

Tab 1	SB 82 by Torres (CO-INTRODUCERS) Book; (Similar to CS/H 06513) Relief of Kareem Hawari by the Osceola County School Board					
Tab 2	SB 264 by Hooper; (Identical to H 00031) Firefighter Inquiries and Investigations					
Tab 3	CS/SB 634 by CM, Bradley; (Identical to H 00677) Judicial Notice					
560052	A	S	RCS	RC, Bradley	Delete L.41 - 51:	02/03 12:12 PM
Tab 4	CS/CS/SB 736 by CA, JU, Hutson; Construction Defect Claims					
337012	A	S	RCS	RC, Hutson	Delete L.91 - 236:	02/03 12:16 PM
Tab 5	CS/SB 756 by CF, Diaz (CO-INTRODUCERS) Albritton; (Compare to CS/CS/H 01439) Public Records/Human Trafficking Victims					
Tab 6	SB 840 by Albritton; (Identical to H 00841) Residential Property Riparian Rights					
Tab 7	SB 868 by Stewart; (Identical to H 00525) Sexual Battery on a Mentally Incapacitated Person					
Tab 8	CS/CS/SB 926 by BI, HP, Albritton; (Identical to CS/H 00517) Licensure Examinations for Dental Practitioners					
Tab 9	SB 934 by Gruters (CO-INTRODUCERS) Perry; (Similar to H 00699) Public Records/Homelessness Counts and Information Systems					
Tab 10	CS/SB 962 by TR, Bradley; (Similar to CS/CS/H 00981) Residential Development Projects for Affordable Housing					
917038	A	S	WD	RC, Brandes	Before L.13:	02/03 12:51 PM
666096	A	S	RCS	RC, Bradley	Delete L.23 - 40:	02/03 12:51 PM
Tab 11	SM 982 by Diaz; (Similar to H 00641) Memorial/Internal Revenue Service Regulations					
Tab 12	SB 1038 by Perry; (Similar to CS/H 00907) Florida Seaport Transportation and Economic Development Council					
Tab 13	CS/SB 1658 by EN, Bean (CO-INTRODUCERS) Rodrigues; (Compare to CS/H 01295) Executive Appointments					
Tab 14	SB 7030 by CJ; (Identical to H 07009) OGSR/Health Information of an Inmate or an Offender					
Tab 15	SB 7032 by CJ; (Identical to H 07015) OGSR/Criminal Intelligence Information or Criminal Investigative Information					
Tab 16	SB 7036 by RI; (Similar to H 00789) Lifeline Telecommunications Service					

The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA

RULES

Senator Passidomo, Chair

Senator Garcia, Vice Chair

MEETING DATE: Thursday, February 3, 2022

TIME: 9:00—11:00 a.m.

PLACE: Pat Thomas Committee Room, 412 Knott Building

MEMBERS: Senator Passidomo, Chair; Senator Garcia, Vice Chair; Senators Albritton, Baxley, Bean, Book, Boyd, Bracy, Brandes, Diaz, Farmer, Gibson, Gruters, Hutson, Mayfield, Powell, and Stargel

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	SB 82 Torres (Similar CS/H 6513)	Relief of Kareem Hawari by the Osceola County School Board; Providing for the relief of Kareem Hawari by the Osceola County School Board; providing an appropriation to Mr. Hawari to compensate him for injuries and damages sustained as a result of the negligence of employees of the Osceola County School Board; providing a limitation on compensation and the payment of attorney fees, etc. JU 01/10/2022 Favorable ED 01/25/2022 Favorable RC 02/03/2022 Favorable	Favorable Yeas 14 Nays 2
2	SB 264 Hooper (Identical H 31)	Firefighter Inquiries and Investigations; Providing that firefighters have certain rights during an informal inquiry; providing that a firefighter may not be threatened with certain disciplinary action during an informal inquiry or interrogation, etc. CA 01/12/2022 Favorable GO 01/26/2022 Favorable RC 02/03/2022 Favorable	Favorable Yeas 15 Nays 0
3	CS/SB 634 Commerce and Tourism / Bradley (Identical H 677)	Judicial Notice; Authorizing courts to take judicial notice of certain information taken from widely accepted web mapping services, global satellite imaging sites, or Internet mapping tools upon request of a party; requiring parties who intend to offer such information into evidence to file a notice of intent containing specified information; authorizing parties to object to the court taking judicial notice of such information; creating a rebuttable presumption that such information should be judicially noticed unless certain findings are made, etc. JU 11/30/2021 Not Considered JU 01/10/2022 Favorable CM 01/24/2022 Fav/CS RC 02/03/2022 Fav/CS	Fav/CS Yeas 16 Nays 0

COMMITTEE MEETING EXPANDED AGENDA

Rules

Thursday, February 3, 2022, 9:00—11:00 a.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	CS/CS/SB 736 Community Affairs / Judiciary / Hutson	Construction Defect Claims; Revising the limitations period for certain actions founded on the design, planning, or construction of an improvement on real property; requiring a claimant to include the reasons for rejecting an offer in a notice rejecting a settlement offer to remedy a construction defect; requiring the court to stay an action if a claimant initiates an action without first accepting or rejecting a supplemental offer; requiring a court to appoint an expert to examine certain alleged construction defects and to prepare an examination report, under certain circumstances; requiring a claimant to repair a construction defect if the claimant receives compensation for an alleged construction defect from specified persons, etc. JU 11/30/2021 Fav/CS CA 01/12/2022 Fav/CS RC 02/03/2022 Fav/CS	Fav/CS Yeas 11 Nays 4
5	CS/SB 756 Children, Families, and Elder Affairs / Diaz (Compare CS/CS/H 1439, CS/H 1441)	Public Records/Human Trafficking Victims; Expanding an existing public records exemption relating to human trafficking victims seeking expunction of certain records related to an offense listed in s. 775.084(1)(b)1., F.S.; providing for future review and repeal of the expanded exemption; providing for the reversion of specified provisions if the exemption is not saved from repeal; providing that a petition for human trafficking victim expunction and all pleadings and documents related to the petition are confidential and exempt from public records requirements; providing for future legislative review and repeal of the exemption; providing a statement of public necessity, etc. CF 11/30/2021 Temporarily Postponed CF 01/11/2022 Fav/CS GO 01/26/2022 Favorable RC 02/03/2022 Favorable	Favorable Yeas 15 Nays 0
6	SB 840 Albritton (Identical H 841)	Residential Property Riparian Rights; Requiring land surveyors to give preference to using the prolongation-of-property-line method to establish a property owner's riparian rights along a channel under certain circumstances; requiring courts to award reasonable attorney fees and costs to a prevailing party in a civil action under certain circumstances, etc. EN 01/10/2022 Favorable JU 01/24/2022 Favorable RC 02/03/2022 Favorable	Favorable Yeas 15 Nays 0

COMMITTEE MEETING EXPANDED AGENDA

Rules

Thursday, February 3, 2022, 9:00—11:00 a.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
7	SB 868 Stewart (Identical H 525)	Sexual Battery on a Mentally Incapacitated Person; Revising the definition of the term "mentally incapacitated"; revising provisions concerning sexual battery upon a person who is mentally incapacitated, etc. JU 01/10/2022 Favorable CJ 01/25/2022 Favorable RC 02/03/2022 Favorable	Favorable Yeas 16 Nays 0
8	CS/CS/SB 926 Banking and Insurance / Health Policy / Albritton (Identical CS/H 517, Compare H 997, S 1444)	Licensure Examinations for Dental Practitioners; Revising licensure examination requirements for dentists to require applicants to demonstrate certain clinical skills on a manikin rather than a live patient; revising requirements for regional licensure examinations offered by dental schools to dental students; revising licensure examination requirements for dental hygienists to require applicants to demonstrate certain clinical skills on a manikin rather than a live patient; deleting a requirement that applicants for dental practitioner licensure examinations maintain medical malpractice insurance to cover any incident of harm to a patient during the clinical examination, etc. HP 01/13/2022 Fav/CS BI 01/25/2022 Fav/CS RC 02/03/2022 Favorable	Favorable Yeas 15 Nays 0
9	SB 934 Gruters (Similar H 699)	Public Records/Homelessness Counts and Information Systems; Providing an exemption from public records requirements for individual identifying information contained in certain homelessness counts and information systems; providing for retroactive application of the exemption; providing for future legislative review and repeal of the exemption; providing a statement of public necessity, etc. CF 01/11/2022 Favorable GO 01/26/2022 Favorable RC 02/03/2022 Favorable	Favorable Yeas 15 Nays 0
10	CS/SB 962 Transportation / Bradley (Similar CS/CS/H 981)	Residential Development Projects for Affordable Housing; Authorizing counties and municipalities, respectively, to approve any residential development project on parcels zoned for commercial or industrial use if certain conditions are met, etc. CA 01/12/2022 Favorable TR 01/25/2022 Fav/CS RC 02/03/2022 Fav/CS	Fav/CS Yeas 15 Nays 1

COMMITTEE MEETING EXPANDED AGENDA

Rules

Thursday, February 3, 2022, 9:00—11:00 a.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
11	SM 982 Diaz (Similar HM 641)	Memorial/Internal Revenue Service Regulations; Urging Congress to protect consumers from harmful and intrusive Internal Revenue Service regulations, etc. FT 01/13/2022 Favorable RC 02/03/2022 Favorable	Favorable Yeas 15 Nays 1
12	SB 1038 Perry (Similar CS/H 907)	Florida Seaport Transportation and Economic Development Council; Revising the membership of the Florida Seaport Transportation and Economic Development Council to include a representative of Putnam County; authorizing Putnam County to apply for a grant for a port feasibility study through the Florida Seaport Transportation and Economic Development Council; requiring the Department of Transportation to include the study in its budget request under certain circumstances; terminating the membership of Putnam County on the council under certain circumstances, etc. TR 01/12/2022 Favorable CM 01/24/2022 Favorable RC 02/03/2022 Favorable	Favorable Yeas 16 Nays 0
13	CS/SB 1658 Environment and Natural Resources / Bean (Compare CS/H 1295)	Executive Appointments; Requiring that the executive director of the Department of Law Enforcement be appointed subject to a majority vote of the Governor and Cabinet, with the Governor on the prevailing side; requiring the appointment of the secretary of the Department of Environmental Protection be subject to the concurrence of three members of the Cabinet or confirmation by the Senate; requiring the Governor to notify the Cabinet and the President of the Senate in writing of the method of confirmation; requiring that the executive director of the Department of Veterans' Affairs be appointed subject to a majority vote of the Governor and Cabinet, with the Governor on the prevailing side, etc. EN 01/18/2022 Temporarily Postponed EN 01/31/2022 Fav/CS RC 01/20/2022 Not Received RC 02/03/2022 Favorable	Favorable Yeas 12 Nays 4
14	SB 7030 Criminal Justice (Identical H 7009)	OGSR/Health Information of an Inmate or an Offender; Amending a provision which provides exemptions from public records requirements for protected health information of an inmate or an offender, and for the identity of any inmate or offender upon whom an HIV test has been performed and the inmate's or offender's test results; removing the scheduled repeal of the exemptions, etc. RC 02/03/2022 Favorable	Favorable Yeas 16 Nays 0

COMMITTEE MEETING EXPANDED AGENDA

Rules

Thursday, February 3, 2022, 9:00—11:00 a.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
15	SB 7032 Criminal Justice (Identical H 7015, Compare S 1282)	OGSR/Criminal Intelligence Information or Criminal Investigative Information; Amending a provision which provides an exemption from public records requirements for criminal intelligence information or criminal investigative information that reveals the personal identifying information of a witness to a murder; removing the scheduled repeal of the exemption, etc. RC 02/03/2022 Favorable	Favorable Yeas 16 Nays 0
16	SB 7036 Regulated Industries (Similar H 789)	Lifeline Telecommunications Service; Requiring a Lifeline service subscriber to present proof of continued eligibility to certain entities upon request; deleting provisions authorizing certain local exchange telecommunications companies and commercial mobile radio service providers to provide Lifeline service to customers who meet certain income requirements; revising the entities required to cooperate in the development of procedures for promoting the Lifeline service; authorizing certain participant information to be exchanged with the Federal Communications Commission or its designee, etc. RC 02/03/2022 Favorable	Favorable Yeas 15 Nays 0
Other Related Meeting Documents			

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL: SB 82

INTRODUCER: Senator Torres

SUBJECT: Relief of Kareem Hawari by the Osceola County School Board

DATE: February 1, 2022

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Bond	Cibula	JU	Favorable
2.	Brick	Bouck	ED	Favorable
3.	Bond	Phelps	RC	Favorable

I. Summary:

SB 82, a claim bill, alleges that 13-year-old Kareem Hawari was injured while participating in athletic competition on behalf of his school due to the negligence of employees of the Osceola County School Board. Mr. Hawari, now an adult, settled the claim with the school board for \$3.6 million, of which \$100,000 has been paid in accordance with the state's sovereign immunity waiver. The bill authorizes and directs the Osceola County School Board to pay the remaining \$3.5 million.

The bill is effective upon becoming law.

II. Present Situation:

Doctrine of Sovereign Immunity: Overview

Sovereign immunity is defined as: "A government's immunity from being sued in its own courts without its consent."¹ The doctrine had its origin with the judge-made law of England. During English feudal times, the King was the sovereign. Today, for the purposes of this discussion, the term "sovereign" refers to Florida state agencies and subdivisions including local governments.

Article X, section 13 of the State Constitution authorizes the Legislature to enact laws that allow suits against the state. The Legislature has, to some extent, allowed tort suits against the state and has limited the collectability of judgments against the state to \$200,000 per person and \$300,000 per incident (the caps applicable at the time of this incident giving rise to SB 82 were \$100,000 and \$200,000 respectively).² A person seeking to recover amounts in excess of the limits may request that the Legislature enact a claim bill.

¹ BLACK'S LAW DICTIONARY (8th ed. 2004).

² Section 768.28, F.S.

In medieval England “one could not sue the king in his own courts; hence the phrase ‘the king can do no wrong.’”³ The basis of the existence of the doctrine of sovereign immunity in the United States was explained as follows:

A sovereign is exempt from suit, not because of any formal conception or obsolete theory, but on the logical and practical ground that there can be no legal right as against the authority that makes the law on which the right depends.⁴

Although one could not sue the king, one could petition the king for relief.⁵

Under s. 2.01, F.S., Florida has adopted the common law of England as it existed on July 4, 1776.⁶ This adoption of English common law included adoption of the doctrine of sovereign immunity. The doctrine of sovereign immunity was in existence centuries before the Declaration of Independence.⁷

The Legislature was first expressly authorized to waive the state’s sovereign immunity under Article IV, section 19 of the Constitution of 1868.⁸ The Legislature again was expressly authorized to waive the state’s sovereign immunity under Article X, section 13 of the Constitution of 1968. This authorization to waive sovereign immunity states:

Provision may be made by general law for bringing suit against the state as to all liabilities now existing or hereafter originating.

Although the first general waiver of the state’s sovereign immunity was not adopted until 1969, “one . . . could always petition for legislative relief by means of a claims bill.”⁹ The first claim bill was passed by the Legislative Council of the Territory of Florida in 1833.¹⁰ The claim bill authorized payment to a person who supplied labor and building materials for the first permanent Capitol building.¹¹

Florida’s Current Statutory Sovereign Immunity Waiver

Section 768.28(1), F.S., allows for suits in tort against the State and its agencies and subdivisions for damages resulting from the negligence of government employees acting in the scope of employment. This liability exists only where a private person would be liable for the same conduct. Section 768.28 applies only to “injury or loss of property, personal injury, or death

³ *Cauley v. City of Jacksonville*, 403 So. 2d 379, 381 (Fla. 1981).

⁴ *Id.* (quoting *Kawananakoa v. Polyblank*, 205 U.S. 349, 353 (1907)).

⁵ *Id.*

⁶ English common law that is inconsistent with state or federal law is not included.

⁷ *North Carolina Dept. of Transp. v. Davenport*, 432 S.E.2d 303, 305 (N.C. 1993).

⁸ Section 19, Art. VI, State Const. (1868), states, “Provision may be made by general law for bringing suit against the State as to all liabilities now existing or hereafter originating.”

⁹ *Cauley*, 403 So. 2d at note 5.

¹⁰ D. Stephen Kahn, *Legislative Claim Bills: A Practical Guide to a Potent(ial) Remedy*, THE FLORIDA BAR JOURNAL, 23 (April, 1988).

¹¹ *Id.*

caused by the negligent or wrongful act or omission of any employee of the agency or subdivision while acting within the scope of the employee's office or employment.”¹²

Section 768.28(5), F.S., currently caps tort recovery from a governmental entity at \$200,000 per person and \$300,000 per incident. Although an ‘excess’ judgment may be entered, “the statutory caps make it impossible, absent a special claim bill passed by the legislature, for a claimant to collect more than the caps provide.”¹³

Individual government employees, officers, or agents are immune from suit or liability for damages caused by any action taken in the scope of employment, unless the damages result from the employee's acting in bad faith, with malicious purpose, or in a manner exhibiting wanton and willful disregard for human rights, safety, or property.¹⁴ A government entity is not liable for any damages resulting from actions by an employee outside the scope of his or her employment, and is not liable for damages resulting from actions committed by the employee in bad faith, with malicious purpose, or in a manner exhibiting wanton and willful disregard for human rights, safety, or property.¹⁵

Claim Bills

A plaintiff may recover an amount in excess of the caps described in s. 768.28(5), F.S., by way of a claim bill. “A claim bill is not an action at law, but rather is a legislative measure that directs the Chief Financial Officer of Florida, or if appropriate, a unit of local government, to pay a specific sum of money to a claimant to satisfy an equitable or moral obligation.”¹⁶ Such obligations typically arise from the negligence of officers or employees of the State or a local governmental agency.¹⁷

Legislative claim bills are used either after procurement of a judgment in an action at law or as a mechanism to avoid an action at law altogether.¹⁸ The amount awarded is based on the Legislature's concept of fair treatment of a person who has been injured or damaged but who is without a complete judicial remedy or who is not otherwise compensable.¹⁹ “Unlike civil judgments, private relief acts are not obtainable by right upon the claimant's proof of his entitlement. Private relief acts are granted strictly as a matter of legislative grace.”²⁰

The beneficiary of a claim bill recovers by virtue of its enactment, regardless of whether the governmental tortfeasor purchased liability insurance for the purpose of paying an excess judgment.²¹ However, where the governmental tortfeasor has liability insurance in excess of the

¹² *City of Pembroke Pines v. Corrections Corp. of America, Inc.*, 274 So. 3d 1105, 1112 (Fla. 4th DCA 2019) (quoting s. 768.28(1), F.S.).

¹³ *Breaux v. City of Miami Beach*, 899 So. 2d 1059, n. 2 (Fla. 2005).

¹⁴ Section 768.28(9)(a), F.S.

¹⁵ *Id.*

¹⁶ *Wagner v. Orange Cty.*, 960 So. 2d 785, 788 (Fla. 5th DCA 2007).

¹⁷ *Id.*

¹⁸ *City of Miami v. Valdez*, 847 So. 2d 1005 (Fla. 3d DCA 2003).

¹⁹ *Wagner*, 960 So. 2d at 788 (citing Kahn, *Legislative Claim Bills*, Fla. B. Journal (April 1988)).

²⁰ *United Servs. Auto. Ass'n v. Phillips*, 740 So. 2d 1205, 1209 (Fla. 2d DCA 1999).

²¹ *Servs. Auto Ass'n v. Phillips*, 740 So. 2d 1205 (Fla. 2d DCA 1999).

statutory cap, and the claimant receives compensation in excess of that statutory cap through a claim bill, the claim bill is paid with funds of the insured, not general revenue.²²

A government entity may, without a claim bill, settle claim against it for an amount in excess of the caps in s. 768.28, F.S., if that amount is within the limits of insurance coverage.²³

Negligence Law

Negligence is the failure to use due care. The failure may be by commission or omission. There are four elements to a negligence claim: (1) duty—where the defendant has a legal obligation to protect others against unreasonable risk; (2) breach—which occurs when the defendant has failed to conform to the required standard of conduct of that duty; (3) causation—where the defendant’s conduct is foreseeably and substantially the cause of the resulting damages; and (4) damages—actual harm.²⁴ A local government is liable in tort for the negligent act of an employee acting within the scope of his or her employment.²⁵

The Injury to Kareem Hawari

According to the bill, on March 5, 2010, claimant Kareem Hawari was a 13-year-old student attending middle school in Osceola County. Prior to his injury, he was a normal and active teenager who was a member of the school wrestling team. On March 5, 2010, he was severely injured during a wrestling meet.

The bill sets forth the facts of the case: The negligence is alleged to have occurred when the wrestling team coach, employed by the school board, directed Mr. Hawari to engage in a wrestling match against a vastly superior opponent. The allegation is that the coach knew or should have known that this match could cause injury to Mr. Hawari. The match was over quickly, as the opponent immediately grabbed Mr. Hawari, lifted him up, and forcibly slammed him into the mat. The force of the collision with the mat caused a brain stem hemorrhage that resulted in a traumatic brain injury. Mr. Hawari has incurred \$708,309.92 in medical expenses and is permanently and totally disabled because of his injuries.

The claimant timely filed suit against the school board. After extensive discovery and pretrial preparation, the parties settled in the amount of \$3.6 million.

III. Effect of Proposed Changes:

The bill authorizes and directs the Osceola County School Board to pay \$3.5 million to Kareem Hawari in full compensation for his injuries sustained due to the negligence of the school board. Attorney fees may not exceed 25 percent of the award.

The bill is effective upon becoming law.

²² *Fla. Mun. Ins. Trust v. Village of Golf*, 850 So. 2d 544 (Fla. 4th DCA 2003).

²³ *Michigan Millers Mut. Ins. Co. v. Burke*, 607 So. 2d 418, 421-22 (Fla. 1992); Section 768.28(5), F.S.

²⁴ *Saunders v. Dickens*, 151 So. 3d 434, 441 (Fla. 2014); *Williams v. Davis*, 974 So.2d 1052, at 1056-1057 (Fla. 2007).

²⁵ *City of Boynton Beach v. Weiss*, 120 So. 3d 606, 611 (Fla. 4th DCA 2013).

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:

None.

C. Government Sector Impact:

SB 82 authorizes and directs the Osceola County School Board to pay \$3.5 million to Kareem Hawari. The bill does not appear to have a fiscal impact on the state.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

None.

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.

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

By Senator Torres

15-00255-22

202282__

A bill to be entitled

An act for the relief of Kareem Hawari by the Osceola County School Board; providing an appropriation to Mr. Hawari to compensate him for injuries and damages sustained as a result of the negligence of employees of the Osceola County School Board; providing a limitation on compensation and the payment of attorney fees; providing an effective date.

WHEREAS, on March 5, 2010, at approximately 6 p.m., 13-year-old Kareem Hawari was participating in a wrestling match sponsored by Harmony Community School in the School District of Osceola County, and

WHEREAS, the wrestling match was supervised by coaches employed by the Osceola County School Board, each of whom had a duty to adequately supervise student athletes participating in school-sponsored athletic events by receiving proper training, providing adequate instruction to student athletes, reasonably selecting or matching student athletes to others in their same weight class for purposes of competition, and monitoring athletic training and events, and

WHEREAS, Mr. Hawari's coach did not receive any formal training and failed to provide Mr. Hawari with adequate instruction before the match, and

WHEREAS, Mr. Hawari was matched with a student athlete who was larger, stronger, and more experienced and who finished the 2010 and 2011 seasons as a county champion wrestler, and

WHEREAS, due to the negligent supervision of the coaches, Mr. Hawari hit his head on the ground during the match and

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suffered a brainstem hemorrhage that resulted in a traumatic brain injury that affects his motor coordination and ability to speak, and

WHEREAS, Mr. Hawari was hospitalized at Osceola Regional Medical Center in Kissimmee on March 5, 2010, and was then transported by helicopter to Arnold Palmer Hospital for Children in Orlando, where he was admitted from March 6 to May 4, 2010, and

WHEREAS, Mr. Hawari underwent surgery on March 8, 2010, to relieve pressure on his brain and had an additional surgery on March 24, 2010, and

WHEREAS, Mr. Hawari was thereafter transferred to Brooks Rehabilitation in Jacksonville, where he was a patient from May 4 to June 30, 2010, and

WHEREAS, Mr. Hawari received physical therapy at Florida Hospital Sports Medicine and Rehabilitation in Altamonte Springs on an outpatient basis from July 12 to October 1, 2014, and

WHEREAS, Mr. Hawari seeks to recover damages for his injuries, which include a permanent injury to his body as a whole, past and future pain and suffering of both a physical and mental nature, disability, physical impairment, disfigurement, mental anguish, inconvenience, expense of hospitalization, medical and nursing care and treatment, loss of ability to earn money, and loss of ability to lead and enjoy a normal life, and

WHEREAS, Mr. Hawari incurred medical expenses in the amount of \$708,309.92 and is permanently and totally disabled and unable to engage in any employment, and

WHEREAS, Mr. Hawari lived a full and vigorous life before his injury on March 5, 2010, had a zest for life, and was active

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

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59 in recreational, social, and sporting activities, and
60 WHEREAS, Mr. Hawari requires continuous assistance with
61 activities of daily living and ongoing treatment for his
62 injuries, and
63 WHEREAS, Mr. Hawari filed a lawsuit against the Osceola
64 County School Board in the Circuit Court of the Ninth Judicial
65 Circuit, in and for Osceola County, alleging that the coaches in
66 their employ had negligently supervised the wrestling match,
67 causing his injuries, and
68 WHEREAS, after extensive discovery and pretrial
69 preparation, the parties reached a settlement agreement in the
70 amount of \$3.6 million, of which \$100,000 has been paid pursuant
71 to the limits of liability in former s. 768.28, Florida Statutes
72 (2010), and the remainder is conditioned upon the passage of a
73 claim bill, NOW, THEREFORE,
74
75 Be It Enacted by the Legislature of the State of Florida:
76
77 Section 1. The facts stated in the preamble to this act are
78 found and declared to be true.
79 Section 2. The Osceola County School Board is authorized
80 and directed to appropriate from funds of the school board not
81 otherwise encumbered and to draw a warrant in the sum of \$3.5
82 million payable to Kareem Hawari as compensation for injuries
83 and damages sustained.
84 Section 3. The amount paid by the Osceola County School
85 Board pursuant to former s. 768.28, Florida Statutes (2010), and
86 the amount awarded under this act are intended to provide the
87 sole compensation for all present and future claims arising out

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88 of the factual situation described in this act which resulted in
89 injuries and damages to Kareem Hawari. The total amount paid for
90 attorney fees may not exceed 25 percent of the total amount
91 awarded under this act.
92 Section 4. This act shall take effect upon becoming a law.

The Florida Senate

APPEARANCE RECORD

2-3-22

Meeting Date

Rules

Committee

82

Bill Number or Topic

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

Amendment Barcode (if applicable)

Name

Albert Balidoc

Phone

850 253 4100

Address

201 W 8th Ave

Email

Street

Tall F

32301

City

State

Zip

Speaking: ☐ For ☐ Against ☐ Information

OR

Waive Speaking: ☒ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐

I am appearing without
compensation or sponsorship.

☒

I am a registered lobbyist,
representing:

☐

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

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

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

S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

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

2/3/22

Meeting Date

82

Bill Number or Topic

RULES

Committee

Amendment Barcode (if applicable)

Name

Cate Coates

Phone

850510 6373

Address

115 E Park Ave

Email

coates63@gmail.com

Street

Tallah

FL

City

State

Zip

Speaking:

☐

For

☐

Against

☐

Information

OR

Waive Speaking:

☒

In Support

☐

Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐

I am appearing without
compensation or sponsorship.

☒

I am a registered lobbyist,
representing:

Kareem HAWART

☐

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

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

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

S-001 (08/10/2021)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL: SB 264

INTRODUCER: Senator Hooper

SUBJECT: Firefighter Inquiries and Investigations

DATE: February 1, 2022

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Hunter	Ryon	CA	Favorable
2. McVaney	McVaney	GO	Favorable
3. Hunter	Phelps	RC	Favorable

I. Summary:

SB 264 amends the Firefighters' Bill of Rights, which provides specific rights to a firefighter under investigation and when subject to interrogation for alleged misconduct that could lead to disciplinary action. The bill expands the rights given to a firefighter during questioning conducted under an informal inquiry. Currently, questioning pursuant to an informal inquiry is not subject to the Firefighters' Bill of Rights.

The bill requires that an informal inquiry be conducted at a reasonable time and for a reasonable duration, allowing reasonable periods of rest for the firefighter. Additionally, during an informal inquiry or interrogation a firefighter may not be threatened with transfer, suspension, dismissal, or disciplinary action as inducement to answer any questions.

The bill revises the definition of the term "informal inquiry" to exclude certain routine work-related discussions such as safety sessions or normal operational fire debriefings.

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

The bill takes effect on July 1, 2022.

II. Present Situation:

Chapter 633, F.S., provides state law on fire prevention and control. Section 633.104(1), F.S., designates the Chief Financial Officer (CFO) as the State Fire Marshal, operating through the Division of the State Fire Marshal (division).¹ Under this authority, the State Fire Marshal:

- Regulates, educates or trains, and certifies fire service personnel;²
- Investigates the causes of fires;³
- Enforces arson laws;⁴
- Regulates the installation and maintenance of fire equipment;⁵
- Conducts firesafety inspections of state buildings;⁶
- Develops firesafety standards;⁷
- Provides facilities for the analysis of fire debris;⁸ and
- Operates the Florida State Fire College.⁹

Additionally, the division adopts by rule the Florida Fire Prevention Code, which contains or references all fire safety laws and rules regarding public and private buildings.¹⁰

Firefighters' Bill of Rights

The Firefighters' Bill of Rights provides specific rights when a firefighter¹¹ is under investigation and subject to interrogation for a reason which could lead to disciplinary action, including reprimand, suspension, or dismissal.¹² There is a similar law for law enforcement and correctional officers known as the Law Enforcement Officers' Bill of Rights.¹³

Currently, when an employing agency¹⁴ receives an allegation of misconduct regarding a firefighter, management may conduct an informal inquiry¹⁵ to determine whether a formal

¹ The head of the Department of Financial Services (DFS) is the Chief Financial Officer. The Division of the State Fire Marshal is located within the DFS. *See* s. 20.121, F.S.

² Section 633.128(1), F.S. *See also* ch. 633, part IV: Fire Standards and Training, F.S.

³ Section 633.104(2)(e), F.S.

⁴ *Id.*

⁵ Section 633.104(2)(b), F.S. *See also* s. 633.104(2)(c), F.S., and ch. 633, part III: Fire Protection and Suppression, F.S.

⁶ Section 633.218, F.S.

⁷ Chapter 633, part II: Fire Safety and Prevention, F.S.

⁸ Section 633.432, F.S.

⁹ Section 633.128(1)(h)–(q), F.S. *See also* ss. 633.428–633.434, F.S.

¹⁰ Section 633.202(1), F.S.

¹¹ “Firefighter” means a person who is certified in compliance with s. 633.408, F.S., and who is employed solely within the fire department or public safety department of an employing agency as a full-time firefighter whose primary responsibility is the prevention and extinguishment of fires; the protection of life and property; and the enforcement of municipal, county, and state fire prevention codes and laws pertaining to the prevention and control of fires. Section 112.81(1), F.S.

¹² Part VIII, ch. 112, F.S.

¹³ Part VI, ch. 112, F.S.

¹⁴ “Employing agency” means any municipality or the state or any political subdivision thereof, including authorities and special districts, which employs firefighters. Section 112.81(2), F.S.

¹⁵ “Informal inquiry” means a meeting by supervisory or management personnel with a firefighter about whom an allegation of misconduct has come to the attention of such supervisory or management personnel, the purpose of which meeting is to mediate a complaint or discuss the facts to determine whether a formal investigation should be commenced. Section 112.81(3), F.S.

investigation¹⁶ is appropriate. Informal inquiries are not subject to the requirements of the Firefighters' Bill of Rights. Only after a formal investigation has begun do the requirements have effect.¹⁷

Under the Firefighters' Bill of Rights, an interrogation of a firefighter must be conducted according to the following terms:¹⁸

- The interrogation shall take place at the facility where the investigating officer is assigned or at the facility that has jurisdiction over the place where the incident under investigation allegedly occurred, as designated by the investigating officer.
- No firefighter shall be subjected to interrogation without first receiving written notice in sufficient detail of the investigation to reasonably apprise the firefighter of the nature of the investigation. The firefighter shall be informed beforehand of the names of all complainants.
- All interrogations shall be conducted at a reasonable time of day, preferably when the firefighter is on duty unless the importance of the interrogation or investigation is of such a nature that immediate action is required.
- The firefighter under investigation shall be informed of the name, rank, and unit or command of the officer in charge of the investigation, the interrogators, and all persons present during any interrogation.
- Interrogation sessions shall be of reasonable duration, and the firefighter shall be permitted reasonable periods for rest and personal necessities.
- The firefighter being interrogated shall not be subjected to offensive language or offered any incentive as an inducement to answer any questions.
- A complete record of any interrogation shall be made, and if a transcript of such interrogation is made, the firefighter under investigation shall be entitled to a copy without charge. Such records may be electronically recorded.
- An employee or officer of an employing agency may represent the agency, and an employee organization may represent any member of a bargaining unit desiring such representation in any proceeding to which this part applies. If a collective bargaining agreement provides for the presence of a representative of the collective bargaining unit during investigations or interrogations, such representative shall be allowed to be present.
- No firefighter shall be discharged, disciplined, demoted, denied promotion or seniority, transferred, reassigned, or otherwise disciplined or discriminated against in regard to his or her employment, or be threatened with any such treatment as retaliation for or by reason solely of his or her exercise of any of the rights granted or protected by this part.

III. Effect of Proposed Changes:

Section 1 amends s. 112.81, F.S., to revise the definitions of “informal inquiry” and “formal investigation.” “Informal inquiry” is revised to exclude certain discussions between supervisory

¹⁶ “Formal investigation” means the process of an investigation ordered by supervisory personnel, after the supervisory personnel has previously determined that the firefighter shall be reprimanded, suspended, or removed, during which the questioning of a firefighter is conducted to gather evidence of misconduct. 112.81(4), F.S.

¹⁷ “Interrogation” means the questioning of a firefighter by an employing agency in connection with a formal investigation or an administrative proceeding but shall not include arbitration or civil service proceedings. Questioning during an informal inquiry shall not be deemed an interrogation. 112.81(6), F.S.

¹⁸ Section 112.82, F.S.

and management personnel and firefighters, such as safety sessions, normal operational fire debriefings, and routine work-related discussions.

The term “formal investigation” is revised to mean an investigation undertaken to determine if a firefighter should be disciplined, reprimanded, suspended, or removed. Management personnel as well as supervisory personnel may initiate a formal investigation.

Section 2 amends s. 112.82, F.S., to expand the rights given to a firefighter during questioning conducted under an informal inquiry. Namely, the following requirements are applied to an informal inquiry:

- It must be conducted at a reasonable time of day, preferably when the firefighter is on duty; and
- It must be conducted for a reasonable duration and the firefighter must be permitted reasonable periods for rest.

The bill further provides that during an informal inquiry or interrogation a firefighter may not be threatened with transfer, suspension, dismissal, or disciplinary action as inducement to answer any questions.

Section 3 provides that the bill takes effect July 1, 2022.

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:

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 substantially amends sections 112.81 and 112.82 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 Hooper

16-00081A-22

2022264__

A bill to be entitled

An act relating to firefighter inquiries and investigations; amending s. 112.81, F.S.; reordering and revising definitions; amending s. 112.82, F.S.; providing that firefighters have certain rights during an informal inquiry; providing that a firefighter may not be threatened with certain disciplinary action during an informal inquiry or interrogation; providing an effective date.

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

Section 1. Section 112.81, Florida Statutes, is amended to read:

112.81 Definitions.—As used in this part:

(3)~~(1)~~ "Firefighter" means a person who is certified in compliance with s. 633.408 and who is employed solely within the fire department or public safety department of an employing agency as a full-time firefighter whose primary responsibility is the prevention and extinguishment of fires; the protection of life and property; and the enforcement of municipal, county, and state fire prevention codes and laws pertaining to the prevention and control of fires.

(2) "Employing agency" means any municipality or the state or any political subdivision thereof, including authorities and special districts, which employs firefighters.

(5)~~(3)~~ "Informal inquiry" means a meeting by supervisory or management personnel with a firefighter about whom an allegation of misconduct has come to the attention of such supervisory or

Page 1 of 4

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

16-00081A-22

2022264__

management personnel, the purpose of which meeting is to mediate a complaint or discuss the facts to determine whether a formal investigation should be commenced. The term does not include routine work-related discussions, such as safety sessions or normal operational fire debriefings.

(4) "Formal investigation" means the process of investigation ordered by supervisory or management personnel to determine if, after the supervisory personnel have previously determined that the firefighter should ~~shall~~ be disciplined, reprimanded, suspended, or removed, during which the questioning of a firefighter is conducted for the purpose of gathering evidence of misconduct.

(1)~~(5)~~ "Administrative proceeding" means any nonjudicial hearing which may result in the recommendation, approval, or order of disciplinary action against, or suspension or discharge of, a firefighter.

(6) "Interrogation" means the questioning of a firefighter by an employing agency in connection with a formal investigation or an administrative proceeding but does ~~shall~~ not include arbitration or civil service proceedings. The term does not include questioning during ~~pursuant to an informal inquiry shall not be deemed to be an interrogation.~~

Section 2. Section 112.82, Florida Statutes, is amended to read:

112.82 Rights of firefighters.—Whenever a firefighter is subjected to an informal inquiry or interrogation, the inquiry or such ~~interrogation must~~ ~~shall~~ be conducted in accordance with ~~pursuant to the terms of~~ this section.

(1) An ~~The~~ interrogation must ~~shall~~ take place at the

Page 2 of 4

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59 facility where the investigating officer is assigned, or at the
60 facility ~~that which~~ has jurisdiction over the place where the
61 incident under investigation allegedly occurred, as designated
62 by the investigating officer.

63 (2) ~~A No~~ firefighter ~~may not shall~~ be subjected to
64 interrogation without first receiving written notice ~~in of~~
65 sufficient detail of the formal investigation in order to
66 reasonably apprise the firefighter of the nature of the
67 investigation. The firefighter must ~~shall~~ be informed beforehand
68 of the names of all complainants.

69 (3) All interrogations must ~~shall~~ be conducted at a
70 reasonable time of day, preferably when the firefighter is on
71 duty, unless the importance of the interrogation ~~or~~
72 ~~investigation~~ is of such a nature that immediate action is
73 required.

74 (4) The firefighter under formal investigation must ~~shall~~
75 be informed of the name, rank, and unit or command of the
76 officer in charge of the investigation, the interrogators, and
77 all persons present during any interrogation.

78 (5) Informal inquiries and interrogation sessions must
79 ~~shall~~ be of reasonable duration, and the firefighter must ~~shall~~
80 be permitted reasonable periods for rest and personal
81 necessities.

82 (6) During an informal inquiry or interrogation, the
83 firefighter ~~may being interrogated shall~~ not be subjected to
84 offensive language; threatened with a transfer, suspension,
85 dismissal, or other disciplinary action; or offered any
86 incentive as an inducement to answer any questions.

87 (7) A complete record of any interrogation must ~~shall~~ be

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2022264

88 made, and if a transcript of such interrogation is made, the
89 firefighter under formal investigation ~~is shall be~~ entitled to a
90 copy of the transcript without charge. Such record may be
91 electronically recorded.

92 (8) An employee or officer of an employing agency may
93 represent the agency, and an employee organization may represent
94 any member of a bargaining unit desiring such representation in
95 any proceeding to which this part applies. If a collective
96 bargaining agreement provides for the presence of a
97 representative of the collective bargaining unit during
98 investigations or interrogations, such representative shall be
99 allowed to be present.

100 (9) ~~A No~~ firefighter ~~may not shall~~ be discharged,
101 disciplined, demoted, denied promotion or seniority,
102 transferred, reassigned, or otherwise disciplined or
103 discriminated against in regard to his or her employment, or be
104 threatened with any such treatment, as retaliation for or by
105 reason solely of his or her exercise of any of the rights
106 granted or protected by this part.

107 Section 3. This act shall take effect July 1, 2022.



The Florida Senate

Committee Agenda Request

To: Senator Kathleen Passidomo, Chair
Committee on Rules

Subject: Committee Agenda Request

Date: January 26, 2022

I respectfully request that **Senate Bill # 264**, relating to Firefighter Inquiries and Investigations, be placed on the:

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

SB 264 amends the Firefighters' Bill of Rights, which provides specific rights to a firefighter under investigation and when subject to interrogation for alleged misconduct that could lead to disciplinary action. The bill expands the rights given to a firefighter during questioning conducted under an informal inquiry. Currently, questioning pursuant to an informal inquiry is not subject to the Firefighters' Bill of Rights.

A handwritten signature in black ink, appearing to read "Ed Hooper", is written over a horizontal line.

Senator Ed Hooper
Florida Senate, District 16

The Florida Senate

APPEARANCE RECORD

FEB 3, 2022

Meeting Date

SB 264

Bill Number or Topic

Rules

Committee

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

Amendment Barcode (if applicable)

Name

Chief RAY Colburn

Phone

407-468-6622

Address

221 Pinewood Dr.

Email

ray@ffca.org

Street

TALLAHASSEE

FL

City

State

Zip

Speaking:

☐

For

☐

Against

☐

Information

OR

Waive Speaking:

☒

In Support

☐

Against

PLEASE CHECK ONE OF THE FOLLOWING:

☒

I am appearing without
compensation or sponsorship.

☐

I am a registered lobbyist,
representing:

☐

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

FLORIDA FIRE Chiefs' Assoc.

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

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

S-001 (08/10/2021)

2/3/22

The Florida Senate
APPEARANCE RECORD

264

Meeting Date

Rules

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

Bill Number or Topic

Committee

Amendment Barcode (if applicable)

Name

Austin Stowers

Phone

850 413 5939

Address

200 E Gaines St.

Email

austin.stowers@myfloridacfo.com

Street

Tallahassee

FL

32399

City

State

Zip

Speaking: ☐ For ☐ Against ☐ Information

OR

Waive Speaking: ☒ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without
compensation or sponsorship.

☒ I am a registered lobbyist,
representing:

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

CFO : State Fire Marshal Jimmy Patronis

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

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

S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

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

2-3-22

Meeting Date

Rules

Committee

264

Bill Number or Topic

Amendment Barcode (if applicable)

Name

DAVID PEREZ

Phone

786-255-5791

Address

Coral Gables Firefighters Local 1210

Email

DPEREZ@LOCAL1210.COM

Street

Coral Gables FL

State

33134

Zip

Speaking:

☐

For

☐

Against

☐

Information

OR

Waive Speaking:

☒

In Support

☐

Against

PLEASE CHECK ONE OF THE FOLLOWING:

☒

I am appearing without
compensation or sponsorship.

☐

I am a registered lobbyist,
representing:

☐

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

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. 511.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

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

S-001 (08/10/2021)

2-3-22

Meeting Date

Rules

Committee

The Florida Senate

APPEARANCE RECORD

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

SB 264

Bill Number or Topic

Amendment Barcode (if applicable)

Name

WAYNE "BERNIE" BERNOSKA

Phone

(850) 224-7333

Address

343 W. Madison St.

Email

Bernie@fpfp.org

Street

Tallahassee FL 32301

City

State

Zip

Speaking:



For



Against



Information

OR

Waive Speaking:



In Support



Against

PLEASE CHECK ONE OF THE FOLLOWING:



I am appearing without
compensation or sponsorship.



I am a registered lobbyist,
representing:

Florida Professional
Firefighters



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

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

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

S-001 (08/10/2021)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL: CS/CS/SB 634

INTRODUCER: Rules Committee; Commerce and Tourism Committee; and Senator Bradley

SUBJECT: Judicial Notice

DATE: February 3, 2022

REVISED: _____

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

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 634 creates a process for a court to take “judicial notice” of certain information taken from mapping services, such as Google Maps. Under Florida law, judicial notice may generally be declared for certain facts “not subject to dispute because they are capable of accurate and ready determination by resort to sources whose accuracy cannot be questioned” or “because they are generally known within the territorial jurisdiction of the court.”¹

The bill provides a process separate from the above standards for any image, map, location, distance, calculation, or other information taken from any widely accepted web mapping service, global satellite imaging site, or Internet mapping tool so long as the information in question indicates the date that it was created.

For civil cases, the bill provides a presumption that the information sought to be judicially noticed should be judicially noticed. This presumption may be overcome if the court finds that the information does not fairly and accurately portray what it is being offered to prove, or that it otherwise should not be admitted into evidence under the Florida Evidence Code. In a criminal case, the court must instruct the jury that the jury may or may not accept this information as conclusive.

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

¹ Section 90.202(11) and (12), F.S.

II. Present Situation:

The Florida Evidence Code

Florida statutes, such as the Florida Evidence Code (Code) as enacted by the Legislature, contain both procedural and substantive law for the courts to apply. Depending on the type of proceeding, the Code is generally applicable to all proceedings in Florida courts,² including actions based on federal claims.³ However, statutes that are procedural in nature, even those passed by the Legislature, must be approved by Supreme Court. Occasionally, the Court rejects the legislative changes.

In 2000, for example, the Court refused to adopt a recently enacted hearsay exception, noting that applying the statute would go against long standing rules of evidence and violate a defendant's right of confrontation.⁴ A concurring opinion by Justice Lewis also found that the statute was an unacceptable rule of procedure, and therefore infringed on the Court's ability to adopt rules under article v, section 2(a), of the Florida Constitution. In 2014, the Court refused to adopt a statute that was not part of the evidence code requiring certain qualifications for expert witnesses in medical negligence cases on the grounds that the statute was procedural.⁵

Judicial Notice

Judicial notice allows a court to make a finding that a certain piece of evidence is true without any formal introduction for that basis.⁶ Generally, this may involve undisputed facts or facts that are so well known they speak for themselves. Often, judicial notice may be used to save time and resources, as presenting evidence for certain situations may prove too much of an unnecessary burden.⁷ Courts warn though, that judicial notice "should be exercised with great caution" and "must be of common and general knowledge [and] authoritatively settled and not doubtful."⁸ A famous example occurred in Ohio where a trial court took judicial notice that "Bud Lite is beer" in a case involving the sale of beer to an underage person.⁹ The conviction was eventually vacated by the Ohio Supreme Court, consistent with an appellate court finding that despite Bud Lite meeting the "common, everyday understanding" of the term "beer," this did not align with the statutory language as enacted by Ohio Legislature, which included that the beverage contain "between one-half of one percent and twelve percent alcohol by volume."¹⁰ The conviction was

² Section 90.103, F.S.

³ *Byrd v. BT Foods, Inc.*, 26 So. 3d 600, 605 (Fla. 4th DCA 2009) ("[S]tate evidence codes control evidentiary questions presented in state court. This is so even where federal claims are litigated, unless the state rules would affect substantive federal rights.").

⁴ *In re Amendments to the Fla. Evidence Code*, 782 So. 2d 339, 341 (Fla. 2000). The statute in question stripped the former testimony of witnesses hearsay exception of the requirement that the witness be unavailable.

⁵ *In re: Amendments to the Fla. Evidence Code*, 144 So. 3d 536, 537 (Fla. 2014).

⁶ Legal Information Institute, *Cornel Law School*, https://www.law.cornell.edu/wex/judicial_notice (last visited January 21, 2022).

⁷ For example, soliciting testimony from members of the Governor, the Secretary of State, and members of the Legislature to verify that an act of the Legislature was enacted into Florida law would put a large burden on those officials in addition to any parties seeking evidence of any Legislative act.

⁸ *State v. Coleman*, 5 So. 2d 60, 62 (Fla. 1941).

⁹ *State v. Kareski*, 2012 WL 1717976, *2 (Ohio 9th Dist. Ct. App. 2012), *vacated*, 998 N.E.2d 410, (Ohio 2013).

¹⁰ Ohio Rev. Code Ann. § 4301.01(6)(b).

thus vacated because the government failed to prove that the Bud Lite in question contained required percentage of alcohol.

There are practical considerations when asking a court to take judicial notice of something. In the above referenced case, for example, judicial notice likely allowed the prosecutor to avoid testing a sample of Bud Lite to determine the alcoholic content. The Bud Lite in question did not contain an official marker identifying the amount of alcohol.¹¹ The Code differentiates between when a court *may* or *shall* take judicial notice upon request of a party.

Under s. 90.201, F.S., a court *shall* take judicial notice of:

- Decisional, constitutional, and public statutory law and resolutions of the Florida Legislature and the Congress of the United States,
- Florida rules of court that have statewide application, its own rules, and the rules of United States courts adopted by the United States Supreme Court, and
- Rules of court of the United States Supreme Court and of the United States Courts of Appeal.¹²

Under s. 90.202, F.S., a court *may* take judicial notice of:

- Special, local, and private acts and resolutions of the Congress of the United States and of the Florida Legislature,
- Decisional, constitutional, and public statutory law of every other state, territory, and jurisdiction of the United States,
- Contents of the Federal Register,
- Laws of foreign nations and of an organization of nations,
- Official actions of the legislative, executive, and judicial departments of the United States and of any state, territory, or jurisdiction of the United States,
- Records of any court of this state or of any court of record of the United States or of any state, territory, or jurisdiction of the United States,
- Rules of court of any court of this state or of any court of record of the United States or of any other state, territory, or jurisdiction of the United States,
- Provisions of all municipal and county charters and charter amendments of this state, provided they are available in printed copies or as certified copies,
- Rules promulgated by governmental agencies of this state which are published in the Florida Administrative Code or in bound written copies,
- Duly enacted ordinances and resolutions of municipalities and counties located in Florida, provided such ordinances and resolutions are available in printed copies or as certified copies,
- Facts that are not subject to dispute because they are generally known within the territorial jurisdiction of the court,
- Facts that are not subject to dispute because they are capable of accurate and ready determination by resort to sources whose accuracy cannot be questioned, and

¹¹ *Kareski*, 998 N.E.2d at 411.

¹² Section 90.201, F.S.

- Official seals of governmental agencies and departments of the United States and of any state, territory, or jurisdiction of the United States.¹³

When presented with a request under s. 90.202, F.S., a court is required to take judicial notice after the court:

- Gives each adverse party timely written notice of the request, proof of which is filed with the court, to enable the adverse party to prepare to meet the request, and
- Is furnished with sufficient information to enable it to take judicial notice of the matter.¹⁴

III. Effect of Proposed Changes:

The bill creates a process to allow a court to take judicial notice of certain information from widely accepted web mapping services, such as street information from Google Maps. Specifically, the bill will allow a court to take judicial notice of any image, map, location, distance, calculation, or other information taken from any widely accepted web mapping service, global satellite imaging site, or internet mapping tool so long as the information in question indicates the date that it was created.

In order for a court to take judicial notice of this type of information, the bill requires a party to file notice within a reasonable time, or as required by a court order. This notice must include a copy of the information and specify the Internet address or pathway where it may be inspected.

The bill provides a process for a party to object to a request for judicial notice of such information. In a civil case, there is a rebuttable presumption that the information sought to be judicially noticed should be judicially noticed, which may be overcome if the court finds by the greater weight of the evidence that the information does not fairly and accurately portray what it is being offered to prove, or that it otherwise should not be admitted into evidence under the Florida Evidence Code. In a criminal case, the court must instruct the jury that the jury may or may not accept the noticed facts as conclusive.

The bill provides that this section “does not affect, expand, or limit standards for any matters that may otherwise be judicially noticed.”

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

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

¹³ Section 90.202, F.S.

¹⁴ Section 90.203, F.S.

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 bill may enable parties in litigation to avoid costs that they would otherwise incur to produce, verify, and authenticate information from web mapping service, a global satellite imaging site, or an Internet mapping tool.

C. Government Sector Impact:

The bill may enable government parties to litigation avoid costs that they would otherwise incur to produce, verify, and authenticate information from web mapping service, a global satellite imaging site, or an Internet mapping tool. The bill may also reduce costs to the judiciary by reducing the judicial time and resources that would otherwise be required in litigation over the admissibility of such information.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates s. 90.2035, Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

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

CS/CS by Rules on February 3, 2022:

The underlying CS limited the rebuttable presumption that a court should take judicial notice of any image, map, location, distance, calculation, or other information taken from a widely accepted web mapping service, global satellite imaging site, or Internet mapping tool to only apply in civil cases. While this information may still be used in criminal cases, the CS by the Rules Committee provides that the court must instruct the jury that the jury may or may not accept the noticed facts as conclusive.

CS by Commerce and Tourism on January 24, 2022:

The CS limits the presumption that a court may take judicial notice of information from web mapping services, global satellite imaging sites, or an Internet mapping tool to those that are “widely accepted.” The CS also rewords provisions of the bill without making substantive changes.

B. Amendments:

None.



560052

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/03/2022	.	
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	.	

The Committee on Rules (Bradley) recommended the following:

Senate Amendment (with title amendment)

Delete lines 41 - 51
and insert:

(b) In civil cases, there is a rebuttable presumption that information sought to be judicially noticed under this section should be judicially noticed. The rebuttable presumption may be overcome if the court finds by the greater weight of the evidence that the information does not fairly and accurately portray what it is being offered to prove or that it otherwise should not be admitted into evidence under the Florida Evidence



560052

Code.

(c) If the court overrules the objection, the court must take judicial notice of the information and admit the information into evidence.

(3) In criminal cases, the court must instruct the jury that the jury may or may not accept the noticed facts as conclusive.

(4) This section does not affect, expand, or limit

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

And the title is amended as follows:

Delete lines 11 - 13

and insert:

information; creating a rebuttable presumption in civil cases that such information should be judicially noticed unless certain findings are made; requiring the court to instruct the jury that the jury may or may not accept the noticed facts as conclusive in criminal cases; providing construction;

By the Committee on Commerce and Tourism; and Senator Bradley

577-02262-22

2022634c1

A bill to be entitled

An act relating to judicial notice; creating s. 90.2035, F.S.; authorizing courts to take judicial notice of certain information taken from widely accepted web mapping services, global satellite imaging sites, or Internet mapping tools upon request of a party; requiring parties who intend to offer such information into evidence to file a notice of intent containing specified information; authorizing parties to object to the court taking judicial notice of such information; creating a rebuttable presumption that such information should be judicially noticed unless certain findings are made; providing construction; providing an effective date.

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

Section 1. Section 90.2035, Florida Statutes, is created to read:

90.2035 Judicial notice of information taken from web mapping services, global satellite imaging sites, or Internet mapping tools.—

(1)(a) Upon request of a party, a court may take judicial notice of an image, map, location, distance, calculation, or other information taken from a widely accepted web mapping service, global satellite imaging site, or Internet mapping tool, if such image, map, location, distance, calculation, or other information indicates the date on which the information was created.

Page 1 of 2

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

577-02262-22

2022634c1

(b) A party intending to offer such information in evidence at trial or at a hearing must file notice of such intent within a reasonable time, or as defined by court order. The notice must include a copy of the information and specify the Internet address or pathway where such information may be accessed and inspected.

(2)(a) A party may object to the court taking judicial notice of the image, map, location, distance, calculation, or other information taken from a widely accepted web mapping service, global satellite imaging site, or Internet mapping tool within a reasonable time or as defined by court order.

(b) There is a rebuttable presumption that information sought to be judicially noticed under this section should be judicially noticed. The rebuttable presumption may be overcome if the court finds by the greater weight of the evidence that the information does not fairly and accurately portray what it is being offered to prove or that it otherwise should not be admitted into evidence under the Florida Evidence Code.

(c) If the court overrules the objection, the court must take judicial notice of the information and admit the information into evidence.

(3) This section does not affect, expand, or limit standards for any matters that may otherwise be judicially noticed.

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

Page 2 of 2

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



SENATOR JENNIFER BRADLEY
5th District

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Community Affairs, *Chair*
Agriculture, *Vice Chair*
Appropriations Subcommittee on Agriculture,
Environment, and General Government
Education
Ethics and Elections
Judiciary
Reapportionment

SELECT SUBCOMMITTEE:

Select Subcommittee on Congressional
Reapportionment, *Chair*

JOINT COMMITTEES:

Joint Legislative Auditing Committee
Joint Select Committee on Collective Bargaining

January 25, 2022

Senator Kathleen Passidomo, Chair
Senate Committee on Rules
400 Senate Building
404 South Monroe Street
Tallahassee, FL 32399-1100

Dear Chair Passidomo:

I respectfully request that Senate Bill 634 be placed on the committee's agenda at your earliest convenience. This bill creates a process for a court to take "judicial notice" of certain information taken from mapping services, such as Google Maps.

Thank you for your consideration.

Sincerely,

A handwritten signature in black ink that reads "Jennifer Bradley". The signature is fluid and cursive.

Jennifer Bradley

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

REPLY TO:

- ☐ 1279 Kingsley Avenue, Kingsley Center, Suite 117, Orange Park, Florida 32073 (904) 278-2085
- ☐ 324 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5005

Senate's Website: www.flsenate.gov

WILTON SIMPSON
President of the Senate

AARON BEAN
President Pro Tempore

2/3/22

Meeting Date

Rules

Committee

Name

Stacy Scott

Phone

352 338-7370

Address

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Email

scotts@pdo8.org

Street

Gainesville

FL

City

State

Zip

Speaking:

☐

For

☐

Against

☐

Information

OR

Waive Speaking:

☒

In Support

☐

Against

PLEASE CHECK ONE OF THE FOLLOWING:

☒

I am appearing without compensation or sponsorship.

☐

I am a registered lobbyist, representing:

☐

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

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

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

S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

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

634

Bill Number or Topic

560052

Amendment Barcode (if applicable)

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/CS/SB 736

INTRODUCER: Rules Committee; Community Affairs Committee; Judiciary Committee; and Senator Hutson

SUBJECT: Construction Defect Claims

DATE: February 4, 2022

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cibula	Cibula	JU	Fav/CS
2.	Hackett	Ryon	CA	Fav/CS
3.	Cibula	Phelps	RC	Fav/CS

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/CS/SB 736 expands on the existing “right to cure procedures” in chapter 558, F.S. These procedures establish an alternative dispute resolution process requiring a claimant and a contractor or similar person to attempt to resolve a construction defect claim before proceeding to litigation. Under the revised procedures, a claimant must provide an inspection report with a notice of a construction defect claim. Additionally in rejecting a settlement offer, the claimant must detail the reasons for rejecting the offer. The contractor must then be given an opportunity to make a supplemental offer.

The bill also provides for a 5-year repose period for one-family, two-family, or three-family residences not exceeding two habitable stories above ground and their accessory structures. For all other structures, the bill retains the 10-year repose period in current law.

The bill takes effect July 1, 2022.

II. Present Situation:

Alternative Dispute Resolution Mechanism for Construction Defects

Chapter 558, F.S., titled, “Construction Defects,” creates an alternative dispute resolution mechanism that must be used in an attempt to resolve many construction defect claims before the

claimant may resort to litigation. Under this dispute resolution mechanism, a claimant is required to file a notice of claim with a contractor or other similar person who is responsible for an alleged defect. Upon receipt of the notice of claim, the contractor or other person has an opportunity to resolve the claim through confidential settlement negotiations.¹ If a claimant files a civil action or arbitration proceeding before completing the requirements of chapter 558, F.S., the court must stay the action.² Legislation like chapter 558, F.S., is known as “right to cure” legislation.³

A construction defect, for purposes of chapter 558, F.S., is a:

deficiency in, or a deficiency arising out of, the design, specifications, surveying, planning, supervision, observation of construction, or construction, repair, alteration, or remodeling of real property resulting from:

- Defective material, products, or components used in the construction or remodeling;
- A violation of the applicable codes in effect at the time of construction or remodeling which gives rise to a cause of action pursuant to s. 553.84 [for a violation of the building code];
- A failure of the design of real property to meet the applicable professional standards of care at the time of governmental approval; or
- A failure to construct or remodel real property in accordance with accepted trade standards for good and workmanlike construction at the time of construction.⁴

Notice of Claim

The specifics of the notice and cure process of chapter 558, F.S., begin with the service of a “written notice of claim” by the claimant upon the contractor, subcontractor, supplier, or design professional, who may be responsible for the alleged defect.⁵ The claimant must serve this notice “at least 60 days before filing any action, or at least 120 days before filing an action involving an association representing more than 20 parcels.”⁶ The notice must “describe in reasonable detail the nature of each alleged construction defect and, if known, the damage or loss resulting from the defect.”⁷ The location of each alleged construction defect must also be sufficiently described in the notice.

Inspection of Alleged Defect

Upon receipt of the notice of claim, the contractor or other person served with the notice may inspect the property or each unit described in the notice to assess the alleged defects and to determine the extent of necessary repairs. The inspections must occur within 30 days after

¹ Section 558.001, F.S.

² Section 558.003, F.S.

³ 4 TIFFANY REAL PROP. § 986.60 (3d ed.).

⁴ Section 558.002(5), F.S.

⁵ Section 558.004(1)(a), F.S.

⁶ *Id.*

⁷ *Id.*

service of the notice or within 50 days after service of the notice involving an association representing more than 20 parcels.⁸

Response to Notice of Claim & Settlement Offers

The contractor, or other person served with the notice of claim, must serve a written response to the claimant within 45 days after service of the notice of claim or within 75 days after service of a copy of the notice of claim involving an association representing more than 20 parcels. The written response must provide:

- A written offer to remedy the alleged construction defect at no cost to the claimant, a detailed description of the proposed repairs necessary to remedy the defect, and a timetable for the completion of such repairs;
- A written offer to compromise and settle the claim by monetary payment, that will not obligate the person's insurer, and a timetable for making payment;
- A written offer to compromise and settle the claim by a combination of repairs and monetary payment, that will not obligate the person's insurer, that includes a detailed description of the proposed repairs and a timetable for the completion of such repairs and making payment;
- A written statement that the person disputes the claim and will not remedy the defect or compromise and settle the claim; or
- A written statement that a monetary payment, including insurance proceeds, if any, will be determined by the person's insurer within 30 days after notification to the insurer by means of serving the claim, which service shall occur at the same time the claimant is notified of this settlement option, which the claimant may accept or reject.⁹

Initiation of Legal Action

The claimant may initiate an action against the contractor or other person served with the notice of claim if the contractor or other person served with the notice disputes the claim or fails to timely respond.¹⁰ If the contractor or other person makes a settlement offer, the claimant may not initiate an action, unless the claimant rejects the settlement offer in writing within 45 days after receiving it.¹¹ The claimant may also initiate an action for the construction defect if the person making the settlement offer does not make the agreed upon repairs or payments within the agreed-upon time or manner.¹²

Statutes of Limitation and Repose

Legal actions must be brought within the timeframes authorized by law. With respect to construction defect actions, there are two timeframes: a 4-year limitations period¹³ and a 10-year

⁸ Section 558.004(2), F.S.

⁹ Section 558.004(5), F.S.

¹⁰ See s. 558.004(7), F.S.

¹¹ Section 558.004(6), F.S.

¹² Section 558.004(8), F.S.

¹³ A statute of limitations "set[s] a time limit within which an action must be filed as measured from the accrual of the cause of action, after which time obtaining relief is barred." *National Auto Service Centers, Inc., v. F/R 500, LLC*, 192 So. 3d 498, 509 (Fla. 2d DCA 2016) (quoting *Hess v. Philip Morris USA, Inc.*, 175 So. 3d 687, 695 (Fla. 2015) (quoting *Merkle v. Robinson*, 737 So. 2d 540, 542 n. 6 (Fla.1999)). The purpose of a statute of limitations is to "require that a plaintiff with a known cause of action prosecute that claim diligently and within a predictable time that will allow for finality of claims prior

statute of repose.¹⁴ The 4-year limitations period applies to actions based on a patent defect,¹⁵ which is an obvious defect, and to a latent or hidden defect¹⁶ once it is discovered or should have been discovered.¹⁷ However, any action based on a latent or hidden defect must be brought within the 10-year statute of repose.¹⁸

The 4-and 10-year periods for bringing a construction defect action begin to run from:

the date of actual possession by the owner, the date of the issuance of a certificate of occupancy, the date of abandonment of construction if not completed, or the date of completion of the contract or termination of the contract between the professional engineer, registered architect, or licensed contractor and his or her employer, whichever date is latest.

The specific point at which the 4 or 10-year periods commence has been a subject of litigation and refined somewhat through legislation over the years.

III. Effect of Proposed Changes:

As detailed below, the bill expands on the existing policy in chapter 558, F.S., of requiring the parties to a potential construction defect action to attempt to resolve their disputes before initiating a civil action or arbitration proceeding.

Supplemental Offers, Attorney Fees, & Settlement Payments (Section 2)

Notices of Claims

The bill increases the quality and quantity of information that must be included in a notice of claim. The notice of claim must be prepared by a contractor, engineer, building code inspector, or other person having a state license and experience relevant to the type of construction that is the basis of the claim. The report must clearly describe the defect, supply pictures of the defect, videos, or test results. Moreover, the report must describe the maintenance and repair history of the portion of the structure containing the alleged defect.

to the potential loss of available evidence over time.” *Id.* at 510 (citing Statute of limitations, BLACK’S LAW DICTIONARY (10th ed. 2014)).

¹⁴ A statute of repose “precludes a right of action after a specified time . . . rather than establishing a time period within which the action must be brought measured from the point in time when the cause of action accrued.” *Id.* at 509 (citing *Univ. of Miami v. Bogorff*, 583 So. 2d 1000, 1003 (Fla.1991)).

¹⁵ A patent defect is “either one about which the owner had actual knowledge or one about which the owner would have known had he or she made a reasonably careful inspection.” *U.S. Lodging of Jacksonville, Ltd., v H.B. Daniel Const. Co., Inc.*, 617 So. 2d 448, 449 (Fla. 1st DCA 1993).

¹⁶ A latent defect is a defect that is not discernable by the exercise of reasonable care. *Kala Investments, Inc. v. Sklar*, 538 So. 2d 909, 914 (Fla. 3d DCA 1989) (citing *Maas Bros., Inc. v. Bishop*, 204 So.2d 16 (Fla. 2d DCA 1967)).

¹⁷ Section 95.11(3)(c), F.S.

¹⁸ *Id.*

The report must be verified¹⁹ by the person preparing it, and the preparer is subject to discipline by the relevant licensing board for preparing a report in bad faith.

Supplemental Offers

Existing law requires a contractor or other person who is served a notice of claim for a construction defect to make an offer to settle the claim or dispute the claim. If a settlement offer is made, the claimant may not initiate a civil action or an arbitration proceeding based on the claim unless the claimant timely serves a written notice of rejection on the offeror.

The bill requires the claimant to include more information in a notice of rejection. Specifically, the notice must state the reasons for rejecting the offer, identify any items that the claimant believes were omitted from the offer, and detail all reasons why the claimant believes that the offer is unreasonable. The claimant's provision of additional information seems to function as a counteroffer or a request for clarification of the offer. Once the offeror is served the claimant's notice of rejection, the bill authorizes the offeror to make a supplemental offer of repair or monetary payment, or both, to the claimant within 15 days after service of the notice of rejection.

A claimant who rejects an initial settlement offer may not initiate an action for a construction defect until the claimant rejects any supplemental offer or the offeror has had 15 days to make a supplemental offer.

Attorney Fee Limitation

Existing law does not directly discourage a claimant from rejecting a reasonable settlement offer and initiating an action for a construction defect claim. However, the bill discourages the claimant from rejecting a reasonable settlement offer by limiting the potential for an award of attorney fees. Specifically, the bill provides that if:

[t]he claimant rejects a timely settlement offer or supplemental offer provided to remedy the alleged construction defect at no cost to the claimant, in any action brought for that defect, the claimant may not recover attorney fees from the offeror on any basis unless the claimant proves by a preponderance of the evidence that, at the time of the offer, additional repairs beyond those offered were necessary to remedy the defect. This [provision, however,] does not apply to any claim for attorney fees based on a contract between the claimant and the offeror.

Court Appointed Expert (Section 4)

The bill requires the court in a civil action for a construction defect to appoint an engineer, contractor, building code inspector, or another expert to examine the alleged defect. The expert must then submit a written report which contains the expert's findings to the court for its consideration and to the parties. But the expert may not be appointed if all of the parties object or

¹⁹ The verification requirement is an assertion that the facts stated in the report are true. A person who makes a false declaration in a verified document commits perjury by false written declaration, which is a third degree felony. Section 92.525, F.S.

if the court finds that the costs of an expert outweigh any potential benefits to the resolution of the action. If appointed, the expert's report must:

- Describe how the expert conducted the examination of the alleged defect.
- Identify persons present at the site of the improvement while the expert conducted the examination.
- Include photographs or other documentation of the alleged defect including any relevant test results.
- State whether the damages claimed by the claimant are more likely than not the result of a construction defect, another identified cause, or a construction defect and another identified cause.
- Address other matters related to the alleged defect as directed by the court.

If the expert's report wholly or partially validates the claimant's construction defect claim, the report "must state the actions necessary to repair the defect and any repairs related to the defect, provide an estimate of the reasonable cost of repairs, and state the anticipated time needed for repairs under the current market conditions for construction services and materials."

The bill provides for the expert to be compensated by the parties, but the prevailing party is entitled to reimbursement by the nonprevailing party. Moreover, the expert may not be employed to repair the alleged defect or recommend contractors to repair the defect.

Payment of Repair Costs (Sections 3 & 5)

Nothing in chapter 558, F.S., currently requires a claimant to use any funds recovered as a result of a construction defect claim to repair the defect.

The bill requires a claimant who accepts a settlement offer that includes a monetary payment for repairs to enter into a contract for repairs within 90 days. The payments, however, are to be made by the offeror directly to the claimant's contractor as the work is performed and expenses are incurred. The repairs generally must be completed within 12 months after the claimant contracts for repairs. The provision of payment from the offeror to the claimant's contractor is similar to procedures that an insurer may follow to pay for the repair of property damaged by a sinkhole.²⁰

If a claimant recovers funds for a construction defect as the result of a civil action or arbitration, the bill requires the claimant to use the funds to repair the defect. If the claimant fails to fully repair the defect, the claimant is liable to a subsequent purchaser of the property for any damages resulting from the failure to disclose the defect.

The liability for failing to repair or disclose the defect is consistent with the duties of a seller of real property under existing law. The seller of real property has a duty to disclose "facts materially affecting the value of the property which are not readily observable and are not known to the buyer."²¹

²⁰ Section 627.707(5)(e), F.S., upon approval by any lienholder, authorizes an insurer to pay for repairs due to a sinkhole directly to the persons selected by the policyholder to perform the land and building stabilization and foundation repairs.

²¹ *Johnson v. Davis*, 480 So. 2d 625, 629 (Fla. 1985).

Timeframe for Construction Defect Action (Section 1)

Existing law specifies a 4-year statute of limitations for a claimant to bring a construction defect action based on a patent or obvious defect and a 10-year statute of repose for a claimant to bring a construction defect action based on a latent or hidden defect. The bill provides for different repose periods depending on the type of structure. There is a 5-year repose period for one-family, two-family, or three-family residences not exceeding two habitable stories above ground and their accessory structures,²² and for all other structures, the bill retains the 10-year repose period in current law.

The commencement of this time period in current law is “the date of actual possession by the owner, the date of the issuance of a certificate of occupancy, the date of abandonment of construction if not completed, or the date of completion of the contract or termination of the contract between the professional engineer, registered architect, or licensed contractor and his or her employer, whichever date is *latest*.” The bill provides that the time period commences on any of the same triggers, whichever date is *earliest*.

Effective Date, Application & Savings Cause (Sections 6 & 7)

The bill takes effect on July 1, 2022, and the provisions of the bill amending the presuit procedures of ch. 558, F.S., apply to civil actions and arbitration proceedings initiated on or after that date.

The reduced time period for bringing a construction defect action applies to construction defects occurring before the effective date of the bill. However, the bill provides a savings clause that enables a person to bring an action for a construction defect within 1 year after the effective date of the bill if the action would otherwise be time barred by the bill.

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.

²² This category of single family residences matches the definition of “residential contractor” in s. 489.105(1)(c), F.S.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

CS/CS/SB 736 may reduce litigation costs to parties to a construction contract by requiring a claimant to detail the reasons for rejecting a presuit settlement offer and by authorizing counteroffers. Provisions requiring the use of any recovery for a construction defect to repair the defect may discourage the bringing of claims that are not well-founded.

C. Government Sector Impact:

The bill may reduce costs of the judicial branch to the extent that the bill reduces litigation.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 95.11 and 558.004.

This bill creates the following sections of the Florida Statutes: 558.0045 and 558.0046.

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/CS by Rules on February 3, 2022:

The CS by the Rules Committee replaces the three different repose periods for bringing a construction defect action in the underlying CS with two repose periods. There is a 5-year repose period for most single family residences and a 10-year repose period for all other structures. Additionally, the CS requires a notice of claim to include an inspection report prepared by a contractor, engineer, building code inspector, or other person having relevant experience.

CS/CS by Community Affairs on January 12, 2022:

The committee substitute revises the timeline for bringing a construction defect action based on obvious and hidden defects in improvements to real property. A 4-year time limit to commence an action regarding an obvious defect will run from completion of the project, while the same limit will run from when a hidden defect is or should have been discovered, as current law provides. Additionally, the substitute applies a variable statute of repose, from 5 to 10 years depending on the type of property improved.

CS by Judiciary on November 30, 2021:

The committee substitute does not include section 5 of the original bill. The section required a claimant who served a notice of claim on a contractor or similar person to also provide notice of the claim to a mortgagee or assignee having a security interest in the relevant property. Additionally, the section required the claimant to notify the mortgagee or assignee of the completion of repairs that correct a construction defect.

B. Amendments:

None.



337012

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/03/2022	.	
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The Committee on Rules (Hutson) recommended the following:

Senate Amendment (with title amendment)

Delete lines 91 - 236
and insert:

(12) ACTIONS RELATING TO AN IMPROVEMENT TO REAL PROPERTY.—
(a) *Running of time to commence action.*—An action founded
on the design, planning, or construction of an improvement to
real property must be commenced within the timeframes set forth
in this section or the action is time barred.

1. The time to commence the action runs from the date of
actual possession by the owner, the date of the issuance of a



337012

certificate of occupancy, the date of abandonment of construction if not completed, or the date of completion of the contract or termination of the contract between the professional engineer, registered architect, or licensed contractor and his or her employer, whichever date is earliest. For the purposes of this subparagraph, the term "completion of the contract" means the later of the date of final performance of all the contracted services or the date that final payment for such services becomes due without regard to the date final payment is made.

2. Counterclaims, cross-claims, and third-party claims that arise out of the conduct, transaction, or occurrence set out or attempted to be set out in a pleading may be commenced up to 1 year after the pleading to which such claims relate is served, even if such claims would otherwise be time barred.

3. If the action is based on construction that is performed pursuant to a duly issued building permit and if a local enforcement agency, state enforcement agency, or special inspector, as those terms are defined in s. 553.71, has issued a final certificate of occupancy or certificate of completion, then as to the construction which is within the scope of such building permit and certificate, the correction of defects to completed work or repair of completed work, whether performed under warranty or otherwise, does not extend the period of time within which an action must be commenced.

(b) Limitations and repose periods.—

1. An action founded on the design, planning, or construction of an improvement to real property may be commenced within 4 years after the time to commence an action begins to run.



337012

41 2. An action involving a latent defect may be commenced
42 within 4 years after the facts giving rise to the cause of
43 action are discovered or should have be discovered through the
44 exercise of due diligence. However, the action may not be
45 commenced more than 5 years after the time for commencing an
46 action begins to run for a one-family, two-family, or three-
47 family residence not exceeding two habitable stories above no
48 more than one uninhabitable story and accessory use structures
49 in connection therewith and 10 years for any other improvement.

50 Section 2. Subsection (2) of section 627.441, Florida
51 Statutes, is amended to read:

52 627.441 Commercial general liability policies; coverage to
53 contractors for completed operations.—

54 (2) A liability insurer must offer coverage at an
55 appropriate additional premium for liability arising out of
56 current or completed operations under an owner-controlled
57 insurance program for any period beyond the period for which the
58 program provides liability coverage, as specified in s.

59 255.0517(2)(b). The period of such coverage must be sufficient
60 to protect against liability arising out of an action brought
61 within the time limits provided in s. 95.11(12) ~~s. 95.11(3)(e)~~.

62 Section 3. Present subsections (8) through (15) of section
63 558.004, Florida Statutes, are redesignated as subsections (9)
64 through (16), respectively, a new subsection (8) is added to
65 that section, and paragraphs (b) and (c) of subsection (1) and
66 subsection (7) of that section are amended, to read:

67 558.004 Notice and opportunity to repair.—

68 (1)

69 (b)1. The notice of claim must include an inspection report



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that is verified pursuant to s. 92.525 by a contractor,
engineer, building code inspector, or other inspector who has a
state license and experience relevant to the type of
construction that is the basis of the claim. The report must
include all of the following:

a. A short statement describing the relevant experience and
licenses of the person conducting the inspection.

b. A description of each alleged construction defect, a
clear description of the location of the defect; pictures,
videos, and any results of testing which pertain to the defect;
and, if known, an explanation of the damage resulting from the
defect.

c. A description of how the inspection was conducted,
including a description of any specialized equipment used during
the inspection or of any tests conducted.

d. An explanation of whether or to what extent and how the
property owner or person acting at the direction of the property
owner inspected, maintained, repaired, or renovated a portion of
the structure containing the alleged defect since the owner took
possession of the structure.

2. The preparation of an inspection report in bad faith
constitutes grounds for discipline by any relevant licensing
board or agency.

3. The claimant and the person preparing the inspection
report do not have an ~~describe in reasonable detail the nature~~
~~of each alleged construction defect and, if known, the damage or~~
~~loss resulting from the defect. Based upon at least a visual~~
~~inspection by the claimant or its agents, the notice of claim~~
~~must identify the location of each alleged construction defect~~



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99 ~~sufficiently to enable the responding parties to locate the~~
100 ~~alleged defect without undue burden. The claimant has no~~
101 obligation to perform destructive or other testing for purposes
102 of this notice.

103 (c) The claimant shall endeavor to serve the notice of
104 claim within 15 days after discovery of an alleged defect, but
105 the failure to serve notice of claim within 15 days does not bar
106 the filing of an action, subject to s. 558.003. This subsection
107 does not preclude a claimant from filing an action sooner than
108 60 days, or 120 days as applicable, after service of written
109 notice as expressly provided in subsection (6), subsection (7),
110 or subsection (9) ~~(8)~~.

111 (7) (a) A claimant who receives a timely settlement offer
112 must accept or reject the offer by serving written notice of
113 such acceptance or rejection on the person making the offer
114 within 45 days after receiving the settlement offer.

115 (b) If the claimant rejects the settlement offer, the
116 claimant must include the reasons for rejecting the offer in the
117 notice rejecting the offer. If the claimant believes that the
118 settlement offer omitted reference to any portion of the claim
119 or was unreasonable in any manner, the claimant must include in
120 the notice the items that the claimant believes were omitted and
121 state in detail all known reasons why the claimant believes the
122 settlement offer is unreasonable.

123 (c) Upon receipt of a claimant's notice of rejection and
124 the reasons for such rejection, the person served with the
125 rejection, within 15 days after receipt of the notice, may make
126 a supplemental offer of repair or monetary payment, or both, to
127 the claimant.



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128 (d) If the claimant rejects a supplemental offer to repair
129 the construction defect or to settle the claim by monetary
130 payment or a combination of both, the claimant must serve
131 written notice of the claimant's rejection on the person making
132 the supplemental offer. The notice must include all known
133 reasons for the claimant's rejection of the supplemental
134 settlement offer.

135 (e) If a claimant initiates an action without first
136 accepting or rejecting the offer or supplemental offer, the
137 court shall stay the action upon timely motion until the
138 claimant complies with this subsection.

139 (8) (a) If the claimant rejects a timely settlement offer or
140 supplemental offer provided to remedy the alleged construction
141 defect at no cost to the claimant, in any action brought for
142 that defect, the claimant may not recover attorney fees from the
143 offeror on any basis unless the claimant proves by a
144 preponderance of the evidence that, at the time of the offer,
145 additional repairs beyond those offered were necessary to remedy
146 the defect. This paragraph does not apply to any claim for
147 attorney fees based on a contract between the claimant and the
148 offeror.

149 (b) If a claimant accepts an offer made pursuant to
150 paragraph (5) (b), paragraph (5) (c), or paragraph (5) (e) or a
151 supplemental offer made pursuant to paragraph (7) (c), the
152 claimant must, within 90 days after the acceptance, enter into a
153 contract with one or more appropriately licensed contractors to
154 complete the repairs necessary to remedy the alleged
155 construction defect. The offeror or insurer shall pay directly
156 to the contractor or contractors, from the accepted monetary



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payment, the amounts necessary to begin and to continue the
repairs as the work is performed and expenses are incurred. The
offeror or insurer may not require the claimant to advance
payment for the repairs. The repairs must be completed within 12
months after the claimant enters into the contract for repairs,
absent mutual agreement between the offeror or insurer and the
claimant.

Section 4. Section 558.0045, Florida Statutes, is created
to read:

558.0045 Construction defect actions.-

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

And the title is amended as follows:

Delete lines 3 - 7

and insert:

amending s. 95.11, F.S.; revising the limitations
period for certain actions founded on the design,
planning, or construction of an improvement to real
property; amending s. 627.441, F.S.; conforming a
cross-reference; amending s. 558.004, F.S.; requiring
a notice of claim to include an inspection report that
is verified by the person conducting the inspection;
specifying the required contents of the report;
providing that a bad faith preparation of an
inspection report constitutes grounds for discipline;
specifying that the person preparing the inspection
report does not have an obligation to perform certain
testing; requiring

By the Committees on Community Affairs; and Judiciary; and
Senator Hutson

578-01974-22

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1 A bill to be entitled
2 An act relating to construction defect claims;
3 amending s. 95.11, F.S.; defining terms; revising the
4 limitations period for certain actions founded on the
5 design, planning, or construction of an improvement on
6 real property; amending s. 627.441, F.S.; conforming a
7 cross-reference; amending s. 558.004, F.S.; requiring
8 a claimant to include the reasons for rejecting an
9 offer in a notice rejecting a settlement offer to
10 remedy a construction defect; authorizing the person
11 served with a notice rejecting a settlement offer to
12 make a supplemental offer within a specified
13 timeframe; providing notice requirements for a
14 claimant who rejects a supplemental offer; requiring
15 the court to stay an action if a claimant initiates an
16 action without first accepting or rejecting a
17 supplemental offer; limiting entitlement to attorney
18 fees if a claimant rejects certain settlement offers
19 to fully repair an alleged construction defect;
20 requiring a claimant who accepts a certain offer to
21 enter into a contract to complete repairs to remedy an
22 alleged construction defect; requiring the offeror or
23 insurer to pay the contractor or contractors directly
24 for the repairs; prohibiting an offeror or insurer
25 from requiring a claimant to advance payment for
26 repairs; requiring that the repairs be completed
27 within a specified timeframe; creating s. 558.0045,
28 F.S.; requiring a court to appoint an expert to
29 examine certain alleged construction defects and to

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

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30 prepare an examination report, under certain
31 circumstances; requiring that the report contain
32 specified information; requiring the parties to
33 compensate the expert; prohibiting the expert from
34 being employed to make repairs or from recommending
35 contractors to make repairs; creating s. 558.0046,
36 F.S.; requiring a claimant to repair a construction
37 defect if the claimant receives compensation for an
38 alleged construction defect from specified persons;
39 providing that a claimant is liable for damages
40 resulting from failure to disclose a construction
41 defect to a purchaser of a property; providing
42 applicability; providing an effective date.
43
44 Be It Enacted by the Legislature of the State of Florida:
45
46 Section 1. Paragraph (c) of subsection (3) of section
47 95.11, Florida Statutes, is amended, and subsection (12) is
48 added to that section, to read:
49 95.11 Limitations other than for the recovery of real
50 property.—Actions other than for recovery of real property shall
51 be commenced as follows:
52 (3) WITHIN FOUR YEARS.—
53 ~~(c) An action founded on the design, planning, or~~
54 ~~construction of an improvement to real property, with the time~~
55 ~~running from the date of actual possession by the owner, the~~
56 ~~date of the issuance of a certificate of occupancy, the date of~~
57 ~~abandonment of construction if not completed, or the date of~~
58 ~~completion of the contract or termination of the contract~~

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~~between the professional engineer, registered architect, or licensed contractor and his or her employer, whichever date is latest; except that, when the action involves a latent defect, the time runs from the time the defect is discovered or should have been discovered with the exercise of due diligence. In any event, the action must be commenced within 10 years after the date of actual possession by the owner, the date of the issuance of a certificate of occupancy, the date of abandonment of construction if not completed, or the date of completion of the contract or termination of the contract between the professional engineer, registered architect, or licensed contractor and his or her employer, whichever date is latest. However, counterclaims, cross claims, and third party claims that arise out of the conduct, transaction, or occurrence set out or attempted to be set out in a pleading may be commenced up to 1 year after the pleading to which such claims relate is served, even if such claims would otherwise be time barred. With respect to actions founded on the design, planning, or construction of an improvement to real property, if such construction is performed pursuant to a duly issued building permit and if a local enforcement agency, state enforcement agency, or special inspector, as those terms are defined in s. 553.71, has issued a final certificate of occupancy or certificate of completion, then as to the construction which is within the scope of such building permit and certificate, the correction of defects to completed work or repair of completed work, whether performed under warranty or otherwise, does not extend the period of time within which an action must be commenced. Completion of the contract means the later of the date of final performance of all~~

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~~the contracted services or the date that final payment for such services becomes due without regard to the date final payment is made.~~

(12) ACTIONS RELATING TO AN IMPROVEMENT TO REAL PROPERTY.-

(a) Definitions.-As used in this subsection, the term:

1. "Category 1 improvement" includes a detached single-family home, including a manufactured home, or a standalone building or structure, intended for use by a single business, occupant, or owner, not exceeding three stories in height and related improvements to such homes, buildings, or structures.

2. "Category 2 improvement" includes a single-family dwelling unit not exceeding three stories in height which is constructed in a series or group of attached units or a commercial or nonresidential building not exceeding three stories in height and related improvements to such dwellings, buildings, or structures.

3. "Category 3 improvement" includes commercial or residential buildings or structures of four or more stories in height and related improvements to such buildings or structures.

4. "Category 4 improvement" includes an improvement that is not a category 1 improvement, category 2 improvement, or category 3 improvement.

5. "Completion of the contract" means the later of the date of final performance of all the contracted services or the date that final payment for such services becomes due without regard to the date final payment is made.

(b) Running of time to commence action.-An action founded on the design, planning, or construction of an improvement to real property must be commenced within the timeframes set forth

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in this section or the action is time barred.

1. The time to commence the action runs from the date of actual possession by the owner, the date of the issuance of a certificate of occupancy, the date of abandonment of construction if not completed, or the date of completion of the contract or termination of the contract between the professional engineer, registered architect, or licensed contractor and his or her employer, whichever date is earliest.

2. Counterclaims, cross-claims, and third-party claims that arise out of the conduct, transaction, or occurrence set out or attempted to be set out in a pleading may be commenced up to 1 year after the pleading to which such claims relate is served, even if such claims would otherwise be time barred.

3. If the action is based on construction that is performed pursuant to a duly issued building permit and if a local enforcement agency, state enforcement agency, or special inspector, as those terms are defined in s. 553.71, has issued a final certificate of occupancy or certificate of completion, then as to the construction which is within the scope of such building permit and certificate, the correction of defects to completed work or repair of completed work, whether performed under warranty or otherwise, does not extend the period of time within which an action must be commenced.

(c) Limitations and repose periods.-

1. An action founded on the design, planning, or construction of an improvement to real property may be commenced within 4 years after the time to commence an action begins to run.

2. An action involving a latent defect may be commenced

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within 4 years after the facts giving rise to the cause of action are discovered or should have been discovered through the exercise of due diligence. However, the action may not be commenced more than 5 years after the time for commencing an action begins to run for a category 1 improvement, 7 years for a category 2 improvement, and 10 years for a category 3 or category 4 improvement.

Section 2. Subsection (2) of section 627.441, Florida Statutes, is amended to read:

627.441 Commercial general liability policies; coverage to contractors for completed operations.-

(2) A liability insurer must offer coverage at an appropriate additional premium for liability arising out of current or completed operations under an owner-controlled insurance program for any period beyond the period for which the program provides liability coverage, as specified in s. 255.0517(2)(b). The period of such coverage must be sufficient to protect against liability arising out of an action brought within the time limits provided in s. 95.11(12) ~~or 95.11(3)(c)~~.

Section 3. Present subsections (8) through (15) of section 558.004, Florida Statutes, are redesignated as subsections (9) through (16), respectively, a new subsection (8) is added to that section, and paragraph (c) of subsection (1) and subsection (7) of that section are amended, to read:

558.004 Notice and opportunity to repair.-

(1)

(c) The claimant shall endeavor to serve the notice of claim within 15 days after discovery of an alleged defect, but the failure to serve notice of claim within 15 days does not bar

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the filing of an action, subject to s. 558.003. This subsection does not preclude a claimant from filing an action sooner than 60 days, or 120 days as applicable, after service of written notice as expressly provided in subsection (6), subsection (7), or subsection (9) ~~(8)~~.

(7) (a) A claimant who receives a timely settlement offer must accept or reject the offer by serving written notice of such acceptance or rejection on the person making the offer within 45 days after receiving the settlement offer.

(b) If the claimant rejects the settlement offer, the claimant must include the reasons for rejecting the offer in the notice rejecting the offer. If the claimant believes that the settlement offer omitted reference to any portion of the claim or was unreasonable in any manner, the claimant must include in the notice the items that the claimant believes were omitted and state in detail all known reasons why the claimant believes the settlement offer is unreasonable.

(c) Upon receipt of a claimant's notice of rejection and the reasons for such rejection, the person served with the rejection, within 15 days after receipt of the notice, may make a supplemental offer of repair or monetary payment, or both, to the claimant.

(d) If the claimant rejects a supplemental offer to repair the construction defect or to settle the claim by monetary payment or a combination of both, the claimant must serve written notice of the claimant's rejection on the person making the supplemental offer. The notice must include all known reasons for the claimant's rejection of the supplemental settlement offer.

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(e) If a claimant initiates an action without first accepting or rejecting the offer or supplemental offer, the court shall stay the action upon timely motion until the claimant complies with this subsection.

(8) (a) If the claimant rejects a timely settlement offer or supplemental offer provided to remedy the alleged construction defect at no cost to the claimant, in any action brought for that defect, the claimant may not recover attorney fees from the offeror on any basis unless the claimant proves by a preponderance of the evidence that, at the time of the offer, additional repairs beyond those offered were necessary to remedy the defect. This paragraph does not apply to any claim for attorney fees based on a contract between the claimant and the offeror.

(b) If a claimant accepts an offer made pursuant to paragraph (5) (b), paragraph (5) (c), or paragraph (5) (e) or a supplemental offer made pursuant to paragraph (7) (c), the claimant must, within 90 days after the acceptance, enter into a contract with one or more appropriately licensed contractors to complete the repairs necessary to remedy the alleged construction defect. The offeror or insurer shall pay directly to the contractor or contractors, from the accepted monetary payment, the amounts necessary to begin and to continue the repairs as the work is performed and expenses are incurred. The offeror or insurer may not require the claimant to advance payment for the repairs. The repairs must be completed within 12 months after the claimant enters into the contract for repairs, absent mutual agreement between the offeror or insurer and the claimant.

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Section 4. Section 558.0045, Florida Statutes, is created to read:

558.0045 Construction defect actions; attorney fees and costs.—

(1) In a civil action alleging a construction defect, the court shall appoint an engineer, a contractor, a building code inspector, or another expert having experience in the type of construction that is the basis of the claimant's claim to examine the alleged defect or, if repairs have been made, any evidence of the alleged defect. However, the court may not appoint an expert if all of the parties object or if the court finds that the costs of an expert outweigh any potential benefits to the resolution of the action. If an expert is appointed, the expert must coordinate and communicate with the parties as directed by the court. Within 15 days after conducting the examination, or as otherwise determined by the court, the expert shall submit a written report to the court for its consideration and to the parties which contains the expert's findings. The report must do all of the following:

(a) Describe how the expert conducted the examination of the alleged defect.

(b) Identify persons present at the site of the improvement while the expert conducted the examination.

(c) Include photographs or other documentation of the alleged defect including any relevant test results.

(d) State whether the damages claimed by the claimant are more likely than not the result of a construction defect, another identified cause, or a construction defect and another identified cause.

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(e) Address other matters related to the alleged defect as directed by the court.

(2) If the expert concludes that the damages are wholly or partially the result of a construction defect, the report must state the actions necessary to repair the defect and any repairs related to the defect, provide an estimate of the reasonable cost of repairs, and state the anticipated time needed for repairs under the current market conditions for construction services and materials.

(3) The parties shall compensate the expert, but the prevailing party is entitled to reimbursement from the nonprevailing party.

(4) An expert appointed by the court under this section may not be employed to repair the alleged defect or recommend contractors to repair the defect.

Section 5. Section 558.0046, Florida Statutes, is created to read:

558.0046 Duty to repair construction defect.—If a claimant receives compensation for an alleged construction defect from a contractor, a subcontractor, a supplier, a design professional, or an insurer, the claimant must repair the defect. A claimant who receives compensation and fails to fully repair the defect is liable to a purchaser of the property for any damages resulting from the failure to disclose the defect.

Section 6. (1) The amendments by this act to s. 95.11(3)(c), Florida Statutes, apply to any action commenced on or after July 1, 2022, regardless of when the cause of action accrued. However, any action that would not have been barred under s. 95.11(3)(c), Florida Statutes, before the amendments

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291 made by this act to that section may be commenced before July 1,
292 2023. If such action is not commenced by July 1, 2023, and is
293 barred by the amendments made by this act to s. 95.11(3)(c),
294 Florida Statutes, the action is barred.

295 (2) Sections 3 through 5 of this act apply to compensation
296 for construction defects received on or after July 1, 2022, and
297 to civil actions and proceedings for a construction defect which
298 are initiated on or after July 1, 2022.

299 Section 7. This act shall take effect July 1, 2022.

The Florida Senate

APPEARANCE RECORD

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

213/2022

Meeting Date

Rules

Committee

736

Bill Number or Topic

Amendment Barcode (if applicable)

Name Carol BOWEN

Phone (954) 425-6811

Address 3730 Coconut Creek Parkway, Ste 200

Email cbowen@delcrestflorida.com

Coconut Creek FL

33066

City

State

Zip

Speaking:

☐ For

☐ Against

☒ Information

OR

Waive Speaking:

☐ In Support

☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without
compensation or sponsorship.

☒ I am a registered lobbyist,
representing:

Associated Builders
and Contractors of Florida

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

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

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

S-001 (08/10/2021)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/3/22

Meeting Date

SB 736

Bill Number (if applicable)

Topic Construction Defects

Amendment Barcode (if applicable)

Name Martin Langensfeld

Job Title _____

Address 11310 NW 53 Lane

Street

Phone 305-494-4767

Doral
City

FL
State

33178
Zip

Email martinlangensfeld@gmail.com

Speaking: ☐ For ☒ Against ☐ Information

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

Representing _____

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

Feb 3, 2022
Meeting Date

SB 736
Bill Number (if applicable)

Topic Construction Defect

Amendment Barcode (if applicable)

Name Sean M Heaney

Job Title Bldg Contractor

Address 545-9 Delaney Ave
Street
Orlando FL 32801
City State Zip

Phone (407) 947-6484

Email sean@smhcsi.com

Speaking: ☐ For ☒ Against ☐ Information

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

Representing _____

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/3/22
Meeting Date

SB 736
Bill Number (if applicable)

Topic Construction Defect

Amendment Barcode (if applicable)

Name ANNIE MARKS

Job Title Property manager

Address 6450 Solano Farm Rd
Street
EIKON FL 32033
City State Zip

Phone 904-669-1330

Email amarks@maymbt.com

Speaking: ☐ For ☒ Against ☐ Information

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

Representing _____

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/13/22

Meeting Date

SB 736

Bill Number (if applicable)

Topic Chapter 558

Amendment Barcode (if applicable)

Name Brian Crevasse

Job Title Attorney

Address 136 Island Hammock Way

Phone 904-826-6165

Street

St. Augustine FL 32080

City

State

Zip

Email bcrevasse@billjenn.com

Speaking: ☐ For ☒ Against ☐ Information

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

Representing _____

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/14/14)

The Florida Senate

APPEARANCE RECORD

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

2/3/22

Meeting Date

Rules

Committee

736

Bill Number or Topic

Amendment Barcode (if applicable)

Name

Frank Severino

Phone

386-257-1943

Address

1360 N Nova Rd

Email

Frank@BSAHE.com

Street

Daytona Bch, FL 32117

City

State

Zip

Speaking:



For



Against



Information

OR

Waive Speaking:



In Support



Against

PLEASE CHECK ONE OF THE FOLLOWING:



I am appearing without
compensation or sponsorship.



I am a registered lobbyist,
representing:



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

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

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

S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

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

2-3-22

Meeting Date

Rules

Committee

736

Bill Number or Topic

Amendment Barcode (if applicable)

Name

Chris Wood

Phone

904-449-1650

Address

12276 San Jose Blvd #120

Email

cwood@myriversidehome.com

Street

Jacksonville

City

FL

State

32223

Zip

Speaking:



For



Against



Information

OR

Waive Speaking:



In Support



Against

PLEASE CHECK ONE OF THE FOLLOWING:



I am appearing without
compensation or sponsorship.



I am a registered lobbyist,
representing:



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

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

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

S-001 (08/10/2021)

The Florida Senate
APPEARANCE RECORD

2-3-21

SB 736

Meeting Date

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

Bill Number or Topic

Committee

Amendment Barcode (if applicable)

Name

Phone

Address

Email

Street

City

State

Zip

Speaking:

☒

For

☐

Against

☐

Information

OR

Waive Speaking:

☐

In Support

☐

Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐

I am appearing without
compensation or sponsorship.

☒

I am a registered lobbyist,
representing:

☐

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

FLORIDA HOME BUILDERS ASSOC.

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

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

S-001 (08/10/2021)

The Florida Senate

02.03.22

APPEARANCE RECORD

736

Meeting Date

Bill Number or Topic

Rules

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

Committee

Amendment Barcode (if applicable)

Name William Large

Phone 850-222-0170

Address 210 South Monroe Street
Street

Email William@fljustice.org

Tallahassee

FL

32301

City

State

Zip

Speaking: ☐ For ☐ Against ☐ Information **OR** Waive Speaking: ☒ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without
compensation or sponsorship.

☒ I am a registered lobbyist,
representing:

Florida Justice Reform Institute

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

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

S-001 (08/10/2021)

2/3/22

The Florida Senate

APPEARANCE RECORD

736

Meeting Date

Bill Number or Topic

Rules

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

Committee

Amendment Barcode (if applicable)

Tim Nungesser

850-445-5367

Name

Phone

Address

110 East Jefferson St

Tim.nungesser@nfib.org

Email

Street

Tallahassee

FL

32301

City

State

Zip

Reset Form

Speaking:

☐

For

☐

Against

☐

Information

OR

Waive Speaking:

☒

In Support

☐

Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐

I am appearing without
compensation or sponsorship.

☒

I am a registered lobbyist,
representing:

**NFIB (National Federation of
Independent Business)**

☐

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

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

S-001 (08/10/2021)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL: CS/SB 756

INTRODUCER: Children, Families, and Elder Affairs Committee and Senator Diaz

SUBJECT: Public Records/Human Trafficking Victims

DATE: February 1, 2022

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. <u>Moody</u>	<u>Cox</u>	<u>CF</u>	Fav/CS
2. <u>Limonas-Borja</u>	<u>McVane</u>	<u>GO</u>	Favorable
3. <u>Moody</u>	<u>Phelps</u>	<u>RC</u>	Favorable

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE – Substantial Changes

I. Summary:

CS/SB 756 amends s. 943.0583, F.S., to expand the public records exemption regarding the expunction of a criminal history record of a human trafficking victim relating to offenses listed under the habitual violent felony offender designation *if* the defendant was not found guilty of, or did not pled guilty or nolo contendere to, such an offense. Current law prohibits – without qualification – the expunction of a criminal history record related to offenses listed under the habitual violent felony offender designation.

The bill also makes confidential and exempt from public records copying and inspection requirements any petition filed by a human trafficking victim to expunge a criminal history record and all pleadings and documents related to the petition.

The bill makes legislative findings, to meet requirements of the State Constitution, that the expansion of the current exemption and the creation of new exemption from public records disclosure are each a public necessity. The bill requires a two-thirds vote of the members present and voting for final passage.

The exemption is subject to the Open Government Sunset Review Act (act) and will stand repealed on October 2, 2027, unless reviewed and reenacted by the Legislature.

The bill expressly provides that if the expansion of the exemption related to the human trafficking victim expunction is not saved from repeal, the provision will revert to the version as it exists on June 30, 2022, except that any amendments to the subsection must be preserved and

continue to operate to the extent that such amendments are not dependent upon the portions of the expanded exemption which expire.

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

The bill is effective July 1, 2022.

II. Present Situation:

Access to Public Records – Generally

The State 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, F.S., provides public access requirements for legislative records. Relevant exemptions are codified in s. 11.0431(2)-(3), F.S., and 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., known as the Public Records Act, provides requirements for public records held by executive agencies.

Executive Agency Records – The Public Records Act

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

Section 119.011(12), F.S., defines “public records” to include:

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 connections with the transaction of official business by any agency.

¹ FLA. CONST. art. I, s. 24(a).

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.”

The Florida Supreme Court has interpreted this definition to encompass all materials made or received by an agency in connection with official business that are used to “perpetuate, communicate, or formalize knowledge of some type.”⁶

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.⁷ A violation of the Public Records Act may result in civil or criminal liability.⁸

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.⁹ 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.¹⁰

General exemptions from the public records requirements are contained in the Public Records Act.¹¹ Specific exemptions often are placed in the substantive statutes relating to a particular agency or program.¹²

When creating a public records exemption, the Legislature may provide that a record is “exempt” or “confidential and exempt.” There is a difference between records the Legislature has determined to be exempt from the Public Records Act and those which the Legislature has determined to be exempt from the Public Records Act *and confidential*.¹³ Records designated as “confidential and exempt” are not subject to inspection by the public and may only be released under the circumstances defined by statute.¹⁴ Records designated as “exempt” may be released at the discretion of the records custodian under certain circumstances.¹⁵

⁶ *Shevin v. Byron, Harless, Schaffer, Reid and Assoc., Inc.*, 379 So. 2d 633, 640 (Fla. 1980).

⁷ Section 119.07(1)(a), F.S.

⁸ Section 119.10, F.S. Public records laws are found throughout the Florida Statutes, as are the penalties for violating those laws.

⁹ FLA. CONST. art. I, s. 24(c).

¹⁰ *Id. 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).

¹¹ *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).

¹² *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).

¹³ *WFTV, Inc. v. The Sch. Bd. of Seminole County*, 874 So. 2d 48, 53 (Fla. 5th DCA 2004).

¹⁴ *Id.*

¹⁵ *Williams v. City of Minneola*, 575 So. 2d 683 (Fla. 5th DCA 1991).

Open Government Sunset Review Act

The provisions of s. 119.15, F.S., known as the Open Government Sunset Review Act¹⁶ (the Act), prescribe a legislative review process for newly created or substantially amended¹⁷ public records or open meetings exemptions, with specified exceptions.¹⁸ The Act requires the 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

The Act also requires specified questions to be considered during the review process.²⁴ In examining an exemption, the Act directs the Legislature to 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

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., provides that exemptions required by federal law or 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.

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 Section 119.15, F.S.

for passage are *not* required. If the Legislature allows an exemption to expire, the previously exempt records will remain exempt unless otherwise provided by law.²⁶

Human Trafficking

Human trafficking is a form of modern-day slavery.²⁷ Human trafficking victims can be young children, teenagers, and adults. Some of which may be citizens that are trafficked domestically within the borders of the United States, while others are smuggled across international borders worldwide.²⁸ Many human trafficking victims are induced with false promises of financial or emotional security, but are forced or coerced into commercial sex, domestic servitude, or other types of forced labor.²⁹ Any minor who is younger than 18 years old and who is induced to perform a commercial sex act is a human trafficking victim, even if there is no force, fraud, or coercion.³⁰ Increasingly, criminal organizations, such as gangs, are enticing local school children into commercial sexual exploitation or trafficking.³¹

Human Trafficking in Florida

Florida law defines “human trafficking” as transporting, soliciting, recruiting, harboring, providing, enticing, maintaining,³² purchasing, patronizing, procuring, or obtaining³³ another person for the purpose of exploitation of that person.³⁴ In Florida, any person who knowingly, or in reckless disregard of the facts, engages in human trafficking, or attempts to engage in human trafficking, or benefits financially by receiving anything of value from participation in a venture that has subjected a person to human trafficking for labor or services, or commercial sexual activity, commits a crime.³⁵ Florida law sets out several circumstances that give rise to specified penalties including, in part:

- Labor or services of any child under the age of 18 commits a first degree felony;³⁶
- Labor or services of any child under the age of 18 who is an unauthorized alien³⁷ commits a first degree felony;³⁸

²⁶ Section 119.15(7), F.S.

²⁷ Section 787.06(1)(a), F.S.

²⁸ *Id.*

²⁹ The Department of Education (the DOE), *Healthy Schools – Human Trafficking*, available at <http://www.fldoe.org/schools/healthy-schools/human-trafficking.stml> (last visited January 20, 2022).

³⁰ *Id.*

³¹ *Id.*

³² Section 787.06(2)(f), F.S., provides “maintain” means, in relation to labor or services, to secure or make possible continued performance thereof, regardless of any initial agreement on the part of the victim to perform such type service. Section 787.06(2)(h), F.S., defines “services” as any act committed at the behest of, under the supervision of, or for the benefit of another, including forced marriage, servitude, or the removal of organs.

³³ Section 787.06(2)(g), F.S., provides “obtain” means, in relation to labor, commercial sexual activity, or services, to receive, take possession of, or take custody of another person or secure performance thereof. Section 787.06(2)(e), F.S., provides “labor” means work of economic or financial value.

³⁴ Section 787.06(2)(d), F.S.

³⁵ Section 787.06(3), F.S.

³⁶ Section 787.06(3)(a)1., F.S. A first degree felony is punishable by a state prison term not exceeding 30 years, a fine not exceeding \$10,000, or both. Sections 775.082 and 775.083, F.S.

³⁷ Section 787.06(2)(j), F.S., defines “unauthorized alien” as an alien who is not authorized under federal law to be employed in the United States, as provided in 8 U.S.C. s. 1324a(h)(3).

³⁸ Section 787.06(3)(c)1., F.S.

- Labor or services who does so by the transfer or transport of any child under the age of 18 from outside of Florida to within Florida commits a first degree felony;³⁹
- Commercial sexual activity⁴⁰ who does so by the transfer or transport of any child under the age of 18 from outside of Florida to within Florida commits a first degree felony;⁴¹ or
- Commercial sexual activity in which any child under the age of 18, or in which any person who is mentally defective⁴² or mentally incapacitated⁴³ is involved commits a life felony.⁴⁴

The above-mentioned first-degree felonies are reclassified as a life felony if a person causes great bodily harm, permanent disability, or permanent disfigurement to another person during the commission of the offense.⁴⁵ Ignorance of the human trafficking victim's age, the victim's misrepresentation of his or her age, or a bona fide belief of the victim's age cannot be raised as a defense by a defendant.⁴⁶

Florida is ranked the third highest state of reported human trafficking cases in the United States.⁴⁷ In 2020, the Florida Abuse Hotline received an increase in reports of commercially exploited children from 3,088 reports in 2019 to 3,181 reports in 2020.⁴⁸

Public Records Exemption relating to Human Trafficking

In part, current law provides a public record exemption for criminal intelligence⁴⁹ and criminal investigative information⁵⁰ including:

³⁹ Section 787.06(3)(e)1., F.S.

⁴⁰ Section 787.06(2)(b), F.S., defines "commercial sexual activity" as any violation of ch. 796, F.S., or an attempt to commit any such offense, and includes sexually explicit performances and the production of pornography. Section 787.06(2)(i), F.S., defines "sexual explicit performance" as an act or show, whether public or private, that is live, photographed, recorded, or videotaped and intended to arouse or satisfy the sexual desires or appeal to the prurient interest.

⁴¹ Section 787.06(3)(f)1., F.S., provides that an offense committed under these circumstances is punishable by a term of imprisonment not exceeding life or as provided in ss. 775.082, 775.083, or 775.084, F.S.

⁴² Section 794.011(1)(b), F.S., defines "mentally defective" as a mental disease or defect which renders a person temporarily or permanently incapable of appraising the nature of his or her conduct.

⁴³ Section 794.011(1)(c), F.S., defines "mental incapacitated" as temporarily incapable of appraising or controlling a person's own conduct due to the influence of a narcotic, anesthetic, or intoxicating substance administered without his or her consent or due to any other act committed upon that person without his or her consent.

⁴⁴ A life felony is punishable by a term of life imprisonment, \$15,000 fine, or both as provided in ss. 775.082(3)(a)6., 775.083, or 775.084, F.S.

⁴⁵ Section 787.06(8)(b), F.S.

⁴⁶ Section 787.06(9), F.S.

⁴⁷ Florida Alliance to End Human Trafficking, *We need to End Human Trafficking in the State of Florida*, available at <https://floridaallianceendht.com/> (last visited January 20, 2022).

⁴⁸ The Office of Program Policy Analysis and Government Accountability, *Annual Report on the Commercial Sexual Exploitation of Children in Florida*, 2021, p. 2, July 2021, available at Annual Report on CSE of Children, 2021 (fl.gov) (last visited January 20, 2022).

⁴⁹ Section 119.011(3)(a), F.S., defines "criminal intelligence information" as information with respect to an identifiable person or group of persons collected by a criminal justice agency in an effort to anticipate, prevent, or monitor possible criminal activity.

⁵⁰ Section 119.011(3)(b), F.S., defines "criminal investigative information" as information with respect to an identifiable person or group of persons compiled by a criminal justice agency in the course of conducting a criminal investigation of a specific act or omission, including, but not limited to, information derived from laboratory tests, reports of investigators or informants, or any type of surveillance.

- Any information that reveals the identity of a person under the age of 18 who is the victim of human trafficking for labor or services;
- Any information that may reveal the identity of a person who is the victim of human trafficking for commercial sexual activity; and
- A photograph, videotape, or image of any part of the body of a victim of human trafficking involving commercial sexual activity.⁵¹

Expunction

A person may have his or her criminal history record expunged under certain circumstances.⁵² When a record is expunged, the criminal justice agencies possessing such record must physically destroy or obliterate it. The Florida Department of Law Enforcement (FDLE) maintains a copy of the record to evaluate subsequent requests for sealing or expunction, and to recreate the record in the event a court vacates the order to expunge.⁵³ The criminal history record retained by the FDLE is confidential and exempt.⁵⁴ Once the record is expunged, a person may lawfully deny or fail to acknowledge the arrests covered by the expunged record, subject to exceptions.⁵⁵

Court Ordered Expunction

Section 943.0585, F.S., provides the courts discretion in dealing with the expunction of criminal history records if certain requirements are met. A court, in its discretion, may order the expunction of a person's criminal history record if the FDLE issues the person a certificate of eligibility for expunction.⁵⁶ The FDLE must issue a certificate of eligibility for court-ordered expunction to a person meeting all criteria.⁵⁷ Generally, a person is eligible for expunction if:

- An indictment, information, or other charging document was not filed or issued in the case giving rise to the criminal history record.
- An indictment, information, or other charging document was filed or issued in the case giving rise to the criminal history record, but was dismissed or nolle prosequi by the State, was dismissed by the court, a judgment of acquittal was rendered, or a verdict of not guilty was rendered.
- The person is not seeking to seal a criminal history record relating to a violation of certain enumerated offenses.
- The person has never, prior to filing the application for a certificate of eligibility, been either:
 - Adjudicated guilty of any criminal offense or comparable ordinance violation; or
 - Adjudicated delinquent of any felony or certain enumerated misdemeanors as a juvenile.
- The person has not been adjudicated guilty or delinquent for committing any of the acts stemming from the arrest or alleged criminal activity to which the petition to expunge pertains.
- The person has never secured a prior sealing or expunction, unless:

⁵¹ Section 119.071(2)(h)1., F.S.

⁵² Sections 943.0581, 943.0582, 943.0583, and 943.0585, F.S.

⁵³ Section 943.045(16), F.S.

⁵⁴ Section 943.0585(6)(a), F.S.

⁵⁵ Section 943.0585(6), F.S.

⁵⁶ Section 943.0585(4), F.S.

⁵⁷ Section 943.0585(2), F.S.

- Expunction is sought of a criminal history record previously sealed for at least 10 years; and
- The record was sealed because adjudication was withheld, or because a judgment of acquittal or verdict of not guilty was rendered.⁵⁸

Human Trafficking Victim Expunction

In 2013, the Legislature created a process authorizing a victim of human trafficking to petition a court for the expunction⁵⁹ of a criminal history record resulting from his or her arrest or filing of charges for an offense committed or reported to have been committed while he or she was a victim of human trafficking.⁶⁰

For purposes of record expunction, “victim of human trafficking” means a person subjected to coercion⁶¹ for the purpose of being used in human trafficking, a child under 18 years of age subjected to human trafficking, or an individual subjected to human trafficking as defined by federal law.⁶²

To be eligible for expunction, the criminal offense must be related to a human trafficking scheme of which the person was a victim or the offense must have been committed at the direction of an operator of the scheme and must not be one of the offenses under s. 775.084(1)(b)1., F.S., including:

- Arson;
- Sexual battery;
- Robbery;
- Kidnapping;
- Aggravated child abuse;
- Aggravated abuse of an elderly person or disabled adult;
- Aggravated assault with a deadly weapon;
- Murder;
- Manslaughter;
- Aggravated manslaughter of an elderly person or disabled adult;
- Aggravated manslaughter of a child;
- Unlawful throwing, placing, or discharging of a destructive device or bomb;

⁵⁸ Section 943.0585(1), F.S.

⁵⁹ When a criminal history record is ordered to be expunged, the record must be physically destroyed by any criminal justice agency possessing such record, except that any criminal history record in the custody of the Florida Department of Law Enforcement (FDLE) must be retained. *See* s. 943.045(16), F.S.

⁶⁰ Section 943.0583(3), F.S.

⁶¹ Section 787.06, F.S., defines “coercion” as “1. Using or threatening to use physical force against any person; 2. Restraining, isolating, or confining or threatening to restrain, isolate, or confine any person without lawful authority against his or her will; 3. Using lending or other credit methods to establish a debt by any person when labor or services are pledged as a security for the debt, if the value of the labor or services as reasonably assessed is not applied toward the liquidation of the debt, the length and nature of the labor or services are not respectively limited and defined; 4. Destroying, concealing removing, confiscating, withholding, or possessing any actual or purported passport, visa, or other immigration document, or any other actual or purported government identification document, of any person; 5. Causing or threatening to cause financial harm to any person; 6. Enticing or luring any person by fraud or deceit; or 7. Providing a controlled substance as outlined in Schedule I or Schedule II of s. 893.03, F.S., to any person for the purpose of exploitation of that person.”

⁶² Section 943.0583(1)(c), F.S.

- Armed burglary; or
- Aggravated stalking.⁶³

The human trafficking victim is eligible to receive the expunction regardless of the disposition of the arrest or of any charges unless the criminal history record is related to one of the above-listed offenses.

The court with original jurisdiction over the crime that the human trafficking victim seeks to expunge is the court designated to hear the victim's petition.⁶⁴ A petition must be initiated by the petitioner with due diligence after he or she is no longer a victim of human trafficking or has sought human trafficking services.⁶⁵ The petition must be accompanied by the following:

- A sworn statement attesting that the petitioner is eligible for an expunction to the best of his or her knowledge and does not have other petitions to expunge or seal pending before any court; and
- Official documentation of the petitioner's status as a human trafficking victim, if any exists.⁶⁶

In contrast to other expunctions made under s. 943.0585, F.S., a court is required to treat a petition seeking to expunge more than one eligible case as a single petition.⁶⁷ Florida's clerks of court are prohibited from charging a filing fee, service charge, or copy fee or any other charge for a petition for a human trafficking victim expunction.⁶⁸

When a criminal history record is ordered to be expunged, the record must be physically destroyed by any criminal justice agency possessing such record, except if it is retained by the FDLE. A human trafficking victim may lawfully deny or fail to acknowledge any expunged record unless he or she is applying for a job within a criminal justice agency or is a defendant in a subsequent criminal prosecution.⁶⁹ The criminal history record that has been expunged is considered confidential and exempt⁷⁰ from public records requirements.⁷¹

⁶³ Section 943.0583(3), F.S. This subsection provides that expunction is not permitted if the offense is related to an offense enumerated in s. 775.084(1)(b)1., F.S., related to habitual violent felony offenders.

⁶⁴ Section 943.0583(2), F.S.

⁶⁵ Section 943.0583(4), F.S.

⁶⁶ Section 943.0583(6), F.S.

⁶⁷ Section 943.0583(2), F.S.

⁶⁸ *Id.*

⁶⁹ Section 943.0583(8)(b), F.S.

⁷⁰ Records designated as "confidential and exempt" are not subject to inspection by the public and may only be released under the circumstances defined by statute. *WFTV, Inc. v. The Sch. Bd. of Seminole County*, 874 So. 2d 48, 53 (Fla. 5th DCA 2004). Records designated as "exempt" may be released at the discretion of the records custodian under certain circumstances. *Williams v. City of Minneola*, 575 So. 2d 683 (Fla. 5th DCA 1991).

⁷¹ Section 119.071(2)(h), F.S.

Current law also provides that criminal intelligence⁷² and criminal investigative information⁷³ is confidential and exempt from public records requirements. Such information includes:⁷⁴

- Any information that reveals the identity of a person under the age of 18 who is the victim of human trafficking for labor or services;⁷⁵
- Any information that may reveal the identity of a person who is the victim of human trafficking for commercial sexual activity;⁷⁶ and
- A photograph, videotape, or image of any part of the body of a victim of human trafficking involving commercial sexual activity.⁷⁷

Florida law does not currently provide a public records exemption for a human trafficking victim's petition and any accompanying documents for expunction of his or her criminal history record resulting from an offense committed while he or she was a victim of human trafficking.

III. Effect of Proposed Changes:

Section 1 amends s. 943.0583, F.S., to expand the public records exemption authorizing human trafficking victims to expunge a criminal history record related to any offense listed in s. 775.084(1)(b)1., F.S. - the habitual violent felony offender designation - *if* the defendant was not found guilty of, or pled guilty or nolo contendere to, any such an offense. This section provides that the expansion of the public records exemption is subject to the Open Government Sunset Review Act and will be repealed on October 2, 2027, unless the Legislature reviews and renews the expansion of the exemption before that date. This section also specifies that if the expansion is not saved, the subsection will revert to the version in existence at June 30, 2022, except that any amendments to this subsection other than by this act shall be preserved and continued to operate to the extent that they are not dependent upon the portions of this subsection that expire.

This section also makes confidential and exempt from public inspection and copying requirements a petition filed by a human trafficking victim to expunge a criminal history record and all pleadings and all related documents to the petition. This section specifies that this new public records exemption is subject to the Open Government Sunset Review Act and will be repealed on October 2, 2027, unless the Legislature reviews and renews the exemption before that date.

Section 2 provides statements of public necessity to meet the requirements of the State Constitution, which note:

⁷² Section 119.011(3)(a), F.S., defines "criminal intelligence information" as information with respect to an identifiable person or group of persons collected by a criminal justice agency in an effort to anticipate, prevent, or monitor possible criminal activity.

⁷³ Section 119.011(3)(b), F.S., defines "criminal investigative information" as information with respect to an identifiable person or group of persons compiled by a criminal justice agency in the course of conducting a criminal investigation of a specific act or omission, including, but not limited to, information derived from laboratory tests, reports of investigators or informants, or any type of surveillance.

⁷⁴ Ch. 2015-146 Laws of Fla.

⁷⁵ See s. 787.06(3)(a), F.S.

⁷⁶ See s. 787.06(3)(b), (d), (f), and (g), F.S.

⁷⁷ *Id.*

[t]he Legislature finds it a public necessity that criminal history records of human trafficking victims related to any offense listed in s. 775.084(1)(b)1. that was dismissed or nolle prosequi by the state attorney or statewide prosecutor, or was dismissed by a court of competent jurisdiction or a judgment of acquittal was rendered by a judge, or a verdict of not guilty was rendered by a judge or jury, and that are ordered to be expunged under s. 943.0583, F.S., be made confidential and exempt from 119.07(1), F.S., and s. 24(a), Article I of the State Constitution. Further, the Legislature finds that it is a public necessity that a petition filed under s. 943.0583, F.S., and all pleadings and documents related to the petition be made confidential and exempt from s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution. Persons who are victims of human trafficking and who have been arrested, charged, or convicted of crimes committed at the behest of their traffickers are themselves victims of crimes. These victims face barriers to employment and loss of other life opportunities, and the fact that they are seeking expungement, as well as the information contained in related pleadings and documents, would expose these petitioners to possible discrimination due to details of their past lives becoming public knowledge. Therefore, it is necessary that these specified criminal history records, even though such record is related to certain serious offenses, and these petitions, pleadings, and related documents be made confidential in order for human trafficking victims to have the chance to rebuild their lives and reenter society.

Section 3 provides that the bill takes effect July 1, 2022.

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 a two-thirds vote of the members present and voting for final passage of a bill creating or expanding an exemption to the public records requirements. This bill expands a current exemption to make certain criminal history records subject to expunction and creates a new exemption for a petition for expunction filed by a human trafficking victim and all pleadings and documents related to the petition. Thus, the bill requires a two-thirds vote to be enacted.

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. Section 2 of the bill contains statements of public necessity for the exemptions.

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 stated purpose of the bill is to protect human trafficking victims from exposure to possible discrimination due to details of their past lives becoming public knowledge. This bill expands a public records exemption for certain criminal history records related to offenses listed in s. 775.084(1)(b)1., and creates a new public records exemption for a petition for expunction filed by a human trafficking victim and all pleadings and documents related to the petition. The exemptions do 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:

None.

C. Government Sector Impact:

The bill does not appear to have a fiscal impact on state or local governments. Costs incurred by an agency in responding to public records requests regarding these exemptions should be offset by authorized fees.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 943.0583 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 Children, Families, and Elder Affairs on January 11, 2022:

The Committee Substitute:

- Expands the provision that authorizes human trafficking victims to expunge a criminal history record related to offenses listed under s. 775.084(1)(b)1. (the habitual violent felony offender designation), provided the victim was not found guilty of, or did not pled guilty or nolo contendere to, such an offense;
- Provides for an Open Government Sunset Review Act repeal date of October 2, 2027, and provides that if the expansion is not saved, the subsection will revert to the version in existence at June 30, 2022 with special exceptions;
- Makes any petition filed by a human trafficking victim to expunge a criminal history record and all pleadings and related documents confidential and exempt, instead of making confidential and exempt the victim's personal identifying information contained in such documents;
- Provides for an Open Government Sunset Review Act repeal date of October 2, 2027; and
- Modifies the public necessity statements to include the provision expanding the human trafficking victim expunction and to conform the statement to relate to making the petition and other documents confidential and exempt.

B. Amendments:

None.

By the Committee on Children, Families, and Elder Affairs; and
Senator Diaz

586-01944-22

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A bill to be entitled

An act relating to public records; amending s. 943.0583, F.S.; expanding an existing public records exemption relating to human trafficking victims seeking expunction of certain records related to an offense listed in s. 775.084(1)(b)1., F.S.; providing for future review and repeal of the expanded exemption; providing for the reversion of specified provisions if the exemption is not saved from repeal; providing that a petition for human trafficking victim expunction and all pleadings and documents related to the petition are confidential and exempt from public records requirements; providing for future legislative review and repeal of the exemption; providing a statement of public necessity; providing an effective date.

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

Section 1. Subsection (3) of section 943.0583, Florida Statutes, is amended, subsection (12) is added to that section, and subsections (10) and (11) of that section are republished, to read:

943.0583 Human trafficking victim expunction.—

(3) (a) A person who is a victim of human trafficking may petition for the expunction of a criminal history record resulting from the arrest or filing of charges for one or more offenses committed or reported to have been committed while the person was a victim of human trafficking, which offense was

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committed or reported to have been committed as a part of the human trafficking scheme of which the person was a victim or at the direction of an operator of the scheme, including, but not limited to, violations under chapters 796 and 847, without regard to the disposition of the arrest or of any charges.

(b) ~~However,~~ This section does not apply to any offense listed in s. 775.084(1)(b)1. if the defendant was found guilty of, or pled guilty or nolo contendere to, any such offense.

(c) Determination of the petition under this section should be by a preponderance of the evidence. A conviction expunged under this section is deemed to have been vacated due to a substantive defect in the underlying criminal proceedings. If a person is adjudicated not guilty by reason of insanity or is found to be incompetent to stand trial for any such charge, the expunction of the criminal history record may not prevent the entry of the judgment or finding in state and national databases for use in determining eligibility to purchase or possess a firearm or to carry a concealed firearm, as authorized in s. 790.065(2)(a)4.c. and 18 U.S.C. s. 922(t), nor shall it prevent any governmental agency that is authorized by state or federal law to determine eligibility to purchase or possess a firearm or to carry a concealed firearm from accessing or using the record of the judgment or finding in the course of such agency's official duties.

(d) The expansion of the public records exemption in paragraph (b) to allow for the expunction of certain criminal history records related to an offense listed in s. 775.084(1)(b)1. is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on

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October 2, 2027, unless reviewed and saved from repeal through reenactment by the Legislature. If the expansion of the exemption is not saved from repeal, this subsection shall revert to that in existence on June 30, 2022, except that any amendments to this subsection other than by this act shall be preserved and continue to operate to the extent that such amendments are not dependent upon the portions of this subsection which expire pursuant to this paragraph.

(10)(a) A criminal history record ordered expunged under this section that is retained by the department is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution, except that the record shall be made available:

1. To criminal justice agencies for their respective criminal justice purposes.

2. To any governmental agency that is authorized by state or federal law to determine eligibility to purchase or possess a firearm or to carry a concealed firearm for use in the course of such agency's official duties.

3. Upon order of a court of competent jurisdiction.

(b) A criminal justice agency may retain a notation indicating compliance with an order to expunge.

(11)(a) The following criminal intelligence information or criminal investigative information is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution:

1. Any information that reveals the identity of a person who is a victim of human trafficking whose criminal history record has been expunged under this section.

2. Any information that may reveal the identity of a person

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who is a victim of human trafficking whose criminal history record has been ordered expunged under this section.

(b) Criminal investigative information and criminal intelligence information made confidential and exempt under this subsection may be disclosed by a law enforcement agency:

1. In the furtherance of its official duties and responsibilities.

2. For print, publication, or broadcast if the law enforcement agency determines that such release would assist in locating or identifying a person that the agency believes to be missing or endangered. The information provided should be limited to that needed to identify or locate the victim.

3. To another governmental agency in the furtherance of its official duties and responsibilities.

(c) This exemption applies to such confidential and exempt criminal intelligence information or criminal investigative information held by a law enforcement agency before, on, or after the effective date of the exemption.

(12)(a) A petition filed pursuant to this section and all pleadings and documents related to the petition are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

(b) This subsection is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2027, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2. The Legislature finds it is a public necessity that criminal history records of human trafficking victims related to any offense listed in s. 775.084(1)(b)1., Florida

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117 Statutes, that was dismissed or nolle prosequi by the state
118 attorney or statewide prosecutor or dismissed by a court of
119 competent jurisdiction, or for which a judgment of acquittal was
120 rendered by a judge or a verdict of not guilty was rendered by a
121 judge or jury, which records are ordered to be expunged under s.
122 943.0583, Florida Statutes, be made confidential and exempt from
123 119.07(1), Florida Statutes, and s. 24(a), Article I of the
124 State Constitution. Further, the Legislature finds that it is a
125 public necessity that a petition filed under s. 943.0583,
126 Florida Statutes, and all pleadings and documents related to the
127 petition be made confidential and exempt from s. 119.07(1),
128 Florida Statutes, and s. 24(a), Article I of the State
129 Constitution. Persons who are victims of human trafficking and
130 who have been arrested, charged, or convicted of crimes
131 committed at the behest of their traffickers are themselves
132 victims of crimes. These victims face barriers to employment and
133 loss of other life opportunities, and the fact that they are
134 seeking expungement, as well as the information contained in
135 related pleadings and documents, would expose these petitioners
136 to possible discrimination due to details of their past lives
137 becoming public knowledge. Therefore, it is necessary that such
138 specified criminal history records, even though such records are
139 related to certain serious offenses, and such petitions,
140 pleadings, and related documents be made confidential in order
141 for human trafficking victims to have the chance to rebuild
142 their lives and reenter society.

143 Section 3. This act shall take effect July 1, 2022.



SENATOR MANNY DIAZ, JR.
36th District

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Health Policy Chair
Appropriations Subcommittee on
Education Vice Chair
Appropriations
Appropriations Subcommittee on Health
and Human Services
Education
Commerce and Tourism
Rules

January 27, 2022

Honorable Senator Kathleen Passidomo
Chair
Committee on Rules

Honorable Chair Passidomo,

I respectfully request that SB 756 Human Trafficking Public Records be placed in the next committee agenda.

The bill expands existing public records exemption relating to human trafficking victims seeking expunction of certain records related to an offense listed in s. 775.084(1)(b)1., F.S.; providing for future review and repeal of the expanded exemption; providing for the reversion of specified provisions if the exemption is not saved from repeal; providing that a petition for human trafficking victim expunction and all pleadings and documents related to the petition are confidential and exempt from public records requirements; providing for future legislative review and repeal of the exemption; providing a statement of public necessity.

Sincerely,

A handwritten signature in dark ink, appearing to read "M. Diaz", is written over a horizontal line.

Senator Manny Diaz, Jr.
Florida Senate, District 36

CC: John B. Phelps, Staff Director
Cynthia Futch, Committee Administrative Assistant
Paul Hayden, Legislative Assistant

REPLY TO:

- ☐ 10001 Northwest 87th Avenue, Hialeah Gardens, Florida 33016 (305) 364-3073
- ☐ 306 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5036

Senate's Website: www.flsenate.gov

Wilton Simpson
President of the Senate

Aaron Bean
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 840

INTRODUCER: Senator Albritton

SUBJECT: Residential Property Riparian Rights

DATE: February 1, 2022

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Collazo	Rogers	EN	Favorable
2. Bond	Cibula	JU	Favorable
3. Collazo	Phelps	RC	Favorable

I. Summary:

SB 840 requires land surveyors to give a preference to the prolongation-of-property-line method of establishing the boundaries of a residential property owner's riparian rights along a channel, unless doing so would result in an inequitable apportionment of the riparian rights at issue. In connection with this preference, the bill defines the terms "channel" and "prolongation-of-property-line method"; limits the scope of the preference to riparian waters only (not littoral waters, such as a lake, an ocean, or a gulf); and provides that the preference only applies when establishing the boundaries of riparian rights after July 1, 2022.

The bill also provides that in a civil action relating to the riparian rights of a residential dock owner, when such rights are exercised with all appropriate environmental and regulatory approvals and permits, the court must award reasonable attorney fees and costs to the defendant if the defendant is the prevailing party.

The bill is effective upon becoming law.

II. Present Situation:

Riparian Rights Generally

Riparian rights¹ are rights of a landowner incident to land bordering upon navigable waters. They are rights of ingress, egress, boating, bathing, and fishing and such others as may be or have been

¹ Technically, the term "riparian" refers to land abutting nontidal or navigable river waters, and the term "littoral" refers to land abutting navigable ocean, sea, or lake waters. *5F, LLC v. Hawthorne*, 317 So. 3d 220, 222 n.1 (Fla. 2d DCA 2021) and *Walton County v. Stop Beach Renourishment, Inc.*, 998 So. 2d 1102, 1105 n.3 (Fla. 2008), *aff'd sub nom. Stop the Beach Renourishment, Inc. v. Fla. Dep't of Env't Prot.*, 560 U.S. 702 (2010). However, the term "riparian" is commonly used to refer to all waterfront owners, so "riparian rights" can be used to refer to rights associated with both riparian and littoral lands. *Id.*

defined by law.² Riparian rights benefit the owner of the riparian land, but such rights are attached to the land and are not owned by the land owner. In order for the rights to attach, the land must extend to the ordinary high water mark³ of the navigable water. Whoever owns or leases the land enjoys the rights, regardless of whether they are mentioned in a deed or lease.⁴ Riparian rights may not be taken without just compensation and due process of law.⁵ Where a landowner's common-law riparian rights are violated by the acts of another individual, the landowner may bring an action on his or her own behalf.⁶

The state holds title to sovereign submerged lands in trust for public use.⁷ The public generally enjoys rights such as bathing, fishing, commerce, and navigation.⁸ Upland property owners enjoy these rights in common with the public.⁹ Riparian rights are additional, exclusive rights that are held by upland property owners but not the general public.¹⁰ Such rights generally include, but are not limited to, the following:

- Access to and from the water.
- An unobstructed view over the water.
- Reasonable use of the water.
- Accretions and relictions.¹¹
- Wharfing out, meaning building structures on the shoreline.¹²

The doctrines of erosion, accretion, and reliction are also riparian rights.¹³ When gradual and imperceptible losses or additions to the shoreline occur, the boundary between public and private land (i.e., the mean high-water line)¹⁴ is altered accordingly.¹⁵ Riparian property owners

² Section 253.141(1), F.S. (2021); *see also Odom v. Deltona Corp.*, 341 So. 2d 977, 981 (Fla. 1976) (providing that “whether or not a particular area is that of a navigable body of water and thus sovereignty property held in trust [under Article X, Section 11 of the Florida Constitution] is a question of fact and dependent upon whether or not the body of water is permanent in character and, in its ordinary and natural state, is navigable for useful purposes and is of sufficient size and so situated and conditioned that it may be used for purposes common to the public in the locality where it is located); *see also Brevard Cty. v. Blasky*, 875 So. 2d 6, 13-14 (Fla. 5th DCA 2004) (explaining that navigability is determined as of 1845, the date Florida became a state).

³ *Walton County*, 998 So. 2d at 1124 (noting that the “ordinary high water mark is well established as the dividing line between private riparian and sovereign or public ownership of the land beneath the water”); *see also s. 253.03(8)(b)*, F.S. (identifying “submerged lands,” for purposes of inventorying public lands, as “publicly owned lands below the ordinary high-water mark of fresh waters and below the mean high-water line of salt waters extending seaward to the outer jurisdiction of the state”); *see also s. 177.28*, F.S. (same).

⁴ Section 253.141(1), F.S.

⁵ *Broward v. Mabry*, 58 Fla. 398, 410 (1909).

⁶ *Harrell v. Hess Oil & Chem. Corp.*, 287 So. 2d 291, 295 (Fla. 1973).

⁷ FLA. CONST. art. X, s. 11.

⁸ *Walton County*, 998 So. 2d at 1110-11.

⁹ *Id.* at 1110-11. These special littoral rights are such as are necessary for the use and enjoyment of the upland property, but these rights may not be so exercised as to injure others in their lawful rights. *Id.* at 1111.

¹⁰ *Id.*

¹¹ *Id.*

¹² *See* Brendan Mackesey, *An Overview of Riparian Rights in Florida*, The Reporter, The Environmental and Land Use Law Section, Vol. XLI, No. 1, 1, 13–16 (2020), available at <https://eluls.org/wp-content/uploads/2021/02/The-Environmental-and-Land-Use-Law-Section-Reporter-October-2020.pdf> (last visited Jan. 16, 2022).

¹³ *Walton County*, 998 So. 2d at 1112-15. “Accretion” is the gradual and imperceptible accumulation of land; “reliction” is an increase of the land by a gradual and imperceptible withdrawal of a waterbody. *Id.* at 1113.

¹⁴ *See s. 177.28(1)*, F.S.

¹⁵ *Bd. of Trustees of the Internal Imp. Tr. Fund v. Sand Key Assocs., Ltd.*, 512 So. 2d 934, 936 (Fla. 1987).

automatically take title to dry land added to their property by accretion or reliction.¹⁶ However, under the doctrine of avulsion, following sudden or perceptible loss or addition to the shoreline, the boundary between public and private land remains where it existed before the avulsive event occurred.¹⁷

Establishing Lines of Riparian Rights

In the 1954 Florida Supreme Court case *Hayes v. Bowman*, opposing parties proposed two different methods for allocating riparian rights: one party argued the lines should extend from the property lines directly into the channel (referred to herein as the “prolongation-of-property-line” method for allocating riparian rights), and the other argued the lines should be drawn at right angles from the thread of the channel to the corners of the property.¹⁸ The Court stated that, based on the nature of upland boundary lines, it is impossible to formulate a geometric rule to govern all cases.¹⁹ Thus, the Court prescribed a rule requiring that, based on the factual circumstances presented, the riparian rights of an upland owner must be preserved over an area as near as practicable in the direction of the channel so as to distribute equitably the submerged lands between the upland and the channel.²⁰ Such equitable distribution must give due consideration to the lay of the upland shore line, the direction of the channel, and the co-relative rights of adjoining upland owners.²¹

The principles established in *Hayes* still apply in Florida today.²² Courts recognize that land surveyors and other practitioners may use many methods to equitably apportion riparian rights, and no one method is proper or improper.²³ The reasoning for this includes inherent aspects of the uplands to which riparian rights are attached: upland property boundaries intersect the water at almost every different angle, and the thread of a channel is seldom, if ever, parallel to the shoreline of the uplands.²⁴ Rights are applied based on the shape of the uplands, the shape of the waterbody, and the parties’ relative position to each other.²⁵

¹⁶ *Stop the Beach Renourishment, Inc. v. Fla. Dep’t of Env’t Prot.*, 560 U.S. 702, 709 (2010); see also *Bd. of Trustees of the Internal Imp. Tr. Fund v. Sand Key Assocs., Ltd.*, 512 So. 2d 934, 938-39 (holding that owners have a right to claim accreted land when the accretion was artificially-caused, as long as the owner did not cause the accretion); see also *New Jersey v. New York*, 523 U.S. 767, 783 (1998) (explaining that an owner may not extend their own property into the water by landfilling or purposefully causing accretion); see also s. 161.051, F.S. (providing that the state will retain title to additions or accretions to the permittee’s property caused by permitted coastal improvements).

¹⁷ *Walton County*, 998 So. 2d at 1114. “Avulsion” is the sudden or perceptible loss of or addition to land by the action of the water or a sudden change in the bed of a lake or the course of a stream. *Id.* at 1116.

¹⁸ *Hayes v. Bowman*, 91 So. 2d 795, 801 (Fla. 1957).

¹⁹ *Id.* at 801-802.

²⁰ *Id.* at 802. In the opinion, the Court expressly references the rights of an unobstructed view of the channel and unobstructed means of ingress and egress over the foreshore and tidal waters. *Id.* at 801. The Court states that if the exercise of these rights is prevented, the upland owner is entitled to relief. *Id.*

²¹ *Id.* at 802.

²² *Lee Cty. v. Kiesel*, 705 So. 2d 1013, 1015 (Fla. 2d DCA 1998); *Lake Conway Shores Homeowners Ass’n, Inc. v. Driscoll*, 476 So. 2d 1306, 1308 (Fla. 5th DCA 1985).

²³ *Nourachi v. United States*, 655 F. Supp. 2d 1215, 1227 (M.D. Fla. 2009).

²⁴ *Hayes*, 91 So. 2d at 801-802.

²⁵ *Johnson v. McCowen*, 348 So. 2d 357, 360 (Fla. 1st DCA 1977).

The use of a particular delineation method may be struck down by a court if the method is found to unfairly impact a party's riparian rights.²⁶ In one case, a Florida court reversed a decision of a trial judge who used a prolongation-of-property-line method, holding that extending the line of the property boundary in this particular case destroyed an adjacent parcel owner's littoral rights, and remanding for an equitable determination of the parties' respective rights.²⁷

The Florida Statutes do not address the methodology for establishing boundaries for riparian rights. The Florida Administrative Code's rules on sovereignty submerged lands generally require all structures and activities to be set back a minimum of 25 feet inside the applicant's riparian rights lines.²⁸ The rules also require applicants seeking standard leases of sovereignty submerged lands to show the applicant's upland parcel property lines and associated riparian rights lines.²⁹

In 2013, the Department of Environmental Protection (DEP) published general guidelines for the allocation of riparian rights, based on research analyzing existing methods for allocating riparian rights together with a study of different shoreline configurations.³⁰ Concentrating on the right of ingress and egress to and from the water (including dock construction) and the right to a view over the water – the two riparian rights “equities” of primary interest among owners – the document includes eight conclusions from the research, summarized as follows:

- When docking is the primary issue, the courts will usually apportion the space between the shore and the line of navigability (i.e., the line of deep water).
- For a straighter shore on a large waterbody, the division lines are perpendicular to the direction of the shore extended to the line of navigable water.
- Along a river without a marked channel, lines are usually perpendicular with the stream's thread (i.e., median).
- Along a river or other waterbody with a nearby marked channel and regular shore, the lines are usually perpendicular with the nearest channel edge and not the thread.
- The direction of upland boundaries is largely ignored when apportioning riparian rights (“[t]he public's mistaken belief that riparian lines are on the extension of their side upland lines is the most frequent cause of riparian disputes”).³¹ The water body must be equitably apportioned as if all waterfront owners were standing on the shore looking out over the waterbody.
- When the shore is irregular (e.g., coves, bays, lakes, rivers) most courts apportion the line of deep water to divide riparian rights as opposed to any perpendicular method.
- Some situations require apportionment of the entire water surface, and then certain methods are used such as the center point method for lakes.

²⁶ *Lake Conway Shores Homeowners Ass'n, Inc. v. Driscoll*, 476 So. 2d 1306, 1309-10 (Fla. 5th DCA 1985).

²⁷ *Id.*; see also *Muraca v. Meyerowitz*, 818 N.Y.S.2d 450, 456-57 (Sup. Ct. 2006).

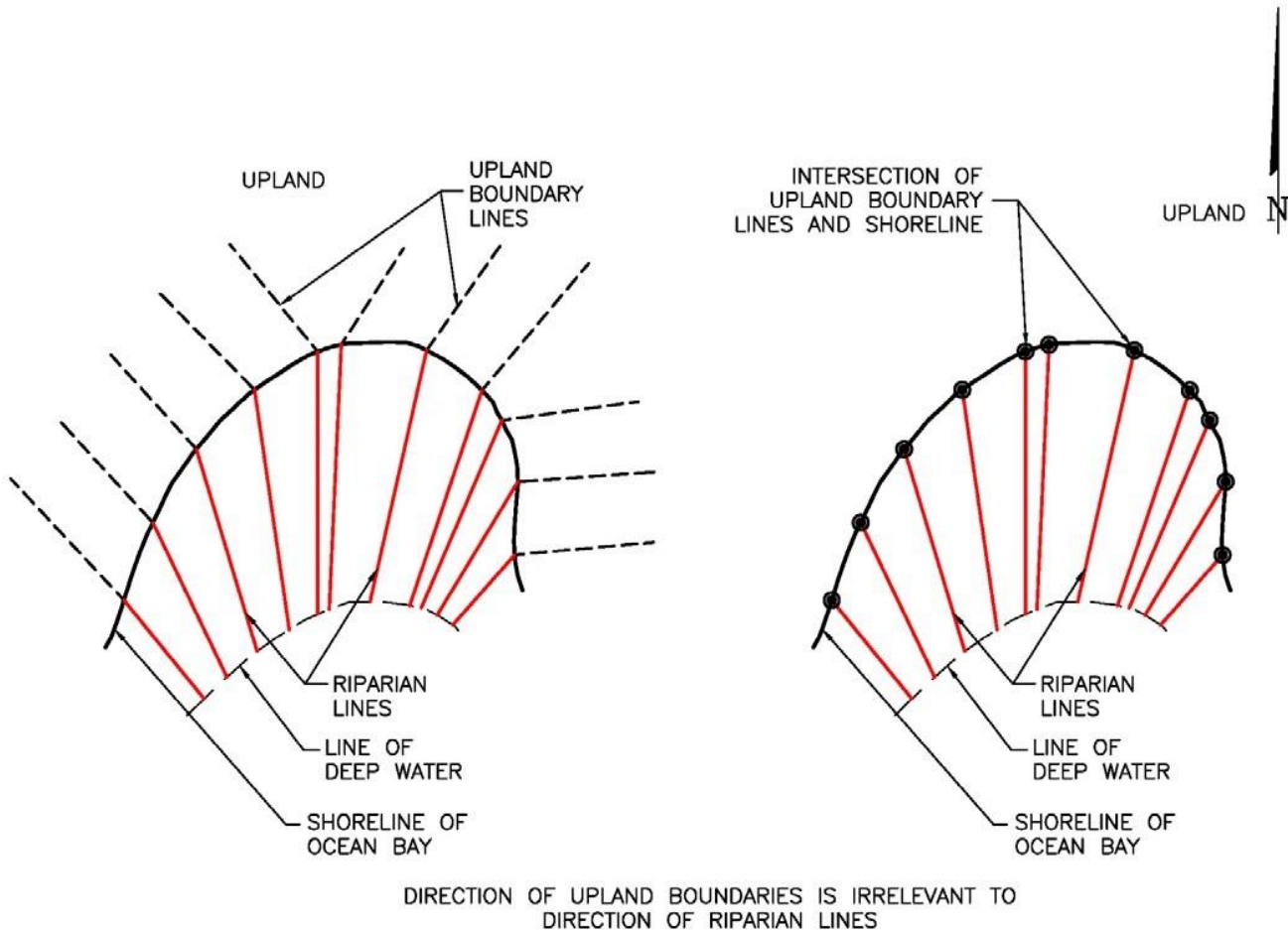
²⁸ Fla. Admin. Code R. 18-21.004(3)(d) (noting also that the minimum setback is 10 feet for marginal docks, and that other exceptions apply).

²⁹ Fla. Admin. Code R. 18-21.008(1)(a)4.f.

³⁰ Florida Dep't of Environmental Protection, SLER 0950, Survey Requirements, *Guidelines for Allocation of Riparian Rights*, 7-18 (2013), available at https://apps.sfwmd.gov/entsb/docdownload?object_id=0900eeea8a95bcd3 (last visited Jan. 16, 2022).

³¹ *Id.* at 8. The diagram shows how it is the locations where the upland boundary lines intersect the shoreline (not the direction of the boundary lines landward of the shoreline) that are relevant for apportionment.

- Apportioning the line of deep water is the most universal method, and it gives the same solution as more traditional techniques in many cases and follows dominant national case law where the shore is irregular.³²



III. Effect of Proposed Changes:

The bill amends s. 253.141(1), F.S., to require land surveyors to give preference to the prolongation-of-property-line method of establishing the boundaries of a residential property owner's riparian rights along a channel. The prolongation-of-property-line method would apply in connection with the construction of docks, piers, marinas, moorings, pilings, and other private improvements, unless doing so would result in an inequitable apportionment of the riparian rights among property owners along the channel.

The bill defines the term "channel" to mean the marked, buoyed, or artificially dredged channel, if any; or if none, a space equal to 20 percent of the average width of the river or stream at the

³² *Id.* at 7-9.

point concerned, which furnishes uninterruptedly, through its course, the deepest water at ordinary low water.

The bill defines the term “prolongation-of-property-line method” to mean establishing the boundary of a property owner’s riparian rights by extending the owner’s property line out into the waterbody at the same angles at which they intersect the ordinary high watermark.

This preference does not apply to littoral waters, such as a lake, an ocean, or a gulf; and it only applies when establishing the boundaries of riparian rights after July 1, 2022.

The bill amends s. 253.141(1), F.S., to provide that in a civil action relating to the riparian rights of a residential dock owner, when such rights are exercised with all appropriate environmental and regulatory approvals and permits, in which the defendant is the prevailing party, the court must award reasonable attorney fees and costs to the prevailing party.

The bill reenacts s. 403.813(1)(s) and s. 403.9323(3), F.S., for the purpose of incorporating the amendments to s. 253.141(1), F.S., into same.

The bill takes effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The 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:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 253.141 of the Florida Statutes.

This bill reenacts the following sections of the Florida Statutes: 403.813 and 403.9323.

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 Albritton

26-00971-22

2022840__

A bill to be entitled

An act relating to residential property riparian rights; amending s. 253.141, F.S.; requiring land surveyors to give preference to using the prolongation-of-property-line method to establish a property owner's riparian rights along a channel under certain circumstances; defining terms; providing applicability; requiring courts to award reasonable attorney fees and costs to a prevailing party in a civil action under certain circumstances; reenacting ss. 403.813(1)(s) and 403.9323(3), F.S., relating to permits issued at district centers and legislative intent in recognizing rights of riparian property ownership, respectively, to incorporate the amendment made to s. 253.141, F.S., in references thereto; providing an effective date.

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

Section 1. Subsection (1) of section 253.141, Florida Statutes, is amended to read:

253.141 Riparian rights defined; certain submerged bottoms subject to private ownership.—

(1)(a) Riparian rights are those incident to land bordering upon navigable waters. They are rights of ingress, egress, boating, bathing, and fishing and such others as may be or have been defined by law. Such rights are not of a proprietary nature. They are rights inuring to the owner of the riparian land but are not owned by him or her. They are appurtenant to

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and are inseparable from the riparian land. The land to which the owner holds title must extend to the ordinary high watermark of the navigable water in order that riparian rights may attach. Conveyance of title to or lease of the riparian land entitles the grantee to the riparian rights running therewith whether or not mentioned in the deed or lease of the upland.

(b) When establishing the boundaries of a residential property owner's riparian rights along a channel, for purposes of the construction of docks, piers, marinas, moorings, pilings, and other private improvements, land surveyors must give preference to the prolongation-of-property-line method unless doing so would result in inequitable apportionment of riparian rights among property owners along the channel.

1. As used in this paragraph, the term:

a. "Channel" means the marked, buoyed, or artificially dredged channel, if any, or if none, means a space equal to 20 percent of the average width of the river or stream at the point concerned which furnishes uninterruptedly, through its course, the deepest water at ordinary low water.

b. "Prolongation-of-property-line method" means establishing the boundary of a property owner's riparian rights by extending the owner's property line out into the waterbody at the same angles at which they intersect the ordinary high watermark.

2. This paragraph does not apply to littoral waters, such as a lake, an ocean, or a gulf.

3. This paragraph applies only when establishing the boundaries of riparian rights after July 1, 2022.

(c) In a civil action relating to the riparian rights of a

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59 residential dock owner, when such rights are exercised with all
 60 appropriate environmental and regulatory approvals and permits,
 61 in which the defendant is the prevailing party, the court shall
 62 award reasonable attorney fees and costs to the prevailing
 63 party.

64 Section 2. For the purpose of incorporating the amendment
 65 made by this act to section 253.141, Florida Statutes, in a
 66 reference thereto, paragraph (s) of subsection (1) of section
 67 403.813, Florida Statutes, is reenacted to read:

68 403.813 Permits issued at district centers; exceptions.—

69 (1) A permit is not required under this chapter, chapter
 70 373, chapter 61-691, Laws of Florida, or chapter 25214 or
 71 chapter 25270, 1949, Laws of Florida, and a local government may
 72 not require a person claiming this exception to provide further
 73 department verification, for activities associated with the
 74 following types of projects; however, except as otherwise
 75 provided in this subsection, this subsection does not relieve an
 76 applicant from any requirement to obtain permission to use or
 77 occupy lands owned by the Board of Trustees of the Internal
 78 Improvement Trust Fund or a water management district in its
 79 governmental or proprietary capacity or from complying with
 80 applicable local pollution control programs authorized under
 81 this chapter or other requirements of county and municipal
 82 governments:

83 (s) The construction, installation, operation, or
 84 maintenance of floating vessel platforms or floating boat lifts,
 85 provided that such structures:

86 1. Float at all times in the water for the sole purpose of
 87 supporting a vessel so that the vessel is out of the water when

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88 not in use;

89 2. Are wholly contained within a boat slip previously
 90 permitted under ss. 403.91-403.929, 1984 Supplement to the
 91 Florida Statutes 1983, as amended, or part IV of chapter 373, or
 92 do not exceed a combined total of 500 square feet, or 200 square
 93 feet in an Outstanding Florida Water, when associated with a
 94 dock that is exempt under this subsection or associated with a
 95 permitted dock with no defined boat slip or attached to a
 96 bulkhead on a parcel of land where there is no other docking
 97 structure;

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

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

108 5. Are not constructed in areas specifically prohibited for
 109 boat mooring under conditions of a permit issued in accordance
 110 with ss. 403.91-403.929, 1984 Supplement to the Florida Statutes
 111 1983, as amended, or part IV of chapter 373, or other form of
 112 authorization issued by a local government.

113
 114 Structures that qualify for this exemption are relieved from any
 115 requirement to obtain permission to use or occupy lands owned by
 116 the Board of Trustees of the Internal Improvement Trust Fund

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117 and, with the exception of those structures attached to a
 118 bulkhead on a parcel of land where there is no docking
 119 structure, may not be subject to any more stringent permitting
 120 requirements, registration requirements, or other regulation by
 121 any local government. Local governments may require either
 122 permitting or one-time registration of floating vessel platforms
 123 to be attached to a bulkhead on a parcel of land where there is
 124 no other docking structure as necessary to ensure compliance
 125 with local ordinances, codes, or regulations. Local governments
 126 may require either permitting or one-time registration of all
 127 other floating vessel platforms as necessary to ensure
 128 compliance with the exemption criteria in this section; to
 129 ensure compliance with local ordinances, codes, or regulations
 130 relating to building or zoning, which are no more stringent than
 131 the exemption criteria in this section or address subjects other
 132 than subjects addressed by the exemption criteria in this
 133 section; and to ensure proper installation, maintenance, and
 134 precautionary or evacuation action following a tropical storm or
 135 hurricane watch of a floating vessel platform or floating boat
 136 lift that is proposed to be attached to a bulkhead or parcel of
 137 land where there is no other docking structure. The exemption
 138 provided in this paragraph shall be in addition to the exemption
 139 provided in paragraph (b). The department shall adopt a general
 140 permit by rule for the construction, installation, operation, or
 141 maintenance of those floating vessel platforms or floating boat
 142 lifts that do not qualify for the exemption provided in this
 143 paragraph but do not cause significant adverse impacts to occur
 144 individually or cumulatively. The issuance of such general
 145 permit shall also constitute permission to use or occupy lands

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146 owned by the Board of Trustees of the Internal Improvement Trust
 147 Fund. Local governments may not impose a more stringent
 148 regulation, permitting requirement, registration requirement, or
 149 other regulation covered by such general permit. Local
 150 governments may require either permitting or one-time
 151 registration of floating vessel platforms as necessary to ensure
 152 compliance with the general permit in this section; to ensure
 153 compliance with local ordinances, codes, or regulations relating
 154 to building or zoning that are no more stringent than the
 155 general permit in this section; and to ensure proper
 156 installation and maintenance of a floating vessel platform or
 157 floating boat lift that is proposed to be attached to a bulkhead
 158 or parcel of land where there is no other docking structure.

159 Section 3. For the purpose of incorporating the amendment
 160 made by this act to section 253.141, Florida Statutes, in a
 161 reference thereto, subsection (3) of section 403.9323, Florida
 162 Statutes, is reenacted to read:

163 403.9323 Legislative intent.—

164 (3) It is the intent of the Legislature to provide
 165 waterfront property owners their riparian right of view, and
 166 other rights of riparian property ownership as recognized by s.
 167 253.141 and any other provision of law, by allowing mangrove
 168 trimming in riparian mangrove fringes without prior government
 169 approval when the trimming activities will not result in the
 170 removal, defoliation, or destruction of the mangroves.

171 Section 4. This act shall take effect upon becoming a law.

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The Florida Senate

APPEARANCE RECORD

Deliver both copies of this form to
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SENATE Bill 840

Bill Number or Topic

FEBRUARY 3, 2022

Meeting Date

Committee

Amendment Barcode (if applicable)

Name DAVID BALLARD GEDDIS JR

Phone (127) 483-1330

Address 802 GEORGIN AVENUE

Email MYABRIDGEPOINT@gmail.com

Street

Palm Harbor Florida

34693

City

State

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Speaking:

☐

For

☐

Against

☒

Information

OR

Waive Speaking:

☐

In Support

☐

Against

PLEASE CHECK ONE OF THE FOLLOWING:

☒

I am appearing without
compensation or sponsorship.

☐

I am a registered lobbyist,
representing:

☐

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

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

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

S-001 (08/10/2021)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL: SB 868

INTRODUCER: Senator Stewart

SUBJECT: Sexual Battery on a Mentally Incapacitated Person

DATE: February 1, 2022

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. <u>Ravelo</u>	<u>Cibula</u>	<u>JU</u>	Favorable
2. <u>Stokes</u>	<u>Jones</u>	<u>CJ</u>	Favorable
3. <u>Ravelo</u>	<u>Phelps</u>	<u>RC</u>	Favorable

I. Summary:

SB 868 amends s. 794.011, F.S., to change the definition of “mentally incapacitated,” to mean temporarily incapable of appraising or controlling a person’s own conduct due to the influence of a narcotic, an anesthetic, or an intoxicating substance.

The bill removes the previous requirements that a narcotic, anesthetic, or intoxicating substance be administered without a person’s consent or due to any other act committed upon that person without his or her consent, in order to be found “mentally incapacitated.”

Current law provides specified circumstances in which the crime of sexual battery may be charged as a first degree felony. One such circumstance is when the offender, without prior knowledge or consent of the victim, administers or has knowledge of someone else administering to the victim any narcotic, anesthetic, or other intoxicating substance that renders the victim *mentally incapacitated* or physically incapacitated. The change in the definition of mentally incapacitated means an offense of sexual battery which occurs against a victim who is under the influence of a substance is a first degree felony.

There may be a positive indeterminate prison bed impact on the Department of Corrections. See Section V. Fiscal Impact Statement.

The bill takes effect October 1, 2022.

II. Present Situation:

Sexual Battery

Section 794.011, F.S., defines the crime of “sexual battery” to mean oral, anal, or vaginal penetration by, or union with, the sexual organ of another or the anal or vaginal penetration of

another by any other object; however, sexual battery does not include an act done for a bona fide medical purpose.¹ Sexual battery offenses are categorized by certain factors including the offender's age, the victim's age, and specified circumstances. Generally, absent any specified circumstances, a sexual battery is a second degree felony.²

Section 794.011(4), F.S., provides that when sexual battery is committed and any of the below specified circumstances are present, the person commits a first degree felony. Florida law punishes first degree felonies in one of two ways. Generally, a first degree felony is punishable by up to 30 years of imprisonment.³ However, when specifically provided for in statute, a first degree felony may be punished by imprisonment for a term of years not exceeding life imprisonment.⁴

Section 794.011(4)(a) and (d), F.S., provides it a first degree felony punishable by imprisonment for a term of years not exceeding life when:

- A person 18 years of age or older commits sexual battery on a person 12 years of age or older, but younger than 18 years of age without that person's consent, under any of the specified circumstances.
- A person commits sexual battery on a person 12 years of age or older without that person's consent, under any of the specified circumstances, and that person was previously convicted of certain crimes.⁵

Section 794.011(4)(b) and (c), F.S., provides it is a first degree felony punishable by up to 30 years of imprisonment when:

- A person 18 years of age or older commits sexual battery on a person 18 years of age or older without that person's consent, under any of the specified circumstances.
- A person younger than 18 years of age commits sexual battery on a person 12 years of age or older without that person's consent, under any of the specified circumstances.

Section 794.011(4)(e), F.S., provides the following specified circumstances that apply to the offenses described above:

- The victim is physically helpless⁶ to resist;

¹ Section 794.011(1)(h), F.S.

² The maximum term of imprisonment for a second degree felony is 15 years imprisonment and a fine not exceeding \$10,000. Sections 775.082 and 775.083, F.S.

³ Section 775.083, provides first degree felonies may also be punishable by a fine not exceeding \$10,000.

⁴ Section 775.082, F.S.

⁵ The specified crimes include: s. 787.01(2), F.S., relating to kidnapping, or s. 787.02(2), F.S., relating to false imprisonment, when the violation involved a victim who was a minor and, in the course of committing that violation, the defendant committed against the minor a sexual battery under this chapter or a lewd act under s. 800.04 or s. 847.0135(5), F.S.; s. 787.01(3)(a)2. or 3., F.S., relating to kidnapping; s. 787.02(3)(a)2. or 3., F.S., relating to false imprisonment; s. 800.04, F.S., relating to lewd or lascivious offenses committed upon or in the presence of persons less than 16 years of age; s. 825.1025, F.S., relating to lewd or lascivious offenses committed upon or in the presence of an elderly or disabled person; s. 847.0135(5), F.S., relating to computer pornography; or ch. 794, F.S., relating to sexual battery, except s. 794.011(10), F.S., which criminalizes false allegations against specified persons.

⁶ Section 794.011(1)(e), F.S., provides that "physically helpless" means unconscious, asleep, or for any other reason physically unable to communicate unwillingness to an act.

- The offender coerces the victim to submit by threatening the use of force or violence likely to cause serious personal injury to the victim, and the victim reasonably believes that the offender has the present ability to execute the threat;
- The offender coerces the victim to submit by threatening to retaliate against the victim, or any other person, and the victim reasonably believes that the offender has the ability to execute the threat in the future;
- The offender, without the prior knowledge or consent of the victim, administers or has knowledge of someone else administering to the victim any narcotic, anesthetic, or other intoxicating substance that mentally or physically incapacitates⁷ the victim;
- The victim is mentally defective,⁸ and the offender has reason to believe this or has actual knowledge of the fact;
- The victim is physically incapacitated; or
- The offender is a law enforcement officer, correctional officer, or correctional probation officer, or is an elected official exempt from such certification,⁹ or any other person in a position of control or authority in a probation, community control, controlled release, detention, custodial, or similar setting, and such officer, official, or person is acting in such a manner as to lead the victim to reasonably believe that the offender is in a position of control or authority as an agent or employee of the government.

Mental Incapacitation

A mentally incapacitated person is “temporarily incapable of appraising or controlling a person’s own conduct due to the influence of a narcotic, anesthetic, or intoxicating substance administered without his or her consent or due to any other act committed upon that person without his or her consent.”¹⁰

A person is not deemed “mentally incapacitated,” under s. 794.011, F.S., if they knowingly and voluntarily consumed a narcotic, anesthetic, or other intoxicating substance. Accordingly, “the Florida sexual battery statute does not place voluntary drug or alcohol consumption on the same footing as involuntary consumption; if they were to be treated as equivalent, the statute would say so.”¹¹

With respect to the issue of consent to sexual activity, “[t]he prevailing view is that voluntary consumption of drugs or alcohol, does not, without more, render consent involuntary.”¹² However, evidence of the victim’s mental incapacity is admissible to prove that the consent to sexual activity was not intelligent, knowing, or voluntary; and the court must instruct the jury accordingly.¹³

⁷ Section 794.011(1)(j), F.S., provides that “physically incapacitated” means bodily impaired or handicapped and substantially limited in ability to resist or flee.

⁸ Section 794.011(1)(b), F.S., provides that “mentally defective” means a mental disease or defect which renders a person temporarily or permanently incapable of appraising the nature of his or her conduct.

⁹ Under s. 943.253, F.S.

¹⁰ Section 794.011(1)(c), F.S.

¹¹ *Coley v. State*, 616 So. 2d 1017, 1023 (Fla. 3d DCA 1993).

¹² *Id.*

¹³ See s. 794.022(4), F.S.

III. Effect of Proposed Changes:

The bill amends s. 794.011, F.S., to change the definition of “mentally incapacitated,” to mean temporarily incapable of appraising or controlling a person’s own conduct due to the influence of a narcotic, an anesthetic, or an intoxicating substance (substance).

The bill removes the previous requirements that the substance *be administered without a person’s consent or due to any other act committed upon that person without his or her consent*, in order to be found “mentally incapacitated.”

Currently, when a person is a victim of a sexual battery and is “mentally incapacitated” the offense is a first degree felony, as described in the Present Situation. By eliminating the requirement that the victim’s mental incapacitation is due to being under the influence of a substance that was administered *without the victim’s consent* means that a sexual battery offense against a victim who is under the influence of a substance is a first degree felony. Currently, it is a second degree felony when a person commits a sexual battery against a victim who was voluntarily under the influence of a substance.

Specifically, the change of the definition “mentally incapacitated” means that a sexual battery is a first degree felony when:

- A person 18 years of age or older commits sexual battery on a person 12 years of age or older, but younger than 18 years of age without that person’s consent, and *the victim is mentally incapacitated*, and the offender has reason to believe this or has actual knowledge of this fact.
- A person commits sexual battery on a person 12 years of age or older without that person’s consent, and *the victim is mentally incapacitated*, and the offender has reason to believe this or has actual knowledge of this fact, and that person was previously convicted of specified crimes.
- A person 18 years of age or older commits sexual battery on a person 18 years of age or older without that person’s consent, and *the victim is mentally incapacitated*, and the offender has reason to believe this or has actual knowledge of this fact.
- A person younger than 18 years of age commits sexual battery on a person 12 years of age or older without that person’s consent, and *the victim is mentally incapacitated*, and the offender has reason to believe this or has actual knowledge of this fact.

The bill takes effect October 1, 2022.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

This bill appears to be exempt from the requirements of Article VII, Section 18 of the Florida Constitution because it is a criminal law.

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 Criminal Justice Impact Conference, which provides the final, official estimate of prison bed impact, if any, of legislation, has not yet reviewed the bill. The bill increases the number of sexual battery cases that will carry a penalty of a first degree felony. Thus this bill may have a positive indeterminate prison bed impact (unquantifiable increase in prison beds) on the Department of Corrections.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 794.011 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.

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

By Senator Stewart

13-01049-22

2022868__

A bill to be entitled

An act relating to sexual battery on a mentally incapacitated person; amending s. 794.011, F.S.; revising the definition of the term "mentally incapacitated"; revising provisions concerning sexual battery upon a person who is mentally incapacitated; providing an effective date.

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

Section 1. Paragraph (c) of subsection (1) and subsection (4) of section 794.011, Florida Statutes, are amended to read: 794.011 Sexual battery.—

(1) As used in this chapter:

(c) "Mentally incapacitated" means temporarily incapable of appraising or controlling a person's own conduct due to the influence of a narcotic, an anesthetic, or an intoxicating substance ~~administered without his or her consent or due to any other act committed upon that person without his or her consent.~~

(4) (a) A person 18 years of age or older who commits sexual battery upon a person 12 years of age or older but younger than 18 years of age without that person's consent, under any of the circumstances listed in paragraph (e), commits a felony of the first degree, punishable by a term of years not exceeding life or as provided in s. 775.082, s. 775.083, s. 775.084, or s. 794.0115.

(b) A person 18 years of age or older who commits sexual battery upon a person 18 years of age or older without that person's consent, under any of the circumstances listed in

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paragraph (e), commits a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, s. 775.084, or s. 794.0115.

(c) A person younger than 18 years of age who commits sexual battery upon a person 12 years of age or older without that person's consent, under any of the circumstances listed in paragraph (e), commits a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, s. 775.084, or s. 794.0115.

(d) A person commits a felony of the first degree, punishable by a term of years not exceeding life or as provided in s. 775.082, s. 775.083, s. 775.084, or s. 794.0115 if the person commits sexual battery upon a person 12 years of age or older without that person's consent, under any of the circumstances listed in paragraph (e), and such person was previously convicted of a violation of:

1. Section 787.01(2) or s. 787.02(2) when the violation involved a victim who was a minor and, in the course of committing that violation, the defendant committed against the minor a sexual battery under this chapter or a lewd act under s. 800.04 or s. 847.0135(5);

2. Section 787.01(3)(a)2. or 3.;

3. Section 787.02(3)(a)2. or 3.;

4. Section 800.04;

5. Section 825.1025;

6. Section 847.0135(5); or

7. This chapter, excluding subsection (10) of this section.

(e) The following circumstances apply to paragraphs (a)–

(d):

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1. The victim is physically helpless to resist.

2. The offender coerces the victim to submit by threatening to use force or violence likely to cause serious personal injury on the victim, and the victim reasonably believes that the offender has the present ability to execute the threat.

3. The offender coerces the victim to submit by threatening to retaliate against the victim, or any other person, and the victim reasonably believes that the offender has the ability to execute the threat in the future.

4. The victim is mentally incapacitated, and the offender has reason to believe this or has actual knowledge of this fact ~~offender, without the prior knowledge or consent of the victim, administers or has knowledge of someone else administering to the victim any narcotic, anesthetic, or other intoxicating substance that mentally or physically incapacitates the victim.~~

5. The victim is mentally defective, and the offender has reason to believe this or has actual knowledge of this fact.

6. The victim is physically incapacitated.

7. The offender is a law enforcement officer, correctional officer, or correctional probation officer as defined in s. 943.10(1), (2), (3), (6), (7), (8), or (9), who is certified under s. 943.1395 or is an elected official exempt from such certification by virtue of s. 943.253, or any other person in a position of control or authority in a probation, community control, controlled release, detention, custodial, or similar setting, and such officer, official, or person is acting in such a manner as to lead the victim to reasonably believe that the offender is in a position of control or authority as an agent or employee of government.

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88 Section 2. This act shall take effect October 1, 2022.

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The Florida Senate

Committee Agenda Request

To: Senator Kathleen Passidomo, Chair
Committee on Rules

Subject: Committee Agenda Request

Date: January 25, 2022

Under current law sexual battery on a mentally incapacitated person who has voluntarily become intoxicated is a lesser offense than if the offender provided the intoxicating substance. Senate Bill #868 remedies this by bringing the two offenses on par with each other.

I respectfully request that **Senate Bill #868**, relating to Sexual Battery on a Mentally Incapacitated Person, be placed on the:

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

A handwritten signature in cursive script that reads "Linda Stewart".

Senator Linda Stewart
Florida Senate, District 13

The Florida Senate

APPEARANCE RECORD

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

2/3

Meeting Date

Rules

Committee

868

Bill Number or Topic

Amendment Barcode (if applicable)

Name

Ellen Bogdanoff

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954 364 6005

Address

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Speaking:



For



Against



Information

OR

Waive Speaking:



In Support



Against

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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

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2-3-22

Meeting Date

Rules

Committee

868

Bill Number or Topic

Amendment Barcode (if applicable)

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State

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Speaking: ☐ For ☐ Against ☐ Information

OR

Waive Speaking: ☒ In Support ☐ Against

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S-001 (08/10/2021)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL: CS/CS/SB 926

INTRODUCER: Banking and Insurance Committee, Health Policy Committee, and Senator Albritton

SUBJECT: Licensure Examinations for Dental Practitioners

DATE: February 1, 2022

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Rossitto-Van Winkle	Brown	HP	Fav/CS
2.	Schrader	Knudson	BI	Fav/CS
3.	Rossitto-Van Winkle	Phelps	RC	Favorable

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 926 revises licensure examination requirements for dentists and dental hygienists to require applicants to demonstrate certain clinical skills on a manikin rather than a live patient. The bill deletes the dental schools' requirement to have a plan to require dental students to possess medical malpractice insurance in amounts not less than the amounts required to take the Florida licensure examinations, and to make adequate arrangements for patients who require follow-up care. The bill also repeals the authorization for the Board of Dentistry (BOD) to require that any person applying to take the practical dentistry or dental hygiene examination in Florida maintain medical malpractice insurance in amounts sufficient to cover any incident of harm to a patient during the examination.

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

II. Present Situation:

The Practice of Dentistry

The BOD regulates the practice of dentistry in Florida by carrying out the provisions of ch. 466, F.S., which establishes the requirements for the practice of dentistry by dentists, dental

hygienists, and dental assistants under the Dental Practice Act.¹ A dentist is licensed to examine, diagnose, treat, and care for conditions within the human oral cavity and its adjacent tissues and structures.² A dental hygienist provides education, preventive, and delegated therapeutic dental services.³ Dental assistants are persons who, under the supervision and authorization of a dentist, provide dental care services directly to a patient, but who are not dental hygienists or licensed certified registered nurse anesthetists.⁴ Only dentists and dental hygienist are required by ch. 466, F.S., to pass a statutorily required licensure examination.

Florida currently uses the American Dental Licensing Examination (ADLEX) and the American Dental Hygiene Licensing Examination (ADHLEX) for its clinical examinations. Both are produced by the American Board of Dental Examiners, Inc. (ADEX),⁵ as the legislatively mandated state clinical licensure examinations for dentists and dental hygienists.⁶ Both clinical examinations are administered by two national testing agencies:

- Commission for Dental Competency Assessments (CDCA).
- Council of Interstate Testing Agencies (CITA).

According to the American Dental Association (ADA) and the ADEX, there are currently four national clinical testing agencies:^{7,8}

- CDCA-WREB (Formerly the Commission for Dental Competency Assessments-Western Regional Examining Board);
- Council of Interstate Testing Agencies (CITA);
- Central Regional Dental Testing Services, Inc. (CRDTS); and
- Southern Regional Testing Agency, Inc. (SRTA).

Delaware administers its own exam while New York requires completion of a one-year residency program for dentists.⁹

Dentists

The requirements for dental licensure in Florida are found in s. 466.006, F.S. An applicant must apply to the Department of Health (DOH) to take and pass the following examinations:

- The ADLEX;¹⁰ and

¹ Section 466.004, F.S.

² Section 466.003(3), F.S.

³ Section 466.003(4) and (5), F.S.

⁴ Section 466.003(6), F.S.

⁵ The American Board of Dental Examiners, Inc. (ADEX) develops both dental and dental hygiene clinical examinations. The first ADLEX exam was produced by the ADEX and administered in 2005; and is now simply called the “ADEX Dental Exam” or the “ADEX Dental Hygiene Exam.” The ADEX does not administer examinations. For clarity purposes, this analysis will continue to refer to American Dental Licensing Examination as the “ADLEX,” the American Dental Hygiene Licensing Examination as the “ADHLEX,” and reserve the abbreviation “ADEX” for the American Board of Dental Examiners, Inc.

⁶ See ss. 466.006(4)(b) and 466.007(4)(b), F.S.

⁷ American Dental Association, *Licensure for Dental Students*, available at <https://www.ada.org/resources/licensure/student-licensure> (last visited Jan. 22, 2022).

⁸ The American Board of Dental Examiners, Inc., ADEX. *What ADEX Does*, available at <https://adexexams.org/about-adex/> (last visited Jan. 31, 2022).

⁹ American Dental Association, *supra* note 7.

¹⁰ Section 466.006, F.S.

- An exam on Florida laws and rules relating to dentistry.

To take the ADLEX clinical examination, a dental applicant must be at least 18 years of age and must:

- Be a graduate from a dental school accredited by the ADA Commission on Dental Accreditation (CODA) or any other dental accrediting entity recognized by the U.S. Department of Education (DOE); or
- Be a dental student in the final year of a program at an ADA-CODA-accredited dental school who has completed all the coursework necessary to prepare the student to perform the clinical and diagnostic procedures required to pass the examinations. A passing score on the examination is valid for 365 days; and
- Have passed Parts I and II of the National Board Dental Examination (NBDE), administered by the Joint Commission on National Dental Examinations (JCNDE).¹¹

Current law requires the ADLEX clinical dental examination to include the following:

- Comprehensive diagnostic skills examination including an examination, clinical diagnosis and treatment planning;
- Two restorations on a live patient or patients;¹²
- Demonstration of periodontal skills on a live patient;
- Demonstration of prosthetics and restorative skills in complete and partial dentures and crowns and bridges and the utilization of practical methods of evaluation;
- Demonstration of restorative skills on a manikin including procedures performed in preparation for a cast restoration;
- Demonstration of endodontic skills; and
- A diagnostic skills examination demonstrating ability to diagnose conditions within the human oral cavity and its adjacent tissues and structures from photographs, slides, radiographs, or models.¹³

A dental school graduate from a school not accredited by the ADA CODA, a U.S. DOE-recognized dental accrediting entity, or approved by the BOD, and desiring to take the ADLEX, is not entitled to do so unless the applicant:

- Demonstrates completion of a program defined by BOD rule at an accredited American dental school and receives either a D.D.S. or D.M.D. from the school; or
- Submits proof of successful completion of at least two consecutive years at a full-time supplemental general dentistry program accredited by the ADA CODA.¹⁴

¹¹ American Dental Association, Joint Commission on National Dental Examinations, *About the JCNDE*, available at <https://www.ada.org/en/jcnde/about-us> (last visited Jan. 22, 2022) The Joint Commission on National Dental Examinations (JCNDE) is the agency responsible for the development and administration of the National Board Dental Examinations (NBDE). This 16-member Commission includes representatives from dental schools, dental practice, state dental examining boards, dental hygiene, dental students, and the public.

¹² See Fla. Admin. Code R. 64B5-2.013 (2021), which specified the class of restorations required for the clinical examination. It was repealed by the BOD in May 2012, after the clinical examination was transitioned to the ADLEX, because the ADEX had specified the class of restorations required to be performed in the ADLEX.

¹³ Section 466.006(5)(a), F.S.

¹⁴ Section 466.006(3), F.S.

Dental Hygienists

The requirements for licensure as a dental hygienist are found in s. 466.007, F.S. An applicant must apply to the DOH to take the ADHLEX and is entitled to licensure if he or she is 18 years of age or older and has:¹⁵

- Graduated from a dental hygiene college or school that is:
 - Board-approved;
 - Accredited by the ADA CODA or by any other dental accrediting entity recognized by the U.S. DOE;
- Passed the Florida Laws and Rules examination; and
- Passed the ADHLEX examination.

A dentist who is a graduate of an accredited dental college or school or a graduate of an unaccredited dental college or school, may also take the ADHLEX and obtain licensure as a dental hygienist if he or she meets certain additional criteria.¹⁶

Dental and Dental Hygiene Examinations

The Legislature has authorized the BOD to use the ADLEX and the ADHLEX dental exams developed by ADEX in lieu of an independent state-developed practical or clinical examination for both dentists and dental hygienists.¹⁷ Dental licensure is a process every dentist must go through, and, in the United States, licensure requirements vary from state to state. State legislatures and dental boards establish the licensure requirements, including which licensure examinations its prospective licensees must take and pass as evidence of clinical competence for a dental license.

Dentists - The American Dental Licensing Examination (ADLEX)

The ADLEX clinical examination administered by CDCA and the CITA is accepted in 48 states plus Puerto Rico, Jamaica, and the U.S. Virgin Islands.¹⁸ The ADLEX clinical examination is given in two formats:

- The traditional format;^{19,20} and
- The Patient-Centered Curriculum Integrated Format (PC CIF).^{21,22}

¹⁵ Section 466.007, F.S.

¹⁶ See s. 466.007 (2)(b)1. and (3), F.S.

¹⁷ See ss. 466.006(4)(b) and 466.007(4)(b), F.S.

¹⁸ The Commission on Dental Competency Assessments, *2021 ADEX Acceptance Maps, Dental*, available at <https://www.cdcaexams.org/ADEX-acceptance-map/> (last visited Jan. 31, 2022). Only New York and Delaware do not accept the ADEX dental examination.

¹⁹ The Commission on Dental Competency Assessments, *Dental (ADEX)*, available at <https://www.cdcaexams.org/dental-exams/> (last visited Jan. 22, 2022).

²⁰ American Dental Association, *supra* note 7.

²¹ *Id.*

²² American Board of Dental Examiners, Inc., ADEX Patient Centered Curriculum Integrated Format (PC CIF), *ADEX* available at <https://ADEXexams.org/wp-content/uploads/2016/06/ADEX-Patient-Centered-Curriculum-Integrated-Format-PC-CIF-2.pdf> (last visited Jan. 22, 2022). The PC CIF format focuses on patient care needs, rather than the candidate's examination. The examination itself is identical to the ADEX Licensing Examination for initial licensure in dentistry.

The traditional format uses a clinical manikin and patient-based examinations administered in a single sitting at the end of a dental student's senior year by a testing agency or individual state. It is for those students who have elected not to take the PC CIF or for those who have already graduated from dental school.²³

The PC CIF is an alternative to the traditional format. The PC CIF option is offered by the CRDTS, CITA, CDCA, and SRTA, but not the WREB. The PC CIF allows dental students to be examined in sections, during the fourth year of dental school. With the PC CIF, the manikin-based clinical examinations are administered late in the junior year or early in the senior year, and the clinical patient-based examinations are administered during the senior year. Only students or graduates of schools accredited by the ADA CODA or the Commission on Dental Accreditation of Canada may take the ADLEX PC CIF clinical examination.²⁴

All other candidates (including international graduates) must apply through a state's dental board in the state or jurisdiction where they wish to practice for permission to take an examination for licensure only in that state or jurisdiction.

The ADLEX examination series includes computer simulations and clinical examinations performed on patients and manikins and is an Objective Structured Clinical Examination (OSCE).²⁵ There are five skill-specific components including a high-fidelity computerized OSCE testing a candidate's ability to apply knowledge to the care of patients. The five areas are:

- Diagnostic Skill Examination;
- Restorative – Anterior and Posterior;
- Prosthodontics;²⁶
- Endodontics;²⁷ and
- Periodontal Scaling.

The cost of taking the full dental ADLEX examination is \$2,295 plus ancillary fees.²⁸

Dental Hygienist - The American Dental Licensing Examination (ADHLEX)

The ADHLEX examination is used in Florida and administered by the CDCA and the CITA. The ADHLEX is designed for students about to complete dental hygiene training and graduate dental

²³ *Id.*

²⁴ Section 466.006(2)(b), F.S.

²⁵ National Institute of Health, US National Library of Medicine, Oman Med J. 2011 Jul; 26(4): 219–222, *Objective Structured Clinical Examination: The Assessment of Choice*, available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3191703/> (last visited Jan. 22, 2022). The Objective Structured Clinical Examination is a versatile multipurpose evaluative tool that can be utilized to assess health care professionals in a clinical setting. It assesses competency, based on objective testing through direct observation. It is precise, objective, and reproducible allowing uniform testing of students for a wide range of clinical skills. Unlike the traditional clinical exam, the OSCE could evaluate areas most critical to performance of health care professionals such as communication skills and ability to handle unpredictable patient behavior.

²⁶ Prosthodontics is the branch of dentistry concerned with the design, manufacture, and fitting of artificial replacements for teeth and other parts of the mouth.

²⁷ Endodontics is the branch of dentistry concerning dental pulp and tissues surrounding the roots of a tooth. Endodontic treatment, or root canal treatment, treats the soft pulp tissue inside the tooth.

²⁸ American Dental Association, *supra* note 7.

hygienists. Forty-seven states accept the ADHLEX examination; only Delaware, Georgia, and Nebraska do not.²⁹

The ADHLEX examination is based on specific performance criteria used to measure clinical competence. There are two skill-specific clinical and simulated clinical OSCE:

- The Computer Simulated Clinical Examination (CSCE-OSCE); and
- The Patient Treatment Clinical Examination (PTCE).³⁰

The CSCE-OSCE exam is designed to assess various levels of diagnosis and treatment planning knowledge, skills, and abilities. Clinically-based questions are utilized through computer-enhanced photographs, radiographs, optical images of study and working models, laboratory data, and other clinical digitized reproductions.³¹

The PTCE evaluates candidates on their clinical and judgment skills. Clinical skills include:³²

- Detection and removal of calculus;
- Accurate periodontal pocket depth measurements;
- Tissue management; and
- Final case presentation.

Judgment skills include:

- Presenting an eligible patient;
- Diagnostic-quality radiographs meeting all examination criteria; and
- An acceptable case selection of teeth that meets all calculus requirements.

The non-patient version of this ADHLEX examination is called the Manikin Treatment Clinical Examination (MTCE).³³

The cost of taking the full ADHLEX exam, both patient and manikin based, is \$995.³⁴

Medical Malpractice Insurance for Examinees

Florida law currently requires dentist and dental hygienists to demonstrate competency on a live patient during their licensure examination. Because of this, s. 466.0075, F.S., authorizes the BOD to require that any person applying to take the examination to practice dentistry or dental hygiene in Florida to maintain medical malpractice insurance in amounts sufficient to cover any incident of harm to a patient during the clinical examination. Additionally, schools of dentistry wishing to offer licensure examinations must have a written plan in place requiring that dental student possess medical malpractice insurance in amounts not less than the amounts required to take the Florida licensure examinations and to make adequate arrangements for patients who

²⁹ The Commission on Dental Competency Assessments, 2021 ADEX Acceptance Maps, *Dental Hygiene*, available at <https://www.cdcaexams.org/ADEX-acceptance-map/> (last visited Jan. 31, 2022).

³⁰ The Commission on Dental Competency Assessments, *Dental Hygiene (ADEX)*, available at <https://www.cdcaexams.org/dental-hygiene-ADEX-exam/> (last visited Jan. 31, 2022).

³¹ *Id.*

³² See The Commission on Dental Competency Assessments, *supra* note 30.

³³ *Id.*

³⁴ See The Commission on Dental Competency Assessments, *supra* note 30

require follow-up care as a result of procedures performed during the clinical portion of the regional examination.³⁵

III. Effect of Proposed Changes:

CS/CS/SB 926 amends s. 466.006, F.S., confirming that the ADLEX is the practical examination for dentists in Florida and revising the required minimum examination requirements to eliminate the requirement for use of live patient(s) for two restorations, the demonstration of periodontal skill with calculus,³⁶ and the demonstration of restorative skills, which requires the candidate to complete procedures performed in preparation for a cast restoration. The bill requires the candidate to use a manikin that has typodont teeth,³⁷ including one with simulated caries, as approved by the CDCA.

The bill amends s. 466.0065, F.S., deleting the requirement that dental schools wishing to offer dental licensure exams to students have a written plan to comply with the following requirements:

- A dental student must possess medical malpractice insurance in amounts not less than the amounts required to take the Florida licensure examinations;
- Adequate arrangements must be made for patients who require follow-up care as a result of procedures performed during the clinical portion of the regional examination; and
- There may not be any evidence in a student's academic record suggesting that the student may pose an unreasonable risk to any live patient required for the clinical portion of the examination.

CS/CS/SB 926 amends s. 466.007, F.S., to require that dental hygienists taking the ADEX licensure examination to demonstrate skills within the dental hygiene scope of practice on manikin that has typodont teeth with simulated dentition and calculus as approved by the CDCA, instead of a live patient.

The bill also repeals s 466.0075, F.S., which authorizes the BOD to require that any person applying to take the practical dentistry or dental hygiene examination in Florida to maintain medical malpractice insurance in amounts sufficient to cover any incident of harm to a patient during the clinical examination.

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

³⁵ Section 466.0065(2)(c) and (e)

³⁶ Dental caries is a process of demineralization of tooth enamel, leading to destruction of enamel and dentin, with cavitation of the tooth. Decayed and infected teeth can be the source of other infections throughout the body, and decayed or missing teeth can interfere with proper chewing of food, leading to nutritional deficiencies or disorders of digestion. Called also tooth decay. The Free Medical Dictionary, *Dental Caries*, available at <https://medical-dictionary.thefreedictionary.com/dental+caries> (last visited Jan. 22, 2022).

³⁷ A typodont is a model of the oral cavity, including teeth, gingiva, and the palate. A typodont is an educational tool for dental and hygienist students, allowing them to practice certain dental procedures on the plastic teeth of a model before actually performing the procedures on live patients. The Free Medical Dictionary, *Typodont*, available at <https://medical-dictionary.thefreedictionary.com/typodont> (last visited Jan. 22, 2022).

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

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

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

None.

B. Private Sector Impact:

The bill will probably reduce the cost of taking the licensure examinations for both dentists and dental hygienists as many often must pay patients large sums for patients to appear at examinations.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 466.006, 466.0065, and 466.007.

This bill repeals section 466.0075 of the Florida Statutes.

IX. Additional Information:

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

CS/CS by Banking and Insurance on January 25, 2022:

The CS revises the type of manikin that may be used in an ADEX Dental Hygiene Examination to be one with typodont teeth with simulated dentition and calculus.

CS by Health Policy on January 13, 2022:

The CS makes technical corrections to the bill relating to required demonstration of a prospective dentist's periodontal skills, by replacing "caries" with "calculus," and makes a technical correction to a prospective hygienist's required demonstration of skills, by adding "calculus" to those requirements.

- B. **Amendments:**

None.

By the Committees on Banking and Insurance; and Health Policy;
and Senator Albritton

597-02316-22

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A bill to be entitled

An act relating to licensure examinations for dental practitioners; amending s. 466.006, F.S.; revising licensure examination requirements for dentists to require applicants to demonstrate certain clinical skills on a manikin rather than a live patient; amending s. 466.0065, F.S.; revising requirements for regional licensure examinations offered by dental schools to dental students; amending s. 466.007, F.S.; revising licensure examination requirements for dental hygienists to require applicants to demonstrate certain clinical skills on a manikin rather than a live patient; repealing s. 466.0075, F.S.; deleting a requirement that applicants for dental practitioner licensure examinations maintain medical malpractice insurance to cover any incident of harm to a patient during the clinical examination; providing an effective date.

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

Section 1. Paragraph (a) of subsection (5) of section 466.006, Florida Statutes, is amended to read:

466.006 Examination of dentists.—

(5) (a) The practical examination required under subsection (4) ~~is shall be~~ the American Dental Licensing Examination developed by the American Board of Dental Examiners, Inc., or its successor entity, if any, provided the board finds that the successor entity's clinical examination complies with the

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

597-02316-22

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provisions of this section, and must ~~shall~~ include, at a minimum:

1. A comprehensive diagnostic skills examination covering the full scope of dentistry and an examination on applied clinical diagnosis and treatment planning in dentistry for dental candidates;

2. Two restorations on a manikin that has typodont teeth with simulated caries as approved by the Commission on Dental Competency Assessments ~~live patient or patients~~. The board by rule shall determine the class of such restorations;

3. A demonstration of periodontal skills on a manikin that has typodont teeth with simulated calculus as approved by the Commission on Dental Competency Assessments ~~live patient~~;

4. A demonstration of prosthetics and restorative skills in complete and partial dentures and crowns and bridges and the utilization of practical methods of evaluation, specifically including the evaluation by the candidate of completed laboratory products such as, but not limited to, crowns and inlays filled to prepared model teeth;

5. A demonstration of restorative skills on a manikin ~~mannequin~~ which requires the candidate to complete procedures performed in preparation for a cast restoration;

6. A demonstration of endodontic skills; and

7. A diagnostic skills examination demonstrating ability to diagnose conditions within the human oral cavity and its adjacent tissues and structures from photographs, slides, radiographs, or models pursuant to rules of the board. If an applicant fails to pass the diagnostic skills examination in three attempts, the applicant is ~~shall~~ not ~~be~~ eligible for

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597-02316-22

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reexamination unless she or he completes additional educational requirements established by the board.

The department shall require a mandatory standardization exercise for all examiners prior to each practical or clinical examination and shall retain for employment only those dentists who have substantially adhered to the standard of grading established at such exercise.

Section 2. Paragraphs (c), (e), and (j) of subsection (2) of section 466.0065, Florida Statutes, are amended to read:

466.0065 Regional licensure examinations.—

(2) Each school of dentistry in this state which is accredited by the Commission on Accreditation of the American Dental Association or its successor agency may, upon written approval by the Board of Dentistry, offer regional licensure examinations only to dental students in the final year of a program at an approved dental school, if the board has approved the hosting school's written plan to comply with the following conditions:

~~(c) The student must possess medical malpractice insurance in amounts not less than the amounts required to take the Florida licensure examinations.~~

~~(e) Adequate arrangements, as defined by the regional examination body and as otherwise required by law, must be made, when necessary, for patients who require followup care as a result of procedures performed during the clinical portion of the regional examination. The regional examination body must inform patients in writing of their right to followup care in advance of any procedures performed by a student.~~

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~~(j) The student's academic record must not include any evidence suggesting that the student poses an unreasonable risk to any live patients who are required for the clinical portion of the regional examination. In order to protect the health and safety of the public, the dental school may request additional information and documents pertaining to the candidate's mental and physical health in order to fully assess the candidate's fitness to engage in exercises involving a live patient.~~

Section 3. Paragraph (b) of subsection (4) of section 466.007, Florida Statutes, is amended to read:

466.007 Examination of dental hygienists.—

(4) Effective July 1, 2012, to be licensed as a dental hygienist in this state, an applicant must successfully complete the following:

(b) A practical or clinical examination approved by the board. The examination shall be the Dental Hygiene Examination produced by the American Board of Dental Examiners, Inc., (ADEX) or its successor entity, if any, if the board finds that the successor entity's clinical examination meets or exceeds the provisions of this section. The board shall approve the ADEX Dental Hygiene Examination if the board has attained and continues to maintain representation on the ADEX House of Representatives, the ADEX Dental Hygiene Examination Development Committee, and such other ADEX Dental Hygiene committees as the board deems appropriate through rulemaking to ensure that the standards established in this section are maintained organizationally. The ADEX Dental Hygiene Examination or the examination produced by its successor entity is a comprehensive examination in which an applicant must demonstrate skills within

597-02316-22

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117 the dental hygiene scope of practice on a manikin that has
118 typodont teeth with simulated dentition and calculus as approved
119 by the Commission on Dental Competency Assessments ~~live patient~~
120 and any other components that the board deems necessary for the
121 applicant to successfully demonstrate competency for the purpose
122 of licensure.

123 Section 4. Section 466.0075, Florida Statutes, is repealed.

124 Section 5. This act shall take effect July 1, 2022.

The Florida Senate

APPEARANCE RECORD

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

2/3/22

Meeting Date

926

Bill Number or Topic

Rules

Committee

Amendment Barcode (if applicable)

Name

Philip Sussman

Phone

Address

Street

Email

City

State

Zip

Speaking:

☐

For

☐

Against

☐

Information

OR

Waive Speaking:

☒

In Support

☐

Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐

I am appearing without
compensation or sponsorship.

☒

I am a registered lobbyist,
representing:

Americans for Prosperity

☐

I am not a lobbyist, but received
something of value for my appearance
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Amendment Barcode (if applicable)

Name

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Speaking:

☐ For

☐ Against

☐ Information

OR

Waive Speaking:

☒

In Support

☐ Against

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I am a registered lobbyist,
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Florida Dental Association



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926

Bill Number or Topic

Amendment Barcode (if applicable)

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Speaking:

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For

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Against

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Information

OR

Waive Speaking:

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In Support

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Against

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S-001 (08/10/2021)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL: SB 934

INTRODUCER: Senator Gruters

SUBJECT: Public Records/Homelessness Counts and Information Systems

DATE: February 1, 2022

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Delia	Cox	CF	Favorable
2. Limones-Borja	McVane	GO	Favorable
3. Delia	Phelps	RC	Favorable

I. Summary:

SB 934 makes confidential and exempt from public inspection and copying requirements individual identifying information of a person contained in a Point-In-Time Count and Survey or data in a Homeless Management Information System collected pursuant to federal law and regulations. "Individual identifying information" is defined as information that directly or indirectly identifies a specific person, or can be linked with other available information to identify a specific person. The bill provides for retroactive application of the exemption to protect similar information collected prior to the bill becoming a law.

The bill does not prohibit the release of aggregate information from a Point-In-Time Count and Survey or data in a Homeless Management Information System that does not disclose individual identifying information of a person.

The exemption is subject to the Open Government Sunset Review Act (act) and will stand repealed on October 2, 2027, unless reviewed and reenacted by the Legislature.

The bill creates a new public records exemption and, therefore, requires a two-thirds vote of the members present and voting for final passage.

The bill is anticipated to have limited fiscal impact on state and local governments. See Section V. Fiscal Impact Statement.

The bill takes effect upon becoming a law.

II. Present Situation:

Access to Public Records - Generally

The State 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, F.S., provides public access requirements for legislative records. Relevant exemptions are codified in s. 11.0431(2)-(3), F.S., and 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., known as the Public Records Act, provides requirements for public records held by executive agencies.

Executive Agency Records – The Public Records Act

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

Section 119.011(12), F.S., defines “public records” to include:

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 connections with the transaction of official business by any agency.

The Florida Supreme Court has interpreted this definition to encompass all materials made or received by an agency in connection with official business that are used to “perpetuate, communicate, or formalize knowledge of some type.”⁶

¹ FLA. CONST. art. I, s. 24(a).

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 *Shevin v. Byron, Harless, Schaffer, Reid and Assoc., Inc.*, 379 So. 2d 633, 640 (Fla. 1980).

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.⁷ A violation of the Public Records Act may result in civil or criminal liability.⁸

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.⁹ 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.¹⁰

General exemptions from the public records requirements are contained in the Public Records Act.¹¹ Specific exemptions often are placed in the substantive statutes relating to a particular agency or program.¹²

When creating a public records exemption, the Legislature may provide that a record is "exempt" or "confidential and exempt." There is a difference between records the Legislature has determined to be exempt from the Public Records Act and those which the Legislature has determined to be exempt from the Public Records Act *and confidential*.¹³ Records designated as "confidential and exempt" are not subject to inspection by the public and may only be released under the circumstances defined by statute.¹⁴ Records designated as "exempt" may be released at the discretion of the records custodian under certain circumstances.¹⁵

Open Government Sunset Review Act

The provisions of s. 119.15, F.S., known as the Open Government Sunset Review Act¹⁶ (the Act), prescribe a legislative review process for newly created or substantially amended¹⁷ public records or open meetings exemptions, with specified exceptions.¹⁸ The Act requires the repeal of

⁷ Section 119.07(1)(a), F.S.

⁸ Section 119.10, F.S. Public records laws are found throughout the Florida Statutes, as are the penalties for violating those laws.

⁹ FLA. CONST. art. I, s. 24(c).

¹⁰ *Id. 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).

¹¹ *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).

¹² *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).

¹³ *WFTV, Inc. v. The Sch. Bd. of Seminole County*, 874 So. 2d 48, 53 (Fla. 5th DCA 2004).

¹⁴ *Id.*

¹⁵ *Williams v. City of Minneola*, 575 So. 2d 683 (Fla. 5th DCA 1991).

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., provides that exemptions required by federal law or applicable solely to the Legislature or the State Court System are not subject to the Open Government Sunset Review Act.

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

The Act also requires specified questions to be considered during the review process.²⁴ In examining an exemption, the Act directs the Legislature to 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 expire, the previously exempt records will remain exempt unless otherwise provided by law.²⁶

Federal Homelessness Grants

Homeless Assistance Grants, administered by the federal Department of Housing and Urban Development (HUD), were first authorized by Congress in 1987 as part of the Stewart B.

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.

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.

McKinney Homeless Assistance Act²⁷ to address the needs of the homeless, including food, shelter, health care, and education.²⁸ In 2000, the Act was renamed the McKinney-Vento Homeless Assistance Act.²⁹ At that time, the McKinney-Vento Act's definition of "homeless"³⁰ was sometimes described as requiring an individual to be literally homeless in order to receive assistance.³¹ In 2009, Congress enacted the Homeless Emergency Assistance and Rapid Transition to Housing (HEARTH) Act. The HEARTH Act broadened the definition of "homeless" to include people at imminent risk of homelessness, previously homeless people temporarily in institutional settings, unaccompanied youth and families with persistent housing instability, and people fleeing or attempting to flee domestic violence.³² This is in addition to the original definition used by the U.S. Department of Housing and Urban Development (HUD): "An individual or family who lacks a fixed, regular, and adequate nighttime residence."

There are two main federal programs which distribute federal homelessness grant funding (1) the Emergency Solutions Grants (ESG) program and (2) the Continuum of Care (CoC) program. The ESG program distributes grant funds primarily for emergency sheltering of the homeless. The CoC program distributes grant funds to assist with the longer-term housing and service needs of the homeless. To be a recipient or subrecipient of the CoC program and ESG program funds, participation and administration of the Homeless Management Information System (HMIS) is required. The purpose of the HMIS is to collect data in order to better inform homeless policy and decision making at the federal, state and local levels.

ESG Program

HUD distributes funds from the ESG program to grantee states and local communities to assist those experiencing homelessness. ESG funds may be used for five program components:

- Street outreach;³³
- Emergency shelter;³⁴
- Homelessness prevention;³⁵
- Rapid rehousing assistance;³⁶ and

²⁷ The Stewart B. McKinney Homeless Assistance Act of 1987, Pub. L. 100-77, July 22, 1987, 101 Stat. 482, 42 U.S.C. § 11301.

²⁸ *Id.*

²⁹ The McKinney-Vento Homeless Assistance Act Pub. L. 106-400, October 30, 2000, 114 Stat. 1675, 42 U.S.C. § 11301.

³⁰ 42 U.S.C. § 11302 (1) an individual who lacks a fixed, regular, and adequate nighttime residence; and (2) an individual who has a primary nighttime residence that is—(A) a supervised publicly or privately operated shelter designed to provide temporary living accommodations (including welfare hotels, congregate shelters, and transitional housing for the mentally ill); (B) an institution that provides a temporary residence for individuals intended to be institutionalized; or (C) a public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings.

³¹ See, for example, the Department of Housing and Urban Development, *The Third Annual Homeless Assessment Report to Congress*, July 2008, p. 2, footnote 5, <http://www.hudhre.info/documents/3rdHomelessAssessmentReport.pdf> (last visited January 24, 2022).

³² 42 U.S.C. § 11302(a).

³³ 24 C.F.R. § 576.101(a) authorizes ESG funds to be used for costs of providing essential services necessary to reach out to unsheltered homeless people; connect them with emergency shelter, housing, or critical services; and provide urgent, nonfacility-based care to unsheltered homeless people who are unwilling or unable to access emergency shelter, housing, or an appropriate health facility.

³⁴ 24 C.F.R. § 576.102 authorizes ESG funds to be used for costs of providing essential services to homeless families and individuals in emergency shelters, renovating buildings to be used as emergency shelter for homeless families and individuals, and operating emergency shelters.

³⁵ 24 C.F.R. § 576.103 authorizes ESG funds to be used to provide housing relocation and stabilization services and short- and/or medium-term rental assistance necessary to prevent an individual or family from moving into an emergency shelter.

³⁶ 24 C.F.R. § 576.104 authorizes ESG funds to be used to provide housing relocation and stabilization services and short- and/or medium-term rental assistance as necessary to help a homeless individual or family move as quickly as possible into permanent housing and achieve stability in that housing.

- HMIS and administrative activities.³⁷

CoC Program - Point-In-time Count and Survey

HUD's data collection efforts are built into its CoC program. A CoC is a regional or local planning body that coordinates homeless response funding, provides homelessness services, and applies for CoC program grants in a geographical area. The HUD requires that state homeless CoCs³⁸ conduct an annual census of persons who are experiencing homelessness, including those who are sheltered in emergency shelters, transitional housing units, and safe havens on a single night during the last week of January.³⁹ This annual count is titled a point-in-time (PIT) count.

Point-In Time Count

The PIT count is an unduplicated count on a single night of the people in a community who are experiencing homelessness that includes both sheltered and unsheltered populations.⁴⁰ Further, HUD requires that the CoCs conduct a count of the unsheltered homeless population in odd-numbered years.⁴¹ Although HUD requires CoCs gather survey data, federal privacy laws do not necessarily extend to non-federal agencies that receive federal funds.⁴²

While CoCs typically perform annual counts of both sheltered and unsheltered individuals, in 2021 only six of the 27 CoCs conducted such counts due to COVID-19 related safety concerns.⁴³ All 27 CoCs conducted a sheltered PIT count.⁴⁴ Ten CoCs did not conduct an unsheltered count, while others conducted a modified form of the unsheltered count.⁴⁵ For those that did not conduct an unsheltered count, the CoCs reported zero unsheltered persons, resulting in an undercount of homelessness.⁴⁶

The 2021 PIT Survey reports indicate that 21,218 persons met the HUD definition of homeless in Florida on a given day in January 2021.⁴⁷ The Florida Department of Education reports that 79,949 public school students were homeless in Florida during the 2019-2020 school year.⁴⁸

³⁷ 24 C.F.R. § 576.107 authorizes ESG funds to be used to pay the costs of contributing data to the HMIS designated by the Continuum of Care for the area; and 24 C.F.R. § 576.108 authorizes recipients to use of to 7.5 percent of its ESG grant for the payment of administrative costs related to the planning and execution of ESG activities.

³⁸ The U.S. Department of Housing and Urban Development (the HUD) designed the Homeless Continuums of Care to promote communitywide commitment and planning toward the goal of preventing and ending homelessness. In Florida there are 27 Continuum of Care lead agencies serving 64 of 67 counties, according to the Department of Children and Families (the DCF) Council on Homelessness. The DCF, *2021 Annual Report*, p. 6, June 2021, available at <https://www.myflfamilies.com/service-programs/homelessness/docs/2021CouncilReport.pdf> (last visited January 12, 2022) (hereinafter cited as "The Council Report").

³⁹ *Id.*

⁴⁰ The National Alliance to End Homelessness, *What is a Point-in-Time Count?*, available at <https://endhomelessness.org/resource/what-is-a-point-in-time-count/> (last visited January 12, 2022).

⁴¹ *Id.*

⁴² *Housing Authority of City of Daytona Beach v. Gomillion*, 639 So.2d 117 (Fla. 5th DCA 1994).

⁴³ The Council Report at p. 6 and 50.

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ *Id.* at p. 14.

⁴⁸ The Council Report at p. 15 and 60-61.

The intent of the PIT Survey is to identify those individuals who meet HUD's definition of a homeless person. This is limited to individuals in the following four categories:

- Literally Homeless: Individuals and families who live in a place not meant for human habitation (including outdoors or in their car), emergency shelter, transitional housing, and motels paid for by a government or charitable organization.
- Imminent Risk of Homelessness: Individuals and families who will lose their primary nighttime residence within 14 days and have no other resources or support networks to obtain other permanent housing.
- Homeless Under other Federal Statutes: Unaccompanied youth under 25 years of age, or families with children and youth, who do not meet any of the other categories are homeless under other federal statutes, have had a lease, and have moved two or more times in the past 60 days, and are likely to remain unstable because of their special needs or barriers.
- Fleeing or Attempting to Flee Domestic Violence: Individuals or families who are fleeing or attempting to flee domestic violence, dating violence, sexual assault, or stalking, and who lack resources and support networks to obtain other permanent housing.⁴⁹

The homeless needs assessment requirements for local governments, including the requirement to use PIT count data, are stated in 24 CFR 91.205(c)(1).⁵⁰

Homeless Management Information Systems

PIT Surveys request personal information, such as a person's name, date of birth, social security number, race, ethnicity, disability (including personal health information), veteran status, and prior living situation.⁵¹ Data collected through PIT Surveys⁵² and during other counts is managed through the HMIS, a software application designed to record and store client-level information on the characteristics and service needs of homeless persons.⁵³ Each CoC is responsible for selecting an HMIS software solution that complies with the HUD's data collection, management, and reporting standards.⁵⁴ An HMIS is typically a web-based software application that homeless

⁴⁹ *Id.* at p. 13.

⁵⁰ 24 CFR 91.205(c)(1) states, in pertinent part: "The plan must describe, in a form prescribed by HUD, the nature and extent of unsheltered and sheltered homelessness, including rural homelessness, within the jurisdiction. At a minimum, the recipient must use data from the Homeless Management Information System (HMIS) and data from the Point-In-Time (PIT) count conducted in accordance with HUD standards; (i) The description must include, for each category of homeless persons specified by HUD (including chronically homeless individuals and families, families with children, veterans and their families, and unaccompanied youth), the number of persons experiencing homelessness on a given night, the number of persons who experience homelessness each year, the number of persons who lose their housing and become homeless each year, the number of persons who exit homelessness each year, the number of days that persons experience homelessness, and other measures specified by HUD.; (ii) The plan also must contain a brief narrative description of the nature and extent of homelessness by racial and ethnic group, to the extent information is available."

⁵¹ The HUD, Sheltered PIT Count and HMIS Data Crosswalk, p. 2, available at <https://files.hudexchange.info/resources/documents/Sheltered-PIT-Count-and-HMIS-Data-Element-Crosswalk.pdf> (last visited January 5, 2022).

⁵² Sample surveys are available at <https://www.pointintime.info/simtechsolutions/assets/File/PIT%202018%20Unsheltered%20Survey.pdf> and <https://files.hudexchange.info/resources/documents/PIT-Count-Youth-Survey-Comprehensive.pdf> (all sites last visited January 24, 2022).

⁵³ The HUD, *Homeless Management Information System*, available at <https://www.hudexchange.info/programs/hmis/> (last visited January 24, 2022).

⁵⁴ *Id.*

assistance providers use to coordinate care, manage their operations, and better serve their clients.⁵⁵

III. Effect of Proposed Changes:

Section 1 creates s. 420.6231, F.S., to make confidential and exempt from public inspection and copying requirements individual identifying information of a person contained in a PIT Count and Survey or data in an HMIS collected pursuant to federal law and regulations. The exemption applies retroactively to information that is currently held related to such PIT counts. The section provides that the exemption is subject to the Open Government Sunset Review Act and will be repealed on October 2, 2027, unless the Legislature reviews and renews the exemption before that date.

Section 1 does not preclude aggregate information from being released so long as an individual cannot be identified.

Section 1 provides the following definitions:

- “Individual identifying information” means “information that directly or indirectly identifies a specific person, can be manipulated to identify a specific person, or can be linked with other available information to identify a specific person.”
- “Point-in-Time Count” means “an unduplicated count of both the sheltered and unsheltered people in a community who are experiencing homelessness.” The bill specifies that the term includes all survey information received from persons experiencing homelessness.

Section 2 provides a statement of public necessity. The bill states that it is a public necessity to keep confidential and exempt from public disclosure identifying information of a person contained in a PIT Count and Survey or data in a HMIS collected pursuant to federal law and regulations. Further, the public necessity statement provides that public knowledge of such sensitive information:

- Could lead to discrimination against or ridicule of such individuals and could make them reluctant to seek assistance for themselves or their family members;
- May put affected individuals at greater risk of injury as a significant proportion of such individuals are survivors of domestic violence or suffer from mental illness or substance abuse; and
- May put affected individuals at a heightened risk for fraud and identity theft.

The section further provides that the harm from disclosing the identity of individuals included outweighs potential benefits to be derived widespread and unfettered access to such information and that federal law requires victim service providers to protect the personal identifying information of clients and prohibits the disclosure of such information for HMIS purposes.⁵⁶

⁵⁵ The HUD Exchange Homeless Management Information System, available at <https://www.hudexchange.info/hmis> (last visited January 24, 2022).

⁵⁶ In the course of awarding grants or implementing programs, the HUD Secretary is required to instruct any victim service provider that is a recipient or subgrantee not to disclose, for purposes of the HMIS, any personally identifying information about any client. The Secretary may, after public notice and comment, require or ask such recipients and subgrantees to disclose, for purposes of the HMIS, non-personally identifying information that has been de-identified, encrypted, or otherwise encoded. *See* 42 U.S.C. s. 11363.

Section 3 directs the Division of Law Revision to replace the phrase “the effective date of this act” wherever it occurs with the date the bill becomes a law.

Section 4 provides that the bill is effective upon becoming law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Not applicable. The bill does not require counties or municipalities to take 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 a two-thirds vote of the members present and voting for final passage of a bill creating or expanding an exemption to the public records requirements. This bill enacts a new exemption for individual identifying information obtained during annual counts of persons who are homeless. Thus, the bill requires a two-thirds vote to be enacted.

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. Section 2 of the bill contains a statement of public necessity for the exemption.

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 personal identifying information of individuals whose information is recorded as part of a PIT Count and Survey. This bill exempts only such personal identifying information from the public records requirements. 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 be subject to the cost, to the extent imposed, associated with making the redactions in response to a public records request.

C. Government Sector Impact:

The Department of Children and Families (DCF) and local service providers which collect PIT Surveys and HMIS information may have to expend resources to train their staff and perform redactions when a public records request is made. The cost of such tasks to the DCF and local service providers is indeterminate.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 420.6231 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 Gruters

23-00963-22

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A bill to be entitled

An act relating to public records; creating s. 420.6231, F.S.; defining terms; providing an exemption from public records requirements for individual identifying information contained in certain homelessness counts and information systems; providing for retroactive application of the exemption; providing construction; providing for future legislative review and repeal of the exemption; providing a statement of public necessity; providing a directive to the Division of Law Revision; providing an effective date.

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

Section 1. Section 420.6231, Florida Statutes, is created to read:

420.6231 Individual identifying information in homelessness counts and databases; public records exemption.-

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

(a) "Individual identifying information" means information that directly or indirectly identifies a specific person, can be manipulated to identify a specific person, or can be linked with other available information to identify a specific person.

(b) "Point-in-Time Count" means an unduplicated count of both the sheltered and unsheltered people in a community who are experiencing homelessness. For purposes of this section, the term includes all survey information received from such persons.

(2) Individual identifying information of a person

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

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contained in a Point-in-Time Count or a homeless management information system which is collected pursuant to 42 U.S.C. chapter 119, subchapter IV and 24 C.F.R. part 91 is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. This exemption applies to individual identifying information collected before, on, or after the effective date of this act.

(3) This section does not preclude the release of aggregate information in a Point-in-Time Count or data in a homeless management information system which does not disclose the individual identifying information of a person.

(4) This section is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2027, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2. (1) The Legislature finds that it is a public necessity that the individual identifying information of a person contained in a Point-in-Time Count or in a homeless management information system collected pursuant to 42 U.S.C. chapter 119, subchapter IV and 24 C.F.R. part 91 be made confidential and exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution.

(2) Public knowledge of such information could lead to discrimination against or ridicule of an individual, which could make such individual reluctant to seek assistance. Public knowledge of such information may also create a greater risk of injury to affected individuals who are survivors of domestic violence or suffer from mental illness or substance abuse. Additionally, public knowledge of such information may create a

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59 heightened risk for fraud and identity theft to affected
60 individuals.

61 (3) The harm from disclosing the individual identifying
62 information of a person contained in a Point-in-Time Count or in
63 a homeless management information system outweighs any public
64 benefit that can be derived from widespread and unfettered
65 access to such information. The exemption is narrowly written so
66 that certain aggregate information may still be disclosed.

67 (4) Further, pursuant to 42 U.S.C. s. 11363, victim service
68 providers must protect the personally identifying information
69 about a client and may not disclose any personally identifying
70 information about a client for purposes of a homeless management
71 information system.

72 (5) For the foregoing reasons, the Legislature finds that
73 such information must be made confidential and exempt from s.
74 119.07(1), Florida Statutes, and s. 24(a), Article I of the
75 State Constitution.

76 Section 3. The Division of Law Revision is directed to
77 replace the phrase "the effective date of this act" wherever it
78 occurs in this act with the date this act becomes a law.

79 Section 4. This act shall take effect upon becoming a law.

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL: CS/CS/SB 962

INTRODUCER: Rules Committee, Transportation Committee and Senator Bradley

SUBJECT: Residential Development Projects for Affordable Housing

DATE: February 4, 2022

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Hackett</u>	<u>Ryon</u>	<u>CA</u>	Favorable
2.	<u>Price</u>	<u>Vickers</u>	<u>TR</u>	Fav/CS
3.	<u>Hackett</u>	<u>Phelps</u>	<u>RC</u>	Fav/CS

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 962 authorizes a county or municipality, regardless of zoning ordinances or the locality's comprehensive plan, to approve the development of any residential development project, including a mixed-use residential development project, on any parcel zoned for commercial or industrial use if 10 percent of the project's units are reserved for affordable housing. Current law authorizes a county or municipality to approve the development of affordable housing on any parcel zoned for residential, commercial, or industrial use regardless of zoning ordinances or the locality's comprehensive plan, but does not specifically address mixed-use residential projects or the portion of units that must be reserved for affordable housing.

The sponsor of a project so approved must additionally agree not to apply for or receive funding from the state's multi-family affordable housing program, known as the State Apartment Incentive Loan (SAIL), limiting eligible projects to those not already seeking SAIL funding.

The bill clarifies that the new and existing provisions allowing affordable housing projects to circumvent comprehensive plans and other ordinances are self-executing and do not require further action by local governments before using this approval process.

The bill takes effect upon becoming a law.

II. Present Situation:

Comprehensive Plans and Amendments

The Growth Management Act requires every city and county to create and implement a comprehensive plan to guide future development.¹ A locality's comprehensive plan lays out the locations for future public facilities, including roads, water and sewer facilities, neighborhoods, parks, schools, and commercial and industrial developments. A comprehensive plan is made up of elements, each laying out regulations for a different facet of development. There are 10 required elements,² most relevant among them:

- The land use element of the plan designates proposed future general distribution, location, and extent of the uses of land. Specified use designations include those for residential, commercial, industry, agriculture, recreation, conservation, education, and public facilities.³
- The housing element of the plan sets forth guidelines and strategies for the creation and preservation of affordable housing for all current and anticipated future residents of the jurisdiction, elimination of substandard housing conditions, provision of adequate sites for future housing, and distribution of housing for a range of incomes and types.⁴

Development that does not conform to the comprehensive plan may not be approved by a local government unless the local government amends its comprehensive plan first. State law requires a proposed comprehensive plan amendment to receive public hearings, the first held by the local planning board.⁵ The local government must then hold an initial public hearing regarding the proposed amendment and subsequently transmit it to several statutorily identified reviewing agencies, including the Department of Economic Opportunity (DEO), the relevant Regional Planning Council, and adjacent local governments that request to participate in the review process.⁶ The process for approving comprehensive plan amendments is bifurcated. Most plan amendments are placed into the Expedited State Review Process, while plan amendments relating to large-scale developments are placed into the State Coordinated Review Process.⁷

Zoning and Amendments to Zoning

In addition to maintaining each comprehensive plan, local governments regulate aspects of land development by enacting ordinances that address local zoning, rezoning, subdivision, building

¹ Section 163.3167(2), F.S.

² Section 163.3177(6), F.S. The 10 required elements include capital improvements; future land use plan; transportation; general sanitary sewer, solid waste, drainage, potable water, and natural groundwater aquifer recharge; conservation; recreation and open space; housing; coastal management; intergovernmental coordination; and property rights. Throughout statutes exist plans and programs that may be added as optional elements.

³ Section 163.3177(6)(a), F.S.

⁴ Section 163.3177(6)(f), F.S.

⁵ Sections 163.3174(4)(a) and 163.3184, F.S.

⁶ Section 163.3184, F.S.

⁷ See ss. 163.3184 and 380.06, F.S. In the Expedited State Review Process, DEO reviews and approves or amends the proposed comprehensive plan amendment. This process can take 4 to 6 months. The State Coordinated Review Process is a more thorough, complex, multi-phase process. For more information, see Florida Department of Economic Opportunity, *Amendments that Must Follow the State Coordinated Review Process; Procedures and Timeframes*, available at <https://floridajobs.org/community-planning-and-development/programs/community-planning-table-of-contents/amendments-that-must-follow-the-state-coordinated-review-process-procedures-and-timeframes> (last visited January 4, 2022).

construction, landscaping, tree protection, sign regulations, or any other regulations controlling the development of land.⁸

Statutes prescribe regular and emergency ordinance adoption procedures for counties and municipalities. Ordinances or resolutions that change the actual list of permitted, conditional, or prohibited uses within a zoning category or ordinances or resolutions initiated by the local government that change the actual zoning map designation of a parcel or parcels of land must follow additional enhanced notice requirements.⁹ If the area affected is less than 10 acres, the local government is required to notify by mail each property owner and hold a public meeting to discuss the ordinance or resolution before passage.¹⁰ If the area affected is 10 acres or greater the local government must hold two separate meetings at which to discuss the changes, and notice the public through either mail to each property owner or to the public generally by newspaper.¹¹

Affordable Housing

Affordable housing is safe and decent housing. It differs from market rate housing in two ways: the income of the family living in the housing; and the financing of the housing.¹² Affordable housing is defined in terms of the income of the people living in the home. Housing is considered affordable when monthly rent or mortgage payments including taxes and insurance do not exceed 30 percent of the household income.¹³ It is generally accepted that a lower income family spending more than 30-40 percent of its income on housing costs will be cost burdened and not have enough money left over to pay for items such as transportation, food, clothing and healthcare.¹⁴

What makes housing affordable is a decrease in monthly rent or mortgage payments, allowing a family to pay less for the housing than it otherwise would cost at “market rate.” Lower monthly payments are a result of affordable housing financing to support homeownership and rental housing, provided through public sector programs at the federal, state and local level.¹⁵

Resident eligibility for Florida’s state and federally funded housing programs is typically governed by area median income (AMI) levels, published annually by the U.S. Department of Housing and Urban Development (HUD) for every county and metropolitan area. The following are standard household income level definitions and their relationship to the 2021 Florida state

⁸ See ss. 163.3164 and 163.3213, F.S. Pursuant to s. 163.3213, F.S., substantially affected persons have the right to maintain administrative actions which assure that land development regulations implement and are consistent with the local comprehensive plan.

⁹ See sections 125.66(4) and 166.041(3), F.S.

¹⁰ *Id.*

¹¹ *Id.*

¹² Affordable Housing Workgroup, 2017 Final Report, page 5, available at: https://www.floridahousing.org/docs/default-source/aboutflorida/august2017/ahwg-report_2017-web-print.pdf?sfvrsn=2 (last visited December 28, 2021).

¹³ Section 420.0004(3), F.S. Public housing, commonly referred to as Section 8 Housing, is provided by local housing agencies (HAs) for low-income residents. Funding for HAs is provided directly from HUD.

¹⁴ *Supra* note 12.

¹⁵ *Id.*

AMI of \$70,000 for a family of four (as family size increases or decreases, the income range also increases or decreases):¹⁶

- Extremely low income – earning up to 30 percent AMI (at or below \$21,000);¹⁷
- Very low income – earning from 30.01 to 50 percent AMI (\$21,001 to \$35,000);¹⁸
- Low income – earning from 50.01 to 80 percent AMI (\$35,001 to \$56,000);¹⁹ and
- Moderate income – earning from 80.01 to 120 percent of AMI (\$56,001 to \$84,000).²⁰

Florida Housing Finance Corporation

The Florida Housing Finance Corporation (Florida Housing) is a public corporation created by the Legislature to assist in providing a range of affordable housing opportunities for Florida residents. Florida Housing administers federal and state resources to make loans, guarantees of loans, and to issue bonds to finance the development and preservation of affordable homeowner and rental housing and assist homebuyers with financing and down payment assistance.²¹

Florida Housing is eligible to receive both state and federal funding to execute its affordable housing programs. Principal state funding, if appropriated, comes from documentary stamp tax revenues distributed to the State Housing Trust Fund and the Local Government Housing Trust Fund.²² Programs supported by the two trust funds include the State Apartment Incentive Loan Program (SAIL)²³ and the State Housing Initiatives Partnership Program (SHIP).²⁴

The SAIL program provides low-interest loans on a competitive basis to affordable housing developers as gap financing for the construction or substantial rehabilitation of multifamily affordable housing developments.²⁵ Applicants may include individuals, public entities, nonprofit organizations, or for-profit organizations that propose the construction or substantial rehabilitation of multifamily units affordable to very-low-income individuals and families. In most cases, the SAIL loan cannot exceed 25 percent of the total development cost and can be used in conjunction with other state and federal programs.

The SHIP program provides funds to all 67 counties and Florida's larger cities on a population based formula to finance and preserve affordable housing for very low, low, and moderate income families based on locally adopted housing plans.

¹⁶ U.S. Department of Housing and Urban Development, *Income Limits, Access Individual Income Limits Areas – Click Here for FY 2021 IL Documentation*, available at <https://www.huduser.gov/portal/datasets/il.html#2021> (last visited December 3, 2021).

¹⁷ Section 420.0004(9), F.S.

¹⁸ Section 420.0004(17), F.S.

¹⁹ Section 420.0004(11), F.S.

²⁰ Section 420.0004(12), F.S.

²¹ See *Overview of Florida Housing Finance Corporation*, Florida Housing Finance Corporation, available at <https://www.floridahousing.org/docs/default-source/aboutflorida/august2017/august2017/tab8.pdf>, (last visited December 28, 2021).

²² Section 201.15, F.S.

²³ Section 420.5087, F.S.

²⁴ Sections 420.907-420.9089, F.S.

²⁵ See section 420.5087, F.S., and Florida Housing, *State Apartment Incentive Loan, Background*, for information cited in this section, available at <http://www.floridahousing.org/programs/developers-multifamily-programs/state-apartment-incentive-loan> (last visited January 4, 2022).

Statutory Guidance on County and Municipal Affordable Housing

As part of ongoing efforts to ensure citizens have access to affordable housing options, the Legislature has enacted various policies to encourage the development of affordable housing at the local level in addition to state programs. In 2001, the Legislature authorized counties and municipalities to “adopt and maintain in effect any law, ordinance, rule, or other measure that is adopted for the purpose of increasing the supply of affordable housing using land use mechanisms such as inclusionary housing ordinances” regardless of other provisions of law.²⁶ “Inclusionary housing ordinances,” often called inclusionary “zoning” ordinances, are ordinances by which a local government will require affordable housing units as a prerequisite to approving development of market rate units.²⁷ The intent of such ordinances is to increase the production of affordable housing in general and also in specific geographic areas with a greater need for affordable housing.²⁸

More recently, in 2020, the Legislature enacted legislation to authorize counties and municipalities, notwithstanding any other provision of law, to approve the development of housing that is affordable on any parcel zoned for residential, commercial, or industrial use.²⁹ This allows counties and municipalities to approve developments which include affordable housing on any parcel without amending the locality’s comprehensive plan or zoning ordinances, saving time and effort for both local governments and developers of affordable housing. The law is silent as to whether developments allowed to bypass comprehensive plans and zoning ordinances include mixed-use developments, as contemplated by the bill.

III. Effect of Proposed Changes:

The bill amends ss. 125.01055(6) and 166.04151(6), F.S., to clarify that a county or municipality, respectively, may notwithstanding any other provision of law, approve the development of any residential development project, including a mixed-use residential development project,³⁰ on any parcel zoned for commercial or industrial use if 10 percent of the project’s units are reserved for housing that is affordable. The sponsor of the project must additionally agree not to apply for or receive SAIL program funding, limiting eligible projects to those not already seeking SAIL funding.

The bill also clarifies that new and existing provisions allowing affordable housing projects to circumvent comprehensive plans and other ordinances are self-executing and do not require further action by local governments before using this approval process.

The bill takes effect upon becoming a law.

²⁶ Sections 125.01055 and 166.04151, F.S.; Sections 15 and 16, ch. 2001-252, Laws of Fla.

²⁷ Ross, J. and Outka, U., The Florida Housing Coalition, *Inclusionary Housing: A Challenge Worth Taking*, available at <https://www.flhousing.org/wp-content/uploads/2012/05/Inclusionary-Housing-A-Challenge-Worth-Taking.pdf> (last visited January 4, 2022).

²⁸ *Id.*

²⁹ Sections 125.01055(6) and 166.04151(6), F.S.; Sections 1 and 6, ch. 2020-27, Laws of Fla.

³⁰ While “mixed-use residential development” is not defined in statute, it is generally accepted to include any development combining two or more land uses, so long as one is residential. The other use could be retail, professional, or any other use. See generally Tyler Adams, *Mixed-Use Zoning*, available at <https://sustainablecitycode.org/brief/mixed-use-zoning/> (last visited December 8, 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 identified.

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

None.

B. Private Sector Impact:

Developers incorporating affordable housing into development projects may benefit from bypassing comprehensive plan amendments and other delays in project approval.

C. Government Sector Impact:

Local governments may experience greater efficiencies in approving developments including affordable housing components.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends sections 125.01055 and 166.04151 of the Florida Statutes.

IX. Additional Information:

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

CS/CS by Rules on February 3, 2022:

The committee substitute adds a requirement that a development on a parcel zoned for commercial or industrial use must make at least 10 percent of its units affordable housing to trigger the provisions of the bill.

CS by Transportation on January 25, 2022:

The committee substitute clarifies that the authorized approval of any residential development project, including a mixed-use residential development project, must be for a project on a parcel that is zoned for commercial or industrial use.

- B. **Amendments:**

None.



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LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
02/03/2022	.	
	.	
	.	
	.	

The Committee on Rules (Brandes) recommended the following:

Senate Amendment (with title amendment)

Before line 13
insert:

Section 1. Paragraphs (a) and (n) of subsection (5) of
section 420.9075, Florida Statutes, are amended to read:

420.9075 Local housing assistance plans; partnerships.—

(5) The following criteria apply to awards made to eligible
sponsors or eligible persons for the purpose of providing
eligible housing:

~~(a) At least 65 percent of the funds made available in each~~



917038

~~county and eligible municipality from the local housing distribution must be reserved for home ownership for eligible persons.~~

(m) ~~(n)~~ Funds from the local housing distribution not used to meet the criteria established in ~~paragraph (a) or paragraph (b)~~ (e) or not used for the administration of a local housing assistance plan must be used for housing production and finance activities, including, but not limited to, financing preconstruction activities or the purchase of existing units, providing rental housing, and providing home ownership training to prospective home buyers and owners of homes assisted through the local housing assistance plan.

1. Notwithstanding paragraph (b) ~~the provisions of paragraphs (a) and (e)~~, program income as defined in s. 420.9071(26) may also be used to fund activities described in this paragraph.

2. When preconstruction due-diligence activities conducted as part of a preservation strategy show that preservation of the units is not feasible and will not result in the production of an eligible unit, such costs shall be deemed a program expense rather than an administrative expense if such program expenses do not exceed 3 percent of the annual local housing distribution.

3. If both an award under the local housing assistance plan and federal low-income housing tax credits are used to assist a project and there is a conflict between the criteria prescribed in this subsection and the requirements of s. 42 of the Internal Revenue Code of 1986, as amended, the county or eligible municipality may resolve the conflict by giving precedence to



917038

the requirements of s. 42 of the Internal Revenue Code of 1986, as amended, in lieu of following the criteria prescribed in this subsection with the exception of paragraph (f) ~~paragraphs (a) and (g) of this subsection.~~

4. Each county and each eligible municipality may award funds as a grant for construction, rehabilitation, or repair as part of disaster recovery or emergency repairs or to remedy accessibility or health and safety deficiencies. Any other grants must be approved as part of the local housing assistance plan.

Section 2. Subsection (27) of section 420.9071, Florida Statutes, is amended to read:

420.9071 Definitions.—As used in ss. 420.907-420.9079, the term:

(27) "Recaptured funds" means funds that are recouped by a county or eligible municipality in accordance with the recapture provisions of its local housing assistance plan pursuant to s. 420.9075(5)(i) ~~s. 420.9075(5)(j)~~ from eligible persons or eligible sponsors, which funds were not used for assistance to an eligible household for an eligible activity, when there is a default on the terms of a grant award or loan award.

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

And the title is amended as follows:

Delete lines 2 - 3
and insert:

An act relating to affordable housing; amending s.
420.9075, F.S.; deleting a criterion for awards made
to eligible sponsors or eligible persons for the



917038

70 purpose of providing eligible housing under the State
71 Housing Initiatives Partnership Program; amending s.
72 420.9071, F.S.; conforming a cross-reference; amending
73 ss. 125.01055 and



666096

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/03/2022	.	
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	.	
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The Committee on Rules (Bradley) recommended the following:

Senate Amendment

Delete lines 23 - 40
and insert:
residential development project, if at least 10 percent of the
units included in the project are for housing that is affordable
and the sponsor of the project agrees not to apply for or
receive funding under s. 420.5087. The provisions of this
subsection are self-executing and do not require the board of
county commissioners to adopt an ordinance or a regulation
before using the approval process in this subsection.



666096

Section 2. Subsection (6) of section 166.04151, Florida Statutes, is amended to read:

166.04151 Affordable housing.—

(6) Notwithstanding any other law or local ordinance or regulation to the contrary, the governing body of a municipality may approve the development of housing that is affordable, as defined in s. 420.0004, on any parcel zoned for residential, commercial, or industrial use. Provided the parcel is zoned for commercial or industrial use, an approval may include any residential development project, including a mixed-use residential development project, if at least 10 percent of the units included in the project are

By the Committee on Transportation; and Senator Bradley

596-02308-22

2022962c1

A bill to be entitled

An act relating to residential development projects for affordable housing; amending ss. 125.01055 and 166.04151, F.S.; authorizing counties and municipalities, respectively, to approve any residential development project on parcels zoned for commercial or industrial use if certain conditions are met; providing construction; providing an effective date.

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

Section 1. Subsection (6) of section 125.01055, Florida Statutes, is amended to read:

125.01055 Affordable housing.—

(6) Notwithstanding any other law or local ordinance or regulation to the contrary, the board of county commissioners may approve the development of housing that is affordable, as defined in s. 420.0004, on any parcel zoned for residential, commercial, or industrial use. Provided the parcel is zoned for commercial or industrial use, an approval may include any residential development project, including a mixed-use residential development project, if a portion of the project is for housing that is affordable and the sponsor of the project agrees not to apply for or receive funding under s. 420.5087. The provisions of this subsection are self-executing and do not require the board of county commissioners to adopt an ordinance or a regulation before using the approval process in this subsection.

Page 1 of 2

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

596-02308-22

2022962c1

Section 2. Subsection (6) of section 166.04151, Florida Statutes, is amended to read:

166.04151 Affordable housing.—

(6) Notwithstanding any other law or local ordinance or regulation to the contrary, the governing body of a municipality may approve the development of housing that is affordable, as defined in s. 420.0004, on any parcel zoned for residential, commercial, or industrial use. Provided the parcel is zoned for commercial or industrial use, an approval may include any residential development project, including a mixed-use residential development project, if a portion of the project is for housing that is affordable and the sponsor of the project agrees not to apply for or receive funding under s. 420.5087. The provisions of this subsection are self-executing and do not require the governing body to adopt an ordinance or a regulation before using the approval process in this subsection.

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

Page 2 of 2

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



SENATOR JENNIFER BRADLEY
5th District

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Community Affairs, *Chair*
Agriculture, *Vice Chair*
Appropriations Subcommittee on Agriculture,
Environment, and General Government
Education
Ethics and Elections
Judiciary
Reapportionment

SELECT SUBCOMMITTEE:
Select Subcommittee on Congressional
Reapportionment, *Chair*

JOINT COMMITTEES:
Joint Legislative Auditing Committee
Joint Select Committee on Collective Bargaining

January 26, 2022

Senator Kathleen Passidomo
Senate Committee on Rules
400 Senate Office Building
404 South Monroe Street
Tallahassee, Florida 32399-1100

Dear Chair Passidomo:

I respectfully request that CS/SB 962 be placed on the agenda of the Committee on Rules at your earliest convenience. The bill seeks to incentivize affordable housing developments by allowing an expedited comp plan process for mixed-use and other housing projects that do not utilize state housing funds.

Thank you for your consideration of this request.

Sincerely,

A handwritten signature in black ink that reads "Jennifer". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Jennifer Bradley

cc: Mr. John Phelps, Staff Director
Ms. Cynthia Futch, Administrative Assistant

REPLY TO:

- ☐ 1279 Kingsley Avenue, Kingsley Center, Suite 117, Orange Park, Florida 32073 (904) 278-2085
- ☐ 324 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5005

Senate's Website: www.flsenate.gov

WILTON SIMPSON
President of the Senate

AARON BEAN
President Pro Tempore

The Florida Senate

APPEARANCE RECORD

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

2/3/22

Meeting Date

Rules

Committee

962

Bill Number or Topic

Amendment Barcode (if applicable)

Name

Philip Swadman

Phone

Address

Street

Email

City

State

Zip

Speaking: ☐ For ☐ Against ☐ Information

OR

Waive Speaking: ☒ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without
compensation or sponsorship.

☒ I am a registered lobbyist,
representing:

Americans for
Prosperity

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

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

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

S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

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

2/3/22

Meeting Date

Rules

Committee

962

Bill Number or Topic

Amendment Barcode (if applicable)

Name

Andy Gonzalez

Phone

850-224-1400

Address

200 S. Monroe St

Email

andyg@floridarealtors.org

Street

Tallahassee FL 32301

City

State

Zip

Speaking:

☐

For

☐

Against

☐

Information

OR

Waive Speaking:

☒

In Support

☐

Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐

I am appearing without
compensation or sponsorship.

☒

I am a registered lobbyist,
representing:

Florida Realtors

☐

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

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

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

S-001 (08/10/2021)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL: SM 982

INTRODUCER: Senator Diaz

SUBJECT: Memorial/Internal Revenue Service Regulations

DATE: February 1, 2022

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Covin	Babin	FT	Favorable
2.	Covin	Phelps	RC	Favorable

I. Summary:

SM 982 is a memorial to the Congress of the United States urging Congress to protect consumers from harmful and intrusive Internal Revenue Service regulations, such as burdensome reporting requirements for financial institutions.

Legislative memorials are not subject to the Governor's veto power and are not presented to the Governor for review. Memorials have no force of law, as they are mechanisms for formally petitioning the federal government to act on a particular subject.

The memorial does not have a fiscal impact on the state or local governments.

II. Present Situation:

The memorial appears to urge Congress to limit reporting requirements for financial institutions. Federal law does require reporting by financial institutions, and recently proposed federal legislation included an expansion of those reporting requirements; however, those additional reporting requirements were removed from the latest draft of the federal legislation. A separate, recently enacted federal law includes an expansion of reporting requirements imposed on brokers relating to digital assets, which may apply to financial institutions that serve as brokers.

Cash Payment Reporting

Current federal law requires a person to report cash transactions of more than \$10,000 received in a trade or business.¹ "Person" means an individual, company, corporation, partnership, association, trust, or estate.² "Cash" includes coins and currency of the United States or any

¹ Internal Revenue Code (IRC), s. 6050I. Cash payment report helps government combat money laundering, IRS, <https://www.irs.gov/newsroom/cash-payment-report-helps-government-combat-money-laundering> (Last visited Jan. 10, 2022).

² IRC, s. 7701(a)(1).

foreign country.³ Cash also includes a cashier's check, bank draft, traveler's check, or money order with a face amount of \$10,000 or less that a person receives for either a designated reporting transaction or any transaction in which the person knows the payer is trying to avoid a report.⁴

Banks and other financial institutions are required to report each deposit, withdrawal, exchange of currency or other payment or transfer, by, through, or to the bank or financial institution which involves a transaction in currency of more than \$10,000, including cash purchases of cashier's checks, treasurer's checks, bank checks, bank drafts, traveler's checks, and money orders with a face value of more than \$10,000, to the Internal Revenue Service (IRS).⁵

The Infrastructure Investment and Jobs Act

The Infrastructure Investment and Jobs Act (Act) was signed into law on November 15, 2021.⁶ The Act adds additional reporting requirements for a broker that facilitates the movement of "digital assets," or cryptocurrency.⁷ Applicable to returns required to be filed and statements required to be furnished after December 31, 2023, the Act:

- Expands the definition of broker to include "any person who (for consideration) is responsible for regularly providing any service effectuating transfers of digital assets on behalf of another person."⁸ A broker is required to file a return with the IRS showing the name and address of each customer with details regarding gross proceeds and other information.⁹
- Modifies the definition of "specified security" to include digital assets.
- Requires brokers to report transfers of digital assets that are not otherwise subject to reporting to the IRS.¹⁰

The act also expands the definition of cash for purposes of cash reporting to include digital assets. By including digital assets in the definition of cash, the Act extends the reporting requirements for transactions of more than \$10,000 in cash to transactions involving digital assets of more than \$10,000. The new reporting requirement requires a person that is currently required to comply with cash reporting requirements to collect information and report to the IRS

³ IRC, s. 6050I(d).

⁴ See IRC, s. 6050I(d) and (f). A "designated reporting transaction" is the retail sale of tangible personal property that's generally suited for personal use, expected to last at least one year and has a sales price of more than \$10,000, such as sales of automobiles, jewelry, mobile homes, and furniture, the sale of a collectible, or the sale of travel and entertainment if the total price of the items for the same trip or entertainment event is more than \$10,000. Cash payment report helps government combat money laundering, IRS, <https://www.irs.gov/newsroom/cash-payment-report-helps-government-combat-money-laundering>, (Last visited Jan. 10, 2022).

⁵ *Id.* 31 C.F.R. ss. 1010.311 and 1010.313; and 31 U.S.C. ss. 5312 and 5313.

⁶ Infrastructure and Jobs Act, Pub. L. No. 117-58 (2021), § 80603, <https://www.congress.gov/bill/117th-congress/house-bill/3684/text> (Last visited Jan. 10, 2022).

⁷ *Id.* IRC, s. 6045(g)(3)(D) defines "digital asset" to mean, except as otherwise provided by the [United States] Secretary [of the Treasury], any digital representation of value which is recorded on a cryptographically secured distributed ledger or any similar technology as specified by the Secretary.

⁸ *Id.* IRC, s. 6045(c)(1)(D).

⁹ *Id.* IRC, s. 6045(a).

¹⁰ *Id.* IRC, s. 6045A(d).

details of transactions involving digital assets, or cryptocurrency transactions, of more than \$10,000.¹¹

The Biden Administration Revenue Proposals

In the Biden Administration’s proposal released in May 2021, a provision provided the IRS increased scrutiny over bank accounts.¹² The proposal would require banks, credit unions, and other financial companies to monitor deposits and withdrawals in accounts that have balances of more than \$600 and submit information to the IRS. Under a revised proposal, financial accounts with money flowing in and out that total \$10,000 or more annually would be subject to additional reporting requirements.¹³ In the current version of the Build Back Better Act passed by the United States House of Representatives on November 19, 2021, the provision requiring additional reporting by banks, credit unions, and other financial companies was omitted.¹⁴

Senate Memorial

A Senate Memorial is “a measure addressed to an executive agency or another legislative body, usually Congress, which expresses the consensus of the Florida Legislature or urges that certain action be taken on a matter within the jurisdiction of the agency or body to which it is addressed. When both houses adopt the measure, the memorial is signed by the legislative officers and transmitted to the Secretary of State for presentation to the addressee. A memorial is not subject to the approval or veto powers of the Governor, is not subject to constitutional title requirements, and does not have the effect of law.”¹⁵

III. Effect of Proposed Changes:

The Senate memorial would urge the United States Congress to protect consumers from harmful and intrusive Internal Revenue Service regulations and dispatch a message to that effect.

Copies of the memorial will be sent by Florida’s Secretary of State to the President of the United States, the President of the United States Senate, the Speaker of the United States House of Representatives, and each member of the Florida delegation to the United States Congress.

The memorial contains six whereas clauses. The clauses outline concerns regarding data privacy and security relating to a proposed expansion of reporting requirements as well as concerns regarding additional regulations imposed on financial institutions.

¹¹ *Id.* IRC, s. 6050I(d).

¹² General Explanations of the Administration’s Fiscal Year 2022 Revenue Proposals, United States Department of the Treasury, May 2021, <https://home.treasury.gov/system/files/131/General-Explanations-FY2022.pdf> (Last visited Jan. 10, 2022).

¹³ FACT SHEET: Tax Compliance Proposals Will Improve Tax Fairness While Protecting Taxpayer Privacy, United States Department of Treasury, Oct. 19, 2021, <https://home.treasury.gov/news/press-releases/jy0415> (Last visited Jan. 10, 2022).

¹⁴ Build Back Better Act, H.R. 5376, 117th Cong. (2021) <https://www.congress.gov/bill/117th-congress/house-bill/5376> (Last visited Jan. 10, 2022).

¹⁵ Senate Glossary, <https://www.flsenate.gov/Reference/Glossary> (Last visited Jan. 10, 2022).

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

As SM 982 is a memorial requesting an action of the federal government, mandate restrictions do not apply because the bill does not require counties and municipalities to spend funds, reduce the counties' or municipalities' ability to raise revenue, or reduce the percentage of state tax shared with counties or municipalities.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

Laws that create or raise state taxes or fees must be passed by two-thirds vote of the membership of each house of the Legislature in a separate bill that contains no other subject.¹⁶ The memorial does not increase any taxes or fees; therefore, the increased tax or fee requirements do not apply.

E. Other Constitutional Issues:

None identified.

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

The memorial does not affect state or local revenues.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

¹⁶ See FLA. CONST., art. VII, s. 19.

VII. Related Issues:

None.

VIII. Statutes Affected:

None.

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.

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

By Senator Diaz

36-01028-22

2022982__

Senate Memorial

A memorial to the Congress of the United States urging Congress to protect consumers from harmful and intrusive Internal Revenue Service regulations.

WHEREAS, the Biden Administration and some in Congress have proposed changes to tax information reporting which would require financial institutions to provide the Internal Revenue Service reports of incoming and outgoing transactions from every customer financial account with gross inflows and outflows that range from \$600 to \$10,000 in a tax year, and

WHEREAS, these proposals would require financial institutions to include in the reports a breakdown for physical cash, transactions with foreign accounts, and transfers to and from another account with the same owner, and would be applicable to both personal and business accounts, and

WHEREAS, savings, transactional, loan, and investment accounts at those financial institutions would be subject to this proposed new requirement, and

WHEREAS, there are real concerns regarding data privacy and security if this new requirement is put in place as keeping member and customer account information private and secure is among the primary goals of all financial institutions in this state, and this new requirement at any threshold dollar amount could jeopardize the security of accounts and personal information, and

WHEREAS, privacy is cited as one of the primary reasons individuals choose not to open bank accounts, and this proposal lays a foundation for new and future barriers for the unbanked

Page 1 of 2

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

36-01028-22

2022982__

or underbanked, and

WHEREAS, financial institutions throughout this state and nation are already subject to many burdensome regulations, and the inclusion of this new, hyperextensive reporting requirement would deepen that burden in an untenable and destructive fashion for many community-based financial institutions, NOW, THEREFORE,

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

That the Congress of the United States is urged to protect consumers from harmful and intrusive Internal Revenue Service regulations, such as burdensome reporting requirements for financial institutions.

BE IT FURTHER RESOLVED that the Secretary of State is directed to dispatch copies of this memorial to the President of the United States, the President of the United States Senate, the Speaker of the United States House of Representatives, the Commissioner of the Internal Revenue Service, and each member of the Florida delegation to the United States Congress.

Page 2 of 2

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



SENATOR MANNY DIAZ, JR.
36th District

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Health Policy Chair
Appropriations Subcommittee on
Education Vice Chair
Appropriations
Appropriations Subcommittee on Health
and Human Services
Education
Commerce and Tourism
Rules

January 14, 2022

Honorable Senator Kathleen Passidomo
Chair
Committee on Rules

Honorable Chair Passidomo,

I respectfully request that SB 982 Memorial/Internal Revenue Service Regulations be placed in the next committee agenda.

Memorial/Internal Revenue Service Regulations; Urging Congress to protect consumers from harmful and intrusive Internal Revenue Service regulations.

Sincerely,

A handwritten signature in black ink, appearing to read "M. Diaz", is written over a horizontal line.

Senator Manny Diaz, Jr.
Florida Senate, District 36

CC: John B. Phelps, Staff Director
Cynthia Futch, Committee Administrative Assistant
Paul Hayden, Legislative Assistant

REPLY TO:

- ☐ 10001 Northwest 87th Avenue, Hialeah Gardens, Florida 33016 (305) 364-3073
- ☐ 306 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5036

Senate's Website: www.flsenate.gov

Wilton Simpson
President of the Senate

Aaron Bean
President Pro Tempore

The Florida Senate

APPEARANCE RECORD

SB 982

2/3/2022

Meeting Date

Bill Number or Topic

Rules

Committee

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

Amendment Barcode (if applicable)

Name

Gina Rotunno

Phone

(727) 409-4783

Address

1001 Thomasville Road, 201

Street

Email

gnarotunno@Florida
Bankers.com

Tallahassee, FL, 32303

City

State

Zip

Speaking: ☐ For ☐ Against ☐ Information

OR

Waive Speaking: ☒ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐

I am appearing without
compensation or sponsorship.

☒

I am a registered lobbyist,
representing:

The Florida Bankers
Association

☐

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

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

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

S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

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

2/3/22

Meeting Date

Rules

Committee

982

Bill Number or Topic

Amendment Barcode (if applicable)

Name

Philip Suderman

Phone

Address

Street

Email

City

State

Zip

Speaking:

☐

For

☐

Against

☐

Information

OR

Waive Speaking:

☒

In Support

☐

Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐

I am appearing without
compensation or sponsorship.

☒

I am a registered lobbyist,
representing:

Amateurs for
Prosperity

☐

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

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

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

S-001 (08/10/2021)

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 1038

INTRODUCER: Senator Perry

SUBJECT: Florida Seaport Transportation and Economic Development Council

DATE: February 1, 2022

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Price	Vickers	TR	Favorable
2.	Renner	McKay	CM	Favorable
3.	Price	Phelps	RC	Favorable

I. Summary:

SB 1038 revises the membership of the Florida Seaport Transportation and Economic Development (FSTED) Council to include as a member the port director (or the director's designee) of the Port of Putnam County. The bill increases the total number of members on the FSTED Council from 17 to 18.

Until July 1, 2024, the bill authorizes Putnam County to apply for a grant through the FSTED Council to fund a feasibility study regarding the establishment of a port in Putnam County. The bill directs the Council to evaluate the grant application in accordance with existing statutory provisions governing evaluation and selection of projects for funding under the FSTED Program within the Florida Department of Transportation (FDOT).

If the grant application is approved, the bill requires the FDOT to include the feasibility study as a specific project in its annual legislative budget request for funding of the FSTED Program. If the study concludes that a port in Putnam County is not feasible, the bill terminates the membership of Putnam County on the FSTED Council.

The bill also reenacts a number of statutory provisions to incorporate amendments made by the bill to the FSTED Council statute.

The fiscal impact of the bill is unknown, as whether any grant award under the FSTED Program for the bill's specified purpose will occur, and in what amount, is unknown. See the "Fiscal Impact Statement" below for additional details.

The bill takes effect July 1, 2022.

II. Present Situation:

The Florida Seaport Transportation and Economic Development (FSTED) Program

The FSTED Program was created within the FDOT to finance port transportation or port facilities projects that will improve the movement and intermodal transportation of cargo or passengers in commerce and trade and support the interests, purposes, and requirements of all 15 public seaports.¹ Section 311.07(2), F.S., currently requires a minimum of \$25 million annually to be made available from the State Transportation Trust Fund to fund the FSTED Program. Section 311.09(9), F.S., also directs the FDOT to include no less than \$25 million annually in its legislative budget request for the FSTED Program. An additional \$35 million in seaport-related funding is provided for specified projects under the Strategic Port Investment Initiative under s. 311.10, F.S., and seaport-related projects may be funded under the Intermodal Logistics Center Infrastructure Support Program under s. 311.101, F.S., and the Intermodal Development Program under s. 341.053, F.S. Additional annual funding for debt service in the amount of \$10 million is also provided under s. 320.20, F.S., for seaport-related bonds.

The FSTED Program is managed by the 17-member FSTED Council. The members currently include the port director of the state's 15 public seaports or the director's designee, the Secretary of the FDOT or his or her designee, and the Executive Director of the Department of Economic Opportunity (DEO) or his or her designee.² The Council reviews applications for the award of grants for projects eligible for funding under the FSTED Program. The Council evaluates eligible projects³ and submits an annual list of approved projects, along with a recommended funding level for each project, to the FDOT and the DEO.⁴

The FDOT reviews the list annually approved by the Council for consistency with the Florida Transportation Plan, the Statewide Seaport and Waterways System Plan, and its adopted work program and must notify the council of projects found to be inconsistent.⁵ The DEO reviews the annual list to evaluate the economic benefit of the project, and to determine whether a project is consistent with the Florida Seaport Mission Plan, with state economic developments goals and policies, and with state, regional, and local plans, as appropriate.⁶ Generally, projects found to be inconsistent may not be included in the list of projects to be funded.

The FDOT must include in its annual legislative budget request for the FSTED Program funded under s. 311.09, F.S., funding for projects determined to be consistent and approved by the Council, and the specific projects to be funded during the ensuing fiscal year must be included in the FDOT's tentative work program.⁷

¹ Section 311.07(1), F.S. The 15 seaports, listed in s. 311.09(1), F.S., are Jacksonville (JaxPort), Port Canaveral, Port Citrus, Port of Fort Pierce, Port of Palm Beach, Port Everglades, Port of Miami, Port Manatee, Port of St. Petersburg, Port of Tampa, Port St. Joe, Port Panama City, Port of Pensacola, Port of Key West, and Port of Fernandina.

² Section 311.09(1), F.S.

³ Eligible project types are listed in s. 311.07(3)(b), F.S., and funding is limited to the specified port facility or port transportation projects on a 50-50 matching basis per s. 311.07(3)(a), F.S., except for projects involving rehabilitation of wharves, docks, berths, bulkheads, or similar structures, which require a 25-percent match.

⁴ Section 311.09(5), F.S.

⁵ Section 311.09(6), F.S.

⁶ Section 311.09(7), F.S.

⁷ See s. 311.09(9), F.S. The FDOT's adopted work program is the 5-year work program adopted by the FDOT pursuant to s. 339.135, F.S. In developing the adopted work program, each of the FDOT districts submits an annual district work program,

The Putnam County Port District and Barge Port Project

The Florida Legislature created the Putnam County Port District in 1961.⁸ The Putnam County Commission, acting as the Port Authority, owns an existing barge port and industrial development area located in Putnam County on the St. Johns River. According to the Putnam County Port District website, barge port services currently include:

- Bulkheaded dock space;
- Enclosed, lockable warehouse space with utilities;
- Separate keyed office space;
- Paved parking; and
- Gated entry.⁹

Additional assets are described as available land at the port and new land acquisitions, an on-dock heavy lift stick crane, CSX rail service at the port, and proximity to major customers.¹⁰

The Port Authority is currently pursuing expansion of the barge port, in cooperation with the Army Corps of Engineers (the Corps),¹¹ under the federal Continuing Authorities Program (CAP), under which the Corps is authorized to plan, design, and implement certain types of water resources projects without additional project specific congressional authorization. The purpose of the CAP is to plan and implement projects of limited size, cost, scope and complexity.¹² The Port Authority's consultant describes the "CAP Section 107" process as an "expedited" process.¹³

The project involves dredging of a 5,000-foot branch channel from the existing barge berth to the St. Johns channel, with the addition of a turning basin to enhance vessel navigation and safety.¹⁴ The new branch channel depth would be 12 feet at low water, as the existing channel has been

which is the 5-year listing of transportation projects planned for each fiscal year, to the FDOT's central office for review and development of the tentative work program. The tentative work program is the 5-year listing of all transportation projects planned for each fiscal year which is developed by the FDOT's central office based on the district work programs. Each year, a new fifth year is added for purposes of developing the tentative and adopted work programs.

⁸ Chapter 67-1961, L.O.F.

⁹ Putnam County, Florida, Port Authority General Information, including a map of the port district boundaries, available at <https://main.putnam-fl.com/?s=Port+District+General+Information> (last visited January 21, 2022). Additional assets are described as available land at the port and new land acquisitions, an on-dock heavy lift stick crane, CSX Rail service at the port, and proximity to major customers.

¹⁰ See video of a presentation to the Putnam County Commission meeting as the Port Authority on December 14, 2021, at 20:29, available at <https://www.youtube.com/c/PutnamBOCC/live?app=desktop> (last visited January 21, 2022).

¹¹ *Id.* At 9:44.

¹² See U.S. Army Corps of Engineers, *Continuing Authorities Program*, for additional program information available at <https://www.nae.usace.army.mil/Missions/Public-Services/Continuing-Authorities-Program/> (last visited January 21, 2022).

¹³ See U.S. Army Corps of Engineers, Small Navigation Project Study (Section 107), available at <https://www.nae.usace.army.mil/Missions/Public-Services/Continuing-Authorities-Program/Section-107/> (last visited January 21, 2022). "Section 107 of the River and Harbor Act of 1960 provides authority for the Corps of Engineers to improve navigation including dredging of channels, anchorage areas, and turning basins and construction of breakwaters, jetties and groins, through a partnership with non-Federal government sponsor such as cities, counties, special chartered authorities (such as port authorities), or units of state government. The maximum Federal cost for project development and construction of any one project is \$10 million and each project must be economically justified, environmentally sound, and technically feasible."

¹⁴ *Supra* note 10 at 10:25.

filled with silt due to storm events over the last 10 to 15 years. The current depth is about 7 feet, which precludes use by anything other than “very shallow-draft barges” and recreational vessels and “doesn’t do much for business.” An estimate of the material that needs to be removed is under 2,000 cubic yards, with a nearby, viable disposal site. At a new depth of 12 feet, the number, size, and capacity of vessels using the barge port would increase dramatically, as would revenues associated with that activity.

In terms of project development,¹⁵ three critical steps have been completed:

- A Federal Interest Determination, completed in July of 2021, which is prepared by the Corps and indicates a federal interest in continuing to evaluate the project.
- Development of a Fact Sheet, containing detailed project information, also prepared by the Corps. This document, completed in September of 2021, indicates that if a required feasibility report is positive and the project is actually constructed, the Corps will assume responsibility for the operations and maintenance of dredging.
- Completion of a Feasibility Cost Sharing Agreement in October of 2021, which establishes the responsibilities of the Port Authority and the Corps for funding the feasibility report.

The purpose of the feasibility report is to demonstrate the project’s support of national economic development (NED), which, in the absence of sufficient historical detail in Palatka, Florida, will be based on a market analysis involving identification of probable marine cargo activity at the facility if the project is completed.¹⁶ If NED is demonstrated, the project will be approved. It is estimated that the feasibility report will require about 18 months to complete, at an estimated cost of \$800,000, with the County’s share being \$350,000 of that amount, which can be spread over the duration of the report’s production.

Assuming the outcome of the report is favorable,¹⁷ the Corps would develop a project partnership agreement between Putnam County and the Corps covering the estimated cost of construction of the project and the responsibility of the County for 20 percent of the cost, which may be reduced by contributions in kind, such as lands, easements, and disposal areas. The entire process, including advertisement for bids, selection and award of a contract, and issuance of a Notice to Proceed, would be handled by the Corps and is expected to take about 18 months.

The dredging project,¹⁸ will allow barges and smaller vessels to access the port, but raising the Shands Bridge would make possible use of the port by larger vessels, such as hopper and flat deck barges, small vessels, and even cruise ships.

The FDOT plans to begin construction of a new Shands Bridge over the St. Johns River just south of the existing bridge in the fall of 2022 as part of the First Coast Expressway Project, increasing the vertical clearance height of the new bridge from the current 45 feet of clearance to 65 feet from the water line. According to the FDOT, this increase “is an improvement for marine commerce in the region.”¹⁹

¹⁵ *Id.* at 11:39.

¹⁶ *Id.* at 13:24.

¹⁷ *Id.* at 15:13.

¹⁸ *Id.* at 21:55.

¹⁹ FDOT, *First Coast Expressway – New St. Johns River Bridge*, available at <https://nflroads.com/ProjectDetails?p=5136> (last visited January 21, 2022.)

III. Effect of Proposed Changes:

The bill increases the total number of members on the FSTED Council from 17 to 18, by adding as a member the port director (or the director's designee) of the Port of Putnam County.

The bill authorizes Putnam County, until July 1, 2024, to apply for a grant through the FSTED Council to fund a feasibility study regarding the establishment of a port in Putnam County. The bill directs the Council to evaluate the grant application in accordance with the existing statutory provisions governing evaluation and selection of projects for funding under the FSTED Program.

If the grant application is approved, the bill requires the FDOT, as is the case under current law for other FSTED applicants who are awarded project grants, to include the feasibility study as a specific project in its annual legislative budget request for funding of the FSTED Program. If the study concludes that a port in Putnam County is not feasible, the bill terminates the membership of Putnam County on the FSTED Council.

The bill reenacts a number of statutory provisions to incorporate the amendment to s. 311.09, F.S.

The bill takes effect July 1, 2022.

IV. Constitutional Issues

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

A private sector consultant may be hired to conduct the described feasibility study should the FSTED Council grant an award to fund the study.

C. Government Sector Impact:

The bill does not revise funding levels under the FSTED Program. However, if the grant application for the feasibility study is approved, funding currently available for other grants under the FSTED Program would be reduced by the unknown amount of any award of funds granted by the FSTED Council for the feasibility study. Going forward, if the study concludes in a finding that a Putnam County Port is feasible, the county's membership on the Council continues, and competition for available funding under the FSTED Program would increase by one. If the study concludes the port is not feasible, membership on the Council terminates, and the bill presents no further fiscal impact.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill provides that if the feasibility study regarding the establishment of a port in Putnam County determines that the port is not feasible, the membership of Putnam County on the council must terminate. The Legislature may wish to clarify when exactly the membership of the council would be changed, and consider requiring the council to report back to the Legislature on the actual current membership of the council after the Putnam County feasibility study has been acted upon.

VIII. Statutes Affected:

This bill substantially amends the following section of the Florida Statutes: 311.09.

The bill reenacts the following sections of the Florida Statutes: 163.3178, 189.068, 311.07, 311.091, 311.10, 311.101, 311.12, 311.121, 311.14, 315.18, 320.20, 334.27, 337.14, 373.406, 373.4133, 373.4136, and 403.061.

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 Perry

8-01092-22

20221038__

1 A bill to be entitled
 2 An act relating to the Florida Seaport Transportation
 3 and Economic Development Council; amending s. 311.09,
 4 F.S.; revising the membership of the Florida Seaport
 5 Transportation and Economic Development Council to
 6 include a representative of Putnam County; authorizing
 7 Putnam County to apply for a grant for a port
 8 feasibility study through the Florida Seaport
 9 Transportation and Economic Development Council;
 10 providing for the evaluation of the application;
 11 requiring the Department of Transportation to include
 12 the study in its budget request under certain
 13 circumstances; terminating the membership of Putnam
 14 County on the council under certain circumstances;
 15 reenacting ss. 163.3178(2)(k), (5), and (6),
 16 189.068(6), 311.07(1) and (3)(a) and (b), 311.091,
 17 311.10(1) and (2), 311.101(2), 311.12(2)(a), (3), and
 18 (6)(a), 311.121(2) and (3)(a), 311.14(1), 315.18,
 19 320.20(3) and (4), 334.27(1), 337.14(7), 373.406(12),
 20 373.4133(2) and (10), 373.4136(6)(d), and 403.061(38)
 21 and (39), F.S., relating to coastal management, the
 22 oversight of deepwater ports, Florida seaport
 23 transportation and economic development funding, entry
 24 into public-private infrastructure project agreements
 25 for port-related public infrastructure projects, the
 26 Strategic Port Investment Initiative within the
 27 department, the Intermodal Logistics Center
 28 Infrastructure Support Program, seaport security,
 29 licensed security officers at Florida seaports,

Page 1 of 26

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8-01092-22

20221038__

30 seaport planning, the confidentiality of certain
 31 records held by deepwater ports, the disposition of
 32 license tax moneys, the definition of the term
 33 "governmental transportation entity," seaport
 34 contractor services, exemptions for overwater piers,
 35 docks, or similar structures in deepwater ports, port
 36 conceptual permits, the authorized use of mitigation
 37 banks, and the duties of the Department of
 38 Environmental Protection in providing environmental
 39 resource permits, respectively, to incorporate the
 40 amendment made to s. 311.09, F.S., in references
 41 thereto; providing an effective date.
 42
 43 Be It Enacted by the Legislature of the State of Florida:
 44
 45 Section 1. Subsection (1) of section 311.09, Florida
 46 Statutes, is amended, and subsection (13) is added to that
 47 section, to read:
 48 311.09 Florida Seaport Transportation and Economic
 49 Development Council.—
 50 (1) The Florida Seaport Transportation and Economic
 51 Development Council is created within the Department of
 52 Transportation. The council consists of the following 18 ~~17~~
 53 members: the port director, or the port director's designee, of
 54 each of the ports of Jacksonville, Port Canaveral, Port Citrus,
 55 Fort Pierce, Palm Beach, Port Everglades, Miami, Port Manatee,
 56 St. Petersburg, Putnam County, Tampa, Port St. Joe, Panama City,
 57 Pensacola, Key West, and Fernandina; the secretary of the
 58 Department of Transportation or his or her designee; and the

Page 2 of 26

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8-01092-22 20221038__

secretary of the Department of Economic Opportunity or his or her designee.

(13) Until July 1, 2024, Putnam County may apply for a grant through the Florida Seaport Transportation and Economic Development Council to perform a feasibility study regarding the establishment of a port in Putnam County. The council shall evaluate the grant application pursuant to subsections (5)-(9) and, if approved, the Department of Transportation must include the feasibility study in its budget request pursuant to subsection (9). If the study determines that a port in Putnam County is not feasible, the membership of Putnam County on the council must terminate.

Section 2. For the purpose of incorporating the amendment made by this act to section 311.09, Florida Statutes, in references thereto, paragraph (k) of subsection (2) and subsections (5) and (6) of section 163.3178, Florida Statutes, are reenacted to read:

163.3178 Coastal management.—

(2) Each coastal management element required by s. 163.3177(6)(g) shall be based on studies, surveys, and data; be consistent with coastal resource plans prepared and adopted pursuant to general or special law; and contain:

(k) A component which includes the comprehensive master plan prepared by each deepwater port listed in s. 311.09(1), which addresses existing port facilities and any proposed expansions, and which adequately addresses the applicable requirements of paragraphs (a)-(k) for areas within the port and proposed expansion areas. Such component shall be submitted to the appropriate local government at least 6 months prior to the

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due date of the local plan and shall be integrated with, and shall meet all criteria specified in, the coastal management element. "The appropriate local government" means the municipality having the responsibility for the area in which the deepwater port lies, except that where no municipality has responsibility, where a municipality and a county each have responsibility, or where two or more municipalities each have responsibility for the area in which the deepwater port lies, "the appropriate local government" means the county which has responsibility for the area in which the deepwater port lies. Failure by a deepwater port which is not part of a local government to submit its component to the appropriate local government shall not result in a local government being subject to sanctions pursuant to s. 163.3184. However, a deepwater port which is not part of a local government shall be subject to sanctions pursuant to s. 163.3184.

(5) The appropriate dispute resolution process provided under s. 186.509 must be used to reconcile inconsistencies between port master plans and local comprehensive plans. In recognition of the state's commitment to deepwater ports, the state comprehensive plan must include goals, objectives, and policies that establish a statewide strategy for enhancement of existing deepwater ports, ensuring that priority is given to water-dependent land uses. As an incentive for promoting plan consistency, port facilities as defined in s. 315.02(6) on lands owned or controlled by a deepwater port as defined in s. 311.09(1), as of the effective date of this act shall not be subject to development-of-regional-impact review provided the port either successfully completes an alternative comprehensive

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development agreement with a local government pursuant to ss. 163.3220-163.3243 or successfully enters into a development agreement with the state land planning agency and applicable local government pursuant to s. 380.032 or, where the port is a department of a local government, successfully enters into a development agreement with the state land planning agency pursuant to s. 380.032. Port facilities as defined in s. 315.02(6) on lands not owned or controlled by a deepwater port as defined in s. 311.09(1) as of the effective date of this act shall not be subject to development-of-regional-impact review provided the port successfully enters into a development agreement with the state land planning agency and applicable local government pursuant to s. 380.032 or, where the port is a department of a local government, successfully enters into a development agreement with the state land planning agency pursuant to s. 380.032.

(6) Each port listed in s. 311.09(1) and each local government in the coastal area which has spoil disposal responsibilities shall provide for or identify disposal sites for dredged materials in the future land use and port elements of the local comprehensive plan as needed to assure proper long-term management of material dredged from navigation channels, sufficient long-range disposal capacity, environmental sensitivity and compatibility, and reasonable cost and transportation. The disposal site selection criteria shall be developed in consultation with navigation and inlet districts and other appropriate state and federal agencies and the public. For areas owned or controlled by ports listed in s. 311.09(1) and proposed port expansion areas, compliance with the

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provisions of this subsection shall be achieved through comprehensive master plans prepared by each port and integrated with the appropriate local plan pursuant to paragraph (2)(k). Section 3. For the purpose of incorporating the amendment made by this act to section 311.09, Florida Statutes, in a reference thereto, subsection (6) of section 189.068, Florida Statutes, is reenacted to read:

189.068 Special districts; authority for oversight; general oversight review process.—

(6) This section does not apply to a deepwater port listed in s. 311.09(1) which is in compliance with a port master plan adopted pursuant to s. 163.3178(2)(k), or to an airport authority operating in compliance with an airport master plan approved by the Federal Aviation Administration, or to any special district organized to operate health systems and facilities licensed under chapter 395, chapter 400, or chapter 429.

Section 4. For the purpose of incorporating the amendment made by this act to section 311.09, Florida Statutes, in references thereto, subsection (1) and paragraphs (a) and (b) of subsection (3) of section 311.07, Florida Statutes, are reenacted to read:

311.07 Florida seaport transportation and economic development funding.—

(1) There is created the Florida Seaport Transportation and Economic Development Program within the Department of Transportation to finance port transportation or port facilities projects that will improve the movement and intermodal transportation of cargo or passengers in commerce and trade and

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175 support the interests, purposes, and requirements of all ports
176 listed in s. 311.09.

177 (3) (a) Florida Seaport Transportation and Economic
178 Development Program funds shall be used to fund approved
179 projects on a 50-50 matching basis with any of the deepwater
180 ports, as listed in s. 311.09, which is governed by a public
181 body or any other deepwater port which is governed by a public
182 body and which complies with the water quality provisions of s.
183 403.061, the comprehensive master plan requirements of s.
184 163.3178(2)(k), and the local financial management and reporting
185 provisions of part III of chapter 218. However, program funds
186 used to fund projects that involve the rehabilitation of
187 wharves, docks, berths, bulkheads, or similar structures shall
188 require a 25-percent match of funds. Program funds also may be
189 used by the Seaport Transportation and Economic Development
190 Council for data and analysis that will assist Florida's
191 seaports and international trade.

192 (b) Projects eligible for funding by grants under the
193 program are limited to the following port facilities or port
194 transportation projects:

195 1. Transportation facilities within the jurisdiction of the
196 port.

197 2. The dredging or deepening of channels, turning basins,
198 or harbors.

199 3. The construction or rehabilitation of wharves, docks,
200 structures, jetties, piers, storage facilities, cruise
201 terminals, automated people mover systems, or any facilities
202 necessary or useful in connection with any of the foregoing.

203 4. The acquisition of vessel tracking systems, container

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204 cranes, or other mechanized equipment used in the movement of
205 cargo or passengers in international commerce.

206 5. The acquisition of land to be used for port purposes.

207 6. The acquisition, improvement, enlargement, or extension
208 of existing port facilities.

209 7. Environmental protection projects which are necessary
210 because of requirements imposed by a state agency as a condition
211 of a permit or other form of state approval; which are necessary
212 for environmental mitigation required as a condition of a state,
213 federal, or local environmental permit; which are necessary for
214 the acquisition of spoil disposal sites and improvements to
215 existing and future spoil sites; or which result from the
216 funding of eligible projects listed in this paragraph.

217 8. Transportation facilities as defined in s. 334.03(30)
218 which are not otherwise part of the Department of
219 Transportation's adopted work program.

220 9. Intermodal access projects.

221 10. Construction or rehabilitation of port facilities as
222 defined in s. 315.02, excluding any park or recreational
223 facilities, in ports listed in s. 311.09(1) with operating
224 revenues of \$5 million or less, provided that such projects
225 create economic development opportunities, capital improvements,
226 and positive financial returns to such ports.

227 11. Seaport master plan or strategic plan development or
228 updates, including the purchase of data to support such plans.

229 Section 5. For the purpose of incorporating the amendment
230 made by this act to section 311.09, Florida Statutes, in a
231 reference thereto, section 311.091, Florida Statutes, is
232 reenacted to read:

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311.091 Entry into public-private infrastructure project agreements for port-related public infrastructure projects.—A seaport listed in s. 311.09(1) may receive or solicit proposals from and enter into a public-private infrastructure project agreement with a private entity, or a consortium of private entities, to build, operate, manage, maintain, or finance a port-related public infrastructure project.

Section 6. For the purpose of incorporating the amendment made by this act to section 311.09, Florida Statutes, in references thereto, subsections (1) and (2) of section 311.10, Florida Statutes, are reenacted to read:

311.10 Strategic Port Investment Initiative.—

(1) There is created the Strategic Port Investment Initiative within the Department of Transportation. Beginning in fiscal year 2012-2013, a minimum of \$35 million annually shall be made available from the State Transportation Trust Fund to fund the Strategic Port Investment Initiative. The Department of Transportation shall work with the deepwater ports listed in s. 311.09 to develop and maintain a priority list of strategic investment projects. Project selection shall be based on projects that meet the state's economic development goal of becoming a hub for trade, logistics, and export-oriented activities by:

(a) Providing important access and major on-port capacity improvements;

(b) Providing capital improvements to strategically position the state to maximize opportunities in international trade, logistics, or the cruise industry;

(c) Achieving state goals of an integrated intermodal

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transportation system; and

(d) Demonstrating the feasibility and availability of matching funds through local or private partners.

(2) Prior to making final project allocations, the Department of Transportation shall schedule a publicly noticed workshop with the Department of Economic Opportunity and the deepwater ports listed in s. 311.09 to review the proposed projects. After considering the comments received, the Department of Transportation shall finalize a prioritized list of potential projects.

Section 7. For the purpose of incorporating the amendment made by this act to section 311.09, Florida Statutes, in a reference thereto, subsection (2) of section 311.101, Florida Statutes, is reenacted to read:

311.101 Intermodal Logistics Center Infrastructure Support Program.—

(2) For the purposes of this section, the term "intermodal logistics center," including, but not limited to, an "inland port," means a facility or group of facilities serving as a point of intermodal transfer of freight in a specific area physically separated from a seaport where activities relating to transport, logistics, goods distribution, consolidation, or value-added activities are carried out and whose activities and services are designed to support or be supported by conveyance or shipping through one or more seaports listed in s. 311.09.

Section 8. For the purpose of incorporating the amendment made by this act to section 311.09, Florida Statutes, in references thereto, paragraph (a) of subsection (2), subsection (3), and paragraph (a) of subsection (6) of section 311.12,

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Florida Statutes, are reenacted to read:

311.12 Seaport security.—

(2) SECURITY PLAN.—

(a) Each seaport listed in s. 311.09 shall adopt and maintain a security plan specific to that seaport which provides for a secure seaport infrastructure that promotes the safety and security of state residents and visitors and the flow of legitimate trade and travel.

(3) SECURE AND RESTRICTED AREAS.—Each seaport listed in s. 311.09 must clearly designate in seaport security plans, and clearly identify with appropriate signs and markers on the premises of a seaport, all secure and restricted areas as defined by 33 C.F.R. part 105.

(a)1. All seaport employees and other persons working at the seaport who have regular access to secure or restricted areas must comply with federal access control regulations as prescribed in this section.

2. All persons and objects in secure and restricted areas are subject to search by a sworn state-certified law enforcement officer, a Class D seaport security officer certified under Maritime Transportation Security Act of 2002 guidelines, or an employee of the seaport security force certified under the Maritime Transportation Security Act of 2002 guidelines.

3. Persons found in these areas without the proper permission are subject to the trespass provisions of ss. 810.08 and 810.09.

(b) The seaport must provide clear notice of the prohibition against possession of concealed weapons and other contraband material on the premises of the seaport. Any person

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in a restricted area who has in his or her possession a concealed weapon, or who operates or has possession or control of a vehicle in or upon which a concealed weapon is placed or stored, commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083. This paragraph does not apply to active-duty certified federal or state law enforcement personnel or persons so designated by the seaport director in writing.

(c) During a period of high terrorist threat level, as designated by the United States Department of Homeland Security, the management or controlling authority of the port may temporarily designate any part of the seaport property as a secure or restricted area. The duration of such designation is limited to the period in which the high terrorist threat level is in effect or a port emergency exists.

(6) GRANT PROGRAM.—

(a) The Florida Seaport Transportation and Economic Development Council shall establish a Seaport Security Grant Program for the purpose of assisting in the implementation of security plans and security measures at the seaports listed in s. 311.09(1). Funds may be used for the purchase of equipment, infrastructure needs, cybersecurity programs, and other security measures identified in a seaport's approved federal security plan. Such grants may not exceed 75 percent of the total cost of the request and are subject to legislative appropriation.

Section 9. For the purpose of incorporating the amendment made by this act to section 311.09, Florida Statutes, in references thereto, subsection (2) and paragraph (a) of subsection (3) of section 311.121, Florida Statutes, are

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reenacted to read:

311.121 Qualifications, training, and certification of licensed security officers at Florida seaports.—

(2) The authority or governing board of each seaport identified under s. 311.09 that is subject to the seaport security standards referenced in s. 311.12 shall require that a candidate for certification as a seaport security officer:

(a) Has received a Class D license as a security officer under chapter 493.

(b) Has successfully completed the certified training curriculum for a Class D license or has been determined by the Department of Agriculture and Consumer Services to have equivalent experience as established by rule of the department.

(c) Has completed the training or training equivalency and testing process established by this section for becoming a certified seaport security officer.

(3) The Seaport Security Officer Qualification, Training, and Standards Coordinating Council is created under the Department of Law Enforcement.

(a) The executive director of the Department of Law Enforcement shall appoint 11 members to the council, to include:

1. The seaport administrator of the Department of Law Enforcement.

2. The Commissioner of Education or his or her designee.

3. The director of the Division of Licensing of the Department of Agriculture and Consumer Services.

4. The administrator of the Florida Seaport Transportation and Economic Development Council.

5. Two seaport security directors from seaports designated

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under s. 311.09.

6. One director of a state law enforcement academy.

7. One representative of a local law enforcement agency.

8. Two representatives of contract security services.

9. One representative of the Department of Highway Safety and Motor Vehicles.

Section 10. For the purpose of incorporating the amendment made by this act to section 311.09, Florida Statutes, in a reference thereto, subsection (1) of section 311.14, Florida Statutes, is reenacted to read:

311.14 Seaport planning.—

(1) The Department of Transportation shall develop, in coordination with the ports listed in s. 311.09(1) and other partners, a Statewide Seaport and Waterways System Plan. This plan shall be consistent with the goals of the Florida Transportation Plan developed pursuant to s. 339.155 and shall consider needs identified in individual port master plans and those from the seaport strategic plans required under this section. The plan will identify 5-year, 10-year, and 20-year needs for the seaport system and will include seaport, waterway, road, and rail projects that are needed to ensure the success of the transportation system as a whole in supporting state economic development goals.

Section 11. For the purpose of incorporating the amendment made by this act to section 311.09, Florida Statutes, in a reference thereto, section 315.18, Florida Statutes, is reenacted to read:

315.18 Confidentiality of certain records held by deepwater ports.—Any proposal or counterproposal exchanged between a

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deepwater port listed in s. 311.09(1) and any nongovernmental entity, relating to the sale, use, or lease of land or of port facilities, and any financial records submitted by any nongovernmental entity to such a deepwater port for the purpose of the sale, use, or lease of land or of port facilities, are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. However, 30 days before any such proposal or counterproposal is considered for approval by the governing body of such a deepwater port, the proposal or counterproposal shall cease to be exempt. If no proposal or counterproposal is submitted to the governing body for approval, such a proposal or counterproposal shall cease to be exempt 90 days after the cessation of negotiations.

Section 12. For the purpose of incorporating the amendment made by this act to section 311.09, Florida Statutes, in references thereto, subsections (3) and (4) of section 320.20, Florida Statutes, are reenacted to read:

320.20 Disposition of license tax moneys.—The revenue derived from the registration of motor vehicles, including any delinquent fees and excluding those revenues collected and distributed under the provisions of s. 320.081, must be distributed monthly, as collected, as follows:

(3) Notwithstanding any other provision of law except subsections (1) and (2), \$15 million shall be deposited annually into the State Transportation Trust Fund solely for the purposes of funding the Florida Seaport Transportation and Economic Development Program as provided in chapter 311. Such revenues shall be distributed on a 50-50 matching basis to any port listed in s. 311.09(1) to be used for funding projects as

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described in s. 311.07(3)(b). Such revenues may be assigned, pledged, or set aside as a trust for the payment of principal or interest on bonds, tax anticipation certificates, or any other form of indebtedness issued by an individual port or appropriate local government having jurisdiction thereof, or collectively by interlocal agreement among any of the ports, or used to purchase credit support to permit such borrowings. However, such debt is not a general obligation of the state. The state covenants with holders of such revenue bonds or other instruments of indebtedness issued that it will not repeal or impair or amend in any manner that will materially and adversely affect the rights of such holders so long as bonds authorized by this section are outstanding. Any revenues that are not pledged to the repayment of bonds authorized by this section may be used for purposes authorized under the Florida Seaport Transportation and Economic Development Program. This revenue source is in addition to any amounts provided and appropriated in accordance with s. 311.07. The Florida Seaport Transportation and Economic Development Council shall approve the distribution of funds to ports for projects that have been approved pursuant to s. 311.09(5)-(8). The council and the Department of Transportation may perform acts required to facilitate and implement this subsection. To better enable the ports to cooperate to their mutual advantage, the governing body of each port may exercise powers provided to municipalities or counties in s. 163.01(7)(d) subject to chapter 311 and special acts, if any, pertaining to a port. The use of funds provided pursuant to this subsection are limited to eligible projects listed in this subsection. Income derived from a project completed with the use of program funds,

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beyond operating costs and debt service, is restricted solely to further port capital improvements consistent with maritime purposes. Use of such income for nonmaritime purposes is prohibited. The revenues available under this subsection may not be pledged to the payment of any bonds other than the Florida Ports Financing Commission Series 1996 and Series 1999 Bonds currently outstanding; however, such revenues may be pledged to secure payment of refunding bonds to refinance the Florida Ports Financing Commission Series 1996 and Series 1999 Bonds. Refunding bonds secured by revenues available under this subsection may not be issued with a final maturity later than the final maturity of the Florida Ports Financing Commission Series 1996 and Series 1999 Bonds or which provide for higher debt service in any year than is currently payable on such bonds. Any revenue bonds or other indebtedness issued after July 1, 2000, other than refunding bonds shall be issued by the Division of Bond Finance at the request of the Department of Transportation pursuant to the State Bond Act.

(4) Notwithstanding any other provision of law except subsections (1), (2), and (3), \$10 million shall be deposited annually into the State Transportation Trust Fund solely for the purposes of funding the Florida Seaport Transportation and Economic Development Program as provided in chapter 311 and for funding seaport intermodal access projects of statewide significance as provided in s. 341.053. Such revenues shall be distributed to any port listed in s. 311.09(1), to be used for funding projects as follows:

(a) For any seaport intermodal access projects that are identified in the 1997-1998 Tentative Work Program of the

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Department of Transportation, up to the amounts needed to offset the funding requirements of this section.

(b) For seaport intermodal access projects as described in s. 341.053(6) which are identified in the 5-year Florida Seaport Mission Plan as provided in s. 311.09(3). Funding for such projects shall be on a matching basis as mutually determined by the Florida Seaport Transportation and Economic Development Council and the Department of Transportation if a minimum of 25 percent of total project funds come from any port funds, local funds, private funds, or specifically earmarked federal funds.

(c) On a 50-50 matching basis for projects as described in s. 311.07(3)(b).

(d) For seaport intermodal access projects that involve the dredging or deepening of channels, turning basins, or harbors; or the rehabilitation of wharves, docks, or similar structures. Funding for such projects requires a 25 percent match of the funds received pursuant to this subsection. Matching funds must come from port funds, federal funds, local funds, or private funds.

Such revenues may be assigned, pledged, or set aside as a trust for the payment of principal or interest on bonds, tax anticipation certificates, or other form of indebtedness issued by an individual port or appropriate local government having jurisdiction thereof, or collectively by interlocal agreement among any of the ports, or used to purchase credit support to permit such borrowings. However, such debt is not a general obligation of the state. This state covenants with holders of such revenue bonds or other instruments of indebtedness issued

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523 hereunder that it will not repeal, impair, or amend this
 524 subsection in a manner that will materially and adversely affect
 525 the rights of holders while bonds authorized by this subsection
 526 remain outstanding. Revenues that are not pledged to the
 527 repayment of bonds as authorized by this section may be used for
 528 purposes authorized under the Florida Seaport Transportation and
 529 Economic Development Program. This revenue source is in addition
 530 to any amounts provided for and appropriated in accordance with
 531 s. 311.07 and subsection (3). The Florida Seaport Transportation
 532 and Economic Development Council shall approve distribution of
 533 funds to ports for projects that have been approved pursuant to
 534 s. 311.09(5)-(8), or for seaport intermodal access projects
 535 identified in the 5-year Florida Seaport Mission Plan as
 536 provided in s. 311.09(3) and mutually agreed upon by the Florida
 537 Seaport Transportation and Economic Development Council and the
 538 Department of Transportation. All contracts for actual
 539 construction of projects authorized by this subsection must
 540 include a provision encouraging employment of participants in
 541 the welfare transition program. The goal for such employment is
 542 25 percent of all new employees employed specifically for the
 543 project, unless the Department of Transportation and the Florida
 544 Seaport Transportation and Economic Development Council
 545 demonstrate that such a requirement would severely hamper the
 546 successful completion of the project. In such an instance,
 547 CareerSource Florida, Inc., shall establish an appropriate
 548 percentage of employees who are participants in the welfare
 549 transition program. The council and the Department of
 550 Transportation may perform such acts as are required to
 551 facilitate and implement the provisions of this subsection. To

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552 better enable the ports to cooperate to their mutual advantage,
 553 the governing body of each port may exercise powers provided to
 554 municipalities or counties in s. 163.01(7)(d) subject to the
 555 provisions of chapter 311 and special acts, if any, pertaining
 556 to a port. The use of funds provided pursuant to this subsection
 557 is limited to eligible projects listed in this subsection. The
 558 revenues available under this subsection may not be pledged to
 559 the payment of any bonds other than the Florida Ports Financing
 560 Commission Series 1996 and Series 1999 Bonds currently
 561 outstanding; however, such revenues may be pledged to secure
 562 payment of refunding bonds to refinance the Florida Ports
 563 Financing Commission Series 1996 and Series 1999 Bonds.
 564 Refunding bonds secured by revenues available under this
 565 subsection may not be issued with a final maturity later than
 566 the final maturity of the Florida Ports Financing Commission
 567 Series 1996 and Series 1999 Bonds and may not provide for higher
 568 debt service in any year than is currently payable on such
 569 bonds. Any revenue bonds or other indebtedness issued after July
 570 1, 2000, other than refunding bonds shall be issued by the
 571 Division of Bond Finance at the request of the Department of
 572 Transportation pursuant to the State Bond Act.

573 Section 13. For the purpose of incorporating the amendment
 574 made by this act to section 311.09, Florida Statutes, in a
 575 reference thereto, subsection (1) of section 334.27, Florida
 576 Statutes, is reenacted to read:

577 334.27 Governmental transportation entities; property
 578 acquired for transportation purposes; limitation on soil or
 579 groundwater contamination liability.—

580 (1) For the purposes of this section, the term

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581 "governmental transportation entity" means the department; an
582 authority created pursuant to chapter 343, chapter 348, or
583 chapter 349; airports as defined in s. 332.004(14); a port
584 enumerated in s. 311.09(1); a county; or a municipality.

585 Section 14. For the purpose of incorporating the amendment
586 made by this act to section 311.09, Florida Statutes, in a
587 reference thereto, subsection (7) of section 337.14, Florida
588 Statutes, is reenacted to read:

589 337.14 Application for qualification; certificate of
590 qualification; restrictions; request for hearing.—

591 (7) A "contractor" as defined in s. 337.165(1)(d) or his or
592 her "affiliate" as defined in s. 337.165(1)(a) qualified with
593 the department under this section may not also qualify under s.
594 287.055 or s. 337.105 to provide testing services, construction,
595 engineering, and inspection services to the department. This
596 limitation does not apply to any design-build prequalification
597 under s. 337.11(7) and does not apply when the department
598 otherwise determines by written order entered at least 30 days
599 before advertisement that the limitation is not in the best
600 interests of the public with respect to a particular contract
601 for testing services, construction, engineering, and inspection
602 services. This subsection does not authorize a contractor to
603 provide testing services, or provide construction, engineering,
604 and inspection services, to the department in connection with a
605 construction contract under which the contractor is performing
606 any work. Notwithstanding any other provision of law to the
607 contrary, for a project that is wholly or partially funded by
608 the department and administered by a local governmental entity,
609 except for a seaport listed in s. 311.09 or an airport as

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610 defined in s. 332.004, the entity performing design and
611 construction engineering and inspection services may not be the
612 same entity.

613 Section 15. For the purpose of incorporating the amendment
614 made by this act to section 311.09, Florida Statutes, in a
615 reference thereto, subsection (12) of section 373.406, Florida
616 Statutes, is reenacted to read:

617 373.406 Exemptions.—The following exemptions shall apply:

618 (12) An overwater pier, dock, or a similar structure
619 located in a deepwater port listed in s. 311.09 is not
620 considered to be part of a stormwater management system for
621 which this chapter or chapter 403 requires stormwater from
622 impervious surfaces to be treated if:

623 (a) The port has a stormwater pollution prevention plan for
624 industrial activities pursuant to the National Pollutant
625 Discharge Elimination System Program; and

626 (b) The stormwater pollution prevention plan also provides
627 similar pollution prevention measures for other activities that
628 are not subject to the National Pollutant Discharge Elimination
629 System Program and that occur on the port's overwater piers,
630 docks, and similar structures.

631 Section 16. For the purpose of incorporating the amendment
632 made by this act to section 311.09, Florida Statutes, in
633 references thereto, subsections (2) and (10) of section
634 373.4133, Florida Statutes, are reenacted to read:

635 373.4133 Port conceptual permits.—

636 (2) Any port listed in s. 311.09(1) may apply to the
637 department for a port conceptual permit, including any
638 applicable authorization under chapter 253 to use sovereignty

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submerged lands under a joint coastal permit pursuant to s. 161.055 or an environmental resource permit issued pursuant to this part, for all or a portion of the area within the geographic boundaries of the port. A private entity with a controlling interest in property used for private industrial marine activities in the immediate vicinity of a port listed in s. 311.09(1) may also apply for a port conceptual permit under this section. A port conceptual permit may be issued for a period of up to 20 years and extended one time for an additional 10 years. A port conceptual permit constitutes the state's conceptual certification of compliance with state water quality standards for purposes of s. 401 of the Clean Water Act and the state's conceptual determination that the activities contained in the port conceptual permit are consistent with the state coastal zone management program.

(10) In lieu of meeting the generally applicable stormwater design standards in rules adopted under this part, which create a presumption that stormwater discharged from the system will meet the applicable state water quality standards in the receiving waters, any port listed in s. 311.09(1) may propose alternative stormwater treatment and design criteria for the construction, operation, and maintenance of stormwater management systems serving overwater piers. The proposal shall include such structural components or best management practices to address the stormwater discharge from the pier, including consideration of activities conducted on the pier, as are necessary to provide reasonable assurance that stormwater discharged from the system will meet the applicable state water quality standards in the receiving waters.

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Section 17. For the purpose of incorporating the amendment made by this act to section 311.09, Florida Statutes, in a reference thereto, paragraph (d) of subsection (6) of section 373.4136, Florida Statutes, is reenacted to read:

373.4136 Establishment and operation of mitigation banks.—

(6) MITIGATION SERVICE AREA.—The department or water management district shall establish a mitigation service area for each mitigation bank permit. The department or water management district shall notify and consider comments received on the proposed mitigation service area from each local government within the proposed mitigation service area. Except as provided herein, mitigation credits may be withdrawn and used only to offset adverse impacts in the mitigation service area. The boundaries of the mitigation service area shall depend upon the geographic area where the mitigation bank could reasonably be expected to offset adverse impacts. Mitigation service areas may overlap, and mitigation service areas for two or more mitigation banks may be approved for a regional watershed.

(d) If the requirements in s. 373.414(1)(b) and (8) are met, the following projects or activities regulated under this part shall be eligible to use a mitigation bank, regardless of whether they are located within the mitigation service area:

1. Projects with adverse impacts partially located within the mitigation service area.

2. Linear projects, such as roadways, transmission lines, distribution lines, pipelines, railways, or seaports listed in s. 311.09(1).

3. Projects with total adverse impacts of less than 1 acre in size.

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697 Section 18. For the purpose of incorporating the amendment
698 made by this act to section 311.09, Florida Statutes, in
699 references thereto, subsections (38) and (39) of section
700 403.061, Florida Statutes, are reenacted to read:

701 403.061 Department; powers and duties.—The department shall
702 have the power and the duty to control and prohibit pollution of
703 air and water in accordance with the law and rules adopted and
704 promulgated by it and, for this purpose, to:

705 (38) Provide a supplemental permitting process for the
706 issuance of a joint coastal permit pursuant to s. 161.055 or
707 environmental resource permit pursuant to part IV of chapter
708 373, to a port listed in s. 311.09(1), for maintenance dredging
709 and the management of dredged materials from maintenance
710 dredging of all navigation channels, port harbors, turning
711 basins, and harbor berths. Such permit shall be issued for a
712 period of 5 years and shall be annually extended for an
713 additional year if the port is in compliance with all permit
714 conditions at the time of extension. The department is
715 authorized to adopt rules to implement this subsection.

716 (39) Provide a supplemental permitting process for the
717 issuance of a conceptual joint coastal permit pursuant to s.
718 161.055 or environmental resource permit pursuant to part IV of
719 chapter 373, to a port listed in s. 311.09(1), for dredging and
720 the management of materials from dredging and for other related
721 activities necessary for development, including the expansion of
722 navigation channels, port harbors, turning basins, harbor
723 berths, and associated facilities. Such permit shall be issued
724 for a period of up to 15 years. The department is authorized to
725 adopt rules to implement this subsection.

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726
727 The department shall implement such programs in conjunction with
728 its other powers and duties and shall place special emphasis on
729 reducing and eliminating contamination that presents a threat to
730 humans, animals or plants, or to the environment.

731 Section 19. This act shall take effect July 1, 2022.

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The Florida Senate

Committee Agenda Request

To: Senator Kathleen Passidomo, Chair
Committee on Rules

Subject: Committee Agenda Request

Date: January 31, 2022

I respectfully request that **Senate Bill #1038**, relating to Florida Seaport Transportation and Economic Development Council, be placed on the:

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

Statement of Intent:

Senate Bill 1038 revises the membership of the Florida Seaport Transportation and Economic Development (FSTED) Council to include Putnam County. The bill would enable Putnam County to obtain FSTED funding to conduct a feasibility study to determine if Putnam County has the capacity to develop a multimodal regional transportation hub and port in the heart of a designated economically distressed community. Its creation would provide a boost to both the local and regional economy by opening new markets for current and future commerce, creating new well-paying jobs for the local community, and expanding the import/export capabilities of current and future locally based industries.

A handwritten signature in black ink that reads "W. Keith Perry". The signature is written in a cursive style with a long, sweeping underline.

Senator Keith Perry
Florida Senate, District 8

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 1658

INTRODUCER: Environment and Natural Resources Committee and Senators Bean and Rodrigues

SUBJECT: Executive Appointments

DATE: February 1, 2022

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Carroll</u>	<u>Rogers</u>	<u>EN</u>	Fav/CS
2.	<u>Carroll</u>	<u>Phelps</u>	<u>RC</u>	Favorable

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1658 revises the appointment criteria for the executive director of the Department of Law Enforcement, the secretary of the Department of Environmental Protection, and the executive director of the Department of Veterans' Affairs.

II. Present Situation:

Structure of the Executive Branch of the State of Florida

The Florida Constitution creates the structure of all branches of the Florida Government. Article IV of the Florida Constitution establishes the executive branch and delineates its structure. The executive power is divided among four public officials: the Governor and the three members of the Florida Cabinet.¹ Article IV also requires that all functions of the executive branch of state government be allotted among not more than 25 departments, not including those provided for or authorized in the Constitution itself.² The administration of each department must be placed by law under the direct supervision of the Governor, the Lieutenant Governor, the Governor and Cabinet, a Cabinet member, or an officer or board appointed by and serving at the pleasure of the Governor.³ The Legislature may provide by law that an appointment to or the removal from any

¹ The Florida Constitution also creates the office of the Lieutenant Governor but does not specify the powers of that office, instead requiring the Lieutenant Governor to perform such duties pertaining to the office of the Governor as are assigned by the Governor. Art. IV, s. 2, FLA. CONST.

² Art. IV, s. 6, FLA. CONST.

³ *Id.*

designated statutory office must require confirmation by the Senate or the approval of three members of the Cabinet.⁴

Cabinet

The Florida Cabinet has existed in some form since 1868.⁵ The 1868 Constitution created a Cabinet that consisted of executive officers appointed by the Governor and confirmed by the Senate.⁶ The 1885 Florida Constitution created six independently elected administrative officers to assist the Governor in governing the executive branch.⁷ The following officers comprised the cabinet under the 1885 Constitution:

- Secretary of State,
- Attorney General,
- Comptroller,
- Treasurer,
- Superintendent of Public Instruction, and
- Commissioner of Agriculture.

The Cabinet largely remained in this form until 2003. In 1998, the Constitution Revision Commission⁸ placed Amendment 8, “Restructuring the Florida Cabinet,” on the ballot.⁹ The amendment reduced the Cabinet to three members by merging the cabinet offices of the treasurer and comptroller into a new position entitled the Chief Financial Officer (CFO) and removed the Secretary of State and the Commissioner of Education¹⁰ from the Cabinet. The amendment passed and became effective on January 7, 2003. The current Cabinet consists of the CFO, Attorney General, and the Commissioner of Agriculture.¹¹ The CFO serves as the chief fiscal officer of the state, settles and approves accounts against the state, and keeps all state funds and securities. The Attorney General is the chief state legal officer. The Commissioner of Agriculture supervises all matters pertaining to agriculture except as otherwise provided by law.¹²

The Governor and Cabinet meet as a collegial body.¹³ The Florida Constitution specifies that when a tie vote occurs, the side on which the Governor voted is deemed to prevail.¹⁴ Florida law

⁴ Art. IV, s. 6(a), FLA. CONST.

⁵ See Joseph W. Landers, Jr., *The Myth of the Cabinet System: The Need to Restructure Florida’s Executive Branch*, 19 Fla. St. U. L. Rev. 1089 (1992) available at <https://ir.law.fsu.edu/cgi/viewcontent.cgi?article=2445&context=lr> (last visited Feb. 1, 2022).

⁶ *Id.*

⁷ Art. IV, s. 20, FLA. CONST. (1885).

⁸ The Constitution Revision Commission meets every 20 years to examine the state constitution, hold public hearings, and proposed revisions. Art. IV, s. 2, FLA. CONST.

⁹ Amendment 8, Florida Department of State, <https://dos.elections.myflorida.com/initiatives/fulltext/pdf/11-4.pdf> (last visited Feb. 1, 2022).

¹⁰ The Commissioner of Education was formerly known as the Superintendent of Public Instruction.

¹¹ Art. IV, s. 4, FLA. CONST.

¹² *Id.*

¹³ See Edwin Bayo & Kent Perez, *Florida’s Cabinet System: Y2K and Beyond*, Fla. B.J., Nov. 2000 at 68, available at <https://www.floridabar.org/the-florida-bar-journal/floridas-cabinet-system-y2k-and-beyond> (last visited Feb. 1, 2022).

¹⁴ Art. IV, s. 4(a), FLA. CONST.

further specifies that when a tie vote occurs and the side the Governor votes on prevails, the vote satisfies the requirement that the action taken be by “majority” or “simple majority.”¹⁵

Department Head Appointments Requiring Unanimous Cabinet Approval

Three departments – Department of Law Enforcement¹⁶ (FDLE), Department of Environmental Protection¹⁷ (DEP), and Department of Veterans’ Affairs¹⁸ (DVA) – require the Governor and three members of the Cabinet to approve the appointment of the department’s secretary or executive director. This requirement existed prior to the Cabinet reorganization in 2003. With the six-member Cabinet that existed prior to 2003, the three Cabinet member approval requirement, when added with the Governor’s choice, would have been a majority.¹⁹ However, the reduction of the Cabinet to three members in 2003 means that the Cabinet vote in these instances must be unanimous.

Florida Department of Law Enforcement

The Florida Department of Law Enforcement (FDLE) was created in 1969, replacing the Bureau of Law Enforcement, with the head of the agency being the Governor and Cabinet.²⁰ Since its creation, the executive director of FDLE has been appointed by the Governor, with the approval of three members of the Cabinet, subject to Senate confirmation.²¹ The executive director serves at the pleasure of the Governor and Cabinet.²² FDLE’s mission is to “promote public safety and strengthen domestic security by providing services in partnership with local, state, and federal criminal justice agencies to prevent, investigate, and solve crimes while protecting Florida’s citizens and visitors.”²³

FDLE is composed of seven Regional Operating Centers²⁴ and the following programs are established in law:

- Criminal Justice Investigations and Forensic Science,
- Criminal Justice Information,
- Criminal Justice Professionalism, and
- Florida Capitol Police.²⁵

¹⁵ Section 14.2001, F.S.

¹⁶ Section 20.201, F.S.

¹⁷ Section 20.255, F.S.

¹⁸ Section 20.37, F.S.

¹⁹ See Kent Perez, *The New Constitutional Cabinet “Florida’s Four,”* Fla. B.J., Apr. 2008 at 62, <https://www.floridabar.org/the-florida-bar-journal/the-new-constitutional-cabinet-floridas-four> (last visited Feb. 1, 2022).

²⁰ Ch. 69-106, Laws of Fla.

²¹ Section 20.201(1), F.S.; see also Art. IV, s. 4(g), FLA. CONST.

²² *Id.*

²³ FDLE, *Statement of Agency Organization and Operation*, available at <https://www.fdle.state.fl.us/About-Us/Documents/StatementofAgencyOrg.aspx> (last visited Feb. 1, 2022).

²⁴ The Regional Operating Centers report to “a Regional Director (Special Agent in Charge) instead of headquarters.” FDLE, *About Us*, <https://www.fdle.state.fl.us/About-Us/General-Information.aspx> (last visited Feb. 1, 2022).

²⁵ *Id.*; see also section 20.201(2), F.S., establishing four programs within FDLE: Criminal Justice Investigations and Forensic Science Program; Criminal Justice Information Program; Criminal Justice Professionalism Program; and Capitol Police.

Department of Environmental Protection

DEP was created in 1993 by the Florida Environmental Reorganization Act of 1993,²⁶ replacing the Department of Environmental Regulation and the Department of Natural Resources.²⁷ Since the department's creation, the head of DEP has been a secretary²⁸ appointed by the Governor, with the concurrence of three members of the Cabinet, subject to Senate confirmation.²⁹ The secretary serves at the pleasure of the Governor.³⁰

DEP is the state's lead agency for environmental management and stewardship.³¹ DEP is divided into three primary program areas:

- Land and recreation programs, which acquire land for preservation and recreation;
- Regulatory programs, which oversee permitting and compliance activities that protect air and water quality and manage waste cleanups; and
- Ecosystems restoration programs, which protect and improve water quality and aquatic resources.³²

DEP has six administrative districts involved in regulatory matters of water management, water resource management, wetlands, and air resources.³³ DEP has nine divisions, which direct the district offices and bureaus in matters of interpretation and applicability of DEP's rules and programs.³⁴ The divisions are:

- Administrative Services,
- Air Resource Management,
- Water Resource Management,
- Environmental Assessment and Restoration,
- Waste Management,
- Recreation and Parks,
- State Lands,
- Water Restoration Assistance, and
- Law Enforcement.³⁵

Department of Veterans' Affairs

In 1988, a constitutional amendment was adopted that required the Legislature to create the DVA in law and prescribe its duties.³⁶ The amendment also specified that the head of the DVA is the Governor and Cabinet.³⁷ Thereafter, the Legislature established the DVA in statute and required

²⁶ Ch. 93-213, Laws of Fla.

²⁷ *Id.*

²⁸ The term "secretary" means an individual who is appointed by the Governor to head a department and who is not otherwise named in the State Constitution. Section 20.03(5), F.S.

²⁹ Section 20.255(1), F.S.

³⁰ *Id.*

³¹ DEP, *About DEP*, <https://floridadep.gov/about-dep> (last visited Jan 12, 2022).

³² *Id.*

³³ Section 20.255(d), F.S.

³⁴ Section 20.255(e), F.S.

³⁵ *Id.*

³⁶ Art. IV, s. 11, FLA. CONST.

³⁷ *Id.*

the executive director be appointed by the Governor, with the approval of three members of the Cabinet, subject to confirmation by the Senate. The executive director serves at the pleasure of the Governor and Cabinet.³⁸

Section 20.37, F.S., establishes the Division of Administration and Public Information and within that division, the Bureau of Information and Research. It also establishes the Division of Veterans' Benefits and Assistance with the following bureaus created within the division:

- Bureau of Veteran Claims Services.
- Bureau of Veteran Field Services.
- Bureau of State Approving for Veterans' Training.³⁹

III. Effect of Proposed Changes:

Section 1 amends s. 20.201, F.S., to provide that the director of the Department of Law Enforcement is appointed by the Governor subject to a majority vote of the Governor and Cabinet, with the Governor on the prevailing side.

Section 2 amends s. 20.255, F.S., to provide that, notwithstanding the statutory requirement that the Senate must confirm the appointment of a secretary appointed by the Governor to serve as head of a department, the secretary of the Department of Environmental Protection shall be appointed by the Governor with the concurrence of three members of the Cabinet or subject to confirmation by the Senate.

The bill provides that upon appointment, the Governor shall notify the Cabinet and the President of the Senate in writing that he or she will seek either the concurrence of three members of the Cabinet or confirmation of the appointee by the Senate. If the Governor chooses the former, such concurrence must be obtained at the first scheduled meeting of the Cabinet following the appointment. The bill provides that if the concurrence is not obtained at such meeting, the appointee may be held over until his or her successor is appointed and qualified for a maximum of 30 days from the date of the Cabinet meeting at which the appointment was considered.

The bill provides that an appointee who does not receive the concurrence of three members of the Cabinet is not eligible for appointment to the same office for one year after the date of the Cabinet meeting at which the appointment was considered. The bill also provides that if the Governor seeks confirmation of the appointee by the Senate, s. 114.05, F.S., applies. That section governs the issuance of a letter of appointment, confirmation by the Senate, and refusal or failure to confirm.

Section 3 amends s. 20.37, F.S., to provide that the executive director of Veterans' Affairs is appointed by the Governor subject to a majority vote of the Governor and Cabinet, with the Governor on the prevailing side.

Section 4 provides that the bill will take effect upon becoming law.

³⁸ Section 20.37(1), F.S.

³⁹ *Id.*

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:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends sections 20.201, 20.255, and 20.37 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 Environment and Natural Resources on January 31, 2022:

Revises the appointment criteria for the executive director of the Department of Law Enforcement, the secretary of the Department of Environmental Protection, and the executive director of the Department of Veterans' Affairs.

- B. **Amendments:**

None.

By the Committee on Environment and Natural Resources; and
Senators Bean and Rodrigues

592-02539-22

20221658c1

A bill to be entitled

An act relating to executive appointments; amending s. 20.201, F.S.; requiring that the executive director of the Department of Law Enforcement be appointed subject to a majority vote of the Governor and Cabinet, with the Governor on the prevailing side; amending s. 20.255, F.S.; requiring the appointment of the secretary of the Department of Environmental Protection be subject to the concurrence of three members of the Cabinet or confirmation by the Senate; requiring the Governor to notify the Cabinet and the President of the Senate in writing of the method of confirmation; requiring the Governor, if seeking the concurrence of the Cabinet, to seek such concurrence at the first scheduled meeting after appointment; providing that an appointee who does not receive the concurrence of the Cabinet may serve for a specified timeframe; providing that an appointee who does not receive concurrence from the Cabinet is not eligible for appointment to the same office for a specified timeframe; providing procedures for confirmation by the Senate; amending s. 20.37, F.S.; requiring that the executive director of the Department of Veterans' Affairs be appointed subject to a majority vote of the Governor and Cabinet, with the Governor on the prevailing side; providing an effective date.

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

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Section 1. Subsection (1) of section 20.201, Florida Statutes, is amended to read:

20.201 Department of Law Enforcement.—

(1) There is created a Department of Law Enforcement. The head of the department is the Governor and Cabinet. The executive director of the department shall be appointed by the Governor subject to a majority vote of the Governor and Cabinet, with the Governor on the prevailing side. The appointment is ~~with the approval of three members of the Cabinet and~~ subject to confirmation by the Senate. The executive director shall serve at the pleasure of the Governor and Cabinet. The executive director may establish a command, operational, and administrative services structure to assist, manage, and support the department in operating programs and delivering services.

Section 2. Subsection (1) of section 20.255, Florida Statutes, is amended to read:

20.255 Department of Environmental Protection.—There is created a Department of Environmental Protection.

(1) Notwithstanding s. 20.05(2), the head of the Department of Environmental Protection shall be a secretary, who shall be appointed by the Governor, with the concurrence of three members of the Cabinet or subject to confirmation by the Senate.

(a) Upon appointment, the Governor shall, in writing, notify the Cabinet and the President of the Senate that he or she will seek either the concurrence of three members of the Cabinet or confirmation of the appointee by the Senate.

(b) If the Governor seeks the concurrence of three members of the Cabinet for the appointment, such concurrence must be obtained at the first scheduled meeting of the Cabinet following

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the appointment. If concurrence of three members of the Cabinet is not obtained at such meeting, the appointee may be held over until his or her successor is appointed and qualified, but the period of such holdover may not exceed 30 days from the date of the Cabinet meeting at which the appointment was considered. An appointee who does not receive the concurrence of three members of the Cabinet is not eligible for appointment to the same office for 1 year after the date of the Cabinet meeting at which the appointment was considered.

(c) If the Governor seeks confirmation of the appointee by the Senate, s. 114.05 applies ~~The secretary shall be confirmed by the Florida Senate.~~

(d) The secretary shall serve at the pleasure of the Governor.

Section 3. Subsection (1) of section 20.37, Florida Statutes, is amended to read:

20.37 Department of Veterans' Affairs.—There is created a Department of Veterans' Affairs.

(1) The head of the department is the Governor and Cabinet. The executive director of the department shall be appointed by the Governor subject to a majority vote of the Governor and Cabinet, with the Governor on the prevailing side. The appointment is with the approval of three members of the Cabinet ~~and~~ subject to confirmation by the Senate. The executive director shall serve at the pleasure of the Governor and Cabinet.

Section 4. This act shall take effect upon becoming a law.

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL: SB 7030

INTRODUCER: Criminal Justice Committee

SUBJECT: OGSR/Health Information of an Inmate or an Offender

DATE: February 1, 2022

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
Siples	Jones		CJ Submitted as Comm. Bill/Fav
1. Siples	Phelps	RC	Favorable

I. Summary:

SB 7030 amends s. 945.10, F.S., to save from repeal the current exemptions from public records disclosure of an inmate's or offender's protected health information and HIV testing information held by the Department of Corrections (DOC).

The original public necessity statement provides that it is a public necessity that an inmate's or offender's protected health information and HIV testing held by the DOC remain confidential and exempt from public disclosure. Allowing such information to be publicly disclosed would, in some cases, conflict with federal law and would be a violation of the inmate's or prisoner's privacy under the Florida Constitution. Additionally, maintaining the confidentiality of HIV testing information is essential to an inmate's or prisoner's participation in such testing.

These exemptions, relating to protected health information and HIV testing information of an inmate or offender held by the DOC, are subject to the Open Government Sunset Review Act and stand repealed on October 2, 2022, unless reviewed and saved from repeal through reenactment by the Legislature. This bill removes the scheduled repeal of the exemptions.

The bill is not expected to impact state or local revenues or expenditures.

The bill is effective October 1, 2022.

II. Present Situation:

Public Records Law

The Florida Constitution provides that the public has the right to inspect or copy records made or received in connection with official governmental business.¹ This applies to the official business

¹ FLA. CONST., art. I, s. 24(a).

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

Chapter 119, F.S., known as the Public Records Act, constitutes the main body of public records laws.³ The Public Records Act states that

[i]t is the policy of this state that all state, county, and municipal records are open for personal inspection and copying by any person. Providing access to public records is a duty of each agency.⁴

The Public Records Act typically contains general exemptions that apply across agencies. Agency- or program-specific exemptions often are placed in the substantive statutes relating to that particular agency or program.

The Public Records Act does not apply to legislative or judicial records.⁵ Legislative records are public pursuant to s. 11.0431, F.S. Public records exemptions for the Legislature are codified primarily in s. 11.0431(2)-(3), F.S., and adopted in the rules of each house of the Legislature.

Section 119.011(12), F.S., defines “public records” to include:

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 connections with the transaction of official business by any agency.

The Florida Supreme Court has interpreted this definition to encompass all materials made or received by an agency in connection with official business which are used to “perpetuate, communicate, or formalize knowledge of some type.”⁶

The Florida Statutes specify conditions under which public access to governmental records must be provided. The Public Records Act guarantees every person’s right to inspect and copy any state or local government public record at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.⁷ A violation of the Public Records Act may result in civil or criminal liability.⁸

Only the Legislature may create an exemption to public records requirements.⁹ An exemption must be created by general law and must specifically state the public necessity justifying the

² *Id.*

³ Public records laws are found throughout the Florida Statutes.

⁴ Section 119.01(1), F.S.

⁵ *Locke v. Hawkes*, 595 So. 2d 32, 34 (Fla. 1992); *see also Times Pub. Co. v. Ake*, 660 So. 2d 255 (Fla. 1995).

⁶ *Shevin v. Byron, Harless, Schaffer, Reid and Assoc. Inc.*, 379 So. 2d 633, 640 (Fla. 1980).

⁷ Section 119.07(1)(a), F.S.

⁸ Section 119.10, F.S. Public records laws are found throughout the Florida Statutes, as are the penalties for violating those laws.

⁹ FLA. CONST., art. I, s. 24(c).

exemption.¹⁰ Further, the exemption must be no broader than necessary to accomplish the stated purpose of the law. A bill enacting an exemption may not contain other substantive provisions¹¹ and must pass by a two-thirds vote of the members present and voting in each house of the Legislature.¹²

When creating a public records exemption, the Legislature may provide that a record is “exempt” or “confidential and exempt.” There is a difference between records the Legislature has determined to be exempt from the Public Records Act and those which the Legislature has determined to be exempt from the Public Records Act *and confidential*.¹³ Records designated as “confidential and exempt” are not subject to inspection by the public and may only be released under the circumstances defined by statute.¹⁴ Records designated as “exempt” may be released at the discretion of the records custodian under certain circumstances.¹⁵

Open Government Sunset Review Act

The provisions of s. 119.15, F.S., known as the Open Government Sunset Review Act (the Act), prescribe a legislative review process for newly created or substantially amended public records or open meetings exemptions,¹⁶ with specified exceptions.¹⁷ The Act requires the repeal of such exemption on October 2nd of the fifth year after creation or substantial amendment; in order to save an exemption from repeal, the Legislature must reenact the exemption or repeal the sunset date.¹⁸ In practice, many exemptions are continued by repealing the sunset date, rather than reenacting the exemption.

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.¹⁹ An exemption serves an identifiable purpose if it meets one of the following purposes *and* the Legislature finds that the purpose of the exemption outweighs open government policy and cannot be accomplished without the exemption:

- It allows the state or its political subdivision to effectively and efficiently administer a program, and administration would be significantly impaired without the exemption;²⁰
- Releasing sensitive personal information would be defamatory or would jeopardize an individual’s safety. If this public purpose is cited as the basis of an exemption, however, only personal identifying information is exempt;²¹ or

¹⁰ *Id.*

¹¹ The bill may, however, contain multiple exemptions that relate to one subject.

¹² FLA. CONST., art. I, s. 24(c)

¹³ *WFTV, Inc. v. The Sch. Bd. of Seminole County*, 874 So. 2d 48, 53 (Fla. 5th DCA 2004).

¹⁴ *Id.*

¹⁵ *Williams v. City of Minneola*, 575 So. 2d 683 (Fla. 5th DCA 1991).

¹⁶ Section 119.15, F.S. Section 119.15(4)(b), F.S., provides that an exemption is considered to be substantially amended if it is expanded to include more records or information or to include meetings.

¹⁷ Section 119.15(2)(a) and (b), F.S., provides that exemptions required by federal law or applicable solely to the Legislature or the State Court System are not subject to the Open Government Sunset Review Act.

¹⁸ Section 119.15(3), F.S.

¹⁹ Section 119.15(6)(b), F.S.

²⁰ Section 119.15(6)(b)1., F.S.

²¹ Section 119.15(6)(b)2., F.S.

- It protects trade or business secrets.²²

The Act also requires specified questions to be considered during the review process.²³ In examining an exemption, the Act directs the Legislature to question the purpose and necessity of reenacting the exemption.

If, in reenacting an exemption or repealing the sunset date, the exemption is expanded, then a public necessity statement and a two-thirds vote for passage are required.²⁴ If the exemption is reenacted or saved from repeal without substantive changes or if the exemption is narrowed, then a public necessity statement and a two-thirds vote for passage are *not* required. If the Legislature allows an exemption to expire, the previously exempt records will remain exempt unless otherwise provided by law.²⁵

Provision of Health by DOC

The DOC is responsible for the inmates of the state correctional system and has supervisory and protective care, custody, and control of the inmates within its facilities.²⁶ The DOC has the constitutional and statutory imperative to provide adequate health services to state prison inmates directly related to this responsibility.²⁷ This medical care includes comprehensive medical, mental health, and dental services, and all associated ancillary services.²⁸ The DOC's Office of Health Service (OHS) oversees the delivery of health care services and handles statewide functions for such delivery. The OHS is led by the Director of Health Services, who reports to the Secretary.²⁹

The DOC contracts with the Centurion of Florida, LLC (Centurion) to provide comprehensive statewide medical, mental health, dental services, and operates the DOC's reception medical center. The care provided is under a managed care model. All inmates are screened at a DOC reception center upon arrival from the county jail. The purpose of this intake process is to determine the inmate's current medical, dental, and mental health care needs, which is achieved through assessments, in part, for auditory, mobility and vision disabilities, and the need for specialized mental health treatment.³⁰

²² Section 119.15(6)(b)3., F.S.

²³ 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?

²⁴ FLA. CONST. art. I, s. 24(c).

²⁵ Section 119.15(7), F.S.

²⁶ Sections 945.04(1) and 945.025(1), F.S.

²⁷ *Crews v. Florida Public Employers Council 79, AFSCME*, 113 So. 3d 1063 (Fla. 1st DCA 2013); *See also* s. 945.025(2), F.S.

²⁸ The DOC, Office of Health Services, available at <http://www.dc.state.fl.us/org/health.html> (last visited January 4, 2022).

²⁹ *Id.*

³⁰ *Id.* *See also* the DOC Annual Report, p. 19.

After the intake process is completed, inmates are assigned to an institution based on their medical and mental health needs and security requirements. Centurion provides primary care using a staff of clinicians, nurses, mental health, and dental professionals and administrators within each major correctional institution. The health services team provides health care services in the dorms for inmates who are in confinement.³¹

The Health Insurance Portability and Accountability Act (HIPAA) and the Privacy Rule

HIPAA was enacted on August 21, 1996, to publicize standards for the electronic exchange, privacy, and security of health information.³² The Privacy Rule (rule) adopted by the U.S. Department of Health and Human Services (HHS) was required by the HIPAA³³ to address the use and disclosure of personal health information. The requirements of the rule apply to individual and group health plans that provide or pay the cost of medical care, every health care provider that electronically transmits health information in connection with certain transactions, and health care clearinghouses that process nonstandard information received from another entity into a standard format or that process standard information into a nonstandard format. Under the rule, all “individually identifiable health information” is protected. Such information includes demographic data such as an individual’s name, address, date of birth, and social security number; the individual’s past, present, or future physical or mental health condition; the provision of health care to such individual; and payments made or to be made for the provision of health care to the individual. Unless for the purposes authorized by the rule, protected health information may not be disclosed without the written authorization of the protected individual.³⁴

Department of Corrections and HIPAA

The DOC is a covered entity for purposes of the rule. The DOC provides comprehensive health care for inmates, including medical, mental health, dental services and all associated ancillary services.³⁵

“Within [a correctional] system, inmates’ health information may originate from or reside in many locations, including booking notes (e.g., infectious or chronic disease status), sick-call triage systems, physician notes, and other departments such as housing and work details (e.g., mobility or injury status).”³⁶ The rule protects the health information of inmates, but also recognizes that correctional facilities have legitimate needs to use and share the information without authorization by the inmate. Thus, the rule includes provisions regarding permissible uses and disclosures of inmates’ health information in the correctional context.

³¹ *Id.*

³² U.S. Dep’t of Health and Human Services, *Summary of the HIPAA Privacy Rule*, available at <https://www.hhs.gov/hipaa/for-professionals/privacy/laws-regulations/index.html> (last visited January 4, 2022).

³³ 45 CFR Parts 160, 162, and 164.

³⁴ *Id.*

³⁵ *Supra* note 28.

³⁶ Melissa M. Goldstein, JD, *Health Information Privacy and Health Information Technology in the US Correctional Setting*, AM J Public Health, 2014 May, 104(5): 803-809, available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3987588/> (last visited January 4, 2022).

Covered entities may disclose the PHI [personal health information] of inmates without their authorization to correctional institutions or law enforcement officials who have lawful custody of an inmate for the purpose of providing health care to the inmate or for the health and safety of the inmate, other inmates, the officers and employees of the institution and others at the facility, and those responsible for inmate transfer. Covered entities may also disclose the PHI of inmates without authorization for law enforcement purposes on the premises of an institution and for the administration and maintenance of the safety, security, and good order of the institution. These provisions apply only to the release of the PHI of current inmates. When inmates are released, they have the same privacy rights under HIPAA as all other individuals.³⁷

Public Records Exemption for Personal Health Information and HIV Testing Information

In 2017, the Legislature amended s. 945.10, F.S., to classify the following records held by the DOC as confidential and exempt from Florida's public record law:

- “Protected health information”³⁸ of an inmate or an offender;
- HIV tests³⁹ of an inmate or offender; and
- HIV test results⁴⁰ received on an inmate or offender.

Section 945.10(2), F.S., provides that protected health information, as well as mental health, medical, and substance abuse records, may be released to:

- The Executive Office of the Governor, the Correctional Medical Authority, and the Department of Health for health care oversight activities authorized by state or federal law, including audits; civil, administrative, or criminal investigations; or inspections relating to the provision of health services;⁴¹
- A state attorney, a state court, or a law enforcement agency conducting an ongoing criminal investigation if the inmate agrees to the disclosure and provides written consent. If the inmate refuses to provide written consent, in response to a court order, a subpoena, investigative, or

³⁷ *Id.*

³⁸ 45 C.F.R. s. 160.103, defines “protected health information” to mean individually identifiable health information that is: transmitted by electronic media; maintained in electronic media; or transmitted or maintained in any other form or medium. Protected health information excludes individually identifiable health information: in education records covered by the Family Educational Rights and Privacy Act; in records described at 20 U.S.C. 1232g(a)(4)(B)(iv)(education records on a student who is eighteen years of age or older, or is attending an institution of postsecondary education, which are made or maintained by physician, psychiatrist, psychologist); in employment records held by a covered entity in its role as employer; and regarding a person who has been deceased for more than 50 years.

³⁹ “HIV test” means a test ordered after July 6, 1988, to determine the presence of the antibody or antigen to human immunodeficiency virus or the presence of human immunodeficiency virus infection. (Section 381.004, F.S.).

⁴⁰ “HIV test result” means a laboratory report of a human immunodeficiency virus test result entered into a medical record on or after July 6, 1988, or any report or notation in a medical record of a laboratory report of a human immunodeficiency virus test. The term does not include test results reported to a health care provider by a patient. (Section 381.004, F.S.).

⁴¹ 45 C.F.R. 164.512(d).

administrative subpoena, a court-ordered warrant, or a statutorily authorized investigative demand or other process⁴² the records can be released to such persons provided that:

- The protected health information and records sought are relevant and material to a legitimate law enforcement inquiry;
- There is a clear connection between the investigated incident and the inmate's protected health information;
- The request is specific and limited in scope to the extent reasonably practicable; and
- De-identified information could not be reasonably used.⁴³
- A state attorney or a law enforcement agency if an inmate is or is suspected of being a victim of a crime if the inmate agrees to the disclosure and provides written consent. If the inmate is unable to agree because of incapacity or other emergency circumstances⁴⁴ provided that:
 - The information is needed to determine whether a violation of law by a person other than the inmate has occurred;
 - The information is not intended to be used against the inmate victim;
 - The immediate law enforcement activity would be materially and adversely affected by waiting until the inmate victim is able to agree to the disclosure; and
 - The disclosure is in the best interests of the inmate victim, as determined by the department.⁴⁵
- A state attorney or a law enforcement agency if the department believes in good faith that the information and records constitute evidence of criminal conduct that occurred in a correctional institution or facility provided that:
 - The protected information and records are specific and limited in scope to the extent reasonably practicable in light of the purpose for which the information or records are sought;
 - There is a clear connection between the criminal conduct and the inmate whose protected health information and records are sought; and
 - De-identified information could not reasonably be used.⁴⁶
- The Division of Risk Management of the Department of Financial Services upon certification by the Division that the information is necessary to investigate and provide legal representation for a claim against the DOC.⁴⁷
- The Department of Legal Affairs or an attorney retained to represent the DOC if the inmate is bringing a legal action against the department.⁴⁸
- Another correctional institution or law enforcement official having lawful custody of the inmate if the protected health information or records are necessary for:
 - The provision of health care to the inmate;
 - The health and safety of the inmate or other inmates;
 - The health and safety of the officers, employees, or others at the correctional institution or facility;

⁴² All orders, subpoenas, warrants, or other statutorily authorized demand must be in accordance with 45 C.F.R. 164, part E, governing security and privacy of health information.

⁴³ 45 C.F.R. 164.512(f)(1).

⁴⁴ The circumstances must be in accordance with 45 C.F.R. 164, part E, governing security and privacy of health information.

⁴⁵ 45 C.F.R. 164.512(f)(3).

⁴⁶ 45 C.F.R. 164.512(f)(5).

⁴⁷ 45 C.F.R. 164.508(a)(2)(C).

⁴⁸ *Id.*

- The health and safety of the individuals or officers responsible for transporting the inmate from one correctional institution, facility, or setting to another;
- Law enforcement on the premises of the correctional institution or facility; or
- The administration and maintenance of the safety, security, and good order of the correctional institution or facility.⁴⁹
- The Department of Children and Families and the Florida Commission on Offender Review if the inmate received mental health treatment while in the custody of the DOC and becomes eligible for release under supervision or upon the end of his or her sentence.⁵⁰

The DOC may also release the protected health information and mental health, medical, or substance abuse records of an inmate to persons acting on behalf of a deceased inmate or offender only for the purpose of requesting access to the information if:

- The person is appointed by a court to act as the personal representative, executor, administrator, curator, or temporary administrator of the deceased inmate's or offender's estate;
- A court has not made a judicial appointment, but the person was designated as a personal representative in a last will and testament; or
- A court has not made a judicial appointment and the inmate or offender has not designated a person in a self-proved last will. In such case, persons include surviving spouses, adult children, and parents of the inmate or offender.⁵¹

Protected health information, as well as mental health, medical, and substance abuse records may also be obtained by subpoena or other court process.⁵²

Public Necessity for Exemption

In creating the exemption, the Legislature articulated the following reasons for the exemption:

[I]t is a public necessity that an inmate's or offender's protected health information and HIV testing information held by the Department of Corrections pursuant to s. 945.10, Florida Statutes, remain confidential and exempt from public disclosure as the Legislature envisioned in this statute and as provided in department rules. Allowing protected health information to be publicly disclosed would in some cases cause a conflict with existing federal law and would be a violation of an inmate's or offender's privacy under the State Constitution. Maintaining the confidentiality of an inmate's or offender's HIV testing information is essential to his or her participation in such testing. Thus, the harm from disclosure would outweigh any public benefit derived therefrom. Appropriate records and protected health information are available, however, to various governmental entities in order for them to perform their duties. It is mandatory that prisons function as effectively, efficiently, and nonviolently as possible. To release such information to the public

⁴⁹ 45 C.F.R. 164.512(f)(5).

⁵⁰ 45 C.F.R. 164.512(d)(2) or (6).

⁵¹ 45 C.F.R. 164.512(g).

⁵² 45 C.F.D. 164.512(e).

would severely impede that function and would jeopardize the health and safety of those within and outside the prison system.⁵³

Pursuant to the Open Government Sunset Review Act, the exemption will repeal on October 2, 2022, unless reenacted by the Legislature.⁵⁴

The DOC reports that since 2019, its Office of Inspector General, which processes a portion of DOC's requests for public records, has asserted the exemption under s. 945.10(1)(a), F.S., for 398 requests out of a total of 800 responses.⁵⁵ Further, it reports that it has asserted the exemption approximately 800 times since 2017 and there has not been any litigation involving the exemption since its enactment. The DOC recommends retaining the exemption in its current form.⁵⁶

III. Effect of Proposed Changes:

The bill amends s. 945.10(1)(a)2. and (h), F.S., to save from repeal the current exemptions from public records disclosure of an inmate's or offender's personal health information or HIV testing information held by the DOC.

The bill deletes the scheduled repeal of the current public records exemption for an inmate's or offender's personal health information or HIV testing information held by the DOC.

The bill is effective October 1, 2022.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The mandate restrictions do not apply because the bill does not require counties and municipalities to spend funds, reduce counties' or municipalities' ability to raise revenue, or reduce the percentage of state tax shared with counties and municipalities.

B. Public Records/Open Meetings Issues:

Vote Requirement

Article I, s. 24(c) of the State Constitution requires a two-thirds vote of the members present and voting for final passage of a bill creating or expanding an exemption to the public records requirements. This bill continues a current public records exemption beyond its current date of repeal; thus, the bill does not require an extraordinary vote for enactment.

⁵³ Chapter 2017-114, Laws of Fla.

⁵⁴ Section 945.10(1)(a)2. and (h), F.S.

⁵⁵ E-mail correspondence from Philip A. Fowler, Attorney Supervisory, Administration Unit, Florida Department of Corrections, (September 14, 2021) (on file with the Senate Committee on Criminal Justice). The DOC's central office also receives public records requests and has asserted the exemption, it was unable to identify the number of times the exemption was asserted due to the volume of requests received and the need to manually review each response.

⁵⁶ *Id.*, and interview with staff from the DOC (August 26, 2021).

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. This bill continues a current public records exemption without expansion.

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 exemptions is to protect an inmate's or offender's personal health information and HIV testing information. 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:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 945.10 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.

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 Criminal Justice

591-02075-22

20227030__

A bill to be entitled

An act relating to a review under the Open Government Sunset Review Act; amending s. 945.10, F.S., which provides exemptions from public records requirements for protected health information of an inmate or an offender, and for the identity of any inmate or offender upon whom an HIV test has been performed and the inmate's or offender's test results; removing the scheduled repeal of the exemptions; providing an effective date.

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

Section 1. Paragraphs (a) and (h) of subsection (1) of section 945.10, Florida Statutes, are amended to read:

945.10 Confidential information.—

(1) Except as otherwise provided by law or in this section, the following records and information held by the Department of Corrections are confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution:

(a)1. Mental health, medical, or substance abuse records of an inmate or an offender; and

2. Protected health information of an inmate or an offender. Protected health information, as used in this section, has the same meaning as provided in 45 C.F.R. s. 160.103. ~~This subparagraph is subject to the Open Government Sunset Review Act of 1995 in accordance with s. 119.15 and shall stand repealed on October 2, 2022, unless reviewed and saved from repeal through reenactment by the Legislature.~~

Page 1 of 2

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

591-02075-22

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(h) The identity of any inmate or offender upon whom an HIV test has been performed and the inmate's or offender's test results, in accordance with s. 381.004. The term "HIV test" has the same meaning as provided in s. 381.004. ~~This paragraph is subject to the Open Government Sunset Review Act of 1995 in accordance with s. 119.15 and shall stand repealed on October 2, 2022, unless reviewed and saved from repeal through reenactment by the Legislature.~~

Section 2. This act shall take effect October 1, 2022.

Page 2 of 2

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/3/22

Meeting Date

SB 7030 -

Bill Number (if applicable)

Topic SB 7030 -

Amendment Barcode (if applicable)

Name Jared Torres

Job Title Legislative Affairs Director, FDC -

Address 501 S. Calhoun ST -
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Tallahassee, FL - 32399 -
City State Zip

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Speaking: ☐ For ☐ Against ☐ Information

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

Representing FL Department of Corrections (FDC) -

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 7032

INTRODUCER: Criminal Justice Committee

SUBJECT: OGSR/Criminal Intelligence Information or Criminal Investigative Information

DATE: February 1, 2022

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
Cellon	Jones		CJ Submitted as Comm. Bill/Fav
1. Cellon	Phelps	RC	Favorable

I. Summary:

SB 7032 saves from repeal the public records exemption for the criminal intelligence information or criminal investigative information that reveals the personal identifying information of a witness to a murder, for two years after the date on which the murder is observed by the witness. The exemption makes the records confidential and exempt from public records requirements.

The Open Government Sunset Review Act requires the Legislature to review each public record and each public meeting exemption five years after enactment. The exemption contained in s. 119.071(2)(m)1., F.S., is scheduled to repeal on October 2, 2022. This bill removes the scheduled repeal to continue the confidential and exempt status.

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

The bill takes effect October 1, 2022.

II. Present Situation:

Public Records Law

The Florida Constitution provides that the public has the right to inspect or copy records made or received in connection with official governmental business.¹ This applies to the official business of any public body, officer, or employee of the state, including all three branches of state government, local governmental entities, and any person acting on behalf of the government.²

¹ FLA. CONST., art. I, s. 24(a).

² *Id.*

Chapter 119, F.S., known as the Public Records Act, constitutes the main body of public records laws.³ The Public Records Act states that

[i]t is the policy of this state that all state, county, and municipal records are open for personal inspection and copying by any person. Providing access to public records is a duty of each agency.⁴

The Public Records Act typically contains general exemptions that apply across agencies. Agency- or program-specific exemptions often are placed in the substantive statutes relating to that particular agency or program.

The Public Records Act does not apply to legislative or judicial records.⁵ Legislative records are public pursuant to s. 11.0431, F.S. Public records exemptions for the Legislature are codified primarily in s. 11.0431(2)-(3), F.S., and adopted in the rules of each house of the Legislature.

Section 119.011(12), F.S., defines “public records” to include:

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 connections with the transaction of official business by any agency.

The Florida Supreme Court has interpreted this definition to encompass all materials made or received by an agency in connection with official business which are used to “perpetuate, communicate, or formalize knowledge of some type.”⁶

The Florida Statutes specify conditions under which public access to governmental records must be provided. The Public Records Act guarantees every person’s right to inspect and copy any state or local government public record at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.⁷ A violation of the Public Records Act may result in civil or criminal liability.⁸

Only the Legislature may create an exemption to public records requirements.⁹ An exemption must be created by general law and must specifically state the public necessity justifying the exemption.¹⁰ Further, the exemption must be no broader than necessary to accomplish the stated purpose of the law. A bill enacting an exemption may not contain other substantive provisions¹¹

³ Public records laws are found throughout the Florida Statutes.

⁴ Section 119.01(1), F.S.

⁵ *Locke v. Hawkes*, 595 So. 2d 32, 34 (Fla. 1992); see also *Times Pub. Co. v. Ake*, 660 So. 2d 255 (Fla. 1995).

⁶ *Shevin v. Byron, Harless, Schaffer, Reid and Assoc. Inc.*, 379 So. 2d 633, 640 (Fla. 1980).

⁷ Section 119.07(1)(a), F.S.

⁸ Section 119.10, F.S. Public records laws are found throughout the Florida Statutes, as are the penalties for violating those laws.

⁹ FLA. CONST., art. I, s. 24(c).

¹⁰ *Id.*

¹¹ The bill may, however, contain multiple exemptions that relate to one subject.

and must pass by a two-thirds vote of the members present and voting in each house of the Legislature.¹²

When creating a public records exemption, the Legislature may provide that a record is “exempt” or “confidential and exempt.” There is a difference between records the Legislature has determined to be exempt from the Public Records Act and those which the Legislature has determined to be exempt from the Public Records Act *and confidential*.¹³ Records designated as “confidential and exempt” are not subject to inspection by the public and may only be released under the circumstances defined by statute.¹⁴ Records designated as “exempt” may be released at the discretion of the records custodian under certain circumstances.¹⁵

Open Government Sunset Review Act

The provisions of s. 119.15, F.S., known as the Open Government Sunset Review Act (the Act), prescribe a legislative review process for newly created or substantially amended public records or open meetings exemptions,¹⁶ with specified exceptions.¹⁷ The Act requires the repeal of such exemption on October 2nd of the fifth year after creation or substantial amendment; in order to save an exemption from repeal, the Legislature must reenact the exemption or repeal the sunset date.¹⁸ In practice, many exemptions are continued by repealing the sunset date, rather than reenacting the exemption.

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.¹⁹ An exemption serves an identifiable purpose if it meets one of the following purposes *and* the Legislature finds that the purpose of the exemption outweighs open government policy and cannot be accomplished without the exemption:

- It allows the state or its political subdivision to effectively and efficiently administer a program, and administration would be significantly impaired without the exemption;²⁰
- Releasing sensitive personal information would be defamatory or would jeopardize an individual’s safety. If this public purpose is cited as the basis of an exemption, however, only personal identifying information is exempt;²¹ or
- It protects trade or business secrets.²²

¹² FLA. CONST., art. I, s. 24(c).

¹³ *WFTV, Inc. v. The Sch. Bd. of Seminole County*, 874 So. 2d 48, 53 (Fla. 5th DCA 2004).

¹⁴ *Id.*

¹⁵ *Williams v. City of Minneola*, 575 So. 2d 683 (Fla. 5th DCA 1991).

¹⁶ Section 119.15, F.S. Section 119.15(4)(b), F.S., provides that an exemption is considered to be substantially amended if it is expanded to include more records or information or to include meetings.

¹⁷ Section 119.15(2)(a) and (b), F.S., provides that exemptions required by federal law or applicable solely to the Legislature or the State Court System are not subject to the Open Government Sunset Review Act.

¹⁸ Section 119.15(3), F.S.

¹⁹ Section 119.15(6)(b), F.S.

²⁰ Section 119.15(6)(b)1., F.S.

²¹ Section 119.15(6)(b)2., F.S.

²² Section 119.15(6)(b)3., F.S.

The Act also requires specified questions to be considered during the review process.²³ In examining an exemption, the Act directs the Legislature to question the purpose and necessity of reenacting the exemption.

If, in reenacting an exemption or repealing the sunset date, the exemption is expanded, then a public necessity statement and a two-thirds vote for passage are required.²⁴ If the exemption is reenacted or saved from repeal without substantive changes or if the exemption is narrowed, then a public necessity statement and a two-thirds vote for passage are *not* required. If the Legislature allows an exemption to expire, the previously exempt records will remain exempt unless otherwise provided by law.²⁵

Murder

First-degree murder, a capital offense,²⁶ is defined in s. 782.04(1)(a)1. and 2., F.S., as the unlawful killing of a human being:

- When perpetrated from a premeditated design to effect the death of the person killed or any human being;
- When committed by a person engaged in the perpetration of, or in the attempt to perpetrate, any:
 - Drug Trafficking offense prohibited by s. 893.135(1);
 - Arson (s. 806.01, F.S.);
 - Sexual battery (s. 794.011, F.S.);
 - Robbery or home-invasion robbery (s. 812.13 or s. 812.135, F.S.);
 - Burglary (s. 810.02, F.S.);
 - Kidnapping (s. 787.01, F.S.);
 - Escape (s. 944.40, F.S.);
 - Aggravated child abuse (s. 827.03, F.S.);
 - Aggravated abuse of an elderly person or disabled adult (s. 825.1025, F.S.);
 - Aircraft piracy (s. 860.16, F.S.);
 - Unlawful throwing, placing, or discharging of a destructive device or bomb (s. 790.1615, F.S.);
 - Carjacking (s. 812.133, F.S.);
 - Aggravated stalking (s. 784.048, F.S.);
 - Murder of a human being (s. 782.04, F.S.);
 - Resisting an officer with violence (s. 843.01, F.S.);

²³ 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?

²⁴ FLA. CONST. art. I, s. 24(c).

²⁵ Section 119.15(7), F.S.

²⁶ A capital felony is punishable by death or life imprisonment. Section 775.082(1)(a), F.S.

- Aggravated fleeing or eluding with serious bodily injury or death (s. 316.1935(4)(b), F.S.);
- A felony act of terrorism;²⁷
- Human trafficking (s. 787.06, F.S.); or
- Which resulted in the unlawful distribution of a specified controlled substance,²⁸ which is the proximate cause of a user's death.²⁹

Murder in the second degree, which is a felony of the first degree punishable by imprisonment for a term of years not exceeding life,³⁰ is the unlawful killing of a human being when:

- Perpetrated by any act imminently dangerous to another and evincing a depraved mind regardless of human life, but without any premeditated design to effect the death of any particular individual;³¹ or
- Committed by a person other than the person engaged in the commission of, or attempt to commit, an enumerated felony³² during such felony.³³

Murder in the third degree, which is a second degree felony,³⁴ is the unlawful killing of a human being, without design to effect death, by a person engaged in the commission of, or the attempt to commit, any felony not enumerated by statute.³⁵

Public Records Exemption under Review

In 2017 the Legislature created s. 119.071(2)(m), F.S., which made the criminal intelligence information³⁶ or criminal investigative information³⁷ that reveals the personal identifying

²⁷ Or an act in furtherance of terrorism, including a felony under s. 775.30, F.S., s. 775.32, F.S., s. 775.33, F.S., s. 775.34, F.S., or s. 775.35, F.S.

²⁸ A substance controlled under s. 893.03(1), F.S., includes substances such as cocaine, opium or any synthetic or natural salt, compound, derivative, or preparation of opium; methadone, alfentanil, carfentanil, fentanyl, sufentanil, or specified controlled substance analogs.

²⁹ Section 782.04(1)(a), F.S.

³⁰ A first degree felony is punishable by a term of imprisonment not exceeding 30 years or, when specifically provided by statute, by imprisonment for a term of years not exceeding life imprisonment, and a fine of \$10,000. Sections 775.082(3)(b)1. and 775.083, F.S.

³¹ Section 782.04(2), F.S.

³² Enumerated felonies include drug trafficking under s. 893.135(1), F.S.; arson; sexual battery; robbery or home-invasion robbery; burglary; kidnapping; escape; aggravated child abuse or aggravated abuse of an elderly person or disabled adult; aircraft piracy; unlawful throwing, placing, or discharging of a destructive device or bomb; carjacking; aggravated stalking; murder of another human being; aggravated fleeing or eluding with serious bodily injury or death; resisting an officer with violence; and a felony act of terrorism or act in furtherance of terrorism. Section 782.04(3), F.S.

³³ Section 782.04(3), F.S.

³⁴ A second degree felony is punishable by a maximum of 15 years imprisonment and a \$10,000 fine. Sections 775.082 and 775.083, F.S.

³⁵ Section 782.04(4), F.S. *See also supra* n. 142.

³⁶ "Criminal intelligence information" means information with respect to an identifiable person or group of persons collected by a criminal justice agency in an effort to anticipate, prevent, or monitor possible criminal activity. Section 119.011(3)(a), F.S.

³⁷ "Criminal investigative information" means information with respect to an identifiable person or group of persons compiled by a criminal justice agency in the course of conducting a criminal investigation of a specific act or omission, including, but not limited to, information derived from laboratory tests, reports of investigators or informants, or any type of surveillance. Section 119.011(3)(b), F.S.

information of a witness to a murder confidential and exempt, for two years after the date on which the murder is observed.³⁸ A criminal justice agency³⁹ may disclose such information:

- In the furtherance of its official duties and responsibilities;
- To assist in locating or identifying the witness if the witness is believed to be missing or endangered;
- To another governmental agency for use in the performance of its official duties and responsibilities; or
- To the parties in a pending criminal prosecution as required by law.⁴⁰

In creating the exemption, the Legislative provided a public necessity statement articulating the following reasons for the exemption:

- The judicial system cannot function without the participation of witnesses.
- Complete cooperation and truthful testimony of witnesses are essential to the determination of the facts of a case.
- The public disclosure of personal identifying information of a witness to a murder could have a chilling effect on persons stepping forward and providing their accounts of a murder that has been witnessed.
- A witness to a murder may be unwilling to cooperate fully with law enforcement officers if the witness knows his or her personal identifying information can be made publicly available.
- A witness may be less likely to call a law enforcement officer and report a murder if his or her personal identifying information is made available in connection with the murder that is being reported or under investigation.
- A witness could become the subject of intimidation tactics or threats by the perpetrator of the murder if the witness's personal identifying information is publicly available.⁴¹

In order to determine whether and to what degree the public records exemption under review is being utilized by criminal justice agencies, legislative staff surveyed 1,196 agencies and consulted with the Florida Department of Law Enforcement by telephone.⁴² In the fall of 2021, staff sent questionnaires to 1,109 police chiefs, 67 sheriffs, and 20 State Attorneys seeking feedback on the exemption.⁴³ Forty-nine agencies returned answered questionnaires.⁴⁴

Of the 49 responding agencies, 35 indicated they had collected or possessed criminal intelligence information or criminal investigative information relating to 3,240 witnesses of a murder during

³⁸ Chapter 2017-11, L.O.F.

³⁹ "Criminal justice agency" means: any law enforcement agency, court, or prosecutor; any other agency charged by law with criminal law enforcement duties; any agency having custody of criminal intelligence information or criminal investigative information for the purpose of assisting such law enforcement agencies in the conduct of active criminal investigation or prosecution or for the purpose of litigating civil actions under the Racketeer Influenced and Corrupt Organization Act, during the time that such agencies are in possession of criminal intelligence information or criminal investigative information pursuant to their criminal law enforcement duties; or the Department of Corrections.

⁴⁰ Section 119.071(2)(m)1., F.S.

⁴¹ Chapter 2017-11, L.O.F.

⁴² Staff also received a partial questionnaire response from the Florida Department of Law Enforcement focusing on questions and discussion that occurred during the telephonic consultation.

⁴³ Staff had the assistance of the Florida Police Chiefs Association, the Florida Sheriff's Association, and the Florida Prosecuting Attorneys Association in sending the survey questionnaires.

⁴⁴ Open Government Sunset Review Questionnaires, Personal Identifying Information of a Murder Witness, responses are on file with the Senate Criminal Justice Committee.

the approximately 5-year period the exemption has been in effect. There were an approximate total of 1,708 public record requests for the information held by the 35 reporting agencies.⁴⁵

A majority of respondents, 33, recommended that the exemption be reenacted, five of which offered suggestions on expanding the exemption. The suggestions related to the length of time the exemption should be in effect, sharing the witness information more broadly, and to what crimes the exemption should apply.⁴⁶

The exemption stands repealed on October 2, 2022, unless it is reviewed and saved from repeal by the Legislature.⁴⁷

III. Effect of Proposed Changes:

The bill amends s. 119.071(2)(m), F.S., to save from repeal the current exemption for the criminal intelligence information or criminal investigative information that reveals the personal identifying information of a witness to a murder, for two years after the date on which the murder is observed.

The bill deletes the scheduled repeal date of October 2, 2022, thereby maintaining the exemption.

The bill takes effect October 1, 2022.

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 a two-thirds vote of the members present and voting for final passage of a bill creating or expanding an exemption to the public records requirements. This bill continues a current public records exemption beyond its current date of repeal; thus, the bill does not require an extraordinary vote for enactment.

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ Section 119.15(3), F.S.

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. This bill continues a current public records exemption without expansion.

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 of a witness to a murder. This bill exempts only the personal identifying information of a witness to a murder from the public records requirements. 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:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 119.071 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.

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 Criminal Justice

591-02074-22

20227032__

A bill to be entitled

An act relating to a review under the Open Government Sunset Review Act; amending s. 119.071, F.S., which provides an exemption from public records requirements for criminal intelligence information or criminal investigative information that reveals the personal identifying information of a witness to a murder; removing the scheduled repeal of the exemption; providing an effective date.

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

Section 1. Paragraph (m) of subsection (2) of section 119.071, Florida Statutes, is amended to read:

119.071 General exemptions from inspection or copying of public records.—

(2) AGENCY INVESTIGATIONS.—

(m) ~~1.~~ Criminal intelligence information or criminal investigative information that reveals the personal identifying information of a witness to a murder, as described in s. 782.04, is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution for 2 years after the date on which the murder is observed by the witness. A criminal justice agency may disclose such information:

1.e. In the furtherance of its official duties and responsibilities.

2.b. To assist in locating or identifying the witness if the agency believes the witness to be missing or endangered.

3.e. To another governmental agency for use in the

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20227032__

performance of its official duties and responsibilities.

4.d. To the parties in a pending criminal prosecution as required by law.

~~2. This paragraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2022, unless reviewed and saved from repeal through reenactment by the Legislature.~~

Section 2. This act shall take effect October 1, 2022.

Page 2 of 2

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

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL: SB 7036

INTRODUCER: Regulated Industries Committee

SUBJECT: Lifeline Telecommunications Service

DATE: February 1, 2022

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
Sharon	Imhof		RI Submitted as Comm. Bill/Fav
1. Sharon	Phelps	RC	Favorable

I. Summary:

SB 7036 amends ss. 364.10 and 364.107, F.S., under the Lifeline program to conform to current federal regulations.

The bill clarifies that an eligible telecommunications carrier (ETC) must notify a Lifeline subscriber (subscriber) of impending termination of Lifeline service if there is reason to believe that the subscriber no longer qualifies for the service. It requires a subscriber to provide proof of continued eligibility for Lifeline service upon request of the ETC, the Federal Communications Commission (FCC) or its designee.

The bill removes obsolete provisions relating to income eligibility standards that are inconsistent with current FCC requirements. It removes references to state agencies no longer involved in the development of procedures for promoting Lifeline, leaving just the Public Service Commission (PSC) and the Department of Children and Families (DCF). The bill clarifies that the PSC and the DCF may exchange information with ETCs, and the FCC or its designee, in order to enroll eligible customers in Lifeline service. The bill requires any state agency that determines a person is eligible for Lifeline service to coordinate with the FCC or its designee to verify eligibility.

The bill amends s. 364.107, F.S., allowing state agencies to share information with the FCC or its designee to verify eligibility or auditing of a Lifeline Assistance Plan.

The bill is effective July 1, 2022.

II. Present Situation:

Lifeline Service

The Lifeline program has provided telecommunication services discounts to qualifying low-income consumers since 1985.¹ The initial goal was to ensure that all Americans could connect to jobs, family, and emergency services through phone service. Since then, that goal has expanded to include the provision of broadband Internet service.²

Under the program, qualifying consumers may receive a discount up to \$9.25 toward their monthly phone or broadband Internet bills through service providers that have been designated as ETCs. Consumers may choose to receive monthly wireless minutes and/or measured data service from designated wireless providers, instead of the credit.³

Lifeline is a federal program funded by the Universal Service Fund (USF).⁴ Its rules are established by the FCC, which designated the Universal Service Administrative Company (USAC), an independent not-for-profit corporation, as Lifeline's administrator.⁵ USAC is responsible for data collection and maintenance, support calculation, and disbursement for Lifeline.⁶

Consumers may qualify to participate in Lifeline through income-based eligibility standards, if their total household income is less than 135 percent of the Federal Poverty Guidelines, which are annually updated by the United States Department of Health and Human Services.⁷ Alternatively, consumers may qualify to participate in Lifeline through program-based eligibility if they are enrolled in any of the following:

- Supplemental Nutrition Assistance Program (SNAP);
- Medicaid;
- Federal Public Housing Assistance;
- Supplemental Security Income;
- Veterans or Survivors Pension Program; or
- Bureau of Indian Affairs Programs, including Tribal Temporary Assistance to Needy Families, Head Start Subsidy, and National School Lunch Program.⁸

¹ FCC, *Lifeline Program for Low-Income Consumers*, <https://www.fcc.gov/general/lifeline-program-low-income-consumers> (last visited Jan. 12, 2022).

² PSC, *2021 Florida Lifeline Assistance Report* (Dec. 2021), p. 3, available at: <http://www.psc.state.fl.us/Files/PDF/Publications/Reports/Telecommunication/LifelineReport/2021.pdf> (last visited Jan. 12, 2022).

³ *Id.*

⁴ The USF is both a fund and category of FCC programs and policies implementing the Universal Service principle that all Americans should have access to communications services. This principle is a cornerstone of the Communications Act of 1934 that established the FCC. *See* FCC, *Universal Service*, <https://www.fcc.gov/general/universal-service> (last visited Jan. 13, 2022).

⁵ PSC, *2021 Lifeline Report*, *supra* n. 2, at 3. *See* Assistant Secretary for Planning and Evaluation, Department of Health and Human Services, *Poverty Guidelines for 2021*, <https://aspe.hhs.gov/topics/poverty-economic-mobility/poverty-guidelines> (last visited Jan. 13, 2022).

⁶ *Id.*

⁷ *Id.* at 4.

⁸ *Id.*

Lifeline in Florida

In Florida, the PSC has oversight of the program and is charged with designating telecommunications companies with ETC status, pursuant to 47 C.F.R. s. 54.201.⁹ ETCs must provide service to qualified residential subscribers, as defined in the ETC's published schedules.¹⁰ Each local exchange telecommunications company with more than one million access lines and which is designated as an ETC must, and any wireless service provider designated as an ETC may, upon filing a notice of election to do so with the PSC, provide Lifeline to any otherwise eligible customer or potential customer whose household income is 150 percent or less of the federal poverty guidelines for Lifeline.¹¹

The Office of Public Counsel (OPC)¹² certifies and maintains claims submitted by customers for Lifeline eligibility under the income test.¹³ Customers may also be eligible for Lifeline under the eligibility standards established by federal law based on participation in certain low-income assistance programs.¹⁴

Each state agency providing benefits to persons eligible for Lifeline service, must develop procedures to promote Lifeline participation in cooperation with the DCF, the Department of Education, the PSC, the OPC, and ETCs.¹⁵ These named agencies may exchange information with the appropriate ETC, including a person's name, date of birth, service address, and telephone number. This information is otherwise confidential and exempt from public disclosure, but for the limited purposes of determining eligibility and enrollment in the program.¹⁶

If a state agency determines that someone is eligible for Lifeline, that agency must immediately forward their information to the PSC for automatic enrollment with the appropriate ETC.¹⁷ The state agency must include an option for an eligible customer to choose not to subscribe to the Lifeline service.¹⁸

An ETC must notify a Lifeline subscriber of impending termination of Lifeline service if the ETC reasonably believes that the subscriber no longer qualifies for Lifeline service.¹⁹ Notification must be sent in a letter separate from the subscriber's bill.²⁰ A subscriber must be given 60 days from the termination letter to demonstrate continued eligibility.²¹

⁹ Section 364.10, F.S.; R. 25-4.0665, Fla. Admin. Code (Lifeline Assistance).

¹⁰ Section 364.10(1)(a), F.S.

¹¹ Section 364.10(2)(a), F.S. There have not been any wireline carriers in Florida with more than a million access lines since 2016. An ETC may provide the Lifeline discount to qualifying customers using the expanded 150 percent guideline, however, this would not qualify for reimbursement from USAC under the 135 percent guideline.

¹² Under s. 350.0611, F.S., the Office of Public Counsel provides representation for the people of the state in proceedings in front of the PSC.

¹³ Section 364.10(2)(a), F.S.

¹⁴ Section 364.10(2)(a), F.S.

¹⁵ Section 364.10(2)(g)1., F.S.

¹⁶ Sections 364.10(2)(g)1. and 364.107, F.S.

¹⁷ Section 364.10(2)(g)1., F.S.

¹⁸ Section 364.10(2)(g)2., F.S.

¹⁹ Section 364.10(1)(e)1., F.S.

²⁰ *Id.*

²¹ Section 364.10(1)(e)2.

2016 Lifeline Modernization Reform Order

In April 2016, the FCC issued the Lifeline Modernization Order (2016 Order).²² The intent was to modernize the program by including broadband as a supported service, designating uniform minimum service standards and eligibility criteria and establishing the National Verifier.²³ Prior to the 2016 Order, states could establish their own income eligibility standards or include additional state qualifying programs. In 2016, the FCC eliminated this provision to simplify administration of the program and bring uniformity among the states.²⁴

National Lifeline Eligibility Verifier

To fight waste, fraud, and abuse in the program, the 2016 Order directed the USAC to develop the National Verifier as a way to determine initial subscriber eligibility, conduct annual recertification, populate a national database of Lifeline customers, and support payments to ETCs.²⁵ The National Verifier's efficiency depends on the establishment of an automated verification interface process connected to qualifying program databases. The National Verifier is connected to federal databases, including the Public Housing Assistance and Medicaid databases, allowing additional avenues to verify eligibility.²⁶

USAC Interface with the DCF Database

In 2019, the PSC coordinated an informal meeting between the DCF and USAC, to assist in Florida's transition to the National Verifier.²⁷ This meeting established the groundwork for an automated verification process, allowing the USAC to interface with the DCF's qualifying program database. USAC's connection to the DCF database was established in January 2021. The DCF database provides the USAC with confirmation of a customer's participation in a qualifying program, without revealing the type of program or other customer information, and eliminating the need for supporting documentation.²⁸

Minimum Service Standards

The 2016 Order required all ETCs to provide a discount for broadband service meeting the FCC's established minimum service standards.²⁹ These standards are reviewed annually by the FCC to ensure that Lifeline service options remain viable as technology improves.³⁰ As of December 2019, the minimum service standards were:

- Mobile voice - 1,000 minutes per month;
- Mobile broadband usage - 8.75 GB per month at 3G; and
- Fixed broadband - 20 Mbps downstream and 3 Mbps upstream with 1 TB data usage per month.

²² FCC, *FCC Modernizes Lifeline Program for Low-Income Consumers*, <https://www.fcc.gov/document/fcc-modernizes-lifeline-program-low-income-consumers> (last visited Jan. 13, 2022).

²³ PSC, *2021 Lifeline Report*, *supra* n. 2, at 15.

²⁴ FCC, Third Report and Order, FCC 16-38, WC Docket No. 11-42 (released April 27, 2016) at p. 77, par. 212.

²⁵ PSC, *2021 Lifeline Report*, *supra* n. 2, at 17.

²⁶ *Id.* At 18.

²⁷ *Id.*

²⁸ *Id.*

²⁹ PSC, *2021 Lifeline Report*, *supra* n. 2, at 15. To be exempt, an ETC needed to be granted forbearance by the FCC.

³⁰ *Id.* To receive USF support, ETCs must meet the minimum service standards.

III. Effect of Proposed Changes:

Section 1 clarifies that an ETC must notify a subscriber of impending termination of Lifeline service if there is reason to believe that the subscriber no longer qualifies for the service. It requires a subscriber to provide proof of continued eligibility for Lifeline service upon request of the ETC, the FCC or its designee.

The bill removes obsolete provisions relating to income eligibility standards that are inconsistent with current FCC requirements. It removes references to state agencies no longer involved in the development of procedures for promoting Lifeline, leaving just the PSC and the DCF. The bill clarifies that the PSC and the DCF may exchange information with ETCs, and the FCC or its designee, in order to enroll eligible customers in the program. The bill requires any state agency that determines a person is eligible for Lifeline service to coordinate with the FCC or its designee to verify eligibility.

Section 2 amends s. 364.107, F.S., allowing state agencies to share information with the FCC or its designee to verify eligibility or auditing of a Lifeline Assistance Plan.

Section 3 provides that the bill is effective July 1, 2022.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

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 the following sections: 364.10 and 364.107 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 Regulated Industries

580-02101-22

20227036__

A bill to be entitled

An act relating to Lifeline telecommunications service; amending s. 364.10, F.S.; requiring a Lifeline service subscriber to present proof of continued eligibility to certain entities upon request; deleting provisions authorizing certain local exchange telecommunications companies and commercial mobile radio service providers to provide Lifeline service to customers who meet certain income requirements; revising the entities required to cooperate in the development of procedures for promoting the Lifeline service; authorizing certain participant information to be exchanged with the Federal Communications Commission or its designee; revising requirements for state agencies to coordinate with the commission or its designee and verify participant eligibility in Lifeline qualifying programs; deleting provisions requiring certain entities to form a Lifeline Workgroup for sharing subscriber information; amending s. 364.107, F.S.; authorizing the release of certain confidential and exempt Lifeline Assistance Plan participant information to the commission or its designee for specified purposes; providing an effective date.

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

Section 1. Paragraphs (e) and (f) of subsection (1) and subsection (2) of section 364.10, Florida Statutes, are amended

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

580-02101-22

20227036__

to read:

364.10 Lifeline service.—

(1)

(e)1. An eligible telecommunications carrier must notify a Lifeline subscriber of impending termination of Lifeline service if the company has a reasonable basis for believing that the subscriber no longer qualifies for the service. Notification of pending termination must be in the form of a letter that is separate from the subscriber's bill.

2. ~~An eligible telecommunications carrier shall allow a subscriber 60 days following the date of the pending termination letter to demonstrate continued eligibility.~~ The subscriber must present proof of continued eligibility upon request of the eligible telecommunications carrier, or the Federal Communications Commission or its designee. An eligible telecommunications carrier may transfer a subscriber off of Lifeline service, pursuant to its tariff, if the subscriber fails to demonstrate continued eligibility.

3. The commission shall establish procedures for such notification and termination.

(f) An eligible telecommunications carrier shall timely credit a consumer's bill with the Lifeline Assistance credit as soon as practicable, but no later than 60 days following receipt of notice of eligibility ~~from the Office of Public Counsel or proof of eligibility from the consumer.~~

(2) (a) ~~Each local exchange telecommunications company that has more than 1 million access lines and that is designated as an eligible telecommunications carrier shall, and any commercial mobile radio service provider designated as an eligible~~

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telecommunications carrier pursuant to 47 U.S.C. s. 214(e) may, upon filing a notice of election to do so with the commission, provide Lifeline service to any otherwise eligible customer or potential customer who meets an income eligibility test at 150 percent or less of the federal poverty income guidelines for Lifeline customers. Such a test for eligibility must augment, rather than replace, the eligibility standards established by federal law and based on participation in certain low income assistance programs. Each intrastate interexchange telecommunications company shall file or publish a schedule providing at a minimum the intrastate interexchange telecommunications company's current Lifeline benefits and exemptions to Lifeline customers who meet the income eligibility test set forth in this subsection. The Office of Public Counsel shall certify and maintain claims submitted by a customer for eligibility under the income test authorized by this subsection.

~~(b)~~ Each eligible telecommunications carrier ~~subject to this subsection~~ shall provide to each state and federal agency providing benefits to persons eligible for Lifeline service applications, brochures, pamphlets, or other materials that inform the persons of their eligibility for Lifeline, and each state agency providing the benefits shall furnish the materials to affected persons at the time they apply for benefits.

(b)(c) An eligible telecommunications carrier may not discontinue basic local telecommunications service to a subscriber who receives Lifeline service because of nonpayment by the subscriber of charges for nonbasic services billed by the telecommunications company, including long-distance service. A subscriber who receives Lifeline service shall pay all

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applicable basic local telecommunications service fees, including the subscriber line charge, E-911, telephone relay system charges, and applicable state and federal taxes.

(c)(d) An eligible telecommunications carrier may not refuse to connect, reconnect, or provide Lifeline service because of unpaid toll charges or nonbasic charges other than basic local telecommunications service.

(d)(e) An eligible telecommunications carrier may require that payment arrangements be made for outstanding debt associated with basic local telecommunications service, subscriber line charges, E-911, telephone relay system charges, and applicable state and federal taxes.

(e)(f) An eligible telecommunications carrier may block a Lifeline service subscriber's access to all long-distance service, except for toll-free numbers, and may block the ability to accept collect calls if ~~when~~ the subscriber owes an outstanding amount for long-distance service or amounts resulting from collect calls. However, the eligible telecommunications carrier may not impose a charge for blocking long-distance service. The eligible telecommunications carrier shall remove the block at the request of the subscriber without additional cost to the subscriber upon payment of the outstanding amount. An eligible telecommunications carrier may charge a service deposit before removing the block.

(f)1.(g)1. Each state agency that provides benefits to persons eligible for Lifeline service shall undertake, in cooperation with the Department of Children and Families, ~~the Department of Education,~~ the commission, ~~the Office of Public Counsel,~~ and ~~telecommunications companies designated~~ eligible

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telecommunications carriers providing Lifeline services, the development of procedures to promote Lifeline participation. The department and ~~departments~~, the commission, and the Office of Public Counsel may exchange sufficient information with the appropriate eligible telecommunications carriers, or the Federal Communications Commission or its designee and any commercial mobile radio service provider electing to provide Lifeline service under paragraph (a), such as a person's name, date of birth, service address, and telephone number, so that eligible customers the carriers can be enrolled identify and enroll an eligible person in the Lifeline and Link-Up programs. The information remains confidential and exempt pursuant to s. 364.107 and may only be used for purposes of determining eligibility and enrollment in the Lifeline and Link-Up programs.

2. If any state agency determines that a person is eligible for a Lifeline qualifying program ~~services~~, the agency must coordinate with the Federal Communications Commission or its designee to verify eligibility for the Lifeline service ~~shall immediately forward the information to the commission to ensure that the person is automatically enrolled in the program with the appropriate eligible telecommunications carrier. The state agency shall include an option for an eligible customer to choose not to subscribe to the Lifeline service. The Public Service Commission and the Department of Children and Families shall adopt rules creating procedures to automatically enroll eligible customers in Lifeline service.~~

~~3. The commission, the Department of Children and Families, the Office of Public Counsel, and each eligible telecommunications carrier offering Lifeline and Link-Up~~

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~~services shall convene a Lifeline Workgroup to discuss how the eligible subscriber information in subparagraph 1. will be shared, the obligations of each party with respect to the use of that information, and the procedures to be implemented to increase enrollment and verify eligibility in these programs.~~

(g) (h) The commission shall report to the Governor, the President of the Senate, and the Speaker of the House of Representatives by December 31 of each year on the number of customers who are subscribing to Lifeline service and the effectiveness of any procedures to promote participation.

(h) (i) The commission may undertake appropriate measures to inform low-income consumers of the availability of the Lifeline and Link-Up programs.

(i) (j) The commission shall adopt rules to administer this section.

Section 2. Subsection (2) of section 364.107, Florida Statutes, is amended to read:

364.107 Public records exemption; Lifeline Assistance Plan participants.—

(2) Information made confidential and exempt under subsection (1) may be released to the applicable telecommunications carrier, or to the Federal Communications Commission or its designee, for purposes directly connected with eligibility for, verification related to, or auditing of a Lifeline Assistance Plan.

Section 3. This act shall take effect July 1, 2022.

02/03/2022

Meeting Date

Rules

Committee

The Florida Senate

APPEARANCE RECORD

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

SB 7036

Bill Number or Topic

Amendment Barcode (if applicable)

954-850-7262

Name E, Ivonne Fernandez - AARP

Phone _____

Address 215 S. Monroe Street

Email ifernandez@aarp.org

Street

Tallahassee

FL

City

State

Zip

Speaking: ☐ For ☐ Against ☐ Information

OR

Waive Speaking: ☒ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without
compensation or sponsorship.

☒ I am a registered lobbyist,
representing:

AARP

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

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

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

S-001 (08/10/2021)



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Appropriations
Appropriations Subcommittee on Criminal and
Civil Justice
Ethics and Elections
Reapportionment
Rules
Transportation

SELECT SUBCOMMITTEE:

Select Subcommittee on Legislative
Reapportionment

SENATOR RANDOLPH BRACY

11th District

February 2, 2022

The Honorable Kathleen Passidomo
Chair, Senate Committee on Rules
402 Senate Building
404 South Monroe Street
Tallahassee, FL 32399-1100

Dear Chair Passidomo:

I write to respectfully request that my absence for the Rules Committee meeting on **February 3, 2022** be excused due to testing positive for COVID-19. I regret that I cannot be present for the meeting, and appreciate your consideration.

Sincerely,

A handwritten signature in cursive script, appearing to read "Randolph Bracy".

Senator Randolph Bracy, District 11

cc: John Phelps, Staff Director
Cyndi Futch, Committee Administrative Assistant

REPLY TO:

- ☐ 6965 Piazza Grande Avenue, Suite 302, 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

WILTON SIMPSON
President of the Senate

AARON BEAN
President Pro Tempore

CourtSmart Tag Report

Room: KB 412
Caption: Senate Rules Committee

Case No.: -
Judge:

Type:

Started: 2/3/2022 9:03:31 AM

Ends: 2/3/2022 10:53:17 AM

Length: 01:49:47

9:03:30 AM	Meeting called to order by Chair Passidomo
9:03:34 AM	Roll call by CAA
9:03:39 AM	Quorum announced
9:04:12 AM	Chair with opening comments
9:04:38 AM	Tab 3 CS/SB 634
9:04:53 AM	Senator Bradley explains the bill
9:06:11 AM	Amendment Barcode 560052
9:06:22 AM	Senator Bradley explains the amendment
9:06:44 AM	Appearance Form
9:06:46 AM	Stacy Scott waives in support
9:06:57 AM	Amendment adopted
9:07:08 AM	Senator Bradley waives close
9:07:19 AM	Roll call on SB 634
9:07:27 AM	SB 634 is reported favorably
9:07:51 AM	Tab 10 CS/SB 962
9:08:03 AM	Senator Bradley explains the bill
9:08:16 AM	Amendment Barcode 917038
9:08:56 AM	Senator Brandes explains the amendment
9:10:18 AM	Senator Bradley with comments
9:10:27 AM	Chair with comments
9:10:59 AM	Senator Brandes closes on the bill
9:11:33 AM	Amendment is withdrawn
9:12:37 AM	Amendment Barcode 666096
9:12:41 AM	Senator Bradley explains the amendment
9:12:58 AM	Senator Brandes with question
9:13:03 AM	Senator Bradley responds
9:13:36 AM	Senator Brandes with question
9:13:38 AM	Senator Bradley responds
9:14:01 AM	Senator Bradley waives close
9:14:07 AM	Amendment is adopted
9:14:16 AM	Senator Powell with question
9:14:24 AM	Senator Bradley responds
9:15:07 AM	Senator Powell with clarification
9:15:13 AM	Senator Bradley responds
9:16:08 AM	Appearance Forms
9:16:10 AM	Phillip Suderman, Americans for Prosperity, waives in support
9:16:14 AM	Andy Gonzalez, Florida Realtors, waives in support
9:16:24 AM	Senator Brandes in debate
9:18:26 AM	Senator Bradley closes on bill
9:18:33 AM	Roll call on CS/CS/SB 962
9:18:47 AM	CS/CS/SB 962 is reported favorably
9:19:08 AM	Tab 7 SB 868
9:19:20 AM	Senator Stewart explains the bill
9:21:22 AM	Appearance Forms
9:21:26 AM	Ellen Bogdanoff, RAINN, waives in support
9:21:30 AM	Barbara Devane, FL National Organization for Women, waives in support
9:21:40 AM	Senator Stewart waives close
9:21:48 AM	Roll call on SB 868
9:21:55 AM	SB 868 is reported favorably
9:22:24 AM	Tab 12 SB 1038
9:22:35 AM	Senator Perry explains the bill
9:23:00 AM	Chair with question

9:23:04 AM Senator Perry responds
9:23:23 AM Senator Gibson in debate
9:23:56 AM Senator Perry closes on bill
9:24:02 AM Roll call on SB 1038
9:24:10 AM SB 1038 is reported favorably
9:24:32 AM Tab 14 SB 7030
9:24:43 AM Senator Brandes explains the bill
9:25:16 AM Appearance Form
9:25:20 AM Jared Torres, FL Department of Corrections, waives in support
9:25:25 AM Senator Brandes waives close
9:25:30 AM Roll Call on SB 7030
9:25:39 AM SB 7030 is reported favorably
9:25:58 AM Tab 15 SB 7032
9:26:06 AM Senator Brandes explains the bill
9:26:28 AM Senator Brandes waives close
9:26:34 AM Roll call on SB 7032
9:26:40 AM SB 7032 is reported favorably
9:27:01 AM Tab 1 SB 82
9:27:10 AM Senator Torres explains the bill
9:28:09 AM Senator Stargel with question
9:28:16 AM Senator Torres responds
9:28:30 AM Senator Stargel with follow-up
9:28:37 AM Chair with comment
9:28:50 AM Senate Stargel with comment
9:28:58 AM Appearance Forms
9:29:02 AM Albert Balido waives in support
9:29:07 AM Cate Coates, representing Kareem Haware, waives in support
9:29:16 AM Senator Stargel in debate
9:29:42 AM Senator Baxley in debate
9:30:33 AM Senator Brandes in debate
9:32:01 AM Chair in debate
9:32:17 AM Senator waives close
9:32:22 AM Roll call on SB 82
9:32:30 AM SB 82 is reported favorably
9:32:57 AM Tab 13 CS/SB 1658
9:33:06 AM Senator Bean explains the bill
9:35:03 AM Senator Bean waives close
9:35:09 AM Roll call on CS/SB 1658
9:35:18 AM CS/SB 1658 is reported favorably
9:35:43 AM Tab 5 CS/SB 756
9:35:52 AM Senator Diaz explains the bill
9:36:32 AM Senator Diaz waives close
9:36:38 AM Roll call on SB 756
9:36:45 AM SB 756 is reported favorably
9:37:10 AM Tab 11 SM 982
9:37:20 AM Senator Diaz explains the bill
9:37:55 AM Appearance Forms
9:37:59 AM Gina Rotunno, Florida Bankers Association, waives in support
9:38:04 AM Phillip Suderman, Americans for Prosperity, waives in support
9:38:08 AM Senator Diaz waives close
9:38:14 AM Roll call on SM 982
9:38:52 AM SM 982 is reported favorably
9:38:57 AM Tab 4 CS/CS/SB 736
9:38:59 AM Senator Hutson explains the bill
9:40:01 AM Amendment Barcode 337012
9:40:05 AM Senator Hutson explains the amendment
9:40:09 AM Senator Brandes with question
9:41:15 AM Senator Hutson responds
9:42:08 AM Senator Brandes with question
9:42:11 AM Senator Hutson responds
9:42:20 AM Senator Brandes with question
9:42:26 AM Senator Hutson responds

9:43:36 AM	Senator Brandes with question
9:43:42 AM	Senator Hutson responds
9:44:35 AM	Senator Farmer with question
9:44:47 AM	Senator Hutson responds
9:47:20 AM	Senator Farmer with follow-up
9:47:27 AM	Senator Hutson responds
9:48:14 AM	Senator Diaz with question
9:48:22 AM	Senator Hutson responds
9:50:14 AM	Senator Diaz with follow-up
9:50:20 AM	Senator Hutson responds
9:51:02 AM	Senator Book with question
9:51:07 AM	Senator Hutson responds
9:52:24 AM	Senator Book with follow-up
9:52:34 AM	Senator Hutson responds
9:54:46 AM	Senator Gibson with question
9:55:00 AM	Senator Hutson responds
9:56:04 AM	Senator Gibson with follow-up
9:56:10 AM	Senator Hutson responds
9:56:30 AM	Senator Gibson with follow-up
9:56:37 AM	Senator Hutson responds
9:57:49 AM	Senator Brandes with question
9:57:55 AM	Senator Hutson responds
9:58:52 AM	Senator Hutson waives close
9:59:04 AM	Amendment is adopted
9:59:13 AM	Senator Farmer with question
9:59:26 AM	Senator Hutson responds
9:59:46 AM	Senator Farmer with question
10:00:08 AM	Senator Hutson responds
10:00:20 AM	Senator Farmer with question
10:00:25 AM	Senator Hutson responds
10:00:29 AM	Senator Farmer with question
10:00:34 AM	Senator Hutson responds
10:00:52 AM	Senator Farmer with question
10:00:57 AM	Senator Hutson responds
10:01:21 AM	Senator Farmer with question
10:01:25 AM	Senator Hutson responds
10:02:44 AM	Senator Gibson with question
10:02:58 AM	Senator Hutson responds
10:04:54 AM	Senator Gibson with follow-up
10:05:01 AM	Senator Hutson responds
10:06:44 AM	Appearance Forms
10:06:49 AM	Carol Bowen, Associated Builders and Contractors of Florida, speaks for information
10:08:45 AM	Martin Langesfeld speaks against
10:10:39 AM	Senator Hutson with question
10:10:48 AM	Mr. Langesfeld responds
10:11:03 AM	Senator Hutson with question
10:11:13 AM	Mr. Langesfeld responds
10:11:22 AM	Sean Heaney, Building Contractor, speaks against
10:14:00 AM	Annie Marks, Property Manager, speaks against
10:16:12 AM	Brian Crevasse, Attorney, speaks against
10:18:01 AM	Senator Hutson with question
10:19:01 AM	Mr. Crevasse responds
10:20:18 AM	Senator Powell with question
10:20:26 AM	Mr. Crevasse responds
10:22:19 AM	Senator Powell with comments
10:22:27 AM	Frank Severino speaks for the bill
10:24:27 AM	Senator Farmer with question
10:24:37 AM	Mr. Severino responds
10:26:05 AM	Senator Brandes with question
10:26:22 AM	Mr. Severino responds
10:26:53 AM	Chris Wood speaks for the bill
10:29:05 AM	Kari Hebrank, Florida Home Builders Association, speaks for the bill

10:30:20 AM William Large, Florida Justice Reform Institute, waives in support
10:30:46 AM Tim Nungesser, National Federation of Independent Business (NFIB), waives in support
10:30:57 AM Senator Boyd in debate
10:32:09 AM Senator Gibson in debate
10:35:46 AM Senator Farmer in debate
10:41:32 AM Senator Hutson closes on bill
10:41:39 AM Roll call on CS/CS/CS/SB 736
10:42:36 AM CS/CS/CS/SB 736 is reported favorably
10:43:14 AM Tab SB 264
10:43:17 AM Senator Hooper explains the bill
10:43:45 AM Appearance Form
10:43:48 AM Chief Ray Colburn, Florida Fire Chiefs' Association, waives in support
10:43:52 AM Austin Stowers, CFO & State Fire Marshall, waives in support
10:43:59 AM David Perez waives in support
10:44:06 AM Wayne Bernoska, Florida Professional Firefighters, waives in support
10:44:12 AM Senator Hooper waives close
10:44:17 AM Roll call SB 264
10:44:25 AM SB 264 is reported favorably
10:44:51 AM Tab 6 SB 840
10:44:58 AM Senator Albritton explains the bill
10:45:21 AM Appearance Form
10:45:25 AM David Geddis speaks for information
10:47:48 AM Senator Albritton waives close
10:47:53 AM Roll call on SB 840
10:48:01 AM SB 840 is reported favorably
10:48:22 AM Tab 8 SB 926
10:48:33 AM Senator Albritton explains the bill
10:48:53 AM Appearance Forms
10:48:57 AM Phillip Suderman, Americans for Prosperity, waives in support
10:49:02 AM Alexandra Abboud, Florida Dental Association, waives in support
10:49:05 AM Leslie Dughi, Florida Dental Hygienists Association, waives in support
10:49:12 AM Senator Albritton waives close
10:49:19 AM Roll call on CS/CS/SB 926
10:49:24 AM CS/CS/SB 926 is reported favorably
10:49:48 AM Tab 9 SB 934
10:50:01 AM Senator Gruters explains the bill
10:50:17 AM Senator Gruters waives close
10:50:22 AM Roll call on SB 934
10:50:24 AM SB 934 is reported favorably
10:50:56 AM Tab 16 SB 7036
10:51:06 AM Senator Hutson explains the bill
10:51:12 AM Appearance Form
10:51:25 AM E. Ivonne Fernandez, AARP, waives in support
10:51:29 AM Senator Hutson waives close
10:51:34 AM Roll call SB 7036
10:51:39 AM SB 7036 is reported favorably
10:52:14 AM Senator Garcia with vote motion on Tab 3
10:52:29 AM Senator Gruters with vote motions for Tabs 1,3,5,7,10,11,12,13,14,15
10:52:38 AM Senator Albritton with vote motion for Tab 3
10:52:46 AM Senator Powell with vote change on Tab 10
10:52:59 AM Motion adopted
10:53:03 AM Senator Boyd moves to adjourn
10:53:05 AM Meeting adjourned