

Tab 1	CS/SB 226 by HP, Harrell ; (Identical to H 00485) Athletic Trainers
Tab 9	CS/SB 838 by CM, Simmons ; (Identical to CS/CS/H 00495) Business Organizations
Tab 3	CS/SB 326 by EN, Perry ; (Identical to CS/H 00073) Environmental Regulation
Tab 4	SB 374 by Rouson ; (Identical to H 00175) Housing Discrimination
Tab 2	CS/SB 292 by BI, Broxson ; (Similar to CS/CS/H 00269) Insurance Claims Data
Tab 11	SB 7022 by IS ; (Identical to H 07001) OGSR/E-mail Addresses/Department of Highway Safety and Motor Vehicles
Tab 7	SB 7004 by FT ; (Identical to H 07007) OGSR/Taxpayer E-mail Addresses Held by a Tax Collector
Tab 10	SB 1224 by Simmons (CO-INTRODUCERS) Gruters ; (Identical to H 00469) Real Estate Conveyances
Tab 6	CS/SB 604 by JU, Bean ; (Similar to CS/H 00197) Servicemembers Civil Relief Act
Tab 5	CS/CS/SB 580 by CA, JU, Bracy (CO-INTRODUCERS) Broxson ; (Identical to CS/H 00349) Uniform Partition of Heirs Property Act
Tab 8	CS/SB 352 by MS, Hutson ; (Similar to CS/CS/H 00205) Unlawful Use of Uniforms, Medals, or Insignia

The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA

RULES

Senator Benacquisto, Chair
Senator Gibson, Vice Chair

MEETING DATE: Wednesday, February 5, 2020
TIME: 9:30—11:30 a.m.
PLACE: *Toni Jennings Committee Room*, 110 Senate Building

MEMBERS: Senator Benacquisto, Chair; Senator Gibson, Vice Chair; Senators Book, Bradley, Brandes, Braynon, Farmer, Flores, Hutson, Lee, Montford, Passidomo, Rodriguez, Simmons, Simpson, Stargel, and Thurston

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	CS/SB 226 Health Policy / Harrell (Identical H 485, Compare CS/CS/H 713, CS/S 230)	Athletic Trainers; Revising the definition of the term "athletic trainer"; requiring certain licensees to maintain certification in good standing without lapse as a condition of renewal of their athletic trainer licenses; requiring that an athletic trainer work within a specified scope of practice; requiring the direct supervision of an athletic training student to be in accordance with rules adopted by the Board of Athletic Training, etc. HP 10/22/2019 Fav/CS AP 01/23/2020 Favorable RC 02/05/2020 Favorable	Favorable Yeas 16 Nays 0
2	CS/SB 292 Banking and Insurance / Broxson (Similar CS/CS/H 269)	Insurance Claims Data; Defining the terms "loss run statement" and "provide"; requiring surplus lines and authorized insurers, respectively, to provide insureds either a loss run statement or certain information within a certain timeframe after receipt of the insured's written request; requiring insurers to provide notice to the agent of record after providing a loss run statement; prohibiting insurers from charging a fee to prepare and provide one loss run statement annually, etc. BI 11/12/2019 Fav/CS CM 12/10/2019 Favorable RC 02/05/2020 Favorable	Favorable Yeas 16 Nays 0

COMMITTEE MEETING EXPANDED AGENDA

Rules

Wednesday, February 5, 2020, 9:30—11:30 a.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
3	CS/SB 326 Environment and Natural Resources / Perry (Identical CS/H 73)	Environmental Regulation; Specifying requirements for contracts between residential recycling collectors or recovered materials processing facilities and counties or municipalities for the collection or processing of residential recycling material; providing that a residential recycling collector or recovered materials processing facility is not required to collect, transport, or process contaminated recyclable material except pursuant to specified contractual requirements after a contract is executed; prohibiting local governments from requiring further verification from the Department of Environmental Protection for certain projects, etc. EN 11/04/2019 Fav/CS CA 12/09/2019 Favorable RC 02/05/2020 Favorable	Favorable Yeas 15 Nays 0
4	SB 374 Rouson (Identical H 175)	Housing Discrimination; Removing housing discrimination as a cause of action for certain relief and damages stemming from violations of the Florida Civil Rights Act of 1992; revising the conditions under which an aggrieved person may commence a civil action in any appropriate court against a specified respondent to enforce specified rights; authorizing, rather than requiring, a civil action to commence within a specified period after an alleged discriminatory housing practice, etc. JU 11/05/2019 Favorable GO 12/09/2019 Favorable RC 02/05/2020 Favorable	Favorable Yeas 16 Nays 0
5	CS/CS/SB 580 Community Affairs / Judiciary / Bracy (Identical CS/H 349)	Uniform Partition of Heirs Property Act; Creating the "Uniform Partition of Heirs Property Act"; providing requirements relating to the court determination of heirs property; providing for the determination of property value; providing for buyout of cotenants; providing for sale of property through open-market sale, sealed bids, or auction; authorizing certain cotenants to agree to certain partitions of real property, etc. JU 11/12/2019 Temporarily Postponed JU 12/10/2019 Fav/CS CA 01/13/2020 Fav/CS RC 02/05/2020 Favorable	Favorable Yeas 16 Nays 0

COMMITTEE MEETING EXPANDED AGENDA

Rules

Wednesday, February 5, 2020, 9:30—11:30 a.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
6	CS/SB 604 Judiciary / Bean (Similar CS/H 197)	Servicemembers Civil Relief Act; Revising the definition of the terms “abandoned” or “abandonment”; providing that certain state laws relating to children do not supersede the Servicemembers Civil Relief Act; requiring the Department of Children and Families to ensure that the act is observed in certain cases, etc. CF 01/21/2020 Favorable JU 01/28/2020 Fav/CS RC 02/05/2020 Favorable	Favorable Yeas 16 Nays 0
7	SB 7004 Finance and Tax (Identical H 7007)	OGSR/Taxpayer E-mail Addresses Held by a Tax Collector; Amending a provision relating to an exemption from public records requirements for taxpayer e-mail addresses held by a tax collector for certain purposes; removing the scheduled repeal of the exemption, etc. GO 12/09/2019 Favorable RC 02/05/2020 Favorable	Favorable Yeas 15 Nays 1
8	CS/SB 352 Military and Veterans Affairs and Space / Hutson (Similar CS/CS/H 205)	Unlawful Use of Uniforms, Medals, or Insignia; Prohibiting certain misrepresentations concerning military service when made for specified purposes, etc. MS 01/15/2020 Fav/CS EE 01/27/2020 Favorable RC 02/05/2020 Favorable	Favorable Yeas 16 Nays 0
9	CS/SB 838 Commerce and Tourism / Simmons (Identical CS/CS/H 495)	Business Organizations; Specifying that certain documents accepted by the Department of State for filing are effective on the date the documents are accepted by the department; revising the required contents of a meeting notice relating to the removal of a director by shareholders; authorizing a domestic corporation to acquire one or more classes or series of shares under certain circumstances; authorizing the department to direct certain interrogatories to certain corporations and to officers or directors of certain corporations, etc. CM 01/14/2020 Fav/CS JU 01/28/2020 Favorable RC 02/05/2020 Favorable	Favorable Yeas 16 Nays 0
10	SB 1224 Simmons (Identical H 469)	Real Estate Conveyances; Providing that subscribing witnesses are not required to validate certain instruments conveying a leasehold interest in real property, etc. BI 01/21/2020 Favorable JU 01/28/2020 Favorable RC 02/05/2020 Favorable	Favorable Yeas 16 Nays 0

COMMITTEE MEETING EXPANDED AGENDA

Rules

Wednesday, February 5, 2020, 9:30—11:30 a.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
11	SB 7022 Infrastructure and Security (Identical H 7001, Compare CS/S 1030)	OGSR/E-mail Addresses/Department of Highway Safety and Motor Vehicles; Amending a provision which provides an exemption from public records requirements for certain e-mail addresses collected by the Department of Highway Safety and Motor Vehicles; removing the scheduled repeal of the exemption, etc. GO 01/21/2020 Favorable RC 02/05/2020 Favorable	Favorable Yeas 15 Nays 1

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/SB 226

INTRODUCER: Health Policy Committee and Senator Harrell

SUBJECT: Athletic Trainers

DATE: February 3, 2020

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Rossitto-Van Winkle	Brown	HP	Fav/CS
2.	Howard	Kynoch	AP	Favorable
3.	Rossitto-Van Winkle	Phelps	RC	Favorable

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 226 requires an athletic trainer to work within his or her scope of practice as defined by the Board of Athletic Trainers (BOAT) and revises the educational and internship requirements for licensure.

The bill has an insignificant, nonrecurring, fiscal impact on the Department of Health (department) that can be absorbed within existing resources.

The bill has an effective date of July 1, 2020.

II. Present Situation:

Athletic Trainers

Section 468.703, F.S., establishes the BOAT within the department to license and regulate the practice of athletic trainers in Florida. Applicants for licensure as an athletic trainer are required to:¹

- Submit to a background screening;

¹ Section 468.707, F.S.

- Have a baccalaureate or higher degree from a college or university in professional athletic training accredited by the Commission on Accreditation of Athletic Training Education, and have passed the national examination to be certified by the Board of Certification (BOC)² for athletic trainers;
- Have a current certification from the BOC, if they graduated before 2004;³ and
- Have current certifications in cardiopulmonary resuscitation (CPR) and the use of an automated external defibrillator (AED).

An athletic trainer must practice under the direction of an allopathic, osteopathic or chiropractic physician licensed under chs. 458, 459, or 460, F.S., or otherwise authorized by Florida law. The physician must communicate his or her direction through oral or written prescriptions or protocols for the provision of services and care by the athletic trainer, and the athletic trainer must provide service or care as dictated by the physician.⁴

The services of an athletic trainer must relate to the prevention, recognition, evaluation, management, disposition, treatment, or rehabilitation of a physically active person who sustained an injury, illness, or other condition involving exercise, sport, recreation, or related physical activity. In providing care and services, an athletic trainer may use physical modalities, including, but not limited to, heat, light, sound, cold, electricity, and mechanical devices.⁵

The BOAT is authorized to adopt rules to implement the provisions of part XIII, ch. 468, F.S. Such rules must include, but are not limited to:⁶

- The allowable scope of practice regarding the use of equipment, procedures, and medication;
- Mandatory requirements and guidelines for communication between the athletic trainer and a physician, including the reporting to the physician of new or recurring injuries or conditions;
- Licensure requirements;
- Licensure examination;
- Continuing education requirements;
- Fees;
- Records and reports to be filed by licensees;
- Protocols; and,
- Any other requirements necessary to regulate the practice of athletic training.

² The Board of Certification, Inc. (BOC) was incorporated in 1989 as a not-for-profit credentialing agency to provide a certification program for the entry level athletic training profession. The BOC establishes both the standards for the practice of athletic training and the continuing education requirements for BOC Certified Athletic Trainers (ATs). The BOC also works with state regulatory agencies to provide credential information, professional conduct guidelines and regulatory standards on certification issues. The BOC also has the only accredited certification program for ATs in the United States and has mutual recognition agreements with Canada and Ireland. *See* Board of Certification for the Athletic Trainer, *What is the BOC?* available at: <http://www.bocatc.org/about-us#what-is-the-boc> (last visited Oct. 4, 2019).

³ *Supra* note 1, at 4. Prior to 2004, and the inception of athletic training programs, athletic trainers obtained training through a BOC internship program to obtain licensure in Florida. Current law does not automatically allow athletic trainers who obtained training through the BOC internship program to become licensed in Florida.

⁴ Section 468.713, F.S.

⁵ Section 468.701, F.S.

⁶ Section 468.705, F.S.

At renewal, licensed athletic trainers must demonstrate a current BOC certification; however, there is no requirement for that certification to be held without lapse and in good standing.⁷

III. Effect of Proposed Changes:

The bill amends s. 468.701, F.S., to remove a substantive statutory provision from the definition of “athletic trainer” and relocate that provision to s. 468.713, F.S. The provision in question restricts a licensed athletic trainer from providing, offering to provide, or representing that he or she is qualified to provide any care or services that he or she lacks the education, training, or experience to provide, or that he or she is otherwise prohibited by law from providing.

The bill also specifies within s. 468.713, F.S., that an athletic trainer shall work within his or her allowable scope of practice as specified in BOAT rule under s. 468.705, F.S.

The bill amends the licensure requirements for an athletic trainer in s. 468.707, F.S., to create a new licensure pathway for applicants who hold a bachelor’s degree, have completed the BOC internship requirements, and hold a current certification from the BOC to become licensed in Florida.

The bill amends s. 468.711, F.S., relating to licensure renewal requirements to require an athletic trainer to maintain his or her BOC certification in good standing without lapse. A licensee will have to demonstrate the continuous good-standing of his or her BOC certification at the time of renewal.

The bill amends s. 468.723, F.S., to give the BOAT rulemaking authority to further define the supervision between an athletic training student and a licensed athletic trainer, rather than relying on compliance with standards set by the Commission on Accreditation of Athletic Training Education.

The bill has an effective date of July 1, 2020.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

⁷ Section 468.711, F.S.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

CS/SB 226 has an insignificant negative impact on state revenues and expenditures. The department will experience an insignificant increase in workload associated with rulemaking activities required in the bill. These costs can be absorbed within existing resources of the department.⁸

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 468.701, 468.707, 468.711, 468.713, and 468.723.

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 Health Policy on October 22, 2019:

The CS:

- Amends s. 468.701, F.S., to remove a substantive statutory provision from the definition of “athletic trainer” and relocate that provision to s. 468.713, F.S.;

⁸ Department of Health fiscal analysis (on file with the Senate Appropriations Subcommittee on Health and Human Services).

- Specifies within s. 468.713, F.S., that an athletic trainer must work within his or her allowable scope of practice as specified in BOAT rule under s. 468.705, F.S.; and
- Deletes provisions in the underlying bill relating to a person's ability to administer emergency care to another person and the ability of third-party payers to reimburse athletic trainers for covered services.

B. Amendments:

None.

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

By the Committee on Health Policy; and Senator Harrell

588-00989-20

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1 A bill to be entitled
 2 An act relating to athletic trainers; amending s.
 3 468.701, F.S.; revising the definition of the term
 4 "athletic trainer"; deleting a requirement that is
 5 relocated to another section; amending s. 468.707,
 6 F.S.; revising athletic trainer licensure
 7 requirements; amending s. 468.711, F.S.; requiring
 8 certain licensees to maintain certification in good
 9 standing without lapse as a condition of renewal of
 10 their athletic trainer licenses; amending s. 468.713,
 11 F.S.; requiring that an athletic trainer work within a
 12 specified scope of practice; relocating an existing
 13 requirement that was stricken from another section;
 14 amending s. 468.723, F.S.; requiring the direct
 15 supervision of an athletic training student to be in
 16 accordance with rules adopted by the Board of Athletic
 17 Training; providing an effective date.

18
 19 Be It Enacted by the Legislature of the State of Florida:

20
 21 Section 1. Subsection (1) of section 468.701, Florida
 22 Statutes, is amended to read:

23 468.701 Definitions.—As used in this part, the term:
 24 (1) "Athletic trainer" means a person licensed under this
 25 part who has met the requirements of under this part, including
 26 the education requirements established as set forth by the
 27 Commission on Accreditation of Athletic Training Education or
 28 its successor organization and necessary credentials from the
 29 Board of Certification. ~~An individual who is licensed as an~~

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

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30 ~~athletic trainer may not provide, offer to provide, or represent~~
 31 ~~that he or she is qualified to provide any care or services that~~
 32 ~~he or she lacks the education, training, or experience to~~
 33 ~~provide, or that he or she is otherwise prohibited by law from~~
 34 ~~providing.~~

35 Section 2. Section 468.707, Florida Statutes, is amended to
 36 read:

37 468.707 Licensure requirements.—Any person desiring to be
 38 licensed as an athletic trainer shall apply to the department on
 39 a form approved by the department. An applicant shall also
 40 provide records or other evidence, as determined by the board,
 41 to prove he or she has met the requirements of this section. The
 42 department shall license each applicant who:

43 (1) Has completed the application form and remitted the
 44 required fees.

45 (2) ~~For a person who applies on or after July 1, 2016,~~ Has
 46 submitted to background screening pursuant to s. 456.0135. The
 47 board may require a background screening for an applicant whose
 48 license has expired or who is undergoing disciplinary action.

49 (3) (a) Has obtained, at a minimum, a bachelor's
 50 ~~baccalaureate or higher~~ degree from a college or university
 51 professional athletic training degree program accredited by the
 52 Commission on Accreditation of Athletic Training Education or
 53 its successor organization recognized and approved by the United
 54 States Department of Education or the Commission on Recognition
 55 of Postsecondary Accreditation, approved by the board, or
 56 recognized by the Board of Certification, and has passed the
 57 national examination to be certified by the Board of
 58 Certification; or-

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

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59 (b)(4) Has obtained, at a minimum, a bachelor's degree, has
 60 completed the Board of Certification internship requirements,
 61 and holds If graduated before 2004, has a current certification
 62 from the Board of Certification.

63 (4)(5) Has current certification in both cardiopulmonary
 64 resuscitation and the use of an automated external defibrillator
 65 set forth in the continuing education requirements as determined
 66 by the board pursuant to s. 468.711.

67 (5)(6) Has completed any other requirements as determined
 68 by the department and approved by the board.

69 Section 3. Subsection (3) of section 468.711, Florida
 70 Statutes, is amended to read:

71 468.711 Renewal of license; continuing education.-

72 (3) If initially licensed after January 1, 1998, the
 73 licensee must be currently certified by the Board of
 74 Certification or its successor agency and maintain that
 75 certification in good standing without lapse.

76 Section 4. Section 468.713, Florida Statutes, is amended to
 77 read:

78 468.713 Responsibilities of athletic trainers.-

79 (1) An athletic trainer shall practice under the direction
 80 of a physician licensed under chapter 458, chapter 459, chapter
 81 460, or otherwise authorized by Florida law to practice
 82 medicine. The physician shall communicate his or her direction
 83 through oral or written prescriptions or protocols as deemed
 84 appropriate by the physician for the provision of services and
 85 care by the athletic trainer. An athletic trainer shall provide
 86 service or care in the manner dictated by the physician.

87 (2) An athletic trainer shall work within his or her

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88 allowable scope of practice as specified in board rule under s.
 89 468.705. An athletic trainer may not provide, offer to provide,
 90 or represent that he or she is qualified to provide any care or
 91 services that he or she lacks the education, training, or
 92 experience to provide or that he or she is otherwise prohibited
 93 by law from providing.

94 Section 5. Subsection (2) of section 468.723, Florida
 95 Statutes, is amended to read:

96 468.723 Exemptions.-This part does not prohibit prevent or
 97 restrict:

98 (2) An athletic training student acting under the direct
 99 supervision of a licensed athletic trainer. For purposes of this
 100 subsection, "direct supervision" means the physical presence of
 101 an athletic trainer so that the athletic trainer is immediately
 102 available to the athletic training student and able to intervene
 103 on behalf of the athletic training student. The supervision must
 104 comply with board rule in accordance with the standards set
 105 forth by the Commission on Accreditation of Athletic Training
 106 Education or its successor.

107 Section 6. This act shall take effect July 1, 2020.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Health Policy, *Chair*
Appropriations Subcommittee on Health
and Human Services, *Vice Chair*
Appropriations Subcommittee on Criminal
and Civil Justice
Children, Families, and Elder Affairs
Military and Veterans Affairs and Space

JOINT COMMITTEE:
Joint Committee on Public Counsel Oversight

SENATOR GAYLE HARRELL
25th District

January 28, 2020

Senator Lizbeth Benacquisto
402 Senate Building
404 South Monroe Street
Tallahassee, FL 32399

Chair Benacquisto,

I respectfully request that **SB 226 – Athletic Trainers** be placed on the next available agenda for the Committee on Rules. SB 226 passed its last committee stop unanimously.

Should you have any questions or concerns, please feel free to contact my office. Thank you in advance for your consideration.

Thank you,

A handwritten signature in cursive script that reads "Gayle".

Senator Gayle Harrell
Senate District 25

Cc: John B. Phelps, Staff Director
Cynthia Futch, Committee Administrative Assistant

REPLY TO:

- 215 SW Federal Highway, Suite 203, Stuart, Florida 34994 (772) 221-4019
- 310 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5025

Senate's Website: www.flsenate.gov

BILL GALVANO
President of the Senate

DAVID SIMMONS
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: CS/SB 838

INTRODUCER: Commerce and Tourism Committee and Senator Simmons

SUBJECT: Business Organizations

DATE: February 3, 2020

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Harmsen</u>	<u>McKay</u>	<u>CM</u>	Fav/CS
2.	<u>Ravelo</u>	<u>Cibula</u>	<u>JU</u>	Favorable
3.	<u>Harmsen</u>	<u>Phelps</u>	<u>RC</u>	Favorable

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 838 amends several sections of the Florida Business Corporation Act, ch. 607, F.S., and its related statutes to:

- Make clarifying and conforming changes to, and fix minor errors in, the 2019 Florida Business Corporation Act legislation;¹
- Modify the laws that govern the makeup of not-for-profit corporations' board committees to allow persons other than board directors to serve on those committees; and
- Re-instate the Florida Department of State's ability to direct interrogatories to a corporation to determine the corporation's compliance with ch. 607, F.S.

II. Present Situation:

In 2019, the Legislature substantially amended ch. 607, F.S., the Florida Business Corporation Act (FBCA),² to better reflect recent changes to the Model Business Corporation Act³ and ch. 605, F.S., the Florida Revised Limited Liability Corporate Act (FRLCA). These changes were made with the input of the Florida Bar's Business Law Section (Business Law Section). Since final passage of the 2019 legislation, the Business Law Section has identified errors and

¹ Chapter 2019-90, L.O.F. CS/CS/HB 1009 was signed into law on June 7, 2019, and took effect on January 1, 2020.

² *Id.*

³ American Bar Association, *Model Business Corporation Act* (2016),

https://www.americanbar.org/content/dam/aba/administrative/business_law/corplaws/2016_mbca.authcheckdam.pdf (last visited Jan. 14, 2020).

inconsistencies to the 2019 legislation. Prior to the 2019 legislation, FBCA had not been substantially amended within the last 30 years.⁴ This bill, in part, attempts to resolve the issues identified.

Further discussion of the present situation is discussed below in conjunction with the Effect of Proposed Changes.

III. Effect of Proposed Changes:

Interrogatories issued by the Department of State

The 2019 FBCA revision inadvertently deleted language from s. 607.0130, F.S., that permitted the Department of State (Department) to direct interrogatories⁵ to a corporation that was regulated under the FBCA, including any of its officers or directors.⁶ The Department used these interrogatories to determine a corporation's compliance with the FBCA. The Department could institute civil proceedings against a corporation found to be in violation of the FBCA based on the interrogatories.⁷

Section 67 creates s. 607.1703, F.S., to restore the Department's authority to issue interrogatories to corporations that operate pursuant to the FBCA and to their officers or directors. Like the deleted FBCA provision, the bill:

- Gives the corporation 30 days to respond, or longer if the Department permits;
- Requires that interrogatories directed to an individual be answered by that individual;
- Provides timeframes for filing a court record relating to the interrogatories; and
- Grants powers and duties to the Department to administer the FBCA, including authority to:
 - Institute a civil action in a circuit court to collect a penalty, fee, or tax that is owed to the state by the corporation, and to compel any legally required finding, qualification, or registration;
 - File a *lis pendens*⁸ against any property owned by the corporation;
 - Refer its findings to the Department of Legal Affairs for the purpose of initiating further action; and
 - Adopt rules necessary to carry out the FBCA.

The bill slightly modifies the FBCA's prior language to specify that the Department may serve interrogatories on a *domestic or foreign* corporation, and to change references from a corporation's "president, vice president, secretary, or assistant secretary" to a corporation's "officer or director" [or] "shareholder ... or fiduciary," when specified.

⁴ The Florida Bar, *Legislature Rewrites Corporations Statute*, FLA. BAR. NEWS, May 1 2019, <https://www.floridabar.org/the-florida-bar-news/legislature-rewrites-corporations-statutes/>

⁵ "Interrogatories" are a list of questions posed by one party to its opposing party in a civil action as part of the discovery process. The recipient must answer the questions under oath. Fla. R. Civ. P. 1.340(a)

⁶ See Ch. 2019-90, Laws of Fla.; see also The Florida Bar Business Law Section, *Proposed Modifications to Chapter 607* (Jan. 24, 2019)(on file with the Senate Committee on Commerce and Tourism).

⁷ Section 607.0130 (2007).

⁸ A "lis pendens," is filed with the clerk of the court to provide written notice that a lawsuit has been filed that involves either title to or a claimed ownership interest in real property. See Legal Information Institute, *Lis Pendens*, https://www.law.cornell.edu/wex/lis_pendens (last visited Jan. 14, 2020).

Not-for-Profit Corporation Board Committees

A not-for-profit corporation's board of directors is vested with the corporation's powers⁹ and must fulfill the corporation's obligations to its members, beneficiaries, donors, and community.¹⁰ The board of directors may also appoint board directors to serve as members of a corporate committee, which acts with the board's full authority, except that the committee cannot:¹¹

- Approve or recommend for approval actions or proposals that members must approve;
- Fill board or board committee vacancies; or
- Adopt, amend, or repeal the bylaws.

Florida law does not allow a not-for-profit corporation's board to appoint non-directors to its board committees. Despite a lack of authority, it is believed that many not-for-profit corporations include non-director members on the board committees.¹²

The Model Not-For-Profit Corporation Act permits a not-for-profit corporation's board to create an advisory committee made up of non-director appointees. The Model Not-For-Profit Corporation Act also dictates that an advisory committee may not have board authority, and may only make recommendations to the board or the not-for-profit corporation's officers or members.¹³

Section 77 authorizes a not-for-profit corporation's board of directors to create board committees and appoint as members thereto any person, whether or not they serve as a director for the not-for-profit corporation's board, subject to the following requirements:

- If an executive committee is created by a resolution of the board of directors, the board may appoint non-board members, but the majority of the executive committee's membership must consist of board directors; and
- If the committee is created by the board or is otherwise authorized by the articles of incorporation or bylaws, and its scope of authority relates to director elections, nominations, or credentials, or is otherwise involved in the director election process, the committee's membership may be made up of entirely non-board members; and
- If an advisory committee is created by the corporation, its membership may consist of any number of non-directors, but the advisory committee may not act on behalf of the board, exercise any board power or authority, or bind the not-for-profit corporation to any action. The advisory committee may make recommendations to the board or corporate officers or members, however.

⁹ See s. 617.01401(2), F.S. (defining a "board of directors" as the "group of persons vested with the management of the affairs of the corporation..."), and s. 607.0302, F.S., which outlines corporate duties as the powers to: sue and be sued; purchase, lease or acquire, and own, hold, improve, use and deal with, real or personal property; sell, convey, mortgage, or otherwise dispose of all or part of its property; lend or borrow money; and make contracts and incur liabilities.

¹⁰ Jeffrey A. Baskies and Cara Freedman, *To Protect and to Serve: The Duties and Responsibilities of Directors of Florida Not-For-Profit Corporations*, Florida Bar Journal Vol. 89, No. 9 (Nov. 2015), available at <https://www.floridabar.org/the-florida-bar-journal/to-protect-and-to-serve-the-duties-and-responsibilities-of-directors-of-florida-not-for-profit-corporations/> (last visited Jan. 14, 2020).

¹¹ Section 617.0825(1) and (3), F.S.

¹² The Florida Bar Business Law Section, *White Paper for S.B. [838] & H.B. [495]*, (Oct. 21, 2019)(on file with the Senate Committee on Commerce and Tourism).

¹³ American Bar Association Committee on Nonprofit Organizations, *Model Nonprofit Corporation Act* §8.25 (3d ed. 2008).

Additionally, the bill defines a non-director committee member's responsibility, fiduciary duty,¹⁴ and liability protections¹⁵ as equal to those provided to a director committee member.

This section does not apply to a condominium, cooperative, or homeowners' association board's fining or architectural review committees acting pursuant to ss. 718.303(3), 719.303(3), and 720.303(2) or 720.3035(1), F.S., respectively.

Conforming Changes

The bill amends ss. 607.0120, 607.0125, 607.0141, 607.0620, 607.0720, 607.1002, 607.11921, 607.1202, 607.1302, 607.1333, 607.1422, 607.1431, 607.14401, 607.1502, 607.1504, 607.15091, 607.1602, and 605.0116, F.S., to provide for consistent terminology throughout ch. 607, F.S., by amending the following terms from:

- "act" to "chapter;"
- "action" to "proceeding;"
- "representative" to "authorized representative;"
- "corporation" to "domestic corporation or foreign corporation;"
- "his or her" to "his, her, or its;"
- "business entity" to "eligible entity;"¹⁶
- "successor" to "successor or assignee;"
- "rights of action" to "proceedings and actions;" and
- "do business" to "transact business."

The bill also amends ss. 607.1103, 607.1106, 607.11920, 607.11921, 607.11923, 607.11924, 607.11935, 607.1432, 607.1520, and 607.504, F.S., to:

- Add references to obligations, other securities, eligible interests, and rights to acquire any combination of shares, securities, cash, or property in connection with organic transactions;
- Ensure consistent use of the term "separate voting group;"
- Change "the receiver" to "any receiver" to reflect that a court may appoint and order compensation for one or more receivers;
- Tailor a reference regarding the process for the withdrawal and cancellation of certificate of authority for a foreign corporation to refer to a foreign corporation, rather than to "it;" and
- Clarify that an entity may elect to become a social purpose corporation by domestication.

Clarifying Changes

The bill makes clarifying changes to ss. 607.0601, 607.0602, 607.0705, 607.0808, 607.0850, 607.0901, 607.1102, 607.1103, 607.11921, 607.11932, 607.1501, 607.1509, and 607.1602, F.S. The changes include:

¹⁴ A director must discharge his or her duties to the corporation in good faith, with the care of an ordinarily prudent person in a similar position, and in a manner he or she reasonably believes to be in the not-for-profit corporation's best interest. *See* s. 617.0830(1)(a)-(c), F.S.

¹⁵ A director is not liable for monetary damages for any statement, vote, decision to act or not act, or failure to act, unless the director breached his or her duties. *See* ss. 607.0831 and 617.0830, F.S.

¹⁶ An "eligible entity" is a domestic corporation, foreign corporation, nonprofit corporation, general partnership, limited partnership, limited liability company, real estate investment trust, or any other foreign or domestic entity that is organized under an organic law. Section 607.01401(28)(a), F.S.

- Specifying that a series of shares that has voting rights is authorized to receive the corporation's net assets upon its dissolution;
- Replacing language to clarify that a series of shares may exist only within one class of shares rather than in one or more classes;
- Changing the term "checks in payment" to "payment" to permit forms of payment to shareholders other than by check;
- Permitting a corporate board to meet on the issue of removal of a board director *and* any additional purpose, if all of the purposes are stated on a properly distributed meeting notice;
- Expanding the definition of "expenses" to include reasonable attorney fees *and expenses*;
- Replacing, in the context of affiliated transactions governed by s. 607.0901, F.S., the term "shares" with "interests" to accommodate those entities that do not have shares;
- Clarifying that a domestic corporation may acquire all of, or one or more classes or series of, both another corporation's shares *and* its rights to acquire shares;
- Ensuring that laws that govern organic transactions contemplate the transaction of all of the following: obligations, other securities, eligible interests, and rights to acquire any combination of shares, securities, cash, or property;
- Specifying that s. 607.1103(6)(a), F.S., details the voting procedures on a plan of merger only;
- Permitting a corporation's articles of incorporation to limit or eliminate specific voting rights, or any combination thereof, as applies to a plan of merger or plan for share exchange;
- Clarifying that ch. 607, F.S., in addition to a foreign corporation's articles of incorporation or board action, may require a vote greater than a quorum to approve the foreign corporation's plan of domestication or plan of conversion;
- Clarifying that a foreign corporation that maintains an account (not just a bank account) in a financial institution is not transacting business, and is therefore not subject to the Department's regulatory authority in virtue thereof;
- Replacing an incorrect word to clarify that a statement of change or similar document is effective when it has been filed *with* the department, not *by* it; and
- Specifying that a shareholder may only inspect the records of actions taken without a meeting by a board committee *of the corporation*.

Cross-Reference Corrections

The bill corrects missing or incorrect cross references in ss. 607.1406, 607.1422, 607.1430, 607.1504, 607.1604, and 607.1622, F.S.

The bill also modifies the sections, subsections, or paragraphs to which provisions apply in ss. 607.0721 and 607.605.0702, F.S.

Grammar, Punctuation, and Duplicative Language Corrections

The bill corrects non-substantive grammar and punctuation errors in ss. 607.0127, 607.01401, 607.0501, 607.0623, 607.0630, 607.0704, 607.0732, 607.0750, 607.0832, 607.0855, 607.0858, 607.1003, 607.11 03, 607.11035, 607.11045, 607.11932, 607.11935, 607.1303, 607.1320, 607.1340, 607.1403, 607.1430, 607.1503, 607.1505, 607.1507, 607.15101, 605.0702, 605.0716, and 617.0501, F.S.

The bill also deletes unnecessary and duplicative language in ss. 605.1104, 607.0630, 607.0707, and 607.1301, F.S.

Effective Date

Section 78 provides that the act takes effect upon becoming law.

Bill Section Directory

Section 1	Section 607.0120, F.S.
Section 2	Section 607.0123, F.S.
Section 3	Section 607.0125, F.S.
Section 4	Section 607.0127, F.S.
Section 5	Section 607.01401, F.S.
Section 6	Section 607.0141, F.S.
Section 7	Section 607.0501, F.S.
Section 8	Section 607.0601, F.S.
Section 9	Section 607.0602, F.S.
Section 10	Section 607.0620, F.S.
Section 11	Section 607.0623, F.S.
Section 12	Section 607.0630, F.S.
Section 13	Section 607.0704, F.S.
Section 14	Section 607.0705, F.S.
Section 15	Section 607.0707, F.S.
Section 16	Section 607.0720, F.S.
Section 17	Section 607.0721, F.S.
Section 18	Section 607.0732, F.S.
Section 19	Section 607.0750, F.S.
Section 20	Section 607.0808, F.S.
Section 21	Section 607.0832, F.S.
Section 22	Section 607.0850, F.S.
Section 23	Section 607.0855, F.S.
Section 24	Section 607.0858, F.S.
Section 25	Section 607.0901, F.S.
Section 26	Section 607.1002, F.S.
Section 27	Section 607.1003, F.S.
Section 28	Section 607.1102, F.S.
Section 29	Section 607.1103, F.S.
Section 30	Section 607.11035, F.S.
Section 31	Section 607.11045, F.S.
Section 32	Section 607.1106, F.S.
Section 33	Section 607.11920, F.S.
Section 34	Section 607.11921, F.S.
Section 35	Section 607.11923, F.S.
Section 36	Section 607.11924, F.S.
Section 37	Section 607.11932, F.S.
Section 38	Section 607.11933, F.S.
Section 39	Section 607.11935, F.S.
Section 40	Section 607.1202, F.S.
Section 41	Section 607.1301, F.S.
Section 42	Section 607.1302, F.S.
Section 43	Section 607.1303, F.S.

Section 44	Section 607.1320, F.S.
Section 45	Section 607.1333, F.S.
Section 46	Section 607.1340, F.S.
Section 47	Section 607.1403, F.S.
Section 48	Section 607.1406, F.S.
Section 49	Section 607.1422, F.S.
Section 50	Section 607.1430, F.S.
Section 51	Section 607.1431, F.S.
Section 52	Section 607.1432, F.S.
Section 53	Section 607.14401, F.S.
Section 54	Section 607.1501, F.S.
Section 55	Section 607.1502, F.S.
Section 56	Section 607.1503, F.S.
Section 57	Section 607.1504, F.S.
Section 58	Section 607.1505, F.S.
Section 59	Section 607.1507, F.S.
Section 60	Section 607.1509, F.S.
Section 61	Section 607.15091, F.S.
Section 62	Section 607.15101, F.S.
Section 63	Section 607.1520, F.S.
Section 64	Section 607.1602, F.S.
Section 65	Section 607.1504, F.S.
Section 66	Section 607.1622, F.S.
Section 67	Section 607.1703, F.S.
Section 68	Section 607.1907, F.S.
Section 69	Section 607.504, F.S.
Section 70	Section 605.0116, F.S.
Section 71	Section 605.0207, F.S.
Section 72	Section 605.0215, F.S.
Section 73	Section 605.0702, F.S.
Section 74	Section 605.0716, F.S.
Section 75	Section 605.1104, F.S.
Section 76	Section 617.0501, F.S.
Section 77	Section 617.0825, F.S.
Section 78	Effective Date

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates s. 607.1703 of the Florida Statutes and substantially amends the following sections of the Florida Statutes: 607.0120, 607.0123, 607.0125, 607.0127, 607.01401, 607.0141, 607.0501, 607.0601, 607.0602, 607.0620, 607.0623, 607.0630, 607.0704, 607.0705, 607.0707, 607.0720, 607.0721, 607.0732, 607.0750, 607.0808, 607.0832, 607.0850, 607.0855, 607.0858, 607.0901, 607.1002, 607.1003, 607.1102, 607.1103, 607.11035, 607.11045, 607.1106,

607.11920, 607.11921, 607.11923, 607.11924, 607.11932, 607.11933, 607.11935, 607.1202, 607.1301, 607.1302, 607.1303, 607.1320, 607.1333, 607.1340, 607.1403, 607.1406, 607.1422, 607.1430, 607.1431, 607.1432, 607.14401, 607.1501, 607.1502, 607.1503, 607.1504, 607.1505, 607.1507, 607.1509, 607.15091, 607.15101, 607.1520, 607.1602, 607.1604, 607.1622, 607.1907, 607.504, 605.0116, 605.0207, 605.0215, 605.0702, 605.0716, 605.1104, 617.0501, and 617.0825.

IX. Additional Information:

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

CS by Commerce and Tourism on January 14, 2020:

- Deletes unnecessary language that implies that a corporation could obtain a life insurance policy for a shareholder that is not a natural person;
- Clarifies that a favorable vote of a majority of all shares entitled to vote on an amendment are required to amend a corporation's articles of incorporation;
- Provides that changes made to board committee membership requirements do not apply to condominium, cooperative, or homeowner's association committees that perform specific duties; and
- Deletes duplicative rulemaking authority in chs. 605 and 607, F.S.

- B. **Amendments:**

None.

By the Committee on Commerce and Tourism; and Senator Simmons

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1 A bill to be entitled
 2 An act relating to business organizations; amending s.
 3 607.0120, F.S.; making technical changes; amending s.
 4 607.0123, F.S.; specifying that certain documents
 5 accepted by the Department of State for filing are
 6 effective on the date the documents are accepted by
 7 the department; making technical changes; amending ss.
 8 607.0125, 607.0127, 607.01401, 607.0141, 607.0501, and
 9 607.0601, F.S.; making technical changes; amending s.
 10 607.0602, F.S.; revising the authority of a board of
 11 directors to reclassify certain unissued shares;
 12 amending ss. 607.0620, 607.0623, 607.0630, 607.0704,
 13 607.0705, 607.0707, 607.0720, 607.0721, 607.0732, and
 14 607.0750, F.S.; making technical changes; amending s.
 15 607.0808, F.S.; revising the required contents of a
 16 meeting notice relating to the removal of a director
 17 by shareholders; amending s. 607.0832, F.S.; making a
 18 technical change; amending s. 607.0850, F.S.; revising
 19 the definition of the term "expenses"; amending ss.
 20 607.0855 and 607.0858, F.S.; making technical changes;
 21 amending s. 607.0901, F.S.; revising definitions;
 22 amending ss. 607.1002 and 607.1003, F.S.; making
 23 technical changes; amending s. 607.1102, F.S.;
 24 authorizing a domestic corporation to acquire one or
 25 more classes or series of shares under certain
 26 circumstances; amending ss. 607.1103, 607.11035,
 27 607.11045, 607.1106, and 607.11920, F.S.; making
 28 technical changes; amending s. 607.11921, F.S.;
 29 revising an exception for the procedure to approve a

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30 plan of domestication; making a technical change;
 31 amending ss. 607.11923 and 607.11924, F.S.; making
 32 technical changes; amending s. 607.11932, F.S.;
 33 revising an exception for the procedure to approve a
 34 plan of conversion; making a technical change;
 35 amending ss. 607.11933, 607.11935, 607.1202, 607.1301,
 36 607.1302, 607.1303, 607.1320, 607.1333, 607.1340,
 37 607.1403, 607.1406, 607.1422, 607.1430, 607.1431,
 38 607.1432, 607.14401, 607.1501, 607.1502, 607.1503,
 39 607.1504, 607.1505, 607.1507, 607.1509, 607.15091,
 40 607.15101, 607.1520, 607.1602, 607.1604, and 607.1622,
 41 F.S.; making technical changes; creating s. 607.1703,
 42 F.S.; authorizing the department to direct certain
 43 interrogatories to certain corporations and to
 44 officers or directors of certain corporations;
 45 providing requirements for answering the
 46 interrogatories; providing requirements for the
 47 department relating to interrogatories; authorizing
 48 the department to bring certain actions; authorizing
 49 the department to file a lis pendens against certain
 50 property and to certify certain findings to the
 51 Department of Legal Affairs; amending ss. 607.1907,
 52 607.504, and 605.0116, F.S.; making technical changes;
 53 amending s. 605.0207, F.S.; specifying that certain
 54 documents accepted by the department for filing are
 55 effective on the date the records are accepted by the
 56 department; making a technical change; amending ss.
 57 605.0215, 605.0702, 605.0716, 605.1104, and 617.0501,
 58 F.S.; making technical changes; amending s. 617.0825,

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59 F.S.; authorizing a board of directors to appoint
60 persons to serve on certain committees; requiring that
61 a majority of the persons on such committees be
62 directors; providing exceptions; making technical
63 changes; providing responsibilities and duties for
64 non-director committee members; authorizing a
65 corporation to create or authorize the creation of
66 advisory committees; specifying an advisory committee
67 is not a committee of the board of directors;
68 providing prohibitions and authorizations for advisory
69 committees; providing applicability; providing an
70 effective date.

71
72 Be It Enacted by the Legislature of the State of Florida:

73
74 Section 1. Subsection (10) of section 607.0120, Florida
75 Statutes, is amended to read:

76 607.0120 Filing requirements.—

77 (10) When the document is delivered to the department for
78 filing, the correct filing fee, and any other tax, license fee,
79 or penalty required to be paid by this chapter ~~act~~ or other law
80 shall be paid or provision for payment made in a manner
81 permitted by the department.

82 Section 2. Subsections (1) and (2) of section 607.0123,
83 Florida Statutes, are amended to read:

84 607.0123 Effective time and date of document.—Except as
85 otherwise provided in s. 607.0124(5), and subject to s.
86 607.0124(4), any document delivered to the department for filing
87 under this chapter may specify an effective time and a delayed

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88 effective date. In the case of initial articles of
89 incorporation, a prior effective date may be specified in the
90 articles of incorporation if such date is within 5 business days
91 before the date of filing.

92 (1) Subject to s. 607.0124, a document accepted for filing
93 is effective:

94 (a) If the record filed ~~filing~~ does not specify an
95 effective time and does not specify a prior or a delayed
96 effective date, on the date and at the time the record ~~filing~~ is
97 accepted, as evidenced by the department's endorsement of the
98 date and time on the filing.

99 (b) If the record filed ~~filing~~ specifies an effective time,
100 but not a prior or delayed effective date, on the date the
101 record ~~filing~~ is accepted, as evidenced by the department's
102 endorsement, and filed at the time specified in the filing.

103 (c) If the record filed ~~filing~~ specifies a delayed
104 effective date, but not an effective time, at 12:01 a.m. on the
105 earlier of:

106 1. The specified date; or

107 2. The 90th day after the date the record is filed ~~of the~~
108 ~~filing~~.

109 (d) If the record filed ~~filing~~ specifies a delayed
110 effective date and an effective time, at the specified time on
111 the earlier of:

112 1. The specified date; or

113 2. The 90th day after the date the record is filed ~~of the~~
114 ~~filing~~.

115 (e) If the record filed ~~filing~~ is of initial articles of
116 incorporation and specifies an effective date before the date of

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117 the filing, but no effective time, at 12:01 a.m. on the later
118 of:

- 119 1. The specified date; or
- 120 2. The 5th business day before the date ~~of~~ the record is
121 filed filing.

122 (f) If the record filed filing is of initial articles of
123 incorporation and specifies an effective time and an effective
124 date before the date of the filing, at the specified time on the
125 later of:

- 126 1. The specified date; or
- 127 2. The 5th business day before the date the record is filed
128 of the filing.

129 (2) If the record filed ~~a filed document~~ does not specify
130 the time zone or place at which the date or time, or both, is to
131 be determined, the date or time, or both, at which it becomes
132 effective shall be those prevailing at the place of filing in
133 this state.

134 Section 3. Subsection (3) of section 607.0125, Florida
135 Statutes, is amended to read:

136 607.0125 Filing duties of the department.—

137 (3) If the department refuses to file a document, the
138 department shall return the document to the domestic or foreign
139 corporation or its authorized representative within 15 days
140 after the document was received for filing, together with a
141 brief, written explanation of the reason for refusal.

142 Section 4. Section 607.0127, Florida Statutes, is amended
143 to read:

144 607.0127 Certificates to be received in evidence;
145 evidentiary effect of certified copy of filed document.—All

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146 certificates issued by the department pursuant to this chapter
147 must be taken and received in all courts, public offices, and
148 official bodies as prima facie evidence of the facts stated. A
149 certificate the department delivered with a copy of a document
150 filed by the department, bearing the signature of the secretary
151 of state, which may be in facsimile, and the seal of this the
152 state, is conclusive evidence that the original document is on
153 file with the department.

154 Section 5. Subsections (1), (2), (22), (51), (61), and (63)
155 of section 607.01401, Florida Statutes, are amended to read:

156 607.01401 Definitions.—As used in this chapter, unless the
157 context otherwise requires, the term:

158 (1) "Acquired eligible entity" means the ~~a~~ domestic or
159 foreign eligible entity that will have all of one or more
160 classes or series of its shares or eligible interests acquired
161 in a share exchange.

162 (2) "Acquiring eligible entity" means the ~~a~~ domestic or
163 foreign eligible entity that will acquire all of one or more
164 classes or series of shares or eligible interests of the
165 acquired eligible entity in a share exchange.

166 (22) "Domesticating corporation" means the ~~a~~ domestic
167 corporation that approves a plan of domestication pursuant to s.
168 607.11921, or the ~~a~~ foreign corporation that approves a
169 domestication pursuant to the organic law of the foreign
170 corporation.

171 (51) "New interest holder liability," in the context of a
172 merger or share exchange, means interest holder liability of a
173 person resulting from a merger or share exchange that is:

174 (a) In respect of an eligible entity which is different

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175 from the eligible entity and not the same eligible entity in
 176 which the person held shares or eligible interests, immediately
 177 before the merger or share exchange became effective; or

178 (b) In respect of the same eligible entity as the one in
 179 which the person held shares or eligible interests, immediately
 180 before the merger or share exchange became effective if:

181 1. The person did not have interest holder liability
 182 immediately before the merger or share exchange became
 183 effective; or

184 2. The person had interest holder liability immediately
 185 before the merger or share exchange became effective, the terms
 186 and conditions of which were changed when the merger or share
 187 exchange became effective.

188 (61) "Public organic record" means a record, the filing of
 189 which by a governmental body is required to form an entity, and
 190 ~~or~~ an amendment to or restatement of such record. Where a public
 191 organic record has been amended or restated, the term means the
 192 public organic record as last amended or restated. The term
 193 includes the following:

194 (a) The articles of incorporation of a corporation for
 195 profit;

196 (b) The articles of incorporation of a nonprofit
 197 corporation;

198 (c) The certificate of limited partnership of a limited
 199 partnership;

200 (d) The articles of organization, certificate of
 201 organization, or certificate of formation of a limited liability
 202 company;

203 (e) The articles of incorporation of a general cooperative

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204 association or a limited cooperative association;

205 (f) The certificate of trust of a statutory trust or
 206 similar record of a business trust; or

207 (g) The articles of incorporation of a real estate
 208 investment trust.

209 (63) "Record date" means the date fixed for determining the
 210 identity of the corporation's shareholders and their share
 211 holdings for purposes of this chapter. Unless another time is
 212 specified when the record date is fixed, the determination shall
 213 be made as of the close of ~~the~~ business at the principal office
 214 of the corporation on the date so fixed.

215 Section 6. Subsections (4) and (11) of section 607.0141,
 216 Florida Statutes, are amended to read:

217 607.0141 Notice.—

218 (4) Written notice to a domestic corporation or to a
 219 foreign corporation authorized to transact business in this
 220 state may be addressed:

221 (a) To its registered agent at the domestic corporation's
 222 or foreign corporation's registered office; or

223 (b) To the domestic corporation or foreign corporation or
 224 to the domestic corporation's or foreign corporation's secretary
 225 at the domestic corporation's or foreign corporation's principal
 226 office or electronic mail address as authorized and shown in its
 227 most recent annual report or, in the case of a domestic
 228 corporation or foreign corporation that has not yet delivered an
 229 annual report, in a domestic corporation's articles of
 230 incorporation or in a foreign corporation's application for
 231 certificate of authority.

232 (11) If this chapter ~~act~~ prescribes requirements for

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233 notices or other communications in particular circumstances,
 234 those requirements govern. If articles of incorporation or
 235 bylaws prescribe requirements for notices or other
 236 communications not less stringent than the requirements of this
 237 section or other provisions of this ~~chapter act~~, those
 238 requirements govern. The articles of incorporation or bylaws may
 239 authorize or require delivery of notices of meetings of
 240 directors by electronic transmission.

241 Section 7. Subsections (1) and (5) of section 607.0501,
 242 Florida Statutes, are amended to read:

243 607.0501 Registered office and registered agent.—

244 (1) Each corporation shall designate and continuously
 245 maintain in this state:

246 (a) A registered office, which may be the same as its place
 247 of business in this state; and

248 (b) A registered agent, which must be:

249 1. An individual who resides in this state whose business
 250 address is identical to the address of the registered office;

251 2. Another domestic entity that is an authorized entity and
 252 whose business address is identical to the address of the
 253 registered office; or

254 3. A foreign entity authorized to transact business in this
 255 state which is an authorized entity and whose business address
 256 is identical to the address of the registered office.

257 (5) The department shall maintain an accurate record of the
 258 registered agent ~~agents~~ and registered office for service of
 259 process and shall promptly furnish any information disclosed
 260 thereby upon request and payment of the required fee.

261 Section 8. Subsection (2) of section 607.0601, Florida

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262 Statutes, is amended to read:

263 607.0601 Authorized shares.—

264 (2) The articles of incorporation must authorize:

265 (a) One or more classes or series of shares that together
 266 have unlimited voting rights, and

267 (b) One or more classes or series of shares (which may be
 268 the same class or series or classes or series as those with
 269 voting rights) that together are entitled to receive the net
 270 assets of the corporation upon dissolution.

271 Section 9. Subsection (1) of section 607.0602, Florida
 272 Statutes, is amended to read:

273 607.0602 Terms of class or series determined by board of
 274 directors.—

275 (1) If the articles of incorporation so provide, the board
 276 of directors is authorized, without shareholder approval, to:

277 (a) Classify any unissued shares into one or more classes
 278 or into one or more series within a class;

279 (b) Reclassify any unissued shares of any class into one or
 280 more classes or into one or more series within a class ~~one or~~
 281 ~~more classes~~; or

282 (c) Reclassify any unissued shares of any series of any
 283 class into one or more classes or into one or more series within
 284 a class.

285 Section 10. Subsection (5) of section 607.0620, Florida
 286 Statutes, is amended to read:

287 607.0620 Subscriptions for shares.—

288 (5) If a subscriber defaults in payment of money or
 289 property under a subscription agreement entered into before
 290 incorporation, the corporation may collect the amount owed as

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291 any other debt. Alternatively, unless the subscription agreement
 292 provides otherwise, the corporation may rescind the agreement
 293 and may sell the shares if the debt remains unpaid more than 20
 294 days after the corporation delivers written demand for payment
 295 to the subscriber. If the subscription agreement is rescinded
 296 and the shares sold, then, notwithstanding the rescission, the
 297 defaulting subscriber or his, ~~or her,~~ or its legal
 298 representative shall be entitled to be paid the excess of the
 299 sale proceeds over the sum of the amount due and unpaid on the
 300 subscription and the reasonable expenses incurred in selling the
 301 shares, but in no event shall the defaulting subscriber or his,
 302 ~~or her,~~ or its legal representative be entitled to be paid an
 303 amount greater than the amount paid by the subscriber on the
 304 subscription.

305 Section 11. Subsection (1) of section 607.0623, Florida
 306 Statutes, is amended to read:

307 607.0623 Share dividends.—

308 (1) Unless the articles of incorporation provide otherwise,
 309 shares may be issued pro rata and without consideration to the
 310 corporation's shareholders or to the shareholders of one or more
 311 classes or series of ~~or~~ shares. An issuance of shares under this
 312 subsection is a share dividend.

313 Section 12. Paragraphs (c) and (d) of subsection (2) of
 314 section 607.0630, Florida Statutes, are amended to read:

315 607.0630 Shareholders' preemptive rights.—

316 (2) A statement included in the articles of incorporation
 317 that "the corporation elects to have preemptive rights" (or
 318 words of similar import) means that the following principles
 319 apply except to the extent the articles of incorporation

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320 expressly provide otherwise:

321 (c) There is no preemptive right with respect to:

322 1. Shares issued as compensation to directors, officers,
 323 agents, or employees of the corporation, its subsidiaries, or
 324 its affiliates;

325 2. Shares issued to satisfy conversion or option rights
 326 created to provide compensation to directors, officers, agents,
 327 or employees of the corporation, its subsidiaries, or its
 328 affiliates;

329 3. Shares authorized in the articles of incorporation that
 330 are issued within 6 months from the effective date of
 331 incorporation;

332 4. Shares issued pursuant to a plan of reorganization
 333 approved by a court of competent jurisdiction pursuant to a law
 334 of this state or of the United States; or

335 5. Shares issued for consideration other than money.

336 (d) Holders of shares of any class or series without
 337 general voting rights but with preferential rights ~~to~~
 338 ~~distributions~~ to receive the net assets upon dissolution have no
 339 preemptive rights with respect to shares of any class or series.

340 Section 13. Subsection (7) of section 607.0704, Florida
 341 Statutes, is amended to read:

342 607.0704 Action by shareholders without a meeting.—

343 (7) The notice requirements in subsection (3) do not delay
 344 the effectiveness of actions taken by written consent, and a
 345 failure to comply with such notice requirement does not
 346 invalidate actions taken by written consent. This subsection
 347 shall ~~may~~ not be deemed to limit judicial power to fashion any
 348 appropriate remedy in favor of a shareholder adversely affected

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349 by a failure to give such notice within the required time
350 period.

351 Section 14. Subsection (5) of section 607.0705, Florida
352 Statutes, is amended to read:

353 607.0705 Notice of meeting.—

354 (5) Notwithstanding the foregoing, whenever notice is
355 required to be given to any shareholder under this chapter or
356 the articles of incorporation or bylaws of any corporation to
357 whom:

358 (a) Notice of two consecutive annual meetings, and all
359 notices of meetings or the taking of action by written consent
360 without a meeting to such person during the period between such
361 two consecutive annual meetings; or

362 (b) All, and at least two payments ~~checks in payment~~ of
363 dividends or interest on securities during a 12-month period,
364
365 have been sent by first-class United States mail, addressed to
366 the shareholder at such person's address as it appears in the
367 record of shareholders of the corporation, maintained in
368 accordance with s. 607.1601(4), and returned undeliverable, then
369 the giving of such notice to such person shall not be required.
370 Any action or meeting which is taken or held without notice to
371 such person has the same force and effect as if such notice has
372 been duly given. If any such person delivers to the corporation
373 a written notice setting forth such person's then current
374 address, the requirement that a notice be given to such person
375 with respect to future notices shall be reinstated.

376 Section 15. Subsections (2), (9), and (10) of section
377 607.0707, Florida Statutes, are amended to read:

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378 607.0707 Record date.—

379 ~~(2) If not otherwise provided by or pursuant to the bylaws,~~
380 ~~the record date for determining shareholders entitled to demand~~
381 ~~a special meeting is the date the first shareholder delivers his~~
382 ~~or her demand to the corporation.~~

383 (9) Shares of a corporation's own stock acquired by the
384 corporation between the record date for determining shareholders
385 entitled to notice of or to vote at a meeting of shareholders
386 and the time of the meeting may be voted ~~on~~ at the meeting by
387 the holder of record as of the record date and shall be counted
388 in determining the total number of outstanding shares entitled
389 to be voted at the meeting.

390 (2)(10) If not otherwise fixed under s. 607.0703 or
391 otherwise provided by or pursuant to the bylaws, the record date
392 for determining shareholders entitled to demand a special
393 meeting is the earliest date on which a signed shareholder
394 demand is delivered to the corporation. A written demand for a
395 special meeting is not effective unless, within 60 days of the
396 earliest date on which such a demand delivered to the
397 corporation as required by s. 607.0702 was signed, written
398 demands signed by shareholders holding at least the percentage
399 of votes specified in or fixed in accordance with s.
400 607.0702(1)(b) have been delivered to the corporation.

401 Section 16. Subsection (2) of section 607.0720, Florida
402 Statutes, is amended to read:

403 607.0720 Shareholders' list for meeting.—

404 (2) The shareholders' list for notice must be available for
405 inspection by any shareholder for a period of 10 days prior to
406 the meeting or such shorter time as exists between the record

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407 date and the meeting and continuing through the meeting at the
 408 corporation's principal office, at a place identified in the
 409 meeting notice in the city where the meeting will be held, or at
 410 the office of the corporation's transfer agent or registrar. Any
 411 separate shareholders' list for voting, if different, must be
 412 similarly available for inspection promptly after the record
 413 date for voting. A shareholder or the shareholder's agent or
 414 attorney is entitled on written demand to inspect and, subject
 415 to the requirements of s. 607.1602(3), copy a list during
 416 regular business hours and at his, ~~or~~ her, or its expense,
 417 during the period it is available for inspection.

418 Section 17. Subsection (3) of section 607.0721, Florida
 419 Statutes, is amended to read:

420 607.0721 Voting entitlement of shares.—

421 (3) Shares held by the corporation in a fiduciary capacity
 422 for the benefit of any person are entitled to vote unless they
 423 are held for the benefit of, or otherwise belong to, the
 424 corporation directly, or indirectly through an entity of which a
 425 majority of the voting power is held directly or indirectly by
 426 the corporation or which is otherwise controlled by the
 427 corporation. For the purposes of this section ~~subsection~~,
 428 "voting power" means the current power to vote in the election
 429 of directors of a corporation or to elect, select, or appoint
 430 those persons who will govern another entity.

431 Section 18. Subsection (2) of section 607.0732, Florida
 432 Statutes, is amended to read:

433 607.0732 Shareholder agreements.—

434 (2) An agreement authorized by this section shall be:

435 (a)1. Set forth or referenced in the articles of

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436 incorporation or bylaws and approved by all persons who are
 437 shareholders at the time of the agreement; or

438 2. Set forth in a written agreement that is signed by all
 439 persons who are shareholders at the time of the agreement and
 440 such written agreement is made known to the corporation; and
 441 (b) Subject to termination or amendment only by all persons
 442 who are shareholders at the time of the termination or
 443 amendment, unless the agreement provides otherwise.

444 Section 19. Subsection (1) of section 607.0750, Florida
 445 Statutes, is amended to read:

446 607.0750 Direct action by shareholder.—

447 (1) Subject to subsection (2), a shareholder may maintain a
 448 direct action against another shareholder, an officer, a
 449 director, or the company, to enforce the shareholder's rights
 450 and otherwise protect the shareholder's interests, including
 451 rights and interests under the articles of incorporation, the
 452 bylaws or this chapter or arising independently of the
 453 shareholder relationship.

454 Section 20. Subsection (4) of section 607.0808, Florida
 455 Statutes, is amended to read:

456 607.0808 Removal of directors by shareholders.—

457 (4) A director may be removed by the shareholders only at a
 458 meeting of shareholders called for the purpose of removing the
 459 director, and the meeting notice must state that the removal of
 460 the director is the purpose, or one of the purposes, of the
 461 meeting.

462 Section 21. Subsection (7) of section 607.0832, Florida
 463 Statutes, is amended to read:

464 607.0832 Director conflicts of interest.—

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465 (7) ~~If where~~ shareholders' action under this section does
 466 not satisfy a quorum or voting requirement applicable to the
 467 authorization of the transaction by shareholders as required by
 468 the articles of incorporation, the bylaws, this chapter, or any
 469 other law, an action to satisfy those authorization
 470 requirements, whether as part of the same action or by way of
 471 another action, must be taken by the shareholders in order to
 472 authorize the transaction. In such action, the vote or consent
 473 of shareholders who are not disinterested shareholders may be
 474 counted.

475 Section 22. Subsection (4) of section 607.0850, Florida
 476 Statutes, is amended to read:

477 607.0850 Definitions.—In ss. 607.0850-607.0859, the term:

478 (4) "Expenses" includes reasonable attorney fees and
 479 expenses, including those incurred in connection with any
 480 appeal.

481 Section 23. Subsection (2) of section 607.0855, Florida
 482 Statutes, is amended to read:

483 607.0855 Determination and authorization of
 484 indemnification.—

485 (2) The determination shall be made:

486 (a) If there are two or more qualified directors, by the
 487 board of directors by a majority vote of all of the qualified
 488 directors, a majority of whom shall for such purposes constitute
 489 a quorum, or by a majority of the members of a committee of two
 490 or more qualified directors appointed by such a vote; ~~or~~

491 (b) By independent special legal counsel:

- 492 1. Selected in the manner prescribed by paragraph (a); or
 493 2. If there are fewer than two qualified directors,

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494 selected by the board of directors, in which selection directors
 495 who are not qualified directors may participate; or

496 (c) By the shareholders, but shares owned by or voted under
 497 the control of a director or officer who, at the time of the
 498 determination, is not a qualified director or an officer who is
 499 a party to the proceeding may not be counted as votes in favor
 500 of the determination.

501 Section 24. Subsection (1) of section 607.0858, Florida
 502 Statutes, is amended to read:

503 607.0858 Variation by corporate action; application of ss.
 504 607.0850-607.0859.—

505 (1) The indemnification provided pursuant to ss. 607.0851
 506 and 607.0852 and the advancement of expenses provided pursuant
 507 to s. 607.0853 are not exclusive, and a corporation may, by a
 508 provision in its articles of incorporation, bylaws, or any
 509 agreement, or by vote of shareholders or disinterested
 510 directors, or otherwise, obligate itself in advance of the act
 511 or omission giving rise to a proceeding to provide any other or
 512 further indemnification or advancement of expenses to any of its
 513 directors or officers. Any such obligatory provision shall be
 514 deemed to satisfy the requirements for authorization referred to
 515 in ss. 607.0853(3) and 607.0855(3). Any such provision that
 516 obligates the corporation to provide indemnification to the
 517 fullest extent permitted by law shall be deemed to obligate the
 518 corporation to advance funds to pay for or reimburse expenses in
 519 accordance with s. 607.0853 to the fullest extent permitted by
 520 law, unless the provision specifically provides otherwise.

521 Section 25. Paragraph (f) of subsection (1) of section
 522 607.0901, Florida Statutes, is amended to read:

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523 607.0901 Affiliated transactions.—

524 (1) For purposes of this section:

525 (f) "Control," "controlling," "controlled by," and "under
526 common control with" mean the possession, directly or
527 indirectly, through the ownership of voting interests ~~shares~~, by
528 contract, arrangement, understanding, relationship, or
529 otherwise, of the power to direct or cause the direction of the
530 management and policies of a person. A person who is the owner
531 of 20 percent or more of the outstanding voting interests ~~shares~~
532 of any corporation, partnership, unincorporated association, or
533 other entity is presumed to have control of such entity, in the
534 absence of proof by a preponderance of the evidence to the
535 contrary. Notwithstanding the foregoing, a person shall not be
536 deemed to have control of an entity if such person holds voting
537 interests ~~shares~~, in good faith and not for the purpose of
538 circumventing this section, as an agent, bank, broker, nominee,
539 custodian, or trustee for one or more beneficial owners who do
540 not individually or as a group have control of such entity.

541 Section 26. Subsection (11) of section 607.1002, Florida
542 Statutes, is amended to read:

543 607.1002 Amendment by board of directors.—Unless the
544 articles of incorporation provide otherwise, a corporation's
545 board of directors may adopt one or more amendments to the
546 corporation's articles of incorporation without shareholder
547 approval:

548 (11) To make any other change expressly permitted by this
549 chapter act to be made without shareholder approval.

550 Section 27. Paragraph (a) of subsection (2) and subsections
551 (4) and (5) of section 607.1003, Florida Statutes, are amended

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552 to read:

553 607.1003 Amendment by board of directors and shareholders.—
554 If a corporation has issued shares, an amendment to the articles
555 of incorporation shall be adopted in the following manner:

556 (2) (a) Except as provided in s. ~~607.1002~~, s. 607.10025,
557 s. ~~and~~ 607.1008, or ~~and~~, with respect to restatements that do
558 not require shareholder approval, s. 607.1007, the amendment
559 shall then be approved by the shareholders.

560 (4) If the amendment is required to be approved by the
561 shareholders, and the approval is to be given at a meeting, the
562 corporation must notify each shareholder, whether or not
563 entitled to vote, of the meeting of shareholders at which the
564 amendment is to be submitted for approval. The notice must be
565 given in accordance with s. 607.0705; must state that the
566 purpose, or one of the purposes, of the meeting is to consider
567 the amendment; and must contain or be accompanied by a copy of
568 the amendment.

569 (5) Unless this chapter, the articles of incorporation, or
570 the board of directors, acting pursuant to subsection (3),
571 requires a greater vote or a greater quorum, the approval of the
572 amendment requires the approval of the shareholders at a meeting
573 at which a quorum exists consisting of at least a majority of
574 the shares entitled to be cast on the amendment ~~exists~~, and, if
575 any class or series of shares is entitled to vote as a separate
576 group on the amendment, except as provided in s. 607.1004(3),
577 the approval of each such separate voting group at a meeting at
578 which a quorum of the voting group exists consisting of at least
579 a majority of the votes entitled to be cast on the amendment by
580 that voting group.

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581 Section 28. Subsections (1) and (6) of section 607.1102,
582 Florida Statutes, are amended to read:

583 607.1102 Share exchange.—

584 (1) By complying with this chapter, including adopting a
585 plan of share exchange in accordance with subsection (3) and
586 complying with s. 607.1103:

587 (a) A domestic corporation may acquire all of the shares or
588 one or more classes or series of shares or rights to acquire
589 shares of one or more classes or series of shares or rights to
590 acquire shares of another domestic or foreign corporation, or
591 all of the eligible interests of one or more classes or series
592 of interests of a domestic or foreign eligible entity, or any
593 combination of the foregoing, pursuant to a plan of share
594 exchange, in exchange for:

595 1. Shares or other securities.

596 2. Eligible interests.

597 3. Obligations.

598 4. Rights to acquire shares, other securities, or eligible
599 interests.

600 5. Cash.

601 6. Other property.

602 7. Any combination of the foregoing; or

603 (b) All of the shares of one or more classes or series of
604 shares or rights to acquire shares of a domestic corporation may
605 be acquired by another domestic or foreign eligible entity,
606 pursuant to a plan of share exchange, in exchange for:

607 1. Shares or other securities.

608 2. Eligible interests.

609 3. Obligations.

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610 4. Rights to acquire shares, other securities, or eligible
611 interests.

612 5. Cash.

613 6. Other property.

614 7. Any combination of the foregoing.

615 (6) A plan of share exchange may be amended only with the
616 consent of each party to the share exchange, except as provided
617 in the plan. A domestic eligible entity may approve an amendment
618 to a plan:

619 (a) In the same manner as the plan was approved, if the
620 plan does not provide for the manner in which it may be amended;
621 or

622 (b) In the manner provided in the plan, except that
623 shareholders, members, or interest holders that were entitled to
624 vote on or consent to approval of the plan are entitled to vote
625 on or consent to any amendment of the plan that will change:

626 1. The amount or kind of shares or other securities;
627 eligible interests; obligations; rights to acquire shares, other
628 securities, or eligible interests; cash; ~~or~~ other property; or
629 any combination of the foregoing, to be received under the plan
630 by the shareholders, members, or interest holders of the
631 acquired eligible entity; or

632 2. Any of the other terms or conditions of the plan if the
633 change would adversely affect such shareholders, members, or
634 interest holders in any material respect.

635 Section 29. Section 607.1103, Florida Statutes, is amended
636 to read:

637 607.1103 Action on a plan of merger or share exchange.—In
638 the case of a domestic corporation that is a party to a merger

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639 or is the acquired eligible entity in a share exchange, the plan
640 of merger or the plan of share exchange must be adopted in the
641 following manner:

642 (1) The plan of merger or the plan of share exchange shall
643 first be adopted by the board of directors of such domestic
644 corporation.

645 (2) (a) Except as provided in subsections (8), (10), and
646 (11), and in ss. 607.11035 and 607.1104, the plan of merger or
647 the plan of share exchange shall then be adopted by the
648 shareholders.

649 (b) In submitting the plan of merger or the plan of share
650 exchange to the shareholders for approval, the board of
651 directors shall recommend that the shareholders approve the
652 plan, or in the case of an offer referred to in s.
653 607.11035(1)(b), that the shareholders tender their shares to
654 the offeror in response to the offer, unless:

655 1. The board of directors makes a determination that
656 because of conflicts of interest or other special circumstances,
657 it should not make such a recommendation; or

658 2. Section 607.0826 applies.

659 (c) If either subparagraph (b)1. or subparagraph (b)2.
660 applies, the board shall inform the shareholders of the basis
661 for its so proceeding without such recommendation.

662 (3) The board of directors may set conditions for the
663 approval of the proposed merger or share exchange by the
664 shareholders or the effectiveness of the plan of merger or the
665 plan of share exchange.

666 (4) If the plan of merger or the plan of share exchange is
667 required to be approved by the shareholders, and if the approval

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668 is to be given at a meeting, the corporation shall notify each
669 shareholder, regardless of whether entitled to vote, of the
670 meeting of shareholders at which the plan is submitted for
671 approval in accordance with s. 607.0705. The notice shall also
672 state that the purpose, or one of the purposes, of the meeting
673 is to consider the plan of merger or the plan of share exchange,
674 regardless of whether or not the meeting is an annual or a
675 special meeting, and contain or be accompanied by a copy of the
676 plan. If the corporation is to be merged into an existing
677 foreign or domestic eligible entity, the notice must also
678 include or be accompanied by a copy of the articles of
679 incorporation and bylaws or the organic rules of that eligible
680 entity into which the corporation is to be merged. If the
681 corporation is to be merged with a domestic or foreign eligible
682 entity and a new domestic or foreign eligible entity is to be
683 created pursuant to the merger, the notice must include or be
684 accompanied by a copy of the articles of incorporation and
685 bylaws or the organic rules of the new eligible entity.
686 Furthermore, if applicable, the notice shall contain a clear and
687 concise statement that, if the plan of merger or share exchange
688 is effected, shareholders dissenting therefrom may be entitled,
689 if they comply with the provisions of this chapter regarding
690 appraisal rights, to be paid the fair value of their shares, and
691 shall be accompanied by a copy of ss. 607.1301-607.1340.

692 (5) Unless this chapter, the articles of incorporation, or
693 the board of directors (acting pursuant to subsection (3))
694 requires a greater vote or a greater quorum in the respective
695 case, approval of the plan of merger or the plan of share
696 exchange shall require the approval of the shareholders at a

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697 meeting at which a quorum exists by a majority of the votes
 698 entitled to be cast on the plan, and, if any class or series of
 699 shares is entitled to vote as a separate voting group on the
 700 plan of merger or the plan of share exchange, the approval of
 701 each such separate voting group at a meeting at which a quorum
 702 of the voting group is present by a majority of the votes
 703 entitled to be cast on the merger or share exchange by that
 704 voting group.

705 (6) (a) Subject to subsection (7), voting by a class or
 706 series as a separate voting group is required on a plan of
 707 merger:

708 1. By each class or series of shares of the corporation
 709 that would be entitled to vote as a separate voting group on any
 710 provision in the plan which, if such provision had been
 711 contained in a proposed amendment to the articles of
 712 incorporation of a surviving corporation, would have entitled
 713 the class or series to vote as a separate voting group on the
 714 proposed amendment under s. 607.1004.~~7-0#~~

715 2. If the plan contains a provision that would allow the
 716 plan to be amended to include the type of amendment to the
 717 articles of incorporation referenced in subparagraph 1., by each
 718 class or series of shares of the corporation that would have
 719 been entitled to vote as a separate voting group on any such
 720 amendment to the articles of incorporation.~~7-0#~~

721 3. By each class or series of shares of the corporation
 722 that is to be converted under the plan of merger into shares;
 723 other securities; eligible interests; obligations; rights to
 724 acquire shares, other securities, or eligible interests; cash;
 725 property; or any combination of the foregoing.~~7-0#~~

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726 4. If the plan contains a provision that would allow the
 727 plan to be amended to convert other classes or series of shares
 728 of the corporation, by each class or series of shares of the
 729 corporation that would have been entitled to vote as a separate
 730 voting group if the plan were to be so amended.

731 (b) Subject to subsection (7), voting by a class or series
 732 as a separate voting group is required on a plan of share
 733 exchange:

734 1. By each class or series that is to be exchanged in the
 735 exchange, with each class or series constituting a separate
 736 voting group.~~7-0#~~

737 2. If the plan contains a provision that would allow the
 738 plan to be amended to include the type of amendment to the
 739 articles of incorporation referenced in subparagraph (a)1., by
 740 each class or series of shares of the corporation that would
 741 have been entitled to vote as a separate voting group on any
 742 such amendment to the articles of incorporation.

743 (c) Subject to subsection (7), voting by a class or series
 744 as a separate voting group is required on a plan of merger or a
 745 plan of share exchange if the group is entitled under the
 746 articles of incorporation to vote as a separate voting group to
 747 approve the plan of merger or the plan of share exchange,
 748 respectively.

749 (7) The articles of incorporation may expressly limit or
 750 eliminate the separate voting rights provided in any one or more
 751 of subparagraphs (6) (a)3. and 4. and ~~subparagraph (6) (a)3.~~
 752 ~~subparagraph (6) (a)4., or~~ subparagraph (6) (b)1. as to any class
 753 or series of shares, except when the plan of merger or the plan
 754 for share exchange:

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755 (a) Includes what is or would be, in effect, an amendment
 756 subject to any one or more of subparagraphs (6) (a)1. and 2. and
 757 (6) (b)2.; and
 758 (b) Will not affect a substantive business combination.
 759 (8) Unless the corporation's articles of incorporation
 760 provide otherwise, approval by the corporation's shareholders of
 761 a plan of merger is not required if:
 762 (a) The corporation will survive the merger;
 763 (b) The articles of incorporation of the surviving
 764 corporation will not differ (except for amendments enumerated in
 765 s. 607.1002) from its articles of incorporation before the
 766 merger; and
 767 (c) Each shareholder of the surviving corporation whose
 768 shares were outstanding immediately prior to the effective date
 769 of the merger will hold the same number of shares, with
 770 identical designations, preferences, rights, and limitations,
 771 immediately after the effective date of the merger.
 772 (9) If, as a result of a merger or share exchange, one or
 773 more shareholders of a domestic corporation would become subject
 774 to new interest holder liability, approval of the plan of merger
 775 or the plan of share exchange shall require, in connection with
 776 the transaction, the signing by each such shareholder of a
 777 separate written consent to become subject to such new interest
 778 holder liability, unless in the case of a shareholder that
 779 already has interest holder liability with respect to such
 780 domestic corporation:
 781 (a) The new interest holder liability is with respect to a
 782 domestic or foreign corporation (which may be a different or the
 783 same domestic corporation in which the person is a shareholder);

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784 and
 785 (b) The terms and conditions of the new interest holder
 786 liability are substantially identical to those of the existing
 787 interest holder liability (other than for changes that reduce or
 788 eliminate such interest holder liability).
 789 (10) Unless the articles of incorporation otherwise
 790 provide, approval of a plan of share exchange by the
 791 shareholders of a domestic corporation is not required if the
 792 corporation is the acquiring eligible entity in the share
 793 exchange.
 794 (11) Unless the articles of incorporation otherwise
 795 provide, shares in the acquired eligible entity not to be
 796 exchanged under the plan of share exchange are not entitled to
 797 vote on the plan.
 798 Section 30. Subsection (1) of section 607.11035, Florida
 799 Statutes, is amended to read:
 800 607.11035 Shareholder approval of a merger or share
 801 exchange in connection with a tender offer.—
 802 (1) Unless the articles of incorporation otherwise provide,
 803 shareholder approval of a plan of merger or a plan of share
 804 exchange under s. 607.1103(1) (b) is not required if:
 805 (a) The plan of merger or share exchange expressly:
 806 1. Permits or requires the merger or share exchange to be
 807 effected under this section; and
 808 2. Provides that, if the merger or share exchange is to be
 809 effected under this section, the merger or share exchange will
 810 be effected as soon as practicable following the satisfaction of
 811 the requirement in paragraph (f);
 812 (b) Another party to the merger, the acquiring eligible

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813 entity in the share exchange, or a parent of another party to
 814 the merger or the parent of the acquiring eligible entity in the
 815 share exchange, makes an offer to purchase, on the terms
 816 provided in the plan of merger or the plan of share exchange,
 817 any and all of the outstanding shares of the corporation that,
 818 absent this section, would be entitled to vote on the plan of
 819 merger or the plan of share exchange, except that the offer may
 820 exclude shares of the corporation that are owned at the
 821 commencement of the offer by the corporation, the offeror, or
 822 any parent of the offeror, or by any wholly owned subsidiary of
 823 any of the foregoing;

824 (c) The offer discloses that the plan of merger or the plan
 825 of share exchange provides that the merger or share exchange
 826 will be effected as soon as practicable following the
 827 satisfaction of the requirement in paragraph (f) and that the
 828 shares of the corporation that are not tendered in response to
 829 the offer will be treated pursuant to paragraph (h);

830 (d) The offer remains open for at least 10 days;

831 (e) The offeror purchases all shares properly tendered in
 832 response to the offer and not properly withdrawn;

833 (f) The shares listed below are collectively entitled to
 834 cast at least the minimum number of votes on the merger or share
 835 exchange that, absent this section, would be required by this
 836 chapter and by the articles of incorporation for the approval of
 837 the merger or share exchange by the shareholders and by each
 838 other voting group entitled to vote on the merger or share
 839 exchange at a meeting at which all shares entitled to vote on
 840 the approval were present and voted:

841 1. Shares purchased by the offeror in accordance with the

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842 offer;

843 2. Shares otherwise owned by the offeror or by any parent
 844 of the offeror or any wholly owned subsidiary of any of the
 845 foregoing; and

846 3. Shares subject to an agreement that provides that they
 847 are to be transferred, contributed, or delivered to the offeror,
 848 any parent of the offeror, or any wholly owned subsidiary of any
 849 of the foregoing in exchange for shares or eligible interests in
 850 such offeror, parent, or subsidiary;

851 (g) The offeror or a wholly owned subsidiary of the offeror
 852 merges with or into, or effects a share exchange in which it
 853 acquires shares of, the corporation; and

854 (h) Each outstanding share of each class or series of
 855 shares of the corporation that the offeror is offering to
 856 purchase in accordance with the offer, and that is not purchased
 857 in accordance with the offer, is to be converted in the merger
 858 into, or into the right to receive, or is to be exchanged in the
 859 share exchange for, or for the right to receive, the same amount
 860 and kind of securities, eligible interests, obligations, rights,
 861 cash, other property, or any combination of the foregoing, to be
 862 paid or exchanged in accordance with the offer for each share of
 863 that class or series of shares that is tendered in response to
 864 the offer, except that shares of the corporation that are owned
 865 by the corporation or that are described in subparagraph (f)2.
 866 or subparagraph (f)3. need not be converted into or exchanged
 867 for the consideration described in this paragraph.

868 Section 31. Subsection (1) of section 607.11045, Florida
 869 Statutes, is amended to read:

870 607.11045 Holding company formation by merger by certain

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871 corporations.—

872 (1) This section applies only to a corporation that has
873 shares registered pursuant to s. 12 of the Securities Exchange
874 Act of 1934, or held of record by not fewer than 2,000
875 shareholders.

876 Section 32. Subsection (1) of section 607.1106, Florida
877 Statutes, is amended to read:

878 607.1106 Effect of merger or share exchange.—

879 (1) When a merger becomes effective:

880 (a) The domestic or foreign eligible entity that is
881 designated in the plan of merger as the survivor continues or
882 comes into existence, as the case may be;

883 (b) The separate existence of every domestic or foreign
884 eligible entity that is a party to the merger, other than the
885 survivor, ceases;

886 (c) All real property and other property, including any
887 interest therein and all title thereto, owned by, and every
888 contract right possessed by, each domestic or foreign eligible
889 entity that is a party to the merger, other than the survivor,
890 become the property and contract rights of and become vested in
891 the survivor, without transfer, reversion, or impairment;

892 (d) All debts, obligations, and other liabilities of each
893 domestic or foreign eligible entity that is a party to the
894 merger, other than the survivor, become debts, obligations, and
895 liabilities of the survivor;

896 (e) The name of the survivor may be, but need not be,
897 substituted in any pending proceeding for the name of any party
898 to the merger whose separate existence ceased in the merger;

899 (f) Neither the rights of creditors nor any liens upon the

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900 property of any corporation party to the merger shall be
901 impaired by such merger;

902 (g) If the survivor is a domestic eligible entity, the
903 articles of incorporation and bylaws or the organic rules of the
904 survivor are amended to the extent provided in the plan of
905 merger;

906 (h) The articles of incorporation and bylaws or the organic
907 rules of a survivor that is a domestic eligible entity and is
908 created by the merger become effective;

909 (i) The shares, obligations, and other securities (and the
910 rights to acquire shares, obligations, or other securities) of
911 each domestic or foreign corporation party to the merger, and
912 the eligible interests in any other eligible entity that is a
913 party to the merger, that are to be converted in accordance with
914 the terms of the merger into shares or other securities;
915 eligible interests; obligations; rights to acquire shares, other
916 securities, or eligible interests; cash; other property; or any
917 combination of the foregoing, are converted, and the former
918 holders of such shares, obligations, other securities, and
919 eligible interests (and the rights to acquire shares,
920 obligations, other securities, or other eligible interests) are
921 entitled only to the rights provided to them by those terms of
922 the merger or to any rights they may have under s. 607.1302 or
923 under the organic law governing the eligible entity;

924 (j) Except as provided by law or the plan of merger, all
925 the rights, privileges, franchises, and immunities of each
926 eligible entity that is a party to the merger, other than the
927 survivor, become the rights, privileges, franchises, and
928 immunities of the survivor; and

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929 (k) If the survivor exists before the merger:
 930 1. All the property and contract rights of the survivor
 931 remain its property and contract rights without transfer,
 932 reversion, or impairment;
 933 2. The survivor remains subject to all of its debts,
 934 obligations, and other liabilities; and
 935 3. Except as provided by law or the plan of merger, the
 936 survivor continues to hold all of its rights, privileges,
 937 franchises, and immunities.

938 Section 33. Subsection (3) of section 607.11920, Florida
 939 Statutes, is amended to read:
 940 607.11920 Domestication.—
 941 (3) In a domestication under subsection (2), the
 942 domesticating eligible entity must enter into a plan of
 943 domestication. The plan of domestication must include:
 944 (a) The name of the domesticating corporation;
 945 (b) The name and jurisdiction of formation of the
 946 domesticated corporation;
 947 (c) The manner and basis of reclassifying the shares and
 948 rights to acquire shares of the domesticating corporation into
 949 shares or other securities, obligations, rights to acquire
 950 shares or other securities, cash, other property, or any
 951 combination of the foregoing;
 952 (d) The proposed organic rules of the domesticated
 953 corporation which must be in writing; and
 954 (e) The other terms and conditions of the domestication.

955 Section 34. Subsections (5) and (6) of section 607.11921,
 956 Florida Statutes, are amended to read:
 957 607.11921 Action on a plan of domestication.—In the case of

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958 a domestication of a domestic corporation into a foreign
 959 jurisdiction, the plan of domestication shall be adopted in the
 960 following manner:
 961 (5) Unless this chapter, the articles of incorporation, or
 962 the board of directors acting pursuant to subsection (3)~~7~~
 963 require a greater vote or a greater quorum in the respective
 964 case, approval of the plan of domestication requires:
 965 (a) The approval of the shareholders at a meeting at which
 966 a quorum exists consisting of a majority of the votes entitled
 967 to be cast on the plan; and
 968 (b) Except as provided in subsection (6), the approval of
 969 each class or series of shares voting as a separate voting group
 970 at a meeting at which a quorum of the voting group exists
 971 consisting of a majority of the votes entitled to be cast on the
 972 plan by that voting group.

973 (6) The articles of incorporation may expressly limit or
 974 eliminate the separate voting rights provided in paragraph
 975 (5) (b) as to any class or series of shares, except when the
 976 public organic rules of the foreign corporation resulting from
 977 the domestication include what would be in effect an amendment
 978 that would entitle the class or series to vote as a separate
 979 voting group under s. 607.1004 if it were a proposed amendment
 980 of the articles of incorporation of a domestic domesticating
 981 corporation.

982 Section 35. Subsection (1) of section 607.11923, Florida
 983 Statutes, is amended to read:
 984 607.11923 Amendment of a plan of domestication;
 985 abandonment.—
 986 (1) A plan of domestication of a domestic corporation

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987 adopted under s. 607.11920(3) may be amended:

988 (a) In the same manner as the plan of domestication was
989 approved, if the plan does not provide for the manner in which
990 it may be amended; or

991 (b) In the manner provided in the plan of domestication,
992 except that a shareholder that was entitled to vote on or
993 consent to approval of the plan is entitled to vote on or
994 consent to any amendment of the plan that will change:

995 1. The amount or kind of shares or other securities;
996 obligations; rights to acquire shares or other securities, ~~or~~
997 ~~eligible interests~~; cash; other property; or any combination of
998 the foregoing, to be received by any of the shareholders or
999 holders of rights to acquire shares or other securities, ~~or~~
1000 ~~eligible interests~~ of the domesticating corporation under the
1001 plan;

1002 2. The organic rules of the domesticated corporation that
1003 are to be in writing and that will be in effect immediately
1004 after the domestication becomes effective, except for changes
1005 that do not require approval of the shareholders of the
1006 domesticated corporation under its organic rules as set forth in
1007 the plan of domestication; or

1008 3. Any of the other terms or conditions of the plan, if the
1009 change would adversely affect the shareholder in any material
1010 respect.

1011 Section 36. Subsection (1) and paragraph (d) of subsection
1012 (3) of section 607.11924, Florida Statutes, are amended to read:
1013 607.11924 Effect of domestication.—

1014 (1) When a domestication becomes effective:

1015 (a) All real property and other property owned by the

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1016 domesticating corporation, including any interests therein and
1017 all title thereto, and every contract right possessed by the
1018 domesticating corporation, are the property and contract rights
1019 of the domesticated corporation without transfer, reversion, or
1020 impairment;

1021 (b) All debts, obligations, and other liabilities of the
1022 domesticating corporation are the debts, obligations, and other
1023 liabilities of the domesticated corporation;

1024 (c) The name of the domesticated corporation may be, but
1025 need not be, substituted for the name of the domesticating
1026 corporation in any pending proceeding;

1027 (d) The organic rules of the domesticated corporation
1028 become effective;

1029 (e) The shares and other securities (and the rights to
1030 acquire shares or other securities) or equity interests of the
1031 domesticating corporation are reclassified into shares, ~~or~~ other
1032 securities, obligations, rights to acquire shares or other
1033 securities, cash, ~~or~~ other property, or any combination of the
1034 foregoing, in accordance with the terms of the domestication,
1035 and the shareholders or equity owners of the domesticating
1036 corporation are entitled only to the rights provided to them by
1037 those terms and to any appraisal rights they may have under the
1038 organic law of the domesticating corporation; and

1039 (f) The domesticated corporation is:

1040 1. Incorporated under and subject to the organic law of the
1041 domesticated corporation;

1042 2. The same corporation, without interruption, as the
1043 domesticating corporation; and

1044 3. Deemed to have been incorporated or formed on the date

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1045 the domesticating corporation was originally incorporated.

1046 (3) Except as otherwise provided in the organic law or
1047 organic rules of a domesticating foreign corporation, the
1048 interest holder liability of a shareholder or equity holder in a
1049 foreign corporation that is domesticated into this state who had
1050 interest holder liability in respect of such domesticating
1051 corporation before the domestication becomes effective shall be
1052 as follows:

1053 (d) The shareholder or equity holder shall ~~may~~ not, by
1054 reason of such prior interest holder liability, have interest
1055 holder liability with respect to any interest holder liabilities
1056 that are incurred after the domestication becomes effective.

1057 Section 37. Paragraph (a) of subsection (2) and subsection
1058 (5) of section 607.11932, Florida Statutes, are amended to read:
1059 607.11932 Action on a plan of conversion.—In the case of a
1060 conversion of a domestic corporation to a domestic or foreign
1061 eligible entity other than a domestic corporation, the plan of
1062 conversion must be adopted in the following manner:

1063 (2) (a) The plan of conversion must ~~shall~~ then be approved
1064 by the shareholders of such domestic corporation.

1065 (5) Unless this chapter, the articles of incorporation, or
1066 the board of directors acting pursuant to subsection (3) ~~r~~
1067 require a greater vote or a greater quorum in the respective
1068 case, approval of the plan of conversion requires:

1069 (a) The approval of the shareholders at a meeting at which
1070 a quorum exists consisting of a majority of the votes entitled
1071 to be cast on the plan; and

1072 (b) The approval of each class or series of shares voting
1073 as a separate voting group at a meeting at which a quorum of the

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1074 voting group exists consisting of a majority of the votes
1075 entitled to be cast on the plan by that voting group.

1076 Section 38. Paragraph (a) of subsection (4) of section
1077 607.11933, Florida Statutes, is amended to read:

1078 607.11933 Articles of conversion; effectiveness.—

1079 (4) (a) If the ~~a~~ converted eligible entity is a domestic
1080 eligible entity, the conversion becomes effective when the
1081 articles of conversion are effective.

1082 Section 39. Subsection (1) and paragraph (d) of subsection
1083 (4) of section 607.11935, Florida Statutes, are amended to read:
1084 607.11935 Effect of conversion.—

1085 (1) When a conversion becomes effective:

1086 (a) All real property and other property owned by,
1087 including any interest therein and all title thereto, and every
1088 contract right possessed by, the converting eligible entity
1089 remain the property and contract rights of the converted
1090 eligible entity without transfer, reversion, or impairment;

1091 (b) All debts, obligations, and other liabilities of the
1092 converting eligible entity remain the debts, obligations, and
1093 other liabilities of the converted eligible entity;

1094 (c) The name of the converted eligible entity may be, but
1095 need not be, substituted for the name of the converting eligible
1096 entity in any pending action or proceeding;

1097 (d) If the converted eligible entity is a filing entity, a
1098 domestic corporation, or a domestic or foreign nonprofit
1099 corporation, its public organic record and its private organic
1100 rules become effective;

1101 (e) If the converted eligible entity is a nonfiling entity,
1102 its private organic rules become effective;

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1103 (f) If the converted eligible entity is a limited liability
1104 partnership, the filing required to become a limited liability
1105 partnership and its private organic rules become effective;

1106 (g) The shares, obligations, eligible interests, and other
1107 securities (and the rights to acquire shares, obligations,
1108 eligible interests, or other securities) and obligations of the
1109 converting eligible entity are reclassified into shares, other
1110 securities, eligible interests, obligations, rights to acquire
1111 shares, ~~or other securities, or~~ eligible interests, ~~obligations,~~
1112 cash, other property, or any combination of the foregoing
1113 ~~thereof~~, in accordance with the terms of the conversion, and the
1114 shareholders or interest holders of the converting eligible
1115 entity are entitled only to the rights provided to them by those
1116 terms and to any rights they may have under s. 607.1302 or under
1117 the organic law of the converting eligible entity; and

1118 (h) The converted eligible entity is:

1119 1. Deemed to be incorporated or organized under and subject
1120 to the organic law of the converted eligible entity;

1121 2. Deemed to be the same entity without interruption as the
1122 converting eligible entity; and

1123 3. Deemed to have been incorporated or otherwise organized
1124 on the date that the converting eligible entity was originally
1125 incorporated or organized.

1126 (4) Except as otherwise provided in the organic law or the
1127 organic rules of the domestic or foreign eligible entity, the
1128 interest holder liability of an interest holder in a converting
1129 eligible entity that converts to a domestic corporation who had
1130 interest holder liability in respect of such converting eligible
1131 entity before the conversion becomes effective shall be as

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1132 follows:

1133 (d) The eligible interest holder shall ~~may~~ not, by reason
1134 of such prior interest holder liability, have interest holder
1135 liability with respect to any interest holder liabilities that
1136 arise after the conversion becomes effective.

1137 Section 40. Subsection (4) of section 607.1202, Florida
1138 Statutes, is amended to read:

1139 607.1202 Shareholder approval of certain dispositions.—

1140 (4) If the disposition is required to be approved by the
1141 shareholders under subsection (1) and if the approval is to be
1142 given at the meeting, the corporation shall notify each
1143 shareholder, regardless of whether entitled to vote, of the
1144 meeting of shareholders at which the disposition is to be
1145 submitted for approval. The notice must state that the purpose,
1146 or one of the purposes, of the meeting is to consider the
1147 disposition and shall contain a description of the disposition
1148 and the consideration to be received by the corporation.
1149 Furthermore, the notice shall contain a clear and concise
1150 statement that, if the transaction is effected, shareholders
1151 dissenting therefrom are or may be entitled, if they comply with
1152 the provisions of this chapter ~~act~~ regarding appraisal rights,
1153 to be paid the fair value of their shares and such notice must
1154 be accompanied by a copy of ss. 607.1301-607.1340.

1155 Section 41. Subsection (2) and paragraph (a) of subsection
1156 (6) of section 607.1301, Florida Statutes, are amended to read:

1157 607.1301 Appraisal rights; definitions.—The following
1158 definitions apply to ss. 607.1301-607.1340:

1159 (2) "Affiliate" means a person that directly or indirectly
1160 through one or more intermediaries controls, is controlled by,

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1161 or is under common control with, another person or is a senior
 1162 executive of such person. For purposes of paragraph (6) (a), a
 1163 person is deemed to be an affiliate of its senior executives.

1164 (6) "Interested transaction" means a corporate action
 1165 described in s. 607.1302(1), other than a merger pursuant to s.
 1166 607.1104, involving an interested person in which any of the
 1167 shares or assets of the corporation are being acquired or
 1168 converted. As used in this definition:

1169 (a) "Interested person" means a person, or an affiliate of
 1170 a person, who at any time during the 1-year period immediately
 1171 preceding approval by the board of directors of the corporate
 1172 action:

1173 1. Was the beneficial owner of 20 percent or more of the
 1174 voting power of the corporation, other than as owner of excluded
 1175 shares;

1176 2. Had the power, contractually or otherwise, other than as
 1177 owner of excluded shares, to cause the appointment or election
 1178 of 25 percent or more of the directors to the board of directors
 1179 of the corporation; or

1180 3. Was a senior executive or director of the corporation or
 1181 a senior executive of any affiliate of the corporation, and will
 1182 receive, as a result of the corporate action, a financial
 1183 benefit not generally available to other shareholders as such,
 1184 other than:

1185 a. Employment, consulting, retirement, or similar benefits
 1186 established separately and not as part of or in contemplation of
 1187 the corporate action;

1188 b. Employment, consulting, retirement, or similar benefits
 1189 established in contemplation of, or as part of, the corporate

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1190 action that are not more favorable than those existing before
 1191 the corporate action or, if more favorable, that have been
 1192 approved on behalf of the corporation in the same manner as is
 1193 provided in s. 607.0832; or

1194 c. In the case of a director of the corporation who, in the
 1195 corporate action, will become a director or governor of the
 1196 acquirer or any of its affiliates ~~in the corporate action,~~
 1197 rights and benefits as a director or governor that are provided
 1198 on the same basis as those afforded by the acquirer generally to
 1199 other directors or governors of such entity or such affiliate.

1200 Section 42. Subsection (1) of section 607.1302, Florida
 1201 Statutes, is amended to read:

1202 607.1302 Right of shareholders to appraisal.—

1203 (1) A shareholder of a domestic corporation is entitled to
 1204 appraisal rights, and to obtain payment of the fair value of
 1205 that shareholder's shares, in the event of any of the following
 1206 corporate actions:

1207 (a) Consummation of a domestication or a conversion of such
 1208 corporation pursuant to s. 607.11921 or s. 607.11932, as
 1209 applicable, if shareholder approval is required for the
 1210 domestication or the conversion;

1211 (b) Consummation of a merger to which such corporation is a
 1212 party:

1213 1. If shareholder approval is required for the merger under
 1214 s. 607.1103 or would be required but for s. 607.11035, except
 1215 that appraisal rights shall not be available to any shareholder
 1216 of the corporation with respect to shares of any class or series
 1217 that remains outstanding after consummation of the merger where
 1218 the terms of such class or series have not been materially

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1219 altered; or

1220 2. If such corporation is a subsidiary and the merger is
1221 governed by s. 607.1104;

1222 (c) Consummation of a share exchange to which the
1223 corporation is a party as the corporation whose shares will be
1224 acquired, except that appraisal rights are not available to any
1225 shareholder of the corporation with respect to any class or
1226 series of shares of the corporation that is not acquired in the
1227 share exchange;

1228 (d) Consummation of a disposition of assets pursuant to s.
1229 607.1202 if the shareholder is entitled to vote on the
1230 disposition, including a sale in dissolution, except that
1231 appraisal rights shall not be available to any shareholder of
1232 the corporation with respect to shares or any class or series
1233 if:

1234 1. Under the terms of the corporate action approved by the
1235 shareholders there is to be distributed to shareholders in cash
1236 the corporation's net assets, in excess of a reasonable amount
1237 reserved to meet claims of the type described in ss. 607.1406
1238 and 607.1407, within 1 year after the shareholders' approval of
1239 the action and in accordance with their respective interests
1240 determined at the time of distribution; and

1241 2. The disposition of assets is not an interested
1242 transaction;

1243 (e) An amendment of the articles of incorporation with
1244 respect to a class or series of shares which reduces the number
1245 of shares of a class or series owned by the shareholder to a
1246 fraction of a share if the corporation has the obligation or the
1247 right to repurchase the fractional share so created;

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1248 (f) Any other merger, share exchange, disposition of
1249 assets, or amendment to the articles of incorporation, in each
1250 case to the extent provided by the articles of incorporation,
1251 bylaws, or a resolution of the board of directors, except that
1252 no bylaw or board resolution providing for appraisal rights may
1253 be amended or otherwise altered except by shareholder approval;

1254 (g) An amendment to the articles of incorporation or bylaws
1255 of the corporation, the effect of which is to alter or abolish
1256 voting or other rights with respect to such interest in a manner
1257 that is adverse to the interest of such shareholder, except as
1258 the right may be affected by the voting or other rights of new
1259 shares then being authorized of a new class or series of shares;

1260 (h) An amendment to the articles of incorporation or bylaws
1261 of a corporation, the effect of which is to adversely affect the
1262 interest of the shareholder by altering or abolishing appraisal
1263 rights under this section;

1264 (i) With regard to a class of shares prescribed in the
1265 articles of incorporation prior to October 1, 2003, including
1266 any shares within that class subsequently authorized by
1267 amendment, any amendment of the articles of incorporation if the
1268 shareholder is entitled to vote on the amendment and if such
1269 amendment would adversely affect such shareholder by:

1270 1. Altering or abolishing any preemptive rights attached to
1271 any of his, ~~or~~ her, or its shares;

1272 2. Altering or abolishing the voting rights pertaining to
1273 any of his, ~~or~~ her, or its shares, except as such rights may be
1274 affected by the voting rights of new shares then being
1275 authorized of any existing or new class or series of shares;

1276 3. Effecting an exchange, cancellation, or reclassification

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1277 of any of his, ~~or~~ her, or its shares, when such exchange,
 1278 cancellation, or reclassification would alter or abolish the
 1279 shareholder's voting rights or alter his, ~~or~~ her, or its
 1280 percentage of equity in the corporation, or effecting a
 1281 reduction or cancellation of accrued dividends or other
 1282 arrearages in respect to such shares;

1283 4. Reducing the stated redemption price of any of the
 1284 shareholder's redeemable shares, altering or abolishing any
 1285 provision relating to any sinking fund for the redemption or
 1286 purchase of any of his, ~~or~~ her, or its shares, or making any of
 1287 his, ~~or~~ her, or its shares subject to redemption when they are
 1288 not otherwise redeemable;

1289 5. Making noncumulative, in whole or in part, dividends of
 1290 any of the shareholder's preferred shares which had theretofore
 1291 been cumulative;

1292 6. Reducing the stated dividend preference of any of the
 1293 shareholder's preferred shares; or

1294 7. Reducing any stated preferential amount payable on any
 1295 of the shareholder's preferred shares upon voluntary or
 1296 involuntary liquidation;

1297 (j) An amendment of the articles of incorporation of a
 1298 social purpose corporation to which s. 607.504 or s. 607.505
 1299 applies;

1300 (k) An amendment of the articles of incorporation of a
 1301 benefit corporation to which s. 607.604 or s. 607.605 applies;

1302 (l) A merger, domestication, conversion, or share exchange
 1303 of a social purpose corporation to which s. 607.504 applies; or

1304 (m) A merger, domestication, conversion, or share exchange
 1305 of a benefit corporation to which s. 607.604 applies.

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1306 Section 43. Subsection (1) of section 607.1303, Florida
 1307 Statutes, is amended to read:

1308 607.1303 Assertion of rights by nominees and beneficial
 1309 owners.—

1310 (1) A record shareholder may assert appraisal rights as to
 1311 fewer than all the shares registered in the record shareholder's
 1312 name but owned by a beneficial shareholder or a voting trust
 1313 beneficial owner only if the record shareholder objects with
 1314 respect to all shares of the class or series owned by the
 1315 beneficial shareholder or the a voting trust beneficial owner
 1316 and notifies the corporation in writing of the name and address
 1317 of each beneficial shareholder or voting trust beneficial owner
 1318 on whose behalf appraisal rights are being asserted. The rights
 1319 of a record shareholder who asserts appraisal rights for only
 1320 part of the shares held of record in the record shareholder's
 1321 name under this subsection shall be determined as if the shares
 1322 as to which the record shareholder objects and the record
 1323 shareholder's other shares were registered in the names of
 1324 different record shareholders.

1325 Section 44. Subsection (1) of section 607.1320, Florida
 1326 Statutes, is amended to read:

1327 607.1320 Notice of appraisal rights.—

1328 (1) If a proposed corporate action described in s.
 1329 607.1302(1) is to be submitted to a vote at a shareholders'
 1330 meeting, the meeting notice (or, where no approval of such
 1331 action is required pursuant to s. 607.11035, the offer made
 1332 pursuant to s. 607.11035) ~~;~~ must state that the corporation has
 1333 concluded that shareholders are, are not, or may be entitled to
 1334 assert appraisal rights under this chapter. If the corporation

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1335 concludes that appraisal rights are or may be available, a copy
1336 of ss. 607.1301-607.1340 must accompany the meeting notice or
1337 offer sent to those record shareholders entitled to exercise
1338 appraisal rights.

1339 Section 45. Subsection (1) of section 607.1333, Florida
1340 Statutes, is amended to read:

1341 607.1333 Limitation on corporate payment.—

1342 (1) No payment shall be made to a shareholder seeking
1343 appraisal rights if, at the time of payment, the corporation is
1344 unable to meet the distribution standards of s. 607.06401. In
1345 such event, the shareholder shall, at the shareholder's option:

1346 (a) Withdraw his, ~~or~~ her, or its notice of intent to assert
1347 appraisal rights, which shall in such event be deemed withdrawn
1348 with the consent of the corporation; or

1349 (b) Retain his, ~~or~~ her, or its status as a claimant against
1350 the corporation and, if it is liquidated, be subordinated to the
1351 rights of creditors of the corporation, but have rights superior
1352 to the shareholders not asserting appraisal rights, and if the
1353 corporation is not liquidated, retain his, ~~or~~ her, or its right
1354 to be paid for the shares, which right the corporation shall be
1355 obliged to satisfy when the restrictions of this section do not
1356 apply.

1357 Section 46. Subsection (1) of section 607.1340, Florida
1358 Statutes, is amended to read:

1359 607.1340 Other remedies limited.—

1360 (1) A shareholder entitled to appraisal rights under this
1361 chapter may not challenge a completed corporate action for which
1362 appraisal rights are available unless such corporate action was
1363 either:

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1364 (a) Not authorized and approved in accordance with the
1365 applicable provisions of this chapter; or

1366 (b) Procured as a result of fraud, a material
1367 misrepresentation, or an omission of a material fact necessary
1368 to make statements made, in light of the circumstances in which
1369 they were made, not misleading.

1370 Section 47. Subsection (3) of section 607.1403, Florida
1371 Statutes, is amended to read:

1372 607.1403 Articles of dissolution.—

1373 (3) For purposes of ss. 607.1401-607.1410, the term
1374 "dissolved corporation" means a corporation whose articles of
1375 dissolution have become effective and includes a successor
1376 entity. Further, for the purposes of this subsection, the term
1377 "successor entity" includes a trust, receivership, or other
1378 legal entity governed by the laws of this state to which the
1379 remaining assets and liabilities of a dissolved corporation are
1380 transferred and which exists solely for the purposes of
1381 prosecuting and defending suits by or against the dissolved
1382 corporation, thereby enabling the dissolved corporation to
1383 settle and close the business of the dissolved corporation, to
1384 dispose of and convey the property of the dissolved corporation,
1385 to discharge the liabilities of the dissolved corporation, and
1386 to distribute to the dissolved corporation's shareholders any
1387 remaining assets, but not for the purpose of continuing the
1388 activities and affairs for which the dissolved corporation was
1389 organized.

1390 Section 48. Paragraph (a) of subsection (5) of section
1391 607.1406, Florida Statutes, is amended to read:

1392 607.1406 Known claims against dissolved corporation.—

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1393 (5) (a) For purposes of ss. 607.1401-607.1410, the term ~~this~~
 1394 ~~section~~, "known claims" means any claim or liability that, as of
 1395 the date of the giving of the written notice contemplated by
 1396 subsections (1) and (2):

1397 1. Has matured sufficiently on or prior to the effective
 1398 date of the dissolution to be legally capable of assertion
 1399 against the dissolved corporation; or

1400 2. Is unmatured as of the effective date of the dissolution
 1401 but will mature in the future solely based on the passage of
 1402 time.

1403 Section 49. Subsections (1) and (6) of section 607.1422,
 1404 Florida Statutes, are amended to read:

1405 607.1422 Reinstatement following administrative
 1406 dissolution.—

1407 (1) A corporation that is administratively dissolved under
 1408 s. 607.1420 or that was dissolved under former s. 607.1421
 1409 before January 1, 2020, may apply to the department for
 1410 reinstatement at any time after the effective date of
 1411 dissolution. The corporation must submit all fees and penalties
 1412 then owed by the corporation at the rates provided by law ~~laws~~
 1413 at the time the corporation applies for reinstatement, together
 1414 with an application for reinstatement prescribed and furnished
 1415 by the department, which is signed by both the registered agent
 1416 and an officer or director of the corporation and states:

1417 (a) The name of the corporation;

1418 (b) The street address of the corporation's principal
 1419 office and mailing address;

1420 (c) The date of the corporation's organization;

1421 (d) The corporation's federal employer identification

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1422 number or, if none, whether one has been applied for;

1423 (e) The name, title or capacity, and address of at least
 1424 one officer or director of the corporation; and

1425 (f) Additional information that is necessary or appropriate
 1426 to enable the department to carry out this chapter.

1427 (6) If the name of the dissolved corporation has been
 1428 lawfully assumed in this state by another eligible business
 1429 entity, the department shall require the dissolved corporation
 1430 to amend its articles of incorporation to change its name before
 1431 accepting its application for reinstatement.

1432 Section 50. Subsection (1), paragraph (b) of subsection
 1433 (3), and subsection (4) of section 607.1430, Florida Statutes,
 1434 are amended to read:

1435 607.1430 Grounds for judicial dissolution.—

1436 (1) A circuit court may dissolve a corporation or order
 1437 such other remedy as provided in s. 607.1434:

1438 (a) In a proceeding by the Department of Legal Affairs to
 1439 dissolve a corporation if it is established that:

1440 1. The corporation obtained its articles of incorporation
 1441 through fraud; or

1442 2. The corporation has continued to exceed or abuse the
 1443 authority conferred upon it by law.

1444
 1445 The enumeration in subparagraphs 1. and 2. of grounds for
 1446 involuntary dissolution does not exclude actions or special
 1447 proceedings by the Department of Legal Affairs or any state
 1448 official for the annulment or dissolution of a corporation for
 1449 other causes as provided in any other statute of this state;

1450 (b) In a proceeding by a shareholder to dissolve a

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1451 corporation if it is established that:

1452 1. The directors are deadlocked in the management of the
1453 corporate affairs, the shareholders are unable to break the
1454 deadlock, and:

1455 a. Irreparable injury to the corporation is threatened or
1456 being suffered;

1457 b. The business and affairs of the corporation can no
1458 longer be conducted to the advantage of the shareholders
1459 generally because of the deadlock; or

1460 c. Both sub-paragraphs a. and b.; or

1461 2. The shareholders are deadlocked in voting power and have
1462 failed to elect successors to directors whose terms have expired
1463 or would have expired upon qualification of their successors;

1464 3. The corporate assets are being misapplied or wasted,
1465 causing material injury to the corporation; or

1466 4. The directors or those in control of the corporation
1467 have acted, are acting, or are reasonably expected to act in a
1468 manner that is illegal or fraudulent;

1469 (c) In a proceeding by a creditor if it is established
1470 that:

1471 1. The creditor's claim has been reduced to judgment, the
1472 execution on the judgment returned unsatisfied, and the
1473 corporation is insolvent; or

1474 2. The corporation has admitted in writing that the
1475 creditor's claim is due and owing and the corporation is
1476 insolvent;

1477 (d) In a proceeding by the corporation to have its
1478 voluntary dissolution continued under court supervision; or

1479 (e) In a proceeding by a shareholder if the corporation has

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1480 abandoned its business and has failed within a reasonable period
1481 of time to liquidate and distribute its assets and dissolve.

1482 (3)

1483 (b) For purposes of As used in this section, the term
1484 "deadlock sale provision" means a provision in a shareholder
1485 agreement that complies with s. 607.0732, which is or may be
1486 applicable in the event of a deadlock among the directors or
1487 shareholders of the corporation, ~~which~~ neither the directors nor
1488 the shareholders, as applicable, of the corporation are able to
1489 break, ~~and~~ and which provides for a deadlock breaking mechanism,
1490 including, but not limited to:

1491 1. A redemption or a purchase and sale of shares or other
1492 equity securities;

1493 2. A governance change;

1494 3. A sale of the corporation or all or substantially all of
1495 the assets of the corporation; or

1496 4. A similar provision that, if initiated and effectuated,
1497 breaks the deadlock by causing the transfer of the shares or
1498 other equity securities, a governance change, or a sale of the
1499 corporation or all or substantially all of the corporation's
1500 assets.

1501 (4) A deadlock sale provision in a shareholder agreement
1502 ~~that which~~ which complies with s. 607.0732 which is not initiated and
1503 effectuated before the court enters an order of judicial
1504 dissolution under subparagraph (1)(b)1. or subparagraph
1505 (1)(b)2., as the case may be, or an order directing the purchase
1506 of petitioner's interest under s. 607.1436, does not adversely
1507 affect the rights of shareholders to seek judicial dissolution
1508 under subparagraph (1)(b)1. or subparagraph (1)(b)2., as the

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1509 case may be, or the rights of the corporation or one or more
 1510 shareholders to purchase the petitioner's interest under s.
 1511 607.1436. The filing of an action for judicial dissolution on
 1512 the grounds described in subparagraph (1)(b)1. or subparagraph
 1513 (1)(b)2., as the case may be, or an election to purchase the
 1514 petitioner's interest under s. 607.1436, does not adversely
 1515 affect the right of a shareholder to initiate an available
 1516 deadlock sale provision under the shareholder agreement that
 1517 complies with s. 607.0732 or to enforce a shareholder-initiated
 1518 or an automatically-initiated deadlock sale provision if the
 1519 deadlock sale provision is initiated and effectuated before the
 1520 court enters an order of judicial dissolution under subparagraph
 1521 (1)(b)1. or subparagraph (1)(b)2., as the case may be, or an
 1522 order directing the purchase of petitioner's interest under s.
 1523 607.1436.

1524 Section 51. Subsection (5) of section 607.1431, Florida
 1525 Statutes, is amended to read:

1526 607.1431 Procedure for judicial dissolution.—

1527 (5) If the court determines that any party has commenced,
 1528 continued, or participated in a proceeding under s. 607.1430 and
 1529 has acted arbitrarily, frivolously, vexatiously, or not in good
 1530 faith, the court may, in its discretion, award attorney fees and
 1531 other reasonable expenses to the other parties to the proceeding
 1532 ~~action~~ who have been affected adversely by such actions.

1533 Section 52. Subsection (5) of section 607.1432, Florida
 1534 Statutes, is amended to read:

1535 607.1432 Receivership or custodianship.—

1536 (5) The court from time to time during the receivership or
 1537 custodianship may order compensation paid and expense

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1538 disbursements or reimbursements made to any ~~the~~ receiver or
 1539 custodian and his, her, or its counsel from the assets of the
 1540 corporation or proceeds from the sale of the assets.

1541 Section 53. Section 607.14401, Florida Statutes, is amended
 1542 to read:

1543 607.14401 Deposit with Department of Financial Services.—
 1544 Assets of a dissolved corporation that should be transferred to
 1545 a creditor, claimant, or shareholder of the corporation who
 1546 cannot be found or who is not competent to receive them shall be
 1547 reduced to cash and deposited with the Department of Financial
 1548 Services for safekeeping. When the creditor, claimant, or
 1549 shareholder furnishes satisfactory proof of entitlement to the
 1550 amount ~~or assets~~ deposited, the Department of Financial Services
 1551 shall pay such person or his, ~~or~~ her, or its representative that
 1552 amount.

1553 Section 54. Paragraphs (c), (h), and (k) of subsection (2)
 1554 of section 607.1501, Florida Statutes, are amended to read:

1555 607.1501 Authority of foreign corporation to transact
 1556 business required; activities not constituting transacting
 1557 business.—

1558 (2) The following activities, among others, do not
 1559 constitute transacting business within the meaning of subsection
 1560 (1):

1561 (c) Maintaining ~~bank~~ accounts in financial institutions.

1562 (h) Securing or collecting debts or enforcing mortgages or
 1563 security interests in property securing the debts, or ~~and~~
 1564 holding, protecting, or maintaining property so acquired.

1565 (k) Owning and controlling a subsidiary corporation
 1566 incorporated in or limited liability company formed in, or

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1567 transacting business within, this state; or voting the shares of
 1568 any such subsidiary corporation~~r~~ or voting the membership
 1569 interests of any such limited liability company, which it has
 1570 lawfully acquired.

1571 Section 55. Subsections (3) and (8) of section 607.1502,
 1572 Florida Statutes, are amended to read:

1573 607.1502 Effect of failure to have a certificate of
 1574 authority.—

1575 (3) A court may stay a proceeding commenced by a foreign
 1576 corporation or its successor or assignee until it determines
 1577 whether the foreign corporation or its successor or assignee
 1578 requires a certificate of authority. If it so determines, the
 1579 court may further stay the proceeding until the foreign
 1580 corporation or its successor or assignee has obtained a
 1581 certificate of authority to transact business in this state.

1582 (8) If a foreign corporation transacts business in this
 1583 state without a certificate of authority or cancels its
 1584 certificate of authority, it appoints the secretary of state as
 1585 its agent for service of process in proceedings and actions for
 1586 ~~rights of action~~ arising out of the transaction of business in
 1587 this state.

1588 Section 56. Subsection (2) of section 607.1503, Florida
 1589 Statutes, is amended to read:

1590 607.1503 Application for certificate of authority.—

1591 (2) The foreign corporation shall deliver with a completed
 1592 application under subsection (1) a certificate of existence or a
 1593 record of similar import, duly authenticated~~r~~ not more than 90
 1594 days prior to delivery of the application to the department,
 1595 signed by the official having custody of the foreign

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1596 corporation's publicly filed records in its jurisdiction of
 1597 incorporation. A translation of the certificate, under oath of
 1598 the translator, must be attached to a certificate which is in a
 1599 language other than the English language.

1600 Section 57. Paragraph (c) of subsection (1) and paragraph
 1601 (c) of subsection (2) of section 607.1504, Florida Statutes, are
 1602 amended to read:

1603 607.1504 Amended certificate of authority.—

1604 (1) A foreign corporation authorized to transact business
 1605 in this state shall deliver for filing an amendment to its
 1606 certificate of authority to reflect a change in any of the
 1607 following:

1608 (c) The name and street address in this state of the
 1609 foreign corporation's registered agent in this state, unless the
 1610 change was timely made in accordance with s. 607.1508 or s.
 1611 607.1509 ~~s. 607.0502 or s. 607.0503~~.

1612 (2) The amendment must be filed within 90 days after the
 1613 occurrence of a change described in subsection (1), must be
 1614 signed by an officer of the foreign corporation, and must state
 1615 the following:

1616 (c) The date the foreign corporation was authorized to
 1617 transact ~~do~~ business in this state.

1618 Section 58. Subsection (1) of section 607.1505, Florida
 1619 Statutes, is amended to read:

1620 607.1505 Effect of a certificate of authority.—

1621 (1) Unless the department determines that ~~than~~ an
 1622 application for a certificate of authority of a foreign
 1623 corporation to transact business in this state does not comply
 1624 with the filing requirements of this chapter, the department

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1625 shall, upon payment of all filing fees, authorize the foreign
1626 corporation to transact business in this state and file the
1627 application for certificate of authority.

1628 Section 59. Subsection (3) of section 607.1507, Florida
1629 Statutes, is amended to read:

1630 607.1507 Registered office and registered agent of foreign
1631 corporation.—

1632 (3) Each initial registered agent, and each successor
1633 registered agent that is appointed, shall file a statement in
1634 writing with the department, in the form and manner prescribed
1635 by the department, accepting the appointment as a registered
1636 agent while simultaneously being designated as the registered
1637 agent. The statement of acceptance must provide that the
1638 registered agent is familiar with, and accepts, the obligations
1639 of that position.

1640 Section 60. Subsection (3) of section 607.1509, Florida
1641 Statutes, is amended to read:

1642 607.1509 Resignation of registered agent of foreign
1643 corporation.—

1644 (3) A registered agent is terminated upon the earlier of:

1645 (a) The 31st day after the department files the statement
1646 of resignation; or

1647 (b) When a statement of change or other record designating
1648 a new registered agent is filed with ~~by~~ the department.

1649 Section 61. Subsection (1) of section 607.15091, Florida
1650 Statutes, is amended to read:

1651 607.15091 Change of name or address by registered agent.—

1652 (1) If a registered agent changes his, ~~or~~ her, or its name
1653 or address, the agent may deliver to the department for filing a

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1654 statement of change containing the following:

1655 (a) The name of the foreign corporation represented by the
1656 registered agent.

1657 (b) The name of the registered agent as currently shown in
1658 the records of the department for the corporation.

1659 (c) If the name of the registered agent has changed, his,
1660 her, or its new name.

1661 (d) If the address of the registered agent has changed, the
1662 new address.

1663 (e) A statement that the registered agent has given the
1664 notice required under subsection (2).

1665 Section 62. Subsection (7) of section 607.15101, Florida
1666 Statutes, is amended to read:

1667 607.15101 Service of process, notice, or demand on a
1668 foreign corporation.—

1669 (7) Any notice or demand on a foreign corporation under
1670 this chapter may be given or made: to the chair of the board,
1671 the president, any vice president, the secretary, or the
1672 treasurer of the foreign corporation; to the registered agent of
1673 the foreign corporation at the registered office of the foreign
1674 corporation in this state; or to any other address in this state
1675 that is in fact the principal office of the foreign corporation
1676 in this state.

1677 Section 63. Paragraph (e) of subsection (1) of section
1678 607.1520, Florida Statutes, is amended to read:

1679 607.1520 Withdrawal and cancellation of certificate of
1680 authority for foreign corporation.—

1681 (1) To cancel its certificate of authority to transact
1682 business in this state, a foreign corporation must deliver to

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1683 the department for filing a notice of withdrawal of certificate
 1684 of authority. The certificate of authority is canceled when the
 1685 notice of withdrawal becomes effective pursuant to s. 607.0123.
 1686 The notice of withdrawal of certificate of authority must be
 1687 signed by an officer or director and state the following:

1688 (e) That the foreign corporation ~~it~~ revokes the authority
 1689 of its registered agent to accept service on its behalf and
 1690 appoints the secretary of state as its agent for service of
 1691 process based on a cause of action arising during the time it
 1692 was authorized to transact business in this state.

1693 Section 64. Subsections (1), (2), and (8) of section
 1694 607.1602, Florida Statutes, are amended to read:

1695 607.1602 Inspection of records by shareholders.—

1696 (1) A shareholder of a corporation is entitled to inspect
 1697 and copy, during regular business hours at the corporation's
 1698 principal office, any of the records of the corporation
 1699 described in s. 607.1601(1), excluding minutes of meetings of,
 1700 and records of actions taken without a meeting by, the
 1701 corporation's board of directors and any board committees of the
 1702 corporation established under s. 607.0825, if the shareholder
 1703 gives the corporation written notice of the shareholder's demand
 1704 at least 5 business days before the date on which the
 1705 shareholder wishes to inspect and copy.

1706 (2) A shareholder of a corporation is entitled to inspect
 1707 and copy, during regular business hours at a reasonable location
 1708 specified by the corporation, any of the following records of
 1709 the corporation if the shareholder meets the requirements of
 1710 subsection (3) and gives the corporation written notice of the
 1711 shareholder's demand at least 5 business days before the date on

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1712 which the shareholder wishes to inspect and copy:

1713 (a) Excerpts from minutes of any meeting of, or records of
 1714 any actions taken without a meeting by, the corporation's board
 1715 of directors and board committees of the corporation maintained
 1716 in accordance with s. 607.1601(1);

1717 (b) The financial statements of the corporation maintained
 1718 in accordance with s. 607.1601(2);

1719 (c) Accounting records of the corporation;

1720 (d) The record of shareholders maintained in accordance
 1721 with s. 607.1601(4); and

1722 (e) Any other books and records.

1723 (8) A corporation may deny any demand for inspection made
 1724 pursuant to subsection (2) if the demand was made for an
 1725 improper purpose, or if the demanding shareholder has within 2
 1726 years preceding his, ~~or~~ her, or its demand sold or offered for
 1727 sale any list of shareholders of the corporation or any other
 1728 corporation, has aided or abetted any person in procuring any
 1729 list of shareholders for any such purpose, or has improperly
 1730 used any information secured through any prior examination of
 1731 the records of the corporation or any other corporation.

1732 Section 65. Subsections (1) and (3) of section 607.1604,
 1733 Florida Statutes, are amended to read:

1734 607.1604 Court-ordered inspection.—

1735 (1) If a corporation does not allow a shareholder who
 1736 complies with s. 607.1602(1) to inspect and copy any records
 1737 required by that subsection to be available for inspection, the
 1738 circuit court in the applicable county may summarily order
 1739 inspection and copying of the records demanded at the
 1740 corporation's expense upon application of the shareholder. If

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1741 the court orders inspection and copying of the records demanded
 1742 under s. 607.1602(1) ~~s. 607.1601(1)~~, it shall also order the
 1743 corporation to pay the shareholder's expenses, including
 1744 reasonable attorney fees, incurred to obtain the order and
 1745 enforce its rights under this section.

1746 (3) If the court orders inspection or ~~and~~ copying of the
 1747 records demanded under s. 607.1602(2), it may impose reasonable
 1748 restrictions on the disclosure, use, or distribution of, and
 1749 reasonable obligations to maintain the confidentiality of, such
 1750 records, and it shall also order the corporation to pay the
 1751 shareholder's expenses incurred, including reasonable attorney
 1752 fees, incurred to obtain the order and enforce its rights under
 1753 this section unless the corporation establishes that the
 1754 corporation refused inspection in good faith because the
 1755 corporation had:

1756 (a) A reasonable basis for doubt about the right of the
 1757 shareholder to inspect or copy the records demanded; or

1758 (b) Required reasonable restrictions on the disclosure,
 1759 use, or distribution of, and reasonable obligations to maintain
 1760 the confidentiality of, such records demanded to which the
 1761 demanding shareholder had been unwilling to agree.

1762 Section 66. Subsections (2) and (4) of section 607.1622,
 1763 Florida Statutes, are amended to read:

1764 607.1622 Annual report for department.—

1765 (2) If an annual report contains the name and address of a
 1766 registered agent which differs from the information shown in the
 1767 records of the department immediately before the annual report
 1768 becomes effective, the differing information in the annual
 1769 report is considered a statement of change under s. 607.0502 or

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1770 s. 607.1508, as the case may be.

1771 (4) The first annual report must be delivered to the
 1772 department between January 1 and May 1 of the year following the
 1773 calendar year in which a domestic corporation's articles of
 1774 incorporation became effective or a foreign corporation obtained
 1775 its certificate of authority to transact business in this state.
 1776 Subsequent annual reports must be delivered to the department
 1777 between January 1 and May 1 of each calendar year thereafter. If
 1778 one or more forms of annual report are submitted for a calendar
 1779 year, the department shall file each of them and make the
 1780 information contained in them part of the official record. The
 1781 first form of annual report filed in a calendar year shall be
 1782 considered the annual report for that the calendar year, and
 1783 each report filed after that one in the same calendar year shall
 1784 be treated as an amended report for that calendar year.

1785 Section 67. Section 607.1703, Florida Statutes, is created
 1786 to read:

1787 607.1703 Interrogatories by department; other powers of
 1788 department.—

1789 (1) The department may direct to any domestic corporation
 1790 or foreign corporation subject to this chapter, and to any
 1791 officer or director of any domestic corporation or foreign
 1792 corporation subject to this chapter, interrogatories reasonably
 1793 necessary and proper to enable the department to ascertain
 1794 whether the domestic corporation or foreign corporation has
 1795 complied with the provisions of this chapter applicable to the
 1796 domestic corporation or foreign corporation. The interrogatories
 1797 must be answered within 30 days after the date of mailing, or
 1798 within such additional time as fixed by the department. The

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1799 answers to the interrogatories must be full and complete and
 1800 must be made in writing and under oath. If the interrogatories
 1801 are directed to an individual, they must be answered by the
 1802 individual, and if directed to a domestic corporation or foreign
 1803 corporation, they must be answered by an officer or director of
 1804 the domestic corporation or foreign corporation, by a
 1805 shareholder if there are no officers or directors of the
 1806 domestic corporation or foreign corporation, or by a fiduciary
 1807 if the corporation is in the hands of a receiver, trustee, or
 1808 other court-appointed fiduciary.

1809 (2) The department need not file a record in a court of
 1810 competent jurisdiction to which the interrogatories relate until
 1811 the interrogatories are answered as provided in this chapter,
 1812 and is not required to file a record if the answers disclose
 1813 that the record is not in conformity with the requirements of
 1814 this chapter or if the department has determined that the
 1815 parties to such document have not paid all fees, taxes, and
 1816 penalties due and owing this state. The department shall certify
 1817 to the Department of Legal Affairs, for such action as the
 1818 Department of Legal Affairs may deem appropriate, all
 1819 interrogatories and answers that disclose a violation of this
 1820 chapter.

1821 (3) The department may, based upon its findings under this
 1822 section or as provided in s. 213.053(15), bring an action in
 1823 circuit court to collect any penalties, fees, or taxes
 1824 determined to be due and owing the state and to compel any
 1825 filing, qualification, or registration required by law. In
 1826 connection with such proceeding, the department may, without
 1827 prior approval by the court, file a lis pendens against any

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1828 property owned by the corporation and may further certify any
 1829 findings to the Department of Legal Affairs for the initiation
 1830 of an action permitted pursuant to this chapter which the
 1831 Department of Legal Affairs may deem appropriate.

1832 Section 68. Section 607.1907, Florida Statutes, is amended
 1833 to read:

1834 607.1907 Saving provision.—

1835 (1) Except as to procedural provisions, chapter 2019-90,
 1836 Laws of Florida, this act does not affect a pending action or
 1837 proceeding or a right accrued before January 1, 2020, and a
 1838 pending civil action or proceeding may be completed, and a right
 1839 accrued may be enforced, as if chapter 2019-90, Laws of Florida,
 1840 this act had not become effective.

1841 (2) If a penalty or punishment for violation of a statute
 1842 or rule is reduced by chapter 2019-90, Laws of Florida, this
 1843 act, the penalty or punishment, if not already imposed, shall be
 1844 imposed in accordance with chapter 2019-90, Laws of Florida this
 1845 act.

1846 Section 69. Subsection (3) of section 607.504, Florida
 1847 Statutes, is amended to read:

1848 607.504 Election of social purpose corporation status.—

1849 (3) If an entity elects to become a social purpose
 1850 corporation by amendment of the articles of incorporation or by
 1851 a merger, domestication, conversion, or share exchange, the
 1852 shareholders of the entity are entitled to appraisal rights
 1853 under and pursuant to ss. 607.1301-607.1340.

1854 Section 70. Subsection (1) of section 605.0116, Florida
 1855 Statutes, is amended to read:

1856 605.0116 Change of name or address by registered agent.—

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1857 (1) If a registered agent changes his, ~~or her,~~ or its name
 1858 or address, the agent may deliver to the department for filing a
 1859 statement of change that provides the following:

1860 (a) The name of the limited liability company or foreign
 1861 limited liability company represented by the registered agent.

1862 (b) The name of the registered agent as currently shown in
 1863 the records of the department for the limited liability company
 1864 or foreign limited liability company.

1865 (c) If the name of the registered agent has changed, his,
 1866 her, or its new name.

1867 (d) If the address of the registered agent has changed, the
 1868 new address.

1869 (e) A statement that the registered agent has given the
 1870 notice required under subsection (2).

1871 Section 71. Subsections (2) and (7) of section 605.0207,
 1872 Florida Statutes, are amended to read:

1873 605.0207 Effective date and time.—Except as otherwise
 1874 provided in s. 605.0208, and subject to s. 605.0209(3), any
 1875 document delivered to the department for filing under this
 1876 chapter may specify an effective time and a delayed effective
 1877 date. In the case of initial articles of organization, a prior
 1878 effective date may be specified in the articles of organization
 1879 if such date is within 5 business days before the date of
 1880 filing. Subject to ss. 605.0114, 605.0115, 605.0208, and
 1881 605.0209, a record filed by the department is effective:

1882 (2) If the record filed specifies an effective time, but
 1883 not a prior or delayed effective date, on the date the record is
 1884 accepted, as evidenced by the department's endorsement, and
 1885 filed at the time specified in the filing.

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1886 (7) If the record filed ~~a filed document~~ does not specify
 1887 the time zone or place at which the date or time, or both, is to
 1888 be determined, the date or time, or both, at which it becomes
 1889 effective shall be those prevailing at the place of filing in
 1890 this state.

1891 Section 72. Section 605.0215, Florida Statutes, is amended
 1892 to read:

1893 605.0215 Certificates to be received in evidence and
 1894 evidentiary effect of certified copy of filed document.—All
 1895 certificates issued by the department in accordance with this
 1896 chapter shall be taken and received in all courts, public
 1897 offices, and official bodies as prima facie evidence of the
 1898 facts stated. A certificate from the department delivered with a
 1899 copy of a document filed by the department bearing the signature
 1900 of the secretary of state, which may be in facsimile, and the
 1901 seal of this state, is conclusive evidence that the original
 1902 document is on file with the department.

1903 Section 73. Paragraph (b) of subsection (2) of section
 1904 605.0702, Florida Statutes, is amended to read:

1905 605.0702 Grounds for judicial dissolution.—

1906 (2)

1907 (b) For purposes of ~~As used in~~ this section, the term
 1908 "deadlock sale provision" means a provision in an operating
 1909 agreement which is or may be applicable in the event of a
 1910 deadlock among the managers or the members of the limited
 1911 liability company which the members of the company are unable to
 1912 break and which provides for a deadlock breaking mechanism,
 1913 including, but not limited to:

1914 1. A redemption or a purchase and sale of interests;

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1915 2. A governance change, among or between members;
 1916 3. The sale of the company or all or substantially all of
 1917 the assets of the company; or
 1918 4. A similar provision that, if initiated and effectuated,
 1919 breaks the deadlock by causing the transfer of interests, a
 1920 governance change, or the sale of all or substantially all of
 1921 the company's assets.

1922 Section 74. Subsection (2) of section 605.0716, Florida
 1923 Statutes, is amended to read:
 1924 605.0716 Judicial review of denial of reinstatement.—
 1925 (2) Within 30 days after service of a notice of denial of
 1926 reinstatement, a limited liability company may appeal the denial
 1927 by petitioning the Circuit Court of Leon County to set aside the
 1928 dissolution. The petition must be served on the department and
 1929 must contain a copy of the department's notice of administrative
 1930 dissolution, the company's application for reinstatement, and
 1931 the department's notice of denial.

1932 Section 75. Subsection (4) of section 605.1104, Florida
 1933 Statutes, is amended to read:
 1934 605.1104 Interrogatories by department; other powers of
 1935 department.—
 1936 ~~(4) The department has the power and authority reasonably~~
 1937 ~~necessary to administer this chapter efficiently, to perform the~~
 1938 ~~duties herein imposed upon it, and to adopt reasonable rules~~
 1939 ~~necessary to carry out its duties and functions under this~~
 1940 ~~chapter.~~

1941 Section 76. Subsection (1) of section 617.0501, Florida
 1942 Statutes, is amended to read:
 1943 617.0501 Registered office and registered agent.—

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1944 (1) Each corporation shall have and continuously maintain
 1945 in this state:
 1946 (a) A registered office which may be the same as its
 1947 principal office; and
 1948 (b) A registered agent, who may be either:
 1949 1. An individual who resides in this state whose business
 1950 office is identical with such registered office; or
 1951 2.a. Another domestic entity that is an authorized entity
 1952 whose business address is identical to the address of the
 1953 registered office;7 or
 1954 b. A foreign entity authorized to transact business in this
 1955 state that is an authorized entity and whose business address is
 1956 identical to the address of the registered office.

1957 Section 77. Section 617.0825, Florida Statutes, is amended
 1958 to read:
 1959 617.0825 Board committees and advisory committees.—
 1960 (1) Unless the articles of incorporation or the bylaws
 1961 otherwise provide, the board of directors, by resolution adopted
 1962 by a majority of the full board of directors, may create an
 1963 executive committee and one or more other committees of the
 1964 board and appoint directors or such other persons as the board
 1965 of directors designates to serve on such committee or
 1966 committees. The majority of the persons on each committee must
 1967 be directors.

1968 (2) Notwithstanding subsection (1), a board committee may
 1969 be composed of less than a majority of directors or entirely of
 1970 non-directors if:

1971 (a) The committee is created by the board of directors or
 1972 is otherwise authorized by the articles of incorporation or the

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1973 bylaws; and

1974 (b) The committee relates to the election, nomination,
 1975 qualification, or credentials of directors or is involved in the
 1976 process of electing directors. ~~designate from among its members~~
 1977 ~~an executive committee and one or more other committees each of~~
 1978 ~~which.~~

1979 (3) To the extent provided by the board of directors in a
 1980 ~~such~~ resolution or in the articles of incorporation or the
 1981 bylaws of the corporation, each such committee shall have and
 1982 may exercise powers and ~~all the~~ authority of the board of
 1983 directors, except that no such committee shall have the power or
 1984 authority to:

1985 (a) Approve or recommend to members actions or proposals
 1986 required by this act to be approved by members.

1987 (b) Fill vacancies on the board of directors or any
 1988 committee thereof.

1989 (c) Adopt, amend, or repeal the bylaws.

1990 (4)(2) Unless the articles of incorporation or the bylaws
 1991 provide otherwise, ss. 617.0820, 617.0822, 617.0823, and
 1992 617.0824, which govern meetings, notice and waiver of notice,
 1993 and quorum and voting requirements of the board of directors,
 1994 apply to committees and their members as well.

1995 (5)(3) Each committee must have two or more members who
 1996 serve at the pleasure of the board of directors. The board, by
 1997 resolution adopted in accordance with and consistent with
 1998 subsection (1), may designate one or more ~~directors as~~ alternate
 1999 members of any such committee who may act in the place and stead
 2000 of any absent member or members at any meeting of such
 2001 committee.

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2002 (6) A committee member who is not a director has the same
 2003 responsibility and fiduciary duties with respect to activities
 2004 of such committee, and the same liability protections, as a
 2005 committee member who is a director.

2006 (7)(4) Neither the designation of any such committee, the
 2007 delegation thereto of authority, nor action by such committee
 2008 pursuant to such authority shall alone constitute compliance by
 2009 any member of the board of directors not a member of the
 2010 committee in question with his or her responsibility to act in
 2011 good faith, in a manner he or she reasonably believes to be in
 2012 the best interests of the corporation, and with such care as an
 2013 ordinarily prudent person in a like position would use under
 2014 similar circumstances.

2015 (8) A corporation may create or authorize the creation of
 2016 one or more advisory committees with any number of persons on
 2017 the committee being non-directors. An advisory committee:

2018 (a) Is not a committee of the board of directors; and

2019 (b) May not act on behalf of or exercise any of the powers
 2020 or authority of the board of directors or bind the corporation
 2021 to any action, but may make recommendations to the board of
 2022 directors, to the officers, or to the members.

2023 (9) This section does not apply to a committee established
 2024 under chapter 718, chapter 719, or chapter 720 to perform the
 2025 functions set forth in s. 718.303(3), s. 719.303(3), s.
 2026 720.303(2), or s. 720.3035(1), respectively.

2027 Section 78. This act shall take effect upon becoming a law.



The Florida Senate

Committee Agenda Request

To: Senator Lizbeth Benacquisto, Chair
Committee on Rules

Subject: Committee Agenda Request

Date: January 29, 2020

I respectfully request that **Senate Bill 838**, relating to Business Organizations, be placed on the:

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

A handwritten signature in black ink, appearing to read "David Simmons".

Senator David Simmons
Florida Senate, District 9

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 326

INTRODUCER: Environment and Natural Resources Committee and Senator Perry

SUBJECT: Environmental Regulation

DATE: February 5, 2020

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Schreiber</u>	<u>Rogers</u>	<u>EN</u>	Fav/CS
2.	<u>Paglialonga</u>	<u>Yeatman</u>	<u>CA</u>	Favorable
3.	<u>Schreiber</u>	<u>Phelps</u>	<u>RC</u>	Favorable

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 326 requires local governments to address the contamination of recyclable material in contracts for the collection, transportation, and processing of residential material. The bill applies to contracts between a local government and a residential recycling collector or recovered materials processing facility that are executed or renewed after October 1, 2020. Such contracts are required to define the term “contaminated recyclable material.” The bill specifies topics that must be addressed in local government contracts with both residential recycling collectors and recovered materials processing facilities.

The bill prohibits local governments from requiring a person claiming an exemption from environmental resource permitting requirements to provide further verification from the Department of Environmental Protection. The bill also changes the specific criteria for the replacement or repair of a dock or pier that is exempt from environmental resource permitting requirements.

II. Present Situation:

Recycling in Florida

Each Florida county has the responsibility and authority to provide for the operation of solid waste disposal facilities to meet the needs of all incorporated and unincorporated areas of the

county.¹ Municipalities are responsible for collecting and transporting solid waste from their jurisdictions to a solid waste disposal facility operated by a county or operated under a contract with a county.² Counties may charge reasonable fees for the handling and disposal of solid waste at their facilities.³ Under Florida law, “recycling” is defined as any process by which solid waste, or materials that would otherwise become solid waste, are collected, separated, or processed and reused or returned to use in the form of raw materials or intermediate or final products.⁴ “Municipal solid waste” includes any solid waste (except for sludge) resulting from the operation of residential, commercial, or governmental establishments that would normally be collected, processed, and disposed of through a solid waste management service (this excludes waste from industrial, mining, or agricultural operations).⁵

In 2008, the Legislature established a weight-based goal of recycling 75 percent of Florida’s municipal solid waste by 2020.⁶ In 2010, the Legislature established interim goals that counties must pursue leading up to 2020.⁷ The interim goals require each Florida county to implement a recyclable materials recycling program with a goal of recycling 40 percent of recyclable solid waste by December 31, 2012; 50 percent by December 31, 2014; 60 percent by December 31, 2016; 70 percent by December 31, 2018; and 75 percent by December 31, 2020.⁸ These programs must be designed to recover a significant portion of at least four of the following materials from the solid waste stream before final disposal at a solid waste disposal facility and to offer these materials for recycling:

- Newspapers.
- Aluminum cans.
- Steel cans.
- Glass.
- Plastic bottles.
- Cardboard.
- Office paper.
- Yard trash.⁹

Counties with a population of 100,000 or less, in lieu of achieving the interim goals, may instead provide residents with the opportunity to recycle.¹⁰ Providing the “opportunity to recycle” must include both of the following:

- Either:

¹ Section 403.706(1), F.S. Municipalities may also be authorized to construct and operate solid waste disposal facilities, if certain statutory requirements are met; *see* Fla. Admin. Code Ch. 62-701.

² *Id.*

³ *Id.*

⁴ Section 403.703(31), F.S.

⁵ Section 403.706(5), F.S.

⁶ Chapter 2008-227, s. 95, Laws of Fla.; s. 403.7032, F.S.; *see* DEP, *Florida and the 2020 75% Recycling Goal, Volume 1 - Report*, 5, 7, 28 (2017)[hereinafter *DEP 2017 Report*], available at https://floridadep.gov/sites/default/files/FinalRecyclingReportVolume1_0_0.pdf. The 75% recycling goal is a weight-based recycling rate: for every 100 tons of municipal solid waste collected, the goal is to recycle (or recover energy from) at least 75 tons.

⁷ Chapter 2010-143, s. 7, Laws of Fla.; s. 403.706(2)(a), F.S.

⁸ Section 403.706(2)(a), F.S.

⁹ Section 403.706(2)(f), F.S.

¹⁰ Section 403.706(4)(c), F.S.

- Providing a system for separating and collecting recyclable materials prior to disposal that is located at a solid waste management facility or solid waste disposal area; or
- Providing a system of places within the county for collection of source-separated recyclable materials.
- Providing a public education and promotion program that is conducted to inform residents of the opportunity to recycle, encourages source separation of recyclable materials, and promotes the benefits of reducing, reusing, recycling and composting materials.¹¹

According to a 2019 report by the Department of Environmental Protection (DEP), only 36 of Florida's 67 counties have populations over 100,000.¹² These 36 counties contain approximately 95% of Florida's population, and produced 45 million of the 47 million tons of municipal solid waste generated in Florida in 2018.¹³

Each county must ensure, to the maximum extent possible, that municipalities within its boundaries participate in the preparation and implementation of recycling and solid waste management programs through interlocal agreements or other means provided by law.¹⁴ Counties and municipalities are encouraged to form cooperative arrangements for implementing recycling programs.¹⁵ Certain activities are eligible for special credit towards achieving a county's recycling goals, including using solid waste as a fuel in a renewable energy facility and innovatively using yard trash or other clean wood waste or paper waste.¹⁶ In order to assess progress towards achieving the interim goals, counties are required to provide information on their solid waste management programs and recycling activities to DEP by April 1 of each year.¹⁷ If DEP determines that a county has not reached the interim recycling goals in time, DEP is authorized to direct the county to develop a plan to expand recycling programs to existing commercial and multifamily dwellings, including apartment complexes.¹⁸ Such an authorized directive applies to the larger counties (with populations over 100,000), which are required to pursue the interim goals.¹⁹

In those years when the state's recycling rate does not meet the statutory thresholds for the interim goals, DEP must provide a report to the President of the Senate and the Speaker of the House of Representatives.²⁰ This report must identify those additional programs or statutory changes needed to achieve the state's recycling goals.²¹ Florida achieved the interim recycling goals established for 2012 and 2014.²² However, Florida's recycling rate for 2016 was 56 percent, falling short of the 2016 interim recycling goal of 60 percent.²³ Florida's recycling rate

¹¹ *Id.*

¹² DEP, *Florida and the 2020 75% Recycling Goal: 2019 Status Report, Volume 1*, 3, 9 (2019)[hereinafter *DEP 2019 Report*], available at https://floridadep.gov/sites/default/files/Final%20Strategic_Plan_2019%2012-13-2019_1.pdf.

¹³ *Id.* at 18, 29.

¹⁴ Section 403.706(3), F.S.

¹⁵ Section 403.706(2)(a), F.S.

¹⁶ Section 403.706(4), F.S.

¹⁷ Section 403.706(7), F.S.; Fla. Admin. Code R. 62-716.450.

¹⁸ Section 403.706(2)(d), F.S.

¹⁹ *DEP 2019 Report*, at 3.

²⁰ Section 403.706(2)(e), F.S.

²¹ *Id.*

²² *DEP 2017 Report*, at 5, available at https://floridadep.gov/sites/default/files/FinalRecyclingReportVolume1_0_0.pdf.

²³ *Id.*

declined from 52 percent in 2017 to 49 percent in 2018, both of which fall short of the interim targets.²⁴ This decrease can largely be attributed to a reduction in the reported amount of construction and demolition (C&D) debris recycled in 2018.²⁵ DEP submitted the most recent status report in 2019.²⁶ Without significant changes to the current approach, the 75% by 2020 goal will not be achieved.²⁷

In 2018, of Florida's 36 large counties (with populations over 100,000), four met the 70% interim recycling goal.²⁸ Recycling credits received for renewable energy and C&D debris were the primary factors for success in these four counties.²⁹ In August of 2019, DEP requested each of the 32 large counties not reaching the interim goals to develop a plan to expand current recycling programs to existing commercial and multifamily dwellings.³⁰ As of November 21st, DEP has received all 32 county recycling plans.³¹

DEP may reduce or modify the municipal solid waste recycling goal that a county is required to achieve if the county demonstrates to DEP that:

- The achievement of the goal would have an adverse effect on the financial obligations of the county that are directly related to a waste-to-energy facility owned or operated by or on behalf of the county; and
- The county cannot remove normally combustible materials from solid waste that is to be processed at a waste-to-energy facility because of the need to maintain a sufficient amount of solid waste to ensure the financial viability of the facility.³²

The goal may only be reduced or modified to the extent necessary to alleviate the adverse effects on the financial viability of a county's waste-to-energy facility.³³

In the development and implementation of a curbside recyclable materials collection program, a county or municipality must enter into negotiations with a franchisee who is operating to exclusively collect solid waste within a service area of a county or municipality to undertake curbside recyclable materials collection responsibilities for a county or municipality.³⁴ Local governments are authorized to enact ordinances that require and direct all residential properties, multifamily dwellings, and apartment complexes and industrial, commercial, and institutional establishments as defined by the local government to establish programs for the separation of recyclable materials designated by the local government.³⁵ A market must exist for the recyclable materials, and the local government must specifically intend for them to be recycled.³⁶ Local governments are authorized to provide for the collection of recyclable materials. Such ordinances

²⁴ *DEP 2019 Report*, at 3.

²⁵ *Id.* at 9.

²⁶ *Id.* at 3.

²⁷ *Id.* at 29.

²⁸ *Id.* at 3.

²⁹ *Id.*

³⁰ *Id.* at 9.

³¹ *Id.*; DEP, *Florida and the 2020 75% Recycling Goal: 2019 Status Report, Volume 2, Appendices* (2019), available at https://floridadep.gov/sites/default/files/Final%20Appendix%20Strategic%20Plan%2012-13-2019_for_upload_test.pdf.

³² Section 403.706(6), F.S.

³³ *Id.*

³⁴ Section 403.706(9), F.S.

³⁵ Section 403.706(21), F.S.

³⁶ *Id.*

may include, but are not limited to, prohibiting any person from knowingly disposing of recyclable materials that are designated by the local government and that ensure the collection of recovered materials as necessary to protect public health and safety.³⁷

A local government may not:

- Require a commercial establishment that generates source-separated recovered materials to sell or otherwise convey its recovered materials to the local government or a facility designated by the local government;
- Restrict such a generator's right to sell or otherwise convey such recovered materials to any properly certified recovered materials dealer; or
- Enact any ordinance that prevents such a dealer from entering into a contract with a commercial establishment to purchase, collect, transport, process, or receive source-separated recovered materials.³⁸

Local governments may require a commercial establishment to source separate the recovered materials generated on the premises of the commercial establishment.³⁹

DEP has been working to increase recycling rates through grant programs, educational opportunities, and the development of a statewide outreach campaign called "Rethink. Reset. Recycle."⁴⁰ DEP is also working on the following recycling options:

- Evaluating the implications of shifting from a weight-based recycling goal to sustainable materials management processes.⁴¹
- Researching the concept of moving from a weight-based recycling goal of 75 percent by 2020 to market-specific goals such as a food diversion goal or an organics recycling goal.
- Requesting that Florida's state universities and Department of Education review potential K-12 curriculum programs emphasizing waste reduction and recycling practices.
- Continuing to work with state agencies to identify recycling/cost-saving measures specific to their operations.
- Providing counties not achieving the interim recycling goals with assistance in analyzing, planning, and executing opportunities to increase recycling.⁴²

Contamination

Many counties and municipalities have instituted single stream recycling programs.⁴³ Single stream curbside recycling programs allow all accepted recyclables to be placed in a single, curbside recycling cart, comingling paper, plastic bottles, metal cans, and glass containers. Single stream recycling programs have been marginally successful in providing curbside collection efficiency by increasing the number of materials collected and residential participation. While there are many advantages to single stream recycling, it has not consistently

³⁷ *Id.*

³⁸ Section 403.7046(3), F.S.

³⁹ Section 403.7046(3)(a), F.S.

⁴⁰ *DEP 2019 Report*, at 22, available at <https://floridadep.gov/sites/default/files/Final%20Strategic%20Plan%202012-13-2019%201.pdf>; Rethink. Reset. Recycle., *About*, <https://floridarecycles.org/> (last visited Jan. 31, 2020).

⁴¹ See EPA, *Sustainable Materials Management Basics*, <https://www.epa.gov/smm/sustainable-materials-management-basics> (last visited Jan. 31, 2020).

⁴² *DEP 2019 Report*, at 10.

⁴³ *Id.* at 11.

yielded positive results for the recycling industry. The unexpected consequence of single stream recycling has been the collection of unwanted materials and poorly sorted recovered materials, resulting in increased contamination originating in the curbside recycling cart.⁴⁴

Contamination hinders processing at recovered materials processing facilities (RMPFs) when unwanted items are placed into recycling carts.⁴⁵ For example, plastic bags are harmful to the automated equipment typically used to process and separate recyclable materials from single stream collections. While RMPFs are equipped to handle some non-recyclable materials, excessive contamination can undermine the recycling process and result in additional sorting, processing, energy consumption, and other increased costs due to equipment downtime, repair, or replacement needs. In addition to increased recycling processing costs, contamination also results in poorer quality recovered materials, and increased rejection and landfilling of materials. Although some local governments have implemented successful single-stream recycling programs with low contamination rates, contamination rates for other programs have continued to increase.⁴⁶

Recycling Markets

Until 2017, China consumed over 50 percent of the recycled paper and plastic in the world, including 70 percent of the plastics collected for recycling in the U.S.⁴⁷ In 2017, China announced a ban on the import of 24 recyclable materials, such as post-consumer plastics and mixed paper, as well as a 0.5 percent contamination standard for most recyclables not named in the ban.⁴⁸ In 2018, the ban was expanded to include post-industrial plastics and a variety of scrap metals, and China implemented pre-shipment inspection requirements for inbound loads of certain material.⁴⁹ The ban has caused shipments of recyclables to other Asian countries to increase dramatically, resulting in nations including India, Malaysia, Indonesia, Thailand, and Vietnam enacting policies restricting the import of recyclable materials.⁵⁰

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ National Waste & Recycling Association, *Issue Brief: China's Changing Policies on Imported Recyclables*, 1 (Apr. 2018), available at https://c.ymcdn.com/sites/wasterecycling.site-ym.com/resource/resmgr/files/issue_brief/China's_Changing_Policies_on.pdf; Cheryl Katz, *Piling Up: How China's Ban on Importing Waste Has Stalled Global Recycling*, Yale Environment 360 (Mar. 7, 2019), <https://e360.yale.edu/features/piling-up-how-chinas-ban-on-importing-waste-has-stalled-global-recycling> (last visited Jan. 31, 2020).

⁴⁸ Resource Recycling, *From Green Fence to Red Alert: A China Timeline*, <https://resource-recycling.com/recycling/2018/02/13/green-fence-red-alert-china-timeline/> (last visited Jan. 31, 2020); National Waste & Recycling Association, *Issue Brief: China's Changing Policies on Imported Recyclables*, 1 (Apr. 2018).

⁴⁹ Resource Recycling, *From Green Fence to Red Alert: A China Timeline*; see also Resource Recycling, *China Reiterates Total Ban and Tries to Define "Solid Waste"* (Apr. 9, 2019), available at <https://resource-recycling.com/recycling/2019/04/09/china-reiterates-total-ban-and-tries-to-define-solid-waste/> (last visited Jan. 31, 2020).

China is planning a total ban on virtually all recovered material imports.

⁵⁰ Resource Recycling, *From Green Fence to Red Alert: A China Timeline*; Christopher Joyce, *Where Will Your Plastic Trash Go Now That China Doesn't Want It?*, NPR (Mar. 13, 2019), <https://www.npr.org/sections/goatsandsoda/2019/03/13/702501726/where-will-your-plastic-trash-go-now-that-china-doesnt-want-it> (last visited Jan. 31, 2020).

China's recycling ban has created substantial challenges around the world for the solid waste and recycling industry.⁵¹ The loss of the Chinese export markets has caused recyclable materials to be sent to landfills or burned.⁵² China's ban and higher standards for contamination are leading to higher costs and lower revenues for the U.S. recycling industry.⁵³ In Florida, local governments are struggling with issues such as rising costs of processing and high contamination rates.⁵⁴ DEP reports that these changes in the markets create challenges for Florida as it tries to increase its recycling rates because future growth is dependent on healthy markets.⁵⁵ The increased supply of recyclable materials and decreased demand from end markets has resulted in a depression of commodities prices in the recycling industry.⁵⁶ In response, DEP has utilized state programs and engaged various stakeholders to develop and grow Florida's recycling markets.⁵⁷

The reduction in global markets has forced many waste haulers and waste management companies to reduce the amount of contamination, i.e., unwanted items found in recycling bins, being transported and delivered to their processing facilities.⁵⁸ Reducing contamination increases the value of the recovered materials.⁵⁹ Due to decreases in the average price for mixed recovered materials, several counties have been asked to renegotiate their recycling contracts.⁶⁰ Many of the contracts have clauses that stipulate contamination must be below a certain percentage or the local government will be charged a much higher rate and/or penalized.⁶¹

Exceptions to Requirements for Environmental Resource Permitting

DEP's Environmental Resource Permitting (ERP) program regulates activities involving the alteration of surface water flows.⁶² The ERP program governs the construction, alteration, operation, maintenance, repair, abandonment, and removal of stormwater management systems, dams, impoundments, reservoirs, appurtenant works, and works (including docks, piers, structures, dredging, and filling located in, on, or over wetlands or other surface waters).⁶³

⁵¹ See Brooks et. al., *The Chinese Import Ban and Its Impact on Global Plastic Waste Trade*, SCIENCES ADVANCES (Jun. 20, 2019), available at <https://advances.sciencemag.org/content/advances/4/6/eaat0131.full.pdf> (last visited Jan. 31, 2020).

⁵² Cheryl Katz, *Piling Up: How China's Ban on Importing Waste Has Stalled Global Recycling*, Yale Environment 360 (March 7, 2019), <https://e360.yale.edu/features/piling-up-how-chinas-ban-on-importing-waste-has-stalled-global-recycling> (last visited Jan. 31, 2020).

⁵³ National Waste & Recycling Association, *Issue Brief: China's Changing Policies on Imported Recyclables*, 1-2 (Apr. 2018), available at https://c.ymcdn.com/sites/wasterecycling.site-ym.com/resource/resmgr/files/issue_brief/China's_Changing_Policies_on.pdf (last visited Jan. 31, 2020).

⁵⁴ Waste Dive, *How Recycling is Changing in All 50 States* (June 5, 2019), <https://www.wastedive.com/news/what-chinese-import-policies-mean-for-all-50-states/510751/> (last visited Jan. 31, 2020).

⁵⁵ *DEP 2017 Report*, at 15, available at https://floridadep.gov/sites/default/files/FinalRecyclingReportVolume1_0_0.pdf.

⁵⁶ *Id.*

⁵⁷ *Id.* at 15-17; *DEP 2019 Report*, at 12-15, available at https://floridadep.gov/sites/default/files/Final%20Strategic_Plan_2019%202012-13-2019_1.pdf.

⁵⁸ *DEP 2019 Report*, at 12.

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ *Id.* at 12-13.

⁶² Chapter 373, p. IV, F.S.; Fla. Admin. Code Ch. 62-330; DEP, *DEP 101: Environmental Resource Permitting*, available at: <https://floridadep.gov/comm/press-office/content/dep-101-environmental-resource-permitting> (last visited Oct. 29, 2019).

⁶³ Fla. Admin. Code R. 62-330.010. The responsibilities for implementing the statewide ERP program are partially delegated by DEP to the water management districts and certain local governments.

For some low impact activities and projects that are narrow in scope, an ERP permit is not required under state law.⁶⁴ Engaging in these activities and projects requires compliance with applicable local requirements, but generally requires no notice to DEP.⁶⁵ A broad array of activities are expressly exempt from the ERP program, these include but are not limited to: the installation of overhead transmission lines; installation and maintenance of boat ramps; work on seawalls and mooring pilings, swales, and footbridges; the removal of aquatic plants; construction and operation of floating vessel platforms; and work on county roads and bridges.⁶⁶ Included among activities exempt from the requirement to obtain an ERP permit is the replacement or repair of existing docks and piers if fill material is not used and the replaced or repaired dock or pier is in the same location and of the same configuration and dimensions as the dock or pier being replaced or repaired.⁶⁷ Although permitting is not required for these activities, there may be a requirement to obtain permission to use or occupy lands owned by the Board of Trustees of the Internal Improvement Trust Fund or a water management district in its governmental or proprietary capacity.⁶⁸

III. Effect of Proposed Changes:

Section 1 amends s. 403.706, F.S., which establishes the responsibilities and authority of local governments to provide facilities and programs for solid waste management and recycling.

The bill defines a “residential recycling collector” as “a for-profit business entity that collects and transports residential recyclable material on behalf of a county or municipality.”

The bill states that after a contract is executed, a residential recycling collector is not required to collect or transport contaminated recycling material, except according to a contract consistent with the requirements below. The bill requires that each contract between a residential recycling collector and a county or municipality for the collection or transport of waste, and each request for proposal or other solicitation for the collection of residential recycling material, include all of the following:

- A definition of “contaminated recyclable material” that is appropriate for the local community.
- The respective strategies and obligations of the local government and residential recycling collector to reduce the amount of contaminated recyclable material being collected.
- The procedures for identifying, documenting, managing, and rejecting residential recycling containers, truckloads, carts, or bins containing contaminated recyclable material.
- The remedies authorized to be used if a container, cart, or bin contains contaminated recyclable material.
- The education and enforcement measures that will be used to reduce the amount of contaminated recyclable material.

The bill states that after a contract is executed, a recovered materials processing facility is not required to process contaminated recyclable material, except according to a contract consistent

⁶⁴ Section 403.813, F.S.

⁶⁵ Fla. Admin. Code Rules 62-330.050(1) and 62-330.051(2).

⁶⁶ Section 403.813(1), F.S.; Fla. Admin. Code R. 62-330.051.

⁶⁷ Section 403.813(1)(d), F.S.

⁶⁸ Section 403.813(1), F.S.

with the requirements below. The bill requires that each contract between a recovered materials processing facility and a county or municipality for processing residential recyclable material, and each request for proposal or other solicitation for processing residential recyclable material, include all of the following:

- A definition of “contaminated recyclable material” that is appropriate for the local community.
- The respective strategies and obligations of the local government and the facility to reduce the amount of contaminated recyclable material being collected and processed.
- The procedures for identifying, documenting, managing, and rejecting residential recycling containers, truckloads, carts, or bins containing contaminated recyclable materials.
- The remedies authorized to be used if a container or truckload contains contaminated recyclable material.

These contractual requirements apply only to the collection and processing of material obtained from residential recycling activities. As used in the bill, the term “contaminated recyclable material” refers only to recyclable material that is commingled or mixed with solid waste or other nonhazardous material. Contaminated recyclable material, as used in the bill, does not include “contamination” as used in programs such as brownfield site cleanup, water quality remediation, drycleaning-solvent-contaminated site cleanup, petroleum-contaminated site cleanup, cattle dipping vat site cleanup, or other hazardous waste remediation.

The contractual requirements apply to each contract between a municipality or county and a residential recycling collector or recovered materials processing facility executed or renewed after October 1, 2020.

Section 2 amends s. 403.813, F.S., which identifies certain activities for which an environmental resource permit is not required.

The bill prohibits a local government from requiring a person claiming an exemption under s. 403.813(1), F.S., to provide further verification from the Department of Environmental Protection.

The bill revises the exemption in current law from environmental resource permitting for the replacement or repair of existing docks or piers. Rather than requiring that the replaced or repaired dock or pier be in the same location and of the same configuration and dimensions as the dock or pier being replaced or repaired, the bill states that it must be within 5 feet of the same location and no larger than the existing dock or pier. No additional aquatic resources may be adversely and permanently impacted by such replacement or repair.

Section 3 states that this act shall take effect on July 1, 2020.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

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

None.

B. Private Sector Impact:

The bill provides recycling collectors the right to refuse collection of recyclable materials that are deemed contaminated under the contract. This right may produce an indeterminate positive fiscal impact for private sector recycling collectors and facilities through a reduction of costs associated with removing contaminated material from recyclables.

The bill may also have a positive fiscal impact on the private sector by expanding the permit exception for the replacement or repair of existing docks and piers if it results in more docks being built or repaired.

C. Government Sector Impact:

The bill may have a negative fiscal impact on local governments that must negotiate new required contract terms, including defining “contaminated recyclable materials,” with residential recycling collectors and recovered materials processing facilities.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 403.706, 403.813

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 Environment and Natural Resources Committee on November 4, 2019:**

- Deletes the requirement that the definition of “contaminated recyclable material” in certain local government contracts must take into consideration the available markets for recyclable material, available waste composition studies, and other relevant factors.
- Clarifies that after the execution of a contract is when a residential recycling collector or recycled material processing facility is not required to collect, transport, or process contaminated recyclable material except pursuant to specified contractual requirements.

B. Amendments:

None.

By the Committee on Environment and Natural Resources; and
Senator Perry

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A bill to be entitled

An act relating to environmental regulation; amending s. 403.706, F.S.; specifying requirements for contracts between residential recycling collectors or recovered materials processing facilities and counties or municipalities for the collection or processing of residential recycling material; providing that a residential recycling collector or recovered materials processing facility is not required to collect, transport, or process contaminated recyclable material except pursuant to specified contractual requirements after a contract is executed; defining the term "residential recycling collector"; providing applicability; amending s. 403.813, F.S.; prohibiting local governments from requiring further verification from the Department of Environmental Protection for certain projects; revising the types of dock and pier replacements and repairs that are exempt from such verification and certain permitting requirements; providing an effective date.

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

Section 1. Subsection (22) of section 403.706, Florida Statutes, is renumbered as subsection (23), and a new subsection (22) is added to that section, to read:

403.706 Local government solid waste responsibilities.—
(22) (a) Each contract between a residential recycling collector and a county or municipality for the collection or

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transport of residential recyclable material, and each request for proposal or other solicitation for the collection of residential recyclable material, must include all of the following:

1. The respective strategies and obligations of the county or municipality and the residential recycling collector to reduce the amount of contaminated recyclable material being collected.

2. The procedures for identifying, documenting, managing, and rejecting residential recycling containers, truck loads, carts, or bins that contain contaminated recyclable material.

3. The remedies authorized to be used if a container, cart, or bin contains contaminated recyclable material.

4. The education and enforcement measures that will be used to reduce the amount of contaminated recyclable material.

5. A definition of the term "contaminated recyclable material" that is appropriate for the local community.

(b) Each contract between a recovered materials processing facility and a county or municipality for processing residential recyclable material, and each request for proposal or other solicitation for processing residential recyclable material, must include all of the following:

1. The respective strategies and obligations of the county or municipality and the facility to reduce the amount of contaminated recyclable material being collected and processed.

2. The procedures for identifying, documenting, managing, and rejecting residential recycling containers, truck loads, carts, or bins that contain contaminated recyclable material.

3. The remedies authorized to be used if a container or

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59 truck load contains contaminated recyclable material.

60 4. A definition of the term "contaminated recyclable
61 material" that is appropriate for the local community.

62 (c) After a contract is executed, a residential recycling
63 collector is not required to collect or transport contaminated
64 recyclable material, except pursuant to a contract consistent
65 with paragraph (a). As used in this subsection, the term
66 "residential recycling collector" means a for-profit business
67 entity that collects and transports residential recyclable
68 material on behalf of a county or municipality.

69 (d) After a contract is executed, a recovered materials
70 processing facility is not required to process contaminated
71 recyclable material, except pursuant to a contract consistent
72 with paragraph (b).

73 (e) This subsection applies to each contract between a
74 municipality or county and a residential recycling collector or
75 recovered materials processing facility executed or renewed
76 after October 1, 2020.

77 (f) This subsection applies only to the collection and
78 processing of material obtained from residential recycling
79 activities. As used in this subsection, the term "contaminated
80 recyclable material" refers only to recyclable material that is
81 comingled or mixed with solid waste or other nonhazardous
82 material. The term does not include contamination as that term
83 or a derivation of that term is used in chapter 376 and other
84 sections of chapter 403, including, but not limited to,
85 brownfield site cleanup, water quality remediation, drycleaning-
86 solvent-contaminated site cleanup, petroleum-contaminated site
87 cleanup, cattle dipping vat site cleanup, or other hazardous

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88 waste remediation.

89 Section 2. Subsection (1) of section 403.813, Florida
90 Statutes, is amended to read:

91 403.813 Permits issued at district centers; exceptions.—

92 (1) A permit is not required under this chapter, chapter
93 373, chapter 61-691, Laws of Florida, or chapter 25214 or
94 chapter 25270, 1949, Laws of Florida, and a local government may
95 not require a person claiming this exception to provide further
96 department verification, for activities associated with the
97 following types of projects; however, except as otherwise
98 provided in this subsection, this subsection does not relieve an
99 applicant from any requirement to obtain permission to use or
100 occupy lands owned by the Board of Trustees of the Internal
101 Improvement Trust Fund or a water management district in its
102 governmental or proprietary capacity or from complying with
103 applicable local pollution control programs authorized under
104 this chapter or other requirements of county and municipal
105 governments:

106 (a) The installation of overhead transmission lines, having
107 with support structures that ~~which~~ are not constructed in waters
108 of the state and which do not create a navigational hazard.

109 (b) The installation and repair of mooring pilings and
110 dolphins associated with private docking facilities or piers and
111 the installation of private docks, piers, and recreational
112 docking facilities, or piers and recreational docking facilities
113 of local governmental entities when the local governmental
114 entity's activities will not take place in any manatee habitat,
115 any of which docks:

116 1. Has 500 square feet or less of over-water surface area

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117 for a dock ~~which is~~ located in an area designated as Outstanding
 118 Florida Waters or 1,000 square feet or less of over-water
 119 surface area for a dock ~~which is~~ located in an area that ~~which~~
 120 is not designated as Outstanding Florida Waters;

121 2. Is constructed on or held in place by pilings or is a
 122 floating dock ~~which is~~ constructed so as not to involve filling
 123 or dredging other than that necessary to install the pilings;

124 3. ~~May~~ ~~shall~~ not substantially impede the flow of water or
 125 create a navigational hazard;

126 4. Is used for recreational, noncommercial activities
 127 associated with the mooring or storage of boats and boat
 128 paraphernalia; and

129 5. Is the sole dock constructed pursuant to this exemption
 130 as measured along the shoreline for a distance of 65 feet,
 131 unless the parcel of land or individual lot as platted is less
 132 than 65 feet in length along the shoreline, in which case ~~there~~
 133 ~~may be~~ one exempt dock may be allowed per parcel or lot.

134
 135 ~~Nothing in~~ This paragraph does not shall prohibit the department
 136 from taking appropriate enforcement action pursuant to this
 137 chapter to abate or prohibit any activity otherwise exempt from
 138 permitting pursuant to this paragraph if the department can
 139 demonstrate that the exempted activity has caused water
 140 pollution in violation of this chapter.

141 (c) The installation and maintenance to design
 142 specifications of boat ramps on artificial bodies of water where
 143 navigational access to the proposed ramp exists or the
 144 installation of boat ramps open to the public in any waters of
 145 the state where navigational access to the proposed ramp exists

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146 and where the construction of the proposed ramp will be less
 147 than 30 feet wide and will involve the removal of less than 25
 148 cubic yards of material from the waters of the state, and the
 149 maintenance to design specifications of such ramps. ~~however,~~
 150 The material to be removed shall be placed on ~~upon~~ a self-
 151 contained, upland spoil site which will ~~so as to~~ prevent the
 152 escape of the spoil material into the waters of the state.

153 (d) The replacement or repair of existing docks and piers,
 154 except that fill material may not be used and the replacement or
 155 repaired dock or pier must be within 5 feet of the same location
 156 and no larger in size than the existing dock or pier, and no
 157 additional aquatic resources may be adversely and permanently
 158 impacted by such replacement or repair in the same location and
 159 of the same configuration and dimensions as the dock or pier
 160 being replaced or repaired. This does not preclude the use of
 161 different construction materials or minor deviations to allow
 162 upgrades to current structural and design standards.

163 (e) The restoration of seawalls at their previous locations
 164 or upland of, or within 18 inches waterward of, their previous
 165 locations. ~~However,~~ This may shall not affect the permitting
 166 requirements of chapter 161, and department rules shall clearly
 167 indicate that this exception does not constitute an exception
 168 from the permitting requirements of chapter 161.

169 (f) The performance of maintenance dredging of existing
 170 manmade canals, channels, intake and discharge structures, and
 171 previously dredged portions of natural water bodies within
 172 drainage rights-of-way or drainage easements which have been
 173 recorded in the public records of the county, when ~~where~~ the
 174 spoil material is to be removed and placed ~~deposited~~ on a self-

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175 contained, upland spoil site ~~which~~ will prevent the escape of
 176 the spoil material into the waters of the state, provided that
 177 no more dredging is to be performed than is necessary to restore
 178 the canals, channels, and intake and discharge structures, and
 179 previously dredged portions of natural water bodies, to original
 180 design specifications or configurations, provided that the work
 181 is conducted in compliance with s. 379.2431(2)(d), provided that
 182 no significant impacts occur to previously undisturbed natural
 183 areas, and provided that control devices for return flow and
 184 best management practices for erosion and sediment control are
 185 used ~~utilized~~ to prevent bank erosion and scouring and to
 186 prevent turbidity, dredged material, and toxic or deleterious
 187 substances from discharging into adjacent waters during
 188 maintenance dredging. ~~Further,~~ For maintenance dredging of
 189 previously dredged portions of natural water bodies within
 190 recorded drainage rights-of-way or drainage easements, an entity
 191 that seeks an exemption must notify the department or water
 192 management district, as applicable, at least 30 days before
 193 ~~prior to~~ dredging and provide documentation of original design
 194 specifications or configurations when ~~where~~ such exist. This
 195 exemption applies to all canals and previously dredged portions
 196 of natural water bodies within recorded drainage rights-of-way
 197 or drainage easements constructed before ~~prior to~~ April 3, 1970,
 198 and to those canals and previously dredged portions of natural
 199 water bodies constructed on or after April 3, 1970, pursuant to
 200 all necessary state permits. This exemption does not apply to
 201 the removal of a natural or manmade barrier separating a canal
 202 or canal system from adjacent waters. When no previous permit
 203 has been issued by the Board of Trustees of the Internal

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204 Improvement Trust Fund or the United States Army Corps of
 205 Engineers for construction or maintenance dredging of the
 206 existing manmade canal or intake or discharge structure, such
 207 maintenance dredging shall be limited to a depth of no more than
 208 5 feet below mean low water. The Board of Trustees of the
 209 Internal Improvement Trust Fund may fix and recover from the
 210 permittee an amount equal to the difference between the fair
 211 market value and the actual cost of the maintenance dredging for
 212 material removed during such maintenance dredging; ~~however,~~ a
 213 ~~no~~ charge may not ~~shall~~ be exacted by the state for material
 214 removed during such maintenance dredging by a public port
 215 authority. The removing party may subsequently sell such
 216 material; however, proceeds from such sale that exceed the costs
 217 of maintenance dredging shall be remitted to the state and
 218 deposited in the Internal Improvement Trust Fund.

219 (g) The maintenance of existing insect control structures,
 220 dikes, and irrigation and drainage ditches, provided that spoil
 221 material is placed ~~deposited~~ on a self-contained, upland spoil
 222 site which will prevent the escape of the spoil material into
 223 waters of the state. In the case of insect control structures,
 224 if the cost of using a self-contained, upland spoil site is so
 225 excessive, as determined by the Department of Health, pursuant
 226 to s. 403.088(1), that it will inhibit proposed insect control,
 227 then-existing spoil sites or dikes may be used, upon
 228 notification to the department. In the case of insect control
 229 where upland spoil sites are not used pursuant to this
 230 exemption, turbidity control devices shall be used to confine
 231 the spoil material discharge to that area previously disturbed
 232 when the receiving body of water is used as a potable water

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233 supply, is designated as shellfish harvesting waters, or
 234 functions as a habitat for commercially or recreationally
 235 important shellfish or finfish. In all cases, no more dredging
 236 is to be performed than is necessary to restore the dike or
 237 irrigation or drainage ditch to its original design
 238 specifications.

239 (h) The repair or replacement of existing functional pipes
 240 or culverts the purpose of which is the discharge or conveyance
 241 of stormwater. In all cases, the invert elevation, the diameter,
 242 and the length of the culvert may ~~shall~~ not be changed. However,
 243 the material used for the culvert may be different from the
 244 original.

245 (i) The construction of private docks of 1,000 square feet
 246 or less of over-water surface area and seawalls in artificially
 247 created waterways when ~~where~~ such construction will not violate
 248 existing water quality standards, impede navigation, or affect
 249 flood control. This exemption does not apply to the construction
 250 of vertical seawalls in estuaries or lagoons unless the proposed
 251 construction is within an existing manmade canal where the
 252 shoreline is currently occupied in whole or part by vertical
 253 seawalls.

254 (j) The construction and maintenance of swales.

255 (k) The installation of aids to navigation and buoys
 256 associated with such aids, provided the devices are marked
 257 pursuant to s. 327.40.

258 (l) The replacement or repair of existing open-trestle foot
 259 bridges and vehicular bridges that are 100 feet or less in
 260 length and two lanes or less in width, provided that no more
 261 dredging or filling of submerged lands is performed other than

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262 that which is necessary to replace or repair pilings and that
 263 the structure to be replaced or repaired is the same length, the
 264 same configuration, and in the same location as the original
 265 bridge. ~~No~~ Debris from the original bridge may not ~~shall~~ be
 266 allowed to remain in the waters of the state.

267 (m) The installation of subaqueous transmission and
 268 distribution lines laid on, or embedded in, the bottoms of
 269 waters in the state, except in Class I and Class II waters and
 270 aquatic preserves, provided no dredging or filling is necessary.

271 (n) The replacement or repair of subaqueous transmission
 272 and distribution lines laid on, or embedded in, the bottoms of
 273 waters of the state.

274 (o) The construction of private seawalls in wetlands or
 275 other surface waters when ~~where~~ such construction is between and
 276 adjoins at both ends existing seawalls; follows a continuous and
 277 uniform seawall construction line with the existing seawalls; is
 278 not ~~no~~ more than 150 feet in length; and does not violate
 279 existing water quality standards, impede navigation, or affect
 280 flood control. However, in estuaries and lagoons the
 281 construction of vertical seawalls is limited to the
 282 circumstances and purposes stated in s. 373.414(5)(b)1.-4. This
 283 paragraph does not affect the permitting requirements of chapter
 284 161, and department rules must clearly indicate that this
 285 exception does not constitute an exception from the permitting
 286 requirements of chapter 161.

287 (p) The restoration of existing insect control impoundment
 288 dikes which are less than 100 feet in length. Such impoundments
 289 shall be connected to tidally influenced waters for 6 months
 290 each year beginning September 1 and ending February 28 if

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291 feasible or operated in accordance with an impoundment
 292 management plan approved by the department. A dike restoration
 293 may involve no more dredging than is necessary to restore the
 294 dike to its original design specifications. For the purposes of
 295 this paragraph, restoration does not include maintenance of
 296 impoundment dikes of operating insect control impoundments.

297 (q) The construction, operation, or maintenance of
 298 stormwater management facilities which are designed to serve
 299 single-family residential projects, including duplexes,
 300 triplexes, and quadruplexes, if they are less than 10 acres
 301 total land and have less than 2 acres of impervious surface and
 302 if the facilities:

303 1. Comply with all regulations or ordinances applicable to
 304 stormwater management and adopted by a city or county;

305 2. Are not part of a larger common plan of development or
 306 sale; and

307 3. Discharge into a stormwater discharge facility exempted
 308 or permitted by the department under this chapter which has
 309 sufficient capacity and treatment capability as specified in
 310 this chapter and is owned, maintained, or operated by a city,
 311 county, special district with drainage responsibility, or water
 312 management district; however, this exemption does not authorize
 313 discharge to a facility without the facility owner's prior
 314 written consent.

315 (r) The removal of aquatic plants, the removal of tussocks,
 316 the associated replanting of indigenous aquatic plants, and the
 317 associated removal from lakes of organic detrital material when
 318 such planting or removal is performed and authorized by permit
 319 or exemption granted under s. 369.20 or s. 369.25, provided

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320 that:

321 1. Organic detrital material that exists on the surface of
 322 natural mineral substrate shall be allowed to be removed to a
 323 depth of 3 feet or to the natural mineral substrate, whichever
 324 is less;

325 2. All material removed pursuant to this paragraph shall be
 326 placed on a self-contained, deposited in an upland spoil site
 327 ~~which in a manner that~~ will prevent the escape ~~reintroduction~~ of
 328 the spoil material into waters in the state except when spoil
 329 material is permitted to be used to create wildlife islands in
 330 freshwater bodies of the state when a governmental entity is
 331 permitted pursuant to s. 369.20 to create such islands as a part
 332 of a restoration or enhancement project;

333 3. All activities are performed in a manner consistent with
 334 state water quality standards; and

335 4. ~~No~~ Activities under this exemption are not conducted in
 336 wetland areas, as defined in s. 373.019(27), which are supported
 337 by a natural soil as shown in applicable United States
 338 Department of Agriculture county soil surveys, except when a
 339 governmental entity is permitted pursuant to s. 369.20 to
 340 conduct such activities as a part of a restoration or
 341 enhancement project.

342
 343 The department may not adopt implementing rules for this
 344 paragraph, notwithstanding any other provision of law.

345 (s) The construction, installation, operation, or
 346 maintenance of floating vessel platforms or floating boat lifts,
 347 provided that such structures:

348 1. Float at all times in the water for the sole purpose of

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349 supporting a vessel so that the vessel is out of the water when
350 not in use;

351 2. Are wholly contained within a boat slip previously
352 permitted under ss. 403.91-403.929, 1984 Supplement to the
353 Florida Statutes 1983, as amended, or part IV of chapter 373, or
354 do not exceed a combined total of 500 square feet, or 200 square
355 feet in an Outstanding Florida Water, when associated with a
356 dock that is exempt under this subsection or associated with a
357 permitted dock with no defined boat slip or attached to a
358 bulkhead on a parcel of land where there is no other docking
359 structure;

360 3. Are not used for any commercial purpose or for mooring
361 vessels that remain in the water when not in use, and do not
362 substantially impede the flow of water, create a navigational
363 hazard, or unreasonably infringe upon the riparian rights of
364 adjacent property owners, as defined in s. 253.141;

365 4. Are constructed and used so as to minimize adverse
366 impacts to submerged lands, wetlands, shellfish areas, aquatic
367 plant and animal species, and other biological communities,
368 including locating such structures in areas where seagrasses are
369 least dense adjacent to the dock or bulkhead; and

370 5. Are not constructed in areas specifically prohibited for
371 boat mooring under conditions of a permit issued in accordance
372 with ss. 403.91-403.929, 1984 Supplement to the Florida Statutes
373 1983, as amended, or part IV of chapter 373, or other form of
374 authorization issued by a local government.

375
376 Structures that qualify for this exemption are relieved from any
377 requirement to obtain permission to use or occupy lands owned by

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378 the Board of Trustees of the Internal Improvement Trust Fund
379 and, with the exception of those structures attached to a
380 bulkhead on a parcel of land where there is no docking
381 structure, ~~may shall~~ not be subject to any more stringent
382 permitting requirements, registration requirements, or other
383 regulation by any local government. Local governments may
384 require either permitting or one-time registration of floating
385 vessel platforms to be attached to a bulkhead on a parcel of
386 land where there is no other docking structure as necessary to
387 ensure compliance with local ordinances, codes, or regulations.
388 Local governments may require either permitting or one-time
389 registration of all other floating vessel platforms as necessary
390 to ensure compliance with the exemption criteria in this
391 section; to ensure compliance with local ordinances, codes, or
392 regulations relating to building or zoning, which are no more
393 stringent than the exemption criteria in this section or address
394 subjects other than subjects addressed by the exemption criteria
395 in this section; and to ensure proper installation, maintenance,
396 and precautionary or evacuation action following a tropical
397 storm or hurricane watch of a floating vessel platform or
398 floating boat lift that is proposed to be attached to a bulkhead
399 or parcel of land where there is no other docking structure. The
400 exemption provided in this paragraph shall be in addition to the
401 exemption provided in paragraph (b). The department shall adopt
402 a general permit by rule for the construction, installation,
403 operation, or maintenance of those floating vessel platforms or
404 floating boat lifts that do not qualify for the exemption
405 provided in this paragraph but do not cause significant adverse
406 impacts to occur individually or cumulatively. The issuance of

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407 such general permit shall also constitute permission to use or
 408 occupy lands owned by the Board of Trustees of the Internal
 409 Improvement Trust Fund. ~~No Local governments may not~~ government
 410 ~~shall~~ impose a more stringent regulation, permitting
 411 requirement, registration requirement, or other regulation
 412 covered by such general permit. Local governments may require
 413 either permitting or one-time registration of floating vessel
 414 platforms as necessary to ensure compliance with the general
 415 permit in this section; to ensure compliance with local
 416 ordinances, codes, or regulations relating to building or zoning
 417 that are no more stringent than the general permit in this
 418 section; and to ensure proper installation and maintenance of a
 419 floating vessel platform or floating boat lift that is proposed
 420 to be attached to a bulkhead or parcel of land where there is no
 421 other docking structure.

422 (t) The repair, stabilization, or paving of existing county
 423 maintained roads and the repair or replacement of bridges that
 424 are part of the roadway, within the Northwest Florida Water
 425 Management District and the Suwannee River Water Management
 426 District, provided:

427 1. The road and associated bridge were in existence and in
 428 use as a public road or bridge, and were maintained by the
 429 county as a public road or bridge on or before January 1, 2002;

430 2. The construction activity does not realign the road or
 431 expand the number of existing traffic lanes of the existing
 432 road; however, the work may include the provision of safety
 433 shoulders, clearance of vegetation, and other work reasonably
 434 necessary to repair, stabilize, pave, or repave the road,
 435 provided that the work is constructed by generally accepted

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436 engineering standards;

437 3. The construction activity does not expand the existing
 438 width of an existing vehicular bridge in excess of that
 439 reasonably necessary to properly connect the bridge with the
 440 road being repaired, stabilized, paved, or repaved to safely
 441 accommodate the traffic expected on the road, which may include
 442 expanding the width of the bridge to match the existing
 443 connected road. ~~However, no~~ Debris from the original bridge may
 444 not ~~shall~~ be allowed to remain in waters of the state, including
 445 wetlands;

446 4. Best management practices for erosion control shall be
 447 employed as necessary to prevent water quality violations;

448 5. Roadside swales or other effective means of stormwater
 449 treatment must be incorporated as part of the project;

450 6. No more dredging or filling of wetlands or water of the
 451 state is performed than that which is reasonably necessary to
 452 repair, stabilize, pave, or repave the road or to repair or
 453 replace the bridge, in accordance with generally accepted
 454 engineering standards; and

455 7. Notice of intent to use the exemption is provided to the
 456 department, if the work is to be performed within the Northwest
 457 Florida Water Management District, or to the Suwannee River
 458 Water Management District, if the work is to be performed within
 459 the Suwannee River Water Management District, 30 days before
 460 ~~prior to~~ performing any work under the exemption.

461
 462 Within 30 days after this act becomes a law, the department
 463 shall initiate rulemaking to adopt a no fee general permit for
 464 the repair, stabilization, or paving of existing roads that are

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465 maintained by the county and the repair or replacement of
 466 bridges that are part of the roadway where such activities do
 467 not cause significant adverse impacts to occur individually or
 468 cumulatively. The general permit shall apply statewide and, with
 469 no additional rulemaking required, apply to qualified projects
 470 reviewed by the Suwannee River Water Management District, the
 471 St. Johns River Water Management District, the Southwest Florida
 472 Water Management District, and the South Florida Water
 473 Management District under the division of responsibilities
 474 contained in the operating agreements applicable to part IV of
 475 chapter 373. Upon adoption, this general permit shall, pursuant
 476 to ~~the provisions of~~ subsection (2), supersede and replace the
 477 exemption in this paragraph.

478 (u) Notwithstanding any provision to the contrary in this
 479 subsection, a permit or other authorization under chapter 253,
 480 chapter 369, chapter 373, or this chapter is not required for an
 481 individual residential property owner for the removal of organic
 482 detrital material from freshwater rivers or lakes that have a
 483 natural sand or rocky substrate and that are not Aquatic
 484 Preserves or for the associated removal and replanting of
 485 aquatic vegetation for the purpose of environmental enhancement,
 486 providing that:

487 1. No activities under this exemption are conducted in
 488 wetland areas, as defined in s. 373.019(27), which are supported
 489 by a natural soil as shown in applicable United States
 490 Department of Agriculture county soil surveys.

491 2. No filling or peat mining is allowed.

492 3. No removal of native wetland trees, including, but not
 493 limited to, ash, bay, cypress, gum, maple, or tupelo, occurs.

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494 4. When removing organic detrital material, no portion of
 495 the underlying natural mineral substrate or rocky substrate is
 496 removed.

497 5. Removed organic detrital material and plant material
 498 ~~removed is placed on~~ deposited in an upland spoil site which is
 499 ~~a manner that~~ will not cause water quality violations.

500 6. All activities are conducted in such a manner, and with
 501 appropriate turbidity controls, so as to prevent any water
 502 quality violations outside the immediate work area.

503 7. Replanting with a variety of aquatic plants native to
 504 the state shall occur in a minimum of 25 percent of the
 505 preexisting vegetated areas where organic detrital material is
 506 removed, except for areas where the material is removed to bare
 507 rocky substrate; however, an area may be maintained clear of
 508 vegetation as an access corridor. The access corridor width may
 509 not exceed 50 percent of the property owner's frontage or 50
 510 feet, whichever is less, and may be a sufficient length
 511 waterward to create a corridor to allow access for a boat or
 512 swimmer to reach open water. Replanting must be at a minimum
 513 density of 2 feet on center and be completed within 90 days
 514 after removal of existing aquatic vegetation, except that under
 515 dewatered conditions replanting must be completed within 90 days
 516 after reflooding. The area to be replanted must extend waterward
 517 from the ordinary high water line to a point where normal water
 518 depth would be 3 feet or the preexisting vegetation line,
 519 whichever is less. Individuals are required to make a reasonable
 520 effort to maintain planting density for a period of 6 months
 521 after replanting is complete, and the plants, including
 522 naturally recruited native aquatic plants, must be allowed to

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523 expand and fill in the revegetation area. Native aquatic plants
 524 to be used for revegetation must be salvaged from the
 525 enhancement project site or obtained from an aquatic plant
 526 nursery regulated by the Department of Agriculture and Consumer
 527 Services. Plants that are not native to the state may not be
 528 used for replanting.

529 8. No activity occurs any farther than 100 feet waterward
 530 of the ordinary high water line, and all activities must be
 531 designed and conducted in a manner that will not unreasonably
 532 restrict or infringe upon the riparian rights of adjacent upland
 533 riparian owners.

534 9. The person seeking this exemption notifies the
 535 applicable department district office in writing at least 30
 536 days before commencing work and allows the department to conduct
 537 a preconstruction site inspection. Notice must include an
 538 organic-detrital-material removal and disposal plan and, if
 539 applicable, a vegetation-removal and revegetation plan.

540 10. The department is provided written certification of
 541 compliance with the terms and conditions of this paragraph
 542 within 30 days after completion of any activity occurring under
 543 this exemption.

544 (v) Notwithstanding any other provision in this chapter,
 545 chapter 373, or chapter 161, a permit or other authorization is
 546 not required for the following exploratory activities associated
 547 with beach restoration and nourishment projects and inlet
 548 management activities:

549 1. The collection of geotechnical, geophysical, and
 550 cultural resource data, including surveys, mapping, acoustic
 551 soundings, benthic and other biologic sampling, and coring.

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552 2. Oceanographic instrument deployment, including temporary
 553 installation on the seabed of coastal and oceanographic data
 554 collection equipment.

555 3. Incidental excavation associated with any of the
 556 activities listed under subparagraph 1. or subparagraph 2.

557 Section 3. This act shall take effect July 1, 2020.

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The Florida Senate

Committee Agenda Request

To: Senator Lizbeth Benacquisto, Chair
Committee on Rules

Subject: Committee Agenda Request

Date: December 20, 2019

I respectfully request that **Senate Bill #326**, relating to Environmental Regulation, be placed on the:

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

A handwritten signature in cursive script that reads "W. Keith Perry".

Senator Keith Perry
Florida Senate, District 8

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/5/20

Meeting Date

SB326

Bill Number (if applicable)

Topic ENVIRONMENTAL REGULATIONS

Amendment Barcode (if applicable)

Name CHARLIE LATHAM

Job Title GOVERNMENT AFFAIRS

Address 6501 GREENLAND ROAD

Phone 904-910-4004

Street JACKSONVILLE FL 32258

Email WLATHAM@WM.COM

City State Zip

Speaking: For Against Information

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

Representing WASTE MANAGEMENT, INC.

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/5/2020

Meeting Date

CSB 326

Bill Number (if applicable)

Topic ENVIRONMENT REGULATIONS

Amendment Barcode (if applicable)

Name KEYNA CORY

Job Title LOBBYIST

Address 730 E. PARK AVE

Phone 888 681 1065

Street

TALLAHASSEE

City

FL

State

3239

Zip

Email Keynacory@pacconsultants.com

Speaking: For Against Information

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

Representing NATIONAL WASTE & RECYCLING ASSN - FL CHAPTER

Appearing at request of Chair: Yes 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 374

INTRODUCER: Senator Rouson

SUBJECT: Housing Discrimination

DATE: February 3, 2020

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Stallard</u>	<u>Cibula</u>	<u>JU</u>	Favorable
2.	<u>Ponder</u>	<u>McVaney</u>	<u>GO</u>	Favorable
3.	<u>Stallard</u>	<u>Phelps</u>	<u>RC</u>	Favorable

I. Summary:

SB 374 amends ss. 760.34, F.S., and 760.35, F.S., to allow a person alleging housing discrimination under the Florida Fair Housing Act (FFHA) to file a civil action regardless of whether the aggrieved person has exhausted his or her administrative remedies. Accordingly, the aggrieved person may file a civil action regardless of whether:

- He or she has filed a complaint with the Florida Commission on Human Relations (Commission);
- The Commission has resolved a complaint (if the aggrieved person chose to file one); or
- Any particular amount of time has passed since the aggrieved person filed a complaint with the Commission.

The bill prohibits an aggrieved person from filing a civil action under the FFHA in two instances: (i) if the claimant has consented to a conciliation agreement obtained by the Commission, other than to enforce the terms of the conciliation agreement; or (i) if an administrative law judge has commenced a hearing.

The bill, in making the FFHA substantially equivalent to the federal Fair Housing Act, enhances the opportunity for the Commission to continue to receive its federal funding of approximately of approximately \$597,189 (based on a six-year average of funding).

The bill takes effect upon becoming law.

II. Present Situation:

The Florida Commission on Human Relations

The Commission was established by the Legislature in 1969 and is charged with enforcing the state's civil rights laws. The Commission investigates complaints of discrimination under the

Florida Fair Housing Act of 1983, the Florida Civil Rights Act of 1992, and the Whistle-Blower's Act of 1999. The Commission is certified as a "substantially equivalent" agency by the United States Department of Housing and Urban Development (HUD) and, through annual work share agreements, receives and investigates housing discrimination complaints referred by HUD. HUD provides funding to the Commission through the Fair Housing Assistance Program (FHAP) for processing complaints, training, technical assistance, and creating and maintaining data information systems.

The Florida Fair Housing Act

The FFHA is modeled after the federal Fair Housing Act.¹ 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.² In addition, the FFHA affords protection to persons who are pregnant or in the process of becoming legal custodians of children of 18 years of age or younger, or persons who are themselves handicapped or associated with a handicapped person.³

A person alleging discrimination under the FFHA has one year after the discriminatory housing practice to file a complaint with the Commission.⁴ The Commission has 100 days after receiving the complaint to complete its investigation and issue a determination.⁵ The Commission may also decide to resolve the complaint and eliminate or correct the discriminatory housing practice through conciliation.⁶ If the Commission is unable to obtain voluntary compliance within 180 days after a complaint is filed, the aggrieved person may initiate a civil action or file a petition for an administrative determination.⁷ If the Commission finds reasonable cause to believe that housing discrimination has occurred, the aggrieved person may request that the Attorney General bring an action against the respondent.⁸ A civil action must be commenced within two years after the alleged discriminatory act occurred.⁹ The court may "continue" (this means the case is held in abeyance pending the settlement) a civil case if conciliation efforts by the Commission or by the local housing agency are likely to result in a satisfactory settlement.¹⁰ If the court finds that a discriminatory housing practice has occurred, the court must issue an order prohibiting the practice and providing affirmative relief.¹¹

¹ Chapter 760, part II, F.S., is the Florida Fair Housing Act. Florida Fair Housing Commission, Housing Act, <https://fchr.myflorida.com/history-of-the-florida-commission-on-human-relations> (last visited Dec. 4, 2019),

² Section 760.23(1), F.S.

³ Sections 760.23(6)-(9), F.S.

⁴ Section 760.34(1) and (2), F.S.

⁵ Section 760.34(1), F.S.

⁶ *Id.*

⁷ Section 760.34(4), F.S.

⁸ *Id.*

⁹ Section 760.35(1), F.S.

¹⁰ *Id.*

¹¹ Section 760.35(2), F.S.

Remedies available under the FFHA include fines and actual punitive damages.¹² The court may also award reasonable attorney fees and costs to the Commission.¹³

If the Commission is unable to obtain voluntary compliance or has reasonable cause to believe that a discriminatory act has occurred, the Commission may institute an administrative proceeding. Alternatively, the aggrieved person may request administrative relief under ch. 120, F.S., within 30 days after receiving notice that the Commission has concluded its investigation.¹⁴

The Commission, or any local agency certified as substantially equivalent, may institute a civil action in an appropriate court if it is unable to obtain voluntary compliance with the local fair housing law.¹⁵ The local agency does not have to petition for an administrative hearing or exhaust its administrative remedies prior to bringing civil action.¹⁶

The Federal Fair Housing Act

Substantially Equivalent Agencies

HUD administers and enforces the federal Fair Housing Act (FHA).¹⁷ The FHA recognizes that a state or local government may also enact laws or ordinances prohibiting unlawful housing discrimination.¹⁸ HUD may certify a state or local government agency as “substantially equivalent” if HUD determines that the state or local law and the FHA are substantially equivalent with respect to:

- The substantive rights protected by such agency in the jurisdiction with respect to which certification is to be made;
- The procedures followed by such agency;
- The remedies available to such agency; and
- The availability of judicial review of such agency’s action.¹⁹

HUD had developed a two-step process of substantial equivalency certification. The first step considers the adequacy of the law, meaning that the law which the agency administers facially provides rights, procedures, remedies, and the availability of judicial review that are substantially equivalent to those provided in the FHA.²⁰ A determination of the adequacy of a state or local fair housing law “on its face” is intended to focus on the meaning and intent of the text of the law, as distinguished from the effectiveness of its administration. Accordingly, this determination is not limited to an analysis of the literal text of the law. Regulations, directives,

¹² Fines are capped in a tiered system based on the number of prior violations of the Fair Housing Act: up to \$10,000 if the respondent has no prior findings of guilt under the Fair Housing Act; up to \$25,000 if the respondent has had one prior violation of the Fair Housing Act; and up to \$50,000, if the respondent has had two or more violations of the Fair Housing Act. Section 760.34(7)(b), F.S.

¹³ Section 760.34(7)(c), F.S.

¹⁴ Section 760.35(3), F.S.

¹⁵ Sections 760.22(9) and 760.34(8), F.S.

¹⁶ Section 760.34(8), F.S.

¹⁷ 42 U.S.C. § 3601, et seq.

¹⁸ 42 U.S.C. § 3610.

¹⁹ *Id.*

²⁰ 24 C.F.R. § 115.201.

rules of procedure, judicial decisions, or interpretations of the law by competent authorities will be considered in making the determination.²¹ The second step considers the adequacy of performance of the law, meaning that in operation the fair housing law provides rights, procedures, remedies, and the availability of judicial review that are substantially equivalent to those provided in the FHA.²²

If a housing discrimination complaint is filed with HUD under the FHA and the complaint falls within the jurisdiction of a substantially equivalent agency, HUD must refer the complaint to the local or state agency and may take no further action, except under limited circumstances.²³

The Commission serves as the certified substantially equivalent HUD agency in Florida.²⁴ Through annual work-share agreements with HUD, the Commission accepts and investigates housing discrimination cases from HUD. According to the Commission's Fiscal Year 2010-11 through Fiscal Year 2017-18 Annual Reports, housing complaints were, on average, 15 percent of all complaints received by the Commission.²⁵

The Fair Housing Assistance Program

A substantially equivalent agency is eligible for federal funding through the Fair Housing Assistance Program (FHAP).²⁶ FHAP permits HUD to reimburse state and local agencies for services that further the purposes of the FHA. Financial assistance provides support for:

- The processing of dual-filed complaints;
- Training under the FHA and the agencies' fair housing law;
- The provision of technical assistance;
- The creation and maintenance of data and information systems;
- The development and enhancement of education and outreach projects, special enforcement efforts, partnership initiatives, and other fair housing projects.²⁷

The Commission is reimbursed by HUD for closing housing cases, through deposit from HUD into the Human Relations Commission Operating Trust Fund within the Commission. In Fiscal Year 2018-2019, these payments totaled \$507,061 for the 2018 grant period. This amount was 45.99 percent of the Commission's Operating Trust Fund for that year.²⁸ In Fiscal Year 2017-18,

²¹ 24 C.F.R. § 115.204.

²² 24 C.F.R. § 115.201.

²³ 42 U.S.C. 3610.

²⁴ HUD additionally certified as substantially equivalent the Broward County Office of Equal Opportunity, Jacksonville Human Rights Commission, Office of Community Affairs – Human Relations Department (Orlando), Palm Beach County Office of Equal Opportunity, Pinellas County Office of Human Rights, and City of Tampa Office of Community Relations. United States Department of Housing and Urban Development, Fair Housing Assistance Program (FHAP) Agencies, https://www.hud.gov/program_offices/fair_housing_equal_opp/partners/FHAP/agencies#FL (last visited Dec. 4, 2019).

²⁵ Florida Commission on Human Relations, Annual Reports, available at <https://fchr.myflorida.com/annual-reports/> (last visited Dec. 4, 2019)

²⁶ United States Department of Housing and Urban Development, Fair Housing Assistance Program (FHAP), https://www.hud.gov/program_offices/fair_housing_equal_opp/partners/FHAP (last visited Dec. 4, 2019).

²⁷ 24 C.F.R. § 115.300.

²⁸ Email from Christopher Turner, Deputy Director of External and Legislative Affairs, Florida Commission on Human Relations (Oct. 31, 2019) (on file with the Senate Committee on Judiciary).

these payments totaled \$611,721, which was 49.89 percent of the Commission's Operating Trust Fund.²⁹ The six-year average of trust fund revenue received from HUD is \$597,189.

Exhaustion of Administrative Remedies

A series of recent judicial decisions regarding the applicability of administrative remedies under the FFHA have threatened the Commission's status as a substantially equivalent HUD agency.

In 2004, the Fourth District Court of Appeal held in *Belletete v. Halford* that an aggrieved person must first exhaust administrative remedies under the FFHA before commencing a civil action in state court, citing the doctrine of exhaustion of administrative remedies.³⁰ The Court's holding was not based upon an analysis of the FFHA, which does not explicitly require exhaustion of administrative remedies. Rather, the court provided a brief analysis of what it considered to be an analogous provision of the Florida Civil Rights Act. The *Belletete* holding has been criticized by the Florida Attorney General, and has been rejected by the U.S. District Court for the Southern District of Florida.³¹ Nevertheless, Florida state courts, both in and outside of the Fourth District Court of Appeal, have adopted the *Belletete* holding, and dismiss claims brought under the FFHA where the plaintiff has not exhausted the administrative process.³²

In ongoing discussions since 2008, HUD has informed the Commission that the judicial interpretation of the FFHA in *Belletete* requiring the exhaustion of administrative remedies renders the Florida law fundamentally inconsistent with federal law. The FHA explicitly allows an aggrieved person to commence a civil action whether or not a complaint has been filed with HUD and without regard to the status of any such complaint.³³ Efforts to amend the FFHA during the 2014,³⁴ 2016,³⁵ 2018,³⁶ and 2019³⁷ legislative sessions were unsuccessful and courts continue to apply the *Belletete* rule in FFHA civil actions.

On July 2, 2015, HUD notified the Commission that it would suspend the Commission's participation in FHAP if the FFHA was not amended by January 25, 2016, to overcome the judicially-created requirement that a plaintiff exhaust their administrative remedies as a

²⁹ Email from Christopher Turner, Deputy Director of External and Legislative Affairs, Florida Commission on Human Relations (April 5, 2019) (on file with the Senate Committee on Judiciary).

³⁰ *Belletete v. Halford*, 886 So. 2d 308, 310 (Fla. 4th DCA 2004); *See also Fla. Welding & Erection Serv., Inc. v. Am. Mut. Ins. Co. of Boston*, 285 So. 2d 386, 389-90 (Fla. 1973). The doctrine of the exhaustion of administrative remedies is the principle that if an administrative remedy is provided by statute, a claimant must first seek relief from the administrative body before judicial relief is available. Black's Law Dictionary (10th ed. 2014), exhaustion of remedies.

³¹ In *Milsap v. Cornerstone Residential Management, Inc.*, 2008 WL 1994840 (S.D. Fla. 2008), the United States District Court for the Southern District of Florida, relying on *Belletete* as the only state court case on the issue, dismissed a familial status claim brought under the FFHA for failure to exhaust administrative remedies. On reconsideration, in which the Florida Attorney General intervened and argued *Belletete* was wrongly decided, the court reversed itself and reinstated the FFHA claims. *See*, 2010 WL 427436 (S. D. Fla. 2010).

³² *Sun Harbor Homeowners Ass'n v. Bonura*, 95 So. 3d 262, 267 (Fla. 4th DCA 2012); *State v. Leisure Village, Inc.*, 40 Fla. L. Weekly D934 (Fla. 4th DCA 2015); *HOPE v. SPV Realty, L.C.*, Case No. 14-32184-CA-01 (Fla. 11th Cir. Ct. April 30, 2015).

³³ 42 U.S.C. § 3613.

³⁴ SB 410 (Senator Braynon) and HB 453 (Representative Watson).

³⁵ SB 7008 (Senate Governmental Oversight and Accountability) and HB 339 (Representative Rouson).

³⁶ SB 306 (Senator Rouson) and HB 853 (Representative Davis).

³⁷ 32 SB 958 (Senator Rouson) and HB 565 (Representatives Williams and Davis).

condition precedent to filing a housing discrimination claim under the FFHA.³⁸ In light of the legislative calendar, HUD agreed to extend the deadline to amend the FFHA until March 12, 2016.³⁹

On March 16, 2016, HUD recognized pending litigation in the Third District Court of Appeal⁴⁰ and vowed to refrain from making any decision regarding suspension of the Commission's participation in FHAP during the pendency of the judicial proceedings.⁴¹ In December 2016, the Third District Court of Appeal applied the *Belletete* rule and held that a plaintiff must exhaust all administrative remedies before commencing an action in civil court, determining that "[w]hether the [Florida Fair Housing Act] should be amended to conform precisely to the federal [Fair Housing Act] is a matter for the Legislature."⁴²

On August 8, 2019, HUD notified the Commission that the FFHA, as interpreted by the courts, is not substantially equivalent to the federal Fair Housing Act.⁴³ The Commission continues to risk suspension in FHAP if the legislature does not amend the FFHA.

III. Effect of Proposed Changes:

The bill amends ss. 760.34, F.S., and 760.35, F.S., to provide that an aggrieved person is not required to exhaust his or her administrative remedies before commencing a civil action under the FFHA. Accordingly, the person may file a civil action regardless of whether:

- He or she has filed a complaint with the Commission;
- The Commission has resolved a complaint (if the aggrieved person chose to file one); or
- Any particular amount of time has passed since the aggrieved person filed a complaint with the Commission.

The bill prohibits an aggrieved person from filing a civil action under the FFHA in two instances: (i) if the claimant has consented to a conciliation agreement obtained by the Commission, other than to enforce the terms of the conciliation agreement; or (i) if an administrative law judge has commenced a hearing. These provisions are consistent with the federal Fair Housing Act.

The bill makes conforming changes to 760.07, F.S.

The act takes effect upon becoming law.

³⁸ Letter from Sara K. Pratt, Deputy Assistant Secretary for Enforcement and Programs, to Michelle Wilson, Executive Director, Florida Commission on Human Relations (July 2, 2015) (on file with the Senate Committee on Judiciary).

³⁹ Letter from Lynn Grosso, Acting Deputy Assistant Secretary for Enforcement and Programs, to Michelle Wilson, Executive Director, Florida Commission on Human Relations (Mar. 16, 2016)(on file with the Senate Committee on Judiciary).

⁴⁰ *Housing Opportunities Project v. SPV*, 212 So. 3d 419 (Fla. 3rd DCA 2016).

⁴¹ Letter from Sara K. Pratt, *supra*, note 46.

⁴² *Housing Opportunities Project v. SPV*, 212 So. 3d 419 at 424

⁴³ Letter from Carlos Osegueda, Office of Fair Housing and Equal Opportunity Region IV Director, Subject: Post-Suspension Performance Assessment Report, (Aug. 8, 2019) (on file with the Senate Committee on Governmental Oversight and Accountability).

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.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

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

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The passage of the bill appears necessary to allow the Commission to continue to receive federal reimbursement for the Commission's resolution of housing discrimination cases. Without the bill, the Commission may be disqualified from receiving this federal funding.

VI. Technical Deficiencies:

None.

VII. Related Issues:

On April 5, 2019, HUD notified the Commission that it was suspended from participating in the FHAP for a period of 90 days, effective April 11, 2019, and ending on July 11, 2019.⁴⁴ The suspension was a direct result of the agency's failure to adequately address four identified deficiencies: (i) staffing and workload management; (ii) quality management and case processing; (iii) conciliation and public interest requirements; and (iv) budget and finance requirements.⁴⁵

During the suspension period, HUD did not refer complaints to the Commission and did not accept cases for dual-filing from the Commission. HUD did pay the Commission for cases dual-filed and those completed during the suspension period which met quality and timeliness standards.

Between June 28, 2019, and July 16, 2019, pursuant to federal regulations, HUD conducted a remote performance assessment to determine whether the deficiencies resulting in suspension had been remedied and/or eliminated.⁴⁶ On August 8, 2019, HUD issued its Post-Suspension Performance Assessment Report (Post-Suspension Report) advising the Commission of its conclusion that the critical performance standards and benchmarks were not met, and that it would recommend withdrawal of the Commission's certification to the Assistant Secretary.⁴⁷ Within the Post-Suspension Report, HUD made note of the continuing substantial equivalency issues that remain because the Florida fair housing law has not been amended to cure the judicially created exhaustion requirement.⁴⁸ HUD acknowledged the Commission's efforts to file legislation to clarify the discrepancy and that substantial equivalency issue was not specifically a part of the Performance Improvement Plan or suspension.⁴⁹

On September 25, 2019, Anna Maria Farias, the Assistant Secretary for Fair Housing and Equal Opportunity, notified the Commission of her decision to place the Commission on a one year probationary status instead of withdrawing the Commission's certification.⁵⁰ Within 30 days of the end of the one-year probationary period, HUD will re-assess the Commission's performance and make a decision regarding the Commission's continued participation in FHAP.

Currently, there are two separate issues affecting the Commission's certification in the FHAP. The bill addresses and cures one of these – the substantial equivalence issue. The second issue relates to the Commission's prior suspension and current probationary status. In this regard, the Commission advises that it is in frequent communication with HUD and continues to make strides in remedying the deficiencies and demonstrating its ability to serve the citizens of Florida. Additionally, for fiscal year 2019-2020, the Legislature authorized 8 additional full time

⁴⁴ Letter from Carlos Osegueda, Office of Fair Housing and Equal Opportunity Region IV Director, Subject: Suspension from the Fair Housing Assistance Program (April 5, 2019)(on file with the Senate Committee on Governmental Oversight and Accountability).

⁴⁵ *Id.*

⁴⁶ Letter from Carlos Osegueda, *supra*, note 43.

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ Letter from Anna Maria Farias, Assistant Secretary for Fair Housing and Equal Opportunity (Sept. 25, 2019) (on file with the Senate Committee on Governmental Oversight and Accountability).

equivalent positions and appropriated associated funding to the Commission to address the staffing and workload issues which were identified deficiencies related to the suspension. The Commission instructions that all of these positions have been filled.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 760.07, 760.34, and 760.35.

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 Rouson

19-00605-20

2020374__

1 A bill to be entitled
 2 An act relating to housing discrimination; amending s.
 3 760.07, F.S.; removing housing discrimination as a
 4 cause of action for certain relief and damages
 5 stemming from violations of the Florida Civil Rights
 6 Act of 1992; amending s. 760.34, F.S.; revising the
 7 conditions under which an aggrieved person may
 8 commence a civil action in any appropriate court
 9 against a specified respondent to enforce specified
 10 rights; providing that the aggrieved person does not
 11 need to pursue certain other remedies before
 12 commencing a civil action; making technical changes;
 13 amending s. 760.35, F.S.; authorizing, rather than
 14 requiring, a civil action to commence within a
 15 specified period after an alleged discriminatory
 16 housing practice; authorizing an aggrieved person to
 17 commence a civil action regardless of certain
 18 circumstances; prohibiting an aggrieved person from
 19 filing a specified action in certain circumstances;
 20 providing an exception; prohibiting an aggrieved
 21 person from commencing a specified civil action if an
 22 administrative law judge has commenced a hearing on
 23 the record on the allegation; making technical
 24 changes; providing an effective date.
 25
 26 Be It Enacted by the Legislature of the State of Florida:
 27
 28 Section 1. Section 760.07, Florida Statutes, is amended to
 29 read:

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30 760.07 Remedies for unlawful discrimination.—Any violation
 31 of any Florida statute that makes ~~making~~ unlawful discrimination
 32 because of race, color, religion, gender, pregnancy, national
 33 origin, age, handicap, or marital status in the areas of
 34 education, employment, ~~housing,~~ or public accommodations gives
 35 rise to a cause of action for all relief and damages described
 36 in s. 760.11(5), unless greater damages are expressly provided
 37 for. If the statute prohibiting unlawful discrimination provides
 38 an administrative remedy, the action for equitable relief and
 39 damages provided for in this section may be initiated only after
 40 the plaintiff has exhausted his or her administrative remedy.
 41 The term "public accommodations" does not include lodge halls or
 42 other similar facilities of private organizations which are made
 43 available for public use occasionally or periodically. The right
 44 to trial by jury is preserved in any case in which the plaintiff
 45 is seeking actual or punitive damages.
 46 Section 2. Section 760.34, Florida Statutes, is amended to
 47 read:
 48 760.34 Enforcement.—
 49 (1) Any person who claims to have been injured by a
 50 discriminatory housing practice or who believes that he or she
 51 will be injured by a discriminatory housing practice that is
 52 about to occur may file a complaint with the commission.
 53 Complaints shall be in writing and ~~shall~~ contain such
 54 information and be in such form as the commission requires. Upon
 55 receipt of such a complaint, the commission shall furnish a copy
 56 to the person or persons who allegedly committed the
 57 discriminatory housing practice or are about to commit the
 58 alleged discriminatory housing practice. Within 100 days after

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59 receiving a complaint, or within 100 days after the expiration
 60 of any period of reference under subsection (3), the commission
 61 shall investigate the complaint and give notice in writing to
 62 the ~~aggrieved~~ person ~~aggrieved~~ whether it intends to resolve it.
 63 If the commission decides to resolve the complaint, it shall
 64 proceed to try to eliminate or correct the alleged
 65 discriminatory housing practice by informal methods of
 66 conference, conciliation, and persuasion. Insofar as possible,
 67 conciliation meetings shall be held in the cities or other
 68 localities where the discriminatory housing practices allegedly
 69 occurred. Nothing said or done in the course of such informal
 70 endeavors may be made public or used as evidence in a subsequent
 71 proceeding under ss. 760.20-760.37 without the written consent
 72 of the persons concerned. Any employee of the commission who
 73 makes public any information in violation of this provision is
 74 guilty of a misdemeanor of the first degree, punishable as
 75 provided in s. 775.082 or s. 775.083.

76 (2) Any person who files a complaint under subsection (1)
 77 must do so ~~be filed~~ within 1 year after the alleged
 78 discriminatory housing practice occurred. The complaint must be
 79 in writing and shall state the facts upon which the allegations
 80 of a discriminatory housing practice are based. A complaint may
 81 be reasonably and fairly amended at any time. A respondent may
 82 file an answer to the complaint against him or her and, with the
 83 leave of the commission, which shall be granted whenever it
 84 would be reasonable and fair to do so, may amend his or her
 85 answer at any time. Both the complaint and the answer must ~~shall~~
 86 be verified.

87 (3) ~~If wherever~~ a local fair housing law provides rights

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88 and remedies for alleged discriminatory housing practices which
 89 are substantially equivalent to the rights and remedies provided
 90 in ss. 760.20-760.37, the commission shall notify the
 91 appropriate local agency of any complaint filed under ss.
 92 760.20-760.37 which appears to constitute a violation of the
 93 local fair housing law, and the commission shall take no further
 94 action with respect to such complaint if the local law
 95 enforcement official has, within 30 days after ~~from~~ the date the
 96 alleged offense was brought to his or her attention, commenced
 97 proceedings in the matter. In no event shall the commission take
 98 further action unless it certifies that in its judgment, under
 99 the circumstances of the particular case, the protection of the
 100 rights of the parties or the interests of justice require such
 101 action.

102 (4) ~~If, within 180 days after a complaint is filed with the~~
 103 ~~commission or within 180 days after expiration of any period of~~
 104 ~~reference under subsection (3), the commission has been unable~~
 105 ~~to obtain voluntary compliance with ss. 760.20-760.37, The~~
 106 aggrieved person aggrieved may commence a civil action in any
 107 appropriate court against the respondent named in the complaint
 108 or petition for an administrative determination under ~~pursuant~~
 109 ~~to~~ s. 760.35 to enforce the rights granted or protected by ss.
 110 760.20-760.37 and is not required to petition for an
 111 administrative hearing or exhaust administrative remedies before
 112 commencing such action. If, as a result of its investigation
 113 under subsection (1), the commission finds there is reasonable
 114 cause to believe that a discriminatory housing practice has
 115 occurred, at the request of the aggrieved person ~~aggrieved~~, the
 116 Attorney General may bring an action in the name of the state on

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117 behalf of the aggrieved person to enforce ~~the provisions of~~ ss.
118 760.20-760.37.

119 (5) In any proceeding brought ~~under pursuant to~~ this
120 section or s. 760.35, the burden of proof is on the complainant.

121 (6) ~~If whenever~~ an action filed in court ~~under pursuant to~~
122 this section or s. 760.35 comes to trial, the commission shall
123 immediately terminate all efforts to obtain voluntary
124 compliance.

125 (7) (a) The commission may institute a civil action in any
126 appropriate court if it is unable to obtain voluntary compliance
127 with ss. 760.20-760.37. The commission does need not have to
128 petition petitioned for an administrative hearing or exhaust
129 exhausted its administrative remedies before prior to bringing a
130 civil action.

131 (b) The court may impose the following fines for each
132 violation of ss. 760.20-760.37:

133 1. Up to \$10,000, if the respondent has not previously been
134 found guilty of a violation of ss. 760.20-760.37.

135 2. Up to \$25,000, if the respondent has been found guilty
136 of one prior violation of ss. 760.20-760.37 within the preceding
137 5 years.

138 3. Up to \$50,000, if the respondent has been found guilty
139 of two or more violations of ss. 760.20-760.37 within the
140 preceding 7 years.

141
142 In imposing a fine under this paragraph, the court shall
143 consider the nature and circumstances of the violation, the
144 degree of culpability, the history of prior violations of ss.
145 760.20-760.37, the financial circumstances of the respondent,

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146 and the goal of deterring future violations of ss. 760.20-
147 760.37.

148 (c) The court shall award reasonable ~~attorney attorney's~~
149 fees and costs to the commission in any action in which the
150 commission prevails.

151 (8) Any local agency certified as substantially equivalent
152 may institute a civil action in any appropriate court, including
153 circuit court, if it is unable to obtain voluntary compliance
154 with the local fair housing law. The agency does need not have
155 to petition petitioned for an administrative hearing or exhaust
156 exhausted its administrative remedies before prior to bringing a
157 civil action. The court may impose fines as provided in the
158 local fair housing law.

159 Section 3. Section 760.35, Florida Statutes, is amended to
160 read:

161 760.35 Civil actions and relief; administrative
162 procedures.—

163 (1) An aggrieved person may commence a civil action ~~shall~~
164 ~~be commenced~~ no later than 2 years after an alleged
165 discriminatory housing practice has occurred. However, the court
166 shall continue a civil case brought under pursuant to this
167 section or s. 760.34 ~~from time to time~~ before bringing it to
168 trial if the court believes that the conciliation efforts of the
169 commission or local agency are likely to result in satisfactory
170 settlement of the discriminatory housing practice complained of
171 in the complaint made to the commission or to the local agency
172 and which practice forms the basis for the action in court. Any
173 sale, encumbrance, or rental consummated before prior to the
174 issuance of any court order issued under the authority of ss.

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175 760.20-760.37 and involving a bona fide purchaser, encumbrancer,
 176 or tenant without actual notice of the existence of the filing
 177 of a complaint or civil action under ~~the provisions of ss.~~
 178 760.20-760.37 ~~is shall~~ not be affected.

179 (2) An aggrieved person may commence a civil action under
 180 this section regardless of whether a complaint has been filed
 181 under s. 760.34(1) and regardless of the status of any such
 182 complaint. If the commission has obtained a conciliation
 183 agreement with the consent of an aggrieved person under s.
 184 760.36, the aggrieved person may not file any action under this
 185 section regarding the alleged discriminatory housing practice
 186 that forms the basis for the complaint except for the purpose of
 187 enforcing the terms of the conciliation agreement.

188 (3) An aggrieved person may not commence a civil action
 189 under this section regarding an alleged discriminatory housing
 190 practice if an administrative law judge has commenced a hearing
 191 on the record on the allegation.

192 (4)(2) If the court finds that a discriminatory housing
 193 practice has occurred, it shall issue an order prohibiting the
 194 practice and providing affirmative relief from the effects of
 195 the practice, including injunctive and other equitable relief,
 196 actual and punitive damages, and reasonable attorney ~~attorney's~~
 197 fees and costs.

198 (5) (a) (3) (a) If the commission is unable to obtain
 199 voluntary compliance with ss. 760.20-760.37 or has reasonable
 200 cause to believe that a discriminatory practice has occurred:

- 201 1. The commission may institute an administrative
- 202 proceeding under chapter 120; or
- 203 2. The aggrieved person ~~aggrieved~~ may request

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204 administrative relief under chapter 120 within 30 days after
 205 receiving notice that the commission has concluded its
 206 investigation under s. 760.34.

207 (b) Administrative hearings shall be conducted under
 208 ~~pursuant to~~ ss. 120.569 and 120.57(1). The respondent must be
 209 served written notice by certified mail. If the administrative
 210 law judge finds that a discriminatory housing practice has
 211 occurred or is about to occur, he or she shall issue a
 212 recommended order to the commission prohibiting the practice and
 213 recommending affirmative relief from the effects of the
 214 practice, including quantifiable damages and reasonable attorney
 215 ~~attorney's~~ fees and costs. The commission may adopt, reject, or
 216 modify a recommended order only as provided under s. 120.57(1).
 217 Judgment for the amount of damages and costs assessed pursuant
 218 to a final order by the commission may be entered in any court
 219 having jurisdiction thereof and may be enforced as any other
 220 judgment.

221 (c) The district courts of appeal may, upon the filing of
 222 appropriate notices of appeal, review final orders of the
 223 commission under ~~pursuant to~~ s. 120.68. Costs or fees may not be
 224 assessed against the commission in any appeal from a final order
 225 issued by the commission under this subsection. Unless
 226 specifically ordered by the court, the commencement of an appeal
 227 does not suspend or stay an order of the commission.

228 (d) This subsection does not prevent any other legal or
 229 administrative action provided by law.

230 Section 4. This act shall take effect upon becoming a law.



The Florida Senate

Committee Agenda Request

To: Senator Lizbeth Benacquisto, Chair
Committee on Rules

Subject: Committee Agenda Request

Date: January 15, 2020

I respectfully request that **Senate Bill #374**, relating to Housing Discrimination, be placed on the:

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

A handwritten signature in cursive script that reads "Darryl Ervin Rouson".

Senator Darryl Ervin Rouson
Florida Senate, District 19

THE FLORIDA SENATE
APPEARANCE RECORD

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

5 Feb 20

Meeting Date

374

Bill Number (if applicable)

Topic Housing Discrimination

Amendment Barcode (if applicable)

Name Christopher Turner

Job Title Deputy Director Legislative Affairs

Address _____
Street

Phone _____

City

State

Zip

Email _____

Speaking: For Against Information

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

Representing Florida Commission on Human Relations

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)

Feb. 5, 2020

Meeting Date

SB 374

Bill Number (if applicable)

Topic Housing Discrimination

Amendment Barcode (if applicable)

Name Dorene Barker

Job Title Associate State Director

Address 215 S. Mimmie St, Suite 603

Phone 850-228-6387

Street

Jallahussee FL 32308

Email dobarker@aarp.org

City

State

Zip

Speaking: For Against Information

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

Representing AARP FL

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 292

INTRODUCER: Banking and Insurance Committee and Senator Broxson

SUBJECT: Insurance Claims Data

DATE: February 3, 2020

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Arnold</u>	<u>Knudson</u>	<u>BI</u>	Fav/CS
2.	<u>McMillan</u>	<u>McKay</u>	<u>CM</u>	Favorable
3.	<u>Arnold</u>	<u>Phelps</u>	<u>RC</u>	Favorable

Please see Section IX. for Additional Information:

PLEASE MAKE SELECTION

I. Summary:

CS/SB 292 creates loss run reporting requirements for all admitted and nonadmitted insurance carriers.

The bill requires an insurance carrier to provide a loss run statement to the insured within 15 days of receipt of a written request submitted by the insured. For personal lines of insurance, carriers may instead provide information on how to obtain a loss run statement at no charge through a consumer reporting agency. The loss run statement must be provided electronically or made available through an electronic portal, and the insurance carrier must notify the agent of record at the time the statement was provided.

The bill requires the statement to include a loss run history for the preceding 5 years or, if the history is less than 5 years, a complete loss run history with the insurance carrier.

The bill prohibits an insurance carrier from charging a fee for preparing or annually providing one loss run statement.

The bill takes effect January 1, 2021.

II. Present Situation:

Loss Run Statements

A loss run statement¹ is a report generated by an insurance carrier showing the claims history of an insured.² Some insurers have existing loss runs systems that allow their insureds to log into a portal to obtain their own detailed reports on claims.³ Insurance carriers may use loss run statements for purposes of underwriting and issuing policies.⁴ The statement will usually provide the following information:

- Name and policy number of the insured;
- Date of each loss and claim;
- A brief description of the claim;
- Amounts paid to the insured or on reserve; and
- Whether the claim is open or closed.⁵

Loss Run Reporting Requirements in Other States

Currently, Florida does not have an existing statutory framework regarding when and how insurers are required to provide loss run statements to insureds. Among states that have adopted loss run reporting requirements, insurance carriers are generally required to provide a report within 10 to 30 days following receipt of a written request made by the insured or insured's agent.⁶ Further, the length of historical data required to be included in the provided report ranges 3-5 years. State examples include:

State	Reporting Timeframe	Amount of Data Required
California ⁷	10 days	3 years
Kentucky ⁸	20 days	5 years
Louisiana ⁹	30 days	3 years
Oklahoma ¹⁰	30 days	Unspecified
Tennessee ¹¹	10 days	3 years

There is variance among states as to which lines of insurance are subject to the reporting requirements. Some states require reporting compliance of all insurance lines, whereas other states require reporting compliance of specific insurance lines only. Similarly, there is variance

¹ Loss run statements are also referred to as “loss runs” or “loss run reports.”

² Insureon, *Loss Runs*, <https://www.insureon.com/insurance-glossary/loss-runs> (last visited Dec. 9, 2019).

³ See, e.g., MSIG Loss Runs, <https://www.msigusa.com/loss-runs/> and StarStone, <http://myaccount.starstoneworkcomp.com/index.htm> (last visited Dec. 9, 2019)

⁴ Insureon, *Loss Runs*, <https://www.insureon.com/insurance-glossary/loss-runs> (last visited Dec. 9, 2019).

⁵ *Id.*

⁶ See FindLaw, *What Is a Loss Run Report?*, <https://consumer.findlaw.com/insurance/what-is-a-loss-run-report.html> (last visited Dec. 9, 2019).

⁷ Cal. INS. Code. § 679.7

⁸ Ky. Rev. Stat. § 304.20-100.

⁹ LSA-R.S. 22:636.4.

¹⁰ 36 O.S. § 36-1204.1.

¹¹ T.C.A. § 56-5-323.

among states as to penalties for insurance carriers that fail to provide the requested reports. Some states, like Oklahoma and Tennessee, consider such failure a violation of their respective states' Unfair Trade Practices Act.¹² Others, like Kentucky, provide penalties either per each individual failure to comply or for each day that the report is not provided.¹³

Public Sources of Loss Run Statements

The majority of personal auto and personal property insurers participate in the Comprehensive Loss Underwriting Exchange (CLUE)¹⁴, a central database of claims information whose report is used by insurers to assist in making underwriting and rating decisions.¹⁵ Developed by the consumer reporting agency, LexisNexis Risk Solutions, the CLUE report contains 7 years of personal auto and personal property claims history associated with an individual.¹⁶ The report includes date of loss, loss type, and amount paid.¹⁷ Under the Fair and Accurate Credit Transactions Act of 2003, LexisNexis Risk Solutions and other consumer reporting agencies must provide one free copy of the consumer's file per year upon request of the consumer.¹⁸

III. Effect of Proposed Changes:

The bill requires an insurance carrier to provide a loss run statement to an insured within 15 days following receipt of a request submitted by the insured. For personal lines of insurance, an insurance carrier may instead provide the insured with information on how to obtain a loss run statement at no charge through a consumer reporting agency. The insurance carrier must notify the agent of record that the statement was provided electronically or made available through an electronic portal. The statement must include a loss run history for the preceding 5 years or, if the history is less than 5 years, a complete loss run history with the insurance carrier. The bill specifies that an insurer is not required to provide loss reserve information as part of a loss run statement. The insurance carrier may not charge a fee for preparing or annually providing one loss run statement.

The bill creates the following definitions:

- “Loss run statement” means a report containing the policy number, period of coverage, number of claims, paid losses on all claims, and date of each loss¹⁹; and

¹² 36 O.S. §36-1204 and T.C.A. § 56-5-323.

¹³ Ky. Rev. Stat. § 304.99-082.

¹⁴ 99 percent of insurers writing automobile coverage, and 96 percent of insurers writing property coverage, participate in the CLUE database. See <https://risk.lexisnexis.com/products/clue-auto> and https://risk.lexisnexis.com/-/media/files/insurance/brochure/clue_property%20pdf.pdf (last visited Dec. 9, 2019).

¹⁵ LexisNexis Risk Solutions, *What is LexisNexis Risk Solutions' role in supplying the credit report, auto or property loss history, and/or insurance score to the insurance company?*, https://consumer-solutions.custhelp.com/app/answers/detail/a_id/743/~/~what-is-lexisnexis-risk-solutions-role-in-supplyingthe-credit-report%2C-auto-or (last visited Dec. 9, 2019).

¹⁶ LexisNexis Risk Solutions, *Who We Are*, https://personalreports.lexisnexis.com/fact_act_disclosure.jsp;jsessionid=162F0EE7199A58F7F42EF943FC1B0488 (last visited Dec. 9, 2019).

¹⁷ *Id.*

¹⁸ Pub. L. No. 109-159, s. 211m 117 Stat 1952 (2003).

¹⁹ The bill provides that “loss run statement” does not include supporting claim file documentation, including, but not limited to, copies of claim files, investigation reports, evaluation statements, insureds' statements, and documents protected by a common law or statutory privilege.

- “Provide” means to send a document electronically or to allow access through an electronic portal to view or generate a document.

Section 1 creates s. 626.9202, F.S., to apply these requirements to nonadmitted insurance carriers.

Section 2 creates s. 627.444, F.S., to apply these requirements to admitted insurance carriers.

Section 3 provides an effective date of January 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill may help consumers with favorable claim histories to obtain insurance at a lower premium.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

The bill in creating s. 626.9202(2), F.S., and s. 627.444(2), F.S., provides that for personal lines of insurance, the insurer may either provide a loss run statement or provide “information on how to obtain a loss run statement through a consumer reporting agency.” The bill then states that “this section does not prohibit an insured from requesting a loss run statement after receiving information from a consumer reporting agency.” The section makes it unclear if a personal lines insurer itself must provide a loss run statement, and if so, at what point they must provide it.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates the following sections of the Florida Statutes: 626.9202 and 627.444.

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

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

CS by Banking and Insurance on November 12, 2019:

- Includes specific data elements in the definition of “loss run statement.”
- Excludes specific data elements from the definition of “loss run statement.”
- Allows personal lines insurance carriers to provide the insured with information on how to obtain a loss run statement at no charge through a consumer reporting agency, rather than provide a loss run statement.
- Allows insurers to deny requests for loss reserve information.
- Provides an effective date of January 1, 2021.

B. Amendments:

None.

By the Committee on Banking and Insurance; and Senator Broxson

597-01377-20

2020292c1

1 A bill to be entitled
 2 An act relating to insurance claims data; creating ss.
 3 626.9202 and 627.444, F.S.; defining the terms "loss
 4 run statement" and "provide"; requiring surplus lines
 5 and authorized insurers, respectively, to provide
 6 insureds either a loss run statement or certain
 7 information within a certain timeframe after receipt
 8 of the insured's written request; providing
 9 construction; requiring insurers to provide notice to
 10 the agent of record after providing a loss run
 11 statement; specifying the required claims history in a
 12 loss run statement; providing that insurers are not
 13 required to provide loss reserve information;
 14 prohibiting insurers from charging a fee to prepare
 15 and provide one loss run statement annually; providing
 16 an effective date.

17
 18 Be It Enacted by the Legislature of the State of Florida:

19
 20 Section 1. Section 626.9202, Florida Statutes, is created
 21 to read:

22 626.9202 Loss run statements for all lines of insurance.-

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

24 (a) "Loss run statement" means a report that contains the
 25 policy number, the period of coverage, the number of claims, the
 26 paid losses on all claims, and the date of each loss. The term
 27 does not include supporting claim file documentation, including,
 28 but not limited to, copies of claim files, investigation
 29 reports, evaluation statements, insureds' statements, and

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

597-01377-20

2020292c1

30 documents protected by a common law or statutory privilege.

31 (b) "Provide" means to electronically send a document or to
 32 allow access through an electronic portal to view or generate a
 33 document.

34 (2) Notwithstanding any other law, an insurer shall provide
 35 to an insured within 15 calendar days after receipt of the
 36 insured's written request, either:

37 (a) A loss run statement; or

38 (b) For personal lines of insurance, information on how to
 39 obtain a loss run statement at no charge through a consumer
 40 reporting agency. However, this section does not prohibit an
 41 insured from requesting a loss run statement after receiving
 42 information from a consumer reporting agency.

43 (3) At the time a loss run statement is provided to the
 44 insured, the insurer shall notify the agent of record that the
 45 loss run statement was provided to the insured.

46 (4) A loss run statement provided pursuant to this section
 47 must contain a claims history with the insurer for the preceding
 48 5 years or, if the claims history is less than 5 years, a
 49 complete claims history with the insurer.

50 (5) Notwithstanding any other provision of this section, an
 51 insurer is not required to provide loss reserve information.

52 (6) Notwithstanding any other law, an insurer may not
 53 charge any fee to prepare and provide annually one loss run
 54 statement in accordance with this section.

55 Section 2. Section 627.444, Florida Statutes, is created to
 56 read:

57 627.444 Loss run statements for all lines of insurance.-

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

Page 2 of 4

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

597-01377-20

2020292c1

59 (a) "Loss run statement" means a report that contains the
 60 policy number, the period of coverage, the number of claims, the
 61 paid losses on all claims, and the date of each loss. The term
 62 does not include supporting claim file documentation, including,
 63 but not limited to, copies of claim files, investigation
 64 reports, evaluation statements, insureds' statements, and
 65 documents protected by a common law or statutory privilege.

66 (b) "Provide" means to electronically send a document or to
 67 allow access through an electronic portal to view or generate a
 68 document.

69 (2) Notwithstanding any other law, an insurer shall provide
 70 to an insured within 15 calendar days after receipt of the
 71 insured's written request, either:

72 (a) A loss run statement; or

73 (b) For personal lines of insurance, information on how to
 74 obtain a loss run statement at no charge through a consumer
 75 reporting agency. However, this section does not prohibit an
 76 insured from requesting a loss run statement after receiving
 77 information from a consumer reporting agency.

78 (3) At the time a loss run statement is provided to the
 79 insured, the insurer shall notify the agent of record that the
 80 loss run statement was provided to the insured.

81 (4) A loss run statement provided pursuant to this section
 82 must contain a claims history with the insurer for the preceding
 83 5 years or, if the claims history is less than 5 years, a
 84 complete claims history with the insurer.

85 (5) Notwithstanding any other provision of this section, an
 86 insurer is not required to provide loss reserve information.

87 (6) Notwithstanding any other law, an insurer may not

Page 3 of 4

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

597-01377-20

2020292c1

88 charge any fee to prepare and provide annually one loss run
 89 statement in accordance with this section.

90 Section 3. This act shall take effect January 1, 2021.

Page 4 of 4

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



The Florida Senate

Committee Agenda Request

To: Senator Lizbeth Benacquisto, Chair
Committee on Rules

Subject: Committee Agenda Request

Date: January 29, 2020

I respectfully request that **Senate Bill #292**, relating to Insurance Claims Data, be placed on the:

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

A handwritten signature in cursive script, appearing to read "Doug Broxson".

Senator Doug Broxson
Florida Senate, District 1

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/5/20
Meeting Date

292
Bill Number (if applicable)

Topic LOSS RUNS

Amendment Barcode (if applicable)

Name KYLE ULRICH

Job Title SVP

Address 3159 SHAMROCK S.
Street

Phone 566-4204

TALLAHASSEE FL 32309
City State Zip

Email KULRICH@FAIA.COM

Speaking: For Against Information

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

Representing FL. ASSOC. OF INSURANCE AGENTS

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 7022

INTRODUCER: Infrastructure and Security Committee

SUBJECT: OGSR/E-mail Addresses/Department of Highway Safety and Motor Vehicles

DATE: February 5, 2020

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
	<u>Proctor</u>	<u>Miller</u>		IS Submitted as Committee Bill
1.	<u>Ponder</u>	<u>McVaney</u>	<u>GO</u>	Favorable
2.	<u>Proctor</u>	<u>Phelps</u>	<u>RC</u>	Favorable

I. Summary:

SB 7022 amends s. 119.0712, F.S., to save from repeal the current exemption from public records disclosure for e-mail addresses provided to the Department of Highway Safety and Motor Vehicles (DHSMV) for the purpose of providing notifications and renewal notices. The bill removes the scheduled repeal date of the exemption, October 2, 2020, thus continuing the exemption.

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

The bill takes effect on October 1, 2020.

II. Present Situation:

Access to Public Records - Generally

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 The right to inspect or copy 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

Additional requirements and exemptions related to public records are found in various statutes and rules, depending on the branch of government involved. For instance, section 11.0431, Florida Statutes (F.S.), provides public access requirements for legislative records. Relevant exemptions are codified in s. 11.0431(2)-(3), F.S., and the statutory provisions are adopted in the

¹ FLA. CONST. art. I, s. 24(a).

² *Id.*

rules of each house of the legislature.³ Florida Rule of Judicial Administration 2.420 governs public access to judicial branch records.⁴ Lastly, chapter 119, F.S., provides requirements for public records held by executive agencies.

Executive Agency Records – The Public Records Act

Chapter 119, F.S., known as the Public Records Act, provides that all state, county and municipal records are open for personal inspection and copying by any person, and that providing access to public records is a duty of each agency.⁵

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 the statutory definition of “public record” to include “material prepared in connection with official agency business which is intended to perpetuate, communicate, or formalize knowledge of some type.”⁷

The Florida Statutes specify conditions under which public access to public records must be provided. The Public Records Act guarantees every person’s right to inspect and copy any public record at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.⁸ A violation of the Public Records Act may result in civil or criminal liability.⁹

The Legislature may exempt public records from public access requirements by passing a general law by a two-thirds vote of both the House and the Senate.¹⁰ The exemption must state with specificity the public necessity justifying the exemption and must be no broader than necessary to accomplish the stated purpose of the exemption.¹¹

³ See Rule 1.48, *Rules and Manual of the Florida Senate*, (2018-2020) and Rule 14.1, *Rules of the Florida House of Representatives*, Edition 2, (2018-2020)

⁴ *State v. Wooten*, 260 So. 3d 1060 (Fla. 4th DCA 2018).

⁵ Section 119.01(1), F.S. Section 119.011(2), F.S., defines “agency” 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.”

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.”

⁷ *Shevin v. Byron, Harless, Schaffer, Reid and Assoc., Inc.*, 379 So. 2d 633, 640 (Fla. 1980).

⁸ Section 119.07(1)(a), F.S.

⁹ Section 119.10, F.S. Public records laws are found throughout the Florida Statutes, as are the penalties for violating those laws.

¹⁰ FLA. CONST. art. I, s. 24(c).

¹¹ *Id.* See, e.g., *Halifax Hosp. Medical Center v. News-Journal Corp.*, 724 So. 2d 567 (Fla. 1999) (holding that a public meetings exemption was unconstitutional because the statement of public necessity did not define important terms and did not justify the breadth of the exemption); *Baker County Press, Inc. v. Baker County Medical Services, Inc.*, 870 So. 2d 189 (Fla. 1st DCA 2004) (holding that a statutory provision written to bring another party within an existing public records exemption is unconstitutional without a public necessity statement).

General exemptions from the public records requirements are contained in the Public Records Act.¹² Specific exemptions often are placed in the substantive statutes relating to a particular agency or program.¹³

When creating a public records exemption, the Legislature may provide that a record is “exempt” or “confidential and exempt.” Custodians of records designated as “exempt” are not prohibited from disclosing the record; rather, the exemption means that the custodian cannot be compelled to disclose the record.¹⁴ Custodians of records designated as “confidential and exempt” may not disclose the record except under circumstances specifically defined by the Legislature.¹⁵

Open Government Sunset Review Act

The Open Government Sunset Review Act¹⁶ (the Act) prescribes a legislative review process for newly created or substantially amended¹⁷ public records or open meetings exemptions, with specified exceptions.¹⁸ It requires the automatic repeal of such exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.¹⁹

The Act 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.²⁰ 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 subdivisions to effectively and efficiently administer a governmental program, and administration would be significantly impaired without the exemption;²¹
- It protects sensitive, personal information, the release of which would be defamatory, cause unwarranted damage to the good name or reputation of the individual, or would jeopardize the individual’s safety. If this public purpose is cited as the basis of an exemption, however, only personal identifying information is exempt;²² or
- It protects information of a confidential nature concerning entities, such as trade or business secrets.²³

¹² See, e.g., s. 119.071(1)(a), F.S. (exempting from public disclosure examination questions and answer sheets of examinations administered by a governmental agency for the purpose of licensure).

¹³ See, e.g., s. 213.053(2)(a), F.S. (exempting from public disclosure information contained in tax returns received by the Department of Revenue).

¹⁴ See *Williams v. City of Minneola*, 575 So. 2d 683, 687 (Fla. 5th DCA 1991).

¹⁵ *WFTV, Inc. v. The School Board of Seminole*, 874 So. 2d 48 (Fla. 5th DCA 2004).

¹⁶ Section 119.15, F.S.

¹⁷ An exemption is considered to be substantially amended if it is expanded to include more records or information or to include meetings as well as records. Section 119.15(4)(b), F.S.

¹⁸ Section 119.15(2)(a) and (b), F.S., provide that exemptions that are required by federal law or are applicable solely to the Legislature or the State Court System are not subject to the Open Government Sunset Review Act.

¹⁹ Section 119.15(3), F.S.

²⁰ Section 119.15(6)(b), F.S.

²¹ Section 119.15(6)(b)1., F.S.

²² Section 119.15(6)(b)2., F.S.

²³ Section 119.15(6)(b)3., F.S.

The Act also requires specified questions to be considered during the review process.²⁴ In examining an exemption, the Act directs the Legislature to carefully question the purpose and necessity of reenacting the exemption.

If the exemption is continued and expanded, then a public necessity statement and a two-thirds vote for passage are required.²⁵ If the exemption is continued without substantive changes or if the exemption is continued and 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.²⁶

Department of Highway Safety and Motor Vehicles and E-Mail Addresses

The DHSMV is the records custodian of motor vehicle records,²⁷ which contain personal information about drivers and motor vehicle owners. Florida's motor vehicle records contain personal information such as a driver's social security number, driver license number, name, address, telephone number, and medical or disability information. The DHSMV is authorized to collect e-mail addresses and use e-mail, in lieu of the United States Postal Service, as a method of providing title certificate notifications,²⁸ for the purpose of providing motor vehicle registration renewal notices,²⁹ and for the purpose of providing driver license renewal notices.³⁰

Open Government Sunset Review of the Public Record Exemption for E-Mail Addresses and Recommendation

In 2015, the Legislature created a public record exemption for e-mail addresses held by the DHSMV if the e-mail addresses are collected by the DHSMV specifically for:

- Sending a notification regarding motor vehicle titles, pursuant to s. 319.40(3), F.S.;
- Providing a renewal notice for a motor vehicle license or registration, pursuant to 320.95(2), F.S.; and

²⁴ Section 119.15(6)(a), F.S. The specified questions are:

- What specific records or meetings are affected by the exemption?
- Whom does the exemption uniquely affect, as opposed to the general public?
- What is the identifiable public purpose or goal of the exemption?
- Can the information contained in the records or discussed in the meeting be readily obtained by alternative means? If so, how?
- Is the record or meeting protected by another exemption?
- Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?

²⁵ See generally s. 119.15, F.S.

²⁶ Section 119.15(7), F.S.

²⁷ Section 119.0712(2)(a), defines the term "motor vehicle record" to mean "any record that pertains to a motor vehicle operator's permit, motor vehicle title, motor vehicle registration, or identification card issued by the Department of Highway Safety and Motor Vehicles."

²⁸ Section 319.40(3), F.S.

²⁹ Section 320.95(2), F.S.

³⁰ Section 322.08(10), F.S.

- Providing a renewal notice for a driver license or identification card, pursuant to 322.08(10), F.S.³¹ (Notification and Renewal Transactions).³²

The 2015 public necessity statement³³ for the exemption provides that:

The Legislature finds that . . . e-mail addresses are unique to each individual and, when combined with other personal identifying information, can be used for identity theft, consumer scams, unwanted solicitations, or other invasive contacts. The public availability of personal e-mail addresses puts department customers at increased risk of these problems. Such risk may be significantly limited by permitting the department to keep customer e-mail addresses exempt. The Legislature finds that the risks to consumers outweigh the state's public policy favoring open government.³⁴

Section 119.0712, F.S., is subject to the OGSR and stands repealed on October 2, 2020, unless reviewed and saved from repeal through reenactment by the Legislature.

The DHSMV has collected approximately 12.9 million e-mail addresses for both active and inactive drivers.³⁵ The DHSMV recommends that the public records exemption be reenacted.

Based upon a review of this public records exemption under the OGSR and discussions with the DHSMV, the professional staff of the Senate Infrastructure and Security Committee recommends that the Legislature retain the public records exemption established in s. 119.0712, F.S.

III. Effect of Proposed Changes:

The bill saves from repeal the public records exemption in s. 119.0712(2)(c), F.S., for e-mail addresses collected by the DHSMV for the purpose of Notification and Renewal Transactions. These records will continue to be exempt from public disclosure beyond October 2, 2020.

The bill also corrects a statutory cross-reference from s. 322.08(9), F.S., to s. 322.08(10), F.S., which relates to DHSMV's authority to collect and use e-mail addresses for driver licensing purposes. See VII. Related Issues below for details.

³¹ As originally enacted in ch. 2015-32 L.O.F., s. 322.08(8), F.S., made an erroneous reference to subsection (8) because, that same session, in ch. 2015-163, L.O.F., the legislature renumbered subsections (4) through (8) of s. 322.08, F.S. The effect of this renumbering moved the provision governing the collection of e-mail addresses for renewal notices from subsection (8) to subsection (9) of s. 322.80, F.S. In 2016, ch. 2016-10, L.O.F., amended s. 119.0712, F.S., to "correct" the reference from subsection (8) to subsection (9) of s. 322.08, F.S. However, that same session, in ch. 2016-242, L.O.F., the legislature moved subsection (9) of s. 322.08, F.S., to subsection (10), and added a new subsection (9). Thus, s. 119.0712(2)(c), F.S., continued to contain an erroneous reference for the collection of e-mail address for renewal notices. This bill corrects this error, making proper reference to subsection (10) instead of subsection (9).

³² Section 119.0712(2)(c), F.S.

³³ Article I, s. 24(c), FLA. CONST., requires each public record exemption "state with specificity the public necessity justifying the exemption."

³⁴ Chapter 2015-32, L.O.F.

³⁵ Email from the DHSMV staff to Senate Committee on Infrastructure and Security staff on September 4, 2019 (on file with Senate Committee on Infrastructure and Security).

The bill requires a majority vote for passage.

The bill takes effect October 1, 2020.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Not applicable. The bill does not require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

B. Public Records/Open Meetings Issues:

Vote Requirement

Article I, s. 24(c) of the State Constitution requires two-thirds vote of the members present and voting for final passage of a bill creating or expanding an exemption to the public records requirements. The bill continues a current public records exemption beyond its current date of repeal. The bill does not create or expand an exemption. Thus, the bill does not require an extraordinary vote for enactment.

Public Necessity Statement

Article I, s. 24(c) of the State Constitution requires a bill creating or expanding an exemption to the public records requirements to state with specificity the public necessity justifying the exemption. The bill continues a current public records exemption without an expansion. Thus, a statement of public necessity is not required.

Breadth of Exemption

Article I, s. 24(c) of the State Constitution requires an exemption to the public records requirements to be no broader than necessary to accomplish the stated purpose of the law. The purpose of the law is to protect the personal identifying information contained in a record held by a tax collector for certain purposes. The exemption does not appear to be broader than necessary to accomplish the purpose of the law.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

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

None.

B. Private Sector Impact:

The private sector will continue to be subject to the cost associated with an agency making redactions in response to a public records request.

C. Government Sector Impact:

Governmental agencies will continue to incur costs related to the redaction of records in responding to public records requests.

VI. Technical Deficiencies:

None.

VII. Related Issues:

In 2016, the Legislature enacted ch. 2016-242, L.O.F., which amended s. 322.08, F. S., and moved s. 322.08(9), F.S., to s. 322.08(10), F.S. However, the reference to that subsection in s. 119.0712(2)(c), F. S., was not amended to reflect this change. The bill corrects the reference.

VIII. Statutes Affected:

The bill substantially amends section 119.0712 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 Infrastructure and Security

596-02010-20

20207022__

1 A bill to be entitled
2 An act relating to a review under the Open Government
3 Sunset Review Act; amending s. 119.0712, F.S., which
4 provides an exemption from public records requirements
5 for certain e-mail addresses collected by the
6 Department of Highway Safety and Motor Vehicles;
7 correcting a cross-reference; removing the scheduled
8 repeal of the exemption; providing an effective date.
9
10 Be It Enacted by the Legislature of the State of Florida:
11
12 Section 1. Paragraph (c) of subsection (2) of section
13 119.0712, Florida Statutes, is amended to read:
14 119.0712 Executive branch agency-specific exemptions from
15 inspection or copying of public records.—
16 (2) DEPARTMENT OF HIGHWAY SAFETY AND MOTOR VEHICLES.—
17 (c) E-mail addresses collected by the Department of Highway
18 Safety and Motor Vehicles pursuant to s. 319.40(3), s.
19 320.95(2), or s. 322.08(10) ~~s. 322.08(9)~~ are exempt from s.
20 119.07(1) and s. 24(a), Art. I of the State Constitution. This
21 exemption applies retroactively. ~~This paragraph is subject to~~
22 ~~the Open Government Sunset Review Act in accordance with s.~~
23 ~~119.15 and shall stand repealed on October 2, 2020, unless~~
24 ~~reviewed and saved from repeal through reenactment by the~~
25 ~~Legislature.~~
26 Section 2. This act shall take effect October 1, 2020.



The Florida Senate

Committee Agenda Request

To: Senator Lizbeth Benacquisto, Chair
Committee on Rules

Subject: Committee Agenda Request

Date: January 22, 2020

I respectfully request that **Senate Bill #7022**, relating to OGSR/E-mail Addresses/DHSMV, be placed on the:

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

A handwritten signature in cursive script that reads "Tom Lee".

Senator Tom Lee
Florida Senate, District 20

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 7004

INTRODUCER: Finance and Tax Committee

SUBJECT: OGSR/Taxpayer E-mail Addresses Held by a Tax Collector

DATE: February 3, 2020

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
	<u>Babin</u>	<u>Diez-Arguelles</u>		FT Submitted as Committee Bill
1.	<u>Ponder</u>	<u>McVaney</u>	<u>GO</u>	Favorable
2.	<u>Babin</u>	<u>Phelps</u>	<u>RC</u>	Favorable

I. Summary:

SB 7004 amends s. 197.3225, Florida Statutes, to save from repeal the current public records exemption for e-mail addresses used by a tax collector to send certain tax notices, by removing the scheduled October 2, 2020, repeal date.

The bill continues to exempt from public disclosure those taxpayer e-mail addresses held by a tax collector for the purposes of:

- Sending a quarterly tax notice for prepayment of estimated taxes pursuant to s. 197.222, F.S.;
- Obtaining the taxpayer's consent to send the tax notice described in s. 197.322(3), F.S.;
- Sending an additional tax notice or delinquent tax notice to the taxpayer pursuant to s. 197.343, F.S.; or
- Sending a tax notice to a designated third party, mortgagee, or vendee pursuant to s. 197.344(1), F.S.

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

The bill takes effect October 1, 2020.

II. Present Situation:

Access to Public Records - Generally

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 The right to inspect or copy applies to the official business of any public body, officer, or employee of the state, including all three

¹ FLA. CONST. art. I, s. 24(a).

branches of state government, local governmental entities, and any person acting on behalf of the government.²

Additional requirements and exemptions related to public records are found in various statutes and rules, depending on the branch of government involved. For instance, section 11.0431, Florida Statutes (F.S.), provides public access requirements for legislative records. Relevant exemptions are codified in s. 11.0431(2)-(3), F.S., and the statutory provisions are adopted in the rules of each house of the legislature.³ Florida Rule of Judicial Administration 2.420 governs public access to judicial branch records.⁴ Lastly, chapter 119, F.S., provides requirements for public records held by executive agencies.

Executive Agency Records – The Public Records Act

Chapter 119, F.S., known as the Public Records Act, provides that all state, county and municipal records are open for personal inspection and copying by any person, and that providing access to public records is a duty of each agency.⁵

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 the statutory definition of “public record” to include “material prepared in connection with official agency business which is intended to perpetuate, communicate, or formalize knowledge of some type.”⁷

The Florida Statutes specify conditions under which public access to public records must be provided. The Public Records Act guarantees every person’s right to inspect and copy any public record at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.⁸ A violation of the Public Records Act may result in civil or criminal liability.⁹

The Legislature may exempt public records from public access requirements by passing a general law by a two-thirds vote of both the House and the Senate.¹⁰ The exemption must state

² *Id.*

³ See Rule 1.48, *Rules and Manual of the Florida Senate*, (2018-2020) and Rule 14.1, *Rules of the Florida House of Representatives*, Edition 2, (2018-2020)

⁴ *State v. Wooten*, 260 So. 3d 1060 (Fla. 4th DCA 2018).

⁵ Section 119.01(1), F.S. Section 119.011(2), F.S., defines “agency” 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.”

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.”

⁷ *Shevin v. Byron, Harless, Schaffer, Reid and Assoc., Inc.*, 379 So. 2d 633, 640 (Fla. 1980).

⁸ Section 119.07(1)(a), F.S.

⁹ Section 119.10, F.S. Public records laws are found throughout the Florida Statutes, as are the penalties for violating those laws.

¹⁰ FLA. CONST. art. I, s. 24(c).

with specificity the public necessity justifying the exemption and must be no broader than necessary to accomplish the stated purpose of the exemption.¹¹

General exemptions from the public records requirements are contained in the Public Records Act.¹² Specific exemptions often are placed in the substantive statutes relating to a particular agency or program.¹³

When creating a public records exemption, the Legislature may provide that a record is “exempt” or “confidential and exempt.” Custodians of records designated as “exempt” are not prohibited from disclosing the record; rather, the exemption means that the custodian cannot be compelled to disclose the record.¹⁴ Custodians of records designated as “confidential and exempt” may not disclose the record except under circumstances specifically defined by the Legislature.¹⁵

Open Government Sunset Review Act

The Open Government Sunset Review Act¹⁶ (the Act) prescribes a legislative review process for newly created or substantially amended¹⁷ public records or open meetings exemptions, with specified exceptions.¹⁸ It requires the automatic repeal of such exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.¹⁹

The Act 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.²⁰ 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 subdivisions to effectively and efficiently administer a governmental program, and administration would be significantly impaired without the exemption;²¹

¹¹ *Id. See, e.g., Halifax Hosp. Medical Center v. News-Journal Corp.*, 724 So. 2d 567 (Fla. 1999) (holding that a public meetings exemption was unconstitutional because the statement of public necessity did not define important terms and did not justify the breadth of the exemption); *Baker County Press, Inc. v. Baker County Medical Services, Inc.*, 870 So. 2d 189 (Fla. 1st DCA 2004) (holding that a statutory provision written to bring another party within an existing public records exemption is unconstitutional without a public necessity statement).

¹² *See, e.g., s. 119.071(1)(a), F.S.* (exempting from public disclosure examination questions and answer sheets of examinations administered by a governmental agency for the purpose of licensure).

¹³ *See, e.g., s. 213.053(2)(a), F.S.* (exempting from public disclosure information contained in tax returns received by the Department of Revenue).

¹⁴ *See Williams v. City of Minneola*, 575 So. 2d 683, 687 (Fla. 5th DCA 1991).

¹⁵ *WFTV, Inc. v. The School Board of Seminole*, 874 So. 2d 48 (Fla. 5th DCA 2004).

¹⁶ Section 119.15, F.S.

¹⁷ An exemption is considered to be substantially amended if it is expanded to include more records or information or to include meetings as well as records. Section 119.15(4)(b), F.S.

¹⁸ Section 119.15(2)(a) and (b), F.S., provide that exemptions that are required by federal law or are applicable solely to the Legislature or the State Court System are not subject to the Open Government Sunset Review Act.

¹⁹ Section 119.15(3), F.S.

²⁰ Section 119.15(6)(b), F.S.

²¹ Section 119.15(6)(b)1., F.S.

- It protects sensitive, personal information, the release of which would be defamatory, cause unwarranted damage to the good name or reputation of the individual, or would jeopardize the individual's safety. If this public purpose is cited as the basis of an exemption, however, only personal identifying information is exempt;²² or
- It protects information of a confidential nature concerning entities, such as trade or business secrets.²³

The Act also requires specified questions to be considered during the review process.²⁴ In examining an exemption, the Act directs the Legislature to carefully question the purpose and necessity of reenacting the exemption.

If the exemption is continued and expanded, then a public necessity statement and a two-thirds vote for passage are required.²⁵ If the exemption is continued without substantive changes or if the exemption is continued and 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.²⁶

Property Tax Notices

The ad valorem tax or “property tax” is an annual tax levied by counties, municipalities, school districts, and some special districts. The tax is based on the taxable value of property as of January 1 of each year.²⁷ The property appraiser annually determines the “just value”²⁸ of property within the taxing authority and then applies relevant exclusions, assessment limitations, and exemptions to determine the property's taxable value.²⁹

Taxpayers receive certain notices at various stages of the property tax administration process. For example:

²² Section 119.15(6)(b)2., F.S.

²³ Section 119.15(6)(b)3., F.S.

²⁴ Section 119.15(6)(a), F.S. The specified questions are:

- What specific records or meetings are affected by the exemption?
- Whom does the exemption uniquely affect, as opposed to the general public?
- What is the identifiable public purpose or goal of the exemption?
- Can the information contained in the records or discussed in the meeting be readily obtained by alternative means? If so, how?
- Is the record or meeting protected by another exemption?
- Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?

²⁵ See generally s. 119.15, F.S.

²⁶ Section 119.15(7), F.S.

²⁷ Both real property and tangible personal property are subject to 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.

²⁸ 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).

²⁹ See s. 192.001(2) and (16), F.S.

- In August of each year, property appraisers send each taxpayer a notice of proposed property taxes, alerting the taxpayer of the property appraiser's proposed assessment for the taxpayer's property and the resulting tax that could be due, depending upon the local governments' adopted budgets.³⁰
- In November of each year, tax collectors send tax notices to each taxpayer, informing the taxpayer of the amount of taxes due.³¹ Taxes are generally due by the following March 31. Upon request by a mortgagee who holds property tax payments in escrow, tax collectors send this tax notice to the mortgagee.³²
- Tax collectors send notices by April 30 to each taxpayer who has not paid his or her tax bill, alerting the taxpayer that a tax certificate could be sold.³³

Historically, tax notices have been sent to the taxpayer using postal mail.³⁴ In 2011, the Legislature authorized tax collectors, after taxpayer consent, to deliver certain tax notices via electronic means.³⁵ Often, e-mail is the electronic means used by tax collectors to send notices.

Public Records Exemption for E-Mail Addresses held by Tax Collectors for Certain Purposes

In 2015, the Legislature created s. 197.3225, F.S., to exempt from disclosure e-mail addresses held by tax collectors for the following purposes:

- Sending a quarterly tax notice for prepayment of estimated taxes pursuant to section 197.222(3), F.S.;
- Obtaining a taxpayer's consent to electronically send the tax notice (the annual tax bill) described in section 197.322(3), F.S.;
- Sending an additional tax notice or delinquent tax notice (annual tax bill/delinquency notice) pursuant to section 197.343, F.S.;
- Sending a tax notice (the annual tax bill) to a designated third party, mortgagee, or vendee pursuant to section 197.344(1), F.S.

Section 197.3225(2), F.S., provides for repeal of the exemption pursuant to the Act on October 2, 2020, unless reviewed and saved from repeal by the Legislature. Chapter 2015-13, Laws of Florida, which created the exemption, provides a statement of public necessity.³⁶ The statement finds that, when combined with other personal identifying information, e-mail addresses can be used for identity theft, taxpayer scams, and other invasive contacts.

Tax collectors have indicated that they have received public records requests for e-mail addresses.³⁷

³⁰ Section 200.069, F.S.

³¹ Section 197.322(3), F.S.

³² Section 197.344(1)(b), F.S.

³³ Section 197.343(1), F.S.

³⁴ *See, e.g.*, ss. 200.069, F.S. (requiring the notice of proposed property taxes to be sent by first-class mail); and 197.322(3), F.S. (authorizing the tax notice notifying the taxpayer of the amount of taxes due to be sent by postal mail).

³⁵ *See generally* ch. 2011-151, Laws of Fla.

³⁶ Section 2, ch. 2015-13, Laws of Fla.

³⁷ *See, e.g.*, Questionnaire Response by Sarasota County Tax Collector's Office, June 2019 (on file with The Senate Committee on Finance and Tax.)

III. Effect of Proposed Changes:

The bill saves from repeal the public records exemption in s. 197.3225, F.S., which exempts from public disclosure and inspection those e-mail addresses held by tax collectors for the purpose of sending certain tax notices to taxpayers. The bill continues the exemption from public disclosure by removing the repeal date.

The bill takes effect October 1, 2020.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Not applicable. The bill does not require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

B. Public Records/Open Meetings Issues:

Vote Requirement

Article I, s. 24(c) of the State Constitution requires two-thirds vote of the members present and voting for final passage of a bill creating or expanding an exemption to the public records requirements. The bill continues a current public records exemption beyond its current date of repeal. The bill does not create or expand an exemption. Thus, the bill does not require an extraordinary vote for enactment.

Public Necessity Statement

Article I, s. 24(c) of the State Constitution requires a bill creating or expanding an exemption to the public records requirements to state with specificity the public necessity justifying the exemption. The bill continues a current public records exemption without an expansion. Thus, a statement of public necessity is not required.

Breadth of Exemption

Article I, s. 24(c) of the State Constitution requires an exemption to the public records requirements to be no broader than necessary to accomplish the stated purpose of the law. The purpose of the law is to protect the personal identifying information contained in a record held by a tax collector for certain purposes. The exemption does not appear to be broader than necessary to accomplish the purpose of the law.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The private sector will continue to be subject to the cost associated with an agency making redactions in response to a public records request.

C. Government Sector Impact:

Governmental agencies will continue to incur costs related to the redaction of records in responding to public records requests.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

The bill substantially amends section 197.3225 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 Finance and Tax

593-01456-20

20207004__

1 A bill to be entitled
 2 An act relating to a review under the Open Government
 3 Sunset Review Act; amending s. 197.3225, F.S.,
 4 relating to an exemption from public records
 5 requirements for taxpayer e-mail addresses held by a
 6 tax collector for certain purposes; removing the
 7 scheduled repeal of the exemption; providing an
 8 effective date.

9

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

11

12 Section 1. Section 197.3225, Florida Statutes, is amended
 13 to read:

14 197.3225 Public records exemption; taxpayer e-mail
 15 addresses.-

16 ~~(1)~~ A taxpayer's e-mail address held by a tax collector for
 17 any of the following purposes is exempt from s. 119.07(1) and s.
 18 24(a), Art. I of the State Constitution:

19 (1)(a) Sending a quarterly tax notice for prepayment of
 20 estimated taxes to the taxpayer pursuant to s. 197.222(3).

21 (2)(b) Obtaining the taxpayer's consent to send the tax
 22 notice described in s. 197.322(3).

23 (3)(c) Sending an additional tax notice or delinquent tax
 24 notice to the taxpayer pursuant to s. 197.343.

25 (4)(d) Sending a tax notice to a designated third party,
 26 mortgagee, or vendee pursuant to s. 197.344(1).

27 ~~(2) This section is subject to the Open Government Sunset
 28 Review Act in accordance with s. 119.15 and shall stand repealed
 29 on October 2, 2020, unless reviewed and saved from repeal~~

Page 1 of 2

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

593-01456-20

20207004__

30 ~~through reenactment by the Legislature.~~

31 Section 2. This act shall take effect October 1, 2020.

Page 2 of 2

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THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Finance and Tax, *Chair*
Agriculture, *Vice Chair*
Appropriations
Appropriations Subcommittee on Criminal
and Civil Justice
Military and Veterans Affairs and Space

SENATOR GEORGE B. GAINER
2nd District

January 13, 2020

Re: SB 7004

Dear Chair Benacquisto,

I am respectfully requesting Senate Bill 7004, related to Open Government Sunset Review Email Addresses, be placed on the agenda for the next meeting of the Committee on Rules.

I appreciate your consideration of this bill. If there are any questions or concerns, please do not hesitate to call my office at (850) 487-5002.

Thank you,

A handwritten signature in cursive script, reading "George B. Gainer".

Senator George Gainer
District 2

Cc. John Phelps, Cynthia Futch, Joshua Goergen, and Timothy Morris

REPLY TO:

- 840 West 11th Street, Panama City, Florida 32401 (850) 747-5454
- 302 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5002
- Northwest Florida State College, 100 East College Boulevard, Building 330, Rooms 105 and 112, Niceville, Florida 32578 (850) 747-5454

Senate's Website: www.flsenate.gov

BILL GALVANO
President of the Senate

DAVID SIMMONS
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 1224

INTRODUCER: Senators Simmons and Gruters

SUBJECT: Real Estate Conveyances

DATE: February 3, 2020

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Knudson</u>	<u>Knudson</u>	<u>BI</u>	Favorable
2.	<u>Elsesser</u>	<u>Cibula</u>	<u>JU</u>	Favorable
3.	<u>Knudson</u>	<u>Phelps</u>	<u>RC</u>	Favorable

I. Summary:

SB 1224 removes a statutory requirement that a lessor's signature on a lease of longer than one year be subscribed by two witnesses.

II. Present Situation:

Section 689.01, F.S., requires that the sale of real property, or the leasing of real property for a term of more than 1 year, be conveyed by a written instrument that is signed by the party conveying the real property, or the party's authorized agent, in the presence of two subscribing witnesses.

In 2019 the Legislature amended s. 689.01, F.S., to provide that the requirement that the instrument conveying property be signed in the presence of two subscribing witnesses may be satisfied by witnesses being present and electronically signing by means of audio-video communication technology.¹

Chapter 692, F.S., provides to corporations an alternative method of conveying real property through a sale or lease. A corporation may instead execute a document sealed with the common or corporate seal that is signed in its name by the president, vice-president, or chief executive officer. This alternative method may not be used by other forms of business organizations such as a limited liability company (LLC).²

Notably, under s. 689.01, F.S., only the lessor's (generally the landlord's) signature must be witnessed. Section 689.01, F.S. operates to ensure that the lessor actually intended to convey the rights as described in the instrument.

¹ Ch. 2019-71, s. 21, Laws of Fla.

² *Skylake Ins. Agency v. NMB Plaza, LLC*, 23 So. 3d 175, 178 (Fla. 3rd DCA 2009).

Both landlords and tenants can be estopped from relying on the two-witness rule as the principles of equity require in an otherwise valid agreement. A landlord, for example, can be estopped from breaking a lease due to a lack of two witnesses where the landlord accepts benefits under the unwitnessed lease and transfers possession to a tenant, and the parties otherwise recognize the instrument as being an effective conveyance.³ Similarly, a tenant can be estopped from breaking the lease for lack of witnesses to a signature where the tenant occupies the conveyed property under the lease (or similar agreement) and makes rental payments under that agreement for two years.⁴

III. Effect of Proposed Changes:

The bill amends s. 689.01(1), F.S., to provide that a written leasehold estate in real property does not require subscribing witnesses. Currently, two subscribing witnesses are required. This change removes a protection afforded to landlords. However, it also streamlines the process by which leaseholds may be conveyed.

This bill takes effect July 1, 2020.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

³ *Gill v. Livingston*, 29 So. 2d 631, 632 (Fla. 1947); *see also Skylake*, 23 So. 3d at 178.

⁴ *Taylor v. Rosman*, 312 So. 2d 239, 241 (Fla. 3d DCA 1975).

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 689.01 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 Simmons

9-01300-20

20201224__

1 A bill to be entitled
 2 An act relating to real estate conveyances; amending
 3 s. 689.01, F.S.; providing that subscribing witnesses
 4 are not required to validate certain instruments
 5 conveying a leasehold interest in real property;
 6 providing an effective date.
 7
 8 Be It Enacted by the Legislature of the State of Florida:
 9
 10 Section 1. Subsection (1) of section 689.01, Florida
 11 Statutes, is amended to read:
 12 689.01 How real estate conveyed.—
 13 (1) No estate or interest of freehold, or for a term of
 14 more than 1 year, or any uncertain interest of, in, or out of
 15 any messuages, lands, tenements, or hereditaments shall be
 16 created, made, granted, transferred, or released in any ~~other~~
 17 manner other than by instrument in writing, signed in the
 18 presence of two subscribing witnesses by the party creating,
 19 making, granting, conveying, transferring, or releasing such
 20 estate, interest, or term of more than 1 year, or by the party's
 21 lawfully authorized agent, unless by will and testament, or
 22 other testamentary appointment, duly made according to law; and
 23 no estate or interest, either of freehold, or of term of more
 24 than 1 year, or any uncertain interest of, in, to, or out of any
 25 messuages, lands, tenements, or hereditaments, shall be assigned
 26 or surrendered unless it be by instrument signed in the presence
 27 of two subscribing witnesses by the party so assigning or
 28 surrendering, or by the party's lawfully authorized agent, or by
 29 the act and operation of law; provided, however, that no

Page 1 of 2

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9-01300-20

20201224__

30 subscribing witnesses shall be required for any such instrument
 31 pertaining to a leasehold estate in real property. No seal shall
 32 be necessary to give validity to any instrument executed in
 33 conformity with this section. Corporations may execute any and
 34 all conveyances in accordance with the provisions of this
 35 section or ss. 692.01 and 692.02.
 36 Section 2. This act shall take effect July 1, 2020.

Page 2 of 2

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



The Florida Senate

Committee Agenda Request

To: Senator Lizbeth Benacquisto, Chair
Committee on Rules

Subject: Committee Agenda Request

Date: January 31, 2020

I respectfully request that **Senate Bill 1224**, relating to Real Estate Conveyances, be placed on the:

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

A handwritten signature in black ink, appearing to read "David Simmons".

Senator David Simmons
Florida Senate, District 9

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/5/2020
Meeting Date

1224
Bill Number (if applicable)

NA
Amendment Barcode (if applicable)

Topic Real Estate Conveyances

Name Greg Black

Job Title Lobbyist

Address 1727 Highland Place
Street

Phone 509-8022

TLH FL 32308
City State Zip

Email greg@waypointstrat.com

Speaking: For Against Information

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

Representing International Council of Shopping Centers

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/5

Meeting Date

1224

Bill Number (if applicable)

Topic Real Estate Conveyances

Amendment Barcode (if applicable)

Name Andrew Rutledge

Job Title Policy Rep

Address 200 S. Monroe St

Phone 250-244-1400

Street

Tallahassee

City

FL

State

32312

Zip

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)

2/5/20

Meeting Date

1224

Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Chris Carmody

Job Title Lobbyist

Address 301. E. Pine St. #1400

Phone 407 - 843 - 880

Street

Orlando

Email _____

City

State

Zip

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.

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 604

INTRODUCER: Judiciary Committee and Senator Bean

SUBJECT: Servicemembers Civil Relief Act

DATE: February 3, 2020

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Preston</u>	<u>Hendon</u>	<u>CF</u>	Favorable
2.	<u>Stallard</u>	<u>Cibula</u>	<u>JU</u>	Fav/CS
3.	<u>Preston</u>	<u>Phelps</u>	<u>RC</u>	Favorable

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 604 amends this state's child welfare statutes to protect the rights of a parent, custodian, or legal guardian who, because of his or her military service, must be absent from his or her child or from child-welfare-related court proceedings.

More particularly, the bill:

- Provides that the absence of a deployed or soon-to-be-deployed parent, custodian, or legal guardian responsible for a child's welfare may not be considered in determining whether the child has been abandoned;
- Requires the Department of Children and Families to ensure that the federal Servicemembers Civil Relief Act (SCRA) is observed in cases where a parent, legal custodian, or caregiver, because of his or her service, is unable to take custody of his or her child or appear before the court in person; and
- Declares that ch. 39, F.S., pertaining to child welfare, does not supersede the requirements of SCRA or its implementing regulations.

The bill does not have a fiscal impact on state or local governments and has an effective date of July 1, 2020.

II. Present Situation:

Abandonment

A child is considered abandoned if the parent, legal custodian, or caregiver, while being able, has made no significant contribution to the child's care and maintenance or has failed to establish or maintain a substantial and positive relationship with the child.¹ And, under ch. 39, F.S., a child who is found by the court to be abandoned is thus found to be "dependent."²

Upon verification that a child has been abandoned, the department may file a dependency petition and require the parents to engage in services to ameliorate the state's concerns and protect the child. During the delivery of services and with the court's supervision, the department may place the child in out-of-home care until reunification with the parent is in the child's best interest. Because a verified finding of abandonment establishes grounds for termination of parental rights, the department has the option to petition the court to terminate parental rights at any time.³

Florida's statutory definition of "abandonment" does not expressly exclude deployment or anticipated deployment of a parent or caregiver from being considered when determining whether a child has been abandoned. As defined, the term expressly provides that the incarceration, repeated incarceration, or extended incarceration of a parent, legal custodian, or caregiver responsible for a child's welfare may support a finding of abandonment. The definition additionally provides that a surrendered newborn, a "child in need of services," or a "family in need of services" is not considered abandoned/abandonment, and will not meet the statutory definition required for a child protective investigation.⁴

Federal Law vs. State Law

While primary responsibility for child welfare rests with states, a number of federal laws have been enacted that affect how states operate their child welfare systems. Section 39.0137, F.S., specifically provides that ch. 39, F.S., does not supersede the requirements of the Indian Child Welfare Act (ICWA)⁵ and the Multi-Ethnic Placement Act (MEPA).⁶

Legal Provisions Protecting Servicemembers

The Servicemembers Civil Relief Act is a federal law that applies to civil proceedings. The act protects servicemembers by allowing for the temporary suspension of judicial and administrative proceedings and transactions that may adversely affect the civil rights of servicemembers during

¹ Section 39.01(1), F.S. For the purposes of s. 39.01(1), F.S., "establish or maintain a substantial positive relationship," includes, but is not limited to, frequent and regular contact with the child through frequent and regular visitation or frequent and regular communication to or with the child, and the exercise of parental rights and responsibilities. Marginal efforts and incidental or token visits or communications are not sufficient to establish a substantial and positive relationship with the child."

² See s. 39.01(15)(a), F.S.

³ Section 39.806(1), F.S.

⁴ Section 39.01(1), F.S.

⁵ 25 U.S.C. ss. 1901, et seq.

⁶ Pub. L. No. 103-382.

their military service.⁷ The SCRA allows a servicemember to request a delay in a court or agency proceeding that may adversely affect his or her rights during his or her military service.⁸

While the SCRA applies to all civil proceedings, the SCRA was amended in 2014 and 2016 to provide servicemembers with additional protections in child custody proceedings.⁹ Child custody may become an issue in a child welfare proceeding if the court is determining which parent should have custody over the child when the other parent cannot protect the child's safety and well-being. The act protects servicemembers from losing permanent custody of their children due to military deployment, and prohibits state courts from considering current or future deployments as the sole factor in determining the best interest of the child when contemplating a permanent change in child custody.¹⁰

Servicemembers must also receive notice both annually and prior to deployment of the child custody protections under the SCRA and courts are to construe the SCRA liberally in favor of servicemembers.¹¹

States may provide more protections to servicemembers¹² than what is provided under the SCRA, as Florida does. For example, because the SCRA only applies to call-ups by the president, Florida law expands SCRA protections to governor-ordered National Guard call-ups if the service exceeds 17 days.¹³ In these situations, the court may stay any civil action or proceeding up to 30 days on its own motion, and must stay the proceeding upon motions of either party, unless it finds the ability to prosecute or defend the action is not materially affected by reason of the active duty status.¹⁴ Florida law also allows active duty servicemembers to terminate real estate contracts if certain requirements are met.¹⁵

As a federal law, the SCRA preempts conflicting state law even if state law does not expressly say so.¹⁶ Currently, the SCRA is expressly cited in several Florida statutes that provide:

- If one of the parties to a divorce has performed at least 10 years of credible service in the military and the division of marital property includes division of military retirement benefits, then the final judgement must include certification that the SCRA was observed if the decree was issued while the member was on active duty and was not represented in court.¹⁷
- Unless prohibited by the SCRA, the court may issue a temporary order granting custodial responsibility after a deploying parent receives notice of deployment; however, the temporary custody may only last until the deployment terminates.¹⁸

⁷ Servicemembers Civil Relief Act, 50 U.S.C. s. 3902.

⁸ *Id.*

⁹ Jennifer K. Elesa, *The Servicemember Civil Relief Act (SCRA): Section-by-Section Summary*, (Updated March 25, 2019) <https://fas.org/sgp/crs/natsec/R45283.pdf>.

¹⁰ Servicemembers Civil Relief Act, 50 U.S.C. s. 3938.

¹¹ 50 U.S.C. s. 3938a.

¹² Florida statutes define "servicemember" as any person serving as a member of the United States Armed Forces on active duty or state active duty and all members of the Florida National Guard and United States Reserve Forces.

¹³ Section 250.5201, F.S.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ See U.S. CONST. art VI, cl. 2.

¹⁷ Section 61.076(2), F.S.

¹⁸ Section 61.733(1), F.S.

- A court may modify or terminate a temporary grant of custodial responsibility on motion of a deploying parent if modification or termination is consistent with the SCRA and is in child's best interest.¹⁹
- If any other provision of law conflicts with the SCRA or the provisions of Florida law related to military affairs, the SCRA or the provisions of Florida law related to military affairs, whichever is applicable, shall control.²⁰

Currently, Florida's child welfare statutes do not specifically state that the SCRA preempts state law. However, because the SCRA is a federal law, it will preempt state law even if it is not explicitly stated in Florida's child welfare law.

III. Effect of Proposed Changes:

SB 604 amends this state's child-welfare statutes to protect the rights of a parent, custodian, or legal guardian who, because of his or her military service, must be absent from his or her child or from child-welfare-related court proceedings.

More particularly, the bill:

- Provides that the absence of a deployed or soon-to-be-deployed parent, custodian, or legal guardian responsible for a child's welfare may not be considered in determining whether the child has been abandoned;
- Requires the Department of Children and Families to ensure that the federal Servicemembers Civil Relief Act (SCRA) is observed in cases where a parent, legal custodian, or caregiver, because of his or her service, is unable to take custody of his or her child or appear before the court in person; and
- Declares that ch. 39, F.S., which pertains to child welfare, does not supersede the requirements of SCRA or its implementing regulations.

The bill does not have a fiscal impact on state or local governments and has an effective date of July 1, 2020.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

¹⁹ Section 61.749(1), F.S.

²⁰ Section 250.83, F.S.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends sections 39.01 and 39.0137 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

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

CS by Judiciary on January 28, 2020:

The committee substitute requires the Department of Children and Families to ensure that the Servicemembers Civil Relief Act is observed in cases where legal custodian or caregiver, because of his or her service, is unable to take custody of a child or appear before the court in person. Under the bill, this provision applied only to parents.

B. Amendments:

None.

By the Committee on Judiciary; and Senator Bean

590-02763-20

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1 A bill to be entitled
 2 An act relating to the Servicemembers Civil Relief
 3 Act; amending s. 39.01, F.S.; revising the definition
 4 of the terms "abandoned" or "abandonment"; amending s.
 5 39.0137, F.S.; providing that certain state laws
 6 relating to children do not supersede the
 7 Servicemembers Civil Relief Act; requiring the
 8 Department of Children and Families to ensure that the
 9 act is observed in certain cases; providing an
 10 effective date.

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

13
 14 Section 1. Subsection (1) of section 39.01, Florida
 15 Statutes, is amended to read:

16 39.01 Definitions.—When used in this chapter, unless the
 17 context otherwise requires:

18 (1) "Abandoned" or "abandonment" means a situation in which
 19 the parent or legal custodian of a child or, in the absence of a
 20 parent or legal custodian, the caregiver, while being able, has
 21 made no significant contribution to the child's care and
 22 maintenance or has failed to establish or maintain a substantial
 23 and positive relationship with the child, or both. For purposes
 24 of this subsection, "establish or maintain a substantial and
 25 positive relationship" includes, but is not limited to, frequent
 26 and regular contact with the child through frequent and regular
 27 visitation or frequent and regular communication to or with the
 28 child, and the exercise of parental rights and responsibilities.
 29 Marginal efforts and incidental or token visits or

Page 1 of 3

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30 communications are not sufficient to establish or maintain a
 31 substantial and positive relationship with a child. A man's
 32 acknowledgment of paternity of the child does not limit the
 33 period of time considered in determining whether the child was
 34 abandoned. The term does not include a surrendered newborn
 35 infant as described in s. 383.50, a "child in need of services"
 36 as defined in chapter 984, or a "family in need of services" as
 37 defined in chapter 984. The absence of a parent, legal
 38 custodian, or caregiver responsible for a child's welfare, who
 39 is a servicemember, by reason of deployment or anticipated
 40 deployment as defined in 50 U.S.C. s. 3938(e), may not be
 41 considered or used as a factor in determining abandonment. The
 42 incarceration, repeated incarceration, or extended incarceration
 43 of a parent, legal custodian, or caregiver responsible for a
 44 child's welfare may support a finding of abandonment.

45 Section 2. Subsection (1) of section 39.0137, Florida
 46 Statutes, is amended, and subsection (3) is added to that
 47 section, to read:

48 39.0137 Federal law; rulemaking authority.—

49 (1) This chapter does not supersede the requirements of the
 50 Indian Child Welfare Act, 25 U.S.C. ss. 1901 et seq., ~~or~~ the
 51 Multi-Ethnic Placement Act of 1994, Pub. L. No. 103-382, as
 52 amended, the Servicemembers Civil Relief Act, 50 U.S.C. ss. 3901
 53 et seq., or the implementing regulations for such acts.

54 (3) The department shall ensure that the Servicemembers
 55 Civil Relief Act is observed in cases where a parent, legal
 56 custodian, or caregiver responsible for a child's welfare, by
 57 virtue of his or her service, is unable to take custody of his
 58 or her child or appear before the court in person.

Page 2 of 3

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59

Section 3. This act shall take effect July 1, 2020.



The Florida Senate

Committee Agenda Request

To: Senator Lizbeth Benacquisto, Chair
Committee on Rules

Subject: Committee Agenda Request

Date: January 28, 2020

I respectfully request that **Senate Bill #604**, relating to Servicemembers Civil Relief Act, be placed on the:

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

A handwritten signature in cursive script that reads "Aaron Bean".

Senator Aaron Bean
Florida Senate, District 4

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 580

INTRODUCER: Community Affairs Committee; Judiciary Committee; and Senator Bracy

SUBJECT: Uniform Partition of Heirs Property Act

DATE: February 3, 2020

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Elsesser</u>	<u>Cibula</u>	<u>JU</u>	Fav/CS
2.	<u>Paglialonga</u>	<u>Ryon</u>	<u>CA</u>	Fav/CS
3.	<u>Elsesser</u>	<u>Phelps</u>	<u>RC</u>	Favorable

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 580 adopts the Uniform Partition of Heirs Property Act by the Uniform Law Commission. The bill provides special procedures for the partition of “heirs property,” which generally includes inherited real property owned by relatives as tenants in common. A partition involves a legal action by a cotenant to force the sale or division of real property.

The bill essentially provides a right of first refusal, allowing heirs property cotenants to purchase the property interests of cotenants seeking partition before the property is divided or sold. The bill requires a court to determine the fair market value of the property, either through court-ordered appraisal or based on the agreement of the parties before the court proceeds to partition. The bill generally requires partitions by sale to be made in an open-market sale by a court-appointed real estate broker, instead of an auction as the statutes currently require.

II. Present Situation:

In Florida, when a person dies intestate, i.e., without a will, and the decedent has no surviving spouse, the decedent’s real property is distributed per stripes to heirs in the following order: to the decedent’s descendants (typically children or grandchildren); if no descendants, then to the decedent’s parents; if no surviving parents, then to any siblings.¹ When multiple people receive property in this manner, they own the property as tenants in common.² “[T]he distinguishing

¹ Sections 732.102-104, F.S.

² See s. 689.15, F.S. (stating that transfers of property create tenancies in common absent an instrument stating otherwise).

feature of a tenancy in common is unity of possession,”³ and as such, “[t]enants in common each own a proportional undivided interest in the property rather than the whole.”⁴

Tenants in common do not have a right to survivorship, i.e., when a tenant in common dies, his or her property interest does not transfer to the other tenants in common but rather transfers to the deceased tenants’ heirs (by will or through intestate succession).⁵ Therefore, as heirs beget heirs, the number of tenants in common can increase.⁶

The interests of the decedent’s property can be spread further, as a tenant in common “may freely transfer or encumber his or her undivided [...] interest without transferring or encumbering the undivided one-half interest owned by the other.”⁷ A tenant in common’s interest “is like any other asset that a person owns as far as the person’s creditors is concerned,” i.e., a “creditor may levy and execute on the interest. Similarly, a judgment lien will attach to the undivided interest of one tenant in common without attaching to the undivided interest of the other tenant in common.”⁸ Additionally, a developer may acquire properties owing back taxes through tax deed sales.⁹

A single heir can sell his or her fractional interest or lose it to a creditor; the purchaser or creditor then becomes a tenant in common and can petition the court for a partition sale to receive their fractional interest: “As a general rule tenants in common are entitled to partition as a matter of right.”¹⁰

A cotenant seeking partition of property must, in a complaint, describe the property to be partitioned and name all interested parties “to the best knowledge and belief of [the] plaintiff.”¹¹ If the names of any interested parties are unknown, “the action may proceed as though such unknown persons were named in the complaint.”¹²

A court may order partition “if it appears that the parties are entitled to it.”¹³ If the court determines a plaintiff’s interest in the property, it can order a partition of that interest, “leaving for future adjustment in the same action the interest of any other defendants” whose interests were not determined in the legal action.¹⁴

³ *In re Estate of Cleaves*, 509 So. 2d 1256, 1259 (Fla. 2d DCA 1987).

⁴ *In re Willoughby*, 212 B.R. 1011, 1015 (Bankr. M.D. Fla. 1997).

⁵ *See, e.g., In re Suggs Estate*, 405 So. 2d 1360, 1361 (Fla. 5th DCA 1981).

⁶ *See* The Florida Bar Journal, *The Disproportionate Impact of Heirs Property in Florida’s Low Income Communities of Color* (available at <https://www.floridabar.org/the-florida-bar-journal/the-disproportionate-impact-of-heirs-property-in-floridas-low-income-communities-of-color/>, last visited December 12, 2019).

⁷ *Willoughby*, 212 B.R. 1011, 1015.

⁸ *Id.* at 1015-16.

⁹ Sections 197.502 and 197.542, F.S.

¹⁰ *Condrey v. Condrey*, 92 So. 2d 423, 427 (Fla. 1957); Section 64.031, F.S. However, the right of a tenant in common to partition of realty may be waived by the tenant in common, or he may be estopped to enforce the right by agreement not to partition, either express or implied. *Id.*

¹¹ Section 64.041, F.S.

¹² *Id.*

¹³ Section 64.051, F.S.

¹⁴ *Id.*

If the court orders partition, it must appoint three commissioners to make the partition.¹⁵ If the commissioners determine that the property is indivisible and cannot be divided without prejudice to one or more of the owners, and the court “is satisfied” that the determination is correct, “the court may order the land to be sold at public auction to the highest bidder by the commissioners or the clerk and the money arising from such sale paid into the court to be divided among the parties in proportion to their interest.”¹⁶ Every party is required to pay the costs of the process, including attorneys’ fees, proportionate to each party’s interest in the property.¹⁷ The court may order these costs and fees be paid out of the proceeds of the property sale.¹⁸

III. Effect of Proposed Changes:

This bill provides procedures for the partition of “heirs property.” Heirs property is real property held by tenants in common where there is no existing agreement governing the partition of the property, one or more of the cotenants acquired his or her property interest from a relative, and either (1) twenty percent of the property is owned by cotenants who are relatives (or twenty percent of the owners are relatives) or (2) twenty percent of the property is owned by cotenants who received their interests from a relative.

Under the bill, if a cotenant seeks partition of property, the court must determine whether the property is heirs property. If the court determines the property is heirs property, and the plaintiff seeks to provide notice by publication, the plaintiff must post a notice of action issued under s. 49.08, F.S., on the property. This notice contains the names of known defendants to the action, a description of unknown defendants claiming any interest in the action, the nature of the action, the name of the court in which the action was brought, and a description of the property.

If the court determines that the property is heirs property, it shall order an appraisal of the property, unless the cotenants have agreed to the property’s value or the court determines that the cost of an appraisal would outweigh the appraisal’s “evidentiary value.”

If the court orders an appraisal, it must appoint a disinterested licensed appraiser to determine the property’s fair market value and file a sworn or verified appraisal with the court. In addition to the appraisal, the court must consider “equitable accounting,” i.e., contributions to the property made by individual cotenants, including property taxes. The court must adjust the purchase cotenants’ purchase prices based on this accounting. After the appraisal is filed, the court must notify all known parties as to the property’s value and inform the parties that the appraisal is available for review and that each party may object to the appraisal within 30 days after the notice.

If an appraisal is filed, the court must conduct a hearing to determine the value of the property not sooner than 30 days after the notice has been sent to the interested parties. The court must

¹⁵ Section 64.061, F.S.

¹⁶ Section 64.071, F.S.

¹⁷ Section 64.081, F.S.

¹⁸ *Id.*

determine the value of the property before proceeding to the partition action. The court must give notice to the parties of the market value.¹⁹

If any cotenant requested partition by sale, the bill essentially grants a right of first refusal to the other cotenants, requiring that the court notice any other cotenants who did not request the sale, informing them that they may buy all of the interest of the cotenant who requested the sale. The value of each tenant's interest is proportional to his or her fractional interest in the property. Within 45 days after the notice of the requested partition by sale, the other cotenants may give notice that they elect to purchase the interest of the cotenant seeking the sale. The court shall notify the parties if only one other cotenant gives notice that he or she wishes to purchase the interest of the party seeking a sale. If multiple cotenants give notice that they wish to purchase the interest of the party seeking partition by sale, the court must allocate the right to purchase that interest proportional to each cotenant's existing fractional ownership of the property. If one or more cotenants give notice of their desire to purchase the interest of a party seeking partition by sale, the court must set a payment due date at least 60 days after the date that the court gave notice of the desire to purchase.

The court must reallocate the property interests if the parties pay their apportioned price within the time limit set by the court; if one or more of the parties do not pay within that timeframe, the court must notify the other cotenants of the price of the remaining interests not purchased, and those other cotenants have 20 days to purchase the remaining interest. If none of the parties pay within the timeframe set by the court, the court must proceed with the partition action as if none of the interests were purchased.

Within 45 days after the initial complaint requesting partition by sale, any cotenant entitled to purchase an interest may request that the court authorize the sale of the interests of any defendants named in the complaint who did not file an appearance to the action. The court may grant the request if the court has determined the fair market value of the non-appearing party's interest under the procedures outlined by the bill.

If the interests of the cotenants who requested partition are not purchased or if there remain one or more parties who request partition in kind after the buyout outlined in the bill, the court must order a partition in kind unless the commissioners described in s. 64.061, F.S., find that a partition in kind will result in manifest injustice, considering a list of factors including whether physical division is practicable, whether the division would result in inequitably valued parcels, a party's sentimental attachment to the property, the degree to which parties have contributed their pro-rated share of property taxes, and any other relevant factors. If the court does not order partition in kind, it may order a partition by sale or dismiss the partition action.

A court ordering partition must enter a judgment of partition to be recorded in the official records of the county where the property is located. This judgment of partition must include a legal description of the property before partition, a description of each parcel of partitioned property, and the names of the owners of each parcel. The court clerk must record the judgment.

¹⁹ The bill does not set a timeline for the notice of the fair market value determination as it does for the notice of appraised value.

If the court orders a sale of a property, the sale must be an open-market sale unless the court finds that a sale by sealed bids or auction would be in the best interests of the tenants. The court must appoint a licensed real estate broker within 10 days to sell the property in a commercially reasonable manner. For an open-market sale, the broker must report an offer at the court-determined property value within 7 days after receiving the offer.

The bill also provides that cotenants owning real property that does not meet the definition of “heirs property” may agree to partition their property under the procedures described in the bill, jointly notifying the court of such agreement.

The bill adds a requirement for commissioners appointed under s. 64.061, F.S., requiring that they be “disinterested and impartial and not a party or a participant in the action.”

The bill does not contain an attorney fee provision, so parties are still responsible for their costs and fees proportional to their interest in the property, per s. 64.081, F.S.

Under the federal Agricultural Improvement Act of 2018, entities in states having adopted the Uniform Partition of Heirs Property Act are given preference in receiving loans from the U.S. Secretary of Agriculture to assist in the resolution of interests on farmland with multiple owners.²⁰ Additionally, farm operators in states having adopted the Uniform Partition of Heirs Property Act are eligible to receive a “farm number,” a prerequisite to participate in certain programs provided by the Secretary of Agriculture under the Agricultural Improvement Act.²¹

The bill takes effect on July 1, 2020, and applies prospectively.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

²⁰ Agricultural Improvement Act, Pub. Law 115-334, 132 Stat. 4670.

²¹ *Id.* at 5015.

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

None.

B. Private Sector Impact:

The bill requires a court to determine the market value of heirs property before commencing partition proceedings and requires partition by sale to be conducted on the open market by a licensed real estate broker, rather than at auction (unless a court determines that auction or sealed bids would be more economically advantageous). This change in the procedure may affect the sale price of heirs property partitioned by sale.

C. Government Sector Impact:

The new procedures for the partition of heirs property appear likely to result in a slight increase in judicial workloads.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates the following sections of the Florida Statutes: 64.201, 64.202, 64.203, 64.204, 64.205, 64.206, 64.207, 64.208, 64.209, 64.210, 64.211, 64.212, 64.213, and 64.214.

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 Community Affairs on January 13, 2020:

The committee substitute incorporates technical, clarifying changes into the bill.

CS by Judiciary on December 10, 2019:

The committee substitute made the following changes to the underlying bill:

- Provides that cotenants owning real property that does not meet the definition of “heirs property” may agree to partition their property under the procedures described in the bill, jointly notifying the court of the agreement.
- Revises procedures for providing notice by publication.
- Requires a court to consider “equitable accounting,” including contributions to the property made by cotenants, in determining the fair purchase price for each cotenant.

- Requires a court ordering partition to enter a “judgment of partition,” which must be recorded in the official records of the county.
- Provides that the commissioners described s. 64.061, F.S., and not the court, make the determination as to whether partition in kind would prejudice any of the cotenants.
- Clarifies that the bill establishes a preference for partitions in kind over partition sales.

B. Amendments:

None.

By the Committees on Community Affairs; and Judiciary; and
Senator Bracy

578-02235-20

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1 A bill to be entitled
2 An act relating to the Uniform Partition of Heirs
3 Property Act; designating part I of ch. 64, F.S.,
4 entitled "General Provisions"; creating part II of ch.
5 64, F.S., entitled "Uniform Partition of Heirs
6 Property Act"; creating s. 64.201, F.S.; providing a
7 short title; creating s. 64.202, F.S.; defining terms;
8 creating s. 64.203, F.S.; providing applicability;
9 providing requirements relating to the court
10 determination of heirs property; specifying the
11 relation of the act to other law; creating s. 64.204,
12 F.S.; providing construction; providing for service
13 and notice; creating s. 64.205, F.S.; providing for
14 appointment and qualifications of commissioners;
15 creating s. 64.206, F.S.; providing for the
16 determination of property value; creating s. 64.207,
17 F.S.; providing for buyout of cotenants; creating s.
18 64.208, F.S.; providing for alternatives to partition;
19 creating s. 64.209, F.S.; providing factors to be
20 considered in determining whether partition in kind
21 may be ordered; creating s. 64.210, F.S.; providing
22 for sale of property through open-market sale, sealed
23 bids, or auction; creating s. 64.211, F.S.; providing
24 requirements for reporting of an open-market sale of
25 property; creating s. 64.212, F.S.; providing for
26 uniformity of application and construction; creating
27 s. 64.213, F.S.; specifying the relation of the act to
28 the Electronic Signatures in Global and National
29 Commerce Act; creating s. 64.214, F.S.; authorizing

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30 certain cotenants to agree to certain partitions of
31 real property; requiring such cotenants to jointly
32 notify the court of such agreement; providing an
33 effective date.
34

35 Be It Enacted by the Legislature of the State of Florida:
36

37 Section 1. Sections 64.011, 64.022, 64.031, 64.041, 64.051,
38 64.061, 64.071, 64.081, and 64.091, Florida Statutes, are
39 designated as part I of chapter 64, Florida Statutes, and
40 entitled "General Provisions."

41 Section 2. Part II of chapter 64, Florida Statutes,
42 consisting of sections 64.201, 64.202, 64.203, 64.204, 64.205,
43 64.206, 64.207, 64.208, 64.209, 64.210, 64.211, 64.212, 64.213,
44 and 64.214, is created to read:

45 PART II

46 UNIFORM PARTITION OF HEIRS PROPERTY ACT

47 64.201 Short title.—This part may be cited as the "Uniform
48 Partition of Heirs Property Act".

49 64.202 Definitions.—As used in this part, the term:

50 (1) "Ascendant" means an individual who precedes another
51 individual in lineage, in the direct line of ascent from the
52 other individual.

53 (2) "Collateral" means an individual who is related to
54 another individual under the law of intestate succession of this
55 state but who is not the other individual's ascendant or
56 descendant.

57 (3) "Descendant" means an individual who follows another
58 individual in lineage, in the direct line of descent from the

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59 other individual.

60 (4) "Determination of value" means a court order
 61 determining the fair market value of heirs property under s.
 62 64.206 or s. 64.210 or adopting the valuation of the property
 63 agreed to by all cotenants.

64 (5) "Equitable accounting" means considering contributions
 65 and adjustments of accounts between cotenants, which are related
 66 to the real property and are based upon such contributions and
 67 adjustments, s. 64.081, and common law.

68 (6) "Heirs property" means real property held in tenancy in
 69 common which satisfies all of the following requirements as of
 70 the filing of a partition action:

71 (a) There is no agreement in a record binding all the
 72 cotenants which governs the partition of the property;

73 (b) One or more of the cotenants acquired title from a
 74 relative, whether living or deceased; and

75 (c) Any of the following applies:

76 1. Twenty percent or more of the interests are held by
 77 cotenants who are relatives;

78 2. Twenty percent or more of the interests are held by an
 79 individual who acquired title from a relative, whether living or
 80 deceased; or

81 3. Twenty percent or more of the cotenants are relatives.

82 (7) "Partition by sale" means a court-ordered sale of the
 83 entire heirs property, whether by open-market sale, sealed bids,
 84 or auction conducted under s. 64.210.

85 (8) "Partition in kind" means the division of heirs
 86 property into physically distinct and separately titled parcels.

87 (9) "Record" means information that is inscribed on a

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88 tangible medium or that is stored in an electronic or other
 89 medium and is retrievable in perceivable form.

90 (10) "Relative" means an ascendant, descendant, or
 91 collateral or an individual otherwise related to another
 92 individual by blood, marriage, adoption, or law of this state
 93 other than this part.

94 64.203 Applicability; relation to other law.—

95 (1) This part applies to partition actions filed on or
 96 after July 1, 2020.

97 (2) Provided that a partition action is otherwise available
 98 under part I of this chapter, the court shall determine whether
 99 the property is heirs property. If the court determines that the
 100 property is heirs property, the property must be partitioned
 101 under this part unless all of the cotenants otherwise agree in a
 102 record.

103 (3) This part supplements part I of this chapter and, if an
 104 action is governed by this part, replaces provisions of part I
 105 of this chapter that are inconsistent with this part.

106 64.204 Service; notice by posting.—

107 (1) This part does not limit or affect the method by which
 108 service of a complaint in a partition action may be made.

109 (2) If the plaintiff in a partition action seeks notice by
 110 publication, and the court determines that the property is heirs
 111 property, then the court shall order the clerk of the court to
 112 issue a notice of action to the plaintiff in the form set forth
 113 in s. 49.08 and the plaintiff must, not later than 10 days after
 114 receipt, post the notice of action on the property that is the
 115 subject of the action.

116 64.205 Commissioners.—If the court appoints commissioners

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117 pursuant to s. 64.061, each commissioner, in addition to the
 118 requirements and disqualifications applicable to commissioners
 119 in part I of this chapter, must be disinterested and impartial
 120 and not a party to or a participant in the action.

121 64.206 Determination of value.—

122 (1) Except as otherwise provided in subsections (2) and
 123 (3), if the court determines that the property that is the
 124 subject of a partition action is heirs property, the court shall
 125 determine the fair market value of the property by ordering an
 126 appraisal pursuant to subsection (4).

127 (2) If all cotenants have agreed to the value of the
 128 property or to another method of valuation, the court shall
 129 adopt that value or the value produced by the agreed method of
 130 valuation.

131 (3) If the court determines that the evidentiary value of
 132 an appraisal is outweighed by the cost of the appraisal, the
 133 court, after an evidentiary hearing, shall determine the fair
 134 market value of the property and send notice to the parties of
 135 the value.

136 (4) If the court orders an appraisal, the court shall
 137 appoint a disinterested real estate appraiser licensed in this
 138 state to determine the fair market value of the property
 139 assuming sole ownership of the fee simple estate. On completion
 140 of the appraisal, the appraiser shall file a sworn or verified
 141 appraisal with the court.

142 (5) If an appraisal is conducted pursuant to subsection
 143 (4), not later than 10 days after the appraisal is filed, the
 144 court shall send notice to each party with a known address,
 145 stating:

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146 (a) The appraised fair market value of the property.

147 (b) That the appraisal is available at the clerk's office.

148 (c) That a party may file with the court an objection to
 149 the appraisal not later than 30 days after the notice is sent,
 150 stating the grounds for the objection.

151 (6) If an appraisal is filed with the court pursuant to
 152 subsection (4), the court shall conduct a hearing to determine
 153 the fair market value of the property not sooner than 31 days
 154 after a copy of the notice of the appraisal is sent to each
 155 party under subsection (5), whether or not an objection to the
 156 appraisal is filed under paragraph (5)(c). In addition to the
 157 court-ordered appraisal, the court may consider any other
 158 evidence of value offered by a party.

159 (7) After a hearing under subsection (6), but before
 160 considering the merits of the partition action, the court shall
 161 determine the fair market value of the property and send notice
 162 to the parties of the value.

163
 164 In addition to a determination of value under this section, the
 165 court shall determine the amount of the equitable accounting
 166 upon the request of any cotenant and shall appropriately adjust
 167 any price, purchase price, apportioned price, buyout, judgment,
 168 or partition granted under this part based on the results of the
 169 equitable accounting.

170 64.207 Cotenant buyout.—

171 (1) If any cotenant requested partition by sale, after the
 172 determination of value under s. 64.206, the court shall send
 173 notice to the parties that any cotenant except a cotenant that
 174 requested partition by sale may buy all the interests of the

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175 cotenants that requested partition by sale.

176 (2) Not later than 45 days after the notice is sent under
 177 subsection (1), any cotenant, except a cotenant that requested
 178 partition by sale, may give notice to the court that it elects
 179 to buy all the interests of the cotenants that requested
 180 partition by sale.

181 (3) The purchase price for each of the interests of a
 182 cotenant that requested partition by sale is the value of the
 183 entire parcel determined under s. 64.206 multiplied by the
 184 cotenant's fractional ownership of the entire parcel.

185 (4) After expiration of the period in subsection (2), the
 186 following rules apply:

187 (a) If only one cotenant elects to buy all the interests of
 188 the cotenants that requested partition by sale, the court shall
 189 notify all the parties of that fact.

190 (b) If more than one cotenant elects to buy all the
 191 interests of the cotenants that requested partition by sale, the
 192 court shall allocate the right to buy those interests among the
 193 electing cotenants based on each electing cotenant's existing
 194 fractional ownership of the entire parcel divided by the total
 195 existing fractional ownership of all cotenants electing to buy
 196 and send notice to all the parties of that fact and of the price
 197 to be paid by each electing cotenant.

198 (c) If no cotenant elects to buy all the interests of the
 199 cotenants that requested partition by sale, the court shall send
 200 notice to all the parties of that fact and resolve the partition
 201 action under s. 64.208(1) and (2).

202 (5) If the court sends notice to the parties under
 203 paragraph (4) (a) or paragraph (4) (b), the court shall set a

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204 date, not sooner than 60 days after the date the notice was
 205 sent, by which electing cotenants must pay their apportioned
 206 price into the court. After this date, the following rules
 207 apply:

208 (a) If all electing cotenants timely pay their apportioned
 209 price into the court, the court shall issue a judgment of
 210 partition reallocating all the interests of the cotenants,
 211 disburse the amounts held by the court to the persons entitled
 212 to them, and direct the clerk of the court to record the
 213 judgment in the official records of the county where the
 214 property is located.

215 (b) If no electing cotenant timely pays its apportioned
 216 price, the court shall resolve the partition action under s.
 217 64.208(1) and (2) as if the interests of the cotenants that
 218 requested partition by sale were not purchased.

219 (c) If one or more but not all of the electing cotenants
 220 fail to pay their apportioned price on time, the court shall
 221 give notice to the electing cotenants that paid their
 222 apportioned price of the interest remaining and the price for
 223 all that interest.

224 (6) Not later than 20 days after the court gives notice
 225 pursuant to paragraph (5) (c), any cotenant that paid may elect
 226 to purchase all of the remaining interest by paying the entire
 227 price into the court. After the 20-day period, the following
 228 rules apply:

229 (a) If only one cotenant pays the entire price for the
 230 remaining interest, the court shall issue a judgment of
 231 partition reallocating the remaining interest to that cotenant
 232 and reallocating the interests of all of the cotenants. The

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233 court shall also disburse the amounts held by the court to the
 234 persons entitled to them and direct the clerk of the court to
 235 record such judgment in the official records of the county where
 236 the property is located.

237 (b) If no cotenant pays the entire price for the remaining
 238 interest, the court shall resolve the partition action under s.
 239 64.208(1) and (2) as if the interests of the cotenants that
 240 requested partition by sale were not purchased.

241 (c) If more than one cotenant pays the entire price for the
 242 remaining interest, the court shall reapportion the remaining
 243 interest among those paying cotenants, based on each paying
 244 cotenant's original fractional ownership of the entire parcel
 245 divided by the total original fractional ownership of all
 246 cotenants that paid the entire price for the remaining interest.
 247 The court shall issue promptly a judgment of partition
 248 reallocating all of the cotenants' interests, disburse the
 249 amounts held by the court to the persons entitled to them,
 250 promptly refund any excess payment held by the court, and direct
 251 the clerk of the court to record the judgment in the official
 252 records of the county where the property is located.

253 (7) Not later than 45 days after the court sends notice to
 254 the parties pursuant to subsection (1), any cotenant entitled to
 255 buy an interest under this section may request the court to
 256 authorize the sale as part of the pending action of the
 257 interests of cotenants named as defendants and served with the
 258 complaint but that did not appear in the action.

259 (8) If the court receives a timely request under subsection
 260 (7), the court, after hearing, may deny the request or authorize
 261 the requested additional sale on such terms as the court

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262 determines are fair and reasonable, provided the court ensures
 263 the due process rights of the nonappearing cotenants, subject to
 264 the following limitations:

265 (a) A sale authorized under this subsection may occur only
 266 after the purchase prices for all interests subject to sale
 267 under subsections (1) through (6) have been paid into court and
 268 those interests have been reallocated among the cotenants as
 269 provided in those subsections.

270 (b) The purchase price for the interest of a nonappearing
 271 cotenant is based on the court's determination of value under s.
 272 64.206.

273 64.208 Partition alternatives.—

274 (1) If any cotenant requested partition in kind, or if all
 275 the interests of all cotenants that requested partition by sale
 276 are not purchased by other cotenants pursuant to s. 64.207, or,
 277 if after conclusion of the buyout under s. 64.207, a cotenant
 278 remains that has requested partition in kind, the court shall
 279 enter a judgment of partition in kind unless the court is
 280 satisfied that commissioners appointed pursuant to s. 64.061
 281 have considered the factors listed in s. 64.209 and found that
 282 partition in kind will result in prejudice to the cotenants as a
 283 group. In considering whether to order partition in kind, the
 284 court shall approve a request by two or more parties to have
 285 their individual interests aggregated. Such judgment of
 286 partition must include the legal description of the real
 287 property before partition, the legal description of each new
 288 parcel, and the name of each parcel's owner and shall be
 289 recorded by the clerk of the court in the official records of
 290 the county where the property is located.

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291 (2) If the court does not order partition in kind under
 292 subsection (1), the court shall order partition by sale pursuant
 293 to s. 64.210 or, if no cotenant requested partition by sale, the
 294 court shall dismiss the action.

295 (3) If the court orders partition in kind pursuant to
 296 subsection (1), the court may require that one or more cotenants
 297 pay one or more other cotenants amounts so that the payments,
 298 taken together with the value of the in-kind distributions to
 299 the cotenants, will make the partition in kind just and
 300 proportionate in value to the fractional interests held.

301 (4) If the court orders partition in kind, the court shall
 302 allocate to the cotenants that are unknown, unlocatable, or the
 303 subject of a default judgment, if their interests were not
 304 bought out pursuant to s. 64.207, a part of the property
 305 representing the combined interests of these cotenants as
 306 determined by the court and this part of the property shall
 307 remain undivided.

308 64.209 Considerations for partition in kind.—

309 (1) In determining under s. 64.208(1) whether partition in
 310 kind would result in prejudice to the cotenants as a group, the
 311 commissioners shall consider the following:

312 (a) Whether the heirs property practicably can be divided
 313 among the cotenants.

314 (b) Whether partition in kind would apportion the property
 315 in such a way that the aggregate fair market value of the
 316 parcels resulting from the division would be materially less
 317 than the value of the property if it were sold as a whole,
 318 taking into account the condition under which a court-ordered
 319 sale likely would occur.

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320 (c) Evidence of the collective duration of ownership or
 321 possession of the property by a cotenant and one or more
 322 predecessors in title or predecessors in possession to the
 323 cotenant who are or were relatives of the cotenant or each
 324 other.

325 (d) A cotenant's sentimental attachment to the property,
 326 including any attachment arising because the property has
 327 ancestral or other unique or special value to the cotenant.

328 (e) The lawful use being made of the property by a cotenant
 329 and the degree to which the cotenant would be harmed if the
 330 cotenant could not continue the same use of the property.

331 (f) The degree to which the cotenants have contributed
 332 their pro rata share of the property taxes, insurance, and other
 333 expenses associated with maintaining ownership of the property
 334 or have contributed to the physical improvement, maintenance, or
 335 upkeep of the property.

336 (g) Any other relevant factor.

337 (2) The commissioners may not consider any one factor in
 338 subsection (1) to be dispositive without weighing the totality
 339 of all relevant factors and circumstances.

340 64.210 Open-market sale, sealed bids, or auction.—

341 (1) If the court orders a sale of heirs property, the sale
 342 must be an open-market sale unless the court finds that a sale
 343 by sealed bids or an auction would be more economically
 344 advantageous and in the best interest of the cotenants as a
 345 group.

346 (2) If the court orders an open-market sale and the
 347 parties, not later than 10 days after the entry of the order,
 348 agree on a real estate broker licensed in this state to offer

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349 the property for sale, the court shall appoint the broker and
 350 establish a reasonable commission. If the parties do not agree
 351 on a broker, the court shall appoint a disinterested real estate
 352 broker licensed in this state to offer the property for sale and
 353 shall establish a reasonable commission. The broker shall offer
 354 the property for sale in a commercially reasonable manner at a
 355 price no lower than the determination of value and on the terms
 356 and conditions established by the court.

357 (3) If the broker appointed under subsection (2) obtains
 358 within a reasonable time an offer to purchase the property for
 359 at least the determination of value:

360 (a) The broker shall comply with the reporting requirements
 361 in s. 64.211; and

362 (b) The sale may be completed in accordance with the laws
 363 of this state other than this part.

364 (4) If the broker appointed under subsection (2) does not
 365 obtain within a reasonable time an offer to purchase the
 366 property for at least the determination of value, the court,
 367 after hearing, may:

368 (a) Approve the highest outstanding offer, if any;

369 (b) Redetermine the value of the property and order that
 370 the property continue to be offered for an additional time; or

371 (c) Order that the property be sold by sealed bids or at an
 372 auction.

373 (5) If the court orders a sale by sealed bids or an
 374 auction, the court shall set terms and conditions of the sale.

375 If the court orders an auction, the auction must be conducted
 376 under part I of this chapter.

377 (6) If a purchaser is entitled to a share of the proceeds

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378 of the sale, the purchaser is entitled to a credit against the
 379 price in an amount equal to the purchaser's share of the
 380 proceeds.

381 64.211 Report of open-market sale.—

382 (1) Unless required to do so within a shorter time by part
 383 I of this chapter, a broker appointed under s. 64.210(2) to
 384 offer heirs property for open-market sale shall file a report
 385 with the court not later than 7 days after receiving an offer to
 386 purchase the property for at least the value determined under s.
 387 64.206 or s. 64.210.

388 (2) The report required by subsection (1) must contain the
 389 following information:

390 (a) A description of the property to be sold to each buyer.

391 (b) The name of each buyer.

392 (c) The proposed purchase price.

393 (d) The terms and conditions of the proposed sale,
 394 including the terms of any owner financing.

395 (e) The amounts to be paid to lienholders.

396 (f) A statement of contractual or other arrangements or
 397 conditions of the broker's commission.

398 (g) Other material facts relevant to the sale.

399 64.212 Uniformity of application and construction.—In
 400 applying and construing this uniform act, consideration must be
 401 given to the need to promote uniformity of the law with respect
 402 to its subject matter among states that enact it.

403 64.213 Relation to Electronic Signatures in Global and
 404 National Commerce Act.—This part modifies, limits, and
 405 supersedes the Electronic Signatures in Global and National
 406 Commerce Act, 15 U.S.C. ss. 7001 et seq., but does not modify,

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407 limit, or supersede s. 101(c) of that act, 15 U.S.C. s. 7001(c),
408 or authorize electronic delivery of any of the notices described
409 in s. 103(b) of that act, 15 U.S.C. s. 7003(b).

410 64.214 Access for all residents.—Notwithstanding any
411 provision to the contrary in this part, cotenants owning real
412 property that is not heirs property may agree to partition such
413 real property under this part. All of the cotenants must jointly
414 notify the court of such agreement.

415 Section 3. This act shall take effect July 1, 2020.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Appropriations Subcommittee on Criminal and
Civil Justice, *Vice Chair*
Criminal Justice
Finance and Tax
Innovation, Industry, and Technology

SENATOR RANDOLPH BRACY
11th District

January 14, 2020

The Honorable Lizbeth Benacquisto
Chairman, Committee on Rules
402 Senate Building
404 South Monroe Street
Tallahassee, FL 32399

Dear Chairman Benacquisto:

I write to respectfully request that the following bill be placed on the agenda of the Senate Rules Committee.

- SB 580, Uniform Partition of Heirs Property: This bill seeks to enhance the property rights of families by clarifying outdated statutes in Florida law. It provides simple due process protections (notice, appraisal, and right of first refusal) for heir property tenants-in-common to prevent a forced sale when one co-tenant desires to sell his/her interest in the property.

Your consideration is greatly appreciated. Please do not hesitate to let me know if you have any questions or concerns regarding the agenda request.

Sincerely,

A handwritten signature in black ink, appearing to read "Randolph Bracy".

Senator Randolph Bracy

REPLY TO:

- 6965 Plaza Grande Avenue, Suite 211, Orlando, Florida 32835 (407) 297-2045 FAX: (888) 263-3814
- 213 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5011

Senate's Website: www.flsenate.gov

BILL GALVANO
President of the Senate

DAVID SIMMONS
President Pro Tempore

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/5/20
Meeting Date

SB 580
Bill Number (if applicable)

Topic Uniform Partition of Heirs Property Act

Amendment Barcode (if applicable)

Name Kent Wimmer

Job Title Senior Representative

Address 1294 Avondale Way

Phone 850-528-5261

Tallahassee FL 32317
City State Zip

Email kwimmer@defenders.org

Speaking: For Against Information

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

Representing Defenders of Wildlife

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/5/20

Meeting Date

SB 580

Bill Number (if applicable)

Topic Heis Property

Amendment Barcode (if applicable)

Name Lindsay Cross

Job Title Govt Relations Director

Address 1700 N Monroe 11-286

Phone _____

Street

Tally

City

32303

State

Zip

Email lindsay@fcvoters.org

Speaking: For Against Information

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

Representing Florida Conservation voters

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)

SB 580
Bill Number (if applicable)

Meeting Date _____

Topic Heirs Property

Amendment Barcode (if applicable) _____

Name Jami Coleman

Job Title Partner at Williams + Coleman Law Firm

Address 701 East Tennessee Street

Phone 850-597-2990

Tallahassee FL 32308
City State Zip

Email jcoleman@williamscoleman.law

Speaking: For Against Information OR

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

Representing Private Attorney

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/5/20
(Meeting Date)

580
Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name DAVID CULLEN

Job Title _____

Address 104-2 Crest St

Phone 941-323-2404

224
City

FL
State

32304
Zip

Email dcullen@sierraflorida.com

Speaking: For Against Information

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

Representing SIERRA CLUB FLORIDA

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/5/2020
Meeting Date

580
Bill Number (if applicable)

Topic Uniform Petition Aen Property

Amendment Barcode (if applicable)

Name Karen Woodell

Job Title _____

Address 579 E. Call St

Phone _____

Tallahassee FL 32301
City State Zip

Email _____

Speaking: For Against Information

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

Representing FL Center for Fiscal + Ec Policy

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

The Florida Senate
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 352

INTRODUCER: Military and Veterans Affairs and Space Committee and Senator Hutson

SUBJECT: Unlawful Use of Uniforms, Medals, or Insignia

DATE: February 3, 2020 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Brown</u>	<u>Caldwell</u>	<u>MS</u>	Fav/CS
2.	<u>Mitchell</u>	<u>Roberts</u>	<u>EE</u>	Favorable
3.	<u>Brown</u>	<u>Phelps</u>	<u>RC</u>	Favorable

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 352 revises the prohibition on a person misrepresenting himself or herself as a member or veteran of the United States Armed Forces. The bill specifies that the material gain prohibited from unlawfully wearing a military uniform, medals, or insignia, includes obtaining paid employment or public office.

A person who violates this provision commits a third degree felony, punishable by up to 5 years in prison and a \$5,000 fine.

The Legislature's Office of Economic and Demographic Research preliminarily estimates that the bill will have a positive insignificant prison bed impact.

The bill takes effect October 1, 2020.

II. Present Situation:

A person commits a third degree felony if he or she:

- Misrepresents himself or herself as a member or veteran of the United States Air Force, United States Army, United States Coast Guard, United States Marine Corp, United States Navy, or National Guard; or
- Wears the uniform of or any medal or insignia of the United States Air Force, United States Army, United States Coast Guard, United States Marine Corp, United States Navy, or

National Guard in an unauthorized manner while soliciting for charitable contributions or for the purpose of material gain.¹

A third degree felony is punishable by up to five years' incarceration and a \$5,000 fine.²

III. Effect of Proposed Changes:

This bill revises the prohibition on a person misrepresenting himself or herself as a member or veteran of the United States Armed Forces. The bill specifies that the material gain prohibited from unlawfully wearing a military uniform, medals, or insignia, includes obtaining paid employment or public office.

A person who violates this provision commits a third degree felony, punishable by up to 5 years in prison and a \$5,000 fine.

The bill takes effect October 1, 2020.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The bill does not appear to require cities and counties to expend funds or limit their authority to raise revenue or receive state-shared revenues as specified by Article VII, Section 18 of the State Constitution.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

¹ Section 817.132, F.S.

² Section 775.082(3)(e), F.S.; Section 775.083(1)(c), F.S.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Legislature's Office of Economic and Demographic Research (EDR) preliminarily estimates that the bill will have a positive insignificant prison bed impact, meaning an increase of 10 or fewer beds.³

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 817.312 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 Military and Veterans Affairs and Space on January 15, 2020:

The CS removed the prohibition on a person misrepresenting himself or herself as a member or veteran of the Armed Forces in order to obtain a professional or political benefit. The CS replaced this language with a delineation of what is meant by material gain from misrepresentation to include obtaining employment or public office resulting in receiving compensation.

B. Amendments:

None.

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

³ Per the Department of Corrections, in FY 18-19, the court sentenced no offenders to prison for a violation of s. 817.312, F.S. Given this, expansion of the statute should not have a significant impact on prison beds (Nov. 5, 2019) (on file with the Senate Committee on Military and Veterans Affairs and Space).

By the Committee on Military and Veterans Affairs and Space; and
Senator Hutson

583-02271-20

2020352c1

1 A bill to be entitled
2 An act relating to unlawful use of uniforms, medals,
3 or insignia; amending s. 817.312, F.S.; prohibiting
4 certain misrepresentations concerning military service
5 when made for specified purposes; providing criminal
6 penalties; providing an effective date.
7
8 Be It Enacted by the Legislature of the State of Florida:
9
10 Section 1. Section 817.312, Florida Statutes, is amended to
11 read:
12 817.312 Unlawful use of uniforms, medals, or insignia.—
13 (1) (a) A person may not:
14 1. Misrepresent himself or herself as a member or veteran
15 of the United States Air Force, United States Army, United
16 States Coast Guard, United States Marine Corps, United States
17 Navy, or National Guard; or
18 2. Wear the uniform of or any medal or insignia authorized
19 for use by members or veterans of the United States Air Force,
20 United States Army, United States Coast Guard, United States
21 Marine Corps, United States Navy, or ~~the~~ National Guard which he
22 or she is not authorized to wear,
23
24 while soliciting for charitable contributions or for the purpose
25 of material gain, including, but not limited to, obtaining
26 employment or public office resulting in receiving compensation.
27 (b) This subsection ~~section~~ does not prohibit persons in
28 the theatrical profession from wearing such uniforms, medals, or
29 insignia while actually engaged in such profession.

Page 1 of 2

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

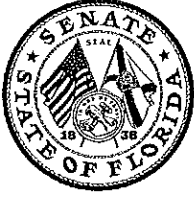
583-02271-20

2020352c1

30 (2) A person who violates subsection (1) commits a felony
31 of the third degree, punishable as provided in s. 775.082, s.
32 775.083, or s. 775.084.
33 Section 2. This act shall take effect October 1, 2020.

Page 2 of 2

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



The Florida Senate

Committee Agenda Request

To: Senator Lizbeth Benacquisto, Chair
Committee on Rules

Subject: Committee Agenda Request

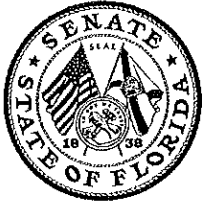
Date: January 29, 2020

I respectfully request that **Senate Bill #352**, relating to Unlawful Use of Uniforms, Medals, or Insignia, be placed on the:

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

A handwritten signature in cursive script that reads "Travis Hutson".

Senator Travis Hutson
Florida Senate, District 7



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Infrastructure and Security, *Chair*
Appropriations
Appropriations Subcommittee on Transportation,
Tourism, and Economic Development
Banking and Insurance
Rules

JOINT COMMITTEE:
Joint Legislative Auditing Committee

SENATOR TOM LEE
20th District

February 2, 2020

The Honorable Lizbeth Benacquisto
Chairman
Rules
402 Senate Building
404 S. Monroe Street
Tallahassee, FL 32399-1100

Chair Benacquisto,

Today, I am scheduled to present *SB 7022: OGSR/E-mail Addresses/Department of Highway Safety and Motor Vehicles* before your committee. Senator Hutson has agreed to present the bill on my behalf.

Thank you,

Two handwritten signatures in black ink. The first signature is "Tom Lee" and the second is a more stylized signature, possibly "JPH".

cc: John Phelps, Staff Director
Cynthia Futch, Administrative Assistant

REPLY TO:

- 915 Oakfield Drive, Suite D, Brandon, Florida 33511 (813) 653-7061
- 418 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5020

Senate's Website: www.flsenate.gov

BILL GALVANO
President of the Senate

DAVID SIMMONS
President Pro Tempore



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Infrastructure and Security, *Chair*
Appropriations
Appropriations Subcommittee on Transportation,
Tourism, and Economic Development
Banking and Insurance
Rules

JOINT COMMITTEE:
Joint Legislative Auditing Committee

SENATOR TOM LEE
20th District

February 5, 2020

The Honorable Lizbeth Benacquisto
Chairman
Rules
402 Senate Building
404 S. Monroe Street
Tallahassee, FL 32399-1100

Chair Benacquisto,

Please excuse me from today's Rules Committee meeting.

Thank you,

Two handwritten signatures in black ink. The first signature is "Tom Lee" and the second is "Lizbeth Benacquisto".

cc: John Phelps, Staff Director
Cynthia Futch, Administrative Assistant

REPLY TO:

- 915 Oakfield Drive, Suite D, Brandon, Florida 33511 (813) 653-7061
- 416 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5020

Senate's Website: www.flsenate.gov

BILL GALVANO
President of the Senate

DAVID SIMMONS
President Pro Tempore

CourtSmart Tag Report

Room: EL 110

Case No.:

Type:

Caption: Senate Rules Committee

Judge:

Started: 2/5/2020 9:33:22 AM

Ends: 2/5/2020 10:08:31 AM

Length: 00:35:10

9:33:21 AM Meeting called to order
9:33:25 AM Roll call
9:33:30 AM Quorum is present
9:33:50 AM Chair Benacquisto comments
9:34:01 AM Tab 6 CS/SB 604
9:34:12 AM Senator Bean explains the bill
9:34:43 AM No questions, no appearances, no debate
9:34:54 AM Senator Bean waives close
9:34:59 AM Roll Call
9:35:02 AM CS for SB 604 is reported favorably
9:35:21 AM Tab 1 CS/SB 226
9:35:31 AM Senator Harrell explains the bill
9:35:41 AM No questions, no appearances, no debate, Senator Harrell waives close
9:36:26 AM Roll call
9:36:37 AM CS/SB 226 is reported favorably
9:36:58 AM Tab 3 CS/SB 326
9:37:13 AM Senator Perry explains the bill
9:37:23 AM No questions
9:37:47 AM Kenya Cory, National Waste & Recycling Association, in support
9:38:05 AM Charlie Latham, Waste Management, in support
9:38:26 AM Roll Call
9:38:29 AM CS/SB 326 is reported favorably
9:38:35 AM Tab 2 CS/SB 292
9:38:52 AM Senator Broxson explains the bill
9:39:03 AM No questions
9:39:08 AM Kyle Ulrich, Florida Association of Insurance Agents, in support
9:39:13 AM No debate
9:39:21 AM Senator Broxson closes
9:39:45 AM Roll call
9:39:53 AM CS/SB 292 is reported favorably
9:40:07 AM Tab 9 CS/SB 838
9:40:32 AM Senator Simmons explains the bill
9:40:50 AM No questions
9:41:20 AM No public appearance
9:41:29 AM No debate
9:41:31 AM Senator Simmons waives close
9:41:33 AM Roll call
9:41:37 AM CS/SB 838 is reported favorably
9:41:57 AM Tab 10 SB 1224
9:42:06 AM Senator Simmons explains the bill
9:42:17 AM No questions
9:42:41 AM Greg Black, International Council of Shopping Centers, in support
9:42:49 AM Andrew Rutledge, Florida Realtors, in support
9:43:15 AM Chris Carmody, Shareholder Orlando NAACP, in support
9:43:21 AM No debate
9:43:25 AM Senator Simmons waives close
9:43:28 AM Roll call
9:43:33 AM SB1224 is reported favorably
9:44:07 AM Tab 7 SB 7004
9:44:21 AM Senator Gainer explains the bill
9:44:46 AM No questions
9:45:32 AM Public appearance submitted: Tim Qualts FTCA in support

9:45:35 AM No debate
9:45:38 AM Senator Gaines waives close
9:45:42 AM Roll call
9:45:45 AM SB 7004 is reported favorably
9:46:33 AM Tab 5 CS/CS/SB 580
9:46:49 AM Senator Bracy explains the bill
9:48:02 AM Questions: none
9:49:02 AM Public testimony
9:49:09 AM Kent Wimmer Sr., Representative Defenders of Wildlife TLH, in support
9:49:14 AM Lindsay Cross, FL Conservation Voters, in support
9:49:18 AM Tami Coleman, Private Attorney, in support
9:49:30 AM David Cullen, Sierra Club Florida, in support
9:49:38 AM Karen Woodell FL Center for Fiscal & EC Policy
9:49:50 AM No debate
9:49:53 AM Senator Bracy waives close
9:50:02 AM Roll call
9:50:05 AM CS/CS/SB 580 is reported favorably
9:50:16 AM Tab 4 SB 374
9:50:28 AM Senator Rousson explains the bill
9:50:36 AM No questions
9:51:10 AM Doreen Barker, AARP FL, in support
9:51:17 AM Christopher Turner FL in support
9:51:26 AM No debate
9:51:28 AM Senator Rousson waives close
9:51:32 AM Roll call
9:51:39 AM SB 374 is reported favorably
9:51:59 AM Tab 8 CS/SB 352
9:52:10 AM Senator Hutson explains the bill
9:52:18 AM Questions: Senator Flores
9:53:18 AM Senator Hutson in response
9:54:05 AM Senator Brandes with question
9:54:13 AM Senator Hutson in response
9:55:35 AM Senator Brandes with follow-up
9:56:33 AM Senator Hutson answers
9:57:13 AM Senator Thurston with question
9:57:25 AM Senator Hutson responds
9:58:04 AM Senator Simmons with question
9:58:43 AM Senator Hutson answers
10:00:07 AM Senator Braynon
10:00:20 AM Senator Hutson
10:00:30 AM No public appearance
10:00:35 AM Senator Brandes in debate
10:02:35 AM Senator Thurston in debate
10:03:44 AM Senator Passidomo in debate
10:04:25 AM Senator Hutson closes on the bill
10:04:55 AM Having closed, Cyndi calls the roll
10:05:00 AM Roll Call
10:05:12 AM CS/SB 352 is reported favorably
10:05:27 AM Tab 11 SB 7022
10:05:30 AM Senator Hutson explains the bill
10:06:07 AM No questions
10:06:39 AM No public appearance
10:06:42 AM No debate
10:06:43 AM Senator Hutson waives close
10:06:48 AM Roll call
10:06:50 AM SB 7022 is reported favorably
10:07:08 AM Motions?
10:07:20 AM Senator Simpson shown vote affirmative CS/SB 226 and CS/SB 604
10:07:20 AM Senator Bradley shown vote affirmative for TABS 1,2,3,6,9
10:07:20 AM Senator Farmer shown vote affirmative CS/SB 604 and CS/SB 226
10:07:20 AM Senator Braynon shown vote affirmative SB 226 and CS/SB 604
10:07:21 AM No more motions

10:08:03 AM Chair Benacquisto comments
10:08:04 AM No further business
10:08:10 AM Senator Hutson moves to adjourn
10:08:17 AM Meeting is adjourned