~~to redress present effects of past discriminatory practices and~~  
 1068 ~~shall be subject to periodic reassessment to account for~~  
 1069 ~~changing needs and circumstances.~~  
 1070 Section 29. Subsection (1) of section 43.16, Florida  
 1071 Statutes, is amended to read:  
 1072 43.16 Justice Administrative Commission; membership, powers  
 1073 and duties.—

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

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1074 (1) There is hereby created a Justice Administrative  
 1075 Commission, with headquarters located in the state capital. The  
 1076 necessary office space for use of the commission shall be  
 1077 furnished by the proper state agency in charge of state  
 1078 buildings. For purposes of the fees imposed on agencies pursuant  
 1079 to s. 287.057(21) ~~s. 287.057(24)~~, the Justice Administrative  
 1080 Commission shall be exempt from such fees.  
 1081 Section 30. Paragraph (a) of subsection (2) of section  
 1082 110.116, Florida Statutes, is amended to read:  
 1083 110.116 Personnel information system; payroll procedures.—  
 1084 (2) In recognition of the critical nature of the statewide  
 1085 personnel and payroll system commonly known as People First, the  
 1086 Legislature finds that it is in the best interest of the state  
 1087 to continue partnering with the current People First third-party  
 1088 operator. The People First System annually processes 500,000  
 1089 employment applications, 455,000 personnel actions, and the  
 1090 state's \$9.5-billion payroll. The Legislature finds that the  
 1091 continuity of operations of the People First System and the  
 1092 critical functions it provides such as payroll, employee health  
 1093 insurance benefit records, and other critical services must not  
 1094 be interrupted. Presently, the Chief Financial Officer is  
 1095 undertaking the development of a new statewide accounting and  
 1096 financial management system, commonly known as the Planning,  
 1097 Accounting, and Ledger Management (PALM) system, scheduled to be  
 1098 operational in the year 2026. The procurement and implementation  
 1099 of an entire replacement of the People First System will impede  
 1100 the timeframe needed to successfully integrate the state's  
 1101 payroll system with the PALM system. In order to maintain  
 1102 continuity of operations and to ensure the successful completion

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1103 of the PALM system, the Legislature directs that:

1104 (a) The department, pursuant to s. 287.057(9) ~~s-~~

1105 ~~287.057(11)~~, shall enter into a 3-year contract extension with

1106 the entity operating the People First System on January 1, 2024.

1107 The contract extension must:

1108 1. Provide for the integration of the current People First

1109 System with PALM.

1110 2. Exclude major functionality updates or changes to the

1111 People First System prior to completion of the PALM system. This

1112 does not include:

1113 a. Routine system maintenance such as code updates

1114 following open enrollment; or

1115 b. The technical remediation necessary to integrate the

1116 system with PALM within the PALM project's planned

1117 implementation schedule.

1118 3. Include project planning and analysis deliverables

1119 necessary to:

1120 a. Detail and document the state's functional requirements.

1121 b. Estimate the cost of transitioning the current People

1122 First System to a cloud computing infrastructure within the

1123 contract extension and after the successful integration with

1124 PALM. The project cost evaluation shall estimate the annual cost

1125 and capacity growth required to host the system in a cloud

1126 environment.

1127

1128 The department shall develop these system specifications in

1129 conjunction with the Department of Financial Services and the

1130 Auditor General.

1131 4. Include technical support for state agencies that may

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1132 need assistance in remediating or integrating current financial

1133 shadow systems with People First in order to integrate with PALM

1134 or the cloud version of People First.

1135 5. Include organizational change management and training

1136 deliverables needed to support the implementation of PALM

1137 payroll functionality and the People First System cloud upgrade.

1138 Responsibilities of the operator and the department shall be

1139 outlined in a project role and responsibility assignment chart

1140 within the contract.

1141 6. Include an option to renew the contract for one

1142 additional year.

1143 Section 31. Paragraph (g) of subsection (3) of section

1144 212.096, Florida Statutes, is amended to read:

1145 212.096 Sales, rental, storage, use tax; enterprise zone

1146 jobs credit against sales tax.—

1147 (3) In order to claim this credit, an eligible business

1148 must file under oath with the governing body or enterprise zone

1149 development agency having jurisdiction over the enterprise zone

1150 where the business is located, as applicable, a statement which

1151 includes:

1152 (g) Whether the business is a small business as defined in

1153 s. 288.703(3) ~~by s. 288.703(6)~~.

1154 Section 32. Paragraph (a) of subsection (2) of section

1155 215.971, Florida Statutes, is amended to read:

1156 215.971 Agreements funded with federal or state

1157 assistance.—

1158 (2) For each agreement funded with federal or state

1159 financial assistance, the state agency shall designate an

1160 employee to function as a grant manager who shall be responsible

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1161 for enforcing performance of the agreement's terms and  
 1162 conditions and who shall serve as a liaison with the recipient  
 1163 or subrecipient.

1164 (a)1. Each grant manager who is responsible for agreements  
 1165 in excess of the threshold amount for CATEGORY TWO under s.  
 1166 287.017 must, at a minimum, complete training conducted by the  
 1167 Chief Financial Officer for accountability in contracts and  
 1168 grant management.

1169 2. Effective December 1, 2014, each grant manager  
 1170 responsible for agreements in excess of \$100,000 annually must  
 1171 complete the training and become a certified contract manager as  
 1172 provided under s. 287.057(12) ~~s. 287.057(15)~~. All grant managers  
 1173 must become certified contract managers within 24 months after  
 1174 establishment of the training and certification requirements by  
 1175 the Department of Management Services and the Department of  
 1176 Financial Services.

1177 Section 33. Subsection (5) of section 282.201, Florida  
 1178 Statutes, is amended to read:

1179 282.201 State data center.—The state data center is  
 1180 established within the department. The provision of data center  
 1181 services must comply with applicable state and federal laws,  
 1182 regulations, and policies, including all applicable security,  
 1183 privacy, and auditing requirements. The department shall appoint  
 1184 a director of the state data center who has experience in  
 1185 leading data center facilities and has expertise in cloud-  
 1186 computing management.

1187 (5) NORTHWEST REGIONAL DATA CENTER CONTRACT.—In order for  
 1188 the department to carry out its duties and responsibilities  
 1189 relating to the state data center, the secretary of the

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1190 department shall contract by July 1, 2022, with the Northwest  
 1191 Regional Data Center pursuant to s. 287.057(9) ~~s. 287.057(11)~~.  
 1192 The contract shall provide that the Northwest Regional Data  
 1193 Center will manage the operations of the state data center and  
 1194 provide data center services to state agencies.

1195 (a) The department shall provide contract oversight,  
 1196 including, but not limited to, reviewing invoices provided by  
 1197 the Northwest Regional Data Center for services provided to  
 1198 state agency customers.

1199 (b) The department shall approve or request updates to  
 1200 invoices within 10 business days after receipt. If the  
 1201 department does not respond to the Northwest Regional Data  
 1202 Center, the invoice will be approved by default. The Northwest  
 1203 Regional Data Center must submit approved invoices directly to  
 1204 state agency customers.

1205 Section 34. Effective only if the reversion of text  
 1206 pursuant to section 53 of chapter 2024-228, Laws of Florida, is  
 1207 abrogated, paragraph (a) of subsection (3) of section 282.709,  
 1208 Florida Statutes, is amended to read:

1209 282.709 State agency law enforcement radio system and  
 1210 interoperability network.—

1211 (3) In recognition of the critical nature of the statewide  
 1212 law enforcement radio communications system, the Legislature  
 1213 finds that there is an immediate danger to the public health,  
 1214 safety, and welfare, and that it is in the best interest of the  
 1215 state to continue partnering with the system's current operator.  
 1216 The Legislature finds that continuity of coverage is critical to  
 1217 supporting law enforcement, first responders, and other public  
 1218 safety users. The potential for a loss in coverage or a lack of

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1219 interoperability between users requires emergency action and is  
 1220 a serious concern for officers' safety and their ability to  
 1221 communicate and respond to various disasters and events.  
 1222 (a) The department, pursuant to s. 287.057(9) ~~e-~~  
 1223 ~~287.057(11)~~, shall enter into a 15-year contract with the entity  
 1224 that was operating the statewide radio communications system on  
 1225 January 1, 2021. The contract must include:  
 1226 1. The purchase of radios;  
 1227 2. The upgrade to the Project 25 communications standard;  
 1228 3. Increased system capacity and enhanced coverage for  
 1229 system users;  
 1230 4. Operations, maintenance, and support at a fixed annual  
 1231 rate;  
 1232 5. The conveyance of communications towers to the  
 1233 department; and  
 1234 6. The assignment of communications tower leases to the  
 1235 department.  
 1236 Section 35. Paragraph (b) of subsection (3) of section  
 1237 286.101, Florida Statutes, is amended to read:  
 1238 286.101 Foreign gifts and contracts.-  
 1239 (3)  
 1240 (b) Disclosure under this subsection is not required with  
 1241 respect to:  
 1242 1. A proposal to sell commodities through the online  
 1243 procurement program established pursuant to s. 287.057(19) ~~e-~~  
 1244 ~~287.057(22)~~;  
 1245 2. A proposal to sell commodities to a university pursuant  
 1246 to Board of Governors Regulation 18.001;  
 1247 3. An application or proposal from an entity that discloses

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1248 foreign gifts or grants under subsection (2) or s. 1010.25;  
 1249 4. An application or proposal from a foreign source that,  
 1250 if granted or accepted, would be disclosed under subsection (2)  
 1251 or s. 1010.25; or  
 1252 5. An application or proposal from a public or not-for-  
 1253 profit research institution with respect to research funded by  
 1254 any federal agency.  
 1255 Section 36. Paragraph (a) of subsection (3) of section  
 1256 287.0571, Florida Statutes, is amended to read:  
 1257 287.0571 Business case to outsource; applicability.-  
 1258 (3) This section does not apply to:  
 1259 (a) A procurement of commodities and contractual services  
 1260 listed in s. 287.057(3)(d) and (e) and (20) ~~s. 287.057(3)(d) and~~  
 1261 ~~(e) and (23)~~.  
 1262 Section 37. Paragraph (b) of subsection (2) of section  
 1263 288.0001, Florida Statutes, is amended to read:  
 1264 288.0001 Economic Development Programs Evaluation.-The  
 1265 Office of Economic and Demographic Research and the Office of  
 1266 Program Policy Analysis and Government Accountability (OPPAGA)  
 1267 shall develop and present to the Governor, the President of the  
 1268 Senate, the Speaker of the House of Representatives, and the  
 1269 chairs of the legislative appropriations committees the Economic  
 1270 Development Programs Evaluation.  
 1271 (2) The Office of Economic and Demographic Research and  
 1272 OPPAGA shall provide a detailed analysis of economic development  
 1273 programs as provided in the following schedule:  
 1274 (b) By January 1, 2015, and every 3 years thereafter, an  
 1275 analysis of:  
 1276 1. The entertainment industry sales tax exemption program

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1277 established under s. 288.1258.

1278 2. VISIT Florida and its programs established or funded  
1279 under ss. 288.122-288.12265 and 288.124.

1280 3. The Florida Sports Foundation and related programs,  
1281 including those established under ss. 288.1162, 288.11621, and  
1282 ~~288.1166, and 288.1167.~~

1283 Section 38. Paragraph (b) of subsection (4) of section  
1284 295.187, Florida Statutes, is amended to read:

1285 295.187 Florida Veteran Business Enterprise Opportunity  
1286 Act.—

1287 (4) VENDOR PREFERENCE.—

1288 (b) ~~Notwithstanding s. 287.057(12),~~ If a veteran business  
1289 enterprise entitled to the vendor preference under this section  
1290 and one or more businesses entitled to this preference or  
1291 another vendor preference provided by law submit bids,  
1292 proposals, or replies for procurement of commodities or  
1293 contractual services which are equal with respect to all  
1294 relevant considerations, including price, quality, and service,  
1295 the state agency shall award the procurement or contract to the  
1296 business having the smallest net worth.

1297 Section 39. Subsection (3) of section 320.63, Florida  
1298 Statutes, is amended to read:

1299 320.63 Application for license; contents.—Any person  
1300 desiring to be licensed pursuant to ss. 320.60-320.70 shall make  
1301 application therefor to the department upon a form containing  
1302 such information as the department requires. The department  
1303 shall require, with such application or otherwise and from time  
1304 to time, all of the following, which information may be  
1305 considered by the department in determining the fitness of the

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1306 applicant or licensee to engage in the business for which the  
1307 applicant or licensee desires to be licensed:

1308 (3) From each manufacturer, distributor, or importer which  
1309 utilizes an identical blanket basic agreement for its dealers or  
1310 distributors in this state, which agreement comprises all or any  
1311 part of the applicant's or licensee's agreements with motor  
1312 vehicle dealers in this state, a copy of the written agreement  
1313 and all supplements thereto, together with a list of the  
1314 applicant's or licensee's authorized dealers or distributors and  
1315 their addresses. The applicant or licensee shall further notify  
1316 the department immediately of the appointment of any additional  
1317 dealer or distributor. The applicant or licensee shall annually  
1318 report to the department on its efforts to add new minority  
1319 dealer points, including difficulties encountered under ss.  
1320 320.61-320.70. For purposes of this section "minority" shall  
1321 have the same meaning as that given it in the definition of  
1322 "minority person" in s. 760.80 ~~s. 288.703~~. Not later than 60  
1323 days before the date a revision or modification to a franchise  
1324 agreement is offered uniformly to a licensee's motor vehicle  
1325 dealers in this state, the licensee shall notify the department  
1326 of such revision, modification, or addition to the franchise  
1327 agreement on file with the department. In no event may a  
1328 franchise agreement, or any addendum or supplement thereto, be  
1329 offered to a motor vehicle dealer in this state until the  
1330 applicant or licensee files an affidavit with the department  
1331 acknowledging that the terms or provisions of the agreement, or  
1332 any related document, are not inconsistent with, prohibited by,  
1333 or contrary to the provisions contained in ss. 320.60-320.70.  
1334 Any franchise agreement offered to a motor vehicle dealer in

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1335 this state shall provide that all terms and conditions in such  
1336 agreement inconsistent with the law and rules of this state are  
1337 of no force and effect.

1338 Section 40. Paragraph (a) of subsection (2) of section  
1339 376.3072, Florida Statutes, is amended to read:

1340 376.3072 Florida Petroleum Liability and Restoration  
1341 Insurance Program.—

1342 (2) (a) An owner or operator of a petroleum storage system  
1343 may become an insured in the restoration insurance program at a  
1344 facility if:

1345 1. A site at which an incident has occurred is eligible for  
1346 restoration if the insured is a participant in the third-party  
1347 liability insurance program or otherwise meets applicable  
1348 financial responsibility requirements. After July 1, 1993, the  
1349 insured must also provide the required excess insurance coverage  
1350 or self-insurance for restoration to achieve the financial  
1351 responsibility requirements of 40 C.F.R. s. 280.97, subpart H,  
1352 not covered by paragraph (d).

1353 2. A site which had a discharge reported before January 1,  
1354 1989, for which notice was given pursuant to s. 376.3071(10) and  
1355 which is ineligible for the third-party liability insurance  
1356 program solely due to that discharge is eligible for  
1357 participation in the restoration program for an incident  
1358 occurring on or after January 1, 1989, pursuant to subsection

1359 (3). Restoration funding for an eligible contaminated site will  
1360 be provided without participation in the third-party liability  
1361 insurance program until the site is restored as required by the  
1362 department or until the department determines that the site does  
1363 not require restoration.

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1364 3. Notwithstanding paragraph (b), a site where an  
1365 application is filed with the department before January 1, 1995,  
1366 where the owner is a small business under s. 288.703(3) ~~or~~  
1367 ~~288.703(6)~~, a Florida College System institution with less than  
1368 2,500 FTE, a religious institution as defined by s.  
1369 212.08(7) (m), a charitable institution as defined by s.  
1370 212.08(7) (p), or a county or municipality with a population of  
1371 less than 50,000, is eligible for up to \$400,000 of eligible  
1372 restoration costs, less a deductible of \$10,000 for small  
1373 businesses, eligible Florida College System institutions, and  
1374 religious or charitable institutions, and \$30,000 for eligible  
1375 counties and municipalities, if:

1376 a. Except as provided in sub-subparagraph e., the facility  
1377 was in compliance with department rules at the time of the  
1378 discharge.

1379 b. The owner or operator has, upon discovery of a  
1380 discharge, promptly reported the discharge to the department,  
1381 and drained and removed the system from service, if necessary.

1382 c. The owner or operator has not intentionally caused or  
1383 concealed a discharge or disabled leak detection equipment.

1384 d. The owner or operator proceeds to complete initial  
1385 remedial action as specified in department rules.

1386 e. The owner or operator, if required and if it has not  
1387 already done so, applies for third-party liability coverage for  
1388 the facility within 30 days after receipt of an eligibility  
1389 order issued by the department pursuant to this subparagraph.

1390  
1391 However, the department may consider in-kind services from  
1392 eligible counties and municipalities in lieu of the \$30,000



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1393 deductible. The cost of conducting initial remedial action as  
1394 defined by department rules is an eligible restoration cost  
1395 pursuant to this subparagraph.

1396 4.a. By January 1, 1997, facilities at sites with existing  
1397 contamination must have methods of release detection to be  
1398 eligible for restoration insurance coverage for new discharges  
1399 subject to department rules for secondary containment. Annual  
1400 storage system testing, in conjunction with inventory control,  
1401 shall be considered to be a method of release detection until  
1402 the later of December 22, 1998, or 10 years after the date of  
1403 installation or the last upgrade. Other methods of release  
1404 detection for storage tanks which meet such requirement are:

1405 (I) Interstitial monitoring of tank and integral piping  
1406 secondary containment systems;

1407 (II) Automatic tank gauging systems; or

1408 (III) A statistical inventory reconciliation system with a  
1409 tank test every 3 years.

1410 b. For pressurized integral piping systems, the owner or  
1411 operator must use:

1412 (I) An automatic in-line leak detector with flow  
1413 restriction meeting the requirements of department rules used in  
1414 conjunction with an annual tightness or pressure test; or

1415 (II) An automatic in-line leak detector with electronic  
1416 flow shut-off meeting the requirements of department rules.

1417 c. For suction integral piping systems, the owner or  
1418 operator must use:

1419 (I) A single check valve installed directly below the  
1420 suction pump if there are no other valves between the dispenser  
1421 and the tank; or

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1422 (II) An annual tightness test or other approved test.

1423 d. Owners of facilities with existing contamination that  
1424 install internal release detection systems pursuant to sub-  
1425 subparagraph a. shall permanently close their external  
1426 groundwater and vapor monitoring wells pursuant to department  
1427 rules by December 31, 1998. Upon installation of the internal  
1428 release detection system, such wells must be secured and taken  
1429 out of service until permanent closure.

1430 e. Facilities with vapor levels of contamination meeting  
1431 the requirements of or below the concentrations specified in the  
1432 performance standards for release detection methods specified in  
1433 department rules may continue to use vapor monitoring wells for  
1434 release detection.

1435 f. The department may approve other methods of release  
1436 detection for storage tanks and integral piping which have at  
1437 least the same capability to detect a new release as the methods  
1438 specified in this subparagraph.

1439 Sites meeting the criteria of this subsection for which a site  
1440 rehabilitation completion order was issued before June 1, 2008,  
1441 do not qualify for the 2008 increase in site rehabilitation  
1442 funding assistance and are bound by the pre-June 1, 2008,  
1443 limits. Sites meeting the criteria of this subsection for which  
1444 a site rehabilitation completion order was not issued before  
1445 June 1, 2008, regardless of whether they have previously  
1446 transitioned to nonstate-funded cleanup status, may continue  
1447 state-funded cleanup pursuant to s. 376.3071(6) until a site  
1448 rehabilitation completion order is issued or the increased site  
1449 rehabilitation funding assistance limit is reached, whichever  
1450

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1451 occurs first.

1452 Section 41. Paragraph (a) of subsection (1) of section  
1453 394.47865, Florida Statutes, is amended to read:

1454 394.47865 South Florida State Hospital; privatization.—

1455 (1) The Department of Children and Families shall, through  
1456 a request for proposals, privatize South Florida State Hospital.  
1457 The department shall plan to begin implementation of this  
1458 privatization initiative by July 1, 1998.

1459 (a) Notwithstanding s. 287.057(11) ~~s. 287.057(14)~~, the  
1460 department may enter into agreements, not to exceed 20 years,  
1461 with a private provider, a coalition of providers, or another  
1462 agency to finance, design, and construct a treatment facility  
1463 having up to 350 beds and to operate all aspects of daily  
1464 operations within the facility. The department may subcontract  
1465 any or all components of this procurement to a statutorily  
1466 established state governmental entity that has successfully  
1467 contracted with private companies for designing, financing,  
1468 acquiring, leasing, constructing, and operating major privatized  
1469 state facilities.

1470 Section 42. Paragraph (b) of subsection (2) and subsection  
1471 (3) of section 402.7305, Florida Statutes, are amended to read:  
1472 402.7305 Department of Children and Families; procurement  
1473 of contractual services; contract management.—

1474 (2) PROCUREMENT OF COMMODITIES AND CONTRACTUAL SERVICES.—

1475 (b) When it is in the best interest of a defined segment of  
1476 its consumer population, the department may competitively  
1477 procure and contract for systems of treatment or service that  
1478 involve multiple providers, rather than procuring and  
1479 contracting for treatment or services separately from each

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1480 participating provider. The department must ensure that all  
1481 providers that participate in the treatment or service system  
1482 meet all applicable statutory, regulatory, service quality, and  
1483 cost control requirements. If other governmental entities or  
1484 units of special purpose government contribute matching funds to  
1485 the support of a given system of treatment or service, the  
1486 department shall formally request information from those funding  
1487 entities in the procurement process and may take the information  
1488 received into account in the selection process. If a local  
1489 government contributes matching funds to support the system of  
1490 treatment or contracted service and if the match constitutes at  
1491 least 25 percent of the value of the contract, the department  
1492 shall afford the governmental match contributor an opportunity  
1493 to name an employee as one of the persons required by s.  
1494 287.057(14) ~~s. 287.057(17)~~ to evaluate or negotiate certain  
1495 contracts, unless the department sets forth in writing the  
1496 reason why the inclusion would be contrary to the best interest  
1497 of the state. Any employee so named by the governmental match  
1498 contributor shall qualify as one of the persons required by s.  
1499 287.057(14) ~~s. 287.057(17)~~. A governmental entity or unit of  
1500 special purpose government may not name an employee as one of  
1501 the persons required by s. 287.057(14) ~~s. 287.057(17)~~ if it, or  
1502 any of its political subdivisions, executive agencies, or  
1503 special districts, intends to compete for the contract to be  
1504 awarded. The governmental funding entity or contributor of  
1505 matching funds must comply with all procurement procedures set  
1506 forth in s. 287.057 when appropriate and required.

1507 (3) CONTRACT MANAGEMENT REQUIREMENTS AND PROCESS.—The  
1508 Department of Children and Families shall review the time period

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1509 for which the department executes contracts and shall execute  
 1510 multiyear contracts to make the most efficient use of the  
 1511 resources devoted to contract processing and execution. Whenever  
 1512 the department chooses not to use a multiyear contract, a  
 1513 justification for that decision must be contained in the  
 1514 contract. Notwithstanding s. 287.057(12) ~~s. 287.057(15)~~, the  
 1515 department is responsible for establishing a contract management  
 1516 process that requires a member of the department's Senior  
 1517 Management or Selected Exempt Service to assign in writing the  
 1518 responsibility of a contract to a contract manager. The  
 1519 department shall maintain a set of procedures describing its  
 1520 contract management process which must minimally include the  
 1521 following requirements:

1522 (a) The contract manager shall maintain the official  
 1523 contract file throughout the duration of the contract and for a  
 1524 period not less than 6 years after the termination of the  
 1525 contract.

1526 (b) The contract manager shall review all invoices for  
 1527 compliance with the criteria and payment schedule provided for  
 1528 in the contract and shall approve payment of all invoices before  
 1529 their transmission to the Department of Financial Services for  
 1530 payment.

1531 (c) The contract manager shall maintain a schedule of  
 1532 payments and total amounts disbursed and shall periodically  
 1533 reconcile the records with the state's official accounting  
 1534 records.

1535 (d) For contracts involving the provision of direct client  
 1536 services, the contract manager shall periodically visit the  
 1537 physical location where the services are delivered and speak

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1538 directly to clients receiving the services and the staff  
 1539 responsible for delivering the services.

1540 (e) The contract manager shall meet at least once a month  
 1541 directly with the contractor's representative and maintain  
 1542 records of such meetings.

1543 (f) The contract manager shall periodically document any  
 1544 differences between the required performance measures and the  
 1545 actual performance measures. If a contractor fails to meet and  
 1546 comply with the performance measures established in the  
 1547 contract, the department may allow a reasonable period for the  
 1548 contractor to correct performance deficiencies. If performance  
 1549 deficiencies are not resolved to the satisfaction of the  
 1550 department within the prescribed time, and if no extenuating  
 1551 circumstances can be documented by the contractor to the  
 1552 department's satisfaction, the department must terminate the  
 1553 contract. The department may not enter into a new contract with  
 1554 that same contractor for the services for which the contract was  
 1555 previously terminated for a period of at least 24 months after  
 1556 the date of termination. The contract manager shall obtain and  
 1557 enforce corrective action plans, if appropriate, and maintain  
 1558 records regarding the completion or failure to complete  
 1559 corrective action items.

1560 (g) The contract manager shall document any contract  
 1561 modifications, which shall include recording any contract  
 1562 amendments as provided for in this section.

1563 (h) The contract manager shall be properly trained before  
 1564 being assigned responsibility for any contract.

1565 Section 43. Subsection (2) of section 408.045, Florida  
 1566 Statutes, is amended to read:

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1567 408.045 Certificate of need; competitive sealed proposals.-  
 1568 (2) The agency shall make a decision regarding the issuance  
 1569 of the certificate of need in accordance with s. 287.057(14) ~~the~~  
 1570 ~~provisions of s. 287.057(17)~~, rules adopted by the agency  
 1571 relating to intermediate care facilities for the developmentally  
 1572 disabled, and the criteria in s. 408.035, as further defined by  
 1573 rule.

1574 Section 44. Paragraph (a) of subsection (3) and subsection  
 1575 (6) of section 473.3065, Florida Statutes, are amended to read:  
 1576 473.3065 Clay Ford Scholarship Program; Certified Public  
 1577 Accountant Education Minority Assistance Advisory Council.-  
 1578 (3) The board shall adopt rules as necessary for  
 1579 administration of the Clay Ford Scholarship Program, including  
 1580 rules relating to the following:

1581 (a) Eligibility criteria for receipt of a scholarship,  
 1582 which, at a minimum, shall include the following factors:

1583 1. Financial need.  
 1584 2. Ethnic, gender, or racial minority status pursuant to s.  
 1585 760.80(2) ~~s. 288.703(4)~~.  
 1586 3. Scholastic ability and performance.

1587 (6) There is hereby created the Certified Public Accountant  
 1588 Education Minority Assistance Advisory Council to assist the  
 1589 board in administering the Clay Ford Scholarship Program. The  
 1590 council shall be diverse and representative of the gender,  
 1591 ethnic, and racial categories set forth in s. 760.80(2) ~~s.~~  
 1592 ~~288.703(4)~~.  
 1593 (a) The council shall consist of five licensed Florida-  
 1594 certified public accountants selected by the board, of whom one  
 1595 shall be a board member who serves as chair of the council, one

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1596 shall be a representative of the National Association of Black  
 1597 Accountants, one shall be a representative of the Cuban American  
 1598 CPA Association, and two shall be selected at large. At least  
 1599 one member of the council must be a woman.

1600 (b) The board shall determine the terms for initial  
 1601 appointments and appointments thereafter.

1602 (c) Any vacancy on the council shall be filled in the  
 1603 manner provided for the selection of the initial member. Any  
 1604 member appointed to fill a vacancy of an unexpired term shall be  
 1605 appointed for the remainder of that term.

1606 (d) Three consecutive absences or absences constituting 50  
 1607 percent or more of the council's meetings within any 12-month  
 1608 period shall cause the council membership of the member in  
 1609 question to become void, and the position shall be considered  
 1610 vacant.

1611 (e) The members of the council shall serve without  
 1612 compensation, and any necessary and actual expenses incurred by  
 1613 a member while engaged in the business of the council shall be  
 1614 borne by such member or by the organization or agency such  
 1615 member represents. However, the council member who is a member  
 1616 of the board shall be compensated in accordance with ss.  
 1617 455.207(4) and 112.061.

1618 Section 45. Subsection (42) of section 570.07, Florida  
 1619 Statutes, is amended to read:  
 1620 570.07 Department of Agriculture and Consumer Services;  
 1621 functions, powers, and duties.-The department shall have and  
 1622 exercise the following functions, powers, and duties:  
 1623 (42) Notwithstanding s. 287.057(21) ~~the provisions of s.~~  
 1624 ~~287.057(24)~~ that require all agencies to use the online

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1625 procurement system developed by the Department of Management  
 1626 Services, the department may continue to use its own online  
 1627 system. However, vendors utilizing such system shall be  
 1628 prequalified as meeting mandatory requirements and  
 1629 qualifications and shall remit fees pursuant to s. 287.057(21)  
 1630 ~~s. 287.057(24)~~, and any rules implementing s. 287.057.

1631 Section 46. Paragraph (e) of subsection (6) of section  
 1632 627.351, Florida Statutes, is amended to read:

1633 627.351 Insurance risk apportionment plans.—

1634 (6) CITIZENS PROPERTY INSURANCE CORPORATION.—

1635 (e) The corporation is subject to s. 287.057 for the  
 1636 purchase of commodities and contractual services except as  
 1637 otherwise provided in this paragraph. Services provided by  
 1638 tradepersons or technical experts to assist a licensed adjuster  
 1639 in the evaluation of individual claims are not subject to the  
 1640 procurement requirements of this section. Additionally, the  
 1641 procurement of financial services providers and underwriters  
 1642 must be made pursuant to s. 627.3513. Contracts for goods or  
 1643 services valued at or more than \$100,000 are subject to approval  
 1644 by the board.

1645 1. The corporation is an agency for purposes of s. 287.057,  
 1646 except that, for purposes of s. 287.057(21) ~~s. 287.057(24)~~, the  
 1647 corporation is an eligible user.

1648 a. The authority of the Department of Management Services  
 1649 and the Chief Financial Officer under s. 287.057 extends to the  
 1650 corporation as if the corporation were an agency.

1651 b. The executive director of the corporation is the agency  
 1652 head under s. 287.057. The executive director of the corporation  
 1653 may assign or appoint a designee to act on his or her behalf.

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1654 2. The corporation must provide notice of a decision or  
 1655 intended decision concerning a solicitation, contract award, or  
 1656 exceptional purchase by electronic posting. Such notice must  
 1657 contain the following statement: "Failure to file a protest  
 1658 within the time prescribed in this section constitutes a waiver  
 1659 of proceedings."

1660 a. A person adversely affected by the corporation's  
 1661 decision or intended decision to award a contract pursuant to s.  
 1662 287.057(1) or (3)(c) who elects to challenge the decision must  
 1663 file a written notice of protest with the executive director of  
 1664 the corporation within 72 hours after the corporation posts a  
 1665 notice of its decision or intended decision. For a protest of  
 1666 the terms, conditions, and specifications contained in a  
 1667 solicitation, including provisions governing the methods for  
 1668 ranking bids, proposals, replies, awarding contracts, reserving  
 1669 rights of further negotiation, or modifying or amending any  
 1670 contract, the notice of protest must be filed in writing within  
 1671 72 hours after posting the solicitation. Saturdays, Sundays, and  
 1672 state holidays are excluded in the computation of the 72-hour  
 1673 time period.

1674 b. A formal written protest must be filed within 10 days  
 1675 after the date the notice of protest is filed. The formal  
 1676 written protest must state with particularity the facts and law  
 1677 upon which the protest is based. Upon receipt of a formal  
 1678 written protest that has been timely filed, the corporation must  
 1679 stop the solicitation or contract award process until the  
 1680 subject of the protest is resolved by final board action unless  
 1681 the executive director sets forth in writing particular facts  
 1682 and circumstances that require the continuance of the

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1683 solicitation or contract award process without delay in order to  
 1684 avoid an immediate and serious danger to the public health,  
 1685 safety, or welfare.

1686 (I) The corporation must provide an opportunity to resolve  
 1687 the protest by mutual agreement between the parties within 7  
 1688 business days after receipt of the formal written protest.

1689 (II) If the subject of a protest is not resolved by mutual  
 1690 agreement within 7 business days, the corporation's board must  
 1691 transmit the protest to the Division of Administrative Hearings  
 1692 and contract with the division to conduct a hearing to determine  
 1693 the merits of the protest and to issue a recommended order. The  
 1694 contract must provide for the corporation to reimburse the  
 1695 division for any costs incurred by the division for court  
 1696 reporters, transcript preparation, travel, facility rental, and  
 1697 other customary hearing costs in the manner set forth in s.  
 1698 120.65(9). The division has jurisdiction to determine the facts  
 1699 and law concerning the protest and to issue a recommended order.  
 1700 The division's rules and procedures apply to these proceedings.  
 1701 The protest must be heard by the division at a publicly noticed  
 1702 meeting in accordance with procedures established by the  
 1703 division.

1704 c. In a protest of an invitation-to-bid or request-for-  
 1705 proposals procurement, submissions made after the bid or  
 1706 proposal opening which amend or supplement the bid or proposal  
 1707 may not be considered. In protesting an invitation-to-negotiate  
 1708 procurement, submissions made after the corporation announces  
 1709 its intent to award a contract, reject all replies, or withdraw  
 1710 the solicitation that amends or supplements the reply may not be  
 1711 considered. Unless otherwise provided by law, the burden of

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1712 proof rests with the party protesting the corporation's action.  
 1713 In a competitive-procurement protest, other than a rejection of  
 1714 all bids, proposals, or replies, the administrative law judge  
 1715 must conduct a de novo proceeding to determine whether the  
 1716 corporation's proposed action is contrary to the corporation's  
 1717 governing statutes, the corporation's rules or policies, or the  
 1718 solicitation specifications. The standard of proof for the  
 1719 proceeding is whether the corporation's action was clearly  
 1720 erroneous, contrary to competition, arbitrary, or capricious. In  
 1721 any bid-protest proceeding contesting an intended corporation  
 1722 action to reject all bids, proposals, or replies, the standard  
 1723 of review by the board is whether the corporation's intended  
 1724 action is illegal, arbitrary, dishonest, or fraudulent.

1725 d. Failure to file a notice of protest or failure to file a  
 1726 formal written protest constitutes a waiver of proceedings.

1727 3. The agency head or his or her designee shall consider  
 1728 the recommended order of an administrative law judge and take  
 1729 final action on the protest. Any further legal remedy lies with  
 1730 the First District Court of Appeal.

1731 Section 47. Except as otherwise expressly provided in this  
 1732 act, this act shall take effect July 1, 2025.

**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 Governmental Oversight and Accountability

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BILL: SB 1816

INTRODUCER: Senator McClain

SUBJECT: Protection of Historic Monuments and Memorials

DATE: March 24, 2025

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Harmsen	McVaney	GO	<b>Pre-meeting</b>
2.			CA	
3.			RC	

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**I. Summary:**

SB 1816 creates the Historic Florida Monuments and Memorials Protection Act to prevent the removal, damage, or destruction of a monument or memorial located on public property which has been displayed for at least 25 years with the intent of being displayed permanently.

For purposes of this Act, “historic Florida monument or memorial” must:

- Be a permanent statue, marker, plaque, flag, banner, cenotaph, religious symbol, painting, seal, tombstone, or display;
- Be located on public property;
- Have been displayed for at least 25 years; and
- Be dedicated to a person, place or event that was important in the past or which is in remembrance or recognition of a significant person or event in state history.

The bill declares void all existing, and preempts to state control any future, local government rule, ordinance, or regulation regarding the removal, damage, or destruction of “historic Florida monuments or memorials.” For purposes of this law, the term local government includes a city, county, a school district, a state college, a state university, or other political subdivision of the state.

A local government or elected or appointed local government official that enacts or enforces an ordinance, regulation, or rule that impinges on the state preemption of this issue is subject to a permanent injunction prohibiting enforcement of the action and a civil fine of up to \$1,000 for the knowing and willful violation.

Additionally, a private individual with specified interests in an affected historic Florida monument or memorial may bring a separate suit against a local government or elected or appointed local government official to seek declaratory or injunctive relief for actual damages and attorney fees and costs, not to exceed \$100,000, caused by enactment or enforcement of an

ordinance, rule, or regulation regarding the removal, damage, or destruction of an historic Florida monument or memorial.

Any local government that seeks to relocate an historic Florida monument or memorial may only do so temporarily as a result of military necessity, construction, or an infrastructure project. The local government must submit notice of such a decision to the Department of State's Division of Historical Resources and place a good faith estimate of the funds necessary to relocate the monument or memorial into an escrow account.

If the local government permanently removes, damages, or destroys a monument or memorial, then the state must pay to restore or relocate the monument or memorial and withhold arts, cultural, and historic funding from the local government until it has reimbursed the state's costs.

The bill grants rulemaking authority to the Department of State, in consultation with the Department of Veterans' Affairs.

The bill will likely have an indeterminate impact on state and local government expenditures related to the relocation of historic Florida monuments and memorials.

The bill takes effect July 1, 2025.

## II. Present Situation:

### Department of State

The Department of State (DOS), created by s. 20.10, F.S., is composed of six divisions: Elections, Historical Resources, Corporations, Library and Information Services, Arts and Culture, and Administration. The head of the DOS is the Secretary of State (Secretary). The Secretary is appointed by and serves at the pleasure of the Governor, and is confirmed by the Senate.

### Division of Historical Resources: Chapter 267, F.S.

The Division of Historical Resources (Division) within the DOS is charged with encouraging the identification, evaluation, protection, preservation, collection, conservation, and interpretation of information about Florida's historic sites and properties or objects related to Florida's history and culture.<sup>1</sup> This includes cooperating with federal and state agencies, local governments, and private entities to accomplish their duties.

The Division is comprised of the following Bureaus:

- Bureau of Historic Preservation;
- Bureau of Historical Museums; and
- Bureau of Archeological Research.<sup>2</sup>

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<sup>1</sup> Florida Department of State, Division of Historical Resources, *About*, <https://dos.fl.gov/historical/about/> (last visited Mar. 25, 2025). *See also*, s. 267.031, F.S.

<sup>2</sup> *Id.*



The Florida Historical Resources Act<sup>3</sup> was established to preserve archaeological sites and objects of antiquity for the public benefit.<sup>4</sup> The Act recognizes Florida's historic properties as an important legacy to be valued and conserved for present and future generations. Accordingly, it is Florida's policy to lead, assist, administer, and encourage public entities and private citizens to preserve the state's historic environment and resources.<sup>5</sup>

The Florida Historical Commission (Commission) is an advisory body that was created to enhance public participation and involvement in the preservation and protection of Florida's historic and archaeological sites and properties.<sup>6</sup>

The Commission's duties include providing assistance, advice, and recommendations to the Division of Historical Resources and its director for:

- Establishing priorities for the identification, acquisition, protection, and preservation of historic and archaeological sites and properties.
- Establishing criteria for use in assessing the significance of historic and archaeological sites.
- Evaluating proposals for historic preservation grants administered by the division.
- Providing an active outreach program to encourage public understanding of and involvement in the preservation of the state's historic and archaeological sites and properties.
- Identifying and expressing public goals for historic preservation and gathering public ideas necessary for the formulation of alternative policies.
- Recommending rules relating to the historic preservation programs administered by the division.
- Protecting and preserving Florida's historic and archaeological sites and properties.

Seven members of the Commission are appointed by the Governor in consultation with the Secretary of State, two by the President of the Senate, and two by the Speaker of the House of Representatives.<sup>7</sup> The Commission must include:

- A licensed architect with expertise in historic preservation and architectural history;
- A professional historian in the field of American history;
- A professional architectural historian;
- An archaeologist specializing in the field of prehistory;
- An archaeologist specializing in the historic period; and
- Representatives of the general public with demonstrated interest in the preservation of Florida's historical and archaeological heritage.<sup>8</sup>

Any action taken by the Commission requires a majority vote of the members present at its meeting.<sup>9</sup>

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<sup>3</sup> Sections 267.011-267.1736, F.S.

<sup>4</sup> Section 267.14, F.S.

<sup>5</sup> Section 267.061(2)(a), F.S.

<sup>6</sup> Section 267.0612(2), F.S.

<sup>7</sup> Section 267.0612(1)(a)1., F.S.

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

<sup>9</sup> Section 267.0612(5), F.S.

### ***Florida Historical Marker Program***

The Florida Historical Marker Program is designed to raise public awareness of Florida's cultural history and to enhance the enjoyment of its historic sites by citizens and tourists. These markers tell stories of the places and people who created Florida, by identifying the churches, schools, archaeological sites, battlefields, and homes that represent Florida's past.<sup>10</sup> The official Florida historic markers are markers awarded, approved, or administered by the Division.<sup>11</sup> A "Florida Heritage" marker is a one that identifies people, events, and places, including buildings, structures, objects, and archaeological sites that are of local, regional, or statewide historic significance relating to Florida history, culture, or ethnic heritage.<sup>12</sup>

The Division is responsible for the administration of all aspects of the Florida Historic Marker Program, including the application process, selection and designation of properties, persons or events to be marked and the placement and maintenance of the markers.<sup>13</sup> There are approximately 1,200 markers throughout the state currently.<sup>14</sup>

### **Criminal Penalty for Destruction of a Memorial**

Section 806.135, F.S., provides that it is a second-degree felony<sup>15</sup> for any person to willfully and maliciously destroy or demolish any memorial or historic property, or to willfully and maliciously pull down a memorial or historic property, unless authorized by the owner of the memorial or the historic property.

The term "historic property" is defined as any building, structure, site, or object that has been officially designated as a historic building, historic structure, historic site, or historic object through a federal, state, or local designation program. A "memorial" is defined as a plaque, statue, marker, flag, banner, cenotaph, religious symbol, painting, seal, tombstone, structure name, or display that is constructed and located with the intent of being permanently displayed or perpetually maintained; is dedicated to a historical person, an entity, an event, or a series of events; and honors or recounts the military service of any past or present United States Armed Forces military personnel, or the past or present public service of a resident of the geographical area comprising the state or the United States. The term includes, but is not limited to, the following memorials established under ch. 265, F.S.:

- Florida Women's Hall of Fame;
- Florida Medal of Honor Wall;
- Florida Veterans' Hall of Fame; 1A
- POW-MIA Chair of Honor Memorial;
- Florida Veterans' Walk of Honor and Florida Veterans' Memorial Garden; and
- Florida Law Enforcement Officers' Hall of Fame;

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<sup>10</sup> Florida Department of State, Florida Division of Historical Resources, *Historical Markers*, <https://dos.fl.gov/historical/preservation/historical-markers/> (last visited Mar. 21, 2025).

<sup>11</sup> Rule 1A-48.002(3), Fla. Admin. Code

<sup>12</sup> Rule 1A-48.002(3)(b), Fla. Admin. Code

<sup>13</sup> Rule 1A-48.003(1), Fla. Admin. Code

<sup>14</sup> Florida Department of State, *Florida Historical Marker List*, <https://apps.flheritage.com/markers/> (last visited Mar. 21, 2025).

<sup>15</sup> A second-degree felony is punishable by up to 15 years imprisonment and a \$10,000 fine. Sections 775.082(9)(a)3.c. and 775.083(1)(b), F.S.

- Florida Holocaust Memorial;
- Florida Slavery Memorial; and
- Any other memorial located within the Capitol Complex, including, but not limited to, Waller Park.

Section 806.135, F.S., also requires the payment of restitution, which includes the full cost of repair or replacement of such memorial or historic property.

### **Monuments**

Section 265.111, F.S., defines “monument” to mean a permanent structure such as a marker, statue, sculpture, plaque, or other artifice, including living plant material, placed in remembrance or recognition of a significant person or event in Florida history.

As of 2022, at least 15 Confederate memorials, statutes, or plaques in Florida have been removed or relocated by local governments.<sup>16</sup> The cities and counties of Jacksonville, Orlando, St. Augustine, Hillsborough, Madison, Marion, and Bradenton are a few of the local governments to recently take actions to remove or relocate confederate monuments in recent years.<sup>17</sup>

### **Department of Veterans’ Affairs**

The Department of Veterans’ Affairs’ existence is mandated by article IV, section 11 of the Florida Constitution, and the entity created by statute.<sup>18</sup> The Department of Veterans’ Affairs is charged with providing “assistance to all former, present, and future members of the Armed Forces of the United States and their spouses and dependents in preparing claims for and securing such compensation, hospitalization, career training, and other benefits or privileges.”<sup>19</sup> Within the Department are three divisions—the Divisions of Administration and Public Information, Veterans’ Benefits and Assistance, and Long-term Care.<sup>20</sup> The Department of Veterans’ Affairs works with the Department of Transportation to contract with non-for-profit groups for the installation of monuments and memorials honoring Florida’s military veterans at highway rest areas around the state.<sup>21</sup>

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<sup>16</sup> C.A. Bridges, the Florida Times-Union, *How many Confederate memorials have been removed in Florida? How many are left?* (Dec. 6, 2022), <https://www.jacksonville.com/story/news/state/2022/12/06/confederate-monuments-florida-how-many-have-been-taken-down/10839211002/> (last visited Mar. 21, 2025).

<sup>17</sup> *Id.*; Michelle McGhee & Selene San Felice, Axois Tampa Bay, *Where Confederate monuments remain across Florida* (May 6, 2021), <https://www.axios.com/local/tampa-bay/2021/05/06/confederate-monuments-in-florida-over-time-map> (last visited Nov. 26, 2024); Michael Paluska, ABC Action News, *Process begins to remove Confederate statute from downtown Tampa* (Aug. 15, 2017), <https://www.abcactionnews.com/news/local-news/process-begins-to-remove-confederate-statue-from-downtown-tampa> (last visited Mar. 21, 2025).

<sup>18</sup> Section 20.37, F.S.

<sup>19</sup> Section 292.05, F.S.

<sup>20</sup> Section 20.37(2), F.S.

<sup>21</sup> Section 337.111(a), F.S.

## Standing in Litigation

For standing, Florida courts require the party prosecuting the claim to be the real party in interest or be expressly authorized by statute to bring the claim on behalf of the real party in interest.

Rule 1.210 of the Florida Rules of Civil Procedure provides, in pertinent part:

(a) Parties Generally. Every action may be prosecuted in the name of the real party in interest, but . . . a party expressly authorized by statute may sue in that person's own name without joining the party for whose benefit the action is brought. All persons having an interest in the subject of the action and in obtaining the relief demanded may join as plaintiffs and any person may be made a defendant who has or claims an interest adverse to the plaintiff. Any person may at any time be made a party if that person's presence is necessary or proper to a complete determination of the cause. Persons having a united interest may be joined on the same side as plaintiffs or defendants, and anyone who refuses to join may for such reason be made a defendant.

## Civil Liability and Damages

The State Constitution provides that “the courts shall be open to every person for redress of any injury, and justice shall be administered without sale, denial, or delay.”<sup>22</sup> In most instances, the aggrieved party is limited to sue for the actual damages incurred.<sup>23</sup>

A statute may subject a person to civil liability for damages caused by the person’s criminal behavior. “Civil liability” is defined by Black’s Law Dictionary as the “debt or legal obligation from a private wrong amounting to the damage done.”<sup>24</sup>

### *Punitive damages*

In any civil action, no claim for punitive damages is permitted unless there is a reasonable showing by evidence in the record, or proffered by the claimant, which would provide a reasonable basis for recovery of such damages.<sup>25</sup> A defendant may only be held liable for punitive damages if the trier of fact finds the defendant was personally guilty of intentional misconduct<sup>26</sup> or gross negligence.<sup>27,28</sup> Punitive damages may not exceed the greater of:

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<sup>22</sup> FLA. CONST. art. I, s. 21.

<sup>23</sup> See, e.g., *Public Defender, Eleventh Judicial Circuit of Fla. v. State*, 115 So.3d 261, 282 (Fla. 2013).

<sup>24</sup> “Civil Liability,” Black’s Law Dictionary 435 (9th ed. 2009).

<sup>25</sup> Section 768.72(1), F.S.

<sup>26</sup> “Intentional misconduct” means that the defendant had actual knowledge of the wrongfulness of the conduct and the high probability that injury or damage to the claimant would result and, despite that knowledge, intentionally pursued that course of conduct, resulting in injury or damage. Section 768.72(2)(a), F.S.

<sup>27</sup> “Gross negligence” means that the defendant’s conduct was so reckless or wanting in care that it constituted a conscious disregard or indifference to the life, safety, or rights of persons exposed to such conduct. Section 768.72(2)(b), F.S.

<sup>28</sup> Section 768.72(2), F.S.

- Three times the amount of compensatory damages awarded to each claimant entitled thereto, consistent with the remaining provisions of this section; or
- The sum of \$500,000.<sup>29</sup>

If the fact finder determines that the wrongful conduct proven under this section was motivated solely by unreasonable financial gain, the court may award an amount of punitive damages not to exceed the greater of:

- Four times the amount of compensatory damages awarded to each claimant entitled thereto, consistent with the remaining provisions of this section; or
- The sum of \$2 million.<sup>30</sup>

If the fact finder determines that, at the time of injury, the defendant had a specific intent to harm the claimant and the defendant's conduct did in fact harm the claimant, then there shall be no cap on punitive damages.<sup>31</sup>

### **Local Government Powers**

The Florida Constitution grants counties and municipalities broad “home rule” authority that did not exist prior to the ratification of the 1968 Constitution.<sup>32</sup> Non-charter county governments may exercise those powers of self-government that are provided by general or special law.<sup>33</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>34</sup> Municipalities have governmental, corporate, and proprietary powers that enable them to conduct municipal government, perform municipal functions and provide municipal services, and exercise any power for municipal purposes except when expressly prohibited by law.<sup>35</sup>

### **Immunity for Official Conduct**

The general rule under the common law is that legislators enjoy absolute immunity from liability for performance of legislative acts.<sup>36</sup> Absolute immunity for legislators has historically been recognized as a “venerable tradition” that has withstood the development of the law since pre-colonial days.<sup>37</sup> Courts have upheld absolute immunity for legislators at all levels of lawmaking,

<sup>29</sup> Section 768.72(1)(a), F.S.

<sup>30</sup> Section 768.73(1)(b), F.S.

<sup>31</sup> Section 768.73(1)(c), F.S.

<sup>32</sup> See, FLA. CONST. art. VIII, s. 5 (1885) (“powers, duties[,] and compensation of county commissioners shall be prescribed by law”) and FLA. CONST. art. VIII, s. 8 (1885) (“The Legislature shall... prescribe [municipal] jurisdiction and powers[.]” See also, *City of Trenton v. State of New Jersey*, 262 U.S. 182, 186 (1923) (“In the absence of state constitutional provisions safeguarding it to them, municipalities have no inherent right of self-government which is beyond the legislative control of the state.”), *Bowden v. Ricker*, 70 Fla. 154 (Fla. 1915) (“Under the provision of s. 5 of art. 8 of the [1885] Constitution that powers and duties of county commissioners ‘shall be prescribed by law,’ the authority of such officials is only such as may be conferred by statutory regulations.”)

<sup>33</sup> FLA. CONST. art. VIII, s. 1(f).

<sup>34</sup> FLA. CONST. art. VIII, s. 1(g).

<sup>35</sup> FLA. CONST. art. VIII, s. 2(b); see also s. 166.021(1), F.S.

<sup>36</sup> See *Tenney v. Brandhove*, 341 U.S. 367 (1951).

<sup>37</sup> *Bogan v. Scott-Harris*, 523 U.S. 44, 48-49 (1998). For additional examples of where absolute immunity of legislative acts has been recognized, see *Harlow v. Fitzgerald*, 457 U.S. 800 (1982); *Lake Country Estates v. Tahoe Regional Planning*

including federal, state, and local government levels.<sup>38</sup> The courts' reasoning behind such holdings is that when legislators hold legislative powers, they use them for the public good, and are exempt from liability for mistaken use of their legislative powers.<sup>39</sup> Furthermore, courts fear that allowing personal liability could distort legislative discretion, undermine the public good by interfering with the rights of the people to representation, tax the time and energy of frequently part-time citizen legislators, and deter service in local government.<sup>40</sup>

When unlawful ordinances have been enacted, the freedom from personal liability does not make the legislative product itself valid.<sup>41</sup> In such instances, affected citizens have been able to challenge the validity of such ordinances by suing to have them declared invalid or have a court enjoin enforcement.<sup>42</sup>

Courts have found that legislators may be subject to personal liability when they lack discretion.<sup>43</sup> Such situations typically exist when legislators are subject to an affirmative duty, such as when a law or court order has directed them to levy a tax. Such acts are labeled "ministerial," as opposed to "legislative," acts.<sup>44</sup> Arguably, an express and clear preemption would remove discretion from local government officials seeking to engage in lawmaking in the preempted field.

### III. Effect of Proposed Changes:

**Section 1** designates the provisions of the bill as the "Historic Florida Monuments and Memorials Protection Act."

#### Definitions

**Section 2** defines the following terms:

- "Historic Florida military monument or memorial" means a historic Florida monument or memorial that honors or recounts the military service of any past or present military personnel, including any armed conflict since settlers from other countries came to what is now the United States."
- "Historic Florida monument or memorial" means a permanent statute, marker, plaque, flag, banner, cenotaph, religious symbol, painting, seal, tombstone, or display constructed and located on public property *which has been displayed for at least 25 years*, with the intent of being permanently displayed or perpetually maintained and which is dedicated to any person, place, or event that was important in the past or which is in remembrance or recognition of a significant person or event in state history."

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*Agency*, 440 U.S. 391 (1979); *Hough v. Amato*, 269 So. 2d 537 (Fla. 1st DCA 1972); *Jones v. Loving*, 55 Miss. 109 (1877); *Ross v. Gonzales*, 29 S.W.2d 437 (Tex. Ct. App. 1930).

<sup>38</sup> *Bogan*, 523 U.S. 44.

<sup>39</sup> *Id.* at 50-51 (citing *Jones*, 55 Miss. 109).

<sup>40</sup> *Id.* at 52.

<sup>41</sup> *Tenney*, 341 U.S. at 379.

<sup>42</sup> *See, e.g., Bogan*, 523 U.S. 44; *Lake Country Estates v. Tahoe Regional Planning Agency*, 440 U.S. 391 (1979); *Tenney*, 341 U.S. 367.

<sup>43</sup> *Bogan*, 523 U.S. at 51-52.

<sup>44</sup> *See Id.*

- A “local government” means any municipality, county, school district, *state college*, *state university*, or other political subdivision of the state.

This definition of a local government includes state colleges and state universities, which is not generally included in other statutory definitions of the term.<sup>45</sup>

### **Preemption of Local Authority and Related Duties and Limitations**

**Section 2** preempts to the state all removal, damage, or destruction of historic Florida monuments or memorials and declares void all existing or future local government ordinances, regulations, rules, and executive actions regarding the removal, damage, or destruction of historic Florida monuments or memorials.

The bill further provides legislative intent that the state act to provide uniformity in the context of the protection of each historic Florida monument or memorial from removal, damage or destruction. It provides that “accurate and factual history belongs to all Floridians and future generations and that the state has an obligation to protect and preserve such history.”

The bill prohibits a local government’s removal of a historic Florida monument or memorial, unless for a temporary purpose, military necessity, or for any construction or infrastructure project. If such a relocation is required, the monument or memorial must be relocated to a site of similar prominence, honor, visibility, and access within the same county or municipality as its original location, as determined by the DOS in consultation with the Florida Historical Commission or Department of Veterans’ Affairs.

A local government that seeks to temporarily relocate a Florida historic monument or memorial must:

- Place a good faith estimate of the funds necessary to relocate it into an escrow account; and
- Provide written notice to the Division on a form prescribed by the DOS of:
  - The decision to temporarily remove the monument or memorial, which must occur within 10 days after the decision to do so; and
  - The date of the cessation or completion of the military necessity, construction or infrastructure project. This notice must be submitted in a reasonable timeframe, not to exceed 30 days from the cessation or completion.

Additionally, the bill provides that the division shall “take any issue regarding the protection, preservation, or relocation of a historic Florida monument or memorial to the Florida Historical Commission, or...[for a military monument or memorial] to the Department of Veterans’ Affairs”. The Division must determine whether to take action, defer making a decision, or not to make a decision, and document such decision and the reasons therefore in writing. This provision appears to require any determination relating to the protection, preservation, or relocation of a monument or memorial to be made by the DOS. Such determinations could include how often to paint the memorial, whether to engage in a costly restoration, and where to place the monument if it must be relocated.

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<sup>45</sup> See, e.g., ss. 119.0713, 161.021, 161.3173 (read in concert with s. 163.3171), 171.202, and 287.05701, F.S.

## **Civil Penalties and Related Liabilities**

**Section 2** prohibits and civilly penalizes a local government, local government elected official, or local government appointed official's enactment or enforcement of an ordinance, regulation, or rule that "impinges on" the state's preemption of the removal, damage, or destruction of historic Florida monuments or memorials.

If a court finds that a local government has violated the above prohibition, it must (1) declare the ordinance, regulation, or rule invalid, and (2) issue a permanent injunction against the local government which prohibits enforcement of the law. The bill applies strict liability and excludes as a defense that the local government acted in good faith or upon the advice of counsel when it enacted or enforced a law in violation of the above prohibition.

Conversely, a court is required only to assess a civil fine of up to \$1,000 against an elected or appointed local government official who knowingly and willfully enacted or enforced the law in violation of the above prohibition.

A separate suit may be brought against a local government or elected or appointed local government official to seek declaratory or injunctive relief, and for actual damages caused by a violation of the above prohibition. The suit must be initiated by one of the following:

- A group involved in the design, erection, or care of the monument or memorial, or a member of this group; or
- A group or person who regularly uses the monument or memorial for remembrance.

The court must award the prevailing plaintiff reasonable attorney fees and costs and the actual damages incurred (not to exceed \$100,000).

If a local government enacts or enforces a local ordinance, regulation, or rule which results in the removal, damage, or destruction of an historic Florida monument or memorial in conflict with the state's preemption of such matters, then the local government is liable for the costs relating to the restoration or relocation of the monument or memorial to its original condition or location within 3 years of the date of its removal, damage, or destruction. If it cannot pay those costs, then the state must act to restore or relocate the monument or memorial, and withhold any DOS arts, cultural, or historic preservation funds from the local government until the local government is able to reimburse the costs to the state.

## **Rulemaking**

The bill grants rulemaking authority to the DOS, in consultation with the Department of Veterans' Affairs, to implement the bill.

## **Effective Date**

The bill takes effect July 1, 2025.



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

The county and municipality mandate provisions of Article VII, section 18 of the Florida Constitution may apply because the bill may require local governments to expend funds in the form of damages awarded by a court for a local government's or elected or appointed local government official's enforcement or enactment of a rule, regulation, or ordinance that removed, damaged, or destroyed monuments and memorials before the passage of this bill. Additionally, the bill may require local governments to maintain historic Florida monuments or memorials in a condition above and beyond what they are able to afford. In such instance, the state must perform the upkeep and bill the local government, withholding arts, cultural, and historic preservation funding from the local government until it is able to afford to pay back the state for the upkeep.

Article VII, section 18 (d) provides eight exemptions, which, if any single one is met, exempts the law from the limitations on mandates. Laws having an "insignificant fiscal impact" are exempt from the mandate requirements, which for Fiscal Year 2024-2025 is forecast at approximately \$2.3 million.<sup>29,30</sup> However, any local government costs associated with the bill are speculative and not readily estimable for purposes of determining whether the exemption for bills having an insignificant fiscal impact applies. If the bill does qualify as a mandate, in order to be binding upon cities and counties, the bill must contain a finding of important state interest and be approved by a two-thirds vote of the membership of each house. None of the constitutional exceptions appear to apply.

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

None identified.

**C. Trust Funds Restrictions:**

None identified.

**D. State Tax or Fee Increases:**

None identified.

**E. Other Constitutional Issues:**Dual Office Holding

The Florida Constitution prohibits dual office holding by forbidding a person who holds one office in Florida from holding another office at the same time.<sup>46</sup> The Constitution provides that those who serve as a member of a constitution revision commission, taxation and budget reform commission, constitutional convention, or statutory body that

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<sup>46</sup> FLA. CONST. art. II, s. 5.

has only advisory powers are excepted from this prohibition. The Florida Historical Commission is currently an advisory body. If it takes on duties that influence the DOS's decision making, it may no longer be considered an advisory body, and its members would be subject to the prohibition on dual office holding.

**V. Fiscal Impact Statement:**

**A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

A private individual or group may seek damages for the removal, damage, or relocation of an historic Florida monument or memorial.

**C. Government Sector Impact:**

Government officials and local governments who violate the prohibitions in the bill face fines. Creating significant penalties on government officials for making policy decisions or carrying out invalid regulations or ordinances may deter public service.

Local governments may be required to pay additional funds to maintain their historic Florida monuments or memorials in better condition than they otherwise planned.

The Department of State may incur several costs related to the implementation and carrying out of the bill. In particular, the Department may see an increase in administrative costs relating to the:

- Development of a rule to adopt a form for the local government reporting of determinations to relocate a monument or memorial as a result of construction, military necessity, or infrastructure project.
- Maintenance of records relating to its determinations on any issue regarding the protection, preservation, or relocation of an historic Florida monument or memorial.
- Increased need for meetings of the Florida Historical Commission to determine permissible actions relating to historic Florida monuments or memorials.

The Department of Veterans' Affairs may see an increase in workload relating to duties added by the bill.

**VI. Technical Deficiencies:**

None identified.

**VII. Related Issues:****Retroactive Application**

Absent an express statement of legislative intent, a statute is presumed to operate only prospectively, not retroactively.<sup>47</sup> While the Legislature may pass a non-criminal law and expressly manifest its intent that it be applied retroactively, the law may still be held unconstitutional if its retroactive application impermissibly burdens existing constitutional rights.<sup>48</sup>

The bill appears to apply make a local government liable for the removal, damage, or destruction and require that the local government restore or relocate the monument or memorial within 3 years of the damage. This may have the effect of penalizing a local government's action that occurred before the effective date of this bill. As a result, this may be found to be a retroactive application of the law.

**VIII. Statutes Affected:**

This bill creates section 267.201 of the Florida Statutes.

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

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

None.

**B. Amendments:**

None.

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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>47</sup> *Fla. Ins. Guar. Ass'n., Inc. v. Devon Neighborhood Ass'n. Inc.*, 67 So.3d 187, 194-95 (Fla. 2011).

<sup>48</sup> *See Menendez v. Progressive Exp. Ins. Co., Inc.*, 35 So. 3d 873, 877 (Fla. 2010) (“[E]ven where the Legislature has expressly stated that a statute will have retroactive application, this Court will reject such an application if the statute impairs a vested right, creates a new obligation, or imposes a new penalty.”).



975322

LEGISLATIVE ACTION

Senate

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House

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The Committee on Governmental Oversight and Accountability  
(McClain) recommended the following:

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause  
and insert:

Section 1. Section 267.201, Florida Statutes, is created to  
read:

267.201 Protection of historic monuments and memorials.-

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

(a) "Department" means the Department of State.

(b)1. "Historic Florida monument or memorial" means a



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11 permanent statue, marker, plaque, flag, banner, cenotaph,  
12 religious symbol, painting, seal, tombstone, or display  
13 constructed and located on public property which has been  
14 displayed for at least 25 years with the intent of being  
15 permanently displayed or perpetually maintained and which is  
16 dedicated to any person, place, or event that was important in  
17 the past or which is in remembrance or recognition of a  
18 significant person or event in state history.

19 2. "Historic Florida military monument or memorial" means a  
20 historic Florida monument or memorial that honors or recounts  
21 the military service of any past or present military personnel,  
22 including any armed conflict since settlers from other countries  
23 came to what is now the United States.

24 (c) "Local government" means any municipality, county,  
25 school district, state college, state university, or other  
26 political subdivision of the state.

27 (2) (a) It is the intent of the Legislature to declare void  
28 all ordinances, regulations, and executive actions regarding the  
29 removal, damage, or destruction of historic Florida monuments or  
30 memorials which have been enacted by any local government.

31 (b) It is also the intent of the Legislature that the state  
32 act to protect each historic Florida monument or memorial from  
33 removal, damage, or destruction. The Legislature finds that an  
34 accurate and factual history belongs to all Floridians and  
35 future generations and that the state has an obligation to  
36 protect and preserve such history.

37 (c) Further, it is the intent of the Legislature to provide  
38 statewide uniformity through the division. It is also the  
39 Legislature's intent for the division to work actively to



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40 protect and preserve each historic Florida monument or memorial,  
41 and ensure that each such monument or memorial is not removed,  
42 damaged, or destroyed, regardless of the location of such  
43 monument or memorial in this state, and to consult with the  
44 Department of Veterans' Affairs on actions regarding all  
45 historic Florida military monuments or memorials.

46 (3) All removal, damage, or destruction of historic Florida  
47 monuments or memorials is preempted to the state. Any existing  
48 or future local government ordinance, regulation, or rule to the  
49 contrary, or any such action other than those authorized in  
50 subsection (6) by an elected or appointed local government  
51 official, is void.

52 (4) (a) Any local government or elected or appointed local  
53 government official who violates the state's preemption of  
54 removal, damage, or destruction of historic Florida monuments or  
55 memorials by enacting or enforcing any local ordinance,  
56 regulation, or rule impinging upon such preemption is liable as  
57 provided in this subsection.

58 (b) If a local government violates paragraph (a), the court  
59 must declare the ordinance, regulation, or rule invalid and  
60 issue a permanent injunction against the local government,  
61 prohibiting the local government from enforcing such ordinance,  
62 regulation, or rule. It is not a defense that, in enacting the  
63 ordinance, regulation, or rule, the local government was acting  
64 in good faith or upon advice of counsel.

65 (c) The court shall assess a civil fine of up to \$1,000  
66 against an elected or appointed local government official who  
67 knowingly and willfully violates paragraph (a).

68 (d) Except as required by applicable law, public funds may



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69 not be used to defend or reimburse the unlawful conduct of an  
70 elected or appointed local government official found to have  
71 knowingly and willfully violated paragraph (a).

72 (e)1. A person or an organization described in subparagraph  
73 2. may file suit against a local government or an elected or  
74 appointed local government official in any court of this state  
75 having jurisdiction over the defendant in the suit for  
76 declaratory or injunctive relief and for actual damages, as  
77 limited herein, caused by the violation. A court shall award a  
78 prevailing plaintiff in any such suit:

79 a. Reasonable attorney fees and costs in accordance with  
80 the laws of this state; and

81 b. The actual damages incurred, but no more than \$100,000.

82 2. The following have standing to bring a civil action for  
83 any violation of paragraph (a):

84 a. A group involved in the design, erection, or care of the  
85 monument or memorial or a member of such group.

86 b. A group or person regularly using the monument or  
87 memorial for remembrance.

88 (5) If a historic Florida monument or memorial is removed,  
89 damaged, or destroyed by a local government in violation of  
90 paragraph (4) (a), the local government is liable for restoring  
91 or relocating such monument or memorial to its original  
92 condition or location or as close as possible to the original  
93 condition or location within 3 years after the date of the  
94 removal, damage, or destruction. If the local government does  
95 not have the necessary funds, the state must restore or relocate  
96 such monument or memorial, and the department must withhold from  
97 the local government all arts, cultural, and historic



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98 preservation funding until the local government reimburses the  
99 state for the cost of restoring or relocating such monument or  
100 memorial. All such funds become available to the local  
101 government once the state is repaid. The local government may  
102 not retroactively collect any of the department funds that  
103 otherwise would have been received during the period that state  
104 funds were withheld.

105 (6) (a) A local government may only remove a historic  
106 Florida monument or memorial temporarily due to military  
107 necessity or for any construction or infrastructure project.

108 (b) A local government proposing to remove such monument or  
109 memorial shall put into an escrow account the good faith  
110 estimate of the funds necessary to relocate the monument or  
111 memorial.

112 (c) A historic Florida monument or memorial temporarily  
113 removed for such purpose must be temporarily relocated to a site  
114 of similar prominence, honor, visibility, and access within the  
115 same county or municipality in which the monument or memorial  
116 was originally located.

117 (d)1. A local government must provide written notification  
118 to the division, on a form prescribed by the department in  
119 consultation with the Department of Veterans' Affairs:

120 a. Of the temporary removal of a historic Florida monument  
121 or memorial. The written notification must be provided within 10  
122 days after the date of the local government's decision to  
123 temporarily remove the historic Florida monument or memorial.

124 b. That the military necessity has ceased or that the  
125 construction or infrastructure project is completed. The written  
126 notification must be provided within a reasonable time, but not





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127 more than 30 days, after the military necessity has ceased or  
128 the construction or infrastructure project has been completed.

129 2. The historic Florida monument or memorial must be  
130 relocated back to the original location or, if that is not  
131 possible, to a site with similar prominence, honor, visibility,  
132 and access within the same county or municipality, as determined  
133 by the department after consultation with the Florida Historical  
134 Commission or, for a historic Florida military monument or  
135 memorial, after consultation with the Department of Veterans'  
136 Affairs.

137 (7) (a) The division shall consider any issue regarding the  
138 protection, preservation, or relocation of a historic Florida  
139 monument or memorial and must determine whether to take action,  
140 defer making a decision, or not to make a decision. If such  
141 determination involves a historic Florida military monument or  
142 memorial, the division must consult with the Department of  
143 Veterans' Affairs.

144 (b) The division shall make a written record of its  
145 decision to take action, to defer making a decision, or not to  
146 make a decision, and the reasons therefor.

147 (8) The department, in consultation with the Department of  
148 Veterans' Affairs, may adopt rules to implement this section.

149 Section 2. This act shall take effect July 1, 2025.

150  
151 ===== T I T L E A M E N D M E N T =====

152 And the title is amended as follows:

153 Delete everything before the enacting clause  
154 and insert:

155 A bill to be entitled



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156 An act relating to protection of historic monuments  
157 and memorials; creating s. 267.201, F.S.; defining  
158 terms; providing legislative intent; preempting all  
159 removal, damage, and destruction of historic Florida  
160 monuments and memorials to the state; providing that  
161 any existing or future ordinance, regulation, or rule  
162 to the contrary is void; providing that local  
163 governments and elected or appointed local government  
164 officials who violate the preemption are liable;  
165 requiring the courts to declare certain ordinances,  
166 regulations, or rules invalid and issue permanent  
167 injunctions against the local government; providing  
168 that it is no defense that a local government was  
169 acting in good faith or upon the advice of counsel;  
170 providing civil penalties for certain officials who  
171 engage in certain actions; prohibiting the use of  
172 public funds to defend or reimburse unlawful conduct  
173 of certain persons; authorizing specified persons and  
174 organizations to file suit against specified entities  
175 for declaratory or injunctive relief and actual  
176 damages; requiring the court to award prevailing  
177 plaintiffs specified fees and damages; providing for  
178 standing to bring civil actions; providing that a  
179 local government is liable in certain instances;  
180 requiring the state to restore or relocate a monument  
181 or memorial in certain circumstances; prohibiting the  
182 distribution of certain funding to local governments  
183 until they reimburse the state; authorizing the  
184 removal or temporary relocation of a monument or



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185 memorial in certain instances, provided certain  
186 requirements are met; specifying certain duties of the  
187 Division of Historical Resources of the Department of  
188 State and Department of Veterans' Affairs concerning  
189 certain monuments or memorials; providing for  
190 rulemaking; providing an effective date.

By Senator McClain

9-01325-25

20251816\_\_

1 A bill to be entitled  
 2 An act relating to protection of historic monuments  
 3 and memorials; providing a short title; creating s.  
 4 267.201, F.S.; defining terms; providing legislative  
 5 intent; preempting all removal, damage, and  
 6 destruction of historic Florida monuments and  
 7 memorials; providing that any existing or future  
 8 ordinance, regulation, or rule to the contrary, and  
 9 certain actions by elected or appointed local  
 10 government officials, are void; providing that local  
 11 governments and elected or appointed local government  
 12 officials who violate the preemption are liable;  
 13 requiring the courts to declare certain ordinances,  
 14 regulations, or rules invalid and issue permanent  
 15 injunctions against the local government; providing  
 16 that it is no defense that a local government was  
 17 acting in good faith or upon the advice of counsel;  
 18 providing civil penalties for certain officials who  
 19 engage in certain actions; prohibiting the use of  
 20 public funds to defend or reimburse unlawful conduct  
 21 of certain persons; authorizing specified persons and  
 22 organizations to file suit against specified entities  
 23 for declaratory or injunctive relief and actual  
 24 damages; requiring the court to award prevailing  
 25 plaintiffs specified fees and damages; providing for  
 26 standing to bring civil actions; providing that a  
 27 local government is liable in certain instances;  
 28 requiring the state to restore or relocate a monument  
 29 or memorial in certain circumstances; prohibiting the

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

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30 distribution of certain funding to local governments  
 31 until they reimburse the state; authorizing the  
 32 removal or temporary relocation of a monument or  
 33 memorial in certain instances provided certain  
 34 requirements are met; specifying certain duties of the  
 35 Division of Historical Resources of the Department of  
 36 State and Department of Veterans' Affairs concerning  
 37 certain monuments or memorials; providing for  
 38 rulemaking; providing an effective date.  
 39  
 40 Be It Enacted by the Legislature of the State of Florida:  
 41  
 42 Section 1. This act may be cited as the "Historic Florida  
 43 Monuments and Memorials Protection Act."  
 44 Section 2. Section 267.201, Florida Statutes, is created to  
 45 read:  
 46 267.201 Protection of historic monuments and memorials.—  
 47 (1) As used in this section, the term:  
 48 (a) "Department" means the Department of State.  
 49 (b) "Historic Florida military monument or memorial" means  
 50 a historic Florida monument or memorial that honors or recounts  
 51 the military service of any past or present military personnel,  
 52 including any armed conflict since settlers from other countries  
 53 came to what is now the United States.  
 54 (c) "Historic Florida monument or memorial" means a  
 55 permanent statue, marker, plaque, flag, banner, cenotaph,  
 56 religious symbol, painting, seal, tombstone, or display  
 57 constructed and located on public property which has been  
 58 displayed for at least 25 years, with the intent of being

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

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59 permanently displayed or perpetually maintained and which is  
 60 dedicated to any person, place, or event that was important in  
 61 the past or which is in remembrance or recognition of a  
 62 significant person or event in state history.

63 (d) "Local government" means any municipality, county,  
 64 school district, state college, state university, or other  
 65 political subdivision of the state.

66 (2) (a) It is the intent of the Legislature to declare void  
 67 all ordinances, regulations, and executive actions regarding the  
 68 removal, damage, or destruction of historic Florida monuments or  
 69 memorials which have been enacted by any local government.

70 (b) It is also the intent of the Legislature that the state  
 71 act to protect each historic Florida monument or memorial from  
 72 removal, damage, or destruction. The Legislature finds that an  
 73 accurate and factual history belongs to all Floridians and  
 74 future generations and that the state has an obligation to  
 75 protect and preserve such history.

76 (c) Further, it is the intent of the Legislature to provide  
 77 statewide uniformity through the division. It is also the  
 78 Legislature's intent for the division to work actively to  
 79 protect and preserve each historic Florida monument or memorial,  
 80 and ensure that each such monument or memorial is not removed,  
 81 damaged, or destroyed, regardless of the location of such  
 82 monument or memorial in this state, and to consult with the  
 83 Department of Veterans' Affairs on actions regarding all  
 84 historic Florida military monuments or memorials.

85 (3) All removal, damage, or destruction of historic Florida  
 86 monuments or memorials is preempted to the state. Any existing  
 87 or future local government ordinance, regulation, or rule to the

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88 contrary, or any such action, other than those authorized in  
 89 subsection (6), by an elected or appointed local government  
 90 official, is void.

91 (4) (a) Any local government or elected or appointed local  
 92 government official who violates the state's preemption of  
 93 removal, damage, or destruction of historic Florida monuments or  
 94 memorials by enacting or enforcing any local ordinance,  
 95 regulation, or rule impinging upon such preemption is liable as  
 96 provided in this subsection.

97 (b) If a local government violates paragraph (a), the court  
 98 must declare the ordinance, regulation, or rule invalid and  
 99 issue a permanent injunction against the local government,  
 100 prohibiting the local government from enforcing such ordinance,  
 101 regulation, or rule. It is no defense that, in enacting the  
 102 ordinance, regulation, or rule, the local government was acting  
 103 in good faith or upon advice of counsel.

104 (c) The court shall assess a civil fine of up to \$1,000  
 105 against an elected or appointed local government official who  
 106 knowingly and willfully violates paragraph (a).

107 (d) Except as required by applicable law, public funds may  
 108 not be used to defend or reimburse the unlawful conduct of an  
 109 elected or appointed local government official found to have  
 110 knowingly and willfully violated paragraph (a).

111 (e)1. A person or an organization described in subparagraph  
 112 2. may file suit against a local government or an elected or  
 113 appointed local government official in any court of this state  
 114 having jurisdiction over the defendant to the suit for  
 115 declaratory or injunctive relief and for actual damages, as  
 116 limited herein, caused by the violation. A court shall award a

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117 prevailing plaintiff in any such suit:

118 a. Reasonable attorney fees and costs in accordance with  
 119 the laws of this state; and

120 b. The actual damages incurred, but no more than \$100,000.

121 2. The following have standing to bring a civil action for  
 122 any violation of paragraph (a):

123 a. A group involved in the design, erection, or care of the  
 124 monument or memorial or a member of such a group.

125 b. A group or person regularly using the monument or  
 126 memorial for remembrance.

127 (5) If a historic Florida monument or memorial is removed,  
 128 damaged, or destroyed by a local government in violation of  
 129 paragraph (4) (a), the local government is liable for restoring  
 130 or relocating such monument or memorial to its original  
 131 condition or location or as close as possible to the original  
 132 condition or location within 3 years after the date of the  
 133 removal, damage, or destruction. If the local government does  
 134 not have the necessary funds, the state must restore or relocate  
 135 such monument or memorial, and the department must withhold from  
 136 the local government all arts, cultural, and historic  
 137 preservation funding until the local government reimburses the  
 138 state for the cost of restoring or relocating such monument or  
 139 memorial. All such funds become available to the local  
 140 government once the state is repaid. The local government may  
 141 not retroactively collect any of the department funds that  
 142 otherwise would have been received during the period that state  
 143 funds were withheld.

144 (6) (a) A local government may only remove a historic  
 145 Florida monument or memorial temporarily due to military

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146 necessity or for any construction or infrastructure project.

147 (b) The local government proposing to remove such monument  
 148 or memorial shall put into an escrow account the good faith  
 149 estimate of the funds necessary to relocate the monument or  
 150 memorial.

151 (c) A historic Florida monument or memorial temporarily  
 152 removed for such purpose must be temporarily relocated to a site  
 153 of similar prominence, honor, visibility, and access within the  
 154 same county or municipality in which the monument or memorial  
 155 was originally located.

156 (d)1. A local government must provide written notification  
 157 to the division, on a form prescribed by the department in  
 158 consultation with the Department of Veterans' Affairs:

159 a. Of the temporary removal of a historic Florida monument  
 160 or memorial. The written notification must be provided within 10  
 161 days after the date of the local government's decision to  
 162 temporarily remove the historic Florida monument or memorial.

163 b. That the military necessity has ceased or that the  
 164 construction or infrastructure project is completed. The written  
 165 notification must be provided within a reasonable time, but not  
 166 more than 30 days, after the military necessity has ceased or  
 167 the construction or infrastructure project has been completed.

168 2. The historic Florida monument or memorial must be  
 169 relocated back to the original location or, if that is not  
 170 possible, to a site with similar prominence, honor, visibility,  
 171 and access within the same county or municipality, as determined  
 172 by the department after consultation with the Florida Historical  
 173 Commission or, for a historic Florida military monument or  
 174 memorial, after consultation with the Department of Veterans'

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175 Affairs.

176 (7) (a) The division shall take any issue regarding the  
177 protection, preservation, or relocation of a historic Florida  
178 monument or memorial to the Florida Historical Commission or, in  
179 the case of a historic Florida military monument or memorial, to  
180 the Department of Veterans' Affairs, for a recommendation to  
181 take action, to defer making a decision, or not to make a  
182 decision.

183 (b) The division shall make a written record of its  
184 decision to take action, to defer making a decision, or not to  
185 make a decision, and the reasons therefor, in consultation with  
186 the Florida Historical Commission or, in the case of a historic  
187 Florida military monument or memorial, the Department of  
188 Veterans' Affairs.

189 (8) The department, in consultation with the Department of  
190 Veterans' Affairs, may adopt rules to implement this section.

191 Section 3. This act shall take effect July 1, 2025.

**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 Governmental Oversight and Accountability

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BILL: SB 1760

INTRODUCER: Senator Grall

SUBJECT: Public Officers and Employees

DATE: March 24, 2025

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	McVaney	McVaney	GO	<b>Pre-meeting</b>
2.			AEG	
3.			RC	

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**I. Summary:**

SB 1760 places additional citizenship and residency requirements on state executive branch officers and defines the term “office” for purposes of the constitutional prohibition on dual office-holding.

This bill is not expected to affect state or local government revenues or expenditures.

This bill takes effect July 1, 2025.

**II. Present Situation:**

**Residency Requirements**

A residency requirement is a mandate that certain public officers – elected and, in some cases, appointed—be residents of the area they serve or the area in which they work. Current law places specific residency requirements on the following public officers in Florida:

- Governor.<sup>1</sup>
- Lieutenant Governor.<sup>2</sup>
- Cabinet members (Attorney General, Chief Financial Officer, and Commissioner of Agriculture).<sup>3</sup>
- State legislators.<sup>4</sup>

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<sup>1</sup> The Governor must be a state resident for seven years and an elector before being elected. FLA. CONST. art. IV, s. 5(b).

<sup>2</sup> The Lieutenant Governor must be a state resident for seven years and an elector before being elected. *Id.*

<sup>3</sup> Cabinet members must be state residents for seven years and an elector before being elected. *Id.*

<sup>4</sup> State legislators must be residents of the district from which they are elected, be an elector in the district from which they were elected, and have resided in Florida for at least two years prior to being elected. FLA. CONST. art. III, s. 15(c).



- State attorneys.<sup>5</sup>
- Public defenders.<sup>6</sup>
- County commissioners.<sup>7</sup>
- School board members.<sup>8</sup>
- Judges (supreme court justices, district court of appeal judges, and circuit court judges).<sup>9</sup>

All candidates for state and county public office, except candidates for judicial office, must subscribe to an oath affirming they are qualified electors of their county at the time of qualifying for public office.<sup>10</sup> In order to be a qualified elector, one must be a U.S. citizen and a resident of the state as well as the county in which he or she registers to vote.<sup>11</sup> The Division of Elections within the Department of State has opined that, unless otherwise provided by the State Constitution, statute, or court ruling, the qualifications one must possess for public office, including residency, are determined as of the commencement of the term of office.<sup>12</sup> Accordingly, county constitutional officers<sup>13</sup> must be residents of the jurisdiction they serve at the time of assuming office.

### Commissions

For purposes of ch. 20, F.S., a “commission” is “a body created by specific statutory enactment within a department,<sup>[14]</sup> 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>15</sup> Commissions play an essential role, serving as regulatory oversight bodies across various policy areas. These entities are typically responsible for rulemaking, licensing, adjudicating disputes, or enforcing regulations.

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<sup>5</sup> State attorneys must be an elector of the state and reside in the territorial jurisdiction of the circuit in which they serve upon taking office. FLA. CONST. art. V., s. 17; *see also* Florida Division of Elections, *FAQ—Candidates*, <https://dos.fl.gov/elections/contacts/frequently-asked-questions/faq-candidates/> (last visited Mar. 23, 2025).

<sup>6</sup> Public defenders must be an elector of the state and reside in the territorial jurisdiction of the circuit in which they serve upon taking office. FLA. CONST. art. V, s. 18; *see also* Florida Division of Elections, *FAQ—Candidates*, <https://dos.fl.gov/elections/contacts/frequently-asked-questions/faq-candidates/> (last visited Feb. 25, 2025).

<sup>7</sup> County commissioners must be residents of the district from which they are elected at the time of election. FLA. CONST. art. VIII, s. 1(e); *see also* Florida Division of Elections Opinion 94-04; *State v. Grassi*, 532 So.2d 1055 (Fla. 1988).

<sup>8</sup> A school board member must be a resident of the district school board member residence area and be an elector in the district in which he or she serves at the time of qualifying. Sections 1001.34 and 1001.36, F.S.; *see also* Florida Division of Elections Opinion 94-04.

<sup>9</sup> Judges must reside in the territorial jurisdiction of the court they serve and be an elector of the state at the time of assuming office. FLA. CONST. art. V, s. 8; *see also Advisory Opinion to the Governor*, 192 So. 2d 757 (Fla. 1966).

<sup>10</sup> Section 99.021(1)(a)1., F.S. Note candidates for municipal office are not explicitly required by this statute to reside within the municipality in which they are running for office. Instead, residency requirements for municipal offices are typically established on a local level. *See Nichols v. State*, 177 So.2d 467 (Fla. 1965); *Marina v. Leahy*, 578 So.2d 382 (Fla. 3rd DCA 1991); Florida Division of Elections Opinion 94-04.

<sup>11</sup> Section 97.041(1)(a), F.S.

<sup>12</sup> Florida Division of Elections Opinion 94-04.

<sup>13</sup> The term “county constitutional officers” includes sheriffs, tax collectors, property appraisers, supervisors of elections, and clerks of circuit courts. FLA. CONST. art. VIII, s. 1(d).

<sup>14</sup> “Department” means the principal administrative unit within the executive branch of state government. Section 20.03(8), F.S.

<sup>15</sup> Section 20.03(4), F.S.

## Board of Trustees

For purposes of ch. 20, F.S., a “board of trustees” is a “board created by specific statutory enactment and appointed to function adjunctively to a department, the Governor, or the Executive Office of the Governor to administer public property or a public program.”<sup>16</sup> While these entities may function within an executive department or under the Governor’s authority, they often operate with a degree of autonomy, making policy decisions and managing public programs in alignment with statutory mandates. Florida college boards of trustees are required to reside in the service delivery area of the college,<sup>17</sup> while university boards of trustees do not have to reside in the state.<sup>18</sup>

## The Board of Governors

The State University System of Florida consists of 12 public universities,<sup>19</sup> each governed by an individual board of trustees.<sup>20</sup> The Board of Governors (BOG) is responsible for overseeing, regulating, and managing the entire State University System.<sup>21</sup> Through its authority, the BOG ensures affordable access to higher education, promotes articulation with other educational institutions, and upholds fiscal responsibility and accountability across Florida’s public universities.<sup>22</sup> The BOG consists of 17 members, 14 of which are “citizens” appointed by the Governor, subject to Senate confirmation.<sup>23</sup> The commissioner of education, the chair of the advisory council of faculty senates, and the president of the Florida student association are also members.<sup>24</sup>

## Licensing Boards

For purposes of ch. 20, F.S., a “licensing board” is “a board authorized to grant and revoke licenses to engage in regulated occupations.”<sup>25</sup> The boards are typically established to oversee and enforce standards within various professions, ensuring that practitioners meet the requisite qualifications and that those practitioners adhere to established ethical and professional guidelines. The boards are commonly composed of professionals licensed in the respective fields and members of the public who represent consumer interests.

## Quasi-public Entities

Throughout the Florida Statutes, entities have been established that are neither entirely governmental in nature nor entirely private but possess traits from both the public and private

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<sup>16</sup> Section 20.03(2), F.S. The definition specifically exempts boards created under ch. 253, F.S., relating to public lands and property.

<sup>17</sup> FLA. CONST. art. IX, s. 8(c).

<sup>18</sup> Section 1001.71(1), F.S.

<sup>19</sup> Section 1000.21(9), F.S.; see State University System, *Universities*, <https://www.flbog.edu/universities/> (last visited Mar. 23, 2025).

<sup>20</sup> FLA. CONST. art. IX, s. 7(b), FLA. CONST.; s. 1001.71, F.S.

<sup>21</sup> See FLA. CONST. art. IX, s. 7(d).

<sup>22</sup> Section 20.155(4)(b), F.S.

<sup>23</sup> FLA. CONST. art. IX, s. 7(d); see s. 1001.70, F.S.

<sup>24</sup> FLA. CONST. art. IX, s. 7(d).

<sup>25</sup> Section 20.03(9), F.S.

sectors. These entities are often referred to as quasi-public entities (QPEs). The reasons for their establishment in law vary from entity to entity. Some are independent entities created to advance certain policy goals. For example, the Florida Housing Finance Corporation was created to finance or refinance housing and related facilities.<sup>26</sup> Others, like the Florida Healthy Kids Corporation<sup>27</sup> and Citizens Property Insurance Corporation,<sup>28</sup> are created to administer government programs or to achieve a particular outcome in the state or in a community.

Just as the purposes of these QPEs vary, so too do their structures. For example, some are nonprofit corporations established completely independent of government and others are for-profit corporations funded through methods that allow the entity to be entirely self-sufficient. The governing bodies of QPEs, usually a board of directors or board of trustees, vary, too. The membership of these boards ranges from government officials and political appointees to private sector representatives and board-elected members.

### **Executive Departments**

Florida's executive branch structure is set forth in the State Constitution and further refined by statute. The State Constitution provides that “[a]ll functions of the executive branch of state government [must] be allotted to among not more than twenty-five departments,” excluding those explicitly created or authorized by the Constitution.<sup>29</sup> A “department” is the principal administrative unit within the executive branch of state government.<sup>30</sup> Each department is headed by a secretary<sup>31</sup> appointed by the Governor or an executive director<sup>32</sup> appointed by the Governor and Cabinet or a board.<sup>33</sup> Additionally, some departments house subunits that function independently of their parent department.<sup>34</sup> These department heads and administrative officers play a critical role in policy implementation, program administration, and regulatory enforcement.

### **Dual Office-holding**

The State Constitution prohibits individuals from holding multiple public offices simultaneously and applies to public offices in state, county, and municipal government.<sup>35</sup> The provision applies to both elected and appointed offices, ensuring that no single individual accumulates multiple governmental roles that could create a conflict of interest.<sup>36</sup> Neither the State Constitution nor the

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<sup>26</sup> Section 420.504(1), F.S.

<sup>27</sup> Florida Healthy Kids Corporation aims to improve children's health by providing comprehensive and affordable health insurance coverage. Section 624.91(2)(a), F.S.

<sup>28</sup> Citizens Property Insurance Corporation was created to provide property insurance coverage to those unable to find affordable coverage in the voluntary admitted market. Section 627.351(6)(a)1., F.S.

<sup>29</sup> FLA. CONST. art. IV, s. 6.

<sup>30</sup> Section 20.03(8), F.S.

<sup>31</sup> See s. 20.03(12), F.S.

<sup>32</sup> See s. 20.03(10), F.S.

<sup>33</sup> For example, the executive director of the State Board of Administration is appointed by a majority vote of the Board of Trustees comprised of the Governor, the Chief Financial Officer, and the Attorney General. The Governor must vote on the prevailing side. Section 215.441, F.S.

<sup>34</sup> For example, the Division of Administrative Hearings is housed with the Department of Management Services but is not subject to the department's control, supervision, or direction. Section 120.65(1), F.S.

<sup>35</sup> FLA. CONST. art. II, s. 5(a).

<sup>36</sup> *Bath Club, Inc. v. Dade County*, 394 So. 2d 110 (Fla. 1981); see *Blackburn v. Brorein*, 70 So. 2d 293 (Fla. 1954).

Legislature has defined the term “office,” leaving the court to establish its meaning through case law. Florida courts have interpreted the term “office” in opposition to the term “employment,” with the latter not being subject to prohibition on dual office-holding. An “office,” the courts have held, refers to a position that exercises sovereign power, has a legally prescribed tenure, and is established by law rather than by contract.<sup>37</sup> The term “employment,” by contrast, “does not comprehend a delegation of any part of the sovereign authority [of government].”<sup>38</sup> Positions such as department heads, members of governing boards, and elected officials have typically been considered offices, while positions like assistants, deputy clerks, and administrative employees have typically been classified as public employees.<sup>39</sup>

Despite the general prohibition, Florida courts have recognized an *ex officio* exception that allows an individual to perform additional official duties if those duties are assigned by legislative designation to the office itself rather than to the individual holding it, provided that the additional duties are consistent with those already exercised.<sup>40</sup> For example, county commissioners and school board members may also serve *ex officio* on a property appraisal adjustment board if the law assigns this responsibility to their office rather than to the individual, as their additional duties are consistent with their existing responsibilities. Additionally, the State Constitution explicitly exempts certain roles, such as notaries public, military officers, and members of advisory bodies from the dual office-holding prohibition.<sup>41</sup>

### III. Effect of Proposed Changes:

**Section 1** creates s. 20.70, F.S., to establish “U.S. citizenship” and “state residency” requirements on a person serving as:

- A member of a commission;
- A member of a board of trustees;
- A member of the Board of Governors;
- A member of a licensing board;
- A member of a governing board or as the chief executive of a statewide entity statutorily created for a public purpose or to effectuate a government program, and which is not under the direct control of a governmental entity; or
- An appointee to state office.

Section 1 also requires the following persons be U.S. citizens, Florida residents, and residents in the same county as their respective department headquarters:

- A secretary of an executive branch department (this includes most executive branch secretaries, except the departments of Legal Affairs; Financial Services; Agriculture and Consumer Services; and those departments noted below).

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<sup>37</sup> *State ex rel. Holloway v. Sheats*, 83 So. 508 (Fla. 1919); *State ex rel. Clyatt v. Hocker*, 22 So. 721 (Fla. 1897).

<sup>38</sup> *State ex rel. Holloway v. Sheats*, 83 So. 508 (Fla. 1919).

<sup>39</sup> See Office of the Attorney General, *Dual Office-holding*,

<https://www.myfloridalegal.com/files/pdf/page/4FF72ECF62927EEA85256CC6007B4517/DualOfficeHoldingPamplet.pdf> (last visited Mar. 23, 2025).

<sup>40</sup> *Bath Club, Inc. v. Dade County*, 394 So. 2d 110 (Fla. 1981).

<sup>41</sup> Members of a constitutional revision commission and taxation and budget reform commission are also exempt. FLA. CONST. art. II, s. 5(a).

- The executive director of an executive branch department (this includes the executive directors of the departments of Revenue; Law Enforcement; Highway Safety and Motor Vehicles; Veterans' Affairs; Elderly Affairs; and Citrus; the executive director of the State Board of Administration; the Commissioner of Education; and the Adjutant General of the Department of Military Affairs).
- The chief administrative officer of any unit of state government housed under an executive branch department for administrative purposes but is not subject to control, supervision, or direction of such department (this includes, but is not limited to, the executive directors of the Florida Gaming Control Commission; Florida Transportation Commission; Fish and Wildlife Conservation Commission; the director of the Agency for Persons with Disabilities; the Commissioner of Insurance Regulation; and the Commissioner of Financial Regulation, the Chief Judge of the Division of Administrative Hearings, the executive director of the Human Relations Commission, and the chair of the Public Employees Relations Commission).

**Section 2** creates s. 112.31251, F.S., to define the term “office” for purposes of the constitutional restriction on dual office-holding in Florida. “Office” is defined to mean any position in state, county, or municipal government that:

- Delegates to the individual holding the position a portion of sovereign power of the government;
- Requires the exercise of independent governmental authority performed in an official capacity rather than solely based upon a contractual or employment relationship;
- Has a prescribed tenure; and
- Exists independently of the individual holding the position.

The following offices are enumerated as positions that meet the definition of “office”:

- Governor, Lieutenant Governor, Cabinet officers;
- State senator and state representative;
- County commissioner, sheriff, tax collector, property appraiser, supervisor of elections, and clerk of circuit court;
- Member of the Board of Governors of the State University System;
- Member of a board of trustees for a state university;
- Member of a district school board;
- County or municipal administrator and attorney;
- The director of a county or municipal emergency management agency;
- Member of a state, county, or municipal board or commission that exercises governmental authority and is not purely advisory in nature;
- Member of the board of the Citizens Property Insurance Corporation;
- Member of the board of the Florida Housing Finance Corporation; and
- Member of the board of the Florida Healthy Kids Corporation.

While the position of a “police officer” or “law enforcement officer” has been held to be an office for purposes of dual office-holding under the State Constitution, the new statutory criteria of “prescribed tenure” may shift these positions away from being an “office” under the statutory interpretation. Likewise, other positions that do not have “prescribed tenure” may also fall

outside the statutory definition of “office”. However, the language and interpretation will continue to control, potentially leading to inadvertent noncompliance.

#### IV. Constitutional Issues:

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

Not applicable. The bill does not require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, or reduce the percentage of state tax shared with counties or municipalities.

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

None identified.

##### C. Trust Funds Restrictions:

None identified.

##### D. State Tax or Fee Increases:

None identified.

##### E. Other Constitutional Issues:

Art. IX, section 7(d) of the State Constitution provides that the Board of Governors of the State University System will be comprised of fourteen *citizen members dedicated to the purposes of the state university system*. Similarly, Art. IX, section 7(c) of the State Constitution provides that each board of trustees of a state university will be comprised of six *citizen* members appointed by the governor and five *citizen* members appointed by the Board of Governors.

Art. II, section 5(b) of the State Constitution requires each state and county officer to affirm:

I do solemnly affirm that I will support, protect, and defend the Constitution and Government of the United States and the State of Florida; that I am duly *qualified to hold office under the Constitution of the state*; and that I will well and faithfully perform the duties of *the office on which I am not about to enter*. So help me God.

*(Emphasis added.)*

Since the State Constitution explicitly places citizenship, dedication to the purposes of the state university system, and senate confirmation requirements on these appointees, it is unclear whether the legislature may add other qualifications (i.e., residency) that must be met for the officer.

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

None identified.

**B. Private Sector Impact:**

It is unclear whether the dual office-holding provisions of this bill will impact a law firm or attorney that has contracted to serve as the municipal attorney for more than one municipality. The position of municipal attorney may not meet the criteria enumerated on lines 47-54 to be included in the dual office-holding prohibition. Yet, the position is included in the statutorily enumerated positions that are mandated to be included in the dual office-holding prohibition.

**C. Government Sector Impact:**

This bill is not expected to affect state or local government revenues or expenditures.

**VI. Technical Deficiencies:**

None identified.

**VII. Related Issues:**

Section 1001.71(1), F.S., relating to university board of trustees, states “There shall be no state residency requirement for university board members, but the Governor and the Board of Governors shall consider diversity and regional representation.” This conflicts with the new language of Section 1 of the bill that applies to boards of trustees generally.

**VIII. Statutes Affected:**

This bill creates the sections 20.70 and 112.31251 of the Florida Statutes.

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

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

None.

**B. Amendments:**

None.

By Senator Grall

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1                                   A bill to be entitled  
 2           An act relating to public officers and employees;  
 3           creating s. 20.70, F.S.; requiring certain public  
 4           officers and employees to be United States citizens  
 5           and residents of this state, and, for specified public  
 6           officers and employees, to reside in a certain county;  
 7           creating s. 112.31251, F.S.; defining the term  
 8           "office" for purposes of s. 5(a), Art. II of the State  
 9           Constitution; defining the term "employment";  
 10          providing an effective date.  
 11  
 12 Be It Enacted by the Legislature of the State of Florida:  
 13  
 14          Section 1. Section 20.70, Florida Statutes, is created to  
 15          read:  
 16          20.70 Residency requirements.—Notwithstanding any other  
 17          law:  
 18          (1) All of the following persons must be United States  
 19          citizens and residents of this state:  
 20          (a) A member of a commission.  
 21          (b) A member of a board of trustees.  
 22          (c) A member of the Board of Governors.  
 23          (d) A member of a licensing board.  
 24          (e) A member of a governing board or the chief executive of  
 25          a statewide entity that is explicitly created or established by  
 26          statute, regardless of its legal form, for a public purpose or  
 27          to effectuate a government program and which is not under the  
 28          direct control of a governmental entity.  
 29          (f) Any other person appointed to hold state office.

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30           (2) All of the following persons must be United States  
 31           citizens, be residents of this state, and reside in the same  
 32           county as their respective departments' headquarters:  
 33           (a) The secretary of a department.  
 34           (b) The executive director of a department of the executive  
 35           branch.  
 36           (c) The chief administrative officer of any unit of state  
 37           government that is housed under a department for administrative  
 38           purposes but is not subject to the control, supervision, or  
 39           direction of such department.  
 40          Section 2. Section 112.31251, Florida Statutes, is created  
 41          to read:  
 42          112.31251 Definition of the term "office."—  
 43          (1) (a) For purposes of s. 5(a), Art. II of the State  
 44          Constitution, the term "office," when referring to an office in  
 45          this state, means any position in state, county, or municipal  
 46          government that:  
 47                  1. Delegates to the individual holding such position a  
 48                  portion of the sovereign power of the government.  
 49                  2. Requires the exercise of independent governmental  
 50                  authority, which is performed in an official capacity and is not  
 51                  based solely on a contractual or employment relationship.  
 52                  3. Has a prescribed tenure.  
 53                  4. Exists independently of the individual holding such  
 54                  position.  
 55                  (b) The term includes, but is not limited to, all of the  
 56                  following positions:  
 57                          1. The Governor.  
 58                          2. The Lieutenant Governor.

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- 59       3. A member of the Cabinet.  
60       4. A state senator.  
61       5. A state representative.  
62       6. A county commissioner.  
63       7. A sheriff.  
64       8. A tax collector.  
65       9. A property appraiser.  
66       10. A supervisor of elections.  
67       11. A clerk of the circuit court.  
68       12. A member of the Board of Governors of the State  
69 University System.  
70       13. A member of a board of trustees for a state university.  
71       14. A member of a district school board.  
72       15. A county or municipal administrator.  
73       16. A county or municipal attorney.  
74       17. The director of a county or municipal emergency  
75 management agency.  
76       18. A member of a state, county, or municipal board or  
77 commission that exercises governmental authority and is not  
78 purely advisory in nature.  
79       19. A member of the board of the Citizens Property  
80 Insurance Corporation established under s. 627.351(6).  
81       20. A member of the board of the Florida Housing Finance  
82 Corporation established under s. 420.504.  
83       21. A member of the board of the Florida Healthy Kids  
84 Corporation established under s. 624.91.  
85       (2) The term "office" does not include either of the  
86 following:  
87       (a) A legislative designation of an officer to perform ex

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- 88       ~~officio the functions of another office; or~~  
89       (b) The position of an individual whose relationship with a  
90 state, county, or municipal government is considered employment.  
91 For purposes of this subsection, the term "employment" means a  
92 relationship with a state, county, or municipal government where  
93 an individual does not exercise in his or her own right any  
94 sovereign power or any prescribed independent authority of a  
95 governmental nature.  
96       Section 3. This act shall take effect July 1, 2025.

Page 4 of 4

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

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

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

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Prepared By: The Professional Staff of the Committee on Governmental Oversight and Accountability

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BILL: CS/SB 676

INTRODUCER: Commerce and Tourism Committee and Senator Martin

SUBJECT: Minimum Wage Requirements

DATE: March 24, 2025

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Dike</u>	<u>McKay</u>	<u>CM</u>	<b>Fav/CS</b>
2.	<u>Harmsen</u>	<u>McVaney</u>	<u>GO</u>	<b>Pre-meeting</b>
3.	_____	_____	<u>RC</u>	_____

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

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 676 amends the Florida Minimum Wage Act to allow employees to opt out of receiving the minimum wage for work-study, internship, preapprenticeship, apprenticeship program, or other similar work-based learning opportunities by signing a waiver acknowledging that the employee is knowingly and voluntarily choosing to receive a lesser amount. Parents or guardians must sign the waiver for employees under 18 years of age.

The bill is not expected to affect state and local government revenues and expenditures.

The bill takes effect July 1, 2025.

**II. Present Situation:**

**Federal Minimum Wage**

The Fair Labor Standards Act (FLSA) prescribes federal standards for minimum wage, overtime, recordkeeping, and child labor.<sup>1</sup> As of 2009, the minimum wage that all covered, nonexempt employees must earn is \$7.25.<sup>2</sup> No state may enforce a minimum wage that is below the federal

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<sup>1</sup> 29 U.S.C. s. 206; U.S. DEPT. OF LABOR, *Fact Sheet #14: Coverage Under the Fair Labor Standards Act (FLSA)*, <https://www.dol.gov/agencies/whd/fact-sheets/14-flsa-coverage> (last visited Mar. 24, 2025).

<sup>2</sup> 29 U.S.C. s. 206.

minimum.<sup>3</sup> As of 2021, around 85% of all wage and salary workers in the U.S. were covered by the FLSA.<sup>4</sup>

The FLSA applies to employees in two categories:

- Enterprise coverage—employees who work for enterprises, businesses or organizations doing at least \$500,000 of business per year, and hospitals, businesses providing medical or nursing care for residents, schools and preschools, and government agencies; or
- Individual coverage—Employees whose work involves the production of goods for commerce or engagement in interstate commerce and domestic workers.<sup>5</sup>

The FLSA includes several exemptions from the federal minimum hourly wage, that are not legally required to be paid at the minimum hourly wage rate, including:

- Executive, administrative and professional employees (including teachers and academic administrative personnel in elementary and secondary schools), outside sales employees, and employees in certain computer-related occupations.
- Employees in certain seasonal amusement or recreational establishments, employees in certain small newspapers, seamen employed on foreign vessels, employees engaged in fishing operations, and employees engaged in newspaper delivery.
- Farm workers employed by anyone who used no more than 500 “man-days” of farm labor in any calendar quarter of the preceding calendar year.
- Casual babysitters and persons employed as companions for the elderly or infirm.
- Border patrol agents.
- Baseball players who are compensated pursuant to a contract that provides for a weekly salary for services performed during the league’s championship season at a rate that is not less than a weekly salary equal to the minimum wage.<sup>6</sup>
- Tipped employees, as long as their tips, combined with the employer’s cash wage, equal at least the federal minimum wage (\$7.25). The minimum cash wage for tipped employees is \$2.13 per hour, with the employer able to claim a tip credit of up to \$5.12 per hour.<sup>7</sup>
- Learners, apprentices, and messengers employed primarily in delivering letters and messages, under special certificates issued by the Department of Labor.<sup>8</sup>

Under the FLSA, employers may pay subminimum wages for certain classes of workers, including:

- Youth employees under 20 years old for their first 90 days of employment.
- Student employees who receive a special certificate from the Department of Labor to work part-time in a vocational training program.

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<sup>3</sup> See U.S. Const. art. VI (the Supremacy Clause of the U.S. Constitution); U.S. DEPT. OF LABOR, *Minimum Wage*, available at <https://www.dol.gov/general/topic/wages/minimumwage> (last visited Mar. 24, 2025).

<sup>4</sup> Sarah A. Donovan, CONG. RSCH. SERV., *The Federal Minimum Wage: In Brief*, <https://crsreports.congress.gov/product/pdf/R/R43089> (last visited Mar. 24, 2025).

<sup>5</sup> U.S. DEPT. OF LABOR, *supra* note 1.

<sup>6</sup> 29 U.S.C. s. 213.

<sup>7</sup> 29 U.S.C. s. 203(m)(2)(A).

<sup>8</sup> 29 U.S.C. s. 214.

- Full-time students who receive a special certificate from the Department of Labor, who are employed in retail/service establishments, agricultural occupation, or an institution of higher education.
- Individuals with disabilities who receive a special certificate from the Department of Labor, whose earning capacity is impaired by a disability.<sup>9</sup>

The FLSA also exempts certain people who volunteer to perform services for a state or local government agency or who volunteer for humanitarian purposes for non-profit food banks. There is also a recognized exception for individuals who volunteer their time freely and without anticipation of compensation for religious, charitable, civic, or humanitarian purposes to non-profit organizations. Unpaid internships for public sector and non-profit charitable organizations, where the intern volunteers without expectation of compensation, are generally permissible.<sup>10</sup>

The FLSA preempts state law that would weaken its worker protections, including minimum wage rates.<sup>11</sup> However, state laws that impose greater worker protections supersede those provided for in the FLSA.<sup>12</sup> Florida law does not indicate or allow for wage exceptions for learners, apprentices, or messengers. Thus, the FLSA provisions apply for those workers.

## Florida Minimum Wage

### *Constitutional Amendment*

In 2004, Floridians voted to amend the Florida Constitution by adding a minimum wage provision that established the state minimum wage,<sup>13</sup> which provides that “all working Floridians are entitled to be paid a minimum wage [...]”<sup>14</sup> and that “[e]mployers shall pay employees wages no less than the minimum wage for all hours worked in Florida.”<sup>15</sup>

In 2020, citizens again voted to amend the Florida Constitution to gradually increase the state minimum wage each year, starting at \$10.00 per hour and rising until it reaches \$15.00 per hour on September 30, 2026.<sup>16</sup> Currently, the Florida minimum wage is \$13.00 per hour.<sup>17</sup> Pursuant to the amendment, on September 30, 2027, and each following year on that date, Florida’s Department of Commerce must adjust the minimum wage for inflation.<sup>18</sup>

In the “definitions” section of article X, section 24 of the Florida Constitution, the terms “employer,” “employee,” and “wage” are deemed to “have the same *meaning* as those

<sup>9</sup> U.S. Dep’t of Labor, *Subminimum Wage*, <https://www.dol.gov/general/topic/wages/subminimumwage> (last visited Mar. 25, 2025).

<sup>10</sup> U.S. Dep’t of Labor, Wage and Hour Division, *Fact Sheet 71: Internship Programs Under the Fair Labor Standards Act*, <https://www.dol.gov/agencies/whd/fact-sheets/71-flsa-internships> (last visited Mar. 25, 2025).

<sup>11</sup> 29 U.S.C. s. 218.

<sup>12</sup> Congressional Research Services, *CRS Report R42713, The Fair Labor Standards Act (FLSA): An Overview, Updated March 8, 2023*, <https://crsreports.congress.gov/product/pdf/R/R42713>, (last visited March 25, 2025).

<sup>13</sup> See FLA. CONST. art. X, § 24.

<sup>14</sup> FLA. CONST. art. X, § 24(a).

<sup>15</sup> FLA. CONST. art. X, § 24(c).

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

<sup>17</sup> U.S. DEPT. OF LABOR, *State Minimum Wage Laws*, <https://www.dol.gov/agencies/whd/minimum-wage/state> (last visited Mar. 24, 2025).

<sup>18</sup> FLA. CONST. art. X, § 24.

established under the FLSA and its implementing regulations.”<sup>19</sup> This constitutional provision further states in section (f) that the case law, administrative interpretations, and other guiding standards under the FLSA *shall guide* the construction and implementation of Florida’s constitutional minimum wage.<sup>20</sup> As a result, the FLSA and its exceptions and exemptions are incorporated into the Florida minimum wage amendment.<sup>21</sup>

The FLSA defines:<sup>22</sup>

- Employer as “any person acting directly or indirectly in the interest of an employer in relation to an employee and includes a public agency, but does not include any labor organization (other than when acting as an employer) or anyone acting in the capacity of an officer or agency of such labor organization.”
- Employee as “any individual employed by an employer.”

The FLSA requires for-profit employers to pay employees for their work. However, interns and students may not fit the definition of an employee under the FLSA—in which case the FLSA does not require compensation for their work. Courts have used the “primary beneficiary test” to determine whether an intern or student is, in fact, an employee under the FLSA.<sup>23</sup> This determination is made on a case-by-case basis.

This test allows courts to examine the “economic reality” of the intern-employer relationship to determine which party is the “primary beneficiary” of the relationship. Courts<sup>24</sup> have identified the following seven factors as part of the test:

- The extent to which the intern and the employer clearly understand that there is no expectation of compensation. Any promise of compensation, express or implied, suggests that the intern is an employee—and vice versa.
- The extent to which the internship provides training that would be similar to that which would be given in an educational environment, including the clinical and other hands-on training provided by educational institutions.
- The extent to which the internship is tied to the intern’s formal education program by integrated coursework or the receipt of academic credit.
- The extent to which the internship accommodates the intern’s academic commitments by corresponding to the academic calendar.
- The extent to which the internship’s duration is limited to the period in which the internship provides the intern with beneficial learning.

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<sup>19</sup> *Emphasis added.*

<sup>20</sup> FLA. CONST. art. X, § 24(f).

<sup>21</sup> Op. Att’y Gen. Fla. 2005-64 (2005); *see also In re Advisory Opinion to the Atty. Gen. re Fla. Minimum Wage Amend.*, 880 So. 2d 636 (Fla. 2004).

<sup>22</sup> 29 U.S.C. s. 203.

<sup>23</sup> E.g., *Benjamin v. B & H Educ., Inc.*, --- F.3d ---, 2017 WL 6460087, at \*4-5 (9th Cir. Dec. 19, 2017); *Glatt v. Fox Searchlight Pictures, Inc.*, 811 F.3d 528, 536-37 (2d Cir. 2016); *Schumann v. Collier Anesthesia, P.A.*, 803 F.3d 1199, 1211-12 (11th Cir. 2015); *see also Walling v. Portland Terminal Co.*, 330 U.S. 148, 152-53 (1947); *Solis v. Laurelbrook Sanitarium & Sch., Inc.*, 642 F.3d 518, 529 (6th Cir. 2011).

<sup>24</sup> *Schumann v. Collier Anesthesia, PA*, 803 F.3d 1199 (11th Cir. 2015) (Adopting a modified version of the “primary beneficiary” test, which examines the “economic reality” of the relationship between the intern and employer to determine who benefits most.)

- The extent to which the intern’s work complements, rather than displaces, the work of paid employees while providing significant educational benefits to the intern.
- The extent to which the intern and the employer understand that the internship is conducted without entitlement to a paid job at the conclusion of the internship.

Courts have described the “primary beneficiary test” as a flexible test, and no single factor is determinative. Accordingly, whether an intern or student is an employee under the FLSA necessarily depends on the unique circumstances of each case.

If analysis of these circumstances reveals that an intern or student is actually an employee, then he or she is entitled to both minimum wage and overtime pay under the FLSA. On the other hand, if the analysis confirms that the intern or student is not an employee, then he or she is not entitled to either minimum wage or overtime pay under the FLSA.

Therefore, labels of employment positions such as “intern,” “student worker,” and “apprentice” do not alone transform the job into a non-employee position under the FLSA. In virtue of Florida’s construction of its constitutional minimum wage provision, the FLSA’s meaning of employee is incorporated into Florida law.

### *Florida Statute*

The Florida Minimum Wage Act (Act), s. 448.110, F.S., implements the requirements of the constitutional amendment in statute.<sup>25</sup> The Act only applies to individuals entitled to receive federal minimum wage under the FLSA.<sup>26</sup> It also specifies that ss. 213 and 214 of the FLSA, which set forth exceptions and exemptions to the minimum wage, are incorporated into Florida minimum wage law.<sup>27</sup>

Additionally, as directed by the Florida Constitution’s minimum wage amendment, the Act provides a cause of action for individuals against employers who do not follow minimum wage requirements, retaliate against an employee for exercising their rights, or otherwise violate the Act.<sup>28</sup> Any individual and the Attorney General are also authorized to bring civil actions against employers who violate it, which may result in injunctive relief or fines paid to the state.<sup>29</sup>

### **Non-FLSA Requirements for Work-Based Learning Opportunities**

The federal government’s work-study program provides part-time employment to certain students who attend higher education institutions.<sup>30</sup> A student is eligible to take part in this program if they are a full-time student accepted at or enrolled in an eligible institution and

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<sup>25</sup> Ch. 2005-353, Laws of Fla., codified in s. 448.110, F.S.

<sup>26</sup> Section 448.110(3), F.S.

<sup>27</sup> *Id.* However, section 213 of the FLSA was amended in 2014 and 2018, concerning border patrol agents and minor league baseball players, respectively. Because a cross-reference to a specific statute incorporates the language of the referenced statute as it existed at the time the reference was enacted, unaffected by any subsequent amendments thereto, these specific FLSA amendments are not a part of Florida’s minimum wage law. *See Overstreet v. Blum*, 227 So.2d 197 (Fla. 1969).

<sup>28</sup> Section 448.110(5)-(6), F.S., which implements FLA. CONST. art. X, § 24(d), prohibiting such retaliation.

<sup>29</sup> Section 448.110(7), F.S., which implements FLA. CONST. art. X, § 24(e), providing for enforcement of the constitutional minimum wage provision.

<sup>30</sup> 20 U.S.C. § 1087-51; 34 C.F.R. § 675.1.

otherwise meet the eligibility requirements of 34 C.F.R. 668.32; have a demonstrated financial need; and are enrolled at an institution of higher education.<sup>31</sup> The student may work for qualifying employers or the education institution itself.<sup>32</sup> Further, the student participating in a work-study program must be paid at least the minimum wage rate under the FLSA.<sup>33</sup>

Additionally, the federal government sets forth labor standards and governs registration of apprenticeship programs under the National Apprenticeship Act.<sup>34</sup> Each employer registered with a state apprenticeship program must pay at least the minimum wage under the FLSA, or a higher wage if required by applicable state law.<sup>35</sup> Each state has a registered apprentice program which must be approved by the Office of Apprenticeship at the U.S. Department of Labor.<sup>36</sup> Florida's apprenticeship program provides work-based learning opportunities for people who are at least 16 years old to gain trade skills while still in school.<sup>37</sup> The Florida Department of Education has developed standards for apprenticeable trades to establish programs with public schools and the Florida College System.<sup>38</sup> These trades include plumbing, heating and air conditioning technicians, teaching, cybersecurity, and more.<sup>39</sup>

### III. Effect of Proposed Changes:

**Section 1** amends s. 448.110, F.S., to provide that an employer is not subject to the minimum wage requirements of this section for certain employees who choose to opt out of the minimum wage. The covered employees are those who are employed in a structured work-study, internship, preapprenticeship program, apprenticeship program, or other similar work-based learning opportunity. Such employees may opt out of receiving the minimum wage by signing a waiver, which must state that the employee is knowingly and voluntarily choosing to work for an amount lower than the minimum wage. If the employee is under 18 years old, a parent or guardian of the employee must sign the waiver on behalf of the employee.

The bill contains a severability clause providing that if any provision is held invalid, that provision is severable and does not affect the validity of other provisions.

While the bill modifies the statutory structure of the state minimum wage, the State Constitution is unamended and is the controlling authority on the requirements of the state minimum wage.

See Section IV, Constitutional Issues, for a discussion of the constitutional issues implicated.

**Section 2** provides an effective date of July 1, 2025.

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<sup>31</sup> 34 C.F.R. § 675.9.

<sup>32</sup> 34 C.F.R. §§ 675.20-675.21.

<sup>33</sup> 34 C.F.R. § 675.24.

<sup>34</sup> See 29 U.S.C. ss.50 et seq; 29 C.F.R. 29.

<sup>35</sup> 29 C.F.R. § 29.5.

<sup>36</sup> 29 C.F.R. 29.3.

<sup>37</sup> See ss. 446.011-446.092, F.S.

<sup>38</sup> Section 446.011, F.S.

<sup>39</sup> Florida Dept. of Education, *Florida's Annual Apprenticeship and Preapprenticeship Report 2023-2024*, <https://www.fldoe.org/academics/career-adult-edu/research-evaluation/annual-app-reports.stml> (last visited Mar. 25, 2025).

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

Not applicable. The bill does not require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, or reduce the percentage of state tax shared with counties or municipalities.

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

None.

**C. Trust Funds Restrictions:**

None.

**D. State Tax or Fee Increases:**

None.

**E. Other Constitutional Issues:**

Under article X, section 24 of the Florida Constitution, “employers shall pay Employee Wages no less than the Minimum Wage for all hours worked in Florida.” When interpreting the meaning of a statute or constitutional provision, courts will abide by the plain language of the text if it is unambiguous.<sup>40</sup> The language of the constitutional mandate dictates that employers must pay the established, hourly minimum wage to employees. If an employee signs a waiver stating that they opt out of minimum wage requirements, the employer continues to be bound by its duty to pay the minimum wage for all hours worked in Florida, pursuant to the State Constitution. The Constitution contemplates *any person’s* ability to “file a complaint or inform any person about any party’s alleged noncompliance with this amendment.” The Constitution further allows both an aggrieved employee and the state attorney general or other official designated by the state legislature to bring an enforcement civil action. This implies a vested interest of the whole public in ensuring the payment of a minimum wage to an employee.

“The Constitution of Florida provides within itself the only methods for its amendment or revision. Thus, the Constitution cannot be modified, amended or repealed by legislative enactments, executive usurpation, or judicial interpretation, except by amendment.”<sup>41</sup>

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<sup>40</sup>*McCloud v. State*, 260 So. 3d 911, 914-15 (Fla. 2018); *Garcia v. Andonie*, 101 So. 3d 339 (Fla. 2012) (“Constitutional analysis must begin with examination of explicit language of provisions in question and, where the language is unambiguous and addresses the matter at issue, the provision should be enforced as written.”).

<sup>41</sup>*Throw v. Republic Enterprise Systems, Inc.*, case no.: 8:06-cv-724-T-30TBM, 2006 U.S. Dist. LEXIS 46215, 2006 WL 1823783 (M.D. Fla. June 30, 2006), quoting *Sparkman v. State ex rel. Scott*, 58 So.2d 432, 432 (Fla. 1952).



There is no exception or exemption from the minimum wage specified in the state constitution, other than those incorporated from the FLSA.<sup>42</sup> A Florida appellate decision<sup>43</sup> on an appeal from a denial of unemployment compensation benefits, the court found that since “the Florida Statutes expressly adopt the FLSA, as interpreted and implemented by federal law, ‘[n]o one can doubt but that to allow waiver of statutory [minimum] wages by agreement would nullify the purposes of the [FLSA].’”<sup>44</sup>

Some constitutional rights can be waived, such as the right to remain silent in police interrogation or the right to a homestead exemption.<sup>45</sup> While it is true that “most personal constitutional rights may be waived... an individual cannot waive a right designed to protect both the individual and the public.”<sup>46</sup> Further, an individual may only forego a constitutional right if “it was the product of free and deliberate choice rather than intimidation, coercion, or deception.”<sup>47</sup>

## V. Fiscal Impact Statement:

### A. Tax/Fee Issues:

None.

### B. Private Sector Impact:

The bill allows employers (both private and public) to pay less than the minimum wage to an employee who opts out of receiving it, in the context of a structured work-study, internship, preapprenticeship, or apprenticeship program, or other similar work-based learning opportunity. This may result in increased savings to the employer. However, other employers who do not offer such work-based learning opportunities may be disadvantaged based on the differential personnel costs.

### C. Government Sector Impact:

The bill is not expected to affect state and local government revenues and expenditures.

## VI. Technical Deficiencies:

None.

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<sup>42</sup> See Art. X, § 24(f), FLA. CONST. (“It is intended that case law, administrative interpretations, and other guiding standards developed under the federal FLSA shall guide the construction of this amendment and any implementing statutes or regulations.”).

<sup>43</sup> *Martinez v. Ford Midway Mall, Inc.*, 59 So. 3d 168 (Fla. 3d DCA 2011).

<sup>44</sup> *Id.* at 173, citing *Brooklyn Savings Bank v. O’Neill*, 324 U.S. 697, 707 (1945).

<sup>45</sup> See *Chames v. DeMayo*, 972 So. 2d 850 (Fla. 2007); *Hartwell v. Blasingame*, 564 So. 2d 543 (Fla. 2d DCA 1990), *approved*, 584 So. 2d 6 (Fla. 1991).

<sup>46</sup> *Chames*, 972 So. 2d at 860.

<sup>47</sup> *Sliney v. State*, 699 So. 2d 662, 668 (Fla. 1997).

**VII. Related Issues:**

“Internship” does not appear to have a standardized definition in Florida law, so it may be unclear what types of internships will be eligible for the minimum wage opt-out.

**VIII. Statutes Affected:**

This bill substantially amends s. 448.110, F.S.

**IX. Additional Information:**

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

**CS by Commerce and Tourism on March 10, 2025:**

The committee substitute creates a provision that employees may waive their right to minimum wage by signing a waiver with specified language; provides that parents of minors must sign the waiver for employees under 18 years old; and adds a severability clause to the bill.

- B. **Amendments:**

None.



152346

LEGISLATIVE ACTION

Senate

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House

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The Committee on Governmental Oversight and Accountability  
(Martin) recommended the following:

**Senate Amendment (with title amendment)**

Delete line 27

and insert:

are incorporated herein, except the Fair Labor Standards Act and  
any regulations or interpretations regarding an employee's  
voluntary waiver of his or her right to receive the state  
minimum wage do not apply.

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



152346

11 And the title is amended as follows:

12 Delete line 3

13 and insert:

14 s. 448.110, F.S.; providing an exception to the  
15 requirement that an employee be paid the state minimum  
16 wage; providing that an employer is not

By the Committee on Commerce and Tourism; and Senator Martin

577-02256-25

2025676c1

1 A bill to be entitled  
 2 An act relating to minimum wage requirements; amending  
 3 s. 448.110, F.S.; providing that an employer is not  
 4 subject to certain minimum wage requirements for  
 5 specified employees; authorizing employees to opt out  
 6 of the minimum wage requirements in a specified  
 7 manner; requiring that the parent or guardian of an  
 8 employee who is younger than 18 years of age sign such  
 9 waiver on behalf of the employee; providing  
 10 severability; providing an effective date.  
 11  
 12 Be It Enacted by the Legislature of the State of Florida:  
 13  
 14 Section 1. Subsection (3) of section 448.110, Florida  
 15 Statutes, is amended to read:  
 16 448.110 State minimum wage; annual wage adjustment;  
 17 enforcement.—  
 18 (3) (a) Employers shall pay employees a minimum wage at an  
 19 hourly rate of \$6.15 for all hours worked in Florida. Only those  
 20 individuals entitled to receive the federal minimum wage under  
 21 the federal Fair Labor Standards Act, as amended, and its  
 22 implementing regulations shall be eligible to receive the state  
 23 minimum wage pursuant to s. 24, Art. X of the State Constitution  
 24 and this section. The provisions of ss. 213 and 214 of the  
 25 federal Fair Labor Standards Act, as interpreted by applicable  
 26 federal regulations and implemented by the Secretary of Labor,  
 27 are incorporated herein.  
 28 (b) An employer is not subject to the minimum wage  
 29 requirements of this section for an employee who is in a

Page 1 of 2

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

577-02256-25

2025676c1

30 structured work-study, internship, preapprenticeship, or  
 31 apprenticeship program or other similar work-based learning  
 32 opportunity and such employee opts out of receiving the minimum  
 33 wage.  
 34 (c) An employee may opt out of receiving the minimum wage  
 35 by signing a waiver of his or her right to the minimum wage  
 36 established under this section. The waiver must state that the  
 37 employee acknowledges his or her right to the state minimum wage  
 38 pursuant to s. 24, Art. X of the State Constitution and this  
 39 section and that he or she is knowingly and voluntarily choosing  
 40 to receive a lesser amount for his or her work-based learning  
 41 opportunity as described in paragraph (b). If the employee is  
 42 younger than 18 years of age, the employee's parent or guardian  
 43 must sign the waiver on behalf of the employee.  
 44 (d) If any provision of this section or its application to  
 45 any person or circumstance is held invalid, that provision or  
 46 its application is severable and does not affect the validity of  
 47 other provisions or applications of this section.  
 48 Section 2. This act shall take effect July 1, 2025.

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