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| **Tab 1** | **CS/SB 388** by **RI, Hutson**; (Identical to CS/H 00423) Beverage Law |

| | | | | | | |
|---|---|---|---|---|---|---|
| 235854 | A | S | RCS | RC, Hutson | Delete L.36: | 04/12 09:16 PM |
| 424218 | A | S | RCS | RC, Hutson | btw L.40 - 41: | 04/12 09:16 PM |
| 379250 | A | S | RCS | RC, Brandes | btw L.40 - 41: | 04/12 09:16 PM |

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| **Tab 2** | **CS/CS/SB 596** by **GO, CU, Hutson (CO-INTRODUCERS) Young, Broxson**; (Similar to CS/H 00687) Utilities |

| | | | | | | |
|---|---|---|---|---|---|---|
| 219028 | D | S | | RC, Hutson | Delete everything after | 04/11 04:58 PM |
| 567676 | AA | S | | RC, Hutson | Delete L.194 - 203: | 04/12 11:59 AM |
| 325560 | AA | S | | RC, Lee | Delete L.309 - 310: | 04/12 03:00 PM |
| 741036 | AA | S | | RC, Lee | btw L.467 - 468: | 04/12 03:14 PM |

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| **Tab 3** | **CS/SB 530** by **BI, Steube**; (Compare to CS/H 00877) Health Insurer Authorization |

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| **Tab 4** | **CS/CS/SB 724** by **BI, JU, Passidomo**; (Similar to CS/H 00267) Estates |

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| **Tab 5** | **SCR 920** by **Farmer (CO-INTRODUCERS) Torres, Bracy, Perry**; (Similar to CS/H 00631) Groveland Four |

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|---|---|---|---|---|---|---|
| 976966 | D | S | RCS | RC, Farmer | Delete everything after | 04/12 09:28 PM |

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| **Tab 6** | **SB 1238** by **Bean**; (Similar to CS/H 01043) Utility Investments in Gas Reserves |

| | |
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| **Tab 7** | **CS/CS/SB 1330** by **ED, JU, Stargel**; (Similar to CS/H 00849) Concealed Weapons and Firearms on Private School Property |

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| **Tab 8** | **SB 1620** by **Powell**; (Similar to CS/H 01347) Deceptive and Unfair Trade Practices |

| | |
|---|---|
| **Tab 9** | **CS/SB 36** by **JU, Montford**; (Similar to CS/H 06533) Relief of Jennifer Wohlgemuth by the Pasco County Sheriff's Office |

| | |
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| **Tab 10** | **CS/SJR 76** by **AP, Lee (CO-INTRODUCERS) Garcia, Perry**; (Similar to CS/1ST ENG/H 00021) Limitations on Property Tax Assessments |

| | |
|---|---|
| **Tab 11** | **CS/SB 1136** by **AG, Lee**; (Similar to H 01233) Cottage Food Operations |

| | |
|---|---|
| **Tab 12** | **SB 7024** by **BI**; (Similar to H 07067) OGSR/Title Insurance Agencies or Insurers/Office of Insurance Regulation |

| | | | | | | |
|---|---|---|---|---|---|---|
| 782334 | D | S | RCS | RC, Flores | Delete everything after | 04/12 09:27 PM |

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| **Tab 13** | **SB 7026** by **BI**; (Identical to H 07045) OGSR/Reports of Unclaimed Property/Department of Financial Services |

**The Florida Senate**

# COMMITTEE MEETING EXPANDED AGENDA

**RULES**
**Senator Benacquisto, Chair**
**Senator Thurston, Vice Chair**

**MEETING DATE:** Wednesday, April 12, 2017
**TIME:** 5:00—6:00 p.m.
**PLACE:** *Toni Jennings Committee Room,* 110 Senate Office Building

**MEMBERS:** Senator Benacquisto, Chair; Senator Thurston, Vice Chair; Senators Book, Bradley, Brandes, Braynon, Flores, Galvano, Latvala, Lee, Montford, and Simpson

| TAB | BILL NO. and INTRODUCER | BILL DESCRIPTION and SENATE COMMITTEE ACTIONS | COMMITTEE ACTION |
|---|---|---|---|
| 1 | **CS/SB 388**<br>Regulated Industries / Hutson<br>(Identical CS/H 423) | Beverage Law; Providing an exemption from provisions relating to the tied house evil for specified financial transactions between a manufacturer of beer or malt beverages and a licensed vendor; providing conditions for the exception, etc.<br><br>RI 03/15/2017 Fav/CS<br>CM 04/03/2017 Favorable<br>RC 04/12/2017 Fav/CS | Fav/CS<br>Yeas 12 Nays 0 |
| 2 | **CS/CS/SB 596**<br>Governmental Oversight and Accountability / Communications, Energy, and Public Utilities / Hutson<br>(Similar CS/H 687) | Utilities; Authorizing the Department of Transportation and certain local governmental entities to prescribe and enforce reasonable rules or regulations with reference to the placing and maintaining across, on, or within the right-of-way limits of any road or publicly owned rail corridors under their respective jurisdictions any voice or data communications services lines or wireless facilities; creating the "Advanced Wireless Infrastructure Deployment Act"; authorizing an authority to require permit fees only under certain circumstances, etc.<br><br>CU 03/07/2017 Fav/CS<br>GO 03/27/2017 Fav/CS<br>RC 04/12/2017 Temporarily Postponed | Temporarily Postponed |
| 3 | **CS/SB 530**<br>Banking and Insurance / Steube<br>(Compare CS/H 877) | Health Insurer Authorization; Requiring health insurers and pharmacy benefits managers on behalf of health insurers to provide certain information relating to prior authorization in a specified manner; requiring health insurers to publish on their websites and provide in writing to insureds a specified procedure to obtain protocol exceptions, etc.<br><br>BI 03/27/2017 Fav/CS<br>JU 04/04/2017 Favorable<br>RC 04/12/2017 Favorable | Favorable<br>Yeas 12 Nays 0 |

| TAB | BILL NO. and INTRODUCER | BILL DESCRIPTION and SENATE COMMITTEE ACTIONS | COMMITTEE ACTION |
|---|---|---|---|
| 4 | **CS/CS/SB 724**<br>Banking and Insurance / Judiciary / Passidomo<br>(Similar CS/H 267) | Estates; Revising the circumstances under which the decedent's property interest in the protected homestead is excluded from the elective estate; providing for the valuation of the decedent's protected homestead under certain circumstances; requiring the payment of interest on any unpaid portion of a person's required contribution toward the elective share with respect to certain property, etc.<br><br>JU 03/14/2017 Fav/CS<br>BI 04/03/2017 Fav/CS<br>RC 04/12/2017 Favorable | Favorable<br>Yeas 12 Nays 0 |
| 5 | **SCR 920**<br>Farmer<br>(Similar CS/HCR 631) | Groveland Four; Acknowledging the grave injustice perpetrated against Charles Greenlee, Walter Irvin, Samuel Shepherd, and Ernest Thomas, who came to be known as the "Groveland Four," exonerating the four men, offering a formal and heartfelt apology to these victims of racial hatred and to their families; and urging the Governor and Cabinet to pardon Walter Irvin and Charles Greenlee, etc.<br><br>CJ 03/06/2017 Favorable<br>JU 03/22/2017 Favorable<br>RC 04/12/2017 Fav/CS | Fav/CS<br>Yeas 12 Nays 0 |
| 6 | **SB 1238**<br>Bean<br>(Similar CS/H 1043) | Utility Investments in Gas Reserves; Revising the jurisdiction of the Public Service Commission over public utilities to include the approval of cost recovery for certain gas reserve investments, etc.<br><br>CU 03/14/2017 Favorable<br>RC 04/12/2017 Temporarily Postponed | Temporarily Postponed |
| 7 | **CS/CS/SB 1330**<br>Education / Judiciary / Stargel<br>(Similar CS/H 849) | Concealed Weapons and Firearms on Private School Property; Specifying that concealed weapon and concealed firearm licensees are not prohibited by specified laws from carrying such weapons or firearms on private school property under a specified circumstance, etc.<br><br>JU 03/22/2017 Fav/CS<br>ED 04/03/2017 Fav/CS<br>RC 04/12/2017 Favorable | Favorable<br>Yeas 8 Nays 4 |
| 8 | **SB 1620**<br>Powell<br>(Similar CS/H 1347) | Deceptive and Unfair Trade Practices; Specifying that the Florida Deceptive and Unfair Trade Practices Act does not apply to credit unions regulated by the Office of Financial Regulation or federal agencies, etc.<br><br>BI 03/27/2017 Favorable<br>CM 04/03/2017 Favorable<br>RC 04/12/2017 Favorable | Favorable<br>Yeas 12 Nays 0 |

| TAB | BILL NO. and INTRODUCER | BILL DESCRIPTION and SENATE COMMITTEE ACTIONS | COMMITTEE ACTION |
|---|---|---|---|
| 9 | **CS/SB 36**<br>Judiciary / Montford<br>(Similar CS/H 6533) | Relief of Jennifer Wohlgemuth by the Pasco County Sheriff's Office; Providing for the relief of Jennifer Wohlgemuth by the Pasco County Sheriff's Office; providing for an appropriation to compensate her for injuries and damages sustained as a result of the negligence of an employee of the Pasco County Sheriff's Office, etc.<br><br>SM<br>JU 02/21/2017 Fav/CS<br>CA 04/03/2017 Favorable<br>RC 04/12/2017 Favorable | Favorable<br>Yeas 12 Nays 0 |
| 10 | **CS/SJR 76**<br>Appropriations / Lee<br>(Similar CS/HJR 21) | Limitations on Property Tax Assessments ; Proposing an amendment to the State Constitution to remove a future repeal of provisions in Section 4 of Article VII that limit the amount of annual increases in assessments, except for school district levies, of specified nonhomestead real property, etc.<br><br>AFT 02/22/2017 Fav/CS<br>AP 04/06/2017 Fav/CS<br>RC 04/12/2017 Favorable | Favorable<br>Yeas 12 Nays 0 |
| 11 | **CS/SB 1136**<br>Agriculture / Lee<br>(Similar H 1233) | Cottage Food Operations; Increasing the annual gross sales limitation for exempting cottage food operations from certain food and building permitting requirements; authorizing cottage food products to be advertised, sold, and paid for over the Internet; requiring such products to be delivered in person directly to the consumer or to a specific event venue, etc.<br><br>AG 03/21/2017 Fav/CS<br>CM 04/03/2017 Favorable<br>RC 04/12/2017 Favorable | Favorable<br>Yeas 12 Nays 0 |
| 12 | **SB 7024**<br>Banking and Insurance<br>(Similar H 7067) | OGSR/Title Insurance Agencies or Insurers/Office of Insurance Regulation; Amending provisions relating to an exemption from public records requirements for proprietary business information provided to the Office of Insurance Regulation by title insurance agencies or insurers; removing the scheduled repeal of the exemption, etc.<br><br>GO 04/03/2017 Favorable<br>RC 04/12/2017 Fav/CS | Fav/CS<br>Yeas 11 Nays 0 |

| TAB | BILL NO. and INTRODUCER | BILL DESCRIPTION and SENATE COMMITTEE ACTIONS | COMMITTEE ACTION |
|---|---|---|---|
| 13 | **SB 7026**<br>Banking and Insurance<br>(Identical H 7045) | OGSR/Reports of Unclaimed Property/Department of Financial Services; Amending provisions relating to an exemption from public records requirements for social security numbers and property identifiers, contained in certain reports of unclaimed property, which are held by the Department of Financial Services; removing the scheduled repeal of the exemption, etc.<br><br>GO 04/03/2017 Favorable<br>RC 04/12/2017 Favorable | Favorable<br>Yeas 11 Nays 0 |

Other Related Meeting Documents

**The Florida Senate**

# BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

| | |
|---|---|
| BILL: | CS/CS/SB 388 |
| INTRODUCER: | Rules Committee, Regulated Industries Committee, and Senator Hutson |
| SUBJECT: | Beverage Law |
| DATE: | April 12, 2017 |
| REVISED: | |

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|---|---|---|---|---|
| 1. | Oxamendi | McSwain | RI | **Fav/CS** |
| 2. | Askey | McKay | CM | **Favorable** |
| 3. | Oxamendi | Phelps | RC | **Fav/CS** |

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

COMMITTEE SUBSTITUTE - Substantial Changes

## I. Summary:

CS/CS/SB 388 amends the "tied house evil" statute in s. 561.42, F.S., which prohibits a manufacturer or distributor from having a financial interest, directly or indirectly, in the establishment or business of a licensed vendor, and prohibits a manufacturer or distributor from giving gifts, loans or property, or rebates to retail vendors.

The bill exempts from the tied house evil prohibitions certain financial transactions negotiated at arm's length for fair market value between a manufacturer of beer or malt beverages and a licensed alcoholic beverage vendor.

Such a financial transaction may not involve the sale or distribution of beer or malt beverages, may not limit the sale of beer or malt beverages from another manufacturer, must be with a vendor who operates a theme park, must not exceed 25 such financial transactions in effect during a calendar year with respect to each theme park, and must be registered with the Division of Alcoholic Beverages and Tobacco (division) in the Department of Business and Professional Regulation (DBPR).

The bill amends s. 562.13, F.S., as amended by CS/CS/SB 106 (or similar legislation enacted during the 2017 Regular Session; hereinafter "CS/CS/SB 106"), to permit the employment of persons under the age of 18 (minors) in a retail drug store, grocery store, department store, florist shop, specialty gift shop, or automobile service station that is a package store licensed under s. 565.02(1)(a), F.S., to sell beer, wine, and distilled spirits only in sealed containers for off-

premises consumption. To employ a minor, a vendor must derive 30 percent or less of its monthly gross revenue from the sale of alcoholic beverages. Those vendors may employ a minor only if the minor is supervised by a person 18 years of age or older who verifies the age of any purchaser to be 21 years of age or older and approves the sale of distilled spirits to any purchaser. The bill removes the supervision and verification requirement in s. 562.13, F.S., as amended by CS/CS/SB 106, for sales of beer and wine by a minor.

The bill maintains current law that permits minors to be employed vendors licensed to sell beer or beer and wine, when such sales are only for off premises consumption. Current law does not impose a supervision or verification requirement for sales by minors employed by an alcoholic beverage vendor.

The bill also:

- Repeals the wine container limits, which under current law are limited to containers that hold no more than one gallon reusable containers that holds 5.16 gallons;
- Permits the sale of cider in 32 ounce, 64 ounce, or one gallon growlers in the same manner and with the same restrictions applicable to malt beverage growlers; and
- Repeals the requirement that a restaurant patron must purchase and consume a full course meal in order to be able to leave a restaurant with a partially consumed bottle of wine, but retains the requirement that the restaurant patron purchase a meal with the bottle of wine.

The bill provides an effective date of July 1, 2017.

## II. Present Situation:

In Florida, alcoholic beverages are regulated by the Beverage Law,[1] which regulates the manufacture, distribution, and sale of wine, beer, and liquor by manufacturers, distributors, and vendors.[2] The division administers and enforces the Beverage Law.[3]

"Alcoholic beverages" are defined in s. 561.01, F.S., as "distilled spirits and all beverages containing one-half of 1 percent or more alcohol by volume." "Malt beverages" are brewed alcoholic beverages containing malt.[4]

Section 561.14, F.S., specifies the license and registration classifications used in the Beverage Law.

- "Manufacturers" are those "licensed to manufacture alcoholic beverages and distribute the same at wholesale to licensed distributors and to no one else within the state, unless authorized by statute."[5]
- "Distributors" are those "licensed to sell and distribute alcoholic beverages at wholesale to persons who are licensed to sell alcoholic beverages."[6]

[1] Section 561.01(6), F.S., provides that the "The Beverage Law" means chs. 561, 562, 563, 564, 565, 567, and 568, F.S.
[2] *See* s. 561.14, F.S.
[3] Section 561.02, F.S.
[4] Section 563.01, F.S.
[5] Section 561.14(1), F.S.
[6] Section 561.14(2), F.S.

- "Importers" are those licensed to sell, or to cause to be sold, shipped, and invoiced, alcoholic beverages to licensed manufacturers or licensed distributors, and to no one else in this state; provided that ss. 564.045 and 565.095, F.S., relating to primary American source of supply licensure, are in no way violated by such imports.[7]
- "Vendors" are those "licensed to sell alcoholic beverages at retail only" and may not "purchase or acquire in any manner for the purpose of resale any alcoholic beverages from any person not licensed as a vendor, manufacturer, bottler, or distributor under the Beverage Law."[8]

**Three-Tier System**

In the United States, the regulation of alcohol since the repeal of Prohibition has traditionally been based upon a "three-tier system." The system requires separation of the manufacture, distribution, and sale of alcoholic beverages. The manufacturer creates the beverages, and the distributor obtains the beverages from the manufacturer to deliver to the vendor. The vendor makes the ultimate sale to the consumer.[9] A manufacturer, distributor, or exporter may not be licensed as a vendor to sell directly to consumers.[10]

Generally, in Florida, only licensed vendors are permitted to sell alcoholic beverages directly to consumers at retail.[11] Licensed manufacturers, distributors, and registered exporters are prohibited from also being licensed as vendors.[12] Manufacturers are also generally prohibited from having an interest in a vendor and from distributing directly to a vendor.[13]

**Tied House Evil Prohibitions**

The three-tier system is deeply rooted in the perceived evils of the "tied house" in which a bar is owned or operated by a manufacturer or the manufacturer exercises undue influence over the retail vendor.[14]

Section 561.42, F.S., known as the "tied house evil" statute, regulates the permitted and prohibited relationships and interactions of manufacturers and distributors with vendors in order to prevent a manufacturer or distributor from having a financial interest, directly or indirectly, in the establishment or business of a licensed vendor, and to prevent a manufacturer or distributor from giving a vendor gifts, loans or property, or rebates.[15] The prohibitions also apply to an importer, primary American source of supply,[16] brand owner or registrant, broker, and sales agent (or sales person thereof).

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[7] Section 561.01(5), F.S.
[8] Section 561.14(3). F.S.
[9] Section 561.14, F.S.
[10] Section 561.22(1), F.S.
[11] Section 561.14(3), F.S. However, see the exceptions provided in ss. 561.221 and 565.03, F.S.
[12] Section 561.22, F.S.
[13] Sections 563.022(14) and 561.14(1), F.S.
[14] Erik D. Price, *Time to Untie the House? Revisiting the Historical Justifications of Washington's Three-Tier System Challenged by Costco v. Washington State Liquor Control Board,* (June 2004) available at: http://www.lanepowell.com/wp-content/uploads/2009/04/pricee_001.pdf (last visited March 9, 2017).
[15] Section 561.42(1), F.S.
[16] *See* s. 564.045, F.S.

The tied house evil statute also prohibits any distributor or vendor from receiving any financial incentives from any manufacturer. It further prohibits manufacturers or distributors from assisting retail vendors by gifts or loans of money or property or by the giving of rebates. These prohibitions do not, however, apply to any bottles, barrels, or other containers necessary for the legitimate transportation of such beverages, to advertising materials, or to the extension of credit,[17] for liquors sold, made strictly in compliance with the provisions of s. 561.42, F.S.[18]

Section 561.42, F.S., also prohibits licensed manufactures and distributors from:

- Making further sales to vendors that the division has certified as not having fully paid for all liquors previously purchased;[19]
- Directly or indirectly giving, lending, renting, selling, or in any other manner furnishing to a vendor any outside sign, printed, painted, electric, or otherwise;[20]
- Providing neon or electric signs, window painting and decalcomanias, posters, placards, and other advertising material herein authorized to be used or displayed by the vendor in the interior of his or her licensed premises;[21] and
- Providing expendable retail advertising specialties, unless sold to the vendor at not less than the actual cost to the industry member who initially purchased them.[22]

**Wine and Cider Containers**

Section 564.05, F.S., prohibits the sale of wine in an individual container that hold more than one gallon of wine. However, wine may be sold in a reusable container that holds 5.16 gallons. Distributors and manufacturers may sell wine to other distributors and manufacturers in containers of any size. Any person who violates the prohibition in s. 564.05, F.S., commits a second degree misdemeanor.[23]

Section 564.055, F.S., prohibits the sale of cider[24] at retail in any individual container that holds more than 32 ounces of cider. However, cider may be packaged and sold in bulk, in kegs or barrels, or in any individual container that holds one gallon or more of cider, regardless of container type.

[17] Section 561.42(2), F.S., permits distributors to extend credit for the sale of liquors to any vendor up to, but not including, the 10th day after the calendar week within which such sale was made.
[18] Section 561.42(1), F.S.
[19] Section 561.42(4), F.S.
[20] Section 561.42(10), F.S.
[21] Section 561.42(12), F.S.
[22] Section 561.42(14)(a), F.S.
[23] Section 775.082, F.S., provides that the penalty for a misdemeanor of the second degree is a term of imprisonment not to exceed 60 days. Section 775.083, F.S., provides that the penalty for a misdemeanor of the second degree is a fine not to exceed $500.
[24] Section 564.06(4), F.S., provides that "cider" is "made from the normal alcoholic fermentation of the juice of sound, ripe apples or pears, including but not limited to flavored, sparkling, or carbonated cider and cider made from condensed apple or pear must, that contain not less than one-half of 1 percent of alcohol by volume and not more than 7 percent of alcohol by volume." "Must" is the expressed juice of a fruit before and during fermentation. *See* https://www.merriam-webster.com/dictionary/must (last visited April 13, 2017).

**Growlers**

Malt beverages must be sold or offered for sale in containers that hold no more than 32 ounces, but malt beverages may be packaged and sold in bulk, in kegs or barrels, or in any individual container that contains one gallon or more of cider, regardless of individual container type. [25]

However, malt beverages may also be sold or offered for sale in a "growler," which is a 32 ounce, 64 ounce, or 128 ounce malt beverage container that is filled or refilled at the point of sale. Growlers must identify or be imprinted or labeled with certain information, including the percentage of alcohol by volume, and have an unbroken seal or be incapable of being immediately consumed.[26]

**Restaurants - Off-Premises Consumption of Wine**

Restaurants licensed to sell wine on the premises may permit patrons to remove one bottle of wine for consumption off the licensed premises under the following conditions:

- The patron must have purchased a full-course meal consisting of a salad or vegetable, entrée, a beverage, and bread and consumed a portion of the bottle of wine with the meal;
- Before the partially-consumed bottle of wine is removed from the premises, the bottle must be securely resealed by the licensee, or the licensee's employee, and placed in a bag or other container that is secured in such a manner that it is visibly apparent if the container has been opened or tampered with after having been sealed;
- A dated receipt for the wine and meal must be attached to the container; and
- The container must be placed in a locked glove compartment, trunk, or other area behind the last upright seat of a motor vehicle that does not have a trunk.[27]

**Employment of Minors**

CS/CS/SB 106 by the Rules Committee, the Regulated Industries Committee, and Senator Flores amends the package store restrictions in s. 565.04, F.S.,[28] to provide for the phased repeal of the restrictions, revise the locations where a new package store may be located in relation to a school, revise the requirements for sale of certain sizes of distilled spirits containers in certain situations, and prohibit sales of distilled spirits at gasoline service stations locations of less than 10,000 square feet.

CS/CS/SB 106 also revises the circumstances under which an alcoholic beverage vendor may employ minors. CS/CS/SB 106 amends s. 562.13, F.S., to permit minors to be employed by a vendor that is a retail drug store, grocery store, department store, florist shop, specialty gift shop, or automobile service station and that derives 30 percent or less of its monthly gross revenue

[25] Section 563.06(6), F.S.
[26] Section 563.06(7), F.S.
[27] Section 564.09, F.S.
[28] Section 565.04, F.S., prohibits package stores from selling, offering and exposing for sale other merchandise in addition to distilled spirits, beer and wine. In addition, package stores may not have openings permitting direct access to any other building or room, except to a private office or storage room of the place of business from which patrons are excluded. However, package stores may sell bitters, grenadine, nonalcoholic mixer-type beverages (not including fruit juices produced outside Florida), fruit juices produced in this state, home bar, and party supplies and equipment (including but not limited glassware and party-type foods), miniatures of no alcoholic content and tobacco products.

from the sale of alcoholic beverages. A vendor may employ a minor if the minor is supervised by a person 18 years of age or older who verifies the age of the purchaser to be 21 years of age or older and approves the sale of alcoholic beverages to the purchaser. A vendor may not lawfully employ a minor during a month in which a vendor's gross revenue from the sale of alcoholic beverages exceeds 30 percent its of total revenue.

## III. Effect of Proposed Changes:

**Tied-House Evil Exception**

CS/SB 388 creates s. 561.42(15), F.S., to exempt from the tied house evil prohibitions certain financial transactions negotiated at arm's length for fair market value between a manufacturer of malt beverages and a vendor licensed under the Beverage Law.

Such financial transactions:

- May not involve the sale or distribution of beer or malt beverages;
- May not limit the sale of beer or malt beverages from another manufacturer;
- Must be with a vendor who operates a theme park;
- Must not exceed 25 such financial transactions in effect during a calendar year with respect to each theme park; and
- Must be registered with the division.

The bill defines a "theme park" as a complex comprised of at least 25 contiguous acres owned and controlled by the same business entity, which contains permanent exhibitions and a variety of recreational activities and has a minimum of 1 million visitors annually.[29]

**Employment of Minors by Package Stores**

The bill amends s. 562.13, F.S., as amended by CS/CS/SB 106 (or similar legislation), to permit the employment of minors in a retail drug store, grocery store, department store, florist shop, specialty gift shop, or automobile service station that is a package store licensed under s. 565.02(1)(a), F.S., to sell beer, wine, and distilled spirits only in sealed containers for off-premises consumption. To employ a minor, those vendors must derive 30 percent or less of its monthly gross revenue from the sale of alcoholic beverages. Those vendors may employ a minor only if the minor is supervised by a person 18 years of age or older who verifies the age of any purchaser to be 21 years of age or older and approves the sale of alcoholic beverages to a purchaser. The bill removes the supervision and verification requirement in s. 562.13, F.S., as amended by CS/CS/SB 106, for sales of beer and wine by a minor.

The bill maintains current law to permit minors to be employed by vendors licensed to sell beer or beer and wine under ss. 563.02(1)(a) and 564.02(1)(a), F.S., when such sales are only for off-premises consumption. Current law does not impose a supervision or verification requirement for sales by minors employed by an alcoholic beverage vendor.

[29] This definition of "theme park" is identical to the definition of the term "theme park or entertainment complex" in s. 509.013(9), F.S., which relates to public lodging and public food services establishments.

**Wine Containers**

The bill repeals the wine container size limits in s. 564.05, F.S.

**Cider Containers**

The bill amends s. 564.055, F.S., to permit cider to be packaged, filled, refilled, or sold in 32 ounce, 64 ounce, and one gallon growlers in the same manner and under the same restrictions authorized for malt beverages under s. 563.06(7), F.S.

**Restaurants - Off-Premises Consumption of Wine**

The bill amends s. 564.09, F.S., to repeal the requirement that a restaurant patron must purchase and consume a full course meal in order to be able to leave a restaurant with a partially consumed bottle of wine. The bill retains the requirement that the restaurant patron purchase a meal with the bottle of wine.

**Effective Date**

The bill provides an effective date of July 1, 2017.

## IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

## V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

## VI. Technical Deficiencies:

None.

## VII. Related Issues:

The Department of Business and Professional Regulations reports some potential difficulty in the regulatory monitoring of industry arrangements facilitated by the exemptions provided in the bill.[30]

## VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 561.42, 562.13 (as amended by CS/CS/SB 106), 564.055, and 564.09.

This bill repeals section 564.05 of the Florida Statutes.

## IX. Additional Information:

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

**CS/CS by Rules on April 12, 2017:**
The committee substitute for committee substitute (CS/CS) amends s. 562.13, F.S., as amended by CS/CS/SB 106, to:

- Permit the employment of minors by specified package stores licensed under s. 565.02(1)(a), to sell beer, wine, and distilled spirits;
- Provide a supervision and verification requirement for sales of distilled spirits by minors;
- Remove the supervision and verification requirement for sales of beer and wine; and
- Maintain current law for the employment of minors by vendors licensed to sell beer or beer and wine, when such sales are only for off premises consumption.

The CS/CS also:

- Limits the number of financial transactions that a beer or malt beverage manufacturer may have with a theme park licensed as a vendor to not more than 25 such transactions in effect for each theme park during any calendar year.
- Repeals the wine containers size limitations in s. 565.05, F.S.
- Amends s. 564.055, F.S., to permit cider to be packaged, filled, refilled, or sold in 32 ounce, 64 ounce, and one gallon growlers in the same manner and under the same restrictions authorized for malt beverages under s. 563.06(7), F.S.
- Amends s. 564.09, F.S., to repeal the requirement that a restaurant patron must purchase and consume a full course meal in order to be able to take home a partially consumed bottle of wine. The CS retains the requirement that the restaurant patron must purchase a meal with the bottle of wine.

[30] Department of Business and Profesional Regulation, *2017 Agency Legislative Bill Analysis: SB 388*, (Feb. 17, 2017.) (On file with the Committee on Commerce and Tourism.)

**CS by Regulated Industries on March 15, 2017:**
The committee substitute (CS):

- Does not amend s. 561.42(13), F.S., to prohibit the possession or use of wine and fortified wine coupons or cross-merchandising coupons.
- Amends s. 561.42(15), F.S., to require that, to be exempt from the tied-house evil law, an arms-length financial transaction between a manufacturer of beer or malt beverages and a vendor may not involve the sale or distribution of beer or malt beverages, may not limit the sale of beer or malt beverages from another manufacturer, must be with a vendor who operates a theme park, and must be registered with the division.

B. Amendments:

None.

235854

LEGISLATIVE ACTION

| Senate | . | House |
|---|---|---|
| Comm: RCS | . | |
| 04/12/2017 | . | |
| | . | |
| | . | |
| | . | |

The Committee on Rules (Hutson) recommended the following:

**Senate Amendment**

Delete line 36
and insert:
annually; however the total number of such transactions in effect during any calendar year with respect to each theme park complex may not exceed 25 transactions; and

424218

LEGISLATIVE ACTION

| Senate | . | House |
|---|---|---|
| Comm: RCS | . | |
| 04/12/2017 | . | |
| | . | |
| | . | |
| | . | |

The Committee on Rules (Hutson) recommended the following:

**Senate Amendment (with title amendment)**

Between lines 40 and 41
insert:

Section 2. Paragraph (c) of subsection (2) of section 562.13, Florida Statutes, as amended by section 1 of Senate Bill 106, enacted in the 2017 Regular Section, is amended to read:

562.13 Employment of minors or certain other persons by certain vendors prohibited; exceptions.—

(2) This section shall not apply to:

(c)1. Persons under the age of 18 years who are employed in

424218

a retail drugstore, grocery store, department store, florist shop, specialty gift shop, or automobile service station whose license fees are specified in ~~s. 563.02(1), s. 564.02(1), or~~ s. 565.02(1)(a), if such vendor derives 30 percent or less of its monthly gross revenue from sales of alcoholic beverages. This exception applies only if the minor employees are supervised by a person 18 years of age or older who verifies that any purchaser of alcoholic beverages is 21 years of age or older and who approves the sale of alcoholic beverages to such purchaser; however, the requirement for supervision and approval does not apply to sales of beer and wine. Failure to comply with the restriction on monthly revenue from the sale of alcoholic beverages is unlawful if a person under the age of 18 years is employed in the licensed premises during a month that the restriction is exceeded.

2. Persons under the age of 18 years who are employed in a retail drug store, grocery store, department store, florist shop, specialty gift shop, or automobile service station that has obtained a license only to sell beer or beer and wine, when such sales are made for consumption off the premises.

However, a minor to whom this subsection otherwise applies may not be employed if the employment, whether as a professional entertainer or otherwise, involves nudity, as defined in s. 847.001, on the part of the minor and such nudity is intended as a form of adult entertainment.

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

And the title is amended as follows:


424218

Delete line 7

and insert:

conditions for the exception; amending s. 562.13, F.S.; revising applicability to specify circumstances under which persons under the age of 18 years who are employed in specified businesses are excluded from certain employment prohibitions; providing an effective

379250

LEGISLATIVE ACTION

| Senate | . | House |
|---|---|---|
| Comm: RCS | . | |
| 04/12/2017 | . | |
| | . | |
| | . | |
| | . | |

The Committee on Rules (Brandes) recommended the following:

**Senate Amendment (with title amendment)**

Between lines 40 and 41
insert:

Section 2. Section 564.05, Florida Statutes, is repealed.

Section 3. Section 564.055, Florida Statutes, is amended to read:

564.055 Cider containers.—Notwithstanding any other law to the contrary, cider, as defined in s. 564.06(4), may be sold by vendors at retail in any size individual container containing no more than 32 ounces of cider; however, this section does not

379250

prohibit cider from being packaged and sold in bulk, in kegs or barrels, or in any individual container that contains 1 gallon or more of cider, regardless of container type. In addition, cider may be packaged, filled, refilled, or sold in 32-ounce, 64-ounce, and 1-gallon growlers in the same manner and under the same restrictions as authorized for malt beverages pursuant to s. 563.06(7).

Section 4. Section 564.09, Florida Statutes, is amended to read:

564.09 Restaurants; off-premises consumption of wine.—Notwithstanding any other provision of law, a restaurant licensed to sell wine on the premises may permit a patron to remove one unsealed bottle of wine for consumption off the premises if the patron has purchased a ~~full course~~ meal ~~consisting of a salad or vegetable, entree, a beverage, and bread~~ and consumed a portion of the bottle of wine ~~with such meal~~ on the restaurant premises. A partially consumed bottle of wine that is to be removed from the premises must be securely resealed by the licensee or its employees before removal from the premises. The partially consumed bottle of wine shall be placed in a bag or other container that is secured in such a manner that it is visibly apparent if the container has been subsequently opened or tampered with, and a dated receipt for the bottle of wine and ~~full course~~ meal shall be provided by the licensee and attached to the container. If transported in a motor vehicle, the container with the resealed bottle of wine must be placed in a locked glove compartment, a locked trunk, or the area behind the last upright seat of a motor vehicle that is not equipped with a trunk.

379250

41
42 ================ T I T L E  A M E N D M E N T ================
43 And the title is amended as follows:
44 Delete line 7
45 and insert:
46 conditions for the exception; repealing s. 564.05,
47 F.S., relating to limitations on the size of
48 individual wine containers; amending s. 564.055; F.S.;
49 authorizing the packaging, filling, refilling, or
50 sale, of cider in growlers; amending s. 564.09, F.S.;
51 revising provisions authorizing a restaurant to allow
52 a patron to remove a resealed wine container from a
53 restaurant for off-premises consumption; providing an
54 effective

**By** the Committee on Regulated Industries; and Senator Hutson

580-02477-17 2017388c1

A bill to be entitled

An act relating to the Beverage Law; amending s. 561.42, F.S.; providing an exemption from provisions relating to the tied house evil for specified financial transactions between a manufacturer of beer or malt beverages and a licensed vendor; providing conditions for the exception; providing an effective date.

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

Section 1. Subsection (15) is added to section 561.42, Florida Statutes, to read:

561.42 Tied house evil; financial aid and assistance to vendor by manufacturer, distributor, importer, primary American source of supply, brand owner or registrant, or any broker, sales agent, or sales person thereof, prohibited; procedure for enforcement; exception.—

(15) This section does not apply to a financial transaction negotiated at arm's length for fair market value between a manufacturer of beer or malt beverages, as defined in s. 563.01, and a vendor licensed under the Beverage Law if:

(a) Such financial transaction does not involve, either all or in part, the direct sale or distribution of beer or malt beverages between the manufacturer and licensed vendor;

(b) Such financial transaction does not limit, either directly or indirectly, the sale of alcoholic beverages from another manufacturer during or in connection with any sponsored events;







580-02477-17 2017388c1

(c) The vendor operates places of business where consumption on the premises is permitted, which premises are located within a theme park complex comprised of at least 25 contiguous acres owned and controlled by the same business entity and which contains permanent exhibitions and a variety of recreational activities and has a minimum of 1 million visitors annually; and

(d) The financial transaction is registered with the division with a summary of the transaction that includes a description of any sponsored events, activities, or cooperative advertising.

Section 2. This act shall take effect July 1, 2017.

THE FLORIDA SENATE

# APPEARANCE RECORD

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

4/12/17
*Meeting Date*

388
*Bill Number (if applicable)*

Topic _____

*Amendment Barcode (if applicable)*

Name Jon Costello

Job Title Lobbyist

Address 119 S Monroe
*Street*

Phone _____

_____
*City* *State* *Zip*

Email _____

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Miller Coors

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/14/14)

**THE FLORIDA SENATE**

# APPEARANCE RECORD

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

4/12/17
*Meeting Date*

388
*Bill Number (if applicable)*

*Amendment Barcode (if applicable)*

Topic BEVERAGE LAW

Name Beth Thibodaux

Job Title Sr. GOVERNMENT AFFAIRS OFFICER

Address 9205 SouthPark Center Loop
*Street*

Orlando FL 32819
*City* *State* *Zip*

Phone 407-226-5827

Email beth.thibodaux@seaworld.com

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

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

Representing SEA WORLD

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

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

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

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

S-001 (10/14/14)

**THE FLORIDA SENATE**

# APPEARANCE RECORD

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

4·12·17
*Meeting Date*

388
*Bill Number (if applicable)*

Topic Beverage Law

*Amendment Barcode (if applicable)*

Name Mac Stipanovich

Job Title Legal Counsel

Address 104 Monroe Street
*Street*
Tallahassee FL 32301
*City* *State* *Zip*

Phone 850·681·4265

Email mac.stipanovich@bipc.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Universal Mando

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

**THE FLORIDA SENATE**

# APPEARANCE RECORD

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

4/12/17
*Meeting Date*

388
*Bill Number (if applicable)*

Topic Tied House Exception

*Amendment Barcode (if applicable)*

Name Mitch Rubin

Job Title Executive Director

Address 215 S. Monroe St. #340
*Street*

Tallahassee, FL 32301
*City* *State* *Zip*

Phone (850) 224-2337

Email: MRubin2505@aol.com
Mitch@fbwa.com

Speaking: ☐ For ☒ Against ☐ Information

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

Representing Florida Beer Wholesalers Assn

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

Duplicate

**THE FLORIDA SENATE**

# APPEARANCE RECORD

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

4/12/17
*Meeting Date*

388
*Bill Number (if applicable)*

Topic Beverage Law

*Amendment Barcode (if applicable)*

Name Brewster Bevis

Job Title Senior Vice President

Address 516 N. Adams St
*Street*

Phone 224-7173

Tallahassee FL 32301
*City* *State* *Zip*

Email bbevis@aif.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Associated Industries of Florida

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/14/14)

**THE FLORIDA SENATE**

# APPEARANCE RECORD

4-12-17
*Meeting Date*

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

388
*Bill Number (if applicable)*

Topic Beverage Law

*Amendment Barcode (if applicable)*

Name Natalie King

Job Title VP/COO

Address 113 E College Ave.
*Street*

Tallahassee FL
*City* *State* *Zip*

Phone 813 924 8218

Email Natalie@rsaconsulting.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Pepsi Distributing

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

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

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

S-001 (10/14/14)

**THE FLORIDA SENATE**

# APPEARANCE RECORD

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

4/12
*Meeting Date*

SB 388
*Bill Number (if applicable)*

Topic Beer - theme Parks

*Amendment Barcode (if applicable)*

Name Eric Criss

Job Title President

Address 110 S. Monroe St
*Street*

Tallahassee FL 32309
*City* *State* *Zip*

Phone 491-3903

Email eric@floridabeer.org

Speaking: ☐ For ☒ Against ☐ Information

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

Representing Beer Industry of Florida

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

**The Florida Senate**

# BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

| | |
|---|---|
| BILL: | CS/CS/SB 596 |
| INTRODUCER: | Governmental Oversight and Accountability Committee; Communications, Energy, and Public Utilities Committee; and Senator Hutson and others |
| SUBJECT: | Utilities |
| DATE: | April 11, 2017 |
| REVISED: | |

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|---|---|---|---|---|
| 1. | Wiehle | Caldwell | CU | **Fav/CS** |
| 2. | Peacock | Ferrin | GO | **Fav/CS** |
| 3. | Wiehle | Phelps | RC | **Pre-meeting** |

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

COMMITTEE SUBSTITUTE - Substantial Changes

## I. Summary:

CS/CS/SB 596 creates the Advanced Wireless Infrastructure Deployment Act. Put very simply, it creates a process for gaining access to and use of public rights-of-way in connection with the installation of small wireless communications infrastructure.

The bill creates a process and time limits for review and approval of applications by an authority. An authority is defined as a county or municipality having jurisdiction and control of the rights-of-way of any public road. An authority does not include the Department of Transportation, and its rights-of-way are excluded from this bill. The authority must approve a complete application unless it does not meet the authority's applicable codes, defined to include "uniform building, fire, electrical, plumbing, or mechanical codes adopted by a recognized national code organization, or local amendments to those codes, enacted solely to address threats of destruction of property or injury to persons," and qualifying government historic preservation zoning regulations. This excludes consideration and application of zoning, land use, aesthetic ordinances, and of any other source of public safety protections.

The bill provides for application or permit fees and collocation or pole attachment fees. Collocation fees cannot exceed $15.00 per year per authority utility pole. Collocation fees include the costs to alter a pole to strengthen it to support the installation of the wireless infrastructure, including costs to replace a pole if necessary. They do not include any consultant fees or expenses.

The bill does not authorize a person to collocate small wireless facilities on a privately owned utility pole, a utility pole owned by an electric cooperative or by a municipal electric utility, a privately owned wireless support structure, or other private property without the consent of the property owner.

Additionally, the bill does not authorize a person to collocate small wireless facilities or micro wireless facilities on a utility pole or erect a wireless support structure in the right-of-way located within a retirement community that is deed-restricted for specified older persons, has more than 5,000 residents, and has underground utilities.

The bill takes effect July 1, 2017.

## II. Present Situation:

### Use of Right-of-Way by Communications Services Providers

Section 337.401, F.S., authorizes the Department of Transportation (DOT or the department) and local governmental entities that have jurisdiction and control of public roads (jointly referred to as the or an authority) to prescribe and enforce reasonable rules or regulations for placing and maintaining of structures across, on, or within the right-of-way limits of a road. An authority may authorize any person who is a resident of this state or any corporation either organized under the laws of this state or licensed to do business within this state to use a right-of-way for the utility[1] in accordance with the authority's adopted rules or regulations.[2] The statute prohibits a utility from installing, locating, or relocating within a right-of-way unless authorized by a written permit.[3] The permit must require the permitholder to be responsible for any damage resulting from the use of the right-of-way.[4]

Municipal and county rights-of-way access rules and regulations relating to communications services providers must be reasonable and nondiscriminatory and must be generally applicable to all providers of communications services.[5] The rules and regulations must be "generally applicable" to all such providers and may not require such providers to apply for or enter into an individual license, franchise, or other agreement as a condition of using the right of way.[6]

A municipality or charter county may require and collect permit fees from any providers of communications services that use or occupy municipal or county roads or rights-of-way.[7] To ensure nondiscriminatory and competitively neutral permit fees for communications services

[1] Existing paragraph 337.401(1)(a), F.S., refers to "any electric transmission, telephone, telegraph, or other communications services lines; pole lines; poles; railways; ditches; sewers; water, heat, or gas mains; pipelines; fences; gasoline tanks and pumps; or other structures referred to in this section and in ss. 337.402, 337.403, and 337.404 as the 'utility'." This indirectly defines the term "utility" not by type of entity or by type of service provided but by the type of structure some type of entity might use in providing some type of service.
[2] Section 337.401(2), F.S.
[3] *Id*.
[4] *Id*.
[5] Section 337.401(3)(a), F.S.
[6] *Id*.
[7] Section 337.401(3)(c)1.a.(I), F.S.

providers, municipalities and charter counties must elect to collect permit fees for use of the right-of-way in one of two ways. First, the local government can elect to require the payment of fees from any such providers, provided that the fees are "reasonable and commensurate with the direct and actual cost of the regulatory activity," "demonstrable," and "equitable among users of the roads or rights-of-way."[8] If the local government makes this election, the rate of its local communications service tax[9] is automatically reduced by a rate of 0.12 percent. Second, the local government can elect not to require payment of fees from any such provider and may increase its local communications service tax by a rate of up to 0.12 percent. A noncharter county may make the same election. If it chooses not to impose permit fees, it may increase its local communications service tax by a rate of up to 0.24 percent to replace the revenues it would have received for such permit fees.[10]

**Local Government Pole Attachment Fees**

With certain exceptions, the authority of a public body[11] to require taxes, fees, charges, or other impositions[12] from dealers of communications services for occupying its roads and rights-of-way is specifically preempted by the state.[13] Among the taxes, fees, and charges *not* preempted[14] are the following:

- Pole attachment fees charged by a local government for attachments to its utility poles.
- Amounts charged for the rental or other use of property owned by a public body which is not in the public rights-of-way to a dealer of communications services for any purpose, including, but not limited to, the placement or attachment of equipment used in the provision of communications services.
- Permit fees related to placing or maintaining facilities in or on public roads or rights-of-way pursuant to s. 337.401, F.S.

Accordingly, local governments may establish pole attachment fees for communications services facilities by ordinance or agreement.

**Collocation of Wireless Communications Facilities in DOT Rights-of-Way**

With respect to property acquired for state rights-of-way, the DOT is responsible for negotiating leases that provide access for wireless communications facilities.[15] Payments required under such leases must be reasonable and reflect the market rate for the use of the state government-

[8] Section 337.401(3)(c)1.a.(I)., F.S. Such costs include the costs of issuing and processing permits, plan reviews, physical inspection, and direct administrative costs.
[9] Local communications services taxes are authorized and governed by ch. 202, F.S.
[10] Section 337.401(3)(c)2., F.S.
[11] Section 1.01(8), F.S., provides that a "public body" includes counties, cities, towns, villages, special tax school districts, special road and bridge districts, bridge districts, and all other districts in this state.
[12] Section 202.24(2)(b), F.S., provides, in part, that a tax, charge, fee, or other imposition includes any amount or in-kind payment of property or services which is required by ordinance or agreement to be paid or furnished to a public body by or through a dealer of communications services in its capacity as a dealer of communications services.
[13] Section 202.24(1), F.S.
[14] *See* s. 202.24(2)(c), F.S.
[15] Section 365.172(13)(f), F.S.

owned property. DOT is authorized to adopt rules for granting such leases, including terms and conditions.[16]

The DOT has entered into three competitively bid leases that allow the lessee to place wireless facilities on the DOT's rights-of-way or to sublease those rights to a third-party for the same purpose.[17] The DOT indicates that it derives an income stream from each of these agreements.[18] The DOT Turnpike System, which includes the Western Beltway, Suncoast Parkway, Veterans Expressway, I-4 connector, Polk Parkway, Sawgrass Expressway, Turnpike Mainline, Beachline Expressway, and Seminole Expressway, is not subject to rights-of-way leases for wireless facilities.[19]

**Federal Law on Wireless Facilities Siting**

The FCC interprets and implements certain provisions of federal law that are designed, among other purposes, to "remove barriers to deployment of wireless network facilities by hastening the review and approval of siting applications by local land-use authorities."[20] These statutory provisions preserve state and local governments' authority to control the "placement, construction, and modification of personal wireless service facilities" and to manage "use of public rights-of-way," but they prohibit state and local governments from using certain unreasonable criteria in making such decisions.[21] Under the authority granted by these provisions, the FCC has issued orders to clarify the "maximum presumptively reasonable time frames for review of siting applications and the criteria local governments may apply in deciding whether to approve them."[22]

Federal law establishes that state and local governments may not establish laws, regulations, or other requirements that prohibit or have the effect of prohibiting the ability of any entity to provide personal wireless services[23] or other telecommunications services.[24] The FCC has interpreted these provisions as precluding state or local government actions that materially inhibit the ability of an entity to compete in a fair and balanced legal and regulatory environment. Federal circuit courts have varied on the particular standards to apply in this area.[25]

---

[16] *Id.*

[17] Florida Department of Transportation, *2017 Legislative Bill Analysis SB 596* (Jan. 30, 2017) (Copy on file with the Governmental Oversight and Accountability Committee*)*. The analysis identifies the following leases: American Tower/Lodestar, entered into on March 25, 1999, with a thirty-year term; Rowstar #1, entered into on December 4, 2014, with a ten-year term, extendable for up to four additional ten year terms at the discretion of Rowstar; and Rowstar #2, entered into on December 29, 2016, with a ten-year term, extendable for up to four additional ten year terms at the discretion of Rowstar.

[18] *Id.*

[19] *Id.*

[20] *See* FEDERAL COMMUNICATIONS COMMISSION, *Comments Sought on Mobilitie, LLC Petition for Declaratory Ruling and Possible Ways to Streamline Deployment Of Small Cell Infrastructure* (*FCC 2016 Notice*), WT Docket No. 16-421, DA 16-1427, December 22, 2016, at p. 2; 47 U.S.C. §§253, 332(c)(7), and 1455(a).

[21] *Id.* at p. 5, citing 47 U.S.C. §§253(c) and 332(c)(7)(A).

[22] *Id.* at p. 2

[23] Under 47 U.S.C. 332(c)(7), "personal wireless services" are defined as "commercial mobile services, unlicensed wireless services, and common carrier wireless exchange access services."

[24] *FCC 2016 Notice* at p. 10, citing 47 U.S.C. §§253(a) and 332(c)(7).

[25] *Id.*

Further, federal law provides that state and local governments may manage the public rights-of-way and may require fair and reasonable compensation from telecommunications providers for use of those rights-of-way on a nondiscriminatory basis.[26] The FCC has not interpreted this provision, and federal circuit courts have varied on the issue of what constitutes "fair and reasonable" compensation.[27]

In December 2016, in response to a petition for declaratory ruling, the FCC issued a public notice seeking comment on streamlining the deployment of small cell infrastructure by improving wireless facilities siting policies.[28] In its notice, the FCC summarized the issues:

> To satisfy consumers' rapidly growing demand for wireless broadband and other services, wireless companies are actively expanding the network capacity needed to maintain and improve the quality of existing services and to support the introduction of new technologies and services. In particular, many wireless providers are deploying small cells and distributed antenna systems (DAS) to meet localized needs for coverage and increased capacity in outdoor and indoor environments. Although the facilities used in these networks are smaller and less obtrusive than traditional cell towers and antennas, they must be deployed more densely – i.e., in many more locations – to function effectively. As a result, local land-use authorities in many areas are facing substantial increases in the volume of siting applications for deployment of these facilities. This trend in infrastructure deployment is expected to continue, and even accelerate, as wireless providers begin rolling out 5G services.
>
> This creates a dilemma. We recognize, as did Congress in enacting Sections 253 and 332 of the Communications Act, that localities play an important role in preserving local interests such as aesthetics and safety. At the same time, the Commission has a statutory mandate to facilitate the deployment of network facilities needed to deliver more robust wireless services to consumers throughout the United States. It is our responsibility to ensure that this deployment of network facilities does not become subject to delay caused by unnecessarily time-consuming and costly siting review processes that may be in conflict with the Communications Act.

The stated purpose of the FCC's request for comments is to develop a factual record to assess whether and to what extent the process of local land-use authorities' review of siting applications is hindering, or is likely to hinder, the deployment of wireless infrastructure. Among the matters on which the FCC is seeking comment and guidance are questions specifically related to access to state and local government rights-of-way and the fees imposed for such access.[29] The FCC indicated that this "data-driven evaluation will make it possible to reach well-supported decisions

[26] *Id.* at p. 12, citing 47 U.S.C. §253(c).
[27] *Id.* at p. 13.
[28] *Id.*
[29] *Id.* at pp. 8-14.

on which further Commission actions, if any, would most effectively address any problem, while preserving local authorities' ability to protect interests within their purview."[30]

**Deployment of Small Wireless Facilities in Florida**

Wireless service providers and wireless infrastructure providers have begun the deployment of small cell wireless infrastructure in various jurisdictions within Florida. These providers indicate that their efforts have been hampered to varying degrees by some local governments that have imposed conditions or moratoria on the siting of small cell facilities.[31] In general, these moratoria indicate that they are temporary measures designed to allow the local government to review their standards, regulations, and requirements related to siting of wireless communications facilities to address small cell facilities.[32] In one instance, the municipality has renewed its moratoria on multiple occasions, extending its effect from the original six months to over 30 months.[33]

**The Florida Fair Housing Act/Housing for Older Persons**

The Florida Fair Housing Act (FFHA)[34] is modeled after the Federal Fair Housing Act.[35] The FFHA prohibits a person from refusing to sell or rent, or otherwise make unavailable a dwelling to any person because of race, color, national origin, sex, handicap, familial status, or religion.[36] The Florida Commission on Human Relations (FCHR) is the state agency established to enforce Florida's anti-discrimination laws.[37]

There are several exemptions to the FFHA, including "housing for older persons." Section 760.29(4)(a), F.S., exempts "housing for older persons" from the anti-discrimination provisions of the act relating to familial status.

Section 760.29(4)(b), F.S., provides, in part, that the term "housing for older persons" means housing:

1. Provided under any state or federal program that the commission (FCHR) determines is specifically designed and operated to assist elderly persons, as defined in the state or federal program;
2. Intended for, and solely occupied by, persons 62 years of age or older; or
3. Intended and operated for occupancy by persons 55 years of age or older that meets the following requirements:

a. At least 80 percent of the occupied units are occupied by at least one person 55 years of age or older.

b. The housing facility or community publishes and adheres to policies and procedures that demonstrate the intent required under this subparagraph.

[30] *Id.* at p. 2.
[31] Several municipalities and counties have adopted moratoria, including the City of Fort Lauderdale, the City of Tallahassee, and Pinellas County.
[32] *See, e.g.,* City of Tallahassee, Resolution No. 16-R-42, December 2016.
[33] City of Fort Lauderdale, Resolution No. 17-30, February 21, 2017.
[34] Part II of Chapter 760, F.S., is the Florida Fair Housing Act.
[35] 42 U.S.C. s. 3601 *et seq*.
[36] Section 760.23(1), F.S.
[37] *See* ss. 760.01–760.11, F.S., and ss. 760.20-760.37, F.S.

c. The housing facility or community complies with rules made by the Secretary of the United States Department of Housing and Urban Development pursuant to 24 C.F.R. part 100 for verification of occupancy.

A facility or community claiming a "housing for older persons" exemption from the FFHA is required to register with the FCHR by sending a letter to the Commission stating that the facility or community is in compliance with the applicable requirements.[38] Failure to comply with the registration requirement does not disqualify a facility or community that otherwise qualifies for the exemption.[39]

## III. Effect of Proposed Changes:

The bill creates the Advanced Wireless Infrastructure Deployment Act, a new subsection s. 337.401(7), F.S.

**Definitions**

The bill creates definitions, including the following related to wireless entities:

- An "applicant" is a person who submits an application and is a wireless provider.
- An "application" is a request submitted by an applicant to an authority for a permit to collocate small wireless facilities.
- A "wireless provider" is a wireless services provider or a wireless infrastructure provider.
- A "wireless services provider" is a person who provides wireless services.
- "Wireless services" are any services provided using licensed or unlicensed spectrum, whether at a fixed location or mobile, using wireless facilities.
- A "wireless infrastructure provider" is a person certificated to provide telecommunications service in the state and who builds or installs wireless communication transmission equipment, wireless facilities, or wireless support structures, but is not a wireless services provider.

The bill defines four types of wireless infrastructure:

- A "wireless facility" is equipment at a fixed location which enables wireless communications between user equipment and a communications network, including radio transceivers, antennas, wires, coaxial or fiber optic cable or other cables, regular and backup power supplies, and comparable equipment, regardless of technological configuration, and equipment associated with wireless communications. The term includes small wireless facilities. The term does not include:
  - The structure or improvements on, under, within, or adjacent to the structure on which the equipment is collocated;
  - Wireline backhaul facilities; or
  - Coaxial or fiber-optic cable that is between wireless structures or utility poles or that is otherwise not immediately adjacent to or directly associated with a particular antenna.
- A "small wireless facility" is a wireless facility that meets both the following qualifications:

[38] Section 760.29(4)(e), F.S.
[39] *Id*.

  - Each antenna associated with the facility is located inside an enclosure of no more than six cubic feet in volume or, in the case of antennas that have exposed elements, each antenna and all of its exposed elements could fit within an enclosure of no more than six cubic feet in volume; and
  - All other wireless equipment associated with the facility is cumulatively no more than 28 cubic feet in volume. The following types of associated ancillary equipment are not included in the calculation of equipment volume: electric meters, concealment elements, telecommunications demarcation boxes, ground-based enclosures, grounding equipment, power transfer switches, cut-off switches, vertical cable runs for the connection of power and other services, and utility poles or other support structures.
- A "micro wireless facility" is a small wireless facility having dimensions no larger than 24 inches in length, 15 inches in width, and 12 inches in height and that has an exterior antenna, if any, no longer than 11 inches.
- An "antenna" is communications equipment that transmits or receives electromagnetic radio frequency signals used in providing wireless services.

The bill defines three types of structures on which an applicant may seek to locate infrastructure:
- An "authority utility pole" is a utility pole owned by an authority in the right-of-way. The term does not include a utility pole owned by a municipal electric utility, any utility pole used to support municipally owned or operated electric distribution facilities, or a utility pole located in the right-of-way within a retirement community that:
  - Is deed-restricted as housing for older persons as defined in s. 760.29(4)(b), F.S.;
  - Has more than 5,000 residents; and
  - Has underground utilities for electric transmission or distribution.
- A "utility pole" is a pole or similar structure that is used in whole or in part to provide communications services or for electric distribution, lighting, traffic control, signage, or a similar function.
- A "wireless support structure" is a freestanding structure, such as a monopole, a guyed or self-supporting tower, a billboard, or another existing or proposed structure designed to support or capable of supporting wireless facilities. The term does not include a utility pole.

The bill also creates the following definitions:
- "Applicable codes" means uniform building, fire, electrical, plumbing, or mechanical codes adopted by a recognized national code organization, or local amendments to those codes, enacted solely to address threats of destruction of property or injury to persons. The term also includes local government historic preservation zoning regulations consistent with the preservation of local zoning authority under 47 U.S.C s. 332(c)(7), the requirements for facility modifications under 47 U.S.C. s. 1455(a), or the National Historic Preservation Act of 1966, as amended, and the regulations adopted to implement these laws.
- "Authority" means a county or municipality having jurisdiction and control of the rights-of-way of any public road. The term does not include the DOT, and its rights-of-way are excluded from the bill.
- "Collocate" or "collocation" means to install, mount, maintain, modify, operate, or replace one or more wireless facilities on, under, within, or adjacent to a wireless support structure or utility pole.
- "FCC" means the Federal Communications Commission.

**Application**

The process necessarily begins with an application; however, the bill does not expressly authorize an authority to develop a form or to require that an applicant provide specific information, although it does contain statements that *imply* some level of authorization. For example, it prohibits an authority from requiring an applicant to provide more information to obtain a permit than is required of electric service providers and other communications service providers that are not wireless service providers.[40] A proponent has argued that this prohibition against requiring more information *indirectly authorizes* an authority to require an applicant to provide the same information as the listed providers. The bill also makes numerous references to a "complete" application. An application cannot be determined to be complete or incomplete without some standard by which to judge, which presumably would be set forth in requirements for the application and permit. However, this, too, is implied or indirect authority.

It *appears* that the application process is for small wireless facilities only, although the bill defines three other types of infrastructure:

- When the bill mentions infrastructure in substantive provisions, it is usually small wireless facilities, and the definition of "application" is a request submitted by an applicant to an authority for a permit to collocate small wireless facilities.[41]
- However, it is possible that an application could be for installation of a micro wireless facility. A micro wireless facility is a type of small wireless facility, so it could be included in the substantive provisions on small wireless facilities. Additionally, the only use of the term micro wireless facility is in a prohibition against authorities requiring approval or fees for specified activities involving micro wireless facilities,[42] which does not necessarily rule out an application for other uses of these facilities.
- The term antenna is used most often in defining the components of other infrastructure and is used only once in a substantive provision, which prohibits an authority from requiring placement of multiple antenna systems on a single utility pole.[43]
- The bill only used the term "wireless facility" in defining "small wireless facility."

The bill requires wireless infrastructure providers include an attestation in their application to an authority that small wireless facilities will be collocated on the utility pole or structure and small wireless facilities will be used by a wireless services provider to provide service within 9 months after the application is granted. The authority must accept and process the application in accordance with the bill and any applicable local codes governing the placement of utility poles in the public right-of-way.

**Application Review and Approval**

The bill establishes the following process and time requirements for the application review and approval:

[40] Section 337.401(7)(d)2., F.S., as proposed by CS/CS/SB 596.
[41] Definitions are not substantive law, so this only provides some level of guidance in interpreting the substantive provisions.
[42] Section 337.401(7)(e)3., F.S., as proposed by CS/CS/SB 596.
[43] Section 337.401(7)(d)3., F.S., as proposed by CS/CS/SB 596.

- The authority must determine whether the application is complete[44] and notify the applicant by electronic mail within 10 days after receiving an application.[45] If an authority deems an application incomplete, the authority must specifically identify the missing information. The application is deemed complete when the applicant submits all documents, information, and fees specifically enumerated in the authority's permit application form or if the authority fails to provide notification to the applicant within 10 days.[46]
- If the authority fails to approve or deny a complete application within 60 days after receipt of the application, the application is deemed approved.[47]
- The authority must notify the applicant of approval or denial by electronic mail. The bill requires an authority to approve a complete application unless it does not meet the authority's applicable codes.[48] If the authority denies the application, the authority must specify in writing the basis for denial, including the specific code provisions on which the denial was based, and send the documentation to the applicant by electronic mail on the day the authority denies the application. The applicant then has 30 days after notice of the denial is sent to the applicant to cure the identified deficiencies and resubmit the application. The authority then must approve or deny the revised application within 30 days after receipt or the application will be deemed approved. Any subsequent review is limited to the deficiencies cited in the denial.[49]
- An applicant seeking to collocate small wireless facilities within the jurisdiction of a single authority may, at the applicant's discretion, file a consolidated application and receive a single permit for the collocation of multiple small wireless facilities.[50] Presumably, the above time limit requirements apply to such a consolidated application.

In reviewing an application, the authority must process applications on a nondiscriminatory basis.[51] The bill prohibits the authority from doing the following:

- Directly or indirectly requiring an applicant to perform services unrelated to the collocation for which approval is sought, such as in-kind contributions to the authority, including reserving fiber, conduit, or pole space for the authority;[52]
- Requiring an applicant to provide more information to obtain a permit than is required of electric service providers and other communications service providers that are not wireless service providers;[53]

[44] The bill does not authorize authorities to establish requirements or standards by which completeness of an application may be determined.
[45] Ten days may be an inadequate time for a local government to make the engineering determination that a proposed location, installation, and resulting wind load comply with applicable codes.
[46] Section 337.401(7)(d)5., F.S., as proposed by CS/CS/SB 596.
[47] Section 337.401(7)(d)6., F.S., as proposed by CS/CS/SB 596.
[48] The term "applicable codes" is defined to include "uniform building, fire, electrical, plumbing, or mechanical codes adopted by a recognized national code organization, or local amendments to those codes, enacted solely to address threats of destruction of property or injury to persons." This excludes consideration and application of zoning, land use, and aesthetic ordinances and of any other source of public safety protections.
[49] Section 337.401(7)(d)7., F.S., as proposed by CS/CS/SB 596.
[50] Section 337.401(7)(d)8., F.S., as proposed by CS/CS/SB 596.
[51] Section 337.401(7)(d)6., F.S., as proposed by CS/CS/SB 596.
[52] Section 337.401(7)(d)1., F.S., as proposed by CS/CS/SB 596.
[53] Section 337.401(7)(d)2., F.S., as proposed by CS/CS/SB 596.

- Requiring the placement of small wireless facilities on any specific utility pole or category of poles or requiring multiple antenna systems on a single utility pole;[54]
- Limit the placement of small wireless facilities by minimum separation distances or a maximum height limitation; however, an authority may limit the height of a small wireless facility to no more than 10 feet above the tallest existing utility pole, measured from grade in place within 500 feet of the proposed location of the small wireless facility. If there is no utility pole within 500 feet, the authority may limit the height of the small wireless facility to no more than 60 feet. The height limitations do not apply to the placement of any small wireless facility on a utility pole or wireless support structure constructed on or before June 30, 2017, if the small wireless facility does not extend more than 10 feet above the structure:[55] and
- Enter into an exclusive arrangement with any person for the right to attach equipment to authority utility poles.[56]

The bill prohibits requiring either approval or fees for:
- Routine maintenance;
- Replacement of existing wireless facilities with wireless facilities that are substantially similar or the same size or smaller; or
- Installation, placement, maintenance, or replacement of micro wireless facilities that are suspended on cables strung between existing utility poles in compliance with applicable codes by a communications service provider authorized to occupy the rights-of-way and who is remitting taxes under chapter 202, F.S.[57]

**Fees**

The bill addresses two types of fees. The first is an application or permit fee. The bill provides that an authority may charge a permit fee only in accordance with existing subsection (3) on fees for access to rights-of-way.[58] That subsection allows local governments to choose whether to charge permit fees. The local government can choose to require and collect permit fees from any providers of communications services that use or occupy municipal or county roads or rights-of-way, in which case the rate of the local communications services tax imposed by such jurisdiction, as computed under s. 202.20, F.S., shall automatically be reduced by a rate of 0.12 percent. Alternatively, the local government can elect not to require and collect permit fees in which case the rate for the local communications services tax as computed under s. 202.20, F.S., for that jurisdiction may be increased by ordinance or resolution by an amount not to exceed a rate of 0.12 percent.

The second type of fee is a pole attachment fee, or collocation fee, which includes any costs of make-ready work.[59] The rates and fees for collocations on authority utility poles must be

[54] Section 337.401(7)(d)3., F.S., as proposed by CS/CS/SB 596.
[55] Section 337.401(7)(d)4., F.S., as proposed by CS/CS/SB 596.
[56] Section 337.401(7)(f)1., F.S., as proposed by CS/CS/SB 596.
[57] Section 337.401(7)(e), F.S., as proposed by CS/CS/SB 596.
[58] Section 337.401(7)(d), F.S., as proposed by CS/CS/SB 596.
[59] "Make-ready" generally refers to the modification of poles or lines or the installation of guys and anchors to accommodate additional facilities. Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC

nondiscriminatory, regardless of the services provided by the collocating person. The rate to collocate equipment on authority utility poles may not exceed the lesser of the annual recurring rate that would be permitted under rules adopted by the FCC under 47 U.S.C. s. 224(d) if the collocation rate were regulated by the FCC or $15 per year per authority utility pole.[60]

If the authority has an existing pole attachment rate, fee, or other term that does not comply with this subsection, the authority must, no later than January 1, 2018, revise the rate, fee, or term to comply with this subsection.

Persons owning or controlling authority utility poles must offer rates, fees, and other terms that comply with this subsection. By the later of January 1, 2018, or 3 months after receiving a request to collocate its first small wireless facility on a utility pole owned or controlled by an authority, the person owning or controlling the authority utility pole must make available, through ordinance or otherwise, rates, fees, and terms for the collocation of small wireless facilities on the authority utility pole which comply with this subsection.

The rates, fees, and terms must be nondiscriminatory, competitively neutral, and commercially reasonable and must comply with this subsection.

The bill provides procedures and timelines for make-ready work:

- If the authority utility pole supports aerial facilities used to provide communications services or electric service, the parties must comply with the process for make-ready work under 47 U.S.C. s. 224[61] and implementing regulations.[62] The good faith estimate of the person

Docket Nos. 96-98, 95-185, Order on Reconsideration, 14 FCC Rcd 18049, 18056 n.50 (1999) (Local Competition Reconsideration Order). https://apps.fcc.gov/edocs_public/attachmatch/FCC-11-50A1.pdf (Last accessed March 2, 2017).

[60] Section 337.401(7)(f)3., F.S., as proposed by CS/CS/SB 596.

[61] Under this law, a rate is just and reasonable if it assures a utility the recovery of not less than the additional costs of providing pole attachments, nor more than an amount determined by multiplying the percentage of the total usable space, or the percentage of the total duct or conduit capacity, which is occupied by the pole attachment by the sum of the operating expenses and actual capital costs of the utility attributable to the entire pole, duct, conduit, or right-of-way. https://www.law.cornell.edu/uscode/text/47/224 (Last accessed March 2, 2017.)

[62] A utility that has received a complete application for pole attachment from a cable operator or telecommunications carrier must respond within 45 days of receipt of the application (or within 60 days, in the case of larger orders, defined as orders up to the lesser of 3000 poles or 5 percent of the utility's poles in a state). This response may be a notification that the utility has completed a survey of poles for which access has been requested. A complete application is an application that provides the utility with the information necessary under its procedures to begin to survey the poles. If the request for attachment is not denied, the utility must present an estimate of charges to perform all necessary make-ready work within 14 days of providing the response. A utility may withdraw an outstanding estimate of charges to perform make-ready work within 14 days after the estimate is presented. A cable operator or telecommunications carrier may accept a valid estimate and make payment any time after receipt of an estimate but before the estimate is withdrawn.

Upon receipt of payment of the estimate, the utility must immediately provide written notice to all known entities with existing attachments that may be affected by the make-ready:

- For attachments in the communications space, the utility must complete all make-ready work no later than 60 days after notification is sent (or 105 days in the case of larger orders). If the utility has not completed the make-ready work by within this time, the cable operator or telecommunications carrier requesting access may complete the specified make-ready.
- For wireless attachments above the communications space, the utility must complete all make-ready work no later than 90 days after notification is sent (or 135 days in the case of larger orders). The utility must complete the make-ready work by this date.

A utility may deviate from the time limits specified in this section:

owning or controlling the pole for any make-ready work necessary to enable the pole to support the requested collocation must include pole replacement if necessary.

- If the authority utility pole does not support aerial facilities used to provide communications services or electric service, the authority must provide a good faith estimate for any make-ready work necessary to enable the pole to support the requested collocation, including necessary pole replacement, within 60 days after receipt of a complete application. Make-ready work, including any pole replacement, must be completed within 60 days after written acceptance of the good faith estimate by the applicant.
- The authority may not require more make-ready work than is required to meet applicable codes or industry standards. Fees for make-ready work may not include costs related to preexisting damage or prior noncompliance. Fees for make-ready work, including any pole replacement, may not exceed actual costs or the amount charged to communications service providers other than wireless service providers for similar work and may not include any consultant fees or expenses.

For many local government authorities, the technology, pole attachments, and siting process contemplated in the bill are relatively new, and it may take time and experience to determine what is necessary to support the wireless infrastructure safely. Consequently, initial implementation of the bill may require consultants to obtain reasonable assurances of public safety. However, the bill prohibits recovery of any consultant fees or expenses.[63]

The bill provides that it does not authorize a person to collocate small wireless facilities on a privately owned utility pole, a utility pole owned by an electric cooperative or by a municipal electric utility, a privately owned wireless support structure, or other private property without the consent of the property owner.

The bill further provides that it does not authorize a person to collocate or attach small wireless facilities or micro wireless facilities on a utility pole or erect a wireless support structure in the right-of-way located within a retirement community that:

- Is deed-restricted as housing for older persons as defined in s. 760.29(4)(b), F.S.;
- Has more than 5,000 residents; and
- Has underground utilities for electric transmission or distribution.

The bill provides that the new subsection may not be construed to limit local governments' authority to enforce historic preservation zoning regulations consistent with the preservation of local zoning authority under 47 U.S.C s. 332(c)(7), the requirements for facility modifications

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- Before offering an estimate of charges if the parties have no agreement specifying the rates, terms, and conditions of attachment.
- During performance of make-ready for good and sufficient cause that renders it infeasible for the utility to complete the make-ready work within the prescribed time frame. A utility that so deviates shall immediately notify, in writing, the cable operator or telecommunications carrier requesting attachment and other affected entities with existing attachments, and shall include the reason for and date and duration of the deviation. The utility shall deviate from the time limits specified in this section for a period no longer than necessary and shall resume make-ready performance without discrimination when it returns to routine operations.

47 CFR § 1.1420 - Timeline for access to utility poles. https://www.law.cornell.edu/cfr/text/47/1.1420 (Last accessed March 2, 2017).

[63] Section 337.401(7)(f)5.d., F.S., as proposed by CS/CS/SB 596.

under 47 U.S.C. s.1455(a), or the National Historic Preservation Act of 1966, as amended, and the regulations adopted to implement these laws.

The bill takes effect July 1, 2017.

## IV. Constitutional Issues:

### A. Municipality/County Mandates Restrictions:

Subsection (b) of section 18, Article VII of the Florida Constitution, provides that except upon the approval of each house of the Legislature by a two-thirds vote of the membership, the Legislature may not enact, amend, or repeal any general law if the anticipated effect of doing so would be to reduce the authority that municipalities or counties have to raise revenue in the aggregate, as such authority existed on February 1, 1989. However, the mandate requirements do not apply to laws having an insignificant impact, which for Fiscal Year 2016-2017 was $2 million or less.[64,65,66]

The county/municipality mandates provision of section 18, Article VII of the Florida Constitution, may apply because this bill prohibits governmental entities with authority over public roads and rights-of-way from recovering any consultant fees or expenses relating to preparing a pole for use by a wireless provider. Given the novelty of the infrastructure, pole attachments, and potential risks of liability, local government authorities may need to make frequent use of consultants to ensure public safety, and the bill prohibits recovery of these consultant costs. The Revenue Estimating Conference has not examined the fiscal impact of this bill, however, the bill's impact may exceed the $2 million threshold.

The bill does not appear to qualify under any exemption or exception. If the bill does qualify as a mandate, final passage must be approved by two-thirds of the membership of each house of the Legislature.

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

None.

### C. Trust Funds Restrictions:

None.

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[64] FLA. CONST. art. VII, s. 18(d).

[65] 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 Feb. 13, 2017).

[66] Based on the Demographic Estimating Conference's population adopted on November 1, 2016. The conference packet is *available at* http://edr.state.fl.us/Content/conferences/population/ConferenceResults.pdf (last visited Feb. 13, 2017).

## V. Fiscal Impact Statement:

A. Tax/Fee Issues:

According to information provided by opponents of the bill, currently the amount of the pole attachment fee is subject only to market forces, and some authorities are charging considerable more than the bill's maximum of $15.00 dollars per attachment per year; the Jacksonville Electric Authority's Small Cell Site Rental Schedule, for example, shows a charge of $1,236.00 per year for each small cell site.

B. Private Sector Impact:

Wireless providers should be able to provide better service to customers.

C. Government Sector Impact:

Authorities may have difficulty and expenses in early implementation as the technology and installations involved are new uses of rights-of-way and the process includes engineering determinations of wind load, structural integrity, and safety.

## VI. Technical Deficiencies:

None.

## VII. Related Issues:

The bill does not address any responsibility or liability of wireless providers relating to potential personal injury or property damage.

## VIII. Statutes Affected:

This bill substantially amends section 337.401 of the Florida Statutes.

## IX. Additional Information:

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

**CS/CS by Governmental Oversight and Accountability on March 27, 2017:**

- Defines "authority" as a county or municipality having jurisdiction and control of the rights-of-way of any public road. This term does not include the DOT and that agency's rights-of-way are excluded from the bill;
- Amends the definition of "authority utility pole" to provide that this term does not include a utility pole owned by a municipal electric utility, any utility pole used to support municipally owned or operated electric distribution facilities, or a utility pole located in the right-of-way of a retirement community that:
  - Is deed-restricted as housing for older persons as defined by s. 760.29(4)(b). F.S.;
  - Has more than 5,000 residents; and
  - Has underground utilities for electric distribution or transmission;

- Requires wireless infrastructure providers include an attestation in their application to an authority regarding the time-frame of collocating small wireless facilities on utility poles or structures and provision of services;
- Provides that an authority must accept and process the application for collocating small wireless facilities on utility poles or structures in accordance with the bill and any applicable local codes governing the placement of utility poles in the public right-of-way
- Provides that a person is not authorized to collocate small wireless facilities on a utility pole owned by a municipal electric utility;
- Provides that a person is not authorized to collocate or attach small wireless facilities or micro wireless facilities on a utility pole or erect a wireless support structure in the right-of-way located within a retirement community that:
  - Is deed-restricted as housing for older persons as defined by s. 760.29(4)(b). F.S.;
  - Has more than 5,000 residents; and
  - Has underground utilities for electric distribution or transmission.

**CS by Communications, Energy, and Public Utilities on March 7, 2017:**

- Amends the definition of "applicable codes" to include qualifying local government historic preservation zoning regulations;
- Amends the definition of "authority utility pole" to exclude a utility pole owned by a municipal electric company;
- Excludes from the definition of "wireless facility" wireline backhaul facilities and coaxial or fiber-optic cable that is between wireless structures or utility poles or that is otherwise not immediately adjacent to or directly associated with a particular antenna;
- Makes the prohibition against an authority requiring approval or fees relating to micro wireless facilities that are suspended applicable to facilities suspended from any type of cable, not just "messenger" cables;
- Provides that the new subsection does not authorize collocation of small wireless facilities on a utility pole owned by an electric cooperative; and
- Provides that the new subsection may not be construed to limit local government's authority to qualifying enforce historic preservation zoning regulations.

B. Amendments:

None.

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LEGISLATIVE ACTION

Senate . House

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The Committee on Rules (Hutson) recommended the following:

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause and insert:

Section 1. Paragraph (a) of subsection (1) of section 337.401, Florida Statutes, is amended, and subsection (7) is added to that section, to read:

337.401 Use of right-of-way for utilities subject to regulation; permit; fees.—

(1)(a) The department and local governmental entities, referred to in this section and in ss. 337.402, 337.403, and

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337.404 as the "authority," that have jurisdiction and control of public roads or publicly owned rail corridors are authorized to prescribe and enforce reasonable rules or regulations with reference to the placing and maintaining across, on, or within the right-of-way limits of any road or publicly owned rail corridors under their respective jurisdictions any electric transmission, voice ~~telephone~~, telegraph, data, or other communications services lines or wireless facilities; pole lines; poles; railways; ditches; sewers; water, heat, or gas mains; pipelines; fences; gasoline tanks and pumps; or other structures referred to in this section and in ss. 337.402, 337.403, and 337.404 as the "utility." The department may enter into a permit-delegation agreement with a governmental entity if issuance of a permit is based on requirements that the department finds will ensure the safety and integrity of facilities of the Department of Transportation; however, the permit-delegation agreement does not apply to facilities of electric utilities as defined in s. 366.02(2).

(7)(a) This subsection may be cited as the "Advanced Wireless Infrastructure Deployment Act."

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

1. "Antenna" means communications equipment that transmits or receives electromagnetic radio frequency signals used in providing wireless services.

2. "Applicable codes" means uniform building, fire, electrical, plumbing, or mechanical codes adopted by a recognized national code organization or local amendments to those codes enacted solely to address threats of destruction of property or injury to persons, or local codes or ordinances

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adopted to implement this subsection. The term includes objective design standards adopted by ordinance which may require that a new utility pole replacing an existing utility pole be of substantially similar design, material, and color, or that ground-mounted equipment meet reasonable spacing requirements. The term includes objective design standards adopted by ordinance which may require a small wireless facility to meet reasonable location context, color, stealth, and concealment requirements; however, the authority may waive the design standards upon a showing that the design standards are not reasonably compatible for the particular location of a small wireless facility or that the design standards impose an excessive expense. The waiver must be granted or denied within 45 days after the date of the waiver request or it is deemed granted.

3. "Applicant" means a person who submits an application and is a wireless provider.

4. "Application" means a request submitted by an applicant to an authority for a permit to collocate small wireless facilities.

5. "Authority" means a county or municipality having jurisdiction and control of the rights-of-way of any public roads. The term does not include the Florida Department of Transportation. The Florida Department of Transportation rights-of-way are excluded from this subsection.

6. "Authority utility pole" means a utility pole owned by an authority in the right-of-way. The term does not include a utility pole owned by a municipal electric utility or any utility pole used to support municipally owned or operated


electric distribution facilities, or a utility pole located in the right-of-way within:

a. A retirement community that:

(I) Is deed-restricted as housing for older persons as defined in s. 760.29(4)(b);

(II) Has more than 5,000 residents; and

(III) Has underground utilities for electric transmission or distribution.

b. A municipality that:

(I) Is located on a coastal barrier island as defined in s. 161.053(1)(b)(3);

(II) Has a land area of less than 5 square miles;

(III) Has fewer than 10,000 residents; and

(IV) Which has, before the adoption of this act, received referendum approval to issue debt to finance municipality-wide underground utilities for electric transmission or distribution.

7. "Collocate" or "collocation" means to install, mount, maintain, modify, operate, or replace one or more wireless facilities on, under, within, or adjacent to a wireless support structure or utility pole. The term does not include the installation of a utility pole or wireless support structure in the public rights-of-way.

8. "FCC" means the Federal Communications Commission.

9. "Micro wireless facility" means a small wireless facility having dimensions no larger than 24 inches in length, 15 inches in width, and 12 inches in height and an exterior antenna, if any, no longer than 11 inches.

10. "Small wireless facility" means a wireless facility that meets the following qualifications:


a. Each antenna associated with the facility is located inside an enclosure of no more than 6 cubic feet in volume or, in the case of antennas that have exposed elements, each antenna and all of its exposed elements could fit within an enclosure of no more than 6 cubic feet in volume; and

b. All other wireless equipment associated with the facility is cumulatively no more than 28 cubic feet in volume. The following types of associated ancillary equipment are not included in the calculation of equipment volume: electric meters, concealment elements, telecommunications demarcation boxes, ground-based enclosures, grounding equipment, power transfer switches, cutoff switches, vertical cable runs for the connection of power and other services, and utility poles or other support structures.

11. "Utility pole" means a pole or similar structure used in whole or in part to provide communications services or for electric distribution, lighting, traffic control, signage, or a similar function. The term includes the vertical support structure for traffic lights, but does not include any horizontal structures upon which are attached signal lights or other traffic control devices and does not include any pole or similar structure 15 feet in height or less unless an authority grants a waiver for the pole.

12. "Wireless facility" means equipment at a fixed location which enables wireless communications between user equipment and a communications network, including radio transceivers, antennas, wires, coaxial or fiber-optic cable or other cables, regular and backup power supplies, and comparable equipment, regardless of technological configuration, and equipment

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associated with wireless communications. The term includes small wireless facilities. The term does not include:

a. The structure or improvements on, under, within, or adjacent to the structure on which the equipment is collocated;

b. Wireline backhaul facilities; or

c. Coaxial or fiber-optic cable that is between wireless structures or utility poles or that is otherwise not immediately adjacent to or directly associated with a particular antenna.

13. "Wireless infrastructure provider" means a person who is certificated to provide telecommunications service in the state and who builds or installs wireless communication transmission equipment, wireless facilities, or wireless support structures, but is not a wireless services provider.

14. "Wireless provider" means a wireless infrastructure provider or a wireless services provider.

15. "Wireless services" means any services provided using licensed or unlicensed spectrum, whether at a fixed location or mobile, using wireless facilities.

16. "Wireless services provider" means a person who provides wireless services.

17. "Wireless support structure" means a freestanding structure, such as a monopole, a guyed or self-supporting tower or another existing or proposed structure designed to support or capable of supporting wireless facilities. The term does not include a utility pole.

(c) Except as provided in this subsection, an authority may not prohibit, regulate, or charge for the collocation of small wireless facilities in the public rights-of-way.

(d) An authority may require a registration process and


permit fees in accordance with subsection (3). An authority shall accept applications for permits and shall process and issue permits subject to the following requirements:

1. An authority may not directly or indirectly require an applicant to perform services unrelated to the collocation for which approval is sought, such as in-kind contributions to the authority, including reserving fiber, conduit, or pole space for the authority.

2. An applicant may not be required to provide more information to obtain a permit than is necessary to demonstrate the applicant's compliance with applicable codes for the placement of small wireless facilities in the locations identified in the application.

3. An authority may not require the placement of small wireless facilities on any specific utility pole or category of poles or require multiple antenna systems on a single utility pole.

4. An authority may not limit the placement of small wireless facilities by minimum separation distances; however, within 14 days from the date of filing the application, an authority may request that the proposed location of a small wireless facility be moved to another location in the right-of-way and placed upon an alternative authority utility pole or support structure or placed upon a new utility pole. The authority and applicant may negotiate the alternate location, including any objective design standards, for 30 days from the date of the request. At the conclusion of the negotiation period, if the applicant accepts the alternative location, the applicant must notify the authority and the application shall be



deemed granted for any new location for which there is agreement and all other locations in the application. If no agreement is reached, the applicant must notify the authority and the authority must grant or deny the original application within 90 days from the date the application was filed. A request for an alternative location, an acceptance of an alternate location, or any rejection of an alternative location must be in writing and provided by electronic mail.

5. An authority may limit the height of a small wireless facility to no more than 10 feet above the utility pole or structure upon which the small wireless facility is to be collocated. Unless waived by an authority, the height for a new utility pole may be limited to the tallest existing utility pole located in the right-of-way, measured from grade in place within 500 feet of the proposed location of the small wireless facility. If there is no utility pole within 500 feet, the authority may limit the height of the utility pole to no more than 50 feet.

6. Except as provided in subparagraphs 4. and 5., the installation of a utility pole in the public rights-of-way designed to support a small wireless facility is subject to authority rules or regulations governing the placement of utility poles in the public rights-of-way and is subject to the application review timeframes in in this subsection.

7. Within 14 days after receiving an application, an authority must determine and notify the applicant by electronic mail as to whether the application is complete. If an application is deemed incomplete, the authority must specifically identify the missing information. An application is


deemed complete if the authority fails to provide notification to the applicant within 14 days or when all documents, information, and fees specifically enumerated in the authority's permit application form are submitted by the applicant to the authority.

8. An application must be processed on a nondiscriminatory basis. A complete application is deemed approved if an authority fails to approve or deny the application within 60 days after receipt of the application. If an authority does not use the 30-day negotiation period provided in subparagraph 4., the parties may mutually agree to extend the 60-day application review period. The authority must grant or deny the application at the end of the extended period. A permit issued pursuant to an approved application remains effective for 1 year unless extended by the authority.

9. An authority must notify the applicant of approval or denial by electronic mail. An authority must approve a complete application unless it does not meet the authority's applicable codes. If the application is denied, the authority must specify in writing the basis for denial, including the specific code provisions on which the denial was based, and send the documentation to the applicant by electronic mail on the day the authority denies the application. The applicant may cure the deficiencies identified by the authority and resubmit the application within 30 days after notice of the denial is sent to the applicant. The authority must approve or deny the revised application within 30 days after receipt or the application is deemed approved. Any subsequent review shall be limited to the deficiencies cited in the denial.


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10. An applicant seeking to collocate small wireless facilities within the jurisdiction of a single authority may, at the applicant's discretion, file a consolidated application and receive a single permit for the collocation of no more than 30 small wireless facilities. If the application includes multiple small wireless facilities, an authority may remove small wireless facility collocations from the application and treat separately small wireless facility collocations for which incomplete information has been received or which are denied.

11. An authority may deny a proposed collocation of a small wireless facility in the public rights-of-way if the proposed collocation:

a. Materially interferes with the safe operation of traffic control equipment.

b. Materially interferes with sight lines or clear zones for transportation, pedestrians, or public safety purposes.

c. Materially interferes with compliance with the Americans with Disabilities Act or similar federal or state standards regarding pedestrian access or movement.

d. Materially fails to comply with the 2010 edition of the Florida Department of Transportation Utility Accommodation Manual.

e. Materially fails to comply with applicable codes.

12. An authority may adopt by ordinance provisions for registration, permitting, insurance coverage, indemnification, performance bonds, security funds, force majeure, abandonment, authority liability, or authority warranties. Such provisions must be reasonable and nondiscriminatory.

13. Collocation of a small wireless facility on an

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authority utility pole may not provide the basis for the imposition of an ad valorem tax on the authority utility pole.

14. An authority may reserve space on authority utility poles for future public safety uses. However, a reservation of space may not preclude collocation of a small wireless facility. If replacement of the authority utility pole is necessary to accommodate the collocation of the small wireless facility and the future public safety use, the pole replacement is subject to make-ready provisions and the replaced pole shall accommodate the future public safety use.

15. Any structure granted a permit and installed pursuant to this subsection must comply with chapter 333 and federal regulations pertaining to airport airspace protections.

(e) An authority may not require approval of or impose fees or other charges for:

1. Routine maintenance;

2. Replacement of existing wireless facilities with wireless facilities that are substantially similar or of the same or smaller size; or

3. Installation, placement, maintenance, or replacement of micro wireless facilities suspended on cables strung between existing utility poles in compliance with applicable codes by a communications service provider authorized to occupy the rights-of-way and who is remitting taxes under chapter 202.

However, notwithstanding this paragraph, an authority may require a right-of-way permit for work that involves excavation, closing a sidewalk, or closing a vehicular lane.

(f) Collocation of small wireless facilities on authority



utility poles is subject to the following requirements:

1. An authority may not enter into an exclusive arrangement with any person for the right to attach equipment to authority utility poles.

2. The rates and fees for collocations on authority utility poles must be nondiscriminatory, regardless of the services provided by the collocating person.

3. The rate to collocate small wireless facilities on authority utility poles may not exceed $100 per year.

4. Agreements between authorities and wireless providers which are in effect on July 1, 2017, and which relate to the collocation of small wireless facilities in the right-of-way, including the collocation of small wireless facilities on authority utility poles, remain in effect, subject to applicable termination provisions. The wireless provider may accept the rates, fees, and terms established under this subsection for small wireless facilities and utility poles that are the subject of an application submitted after the rates, fees, and terms become effective.

5. A person owning or controlling an authority utility pole shall offer rates, fees, and other terms that comply with this subsection. By the later of January 1, 2018, or 3 months after receiving a request to collocate its first small wireless facility on a utility pole owned or controlled by an authority, the person owning or controlling the authority utility pole shall make available, through ordinance or otherwise, rates, fees, and terms for the collocation of small wireless facilities on the authority utility pole which comply with this subsection.

a. The rates, fees, and terms must be nondiscriminatory,


competitively neutral, and must comply with this subsection.

b. For an authority utility pole that supports an aerial facility used to provide communications services or electric service, the parties shall comply with the process for make-ready work under 47 U.S.C. s. 224 and implementing regulations. The good faith estimate of the person owning or controlling the pole for any make-ready work necessary to enable the pole to support the requested collocation must include pole replacement if necessary.

c. For an authority utility pole that does not support an aerial facility used to provide communications services or electric service, the authority shall provide a good faith estimate for any make-ready work necessary to enable the pole to support the requested collocation, including necessary pole replacement, within 60 days after receipt of a complete application. Make-ready work, including any pole replacement, must be completed within 60 days after written acceptance of the good faith estimate by the applicant. Alternatively, an authority may require the applicant seeking to collocate a small wireless facility to provide a make-ready estimate at the applicant's expense for the work necessary to support the small wireless facility, including pole replacement, and to perform the make-ready work. If pole replacement is required, the scope of the make-ready estimate is limited to the design, fabrication, and installation of a utility pole that is substantially similar in color and composition. The authority may not impose conditions on or restrict the manner in which the applicant obtains, develops, or provides the estimate or conducts the make-ready work subject to usual construction


restoration standards for work in the right-of-way. The replaced or altered utility pole shall remain the property of the authority.

d. An authority may not require more make-ready work than is required to meet applicable codes or industry standards. Fees for make-ready work may not include costs related to preexisting damage or prior noncompliance. Fees for make-ready work, including any pole replacement, may not exceed actual costs or the amount charged to communications service providers other than wireless services providers for similar work and may not include any consultant fee or expense.

(g) For any applications filed before the effective dates of ordinances implementing this subsection, an authority may apply current ordinances regulating the placement of communications facilities in the right-of-way, including registration, permitting, insurance coverage, indemnification, performance bonds, security funds, force majeure, abandonment, authority liability, or authority warranties. Permit application requirements and small wireless facility placement requirements, including utility pole height limits, which conflict with this subsection shall be waived by the authority.

(h) Except as provided in this section or specifically required by state law, an authority may not adopt or enforce any regulation on the placement or operation of communications facilities in the rights-of-way by a provider authorized by state law to operate in the rights-of-way and may not regulate any communications services or impose or collect any tax, fee, or charge not specifically authorized under state law.

(i) A wireless provider shall, in relation to a small

wireless facility, utility pole, or wireless support structure in the public rights-of-way, comply with nondiscriminatory undergrounding requirements of the authority which prohibit above-ground structures in public rights-of-way. Any such requirements may be waived by the relevant authority.

(j) A wireless infrastructure provider may apply to an authority to place utility poles in the public rights-of-way to support the collocation of small wireless facilities. The application must include an attestation that small wireless facilities will be collocated on the utility pole or structure and small wireless facilities will be used by a wireless services provider to provide service within 9 months from the date the application is granted. An authority shall accept and process the application in accordance with subparagraph (7)(d)6. and any applicable codes and other local codes governing the placement of utility poles in the public rights-of-way.

(k) This subsection does not limit a local government's authority to enforce historic preservation zoning regulations consistent with the preservation of local zoning authority under 47 U.S.C s. 332(c)(7), the requirements for facility modifications under 47 U.S.C. s. 1455(a), or the National Historic Preservation Act of 1966, as amended, and the regulations adopted to implement these laws. An authority may enforce local codes adopted by ordinance in effect on April 1, 2017, which are applicable to a historic area designated by the state or authority and subject to waiver by the authority.

(l) This subsection does not authorize a person to collocate or attach wireless facilities, including any antenna, micro wireless facility, or small wireless facility, on a

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privately owned utility pole, a utility pole owned by an electric cooperative or a municipal electric utility, a privately owned wireless support structure, or other private property without the consent of the property owner.

(m) The approval of the installation, placement, maintenance, or operation of a small wireless facility pursuant to this subsection may not be construed to authorize the provision of any voice, data, or video communications services or the installation, placement, maintenance, or operation of any communications facilities other than small wireless facilities in the right-of-way.

(n) This subsection does not affect the provisions of subsection (6) relating to pass-through providers.

(o) This subsection does not authorize a person to collocate or attach small wireless facilities or micro wireless facilities on a utility pole unless otherwise permitted by federal law, or to erect a wireless support structure in the right-of-way located within a retirement community that:

1. Is deed-restricted as housing for older persons as defined in s. 760.29(4)(b);

2. Has more than 5,000 residents; and

3. Has underground utilities for electric transmission or distribution.

Nothing in this paragraph applies to the installation of micro wireless facilities on any existing and duly authorized aerial communications facilities, provided that once aerial facilities are converted to underground, any such collocation or construction shall be only as provided by the municipality's

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underground utilities ordinance.

(p) This subsection does not authorize a person to collocate or attach small wireless facilities or micro wireless facilities on a utility pole unless otherwise permitted by federal law, or to erect a wireless support structure in the right-of-way located within a municipality that:

1. Is located on a coastal barrier island as defined in s. 161.053(1)(b)3.;

2. Has a land area of less than 5 square miles;

3. Has fewer than 10,000 residents; and

4. Which has, before the adoption of this act, received referendum approval to issue debt to finance municipality-wide undergrounding of its utilities for electric transmission or distribution.

Nothing in this paragraph applies to the installation of micro wireless facilities on any existing and duly authorized aerial communications facilities, provided that once aerial facilities are converted to underground, any such collocation or construction shall be only as provided by the municipality's underground utilities ordinance.

Section 2. This act shall take effect July 1, 2017.

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

And the title is amended as follows:

Delete everything before the enacting clause and insert:

A bill to be entitled

An act relating to utilities; amending s. 337.401,

219028

F.S.; authorizing the Department of Transportation and certain local governmental entities to prescribe and enforce reasonable rules or regulations with reference to the placing and maintaining across, on, or within the right-of-way limits of any road or publicly owned rail corridors under their respective jurisdictions any voice or data communications services lines or wireless facilities; providing a short title; defining terms; prohibiting a county or municipality having jurisdiction and control of the rights-of-way of any public road, referred to as the "authority," from prohibiting, regulating, or charging for the collocation of small wireless facilities in public rights-of-way under certain circumstances; authorizing an authority to require a registration process and permit fees only under certain circumstances; requiring an authority to receive and process applications for permits and to issue such permits, subject to specified requirements; prohibiting an authority from requiring approval of or imposing fees or other charges for routine maintenance, the replacement of certain wireless facilities, or the installation, placement, maintenance, or replacement of certain micro wireless facilities; providing an exception; providing requirements for the collocation of small wireless facilities on authority utility poles; providing requirements for rates, fees, and other terms related to authority utility poles; authorizing an authority to apply current ordinances

regulating placement of communications facilities in the right-of-way, including registration, permitting, insurance coverage, indemnification, performance bonds, security funds, force majeure, abandonment, authority liability, or authority warranties for certain applications; providing that certain permit application requirements and small wireless facility placement requirements shall be waived by the authority; prohibiting an authority from adopting or enforcing any regulation on the placement or operation of certain communications facilities, from regulating any communications services, or from imposing or collecting any tax, fee, or charge not specifically authorized under state law; requiring a wireless provider to comply with certain nondiscriminatory undergrounding requirements of the authority; authorizing the authority to waive any such requirements; authorizing a wireless infrastructure provider to apply to an authority to place utility poles in the public rights-of-way to support the collocation of small wireless facilities; providing requirements for such application; requiring the authority to accept and process the application, subject to certain requirements; providing construction; authorizing an authority to enforce local codes adopted by ordinance in effect on a specified date which are applicable to a historic area designated by the state or authority and subject to waiver by the authority; providing an effective date.

567676

LEGISLATIVE ACTION

Senate . House

. . . . .

The Committee on Rules (Hutson) recommended the following:

**Senate Amendment to Amendment (219028)**

Delete lines 194 - 203
and insert:
5. An authority shall limit the height of a small wireless facility to no more than 10 feet above the utility pole or structure upon which the small wireless facility is to be collocated. The height for a new utility pole shall be limited to the tallest existing utility pole in place as of July 1, 2017, located in the same right-of-way, measured from grade in place within 500 feet of the proposed location of the small


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wireless facility. If there is no utility pole within 500 feet of the facility, the authority shall limit the height of the utility pole to no more than 50 feet. The height limitations do not apply to the placement of any small wireless facility on a utility pole or wireless support structure constructed on or before June 30, 2017, if the small wireless facility does not extend more than 10 feet above the structure.

325560

LEGISLATIVE ACTION

Senate . House

. . . . .

The Committee on Rules (Lee) recommended the following:

**Senate Amendment to Amendment (219028)**

Delete lines 309 - 310
and insert:
3. The rate to collocate equipment on authority utility poles must be reasonable and must reflect the market rate for the use of the government-owned property.

741036

LEGISLATIVE ACTION

Senate . House

. . . . .

The Committee on Rules (Lee) recommended the following:

**Senate Amendment to Amendment (219028)**

Between lines 467 and 468
insert:
(q) This subsection does not authorize a person to collocate or attach small wireless facilities or micro wireless facilities on a utility pole unless otherwise permitted by federal law, or to erect a wireless support structure in the right-of-way, which do not comply with the covenants, conditions, and restrictions; articles of incorporation; and by laws applicable to the proposed location.

**By** the Committees on Governmental Oversight and Accountability; and Communications, Energy, and Public Utilities; and Senators Hutson, Young, and Broxson

585-02958-17 2017596c2

A bill to be entitled

An act relating to utilities; amending s. 337.401, F.S.; authorizing the Department of Transportation and certain local governmental entities to prescribe and enforce reasonable rules or regulations with reference to the placing and maintaining across, on, or within the right-of-way limits of any road or publicly owned rail corridors under their respective jurisdictions any voice or data communications services lines or wireless facilities; providing a short title; defining terms; prohibiting a county or municipality having jurisdiction and control of the rights-of-way of any public road, referred to as the "authority," from prohibiting, regulating, or charging for the collocation of small wireless facilities in public rights-of-way under certain circumstances; authorizing an authority to require permit fees only under certain circumstances; requiring an authority to receive and process applications for permits and to issue such permits, subject to specified requirements; providing that height limitations do not apply to the placement of small wireless facilities on or before a specified date under certain circumstances; prohibiting an authority from requiring approval, fees, or other charges for routine maintenance, the replacement of certain wireless facilities, or the installation, placement, maintenance, or replacement of certain micro wireless facilities; requiring an authority to approve the collocation of small wireless facilities







585-02958-17 2017596c2

on authority utility poles, subject to certain requirements; providing requirements for rates, fees, and other terms related to authority utility poles; prohibiting an authority from adopting or enforcing any regulation on the placement or operation of certain communications facilities, from regulating any communications services, or from imposing or collecting any tax, fee, or charge not specifically authorized under state law; providing construction; providing an effective date.

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

Section 1. Paragraph (a) of subsection (1) of section 337.401, Florida Statutes, is amended, and subsection (7) is added to that section, to read:

337.401 Use of right-of-way for utilities subject to regulation; permit; fees.—

(1)(a) The department and local governmental entities, referred to in this section and in ss. 337.402, 337.403, and 337.404 as the "authority," that have jurisdiction and control of public roads or publicly owned rail corridors are authorized to prescribe and enforce reasonable rules or regulations with reference to the placing and maintaining across, on, or within the right-of-way limits of any road or publicly owned rail corridors under their respective jurisdictions any electric transmission, voice ~~telephone~~, telegraph, data, or other communications services lines or wireless facilities; pole lines; poles; railways; ditches; sewers; water, heat, or gas

mains; pipelines; fences; gasoline tanks and pumps; or other structures referred to in this section and in ss. 337.402, 337.403, and 337.404 as the "utility." The department may enter into a permit-delegation agreement with a governmental entity if issuance of a permit is based on requirements that the department finds will ensure the safety and integrity of facilities of the Department of Transportation; however, the permit-delegation agreement does not apply to facilities of electric utilities as defined in s. 366.02(2).

(7)(a) This subsection may be cited as the "Advanced Wireless Infrastructure Deployment Act."

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

1. "Antenna" means communications equipment that transmits or receives electromagnetic radio frequency signals used in providing wireless services.

2. "Applicable codes" means uniform building, fire, electrical, plumbing, or mechanical codes adopted by a recognized national code organization, or local amendments to those codes, enacted solely to address threats of destruction of property or injury to persons. The term includes local government historic preservation zoning regulations consistent with the preservation of local zoning authority under 47 U.S.C s. 332(c)(7), the requirements for facility modifications under 47 U.S.C. s. 1455(a), or the National Historic Preservation Act of 1966, as amended; and the regulations adopted to implement these laws.

3. "Applicant" means a person who submits an application and is a wireless provider.

4. "Application" means a request submitted by an applicant





to an authority for a permit to collocate small wireless facilities.

5. "Authority" means a county or municipality having jurisdiction and control of the rights-of-way of any public road. The term does not include the Department of Transportation. The Department of Transportation rights-of-way are excluded from this subsection.

6. "Authority utility pole" means a utility pole owned by an authority in the right-of-way. The term does not include a utility pole owned by a municipal electric utility, any utility pole used to support municipally owned or operated electric distribution facilities, or a utility pole located in the right-of-way within a retirement community that:

a. Is deed-restricted as housing for older persons as defined in s. 760.29(4)(b);

b. Has more than 5,000 residents; and

c. Has underground utilities for electric transmission or distribution.

7. "Collocate" or "collocation" means to install, mount, maintain, modify, operate, or replace one or more wireless facilities on, under, within, or adjacent to a wireless support structure or utility pole.

8. "FCC" means the Federal Communications Commission.

9. "Micro wireless facility" means a small wireless facility having dimensions no larger than 24 inches in length, 15 inches in width, and 12 inches in height and an exterior antenna, if any, no longer than 11 inches.

10. "Small wireless facility" means a wireless facility that meets the following qualifications:

a. Each antenna associated with the facility is located inside an enclosure of no more than 6 cubic feet in volume or, in the case of antennas that have exposed elements, each antenna and all of its exposed elements could fit within an enclosure of no more than 6 cubic feet in volume; and

b. All other wireless equipment associated with the facility is cumulatively no more than 28 cubic feet in volume. The following types of associated ancillary equipment are not included in the calculation of equipment volume: electric meters, concealment elements, telecommunications demarcation boxes, ground-based enclosures, grounding equipment, power transfer switches, cutoff switches, vertical cable runs for the connection of power and other services, and utility poles or other support structures.

11. "Utility pole" means a pole or similar structure that is used in whole or in part to provide communications services or for electric distribution, lighting, traffic control, signage, or a similar function.

12. "Wireless facility" means equipment at a fixed location which enables wireless communications between user equipment and a communications network, including radio transceivers, antennas, wires, coaxial or fiber-optic cable or other cables, regular and backup power supplies, and comparable equipment, regardless of technological configuration, and equipment associated with wireless communications. The term includes small wireless facilities. The term does not include:

a. The structure or improvements on, under, within, or adjacent to the structure on which the equipment is collocated;

b. Wireline backhaul facilities; or





c. Coaxial or fiber-optic cable that is between wireless structures or utility poles or that is otherwise not immediately adjacent to or directly associated with a particular antenna.

13. "Wireless infrastructure provider" means a person who is certificated to provide telecommunications service in the state and who builds or installs wireless communication transmission equipment, wireless facilities, or wireless support structures, but is not a wireless services provider.

14. "Wireless provider" means a wireless infrastructure provider or a wireless services provider.

15. "Wireless services" means any services provided using licensed or unlicensed spectrum, whether at a fixed location or mobile, using wireless facilities.

16. "Wireless services provider" means a person who provides wireless services.

17. "Wireless support structure" means a freestanding structure, such as a monopole, a guyed or self-supporting tower, a billboard, or another existing or proposed structure designed to support or capable of supporting wireless facilities. The term does not include a utility pole.

(c) Except as provided in this subsection, an authority may not prohibit, regulate, or charge for the collocation of small wireless facilities in the public rights-of-way.

(d) An authority may require permit fees only in accordance with subsection (3). An authority shall accept applications for permits and shall process and issue permits subject to the following requirements:

1. An authority may not directly or indirectly require an applicant to perform services unrelated to the collocation for

which approval is sought, such as in-kind contributions to the authority, including reserving fiber, conduit, or pole space for the authority.

2. An applicant may not be required to provide more information to obtain a permit than is required of electric service providers and other communications service providers that are not wireless services providers.

3. An authority may not require the placement of small wireless facilities on any specific utility pole or category of poles or require multiple antenna systems on a single utility pole.

4. An authority may not limit the placement of small wireless facilities by minimum separation distances.

5. An authority may limit the height of a small wireless facility to be no more than 10 feet above the tallest existing utility pole within 500 feet, measured from grade in place, of the proposed location of the small wireless facility. If there is no utility pole within 500 feet, the authority may limit the height of the small wireless facility to be no more than 60 feet. The height limitations do not apply to the placement of any small wireless facility on a utility pole or wireless support structure constructed on or before June 30, 2017, if the small wireless facility does not extend more than 10 feet above the structure.

6. A wireless infrastructure provider may apply to an authority to place utility poles or wireless support structures in the public rights-of-way to support the collocation of small wireless facilities. The application must include an attestation that small wireless facilities will be collocated on the utility





pole or structure and small wireless facilities will be used by a wireless services provider to provide service within 9 months after the date the application is granted. An authority shall accept and process the application in accordance with this paragraph and any applicable local codes governing the placement of utility poles in the public rights-of-way.

7. Within 10 days after receiving an application, an authority must determine and notify the applicant by electronic mail as to whether the application is complete. If an application is deemed incomplete, the authority must specifically identify the missing information. An application is deemed complete if the authority fails to provide notification to the applicant within 10 days or when all documents, information, and fees specifically enumerated in the authority's permit application form are submitted by the applicant to the authority.

8. An application must be processed on a nondiscriminatory basis. A complete application is deemed approved if an authority fails to approve or deny the application within 60 days after receipt of the application.

9. An authority must notify the applicant of approval or denial by electronic mail. An authority shall approve a complete application unless it does not meet the authority's applicable codes. If the application is denied, the authority must specify in writing the basis for denial, including the specific code provisions on which the denial was based, and send the documentation to the applicant by electronic mail on the day the authority denies the application. The applicant may cure the deficiencies identified by the authority and resubmit the

application within 30 days after notice of the denial is sent to the applicant. The authority shall approve or deny the revised application within 30 days after receipt or the application is deemed approved. Any subsequent review shall be limited to the deficiencies cited in the denial.

10. An applicant seeking to collocate small wireless facilities within the jurisdiction of a single authority may, at the applicant's discretion, file a consolidated application and receive a single permit for the collocation of multiple small wireless facilities.

(e) An authority may not require approval, fees, or other charges for:

1. Routine maintenance;

2. Replacement of existing wireless facilities with wireless facilities that are substantially similar or of the same or smaller size; or

3. Installation, placement, maintenance, or replacement of micro wireless facilities that are suspended on cables strung between existing utility poles in compliance with applicable codes by a communications service provider that is authorized to occupy the rights-of-way and that is remitting taxes under chapter 202.

(f) An authority shall approve the collocation of small wireless facilities on authority utility poles, subject to the following requirements:

1. An authority may not enter into an exclusive arrangement with any person for the right to attach equipment to authority utility poles.

2. The rates and fees for collocations on authority utility







poles must be nondiscriminatory, regardless of the services provided by the collocating person.

3. The rate to collocate equipment on authority utility poles may not exceed the lesser of the annual recurring rate that would be permitted under rules adopted by the FCC under 47 U.S.C. s. 224(d) if the collocation rate were regulated by the FCC or $15 per year per authority utility pole.

4. If an authority has an existing pole attachment rate, fee, or other term that does not comply with this subsection, the authority shall, no later than January 1, 2018, revise such rate, fee, or term to be in compliance with this subsection.

5. A person owning or controlling an authority utility pole shall offer rates, fees, and other terms that comply with this subsection. By the later of January 1, 2018, or 3 months after receiving a request to collocate its first small wireless facility on a utility pole owned or controlled by an authority, the person owning or controlling the authority utility pole shall make available, through ordinance or otherwise, rates, fees, and terms for the collocation of small wireless facilities on the authority utility pole which comply with this subsection.

a. The rates, fees, and terms must be nondiscriminatory, competitively neutral, and commercially reasonable and must comply with this subsection.

b. For an authority utility pole that supports an aerial facility used to provide communications services or electric service, the parties shall comply with the process for make-ready work under 47 U.S.C. s. 224 and implementing regulations. The good faith estimate of the person owning or controlling the pole for any make-ready work necessary to enable the pole to

support the requested collocation must include pole replacement if necessary.

c. For an authority utility pole that does not support an aerial facility used to provide communications services or electric service, the authority shall provide a good faith estimate for any make-ready work necessary to enable the pole to support the requested collocation, including necessary pole replacement, within 60 days after receipt of a complete application. Make-ready work, including any pole replacement, must be completed within 60 days after written acceptance of the good faith estimate by the applicant.

d. An authority may not require more make-ready work than is required to meet applicable codes or industry standards. Fees for make-ready work may not include costs related to preexisting damage or prior noncompliance. Fees for make-ready work, including any pole replacement, may not exceed actual costs or the amount charged to communications service providers other than wireless services providers for similar work and may not include any consultant fee or expense.

(g) Except as provided in this chapter or specifically required by state law, an authority may not adopt or enforce any regulation on the placement or operation of communications facilities in the rights-of-way by a provider authorized by state law to operate in the rights-of-way and may not regulate any communications services or impose or collect any tax, fee, or charge not specifically authorized under state law.

(h) This subsection does not authorize a person to collocate small wireless facilities on a privately owned utility pole, a utility pole owned by an electric cooperative or by a





municipal electric utility, a privately owned wireless support structure, or other private property without the consent of the property owner.

(i) This subsection does not authorize a person to collocate or attach small wireless facilities or micro wireless facilities on a utility pole or erect a wireless support structure in the right-of-way located within a retirement community that:

1. Is deed-restricted as housing for older persons as defined in s. 760.29(4)(b);

2. Has more than 5,000 residents; and

3. Has underground utilities for electric transmission or distribution.

(j) This subsection may not be construed to limit a local government's authority to enforce historic preservation zoning regulations consistent with the preservation of local zoning authority under 47 U.S.C s. 332(c)(7), the requirements for facility modifications under 47 U.S.C. s. 1455(a), or the National Historic Preservation Act of 1966, as amended; and the regulations adopted to implement these laws.

Section 2. This act shall take effect July 1, 2017.

**The Florida Senate**

# BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

| | |
|---|---|
| BILL: | CS/SB 530 |
| INTRODUCER: | Banking and Insurance Committee and Senator Steube |
| SUBJECT: | Health Insurer Authorization |
| DATE: | April 12, 2017 REVISED: |

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|---|---|---|---|---|
| 1. | Johnson | Knudson | BI | **Fav/CS** |
| 2. | Brown | Cibula | JU | **Favorable** |
| 3. | Johnson | Phelps | RC | **Favorable** |

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

COMMITTEE SUBSTITUTE - Substantial Changes

## I. Summary:

CS/SB 530 revises provisions of the Insurance Code relating to prior authorization and step therapy or fail-first protocols. The bill creates an expedited, standard process for the approval or denial of prior authorizations and protocol exceptions, which provides greater transparency for consumers and providers regarding policies and procedures.

Under a prior authorization process, a health care provider is required to seek approval from an insurer before a patient may receive a health care service under the plan. Step therapy or fail-first protocols for medical treatment or prescription drugs coverage require an insured or enrollee to try a certain drug or treatment before receiving coverage for another drug or medical treatment. However, timely access to appropriate health care can be critical for individuals who have chronic conditions that may cause death, disability, or serious discomfort.

The bill:

- Requires a health insurer (which means a health insurer, health maintenance organization (HMO), or Medicaid managed care plan), or pharmacy benefit manager (PBM) on behalf of a health insurer to authorize or deny a prior authorization request or a protocol exception request or appeal of a denial in nonurgent care situation within 72 hours after receiving a prior authorization form or protocol exception request. In urgent circumstances, a health insurer must authorize or deny a request within 24 hours.
- Provides greater transparency for consumers by requiring health insurers or PBMs to provide public access on its website to current prior authorization requirements, restrictions, and

forms and in written or electronic form upon request. If a health insurer, or PBM intends to amend or implement a new prior authorization requirement or restriction, the entity must update the website 60 days before the effective date of the new requirement or restriction. Notification of the change must be provided to all insureds or enrollees using the affected service and to all contract providers who provide the affected services at least 60 days before the effective date.

- Requires a health insurer to grant a protocol exception request under certain conditions.
- Provides that if the health insurer authorizes the protocol exception request, the health insurer must specify the approved medical procedure, course of treatment, or prescription drug benefits.
- Requires that if the health insurer denies the protocol exception request, the health insurer must provide specified information, including procedures on appealing a denial.

The fiscal impact on the Medicaid program is indeterminate. The State Group Insurance program indicates that the two fully-insured HMOs would incur an indeterminate negative impact. The provisions of the bill would not have a fiscal impact on the state's self-funded insurance plans.

## II. Present Situation:

### Regulation of Insurers and Health Maintenance Organizations in Florida

The Office of Insurance Regulation (OIR) licenses and regulates the activities of insurers, HMOs, and other risk-bearing entities.[1] The Agency for Health Care Administration (agency) regulates the quality of care provided by HMOs under part III of ch. 641, F.S. Before receiving a certificate of authority from the OIR, an HMO must receive a Health Care Provider Certificate from the agency.[2] As part of the certification process used by the agency, an HMO must provide information to demonstrate that the HMO has the ability to provide quality of care consistent with the prevailing standards of care.[3]

The Florida Insurance Code requires health insurers and HMOs to provide an outline of coverage or other information describing the benefits, coverages, and limitations of a policy or contract. This may include an outline of coverage describing the principal exclusions and limitations of the policy.[4] Further, each contract, certificate, or member handbook of an HMO must delineate the services for which a subscriber is entitled and any limitations under the contract.[5]

Section 627.4234, F.S., requires a health insurance policy or health care services plan, which provides medical, hospital, or surgical expense coverage delivered or issued for delivery in this state to contain one or more of the following procedures or provisions to contain health insurance costs or cost increases:

- Coinsurance.
- Deductible amounts.
- Utilization review.

[1] Section 20.121(3)(a), F.S.
[2] Section 641.21(1), F.S.
[3] Section 641.495, F.S.
[4] Section 627.642, F.S.
[5] Section 641.31(4), F.S.

- Audits of provider bills to verify that services and supplies billed were furnished and that proper charges were made.
- Scheduled benefits.
- Benefits for preadmission testing.
- Any lawful measure or combination of measures for which the insurer provides to the office information demonstrating that the measure or combination of measures is reasonably expected to contain health insurance costs or cost increases.

Pursuant to s. 627.42392, F.S., any health insurer (health insurer, HMO, Medicaid managed care plan) or pharmacy benefit manager, on behalf of the health insurer, that does not use an online prior authorization form must use a standardized form adopted by the Financial Services Commission to obtain a prior authorization for a medical procedure, course of treatment, or prescription drug benefit. Such form must include all clinical documentation necessary for the health insurer to make a decision.

**Florida's Statewide Medicaid Managed Care[6]**

The Florida Medicaid program is a partnership between the federal and state governments. In Florida, the Agency for Health Care Administration (agency) oversees the Medicaid program.[7] The Statewide Medicaid Managed Care (SMMC) program is comprised of the Managed Medical Assistance (MMA) program and the Long-term Care (LTC) managed care program. The agency contracts with managed care plans to provide services to eligible enrollees.[8]

***Managed Care Covered Services***

The benefit package offered by the MMA plans is comprehensive and covers all Medicaid state plan benefits (with very limited exceptions). This includes all medically necessary services for children. Most Florida Medicaid enrollees who are eligible for the full array of Florida Medicaid benefits are enrolled in an MMA plan. The agency maintains coverage policies for most Florida Medicaid services, which are incorporated by reference into Rule 59G-4, F.A.C. Florida Medicaid managed care plans cannot be more restrictive than these policies or the Florida Medicaid state plan (which is approved by the federal Centers for Medicare and Medicaid Services) in providing services to their enrollees.

Section 409.91195, F.S., establishes the Pharmaceutical and Therapeutics (P&T) committee within the agency for the development of a Florida Medicaid preferred drug list (PDL). The P&T committee meets quarterly, reviews all drug classes included in the formulary at least every 12 months, and may recommend additions to and deletions from the agency's Medicaid PDL, such that the PDL provides for medically appropriate drug therapies for Florida Medicaid recipients and an array of choices for prescribers within each therapeutic class. The agency also

[6] Agency for Health Care Administration, Analysis of SB 530 (Feb. 22, 2017) (on file with the Senate Committee on Banking and Insurance).
[7] Part III of ch. 409, F.S., governs the Medicaid program.
[8] A managed care plan that is eligible to provide services under the SMMC program must have a contract with the agency to provide services under the Medicaid program; be a health insurer, an exclusive provider organization or a HMO authorized under ch. 624, 627, or 641, F.S., respectively, or a provider service network authorized under s. 409.912(2), F.S., or an accountable care organization authorized under federal law. (s. 409.962, F.S.)

manages the federally required Medicaid Drug Utilization Board, which meets quarterly, and develops and reviews clinical prior authorization criteria, including step-therapy protocols for drugs that are not on the Medicaid PDL.

Florida Medicaid managed care plans serving MMA enrollees are required to provide all prescription drugs listed on the agency's PDL and otherwise covered by Medicaid.[9] As such, the Florida Medicaid managed care plans have not implemented their own plan-specific formulary or PDL. The Florida Medicaid managed care plan's prior authorization criteria/protocols related to prescribed drugs cannot be more restrictive than the criteria established by the agency.

***Prior Authorization Requirements***

Florida Medicaid managed care plans may implement service authorization and utilization management requirements for the services they provide under the SMMC program. However, Florida Medicaid managed care plans are required to ensure that service authorization decisions are based on objective evidenced-based criteria; utilization management procedures are applied consistently; and all decisions to deny or limit a requested service are made by health care providers who have the appropriate clinical expertise in treating the enrollee's condition. The Florida Medicaid managed care plans are also required to adopt practice guidelines that are based on valid and reliable clinical evidence or a consensus of health care professionals in a particular field; consider the needs of the enrollees; are adopted in consultation with providers; and are reviewed and updated periodically, as appropriate.[10]

Florida Medicaid managed care plans must establish and maintain a utilization management system to monitor utilization of services, including an automated service authorization system for denials, service limitations, and reductions of authorization. Section 627.42392, F.S., requires the use of a standard prior authorization form by health insurers. A health insurer that does not provide an electronic prior authorization process for use by its providers is required to use the prior authorization form adopted by the Financial Services Commission for authorization of procedures, treatments, or prescription drugs. Currently, Medicaid managed care plans are required by contract to have electronic authorization processes and are therefore exempt from this provision.

The SMMC contract requires managed care plans to authorize or deny a standard request for prior authorization for services other than prescribed drugs within 7 days and authorize or deny an expedited request within 48 hours after receiving the request. Within 24 hours after receipt of a request, a managed care plan must respond to a request for prior authorization. The timeframe for standard authorization decisions can be extended up to 7 additional days if the enrollee or the provider requests an extension or the managed care plan justifies the need for additional information and describes how the extension is in the enrollee's interest.

[9] See Agency for Health Care Administration Pharmacy Policy available at: http://ahca.myflorida.com/Medicaid/Policy_and_Quality/Policy/pharmacy_policy/index.shtml (last viewed Mar. 30, 2017).
[10] These guidelines are consistent with requirements found in federal and state regulations (See 42 CFR s. 438.236(b)). All service authorization decisions made by the managed care plans must be consistent with the State's Medicaid medical necessity definition (Rule 59G-1.010, F.A.C.).

***Enrollee Materials and Services***

Managed care plans are contractually required to notify enrollees via the enrollee handbook of any procedures for obtaining required services and authorization requirements, including any services available without prior authorization. All enrollee communications, including written materials, spoken scripts, and websites, must be at or near the fourth grade reading level. Managed care plans are required by contract to issue a provider handbook to all providers that includes prior authorization and referral procedures, including required forms. Managed care plans are required to keep all provider handbooks and bulletins up to date and in compliance with state and federal laws. The managed care plans must notify its enrollees in writing of any changes to covered services or service authorization protocols at least 30 days in advance of the change.

The managed care plan must send a written notice of adverse benefit determination to the enrollee to inform the enrollee about a decision to deny, reduce, suspend, or terminate a requested service and provide directions on how the enrollee may ask for a plan appeal to dispute the managed care plan's adverse benefit determination. The enrollee has 60 days after the plan's adverse benefit determination to ask for a plan appeal. For decisions that are appealed, the managed care plan must have a second health care professional who was neither involved in any previous level of review or decision-making, nor a subordinate of any such individual. The managed care plan then has 30 days from the date of the enrollee's request to make a final decision. The managed care plan has 72 hours to respond to the enrollee or his or her authorized representative's request for an expedited plan appeal. The enrollee must complete the plan appeal process before asking for a Medicaid fair hearing.

**Florida State Group Insurance Program**

Under the authority of s. 110.123, F.S., the Department of Management Services (DMS), through the Division of State Group Insurance, administers the state group insurance program by providing employee benefits such as health, life, dental, and vision insurance products under a cafeteria plan consistent with s. 125, Internal Revenue Code. To administer the state group health insurance program, the DMS contracts with third party administrators, HMOs, and a PBM for the state employees' prescription drug program pursuant to s. 110.12315, F.S.

Contractually, health plans and contracted third party administrators are required to review urgent or emergency prior authorization requests within 24 hours after receipt and within 14 calendar days after initial receipt for routine requests. Current industry standards for utilization review change notices to plan participants/enrollees is 30 days.[11]

[11] Department of Management Services, *Analysis of SB 530* (Mar. 23, 2017) (on file with the Senate Banking and Insurance Committee and the Senate Judiciary Committee).

**Federal Patient Protection and Affordable Care Act**

***Health Insurance Reforms***

The federal Patient Protection and Affordable Care Act (PPACA) was signed into law on March 23, 2010.[12] The PPACA requires health insurers to make coverage available to all individuals and employers, without exclusions for preexisting conditions and without basing premiums on any health-related factors. The PPACA also mandates required essential health benefits[13] and other provisions.

The PPACA requires insurers and HMOs that offer qualified health plans (QHPs) to provide ten categories of essential health benefits (EHB), which includes prescription drugs.[14] The federal Health Insurance Marketplace must certify such plans of an insurer or HMO.[15] The federal deadline for insurers and HMOs to submit 2018 rates and forms to the Florida Office of Insurance Regulation is May 3, 2017.[16,17]

***Prescription Drug Coverage***

For purposes of complying with the federal EHBs for prescription drugs, plans must include in their formulary drug list the greater of one drug for each U.S. Pharmacopeia (USP) category and class; or the same number of drugs in each USP category and class as the state's EHB benchmark plan. Plans must have a Pharmacy and Therapeutics Committee design formularies using scientific evidence that will include consideration of safety and efficacy, cover a range of drugs in a broad distribution of therapeutic categories and classes, and provide access to drugs that are included in broadly accepted treatment guidelines. The PPACA also requires plans to implement an internal appeals and independent external review process if an insured is denied coverage of a drug on the formulary.[18]

Plans are required to publish an up-to-date and complete list of all covered drugs on its formulary drug list, including any tiered structure and any restrictions on the way a drug can be obtained, in

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[12] The Patient Protection and Affordable Care Act (Pub. L. No. 111–148) was enacted on March 23, 2010. The Health Care and Education Reconciliation Act of 2010 (Pub. L. No. 111–152), which amended and revised several provisions of the Patient Protection and Affordable Care Act, was enacted on March 30, 2010.
[13] 42 U.S.C. s.18022.
[14] See Center for Consumer Information & Insurance Oversight, *Information on Essential Health Benefits (EHB) Benchmark Plans* https://www.cms.gov/cciio/resources/data-resources/ehb.html (last viewed March 30, 2017) for Florida's benchmark plan.
[15] Center for Consumer Information & Insurance Oversight, *Qualified Health Plans,* https://www.cms.gov/CCIIO/Programs-and-Initiatives/Health-Insurance-Marketplaces/qhp.html (last viewed Mar. 30, 2017).
[16] Office of Insurance Regulation, *Guidance to Insurers,* available at http://www.floir.com/sitedocuments/PPACANoticetoIndustry201802032017.pdf (last viewed Mar. 30, 2017).
[17] President Trump, Executive Order 13765, *Minimizing the Economic Burden of the Patient Protection and Affordable Care Act Pending Repeal,* https://www.whitehouse.gov/the-press-office/2017/01/2/executive-order-minimizing-economic-burden-patient-protection-and (Jan. 20, 2017). President Trump issued an executive order indicating that it is the intent of his administration to seek the prompt repeal of PPACA. (last viewed: Mar. 30, 2017).
[18] 45 C.F.R. s. 147.136.

a manner that is easily accessible to insureds, prospective insureds, the state, and the public.[19] Restrictions include prior authorization, step therapy, quantity limits and access restrictions.[20]

**Cost Containment Measures Used by Insurers and HMOs**

Insurers use many cost containment and utilization review strategies to manage medical and drug spending and patient safety. For example, plans may place utilization management requirements on the use of certain medical treatments or drugs on their formulary. Under prior authorization, a health care provider is required to seek approval from an insurer before a patient may receive a specified diagnostic or therapeutic treatment or specified prescription drugs under a plan. In some cases, plans require an insured to use a step therapy protocol for drugs or a medical treatment, which requires the insured to try one drug or medical procedure first to treat the medical condition before the insurer or HMO will cover another drug or procedure for that condition.

## III. Effect of Proposed Changes:

**Section 1** revises s. 627.42392, F.S., relating to prior authorization by a health insurer. A health insurer is an authorized health insurer offering major medical or similar comprehensive coverage, a Medicaid managed care plan, or an HMO. The section defines the term, "urgent care situation," which has the same meaning as in s. 627.42393, F.S. (see section 2, below).

A health insurer or a PBM on behalf of a health insurer is required to provide current prior authorization requirements, restrictions, and forms on a publicly accessible website and in written or electronic format upon request. The requirements must be described in clear and easily understandable language. Further, the bill requires any clinical criteria to be described in language easily understandable by a provider.

If a health insurer or a PBM on behalf of a health insurer intends to amend or implement new prior authorization requirements or restrictions, the health insurer or PBM must:

- Ensure that the new or amended requirements or restrictions are available on their website at least 60 days before the effective date of the changes.
- Provide notice to policyholders and providers who are affected by the changes at least 60 days before the effective date. Notice may be delivered electronically or by other methods mutually agreed upon by the insured or provider.

These notice requirements do not apply to expansion of coverage.

Health insurers or PBMs on behalf of health insurers must approve or deny prior authorization requests in urgent and nonurgent care circumstances within 24 hours and 72 hours, respectively, after receipt of the prior authorization form. Notice must be given to the patient and the treating provider of the patient.

[19] 45 C.F.R. s. 156.122(d).
[20] According to CMS, this formulary drug list website link should be the same direct formulary drug list link for obtaining information on prescription drug coverage in the Summary of Benefits Coverage, in accordance with 45 CFR s. 147.200(a)(2).

**Section 2** creates s. 627.42393, F.S., relating to step therapy or fail-first protocols. The bill defines the following terms:

- "Fail-first protocol," is a written protocol that specifies the order in which a certain medical procedure, prescription drugs or course of treatment must be used to treat an insured's condition.
- "Health insurer" has the same meaning as provided in s. 627.42392, F.S. (see section 1, above).
- "Preceding prescription drug or medical treatment," is a medical procedure, course of treatment, or prescription drug that must be used pursuant to a health insurer's fail first protocol as a condition of coverage under a health insurance policy or HMO contract to treat an insured's condition.
- "Protocol exception" is a determination by a health insurer that a fail first protocol is not medically appropriate or indicated for treatment of an insured's condition, and the health insurer authorizes the use of another medical procedure, course of treatment, or prescription drug prescribed or recommended by the treating provider for the insured's condition.
- "Urgent care situation" is an injury or condition of an insured which, if medical care and treatment is not provided earlier than the time generally considered by the medical profession to be reasonable for a nonurgent situation, in the opinion of the insured's treating physician, would seriously jeopardize the insured's life or health or ability to regain maximum function or subject the patient to severe pain that cannot be managed adequately.

A health insurer is required to publish on its website and provide to an insured in writing the procedure for requesting a protocol exception, including the following:

- A description of the manner in which an insured may request a protocol exception.
- The manner and timeframe in which a health insurer is required to authorize or deny a protocol exception request or respond to an appeal to a health insurer's authorization or denial of a request.
- The conditions in which the protocol exception request must be granted.

As is the case for a response to a request for a prior authorization, the health insurer must authorize or deny a protocol exception request or respond to an appeal of a health insurer's authorization or denial of a request within 24 hours after receipt in an urgent care situation; or within 72 hours after receipt in a nonurgent care situation. The health insurer must include a detailed written explanation of the reason for the denial and the procedure to appeal the denial.

A health insurer must grant a protocol exception request if:

- A preceding prescription drug or medical treatment is contraindicated or will likely cause an adverse reaction or physical or mental harm to the insured;
- A preceding prescription drug is expected to be ineffective based on the medical history of the insured and the clinical evidence of the characteristics of the preceding prescription drug or medical treatment;
- The insured previously received a preceding prescription drug or another prescription drug or medical treatment that is in the same pharmacologic class or that has the same mechanism of action as a preceding prescription drug, respectively, and the drug or treatment lacked efficacy or effectiveness or adversely affected the insured; or

- A preceding prescription drug or medical treatment is not in the best interest of the insured because the insured's use of the drug or treatment is expected to:
  - Cause a significant barrier to the insured's adherence to or compliance with the insured's plan of care;
  - Worsen the medical condition of the insured that exists simultaneously but independently with the condition under treatment; or
  - Decrease the ability of the insured to achieve or maintain his or her ability to perform daily activities.

The health insurer may request a copy of relevant documentation from the insured's medical record in support of a protocol exception request.

**Section 3** provides that the bill takes effect July 1, 2017.

## IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

The bill does not address whether its provisions apply prospectively to future contracts between a person and an insurer or an HMO or to contracts in existence on the effective date of the bill.

Article I, section 10 of the State Constitution provides:

> **Prohibited laws.—**No bill of attainder, ex post facto law or law impairing the obligation of contracts shall be passed.

This bill may potentially be challenged to the extent that its provisions substantially alter existing contracts, In *Pomponio v. Claridge of Pompano Condominium, Inc.*,[21] the Florida Supreme Court reviewed a statute which required the deposit of rent into a court registry during litigation involving obligations under a contract lease. The court invalidated the law as an unconstitutional impairment of contract, after applying a three-

[21] *Pomponio v. Claridge of Pompano Condominium, Inc.*, 378 So. 2d 774, 779 (Fla. 1979).

prong test."[22] The court noted that the inquiry is not required and the law will stand if the court initially finds that the alteration of contractual obligations is minimal.[23] However, a substantial or severe impairment of an existing contract requires the court to consider whether:

- The law was enacted to deal with a broad, generalized economic or social problem;
- The law operates in an area that was already subject to state regulation at the time the contract was entered into; and
- The effect on the contractual relationships is temporary or whether it is severe, permanent, immediate, and retroactive.[24]

In *United States Fidelity & Guaranty Co. v. Department of Insurance*, the Florida Supreme Court followed *Pomponio*.[25] In so doing, the court stated that the overall query involves a balancing of a person's interest to not have his or her contracts impaired, with the state's interest in exercising legitimate police power.[26] As provided in *Pomponio*, the severity of the impairment increases the level of scrutiny.[27]

Relevant to whether an impairment of contract is constitutional is the degree to which the plaintiff's industry had been regulated in the past. If the industry of the plaintiff was already heavily regulated at the time the plaintiff entered into the contract, further regulation is expected, and therefore considered to be reasonable by the court.[28]

## V. Fiscal Impact Statement:

### A. Tax/Fee Issues:

None.

### B. Private Sector Impact:

Implementation of the bill may give health care providers greater flexibility in prescribing medications to meet the unique medical needs of their patients and reduce the administrative burden associated with the prior authorization process and the current step therapy or failfirst therapy protocols.

Insurers and HMOs may experience an indeterminate increase in costs associated with changes in the step therapy protocols provided in the bill. These cost increases are likely to pass through to the purchasers of health insurance, such as individuals and employers.[29]

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[22] *Id*. at 779, 782.
[23] In so doing, the court concluded, "[t]he severity of the impairment measures the height of the hurdle the state legislation must clear." *Id*.
[24] *Id*.
[25] *United States Fidelity & Guaranty Co. v. Department of Insurance*, 453 So. 2d 1355, 1360 (Fla. 1984).
[26] *Id*. at 1360.
[27] *Id*.
[28] *Id*. at 1361.
[29] Office of Insurance Regulation, *2017 Agency Legislative Bill Analysis of SB 530* (Feb. 2, 2017) (on file with the Senate Committee on Banking and Insurance and the Senate Committee on Judiciary).

The provisions of the bill would not apply to self-insured health plans because plans are preempted from state regulation under the Employee Retirement Income Security Act of 1974.

C. Government Sector Impact:

**Division of State Group Insurance/DMS[30]**

The fiscal impact of the bill is unknown. However, the bill will negatively impact the division's fully insured HMO vendors, Capital Health Plan (CHP) and Florida Health Care Plans (FHCP). The initial estimated fiscal impact for CHP would be $450,000 annually. The FHCP was unable to provide a fiscal impact estimate. The provisions of the bill will not affect the state's self-funded insurance plans.

The requirement of a 60-day notice for utilization review changes may prevent timely changes when external or internal factors facilitate an urgent need for the change. The 60-day notice requirement could discourage utilization review changes all together, many of which are made to maintain or increase quality. Other changes are made to assist in the elimination of fraud, abuse, and overuse of certain prescription drugs and medical treatments.

**Medicaid[31]**

According to the agency, CS/SB 530 will have an indeterminate fiscal impact on the agency. The bill will require the agency to amend the SMMC contracts to modify the prior authorization requirements and the utilization review timeframes. The agency will use current agency resources to amend the contract. The bill will significantly affect the business (staffing, systems, etc.) and clinical operations of the Medicaid managed care plans. The bill requires the plans to shorten the time to review authorizations, which will increase the administrative costs.

The agency notes that the situations specified in the bill, for which a plan would be required to authorize a request for a "protocol exception," should already be contemplated in the plans' clinical/evidence based authorization criteria under the SMMC program and are factors addressed in the application of the State's Medicaid medical necessity definition. All Medicaid managed care plans must use the State's Medicaid medical necessity definition in their approval and denial of services. As such, it is unclear of the benefit achieved from applying the requirements related to the "protocol exception" to managed care plans furnishing services under the SMMC program, other than to add administrative requirements on the plans in an effort to expedite authorization decisions. The timely response standards for protocol exceptions will require the plans to increase their authorization staff and will result in an increase in administrative expenses.

[30] Department of Management Services, *Senate Bill 530 Analysis* (Mar. 23, 2017) (on file with the Senate Committee on Banking and Insurance and the Senate Committee on Judiciary).
[31] Agency for Health Care Administration, *Senate Bill 530 Analysis* (Feb. 22, 2017) (on file with the Senate Committee on Banking and Insurance).

These increased costs will need to be reflected in the SMMC capitation rates as administrative expenses.

## VI. Technical Deficiencies:

**Terms**

The provisions of section 1 of the bill apply to health insurers and pharmacy benefit managers on behalf of health insurers. The OIR regulates health insurers; however, PBMs are not licensed or regulated by the OIR. It is unclear whether the health insurer is responsible for the actions of the PBM. The OIR analysis of the bill expresses concern regarding enforcing PBM compliance with this bill.[32]

**Notice of Prior Authorization Changes**

The bill requires health insurers or a PBM to provide at least 60 days' prior notice to insureds and physicians prior to implementing new requirements or restrictions to the prior authorization process. However, the bill does not allow for exceptions in circumstances where a drug or procedure is found to be hazardous or could result in harm to an insured.

## VII. Related Issues:

**Effective Date**

According to the OIR, the filing submission deadline for PPACA-compliant form and rate filings in the individual and small group market is May 3, 2017. This deadline is applicable for products sold on and off the exchange. However, the effective date of the bill is July 1, 2017. Many plans operate on a calendar year basis.

## VIII. Statutes Affected:

This bill substantially amends section 627.4292, Florida Statutes.

This bill creates section 627.4293, 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 Banking and Insurance Committee on March 27, 2015:**
The CS:

- Revises definitions.
- Removes applicability of the provisions of the bill to utilization review entities.
- Revises procedures for prior authorization and fail first protocols.

[32] Office of Insurance Regulation, *2017 Agency Legislative Bill Analysis of SB 530* (Feb. 2, 2017) (on file with the Senate Committee on Banking and Insurance and the Senate Committee on Judiciary).

- Shortens response time for health insurers to authorize or deny a prior authorization request or a fail first protocol exception request for nonurgent care situations from 3 business days to 72 hours.

B. Amendments:

None.

**By** the Committee on Banking and Insurance; and Senator Steube

597-02949-17 2017530c1

A bill to be entitled

An act relating to health insurer authorization; amending s. 627.42392, F.S.; revising and providing definitions; revising criteria for prior authorization forms; requiring health insurers and pharmacy benefits managers on behalf of health insurers to provide certain information relating to prior authorization in a specified manner; prohibiting such insurers and pharmacy benefits managers from implementing or making changes to requirements or restrictions to obtain prior authorization, except under certain circumstances; providing applicability; requiring such insurers or pharmacy benefits managers to authorize or deny prior authorization requests and provide certain notices within specified timeframes; creating s. 627.42393, F.S.; providing definitions; requiring health insurers to publish on their websites and provide in writing to insureds a specified procedure to obtain protocol exceptions; specifying timeframes in which health insurers must authorize or deny protocol exception requests and respond to an appeal to a health insurer's authorization or denial of a request; requiring authorizations or denials to specify certain information; providing circumstances in which health insurers must grant a protocol exception request; authorizing health insurers to request documentation in support of a protocol exception request; providing an effective date.







597-02949-17 2017530c1

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

Section 1. Section 627.42392, Florida Statutes, is amended to read:

627.42392 Prior authorization.—

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

(a) "Health insurer" means an authorized insurer offering an individual or group insurance policy that provides major medical or similar comprehensive coverage ~~health insurance as defined in s. 624.603~~, a managed care plan as defined in s. 409.962(10) ~~s. 409.962(9)~~, or a health maintenance organization as defined in s. 641.19(12).

(b) "Urgent care situation" has the same meaning as in s. 627.42393.

(2) Notwithstanding any other provision of law, effective January 1, 2017, or six (6) months after the effective date of the rule adopting the prior authorization form, whichever is later, a health insurer, or a pharmacy benefits manager on behalf of the health insurer, which does not provide an electronic prior authorization process for use by its contracted providers, shall only use the prior authorization form that has been approved by the Financial Services Commission for granting a prior authorization for a medical procedure, course of treatment, or prescription drug benefit. Such form may not exceed two pages in length, excluding any instructions or guiding documentation, and must include all clinical documentation necessary for the health insurer to make a decision. At a minimum, the form must include: (1) sufficient patient information to identify the member, date of birth, full

name, and Health Plan ID number; (2) provider name, address and phone number; (3) the medical procedure, course of treatment, or prescription drug benefit being requested, including the medical reason therefor, and all services tried and failed; (4) any laboratory documentation required; and (5) an attestation that all information provided is true and accurate. The form, whether in electronic or paper format, may not require information that is not necessary for the determination of medical necessity of, or coverage for, the requested medical procedure, course of treatment, or prescription drug.

(3) The Financial Services Commission in consultation with the Agency for Health Care Administration shall adopt by rule guidelines for all prior authorization forms which ensure the general uniformity of such forms.

(4) Electronic prior authorization approvals do not preclude benefit verification or medical review by the insurer under either the medical or pharmacy benefits.

(5) A health insurer or a pharmacy benefits manager on behalf of the health insurer must provide the following information in writing or in an electronic format upon request, and on a publicly accessible Internet website:

(a) Detailed descriptions of requirements and restrictions to obtain prior authorization for coverage of a medical procedure, course of treatment, or prescription drug in clear, easily understandable language. Clinical criteria must be described in language easily understandable by a health care provider.

(b) Prior authorization forms.

(6) A health insurer or a pharmacy benefits manager on





behalf of the health insurer may not implement any new requirements or restrictions or make changes to existing requirements or restrictions to obtain prior authorization unless:

(a) The changes have been available on a publicly accessible Internet website at least 60 days before the implementation of the changes.

(b) Policyholders and health care providers who are affected by the new requirements and restrictions or changes to the requirements and restrictions are provided with a written notice of the changes at least 60 days before the changes are implemented. Such notice may be delivered electronically or by other means as agreed to by the insured or health care provider.

This subsection does not apply to expansion of health care services coverage.

(7) A health insurer or a pharmacy benefits manager on behalf of the health insurer must authorize or deny a prior authorization request and notify the patient and the patient's treating health care provider of the decision within:

(a) Seventy-two hours of obtaining a completed prior authorization form for nonurgent care situations.

(b) Twenty-four hours of obtaining a completed prior authorization form for urgent care situations.

Section 2. Section 627.42393, Florida Statutes, is created to read:

627.42393 Fail-first protocols.—

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

(a) "Fail-first protocol" means a written protocol that

specifies the order in which a certain medical procedure, course of treatment, or prescription drug must be used to treat an insured's condition.

(b) "Health insurer" has the same meaning as provided in s. 627.42392.

(c) "Preceding prescription drug or medical treatment" means a medical procedure, course of treatment, or prescription drug that must be used pursuant to a health insurer's fail-first protocol as a condition of coverage under a health insurance policy or a health maintenance contract to treat an insured's condition.

(d) "Protocol exception" means a determination by a health insurer that a fail-first protocol is not medically appropriate or indicated for treatment of an insured's condition and the health insurer authorizes the use of another medical procedure, course of treatment, or prescription drug prescribed or recommended by the treating health care provider for the insured's condition.

(e) "Urgent care situation" means an injury or condition of an insured which, if medical care and treatment is not provided earlier than the time generally considered by the medical profession to be reasonable for a nonurgent situation, in the opinion of the insured's treating physician, would:

1. Seriously jeopardize the insured's life, health, or ability to regain maximum function; or

2. Subject the insured to severe pain that cannot be adequately managed.

(2) A health insurer must publish on its website, and provide to an insured in writing, a procedure for an insured and





health care provider to request a protocol exception. The procedure must include:

(a) A description of the manner in which an insured or health care provider may request a protocol exception.

(b) The manner and timeframe in which the health insurer is required to authorize or deny a protocol exception request or respond to an appeal to a health insurer's authorization or denial of a request.

(c) The conditions in which the protocol exception request must be granted.

(3)(a) The health insurer must authorize or deny a protocol exception request or respond to an appeal to a health insurer's authorization or denial of a request within:

1. Seventy-two hours of obtaining a completed prior authorization form for nonurgent care situations.

2. Twenty-four hours of obtaining a completed prior authorization form for urgent care situations.

(b) An authorization of the request must specify the approved medical procedure, course of treatment, or prescription drug benefits.

(c) A denial of the request must include a detailed, written explanation of the reason for the denial, the clinical rationale that supports the denial, and the procedure to appeal the health insurer's determination.

(4) A health insurer must grant a protocol exception request if:

(a) A preceding prescription drug or medical treatment is contraindicated or will likely cause an adverse reaction or physical or mental harm to the insured;

(b) A preceding prescription drug is expected to be ineffective, based on the medical history of the insured and the clinical evidence of the characteristics of the preceding prescription drug or medical treatment;

(c) The insured has previously received a preceding prescription drug or medical treatment that is in the same pharmacologic class or has the same mechanism of action, and such drug or treatment lacked efficacy or effectiveness or adversely affected the insured; or

(d) A preceding prescription drug or medical treatment is not in the best interest of the insured because the insured's use of such drug or treatment is expected to:

1. Cause a significant barrier to the insured's adherence to or compliance with the insured's plan of care;

2. Worsen an insured's medical condition that exists simultaneously but independently with the condition under treatment; or

3. Decrease the insured's ability to achieve or maintain his or her ability to perform daily activities.

(5) The health insurer may request a copy of relevant documentation from the insured's medical record in support of a protocol exception request.

Section 3. This act shall take effect July 1, 2017.

# THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Judiciary, *Chair*
Banking and Insurance, *Vice Chair*
Agriculture
Appropriations Subcommittee on Finance and Tax
Regulated Industries

JOINT COMMITTEE:
Joint Committee on Public Counsel Oversight

**SENATOR GREG STEUBE**
23rd District

April 4, 2017

The Honorable Lizbeth Benacquisto
Florida Senate
400 Senate Office Building
404 South Monroe Street
Tallahassee, FL 32399-1100

Dear Senator Benacquisto,

I am writing this letter because my bill, SB 530: Health Insurance, has been referred to the Senate Rules Committee. This bill passed the Senate Judiciary committee on April 4. I am respectfully requesting that you place these bills on your committee's calendar for the next committee week.

Thank you for your consideration. Please contact me if you have any questions.

Very respectfully yours,

W. Gregory Steube, District 23

REPLY TO:
☐ 722 Apex Road, Unit A, Sarasota, Florida 34240 (941)342-9162
☐ 326 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5023

Senate's Website: *www.flsenate.gov*

**JOE NEGRON**
**President of the Senate**

**ANITERE FLORES**
**President Pro Tempore**

**THE FLORIDA SENATE**

# APPEARANCE RECORD

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

4/12/17
*Meeting Date*

SB530
*Bill Number (if applicable)*

Topic _____

*Amendment Barcode (if applicable)*

Name Chris Nolan

Job Title _____

Address 1000 Riverside ave
*Street*

Phone 904-355-1555

Jacksonville FL
*City* *State* *Zip*

Email _____

Speaking: ☑ For ☐ Against ☐ Information

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

Representing ACP

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

5:00pm
110 S

THE FLORIDA SENATE

# APPEARANCE RECORD

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

4/12/17
*Meeting Date*

530
*Bill Number (if applicable)*

Topic Fail-first/Prior Authorization

*Amendment Barcode (if applicable)*

Name Stephen Winn

Job Title Executive Director

Address 2544 Blairstone Pines Dr.
*Street*

Phone 878-7364

Tallahassee FL 32301
*City* *State* *Zip*

Email winnsr@earthlink.net

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Osteopathic Medical Association

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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S-001 (10/14/14)

**THE FLORIDA SENATE**

# APPEARANCE RECORD

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

4/12/17
*Meeting Date*

SB 530
*Bill Number (if applicable)*

Topic Health Insurer Authorization

*Amendment Barcode (if applicable)*

Name Dorene Barker

Job Title Associate State Director

Address 200 W. College Ave.
*Street*

Phone 850-228-6387

Tallahassee FL 32301
*City* *State* *Zip*

Email DOBarker@aarp.org

Speaking: ☑ For ☐ Against ☐ Information

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

Representing AARP

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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S-001 (10/14/14)

**THE FLORIDA SENATE**

# APPEARANCE RECORD

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

4/12/17
*Meeting Date*

530
*Bill Number (if applicable)*

Topic fail first

*Amendment Barcode (if applicable)*

Name Charlie Adams

Job Title Deputy Director

Address 2201 S Monroe St.
*Street*

Phone

Tallahassee FL 32301
*City* *State* *Zip*

Email

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

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

Representing Big Bend Cares

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

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

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S-001 (10/14/14)

**THE FLORIDA SENATE**

# APPEARANCE RECORD

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

4/19/17
*Meeting Date*

530
*Bill Number (if applicable)*

Topic fail first

*Amendment Barcode (if applicable)*

Name Alisa LaPolt

Job Title Executive Director

Address PO Box 4161
*Street*

Tallahassee FL 32302
*City* *State* *Zip*

Phone

Email

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

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

Representing NAMI Florida

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

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

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

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S-001 (10/14/14)

**THE FLORIDA SENATE**

# APPEARANCE RECORD

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

4/12/17
*Meeting Date*

530
*Bill Number (if applicable)*

*Amendment Barcode (if applicable)*

Topic fail fmt

Name Pam Langford

Job Title Executive Director

Address PO Box 10813
*Street*

Tallahassee, FL 32318
*City* *State* *Zip*

Phone

Email

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

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

Representing HEALS of the South

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

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

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

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S-001 (10/14/14)

THE FLORIDA SENATE

# APPEARANCE RECORD

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

4/12/17
*Meeting Date*

SB 530
*Bill Number (if applicable)*

Topic Health Insurer Authorization

*Amendment Barcode (if applicable)*

Name Aimee Diaz Lyon

Job Title

Address 119 South Monroe Street, Suite 200
*Street*

Phone 850-205-9000

Tallahassee FL 32301
*City* *State* *Zip*

Email aimee.diazlyon@mhdhm.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing BioFlorida / The AIDS Institute

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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S-001 (10/14/14)

**THE FLORIDA SENATE**

# APPEARANCE RECORD

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

4/12/17
*Meeting Date*

SB 530
*Bill Number (if applicable)*

Topic _____

*Amendment Barcode (if applicable)*

Name Jeff Scott

Job Title _____

Address 1430 Piedmont Dr. E.
*Street*

Tallahassee FL 32308
*City* *State* *Zip*

Phone 850 224-6496

Email jscott@flmedical.org

Speaking: ☑ For ☐ Against ☐ Information

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

Representing Florida Medical Association

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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S-001 (10/14/14)

**THE FLORIDA SENATE**

# APPEARANCE RECORD

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

Meeting Date

530

Bill Number (if applicable)

Topic ~~Bill~~ Health Insurance Appt.

Amendment Barcode (if applicable)

Name Beth Labarky

Job Title Consultant

Address 1400 Village Sq. Blvd

Street

Tel Fla 32312

City State Zip

Phone 850 322 7335

Email

Speaking: ☒ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against

*(The Chair will read this information into the record.)*

Representing Alpha One Foundation

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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S-001 (10/14/14)

**The Florida Senate**

# BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

| | |
|---|---|
| BILL: | CS/CS/SB 724 |
| INTRODUCER: | Banking and Insurance Committee; Judiciary Committee; and Senator Passidomo |
| SUBJECT: | Estates |
| DATE: | April 12, 2017 |
| REVISED: | |

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|---|---|---|---|---|
| 1. | Stallard | Cibula | JU | **Fav/CS** |
| 2. | Billmeier | Knudson | BI | **Fav/CS** |
| 3. | Stallard | Phelps | RC | **Favorable** |

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

COMMITTEE SUBSTITUTE - Substantial Changes

## I. Summary:

CS/CS/SB 724 modifies several sections of the Florida Probate Code relating to the "elective share"—that is, the 30 percent portion of a decedent's estate that a surviving spouse may elect to take regardless of what is provided to him or her in the decedent's testamentary plan.

Current law does not include homestead property in the elective estate, the part of the property from which the surviving spouse can take 30 percent. The bill expressly includes the decedent's protected homestead in the elective estate. For the purpose of this calculation, homestead is valued differently depending on the interest that the surviving spouse would have in the homestead. The bill provides that if the surviving spouse receives a full, outright ("fee simple") interest, the homestead is valued at its fair market value as of the decedent's death.

Current law allows the surviving spouse to take a life estate in the homestead or take undivided one-half interest in the homestead. The bill provides that if the surviving spouse elects to take a life estate in the homestead or if the surviving spouse elects to take a one-half interest in the homestead, the homestead is valued at one-half of its fair market value on the decedent's date of death.

Current law authorizes an award of attorneys' fees and costs only where an election is made or attempted in bad faith. The bill expands the prospect of recovering these fees and costs in two ways. First, the bill expands the types of actions in which fees and costs may be granted. Second, an award of fees and costs no longer must be predicated on bad faith.

The bill extends the time in which a surviving spouse may move for an extension to choose the elective share, expands the application of interest penalties for late payment by those who are liable to contribute to the elective share, and adds a clause designed to "save" trusts that would qualify as "elective share trusts" if not for a particular deficiency.

## II. Present Situation:

### Elective Share

The law affords people broad authority to determine what will happen to their assets when they die. To exercise this authority, people may use one or more of a host of available tools, perhaps the best-known of which is a will. Other tools include trusts, beneficiary designations on bank accounts and any number of other items, and life insurance policies.

However, the authority of a person to determine the destination of his or her property upon his or her death is subject to a host of limitations. One of these limitations, which applies to people who are married at the time of their death, is called the "elective share." This provision of Florida law entitles a decedent's spouse to elect to receive a certain percentage of the estate, *regardless of what a will or other testamentary instrument says*. This is percentage is called the "elective share."

The elective share is 30 percent of the net value of the "elective estate." Section 732.2035, F.S., lists the decedent's assets that are included in the elective estate. These assets include the probate estate, as well as several categories of assets that do not pass through probate.

#### *Homestead Not Included in Elective Estate*

In Florida, the basic concept of a homestead is a home that is protected from most creditors and actions of courts. Homestead includes $2,000 of personal property, but its main component is real property. Homestead property is specifically excluded from the elective estate.[1] As such, when calculating the elective estate, the value of the homestead is not included.

The Florida Constitution provides that the "homestead shall not be subject to devise if the owner is survived by spouse or minor child, except the homestead may be devised to the owner's spouse if there be no minor child."[2] A purpose of this provision is to prevent a surviving spouse from losing a home when a spouse dies. Section 732.401, F.S., implements this provision. It provides that a homestead is not devised according to law, the homestead is passed on as if the decedent died without a will. If a decedent is survived by a spouse and one or more descendants, the spouse can take a life estate in the homestead and the other descendants take per stirpes.[3] The surviving spouse can opt to take an undivided one-half interest in the homestead in lieu of the life estate.[4]

[1] Section 732.2045(1)(i), F.S.
[2] Art. X, s. 4(c), Fla. Const.
[3] Section 732.401(1), F.S.
[4] Section 732.401(2), F.S.

***Deadlines to Choose the Elective Share***

In order to exercise the option to take the elective share, a surviving spouse must file his or her election with the court. The surviving spouse must file the election by the earlier of 6 months after the date the surviving spouse is served with the estate's Letters of Administration or 2 years after the death of the surviving spouse.[5] Within these timeframes, the surviving spouse may petition the court for good cause for an extension of time to make the election.[6]

***Contribution to the Elective Share***

The elective share is available to a surviving spouse, even to one whom the decedent purposefully did not provide for in the decedent's testamentary plan. In a case in which a surviving spouse is not left assets equal to at least 30 percent of the elective estate in the testamentary plan, the amounts due the surviving spouse will need to come from assets that may be allocated to other persons. The statutes require this money to be paid from a progression of different asset types until the elective share is satisfied. These classes of assets are as follows:[7]

> Class 1.—The decedent's probate estate and revocable trusts.
> Class 2.—Recipients of property interests, other than protected charitable interests, included in the elective estate under s. 732.2035(2), (3), or (6), F.S. and, to the extent the decedent had at the time of death the power to designate the recipient of the property, property interests, other than protected charitable interests, included under s. 732.2035(5) and (7), F.S.
> Class 3.—Recipients of all other property interests, other than protected charitable interests, included in the elective estate.
>
> For purposes of [these classes], a protected charitable interest is any interest for which a charitable deduction with respect to the transfer of the property was allowed or allowable to the decedent or the decedent's spouse under the United States gift or income tax laws.[8]

Beneficiaries who have received a distribution of property that it included in the elective estate, as well as "direct recipients,"[9] are liable to contribute to satisfying the elective share.[10] These persons may have received property, rather than money, from the decedent's estate.

Instead of making a cash payment of the dollar amount for which one of these persons is liable, a beneficiary or direct recipient may contribute a proportional part of all property received. This person may also satisfy their contribution obligation by doing one of two things with respect to

[5] Section 732.2135(1), F.S.
[6] Section 732.2135(2), F.S.
[7] Section 732.2075(2), F.S.
[8] As an example, assume these simplistic facts: a man dies with two adult children, $1,000,000 probate assets, no house, and a will that leaves his entire estate to his two children in equal parts. Also, assume that the assets are elective share assets, and that the wife files for her elective share. Here, the children, who would otherwise get $500,000 each, will each need to contribute $150,000 to satisfy the wife's elective share.
[9] "Direct recipient" is defined to include "the decedent's probate estate and any other person who receives property included in the elective estate by transfer from the decedent . . ., by right of survivorship, or by beneficiary designation under a governing instrument." Section 732.2025(1), F.S.
[10] Section 732.2085(1), F.S.

any property interest received before the date of the court's order of contribution. As one option, he or she may contribute all of the property. Or if the property has been sold or exchanged before the date the spouse's election was filed, the liable person may pay an amount equal to the value of the property on the date it was sold or exchanged, less reasonable costs of the sale.[11] Moreover, if a person pays the value of the property on the date of a sale or exchange, or if a person contributes all of the property received,[12] no further contribution is required as to the property. And that amount satisfies his or her contribution liability, even if it is less than the amount he or she would otherwise owe. Accordingly, the balance is then reapportioned among the other members of the class.[13]

Ultimately, it is the duty of the court to determine the elective share and all necessary contribution. And those who owe a contribution must pay interest on the contribution at the statutory interest rate. This interest begins accruing 90 days after the contribution order.

***Elective Share Trusts***

The law grants a decedent's estate several options as to the form of the transfer of an elective share. One option, of course, is to give the surviving spouse assets outright. But, in lieu of giving assets to the spouse outright, the law permits the decedent's estate to satisfy the elective share by merely placing assets into a trust for the benefit of the surviving spouse—an elective share trust. And the law seeks to ensure that the trust *actually* benefits the surviving spouse.

Accordingly, by definition, an elective share trust must authorize the surviving spouse to require the trustee either to make non-productive trust property productive or to convert it within a reasonable time.[14]

But even if a trust was intended to be an elective share trust and contains the other two elements of an elective share trust, the law contains no mechanism to allow the surviving spouse to nonetheless convert non-productive trust assets, thus "saving" the trust from failing the test. This type of savings mechanism exists in Florida law for a marital deduction trust.[15]

***Attorney's Fees and Costs for Bad-Faith Elections***

If the court determines that an election is made or pursued in bad faith, the court may assess attorney's fees and costs against the surviving spouse or the surviving spouse's estate.[16]

## III. Effect of Proposed Changes:

***Homestead is Included in the Elective Estate***

A homestead as provided in Article X, s. 4 of the State Constitution is designed to protect one's home from most creditors and court actions. Homestead includes $2,000 of personal property, but its main component is real property.

[11] Section 732.2085(2), F.S.
[12] That is, in the manner described in s. 732.2085(2)(b), F.S.
[13] Section 732.2085(3)(a), F.S.
[14] Section 732.2025(2), F.S.
[15] Section 738.606, F.S.
[16] Section 732.2135, F.S.

Under current law, homestead property is specifically excluded from the elective estate.[17] As such, the value of the homestead is not factored in when calculation of the elective estate. The bill expressly includes homestead property in the elective estate, unless the surviving spouse has waived his or her homestead rights.

***Valuation of Homestead for the Purpose of Valuation of the Elective Estate***

The bill provides that if the homestead passes to the surviving spouse in fee simple, the homestead is valued at its fair market value[18] on the date of the decedent's death.

If the surviving spouse takes a life estate or an undivided one-half interest in the homestead,[19] the homestead is valued at one-half of its fair market value on the decedent's death date.

***Deadline to Choose the Elective Share***

In order to exercise the option to take the elective share, a surviving spouse must file his or her election with the court. The surviving spouse must file the election by the earlier of 6 months after the date the surviving spouse is served with the estate's Letters of Administration, or 2 years after the death of the surviving spouse.[20] Under current law, the surviving spouse may, *within these timeframes*, petition the court for good cause for an extension of time to make the election.[21] The bill modifies this scheme.

The bill maintains that the surviving spouse may move for an extension with the same timeframes, and the bill maintains the 2-year absolute outer limit. However, the bill also permits a surviving spouse to move for an extension within 40 days after the termination of the proceedings specified in the bill.

***Contribution to the Elective Share***

Beneficiaries who have received a distribution of property that it included in the elective estate, as well as "direct recipients,"[22] are liable to contribute to satisfying the elective share, both under current law and under the bill.[23] These persons may have received property, rather than money, from the decedent's estate.

Under the bill, as under current law, instead of making a cash payment of the dollar amount for which one of these persons is liable, a beneficiary or direct recipient may contribute a proportional part of all property received. This person may also satisfy their contribution obligation by doing one of two things with respect to any property interest received before the

[17] Section 732.2045(1)(i), F.S.
[18] The bill provides that "fair market value shall be calculated by deducting from the total value of the property all mortgages, liens, and security interests to which the protected homestead is subject and for which the decendent is liable, but only to the extent that such amount is not otherwise deducted as a claim paid or payable from the elective estate."
[19] Sections 732.401(1) and 732.401(2), F.S.
[20] Section 732.2135(1), F.S.
[21] Section 732.2135(2), F.S.
[22] "Direct recipient" is defined to include "the decedent's probate estate and any other person who receives property included in the elective estate by transfer from the decedent . . ., by right of survivorship, or by beneficiary designation under a governing instrument." Section 732.2025(1), F.S.
[23] Section 732.2085(1), F.S.

date of the court's order of contribution. As one option, he or she may contribute all of the property. Or if the property has been sold or exchanged before the date the spouse's election was filed, the liable person may pay an amount equal to the value of the property on the date it was sold or exchanged, less reasonable costs of the sale.[24] Moreover, if a person pays the value of the property on the date of a sale or exchange, or if a person contributes all of the property received,[25] no further contribution is required as to the property. And that amount satisfies his or her contribution liability, even if it is less than the amount he or she would otherwise owe.[26]

However, under the bill, if this person's required contribution is not fully paid by 2 years after the date of the death of the decedent, the person must pay interest at the statutory rate on any portion of the required contribution that remains unpaid.

Ultimately, it is the duty of the court to determine the elective share and all necessary contributions. And those who owe a contribution must, as a general matter, pay interest on the contribution at the statutory interest rate. This interest begins accruing 90 days after the contribution order under current law. The bill maintains this provision, but also imposes interest on any amount of the elective share not satisfied within 2 years of the date of the decedent's death, *regardless of whether an order of contribution was entered*.

***Attorney's Fees and Costs***

In current law, if the court determines that an election is made or pursued in bad faith, the court may assess attorney's fees and costs against the surviving spouse or the surviving spouse's estate.[27] The bill significantly expands the scope of this provision.
The bill removes the bad faith requirement, and the bill does not limit assessments of attorney's fees and costs to instances where someone makes or pursues an election.

Under the bill, the court may award fees and costs in *any proceeding* under the elective share statutes in which there is a dispute over:

- The entitled to of the amount of the elective share;
- The property interests included in the elective or its value; or
- The satisfaction of the elective share.

Moreover, the bill specifies that when the court award costs and fees, it may do one or more of the following:

- Direct payment from the estate;
- Direct payment from a party's interest in the elective share or the elective estate; or
- Enter a judgment that can be satisfied from other property of a party.

If the personal representative fails to file a petition to determine the amount of the elective share, as required by the Probate Rules, he or she may be liable for additional costs. Specifically, if the electing spouse or any of the other persons mentioned in the bill file the petition that the personal

[24] Section 732.2085(2), F.S.
[25] That is, in the manner described in s. 732.2085(2)(b), F.S.
[26] Accordingly, the balance is then reapportioned among the other members of the class. Section 732.2085(3)(a), F.S.
[27] Section 732.2135, F.S.

representative failed to file, he or she may be awarded the reasonable costs, including attorney's fees, incurred in connection with the preparation and filing of the petition.[28]

The changes to the attorney fee provisions apply to all proceedings commenced after July 1, 2017.

***Elective Share Trusts***

By definition, elective share trusts must provide the surviving spouse with the ability to have non-productive trust assets converted to productive assets. However, current law does not provide a way to "save" a trust that fails to meet this requirement, though the trust otherwise meets the definition of an elective share trust and was intended to be an elective share trust. The bill changes this.

The bill authorizes a surviving spouse who is intended to benefit from an elective share trust to force the trustee to make the trust productive. Thus, the bill "saves" trusts that do not otherwise give the spouse this authority, but that are otherwise legally sufficient.

**Effective Date**

The bill takes effect July 1, 2017.

## IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

This bill does not require counties or municipalities to spend funds or limit their authority to raise revenue or receive state-shared revenues as specified in Article VII, s. 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

## V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

[28] The removal of the bad-faith requirement, the expansion of the types of people who may seeks fees and costs, and the expansion of the types of proceedings for which the non-prevailing party may have to pay costs could encourage settlement of these matters. Additionally, it could discourage the very initiation of some proceedings, given the associated risk of being the non-prevailing party and having to pay fees and costs.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

## VI. Technical Deficiencies:

None.

## VII. Related Issues:

None.

## VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 732.2025, 732.2035, 732.2045, 732.2055, 732.2075, 732.2085, 732.2095, 732.2115, 732.2135, 732.2145, and 738.606.

This bill creates section 732.2151, Florida Statutes.

## IX. Additional Information:

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

**CS/CS by Banking and Insurance on April 3, 2017:**
Clarifies the method of calculating the fair market value of homestead property.

**CS by Judiciary on March 14, 2017:**
The bill created a tiered-rate structure, depending on the length of the marriage, to determine the amount of the elective share. These rates varied from 10 percent of the elective estate to 40 percent of the elective estate. The committee substitute removes this structure, returning to the current law's 30 percent, flat rate.

B. Amendments:

None.

**By** the Committees on Banking and Insurance; and Judiciary; and Senator Passidomo

597-03358-17 2017724c2

A bill to be entitled

An act relating to estates; amending s. 732.2025, F.S.; conforming cross-references; amending s. 732.2035, F.S.; providing that a decedent's property interest in the protected homestead is included in the elective estate; amending s. 732.2045, F.S.; revising the circumstances under which the decedent's property interest in the protected homestead is excluded from the elective estate; amending s. 732.2055, F.S.; providing for the valuation of the decedent's protected homestead under certain circumstances; amending s. 732.2075, F.S.; conforming cross-references; amending s. 732.2085, F.S.; requiring the payment of interest on any unpaid portion of a person's required contribution toward the elective share with respect to certain property; amending s. 732.2095, F.S.; revising provisions relating to the valuation of a surviving spouse's interest in property to include protected homestead; conforming cross-references; amending s. 732.2115, F.S.; conforming a cross-reference; amending s. 732.2135, F.S.; revising the period within which a specified person may petition the court for an extension of time for making an election; removing a provision authorizing assessment of attorney fees and costs if an election is made in bad faith; amending s. 732.2145, F.S.; requiring the payment of interest on any unpaid portion of a person's required contribution toward the elective share after a certain date; creating s.







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732.2151, F.S.; providing for the award of fees and costs in certain elective share proceedings; providing that a court may direct payment from certain sources; providing applicability; amending s. 738.606, F.S.; providing that a surviving spouse may require a trustee of a marital or elective share trust to make property productive of income; providing applicability; providing an effective date.

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

Section 1. Subsections (1) and (9) of section 732.2025, Florida Statutes, are amended to read:

732.2025 Definitions.—As used in ss. 732.2025-732.2155, the term:

(1) "Direct recipient" means the decedent's probate estate and any other person who receives property included in the elective estate by transfer from the decedent, including transfers described in s. 732.2035(9) ~~s. 732.2035(8)~~, by right of survivorship, or by beneficiary designation under a governing instrument. For this purpose, a beneficiary of an insurance policy on the decedent's life, the net cash surrender value of which is included in the elective estate, is treated as having received property included in the elective estate. In the case of property held in trust, "direct recipient" includes the trustee but excludes the beneficiaries of the trust.

(9) "Revocable trust" means a trust that is includable in the elective estate under s. 732.2035(5) ~~s. 732.2035(4)~~.

Section 2. Section 732.2035, Florida Statutes, is amended

to read:

732.2035 Property entering into elective estate.—Except as provided in s. 732.2045, the elective estate consists of the sum of the values as determined under s. 732.2055 of the following property interests:

(1) The decedent's probate estate.

(2) The decedent's interest in property which constitutes the protected homestead of the decedent.

(3) The decedent's ownership interest in accounts or securities registered in "Pay On Death," "Transfer On Death," "In Trust For," or coownership with right of survivorship form. For this purpose, "decedent's ownership interest" means, in the case of accounts or securities held in tenancy by the entirety, one-half of the value of the account or security, and in all other cases, that portion of the accounts or securities which the decedent had, immediately before death, the right to withdraw or use without the duty to account to any person.

(4) ~~(3)~~ The decedent's fractional interest in property, other than property described in subsection (3) ~~(2)~~ or subsection (8) ~~(7)~~, held by the decedent in joint tenancy with right of survivorship or in tenancy by the entirety. For this purpose, "decedent's fractional interest in property" means the value of the property divided by the number of tenants.

(5) ~~(4)~~ That portion of property, other than property described in subsection (2) and subsection (3), transferred by the decedent to the extent that at the time of the decedent's death the transfer was revocable by the decedent alone or in conjunction with any other person. This subsection does not apply to a transfer that is revocable by the decedent only with





the consent of all persons having a beneficial interest in the property.

(6)(a) ~~(5)(a)~~ That portion of property, other than property described in subsection (2) ~~(3)~~, subsection (4), subsection (5), or subsection (8) ~~(7)~~, transferred by the decedent to the extent that at the time of the decedent's death:

1. The decedent possessed the right to, or in fact enjoyed the possession or use of, the income or principal of the property; or

2. The principal of the property could, in the discretion of any person other than the spouse of the decedent, be distributed or appointed to or for the benefit of the decedent.

In the application of this subsection, a right to payments under a commercial or private annuity, an annuity trust, a unitrust, or a similar arrangement shall be treated as a right to that portion of the income of the property necessary to equal the annuity, unitrust, or other payment.

(b) The amount included under this subsection is:

1. With respect to subparagraph (a)1., the value of the portion of the property to which the decedent's right or enjoyment related, to the extent the portion passed to or for the benefit of any person other than the decedent's probate estate; and

2. With respect to subparagraph (a)2., the value of the portion subject to the discretion, to the extent the portion passed to or for the benefit of any person other than the decedent's probate estate.

(c) This subsection does not apply to any property if the

decedent's only interests in the property are that:

1. The property could be distributed to or for the benefit of the decedent only with the consent of all persons having a beneficial interest in the property; or

2. The income or principal of the property could be distributed to or for the benefit of the decedent only through the exercise or in default of an exercise of a general power of appointment held by any person other than the decedent; or

3. The income or principal of the property is or could be distributed in satisfaction of the decedent's obligation of support; or

4. The decedent had a contingent right to receive principal, other than at the discretion of any person, which contingency was beyond the control of the decedent and which had not in fact occurred at the decedent's death.

(7) ~~(6)~~ The decedent's beneficial interest in the net cash surrender value immediately before death of any policy of insurance on the decedent's life.

(8) ~~(7)~~ The value of amounts payable to or for the benefit of any person by reason of surviving the decedent under any public or private pension, retirement, or deferred compensation plan, or any similar arrangement, other than benefits payable under the federal Railroad Retirement Act or the federal Social Security System. In the case of a defined contribution plan as defined in s. 414(i) of the Internal Revenue Code of 1986, as amended, this subsection shall not apply to the excess of the proceeds of any insurance policy on the decedent's life over the net cash surrender value of the policy immediately before the decedent's death.





(9) ~~(8)~~ Property that was transferred during the 1-year period preceding the decedent's death as a result of a transfer by the decedent if the transfer was either of the following types:

(a) Any property transferred as a result of the termination of a right or interest in, or power over, property that would have been included in the elective estate under subsection (5) ~~(4)~~ or subsection (6) ~~(5)~~ if the right, interest, or power had not terminated until the decedent's death.

(b) Any transfer of property to the extent not otherwise included in the elective estate, made to or for the benefit of any person, except:

1. Any transfer of property for medical or educational expenses to the extent it qualifies for exclusion from the United States gift tax under s. 2503(e) of the Internal Revenue Code, as amended; and

2. After the application of subparagraph 1., the first annual exclusion amount of property transferred to or for the benefit of each donee during the 1-year period, but only to the extent the transfer qualifies for exclusion from the United States gift tax under s. 2503(b) or (c) of the Internal Revenue Code, as amended. For purposes of this subparagraph, the term "annual exclusion amount" means the amount of one annual exclusion under s. 2503(b) or (c) of the Internal Revenue Code, as amended.

(c) Except as provided in paragraph (d), for purposes of this subsection:

1. A "termination" with respect to a right or interest in property occurs when the decedent transfers or relinquishes the

right or interest, and, with respect to a power over property, a termination occurs when the power terminates by exercise, release, lapse, default, or otherwise.

2. A distribution from a trust the income or principal of which is subject to subsection (5)~~(4)~~, subsection (6)~~(5)~~, or subsection (10)~~(9)~~ shall be treated as a transfer of property by the decedent and not as a termination of a right or interest in, or a power over, property.

(d) Notwithstanding anything in paragraph (c) to the contrary:

1. A "termination" with respect to a right or interest in property does not occur when the right or interest terminates by the terms of the governing instrument unless the termination is determined by reference to the death of the decedent and the court finds that a principal purpose for the terms of the instrument relating to the termination was avoidance of the elective share.

2. A distribution from a trust is not subject to this subsection if the distribution is required by the terms of the governing instrument unless the event triggering the distribution is determined by reference to the death of the decedent and the court finds that a principal purpose of the terms of the governing instrument relating to the distribution is avoidance of the elective share.

(10)~~(9)~~ Property transferred in satisfaction of the elective share.

Section 3. Paragraph (i) of subsection (1) of section 732.2045, Florida Statutes, is amended to read:

732.2045 Exclusions and overlapping application.—





(1) EXCLUSIONS.—Section 732.2035 does not apply to:

(i) Property which constitutes the protected homestead of the decedent if the surviving spouse validly waived his or her homestead rights as provided under s. 732.702, or otherwise under applicable law, and such spouse did not receive any interest in the protected homestead upon the decedent's death ~~whether held by the decedent or by a trust at the decedent's death~~.

Section 4. Section 732.2055, Florida Statutes, is amended to read:

732.2055 Valuation of the elective estate.—For purposes of s. 732.2035, "value" means:

(1)(a) In the case of protected homestead:

1. If the surviving spouse receives a fee simple interest, the fair market value of the protected homestead on the date of the decedent's death.

2. If the spouse takes a life estate as provided in s. 732.401(1), or validly elects to take an undivided one-half interest as a tenant in common as provided in s. 732.401(2), one-half of the fair market value of the protected homestead on the date of the decedent's death.

3. If the surviving spouse validly waived his or her homestead rights as provided under s. 732.702 or otherwise under applicable law, but nevertheless receives an interest in the protected homestead, other than an interest described in s. 732.401, including an interest in trust, the value of the spouse's interest is determined as property interests that are not protected homestead.

(b) For purposes of this subsection, fair market value

shall be calculated by deducting from the total value of the property all mortgages, liens, and security interests to which the protected homestead is subject and for which the decedent is liable, but only to the extent that such amount is not otherwise deducted as a claim paid or payable from the elective estate.

(2) In the case of any policy of insurance on the decedent's life includable under s. 732.2035(5), (6), or (7) ~~s. 732.2035(4), (5), or (6)~~, the net cash surrender value of the policy immediately before the decedent's death.

(3)~~(2)~~ In the case of any policy of insurance on the decedent's life includable under s. 732.2035(9) ~~s. 732.2035(8)~~, the net cash surrender value of the policy on the date of the termination or transfer.

(4)~~(3)~~ In the case of amounts includable under s. 732.2035(8) ~~s. 732.2035(7)~~, the transfer tax value of the amounts on the date of the decedent's death.

(5)~~(4)~~ In the case of other property included under s. 732.2035(9) ~~s. 732.2035(8)~~, the fair market value of the property on the date of the termination or transfer, computed after deducting any mortgages, liens, or security interests on the property as of that date.

(6)~~(5)~~ In the case of all other property, the fair market value of the property on the date of the decedent's death, computed after deducting from the total value of the property:

(a) All claims paid or payable from the elective estate; and

(b) To the extent they are not deducted under paragraph (a), all mortgages, liens, or security interests on the property.





Section 5. Paragraph (b) of subsection (1), paragraph (b) of subsection (2), and paragraph (c) of subsection (3) of section 732.2075, Florida Statutes, are amended to read:

732.2075 Sources from which elective share payable; abatement.—

(1) Unless otherwise provided in the decedent's will or, in the absence of a provision in the decedent's will, in a trust referred to in the decedent's will, the following are applied first to satisfy the elective share:

(b) To the extent paid to or for the benefit of the surviving spouse, amounts payable under any plan or arrangement described in s. 732.2035(8) ~~s. 732.2035(7)~~.

(2) If, after the application of subsection (1), the elective share is not fully satisfied, the unsatisfied balance shall be allocated entirely to one class of direct recipients of the remaining elective estate and apportioned among those recipients, and if the elective share amount is not fully satisfied, to the next class of direct recipients, in the following order of priority, until the elective share amount is satisfied:

(b) *Class 2.*—Recipients of property interests, other than protected charitable interests, included in the elective estate under s. 732.2035(3), (4), or (7) ~~s. 732.2035(2), (3), or (6)~~ and, to the extent the decedent had at the time of death the power to designate the recipient of the property, property interests, other than protected charitable interests, included under s. 732.2035(6) and (8) ~~s. 732.2035(5) and (7)~~.

For purposes of this subsection, a protected charitable interest

is any interest for which a charitable deduction with respect to the transfer of the property was allowed or allowable to the decedent or the decedent's spouse under the United States gift or income tax laws.

(3) If, after the application of subsections (1) and (2), the elective share amount is not fully satisfied, the additional amount due to the surviving spouse shall be determined and satisfied as follows:

(c) If there is more than one trust to which this subsection could apply, unless otherwise provided in the decedent's will or, in the absence of a provision in the decedent's will, in a trust referred to in the decedent's will, the unsatisfied balance shall be apportioned pro rata to all such trusts in proportion to the value, as determined under s. 732.2095(2)(f) ~~s. 732.2095(2)(d)~~, of the surviving spouse's beneficial interests in the trusts.

Section 6. Paragraph (a) of subsection (3) of section 732.2085, Florida Statutes, is amended to read:

732.2085 Liability of direct recipients and beneficiaries.—

(3) If a person pays the value of the property on the date of a sale or exchange or contributes all of the property received, as provided in paragraph (2)(b):

(a) No further contribution toward satisfaction of the elective share shall be required with respect to that property. However, if a person's required contribution is not fully paid by 2 years after the date of the death of the decedent, such person must also pay interest at the statutory rate on any portion of the required contribution that remains unpaid.

Section 7. Section 732.2095, Florida Statutes, is amended







to read:

732.2095 Valuation of property used to satisfy elective share.—

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

(a) "Applicable valuation date" means:

1. In the case of transfers in satisfaction of the elective share, the date of the decedent's death.

2. In the case of property held in a qualifying special needs trust on the date of the decedent's death, the date of the decedent's death.

3. In the case of other property irrevocably transferred to or for the benefit of the surviving spouse during the decedent's life, the date of the transfer.

4. In the case of property distributed to the surviving spouse by the personal representative, the date of distribution.

5. Except as provided in subparagraphs 1., 2., and 3., in the case of property passing in trust for the surviving spouse, the date or dates the trust is funded in satisfaction of the elective share.

6. In the case of property described in s. 732.2035(2), (3), or (4) ~~s. 732.2035(2) or (3)~~, the date of the decedent's death.

7. In the case of proceeds of any policy of insurance payable to the surviving spouse, the date of the decedent's death.

8. In the case of amounts payable to the surviving spouse under any plan or arrangement described in s. 732.2035(8) ~~s. 732.2035(7)~~, the date of the decedent's death.

9. In all other cases, the date of the decedent's death or

the date the surviving spouse first comes into possession of the property, whichever occurs later.

(b) "Qualifying power of appointment" means a general power of appointment that is exercisable alone and in all events by the decedent's spouse in favor of the spouse or the spouse's estate. For this purpose, a general power to appoint by will is a qualifying power of appointment if the power may be exercised by the spouse in favor of the spouse's estate without the consent of any other person.

(c) "Qualifying invasion power" means a power held by the surviving spouse or the trustee of an elective share trust to invade trust principal for the health, support, and maintenance of the spouse. The power may, but need not, provide that the other resources of the spouse are to be taken into account in any exercise of the power.

(2) Except as provided in this subsection, the value of property for purposes of s. 732.2075 is the fair market value of the property on the applicable valuation date.

(a) If the surviving spouse has a life interest in property not in trust that entitles the spouse to the use of the property for life, including, without limitation, a life estate in protected homestead as provided in s. 732.401(1), the value of the spouse's interest is one-half of the value of the property on the applicable valuation date.

(b) If the surviving spouse elects to take an undivided one-half interest in protected homestead as a tenant in common as provided in s. 732.401(2), the value of the spouse's interest is one-half of the value of the property on the applicable valuation date.





(c) If the surviving spouse validly waived his or her homestead rights as provided in s. 732.702 or otherwise under applicable law but nevertheless receives an interest in protected homestead, other than an interest described in s. 732.401, including, without limitation, an interest in trust, the value of the spouse's interest is determined as property interests that are not protected homestead.

(d) ~~(b)~~ If the surviving spouse has an interest in a trust, or portion of a trust, which meets the requirements of an elective share trust, the value of the spouse's interest is a percentage of the value of the principal of the trust, or trust portion, on the applicable valuation date as follows:

1. One hundred percent if the trust instrument includes both a qualifying invasion power and a qualifying power of appointment.

2. Eighty percent if the trust instrument includes a qualifying invasion power but no qualifying power of appointment.

3. Fifty percent in all other cases.

(e) ~~(c)~~ If the surviving spouse is a beneficiary of a trust, or portion of a trust, which meets the requirements of a qualifying special needs trust, the value of the principal of the trust, or trust portion, on the applicable valuation date.

(f) ~~(d)~~ If the surviving spouse has an interest in a trust that does not meet the requirements of either an elective share trust or a qualifying special needs trust, the value of the spouse's interest is the transfer tax value of the interest on the applicable valuation date; however, the aggregate value of all of the spouse's interests in the trust shall not exceed one-

half of the value of the trust principal on the applicable valuation date.

(g) ~~(c)~~ In the case of any policy of insurance on the decedent's life the proceeds of which are payable outright or to a trust described in paragraph (d) ~~(b)~~, paragraph (e) ~~(c)~~, or paragraph (f) ~~(d)~~, the value of the policy for purposes of s. 732.2075 and paragraphs (d), (e), and (f) ~~(b), (c), and (d)~~ is the net proceeds.

(h) ~~(f)~~ In the case of a right to one or more payments from an annuity or under a similar contractual arrangement or under any plan or arrangement described in s. 732.2035(8) ~~s. 732.2035(7)~~, the value of the right to payments for purposes of s. 732.2075 and paragraphs (d), (e), and (f) ~~(b), (c), and (d)~~ is the transfer tax value of the right on the applicable valuation date.

Section 8. Section 732.2115, Florida Statutes, is amended to read:

732.2115 Protection of payors and other third parties.—Although a property interest is included in the decedent's elective estate under s. 732.2035(3)-(9) ~~s. 732.2035(2)-(8)~~, a payor or other third party is not liable for paying, distributing, or transferring the property to a beneficiary designated in a governing instrument, or for taking any other action in good faith reliance on the validity of a governing instrument.

Section 9. Section 732.2135, Florida Statutes, is amended to read:

732.2135 Time of election; extensions; withdrawal.—

(1) Except as provided in subsection (2), the election must







be filed on or before the earlier of the date that is 6 months after the date of service of a copy of the notice of administration on the surviving spouse, or an attorney in fact or guardian of the property of the surviving spouse, or the date that is 2 years after the date of the decedent's death.

(2) Within the period provided in subsection (1), or 40 days after the date of termination of any proceeding which affects the amount the spouse is entitled to receive under s. 732.2075(1), whichever is later, but no more than 2 years after the decedent's death, the surviving spouse or an attorney in fact or guardian of the property of the surviving spouse may petition the court for an extension of time for making an election. For good cause shown, the court may extend the time for election. If the court grants the petition for an extension, the election must be filed within the time allowed by the extension.

(3) The surviving spouse or an attorney in fact, guardian of the property, or personal representative of the surviving spouse may withdraw an election at any time within 8 months after the decedent's death and before the court's order of contribution.

(4) A petition for an extension of the time for making the election or for approval to make the election shall toll the time for making the election.

~~(5) If the court determines that an election is made or pursued in bad faith, the court may assess attorney's fees and costs against the surviving spouse or the surviving spouse's estate.~~

Section 10. Subsection (1) of section 732.2145, Florida

Statutes, is amended to read:

732.2145 Order of contribution; personal representative's duty to collect contribution.—

(1) The court shall determine the elective share and contribution. Any amount of the elective share not satisfied within 2 years of the date of death of the decedent shall bear interest at the statutory rate until fully satisfied, even if an order of contribution has not yet been entered. Contributions shall bear interest at the statutory rate beginning 90 days after the order of contribution. The order is prima facie correct in proceedings in any court or jurisdiction.

Section 11. Section 732.2151, Florida Statutes, is created to read:

732.2151 Award of fees and costs in elective share proceedings.—

(1) The court may award taxable costs as in chancery actions, including attorney fees, in any proceeding under this part in which there is an objection to or dispute over:

(a) The entitlement to or the amount of the elective share;

(b) The property interests included in the elective estate, or its value; or

(c) The satisfaction of the elective share.

(2) When awarding taxable costs or attorney fees, the court may do one or more of the following:

(a) Direct payment from the estate.

(b) Direct payment from a party's interest in the elective share or the elective estate.

(c) Enter a judgement that can be satisfied from other property of the party.





(3) In addition to any of the fees that may be awarded under subsections (1) and (2), if the personal representative does not file a petition to determine the amount of the elective share as required by the Florida Probate Rules, the electing spouse or the attorney in fact, guardian of the property, or personal representative of the electing spouse may be awarded from the estate reasonable costs, including attorney fees, incurred in connection with the preparation and filing of the petition.

(4) This section applies to all proceedings commenced on or after July 1, 2017, without regard to the date of the decedent's death.

Section 12. Subsection (1) of section 738.606, Florida Statutes, is amended to read:

738.606 Property not productive of income.—

(1) If a marital deduction under the Internal Revenue Code or comparable law of any state is allowed for all or part of a trust, or if assets are transferred to a trust that satisfies the requirements of s. 732.2025(2)(a) and (c), and such assets have been used in whole or in part to satisfy an election by a surviving spouse under s. 732.2125 and ~~the income of which must be distributed to the grantor's spouse and the assets of which~~ consist ~~substantially~~ of property that, in the aggregate, does not provide the spouse with sufficient income from or use of the trust assets, and if ~~the~~ amounts the trustee transfers from principal to income under s. 738.104 and distributes to the spouse from principal pursuant to the terms of the trust are insufficient to provide the spouse with the beneficial enjoyment required to obtain the marital deduction, even though, in the

case of an elective share trust, a marital deduction is not made or is only partially made, the spouse may require the trustee of such marital trust or elective share trust to make property productive of income, convert property within a reasonable time, or exercise the power conferred by ss. 738.104 and 738.1041. The trustee may decide which action or combination of actions to take.

Section 13. Applicability.—Except as otherwise provided in this act, the amendments made by this act apply to decedents whose death occurred on or after July 1, 2017.

Section 14. This act shall take effect July 1, 2017.

The Florida Senate

# Committee Agenda Request

**To:** Senator Lizbeth Benacquisto, Chair
Committee on Rules

**Subject:** Committee Agenda Request

**Date:** April 3, 2017

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I respectfully request that **Senate Bill #724**, relating to Elective Share, be placed on the:

☐ committee agenda at your earliest possible convenience.

☒ next committee agenda.

Senator Kathleen Passidomo
Florida Senate, District 28

File signed original with committee office

S-020 (03/2004)

**The Florida Senate**

# BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

| | |
|---|---|
| BILL: | CS/SCR 920 |
| INTRODUCER: | Rules Committee and Senator Farmer |
| SUBJECT: | Groveland Four |
| DATE: | April 13, 2017 |
| REVISED: | |

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|---|---|---|---|---|
| 1. | Sumner | Hrdlicka | CJ | **Favorable** |
| 2. | Brown | Cibula | JU | **Favorable** |
| 3. | Sumner | Phelps | RC | **Fav/CS** |

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

COMMITTEE SUBSTITUTE - Substantial Changes

## I. Summary:

CS/SCR 920 acknowledges that Charles Greenlee, Walter Irvin, Samuel Shepherd, and Ernest Thomas, the men who came to be known as the "Groveland Four," were the victims of gross injustices and that their abhorrent treatment by the criminal justice system is a shameful chapter in this state's history. The Legislature extends a heartfelt apology to the families of Charles Greenlee, Walter Irvin, Samuel Shepherd, and Ernest Thomas for the enduring sorrow caused by the criminal justice system's failure to protect their basic constitutional rights. Lastly, the Legislature urges the Governor and Cabinet to expedite review of the cases of Charles Greenlee, Walter Irvin, Samuel Shepherd, and Ernest Thomas as part of their constitutional authority to grant clemency, including granting full pardons.

Despite a lack of evidence or credible witnesses, the four men were charged with rape. Ernest Thomas escaped while under arrest, and law enforcement officers shot and killed him. Amidst an environment of inaccurately-obtained eyewitness identification, forced confessions, and indicting news reports, Mr. Greenlee, Mr. Irvin, and Mr. Shepherd were convicted of rape. Mr. Greenlee, just 16 years old at the time of the incident, received a sentence of life imprisonment. Juries sentenced Mr. Irvin and Mr. Shepherd to the death penalty.

The concurrent resolution requires a copy of the resolution to be provided to the Governor, the Attorney General, the Chief Financial Officer, the Commissioner of Agriculture, and the families of the Groveland Four.

## II. Present Situation:

### Concurrent Resolutions

A concurrent resolution is a resolution that is adopted by both houses and is limited to procedural legislative matters and ratification of federal constitutional amendments.[1] Florida Senate Rule 3.6 requires concurrent resolutions to contain a proper title, as defined in Article III, Section 6 of the State Constitution. Standard rules of capitalization apply. Concurrent resolutions are required to contain the resolving clause: "Be It Resolved by the Senate of the State of Florida, the House of Representatives Concurring:"

Florida Senate Rule 4.13 requires that each concurrent resolution be read by title on two separate days before a voice vote on adoption, unless decided otherwise by a two-thirds vote of those Senators present.

### Clemency

Except in cases of treason and in which impeachment results in conviction, the Governor may, by executive order filed with the Secretary of State, suspend collection of fines and forfeitures, grant reprieves not exceeding 60 days, and with the approval of two members of the Cabinet, grant full or conditional pardons, restore civil rights, commute punishment, and remit fines and forfeitures for offenses.[2]

## III. Effect of Proposed Changes:

The Senate Concurrent Resolution provides in whereas clauses additional factual statements relating to the Groveland Four, following their trials and convictions:

On July 17, 1949, a 17-year-old white married woman Norma Padgett, and Willie Padgett, her estranged husband, reported to police that she had been abducted at approximately 2:30 a.m., driven about 25 minutes to a dead-end road, and raped by 4 black men after the car in which she and her estranged husband were riding broke down on a rural road outside Groveland in Lake County.

Charles Greenlee, who was sixteen years old in July 1949, was being detained 20 miles away by two retail store night-watchmen at about the same time as the attack was alleged to have occurred. The alleged rape victim's husband stated on 2 separate occasions that Mr. Greenlee was not one of the young men present when the car broke down on July 16, 1949. Mr. Greenlee denied that he and Mr. Thomas ever met Mr. Shepherd, Mr. Irvin, the alleged victim, or her estranged husband.

Walter Irvin and Samuel Shepherd, both World War II veterans, acknowledged that they had stopped by the broken-down vehicle to see if they could assist the couple, but denied any involvement in the alleged rape.

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[1] The Florida Senate, *Glossary, Bills: Resolution: Concurrent Resolution* (*SCR, HCR*), available at http://www.flsenate.gov/Reference/Glossary/#concurrent (last visited April 12, 2017).
[2] Section 940.01, F.S.

After their arrest that evening, Mr. Greenlee, Mr. Irvin, and Mr. Shepherd were severely beaten in the basement of the county jail. Mr. Greenlee and Mr. Shepherd were coerced into confessing to the crime while Mr. Irvin steadfastly maintained his innocence despite repeated beatings.

Ernest Thomas, understanding the racial realities of the time and the danger he was in, escaped Lake County before law enforcement could locate him. When he was located by an armed, deputized posse, in the woods of Madison County, Florida, Mr. Thomas was shot as he slept beside a tree.

Mr. Greenlee, Mr. Irvin, and Mr. Shepherd, were tried and convicted of rape. Mr. Greenlee was sentenced to life imprisonment due to his young age, and Mr. Irvin and Mr. Shepherd were sentenced to death. The judge who presided at the men's trial denied their attorneys access to an exculpatory medical report of the alleged rape victim and barred testimony regarding the three men being repeatedly and brutally beaten by law enforcement officers. Thurgood Marshall, then-Executive Director of the NAACP Legal Defense and Educational Fund, appealed the convictions of Mr. Irvin and Mr. Shepherd to the United States Supreme Court, which unanimously overturned the judgments on April 9, 1951, and ordered a retrial.[3]

Seven months later, on November 6, 1951, as Mr. Irvin and Mr. Shepherd were being transported by Lake County Sheriff Willis McCall from Florida State Prison in Raiford to Tavares Road Prison for a pretrial hearing, the sheriff pulled over on a dirt road and shot both men, claiming the handcuffed men were trying to escape. Mr. Shepherd died at the scene as a result of his wounds.

During an interview with an investigator sent by then-Governor Fuller Warren, Mr. Irvin stated that, after he had been shot twice by the Sheriff, Deputy Sheriff James L. Yates shot him through the neck as he lay on the ground handcuffed to the deceased Mr. Shephard. The FBI later discovered a .38-caliber bullet directly beneath a blood spot marking where Mr. Irvin had laid, providing forensic corroboration of Mr. Irvin's statement that he was shot while lying on the ground. Walter Irvin, who pretended to be dead, survived despite a delay in treatment caused by the hospital's refusal to transport him in an ambulance due to his race.

Mr. Irvin was retried and convicted a second time for the alleged rape and was sentenced to death,[4] despite the fact that a former FBI criminologist stated that he believed forensic evidence had been manufactured by law enforcement. Mr. Irvin's sentence was commuted to life in prison in 1955 by then-Governor LeRoy Collins after the prosecuting attorney, who was the prosecutor both times that Mr. Irvin was convicted, stated in a letter that not only was a life sentence more appropriate, but that Mr. Irvin maintained his innocence even after being shot when he believed himself to be dying. Mr. Irvin was found dead in his car while visiting Lake County for a funeral in 1969, 1 year after being paroled by then-Governor Claude Kirk.

Mr. Greenlee, who was paroled in 1960 at the age of 27, died in April 2012 at the age of 78.

[3] *Shepherd v. Florida*, 341 U.S. 50 (1951).
[4] See *Irvin v. Chapman*, 75 So. 2d 591 (Fla. 1954).

On March 15, 2016, the Lake County Commission approved Proclamation 2016-26 and presented it to the families of the Groveland Four. The proclamation reportedly apologizes to the families for the injustices against Mr. Irvin, Mr. Shepherd, Mr. Greenlee, and Mr. Thomas, and urges the Governor to exonerate the men.[5]

This resolution acknowledges that Charles Greenlee, Walter Irvin, Samuel Shepherd, and Ernest Thomas, the men who came to be known as the "Groveland Four," were the victims of gross injustices and that their abhorrent treatment by the criminal justice system is a shameful chapter in this state's history.

The Legislature extends a heartfelt apology to the families of Charles Greenlee, Walter Irvin, Samuel Shepherd, and Ernest Thomas for the enduring sorrow caused by the criminal justice system's failure to protect their basic constitutional rights. Lastly, the Legislature urges the Governor and Cabinet to expedite review of the cases of Charles Greenlee, Walter Irvin, Samuel Shepherd, and Ernest Thomas as part of their constitutional authority to grant clemency, including granting full pardons.

The resolution requires a copy of the resolution to be provided to the Governor, the Attorney General, the Chief Financial Officer, the Commissioner of Agriculture, and the families of the Groveland Four as a tangible token of the sentiments expressed therein.

## IV. Constitutional Issues:

### A. Municipality/County Mandates Restrictions:

None.

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

None.

### C. Trust Funds Restrictions:

None.

## V. Fiscal Impact Statement:

### A. Tax/Fee Issues:

None.

[5] Lake County Commission, *Minutes of a Regular Meeting of the Board of County Commissioners* (March 15, 2016), available at http://www.lakecountyclerk.org/forms/board_minutes/2016/03/2016-03-15_Regular_Meeting.htm (last visited April 12, 2017). Christal Hayes, *Groveland Four families thankful for Lake apology, still seek exoneration*, Orlando Sentinel (March 15, 2016), available at http://www.orlandosentinel.com/news/lake/os-groveland-four-families-lake-county-20160315-story.html (last visited April 12, 2017).

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

## VI. Technical Deficiencies:

None.

## VII. Related Issues:

None.

## VIII. Statutes Affected:

None.

## 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 Rules on April 12, 2017:**
The committee substitute:

- Deletes the request to deem the four men exonerated.
- Revises the facts in the whereas clauses in the title.

B. Amendments:

None.

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LEGISLATIVE ACTION

| Senate | . | House |
|---|---|---|
| Comm: RCS | . | |
| 04/12/2017 | . | |
| | . | |
| | . | |
| | . | |

The Committee on Rules (Farmer) recommended the following:

**Senate Amendment (with title amendment)**

Delete everything after the resolving clause and insert:

That we hereby acknowledge that Charles Greenlee, Walter Irvin, Samuel Shepherd, and Ernest Thomas, who came to be known as "the Groveland Four," were the victims of gross injustices and that their abhorrent treatment by the criminal justice system is a shameful chapter in this state's history.

BE IT FURTHER RESOLVED that we hereby extend a heartfelt apology to the families of Charles Greenlee, Walter Irvin,

976966

Samuel Shepherd, and Ernest Thomas for the enduring sorrow caused by the criminal justice system's failure to protect their basic constitutional rights.

BE IT FURTHER RESOLVED that the Legislature urges the Governor and Cabinet to expedite review of the cases of Charles Greenlee, Walter Irvin, Samuel Shephard, and Ernest Thomas as part of the Governor's and Cabinet's constitutional authority to grant clemency, including granting full pardons.

BE IT FURTHER RESOLVED that a copy of this resolution be provided to the Governor, the Attorney General, the Chief Financial Officer, the Commissioner of Agriculture, and the families of the Groveland Four as a tangible token of the sentiments expressed herein.

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

And the title is amended as follows:

Delete everything before the resolving clause and insert:

Senate Concurrent Resolution

A concurrent resolution acknowledging the grave injustices perpetrated against Charles Greenlee, Walter Irvin, Samuel Shepherd, and Ernest Thomas, who came to be known as "the Groveland Four"; offering a formal and heartfelt apology to these victims of racial hatred and to their families; and urging the Governor and Cabinet to perform an expedited clemency review of the cases of Charles Greenlee, Walter Irvin, Samuel Shephard, and Ernest Thomas, including granting full pardons.

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WHEREAS, on July 16, 1949, a 17-year-old white woman and her estranged husband reported to police that she had been abducted at approximately 2:30 a.m., driven approximately 25 minutes to a dead-end road, and raped by four black men after the car in which she and her estranged husband were riding broke down on a rural road outside Groveland in Lake County, and

WHEREAS, Charles Greenlee, Walter Irvin, and Samuel Shepherd were charged with rape, while Ernest Thomas was presumed guilty of the crime, and

WHEREAS, Charles Greenlee, who was 16 years old in July 1949, was being detained 20 miles away by two retail store night watchmen at approximately the same time at which the alleged attack occurred, and

WHEREAS, the estranged husband stated on two separate occasions that Charles Greenlee was not one of the young men present when his car broke down on July 16, 1949, and

WHEREAS, Charles Greenlee denied that he and Ernest Thomas ever met Samuel Shephard, Walter Irvin, the alleged victim, or her estranged husband, and

WHEREAS, Walter Irvin and Samuel Shepherd, both World War II veterans, acknowledged that they had stopped by the broken-down vehicle to see if they could assist the couple, but denied any involvement in the alleged rape, and

WHEREAS, after their arrest that evening, Charles Greenlee, Walter Irvin, and Samuel Shepherd were severely beaten in the basement of the county jail; Charles Greenlee and Samuel Shepherd were coerced into confessing to the crime; and Walter Irvin steadfastly maintained his innocence despite repeated

beatings, and

WHEREAS, Ernest Thomas, understanding the racial realities of the time and the danger he was in, escaped Lake County before law enforcement could locate him, and

WHEREAS, after being hunted for more than 30 hours through at least 25 miles of swampland in Madison County by an armed, deputized posse of approximately 1,000 men with bloodhounds, Ernest Thomas was killed in a hail of gunfire as he slept beside a tree before he could answer questions or declare his innocence, and

WHEREAS, the three surviving men, Charles Greenlee, Walter Irvin, and Samuel Shepherd, were tried and convicted in the case, with Charles Greenlee sentenced to life imprisonment due to his young age and Walter Irvin and Samuel Shepherd sentenced to death, and

WHEREAS, the judge who presided at the men’s trial denied the men’s attorneys access to an exculpatory medical report of the alleged rape victim and barred testimony regarding the three men being repeatedly and brutally beaten by law enforcement officers, and

WHEREAS, Thurgood Marshall, then-Executive Director of the NAACP Legal Defense and Educational Fund, appealed the convictions of Walter Irvin and Samuel Shepherd to the United States Supreme Court, which unanimously overturned the judgments on April 9, 1951, and ordered a retrial, and

WHEREAS, 7 months later, on November 6, 1951, as Walter Irvin and Samuel Shepherd were being transported from Florida State Prison in Raiford to Tavares Road Prison for a pretrial hearing, Lake County Sheriff Willis McCall shot both men on a

dirt road leading into Umatilla, claiming the handcuffed men were trying to escape, and

WHEREAS, Samuel Shepherd died at the scene as a result of his wounds, immeasurably compounding the suffering of his hardworking, close-knit family whose home had been burned to the ground by a mob in the days immediately following reports of the alleged rape, and

WHEREAS, during an interview with an investigator sent by then-Governor Fuller Warren, Walter Irvin stated that, after he had been shot twice by Sheriff McCall, Deputy Sheriff James L. Yates shot him through the neck as he lay on the ground handcuffed to the deceased Samuel Shephard, and

WHEREAS, the Federal Bureau of Investigation discovered a .38-caliber bullet directly beneath a blood spot marking where Walter Irvin lay, providing forensic corroboration of Walter Irvin’s statement that he was shot while lying on the ground, and

WHEREAS, Walter Irvin, who pretended to be dead, survived despite a delay in treatment caused by the hospital’s refusal to transport him in an ambulance due to his race, and

WHEREAS, Walter Irvin was retried and convicted a second time for the alleged rape and was sentenced to death, despite the fact that a former Federal Bureau of Investigation criminologist stated that he believed forensic evidence had been manufactured by law enforcement, and

WHEREAS, Walter Irvin’s sentence was commuted to life in prison in 1955 by then-Governor LeRoy Collins after the prosecuting attorney, who twice convicted Walter Irvin, stated in a letter that not only was a life sentence more appropriate,

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but that Walter Irvin maintained his innocence even after being shot when he believed himself to be dying, and

WHEREAS, Walter Irvin was found dead in his car while visiting Lake County for a funeral in 1969, 1 year after being paroled by then-Governor Claude R. Kirk, Jr., and

WHEREAS, Charles Greenlee, who was paroled in 1960 at the age of 27, died in April 2012 at the age of 78, and

WHEREAS, the people of this state recognize that no action on the part of the Legislature can make right the egregious wrongs perpetrated against Charles Greenlee, Walter Irvin, Samuel Shepherd, and Ernest Thomas and their families by the criminal justice system, law enforcement agencies, and individuals whose actions were fueled by racial hatred, and

WHEREAS, the families of Charles Greenlee, Walter Irvin, Samuel Shepherd, and Ernest Thomas have demanded that steps be taken to clear the men’s names, NOW, THEREFORE,

**By** Senator Farmer

34-00535A-17 2017920__

Senate Concurrent Resolution

A concurrent resolution acknowledging the grave injustice perpetrated against Charles Greenlee, Walter Irvin, Samuel Shepherd, and Ernest Thomas, who came to be known as the "Groveland Four," exonerating the four men, offering a formal and heartfelt apology to these victims of racial hatred and to their families; and urging the Governor and Cabinet to pardon Walter Irvin and Charles Greenlee.

WHEREAS, on July 16, 1949, a 17-year-old white woman and her estranged husband reported to police that they had been attacked and that she had been raped by four black men after the car in which she and her estranged husband were riding broke down on a rural road outside Groveland, in Lake County, and

WHEREAS, despite the lack of physical evidence in the case and the established alibis of the accused, Charles Greenlee, Walter Irvin, Samuel Shepherd, and Ernest Thomas, the four men were presumed guilty, and

WHEREAS, Walter Irvin and Samuel Shepherd, both World War II veterans, acknowledged that they had stopped by the broken-down vehicle to see if they could assist the couple, but denied any involvement in the alleged rape, and

WHEREAS, Charles Greenlee, who was only 16 years old at the time, and Ernest Thomas denied ever meeting the alleged victim and her estranged husband, and

WHEREAS, after their arrest that evening, Charles Greenlee, Walter Irvin, and Samuel Shepherd were severely beaten in the basement of the county jail, and Mr. Greenlee and Mr. Shepherd







34-00535A-17 2017920__

were coerced into confessing to the crime, while Mr. Irvin refused to admit his guilt, and

WHEREAS, Ernest Thomas, who fled the county, was shot to death several days later in Madison County by members of a deputized posse of armed men, and

WHEREAS, the three surviving men, Charles Greenlee, Walter Irvin, and Samuel Shepherd, were tried and convicted in the case, with Mr. Greenlee sentenced to life imprisonment due to his age and Mr. Irvin and Mr. Shepherd sentenced to death, and

WHEREAS, Thurgood Marshall, then executive director of the NAACP Legal Defense and Educational Fund, appealed the convictions of Walter Irvin and Samuel Shepherd to the United States Supreme Court, which unanimously overturned the judgments on April 9, 1951, and ordered a retrial, and

WHEREAS, 7 months later, in November 1951, while transporting Walter Irvin and Samuel Shepherd from Florida State Prison in Raiford to Tavares State Prison for a pretrial hearing, Lake County Sheriff Willis McCall and Deputy Sheriff James L. Yates shot both men on a dirt road leading into Umatilla, claiming that they had shot the handcuffed men in self-defense when the two tried to escape, and

WHEREAS, Samuel Shepherd died at the scene as a result of his wounds, but Walter Irvin, who pretended to be dead, survived and accused the sheriff and his deputy of attempted murder, but no charges were ever brought against the officers, and

WHEREAS, Walter Irvin was retried and convicted a second time for the crime and was sentenced to death, despite the fact that the state attorney allegedly withheld exculpatory medical evidence from the defense, and despite testimony from a former

Federal Bureau of Investigation criminologist stating that he believed forensic evidence had been manufactured by deputies, and

WHEREAS, Mr. Irvin's sentence was commuted to life in prison in 1955 by then Governor LeRoy Collins, who was not convinced of Mr. Irvin's guilt, and

WHEREAS, in 1970, while visiting Lake County, Walter Irvin, who had been paroled 2 years earlier by then Governor Claude Kirk, was found dead in his car, and, while Mr. Irvin's death was officially attributed to natural causes, Thurgood Marshall reportedly had doubts about the circumstances surrounding his death, and

WHEREAS, Charles Greenlee, who was paroled in 1962 after serving 12 years in prison, died in April 2012 at the age of 78, and

WHEREAS, the grave injustice perpetrated against the Groveland Four extended far beyond Lake and Madison Counties and is believed to have played a role in the deaths of National Association for the Advancement of Colored People leader Harry T. Moore and his wife, Harriette, who had advocated on behalf of the four men and were killed when their home in Mims was bombed on December 25, 1951, and

WHEREAS, the people of this state recognize that no action on the part of the Legislature can make right the egregious wrongs perpetrated against Charles Greenlee, Walter Irvin, Samuel Shepherd, and Ernest Thomas and their families by the criminal justice system, law enforcement agencies, and individuals whose actions were fueled by racial hatred, and

WHEREAS, the families of Charles Greenlee, Walter Irvin,





Samuel Shepherd, and Ernest Thomas have demanded that steps be taken to clear the men's names, NOW, THEREFORE,

Be It Resolved by the Senate of the State of Florida, the House of Representatives Concurring:

That we hereby acknowledge that Charles Greenlee, Walter Irvin, Samuel Shepherd, and Ernest Thomas were the victims of gross injustices and that we apologize to the families of the Groveland Four for all of the aforementioned wrongs and deem the four men formally exonerated.

BE IT FURTHER RESOLVED that the Legislature urges the Governor and Cabinet to review the cases of Walter Irvin and Charles Greenlee and to grant Mr. Irvin and Mr. Greenlee pardons.

BE IT FURTHER RESOLVED that a copy of this resolution be provided to the Governor, the Attorney General, the Chief Financial Officer, the Commissioner of Agriculture, and the families of the Groveland Four as a tangible token of the sentiments expressed herein.

# THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Appropriations Subcommittee on Higher Education
Appropriations Subcommittee on Pre-K - 12 Education
Banking and Insurance
Education
Environmental Preservation and Conservation

**SENATOR GARY M. FARMER, JR.**
34th District

March 23, 2017

Chair Benacquisto
Rules Committee
404 South Monroe Street
Tallahassee, FL 32399-1100
Sent via email to Benacquisto.Lisbeth@flsenate.gov

Chair Benacquisto,

I respectfully request that you place SCR 920 relating to the Groveland Four on the agenda of the Rules Committee at your earliest convenience.

Should you have any questions or concerns, please feel free to contact me or my office. Thank you in advance for your consideration.

Thank you,

Senator Gary Farmer
District 34

CC:
John B. Phelps, Staff Director
Cyndi Futch, Committee Administrative Assistant
Dane Bennett, Legislative Assistant to Senator Benacquisto
Matthew Hunter, Legislative Assistant to Senator Benacquisto

✓ 3/23

REPLY TO:
☐ Broward College Campus, 111 East Las Olas Boulevard, Suite 913, Fort Lauderdale, Florida 33301 (954) 467-4227
☐ 216 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5034

Senate's Website: *www.flsenate.gov*

JOE NEGRON
President of the Senate

ANITERE FLORES
President Pro Tempore

**The Florida Senate**

# BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

| | |
|---|---|
| BILL: | SB 1238 |
| INTRODUCER: | Senator Bean |
| SUBJECT: | Utility Investments in Gas Reserves |
| DATE: | April 11, 2017 |
| REVISED: | |

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|---|---|---|---|---|
| 1. | Caldwell/Wiehle | Caldwell | CU | **Favorable** |
| 2. | Wiehle | Phelps | RC | **Pre-meeting** |

## I. Summary:


SB 1238 authorizes the Public Service Commission (PSC or commission) to approve cost recovery for prudently incurred natural gas reserve investments, including a rate of return and prudently incurred expenses associated with such investments, by a public utility through an adjustment clause. To qualify, the public utility must have at least 65 percent natural gas fueled generation.

By December 31, 2017, the commission must adopt a rule containing the standards by which it will determine the prudence of natural gas reserve investments. The rule must include the following three criteria:

- Each investment is projected to generate savings for customers over the life of the investment.
- Each investment must have at least 50 percent of the wells classified as proven reserves by the Securities and Exchange Commission.
- Total volume of natural gas produced from the utility's reserves must not exceed the following percentages of the utility's average projected natural gas daily burn:
  - 7.5 percent in 2018.
  - 10 percent in 2019.
  - 12.5 percent in 2020.
  - 15 percent thereafter.

The bill would take effect July 1, 2017.

## II. Present Situation:

**Present Regulation of Electric Industry**

Economic regulation is a substitute for market forces in an industry where those forces do not function properly. As such, economic regulation is to some extent a balancing process, assigning both the utility and its customers both benefits and obligations.

The regulated electric utility[1] gets:
- A monopoly service territory with a captive customer base;
- Recovery of all prudent and reasonable costs; and
- A rate of return on capital investments, or a profit.

The regulated utility's customers get:
- The utility's obligation to serve, which consists of an obligation to provide adequate, reliable service, in both production and delivery of electricity, and an obligation to provide that service to all paying customers within its service territory; and
- Fair and reasonable rates.

An inherent element of this arrangement is that the regulated utility is almost always limited to investments within the core of the electric industry, which prevents risks from investments in other types of businesses from having a detrimental impact on reliability and fair rates for the captive customers.

Typically, a regulated utility recovers its capital investments and fixed costs, including a rate of return on capital investments, through base rates, and recovers variable or short-term costs through a cost recovery clause proceeding.

The relevant recovery clause here is the fuel and purchased power recovery clause (fuel clause). The fuel clause was created by commission order, not statute, and the PSC policy and practice on the fuel clause was developed over decades through a series of PSC orders issued in evidentiary proceedings, not set forth in rules established through rulemaking proceedings. Fuel cost recovery is a simple pass-through charge of the costs incurred, and very rarely includes any capital investment or return on that investment. The commission has an annual docket on fuel cost recovery charges, and each public utility projects its fuel costs for the upcoming year and presents documentation on its costs for the past year for a "true-up" of projected compared to actual fuel costs for that year. The fuel charge for the next year is based on the projected costs and any necessary adjustment for overcharges or undercharges from the previous year.

Changes in fuel prices can be volatile, so utilities have fuel price hedging programs, which "promise protection against energy-market price spikes, and they can be important to the

[1] The statutes establish two classes of utilities. The first is a "public utility" which includes Florida Power & Light, Duke Energy Florida, Tampa Electric Company, Gulf Power, and Florida Utilities Company, but does not include either a municipal electric utility or a cooperative. This class of utility is subject to full economic regulation by the PSC. The second class is an "electric utility" which includes public utilities, municipal electric utilities, and rural cooperatives. This class is subject to grid regulation and rate design jurisdiction. This bill applies only to public utilities subject to full economic regulation. See, s. 366.02 and chapter 366, F.S.

regulatory goal of sustainable, lowest long-term service cost."[2] Most hedges are financial and consist of options, swaps, futures, basis swaps, and fixed-price swaps involving natural gas and possibly other commodities whose price movements are known to be related to energy price movements.[3] Storing natural gas provides a physical hedge against price volatility and against shortages and disruptions to pipeline operations.[4]

**PSC Order on FPL Hedging Investments**

On June 25, 2014, Florida Power and Light Company (FPL) filed a petition seeking PSC approval to recover through the fuel clause its costs of a joint venture with an oil and natural gas company to acquire, explore, drill, and develop natural gas wells in Oklahoma (known as the "Woodford Project"). FPL argued that the investments were permissible as a long-term physical hedge, and that, as they were capital investments, FPL was entitled to earn a rate of return on the investments. FPL also requested that the commission establish guidelines under which FPL could invest in future gas reserve projects without the commission's prior approval and recover the costs through the fuel clause.

On January 12, 2015, in a case of first impression, the commission approved FPL's petition for cost recovery, including a rate of return, through the fuel clause.[5] The PSC established two conditions on the cost recovery. First, FPL had to add the appropriate subaccounts, under the FERC system of accounting, which would correspond on a one-on-one basis with the accounts used by an FPL affiliate that had originally invested in these contracts. Second, FPL had to use an independent auditor in performing audits provided in the agreement.

On July 14, 2015, the commission approved FPL's petition requesting guidelines under which FPL could participate in future gas reserve projects without the commission's prior approval and recover the costs through the fuel clause.[6] One effect of this is that an FPL investment that meets the guidelines is automatically deemed to be prudent and reasonable, and so recoverable from ratepayers.

**Florida Supreme Court Order on Appeal of PSC's FPL Order**

On January 15, 2015, the Florida Supreme Court (Court) consolidated appeals by the Office of Public Counsel (OPC) and the Florida Industrial Power Users Group's of the commission's orders approving the Woodford Project and approving guidelines.[7] On May 19, 2016, the Court reversed the PSC orders, holding that the commission exceeded its statutory authority when approving recovery of FPL's investment in the Woodford Project.[8]

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[2] Stephen Maloney, When The Price Is Right: How to measure hedging effectiveness and regulatory policy, Fortnightly Magazine - October 2007, https://www.fortnightly.com/fortnightly/2007/10/when-price-right (last accessed April 10, 2017).
[3] *Id*.
[4] *Id*.
[5] *See:* Order No. PSC-15-0038-FOF-EI, issued January 12, 2015, in Docket No. 150001-EI, *In re: Fuel and purchased power cost recovery clause with generating performance incentive factor.*
[6] Order No. PSC-15-0284-FOF-EI, issued July 14, 2015, in Docket No. 120005-EI, *In re: Fuel and purchased power cost recovery clause with generating performance incentive factor.*
[7] *Id*.
[8] *Citizens of the State of Florida v Art Graham*, 191 So. 3d 897, Fla. (May 19, 2016); Also available at http://www.floridasupremecourt.org/decisions/2016/sc15-95.pdf.

The Court explained this holding by addressing two possible bases for cost recovery. First, the Court found that the PSC could not approve cost recovery pursuant to its general authority over matters respecting the rates and service of public utilities. The statutes authorize the commission to set fair, just, and reasonable rates for public utilities, which are defined as owning, maintaining, or operating an electric generation, transmission, or distribution system. "Therefore, under the plain meaning of these two statutes, cost recovery is permissible only for costs arising from the "generation, transmission, or distribution" of electricity…. In other words, the exploration, drilling, and production of fuel falls outside the purview of an electric utility as defined by the Legislature."[9] This appears to be an application of the limitation inherent in economic regulation that a regulated entity cannot invest in a business not part of its regulated activities in order to prevent risks from investments in outside businesses and the impacts of those risks on reliability and fair rates for the monopoly business' captive customers.

Second, the Court found that the PSC could not approve the investments as a long-term physical hedge. "Specifically, hedging involves locking in a future price to avoid the adverse effects of price fluctuations, and utilities can hedge by entering into financial arrangements to secure natural gas at a future point in time at a fixed price."[10] The Woodford Project does not involve a certain quantity of fuel for a certain price, so it cannot qualify as a hedge.[11] Additionally, the fuel cost recovery process is a cash flow mechanism to allow utilities to recover costs for changes in fuel costs between ratemaking proceedings, and, while it does permit utilities to recover actual costs of financial derivatives and physical hedges that help prevent price shocks from volatile fuel costs, it does not allow a rate of return on money spent to purchase fuel or costs of hedging contracts.[12] The Court closes this discussion by making the following findings.

> Permitting advance recovery of FPL's investment in the Woodford Project's exploration and production of natural gas will not pay for the costs of actual fuel. It will provide recovery, instead, for investment, operation, and maintenance and operation of assets that will provide access to an unknown quantity of fuel in the future. It is impossible to know what the costs of the natural gas will be until it is actually produced. There is more uncertainty from this investment rather than less. Therefore, it cannot be characterized as a physical hedge.
>
> Additionally, under FPL's proposal for the Woodford Project, ratepayers (not FPL) bear the risk of natural gas price volatility and all of the production risks. If the production cost of extracting natural gas from the Woodford wells, including profit paid to FPL on its capital investment, is less than the natural gas market price, the ratepayers will benefit. However, if the production costs of extracting natural gas from the Woodford wells is more than the natural gas market, the ratepayers do not benefit but will instead suffer a

[9] *Id.*, http://www.floridasupremecourt.org/decisions/2016/sc15-95.pdf, pages 5-8.
[10] *Id.*, http://www.floridasupremecourt.org/decisions/2016/sc15-95.pdf, page 9, citing See Stephen Maloney, When the Price is Right, 145 No. 10 Pub. Util. Fort. 24, 25-26 (Oct. 2007).
[11] As is discussed above, typically the fuel cost recovery process is a simple pass-through charge of the costs incurred, with the recovery for any given year based on the projected fuel costs for that year adjusted for overcharges or undercharges from the previous year to true-up recovery to actual costs. One effect of the lack of "a certain quantity of fuel for a certain price" is that there is no basis for a true-up.
[12] *Id.*, http://www.floridasupremecourt.org/decisions/2016/sc15-95.pdf, pages 8-10.

> loss. The monies spent on the Woodford Project are not a mere pass-through, like other fuel expenses, because FPL will earn a return on its capital expenditures. Accordingly, the Woodford Project is a guaranteed capital investment for FPL; it is not a hedge to stabilize fuel costs.
>
> This may be a good idea, but whether advance cost recovery of speculative capital investments in gas exploration and production by an electric utility is in the public interest is a policy determination that must be made by the Legislature.[13]

**Subsequent Supreme Court Decision on the Fuel Clause**

The Court further addressed the PSC's use of the fuel clause in a subsequent case involving Florida Public Utilities Company (FPUC), an investor-owned electric utility located in Fernandina Beach that does not generate its own electricity, but instead relies solely on wholesale purchase power agreements with other electric utilities.[14] On August 29, 2014, FPUC entered into a settlement agreement with OPC to resolve FPUC's then-pending petition for an increase in base rates. The settlement agreement, approved by the PSC on September 29, 2014, prohibited FPUC from increasing its base rates until at least December 31, 2016, but did allow FPUC to seek PSC approval for recovery of costs "of a type which traditionally and historically would be, have been, or are presently recovered through cost recovery clauses."

On September 1, 2015, FPUC petitioned the commission for approval to recover through the fuel clause its costs of constructing a new interconnection with FPL, including a return on investment. In support of its petition, FPUC argued that it was purchasing power from Jacksonville Electric Authority pursuant to a contract that would expire on December 31, 2017, and that the interconnection with FPL would give FPUC access to electricity from two sources and a better bargaining position, with any savings to be passed on to customers in the form of lower rates. OPC objected that the costs were barred by the settlement agreement. Commission staff agreed, and recommended that the petition be denied. Nonetheless, the commission voted to reject the staff recommendation and approve the recovery.

On appeal, the Court found that the PSC failed to consider and apply the settlement agreement and turned to the issue of whether the petition could be granted. The Court began by noting that the term "fuel clause" is a misnomer as the fuel clause is not a particular provision, but rather "a regulatory tool designed to pass through to utility customers the costs associated with fuel purchases."[15] Its purpose is to prevent "regulatory lag" a time lag between ratemaking proceedings in which volatile prices result in under-recovery of costs. However, as the commission has recognized, regulatory lag is not as much of a problem when expenses such as capital improvements can be planned for and included in base rate calculations. The PSC has approved recovery of some capital costs through the fuel clause. For example, in 1995, it approved FPL's purchase of 462 high capacity rail cars which allowed FPL to obtain favorable transportation rate savings that exceeded the recoverable cost of the purchase, saving an estimated $24 million in fuel costs. Turning to the issues at hand, the court stated:

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[13] *Id*., http://www.floridasupremecourt.org/decisions/2016/sc15-95.pdf, pages 9-10.
[14] *Citizens of the State of Florida v Art Graham,* March 16, 2017, http://www.floridasupremecourt.org/decisions/2017/sc16-141.pdf.
[15] *Id.*, at 19.

With the purpose of the fuel clause in mind, we conclude that the Commission erred as a matter of law in determining that the construction type costs associated with the actual construction of the physical structure for the transmission interconnection are recoverable through the fuel clause pursuant to Order No. 14546. Unlike the dissent, if we were to allow recovery of these capital construction costs through the fuel clause simply because they may result in savings and are loosely linked to fuel and purchased power through transmission lines, the fuel clause exception would finally totally swallow whole the rule that capital costs should be recovered through base rates because they can be subject to adequate planning.

Indeed, in this very case the testimony of FPUC witnesses suggested that FPUC simply chose to pursue recovery through the fuel clause as a matter of convenience, rather than any necessity borne of unforeseen volatility. Moreover, tellingly, FPUC had always recovered costs for transmission assets through base rates on prior occasions. Only after a settlement agreement freezing base rates was in place did FPUC for the first time seek to recover transmission asset capital construction costs through the fuel clause.

We do not believe that the fuel clause is an end-all-be-all of cost recovery, but rather its history suggests its use should be limited to facilitating recovery of costs related to fuel and power purchases that are volatile, rendering them less than ideal for a base rates case. Today's case is certainly not the first example of utilities seeking to recover for items that are more properly base rate costs through the fuel clause in a practice that has become alarmingly frequent. Just recently we reexamined the contours of the fuel clause in reversing a commission order approving cost recovery of " 'exploration expense, depletion expense, operating expenses, G & A, taxes, transportation costs and a return on the unrecovered investment, including working capital' for investments in the exploration, drilling, and production of natural gas in the Woodford Shale Gas Region in Oklahoma." Citizens of State v. Graham, 191 So. 3d 897, 899 (Fla. 2016). The project was characterized as "a long-term physical hedge." Id. at 901. In that case we reaffirmed the purpose of the fuel clause as a mechanism for addressing the volatility of fuel prices between ratemaking proceedings.

## III. Effect of Proposed Changes:

The bill amends s. 366.04(2), F.S., to authorize the commission to approve cost recovery through an adjustment clause for a utility's prudent investments in natural gas reserves, including rate of return, and for prudently incurred expenses associated with such investments. To qualify to make these investments, a utility must have at least 65 percent natural-gas-fueled generation.[16]

[16] The phrase "has at least 65 percent natural-gas-fueled generation" can refer either to installed power plant capacity or actual electricity generation, stated in kilowatt-hours (kWh). According to the PSC bill analysis, if the phrase refers to capacity, as of December 31, 2015, FPL was 67 percent, Duke Energy Florida, LLC, (DEF) was 62 percent, Tampa Electric Company (TECO) was 58 percent, and Gulf Power Company (GPC) was 24 percent. This data set suggests only one electric generating public utility would qualify at this time. If the phrase refers to actual kWh generated, this can vary from year to year based on a variety of factors. FPL projected sustained generation from natural gas in excess of at least 65 percent. DEF projected sustained usage in excess of 65 percent after 2016. GPC could potentially qualify during the period 2016 through 2019.

The commission must adopt by rule no later than December 31, 2017, standards by which it will determine the prudence of such gas reserve investments. The standards must require, at minimum, all of the following:

- Each natural gas reserve investment is projected to generate savings for customers over the life of the investment.
- The total volume of natural gas produced from all of the utility's natural gas reserve investments must not exceed the following percentages of the utility's average projected daily burn of natural gas:
  - 7.5 percent in 2018;
  - 10 percent in 2019;
  - 12.5 percent in 2020; and
  - 15 percent in 2021 and thereafter.
- Each investment must be made in natural gas projects that have at least 50 percent of the wells within the project classified as proved gas reserves by the Securities and Exchange Commission.

The bill takes effect July 1, 2017.

The Court noted in both cases discussed above that capital investments and the related return on investments are not usually included in an adjustment clause (recovery clause). There is, however, an argument that recovering these costs in a recovery clause is more appropriate. The Court found that:

- The costs of these investments are not related to the utility's core functions of generating and delivering electricity.
- These are not long-term physical hedging contracts as they do not involve a set amount of natural gas for a set price.
- Under the terms of the PSC order (and of this bill) "ratepayers (not FPL) bear the risk of natural gas price volatility and all of the production risks."
- "Accordingly, the Woodford Project is a guaranteed capital investment for FPL; it is not a hedge to stabilize fuel costs."

As these investments can be considered to be outside a regulated utility's regulated business practices, these costs arguably are not appropriate for inclusion in base rates and could more appropriately be included in a pass-through recovery clause.

Similar to the PSC order, the bill establishes standards which if met, constitute a binding determination of prudent and reasonable costs, with no subsequent review and no opportunity for a true-up of projected costs as compared to actual costs.

The bill requires the commission to adopt by rule no later than December 31, 2017, standards by which it will determine the prudence of gas reserve investments. The commission points out in its review of the bill that while a rule may be proposed before or by that date, the date of adoption will depend in part upon what further legal process stakeholders avail themselves of pursuant to s. 120.54, F.S.

The Securities and Exchange Commission has three classes of natural gas reserves based on the probability that the predicted quantity of gas can be commercially recovered under current technical, contractual, economic, and regulatory conditions:

- Proved reserves have reasonable certainty (90 percent probability);
- Probable reserves have some uncertainty (50 percent probability), and
- Possible reserves have high uncertainty (10 percent probability).[17]

Because one of the primary purposes of gas reserve projects is a physical source of supply to serve its natural gas needs, the PSC required that at least 50 percent of the wells in each gas reserve project must be classified as proved reserves, and it prohibited FPL from entering into transactions for gas reserve projects that involve wells classified as possible reserves. The bill, on the other hand, would allow up to 50 percent in possible reserves.

The bill also does not have the PSC's requirement that FPL add the appropriate subaccounts to correspond on a one-on-one basis with the accounts used by the affiliated Gas Reserve Company.

## IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

## V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Qualifying utilities will receive a rate of return on all investments. Customers should benefit if natural gas prices increase sufficiently, but could bear additional costs if natural gas prices decrease. Additionally, customers would not benefit if there is no natural gas in a well (and up to 50 percent of all projects can be possible resources with a 10 percent possibility of the projected success), if less natural gas is produced than projected, or if production costs increase.

[17] Order No. PSC-15-0284-FOF-EI, issued July 14, 2015, in Docket No. 120005-EI, *In re: Fuel and purchased power cost recovery clause with generating performance incentive factor.*

C. Government Sector Impact:

None.

## VI. Technical Deficiencies:

None.

## VII. Related Issues:

None.

## VIII. Statutes Affected:

The bill substantially amends section 366.04 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 Bean

4-01107A-17 20171238__

A bill to be entitled

An act relating to utility investments in gas reserves; amending s. 366.04, F.S.; revising the jurisdiction of the Public Service Commission over public utilities to include the approval of cost recovery for certain gas reserve investments; requiring the commission to adopt, by rule, standards by which it will determine the prudence of such investments; providing an effective date.

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

Section 1. Present paragraphs (d), (e), and (f) of subsection (2) of section 366.04, Florida Statutes, are redesignated as paragraphs (e), (f), and (g), respectively, and a new paragraph (d) is added to that subsection, to read:

366.04 Jurisdiction of commission.—

(2) In the exercise of its jurisdiction, the commission shall have power over electric utilities for the following purposes:

(d) To approve cost recovery by adjustment clause for a utility's prudent investments, including rate of return, and for prudently incurred expenses associated with such investments, in natural gas reserves if the utility has at least 65 percent natural-gas-fueled generation. The commission shall adopt by rule no later than December 31, 2017, standards by which it will determine the prudence of such gas reserve investments. The standards must require, at minimum, all of the following:

1. Each natural gas reserve investment is projected to







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generate savings for customers over the life of the investment.

2. The total volume of natural gas produced from all of a utility's natural gas reserve investments must not exceed the following percentages of the utility's average projected daily burn of natural gas:

a. 7.5 percent in 2018;

b. 10 percent in 2019;

c. 12.5 percent in 2020; and

d. 15 percent in 2021 and thereafter.

3. Each investment must be made in natural gas projects that have at least 50 percent of the wells within the project classified as proved gas reserves by the Securities and Exchange Commission.

No provision of this chapter shall be construed or applied to impede, prevent, or prohibit any municipally owned electric utility system from distributing at retail electrical energy within its corporate limits, as such corporate limits exist on July 1, 1974; however, existing territorial agreements shall not be altered or abridged hereby.

Section 2. This act shall take effect July 1, 2017.

**The Florida Senate**

# BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

| | |
|---|---|
| BILL: | CS/CS/SB 1330 |
| INTRODUCER: | Education Committee; Judiciary Committee and Senator Stargel |
| SUBJECT: | Concealed Weapons and Firearms on Private School Property |
| DATE: | April 12, 2017 REVISED: |

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|---|---|---|---|---|
| 1. | Stallard | Cibula | JU | **Fav/CS** |
| 2. | Androff | Graf | ED | **Fav/CS** |
| 3. | Stallard | Phelps | RC | **Favorable** |

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

COMMITTEE SUBSTITUTE - Substantial Changes

## I. Summary:

CS/CS/SB1330 provides that a person who is licensed to carry a concealed weapon or firearm under Florida law is not prohibited from carrying a concealed weapon or firearm on private school property during non-school hours, or during an event on that property that is not sanctioned by the school, if a religious institution is located on the property.

The bill takes effect July 1, 2017.

## II. Present Situation:

### Overview

Possessing firearms or weapons on the property of any elementary or secondary school, or any college or university, whether public or private, is generally prohibited under Florida law. There are several exceptions to this prohibition. Federal law also prohibits a person from possessing a firearm on school property. One exception to this federal prohibition is that it does not apply to those licensed to carry a firearm by the state. But, Florida's concealed carry license does not authorize licensees to carry weapons or firearms into school facilities.

**Carrying Weapons and Firearms**

Carrying a concealed weapon or firearm, as well as openly carrying a firearm, is generally illegal in this state. However, these prohibitions are subject to exceptions.[1]

***Lawful Concealed Carry of Weapons and Firearms***

A license to carry a concealed weapon or firearm appears to authorize a licensee to carry a concealed firearm in most places in the state. In general, a person will qualify for a license if he or she is at least 21 years of age, has qualifying training, does not chronically and habitually consume alcohol or other substances to the point of impairment, and has no recent criminal history.

A license, however, does not authorize a person to carry a concealed firearm into several places, including any college or university facility, any career center, or any elementary or secondary school facility or administration building. A license also does not authorize a person to carry a concealed firearm into any school, college, or professional athletic event not related to firearms.[2]

As used in the licensing statute, the terms referring to schools, colleges, and universities are not defined. As such, the statute makes no distinction between public and private schools.

Additional exceptions to the general prohibition against carrying a concealed firearm or openly carrying a firearm are created by s. 790.25(3), F.S. This statute authorizes an unlicensed individual to openly possess a firearm or carry a concealed firearm in a manner described in the statute. The statute, for example, authorizes law enforcement officers to carry firearms while on duty. The statute also authorizes those engaged in hunting, fishing, or camping to carry a firearm while engaging in those activities or traveling to and from them. A person may also possess a firearm at his or her home or place of business.

**Prohibited Possession of Weapons and Firearms at School or Related Location**

In general, s. 790.115, F.S., prohibits a person from possessing any firearm, electric weapon or device, destructive device, or other weapon on the property of any school, school bus, or school bus stop. Unlike the statute authorizing the issuance of concealed weapon or firearm licenses, this statute expressly and broadly defines the term "school." Under the definition, a school means any preschool through postsecondary school, *whether public or private*.[3] The penalty for violating the ban on weapons varies depending on the weapon possessed and whether the violator has a concealed weapons and firearms license.[4]

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[1] Many of these exceptions are set forth in s. 790.25, F.S. Florida's licensed concealed carrying program, set forth at s. 790.06, F.S., is another exception.

[2] See s. 790.06(12), F.S., for a list of the places that a license does not not authorize a licensee to carry into.

[3] It also means any career center. Section 790.115(2)(a), F.S.

[4] A non-licensee possessing a firearm or other weapon commits a third degree felony, punishable by up to 5 years in prison and a fine not to exceed $5,000. *See*, ss. 790.115(b)-(c), 775.082(9)(a)3.d. and 775.083(1)(c), F.S. However, licensees who commit this crime are guilty of a lesser charge, a second degree misdemeanor, punishable by up to 60 days in jail and a fine not to exceed $500. *See*, ss. 790.115(2)(e), 790.06(12)(d), 775.082(4)(b), and 775.083(1)(e), F.S.

However, the statute includes several exceptions to the ban on possessing a weapon at a school. Specifically, the statute allows a person to possess any of the banned weapons "as authorized in support of school-sanctioned activities." Additionally, a person may "carry" a firearm in:[5]

- A case to a firearms program, class, or function, if approved by school authorities;
- A case to a career center having a firearms training range; or
- A vehicle if the firearm is not accessible for immediate use, unless, in the case of a school district, the school district has opted out of this allowance.

**Prohibited Exhibition of a Weapon or Firearm at a School or Related Location**

The ban on possessing weapons on school property applies only to such weapons as firearms, bombs, brass knuckles, knives, and the like. However, criminal penalties apply to a person who exhibits a sword, sword cane, box cutter, or common pocketknife in an angry or threatening manner.[6]

**Federal Law**

The federal Gun-Free School Zones Act prohibits possessing a firearm that has moved in or otherwise affects interstate or foreign commerce at a place the individual knows, or has reasonable cause to believe, is a school or is within 1,000 feet of a school.[7] However, this prohibition does not apply to a person who is licensed to carry a concealed weapon or firearm.[8]

Another federal law, the Gun-Free Schools Act, is more-narrowly focused on prohibiting students from possessing firearms at or near schools. This prohibition is also subject to exceptions.[9] The act expressly states that it does not apply to a firearm "that is lawfully stored inside a locked vehicle on school property, or if it is for activities approved and authorized by the local educational agency and the local educational agency adopts appropriate safeguards to ensure student safety."[10]

## III. Effect of Proposed Changes:

CS/CS/SB1330 provides that a person who is licensed to carry a concealed weapon or firearm under Florida law is not prohibited from carrying a concealed weapon or firearm on private school property during non-school hours, or during an event on that property that is not sanctioned by the school, if a religious institution is located on the property.

**Carrying Weapons and Firearms at Private Schools**

Under current law, section 790.115, F.S., prohibits carrying a firearm or weapon on any school property, subject to exceptions in the statute. This statute defines school to include preschools through colleges and universities, public *or private*, as well as career centers. Also, Florida's

[5] Section 790.115(2)(a)1.-3., F.S.
[6] Section 790.115(1), F.S.
[7] 18 U.S.C. § 922(q)(2)(A).
[8] *See*, 18 U.S.C. § 922(q)(2)(B)(ii).
[9] *See*, 20 U.S.C. § 7961.
[10] 20 U.S.C. § 7961(g).

concealed weapons and firearms licensing statute lists elementary and secondary facilities and administration buildings, college and university facilities, and career centers as places where the license does not authorize a person to carry.

The bill expressly states that section 790.115, F.S., and the concealed weapons and firearms licensing statute do not prohibit concealed carry licensees from carrying on private school property during non-school hours, or during an event on that property that is not sanctioned by the school, if a religious institution is located on the property. As such, the bill appears effectively to authorize licensees to carry concealed weapons and firearms in these places during non-school hours or during an event that is not sanctioned by the school.[11]

The bill adopts the definition of "religious institution" from elsewhere in the Florida Statutes:[12]

> "Religious institution" means a church, ecclesiastical or denominational organization, or established physical place for worship in this state at which nonprofit religious services and activities are regularly conducted and carried on and includes those bona fide religious groups that do not maintain specific places of worship. The term also includes a separate group or corporation that forms an integral part of a religious institution that is exempt from federal income tax under s. 501(c)(3) of the Internal Revenue Code and that is not primarily supported by funds solicited outside its own membership or congregation.

As such, "religious institution" can mean several different things. It can mean a place, or it can mean a group of people, such as a congregation. Accordingly, the times and places covered by the bill—i.e., "nonschool hours" or, "an event that is not sanctioned by the school" at a "private school property" on which is located at "religious institution"—would *clearly* include, for example, time outside of school hours and during which there is no activity that is sanctioned by the school occurring at a private Jewish school that has on its campus a synagogue building that houses an active congregation.

Under the bill, licensees would remain prohibited from carrying a concealed weapon or a concealed firearm on private school property during school hours or during a school-sanctioned activity. For instance, a licensee would not be permitted to carry a concealed weapon or a concealed firearm while school is in session or during a school-sanctioned extracurricular activity.

**Private School's Right to Exclude Anyone Possessing a Weapon or Firearm**

It appears that a private school may exclude from its campus any person possessing a weapon or firearm. The Florida Constitution declares that every person has the right to "acquire, possess, and protect property."[13] The right to exclude others is "one of the most essential sticks in the bundle of rights that are commonly characterized as property."[14]

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[11] Federal law generally prohibits possessing a firearm at or within 1,000 feet of any school's property.
[12] The bill references s. 775.0861, F.S., which defines "religious institution" by reference to s. 496.404(23), F.S.
[13] FLA. CONST. art. I, s. 2.
[14] *Nollan v. Cal. Coastal Comm'n*, 483 U.S. 825, 831 (1987) (quoting *Loretto v. Teleprompter Manhattan CATV Corp*., 458 U.S. 419, 433 (1982)).

A person who enters the property of another without authorization commits the crime of trespass to property. The elements of trespass are set forth in s. 810.08(1), F.S., which states:

> Whoever, without being authorized, licensed, or invited, willfully enters or remains in any structure or conveyance, or, having been authorized, licensed, or invited, is warned by the owner or lessee of the premises, or by a person authorized by the owner or lessee, to depart and refuses to do so, commits the offense of trespass in a structure or conveyance.

Trespassing with a firearm is a third degree felony,[15] punishable by up to 5 years in prison,[16] 5 years of probation, and a fine not to exceed $5,000.[17]

**Effective Date**

The bill takes effect July 1, 2017.

## IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

This bill does not require counties or municipalities to spend funds or limit their authority to raise revenue or receive state-shared revenues as specified in Article VII, s. 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

## V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

[15] Section 810.08(2)(c), F.S.
[16] Section 775.082(3)(e), F.S.
[17] Section 775.083(1)(c), F.S.

C. Government Sector Impact:

None.

## VI. Technical Deficiencies:

None.

## VII. Related Issues:

None.

## VIII. Statutes Affected:

This bill substantially amends section 790.115 of the Florida Statutes.

## IX. Additional Information:

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

**CS/CS by Education on April 3, 2017:**
The committee substitute provides that a concealed weapon licensee or a concealed firearm licensee is not prohibited from carrying a concealed weapon or a concealed firearm on private school property during an activity that is not sanctioned by the school on that property, if a religious institution is located on the property.

**CS by Judiciary on March 22, 2017:**
The underlying bill made certain statutory provisions regulating weapons and firearms at schools, colleges, universities, and career centers apply only to public entities. The committee substitute replaced the substance of the underlying bill with a simpler concept. The committee substitute provides that two statutes that prohibit a person from possessing a concealed weapon or firearm at a school do not apply to private school property during nonschool hours if a religious institution is located on the property.

B. Amendments:

None.

**By** the Committees on Education; and Judiciary; and Senator Stargel

581-03344-17 20171330c2

A bill to be entitled

An act relating to concealed weapons and firearms on private school property; amending s. 790.115, F.S.; specifying that concealed weapon and concealed firearm licensees are not prohibited by specified laws from carrying such weapons or firearms on private school property under a specified circumstance; providing an effective date.

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

Section 1. Subsection (3) of section 790.115, Florida Statutes, is amended to read:

790.115 Possessing or discharging weapons or firearms at a school-sponsored event or on school property prohibited; penalties; exceptions.—

(3)(a) This section does not apply to any law enforcement officer as defined in s. 943.10(1), (2), (3), (4), (6), (7), (8), (9), or (14).

(b) This section and s. 790.06(12)(a)10., 11., and 13. do not prohibit a person who is licensed under s. 790.06 from carrying a concealed weapon or concealed firearm on private school property during nonschool hours, or during an activity that is not sanctioned by the school on that property, if a religious institution, as defined in s. 775.0861, is located on the property.

Section 2. This act shall take effect July 1, 2017.

**THE FLORIDA SENATE**

# APPEARANCE RECORD

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

4/15/17
*Meeting Date*

1330
*Bill Number (if applicable)*

Topic Guns on Church property

*Amendment Barcode (if applicable)*

Name Kelly Quintero

Job Title Legislative Advocate

Address 540 Beverly Ct
*Street*

Tallahassee FL 32301
*City* *State* *Zip*

Phone 772 204 1797

Email lwvfadvocacy@gmail.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing League of Women Voters of Florida

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

**THE FLORIDA SENATE**

# APPEARANCE RECORD

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

4-12-16
*Meeting Date*

SB 1330
*Bill Number (if applicable)*

Topic Gun Safety

*Amendment Barcode (if applicable)*

Name Douglas Miller

Job Title

Address 3034 O'Brien Drive
*Street*
Tallahassee FL 32309
*City* *State* *Zip*

Phone 850-766-6867

Email douglasmiller8480@gmail.com

Speaking: ☐ For ☒ Against ☐ Information

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

Representing

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

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

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

S-001 (10/14/14)

**The Florida Senate**

# BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

| | |
|---|---|
| BILL: | SB 1620 |
| INTRODUCER: | Senator Powell |
| SUBJECT: | Deceptive and Unfair Trade Practices |
| DATE: | April 12, 2017 |
| REVISED: | |

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|---|---|---|---|---|
| 1. | Matiyow | Knudson | BI | **Favorable** |
| 2. | Harmsen | McKay | CM | **Favorable** |
| 3. | Matiyow | Phelps | RC | **Favorable** |

## I. Summary:

SB 1620 exempts credit unions licensed under ch. 657, F.S., from the Florida Deceptive and Unfair Trade Practices Act. Other entities currently exempt from the act include Florida-licensed banks and savings and loans associations.

## II. Present Situation:

### Florida Deceptive and Unfair Trade Practices Act (FDUTPA)

#### *History and Purpose of FDUTPA*

The Florida Deceptive and Unfair Trade Practices Act (FDUTPA) is a consumer and business protection measure that prohibits unfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in trade or commerce.[1] The FDUTPA is based on federal law.[2] The state attorney or the Department of Legal Affairs may bring actions when it is in the public interest on behalf of consumers or governmental entities.[3] The Office of the State Attorney may enforce violations of the FDUTPA if the violations take place in its jurisdiction. The Department of Legal Affairs has enforcement authority if the violation is multi-jurisdictional, the state attorney defers in writing, or the state attorney fails to act within 90 days after a written complaint is filed.[4] Consumers may also file suit through private actions.[5]

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[1] Chapter 73-124, L.O.F., and s. 501.202, F.S.

[2] D. Matthew Allen, et. al., *The Federal Character of Florida's Deceptive and Unfair Trade Practices Act*, 65 U. Miami L. Rev. 1083, Summer 2011.

[3] Section 501.207, F.S. David J. Federbush, *FDUTPA for Civil Antitrust: Additional Conduct, Party, and Geographic Coverage; State Actions for Consumer Restitution*, 76 FLA. B.J. 52, December 2002, available at http://www.floridabar.org/divcom/jn/jnjournal01.nsf/c0d731e03de9828d852574580042ae7a/99aa165b7d8ac8a485256c8300791ec1!OpenDocument&Highlight=0,business,Division* (last visited on February 13, 2017).

[4] Section 501.203(2), F.S.

[5] Section 501.211, F.S.

***Remedies under the FDUTPA***

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

- Declaratory judgments;
- Injunctive relief;
- Actual damages on behalf of consumers and businesses;
- Cease and desist orders;
- Civil penalties of up to $10,000 per willful violation; and
- Civil penalties of up to $15,000 per willful violation where certain aggravating factors are found.[6]

Remedies for private parties are limited to:

- A declaratory judgment and an injunction where a person is aggrieved by a FDUTPA violation; and
- Actual damages, attorney fees and court costs, where a person has suffered a loss due to a FDUTPA violation.[7]

***Exemptions under the FDUTPA***

FDUTPA exempts certain entities from its governance, including:[8]

- Any person or activity regulated under laws administered by the Office of Insurance Regulation of the Financial Services Commission (OIR);
- Banks and savings and loan associations regulated by the Office of Financial Regulation of the Financial Services Commission (OFR);
- Banks or savings and loan associations regulated by federal agencies; or
- Any person or activity regulated under the laws administered by the former Department of Insurance, which are now administered by the Department of Financial Services (DFS).

Although FDUTPA exempts the above entities that would otherwise be regulated, it does not currently exempt credit unions.

**Federal Unfair and Deceptive Trade Practices Laws**

The Federal Trade Commission's (FTC's) unfair and deceptive trade practices regulations prohibit unfair or deceptive acts or practices in or affecting commerce.[9] However, like FDUTPA, the FTC's regulations exempt banks, savings and loan institutions, or federally-chartered credit unions.[10]

[6] Sections 501.207(1), 501.208, and 501.2075, F.S. Civil Penalties are deposited into general revenue. Enforcing authorities may also request attorney fees and costs of investigation or litigation. *See also*, s. 501.2105, F.S.
[7] Sections 501.211(1)-(2), and 501.2105 F.S.
[8] Section 501.212(4), F.S.
[9] 15 U.S.C. s. 45(a)(1).
[10] 15 U.S.C. s. 45(a)(2).

The Dodd-Frank Act extends the prohibition of unfair, deceptive, or abusive acts (UDAAPs) to banks, credit unions, and other financial institutions.[11] The Consumer Financial Protection Bureau (CFPB) is the regulatory agency under the Dodd-Frank Act.[12] The CFPB has identified the following practices as probable UDAAPs:[13]

- Collection or assessment of a debt or any additional fee, interest, or charge in connection with a debt, which is not expressly authorized by the underlying loan;
- The taking of property without a legal right to do so;
- Causing a consumer's debt to be revealed to his or her employer or co-workers, without the consumer's consent to do so;
- Misrepresentation of a communication as from a government source or attorney; and
- Making false threats of lawsuits, arrest, or prosecution for non-payment of a debt.

**Regulation of Credit Unions**

Credit unions are financial institutions organized to encourage thrift among, and create sources of credit for, their members.[14] Under the dual banking system in the United States, credit unions may be chartered under either state or federal law:

- The Florida Credit Union Act (act) governs the formation and duties of state-chartered credit unions, but ch. 655, F.S., provides guidance regarding the credit union's operations.[15] State-chartered credit unions are regulated by the Florida OFR and the National Credit Union Association (NCUA), an independent federal agency.
- Federally-chartered credit unions are chartered under the Federal Credit Union Act of 1934[16] and are regulated only by the NCUA.

In addition to its oversight of both state- and federally-chartered credit unions, the NCUA also operates and manages the National Credit Union Share Insurance Fund (NCUSIF), which insures share (deposit) accounts for members of all federally-chartered credit unions and most state-chartered credit unions.[17] All state-chartered credit unions that operate in Florida must carry NCUSIF insurance.[18] The standard maximum share insurance coverage amount for a credit union is $250,000.[19]

Like banks, both state- and federally-chartered credit unions are subject to a number of regulations that provide some protections that overlap with FDUTPA, including the following:

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[11] See 12 U.S.C. ss. 5481, 5531, and 5536(a); *see also* Consumer Financial Protection Bureau, *Compliance Bulletin and Policy Guidance 2016-02, Service Providers*, (Oct. 19, 2016), available at http://files.consumerfinance.gov/f/documents/102016_cfpb_OfficialGuidanceServiceProviderBulletin.pdf (last visited Mar. 30, 2017).
[12] 12 U.S.C. s. 5481(2).
[13] *See supra* note 11.
[14] *See, e.g.*, 12 U.S.C. s. 1752, and s. 657.003, F.S.
[15] Ch. 80-258, Laws of Fla.; codified at ch. 657, F.S.
[16] Public Law 73-467, codified as 12 U.S.C. s. 1751 *et seq.*
[17] Federally-chartered credit unions must be insured through NCUSIF, and state-chartered credit unions may be insured through NCUSIF, though some state-chartered credit unions may be insured by private insurance or guaranty corporations. *See* NCUA, *Your Insured Funds*, available at https://www.ncua.gov/Legal/GuidesEtc/GuidesManuals/NCUAYourInsuredFunds.pdf (last visited Mar. 29, 2017).
[18] Sections 657.005(7), 657.008(5)(a)2., and 657.033(9), F.S.
[19] *See supra* note 12.

- Truth in Savings Act (TISA)[20] – TISA enables credit union members to make informed decisions about accounts at credit unions by requiring credit unions to disclose information such as fees, dividend rates, and annual percentage yield regarding its accounts.[21] TISA also prohibits credit unions from advertising in a misleading or inaccurate manner.[22]
- Accuracy of advertising requirement – Credit unions insured through NCUSIF "may [not] use any advertising, or make any representation which is inaccurate or deceptive… [or] misrepresents its services, contracts, or financial condition."[23]
- Equal Credit Opportunity (ECOA) [24] and Fair Housing (FHA)[25] Acts – The ECOA prohibits discrimination in any aspect of a credit transaction on the basis of race, color, religion, national origin, sex, marital status, age, the fact that an applicant's income derives from any public assistance program, or the fact that the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The FHA works in conjunction with the ECOA to prohibit discrimination by anyone who is in the business of providing loans for housing.[26]
- Fair Credit Reporting Act (FCRA)[27] – The FCRA defines the responsibilities and liabilities of those who provide information to, and access data from, a consumer reporting agency (CRA).[28] The FCRA promotes accuracy, fairness, and privacy of information held by CRA's by:
  - Regulating the consumer reporting industry;
  - Placing disclosure obligations on users of consumer reports;
  - Ensuring fair, timely, and accurate reporting of credit information;
  - Restricting the use of reports on consumers; and
  - Requiring the deletion of obsolete information, in certain situations.[29]
- Truth in Lending Act (TILA)[30] – TILA requires clear and conspicuous disclosures relating to the terms and costs of various forms of consumer credit.[31]
- Real Estate Settlement Procedures Act (RESPA)[32] – RESPA requires timely disclosures regarding the nature and costs of the real estate settlement process. For example, a lender must provide an applicant with a good faith estimate no more than 3 business days after a lender receives an application.[33]
- Privacy of consumer financial information under the Gramm-Leach-Bliley Act (GLBA)[34] The GLBA generally prohibits a financial institution from disclosing a consumer's nonpublic personal information to nonaffiliated third parties, unless the institution satisfies notice and

[20] 12 CFR Part 707.
[21] 12 CFR s. 707.1(b); 12 CFR ss. 707.4-.6.
[22] 12 CFR s. 707.8(a)(1).
[23] 12 CFR s. 740.2.
[24] 12 CFR Part 1002.
[25] 42 U.S.C. s. 3601 *et seq.*
[26] NCUA, *Consumer Compliance Manual: Fair Housing Act*, available at https://www.ncua.gov/regulation-supervision/Pages/manuals-guides/consumer-compliance.aspx (last visited Mar. 29, 2017).
[27] 15 U.S.C. s. 1681 *et seq.*
[28] NCUA, *Consumer Compliance Manual: Fair Credit Reporting Act*, available at https://www.ncua.gov/regulation-supervision/Pages/manuals-guides/consumer-compliance.aspx (last visited Mar. 29, 2017).
[29] *Id.*
[30] 12 CFR Part 1026.
[31] *Id.* at ss. 1026.1(b) and 1026.5(a).
[32] 12 CFR Part 1024.
[33] *Id.* at s. 1024.7 and Appendix C.
[34] 15 U.S.C. s. 6801 *et seq.*

opt-out requirements, and the consumer has not elected to opt-out of the disclosure.[35] Under the GLBA, an institution must also give customers notice of its privacy policies and practices. Rules and regulations have been issued to implement provisions of the GLBA.[36]

- CFPB's prohibition on unfair, deceptive, or abusive practices (UDAAPs)[37] – The CFPB regulates the offering and provision of consumer financial products or services,[38] and that enforces many of the above-mentioned regulations. The CFPB prohibits banks, financial institutions, and state- and federally-chartered credit unions from committing or engaging in UDAAPs in connection with any transaction with a consumer.[39, 40]
- Federal Trade Commission's (FTC's) prohibition on unfair or deceptive acts or practices.[41] State-chartered credit unions are not expressly exempt from the FTC's authority to prosecute unfair or deceptive acts. However, as noted above, the CFPB has broad authority to enforce a prohibition on unfair, deceptive, or abusive acts or practices in relation to both state- and federally-chartered credit unions.

## III. Effect of Proposed Changes:

**Section 1** amends s. 501.212, F.S., to exempt credit unions regulated by the OFR under ch. 657, F.S., and credit unions regulated by federal agencies, from the FDUTPA. Current law exempts banks and savings and loan associations regulated by the OFR or federal agencies from the FDUTPA.

**Section 2** provides an effective date of July 1, 2017.

## IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

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[35] *Id.*
[36] 12 CFR s. 716.1 and Part 1016.
[37] 12 U.S.C. s. 5536(a)(1).
[38] 12 U.S.C. ss. 5481(14) and 5491(a).
[39] 12 U.S.C. s. 5531(a). *See also* s. 5536(a)(1) (prohibiting "any covered person or service provider – (A) to offer or provide to a consumer any financial product or service not in conformity with Federal consumer financial law, or otherwise commit any act or omission in violation of a Federal consumer financial law; or (B) to engage in any unfair, deceptive, or abusive act or practice").
[40] 12 U.S.C. ss. 5481(5), (6), and (15).
[41] 15 U.S.C. s. 45(a).

## V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Credit Unions regulated under Florida law will no longer be subject to litigation costs related to claims under the FDUTPA.

C. Government Sector Impact:

The Department of Legal Affairs may see reduced litigation under FDUTPA relating to credit unions.

## VI. Technical Deficiencies:

None.

## VII. Related Issues:

None.

## VIII. Statutes Affected:

This bill substantially amends section 501.212 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 Powell

30-01297-17 20171620__

A bill to be entitled

An act relating to deceptive and unfair trade practices; amending s. 501.212, F.S.; specifying that the Florida Deceptive and Unfair Trade Practices Act does not apply to credit unions regulated by the Office of Financial Regulation or federal agencies; providing an effective date.

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

Section 1. Subsection (4) of section 501.212, Florida Statutes, is amended to read:

501.212 Application.—This part does not apply to:

(4)(a) Any person or activity regulated under laws administered by~~:~~

~~(a)~~ the Office of Insurance Regulation of the Financial Services Commission;

(b) Banks, credit unions, and savings and loan associations regulated by the Office of Financial Regulation of the Financial Services Commission;

(c) Banks, credit unions, or savings and loan associations regulated by federal agencies; or

(d) Any person or activity regulated under the laws administered by the former Department of Insurance which are now administered by the Department of Financial Services.

Section 2. This act shall take effect July 1, 2017.

The Florida Senate

# Committee Agenda Request

**To:** Senator Lizbeth Benacquisto, Chair
Committee on Rules

**Subject:** Committee Agenda Request

**Date:** April 5, 2017

---

I respectfully request that **Senate Bill #1620**, relating to Deceptive and Unfair Trade Practices, be placed on the:

☐ committee agenda at your earliest possible convenience.

☒ next committee agenda.

Senator Bobby Powell
Florida Senate, District 30

File signed original with committee office

S-020 (03/2004)

THE FLORIDA SENATE

# APPEARANCE RECORD

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

04/12/17
*Meeting Date*

1620
*Bill Number (if applicable)*

Topic Unfair and Deceptive Trade Practices

*Amendment Barcode (if applicable)*

Name Jared Ross

Job Title SVP, Governmental Affairs

Address 3692 Coolidge Ct.
*Street*

Phone (850) 322-6956

Tallahassee FL 32311
*City* *State* *Zip*

Email jared.ross@fcu.coop

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Credit Union Association

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

# THE FLORIDA SENATE

**SPECIAL MASTER ON CLAIM BILLS**

***Location***
402 Senate Office Building

***Mailing Address***
404 South Monroe Street
Tallahassee, Florida 32399-1100
(850) 487-5237

| DATE | COMM | ACTION |
|---|---|---|
| 1/31/17 | SM | **Favorable** |
| 2/22/17 | JU | **Fav/CS** |
| 4/4/17 | CA | **Favorable** |
| 4/12/17 | RC | **Favorable** |

January 31, 2017

The Honorable Joe Negron
President, The Florida Senate
Suite 409, The Capitol
Tallahassee, Florida 32399-1100

Re: **CS/SB 36** – Judiciary Committee and Senator Bill Montford
Relief of Jennifer Wohlgemuth

## SPECIAL MASTER'S FINAL REPORT

THIS IS A MEDIATED SETTLED EXCESS JUDGMENT CLAIM FOR $2.6 MILLION AGAINST THE PASCO COUNTY SHERIFF'S OFFICE TO COMPENSATE JENNIFER WOHLGEMUTH FOR INJURIES SUSTAINED IN A MOTOR VEHICLE CRASH RESULTING FROM THE NEGLIGENT OPERATION OF A POLICE VEHICLE.

CURRENT STATUS: On December 2, 2011, an administrative law judge from the Division of Administrative Hearings, serving as a Senate special master, issued a report after holding a de novo hearing on a previous version of this bill, SB 22 (2012). The judge's report contained findings of fact and conclusions of law and recommended that the bill be reported favorably with one amendment. That report is attached as an addendum to this report.

PRIOR LEGISLATIVE HISTORY: Senate Bill 50 by Senator Smith and House Bill 1347 were filed during the 2011 Legislative Session. The Senate Bill was indefinitely postponed and withdrawn from consideration. The House Bill died in its only committee of reference. Senate Bill 22 by Senator Smith and House Bill 1353 were filed during the 2012 Legislative Session. The Senate Bill passed with one amendment in all its committees

of reference but died in Messages. The House Bill died in its only committee of reference.

Senate Bill 30 filed by Senator Montford and House Bill 3535 by Representative Rouson were filed during the 2015 Legislative Session. The Senate Bill passed favorably with one amendment in the Judiciary Committee but died in the Community Affairs Committee. The House Bill died in the first committee of reference.

Senate Bill 62 was filed by Senator Montford during the 2016 Legislative Session. The bill passed the Judiciary Committee but died in the Community Affairs Committee. The bill did not have a House Companion.

According to counsel for the parties, there have been no substantial changes in the facts and circumstances for the underlying claim since the claim bill hearing. Accordingly, I find no cause to alter the findings and recommendations of the original report.

RECOMMENDATIONS: For the reasons set forth above the undersigned recommends that Senate Bill 36 be reported favorably.

Respectfully submitted,

Tracy Jeanne Sumner
Senate Special Master

cc: Secretary of the Senate

**CS by Judiciary:**
The committee substitute, in conformity with a recent opinion of the Florida Supreme Court, does not include the limits on costs, lobbying fees, and other similar expenses, which were included in the original bill.

# THE FLORIDA SENATE

**SPECIAL MASTER ON CLAIM BILLS**

***Location***
402 Senate Office Building

***Mailing Address***
404 South Monroe Street
Tallahassee, Florida 32399-1100
(850) 487-5237

| DATE | COMM | ACTION |
|---|---|---|
| 12/2/11 | SM | Fav/1 amendment |
| | | |
| | | |
| | | |

December 2, 2011

The Honorable Mike Haridopolos
President, The Florida Senate
Suite 409, The Capitol
Tallahassee, Florida 32399-1100

Re: **SB 22 (2012)** – Senator Christopher L. Smith
Relief of Jennifer Wohlgemuth

## SPECIAL MASTER'S FINAL REPORT

THIS IS A CONTESTED CLAIM FOR $8,624,754.40 BASED ON A BENCH TRIAL AWARD FOR JENNIFER WOHLGEMUTH AGAINST THE PASCO COUNTY SHERIFF'S OFFICE TO COMPENSATE CLAIMANT FOR INJURIES SUSTAINED IN A MOTOR VEHICLE CRASH RESULTING FROM THE NEGLIGENT OPERATION OF A POLICE VEHICLE.

FINDINGS OF FACT:

On January 3, 2005, at approximately 1:35 a.m., the Claimant, Jennifer Wohlgemuth, was operating her Honda Accord southbound on Regency Park Boulevard in New Port Richey, Florida. The Claimant, who was not wearing her seatbelt, was in the process of dropping off several passengers with whom she had been socializing earlier that evening.

As the Claimant headed southbound on Regency Park Boulevard, she approached the intersection of Ridge Road, which is controlled by a traffic light in all four directions. Unbeknownst to the Claimant, a fleeing motorist, Scott Eddins, had proceeded through the intersection a short time earlier headed eastbound on Ridge Road. Closely pursuing Mr. Eddins were three police vehicles with the Port Richey and New Port Richey Police Departments. A fourth law enforcement vehicle, operated by Pasco County Sheriff's

Deputy Kenneth Petrillo, was well behind the pursuit and trailed the other patrol cars by 10 to 30 seconds.

Although the traffic signal at the intersection was red for vehicles traveling eastbound on Ridge Road, Deputy Petrillo entered the intersection against the light, without slowing, at a rate of travel that substantially exceeded the 45 MPH speed limit. Although Deputy Petrillo's patrol vehicle was equipped with a siren, he neglected to activate it. Almost immediately upon entering the intersection, Deputy Petrillo struck the front right portion of the Claimant's Honda Accord, which had lawfully proceeded into the intersection several seconds earlier.

As a result of the impact, which was devastating, the Claimant's vehicle traveled approximately 15 feet across a grass shoulder and sidewalk, at which point it struck a metal railing and came to rest. The front right of the Claimant's vehicle was demolished, and the entire right side was dented with inward intrusion. In addition, the front windshield, rear windshield, and right side windows were shattered and broken away.

The Claimant exited her vehicle following the collision, but collapsed in the roadway moments later due to the serious nature of her injuries. The Claimant was subsequently transported to Bayfront Medical Center for treatment.

Shortly after the accident, Florida Highway Patrol Corporal Erik W. Bromiley initiated an investigation to determine the cause of the collision. During his investigation, Corporal Bromiley learned that three Alprazolam (an anti-depressant) tablets, totaling 1.8 grams, had been discovered in the Claimant's wallet. In addition, several witnesses advised Corporal Bromiley that the Claimant had consumed alcoholic beverages at a bar earlier in the evening. Ultimately, however, Corporal Bromiley could not conclude that the Claimant was impaired by drugs or alcohol at the time of the accident.

While Corporal Bromiley remained at the scene to question witnesses and inspect the crash site, a second trooper responded to Bayfront Medical Center and obtained blood samples from the Claimant. Testing of the blood, which was drawn approximately two and one-half hours after the

accident, revealed that the Claimant's blood alcohol level was .021 and .022, which is below the legal limit of .08. In addition, cocaine metabolites and Alprazolam were detected.

Jeffrey Hayes, a toxicologist employed with the Pinellas County Forensic Laboratory, estimated that at the time of the accident, the Claimant's blood alcohol level could have ranged from .047 (a level in which the driver is presumed not to be impaired pursuant to Florida law) to .097, which would exceed the legal limit. Significantly, Mr. Hayes conceded that any conclusion that the Claimant was impaired when the collision occurred would be purely speculative.

Accident reconstruction established that Deputy Petrillo was travelling between 64 MPH (with a margin of error of plus or minus 5 MPH) in a 45 MPH zone. It was further estimated that the Claimant was travelling 34 MPH, in excess of the posted 30 MPH limit for Regency Park Boulevard. However, with the margin of error of plus or minus 5 MPH, the accident reconstruction findings do not preclude a determination that the Claimant was observing the speed limit.

Although it is clear that Deputy Petrillo's siren was not activated prior to the collision, the evidence is inconclusive regarding the use of the patrol vehicle's emergency lights.

An additional investigation of the accident was conducted by Inspector Art Fremer with the Pasco County Sheriff's Office Professional Standards Unit. The purpose of Inspector Fremer's investigation was to ascertain if Deputy Petrillo had committed any statutory violations or failed to observe the policies of the Pasco County Sheriff's Office. At the conclusion of his investigation, Investigator Fremer determined that Deputy Petrillo violated General Order 41.3 of the Pasco County Sheriff's Office in the following respects: (1) failing to activate and continuously use a siren while engaged in emergency operations; (2) entering the intersection against a red light without slowing or stopping, which was necessary for safe operation; (3) entering the intersection at a speed greater than reasonable; and (4) failing to ensure that cross-traffic flow had yielded. In addition, Investigator Fremer concluded that Deputy Petrillo had violated s. 316.072(5), Florida Statutes, which provides that the operator of an emergency vehicle may exceed the maximum speed limit "as long as the driver does not endanger

life or property." As a result of his misconduct, Deputy Petrillo was suspended for 30 days without pay.

With respect to the Claimant's driving, the undersigned credits the testimony of Amanda Dunn, an eyewitness driving three to four car lengths behind the Claimant, who noticed no unusual driving and testified that the "coast was clear" when the Claimant entered the intersection. Accordingly, the undersigned finds that she operated her vehicle in accordance with the law and did not contribute to the accident.

As a result of the collision, the Claimant suffered severe closed head trauma, which included a subdural hematoma of the right frontal lobe and a subarachnoid hemorrhage. As a result of significant swelling to her brain, a portion of the Claimant's skull was removed. The Claimant remained in a coma for approximately three weeks following the accident, and did not return home until August of 2005.

At the time of the final hearing in this matter, the Claimant continues to suffer from severe impairment to her memory, a partial loss of vision, poor balance, urinary problems, anxiety, dysarthric speech, and weight fluctuations. Further, the damage to the Claimant's frontal lobe has left her with the behavior, judgment, and impulses similar to those of a seven-year-old child. As a consequence, the Claimant requires constant supervision and is unable to hold a job, drive, or live independently.

LITIGATION HISTORY:

On March 17, 2007, the Claimant filed an Amended Complaint for Negligence and Demand for Jury Trial in the Sixth Judicial Circuit, in and for Pasco County. In her Amended Complaint, the Claimant sued Robert White, as Sheriff of Pasco County, for injuries she sustained as a result of Deputy Petrillo's negligence. On March 9-11, Circuit Judge Stanley R. Mills conducted a bench trial of the Claimant's negligence claim.

On March 12, 2009, Judge Mills rendered a verdict in favor of the Claimant and awarded:

- $299,284.32 for past medical expenses.
- $5,786,983.00 for future medical expenses.
- $1,055,000.00 for future lost earnings.

- $500,000.00 for past pain and suffering.

- $1,500,000 for future pain and suffering.

The trial judge further determined that Deputy Petrillo was 95 percent responsible for the Claimant's injuries, and that the Claimant was 5 percent responsible due to her failure to wear a seatbelt. With the allocation of 5 percent responsibility to the Claimant, the final judgment for the Claimant totaled $8,724,754.50.

The Respondent appealed the final judgment to the Second District Court of Appeal. In its initial brief, the Respondent argued that the trial court erred by: (1) failing to allocate any responsibility to the Claimant based upon her blood alcohol level; (2) awarding lost wages that were not supported by competent substantial evidence; (3) failing to allocate any responsibility to the Claimant based upon her driving in excess of the speed limit; and (4) failing to allocate any responsibility to the Scott Eddins, the fleeing motorist. Oral argument was granted, and on March 10, 2010, the Second District Court of Appeal affirmed the trial court without a written opinion.

CLAIMANT'S ARGUMENTS:

- Deputy Petrillo's negligent operation of his patrol vehicle was the proximate cause of the Claimant's injuries.

- The trial court's findings as to damages and the apportionment of liability were appropriate.

RESPONDENT'S ARGUMENTS:

- The Pasco County Sheriff's Office objects to any payment to the Claimant through a claim bill.

- At the time of the collision, the Claimant was not wearing her seat belt and was impaired by alcohol, drugs, or a combination of the two, and as such, more than 5 percent of the fault should be allocated to her.

- Some responsibility should be apportioned to Scott Eddins, who was being pursued by multiple law enforcement vehicles at the time Deputy Petrillo collided with the Claimant's vehicle.

CONCLUSIONS OF LAW:

Deputy Petrillo had a duty to operate his vehicle at all times with consideration for the safety of other drivers. See City of Pinellas Park v. Brown, 604 So. 2d 1222, 1226 (Fla. 1992) (holding officers conducting a high-speed chase of a man who ran a red light had a duty to reasonably safeguard surrounding motorists); Brown v. Miami-Dade Cnty., 837 So. 2d 414, 417 (Fla. 3d DCA 2001) ("Florida courts have found that police officers do owe a duty to exercise reasonable care to protect innocent bystanders . . . when their law enforcement activities create a foreseeable zone of risk"); Creamer v. Sampson, 700 So. 2d 711 (Fla. 2d DCA 1997) (holding police owed duty to innocent motorist during high speed pursuit of traffic offender). It was entirely foreseeable that injuries to motorists such as the Claimant could occur where Deputy Petrillo entered an intersection at a high rate of speed, without slowing, against a red light, and without his siren activated. Further, Deputy Petrillo failed to comply with s. 316.072(5), Florida Statutes, which provides that the operator of an emergency vehicle may exceed the maximum speed limit "as long as the driver does not endanger life or property." Deputy Petrillo breached his duty of care and the breach was the proximate cause of the Claimant's injuries.

The Pasco County Sheriff's Office, as Deputy Petrillo's employer, is liable for his negligent act. Mercury Motors Express v. Smith, 393 So. 2d 545, 549 (Fla. 1981) (holding that an employer is vicariously liable for compensatory damages resulting from the negligent acts of employees committed within the scope of their employment).

The circuit judge's allocation of 95 percent liability to the Pasco County Sheriff's Office is reasonable and should not be disturbed. The evidence failed to establish that the Claimant was impaired or that her operation of the vehicle contributed to the accident. Further, as Deputy Petrillo was well behind the pursuit, the zone of risk created by Scott Eddins (the fleeing motorist) had moved beyond the intersection of Regency Park Boulevard and Ridge Road at the time of the collision. Accordingly, the trial court correctly determined that no fault should be apportioned to Mr. Eddins.

The undersigned further concludes that the damages awarded to the Claimant were appropriate. This includes the $1,055,000.00 for future lost earnings, which was based on the reasonable and conservative assumption that the

Claimant did not possess a high school diploma, when in fact she had graduated from high school and planned to attend community college.

LEGISLATIVE HISTORY: This is the second year that a bill has been filed on the Claimant's behalf. During the 2011 session, the bill (SB 50) was indefinitely postponed and withdrawn from consideration on May 7, 2011.

ATTORNEYS FEES: The Claimant's attorneys have agreed to limit their fees to 25 percent of any amount awarded by the Legislature in compliance with s. 768.28(8), Florida Statutes.

FISCAL IMPACT: The Respondent has already paid the statutory maximum of $100,000.00, leaving $8,624,754.40 unpaid. Pursuant to the Sheriff's Automobile Risk Program (a self-insurance pool), an additional $332,000 is at the Respondent's disposal. The remaining balance would be paid by Pasco County funds. Respondent's General Counsel, Jeremiah Hawkes, advises that the Pasco County Sheriff's Office is in the midst of a significant budget crisis that would be exacerbated by the passage of the instant claim bill.

Notwithstanding the Respondent's budgetary woes, the undersigned concludes that the Claimant is presently entitled to the full amount sought. In the alternative, it would not be inappropriate to amend Senate Bill 22 to direct Respondent to pay the balance of $8,624,754.40 over a period of years.

COLLATERAL SOURCES: The Claimant receives $221 per month in Social Security Disability Insurance.

SPECIAL ISSUES: Senate Bill 22, as it is presently drafted, provides that Deputy Petrillo failed to activate his patrol vehicle's emergency lights. In light of the undersigned's finding that the evidenced is inconclusive regarding the use of emergency lights, Senate Bill 22 should be amended accordingly.

The Respondent introduced evidence that that the Claimant began using marijuana at the age of 16, as well as cocaine several years later. Although the Claimant sought help for her addictions, she voluntarily terminated treatment roughly two weeks prior to the collision with Deputy Petrillo's vehicle. As there was no evidence that the Claimant was impaired at the time of the accident, the undersigned concludes that the

Claimant's history of drug addiction should not militate against the passage of the instant claim bill.

RECOMMENDATIONS: For the reasons set forth above, the undersigned recommends that Senate Bill 22 (2012) be reported FAVORABLY, as amended.

Respectfully submitted,

Edward T. Bauer
Senate Special Master

cc: Senator Christopher L. Smith
Debbie Brown, Interim Secretary of the Senate
Counsel of Record

**By** the Committee on Judiciary; and Senator Montford

590-01954-17 201736c1

A bill to be entitled

An act for the relief of Jennifer Wohlgemuth by the Pasco County Sheriff's Office; providing for an appropriation to compensate her for injuries and damages sustained as a result of the negligence of an employee of the Pasco County Sheriff's Office; providing a limitation on the payment of attorney fees; providing an effective date.

WHEREAS, in the early morning of January 3, 2005, 21-year-old Jennifer Wohlgemuth was lawfully and properly operating her vehicle and traveling southbound on Regency Park Boulevard, and

WHEREAS, at the same time, Deputy Kenneth Petrillo, an officer of the Pasco County Sheriff's Office, was driving one of four law enforcement vehicles engaged in a high-speed pursuit, and

WHEREAS, Deputy Petrillo's vehicle was traveling eastbound on Ridge Road, well behind the other law enforcement vehicles, which had already cleared the intersection of Ridge Road and Regency Park Boulevard in Pasco County, and

WHEREAS, Deputy Petrillo did not activate his vehicle's siren or flashing lights and sped through the intersection on a red light at a speed of at least 20 miles per hour over the posted speed limit, and

WHEREAS, Deputy Petrillo's vehicle violently struck the passenger side of Jennifer Wohlgemuth's vehicle as she entered the intersection on a green light while observing the speed limit, and

WHEREAS, none of the numerous witnesses to the crash heard







590-01954-17 201736c1

Deputy Petrillo's siren or saw flashing lights, and

WHEREAS, after the crash, Deputy Petrillo's siren switch was found to be in the radio mode, which indicates that the siren was not activated at the time of the crash, and

WHEREAS, an internal affairs investigation of the accident found that Deputy Petrillo violated the policies of the Pasco County Sheriff's Office, and he was suspended for 30 days without pay and subjected to other disciplinary measures, and

WHEREAS, as a result of the accident, Jennifer Wohlgemuth was in a coma for 3 weeks, was unable to speak for several months after emerging from the coma, and did not return home until August 2005, and

WHEREAS, Jennifer Wohlgemuth suffered profound brain injuries, including a subdural hematoma of the right frontal lobe and subarachnoid hemorrhage that resulted in the removal of a portion of her skull, and

WHEREAS, due to the damage to her frontal lobe, Jennifer Wohlgemuth's behavior and impulse control are similar to those of a 10-year-old child and require that she be supervised 24 hours a day, 7 days a week, and

WHEREAS, Jennifer Wohlgemuth currently suffers from severe memory loss, partial loss of vision, lack of balance, urinary problems, anxiety, depression, dysarthric speech, acne, and weight fluctuations, and

WHEREAS, as a result of her significant memory impairment and lack of judgment, Jennifer Wohlgemuth is unable to drive, work at a job, or live independently and is under the guardianship of Traci Wohlgemuth, and

WHEREAS, a 3-day bench trial was held in the Sixth Judicial

Circuit in the case of *Traci Wohlgemuth, as guardian of Jennifer K. Wohlgemuth, an incompetent, v. Robert White, as Sheriff of Pasco County, Florida*, which was assigned case number 51-2007-CA-000859, and on March 12, 2009, the trial court rendered a verdict in Jennifer Wohlgemuth's favor, awarding her total damages of $9,141,267.32, and

WHEREAS, the trial court found that Deputy Petrillo was 95 percent responsible for Jennifer Wohlgemuth's injuries and that Ms. Wohlgemuth was responsible for the remaining 5 percent due to her alleged failure to wear a seat belt, and

WHEREAS, on August 4, 2009, the trial court entered its amended final judgment in the amount of $8,724,754.40, and

WHEREAS, the Pasco County Sheriff's Office appealed the amended final judgment to the Second District Court of Appeal, and the appellate court affirmed the trial court's final judgment on March 10, 2010, and

WHEREAS, in accordance with s. 768.28, Florida Statutes, the Pasco County Sheriff's Office paid the statutory limit of $100,000, and the remaining amount of $8,624,754.40 remains unpaid, and

WHEREAS, the Pasco County Sheriff's Office and Jennifer Wohlgemuth have since entered into a settlement agreement regarding the unpaid amount, with the sheriff's office promising to make annual payments to Ms. Wohlgemuth and agreeing not to oppose this claim bill, NOW, THEREFORE,

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

Section 1. The facts stated in the preamble to this act are





found and declared to be true.

Section 2. The Pasco County Sheriff's Office is authorized and directed to appropriate from funds of the sheriff's office and to pay Jennifer Wohlgemuth the settlement amount of $2.6 million as compensation for injuries and damages sustained due to the negligence of an employee of the sheriff's office. Payment shall be made in the amount of $325,000 per year for 8 consecutive years. The first payment must be made no later than October 31, 2017. Payments must be made by October 31 each subsequent year until paid in full. However, if Jennifer Wohlgemuth dies before October 31, 2024, payments shall cease with her death and the award under this act shall be deemed paid in full.

Section 3. The amount paid by the Pasco County Sheriff's Office under s. 768.28, Florida Statutes, and the amount awarded under this act are intended to provide the sole compensation for all present and future claims arising out of the factual situation described in this act which resulted in the injuries and damages to Jennifer Wohlgemuth. The total amount paid for attorney fees relating to this claim may not exceed 25 percent of the amount awarded under this act.

Section 4. This act shall take effect upon becoming a law.

**The Florida Senate**

# BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

| | |
|---|---|
| BILL: | CS/SJR 76 |
| INTRODUCER: | Appropriations Committee (Recommended by Appropriations Subcommittee on Finance and Tax); and Senator Lee and others |
| SUBJECT: | Limitations on Property Tax Assessments |
| DATE: | April 12, 2017 REVISED: |

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|---|---|---|---|---|
| 1. | Babin | Diez-Arguelles | AFT | **Recommend: Fav/CS** |
| 2. | Babin | Hansen | AP | **Fav/CS** |
| 3. | Babin | Phelps | RC | **Favorable** |

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

COMMITTEE SUBSTITUTE - Substantial Changes

## I. Summary:

CS/SJR 76 proposes an amendment to the Florida Constitution to remove the scheduled January 1, 2019, repeal of the 10-percent assessment limitation on non-homestead property. If approved by at least 60 percent of the electors, the 10-percent assessment limitation will continue.

The Revenue Estimating Conference (REC) has determined that the joint resolution has an indeterminate fiscal impact because it must be approved by the electors before it takes effect. If approved, the REC estimates that the joint resolution will reduce property taxes, other than property taxes for schools, by $688.1 million, beginning in Fiscal Year 2019-2020.[1] The Department of State expects to incur costs of $38,916 to advertise the constitutional amendment.

## II. Present Situation:

### General Overview of Property Taxation

The ad valorem tax (property tax) is levied annually by counties, cities, school districts, and some special districts. Taxing jurisdictions impose their tax on the taxable value of property as of

[1] *See* infra, Section V, Fiscal Impact Statement.

January 1 of each year.[2] The property appraiser annually determines the "just value"[3] of property and then applies relevant exclusions, assessment limitations, and exemptions to determine the property's "taxable value."[4] Tax collectors mail tax bills in November of each year based on the previous January 1 valuation. Payment is due before April 1.[5] The Florida Constitution prohibits the state from levying ad valorem taxes[6] and requires property valuations to be at just value, unless a lesser valuation is expressly authorized.[7]

**The Save Our Homes Assessment Limitation for Homestead Property**

Property assessment limitations limit the annual increase in a property's value for tax purposes, regardless of the property's increase in fair market value. For example, even though a property's market value may increase by 15 percent in a given year, an assessment limitation will limit the increase in assessed value to a lesser amount for tax purposes.

Voters approved Florida's first property assessment limitation, known as Save Our Homes (SOH) in 1992, and it became effective for homestead assessments as of January 1, 1995.[8] The SOH limitation limits the annual increase in the assessed value of homesteads to the lesser of three percent or the percentage change in the consumer price index (CPI).[9] The CPI often limits the increase to below three percent. For example, the change in CPI resulted in a SOH limitation of 0.7 percent[10] in 2016 and 2.1 percent[11] in 2017.

**The 10-Percent Assessment Limitation for Non-homestead Property**

In 2007, the Legislature passed a joint resolution,[12] which, among other things, proposed a 10-percent assessment limitation for non-homestead property. The limitation does not apply to property taxes levied by school districts.[13] The voters approved the constitutional amendment in the primary election held on January 29, 2008. It first applied to assessments as of January 1, 2009.

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[2] Both real property and tangible personal property can be subject to the tax. Section 192.001(12), F.S., defines "real property" as land, buildings, fixtures, and all other improvements to land. Section 192.001(11)(d), F.S., defines "tangible personal property" as all goods, chattels, and other articles of value capable of manual possession and whose chief value is intrinsic to the article itself.

[3] Property must be valued at "just value" for purposes of property taxation unless the Florida Constitution provides otherwise. FLA. CONST. art VII, s. 4. Just value has been interpreted by the courts to mean the fair market value that a willing buyer would pay a willing seller for the property in an arm's-length transaction. *See Walter v. Shuler*, 176 So. 2d 81 (Fla. 1965); *Deltona Corp. v. Bailey*, 336 So. 2d 1163 (Fla. 1976); *Southern Bell Tel. & Tel. Co. v. Dade County*, 275 So. 2d 4 (Fla. 1973).

[4] *See* s. 192.001(2) and (16), F.S.

[5] Section 197.333, F.S.

[6] FLA. CONST. art. VII, s. 1(a)

[7] *See* FLA. CONST. art. VII, s. 4

[8] *See* FLA. CONST. art. VII, s. (4)(d); s. 193.155, F.S.

[9] Section 193.155(1), F.S.

[10] Department of Revenue, Property Tax Valuation and Income Limitation Rates, *available at* www.floridarevenue.com/dor/property/resources/limitations.html (last visited Feb. 13, 2017).

[11] Id.

[12] SJR 2-D (2007, Special Session D)

[13] *See* FLA. CONST. art. VII, s. 4(g) & (h); ss. 193.1554 and 193.1555, F.S.

**Recapture**

An administrative rule requires the property appraiser to increase the assessed value of a homestead property that is benefitting from the SOH limitation even though the just (or fair market) value of the property has remained the same, decreased, or increased less than the applicable SOH limit.[14] Pursuant to SOH, the increase is limited to the lesser of 3 percent or the percentage change in the CPI, but the assessed value can never exceed the just value.
For an example of the rule's operation, assume that in year 1 a homestead property has a just value of $250,000 and an assessed value of $200,000. The assessed value is lower than the just value because the property has received the benefit of the SOH limitation for a few years. In year 2, assume that the applicable SOH percentage is 3 percent, but that the real estate market is flat and the property's just value remains at $250,000. In this situation, the property appraiser must increase the assessed value to $206,000. This treatment is also required for the 10-percent limitation for non-homestead property.

**Repeal of the 10-Percent Assessment Limitation**

The 2008 constitutional amendment included a repeal of the 10-percent assessment limitation, effective January 1, 2019. However, it also provided that the "[L]egislature shall by joint resolution propose an amendment abrogating the repeal..., which shall be submitted to the electors of the state for approval or rejection at the general election of 2018…."[15]

## III. Effect of Proposed Changes:

The bill amends the State Constitution to remove the repeal of the 10-percent assessment limitation for non-homestead property scheduled for January 1, 2019. If approved by at least 60 percent of the electors, the 10-percent assessment limitation will continue.

## IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The mandate provisions in Art. VII, s. 18 of the State Constitution do not apply to joint resolutions.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

[14] Rule 12D-8.0062(5), F.A.C.
[15] FLA. CONST. art. XII, s. 27

D. Other Constitutional Issues:

A joint resolution must be passed by three-fifths of the membership of each house of the Legislature. It must be submitted to the electors at the next general election held more than 90 days after the joint resolution proposing it is filed with the custodian of state records, unless, pursuant to law enacted by the affirmative vote of three-fourths of the membership of each house of the Legislature and limited to a single amendment or revision, it is submitted at an earlier special election held more than 90 days after such filing.[16] To pass, a proposed constitutional amendment must be approved by at least 60 percent of the electors voting on the measure, and if passed, it becomes effective as an amendment on the first Tuesday after the first Monday in January following the election, or on such other date as may be specified in the amendment or revision.[17]

## V. Fiscal Impact Statement:

A. Tax/Fee Issues:

The Revenue Estimating Conference (REC) has determined that CS/SJR 76 has an indeterminate fiscal impact because it must be approved by the electors before it takes effect. If approved, the joint resolution will reduce the non-school property tax base beginning in Fiscal Year 2019-2020, but the tax impact will depend upon the Fiscal Year 2019-2020 millage rates. Applying current statewide average millage rates, the REC estimates that the joint resolution will reduce non-school property taxes by $688.1, beginning in Fiscal Year 2019-2020.

B. Private Sector Impact:

If the voters approve the amendment in the 2018 general election, some owners of non-homestead property will pay less property tax.

C. Government Sector Impact:

The Division of Elections is required to advertise the full text of proposed constitutional amendments in English and Spanish twice in a newspaper of general circulation in each county before the election in which the amendment is submitted to the electors.[18] The Division is also required to provide each Supervisor of Elections with either booklets or posters displaying the full text of proposed amendments. The cost to advertise constitutional amendments for the 2016 general election was $117.56 per word. Using 2016 rates, the Division estimates that the cost to advertise this amendment for the 2018 general election will be at least $38,916.

## VI. Technical Deficiencies:

None.

[16] FLA. CONST. art. XI, s. 5(a).
[17] FLA. CONST. art. XI, s. 5(e).
[18] FLA. CONST. art. XI, s. 5(d).

## VII. Related Issues:

None.

## VIII. Statutes Affected:

This bill substantially amends Article XII, section 27 of the State Constitution.

## 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 Appropriations on April 6, 2017:**
The committee substitute clarifies that, if approved by the voters, the constitutional amendment becomes effective on January 1, 2019.

B. Amendments:

None.

**By** the Committee on Appropriations; and Senators Lee, Garcia, and Perry

576-03512-17 201776c1

Senate Joint Resolution

A joint resolution proposing an amendment to Section 27 of Article XII of the State Constitution to remove a future repeal of provisions in Section 4 of Article VII that limit the amount of annual increases in assessments, except for school district levies, of specified nonhomestead real property.

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

That the following amendment to Section 27 of Article XII of the State Constitution is agreed to and shall be submitted to the electors of this state for approval or rejection at the next general election:

ARTICLE XII

SCHEDULE

SECTION 27. Property tax exemptions and limitations on property tax assessments.—

(a) The amendments to Sections 3, 4, and 6 of Article VII, providing a $25,000 exemption for tangible personal property, providing an additional $25,000 homestead exemption, authorizing transfer of the accrued benefit from the limitations on the assessment of homestead property, and this section, if submitted to the electors of this state for approval or rejection at a special election authorized by law to be held on January 29, 2008, shall take effect upon approval by the electors and shall operate retroactively to January 1, 2008, or, if submitted to the electors of this state for approval or rejection at the next general election, shall take effect January 1 of the year







576-03512-17 201776c1

following such general election. The amendments to Section 4 of Article VII creating subsections (g) ~~(f)~~ and (h) ~~(g)~~ of that section, creating a limitation on annual assessment increases for specified real property, shall take effect upon approval of the electors and shall first limit assessments beginning January 1, 2009, if approved at a special election held on January 29, 2008, or shall first limit assessments beginning January 1, 2010, if approved at the general election held in November of 2008. ~~Subsections (f) and (g) of Section 4 of Article VII are repealed effective January 1, 2019; however, the legislature shall by joint resolution propose an amendment abrogating the repeal of subsections (f) and (g), which shall be submitted to the electors of this state for approval or rejection at the general election of 2018 and, if approved, shall take effect January 1, 2019.~~

(b) The amendment to subsection (a) abrogating the scheduled repeal of subsections (g) and (h) of Section 4 of Article VII of the State Constitution as it existed in 2017, shall take effect January 1, 2019.

BE IT FURTHER RESOLVED that the following statement be placed on the ballot:

CONSTITUTIONAL AMENDMENT

ARTICLE XII, SECTION 27

LIMITATIONS ON PROPERTY TAX ASSESSMENTS.—Proposing an amendment to the State Constitution to retain provisions adopted in 2008 that limit increases in assessments, except for school district levies, of specified nonhomestead real property, to 10 percent each year. If approved, the amendment removes the scheduled repeal of such provisions in 2019 and shall take

effect January 1, 2019.



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

The Florida Senate

# Committee Agenda Request

**To:** Senator Lizbeth Benacquisto, Chair
Rule Committee

**Subject:** Committee Agenda Request

**Date:** April 6, 2017

---

I respectfully request that **Senate Bill #76**, relating to Limitations on Property Tax Assessments, be placed on the:

☐ committee agenda at your earliest possible convenience.

☒ next committee agenda.

Tom Lee

Senator Tom Lee
Florida Senate, District 20

File signed original with committee office

THE FLORIDA SENATE

# APPEARANCE RECORD

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

4/12/17
*Meeting Date*

76
*Bill Number (if applicable)*

Topic _____

*Amendment Barcode (if applicable)*

Name ANDREW RAMAGE

Job Title _____

Address 200 S. Monroe St.
*Street*

Tallahassee FL 32301
*City* *State* *Zip*

Phone _____

Email _____

Speaking: ☐ For ☐ Against ☐ Information

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

Representing FLORIDA REALTORS

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

# APPEARANCE RECORD

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

4/12/17
*Meeting Date*

760
*Bill Number (if applicable)*

*Amendment Barcode (if applicable)*

Topic Property Tax Assessments

Name Carolyn Johnson

Job Title Policy Director

Address 136 S Bronough St
*Street*

Tallahassee
*City* *State* *Zip*

Phone 521-1200

Email cjohnson@flchamber.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing FL Chamber of Commerce

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

**THE FLORIDA SENATE**

# APPEARANCE RECORD

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

4/12/17
*Meeting Date*

76
*Bill Number (if applicable)*

*Amendment Barcode (if applicable)*

Topic Tax Assessments

Name Brewster Bevis

Job Title Senior Vice President

Address 516 N. Adams St
*Street*

Phone 224-7173

Tallahassee — *City* | FL — *State* | 32301 — *Zip*

Email bbevis@aif.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Associated Industries of Florida

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

# APPEARANCE RECORD

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

4/12/17
*Meeting Date*

76
*Bill Number (if applicable)*

*Amendment Barcode (if applicable)*

Topic _____

Name Tim Nungesser

Job Title Legislative Director

Address 110 E. Jefferson St
*Street*

Tallahassee FL 32301
*City* *State* *Zip*

Phone 850-445-5367

Email tim.nungesser@nfib.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing National Federation of Independent Business

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

**The Florida Senate**

# BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

| | |
|---|---|
| BILL: | CS/SB 1136 |
| INTRODUCER: | Agriculture Committee and Senator Lee |
| SUBJECT: | Cottage Food Operations |
| DATE: | April 12, 2017 |
| REVISED: | |

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|---|---|---|---|---|
| 1. | Akhavein | Becker | AG | **Fav/CS** |
| 2. | Harmsen | McKay | CM | **Favorable** |
| 3. | Akhavein | Phelps | RC | **Favorable** |

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

COMMITTEE SUBSTITUTE - Substantial Changes

## I. Summary:

CS/SB 1136 increases the maximum annual gross sales limit of cottage foods operations from $15,000 to $50,000. It allows cottage food operations to sell, offer for sale, and accept payment for cottage food products over the Internet, but requires the cottage food item to be delivered in person directly to the consumer, or to a specific event venue.

## II. Present Situation:

### Food Safety Laws

The Department of Agriculture and Consumer Services' (department's) Division of Food Safety ensures that safe, wholesome, and properly labeled food is available to the public through the permitting and inspection of food establishments, and inspection of food products that are sold or produced in Florida.[1] Over 45,000 food establishments are currently permitted and regulated by the department.[2] The department works in cooperation with the United States Department of

[1] Florida Department of Agriculture and Consumer Services, *Division of Food Safety*, http://www.freshfromflorida.com/Divisions-Offices/Food-Safety (last visited Mar. 29, 2017). *See also* ch. 500, F.S., the "Florida Food Safety Act."

[2] Department of Agriculture and Consumer Services, Division of Food Safety, p. 1, *SB 1136 Agency Analysis* (Mar. 8, 2017) (on file with the Agriculture Committee).

Agriculture and Food and Drug Administration to help ensure compliance with both state and federal regulations.[3]

**Florida Cottage Food Operation Law**

A cottage food operation is a business operated by a person who, under certain conditions and restrictions, produces or packages non-potentially hazardous food in their home kitchen.[4] Though it has not adopted a rule on cottage food operations, the department has published materials defining potentially hazardous foods as those that:

- Require time or temperature control for safety to limit pathogenic micro-organism growth or toxin formation;
- Are an animal food that is raw or heat-treated;
- Are a plant food that is heat-treated or consists of raw seed sprouts, cut melons, cut leafy greens, cut tomatoes or mixtures of cut tomatoes that are not modified in a way so that they are unable to support pathogenic micro-organism growth or toxin formation; or
- Garlic-in-oil mixtures that are not modified so that they are unable to support pathogenic micro-organism growth or toxin formation.[5]

Foods that could be cottage food products (because they are not potentially hazardous foods) are:

- Loaf breads, rolls, biscuits;
- Cakes, pastries, and cookies;
- Honey;
- Jams, jellies, and preserves;
- Fruit pies and dried fruits;
- Dry herbs, seasonings, and mixtures;
- Homemade pasta;
- Cereals, trail mixes, and granola;
- Coated or uncoated nuts;
- Vinegar and flavored vinegars; and
- Popcorn and popcorn balls.[6]

Under s. 500.80, F.S., cottage food operations are exempt from food safety production standards, are not subject to inspection by a governmental entity, and are not required to meet state permitting requirements under s. 500.12, F.S. However, cottage food operations must comply with the cottage food law and limit annual gross sales of cottage food products to less than $15,000. A cottage food operation must provide the department with written documentation to verify its annual gross sales upon the department's request to do so.

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[3] Florida Department of Agriculture and Consumer Services, *Food Establishment Inspections*, http://www.freshfromflorida.com/Divisions-Offices/Food-Safety/Business-Resources/Food-Establishment-Inspections (last visited Mar. 29, 2017).
[4] Sections 500.03(j), (k), and 500.80, F.S.
[5] *See* Department of Agriculture and Consumer Services, *Division of Food Safety: Cottage Food Legislation Signed into Law* (Feb. 2014), available at: https://www.freshfromflorida.com/content/download/10223/137606/CottageFoodAdvisoryWithFormNumber.pdf (last visited Mar. 29, 2017).
[6] *Id.*

Cottage food operators are currently prohibited from selling, or offering to sell, cottage food products over the Internet, by mail order, or at wholesale.

Cottage food products must be prepackaged with a label that contains:
- The name and address of the cottage food operation;
- The name of the cottage food product;
- The ingredients of the cottage food product, in descending order of predominance by weight;
- The net weight or net volume of the cottage food product;
- Allergen information as specified by federal labeling requirements;
- Appropriate nutritional information (if any nutritional claim is made) as specified by federal labeling requirements;[7] and
- The statement, "Made in a cottage food operation that is not subject to Florida's food safety regulation" printed in 10-point type in a color in a clear contrast to the background of the label.

Additionally, current law provides that:
- A cottage food operation may only sell cottage food products that are stored on the premises of the operation;
- Cottage food operations are not exempt from any state or federal tax law, rule, regulation, or certificate that applies to all cottage food operations; and
- A cottage food operation must comply with all applicable county and municipal laws and ordinances regulating the preparation, processing, storage, and sale of cottage food products by a cottage food operation or from a person's residence.

The department may investigate complaints that a cottage food operation has violated an applicable provision of state food products law[8] or rule adopted under such law. Upon receiving a complaint, an officer or employee of the department may inspect the cottage food operation's premises to determine compliance with applicable to state law and departmental rules. An operation's refusal to permit an authorized officer or employee to enter and inspect the premises is grounds for administrative disciplinary action under s. 500.121, F.S.[9]

State law regarding cottage food operations does not apply to any person operating under a food permit issued pursuant to s. 500.12, F.S.[10]

**Cottage Food Sales in Other States**

Many states have adopted laws regarding cottage food operations and production, including Alabama in 2014, Texas and California in 2013, and Michigan in 2010.[11] While regulation varies

[7] *See* C.F.R. Title 21, Part 101. Available at: http://www.ecfr.gov/cgi-bin/text-idx?SID=b8a6ba2f29a50685c15ebddd8bbd56aa&mc=true&node=pt21.2.101&rgn=div5 (last visited March 8, 2017).
[8] Chapter 500, F.S.
[9] Disciplinary action includes suspension procedures provided for in s. 500.12, F.S., and may include an administrative fine in the Class II category pursuant to s. 570.971, F.S.
[10] Permits under this section are required for any person who operates a food establishment or retail food store.
[11] PickYourOwn.Org, *Cottage Food Laws by State: Selling Your Homemade and Home-Canned Foods* (Mar. 29, 2017), http://www.pickyourown.org/CottageFoodLawsByState.htm (last visited Mar. 29, 2017).

from state to state, many states have adopted limits to annual gross sales or income from cottage food products including:

- Alabama and Michigan limit annual gross income from sales to $20,000;[12]
- Texas limits annual gross sales to $50,000;[13] and
- California limited annual gross sales starting with $35,000 in 2013, $45,000 in 2014, and $50,000 beginning in 2015.[14]

## III. Effect of Proposed Changes:

**Section 1** amends s. 500.80, F.S., to increase the annual gross sales limit from $15,000 to $50,000 for cottage food operations; this will allow larger businesses to qualify and operate as a cottage food operation. The bill also allows a cottage food operation to sell, offer for sale, and receive payments for sale over the Internet, if the purchased cottage food products are delivered in person directly to the consumer or to a specific event.

**Section 2** provides an effective date of July 1, 2017.

## IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

## V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

People engaged in cottage food operations will be able to expand their volume of sales from $15,000 to $50,000 per year. They may also be able to make sales more efficiently over the Internet.

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[12] Alabama Department of Agriculture and Industries, Farmer's Market Authority, Home Processed Products & Cottage Food Law, available at http://fma.alabama.gov/pdfs/Brochure_HomeProcessed-CottageFoodLaw.pdf (last visited Mar. 29, 2017). *See also*, MCLS s. 289.4102.

[13] Tex. Health and Safety Code, s. 437.001.

[14] Cal. Health and Safety Code s. 114365.2.

C. Government Sector Impact:

The Division of Food Safety indicates that the increase in gross sales for cottage food operators may result in increased food safety health events and complaints, and therefore cause a rise in investigations and prosecutions of cottage food operators.[15]

## VI. Technical Deficiencies:

None.

## VII. Related Issues:

None.

## VIII. Statutes Affected:

This bill amends s. 500.80, 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 Agriculture on March 21, 2017:**

The committee substitute reinstates an annual sales volume limitation for cottage food operators. The new limit is $50,000 in annual sales. The CS also allows Internet sales, offers for sale, and payments over the Internet as long as the cottage food products are delivered in person directly to the consumer or to a specific event.

B. Amendments:

None.



[15] Department of Agriculture and Consumer Services, Division of Food Safety, *SB 1136 Agency Analysis* (Mar. 8, 2017) (on file with the Agriculture Committee).

**By** the Committee on Agriculture; and Senator Lee

575-02671-17 20171136c1

A bill to be entitled

An act relating to cottage food operations; amending s. 500.80, F.S.; increasing the annual gross sales limitation for exempting cottage food operations from certain food and building permitting requirements; authorizing cottage food products to be advertised, sold, and paid for over the Internet; requiring such products to be delivered in person directly to the consumer or to a specific event venue; providing an effective date.

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

Section 1. Paragraph (a) of subsection (1) and subsection (2) of section 500.80, Florida Statutes, are amended to read:

500.80 Cottage food operations.—

(1)(a) A cottage food operation must comply with the applicable requirements of this chapter but is exempt from the permitting requirements of s. 500.12 if the cottage food operation complies with this section and has annual gross sales of cottage food products that do not exceed $50,000 ~~$15,000~~.

(2) A cottage food operation may sell, offer for sale, and accept payment for cottage food products over the Internet, but such products must be delivered in person directly to the consumer or to a specific event venue. A cottage food operation may not sell, ~~or~~ offer for sale, or deliver cottage food products ~~over the Internet,~~ by mail order~~,~~ or at wholesale.

Section 2. This act shall take effect July 1, 2017.



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

The Florida Senate

# Committee Agenda Request

**To:** Senator Benacquisto, Chair
Committee on Rules

**Subject:** Committee Agenda Request

**Date:** April 3, 2017

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I respectfully request that **Senate Bill #1136**, relating to Cottage Food Operations, be placed on the:

☐ committee agenda at your earliest possible convenience.

☒ next committee agenda.

Tom Lee

Senator Tom Lee
Florida Senate, District 20

File signed original with committee office

S-020 (03/2004)

**The Florida Senate**

# BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

| | |
|---|---|
| BILL: | CS/SB 7024 |
| INTRODUCER: | Rules Committee and Banking and Insurance Committee |
| SUBJECT: | OGSR/Title Insurance Agencies or Insurers/Office of Insurance Regulation |
| DATE: | April 13, 2017 REVISED: |

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|---|---|---|---|---|
| | Billmeier | Knudson | | **BI Submitted as Committee Bill** |
| 1. | Ferrin | Ferrin | GO | **Favorable** |
| 2. | Billmeier | Phelps | RC | **Fav/CS** |

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

COMMITTEE SUBSTITUTE - Substantial Changes

## I. Summary:

CS/SB 7024 continues the existing public records exemption for proprietary business information a title insurance agency or insurer provides to the Office of Insurance Regulation (OIR) by removing the October 2, 2017, repeal date.

The bill also revises the definition of "proprietary business information" to clarify that information that has been publically disclosed is not subject to the exemption and limits the exemption to information specifically cited in statute.

The bill provides an effective date of October 1, 2017.

## II. Present Situation:

### Public Records Law

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

[1] FLA. CONST., art. I, s. 24(a).
[2] *Id*.

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

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

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

The Legislature may create an exemption to public records requirements.[9] An exemption must pass by a two-thirds vote of the House and the Senate.[10] In addition, an exemption must explicitly lay out the public necessity justifying the exemption, and the exemption must be no broader than necessary to accomplish the stated purpose of the exemption.[11] A statutory exemption which does not meet these criteria may be unconstitutional and may not be judicially saved.[12]

When creating a public records exemption, the Legislature may provide that a record is "confidential and exempt" or "exempt."[13] Records designated as "confidential and exempt" may be released by the records custodian only under the circumstances defined by the Legislature.

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

[4] Public records laws are found throughout the Florida Statutes.

[5] Section 119.01(1), F.S.

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

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

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

[9] FLA. CONST., art. I, s. 24(c).

[10] *Id.*

[11] *Id.*

[12] *Halifax Hosp. Medical Center v. New-Journal Corp.,* 724 So. 2d 567 (Fla. 1999). See also *Baker County Press, Inc. v. Baker County Medical Services, Inc.*, 870 So. 2d 189 (Fla. 1st DCA 2004).

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

Records designated as "exempt" are not required to be made available for public inspection, but may be released at the discretion of the records custodian under certain circumstances.[14]

**Open Government Sunset Review Act**

The Open Government Sunset Review Act (referred to hereafter as the "OGSR") prescribes a legislative review process for newly created or substantially amended public records or open meetings exemptions.[15] The OGSR provides that an exemption automatically repeals on October 2nd of the fifth year after creation or substantial amendment; in order to save an exemption from repeal, the Legislature must reenact the exemption.[16]

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

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

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

If, in reenacting an exemption, the exemption is expanded, then a public necessity statement and a two-thirds vote for passage are required.[22] If the exemption is reenacted without substantive changes or if the exemption is narrowed, then a public necessity statement and a two-thirds vote

[14] *Williams v. City of Minneola*, 575 So. 2d 687 (Fla. 5th DCA 1991).
[15] Section 119.15, F.S. Section 119.15(4)(b), F.S., provides that an exemption is considered to be substantially amended if it is expanded to include more information or to include meetings. The OGSR does not apply to an exemption that is required by federal law or that applies solely to the Legislature or the State Court System pursuant to section 119.15(2), F.S.
[16] Section 119.15(3), F.S.
[17] Section 119.15(6)(b), F.S.
[18] Section 119.15(6)(b)1., F.S.
[19] Section 119.15(6)(b)2., F.S.
[20] Section 119.15(6)(b)3., F.S.
[21] Section 119.15(6)(a), F.S. The specified questions are:
1. What specific records or meetings are affected by the exemption?
2. Whom does the exemption uniquely affect, as opposed to the general public?
3. What is the identifiable public purpose or goal of the exemption?
4. Can the information contained in the records or discussed in the meeting be readily obtained by alternative means? If so, how?
5. Is the record or meeting protected by another exemption?
6. Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?

[22] FLA. CONST. art. I, s. 24(c).

for passage are *not* required. If the Legislature allows an exemption to sunset, the previously exempt records will remain exempt unless provided for by law.[23]

**Title Insurers and Title Agencies Data Submission**

Section 627.782(8), F.S., requires title insurers and title agencies to submit to OIR, on or before May 31 of each year, revenue, loss, and expense data for the most recently concluded year that are determined necessary to assist in the analysis of premium rates, title search costs, and the condition of the Florida title insurance industry.

**Public Record Exemption under Review**

In 2012, the Legislature made proprietary business information that is provided to OIR by a title insurance agency or insurer confidential and exempt from public disclosure under s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution until such information is otherwise publicly available or is no longer treated by the title insurance agency or insurer as proprietary business information. However, information provided by multiple title insurance agencies and insurers may be aggregated on an industry-wide basis and disclosed to the public as long as the specific identities of the agencies or insurers are not revealed. The exemption defines "proprietary business information" as information that: [24]

- Is owned or controlled by a title insurance agency or insurer requesting confidentiality;
- Is intended to be and is treated by the title insurance agency or insurer as private in that the disclosure of the information would cause harm to the business operations of the title insurance agency or insurer;
- Has not been publicly disclosed unless disclosed pursuant to a statutory provision, an order of a court or administrative body, or a private agreement, providing that the information may be released to the public; and
- Concerns business plans, internal auditing controls and reports of internal auditors, reports of external auditors for privately held companies, trade secrets as defined in s. 688.002, F.S., or financial information, including, but not limited to, revenue data, loss expense data, gross receipts, taxes paid, capital investment, customer identification, and employee wages.

The 2012 public necessity statement for the exemption provides that: [25]

> The disclosure of information, such as revenue data, loss expense data, gross receipts, the amount of taxes paid, the amount of capital investment, customer identification, and the amount of employee wages paid, could injure a business in the marketplace by providing its competitors with detailed insights into the financial status and the strategic plans of the business, thereby diminishing the advantage that the business maintains over competitors that do not possess such information. Without this exemption, title insurance agencies and title insurers, whose records are generally not required to be open to the public, might refrain from providing accurate and unbiased data, thus impairing the Office of Insurance

[23] Section 119.15(7), F.S.
[24] Section 626.84195, F.S.
[25] Ch. 2012-207, Laws of Fla.

> Regulation's ability to set fair and adequate title insurance rates. Proprietary business information derives actual or potential independent economic value from not being generally known to, and not being readily ascertainable by proper means by, other persons who can derive economic value from its disclosure or use. The Office of Insurance Regulation, in performing its lawful duties and responsibilities, may need to obtain information from the proprietary business information. Without an exemption from public records requirements for proprietary business information provided to the Office of Insurance Regulation, such information becomes a public record when received and must be divulged upon request. Divulgence of any proprietary business information under the public records law would destroy the value of that property to the proprietor, causing a financial loss not only to the proprietor but also to the residents of this state due to the loss of reliable financial data necessary for fair and adequate rate regulation. Release of proprietary business information would give business competitors an unfair advantage and weaken the position in the marketplace of the proprietor that owns or controls the proprietary business information. The harm to businesses in the marketplace and to the effective administration of the ratemaking function caused by the public disclosure of such information far outweighs the public benefits derived from its release. In addition, the confidentiality provided by this act does not preclude the reporting of statistics in the aggregate concerning the collection of data, as well as the names of the title insurance agencies and title insurers participating in the data collection. Such aggregate reported data is available to the public and is important to an assessment of the setting of title insurance premiums.

The exemption will repeal on October 2, 2017, unless reviewed and saved from repeal by the Legislature.

**Staff Review of the Exemption**

During the 2016 interim, committee staff consulted with OIR staff as part of the Open Government Sunset Review process. OIR staff indicated that the exemption was necessary to encourage candid participation in OIR data collection efforts and recommended reenactment of the exemption. If the exemption were to lapse, OIR staff believes that title insurers and title agencies would be hesitant to submit information to OIR for fear that their competitors would gain access to sensitive business information. OIR staff indicated that it does not collect "customer identification" and therefore would not object to that term being removed as an example of "financial information" within the exemption.

Committee staff recommends reenacting the exemption with revisions. Saving the exemption from repeal is recommended to ensure proprietary business information that could give competition an unfair advantage is kept confidential, and to ensure that OIR is given accurate and unbiased data to facilitate its regulatory functions. Additionally, it should be made clear that information that has been publicly disclosed is not subject to the exemption. Finally, because "customer information" is not collected by OIR, the reference to it should be removed.

## III. Effect of Proposed Changes:

The bill reenacts the public record exemption for "proprietary business information" provided to the OIR by title insurance agency or insurer.

The bill also revises the definition of "proprietary business information" to clarify that information that has been publicly disclosed is not subject to the exemption. It removes a reference to customer identification because the OIR does not collect such information.

Current law provides that financial information "including, but not limited to" specified information is exempt. The bill removes "but not limited to" to limit the exemption to information specified in statute.

The bill takes effect October 1, 2017.

## IV. Constitutional Issues:

### A. Municipality/County Mandates Restrictions:

None.

### 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 newly created or expanded public records exemption. The bill does not create or expand a public records exemption, therefore it does not require a two-thirds vote for final passage.

The bill retains the existing public records exemption for the proprietary business information provided to the OIR by a title insurance agency or insurer. The bill complies with the requirements of article I, s. 24 of the State Constitution that public records exemptions may only be addressed in legislation separate from substantive changes to law.

### C. Trust Funds Restrictions:

None.

## V. Fiscal Impact Statement:

### A. Tax/Fee Issues:

None.

### B. Private Sector Impact:

Maintaining the exemption ensures that proprietary business information is kept confidential, and keeps competitors from gaining an unfair advantage.

C. Government Sector Impact:

Maintaining the exemption ensures that OIR is given accurate and unbiased data to use during the rate setting process.

## VI. Technical Deficiencies:

None.

## VII. Related Issues:

None.

## VIII. Statutes Affected:

This bill substantially amends section 626.84195 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 Rules on April 12, 2017:**

- Clarifies that information is not confidential if it has been publicly disclosed;
- Removes customer identification from the types of exempt information because the OIR no longer collects customer information; and
- Narrows the exemption by removing the phrase "but not limited to" from the exemption.

B. Amendments:

None.

782334

LEGISLATIVE ACTION

| Senate | . | House |
|---|---|---|
| Comm: RCS | . | |
| 04/12/2017 | . | |
| | . | |
| | . | |
| | . | |

The Committee on Rules (Flores) recommended the following:

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause
and insert:

Section 1. Section 626.84195, Florida Statutes, is amended to read:

626.84195 Confidentiality of information supplied by title insurance agencies and insurers.—

(1) As used in this section, the term "proprietary business information" means information that:

(a) Is owned or controlled by a title insurance agency or

insurer requesting confidentiality under this section;

(b) Is intended to be and is treated by the title insurance agency or insurer as private in that the disclosure of the information would cause harm to the business operations of the title insurance agency or insurer;

(c) Has not been publicly disclosed ~~unless disclosed pursuant to a statutory provision, an order of a court or administrative body, or a private agreement, providing that the information may be released to the public~~; and

(d) Concerns:

1. Business plans;

2. Internal auditing controls and reports of internal auditors;

3. Reports of external auditors for privately held companies;

4. Trade secrets, as defined in s. 688.002; or

5. Financial information, including~~, but not limited to,~~ revenue data, loss expense data, gross receipts, taxes paid, capital investment, ~~customer identification,~~ and employee wages.

(2) Proprietary business information provided to the office by a title insurance agency or insurer is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution until such information is otherwise publicly available or is no longer treated by the title insurance agency or insurer as proprietary business information. However, information provided by multiple title insurance agencies and insurers may be aggregated on an industrywide basis and disclosed to the public as long as the specific identities of the agencies or insurers are not revealed.


782334

~~(3) This section is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2017, unless reviewed and saved from repeal through reenactment by the Legislature.~~

Section 2. This act shall take effect October 1, 2017.

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

And the title is amended as follows:

Delete everything before the enacting clause and insert:

A bill to be entitled

An act relating to a review under the Open Government Sunset Review Act; amending s. 626.84195, F.S.; revising the definition of the term "proprietary business information" as used in an exemption from public record requirements relating to information provided by title insurance agencies and insurers to the Office of Insurance Regulation; removing the scheduled repeal of an exemption; providing an effective date.

**By** the Committee on Banking and Insurance

597-02425-17 20177024__

A bill to be entitled

An act relating to a review under the Open Government Sunset Review Act; amending s. 626.84195, F.S., relating to an exemption from public records requirements for proprietary business information provided to the Office of Insurance Regulation by title insurance agencies or insurers; redefining the term "proprietary business information"; removing the scheduled repeal of the exemption; providing an effective date.

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

Section 1. Section 626.84195, Florida Statutes, is amended to read:

626.84195 Confidentiality of information supplied by title insurance agencies and insurers.—

(1) As used in this section, the term "proprietary business information" means information that:

(a) Is owned or controlled by a title insurance agency or insurer requesting confidentiality under this section;

(b) Is intended to be and is treated by the title insurance agency or insurer as private in that the disclosure of the information would cause harm to the business operations of the title insurance agency or insurer;

(c) Has not been ~~publicly~~ disclosed unless disclosed pursuant to a statutory provision, an order of a court or administrative body, or a private agreement, providing that the information may not be released to the public; and







597-02425-17 20177024__

(d) Concerns:

1. Business plans;

2. Internal auditing controls and reports of internal auditors;

3. Reports of external auditors for privately held companies;

4. Trade secrets, as defined in s. 688.002; or

5. Financial information, including, but not limited to, revenue data, loss expense data, gross receipts, taxes paid, capital investment, customer identification, and employee wages.

(2) Proprietary business information provided to the office by a title insurance agency or insurer is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution until such information is otherwise publicly available or is no longer treated by the title insurance agency or insurer as proprietary business information. However, information provided by multiple title insurance agencies and insurers may be aggregated on an industrywide basis and disclosed to the public as long as the specific identities of the agencies or insurers are not revealed.

~~(3) This section is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2017, unless reviewed and saved from repeal through reenactment by the Legislature.~~

Section 2. This act shall take effect October 1, 2017.

**The Florida Senate**

# BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

| | |
|---|---|
| BILL: | SB 7026 |
| INTRODUCER: | Banking and Insurance Committee |
| SUBJECT: | OGSR/Reports of Unclaimed Property/Department of Financial Services |
| DATE: | April 12, 2017 |
| REVISED: | |

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|---|---|---|---|---|
| | Matiyow | Knudson | | **BI Submitted as Committee Bill** |
| 1. | Ferrin | Ferrin | GO | **Favorable** |
| 2. | Matiyow | Phelps | RC | **Favorable** |

## I. Summary:

SB 7026 continues the existing public records exemption for social security numbers and property identifiers held by the Division of Unclaimed Property at the Department of Financial Services by removing the October 2, 2017, repeal date.

The bill provides an effective date of October 1, 2017.

## II. Present Situation:

### Public Records Law

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

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

[1] FLA. CONST., art. I, s. 24(a).
[2] *Id*.
[3] The Public Records Act does not apply to legislative or judicial records. *Locke v. Hawkes*, 595 So. 2d 32 (Fla. 1992). Also see *Times Pub. Co. v. Ake*, 660 So. 2d 255 (Fla. 1995). The Legislature's records are public pursuant to s. 11.0431, F.S. Public records exemptions for the Legislatures are primarily located in s. 11.0431(2)-(3), F.S.
[4] Public records laws are found throughout the Florida Statutes.

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

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

The Legislature may create an exemption to public records requirements.[9] An exemption must pass by a two-thirds vote of the House and the Senate.[10] In addition, an exemption must explicitly lay out the public necessity justifying the exemption, and the exemption must be no broader than necessary to accomplish the stated purpose of the exemption.[11] A statutory exemption which does not meet these criteria may be unconstitutional and may not be judicially saved.[12]

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

**Open Government Sunset Review Act**

The Open Government Sunset Review Act (referred to hereafter as the "OGSR") prescribes a legislative review process for newly created or substantially amended public records or open

[5] Section 119.01(1), F.S.
[6] Section 119.011(12), F.S., defines "public record" to mean "all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency." Section 119.011(2), F.S., defines "agency" to mean as "any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency."
[7] *Shevin v. Byron, Harless, Schaffer, Reid and Assoc. Inc*., 379 So. 2d 633, 640 (Fla. 1980).
[8] Section 119.10, F.S. Public records laws are found throughout the Florida Statutes, as are the penalties for violating those laws.
[9] FLA. CONST., art. I, s. 24(c).
[10] *Id.*
[11] *Id.*
[12] *Halifax Hosp. Medical Center v. New-Journal Corp.*, 724 So. 2d 567 (Fla. 1999). See also *Baker County Press, Inc. v. Baker County Medical Services, Inc.*, 870 So. 2d 189 (Fla. 1st DCA 2004).
[13] If the Legislature designates a record as confidential, such record may not be released to anyone other than the persons or entities specifically designated in the statutory exemption. *WFTV, Inc. v. The School Board of Seminole*, 874 So. 2d 48 (Fla. 5th DCA 2004).
[14] *Williams v. City of Minneola*, 575 So. 2d 687 (Fla. 5th DCA 1991).

meetings exemptions.[15] The OGSR provides that an exemption automatically repeals on October 2nd of the fifth year after creation or substantial amendment; in order to save an exemption from repeal, the Legislature must reenact the exemption.[16]

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

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

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

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

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[15] Section 119.15, F.S. Section 119.15(4)(b), F.S., provides that an exemption is considered to be substantially amended if it is expanded to include more information or to include meetings. The OGSR does not apply to an exemption that is required by federal law or that applies solely to the Legislature or the State Court System pursuant to section 119.15(2), F.S.
[16] Section 119.15(3), F.S.
[17] Section 119.15(6)(b), F.S.
[18] Section 119.15(6)(b)1., F.S.
[19] Section 119.15(6)(b)2., F.S.
[20] Section 119.15(6)(b)3., F.S.
[21] Section 119.15(6)(a), F.S. The specified questions are:
1. What specific records or meetings are affected by the exemption?
2. Whom does the exemption uniquely affect, as opposed to the general public?
3. What is the identifiable public purpose or goal of the exemption?
4. Can the information contained in the records or discussed in the meeting be readily obtained by alternative means? If so, how?
5. Is the record or meeting protected by another exemption?
6. Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?

[22] FLA. CONST. art. I, s. 24(c).
[23] Section 119.15(7), F.S.

**Unclaimed Property**

Unclaimed property consists of any funds or other property, tangible or intangible, which has remained unclaimed by the owner for more than 5 years after the property becomes payable or distributable.[24] Savings and checking accounts, money orders, travelers' checks, uncashed payroll or cashiers' checks, stocks, bonds, other securities, insurance policy payments, refunds, security and utility deposits, and contents of safe deposit boxes are potentially unclaimed property.[25] Holders of unclaimed property, which typically include banks and insurance companies, are required to report unclaimed property to the Department of Financial Services (DFS).[26] If the property remains unclaimed, all proceeds from abandoned property are deposited by DFS into the Department of Education School Trust Fund (State School Fund), except for a $15 million balance that is retained in a separate account (the Unclaimed Property Trust Fund) for the prompt payment of verified claims.[27]

**Florida Disposition of Unclaimed Property Act**

The Florida Disposition of Unclaimed Property Act[28] serves to protect the interest of missing owners of property while the people of the state derive a benefit from the unclaimed and abandoned property until the property is claimed, if ever. DFS administers the Act through its Division of Unclaimed Property (division).[29]

Holders of inactive accounts (presumed unclaimed property) are required to use due diligence to locate apparent owners.[30] Once the allowable time period for holding unclaimed property has expired, a holder is required to file a report with DFS by May 1 each year for all property valued at $50 or more and presumed unclaimed for the preceding calendar year.[31] The report generally must contain the name and social security number or federal employer identification number, if known, and the last known address of the apparent owner.[32]

Current law places an obligation on the state to notify owners of unclaimed property accounts valued at over $250, in a cost-effective manner, including through attempts to directly contact the owner.[33] DFS indicates that the means used to find lost property owners include social security numbers, direct mailing, motor vehicle records, state payroll records, newspaper advertisements, and a state website[34] where unclaimed property can be found.[35]

Attorneys, Florida-certified public accountants, Florida-licensed private investigators, and Florida-licensed private investigative agencies must first register with DFS in order to act as a

[24] Section 717.102(1), F.S.
[25] Sections 717.104 – 717.116, F.S.
[26] Section 717.117(1), F.S.
[27] Section 717.123, F.S.
[28] Section 717.001, F.S. Chapter 717, F.S., may be cited as the "Florida Disposition of Unclaimed Property Act."
[29] Section 20.121(2)(k), F.S.
[30] Section 717.117(4), F.S.
[31] Section 717.117(3), F.S.
[32] Section 717.117(1), F.S.
[33] Section 717.118(1), F.S.
[34] www.fltreasurehunt.org (last visited March 11, 2017).
[35] Section 717.118(1), F.S.

claimant's representative, acquire ownership or entitlement to unclaimed property, and receive a distribution of fees and costs from DFS.[36] Claimants' representatives access information from the division's website or the division itself.

**Public Record Exemption under Review**

Current law provides that social security numbers and property identifiers contained in reports of unclaimed property held by DFS are confidential and exempt from s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution.[37] Prior to 2012, the exemption provided an exception which allowed social security numbers to be released to certain persons registered with DFS to act as claimants' representatives. In 2012, the Legislature repealed the exception and reenacted the exemption, thus requiring all social security numbers and property identifiers to be kept confidential and exempt from public record requirements.[38]

The 2012 public necessity statement provides that:

> Social security numbers, which are used by a holder of unclaimed property to identify such property, could be used to fraudulently obtain unclaimed property. The release of social security numbers could also place owners of unclaimed property at risk of identity theft. Therefore, the protection of social security numbers is a public necessity in order to prevent the fraudulent use of such information by creating falsified or forged documents that appear to demonstrate entitlement to unclaimed property and to prevent opportunities for identity theft.[39]

Pursuant to the Open Government Sunset Review Act, the exemption will repeal on October 2, 2017, unless reenacted by the Legislature.[40]

**Staff Review of the Exemption**

During the 2016 interim, committee staff consulted with staff from DFS as part of the Open Government Sunset Review process. DFS staff recommended reenactment of the exemption without changes and indicated that protecting social security numbers and property identifiers is critical to preventing fraud and identity theft related to unclaimed property claims. According to DFS, protecting the social security number and property identifiers has not impaired property locators' ability to locate the property owners. The DFS provided the following information regarding the activity of registered claimant's representatives during the past 10 years.

[36] Section 717.1400, F.S.
[37] Section 717.117(8), F.S. The term "property identifier" means the descriptor used by the holder of the unclaimed property to identify it.
[38] Chapter 2012-227, Laws of Fla.
[39] *Id*.
[40] Section 717.117(8)(c), F.S.

| Fiscal Year | Number of Paid Claims Filed by Registrants | Amounts Paid to Registrants (Fees and Purchase Proceeds) |
|---|---|---|
| **2007-08** | 61,823 | $4,411,999 |
| **2008-09** | 68,204 | $4,954,184 |
| **2009-10** | 81,980 | $6,511,745 |
| **2010-11** | 71,744 | $7,288,154 |
| **2011-12 (Law Change)** | 75,149 | $8,190,483 |
| **2012-13** | 70,492 | $7,729,066 |
| **2013-14** | 95,796 | $10,141,842 |
| **2014-15** | 97,742 | $11,676,028 |
| **2015-16** | 94,128 | $9,252,767 |
| **2016-17 (7.5 months)** | 71,519 | $7,321,928 |

Saving the exemption from repeal is recommended to protect social security numbers and property identifiers to prevent fraud and identity theft. No other changes are necessary.

## III. Effect of Proposed Changes:

The bill removes the October 2, 2017, repeal date of the existing public records exemption for social security numbers and property identifiers held by the division at DFS.

The bill provides an effective date of October 1, 2017.

## IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

## V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

## VI. Technical Deficiencies:

None.

## VII. Related Issues:

None.

## VIII. Statutes Affected:

This bill substantially amends section 717.117 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** the Committee on Banking and Insurance

597-02426-17 20177026__

A bill to be entitled

An act relating to a review under the Open Government Sunset Review Act; amending s. 717.117, F.S., relating to an exemption from public records requirements for social security numbers and property identifiers, contained in certain reports of unclaimed property, which are held by the Department of Financial Services; removing the scheduled repeal of the exemption; providing an effective date.

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

Section 1. Subsection (8) of section 717.117, Florida Statutes, is amended to read:

717.117 Report of unclaimed property.—

(8)(a) As used in this subsection, the term "property identifier" means the descriptor used by the holder to identify the unclaimed property.

(b) Social security numbers and property identifiers contained in reports required under this section, held by the department, are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

(c) This exemption applies to social security numbers and property identifiers held by the department before, on, or after the effective date of this exemption.

~~(d) This subsection is subject to the Open Government Sunset Review Act in accordance with s. 119.15, and shall stand repealed October 2, 2017, unless reviewed and saved from repeal through reenactment by the Legislature.~~







597-02426-17 20177026__

Section 2. This act shall take effect October 1, 2017.

# CourtSmart Tag Report

**Room:** EL 110 **Case No.:** **Type:**
**Caption:** Senate Rules Committee **Judge:**

**Started: 4/12/2017 7:41:27 PM**
**Ends: 4/12/2017 8:14:00 PM** **Length: 00:32:34**

| | |
|---|---|
| **7:41:27 PM** | Meeting called to order by Chair Benacquisto |
| **7:41:30 PM** | Roll call by Administrative Assistant Cyndi Futch |
| **7:41:37 PM** | Quorum present |
| **7:42:22 PM** | Comments by Chair Benacquisto |
| **7:42:24 PM** | Question by Senator Latvala |
| **7:42:32 PM** | Response by Chair Benacquisto |
| **7:42:39 PM** | CS/SB 530 Introduced by Chair Benacquisto |
| **7:42:48 PM** | (Senator Bradley takes the chair) |
| **7:42:55 PM** | Explanation of CS/SB 530 by Senator Steube |
| **7:43:38 PM** | Chris Nuland of the ACP waives in support |
| **7:43:54 PM** | Steven Winn of the Florida Osteopathic Medical Association waives in support |
| **7:44:02 PM** | Dorene Barker of the AARP waives in support |
| **7:44:07 PM** | Charlie Adams of the Big Bend Cares waives in support |
| **7:44:21 PM** | Alisa LaPolt of the NAMI Florida waives in support |
| **7:44:32 PM** | Pam Langford of the HEALS of the South waives in support |
| **7:44:36 PM** | Aimee Diaz Lyon of the BioFlorida/AIDS Institute waives in support |
| **7:44:41 PM** | Jeff Scott of the Florida Medical Association waives in support |
| **7:44:46 PM** | Beth Labasky of the Alpha One Foundation waives in support |
| **7:44:56 PM** | Senator Steube waives close |
| **7:45:02 PM** | Roll call on CS/SB 530 by Administrative Assistant Cyndi Futch |
| **7:45:17 PM** | CS/SB 530 is reported favorably |
| **7:45:35 PM** | CS/CS/SB 724 introduced by Chair Bradley |
| **7:45:44 PM** | Explanation of CS/CS/SB 724 by Senator Passidomo |
| **7:46:53 PM** | Passidomo waives close |
| **7:46:55 PM** | Roll call on CS/CS/SB 724 by Administrative Assistant Cyndi Futch |
| **7:47:04 PM** | CS/CS/SB 724 is reported favorably |
| **7:47:22 PM** | (Senator Bradley returns the chair) |
| **7:47:28 PM** | SB 1620 is introduced by Chair Benacquisto |
| **7:47:34 PM** | Explanation of SB 1620 by Senator Powell |
| **7:48:34 PM** | Jared Ross of the Florida Credit Union Association waives in support |
| **7:48:40 PM** | Senator Powell waives close |
| **7:48:44 PM** | Roll call on SB 1620 by Administrative Assistant Cyndi Futch |
| **7:48:56 PM** | SB 1620 is reported favorably |
| **7:49:10 PM** | CS/CS/SB 1330 introduced by Chair Benacquisto |
| **7:49:29 PM** | Explanation of CS/CS/SB 1330 by Senator Stargel |
| **7:49:38 PM** | Kelly Quintero of the League of Women Voters of Florida waives in opposition |
| **7:49:45 PM** | Douglas Miller waives in opposition |
| **7:49:52 PM** | Senator Stargel waives close |
| **7:49:55 PM** | Roll call on CS/CS/SB 1330 by Administrative Assistant Cyndi Futch |
| **7:50:31 PM** | CS/CS/SB 1330 is reported favorably |
| **7:50:43 PM** | SCR 920 introduced by Chair Benacquisto |
| **7:50:45 PM** | Explanation of SCR 920 by Senator Farmer |
| **7:50:55 PM** | Late filed Amendment Barcode No. 976966 taken up without objection |
| **7:51:09 PM** | Explanation of Amendment Barcode No. 976966 by Senator Farmer |
| **7:52:25 PM** | Without objection, Amendment Barcode No. 976966 is adopted |
| **7:52:34 PM** | Senator Farmer waives close |
| **7:52:37 PM** | Roll call on SCR 920 by Administrative Assistant Cyndi Futch |
| **7:52:49 PM** | SCR 920 is reported favorably |
| **7:53:04 PM** | CS/SB 388 introduced by Chair Benacquisto |
| **7:53:12 PM** | Explanation of CS/SB 388 by Senator Hutson |
| **7:53:47 PM** | Amendment Barcode No. 235854 introduced by Chair Benacquisto |
| **7:53:56 PM** | Explanation of Amendment Barcode No. 235854 by Senator Hutson |

**7:54:11 PM** Question by Senator Book
**7:54:25 PM** Response by Senator Hutson
**7:54:39 PM** Question by Senator Bradley
**7:54:44 PM** Response by Senator Hutson
**7:55:39 PM** Without objection Amendment Barcode No. 235854 is adopted
**7:55:46 PM** Amendment Barcode No. 424218 is introduced by Chair Benacquisto
**7:55:56 PM** Explanation of Amendment Barcode No. 424218 by Senator Hutson
**7:56:11 PM** Question by Vice Chair Thurston
**7:56:20 PM** Response by Senator Hutson
**7:57:59 PM** Additional question by Vice Chair Thurston
**7:58:08 PM** Response by Senator Hutson
**7:58:31 PM** Continued discussion between Vice Chair Thurston and Senator Hutson
**7:58:39 PM** Without objection, Amendment Barcode No. 424218 is adopted
**7:59:33 PM** Amendment Barcode No. 379250 introduced by Chair Benacquisto
**7:59:39 PM** Explanation Amendment Barcode No. 379250 of by Senator Brandes
**8:00:06 PM** Discussion
**8:00:18 PM** Without objection, Amendment Barcode No. 379250 is adopted
**8:00:37 PM** Jon Costello of Miller Coors waives in opposition
**8:00:45 PM** Beth Thibodaux of SeaWorld waives in support
**8:00:49 PM** Mac Stipanovich of Universal Orlando waives in support
**8:00:54 PM** Mitch Rubin of the Florida Beer Wholesalers Association speaking in opposition
**8:02:07 PM** Brewster Bevis of the Associated Industries of Florida waives in support
**8:02:13 PM** Natalie King of Pepin Distributing waives in opposition
**8:02:20 PM** Eric Criss of the Beer Industry of Florida speaking in opposition
**8:03:03 PM** Question by Senator Lee
**8:03:35 PM** Senator Hutson responds and closes
**8:03:54 PM** Roll call on CS/CS/SB 388 by Administrative Assistant Cyndi Futch
**8:04:07 PM** CS/CS/SB 388 is reported favorably
**8:04:27 PM** (Senator Bradley takes the chair)
**8:04:33 PM** CS/SB 36 introduced by Chair Bradley
**8:04:40 PM** Explanation of CS/SB 36 by Senator Montford
**8:05:17 PM** Senator Montford waives close
**8:05:20 PM** Roll call on CS/SB 36 by Administrative Assistant Cyndi Futch
**8:05:32 PM** CS/SB 36 is reported favorably
**8:06:10 PM** CS/SJR 76 introduced by Chair Bradley
**8:06:21 PM** Explanation of CS/SJR 76 by Senator Lee
**8:07:02 PM** Andrew Rutledge of the Florida Realtors waives in support
**8:07:08 PM** Carolyn Johnson of the Florida Chamber of Commerce waives in support
**8:07:13 PM** Brewster Bevis of the Associated Industries of Florida waives in support
**8:07:19 PM** Tim Nunguesser of the National Federation of Independent Business waives in support
**8:07:33 PM** Senator Lee waives close
**8:07:34 PM** Roll call on CS/SJR 76 by Administrative Assistant Cyndi Futch
**8:07:53 PM** CS/SJR 76 is reported favorably
**8:08:06 PM** CS/SB 1136 introduced by Chair Bradley
**8:08:10 PM** Explanation of CS/SB 1136 by Senator Lee
**8:09:14 PM** Senator Lee waives close
**8:09:17 PM** Roll call on CS/SB 1136 by Administrative Assistant Cyndi Futch
**8:09:27 PM** CS/SB 1136 is reported favorably
**8:09:47 PM** SB 7024 introduced by Chair Bradley
**8:09:55 PM** Explanation of SB 7024 by Senator Flores
**8:10:21 PM** Late filed Amendment Barcode No. 782334 taken up without objection
**8:10:35 PM** Explanation of Amendment Barcode No. 782334 by Senator Flores
**8:11:02 PM** Amendment Barcode No. 782334 is adopted without objection
**8:11:18 PM** Senator Bradley waives close
**8:11:28 PM** Roll call on CS/SB 7024 by Administrative Assistant Cyndi Futch
**8:11:43 PM** CS/SB 7024 is reported favorably
**8:11:59 PM** SB 7026 introduced by Chair Bradley
**8:12:04 PM** Explanation of SB 7026 by Senator Flores
**8:12:23 PM** Senator Flores waives close
**8:12:25 PM** Roll call on SB 7026 by Administrative Assistant Cyndi Futch
**8:12:46 PM** SB 7026 is reported favorably
**8:12:53 PM** Senator Benacquisto moves to temporarily postpone CS/CS/SB 596 and SB 1238

**8:13:06 PM** Without objection, CS/CS/SB 596 and SB 1238 are temporarily postponed
**8:13:11 PM** Senator Montford moves to have the record show his voting in favor of CS/SB 530, CS/CS/SB 724, SB 1620, CS/SJR 920 and in opposition of CS/CS/SB 1330
**8:13:51 PM** Without objection, the motion is adopted
**8:13:54 PM** Vice Chair Thurston moves to adjourn
**8:14:00 PM** Meeting adjourned