

Tab 1	SB 896 by Brodeur; (Similar to H 00539) Renewable Natural Gas						
Tab 2	SB 1294 by Brodeur; (Similar to CS/H 00663) Cottage Food Operations						
Tab 3	SB 1342 by Perry; (Similar to CS/H 00821) Licensure Requirements for Land Surveyors and Mappers						
713472	A	S		RI, Perry	Delete L.86 - 109:	03/08 08:21 AM	
Tab 4	SB 1370 by Rodriguez; (Similar to CS/H 00911) Medical Treatment of Animals						
963556	A	S	RCS	RI, Rodriguez	Delete L.31 - 35:	03/09 12:13 PM	
Tab 5	SB 1592 by Burgess (CO-INTRODUCERS) Diaz, Albritton; (Similar to H 01239) Broadband Internet Infrastructure						
Tab 6	SB 338 by Gruters; (Identical to H 01431) Specialty Contracting Services						
Tab 7	SB 1080 by Hutson; (Similar to H 00987) Tobacco and Nicotine Products						
859156	D	S	RCS	RI, Hutson	Delete everything after	03/09 12:13 PM	
Tab 8	SB 856 by Hutson; (Compare to CS/H 00839) State Preemption of Energy Infrastructure Regulations						
352804	D	S	RCS	RI, Hutson	Delete everything after	03/09 12:13 PM	
Tab 9	SB 1128 by Hutson; (Similar to H 00919) Preemption on Restriction of Utility Services						
419346	A	S	RCS	RI, Hutson	Delete L.23 - 46:	03/09 12:13 PM	

The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA

REGULATED INDUSTRIES
Senator Hutson, Chair
Senator Book, Vice Chair

MEETING DATE: Tuesday, March 9, 2021
TIME: 9:00—11:30 a.m.
PLACE: *Pat Thomas Committee Room, 412 Knott Building*

MEMBERS: Senator Hutson, Chair; Senator Book, Vice Chair; Senators Albritton, Gruters, Hooper, Passidomo, Rodrigues, Rouson, and Stewart

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
PUBLIC TESTIMONY WILL BE RECEIVED FROM ROOM A3 AT THE DONALD L. TUCKER CIVIC CENTER, 505 W. PENSACOLA STREET, TALLAHASSEE, FL. 32301			
1	SB 896 Brodeur (Similar H 539)	Renewable Natural Gas; Defining the terms "biogas" and "renewable natural gas"; revising the definition of the term "renewable energy" to include certain energy created for transportation fuel, etc. RI 03/09/2021 Temporarily Postponed EN RC	Temporarily Postponed
2	SB 1294 Brodeur (Similar CS/H 663)	Cottage Food Operations; Citing this act as the "Home Sweet Home Act"; revising the definition of "cottage food operation"; increasing the annual gross sales limitation for exempting cottage food operations from certain food and building permitting requirements; authorizing the sale, offer for sale, acceptance of payment, and delivery of cottage food products by mail; preempting the regulation of cottage food operations to the state; prohibiting local governments from prohibiting or regulating cottage food operations, etc. RI 03/09/2021 Favorable CM RC	Favorable Yeas 9 Nays 0
3	SB 1342 Perry (Similar CS/H 821)	Licensure Requirements for Land Surveyors and Mappers; Authorizing an exiled professional to substitute specified lawful practice of the profession for the education requirement for examination; revising education requirements for licensure; providing that specified work experience may be substituted for education requirements for licensure as a land surveyor or mapper, etc. RI 03/09/2021 Temporarily Postponed CM RC	Temporarily Postponed

COMMITTEE MEETING EXPANDED AGENDA

Regulated Industries

Tuesday, March 9, 2021, 9:00—11:30 a.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	SB 1370 Rodriguez (Similar CS/H 911)	Medical Treatment of Animals; Revising the definition of the term "veterinarian/client/patient relationship"; revising exceptions to who may immunize or treat an animal for certain diseases; revising grounds for disciplinary action against a veterinarian; authorizing employees, agents, or contractors of animal control authorities to administer rabies vaccinations under certain circumstances; providing that a supervising veterinarian assumes responsibility for any person working at his or her discretion or under his or her supervision, etc. RI 03/09/2021 Fav/CS AG RC	Fav/CS Yeas 8 Nays 1
5	SB 1592 Burgess (Similar H 1239)	Broadband Internet Infrastructure; Citing this act as the "Florida Broadband Deployment Act of 2021"; exempting the purchase, lease, or sale of certain equipment used by a provider of communications services or a provider of Internet access services in this state from the sales and use tax; requiring municipal electric utilities to ensure that their broadband provider rates and fees meet certain requirements, make certain records available to broadband providers, and establish just and reasonable terms and conditions for broadband provider attachments; prohibiting municipal electric utilities from prohibiting a broadband provider from using certain techniques and equipment if used in accordance with certain safety standards, etc. RI 03/09/2021 Favorable FT AP	Favorable Yeas 9 Nays 0
6	SB 338 Gruters (Identical H 1431)	Specialty Contracting Services; Revising the types of buildings for which individuals who are not required to obtain certain registrations or certifications may perform contracting services without a local license under certain circumstances; authorizing certain persons under the supervision of specified licensed contractors to perform certain specialty contracting services for commercial or residential swimming pools, hot tubs or spas, or interactive water features; providing that such supervision does not require a direct contract between those persons, etc. RI 03/09/2021 Favorable CA RC	Favorable Yeas 9 Nays 0

COMMITTEE MEETING EXPANDED AGENDA

Regulated Industries

Tuesday, March 9, 2021, 9:00—11:30 a.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
7	SB 1080 Hutson (Similar H 987)	Tobacco and Nicotine Products; Revising the age limits for permits relating to cigarettes; revising age and time restrictions relating to the prohibition of smoking and vaping near school property; defining the term "vapor-generating electronic device"; revising prohibitions on the sale of tobacco products from vending machines; requiring that the age of persons purchasing tobacco products be verified under certain circumstances, etc. RI 03/09/2021 Fav/CS HP AP	Fav/CS Yeas 9 Nays 0
8	SB 856 Hutson (Similar H 839)	State Preemption of Energy Infrastructure Regulations; Defining the term "energy infrastructure"; preempting to the state the regulation of the construction of energy infrastructure, etc. RI 03/09/2021 Fav/CS CA RC	Fav/CS Yeas 7 Nays 2
9	SB 1128 Hutson (Similar H 919)	Preemption on Restriction of Utility Services; Prohibiting municipalities, counties, special districts, or other political subdivisions from enacting or enforcing provisions or taking actions that restrict or prohibit property owners, tenants, or utility service customers from choosing their utility service from a utility service provider that serves the property, irrespective of the fuel source; retaining the right of municipalities to levy taxes on public services and to receive revenue from public utilities, etc. RI 03/09/2021 Fav/CS CA RC	Fav/CS Yeas 8 Nays 1

Other Related Meeting Documents

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Regulated Industries

BILL: SB 896

INTRODUCER: Senator Brodeur

SUBJECT: Renewable Natural Gas

DATE: March 8, 2021

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Sharon _____	Imhof _____	RI _____	Pre-meeting _____
2.	_____	_____	EN _____	_____
3.	_____	_____	RC _____	_____

I. Summary:

SB 896 amends s. 366.91, F.S., by adding the terms “biogas” and “renewable natural gas,” and expanding the term “renewable energy.”

The term “biogas” means a mixture of gases, largely comprised of carbon dioxide, hydrocarbons, and methane gas, that is produced by the biological decomposition of organic materials.

The term “renewable Natural Gas” (RNG) means anaerobically generated biogas, landfill gas, or wastewater treatment gas, which is refined to a methane content of 90 percent or more, that may be used as transportation fuel, for electric generation, or is of a quality capable of being injected into a natural gas pipeline.

The term “renewable energy,” is expanded to mean electrical energy produced or energy created to displace traditional fuel sources from a method that uses one or more of the following fuels or energy sources. The bill also provides that hydrogen produced or resulting from energy sources other than fossil fuels, such as biomass, solar energy, geothermal energy, wind energy, ocean energy, RNG, and hydroelectric power, also constitute renewable energy.

The bill is effective on July 1, 2021.

II. Present Situation:

Renewable Natural Gas and Biogas

Natural gas is a fossil energy source which forms beneath the earth’s surface.¹

¹ U.S. Energy Information Administration, *Natural gas explained*, <https://www.eia.gov/energyexplained/natural-gas/> (last visited Mar. 6, 2021).

Natural gas contains many different compounds, the largest of which is methane.² Conventional natural gas is primarily extracted from subsurface porous rock reservoirs via gas and oil well drilling and hydraulic fracturing, commonly referred to as “fracking.” The term RNG refers to biogas that has been refined to use in place of conventional natural gas.³

Biogas used to produce RNG comes from various sources, including municipal solid waste landfills, digesters at water resource recovery facilities, livestock farms, food production facilities and organic waste management operations.⁴ Raw biogas has a methane content between 45 and 65 percent.⁵ Once biogas is captured, it is treated in a process called conditioning or upgrading, which involves the removal of water, carbon dioxide, hydrogen sulfide, and other trace elements.⁶ The nitrogen and oxygen content is reduced and once upgraded the RNG has a methane content of 90 percent or more.⁷ RNG prepared for injection into a natural gas pipeline typically has a methane content between 96 and 98 percent.⁸

Expansion of RNG offers an opportunity to decarbonize traditional gas end uses such as transportation and heating.⁹ RNG qualifies as an advanced biofuel under the Federal Renewable Fuel Standard Program.¹⁰ This program was enacted by Congress in order to reduce greenhouse gas emissions by reducing reliance on imported oil and expanding the nation’s renewable fuels sector.¹¹

Nationwide, there were 157 total confirmed operational RNG projects as of December, 2020.¹² While there were at least two RNG projects reportedly under construction in Florida at the end of 2020, it is not confirmed whether any operational production has been achieved in the state.¹³

Florida Public Service Commission

Chapter 366, F.S., provides for the regulation of electric utilities by the Florida Public Service Commission (PSC). The PSC is an arm of the legislative branch of government and has rate-setting jurisdiction over electric and natural gas public utilities.¹⁴ The role of the PSC is to ensure that Florida’s consumers receive utility services, including electric, natural gas, telephone, water, and wastewater, in a safe, affordable, and reliable manner.¹⁵ In order to do so, the PSC exercises authority over public utilities in one or more of the following areas: (1) Rate or economic

² *Id.*

³ United States Environmental Protection Agency, *Landfill Methane Outreach Program (LMOP): Renewable Natural Gas*, <https://www.epa.gov/lmop/renewable-natural-gas> (last visited Mar. 6, 2021).

⁴ *Id.*

⁵ *Id.*

⁶ Florida Dept. of Agriculture and Consumer Services, *Bill Analysis for SB 896* (Feb. 15, 2021) (on file with the Senate Committee on Regulated Industries).

⁷ USEPA, LMOP: Renewable Natural Gas, *supra* at n. 3.

⁸ *Id.*

⁹ FDACS, *Bill Analysis*, *supra* at n. 6.

¹⁰ *Id.*

¹¹ United States Environmental Protection Agency, *Renewable Fuel Standard Program*, <https://www.epa.gov/renewable-fuel-standard-program> (last visited Mar. 6, 2021).

¹² FDACS, *Bill Analysis*, *supra* at n. 6.

¹³ *Id.*

¹⁴ See ss. 350.001, 366.02, and 366.05, F.S.

¹⁵ See Florida Public Service Commission, *The PSC’s Role*, <http://www.psc.state.fl.us> (last visited Mar. 6, 2021).

regulation; (2) Market competition oversight; and/or (3) Monitoring of safety, reliability, and service issues.¹⁶ The PSC monitors the safety and reliability of the electric power grid¹⁷ and may order the addition or repair of infrastructure as necessary.¹⁸ Further, the PSC reviews applications to determine the need for certain new electrical power plants¹⁹ and certain large transmission lines as part of the Department of Environmental Protection’s siting process.²⁰

The PSC has jurisdiction over 27 municipally-owned natural gas utilities and four gas districts with regard to territorial boundaries, safety, and safety authority over all electric and natural gas systems operating in the state.²¹

A public utility includes any person or legal entity supplying electricity or gas, including natural, manufactured, or similar gaseous substance, to or for the public within the state.²² Notably, courts have ruled that the sale of electricity to even a single customer makes the provider a “public utility” subjecting them to the PSC’s regulatory jurisdiction, under s. 366.02(1), F.S.²³ The PSC’s jurisdiction over public utilities is exclusive and superior to all other boards, agencies, political subdivisions, municipalities, towns, villages, or counties, and in cases of conflict the PSC is to prevail.²⁴

Investor-Owned Electric Utilities Companies

There are five investor-owned electric utility companies in Florida: Florida Power & Light Company, Duke Energy Florida, Tampa Electric Company, Gulf Power Company, and Florida Public Utilities Corporation.²⁵ Investor-owned electric utility rates and revenues are regulated by the Florida Public Service Commission.²⁶ These utilities must file periodic earnings reports, either monthly, quarterly, or semi-annually, depending upon each company’s size. These more frequent company filings allow the PSC to monitor earnings levels on an ongoing basis and adjust customer rates quickly if a company appears to be overearning.²⁷

Municipally-Owned Electric Utilities

A municipal electric utility is an electric utility system owned or operated by a municipality engaged in serving residential, commercial or industrial customers, usually within the boundaries

¹⁶ *Id.*

¹⁷ Sections 366.04(5) and (6), F.S.

¹⁸ Sections 366.05(1) and (8), F.S.

¹⁹ Section 403.519, F.S.

²⁰ Section 403.537, F.S.

²¹ Florida Public Service Commission, *2020 FPSC Annual Report*, available at <http://www.psc.state.fl.us/Files/PDF/Publications/Reports/General/Annualreports/2020.pdf> (last visited Mar. 6, 2021).

²² Section 366.02(1), F.S.

²³ *Florida Public Service Com’n v. Bryson*, 569 So. 2d 1253, 1255 (Fla. 1990) (finding that even a property management company is a public utility within the PSC’s regulatory jurisdiction); *PW Ventures, Inc. v. Nichols*, 533 So. 2d 281, 284 (Fla. 1988) (finding that “to the public,” as used in ch. 366, F.S., means “to any member of the public,” rather than “to the general public”).

²⁴ Section 366.04 (1), F.S.

²⁵ *Id.*

²⁶ Florida Department of Agriculture and Consumer Services, *Electric Utilities*, <https://www.fdacs.gov/Energy/Florida-Energy-Clearinghouse/Electric-Utilities> (last visited Mar. 5, 2021).

²⁷ FPSC, *2020 Annual Report*, *supra* at n. 21.

of the municipality.²⁸ Municipally-owned utility rates and revenues are regulated by their city commission.²⁹ As noted above, the PSC has limited jurisdiction over municipally-owned electric utilities.³⁰ There are 34 municipal electric companies in Florida.³¹ Most municipal electric utilities are represented by the Florida Municipal Electric Association which serves over three million Floridians.³²

Natural Gas Utilities

Florida's natural gas network is comprised of four interstate pipelines and two intrastate pipelines.³³ These pipelines supply natural gas to five investor-owned natural gas utilities, 27 municipal natural gas utilities, and four special gas districts.³⁴ The PSC has regulatory authority over the investor-owned natural gas utilities in all aspects of operations, including safety; authority over municipally-owned natural gas utilities that is limited to safety and territorial boundary disputes; and authority over special gas districts that is limited to safety and territorial boundary disputes.³⁵

Public Utility Regulatory Policies Act

In 1978, the federal government enacted the Public Utility Regulatory Policies Act (PURPA).³⁶ The PURPA requires promotion of energy efficiency and use of renewables.³⁷ Primarily, the PURPA was enacted to encourage:

- The conservation of electric energy;
- Increased efficiency in the use of facilities and resources by electric utilities;
- Equitable retail rates for electric consumers;
- Expedient development of hydroelectric potential at existing small dams;
- Conservation of natural gas while ensuring that rates to natural gas consumers are equitable.³⁸

The PURPA requires utilities to interconnect with and purchase power from “qualifying facilities,” which fall into two categories: (1) qualifying small power production facilities and (2) qualifying cogeneration facilities.³⁹ Qualifying small power production facilities must produce less than 80 megawatts and use biomass, waste, renewable resources, geothermal resources, or any combination thereof, of which 75 percent or more of the total energy input must be from these sources.⁴⁰ Qualifying cogeneration facilities are entities that generate electricity as a

²⁸ FDACS, *Electric Utilities*, *supra* at n. 26.

²⁹ *Id.*

³⁰ FPSC, *2020 Annual Report*, *supra* at n. 21.

³¹ FDACS, *Electric Utilities*, *supra* at n. 26.

³² Florida Municipal Electric Association, *About FMEA*, <https://www.publicpower.com/about-us> (last visited Mar. 6, 2021).

³³ Florida Department of Agriculture and Consumer Services, *Natural Gas Utilities*, <https://www.fdacs.gov/Energy/Florida-Energy-Clearinghouse/Natural-Gas-Utilities> (last visited Mar. 6, 2021).

³⁴ *Id.*

³⁵ Section 366, F.S. *See also*, FPSC, *2020 Annual Report*, *supra* at n. 21.

³⁶ Public Law 95-617 (HR 4018) November 9, 1978.

³⁷ Federal Energy Regulatory Commission, *PURPA Qualifying Facilities*, <https://www.ferc.gov/qf> (last visited Mar. 6, 2021).

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ 18 C.F.R. 292.204.

byproduct of an industrial process, which is not intended fundamentally for sale to an electric utility.⁴¹

The PURPA directed the Federal Energy Regulatory Commission to implement its provisions, which in turn, directed the states to implement these provisions. In response, the Florida Legislature created s. 366.051, F.S., directing utilities to purchase power from cogenerators and small power producers and defining “full avoided costs.” “A utility’s ‘full avoided costs’ are the incremental costs to the utility of the electric energy or capacity, or both, which, but for the purchase from cogenerators or small power producers, such utility would generate itself or purchase from another source.”⁴² Traditionally, the Commission has approved electric utilities power purchase contracts that include provisions for payment, capacity, and energy based upon either the utility’s cost to construct and operate its next planned generating unit or the cost of purchasing capacity and energy from generating units owned by other utilities in the interchange market.⁴³

Renewable Energy

In 2005, the Legislature created s. 366.91, F.S., to address renewable energy. This section requires utilities to continuously offer a purchase contract to renewable energy producers for a minimum of 10 years and contain payment provisions for energy and capacity based upon the utility’s full avoided costs.⁴⁴ It also includes municipal electric utilities and rural electric cooperatives whose annual sales exceed 2,000 gigawatt hours.⁴⁵ The term “renewable energy” means electrical energy produced from:

- Hydrogen produced from sources other than fossil fuels;⁴⁶
- Biomass,
- Solar energy,
- Geothermal energy,
- Wind energy,
- Ocean energy,
- Hydroelectric power, and
- “The alternative energy resource, waste heat, from sulfuric acid manufacturing operations and electrical energy produced using pipeline-quality synthetic gas produced from waste petroleum coke with carbon capture and sequestration.”

⁴¹ 18 C.F.R. 292.205.

⁴² Section 366.051(3) and (4), F.S.

⁴³ Florida Public Service Commission, *States’ Electric Restructuring Activities Update: Wholesale Sales* <http://www.psc.state.fl.us/Publications/ElectricRestructuringDetails#4> (last visited Mar. 6, 2021); Florida Public Service Commission, *States’ Electric Restructuring Activities Update: Federal Legislation - Public Utilities Regulatory Policy Act* <http://www.psc.state.fl.us/Publications/ElectricRestructuringDetails#5> (last visited Mar. 6, 2021).

⁴⁴ Section 366.91(3), F.S.

⁴⁵ Section 366.91(4), F.S.

⁴⁶ Section 366.91(2)(d), F.S. “Traditional fuel sources” is assumed to be limited to fossil fuels and fuels derived from fossil fuels. See U.S. Energy Information Administration, What is energy? Sources of energy: Most of Our Energy is Nonrenewable, <https://www.eia.gov/energyexplained/what-is-energy/sources-of-energy.php> (last visited Mar. 6, 2021) (listing petroleum, hydrocarbon gas liquids, natural gas, coal, and nuclear energy as the most common energy sources, in the U.S. and abroad).

III. Effect of Proposed Changes:

SB 896 amends s. 366.91, F.S., by adding the terms “biogas” and “renewable natural gas,” and expanding the term “renewable energy.”

The term “biogas” means a mixture of gases, largely comprised of carbon dioxide, hydrocarbons, and methane gas, that is produced by the biological decomposition of organic materials.

The term “renewable Natural Gas” means anaerobically generated biogas, landfill gas, or wastewater treatment gas, which is refined to a methane content of 90 percent or more, that may be used as transportation fuel, for electric generation, or is of a quality capable of being injected into a natural gas pipeline.

The term “renewable energy,” is expanded to mean electrical energy produced or energy created to displace traditional fuel sources from a method that uses one or more of the following fuels or energy sources. The bill also provides that hydrogen produced or resulting from energy sources other than fossil fuels, such as biomass, solar energy, geothermal energy, wind energy, ocean energy, RNG, and hydroelectric power, also constitute renewable energy.

The bill amends the references to “renewable energy” included in ss. 366.92, 373.236, and 403.973, F.S., to reflect the revised definition.

The bill includes conforming changes in ss. 366.92, 373.236, 403.973, and 288.9606(7) F.S., to reflect the revised definition of “renewable energy.”

The bill reenacts s. 288.9606(7), F.S., without modification, to incorporate the changes made to s. 366.91, F.S.

The bill is effective on July 1, 2021.

I. 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.

II. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Indeterminate.

C. Government Sector Impact:

Indeterminate.

III. Technical Deficiencies:

None.

IV. Related Issues:

The expansion of the term “renewable energy” in the bill to include “energy created to displace traditional fuel sources,” may have the effect of expanding the definition beyond electricity. This appears to impose the requirement that public utilities continuously offer a purchase contract to producers of biogas and RNG, for a term of at least 10 years, which contains payment provisions for energy and capacity based upon the utility’s full avoided cost pursuant to s. 366.051, F.S.

The PSC has traditionally based a utility’s full avoided cost on either the cost to construct and operate a generating unit or the cost of purchasing capacity and energy from another utility’s generating unit. The basis for pricing under this expanded definition appears unclear.

The bill does not grant the PSC rulemaking authority in order to determine the applicable terms and conditions that would apply to purchase contracts for non-electric renewable energy or set forth parameters for determining a utility’s full avoided cost for RNG.

V. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 366.91, 366.92, 373.236, 403.973, and 288.9606.

VI. 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 Brodeur

9-00798A-21 2021896__

1 A bill to be entitled

2 An act relating to renewable natural gas; amending s.

3 366.91, F.S.; defining the terms "biogas" and

4 "renewable natural gas"; revising the definition of

5 the term "renewable energy" to include certain energy

6 created for transportation fuel; amending ss. 366.92,

7 373.236, and 403.973, F.S.; conforming cross-

8 references; reenacting s. 288.9606(7), F.S., relating

9 to the issuance of revenue bonds, to incorporate the

10 amendment made to s. 366.91, F.S., in a reference

11 thereto; providing an effective date.

12

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

14

15 Section 1. Present paragraphs (a) through (d) of subsection

16 (2) of section 366.91, Florida Statutes, are redesignated as

17 paragraphs (b) through (e), respectively, a new paragraph (a)

18 and paragraph (f) are added to that subsection, and present

19 paragraph (d) of that subsection is amended, to read:

20 366.91 Renewable energy.—

21 (2) As used in this section, the term:

22 (a) "Biogas" means a mixture of gases produced by the

23 biological decomposition of organic materials which is largely

24 comprised of carbon dioxide, hydrocarbons, and methane gas.

25 (e)(~~4~~) "Renewable energy" means electrical energy produced

26 or energy created to displace traditional fuel sources from a

27 method that uses one or more of the following fuels or energy

28 sources: hydrogen produced or resulting from sources other than

29 fossil fuels, biomass, solar energy, geothermal energy, wind

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30 energy, ocean energy, renewable natural gas, and hydroelectric

31 power. The term includes the alternative energy resource, waste

32 heat, from sulfuric acid manufacturing operations and electrical

33 energy produced using pipeline-quality synthetic gas produced

34 from waste petroleum coke with carbon capture and sequestration.

35 (f) "Renewable natural gas" means anaerobically generated

36 biogas, landfill gas, or wastewater treatment gas refined to a

37 methane content of 90 percent or greater which may be used as a

38 transportation fuel or for electric generation or is of a

39 quality capable of being injected into a natural gas pipeline.

40 Section 2. Paragraph (b) of subsection (2) of section

41 366.92, Florida Statutes, is amended to read:

42 366.92 Florida renewable energy policy.—

43 (2) As used in this section, the term:

44 (b) "Renewable energy" means renewable energy as defined in

45 s. 366.91(2)(e) ~~s. 366.91(2)(d)~~.

46 Section 3. Subsection (7) of section 373.236, Florida

47 Statutes, is amended to read:

48 373.236 Duration of permits; compliance reports.—

49 (7) A permit approved for a renewable energy generating

50 facility or the cultivation of agricultural products on lands

51 consisting of 1,000 acres or more for use in the production of

52 renewable energy, as defined in s. 366.91(2)(e) ~~s. 366.91(2)(d)~~,

53 shall be granted for a term of at least 25 years at the

54 applicant's request based on the anticipated life of the

55 facility if there is sufficient data to provide reasonable

56 assurance that the conditions for permit issuance will be met

57 for the duration of the permit; otherwise, a permit may be

58 issued for a shorter duration that reflects the longest period

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59 for which such reasonable assurances are provided. Such a permit
60 is subject to compliance reports under subsection (4).
61 Section 4. Paragraph (f) of subsection (3) and paragraph
62 (b) of subsection (19) of section 403.973, Florida Statutes, are
63 amended to read:
64 403.973 Expedited permitting; amendments to comprehensive
65 plans.—
66 (3)
67 (f) Projects resulting in the production of biofuels
68 cultivated on lands that are 1,000 acres or more or in the
69 construction of a biofuel or biodiesel processing facility or a
70 facility generating renewable energy, as defined in s.
71 366.91(2)(e) ~~s. 366-91(2)(d)~~, are eligible for the expedited
72 permitting process.
73 (19) The following projects are ineligible for review under
74 this part:
75 (b) A project, the primary purpose of which is to:
76 1. Effect the final disposal of solid waste, biomedical
77 waste, or hazardous waste in this state.
78 2. Produce electrical power, unless the production of
79 electricity is incidental and not the primary function of the
80 project or the electrical power is derived from a fuel source
81 for renewable energy as defined in s. 366.91(2)(e) ~~s.~~
82 ~~366-91(2)(d)~~.
83 3. Extract natural resources.
84 4. Produce oil.
85 5. Construct, maintain, or operate an oil, petroleum, or
86 sewage pipeline.
87 Section 5. For the purpose of incorporating the amendment

9-00798A-21 2021896__

88 made by this act to section 366.91, Florida Statutes, in a
89 reference thereto, subsection (7) of section 288.9606, Florida
90 Statutes, is reenacted to read:
91 288.9606 Issue of revenue bonds.—
92 (7) Notwithstanding any provision of this section, the
93 corporation in its corporate capacity may, without authorization
94 from a public agency under s. 163.01(7), issue revenue bonds or
95 other evidence of indebtedness under this section to:
96 (a) Finance the undertaking of any project within the state
97 that promotes renewable energy as defined in s. 366.91 or s.
98 377.803;
99 (b) Finance the undertaking of any project within the state
100 that is a project contemplated or allowed under s. 406 of the
101 American Recovery and Reinvestment Act of 2009; or
102 (c) If permitted by federal law, finance qualifying
103 improvement projects within the state under s. 163.08.
104 Section 6. This act shall take effect July 1, 2021.



FLORIDA DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES
COMMISSIONER NICOLE "NIKKI" FRIED

February 15, 2021

Agency Affected: Dept. of Agriculture and Consumer Services

Telephone: 850-617-7000

Agency Contact: Emily Buckley, Legislative Affairs Director

Telephone: 850-617-7700

Senate Bill Number: 896

Senate Bill Sponsor: Senator Brodeur

Bill Title: Renewable Natural Gas

Effective Date: July 1, 2021

Similar Bill(s): Yes No

Similar Bill(s): HB 539: Renewable Energy by Rep. Byrd

Identical Bill: Yes No

Identical Bill:

1. SUMMARY

By adding biogas and renewable natural gas (RNG) to the definition of renewable energy found in subsection 366.91(2), F.S., the bill extends the same requirements as for other renewable energy sources. Specifically, public utilities in Florida would be required to continuously offer a purchase contract to producers of biogas and RNG energy, which must be for a term of at least 10 years, and contain payment provisions for energy and capacity, based upon the utility's full avoided costs. The cost-recovery provisions of s. 366.91, F.S., would still apply.

The bill specifically allows the Florida Development Finance Corporation to continue issuing revenue bonds to finance the undertaking of renewable energy projects, including RNG and biogas renewable energy projects.

2. PRESENT SITUATION

Renewable Natural Gas and Biogas

Natural gas is primarily made up of methane, with low concentrations of other hydrocarbons, water, carbon dioxide, nitrogen, oxygen, and sulfur compounds. While conventional natural gas is primarily extracted from subsurface porous rock reservoirs via gas and oil wells that utilize drilling and hydraulic fracturing technologies, RNG production

begins with capturing a methane biogas created by the decomposition of organic matter that can be derived from digesters installed on dairy or swine farms, wastewater treatment plants, and landfills, or produced from thermal chemical processes.¹ The raw biogas must then be treated through a process called conditioning or upgrading, which involves the removal of water, carbon dioxide, hydrogen sulfide, and other trace elements.²

After minor cleanup, biogas can be used to produce electricity and heat, but to fuel vehicles, biogas must be processed to a higher purity standard. The resulting RNG, or biomethane,³ has a higher content of methane than raw biogas, which makes it comparable to conventional natural gas and thus a suitable energy source in applications that require pipeline-quality gas. RNG is processed to the purity standards of a pipeline-quality gas that can be used in natural gas vehicles, either in the form of compressed natural gas (CNG) or liquefied natural gas (LNG).

Expansion of RNG offers an opportunity to decarbonize traditional gas end uses such as transportation and heating. RNG qualifies as an advanced biofuel under the Federal Renewable Fuel Standard, which is a federal program requiring transportation fuel sold in the United States to contain a minimum volume of renewable fuels.⁴ Other expected benefits of RNG include a reduction in total GHG emissions by using waste streams, improved air quality, and supply diversification.⁵

Nationwide, there were 157 total confirmed operational RNG projects as of December 31, 2020.⁶ The total operational production, as of December 31, 2020, was reported as 59,488,530 Million British Thermal Units (MMBTU) with another 9,717,129 MMBTU of production under construction. While there were at least two RNG projects reportedly under construction in Florida at the end of 2020,⁷ it is not confirmed whether any operational production has been achieved in the state.

Renewable Energy

Chapter 366, F.S., provides for the regulation of electric utilities by the Florida Public Service Commission (FPSC). Subsection 366.91(2)(d), F.S., defines “renewable energy” as electrical energy produced from:

- hydrogen produced from sources other than fossil fuels,

¹ Thermal chemical processes involve gasification utilizing renewable feedstocks like wood and agricultural waste.

² See, USDOE Alternative Fuel Data Center, at https://afdc.energy.gov/fuels/natural_gas_renewable.html

³ Biomethane refers to biogas that has been treated to be interchangeable with traditional natural gas but is often used separately from vehicle applications.

⁴ The Renewable Fuel Standard, administered by the US EPA, originated with the Energy Policy Act of 2005 and was expanded and extended by the Energy Independence and Security Act of 2007 (EISA).

⁵ National Association of Regulated Utility Commissioners Committee on Gas, NARUC 2019 Summer Policy Summit: RNG Workshop (July 23, 2019).

⁶ For a comprehensive list of projects that are upgrading gas for pipeline injection or use as vehicle fuel, see the [Renewable Natural Gas Database](#) developed and maintained by Argonne National Laboratory.

⁷ Fortistar in partnership with New River Solid Waste Association in Raiford, Florida, as well as Brightmark in Okeechobee County.

- biomass,
- solar energy,
- geothermal energy,
- wind energy,
- ocean energy,
- hydroelectric power, and
- “the alternative energy resource, waste heat, from sulfuric acid manufacturing operations and electrical energy produced using pipeline-quality synthetic gas produced from waste petroleum coke with carbon capture and sequestration.”

Subsection 366.91(3), F.S., requires that each public utility continuously offer a purchase contract to producers of renewable energy, which must be for a term of at least 10 years, and contain payment provisions for energy and capacity based upon the utility's full avoided costs. Capacity payments are not required if, due to the operational characteristics of the renewable energy generator or the anticipated peak and off-peak availability and capacity factor of the utility's avoided unit, the producer is unlikely to provide any capacity value to the utility or the electric grid during the contract term. Prudent and reasonable costs associated with a renewable energy contract are to be recovered from the ratepayers of the contracting utility, without differentiation among customer classes, through the appropriate cost-recovery clause mechanism administered by the FPSC.

RNG Laws in Other States

In Nevada, RNG is defined as gas “produced by processing biogas or by converting electric energy generated using renewable energy into storable or injectable gas fuel, in a process commonly known as power-to-gas or electrolysis; and Meets the quality standards applicable to the natural gas pipeline into which the gas will be injected.” Additionally, a RNG facility is defined as “a facility or any part of the equipment located at a facility that is used to create biogas, create hydrogen for methanation, gather biogas, gather hydrogen, process biogas into renewable natural gas, inject renewable natural gas into a natural gas pipeline or determine the constituents of renewable natural gas before the injection of the renewable natural gas into a natural gas pipeline.” In 2019, the Public Utilities Commission of Nevada was directed to adopt regulations authorizing a public utility that purchases natural gas for resale to engage in specified RNG activities, along with recovery for “all reasonable and prudent costs” associated with RNG activities that provide specified environmental benefits. Additionally, a public utility which purchases natural gas for resale must attempt to incorporate RNG into its gas supply portfolio.⁸

In Oregon, renewable natural gas is included in “the broader set of low carbon resources that may leverage the natural gas system to reduce greenhouse gas emissions.”⁹

⁸ Sections 704.9995-9997, Nevada Revised Statutes.

⁹ Sections 757.390-398, Oregon Revised Statutes.

Renewable natural gas is defined as “products processed to meet pipeline quality standards or transportation fuel grade requirements”, and includes “biogas that is upgraded to meet natural gas pipeline quality standards such that it may blend with, or substitute for, geologic natural gas,” hydrogen gas derived from renewable energy sources, or methane gas derived from any combination of biogas, hydrogen gas or carbon oxides derived from renewable energy sources, or waste carbon dioxide. Biogas is defined as “a mixture of carbon dioxide and hydrocarbons, primarily methane gas, released from the biological decomposition of organic materials.” The Oregon PUC has established RNG programs for large natural gas utilities,¹⁰ and another for small natural gas utilities. Cost recovery is available, including an automatic adjustment clause. The voluntary RNG target distribution goals for large utilities that participate in the RNG program anticipates 5% RNG by 2025, and 30% RNG by 2050.

Laws in the state of Washington,¹¹ provide that renewable natural gas is defined as “a gas consisting largely of methane and other hydrocarbons derived from the decomposition of organic material in landfills, wastewater treatment facilities, and anaerobic digesters.” Renewable hydrogen is defined as “hydrogen produced using renewable resources both as the source for the hydrogen and the source for the energy input into the production process.” Washington public utility districts are authorized to:

- produce renewable natural gas and renewable hydrogen and utilize the renewable natural gas or renewable hydrogen they produce for internal operations;
- sell renewable natural gas and renewable hydrogen that is delivered into a gas transmission pipeline located in the state of Washington or delivered in pressurized containers;
- sell renewable natural gas and renewable hydrogen to facilities that condense or dispense natural gas or renewable hydrogen for use as a motor fuel; and
- sell renewable hydrogen at wholesale or to an end-use customer in pressurized containers directly from renewable hydrogen production facilities to facilities that utilize renewable hydrogen as a nonutility related input for a manufacturing process.

3. EFFECT OF PROPOSED CHANGES

Section 1 of the bill adds definitions for “biogas” and “renewable natural gas (RNG)” to subsection 366.91(2), F.S. Biogas would be defined as “a mixture of gases produced by the biological decomposition of organic materials which is largely comprised of carbon dioxide, hydrocarbons, and methane gas.” RNG would be defined as “anaerobically generated biogas, landfill gas, or wastewater treatment gas refined to a methane content of 90 percent or greater which may be used as a transportation fuel or for electric generation or is of a quality capable of being injected into a natural gas pipeline.”

¹⁰ Natural gas utilities with more than 200,000 customers in the state.

¹¹ Section 54.04.190, Revised Code of Washington.

Additionally, the definition of “renewable energy” would be expanded to include “energy created to displace traditional fuel sources,” which clarifies that the production of electrical energy is not exclusively required to meet the definition of renewable energy.

Public utilities in Florida would be required to continuously offer a purchase contract to producers of biogas and RNG energy, for a term of at least 10 years, and containing payment provisions for energy and capacity based upon the utility's full avoided costs. Cost-recovery provisions of s. 366.91, F.S., would also apply.

For the purpose of permitting the consumptive uses of water at a renewable energy generating facility,¹² as administered by the Florida Department of Environmental Protection, a permit “shall be granted for a term of at least 25 years at the applicant’s request based on the anticipated life of the facility if there is sufficient data to provide reasonable assurance that the conditions for permit issuance will be met for the duration of the permit.”¹³ By reference, the bill would establish the same duration of consumptive use permitting for biogas and RNG facilities.

Additionally, the bill would make biogas and RNG projects eligible for the expedited permitting process of certain economic development projects found in section 403.973, F.S.

Section 2 of the bill amends s. 366.92, F.S., to conform a reference.

Section 3 of the bill amends s. 373.236, F.S., to conform a reference.

Section 4 of the bill amends s. 403.973, F.S., to conform a reference

Section 5 of the bill reenacts s.288.9606, F.S., for the purpose of incorporating the changes made by the bill. Pursuant to s.288.9606(7)(a), F.S., the Florida Development Finance Corporation has authority to issue revenue bonds to finance the undertaking of any project within the state that promotes renewable energy. By reference and reenactment, the bill would extend this authority to biogas and RNG projects.

Section 6 of the bill provides an effective date of July 1, 2021.

¹² Section 373.236, F.S.

¹³ Alternatively, a permit may be issued for a shorter duration depending on the reasonable assurances that are provided. Such a permit is subject to certain compliance reports.

4. FISCAL IMPACT ON FDACS

Currently, the proposed bill does not have a fiscal impact on the Florida Department of Agriculture and Consumer Services.

	(FY 21-22) Amount/ FTE	(FY 22-23) Amount/ FTE	(FY 23-24) Amount/ FTE
A. Revenues			
Recurring			
Non-Recurring			
TOTAL REVENUES	N/A	N/A	N/A
B. Expenditures			
Recurring			
Non-Recurring			
TOTAL EXPENDITURES	N/A	N/A	N/A
C. NET TOTAL	N/A	N/A	N/A

5. IS THERE AN ESTIMATED FISCAL IMPACT ON LOCAL GOVERNMENT(s)?

No.

6. IS THERE AN ESTIMATED FISCAL IMPACT ON THE PRIVATE SECTOR?

No.

7. ARE THERE ESTIMATED TAXES, FEES, OR FINES ASSOCIATED WITH THE PROPOSED BILL? (If yes, please explain the impact in A and/or B below)

No.

A. Does the proposed bill create new or increase existing taxes, fees, or fines? If so, please explain.

B. Does the proposed bill repeal or decrease existing taxes, fees, or fines? If so, please explain.

C. DOES THE BILL DIRECT OR ALLOW THE DEPARTMENT TO DEVELOP, ADOPT, OR ELIMINATE RULES, REGULATIONS, POLICIES, OR PROCEDURES?

- a. Yes: No:
b. If yes please explain:

8. DOES THE PROPOSED BILL REQUIRE THE DEPARTMENT TO PARTICIPATE IN OR PRODUCE ANY REPORTS OR STUDIES?

- a. Yes: No:
b. If yes please explain:

9. ARE THERE ANY APPOINTMENTS, CREATION OF, OR CHANGES TO ANY BOARDS, TASK FORCES, COUNCILS, COMMISSIONS, ETC. THAT WILL IMPACT THE DEPARTMENT?

- a. Yes: No:
b. If yes please explain:

LEGAL ISSUES

10. Does the proposed bill conflict with existing federal law or regulations that impact the department? If so, what laws and/or regulations?

Unknown.

11. Does the proposed bill raise significant constitutional concerns under the U.S. or Florida Constitutions (e.g. separation of powers, access to the courts, equal protection, free speech, establishment clause, impairment of contracts) that impacts the department?

Unknown.

12. Is the proposed bill likely to generate litigation for the department and, if so, from what interest groups or parties?

Unknown.

COMMENTS:

YOU MUST PRINT AND DELIVER THIS FORM TO THE ASSIGNED TESTIMONY ROOM

THE FLORIDA SENATE

APPEARANCE RECORD

3/9/2021

Meeting Date

896

Bill Number (if applicable)

Topic

Amendment Barcode (if applicable)

Name Dale Calhoun

Job Title Executive Director

Address 201 S Monroe St Unit A

Phone 8506810496

Street

Tallahassee

FL

Email dale.calhoun@floridagas.org

City

State

32301

Zip

Speaking: For

Against

Information

Waive Speaking: In Support

Against

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

Representing Florida Natural Gas Association

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/14/14)

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THE FLORIDA SENATE

APPEARANCE RECORD

3/9/21

Meeting Date

896

Bill Number (if applicable)

Topic Renewable Natural Gas

Amendment Barcode (if applicable)

Name Michael Cassel

Job Title AVP, Regulatory & Government Affairs

Address 208 Wildlight Ave Phone 561-252-0250

Street

Yulee

FL

32097

City

State

Zip

Speaking: For Against Information In Support Against Yes No
Waive Speaking: In Support Against Yes No
(The Chair will read this information into the record.)

Representing Chesapeake Utilities Corporation

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.

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THE FLORIDA SENATE

3/9/21 REG. IND. A3

APPEARANCE RECORD

896

Meeting Date

Bill Number (if applicable)

Topic Renewable Natural Gas

Amendment Barcode (if applicable)

Name David Cullen

Job Title _____

Address 1934 Shelby Court

Phone 941-323-2404

Street

Tallahassee

FL

32308

Email cullenasea@gmail.com

City

State

Zip

Speaking: For

Against

Information

Waive Speaking:

In Support

Against

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

Representing Sierra Club Florida

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)

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THE FLORIDA SENATE

APPEARANCE RECORD

3/9/21

Meeting Date

896

Bill Number (if applicable)

Topic Renewable Natural Gas

Amendment Barcode (if applicable)

Name Kim Ross

Job Title Executive Director, ReThink Energy Action Fund

Address 603 N MLK Jr Blvd

Phone 850-888-2565

Street

Tallahassee

FL

32301

City

State

Zip

Email kim@rethinkenergyflorida.org

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

Committee Agenda Request

To: Senator Travis Hutson, Chair
Committee on Regulated Industries

Subject: Committee Agenda Request

Date: February 4, 2021

I respectfully request that **Senate Bill 896**, relating to Renewable Natural Gas, be placed on the:

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

A handwritten signature in black ink that reads "Jason Brodeur".

Senator Jason Brodeur
Florida Senate, District 9

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Regulated Industries

BILL: SB 1294

INTRODUCER: Senator Brodeur

SUBJECT: Cottage Food Operations

DATE: March 8, 2021

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Oxamendi	Imhof	RI	Favorable
2.	_____	_____	CM	_____
3.	_____	_____	RC	_____

I. Summary:

SB 1294 revises the requirements for the sale of cottage foods. A cottage food product is any food that is not a potentially hazardous food as defined by rule of the Department of Agriculture (department). Cottage food sales are exempt from permitting requirements if the cottage food seller (operation) complies with s. 500.80, F.S., and has annual gross sales of less than \$50,000. The bill increases the maximum allowable annual gross sales to less than \$250,000.

The bill allows individual cottage food operations to sell, offer for sale, and accept payment for cottage food products as a business entity. Current law only permits persons to operate a cottage food operation as a natural person. The bill also allows cottage foods to be sold, offered for sale, and payed for by mail order and permits cottage food products to be delivered by mail.

The bill provides this act may be cited as the “Home Sweet Home Act.”

The bill preempts the regulation of cottage food operations to the state.

The bill is effective July 1, 2021.

II. Present Situation:

Food Safety Laws

The Division of Food Safety within the Department of Agriculture and Consumer Services (department) ensures that safe, wholesome, and properly labeled food is available to the public through the permitting and inspection of food establishments, and inspection of food products

that are sold or produced in Florida.¹ The department works in cooperation with the United States Department of Agriculture and the Food and Drug Administration to help ensure compliance with both state and federal regulations.²

Florida Cottage Food Operation Law

A cottage food operation is an unincorporated business operated by a natural person who, under certain conditions and restrictions, produces or packages food that is not potentially hazardous in their home kitchen.³

A cottage food product is any food that is not a potentially hazardous food as defined by department rule which is sold by a cottage food operation in accordance with s. 500.80, F.S.⁴ The department has not adopted a rule defining the term “potentially hazardous food,” but it has adopted the 2017 Food Code (Food Code) published by the U.S. Public Health Service of the United States Department of Health and Human Services.⁵

The Food Code defines the term “Time/Temperature Controlled for Safety (TCS) Food,” formerly referred to as “potentially hazardous food” as a “food that requires time/temperature control for safety (TCS) to limit pathogenic microorganism growth or toxin formation.”⁶ “Time/temperature control for safety food” includes:

- Animal food that is raw or heat-treated;
- Plant food that is heat-treated, or consists of raw seed sprouts, cut melons, cut leafy greens, cut tomatoes or mixtures of cut tomatoes that are not modified in a way so that they are unable to support pathogenic micro-organism growth or toxin formation;
- Garlic-in-oil mixtures that are not modified so that they are unable to support pathogenic micro-organism growth or toxin formation;
- Food for which the interaction of its water content and pH value require the product to be heat treated and subsequently packaged.⁷

Although it has not adopted a rule on cottage food operations, the department has published materials defining “Time/Temperature Controlled for Safety (TCS) Food,” formerly referred to as “potentially hazardous food,” to identify the following foods that could be cottage food products (because they are not potentially hazardous foods):

- Loaf breads, rolls, biscuits;

¹ Florida Department of Agriculture and Consumer Services, *Division of Food Safety*, <http://www.freshfromflorida.com/Divisions-Offices/Food-Safety> (last visited Mar. 1, 2021). See also ch. 500, F.S., the “Florida Food Safety Act.”

² Florida Department of Agriculture and Consumer Services, *Food Establishments*, <https://www.fdacs.gov/Business-Services/Food/Food-Establishments> (last visited Mar. 1, 2021).

³ Sections 500.03(j), (k), and 500.80, F.S.

⁴ Section 500.03(k), F.S.

⁵ Fla. Admin. Code R. 5K-4.002(4)(a). The 2017 Food Code is available at: <https://www.fda.gov/media/110822/download> (last visited March 2, 2021).

⁶ 2017 Food Code, subpart 1-21.10, defining “Time/Temperature Control for Safety Food (formerly “potentially hazardous food” (PHF))”

⁷ See Department of Agriculture and Consumer Services, *Division of Food Safety: Cottage Food Operations* (August 2020), defining “Cottage Food Product,” available at: <https://www.fdacs.gov/content/download/70108/file/Cottage-Food-Operations.pdf> (last visited Mar. 1, 2021).

- Cakes, pastries, and cookies;
- Honey;
- Jams, jellies, and preserves made from high acid-fruits only;
- Fruit pies and dried fruits;
- Dry herbs, seasonings, and mixtures;
- Homemade pasta;
- Cereals, trail mixes, and granola;
- Coated or uncoated nuts;
- Vinegar and flavored vinegars;
- Popcorn and popcorn balls; and
- Nut butters, including almond, peanut, cashew, etc.⁸

Under s. 500.80, F.S., cottage food operations are exempt from food safety production standards, are not subject to inspection by a governmental entity, and are not required to meet state permitting requirements under s. 500.12, F.S. However, cottage food operations must comply with the cottage food law and limit annual gross sales of cottage food products to less than \$50,000. A cottage food operation must provide the department with written documentation to verify its annual gross sales upon the department's request to do so.

Cottage food operators are currently prohibited from selling, or offering to sell, cottage food products by mail order or at wholesale.⁹

Cottage food products must be prepackaged with a label that contains:

- The name and address of the cottage food operation;
- The name of the cottage food product;
- The ingredients of the cottage food product, in descending order of predominance by weight;
- The net weight or net volume of the cottage food product;
- Allergen information as specified by federal labeling requirements;
- Appropriate nutritional information (if any nutritional claim is made) as specified by federal labeling requirements;¹⁰ and
- The statement, "Made in a cottage food operation that is not subject to Florida's food safety regulation" printed in 10-point type in a color that provides a clear contrast to the background of the label.¹¹

Additionally, current law provides that:

- A cottage food operation may only sell cottage food products that are stored on the premises of the operation;
- Cottage food operations are not exempt from any state or federal tax law, rule, regulation, or certificate that applies to all cottage food operations; and

⁸ *Id.*

⁹ Section 500.80(2), F.S.

¹⁰ See C.F.R. Title 21, Part 101. Available at: <http://www.ecfr.gov/cgi-bin/text-idx?SID=b8a6ba2f29a50685c15ebddd8bbd56aa&mc=true&node=pt21.2.101&rgn=div5> (last visited March 1, 2021).

¹¹ Section 500.80(3), F.S.

- A cottage food operation must comply with all applicable county and municipal laws and ordinances regulating the preparation, processing, storage, and sale of cottage food products by a cottage food operation or from a person’s residence.¹²

The department may investigate complaints that a cottage food operation has violated an applicable provision of state food products law¹³ or rule adopted under such law.¹⁴ Upon receiving a complaint, an officer or employee of the department may inspect the cottage food operation’s premises to determine compliance with applicable to state law and departmental rules. An operation’s refusal to permit an authorized officer or employee to enter and inspect the premises is grounds for administrative disciplinary action under s. 500.121, F.S.¹⁵

State law regarding cottage food operations does not apply to any person operating under a food permit issued pursuant to s. 500.12, F.S.¹⁶

In 2020, the department responded to 233 consumer complaints regarding unpermitted food establishments, including cottage food operations not complying with the existing food laws. In 2021, the department has responded to 57 unpermitted food establishment complaints.¹⁷

Cottage Food Sales in Other States

Many states have adopted laws regarding cottage food operations and sales. Not all states have imposed an annual gross income limit for cottage food sales. For states that have imposed a gross income limit, the average allowable annual gross income ranges from \$15,000 to \$35,000.¹⁸

III. Effect of Proposed Changes:

Section 1 provides that this act may be cited as the “Home Sweet Home Act.”

Section 2 amends s. 500.03(1)(j), F.S., to revise the definition of the term “cottage food operation” to allow cottage food operations to sell, offer for sale, and accept payment for cottage food products as a business entity. It also permits cottage food products to be produced or packaged at the residence of a natural person who has an ownership interest in the entity.

Section 3 amends ss. 500.80(1)(a) and (2), F.S., to increase the maximum annual gross sales limit for cottage foods operations from less than \$50,000 to less than \$250,000.

¹² Sections 500.80(4), (5), and (6), F.S.

¹³ Chapter 500, F.S.

¹⁴ Section 500.80(7)(a), F.S.

¹⁵Section 500.12, F.S., provides disciplinary procedures for violations of ch. 500, F.S., and applicable rules, including the imposition of Class II administrative fines against a cottage food operation that violates ch. 500, F.S. A violation in the Class II category carries a fine not to exceed \$5,000 for each violation. *See* s. 570.971(1)(b), F.S.

¹⁶ Section 500.12, F.S., requires a permit issued by the department for any person operating a food establishment or retail food store.

¹⁷ Department of Agriculture and Consumer Services, *Agency Analysis for SB 1294*, page 2 (Feb. 23, 2021)(on file with the Senate Committee on Regulated Industries).

¹⁸ Department of Agriculture and Consumer Services, *Agency Analysis for SB 1294*, page 3 (Feb. 23, 2021) (on file with the Committee on Regulated Industries). *See also* Pickyourown.org, *Cottage Food Laws by State: Selling Your Homemade and Home-Canned Foods*, updated Mar. 01, 2021, available at: <https://www.pickyourown.org/CottageFoodLawsByState.htm> (last visited Mar. 1, 2021).

The bill allows cottage food operations to sell, offer for sale, and accept payment for cottage food products by mail order. It also permits cottage food products to be delivered by mail.

The bill also amends s. 500.80(6), F.S., to preempt the regulation of cottage food operations to the state. Under the bill, a local law, ordinance, or regulation may not prohibit a cottage food operation or regulate the preparation, processing, storage, and sale of cottage food products by a cottage food operation or from a person's residence.

Section 2 provides an effective date of July 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Persons engaged in cottage food operations will be able to expand their allowable total gross income from sales from less than \$50,000 to less than \$250,000 per year. They may also be able to make additional sales by accepting orders and payments by mail order and delivering products by mail.

C. Government Sector Impact:

The department indicates that the increase in gross sales for cottage food operators, and the additional sales and deliveries by mail may result in increased food safety health events and complaints, and therefore increase the department's workload. The department cannot recover these enforcement expenses because cottage food operations do not pay a permit fee.¹⁹

VI. Technical Deficiencies:

None.

VII. Related Issues:

According to the Department of Agriculture and Consumer Services, increasing the allowable gross sales for cottage food operations would remove larger operations from permitting requirements and inspections for sanitation and compliance with food safety regulations. The department states that, without proper training and oversight, small businesses may expose themselves to greater liability resulting from harming persons through foodborne illnesses. The departments also states that the result of a robust inspection and training program is that these small businesses have a 96 percent compliance rate with respect to meeting inspection requirements, and that studies have shown that food safety inspection programs result in a higher compliance rate than without such programs.²⁰

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 500.03 and 500.80.

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.

¹⁹ Department of Agriculture and Consumer Services, *Agency Analysis for SB 1294*, page 2 (Feb. 23, 2021) (on file with the Committee on Regulated Industries).

²⁰ *Id.*

By Senator Brodeur

9-01409-21 20211294

1 A bill to be entitled

2 An act relating to cottage food operations; providing

3 a short title; amending s. 500.03, F.S.; revising the

4 definition of "cottage food operation"; amending s.

5 500.80, F.S.; increasing the annual gross sales

6 limitation for exempting cottage food operations from

7 certain food and building permitting requirements;

8 authorizing the sale, offer for sale, acceptance of

9 payment, and delivery of cottage food products by

10 mail; preempting the regulation of cottage food

11 operations to the state; prohibiting local governments

12 from prohibiting or regulating cottage food

13 operations; providing an effective date.

14

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

16

17 Section 1. This act may be cited as the "Home Sweet Home

18 Act."

19 Section 2. Paragraph (j) of subsection (1) of section

20 500.03, Florida Statutes, is amended to read:

21 500.03 Definitions; construction; applicability.—

22 (1) For the purpose of this chapter, the term:

23 (j) "Cottage food operation" means a natural person or an

24 entity that ~~who~~ produces or packages cottage food products at

25 the ~~his or her~~ residence of the natural person or at the

26 residence of a natural person who has an ownership interest in

27 the entity, and sells such products in accordance with s.

28 500.80.

29 Section 3. Paragraph (a) of subsection (1) and subsections

Page 1 of 2

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

9-01409-21 20211294

30 (2) and (6) of section 500.80, Florida Statutes, are amended to

31 read:

32 500.80 Cottage food operations.—

33 (1)(a) A cottage food operation must comply with the

34 applicable requirements of this chapter but is exempt from the

35 permitting requirements of s. 500.12 if the cottage food

36 operation complies with this section and has annual gross sales

37 of cottage food products that do not exceed \$250,000 ~~or~~ \$50,000.

38 (2) A cottage food operation may sell, offer for sale, and

39 accept payment for cottage food products over the Internet or by

40 mail order. Such, ~~but such~~ products may ~~not~~ be delivered in

41 person directly to the consumer, ~~or~~ to a specific event venue,

42 or by mail. A cottage food operation may not sell, offer for

43 sale, or deliver cottage food products by ~~mail order~~ or at

44 wholesale.

45 (6) The regulation of cottage food operations is preempted

46 to the state. A local law, ordinance, or regulation may not

47 prohibit a cottage food operation or regulate ~~must comply with~~

48 all ~~applicable county and municipal laws and ordinances~~

49 regulating the preparation, processing, storage, and sale of

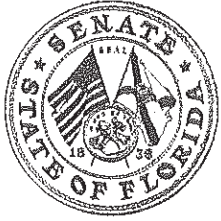
50 cottage food products by a cottage food operation or from a

51 person's residence.

52 Section 4. This act shall take effect July 1, 2021.

Page 2 of 2

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THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

SENATOR JASON BRODEUR

9th District

COMMITTEES:

Environment and Natural Resources, *Chair*
Health Policy, *Vice Chair*
Appropriations Subcommittee on Agriculture,
Environment, and General Government
Appropriations Subcommittee on Health and
Human Services
Children, Families, and Elder Affairs
Community Affairs

SELECT COMMITTEE:

Select Committee on Pandemic
Preparedness and Response

JOINT COMMITTEE:

Joint Administrative Procedures Committee

March 3, 2021

Honorable Travis Hutson
416 Senate Building
404 South Monroe Street
Tallahassee, FL 32399-1100

Dear Chair Hutson,

I am writing to request that SB 1294, Cottage Food Operations, be placed on the agenda to be heard in the Regulated Industries Committee.

I appreciate your consideration in this matter.

Sincerely,

A handwritten signature in cursive script that reads "Jason Brodeur".

Jason Brodeur

Cc: Booter Imhof, Staff Director
Susan Datres, Administrative Assistant

REPLY TO:

311 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5009

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 the Senator or Senate Professional Staff conducting the meeting)

3-9-21

Meeting Date

1294

Bill Number (if applicable)

Topic REG INDUSTRIES

Amendment Barcode (if applicable)

Name Sal Nuzzo

Job Title Vice President of Policy

Address 100 N Duval Street

Phone 850-322-9941

Street

Tallahassee

FL

City

State

32301

Zip

Email snuzzo@jamesmadison.org

Speaking: For Against Information

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

Representing The James Madison Institute

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

Meeting Date March 9 2021

Bill Number (if applicable) SB 1294

Topic Cottage Food Operations Amendment Barcode (if applicable)

Name DIEGO ECHEVERRI "Dee-yay-son" Etch - oh - very "

Job Title Legislative Liaison

Address 200 W College Ave Phone

City TLH State FL Zip Email

Speaking: For Against Information In Support Against

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

Representing Americans For Prosperity

Appearing at request of Chair: Yes No Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

Meeting Date 3/9/2021

1294

Bill Number (if applicable)

Topic Comabe Foods

Amendment Barcode (if applicable)

Name CHRISTIAN CAMARIA

Job Title

Address PO Box 122

Phone 305 608 4300

City FALLAHASSEE State FL Zip 32302

Email CHRISTIAN@CHAUSERCONSULTANTSFL.COM

Speaking: For Against Information

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

Representing Institute For Justice

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

The Florida Senate
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 Regulated Industries

BILL: SB 1342

INTRODUCER: Senator Perry

SUBJECT: Licensure Requirements for Land Surveyors and Mappers

DATE: March 8, 2021

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Kraemer</u>	<u>Imhof</u>	<u>RI</u>	<u>Pre-meeting</u>
2.	_____	_____	<u>CM</u>	_____
3.	_____	_____	<u>RC</u>	_____

I. Summary:

SB 1342 revises the educational and experience requirements to be eligible to take the examination for a surveyor and mapper license issued by the Board of Professional Surveyors and Mappers within the Department of Agriculture and Consumer Services. The bill:

- Allows exiled foreign-trained professionals who have lawfully practiced the profession for three years to substitute their experience for the professional or occupational college degree that is required under current law.
- Reduces the required work experience as a subordinate to an actively practicing surveyor and mapper based on the level of the applicant's education.
- Creates additional license eligibility pathways for persons with an associate of arts degree, or an equivalent 60 credit hours, and persons with a high school diploma, or the equivalent.

Under the bill, for applicants to take the license examination with:

- A bachelor's degree or higher in surveying and mapping (or a similar program such as geomatics, geomatics engineering, and land surveying) from a college or university recognized by the board, the required work experience is reduced to two years or more from four years or more.
- A bachelor's degree or higher in a subject other than surveying and mapping from an accredited college or university, the required work experience is reduced to two years or more from six years or more.
- An associate of arts degree, or an equivalent 60 credit hours, the required work experience is four years or more. There is no accreditation requirement under the bill for institutions issuing degrees or offering credit hours, and there is no requirement for semester hours in the subject of surveying and mapping or other related subjects. Work experience obtained as part of educational coursework may not serve to meet the work experience requirement.

- A high school diploma, or the equivalent, the required work experience as a subordinate to an actively practicing surveyor and mapper is six years. Work experience obtained as part of educational coursework may not serve to meet the work experience requirement.

The bill also provides that applicants are eligible to take the licensure examination upon “proof of verifiable work experience in the active practice of surveying and mapping, which is of a nature indicating that the applicant was in responsible charge of the accuracy and correctness of the surveying and mapping work performed.”

See Section V, Fiscal Impact Statement.

The bill is effective July 1, 2021.

II. Present Situation:

Land Surveying and Mapping

Chapter 472, F.S., governs the practice of land surveying and mapping in Florida. The Secretary of the Department of Agriculture and Consumer Services (DACS)¹ appoints the nine members of the Board of Professional Surveyors and Mappers (board), subject to confirmation by the Florida Senate.² The DACS approves registrations, certificates, and licenses to those persons and businesses that meet all statutory and administrative requirements for licensure.³ The board is authorized to adopt administrative rules to implement the act, subject to the prior approval of DACS.⁴

Licensed professional surveyors and mappers make exact measurements and determine property boundaries. They provide data relevant to the shape, contour, gravitation, location, elevation, or dimension of land or land features on or near the earth's surface for engineering, mapmaking, mining, land evaluation, construction, and other purposes.⁵ There are nearly 2,490 surveyors and mappers with active licenses in the state.⁶

Licensing Examinations

All applicants for licensure must be approved by the board to be eligible to take the licensure examination.⁷ An applicant must be of good moral character⁸ and satisfy the following educational and experience requirements to be eligible to take the licensure examination:

¹ The regulation of professional surveyors and mappers was transferred in 2009 from the Department of Business and Professional Regulation to DACS. See Ch. 2009-66, ss. 1 to 30, Laws of Fla. (effective October 1, 2009).

² See s. 472.007, F.S.

³ See ss. 472.006(10) and 472.015, F.S.

⁴ See s. 472.008, F.S., and Fla. Admin. Code R. 5J-17.001 to 17.400.

⁵ See Florida Department of Agriculture and Consumer Services, Business Services, *Surveyors and Mappers*, available at <https://www.fdaacs.gov/Business-Services/Surveyors-and-Mappers> (last visited Mar. 4, 2021).

⁶ See the search results for active licensees at <https://csapp.800helpfla.com/cspublicapp/businesssearch/businesssearch.aspx> (last visited Mar. 4, 2021).

⁷ See s. 472.013, F.S.

⁸ The term “good moral character means “a personal history of honesty, fairness, and respect for the rights of others and for the laws of this state and nation.” See s. 472.013(5)(a), F.S.

- A bachelor's degree in surveying and mapping or in a similarly titled program, with four or more years of work experience under a professional surveyor, with the applicant having been in responsible charge of the accuracy and correctness of the surveying work performed; or
- A bachelor's degree in a course of study other than surveying and mapping, with six or more years of work experience under a professional surveyor, and for five of those years, the applicant must have been in responsible charge of the accuracy and correctness of the surveying work performed.⁹

Applicants whose course of study was other than surveying and mapping, must meet an additional educational requirement of a minimum of 25 semester hours from a college or university approved by the board in surveying and mapping subjects, or in any combination of courses in civil engineering, surveying, mapping, mathematics, photogrammetry, forestry, or land law and the physical sciences.¹⁰

The board, by rule, is authorized to establish fees for examination.¹¹ The initial application and examination fee must not exceed \$125 plus the actual per applicant cost to DACS to purchase the examination from the National Council of Engineering Examiners or a similar national organization.¹² The examination fee must be sufficient to cover the cost of obtaining and administering the examination and is refundable if the applicant is found ineligible to sit for the examination; the application fee is nonrefundable.¹³

An exiled foreign-trained professional seeking to become a licensed surveyor and mapper is eligible to take the required examination if the exiled professional:

- Immigrated to the United States after leaving their home country because of political reasons, when the home country is located in the Western Hemisphere and does not have diplomatic relations with the United States;
- Applies to DACS and submits a fee;
- Was a resident of Florida immediately preceding the application;
- Demonstrates through submission of documentation to DACS that is verified by the applicant's respective professional association in exile, that the applicant graduated with an appropriate professional or occupational degree from a college or university, but DACS may not require documentation from the Republic of Cuba;
- Lawfully practiced land surveying and mapping for at least three years;
- Prior to 1980, successfully completed an approved course of study pursuant to chs. 74-105 and 75-177, Laws of Florida, relating to continuing education; and
- Presents a certificate demonstrating the successful completion of a board-approved continuing education program, which offers a course of study that will prepare the applicant for the examination.¹⁴

⁹ See s. 472.013(2), F.S.

¹⁰ See s. 472.013(2)(b), F.S.

¹¹ See s. 472.011, F.S. and Fla. Admin. Code R. 5J-17.070.

¹² *Id.*

¹³ *Id.*

¹⁴ See s. 472.0101(1), F.S.

Upon request of a person who meets the requirements for foreign-trained professionals and submits an examination fee, DACS must conduct a written practical examination, on behalf of the board, that tests the person's current ability to competently practice the profession in accordance with the actual practice of the profession.¹⁵ The fees charged for the examinations must be established by DACS by rule for the board,¹⁶ and must be sufficient to develop or to contract for the development of the examination and its administration, grading, and grade reviews.¹⁷

Licensure by Endorsement

The board is required to certify an applicant as qualified for a license by endorsement if the applicant currently holds a valid license to practice surveying and mapping issued by another state or territory of the United States before July 1, 1999, and the applicant:

- Has passed a national, regional, state, or territorial licensing examination that is substantially equivalent to the examination required by s. 472.013, F.S.; and has a specific experience record of at least eight years as a subordinate to a registered surveyor and mapper in the active practice of surveying and mapping, six years of which must be of a nature indicating that the applicant was in responsible charge of the accuracy and correctness of the surveying and mapping work performed; or
- Holds a valid license to practice surveying and mapping issued by another state or territory of the United States, if the criteria for issuance were substantially the same as the licensure criteria that existed in Florida at the time the license was issued.¹⁸

All applicants for licensure by endorsement must pass the Florida law and rules portion of the examination prior to licensure.¹⁹

III. Effect of Proposed Changes:

Section 1 of the bill amends s. 472.0101, F.S., relating to special examination and license provisions for an exiled professional seeking to practice as a licensed surveyor and mapper. Under the bill, three years of lawful experience as a surveyor and mapper may be substituted for the professional or occupational college degree that is required under current law.²⁰

Section 2 of the bill amends s. 472.013, F.S., to revise the educational and experience requirements for an applicant to be eligible to take the surveyor and mapper licensure examination. Surveying and mapping work experience obtained by an applicant must be of a nature to indicate the applicant was "in responsible charge of the accuracy and correctness" of the work.²¹

¹⁵ See s. 472.0101(2), F.S. DACS must treat documentary evidence submitted by an exiled professional who is eligible to take the examination as evidence of the applicant's preparation in the academic and preprofessional fundamentals, and DACS may not examine the applicant on such fundamentals. *Id.*

¹⁶ See Fla. Admin. Code R. 5J-17.210.

¹⁷ See s. 472.0101(3), F.S.

¹⁸ See s. 472.015(5)(a), F.S.

¹⁹ See s. 472.015(5)(b), F.S.

²⁰ *Supra*, note 15.

²¹ See s. 472.013(2)(a) and (b), F.S.

The bill creates additional eligibility pathways for persons with an associate of arts degree, or an equivalent 60 credit hours, and persons with a high school diploma, or the equivalent. Under the bill, the length of an applicant's work experience as a subordinate to an actively practicing surveyor and mapper required to take the licensure examination varies by level of the applicant's education; for those applicants with:

- A bachelor's degree or higher in surveying and mapping (or a similar program such as geomatics,²² geomatics engineering, and land surveying) from a college or university recognized by the board, the required work experience is reduced to two years or more from four years or more.
- A bachelor's degree or higher in a subject other than surveying and mapping from an accredited college or university, the required work experience is reduced to two years or more from six years or more. As required in current law, such applicants must also have completed a minimum of 25 semester hours in surveying and mapping subjects (or in any combination of courses in civil engineering, surveying, mapping, mathematics, photogrammetry, forestry, or land law and the physical sciences), from a college or university approved by the board.²³
- An associate of arts degree, or an equivalent 60 credit hours, the required work experience is four years or more. There is no accreditation requirement for institutions issuing degrees or offering credit hours, and there is no requirement for semester hours in the subject of surveying and mapping or other related subjects. Work experience obtained as part of educational coursework may not serve to meet the work experience requirement.
- A high school diploma, or the equivalent, the required work experience as a subordinate to an actively practicing surveyor and mapper is six years. Work experience obtained as part of educational coursework may not serve to meet the work experience requirement.

The bill also provides that applicants are eligible to take the licensure examination upon "proof of verifiable work experience in the active practice of surveying and mapping, which is of a nature indicating that the applicant was in responsible charge of the accuracy and correctness of the surveying and mapping work performed." As noted by DACS, for this method of qualifying to take the licensure examination, there is no minimum educational prerequisite, no minimum amount of work experience required, and no requirement that such work experience have been acquired while licensed and in accordance with the laws of the jurisdiction in which the work experience occurred.²⁴

As stated in **Section 3**, the bill is effective July 1, 2021.

²² The geomatics profession collects, manages, and analyzes geospatial data through ground surveying, photogrammetry, remote sensing, satellite positioning, inertial measurements, echo-sounding, and laser scanning. Geomatics students study geometry, statistics, boundary law, and surveying and mapping instrument usage. See *University of Florida Undergraduate Catalog, Colleges and Schools, College of Agricultural and Lifesciences, Geomatics Major*, available at https://catalog.ufl.edu/UGRD/colleges-schools/UGAGL/GEM_BSGE/ (last visited Mar. 4, 2021).

²³ See s. 472.013(2)(b), F.S.

²⁴ See Department of Agriculture and Consumer Services, *Agency Bill Analysis for SB 1342* at p. 2 (Feb. 24, 2021) (on file with the Senate Committee on Regulated Industries).

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:

More applicants may seek licensure as a professional surveyor and mapper based on the reduced work experience requirements and lower education requirements to become eligible to take the licensure examination.

C. Government Sector Impact:

According to DACS, it is unable to estimate a fiscal impact for the bill on its operations.²⁵ In its analysis, DACS notes it is unknown if reduced requirements will increase the number of licenses; if so, DACS may require additional resources to process licenses applications despite the increase in licensing revenue.²⁶

VI. Technical Deficiencies:

None.

²⁵ See Department of Agriculture and Consumer Services, *Agency Bill Analysis for SB 1342* at p. 2 (Feb. 24, 2021) (on file with the Senate Committee on Regulated Industries).

²⁶ *Id.*

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 472.0101 and 472.013.

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.



713472

LEGISLATIVE ACTION

Senate

.
. .
. .
. .
. .

House

The Committee on Regulated Industries (Perry) recommended the following:

Senate Amendment (with title amendment)

Delete lines 86 - 109

and insert:

(c) The applicant has received an associate degree and has a specified experience record of 4 or more years as a subordinate to a professional surveyor and mapper in the active practice of surveying and mapping, which experience is of a nature indicating that the applicant was in responsible charge of the accuracy and correctness of the surveying and mapping



713472

11 work performed. Work experience acquired as a part of the
12 education requirement may not be construed as experience in
13 responsible charge.

14 (d) The applicant has received a high school diploma, or
15 the equivalent, and has a specified experience record of 6 or
16 more years as a subordinate to a professional surveyor and
17 mapper in the active practice of surveying and mapping, which
18 experience is of a nature indicating that the applicant was in
19 responsible charge of the accuracy and correctness of the
20 surveying and mapping work performed. Work experience acquired
21 as a part of the education requirement may not be construed as
22 experience in responsible charge.

23 (e) The applicant holds a valid license to practice
24 surveying and mapping in another state, jurisdiction, or
25 territory, and has 2 years of experience in the active practice
26 of surveying and mapping, which experience is of a nature
27 indicating that the applicant was in responsible charge of the
28 accuracy and correctness of the surveying and mapping work
29 performed.

30 (f) The applicant has received a registered apprenticeship
31 certificate in surveying and mapping after completing a
32 registered apprenticeship program approved by the Department of
33 Education and has a specified experience record of 2 or more
34 years as a subordinate to a professional surveyor and mapper in
35 the active practice of surveying and mapping, which experience
36 is of a nature indicating that the applicant was in responsible
37 charge of the accuracy and correctness of the surveying and
38 mapping work performed. Work experience acquired as a part of
39 the education requirement may not be construed as experience in



713472

40 responsible charge.

41

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

43 And the title is amended as follows:

44 Delete line 10

45 and insert:

46 licensure as a land surveyor or mapper; providing that
47 an applicant who holds a license from another state,
48 jurisdiction, or territory and has certain experience
49 in the practice of surveying and mapping may take the
50 licensure examination to practice as a land surveyor
51 or mapper in this state; providing that completion of
52 a specified apprenticeship program may be substituted
53 for education requirements for licensure as a land
54 surveyor or mapper; providing an

By Senator Perry

8-00352-21 20211342

1 A bill to be entitled
 2 An act relating to licensure requirements for land
 3 surveyors and mappers; amending s. 472.0101, F.S.;
 4 authorizing an exiled professional to substitute
 5 specified lawful practice of the profession for the
 6 education requirement for examination; amending s.
 7 472.013, F.S.; revising education requirements for
 8 licensure; providing that specified work experience
 9 may be substituted for education requirements for
 10 licensure as a land surveyor or mapper; providing an
 11 effective date.
 12
 13 Be It Enacted by the Legislature of the State of Florida:
 14
 15 Section 1. Subsection (1) of section 472.0101, Florida
 16 Statutes, is amended to read:
 17 472.0101 Foreign-trained professionals; special examination
 18 and license provisions.—
 19 (1) When not otherwise provided by law, the department
 20 shall by rule provide procedures under which exiled
 21 professionals may be examined under this chapter. A person is
 22 eligible for the examination if the exiled professional:
 23 (a) Immigrated to the United States after leaving the
 24 person's home country because of political reasons, provided the
 25 country is located in the Western Hemisphere and does not have
 26 diplomatic relations with the United States;
 27 (b) Applies to the department and submits a fee;
 28 (c) Was a resident of this state immediately preceding the
 29 person's application;

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8-00352-21 20211342

30 (d) Demonstrates to the department, through submission of
 31 documentation verified by the applicant's respective
 32 professional association in exile, that the applicant was
 33 graduated with an appropriate professional or occupational
 34 degree from a college or university. However, the department may
 35 not require receipt of any documentation from the Republic of
 36 Cuba as a condition of eligibility under this section;
 37 (e) Has lawfully practiced the profession for at least 3
 38 years. The person may substitute such practice of the profession
 39 for the education requirement under paragraph (d);
 40 (f) Before ~~prior to~~ 1980, successfully completed an
 41 approved course of study pursuant to chapters 74-105 and 75-177,
 42 Laws of Florida; and
 43 (g) Presents a certificate demonstrating the successful
 44 completion of a continuing education program which offers a
 45 course of study that will prepare the applicant for the
 46 examination offered under subsection (2). The department shall
 47 develop rules for the approval of such programs for the board.
 48 Section 2. Subsection (2) of section 472.013, Florida
 49 Statutes, is amended to read:
 50 472.013 Examinations, prerequisites.—
 51 (2) An applicant shall be entitled to take the licensure
 52 examination to practice in this state as a surveyor and mapper
 53 if the applicant is of good moral character and has satisfied
 54 one of the following requirements:
 55 (a) The applicant has received a bachelor's degree, its
 56 equivalent, or higher in surveying and mapping or a similarly
 57 titled program, including, but not limited to, geomatics,
 58 geomatics engineering, and land surveying, from a college or

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8-00352-21 20211342
 59 university recognized by the board and has a specific experience
 60 record of 2 4 or more years as a subordinate to a professional
 61 surveyor and mapper in the active practice of surveying and
 62 mapping, which experience is of a nature indicating that the
 63 applicant was in responsible charge of the accuracy and
 64 correctness of the surveying and mapping work performed. Work
 65 experience acquired as a part of the education requirement may
 66 not be construed as experience in responsible charge.
 67 (b) The applicant has received a bachelor's degree, its
 68 equivalent, or higher in a course of study, other than in
 69 surveying and mapping, at an accredited college or university
 70 and has a specific experience record of 2 6 or more years as a
 71 subordinate to a registered surveyor and mapper in the active
 72 practice of surveying and mapping, which experience is 5 years
 73 ~~of which shall be~~ of a nature indicating that the applicant was
 74 in responsible charge of the accuracy and correctness of the
 75 surveying and mapping work performed. The applicant must have
 76 completed a minimum of 25 semester hours from a college or
 77 university approved by the board in surveying and mapping
 78 subjects or in any combination of courses in civil engineering,
 79 surveying, mapping, mathematics, photogrammetry, forestry, or
 80 land law and the physical sciences. Any of the required 25
 81 semester hours of study completed not as a part of the
 82 bachelor's degree, its equivalent, or higher may be approved at
 83 the discretion of the board. Work experience acquired as a part
 84 of the education requirement may not be construed as experience
 85 in responsible charge.

86 (c) The applicant has received a 2-year associate of arts
 87 degree, or an equivalent 60 credit hours, and has a specified

Page 3 of 4

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8-00352-21 20211342
 88 experience record of 4 or more years as a subordinate to a
 89 professional surveyor and mapper in the active practice of
 90 surveying and mapping, which experience is of a nature
 91 indicating that the applicant was in responsible charge of the
 92 accuracy and correctness of the surveying and mapping work
 93 performed. Work experience acquired as a part of the education
 94 requirement may not be construed as experience in responsible
 95 charge.
 96 (d) The applicant has received a high school diploma, or
 97 the equivalent, and has a specified experience record of 6 or
 98 more years as a subordinate to a professional surveyor and
 99 mapper in the active practice of surveying and mapping, which
 100 experience is of a nature indicating that the applicant was in
 101 responsible charge of the accuracy and correctness of the
 102 surveying and mapping work performed. Work experience acquired
 103 as a part of the education requirement may not be construed as
 104 experience in responsible charge.
 105 (e) The applicant has proof of verifiable work experience
 106 in the active practice of surveying and mapping, which
 107 experience is of a nature indicating that the applicant was in
 108 responsible charge of the accuracy and correctness of the
 109 surveying and mapping work performed.

Section 3. This act shall take effect July 1, 2021.

Page 4 of 4

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



FLORIDA DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES
COMMISSIONER NICOLE "NIKKI" FRIED

February 24, 2021

Agency Affected: Dept. of Agriculture and Consumer Services

Telephone: 850-617-7000

Agency Contact: Emily Buckley, Legislative Affairs Director

Telephone: 850-617-7700

Senate Bill Number: 1342

Senate Bill Sponsor: Senator Perry

Bill Title: Licensure Requirements for Land Surveyors and Mappers

Effective Date: July 1, 2021

Similar Bill(s): Yes No

Similar Bill(s): HB 821: Licensure Requirements for Land Surveyors and Mappers by Rep. Mariano

Identical Bill: Yes No

Identical Bill:

1. SUMMARY

Authorizes foreign trained professionals to substitute specified lawful practice of the profession for the education requirement for examination; For non-foreign trained applicants it revises education requirements for taking licensure exams, creating an acceptable range from no high school or college degree to a four year degree along with applicable work experience; provides that specified work experience may be substituted for education requirements for taking licensure exams and includes an option that does not quantify how much work experience is required.

2. PRESENT SITUATION

Foreign trained professionals must have graduated with an appropriate college degree from a college or university and must have lawfully practiced the profession for at least three (3) years. Non foreign trained individuals applying to take the licensure examinations are required to have a bachelor's degree in surveying and mapping or in a similarly titled program and four (4) or more years of work experience under a licensed surveyor and must have been in responsible charge of the accuracy and correctness of the surveying work performed; OR must have a bachelor's degree in a course of study other than surveying and mapping and six (6) or more years of work experience under a licensed

surveyor and must have been in responsible charge of the accuracy and correctness of the surveying work performed. In addition, these applicants must have completed a minimum of 25 semester hours from a college or university approved by the board in surveying and mapping courses.

3. EFFECT OF PROPOSED CHANGES

In order to qualify to take the licensure exams, applicants would no longer need a college or high school diploma, and the work experience requirement would be significantly reduced. Most notably, s. 472.013(2)(e) does not include *any* education prerequisites, does not quantify the amount of experience required, and does not require such experience to have been acquired while properly licensed and otherwise acting in accordance with the laws of the relevant jurisdiction. This could result in applicants with little or no education and minimal work experience applying for testing and licensure in this state.

4. FISCAL IMPACT ON FDACS

Currently, the Florida Department of Agriculture and Consumer Services is unable to estimate a fiscal impact, if any, the proposed bill may have on the Department.

It is unknown if reduced requirements will lead to an increase in the number of licenses issued. If this was the case, licensing revenue could increase, and the Department may require additional resources to process applications.

	(FY 21-22) Amount/ FTE	(FY 22-23) Amount/ FTE	(FY 23-24) Amount/ FTE
A. Revenues			
Recurring			
Non-Recurring			
TOTAL REVENUES	N/A	N/A	N/A
B. Expenditures			
Recurring			
Non-Recurring			
TOTAL EXPENDITURES	N/A	N/A	N/A
C. NET TOTAL	N/A	N/A	N/A

5. IS THERE AN ESTIMATED FISCAL IMPACT ON LOCAL GOVERNMENT(s)?

No.

6. IS THERE AN ESTIMATED FISCAL IMPACT ON THE PRIVATE SECTOR?

No.

7. ARE THERE ESTIMATED TAXES, FEES, OR FINES ASSOCIATED WITH THE PROPOSED BILL? (If yes, please explain the impact in A and/or B below)

No.

A. Does the proposed bill create new or increase existing taxes, fees, or fines? If so, please explain.

B. Does the proposed bill repeal or decrease existing taxes, fees, or fines? If so, please explain.

C. DOES THE BILL DIRECT OR ALLOW THE DEPARTMENT TO DEVELOP, ADOPT, OR ELIMINATE RULES, REGULATIONS, POLICIES, OR PROCEDURES?

a. Yes: No:

b. If yes, please explain: The rules would have to be amended to change current education and work experience requirements.

8. DOES THE PROPOSED BILL REQUIRE THE DEPARTMENT TO PARTICIPATE IN OR PRODUCE ANY REPORTS OR STUDIES?

a. Yes: No:

b. If yes please explain:

9. ARE THERE ANY APPOINTMENTS, CREATION OF, OR CHANGES TO ANY BOARDS, TASK FORCES, COUNCILS, COMMISSIONS, ETC. THAT WILL IMPACT THE DEPARTMENT?

c. Yes: No:

d. If yes please explain:

LEGAL ISSUES

10. Does the proposed bill conflict with existing federal law or regulations that impact the department? If so, what laws and/or regulations?

No.

11. Does the proposed bill raise significant constitutional concerns under the U.S. or Florida Constitutions (e.g. separation of powers, access to the courts, equal protection, free speech, establishment clause, impairment of contracts) that impacts the department?

No.

12. Is the proposed bill likely to generate litigation for the department and, if so, from what interest groups or parties?

No.

COMMENTS:

THE FLORIDA SENATE

APPEARANCE RECORD

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

3-9-21

Meeting Date

SB1342

Bill Number (if applicable)

Topic College degree for surveyor license

Amendment Barcode (if applicable)

Name DAVID DAVIS

Job Title

Address 311 EAST PARK AVE

Phone 224-5081

Street

TALLAHASSEE

32301

FL

Email

City

State

Zip

Speaking: For

Against

Information

Waive Speaking: In Support

Against

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

Representing FLORIDA SURVEYING AND MAPPING SOCIETY

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.

YOU MUST PRINT AND DELIVER THIS FORM TO THE ASSIGNED TESTIMONY ROOM

THE FLORIDA SENATE

APPEARANCE RECORD

March 9, 2021

Meeting Date

SB 1342

Bill Number (if applicable)

Topic Survey Licensure Requirements

Amendment Barcode (if applicable)

Name Don Elder

Job Title _____

Address 109 E Garden St Suite A

Phone 850-324-9445

Street

Pensacola

32502

Email delder@pickettusa.com

City

FL

32502

Zip

Speaking: For Against

Information

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

Representing Pickett and Associates, Inc.

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/14/14)



The Florida Senate

Committee Agenda Request

To: Senator Travis Hutson, Chair
Committee on Regulated Industries

Subject: Committee Agenda Request

Date: February 25, 2021

I respectfully request that **Senate Bill #1342**, relating to Licensure Requirements for Land Surveyors and Mappers, be placed on the:

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

W. Keith Perry

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 Regulated Industries

BILL: CS/SB 1370

INTRODUCER: Regulated Industries Committee and Senator Rodriguez

SUBJECT: Medical Treatment of Animals

DATE: March 10, 2021

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Kraemer</u>	<u>Imhof</u>	<u>RI</u>	<u>CS/Fav</u>
2.	_____	_____	<u>AG</u>	_____
3.	_____	_____	<u>RC</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1370 revises the veterinarian practice act to authorize a veterinarian, consistent with the veterinarian's professional judgment, to establish a patient/client relationship with an animal and its owner remotely by telephone, audio-visual technology, or other means, and to treat and prescribe prescription drugs to the animal remotely without the requirement of a physical examination of the animal. The bill prohibits a veterinarian from prescribing controlled substances without a physical examination unless it is for inpatient treatment or hospice care.

The bill allows employees, agents, or contractors of an animal control authority to administer rabies vaccinations to impounded animals that will be transferred, rescued, fostered, adopted, or reclaimed by the owner. Such persons may administer rabies vaccinations under the indirect supervision of a veterinarian, who must be available for consultation, but need not be at the premises where the vaccinations are administered. Under the bill, the supervising veterinarian assumes responsibility for the veterinary care given to the animal by any person working under the veterinarian's direction and supervision.

According to the Department of Business and Professional Regulation, the bill has no fiscal impact on local or state government.¹

¹ See Department of Business and Professional Regulation, *2021 Agency Legislative Bill Analysis for HB 911* (identical to SB 1370, pp. 3-4 (Mar. 1, 2021) (on file with Senate Committee on Regulated Industries).

The bill is effective July 1, 2021.

II. Present Situation:

Veterinary Medicine, the Practice of Veterinary Medicine, and Exempted Persons

In 1979, the Legislature determined the practice of veterinary medicine is potentially dangerous to public health and safety if conducted by incompetent and unlicensed practitioners and that minimum requirements for the safe practice of veterinary medicine are necessary.² The Board of Veterinary Medicine (board) in the Department of Business and Professional Regulation (DBPR) implements the provisions of ch. 474, F.S., on Veterinary Medical Practice.³ A veterinarian is a health care practitioner licensed to engage in the practice of veterinary medicine in Florida under ch. 474, F.S.⁴

Veterinary medicine includes, with respect to animals:⁵

- Surgery;
- Acupuncture;
- Obstetrics;
- Dentistry;
- Physical therapy;
- Radiology;
- Theriogenology (reproductive medicine);⁶ and
- Other branches or specialties of veterinary medicine.

The practice of veterinary medicine is the diagnosis of medical conditions of animals, and the prescribing or administering of medicine and treatment to animals for the prevention, cure, or relief of a wound, fracture, bodily injury, or disease, or holding oneself out as performing any of these functions.⁷ Veterinarians who are incompetent or present a danger to the public are subject to discipline and may be prohibited from practicing in the state.⁸

Nine categories of persons are exempt from complying with ch. 474, F.S.:⁹

- Faculty veterinarians with assigned teaching duties at accredited¹⁰ institutions;

² See s. 474.201, F.S.

³ See ss. 474.204 through 474.2125, F.S., concerning the powers and duties of the board.

⁴ See s. 474.202(11), F.S.

⁵ See s. 474.202(13), F.S. Section 474.202(1), F.S., defines “animal” as “any mammal other than a human being or any bird, amphibian, fish, or reptile, wild or domestic, living or dead.”

⁶ The Society for Theriogenology, established in 1954, is composed of veterinarians dedicated to standards of excellence in animal reproduction. See <https://www.therio.org> (last visited Mar. 10, 2021).

⁷ See s. 474.202(9), F.S. Also included is the determination of the health, fitness, or soundness of an animal, and the performance of any manual procedure for the diagnosis or treatment of pregnancy, fertility, or infertility of animals.

⁸ See s. 474.213, F.S., on prohibited acts, and s. 474.214, F.S., on disciplinary proceedings.

⁹ See s. 474.203, F.S.

¹⁰ Sections 474.203(1) and (2), F.S., provide that accreditation of a school or college must be granted by the American Veterinary Medical Association (AVMA) Council on Education, or the AVMA Commission for Foreign Veterinary Graduates. The AVMA Council on Education is recognized by the Council for Higher Education Accreditation (CHEA) as the accrediting body for schools and programs that offer the professional Doctor of Veterinary Medicine degree (or its equivalent) in the United States and Canada, and may also approve foreign veterinary colleges. See <https://www.avma.org/professionaldevelopment/education/accreditation/colleges/pages/coe-pp-overview-of-the-coe.aspx>

- Intern/resident veterinarians at accredited institutions who are graduates of an accredited institution, but only until they complete or terminate their training;
- Students in a school or college of veterinary medicine who perform assigned duties by an instructor (no accreditation of the institution is required), or work as preceptors¹¹ (if the preceptorship is required for graduation from an accredited institution);
- Doctors of veterinary medicine employed by a state agency or the United States Government while actually engaged in the performance of official duties at the installations for which the services were engaged;
- Persons or their employees caring for the persons' own animals, as well as part-time or temporary employees, or independent contractors, who are hired by an owner to help with herd management and animal husbandry tasks (excluding immunization or treatment of diseases that are communicable to humans and significant to public health) for herd/flock animals, with certain limitations; however, the exemption is not available to a person licensed as a veterinarian in another state and temporarily practicing in Florida, or convicted of violating ch. 828, F.S., on animal cruelty, or of any similar offense in another jurisdiction, and employment may not be provided for the purpose of circumventing ch. 474, F.S.;
- Certain entities or persons¹² that conduct experiments and scientific research on animals as part of the development of pharmaceuticals, biologicals, serums, or treatment methods of treatment or techniques to diagnose or treatment of human ailments, or in the study and development of methods and techniques applicable to the practice of veterinary medicine;
- Veterinary aides, nurses, laboratory technicians, preceptors, or other employees of a licensed veterinarian, who administer medication or provide help or support under the responsible supervision¹³ of a licensed veterinarian;
- Certain non-Florida veterinarians who are licensed and actively practicing veterinary medicine in another state, are board certified in a specialty recognized by the Florida Board of Veterinary Medicine, and are assisting upon request of a Florida-licensed veterinarian to consult on the treatment of a specific animal or on the treatment on a specific case of the animals of a single owner; and
- Employees, agents, or contractors of public or private animal shelters, humane organizations, or animal control agencies operated by a humane organization, county, municipality, or incorporated political subdivision, whose work is confined solely to implanting radio

(last visited Mar. 10, 2021). The AVMA Commission for Foreign Veterinary Graduates assists graduates of foreign, non-accredited schools to meet the requirement of most states that such foreign graduates successfully complete an educational equivalency assessment certification program. *See*

<https://www.avma.org/professionaldevelopment/education/foreign/pages/ecfvg-about-us.aspx> (last visited Mar. 10, 2021). In turn, the Council for Higher Education Accreditation, a national advocate for regulation of academic quality through accreditation, is an association of degree-granting colleges and universities. *See* <http://chea.org/about> (last visited Mar. 10, 2021).

¹¹ A preceptor is a skilled practitioner or faculty member, who directs, teaches, supervises, and evaluates student in a clinical setting to allow practical experience with patients. *See*

<https://www.merriam-Webster.com/dictionary/preceptor#medicalDictionary> (last visited Mar. 10, 2021).

¹² *See* s. 474.203(6), F.S., which states that the exemption applies to “[s]tate agencies, accredited schools, institutions, foundations, business corporations or associations, physicians licensed to practice medicine and surgery in all its branches, graduate doctors of veterinary medicine, or persons under the direct supervision thereof”

¹³ The term “responsible supervision” is defined in s. 474.202(10), F.S., as the “control, direction, and regulation by a licensed doctor of veterinary medicine of the duties involving veterinary services” delegated to unlicensed personnel.

frequency identification device microchips in dogs and cats in accordance with s. 823.15, F.S.¹⁴

Veterinarian/Client/Patient Relationship

Section 474.202(12), F.S., defines a “veterinarian/client/patient relationship” as one in which a veterinarian has assumed responsibility for making medical judgments about the health of an animal and its need for medical treatment. The term “patient” means any animal “for which a veterinarian practices veterinary medicine.”¹⁵

The term “valid veterinarian-client-patient relationship” used in federal regulations issued by the federal Food and Drug Administration (FDA), a component of the United State Department of Health and Human Services, is similar to the term defined in s. 474.202(12), F.S.¹⁶

The FDA temporarily suspended the enforcement of portions of the federal veterinarian-client-patient relationship (VCPR) requirements under the FDA regulations. The FDA noted that “[t]he VCPR is the professional relationship between the veterinarian, client (e.g., animal owner or caretaker), and the animal patient(s).”¹⁷ The federal VCPR definition requires that veterinarians physically examine animal patients and make medically appropriate and timely visits to the location where the animals are kept.¹⁸ The FDA indicated that it would not be enforcing the animal examination and premises visit VCPR requirements involving the FDA regulations governing Extralabel Drug Use in Animals and Veterinary Feed Directive drugs (VFD).¹⁹ This change would allow veterinarians to prescribe drugs in an Extralabel manner or authorize the use of VFD drugs without direct emanation or visiting the patients.²⁰

The FDA warned that even though the federal requirements were suspended, veterinarians still needed to consider state VCPR requirements.²¹

Requirements for Prescribing Medicinal Drugs and Controlled Substances

Section 474.214(1)(y), F.S., sets forth the acts that may subject a veterinarian to disciplinary proceedings, related to the prescribing of drugs. A veterinarian may not order, prescribe, or make available medicinal drugs or drugs commonly known as “prescription” or “legend” drugs which are required by federal or state law to be dispensed only on a prescription, or controlled substances as defined in ch. 893, F.S.,²² for use other than for the specific treatment of animal patients for which there is a documented veterinarian/client/patient relationship. The veterinarian must:

¹⁴ See s. 823.15(5), F.S., which authorizes such persons to perform microchipping of dogs and cats.

¹⁵ See s. 474.202(8), F.S.

¹⁶ See 21 C.F.R. s. 530.3 <https://www.accessdata.fda.gov/scripts/cdrh/cfdocs/cfcfr/CFRSearch.cfm?fr=530.3>.

¹⁷ See *Coronavirus (COVID-19) Update: FDA Helps Facilitate Veterinary Telemedicine During Pandemic*, FDA News Release, March 24, 2020 available at [Coronavirus \(COVID-19\) Update: FDA Helps Facilitate Veterinary Telemedicine During Pandemic | FDA](#) (last visited Mar. 10, 2021).

¹⁸ *Id.*

¹⁹ *Id.* See 21 C.F.R. s. 530 and 21 C.F.R. part 558.

²⁰ *Id.*

²¹ *Id.*

²² See s. 893.03, F.S., for the listing of controlled substances regulated under Florida law.

- Have sufficient knowledge of the animal to initiate at least a general or preliminary diagnosis of the animal's medical condition, meaning the veterinarian is personally acquainted with the keeping and caring of the animal and has recently seen the animal or has made medically appropriate and timely visits to the premises where the animal is kept;
- Be available or provide for follow up care and treatment if there are adverse reactions or the regimen of therapy fails; and
- Maintain documentation of patient visits, diagnosis, treatment, and other relevant information required under the veterinary practice act, ch. 474, F.S.²³

Rabies Vaccinations

In Florida, all dogs, cats, and ferrets²⁴ four months of age or older must be vaccinated against rabies at the expense of their owners by a licensed veterinarian.²⁵ Rabies is a fatal but preventable viral disease that can spread to people and pets bitten or scratched by a rabid animal.²⁶ According to the Centers for Disease Control and Prevention (CDC), a component of the United States Department of Health and Human Services, most rabies deaths in people around the world are caused by dog bites.²⁷ Because of laws in the United States requiring dogs to be vaccinated for rabies, dogs make up only about one percent of rabid animals reported nationally each year.²⁸

Rabies vaccines are licensed by the United States Department of Agriculture, and revaccinations are required 12 months after the initial vaccine.²⁹ Thereafter, the interval between vaccinations is set by the vaccine manufacturer.³⁰

A dog, cat, or ferret is exempt from vaccination against rabies if a licensed veterinarian has examined the animal and certified that vaccination at that time would endanger the animal's health because of its age, infirmity, disability, illness, or other medical considerations; however, an exempt animal must be vaccinated against rabies as soon as its health permits.³¹

After administering a rabies vaccination, the licensed veterinarian must provide a certificate to the animal's owner and the animal control authority, using the "Rabies Vaccination Certificate" of the National Association of State Public Health Veterinarians (NASPHV), or an equivalent form approved by the local government that contains the same information as the NASPHV certificate.³² A signature stamp may be used in lieu of the veterinarian's actual signature.

²³ See s. 474.214(1)(y), F.S.

²⁴ Ferrets that are vaccinated as required must be quarantined when necessary, in accordance with administrative rules of the Florida Department of Health. See s. 828.30(4), F.S., and Fla. Admin. Code R. 64D-3.040.

²⁵ See s. 828.30, F.S.

²⁶ See <https://www.cdc.gov/rabies/index.html> (last visited Mar. 10, 2021). In the United States, rabies is mostly found in wild animals like bats, raccoons, skunks, and foxes. *Id.*

²⁷ *Id.*

²⁸ *Id.*

²⁹ See s. 828.30(1), F.S.

³⁰ *Id.* Evidence of rabies antibodies may not be substituted for a current vaccination in managing rabies exposure or determining the need for booster vaccinations.

³¹ See s. 828.30(2), F.S.

³² See s. 828.30(3), F.S.

An animal owner's name, street address, phone number, and animal tag number in a rabies vaccination certificate provided to an animal control authority is a public record exempt from the inspection and copying requirements of s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution.³³ However, all information in a rabies vaccination certificate for a particular animal biting, scratching, or otherwise causing exposure, may be provided to a:

- Person who has been bitten, scratched, or otherwise exposed to a disease such as rabies that spreads between animals and people (zoonotic disease),³⁴ or that person's physician;
- Veterinarian treating an animal that has been bitten, scratched, or otherwise exposed to a zoonotic disease; or
- The owner of an animal that has been bitten, scratched, or otherwise exposed to a zoonotic disease.³⁵

In addition, any person with an animal tag number may receive vaccination certificate information with regard to that animal. The following entities must be provided the information in rabies vaccination certificates for the purpose of controlling the transmission of rabies, but may not release the exempt information to third parties:

- Law enforcement and prosecutorial agencies;
- Other animal control authorities;
- Emergency and medical response and disease control agencies; or
- Other governmental health agencies.³⁶

Release of exempt information contained in a rabies vaccine certificate is a civil infraction that could subject those cited for a violation to a civil penalty of up to \$500.³⁷

Municipalities and counties are not prohibited from establishing similar or more stringent requirements than those described above for rabies control ordinances; however, local governments may not mandate revaccination of currently vaccinated animals except in instances involving treatment for rabies after an exposure.³⁸

III. Effect of Proposed Changes:

Section 1 amends s. 474.202(12), F.S., to provide that a "veterinarian/client/patient relationship" may be established in person or by veterinary telemedicine, if audio-visual technology is used. Under the bill, a physical examination is not required before a veterinarian may assume responsibility for making medical judgments or providing treatment, provided the relationship is established either in person or by audio-visual technology. Section 474.202(14), F.S., defines the term "veterinary telemedicine" as the practice of veterinary medicine in a remote setting, through

³³ See s. 828.30(5), F.S.

³⁴ See information from the CDC about zoonotic diseases that are caused by germs that spread between animals and people at <https://www.cdc.gov/onehealth/basics/zoonotic-diseases.html#:~:text=Zoonotic%20means%20infectious%20diseases%20that%20are%20spread%20between,lives,%20both%20at%20home%20and%20away%20from%20home> (last visited Mar. 10, 2021).

³⁵ See s. 828.30(5), F.S.

³⁶ *Id.*

³⁷ See s. 828.30(6), F.S., and s. 828.27(2), F.S., authorizing the governing body of a county or municipality to enact ordinances relating to animal control or cruelty, and setting forth requirements for penalties, citations, and related procedures.

³⁸ See s. 828.30(7), F.S.

the use of telephone, audio-visual technology, or other means consistent with the veterinarian's professional judgment; however, the veterinarian/client/patient relationship must be established in person or by audio-visual technology.

Section 2 creates s. 474.2021, F.S., which:

- Authorizes veterinarians with a current Florida license to practice veterinary telemedicine;
- Prohibits the prescribing of controlled substances if the veterinary/client/patient relationship has been established remotely, without a previous physical examination by the veterinarian, unless the prescribing is for:
 - Inpatient treatment at an animal clinic or hospital; or
 - Treatment of a patient receiving hospice services;
- Provides the Florida Board of Veterinary Medicine has jurisdiction of veterinarians practicing veterinary telemedicine in Florida, regardless of the veterinarian's physical office location; and
- Provides the practice of veterinary telemedicine in accordance with this section is not a standard of care violation, and a veterinarian may not be disciplined solely for practicing veterinary telemedicine.

Section 3 amends s. 474.203(5)(a), F.S., to create an exception to the requirement that only a veterinarian may immunize or treat an animal for diseases that are communicable to people and that are significant to public health. The exception, limited to the administration of rabies vaccinations under specific conditions, is discussed in **Section 5** below.

Section 4 removes the requirement in s. 474.214(1)(y), F.S., that a veterinarian be "personally" acquainted with an animal's care and have recently seen the animal or made medically appropriate and timely visits to the premises where the animal is kept.

Section 5 amends s. 828.30, F.S., to allow employees, agents, or contractors of an animal control authority to administer rabies vaccinations to impounded animals that will be transferred, rescued, fostered, adopted, or reclaimed by the owner.

However, persons eligible to administer rabies vaccinations in this limited circumstance must be acting under a veterinarian's indirect supervision. The bill provides the term "indirect supervision," means the supervising veterinarian is available for consultation by telecommunications,³⁹ but is not required to be on the premises during the consultation. In addition, the supervising veterinarian assumes responsibility for the veterinary care given to the animal by any person working under the direction and supervision of the veterinarian.

The bill includes technical drafting changes and conforming changes.

The bill is effective July 1, 2021.

³⁹ The term "telecommunications" is not defined in the bill, but Florida's Information Technology Management Act, part I of ch. 282, F.S., related to Communications and Data Processing (ss. 282.003 to 283.318, F.S.), defines that term to mean "the science and technology of communication at a distance, including electronic systems used in the transmission or reception of information." See s. 282.0041(35), F.S.

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:

Animal owners may be able to obtain care for an animal from a veterinarian by establishing a veterinarian/client/patient relationship by telephone or other means offered with the veterinarian's professional judgment, and a physical examination is not required. A veterinarian need not be personally acquainted with the animal's care, have recently seen the animal, or make visits to a site where the animal is kept. These new practices may improve availability, timeliness, and expense associated with veterinary care in circumstances deemed appropriate by the veterinarian, who must assume responsibility for making medical judgments or providing treatment.

Certain rabies vaccinations may be administered by employees, agents, or contractors of an animal control authority to impounded animals that will be transferred, rescued, fostered, adopted, or reclaimed by the owner. This vaccination method may allow vaccination of impounded animals to occur more quickly and reduce costs to animal control authorities.

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: 474.202, 474.203, 474.214, and 828.30.

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 Regulated Industries Committee on March 9, 2021:**

The committee substitute:

- Provides the term “veterinary telemedicine” means the practice of veterinary medicine in a remote setting, through the use of audio-visual technology or telephone;
- Authorizes veterinarians with a current Florida license to practice veterinary telemedicine;
- Prohibits the prescribing of controlled substances if the veterinary/client/patient relationship was established remotely, without a previous physical examination by the veterinarian, unless the prescribing is for:
 - Inpatient treatment at an animal clinic or hospital; or
 - Treatment of a patient receiving hospice services;
- Provides the Florida Board of Veterinary Medicine has jurisdiction of veterinarians practicing veterinary telemedicine in Florida, regardless of the location of the veterinarian’s physical office; and
- Provides the practice of veterinary telemedicine in accordance with this section is not a standard of care violation, and a veterinarian may not be disciplined solely for practicing veterinary telemedicine.

B. Amendments:

None.



963556

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/09/2021	.	
	.	
	.	
	.	

The Committee on Regulated Industries (Rodriguez) recommended the following:

Senate Amendment (with directory and title amendments)

Delete lines 31 - 35
and insert:
relationship may be established in person or by means of
veterinary telemedicine if audio-visual technology is used to
establish such relationship. A physical examination is not
required for the veterinarian to assume responsibility for
making medical judgments or providing treatment.

(14) "Veterinary telemedicine" means the practice of



963556

11 veterinary medicine in a remote setting, including through the
12 use of telephone or audio-visual technology or by other means
13 consistent with the veterinarian's professional judgment, as
14 long as the veterinarian/client/patient relationship is
15 established either in person or by audio-visual technology.

16 Section 2. Section 474.2021, Florida Statutes, is created
17 to read:

18 474.2021 Veterinary telemedicine.—

19 (1) A veterinarian may practice veterinary telemedicine.

20 (2) A veterinarian may not prescribe controlled substances
21 if the veterinarian/client/patient relationship has been
22 established remotely under this section and the veterinarian has
23 not previously performed a physical examination, unless the
24 controlled substance is prescribed for the following:

25 (a) Inpatient treatment at an animal clinic or hospital; or

26 (b) The treatment of a patient receiving hospice services.

27 (3) A veterinarian must hold a current license to practice
28 veterinary medicine in this state in order to practice
29 veterinary telemedicine.

30 (4) The board has jurisdiction over a veterinarian
31 practicing veterinary telemedicine in this state, regardless of
32 where the veterinarian's physical offices are located. The
33 practice of veterinary telemedicine in accordance with this
34 section is not a standard of care violation, and a veterinarian
35 may not be disciplined solely for practicing veterinary
36 telemedicine.

37
38 ===== D I R E C T O R Y C L A U S E A M E N D M E N T =====

39 And the directory clause is amended as follows:



963556

40 Delete line 25
41 and insert:
42 Statutes, is amended, and subsection (14) is added to that
43 section, to read:
44
45 ===== T I T L E A M E N D M E N T =====
46 And the title is amended as follows:
47 Between lines 4 and 5
48 insert:
49 defining the term "veterinary telemedicine"; creating
50 s. 474.2021, F.S.; authorizing veterinarians to
51 practice veterinary telemedicine; prohibiting
52 veterinarians from prescribing controlled substances;
53 providing exceptions; providing licensure requirements
54 to practice veterinary telemedicine; providing
55 jurisdiction of the Florida Board of Veterinary
56 Medicine; providing construction;

By Senator Rodriguez

39-00805A-21 20211370

1 A bill to be entitled
 2 An act relating to the medical treatment of animals;
 3 amending s. 474.202, F.S.; revising the definition of
 4 the term "veterinarian/client/patient relationship";
 5 amending s. 474.203, F.S.; revising exceptions to who
 6 may immunize or treat an animal for certain diseases;
 7 amending s. 474.214, F.S.; revising grounds for
 8 disciplinary action against a veterinarian; amending
 9 s. 828.30, F.S.; authorizing employees, agents, or
 10 contractors of animal control authorities to
 11 administer rabies vaccinations under certain
 12 circumstances; providing that a supervising
 13 veterinarian assumes responsibility for any person
 14 working at his or her discretion or under his or her
 15 supervision; defining the term "indirect supervision";
 16 providing requirements; authorizing a veterinarian who
 17 indirectly supervises the administration of the rabies
 18 vaccination to affix his or her signature stamp on a
 19 rabies vaccination certificate; providing an effective
 20 date.
 21
 22 Be It Enacted by the Legislature of the State of Florida:
 23
 24 Section 1. Subsection (12) of section 474.202, Florida
 25 Statutes, is amended to read:
 26 474.202 Definitions.—As used in this chapter:
 27 (12) "Veterinarian/client/patient relationship" means a
 28 relationship where the veterinarian has assumed the
 29 responsibility for making medical judgments regarding the health

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30 of the animal and its need for medical treatment. Such
 31 relationship may be established in person, by telephone, or by
 32 other means consistent with the individual veterinarian's
 33 professional judgment. A physical examination is not required
 34 for the veterinarian to assume responsibility for making medical
 35 judgments or providing treatment.
 36 Section 2. Paragraph (a) of subsection (5) of section
 37 474.203, Florida Statutes, is amended to read:
 38 474.203 Exemptions.—This chapter does not apply to:
 39 (5)(a) Any person, or the person's regular employee,
 40 administering to the ill or injuries of her or his own animals,
 41 including, but not limited to, castration, spaying, and
 42 dehorning of herd animals, unless title is transferred or
 43 employment provided for the purpose of circumventing this law.
 44 This exemption does not apply to any person licensed as a
 45 veterinarian in another state or foreign jurisdiction and
 46 practicing temporarily in this state. However, except as
 47 provided in s. 828.30, only a veterinarian may immunize or treat
 48 an animal for diseases that are communicable to humans and that
 49 are of public health significance.
 50
 51 For the purposes of chapters 465 and 893, persons exempt
 52 pursuant to subsection (1), subsection (2), or subsection (4)
 53 are deemed to be duly licensed practitioners authorized by the
 54 laws of this state to prescribe drugs or medicinal supplies.
 55 Section 3. Paragraph (y) of subsection (1) of section
 56 474.214, Florida Statutes, is amended to read:
 57 474.214 Disciplinary proceedings.—
 58 (1) The following acts shall constitute grounds for which

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59 the disciplinary actions in subsection (2) may be taken:

60 (y) Using the privilege of ordering, prescribing, or making
 61 available medicinal drugs or drugs as defined in chapter 465, or
 62 controlled substances as defined in chapter 893, for use other
 63 than for the specified treatment of animal patients for which
 64 there is a documented veterinarian/client/patient relationship.

65 Pursuant ~~thereeto~~. The veterinarian shall:

66 1. Have sufficient knowledge of the animal to initiate at
 67 least a general or preliminary diagnosis of the medical
 68 condition of the animal, which means that the veterinarian is
 69 personally acquainted with the keeping and caring of the animal
 70 and ~~has recently seen the animal or has made medically~~
 71 ~~appropriate and timely visits to the premises where the animal~~
 72 ~~is kept.~~

73 2. Be available or provide for followup care and treatment
 74 in case of adverse reactions or failure of the regimen of
 75 therapy.

76 3. Maintain records which document patient visits,
 77 diagnosis, treatment, and other relevant information required
 78 under this chapter.

79 Section 4. Subsections (1) and (3) of section 828.30,
 80 Florida Statutes, are amended to read:

81 828.30 Rabies vaccination of dogs, cats, and ferrets.—

82 (1)(a) Except as provided in paragraph (b), all dogs, cats,
 83 and ferrets 4 months of age or older must be vaccinated by a
 84 licensed veterinarian against rabies with a vaccine that is
 85 licensed by the United States Department of Agriculture for use
 86 in those species.

87 (b) An employee, agent, or contractor of an animal control

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88 authority acting under the indirect supervision of a
 89 veterinarian may vaccinate impounded animals that will be
 90 transferred, rescued, fostered, adopted, or reclaimed by the
 91 owner. As used in this subsection, the term "indirect
 92 supervision," means that the supervising veterinarian is
 93 available for consultation by telecommunications but is not
 94 required to be on the premises during such consultation. The
 95 supervising veterinarian assumes responsibility for the
 96 veterinary care given to the animal by any person working under
 97 or at his or her direction and supervision.

98 (c) The owner of every dog, cat, and ferret shall have the
 99 animal revaccinated 12 months after the initial vaccination.
 100 Thereafter, the interval between vaccinations shall conform to
 101 the vaccine manufacturer's directions. The cost of vaccination
 102 must be borne by the animal's owner. Evidence of circulating
 103 rabies virus neutralizing antibodies may ~~shall~~ not be used as a
 104 substitute for current vaccination in managing rabies exposure
 105 or determining the need for booster vaccinations.

106 (3) Upon vaccination against rabies, the licensed
 107 veterinarian shall provide the animal's owner and the animal
 108 control authority with a rabies vaccination certificate. Each
 109 animal control authority and veterinarian shall use the "Rabies
 110 Vaccination Certificate" of the National Association of State
 111 Public Health Veterinarians (NASPHV) or an equivalent form
 112 approved by the local government that contains all the
 113 information required by the NASPHV Rabies Vaccination
 114 Certificate. The veterinarian who administers the rabies
 115 vaccination, or who supervises an employee, agent, or contractor
 116 of an animal control authority administering the rabies

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

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117 vaccination. ~~veeine~~ to an animal as required under this section
118 may affix his or her signature stamp in lieu of an actual
119 signature.

120 Section 5. This act shall take effect July 1, 2021.



ANALYSIS

2021 AGENCY LEGISLATIVE BILL

AGENCY: Department of Business & Professional Regulation

<u>BILL INFORMATION</u>	
BILL NUMBER:	<u>HB 911</u>
BILL TITLE:	<u>Medical Treatment of Animals</u>
BILL SPONSOR:	<u>Rep. Buchanan</u>
EFFECTIVE DATE:	<u>July 1, 2021</u>

<u>COMMITTEES OF REFERENCE</u>
1) Regulatory Reform Subcommittee
2) Commerce Committee
3) Click or tap here to enter text.
4) Click or tap here to enter text.
5) Click or tap here to enter text.

<u>CURRENT COMMITTEE</u>
Regulatory Reform Subcommittee

<u>SIMILAR BILLS</u>	
BILL NUMBER:	N/A
SPONSOR:	N/A

<u>PREVIOUS LEGISLATION</u>	
BILL NUMBER:	N/A
SPONSOR:	N/A
YEAR:	N/A
LAST ACTION:	N/A

<u>IDENTICAL BILLS</u>	
BILL NUMBER:	SB 1370
SPONSOR:	Sen. Rodriguez

<u>Is this bill part of an agency package?</u>
No

<u>BILL ANALYSIS INFORMATION</u>	
DATE OF ANALYSIS:	March 1, 2021
LEAD AGENCY ANALYST:	Ruthanne Christie, Executive Director
ADDITIONAL ANALYST(S):	Tom Coker, Technology Tracy Dixon, Service Operations Jake Whealdon, Acting OGC Rules Jerry Wilson, Division of Regulation
LEGAL ANALYST:	Crystal Stephens, Chief Attorney – Professions

	Alison A. Parker, Deputy General Counsel – Administration // Acting DGC Professions
FISCAL ANALYST:	Raleigh Close, Administration

POLICY ANALYSIS

1. EXECUTIVE SUMMARY

The Department of Business and Professional Regulation regulates the practice of Veterinary Medicine under ch. 474, F.S. The bill adds and amends definitions in s. 474.202, F.S., to revise the definition of “veterinarian/client/patient relationship”.

The bill amends the disciplinary proceedings in s. 474.214(1)(y), F.S., regarding prescribing drugs.

The bill also revises provisions of s. 828.30, F.S., regarding rabies vaccinations of dogs, cats and ferrets.

2. SUBSTANTIVE BILL ANALYSIS

1. PRESENT SITUATION:

Section 474.202(12), F.S., defines “veterinarian/client/patient relationship”, and is a standard used in determining disciplinary action. A valid VCPR is required for a veterinarian to assume responsibility for the care and treatment of animal. It is currently a violation of the statute for a veterinarian to prescribe drugs and controlled substances for any animal with which they do not have a documented veterinary/client/patient relationship, which includes having recently seen the animal per s. 474.214(1)(y), F.S.

A federal veterinary/client/patient relationship is also required per 21 CFR §530.3(i) for issuance of veterinary feed directives for the use of certain drugs in animal feed and includes:

21 CFR §530.3(i) (i) A valid veterinarian-client-patient relationship is one in which:

(3) The practicing veterinarian is readily available for follow-up in case of adverse reactions or failure of the regimen of therapy. Such a relationship can exist only when the veterinarian has recently seen and is personally acquainted with the keeping and care of the animal(s) by virtue of examination of the animal(s), and/or by medically appropriate and timely visits to the premises where the animal(s) are kept.

Section 828.30, F.S., requires rabies vaccination of all dogs, cats and ferrets over 4 months old by a licensed veterinarian.

2. EFFECT OF THE BILL:

Veterinarian/Client/Patient Relationship

The bill amends the current definition of “veterinarian/client/patient relationship” (VCPR) in s. 474.202, F.S., to permit the relationship to be established by telephone or other means within the veterinarian’s professional judgment and states a physical examination is not required.

The bill also amends s. 474.214(1)(y), F.S., to remove the prohibition for preventing veterinarians from prescribing drugs and controlled substances to patients they have never seen in person.

The bill creates a provision in s. 828.30, F.S., to allow animal control employees to vaccinate for rabies under the “indirect supervision” of a veterinarian and states that “indirect supervision” means available for consultation by phone and permits the veterinarian to sign rabies vaccination certificates when vaccinations are performed in this manner.

3. DOES THE BILL DIRECT OR ALLOW THE AGENCY/BOARD/COMMISSION/DEPARTMENT TO DEVELOP, ADOPT, OR ELIMINATE RULES, REGULATIONS, POLICIES, OR PROCEDURES? Y N

If yes, explain:	N/A
------------------	-----

Is the change consistent with the agency's core mission?	Y <input type="checkbox"/> N <input type="checkbox"/>
Rule(s) impacted (provide references to F.A.C., etc.):	N/A

4. WHAT IS THE POSITION OF AFFECTED CITIZENS OR STAKEHOLDER GROUPS?

Proponents and summary of position:	Unknown
Opponents and summary of position:	Unknown

5. ARE THERE ANY REPORTS OR STUDIES REQUIRED BY THIS BILL?Y N

If yes, provide a description:	N/A
Date Due:	N/A
Bill Section Number(s):	N/A

6. ARE THERE ANY NEW GUBERNATORIAL APPOINTMENTS OR CHANGES TO EXISTING BOARDS, TASK FORCES, COUNCILS, COMMISSIONS, ETC. REQUIRED BY THIS BILL?Y N

Board:	N/A
Board Purpose:	N/A
Who Appoints:	N/A
Changes:	N/A
Bill Section Number(s):	N/A

FISCAL ANALYSIS

1. DOES THE BILL HAVE A FISCAL IMPACT TO LOCAL GOVERNMENT?Y N

Revenues:	N/A
Expenditures:	N/A
Does the legislation increase local taxes or fees? If yes, explain.	N/A
If yes, does the legislation provide for a local referendum or local governing body public vote prior to implementation of the tax or fee increase?	N/A

2. DOES THE BILL HAVE A FISCAL IMPACT TO STATE GOVERNMENT?

Y N

Revenues:	N/A
Expenditures:	N/A
Does the legislation contain a State Government appropriation?	N/A
If yes, was this appropriated last year?	N/A

3. DOES THE BILL HAVE A FISCAL IMPACT TO THE PRIVATE SECTOR?

Y N

Revenues:	N/A
Expenditures:	N/A
Other:	N/A

4. DOES THE BILL INCREASE OR DECREASE TAXES, FEES, OR FINES?

Y N

If yes, explain impact.	N/A
Bill Section Number:	N/A

TECHNOLOGY IMPACT

1. DOES THE BILL IMPACT THE AGENCY'S TECHNOLOGY SYSTEMS (I.E. IT SUPPORT, LICENSING SOFTWARE, DATA STORAGE, ETC.)?
Y N

If yes, describe the anticipated impact to the agency including any fiscal impact.	N/A
--	-----

FEDERAL IMPACT

1. DOES THE BILL HAVE A FEDERAL IMPACT (I.E. FEDERAL COMPLIANCE, FEDERAL FUNDING, FEDERAL AGENCY INVOLVEMENT, ETC.)?
Y N

If yes, describe the anticipated impact including any fiscal impact.	N/A
--	-----

ADDITIONAL COMMENTS

Professions: This change will allow for the practice of “telemedicine” in veterinary medicine in the state of Florida. The bill does not establish guidelines for this area of practice nor does it give the Board rule making authority to establish such guidelines. Chapter 474.215, F.S., has guidelines for brick and mortar practices, house calls, mobile, agricultural and limited service practices.

The bill does not address issues that may be unique in telemedicine such as jurisdiction over out of state practitioners, confidentiality and production of medical records, standards for medical records and availability of in-person follow-up care.

The bill does not provide guidelines for establishing client/patient identity or preventing possible abuse of controlled substances.

The language in the bill will put Florida’s definition of a “veterinarian/client/patient relationship” in conflict with the Federal definition which specifically states the veterinarian must have recently seen and be personally acquainted with the keeping and care of the animal.

DSO: No impact.

OGC Rules: No additional comments.

Regulation: Can handle any additional complaints with existing staff.

LEGAL - GENERAL COUNSEL'S OFFICE REVIEW

Issues/concerns/comments:

OGC: No additional comments.



The Florida Senate

Committee Agenda Request

To: Senator Travis Hutson, Chair
Committee on Regulated Industries

Subject: Committee Agenda Request

Date: March 3, 2021

I respectfully request that **Senate Bill #1370**, relating to Medical Treatment of Animals, be placed on the:

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

A handwritten signature in black ink, appearing to read "Ana Maria Rodriguez".

Senator Ana Maria Rodriguez
Florida Senate, District 39

YOU MUST PRINT AND DELIVER THIS FORM TO THE ASSIGNED TESTIMONY ROOM

THE FLORIDA SENATE

APPEARANCE RECORD

3/9/21

Meeting Date

1370

Bill Number (if applicable)

Topic Medical Treatment of Animals

Amendment Barcode (if applicable)

Name Corinne Mixon

Job Title Government Consultant

Address 511 N. Adams St.

Phone 8507665795

Street

Tallahassee

City

fl

State

32301

Zip

Email corinne@rutledge-ecenia.com

Speaking: For

Against

Information

In Support

Against

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

Representing ASPCA

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)

3/9/21
Meeting Date

1370

Bill Number (if applicable)

Topic Vet Medicine

Amendment Barcode (if applicable)

Name CHRISTIAN CAWADA

Job Title _____

Address PO Box 122

Phone 305 608 4300

Street TALLAHASSEE FL 32302

Email CHRISTIAN@CAWADACONSULTANTSFL.COM

City _____ State _____ Zip _____

Speaking: For Against Information

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

Representing INSTITUTE FOR JUSTICE

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

The Florida Senate
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 Regulated Industries

BILL: SB 1592

INTRODUCER: Senators Burgess and Diaz

SUBJECT: Broadband Internet Infrastructure

DATE: March 8, 2021

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Imhof</u>	<u>Imhof</u>	<u>RI</u>	Favorable
2.	_____	_____	<u>FT</u>	_____
3.	_____	_____	<u>AP</u>	_____

I. Summary:

SB 1592 provides that the act may be cited as the “Florida Broadband Deployment Act of 2021.”

The bill exempts from the sales and use tax the purchase, lease, or sale of equipment used by providers of communication services or Internet access services, as defined in the bill. The bill also provides that the Department of Revenue (DOR) may develop rules to administer the exemption.

The bill provides a procedure for access by broadband providers for attachments to utility poles of municipal electric utilities. It provides for the adoption of rates, terms, and conditions for the access to the poles consistent with federal requirements for pole attachments.

It provides for determination of costs for attachments and replacement of utility poles. It prohibits municipal electric utilities from preventing broadband providers from using certain techniques and equipment in the installation of attachments which are done in accordance with established safety standards. The bill prevents municipal electric utilities from requiring a broadband provider to comply with pole attachment specifications that exceed existing codes standards.

It provides for procedures for attachment agreements and court review.

The bill has an effective date of July 1, 2021.

II. Present Situation:

Florida Sales and Use Tax

Florida levies a six percent sales and use tax on the sale or rental of most tangible personal property, admissions,¹ transient rentals,² rental of commercial real estate,³ and a limited number of services. Chapter 212, F.S., contains statutory provisions authorizing the levy and collection of Florida's sales and use tax, as well as the exemptions and credits applicable to certain items or uses under specified circumstances. There are currently more than 260 exemptions, exclusions, deductions, and credits from the sales and use tax.⁴ Sales tax is added to the price of the taxable good or service and collected from the purchaser at the time of sale.⁵

In addition to the state tax, s. 212.055, F.S., authorizes counties to impose nine local discretionary sales surtaxes. A surtax applies to "all transactions occurring in the county which transactions are subject to the state tax imposed on sales, use, services, rental, admissions, and other transactions by [ch. 212, F.S.], and communications services as defined in ch. 202, F.S."⁶ The discretionary sales surtax is based on the tax rate imposed by the county where the taxable goods or services are sold, or are delivered into. Discretionary sales surtax rates currently levied vary by county in a range from 0.5 percent to 2 percent.⁷

Electric Utilities

Investor-Owned Electric Utilities Companies

There are five investor-owned electric utility companies in Florida: Florida Power & Light Company, Duke Energy Florida, Tampa Electric Company, Gulf Power Company, and Florida Public Utilities Corporation.⁸ Investor-owned electric utility rates and revenues are regulated by the Florida Public Service Commission.⁹ Accordingly, these utilities must file periodic earnings reports, either monthly, quarterly, or semi-annually, depending upon each company's size. These more frequent company filings allow the PSC to monitor earnings levels on an ongoing basis and adjust customer rates quickly if a company appears to be overearning.¹⁰

Municipally Owned Electric Utilities

A municipal electric utility is an electric utility system owned or operated by a municipality engaged in serving residential, commercial or industrial customers, usually within the boundaries

¹ Section 212.04, F.S.

² Section 212.03, F.S.

³ Section 212.031, F.S.

⁴ See Office of Economic and Demographic Research, The Florida Legislature, *Florida Tax Handbook*, pp. 166-171 (2020), available at <http://edr.state.fl.us/content/revenues/reports/tax-handbook/taxhandbook2020.pdf> (last visited Mar. 7, 2021).

⁵ Florida Dept. of Revenue, *Who must pay tax? Partial list of taxable business activities*, available at http://dor.myflorida.com/dor/taxes/sales_tax.html (last visited Mar. 7, 2021).

⁶ Section 212.054, F.S.

⁷ See Office of Economic and Demographic Research, The Florida Legislature, *County Tax Rates: CY 2007-2021*, available at <http://edr.state.fl.us/Content/local-government/data/data-a-to-z/g-l.cfm> (last visited Mar. 7, 2021).

⁸ *Id.*

⁹ Florida Department of Agriculture and Consumer Services, *Electric Utilities*, <https://www.fdacs.gov/Energy/Florida-Energy-Clearinghouse/Electric-Utilities> (last visited Mar. 7, 2021).

¹⁰ Florida Public Service Commission, *2020 FPSC Annual Report*, available at <http://www.psc.state.fl.us/Files/PDF/Publications/Reports/General/Annualreports/2020.pdf> (last visited Mar. 7, 2021).

of the municipality.¹¹ Municipally owned utility rates and revenues are regulated by their city commission.¹² As noted above, the PSC does have limited jurisdiction over municipally owned electric utilities.¹³ In total there are 34 municipal electric companies in Florida.¹⁴ Most municipal electric utilities are represented by the Florida Municipal Electric Association which serves over three million Floridians.¹⁵

Broadband Internet

In 1978, Congress passed the Pole Attachment Act, which added Section 224 to the Communications Act of 1934, to require the Federal Communications Commission (FCC) to establish rates for pole attachments.¹⁶ Under the law, public power and rural electric cooperative utilities were exempted from this requirement.¹⁷ The term “utility” is defined as:

[A]ny person whose rates or charges are regulated by the Federal Government or a State and who owns or controls poles, ducts, conduits, or rights-of-way used, in whole or in part, for wire communication. Such term does not include any railroad, any person who is cooperatively organized, or any person owned by the Federal Government or any State.¹⁸

On April 7, 2011, the FCC approved its pole attachment order.¹⁹ Public power utilities are not directly impacted by the order because their pole attachments are not subject to the FCC’s jurisdiction. The order revised the telecom formula and make-ready provisions to provide a benchmark for pole attachment rates and access.²⁰

As of the order’s date, 21 states had certified to the FCC that regulate rates, terms, and conditions for pole attachments, and have the authority to consider and do consider the interests of subscribers of cable television services, as well as the interests of the consumers of the utility services.²¹

III. Effect of Proposed Changes:

Section 1 provides the act may be cited as the “Florida Broadband Deployment Act of 2021.”

Section 2 amends s. 212.08, F.S., to exempt from the sales and use tax the purchase, lease, or sale of equipment used by providers of communication services or Internet access services, as

¹¹ FDACS, *Electric Utilities*, *supra* at n. 9.

¹² *Id.*

¹³ FPSC, *2020 Annual Report*, *supra* at n. 10.

¹⁴ FDACS, *Electric Utilities*, *supra* at n. 9.

¹⁵ Florida Municipal Electric Association, *About FMEA*, <https://www.publicpower.com/about-us> (last visited Mar. 7, 2021).

¹⁶ P.L. 95-234, codified at 47 U.S.C. s. 224.

¹⁷ *Id.*

¹⁸ State is defined as “any State, territory, or possession of the United States, the District of Columbia, or any political subdivision, agency, or instrumentality thereof.”

¹⁹ FCC Report and Order, FCC 11-50, April 7, 2011, *available at* [FCC Reforms Pole Attachment Rules to Boost Broadband Deployment | Federal Communications Commission](#) (last visited March 7, 2021).

²⁰ *See* [Preserving the Municipal Exemption from Federal Pole Attachment Regulations | American Public Power Association](#) (last visited March 7, 2021).

²¹ *Supra* at n. 19, Appendix C.

defined in the bill. The bill provides that the purchase, lease, or sale of equipment used in the business of providing communication services or Internet access services, in whole or in part, by a provider of the services is exempt from sales tax imposed by ch. 212, F.S.

Equipment is defined as all equipment, machinery, software, or other infrastructure that is classified as central office equipment, station equipment, or apparatus, station, connection, wiring, or large private branch exchanges, according to the uniform system of accounts adopted by the Public Service Commission. It also includes a part of a national, regional, or local headend or similar facility operated by a provider of communication services or Internet access services. A headend is a facility that accepts TV signals as input from satellites, processes them into cable quality signals, and then distributes them to homes and cable networks. It can also be considered as a master distribution center where incoming television signals are received, selected, amplified and re-modulated, and sent for transmission to cable networks.²²

“Communication services” has the same meaning as in s. 202.11(1), F.S. and “Internet access service” has the same meaning is s. 202.11(6), F.S. Provider of communication services or Internet services means a dealer as defined in s. 202.11(2), F.S. and any member of an affiliated group as defined in section 202.37(1)(c)2., F.S.

Section 3 creates s. 364.0137, F.S., to provide the requirements for broadband provider attachments to municipal electric utility poles.

The bill provides Legislative findings that just, reasonable, and nondiscriminatory rates, terms, and condition for access and use of municipal electric utility poles by broadband service providers is essential for the deployment of broad service to the residents of the state.

The bill defines the terms “attachment,” “broadband provider,” “broadband service,” and “utility pole.”

The bill provides that to promote the deployment of broadband service to all residents, each municipal utility must provide broadband providers with access to any utility pole it owns or operates and adopt rates, terms and conditions for such access that are consistent with 47 U.S.C. s. 224 and any FCC regulations and decisions adopted as of July 1, 2021. The rates, terms, and conditions must be nondiscriminatory, just, and reasonable and may not favor a pole owner, owner, or affiliate of the pole owner.

A municipal electric utility may not discriminate between providers and any attaching entity. The annual recurring rate established by the utility must be calculated pursuant to the cable service rate formula established by 47 U.S.C. s. 224(d) and FCC regulations and decisions in existence on July 1, 2021. The utility must maintain the records necessary to calculate the charges, including costs, description, and depreciation of the utility poles, including any ancillary poles.

The terms and conditions attachment to the poles by a broadband provider must be just and reasonable, nondiscriminatory, and consistent with 47 U.S.C. s. 224 and FCC regulations and

²² See Techopedia, *Headend: What does Headend mean?* <https://www.techopedia.com/definition/7550/headend> (last visited March 7, 2021).

decisions in existence on July 1, 2021. The bill requires a utility to rearrange or otherwise reengineer any utility pole if necessary to accommodate the broadband provider's new attachment. If the utility pole must be replaced to accommodate the attachment, the utility may only charge the broadband provider its actual and reasonable costs of "advancing the retirement of the existing utility pole." The costs must be measured by all of the following:

- Net book value of the existing utility pole;
- Incremental cost of installing a utility pole with greater capacity than the existing pole; and
- Other incremental costs that may not include the cost of a pole that the utility would have installed at the same location.

A utility may not prohibit a broadband provider from using boxing techniques, extension arms, attachments below existing attachments where spaces unavailable above the existing attachments, temporary attachments, or other methods or equipment, provided that they comply with the National Electric Safety Code, or any other applicable safety codes.

For any pole replacement, the bill requires the utility to complete all work necessary to accommodate the broadband provider's attachments within 90 days after receipt of an attachment request from the provider. The utility may not require the provider to comply with any attachment specifications that exceed the National Electric Safety Code or any applicable codes.

A municipal electric utility or a broadband provider may submit a written request to negotiate an agreement or to amend, modify, or renew an existing agreement on attachments to conform to the provisions of the bill. The parties must negotiate in good faith for at least 60 days, and after that time, either party may petition the circuit court to determine rates, terms and conditions of the agreements consistent with the provisions of the bill. The court must enter a decision within 180 days after the filing of the petition. The court's decision is retroactive to apply to existing attachments and to the date of the written request to negotiate and to the continuing terms of all existing attachments installed before the written request.

Between the date of the written request and the court's decision:

- The terms of any existing agreement on attachments apply, subject to true-up, to put the parties in the position they would have been if the court's decision had been in effect on the date of the negotiation request.
- In absence of an existing agreement, unless the parties agree otherwise, the court is required to establish interim rates and conditions, subject to a true-up, to put the parties in the position they would have been if the court's decision had been in effect on the date of the negotiation request.

A utility or provider may seek available remedies at law or equity for violations of the provisions of the bill. The court is required to give effect to the provisions of 47 U.S.C. s. 224 and FCC regulations and decisions in existence on July 1, 2021 in making its decision.

Section 4 provides an effective date of July 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

The Revenue Estimating Conference has not determined the amount of the tax exemption provided in this bill, but the impact appears to be considerable.

The DOR has raised the following implementation issues:

It is unclear if the exemption is intended to be limited to purchases by providers of communications services or Internet access service or if the intent is to also exempt sales by providers. It is unclear if the intent is to exempt the tax imposed on the lease of real property under [s.] 212.031, F.S. Section 212.08, F.S., generally provides exemptions for tangible personal property. While it is assumed the intent is to exempt tangible items, the bill provides that the term equipment includes "other infrastructure" which implies land or buildings. It is unclear what constitutes "Equipment used in the business of providing communications services or Internet access services" on lines 105-115. Reference to a specific publication or definitions would be preferable.²³

²³ Department of Revenue, *2021 Agency Legislative Bill Analysis for SB 1592* at page 4 (Mar. 3, 2021) (on file with the Senate Committee on Regulated Industries).

B. Private Sector Impact:

Broadband service providers may see an adjustment in the pole attachment fees paid to municipal electric utilities for installation of attachments to the utilities' poles.

C. Government Sector Impact:

Municipal utilities may see an adjustment in the amount of pole attachment fees received from broadband service providers for installation of attachments to the utilities' poles

VI. Technical Deficiencies:

On line 257, the reference to "commission's determination" should read "court's determination."

VII. Related Issues:

The DOR indicated that the effective date of July 1, 2021 does not allow sufficient time for adoption of permanent rules. The department requests emergency rulemaking to implement the provisions of the bill.²⁴

VIII. Statutes Affected:

This bill substantially amends s. 212.08, F.S.

This bill creates s. 364.0137, F.S.

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.

²⁴ *Id.*

By Senator Burgess

20-00948C-21

20211592

1 A bill to be entitled
 2 An act relating to broadband Internet infrastructure;
 3 providing a short title; amending s. 212.08, F.S.;
 4 exempting the purchase, lease, or sale of certain
 5 equipment used by a provider of communications
 6 services or a provider of Internet access services in
 7 this state from the sales and use tax; defining terms;
 8 creating s. 364.0137, F.S.; providing legislative
 9 findings; defining terms; requiring municipal electric
 10 utilities to ensure that their broadband provider
 11 rates and fees meet certain requirements, make certain
 12 records available to broadband providers, and
 13 establish just and reasonable terms and conditions for
 14 broadband provider attachments; prohibiting municipal
 15 electric utilities from prohibiting a broadband
 16 provider from using certain techniques and equipment
 17 if used in accordance with certain safety standards;
 18 requiring any required pole replacement by a municipal
 19 electric utility to be completed within a specified
 20 timeframe; prohibiting municipal electric utilities
 21 from requiring a broadband provider to comply with
 22 attachment specifications that exceed specified
 23 established safety levels; providing construction;
 24 authorizing municipal electric utilities or broadband
 25 providers to negotiate agreements or renegotiate
 26 existing agreements and to petition the court after a
 27 specified timeframe if unable to reach an agreement;
 28 requiring the court to make a determination within a
 29 specified timeframe; specifying that such

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20-00948C-21

20211592

30 determination applies retroactively; authorizing
 31 municipal electric utilities and broadband providers
 32 to seek any available remedies; providing an effective
 33 date.
 34
 35 WHEREAS, although this state is a national leader in
 36 private sector broadband investment, including billions of
 37 dollars invested by existing service providers, estimates show
 38 that as many as 804,000 residents lack access to the services,
 39 particularly in rural areas where the cost to deploy facilities
 40 is significantly higher than in more densely populated areas,
 41 and
 42 WHEREAS, the lack of advanced communication capabilities,
 43 broadband facilities, and services in certain areas deprives
 44 residents of access to opportunities, and
 45 WHEREAS, the Legislature finds that it is in the public
 46 interest of this state to encourage private-sector investment in
 47 broadband deployment and upgrades, encourage greater
 48 participation and access for all residents, and remove
 49 regulatory and economic barriers to such investment, and
 50 WHEREAS, the Legislature finds that it is in the public
 51 interest of this state to encourage and facilitate the
 52 development of and investment in broadband facilities to advance
 53 Florida's economic competitiveness, create job opportunities,
 54 enhance health care, and enhance educational advancement, and
 55 WHEREAS, the Legislature finds that reasonable rates,
 56 terms, and conditions for access and use of municipal utility
 57 poles by broadband service providers are essential for the
 58 deployment, upgrade, and maintenance of broadband service, and

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20-00948C-21 20211592

59 WHEREAS, it is critical that such access rates, terms, and
 60 conditions be reasonable and fully compensatory, as approved by
 61 the federal pole attachment regime imposed by the Communications
 62 Act of 1934, as amended, 47 U.S.C. s. 224, and the rules and
 63 regulations of the Federal Communications Commission governing
 64 utilities whose pole attachments are regulated under federal
 65 law, NOW, THEREFORE,
 66
 67 Be It Enacted by the Legislature of the State of Florida:
 68
 69 Section 1. This act may be cited as the "Florida Broadband
 70 Deployment Act of 2021."
 71 Section 2. Paragraph (ppp) is added to subsection (7) of
 72 section 212.08, Florida Statutes, to read:
 73 212.08 Sales, rental, use, consumption, distribution, and
 74 storage tax: specified exemptions.—The sale at retail, the
 75 rental, the use, the consumption, the distribution, and the
 76 storage to be used or consumed in this state of the following
 77 are hereby specifically exempt from the tax imposed by this
 78 chapter.
 79 (7) MISCELLANEOUS EXEMPTIONS.—Exemptions provided to any
 80 entity by this chapter do not inure to any transaction that is
 81 otherwise taxable under this chapter when payment is made by a
 82 representative or employee of the entity by any means,
 83 including, but not limited to, cash, check, or credit card, even
 84 when that representative or employee is subsequently reimbursed
 85 by the entity. In addition, exemptions provided to any entity by
 86 this subsection do not inure to any transaction that is
 87 otherwise taxable under this chapter unless the entity has

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88 obtained a sales tax exemption certificate from the department
 89 or the entity obtains or provides other documentation as
 90 required by the department. Eligible purchases or leases made
 91 with such a certificate must be in strict compliance with this
 92 subsection and departmental rules, and any person who makes an
 93 exempt purchase with a certificate that is not in strict
 94 compliance with this subsection and the rules is liable for and
 95 shall pay the tax. The department may adopt rules to administer
 96 this subsection.
 97 (ppp) Equipment purchased, leased, or sold in this state
 98 for use by a provider of communications services or a provider
 99 of Internet access services.—
 100 1. The purchase, lease, or sale of equipment used in the
 101 business of providing communications services or Internet access
 102 services, in whole or in part, by a provider of communications
 103 services or Internet access services is exempt from the tax
 104 imposed by this chapter.
 105 2. As used in this paragraph, the term:
 106 a. "Equipment used in the business of providing
 107 communications services or Internet access services" means all
 108 equipment, machinery, software, or other infrastructure that is:
 109 (I) Classified as central office equipment, station
 110 equipment or apparatus, station connection, wiring, or large
 111 private branch exchanges according to the uniform system of
 112 accounts which was adopted and prescribed for the provider by
 113 the Public Service Commission; or
 114 (II) Part of a national, regional, or local headend or
 115 similar facility operated by a provider of communications
 116 services or Internet access services.

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117 b. "Communications services" has the same meaning as in s.

118 202.11(1).

119 c. "Internet access service" has the same meaning as

120 defined in s. 202.11(6).

121 d. "Provider of communications services or Internet access

122 services" means a dealer as defined in s. 202.11(2) and any

123 member of an affiliated group as defined in s. 202.37(1)(c)2.

124 with such dealer.

125 Section 3. Section 364.0137, Florida Statutes, is created

126 to read:

127 364.0137 Broadband service infrastructure.—

128 (1) The Legislature finds that just, reasonable, and

129 nondiscriminatory rates, terms, and conditions for the access

130 and use of municipal electric utility poles by broadband service

131 providers is essential to deploy, upgrade, and maintain

132 broadband service to residents of this state. It is critical

133 that municipal electric utility pole access and use rates are

134 just, reasonable, nondiscriminatory, and fully compensatory,

135 which may be achieved under the federal framework applicable to

136 utility poles owned and operated by investor-owned utilities.

137 The terms and conditions associated with the access and use of

138 utility poles must be consistent with 47 U.S.C. s. 224, the

139 Communications Act of 1934, as amended, and the regulations of

140 the Federal Communications Commission as those regulations

141 existed on July 1, 2021.

142 (2) As used in this section, the term:

143 (a) "Attachment" means any attachment to a utility pole or

144 structure, duct, conduit, or right-of-way owned or controlled by

145 a municipal electric utility.

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146 (b) "Broadband provider" means a person who provides

147 broadband service and includes a person who provides or offers

148 additional services to the public in addition to broadband

149 service.

150 (c) "Broadband service" means a service that provides high-

151 speed access to the Internet at a rate of at least 25 megabits

152 per second in the downstream direction and at least 3 megabits

153 per second in the upstream direction.

154 (d) "Utility pole" means a pole owned or controlled by a

155 municipal electric utility which is used in whole or in part for

156 electric distribution.

157 (3) To promote the deployment of broadband service to all

158 residents, each municipal electric utility:

159 (a) Shall provide broadband providers with access to any

160 utility pole it owns or operates and adopt rates, terms, and

161 conditions for such access which are consistent with 47 U.S.C.

162 s. 224 and any Federal Communications Commission regulations and

163 decisions adopted thereunder as such regulations and decisions

164 existed on July 1, 2021. Such rates, terms, and conditions must

165 be nondiscriminatory, just, and reasonable and may not favor a

166 pole owner or an affiliate of the pole owner.

167 (b)1. Shall ensure that any rate or fee that the municipal

168 electric utility charges to a broadband provider for an

169 attachment to a utility pole does not do any of the following:

170 a. Discriminate between or among such providers and any

171 other attaching entity, regardless of the services furnished.

172 b. Exceed the annual recurring rate calculated in

173 accordance with the cable service rate formula established by 47

174 U.S.C. s. 224(d) or any Federal Communications Commission rule.

Page 6 of 10

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20-00948C-21 20211592

175 regulation, or decision adopted thereunder, as such existed on

176 July 1, 2021.

177 2. Shall maintain and make available to a broadband

178 provider all records necessary to calculate the rate it charges

179 to the provider. The records must include all of the following:

180 a. All costs associated with utility poles; any

181 improvements or reinforcements thereto; and any appurtenances,

182 including costs associated with storm hardening efforts, which

183 must be identified with particularity.

184 b. Identification of the actual height, usable space, and

185 appurtenances associated with each utility pole.

186 c. Information regarding any ancillary utility poles and

187 the costs associated with such poles, which are separately

188 identifiable from the principal utility poles they support.

189 d. To the extent the accumulated depreciation for a utility

190 pole which is used to calculate the rate is based on records

191 specific to pole plant rather than based on proration of

192 accumulated depreciation tracked at a higher aggregated plant

193 amount, sufficiently detailed data to support the pole-specific

194 figure.

195 (c) Shall establish just and reasonable terms and

196 conditions for a broadband provider attachment which do not

197 discriminate between or among providers or any other attaching

198 entity and which are consistent with 47 U.S.C. s. 224 and any

199 Federal Communications Commission rule, regulation, or decision

200 adopted thereunder, as such existed on July 1, 2021, except

201 that:

202 1. If necessary to accommodate a broadband provider's new

203 attachment, the municipal electric utility shall rearrange.

Page 7 of 10

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20-00948C-21 20211592

204 expand, replace, or otherwise safely reengineer any utility pole

205 upon the request of the broadband provider. If the municipal

206 electric utility is required to replace a utility pole pursuant

207 to this subparagraph, the municipal electric utility may not

208 require a broadband provider to reimburse any costs associated

209 with such pole replacement beyond the recovery of its actual and

210 reasonable costs of advancing the retirement of the existing

211 utility pole. Such costs shall be measured by all of the

212 following:

213 a. The net book value of the existing utility pole;

214 b. The incremental cost, if any, of installing a utility

215 pole with greater capacity than the utility pole the municipal

216 electric utility would have installed in the normal course of

217 its operations;

218 c. Any other incremental costs proved by the municipal

219 electric utility, provided that such incremental costs do not

220 include any costs associated with a utility pole the municipal

221 electric utility would have installed at the same location;

222 2. The municipal electric utility may not prohibit the

223 broadband provider from using boxing techniques, extension arms,

224 attachments below existing attachments where space is

225 unavailable above existing attachments, temporary attachments,

226 or other methods or equipment, provided that such use complies

227 with the National Electric Safety Code or other applicable

228 safety codes; and

229 3. With respect to a utility pole replacement, the

230 municipal electric utility must complete such pole replacement

231 and any other work necessary to accommodate the broadband

232 provider's attachment to the replaced pole within 90 days after

Page 8 of 10

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233 receiving a complete attachment request from a broadband

234 provider.

235 (d) May not require a broadband provider to comply with any

236 utility pole attachment specifications that exceed the

237 specifications in the National Electric Safety Code, applicable

238 fire safety codes, or any building code or similar code of

239 general applicability for the protection of public health,

240 safety, or welfare which was adopted by the applicable local

241 governmental jurisdiction before the broadband provider filed a

242 utility pole attachment application. However, this section may

243 not be construed to expand the power of any local governmental

244 jurisdiction.

245 (4) A municipal electric utility or broadband provider may

246 submit a written request to negotiate agreements or to amend,

247 modify, or renew any existing agreement addressing attachments

248 by the broadband provider to conform such agreements to this

249 section. The parties must negotiate in good faith for at least

250 60 days after the written request, after which either party may

251 petition the circuit court to determine rates, terms, and

252 conditions for the agreements consistent with this section. The

253 court shall make a determination within 180 days after the

254 filing of the petition for that determination. The court's

255 determination applies retroactively to attachments between the

256 date of the written request to negotiate and the date of the

257 commission's determination, and to the continuing terms of all

258 existing attachments that were installed before the written

259 request. Between the date of the written request to negotiate

260 and the date of the court's determination:

261 (a) The terms and conditions of any existing agreement

20-00948C-21 20211592__

262 addressing such attachments apply, subject to true-up, to put

263 the parties in the positions in which they would have been had

264 the court's determination been in effect on the date of the

265 written request to negotiate; and

266 (b) In the absence of such existing agreement, unless the

267 parties agree otherwise, the court, within 30 days after the

268 petition for a determination, must establish interim rates,

269 terms, and conditions that will apply, subject to true-up, to

270 put the parties in the positions in which they would have been

271 had the court's determination been in effect on the date of the

272 written request to negotiate.

273 (5) A municipal electric utility or broadband provider may

274 seek any available remedies at law or equity for violations of

275 this section. In all cases involving this section, and to the

276 extent not otherwise provided by this section, the court shall

277 give effect to the provisions and intent of 47 U.S.C. s. 224 and

278 any Federal Communications Commission rules, regulations, or

279 decisions adopted thereunder, as such existed on July 1, 2021.

280 Section 4. This act shall take effect July 1, 2021.



The Florida Senate

Committee Agenda Request

To: Senator Travis Hutson, Chair
Committee on Regulated Industries

Subject: Committee Agenda Request

Date: March 3, 2021

I respectfully request that **Senate Bill #1592**, relating to Broadband Internet Infrastructure, be placed on the:

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

A handwritten signature in blue ink that reads "Danny".

Senator Danny Burgess
Florida Senate, District 20

YOU MUST PRINT AND DELIVER THIS FORM TO THE ASSIGNED TESTIMONY ROOM

THE FLORIDA SENATE

APPEARANCE RECORD

3/9/21

Meeting Date

SB1592

Bill Number (if applicable)

Topic Broadband Internet Infrastructure

Amendment Barcode (if applicable)

Name Charlie Dudley

Job Title Attorney

Address 108 S Monroe St

Phone 850-681-0024

Street

Tallahassee

FL

32301

City

State

Zip

Email cdudley@flapartners.com

For

Against

Information

In Support

Against

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

Representing Florida Internet and Television Association

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

PLEASE PRINT AND DELIVER THIS FORM TO THE ASSIGNED TESTIMONY ROOM

Reg Ind 9:00

THE FLORIDA SENATE

APPEARANCE RECORD

1592

Bill Number (if applicable)

3/9/21

Meeting Date

Amendment Barcode (if applicable)

Topic Broadband Internet Infrastructure

Name Brewster Bevis

Job Title Senior Vice President

Address 513 N Adams St Phone 224-7173

Street

Tallahassee

FL

State

Zip

32301

Email bbevis@aif.com

Speaking: For Against Information

Information

Information

Zip

32301

Email bbevis@aif.com

In Support

Against

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

Representing Associated Industries of Florida

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

SB 1592

March 9th

Meeting Date

Bill Number (if applicable)

~~David Sander~~
Broadband Internet

Amendment Barcode (if applicable)

Topic

Name

David Sander

Job Title

Retired Senior Citizen

Address

166 Wilshire Center Phone 352 205 6597

Street

City

Fort Lauderdale

State

Zip

347378 Florida 1955@gmail.com

Speaking:

For Against

Information

In Support Against

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

Representing

Self

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE

APPEARANCE RECORD

March 9, 2021
Meeting Date

1592

Bill Number (if applicable)

Topic Broadband Internet Infrastructure

Amendment Barcode (if applicable)

Name David Shepp

Job Title Lobbyist

Address P.O. Box 3739

Phone 863 581-4250

Street

Lakeland

FL

City

State

33802

Zip

Email shepp@thesouthernrnp.com

Speaking: For Against

Information

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

Representing City of Lakeland

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/9/21

Meeting Date

1592

Bill Number (if applicable)

Topic Broadband

Amendment Barcode (if applicable)

Name Ryan Matthews

Job Title Leg. Counsel

681-7383

Phone

Address PO Box 50930

Street TJLH

32301

Email

City FL

State

Zip

ryan@psmh.net

Speaking: For Against

Information

In Support Against

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

Representing FL Municipal Electric Assoc.

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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S-001 (10/14/14)

APPEARANCE RECORD

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

3/9/21
Meeting Date

1592
Bill Number (if applicable)

Topic Broadband Amendment Barcode (if applicable)

Name Ryan Matthews

Job Title Leg. Counsel Phone 681-7383

Address PO Box 10930 Email Ryan@psmf.net

Street TJL City FL State FL Zip 32301

Speaking: For Against Information Waive Speaking: In Support Against

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

Representing FL Municipal Electre Assoc.

Appearing at request of Chair: Yes No Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

3-9-21

Meeting Date

1592

Bill Number (if applicable)

Topic REGULATED INDUSTRIES

Amendment Barcode (if applicable)

Name Sal Nuzzo

Job Title Vice President of Policy

Address 100 N Duval Street Phone 850-322-9941

Street

Tallahassee

32301

Email snuzzo@jamesmadison.org

City

FL

Zip

Speaking: For

Against

Information

Waive Speaking: In Support

Against

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

Representing The James Madison Institute

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/14/14)

Duplicate

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 Regulated Industries

BILL: SB 338

INTRODUCER: Senator Gruters

SUBJECT: Specialty Contracting Services

DATE: March 8, 2021

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Kraemer</u>	<u>Imhof</u>	<u>RI</u>	Favorable
2.	_____	_____	<u>CA</u>	_____
3.	_____	_____	<u>RC</u>	_____

I. Summary:

SB 338 also expands an existing licensure exemption in s. 489.117(4)(d), F.S., to allow unlicensed persons to perform certain contracting services for the construction, remodeling, repair, or improvement of *clubhouses* or *recreation buildings* in a residential development without obtaining a local license. Such persons must be under the supervision of a licensed general, building, or residential contractor. Currently, this licensure exemption applies only to certain contracting services on *single-family residences*, including townhouses.

The bill creates an exemption from local and state licensing for persons under the supervision of a certified or registered pool contractor for the construction, remodeling, or repair of swimming pools, hot tubs, and other water features. The supervising contractor need not have a direct contract with the unlicensed person performing the specialty contracting services. The exemption is not available for persons required to be certified or registered as contractors for specified trade categories described in current law.¹

The bill is effective July 1, 2021.

II. Present Situation:

The Legislature regulates the construction industry “in the interest of the public health, safety, and welfare,”² and has enacted ch. 489, F.S., to address requirements for construction contracting, electrical and alarm system contracting, and septic tank contracting, and

¹ See ss. 489.105(3)(a) through (i) and (m) through (o), F.S. The specified scopes of work are identified as general contractor, building contractor, residential contractor, sheet metal contractor, roofing contractor, Class A, B, and C air-conditioning contractor, mechanical contractor, plumbing contractor, underground utility and excavation contractor, and solar contractor.

² See s. 489.101, F.S.

requirements for qualified persons to be licensed if they have sufficient technical expertise in the applicable trade.³

More than 20 categories of persons are exempt from the contractor licensing requirements of ch. 489, F.S., including but not limited to:

- Contractors in work on bridges, roads, streets, highways, or railroads, and other services defined by the board and the Florida Department of Transportation;
- Employees of licensed contractors, if acting within the scope of the contractor's license, with that licensee's knowledge;
- Certain employees of federal, state, or local governments or districts (excluding school and university boards), under limited circumstances;
- Certain public utilities, on construction, maintenance, and development work by employees;
- Property owners, when acting as their own contractor and providing "direct, onsite supervision" of all work not performed by licensed contractors on one-family or two-family residences, farm outbuildings, or commercial buildings at a cost not exceeding \$75,000;
- Work undertaken on federal property or when federal law supersedes part I of ch. 489, F.S.;
- Work falling under the so-called handyman exemption, meaning it is of a "casual, minor, or inconsequential nature," and the total contract price for all labor, materials, and all other items is less than \$2,500, subject to certain exceptions;
- Registered architects and engineers acting within their licensed practice, including those exempt from such licensing, but not acting as a contractor unless licensed under ch. 489, F.S.
- Work on one-, two-, or three-family residences constructed or rehabilitated by Habitat for Humanity, International, Inc., or a local affiliate, subject to certain requirements;
- Certain disaster recovery mitigation or other organizations repairing or replacing a one-family, two-family or three-family residence impacted by a disaster, subject to certain requirements; and
- Employees of an apartment community or apartment community management company who make minor repairs to existing electric water heaters, electric heating, ventilating, and air-conditioning systems, subject to certain requirements.⁴

Construction Contracting

The Construction Industry Licensing Board (CILB) within the DBPR is responsible for licensing and regulating the construction industry in this state under part I of ch. 489, F.S.⁵ The CILB is divided into two divisions with separate jurisdictions:

- Division I comprises the general contractor, building contractor, and residential contractor members of the CILB. Division I has jurisdiction over the regulation of general contractors, building contractors, and residential contractors.
- Division II comprises the roofing contractor, sheet metal contractor, air-conditioning contractor, mechanical contractor, pool contractor, plumbing contractor, and underground utility and excavation contractor members of the CILB. Division II has jurisdiction over the regulation of roofing contractors, sheet metal contractors, class A, B, and C air-conditioning contractors, mechanical contractors, commercial pool/spa contractors, residential pool/spa

³ See parts I, II, and III, respectively, of ch. 489, F.S.

⁴ See s. 489.103, F.S., for additional exemptions.

⁵ See s. 489.107, F.S.

contractors, swimming pool/spa servicing contractors, plumbing contractors, underground utility and excavation contractors, solar contractors, and pollutant storage systems contractors.⁶

The Electrical Contractors' Licensing Board (ECLB) within the DBPR is responsible for licensing and regulating electrical and alarm system contractors in Florida under part II of ch. 489, F.S.⁷

Master septic tank contractors and septic tank contractors are regulated by the Department of Health under part III of ch. 489, F.S.⁸

Construction contractors regulated under part I of ch. 489, F.S., and electrical and alarm contractors regulated under part II of ch. 489, F.S., must satisfactorily complete a licensure examination before being licensed.⁹ The CILB and ECLB may deny a license application for any person who it finds guilty of any of the grounds for discipline set forth in s. 455.227(1), F.S., or set forth in the profession's practice act.¹⁰

A "specialty contractor" is a contractor whose scope of practice is limited to:

- A particular construction category adopted by board rule; and
- A subset of the trade categories for contractors listed in s. 489.105(3)(a) through (p), F.S., such as roofing, air-conditioning, plumbing, etc.¹¹

Swimming Pool/Spa Contractors

Section 489.105(3)(j) – (l), F.S., provides three categories of pool/spa contractors in the construction industry. These contractor categories include commercial pool/spa, residential pool/spa, and swimming pool/spa servicing. If an individual's scope of work involves, but is not limited to, the construction, repair, and servicing of these types of swimming pools and spas, one must obtain a state license from the DBPR which is valid in any county or municipality throughout the state. In addition to the state licenses described in s. 489.105(3)(j) – (l), F.S., the DBPR also provides, by rule, the opportunity to obtain a voluntary specialty contractor license in specific areas of pool/spa construction.¹² However, these specialty contractors must work under the supervision of a state-licensed contractor.¹³

The CILB has adopted specific rules for the voluntary certification of swimming pool specialty contractors and residential pool/spa servicing contractors.¹⁴ Licenses for these contractors include those for:

- Swimming Pool Layout;
- Swimming Pool Structural;

⁶ Section 489.105(3), F.S.

⁷ Section 489.507, F.S.

⁸ See ss. 489.551-489.558, F.S.

⁹ See ss. 489.113 and 489.516, F.S., respectively.

¹⁰ Section 455.227(2), F.S.

¹¹ Section 489.105(3)(q), F.S.

¹² See Fla. Admin. Code R. 61G4-15.032 and 61G4-15.040.

¹³ *Id.*

¹⁴ *Id.*

- Swimming Pool Excavation;
- Swimming Pool Trim;
- Swimming Pool Decking;
- Swimming Pool Piping; and
- Swimming Pool Finishes.

Certification and Registration of Contractors

Under current law, a “certified contractor” has met competency requirements for a particular trade category and holds a geographically unlimited certificate of competency from the DBPR which allows the contractor to contract in any jurisdiction in the state without being required to fulfill the competency requirements of other jurisdictions.¹⁵

The term “registered contractor” means a contractor who has registered with the DBPR as part of meeting competency requirements for a trade category in a particular jurisdiction, which limits the contractor to contracting only in the jurisdiction for which the registration is issued.¹⁶

Fee for Certification and Registration

As provided in s. 489.109, F.S., an applicant for certification as a contractor is required to pay an initial application fee not to exceed \$150, and, if an examination cost is included in the application fee, the combined amount may not exceed \$350. For an applicant for registration as a contractor, the initial application fee may not exceed \$100, and the initial registration fee and the renewal fee may not exceed \$200.¹⁷ The initial application fee and the renewal fee is \$50 for an application to certify or register a business.¹⁸

Fees must be adequate to ensure the continued operation of the CILB, and must be based on DBPR’s estimates of revenue required to implement part I of ch. 489, F.S., and statutory provisions regulating the construction industry.¹⁹

All certificate holders and registrants must pay a fee of \$4 to the DBPR at the time of application or renewal, to fund projects relating to the building construction industry or continuing education programs offered to building construction industry workers in Florida, to be selected by the Florida Building Commission.²⁰

¹⁵ Sections 489.105(8) and 489.113(1), F.S.

¹⁶ Sections 489.105(10) and 489.117(1)(b), F.S.

¹⁷ Section 489.109, F.S. Any applicant who seeks certification as a contractor under part I of ch. 489, F.S., by taking a practical examination must pay as an examination fee the actual cost incurred by the DBPR in developing, preparing, administering, scoring, score reporting, and evaluating the examination, if the examination is conducted by the DBPR.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ Section 489.109(3), F.S.

Subcontractors

In most circumstances, a contractor must subcontract all electrical, mechanical, plumbing, roofing, sheet metal, swimming pool, and air-conditioning work unless the contractor holds a state certificate or registration in the appropriate trade category.²¹

A subcontractor who does not have a state certificate or registration may work under the supervision of a licensed or certified contractor, if:

- The work of the subcontractor falls within the scope of the contractor's license; and
- The subcontractor is not engaged in construction work that would require specified contractor licensing (i.e., licensure as an electrical contractor,²² septic tank contractor,²³ sheet metal contractor, roofing contractor, Class A, B, or C air-conditioning contractor, mechanical contractor, commercial pool/spa contractor, residential pool/spa contractor, swimming pool servicing contractor, plumbing contractor, underground utility and excavation contractor, or solar contractor.²⁴

Licensure Exemption in s. 489.117(4)(d), F.S.

Section 489.117(4)(d), F.S., commonly referred to as the “Jim Walter” exemption, was enacted in 1993²⁵ and allows unlicensed persons to perform contracting services for the construction, remodeling, repair, or improvement of single-family residences and townhouses²⁶ without obtaining a local license. The person must be under the supervision of a certified or registered general, building, or residential contractor, and the work may not be work that requires licensure in the areas of roofing, sheet metal, air-conditioning, mechanical, pool/spa, plumbing, solar, or underground utility and excavation.²⁷ The supervising contractor need not have a direct contract with the unlicensed person performing the contracting services.

Florida's Fifth District Court of Appeal addressed the applicability of this exemption to a local building contractor licensing requirement in a St. Johns County ordinance.²⁸ The court found (under s. 489.117(4)(d), F.S.), the county's ordinance requiring all non-certified contractors to obtain a local license conflicted with state law.²⁹

Another example of this exemption's applicability is contained in a 2001 Attorney General Opinion. In this opinion, Florida's Attorney General, Robert A. Butterworth, explained that a county may not enact an ordinance that requires local certification of drywall installers. Mr. Butterworth reasoned that, under the exemption in s. 489.117(4)(d), F.S., “the county may not require certification of persons performing drywall installation on single-family residences when such persons are working under the supervision of a certified or registered general, building, or

²¹ Section 489.113(3), F.S. Various exceptions for general, building, residential, and solar contractors are set forth in s. 489.113(3)(a) through (g), F.S.

²² See Part II, of ch. 489, F.S., relating to Electrical and Alarm System Contracting.

²³ See Part III of ch. 489, F.S., relating to Septic Tank Contracting.

²⁴ Section 489.113(2), F.S.

²⁵ See ch. 93-154, s. 3, and ch. 93-166, s. 12, Laws of Fla. These provisions have been subsequently amended.

²⁶ The term “townhouses” was added to the exemption in 2003. See ch. 2003-257, s. 5, Laws of Fla.

²⁷ Section 489.117(4)(d), F.S.

²⁸ See *Florida Home Builders Ass'n v. St. Johns County*, 914 So.2d 1035 (Fla. 5th DCA 2005).

²⁹ *Id.* at 1037.

residential contractor.”³⁰ Drywall installation fits the local licensing exemption because one does not have to obtain registration or certification under s. 489.105(3)(d)-(o), F.S., to perform this aspect of construction.

The Florida Building Code

The Florida Building Code (building code) is the unified building code applicable to the design, construction, erection, alteration, modification, repair, or demolition of public or private buildings, structures, and facilities in the state.³¹ The building code must be applied, administered, and enforced uniformly and consistently throughout the state.³² The building code is adopted, updated, interpreted, and maintained by the commission, and is enforced by authorized state and local government agencies.³³ The Florida Building Commission (commission), housed within the DBPR, adopts an updated building code every three years through review of codes published by the International Code Council and the National Fire Protection Association.³⁴

III. Effect of Proposed Changes:

SB 338 amends s. 487.117(4), F.S., to expand the circumstances under which unlicensed persons may perform certain construction contracting services.

The bill expands the licensure exemption in s. 489.117(4)(d), F.S., to allow unlicensed persons to perform contracting services for the construction, remodeling, repair, or improvement of *clubhouses* or *recreation buildings* in a residential development without obtaining a local license. Under current law, such unlicensed persons must be under the supervision of a licensed general, building, or residential contractor, and the work may not be work that requires licensure as a roofing, sheet metal, air-conditioning, mechanical, pool/spa, plumbing, solar, or underground utility and excavation contractor. Currently, this licensure exemption applies only to eligible construction activities on *single-family residences*, including townhouses.

Under the bill, an exemption from local and state licensing is created for all persons performing certain specialty contracting services under the supervision of a certified or registered commercial pool/spa contractor, a residential pool/spa contractor, or a swimming pool/spa servicing contractor (a licensed pool contractor). The bill provides a contractual relationship between the supervising contractor and those performing the specialty contracting services is not required (i.e., the performance of such contracting services is outside the business of contracting and need not be undertaken through a contractor/subcontractor relationship).

³⁰ See Op. Att’y. Gen. Fla. 2001-25 (2001), available at <http://www.myfloridalegal.com/ago.nsf/opinions/4c31d4cae5f162bf85256a1e00532dac> (last visited Mar. 4, 2021).

³¹ See s. 553.72, F.S. Part IV of ch. 553, F.S., is cited as the “Florida Building Codes Act.” See s. 552.70, F.S. The Florida Building Code, 7th Edition, available at https://www.floridabuilding.org/bc/bc_default.aspx (last visited Mar. 4, 2021).

³² See s. 553.72(1), F.S.

³³ See s. 553.72(3), F.S.

³⁴ S. 553.73(7), F.S., which requires review of the International Building Code, the International Fuel Gas Code, the International Existing Building Code, the International Mechanical Code, the International Plumbing Code, and the International Residential Code, all of which are copyrighted and published by the International Code Council, and the National Electrical Code, which is copyrighted and published by the National Fire Protection Association.

The services that may be performed by unlicensed persons under the supervision of a licensed pool contractor include the construction, remodeling, repair, or improvement of swimming pools, hot tubs, spas, and interactive water features, as defined in the Florida Building Code (code).³⁵ Of those terms, the current code does not appear to define “interactive water features.” However, the described scope of work for “swimming pool piping specialty contractor” includes “decorative or interactive water displays or areas.”³⁶

The exemption is not available for persons required to be certified or registered as contractors for specified trade categories described in s. 489.105(3), F.S.³⁷

The bill is effective July 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

³⁵ The term “swimming pool” is defined as “[a]ny structure intended for swimming, recreational bathing or wading that contains water over 24 inches (610 mm) deep. This includes in-ground, aboveground and on-ground pools; hot tubs; spas and fixed-in-place wading pools.” See ch. 2 of the 2017 Florida Building Code (Sixth Edition), available at <https://codes.iccsafe.org/content/FBC2017/chapter-2-definitions> (last visited Mar. 4, 2021).

³⁶ See Fla. Admin. Code R. 61G4-15.032(2)(f), relating to certification of swimming pool piping specialty contractors.

³⁷ See ss. 489.105(3)(a) through (i) and (m) through (o), F.S. The specified scopes of work are identified as general contractor, building contractor, residential contractor, sheet metal contractor, roofing contractor, Class A, B, and C air-conditioning contractor, mechanical contractor, plumbing contractor, underground utility and excavation contractor, and solar contractor.

B. Private Sector Impact:

Persons who are not licensed as contractors in a trade and have not been eligible to engage in such work may now, under the supervision of certified or registered contractors whose licenses cover such work, construct, remodel, repair, or improve swimming pools, hot tubs, spas, or interactive water features.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 489.117 of the Florida Statutes.

IX. Additional Information:**A. Committee Substitute – Statement of Changes:**

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

None.

B. Amendments:

None.

By Senator Gruters

23-00491-21 2021338

1 A bill to be entitled
 2 An act relating to specialty contracting services;
 3 amending s. 489.117, F.S.; revising the types of
 4 buildings for which individuals who are not required
 5 to obtain certain registrations or certifications may
 6 perform contracting services without a local license
 7 under certain circumstances; authorizing certain
 8 persons under the supervision of specified licensed
 9 contractors to perform certain specialty contracting
 10 services for commercial or residential swimming pools,
 11 hot tubs or spas, or interactive water features;
 12 providing that such supervision does not require a
 13 direct contract between those persons; providing an
 14 effective date.

15
 16 Be It Enacted by the Legislature of the State of Florida:

17
 18 Section 1. Paragraph (d) of subsection (4) of section
 19 489.117, Florida Statutes, is amended, and paragraph (e) is
 20 added to that subsection, to read:
 21 489.117 Registration; specialty contractors.-
 22 (4)
 23 (d) Any person who is not required to obtain registration
 24 or certification pursuant to s. 489.105(3)(d)-(o) may perform
 25 contracting services for the construction, remodeling, repair,
 26 or improvement of single-family residences, including a
 27 townhouse as defined in the Florida Building Code, and
 28 clubhouses or recreation buildings in a residential development
 29 without obtaining a local license if such person is under the

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

23-00491-21 2021338

30 supervision of a certified or registered general, building, or
 31 residential contractor. ~~Such as used in this paragraph,~~
 32 supervision does not ~~shall not be deemed to~~ require the
 33 existence of a direct contract between the certified or
 34 registered general, building, or residential contractor and the
 35 person performing specialty contracting services.
 36 (e) Any person who is not required to obtain registration
 37 or certification under s. 489.105(3)(d)-(i) or (m)-(o) may
 38 perform specialty contracting services for the construction,
 39 remodeling, repair, or improvement of commercial or residential
 40 swimming pools, hot tubs or spas, or interactive water features,
 41 as defined in the Florida Building Code, without obtaining a
 42 local contractor license or specialty contractor license if such
 43 person is under the supervision of a person who is certified or
 44 registered under s. 489.105(3)(j)-(l), provided that the work is
 45 within the scope of the supervising contractor's license. Such
 46 supervision does not require a direct contract between a person
 47 certified or registered under s. 489.105(3)(j)-(l) and the
 48 person performing specialty contracting services.

49 Section 2. This act shall take effect July 1, 2021.

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



The Florida Senate

Committee Agenda Request

To: Senator Travis Hutson, Chair
Committee on Regulated Industries

Subject: Committee Agenda Request

Date: January 26, 2021

I respectfully request that **Senate Bill #338**, relating to Specialty Contracting Services, be placed on the:

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

Please let me know if you have any questions.

Sincerely,

A handwritten signature in black ink that reads "Joe Gruters".

Joe Gruters

Cc: Booter Imhof, Staff Director
Susan Datres, Committee Administrative Assistant

APPEARANCE RECORD

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

3/9/2021

Meeting Date

SB 339

Bill Number (if applicable)

Topic Security Contracting Services

Amendment Barcode (if applicable)

Name Dallas Thiesen

Job Title Government Affairs Manager

Address 2555 Polberlake Drive Phone _____

Street

Sarasota

City

FL

State

Zip

Speaking: For

Against

Information

In Support

Against

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

Representing Florida Swimming Pool Association

Appearing at request of Chair: Yes No

Yes

No

Lobbyist registered with Legislature: Yes No

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

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

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Regulated Industries

BILL: CS/SB 1080

INTRODUCER: Regulated Industries Committee and Senator Hutson

SUBJECT: Tobacco and Nicotine Products

DATE: March 10, 2021

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Oxamendi	Imhof	RI	Fav/CS
2.			HP	
3.			AP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1080 relates to the regulation of the retail sale of tobacco products and nicotine products. The bill:

- Increases the minimum age to lawfully purchase and possess tobacco products and nicotine products from 18 years of age to 21 years of age.
- Creates a separate licensing structure for the sale of “nicotine dispensing devices” and nicotine products, by creating a new part of ch. 569, F.S, to regulate the sale of such products.
- Regulates tobacco products under part I, which consists of the current law provisions.
- Regulates nicotine products under part II, which includes the requirements in current law for the sale of nicotine products, and additional provisions for the regulation of nicotine product sales the same as currently apply to the regulation of tobacco product sales.
- Does not define nicotine products as tobacco products.
- Requires retail dealers of nicotine products to have a permit issued by the Division of Alcoholic Beverages and Tobacco, but does not require a fee for the permit. However, the holder of a retail tobacco products dealer permit may sell nicotine products without an additional permit.
- Prohibits smoking and nicotine by any person under 21 years of age on or near school property. (Current law applies the prohibition to persons under 18 years of age).
- Keeps the exemption in current law for underage persons in the military and persons acting in the scope of lawful employment.

- Requires age verification before a sale or delivery of tobacco products to person who appear to be under 30 years of age. (This complies with federal law.)

The effective date of the bill is October 1, 2021.

II. Present Situation:

Regulation of Tobacco Products

The Division of Alcoholic Beverages and Tobacco (division) within the Department of Business and Professional Regulation (DBPR) is the state agency responsible for the regulation and enforcement of tobacco products under ch. 569, F.S.

Tobacco Products Definitions

Section 569.002(6), F.S., defines the term “tobacco products” to include loose tobacco leaves and products made from tobacco leaves, in whole or in part, and cigarette wrappers, which can be used for smoking, sniffing, or chewing.

Section 210.25(12), F.S., provides a separate definition for the term “tobacco products” in the context of the taxation of these products and the licensing of tobacco product manufacturers, importers, exporters, distributing agents, or wholesale dealers under part II of ch. 210, F.S. In this context the term “tobacco products” means:

loose tobacco suitable for smoking; snuff; snuff flour; cavendish; plug and twist tobacco; fine cuts and other chewing tobaccos; shorts; refuse scraps; clippings, cuttings, and sweepings of tobacco, and other kinds and forms of tobacco prepared in such manner as to be suitable for chewing; but “tobacco products” does not include cigarettes, as defined by s. 210.01(1), or cigars.

The definition of “tobacco products” in s. 569.002(6), F.S., is limited to the regulation of tobacco products by the division under ch. 569, F.S., and does not affect the taxation of such products under ch. 210, F.S.

Retail Tobacco Products Dealer Permits

A person must obtain a retail tobacco products dealer permit from the division for each place of business where tobacco products are sold, including sales made through a vending machine.¹ Section 569.003, F.S., relates to retail tobacco products dealer permits, the permit application, qualifications, fees, renewals, and duplicates. Section 569.003(2), F.S., stipulates that permits may only be issued to persons who are 18 years of age or older or to corporations the officers of which are 18 years of age or older. The division is authorized to refuse to issue a permit to any person, firm, association, or corporation whose permit has been revoked; to any corporation with an officer who has had his or her permit revoked; or to any person who is or has been an officer of a corporation whose permit has been revoked.

¹ Section 569.003, F.S.

The fee for an annual permit is established in rule by the division at an amount to cover the regulatory costs of the program, not to exceed \$50. The fees are deposited into the Alcoholic Beverage and Tobacco Trust Fund within the DBPR.²

Mail Order, Internet, Other Remote Sales of Tobacco Products, and Tobacco Products Permits

Section 210.095(5), F.S., provides requirements for the delivery of mail order, Internet, and other remote sales of tobacco products, including age verification requirements, all of which is generally referred to as “delivery sales.” It also defines 10 relevant terms.

Specific notice and shipping requirements are provided for all delivery sales, whether in-state or out-of-state. Each person who mails, ships, or otherwise delivers tobacco products in connection with an order for a delivery sale is required to:

- Include, as part of the shipping documents, in a clear and conspicuous manner, the following statement: “Tobacco Products: Florida law prohibits shipping to individuals under 18 years of age and requires the payment of all applicable taxes.”
- Use a method of mailing, shipping, or delivery which obligates the delivery service to:
 - Require the signature of an adult who resides at the delivery address and obtain proof of the legal minimum purchase age of the individual accepting delivery, if the individual appears to be under 27 years of age.
 - Require proof that the individual accepting delivery is either the addressee or the adult designated by the addressee, in the form of a valid, government-issued identification card bearing a photograph of the individual who signs to accept delivery of the shipping container.
- Provide to the delivery service, if such service is used, evidence of full compliance with requirements for the collection and remittance of all taxes imposed on tobacco products by this state with respect to the delivery sale.³

If a person accepts a purchase order for a delivery sale and delivers the tobacco products without using a delivery service, the person must comply with all of the requirements that apply to a delivery service.⁴ Before making sales or shipping orders, entities must provide specific notice to the division as to shipper and receiver, with monthly reporting.⁵ There are requirements specific to purchase orders.⁶

Section 210.095(8), F.S., provides that the penalty for the following violations of the delivery sale requirements is a misdemeanor of the third degree:

- A delivery sale delivers tobacco products, on behalf of a delivery service, to an individual who is under 18 years of age.
- A violation of any provision in s. 210.095, F.S., by an individual who is under 18 years of age.

² Section 569.003(1)(c), F.S.

³ Section 210.095(5), F.S.

⁴ *Id.*

⁵ Section 210.095(6), F.S.

⁶ Section 210.095(7), F.S.

Florida law does not provide a criminal penalty classification for a misdemeanor of the third degree. However, the prohibitions and second degree misdemeanor penalties⁷ in s. 569.101, F.S., (prohibiting the sale, delivery, bartering, furnishing, or giving, directly or indirectly, to any person who is under 18 years of age, any tobacco product, and s. 569.11, F.S., prohibiting persons under 18 years of age from possessing, directly or indirectly, any tobacco product) apply to s. 210.095, F.S., relating to the delivery of tobacco products to persons under the age of 18.

Section 210.15, F.S., relates to permits for the sale of specific tobacco products. A requirement for issuance of such a permit is for a person to be of good moral character and not less than 18 years of age. In addition, permits to corporations may be issued only to corporations whose officers are of good moral character and not less than 18 years of age.⁸

Signage Requirement

Retail tobacco products dealers must post a clear and conspicuous sign that the sale of tobacco products is prohibited to persons under the age of 18 and that proof of age is required for purchase. The division is required to make the signs available to retailer dealers and must also have instructional material in the form of a calendar or similar format to assist in determining the age of the person attempting to purchase a tobacco product.⁹

Annual Report

The DBPR is required to submit an annual report to the Governor and Legislature regarding the enforcement of tobacco products, including:

- The number and results of compliance visits by the division;
- The number of violations for failure of a retailer to hold a valid license;
- The number of violations for selling tobacco products to anyone under the age of 18 and the results of administrative hearings on such violations; and
- The number of people under the age of 18 cited for violations, including sanctions imposed as a result of such citation, related to misrepresenting their age, purchasing tobacco products underage, or misrepresenting military service for the purpose of obtaining tobacco products underage.¹⁰

Tobacco Products and Minors

Current law prohibits the sales of tobacco products to, and the possession of tobacco products by, person under the age of 18. Section 569.101, F.S., prohibits the sale, delivery, bartering, furnishing, or giving of tobacco products to persons under the age of 18. A violation of this

⁷ Section 775.082, F.S., provides that the penalty for a misdemeanor of the second degree is punishable by a term of imprisonment not to exceed 60 days. Section 775.083, F.S., provides that the penalty for a misdemeanor of the second degree is punishable by a fine not to exceed \$500.

⁸ Section 210.15(2)(b), F.S.

⁹ Section 569.14, F.S.

¹⁰ Section 569.19, F.S.

prohibition is a second degree misdemeanor.¹¹ A second or subsequent violation within one year of the first violation is a first degree misdemeanor.¹²

It is a complete defense to a person charged with a violation of s. 569.101, F.S., if the buyer or recipient falsely evidenced that he or she was 18 years of age or older, a prudent person would believe the buyer or recipient to be 18 years of age or older, and the buyer or recipient presented false identification¹³ upon which the person relied in good faith.¹⁴

Section 569.11, F.S., prohibits persons under the age of 18 years from possessing, directly or indirectly, any tobacco products:

- A first violation of this prohibition is a non-criminal violation with a penalty of 16 hours of community service or a \$25 fine, and attendance at a school-approved anti-tobacco program, if locally available.
- A second or subsequent violation within 12 weeks of the first violation is punishable with a \$25 fine.

Any second or subsequent violation within the 12-week time period after the first violation is punishable as a first violation.¹⁵

Eighty percent of all civil penalties received by a county court under s. 569.11, F.S., must be remitted to the Department of Revenue for transfer to the Department of Education for teacher training, and for research and evaluation to reduce and prevent the use of tobacco products, nicotine products, or nicotine dispensing devices by children. The remaining 20 percent of civil penalties received by a county court must remain with the clerk of the county court to cover administrative costs.¹⁶

Section 569.002(7), F.S., provides that the term “any person under the age of 18” does not include any person under age 18 who:

- Has had his or her disability of nonage removed under ch. 743, F.S.;
- Is in the military reserve or on active duty in the Armed Forces of the United States;
- Is otherwise emancipated by a court of competent jurisdiction and released from parental care and responsibility; or
- Is acting in his or her scope of lawful employment with an entity licensed under the provisions of ch. 210, F.S., relating to taxation of cigarettes and other tobacco products, or ch. 569, F.S., relating to tobacco products.

¹¹ *Supra* note 6.

¹² Section 775.082, F.S., provides that the penalty for a misdemeanor of the first degree is punishable by a term of imprisonment not exceeding one year. Section 775.083, F.S., provides that the penalty for a misdemeanor of the first degree is punishable by a fine not to exceed \$1,000.

¹³ Identification includes carefully checking “a driver license or an identification card issued by this state or another state of the United States, a passport, or a United States armed services identification card presented by the buyer or recipient and acted in good faith and in reliance upon the representation and appearance of the buyer or recipient in the belief that the buyer or recipient was 18 years of age or older.” *See* s. 569.101(3)(c), F.S.

¹⁴ Section 569.101(3)(c), F.S.

¹⁵ Section 569.11(1), F.S.

¹⁶ Section 569.11(6), F.S.

To prevent persons under 18 years of age from purchasing or receiving tobacco products, the sale or delivery of tobacco products is prohibited, except when those products are under the direct control or line of sight of the dealer or the dealer's agent or employee. If a tobacco product is sold from a vending machine, the vending machine must have:

- An operational lock-out device which is under the control of the dealer or the dealer's agent or employee who directly regulates the sale of items through the machine by triggering the lock-out device to allow the dispensing of one tobacco product;
- A mechanism on the lock-out device to prevent the machine from functioning if the power source for the lock-out device fails or if the lock-out device is disabled; and
- A mechanism to ensure that only one tobacco product is dispensed at a time.¹⁷

These requirements for the sale of tobacco products do not apply to an establishment that prohibits persons under 18 years of age on the premises and do not apply to the sale or delivery of cigars and pipe tobacco.¹⁸

Section 569.0075, F.S., prohibits the giving of sample tobacco products to persons under the age of 18.

Section 569.12, F.S., provides enforcement authority to full-time, part-time, and auxiliary law enforcement officers for the provisions of ch. 569, F.S. The section also authorizes a county or municipality to designate certain of its employees or agents as tobacco product enforcement officers within specified guidelines. Such enforcement officers are authorized to issue a citation to a person under 18 years of age based on a reasonable cause to believe that a civil infraction has been committed. Similar authority is provided for correctional probation officers. Details are provided as to the required elements of the citation.

Retail tobacco products dealers (retailers) must post a clear and conspicuous sign that the sale of tobacco products is prohibited to persons under the age of 18 and that proof of age is required for purchase. The division is required to make the signs available to retailers. Retailers must also have instructional material in the form of a calendar or similar format to assist in determining the age of the person attempting to purchase a tobacco product.¹⁹

Section 569.19, F.S., requires the division to annually provide to the Legislature and the Governor, by December 31, a progress report on its enforcement actions specific to the number and results of compliance visits, number of violations for failure of a retailer to hold a valid license, number of violations of selling tobacco products to persons under age 18, results of administrative hearings on these issues, and number of persons under age 18 cited for violations of underage purchases and sanctions imposed as a result of a citation.

Section 386.212, F.S., in the Florida Clean Indoor Air Act,²⁰ prohibits any person under the age of 18 from smoking tobacco within 1,000 feet of a public or private elementary, middle, or secondary school between the hours of 6:00 a.m. and midnight.²¹ A violation of this prohibition

¹⁷ Section 569.007(1), F.S.

¹⁸ Section 569.007(2) and (3), F.S.

¹⁹ Section 569.14, F.S.

²⁰ Part II of ch. 386, F.S.

²¹ Section 386.212(1), F.S.

is punishable by a maximum noncriminal civil penalty not to exceed \$25, or 50 hours of community service or, where available, successful completion of a school-approved anti-tobacco “alternative to suspension” program.²²

Administrative Penalties

A retail tobacco dealer permit-holder can be disciplined under the division’s penalty guidelines. For a violation of the prohibition in s. 569.06, F.S., against the sale of tobacco products to persons under 18 years of age, the guidelines provide:

- 1st occurrence -- \$500 fine.
- 2nd occurrence -- \$1,000 fine.
- 3rd occurrence -- \$2,000 fine and a 20-day suspension of the dealer permit.
- 4th occurrence -- revocation of the dealer permit.

These penalties are based on a single violation in which the permit-holder committed or knew about the violation; or a pattern of at least three violations on different dates within a 12-week period by employees, independent contractors, agents, or patrons on the licensed premises or in the scope of employment in which the permit-holder did not participate; or violations which were occurring in an open and notorious manner on the licensed premises.²³

Section 569.008, F.S., provides a process for a retail tobacco products dealer to mitigate penalties imposed against a dealer because of an employee’s illegal sale of a tobacco product to a person under 18 years of age.²⁴ The process encourages retail tobacco products dealers to comply with responsible practices. The division may mitigate penalties if:

- The dealer is qualified as a responsible dealer having established and implemented specified practices designed to ensure that the dealer’s employees comply with ch. 569, F.S., such as employee training;
- The dealer had no knowledge of that employee’s violation at the time of the violation and did not direct, approve, or participate in the violation; or
- The sale was made through a vending machine equipped with an operational lock-out device.²⁵

Nicotine Dispensing Devices

Section 877.112, F.S., provides requirements for the sale of nicotine dispensing devices and nicotine products to minors, such as electronic cigarettes (e-cigarettes). This statute extends the current prohibitions related to tobacco products to the sale, gifting, possession, or use of nicotine dispensing devices and nicotine products to and by persons under 18 years of age.

A license is not required to sell or offer for sale “nicotine dispensing devices” or “nicotine products.”

²² Section 386.212(3), F.S.

²³ Fla. Admin. Code R. 61A-2.022(1) (2019).

²⁴ The Florida Responsible Vendor Act in ss. 561.701 - 561.706, F.S., provides a comparable process for mitigation of penalties against vendors of alcoholic beverages.

²⁵ Section 569.008(3), F.S.

A “nicotine dispensing device” is:

any product that employs an electronic, chemical, or mechanical means to produce vapor from a nicotine product, including, but not limited to, an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or other similar device or product, any replacement cartridge for such device, and any other container of nicotine in a solution or other form intended to be used with or within an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or other similar device or product.²⁶

A “nicotine product” is:

any product that contains nicotine, including liquid nicotine intended for human consumption, whether inhaled, chewed, absorbed, dissolved or ingested by any means. The definition does not include a tobacco product under Florida law, a drug or device under federal law, or a product that contains incidental nicotine.²⁷

The sale or giving of nicotine products or nicotine dispensing devices to any person under 18 years of age is prohibited and punishable as a second degree misdemeanor.²⁸ It is a complete defense to a violation if an underage person falsely misrepresented his or her age, the underage person had the appearance to a prudent person to 18 years of age or older, and the person carefully checked, and relied on, the driver license or identification card of the recipient.²⁹

Persons under 18 years of age possessing, purchasing, or misrepresenting their age or military service to obtain nicotine products or nicotine dispensing devices commit a noncriminal violation. The penalty is 16 hours of community service or a \$25 fine for a first violation, and attendance at a school-approved anti-tobacco and nicotine program, if available. A second or subsequent violation within 12 weeks of the first violation requires a \$25 fine. Any second or subsequent violation not within the 12-week time period after the first violation is punishable as provided for a first violation.³⁰

If a person under 18 years of age is found by the court to have committed such a noncriminal violation and that person has failed to complete community service, pay the required fine, or attend a school-approved anti-tobacco and nicotine program, if locally available, the court may direct the Department of Highway Safety and Motor Vehicles to withhold issuance of or suspend the driver license or driving privilege of that person for 30 or 45 consecutive days, depending on the infraction.³¹

Eighty percent of civil penalties specific to possession of nicotine products or nicotine dispensing devices by minors and misrepresenting age in making such purchases are remitted to the Department of Revenue for transfer to the Department of Education for teacher training and for research and evaluation to reduce and prevent the use of tobacco products, nicotine products,

²⁶ Section 877.112(1)(a), F.S.

²⁷ Section 877.112(1)(b), F.S.

²⁸ *Supra* note 5.

²⁹ Section 877.112(5), F.S.

³⁰ Sections 877.112(6) and (7), F.S.

³¹ Section 877.112(8), F.S.

or nicotine dispensing devices by children. The remaining 20 percent of civil penalties received by a county court are retained by the clerk of the county court to cover administrative costs.³²

Subsection 877.112(10), F.S., requires a retail dealer of nicotine products and nicotine dispensing devices to post signs that the sale of nicotine products and nicotine dispensing devices to persons under 18 years of age is prohibited. This signage requirement is similar to the signs required for retail tobacco products dealers under s. 569.14, F.S.

Nicotine products or nicotine dispensing devices may not be sold or delivered by self-service merchandising, except when such products are under the direct control of, or in the line of sight where effective control may be reasonably maintained by, the retailer or their agent or employee.³³

To prevent persons under 18 years of age from purchasing or receiving nicotine products or nicotine dispensing devices, s. 877.112(12), F.S., requires retailers to comply with restrictions identical to the restrictions on the sale of tobacco products in s. 569.007(1), F.S., such as requiring the products to be sold or delivered only when under the direct control or line of sight of the retailer and requiring a lock-out device if the products are sold or delivered from a vending machine.

Regulation of Vaping

During the 2019 legislative session, CS/SB 7012³⁴ was enacted to implement Amendment 9 to the Florida Constitution,³⁵ which was approved by the voters of Florida on November 6, 2018, to ban the use of vapor-generating electronic devices, such as electronic cigarettes (e-cigarettes), in enclosed indoor workplaces, as part of the Florida Clean Indoor Air Act. The use of e-cigarettes is commonly referred to as vaping.

The use of vapor-generating electronic devices is permitted in the enclosed indoor workplace of a “vapor-generating device retailer” or “retail vape shop,” which is defined as “any enclosed indoor workplace dedicated to or predominantly for the retail sale of vapor-generating electronic devices and components, parts, and accessories for such products, in which the sale of other products or services is merely incidental.” Vaping is permitted at the same locations authorized to permit tobacco smoking, i.e., private residences whenever not being used for certain commercial purposes, stand-alone bars, designated rooms in hotels and other public lodging establishments, retail tobacco shops, facilities owned or leased by a membership association, smoking cessation program locations, medical or scientific research locations, and customs smoking rooms in airport in-transit lounges.³⁶

Local governments may adopt more restrictive local ordinances on the use of vapor-generating electronic devices.³⁷

³² Section 877.112(9), F.S.

³³ Section 877.112(11), F.S.

³⁴ See ch. 2019-14, Laws of Fla.

³⁵ FLA. CONST. art. X, s. 20.

³⁶ See ch. 386, part II, F.S.

³⁷ *Id.*

The above provisions were approved by the Governor and took effect July 1, 2019.

Unlike the retail sale of tobacco products, which is subject to regulation under ch. 569, F.S., the sale of vape products is only regulated under the provisions of s. 877.112, F.S. While tobacco products in Florida are subject to specific taxation under ch. 210, F.S., nicotine products are only subject to sales taxes.

Rates of Youth Vaping

According to Centers for Disease Control (CDC) latest National Youth Tobacco Surveys, electronic cigarettes (e-cigarettes) were the most commonly used tobacco product among high school (19.6 percent; 3.02 million) and middle school (4.7; 550,000) students.³⁸ The CDC found that:

From 2019 to 2020, decreases in current use of any tobacco product, any combustible tobacco product, multiple tobacco products, e-cigarettes, cigars, and smokeless tobacco occurred among high school and middle school students; these declines resulted in an estimated 1.73 million fewer current youth tobacco product users in 2020 than in 2019 (6.20 million) (3). From 2019 to 2020, no significant change occurred in the use of cigarettes, hookahs, pipe tobacco, or heated tobacco products. The comprehensive and sustained implementation of evidence-based tobacco control strategies at the national, state, and local levels, combined with tobacco product regulation by FDA, is warranted to help sustain this progress and to prevent and reduce all forms of tobacco product use among U.S. youths.³⁹

The study found that use of e-cigarettes declined from 2019 to 2020, reversing previous trends. The declines were likely attributable to multiple factors at the national, state, and local levels. The report noted that “in December 2019, the federal minimum age of sale of all tobacco product types increased from 18 to 21 years.⁴⁰ The report indicated that the FDA issued guidance in January 2020 to prioritize enforcement against certain flavored e-cigarette products that appeal to youths, including mint and fruit flavors.⁴¹ Further the FDA reported stated that “several states and communities also recently restricted the sale of flavored tobacco products, including e-cigarettes.⁴²

³⁸ Centers for Disease Control and Prevention, *Tobacco Product Use Among Middle and High School Students — United States, 2020, December 18, 2020*, available at [Tobacco Product Use Among Middle and High School Students — United States, 2020 | MMWR \(cdc.gov\)](#) (last visited March 6, 2021).

³⁹ *Id.*

⁴⁰ Food and Drug Administration, *Newly signed legislation raises federal minimum age of sale of tobacco products to 21, 2019*, available at <https://www.fda.gov/tobacco-products/ctp-newsroom/newly-signed-legislation-raises-federal-minimum-age-sale-tobacco-products-21>[external icon](#) (last visited March 6, 2021).

⁴¹ FDA Center for Tobacco Products, *Enforcement priorities for Electronic Nicotine Delivery Systems (ENDS) and other deemed products on the market without premarket authorization (revised)*, available at <https://www.fda.gov/media/133880/download> (last visited March 6, 2021).

⁴² See Campaign for Tobacco Free Kids, *States & Localities that have Restricted the Sale of Flavored Tobacco Products*, available at [0398.pdf \(tobaccofreekids.org\)](#) (last visited March 6, 2021).

Nearly 70 percent of e-cigarette users reported using a flavored product, and the availability of flavors such as mint and chocolate was a reason that many students cited for trying e-cigarettes. The findings came a year after the U.S. Surgeon General declared the surge in youth vaping an epidemic.⁴³

Health Issues Relating to Vaping

The CDC is conducting an ongoing national investigation of vaping-related lung injuries. The CDC, the federal Food and Drug Administration (FDA), state and local health departments, and public health and clinical stakeholders have been investigating and monitoring the nationwide illness outbreak related to vaping. The condition has been labelled “E-cigarette, or Vaping, product use-Associated Lung Injury,” or EVALI. AS of February 18, 2020, the CDC reports that 2,807 people have been hospitalized and 68 people have died across 29 states and Washington, D.C.⁴⁴ Two of the deaths have occurred in Florida, and 103 cases of vaping-related illness hospitalizations have been documented in Florida as of December 3, 2019.⁴⁵

National Minimum Age of Sale of Tobacco Products

As part of the federal budget revisions adopted in December 2019 and signed into law on December 20, 2019, the federal minimum age for the sale of tobacco products was increased to 21 years of age.⁴⁶ The specific tobacco provisions in the budget amended section 906(d) of the Federal Food, Drug, and Cosmetic Act to increase the federal minimum age to purchase tobacco products from 18 to 21 years of age, and to prohibit retailers from selling tobacco products to any person younger than 21 years of age. The provisions also require the FDA to update its applicable tobacco regulations within specified timelines.

As part of the rule update process, the FDA must update the relevant age verification requirements to require age verification for individuals under age 30 (as opposed to the current age verification threshold for individuals under age 27).

U.S. Federal Food and Drug Administration Enforcement

The FDA has “deemed” ENDS products, i.e., vaping products, to be tobacco products.⁴⁷ A brief explanation of “deeming” is helpful in this context. The Family Smoking Prevention and

⁴³ See “Surgeon General Warns Youth Vaping Is Now An ‘Epidemic,’” December 18, 2018, *available at* <https://www.npr.org/sections/health-shots/2018/12/18/677755266/surgeon-general-warns-youth-vaping-is-now-an-epidemic> (last visited Feb. 25, 2021).

⁴⁴ Centers for Disease Control and Prevention, *Outbreak of Lung Injury Associated with the Use of E-Cigarette, or Vaping, Products*, available at: https://www.cdc.gov/tobacco/basic_information/e-cigarettes/severe-lung-disease.html (last visited Feb. 26, 2021).

⁴⁵ See Naseem S. Miller, *Florida reports second vaping death*, Orlando Sentinel, Dec. 11, 2019, available at: <http://www.orlandosentinel.com/news/os-ne-florida-reports-second-vaping-death-20191211-dvz3tehxebvkvkavhe2jdiepe-story.html> (last visited Feb 26, 2021).

⁴⁶ See the “Further Consolidated Appropriations Act, 2020,” Rules Committee print 116-44, Text of the House Amendment to the Senate Amendment to H.R. 1865, December 16, 2019, beginning at page 1492 of 1773, *available at* <https://rules.house.gov/sites/democrats.rules.house.gov/files/BILLS-116HR1865SA-RCP116-44.PDF> (last visited Jan. 25, 2020).

⁴⁷ See 21 CFR 1100-1143. For all intents and purposes, “Electronic Nicotine Delivery Systems” or ENDS products is a reference to vaping products.

Tobacco Control Act (2009) (the act) authorized the FDA to regulate tobacco products. The act broadly defined “tobacco products” as any product that is “made or derived from tobacco” and that is “intended for human consumption.” However, the act, when passed, immediately applied to a few products, namely cigarettes, cigarette tobacco, smokeless tobacco, and roll-your-own tobacco. To regulate any other tobacco products, the act requires the FDA to assert jurisdiction through regulation. In other words, for the FDA to start regulating cigars, e-cigarettes, hookah, and other products not regulated by the federal government, the FDA must create a rule through its formal notice-and-comment rulemaking process. A rule, or regulation, that extends the FDA’s jurisdiction to all tobacco products is often referred to as a Deeming Regulation because the language of the act states that the FDA can regulate additional tobacco products that it “deems to be subject” to the act.⁴⁸

New tobacco products may not be legally marketed in the United States without a tobacco product marketing order from the FDA, which evaluates based on the product's risks to the population as a whole. A “new tobacco product” is any ENDS product is:

- Any tobacco product (including those products in test markets) that was not commercially marketed in the United States as of February 15, 2007; or
- Any modification (including a change in design, any component, any part, or any constituent, including a smoke constituent, or in the content, delivery or form of nicotine, or any other additive or ingredient) of a tobacco product where the modified product was commercially marketed in the United States after February 15, 2007.⁴⁹

The affected products include:

- Any flavored, cartridge-based ENDS product (other than a tobacco- or menthol-flavored ENDS product);
- All other ENDS products for which the manufacturer has failed to take (or is failing to take) adequate measures to prevent minors’ access; and
- Any ENDS product that is targeted to minors or whose marketing is likely to promote use of ENDS by minors.⁵⁰

There are three pathways to market for a person intending to market new tobacco products:

- A premarketing order issued by the FDA after submission of a premarket application;
- A finding by the FDA that the product is “substantial equivalent” to a “predicate” product and does not raise different questions of public health than the predicate product; and
- Receiving an exemption from demonstrating substantial equivalence.⁵¹

⁴⁸ See *Deeming Tobacco Products To Be Subject to the Federal Food, Drug, and Cosmetic Act, as Amended by the Family Smoking Prevention and Tobacco Control Act; Restrictions on the Sale and Distribution of Tobacco Products and Required Warning Statements for Tobacco Products*, available at: <https://www.federalregister.gov/documents/2016/05/10/2016-10685/deeming-tobacco-products-to-be-subject-to-the-federal-food-drug-and-cosmetic-act-as-amended-by-the> (Feb. 26, 2021.) See also Tobacco Control Legal Consortium, *A Deeming Regulation: What is Possible Under the Law*, available at: <https://www.publichealthlawcenter.org/sites/default/files/resources/tclc-fs-deeming-reg-what-is-possible-2014.pdf> (last visited Feb. 26, 2021).

⁴⁹ Federal Food, Drug, and Cosmetic Act, 21 U.S.C. §910(a)(1).

⁵⁰ *Supra*, note 48.

⁵¹ FDA, *Market and Distribute a Tobacco Product*, available at: <https://www.fda.gov/tobacco-products/products-guidance-regulations/market-and-distribute-tobacco-product> (last visited Feb. 26, 2021).

New tobacco products commercially marketed after February 15, 2007 but before March 22, 2011 with a Substantial Equivalency Report submitted by March 22, 2011, are known as “provisional SE tobacco products” and may continue to be marketed unless FDA issues an order that the new product is not substantially equivalent.⁵²

III. Effect of Proposed Changes:

The bill creates a separate licensing structure for the sale of “nicotine dispensing devices” and “nicotine products,” by creating a new part of ch. 569, F.S., to regulate the sale of such products. Under the bill:

- Tobacco products would be regulated under part I of ch. 569, F.S., consisting of ss. 569.002 through 569.23, F.S., which comprise the current provisions in ch. 569, F.S.
- Nicotine products would be regulated under part II, consisting of ss. 569.31 through 569.45, F.S., which includes the requirements in current law for the sale of nicotine products, and additional provisions for regulating nicotine product sales the same as currently apply to the regulation of tobacco product sales.

The bill changes the title of ch. 569, F.S., from “Tobacco Products” to “Tobacco and Nicotine Products,” and directs the Division of Law Revision to create parts I and II of ch. 569, F.S., entitled “Tobacco Products” and “Nicotine Products,” respectively.

Tobacco Products

The bill increases the minimum age to lawfully purchase and possess tobacco products from 18 years of age to 21 years of age. It revises the minimum age requirements in the relevant provisions in ch. 210 and in ch. 569, F.S., including:

- Section 210.095(5), F.S., relating to mail order, Internet, and remote sales of tobacco products, and age verification related for such sales. The bill also requires the individual making a delivery of tobacco products to require the person accepting delivery to provide proof of their legal minimum purchase age if the individual appears to be under 30 years of age, rather than the current 27 years of age. (This latter provision is modified to ensure conformity with recent federal law provisions.)⁵³
- Section 569.14, F.S., relating to signage requirements.
- Section 210.15 (1)(b), F.S., relating to the qualification for a person applying for a permit for the sale of tobacco products.
- Sections 569.007(1) and (2), F.S., relating to the prohibition on the sale or delivery of tobacco products to an underage person.
- Section 569.101, F.S., relating to the prohibition and penalties against the sale, delivery, barter, furnishing, or giving of tobacco products to an underage person.
- Section 569.11, F.S., relating to the prohibition on the possession of tobacco products by underage persons.
- Section 569.14, F.S., revising the signage requirements for dealers of tobacco products.

⁵² *Id.*

⁵³ *Supra* note 47.

The bill revises the definition of the term “any person under the age of 18,” to “any person under the age of 21” and deletes the exemptions for persons who have had the disability of nonage removed under ch. 743, F.S., and emancipated minors. Under the bill, the prohibitions against the sale of tobacco products to, and possession of tobacco products by, persons under 21 years of age would apply to such persons. Persons in the military reserve or active duty in the Armed Forces of the United States and persons acting within the scope of lawful employment, if under the age of 21, would not be prohibited from possessing or purchasing tobacco products.

The bill also amends ss. 210.095(8)(e) and (g), F.S., to provide that the penalty for a violation of the delivery sale requirements in this section, including a delivery sale to a person under the legal age to possess tobacco products, is a misdemeanor of the second degree. The incorrect reference to a misdemeanor of the third degree is deleted.

Smoking and Vaping Near School Property

The bill also amends s. 386.212, F.S., to increase the applicable age from 18 years of age to 21 years of age in the prohibition against smoking and vaping on or near school property during the hours of 6 a.m. to midnight and related penalties.

Nicotine Dispensing Devices and Nicotine Products

Definitions

The bill creates s. 569.31, F.S., to define the terms used in part II of ch. 569, F.S.

The bill defines the term “nicotine dispensing device” to mean “any product that employs an electronic, chemical, or mechanical means to produce vapor or aerosol from a nicotine product, including, but not limited to, an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or other similar device or product, any replacement cartridge for such device, and any other container of nicotine in a solution or other form intended to be used with or within an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or other similar device or product.” This definition for “nicotine dispensing device” is the same as the term is currently defined in s. 877.112, F.S.

The bill defines the term “nicotine product” to mean “any product that contains nicotine, including liquid nicotine, which is intended for human consumption, whether inhaled, chewed, absorbed, dissolved, or ingested by any means.” The term “nicotine product” also includes any nicotine dispensing device.

Under the bill, the following products are not considered to be nicotine products:

- Tobacco products;
- Products regulated as a drug or device by the FDA; or
- Products that contain incidental nicotine.

The definition of “nicotine product” in the bill is the same as the term is currently defined in s. 877.112, F.S.

Section 569.31, F.S., defines the term “any person under the age of 21” to not include any person under the age of 21 who is:

- In the military reserve or on active duty in the Armed Forces of the United States; or
- Acting in his or her scope of lawful employment.⁵⁴

Retail Nicotine Products Dealer Permits

The bill creates s. 569.32, F.S., to require persons who deal, at retail, in nicotine products or that allow a nicotine products vending machine to be located in their premises, to obtain a retail nicotine products dealer permit from the division. This permit does not allow for the sale of tobacco products. However, the holder of a retail tobacco products dealer permit may sell nicotine products without an additional permit.

The bill requires a person to obtain a retail nicotine products dealer permit for each place of business or the premises where nicotine products are to be sold face-to-face or through a vending machine, but no fee is provided for the permit. The division may only issue permits to persons who are 21 years or older or corporations with officers who are 21 years or older. The bill provides the place or premises covered by a permit is subject to inspection and search without a search warrant by the division, or its authorized assistants, and by sheriffs, deputy sheriffs, or police officers, to determine compliance with requirements for nicotine sales and dealing.

The provisions for the issuance and renewal of a retail nicotine products dealer permit are comparable to the requirements for a retail tobacco products dealer permit. However, the bill does not require a retail dealer to pay a fee for a retail nicotine products dealer permit.

Section 569.33, F.S., provides that a retail nicotine products dealer, by accepting a permit, consents to the inspection and search of the place or premises covered by the permit without a warrant by the division or its authorized assistants, and by sheriffs, deputy sheriffs, or police officers, to determine compliance with part II of ch. 569, F.S.⁵⁵

Section 569.34, F.S., prohibits the dealing, at retail, of nicotine products. A person who violates this prohibition commits a noncriminal violation, punishable by a fine of not more than \$500.⁵⁶ However, a retail tobacco products dealer is not required to have a separate or additional permit to deal, at retail, in nicotine products.

Section 569.35, F.S., provides administrative penalties for a violation of the requirements in part II of ch. 569, F.S. Under the bill, the division may assess a fine of up to \$1,000 for a violation. All fines collected must be deposited by the division into the General Revenue Fund. The division may also suspend the imposition of a penalty against a dealer, conditioned upon the dealer's compliance with terms the division considers appropriate.⁵⁷

⁵⁴ See s. 569.002(9), F.S., as amended by the bill, providing a comparable provision for the retail tobacco products dealer permit.

⁵⁵ See s. 569.004, F.S., providing a comparable provision for the retail tobacco products dealer permit.

⁵⁶ See s. 569.005, F.S., providing a comparable provision, including the same penalty, for the retail tobacco products dealer permit.

⁵⁷ See s. 569.006, F.S., providing a comparable provision for the retail tobacco products dealer permit.

Section 569.39, F.S., authorizes the division to adopt rules to administer part II of ch. 569, F.S.

Nicotine Products and Persons Under the Age of 21

The bill repeals s. 877.112, F.S., which currently regulates the retail sale nicotine products in this state, including the sale of such products to, and possession by, minors. The requirements of s. 877.112, F.S., are incorporated into part II of ch. 569, F.S., and revised to increase the minimum lawful age to 21 from 18 years of age:

- Section 569.37, F.S., requiring sales and deliveries of nicotine products to be under the direct control or line of sight of the dealer or the dealer's agent or employee. If the sale or delivery is made through a vending machine, the vending machine must be equipped with an operational lockout device that is under the control of the dealer or the dealer's agent or employee who directly regulates the sale of items through the machine by triggering the lockout device to allow the dispensing of one nicotine product. The bill also prohibits sales by means of self-merchandising, which is an open display of products providing the consumer with direct access to nicotine products. However, self-merchandising is permitted if the establishment prohibits persons under 21 years of age on the licensed premises.⁵⁸
- Section 569.41(1), F.S., prohibiting the sale, delivery, barter, furnishing, or giving (sale or delivery) of nicotine products to underage persons;⁵⁹
- Section 569.41(2), F.S., providing criminal penalties for the sale or delivery of nicotine products to underage persons of a misdemeanor of the second degree for a first violation and a misdemeanor of the first degree for second of subsequent violation within one year of the first violation.⁶⁰
- Section 569.41(3), F.S., providing the following affirmative defenses for a person charged with such a violation:⁶¹
 - The buyer falsely represented that he or she was 21 years of age or older;
 - The appearance of the buyer would indicate, to a prudent person, that the buyer was 21 years of age or older; and
 - The person carefully checked a driver license or identification card and acted in good faith in reliance upon the representation and appearance of the buyer or recipient in the belief the buyer or recipient of 21 years of age or older.
- Section 569.38, F.S., prohibiting the gifting of nicotine product samples to underage persons;⁶²
- Sections 569.42(1) through (5), F.S., prohibiting the knowing possession of nicotine products by persons under the lawful minimum age, prohibiting the misrepresentation of age or military service for the purpose of inducing a dealer or an agent or servant of a dealer to sell or deliver any nicotine product, and providing that any person who violates such prohibitions commits a non-criminal violation, punishable as follows:
 - A first violation carries a penalty of 16 hours of community service or a \$25 fine, and attendance at a school-approved anti-tobacco and anti-nicotine program, if locally available.
 - A second violation within 12 weeks of the first violation is punishable with a \$25 fine.

⁵⁸ See ss. 877.112(11) and (12), F.S.

⁵⁹ See s. 877.112(2), F.S.

⁶⁰ See s. 877.112(4), F.S.

⁶¹ See s. 877.112(5), F.S.

⁶² See s. 877.112(3), F.S.

- A court may suspend or withhold issuance of a driver's license for persons under 21 years of age who fail to complete the noncriminal penalties for knowingly possessing or misrepresenting their age in order to purchase nicotine products.⁶³
- Section 569.42(6), F.S., requiring 80 percent of all civil penalties received from violating prohibitions related to the possession or sale of nicotine products by a county court to be remitted to the Department of Revenue for transfer to the Department of Education for teacher training and for research and evaluation to reduce and prevent the use of nicotine products and nicotine products by children. The remaining 20 percent of civil penalties received by a county court must remain with the clerk of the county court to cover administrative costs.⁶⁴
- Section 569.43, F.S., requiring nicotine product retailers to post a clear and conspicuous sign that the sale of nicotine products is prohibited to persons under the age of 21 and that proof of age is required for purchase.⁶⁵

The bill creates s. 569.381, to provide a process to encourage a retail nicotine products dealer to comply with responsible practices to prevent the sale of nicotine products to persons under 21 years of age. This process is the same as is currently provided in s. 569.008, F.S., for retail tobacco product dealers. Under the bill, if the division finds that a retail nicotine products retailer's employee has illegally sold nicotine products to a person under 21 years of age, the division may mitigate penalties if:

- The nicotine product retailer is qualified as a responsible retailer by establishing and implementing specified practices designed to ensure that the nicotine product retailer's employees comply with Florida laws regulating the sale of nicotine products, such as employee training;
- The nicotine product retailer had no knowledge of that employee's violation at the time of the violation and did not direct, approve, or participate in the violation; and
- If the sale was made through a vending machine, the machine was equipped with an operational lock-out device.

Annual Report

Section 569.44, F.S., requires the division to submit an annual report, by December 31, to the Governor and Legislature on the progress of implementing and enforcing the above requirements, including:

- The number and results of compliance visits by the division;
- The number of violations for failure of a retailer to hold a valid permit;
- The number of violations for selling nicotine products to anyone under the age of 21 and the results of administrative hearings on such violations; and
- The number of people under the age of 21 cited, including sanctions imposed as a result of such citation.⁶⁶

⁶³ See ss. 877.112(6), (7), and (8), F.S.

⁶⁴ See s. 877.112(9), F.S.

⁶⁵ See s. 877.112(10), F.S.

⁶⁶ See s. 569.19, F.S., providing a comparable provision for the retail tobacco products dealer permit.

Mail Order, Internet, and Other Remote Sales of Nicotine Products in Florida

Section 569.45, F.S., provides requirements for the delivery of mail order, Internet, and other remote sales of nicotine products, referred to as “delivery sales.”⁶⁷ Under the bill, each person who mails, ships, or otherwise delivers nicotine products in connection with an order for a delivery sale must:

- Include, as part of the shipping documents, in a clear and conspicuous manner, the following statement: “Nicotine Products: Florida law prohibits shipping to individuals under 18 years of age.”
- Use a method of mailing, shipping, or delivery which obligates the delivery service to:
 - Require the signature of an adult who resides at the delivery address and obtain proof of the legal minimum purchase age of the individual accepting delivery, if the individual appears to be under 30 years of age.
 - Require proof that the individual accepting delivery is either the addressee or the adult designated by the addressee, in the form of a valid, government-issued identification card bearing a photograph of the individual who signs to accept delivery of the shipping container.

Before the first delivery to a consumer, the bill requires the person mailing, shipping, or delivering the nicotine products to:

- Obtain a certification from the person accepting delivery that includes reliable confirmation that the person accepting the delivery is an adult, and a written statement under penalty of perjury providing the person’s date of birth, address, and confirmation that the person wants to accept the delivery;
- Make a good faith effort to verify the information in the certification by checking the information against a commercially available database or obtaining a photocopy of the person’s ID;
- Provide the person accepting the delivery a notice stating nicotine products are illegal for underage youths and sales of such products are restricted to individuals who provide verifiable proof of legal age to purchase;
- Receive payment by a credit card or debit card in the name of the person accepting the delivery or a personal or company check of the person accepting the delivery, if the order is made in accordance with an advertisement on the Internet;
- Submit to the credit card company necessary information so that the words “nicotine product” appear on the person’s credit card statement when a purchase is made using a credit card; and
- Make a phone call to the person accepting the delivery to confirm the order before shipping the order.

The bill requires a person who accepts a purchase order for a delivery sale and delivers the nicotine products without using a delivery service to comply with all of the delivery service requirements.

⁶⁷ See s. 210.095, F.S., providing comparable provisions for delivery sales of tobacco products.

The bill imposes a penalty for knowingly violating the delivery sale requirements as a misdemeanor of the second degree.⁶⁸

Effective Date

The effective date of the bill is October 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

Article VII, Section 19 of the Florida Constitution requires a “state tax or fee imposed, authorized, or raised under this section must be contained in a separate bill that contains no other subject.” A “fee” is defined by the Florida Constitution to mean “any charge or payment required by law, including any fee for service, fee or cost for licenses, and charge for service.”

Article VII, Section 19 of the Florida Constitution also requires that a tax or fee raised by the Legislature must be approved by two-thirds of the membership of each house of the Legislature.

Under the bill, a fee for a retail nicotine products dealer permit is not imposed.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

⁶⁸ *Supra*, note 6.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Department of Business and Professional Regulation (DBPR) may incur indeterminate expenses related to personnel costs or modification of operational priorities needed to accommodate the additional licensure of dealers of vapor-generating electronic devices, which will not be offset by a permit fee.

VI. Technical Deficiencies:

None.

VII. Related Issues:**Age of Tobacco Purchase in Other States**

As of January 1, 2021, 31 states have raised the tobacco purchase age to 21 years of age, along with Washington, DC, and over 500 localities.⁶⁹ In Florida, Alachua County and the City of Fort Lauderdale have raised their minimum age for purchase of tobacco products to 21 years of age.⁷⁰

Age Restrictions on Youth Access to Electronic Cigarettes in Other States

As of December 15, 2020, all states and the District of Columbia have laws that restrict youth access to electronic cigarettes, or e-cigarettes. In this context, *e-cigarette* broadly refers to any product, and its component parts and accessories, that contains nicotine and/or other substances intended for use in the form of an aerosol, often referred to as vapor. In 32 states, the restriction is set at age 21. Two states set the restriction at age 19. In 16 states, the restriction is set at age 18. There are certain exceptions and exemptions that are applicable within any given state.⁷¹

The bill amends s. 569.002(6), F.S., to modify the definition of “tobacco products” in the context of the regulation of the retail sale of tobacco products. Section 210.25(11), F.S., relating to the taxation of on tobacco products other than cigarettes or cigars, also defines the term “tobacco products.” Because the bill does not revise the definition of “tobacco products” in part II ch. 210, F.S., which governs the excise tax and surcharge imposed and collected on tobacco products other than cigars and cigarettes, the bill does not affect:

- The taxation of vapor-generating electronic devices;

⁶⁹ See Campaign for Tobacco-Free Kids, *States and Localities that have Raised the Minimum Legal Sale Age for Tobacco Products to 21*, available at:

https://www.tobaccofreekids.org/assets/content/what_we_do/state_local_issues/sales_21/states_localities_MLSA_21.pdf (last visited Feb. 25, 2021).

⁷⁰ *Id.*

⁷¹ See Public Health Law Center at Mitchell Hamline School of Law, “Youth Access to E-Cigarettes, States with Laws Restricting Youth Access to E-Cigarettes, Enacted as of December 15, 2020,” available at:

<https://www.publichealthlawcenter.org/sites/default/files/States-with-Laws-Restricting-Youth-Access-to-ECigarettes-Dec2020.pdf> (last visited Feb. 25, 2021).

- The collection of excise taxes and surcharge taxes on other tobacco products; or
- The licensure, reporting, and recordkeeping of manufacturers and distributors of vapor-generating electronic devices or other tobacco products.

Types of Nicotine Devices Subject to Federal Enforcement Priorities

The nicotine devices that are subject to enhanced enforcement by the FDA are cartridge-based nicotine devices. Tank-based vaping devices will not be subject to enhanced federal FDA enforcement.⁷²

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 210.095, 210.15, 386.212, 569.002, 569.003, 569.004, 569.006, 569.007, 569.0075, 569.008, 569.009, 569.101, 569.11, 569.12, 569.14, and 569.19.

This bill creates the following sections of the Florida Statutes: 569.31, 569.32, 569.33, 569.34, 569.35, 569.37, 569.38, 569.381, 569.39, 567.41, 569.42, 569.43, 569.44, and 569.45.

This bill repeals section 877.112 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 Regulated Industries on March 9, 2021:

The committee substitute:

- Creates a separate licensing structure for the sale of “nicotine dispensing devices” and nicotine products, by creating a new part II in ch. 569, F.S., to regulate the sale of such products.
- Regulates tobacco products under part I consisting of ss. 569.002 through 569.23, F.S., which consists of the current law provisions.
- Regulates nicotine products under part II, consisting of ss. 569.31 through 569.45, F.S., which includes the requirements in current law for the sale of nicotine products and additional provisions for the regulation of nicotine product sales the same as currently apply to the regulation of tobacco product sales.
- Does not define the term tobacco products to include nicotine products.
- Defines the term “nicotine dispensing device” and the term “vapor-generating electronic device.”
- Requires nicotine products retail dealers to have a permit issued by the Division of Alcoholic Beverages and Tobacco, but does not require a fee.
- Retains the exemption in the definition for “any person under the age of 21” for underage persons in the military and persons acting in the scope of lawful employment.

⁷² *Supra* note 48.

- Revises the prohibition against smoking and vaping on or near school property to apply to persons under 21 years, and does not apply the prohibition to all hours of the day.
- Amends ss. 210.095(8)(e) and (g), F.S., to provide that the penalty for a violation of the delivery sale requirements in this section, including a delivery sale to a person under the legal age to possess tobacco products, is a misdemeanor of the second degree, and deleting the incorrect reference to a misdemeanor of the third degree.
- Does not amend s. 569.007(1), F.S., to provide that sales of tobacco products from a vending machine are only permissible from a machine that is located in an establishment that prohibits persons under age 21 on the licensed premises at all times.
- Removes the provision in the bill limiting the sale of tobacco products through vending machines to a location that prohibit persons under 21 years of age on the premises.
- Does not create s. 569.101(4), F.S., to require a person to verify that a person purchasing a tobacco product is not under 21 years of age, and specify the type of documentation that may be used to verify age.
- Makes several technical and conforming changes to the bill.

B. Amendments:

None.



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/09/2021	.	
	.	
	.	
	.	

The Committee on Regulated Industries (Hutson) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Paragraph (a) of subsection (1), paragraphs (a) and (c) of subsection (2), paragraph (a) of subsection (3), paragraph (a) of subsection (4), paragraphs (a) and (b) of subsection (5), and paragraphs (a), (b), (e), and (g) of subsection (8) of section 210.095, Florida Statutes, are amended to read:



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11 210.095 Mail order, Internet, and remote sales of tobacco
12 products; age verification.-

13 (1) For purposes of this section, the term:

14 ~~(a) "Adult" means an individual who is at least of the~~
15 ~~legal minimum purchase age for tobacco products.~~

16 (2)

17 (a) A sale of tobacco products constituting a delivery sale
18 pursuant to paragraph (1)(b) ~~(1)(e)~~ is a delivery sale
19 regardless of whether the person accepting the order for the
20 delivery sale is located inside or outside this state.

21 (c) A person may not make a delivery sale of tobacco
22 products to any individual who is not 21 years of age or older
23 ~~an adult~~.

24 (3) A person may not mail, ship, or otherwise deliver
25 tobacco products in connection with an order for a delivery sale
26 unless, before the first delivery to the consumer, the person
27 accepting the order for the delivery sale:

28 (a) Obtains from the individual submitting the order a
29 certification that includes:

30 1. Reliable confirmation that the individual is 21 years of
31 age or older ~~an adult~~; and

32 2. A statement signed by the individual in writing and
33 under penalty of perjury which:

34 a. Certifies the address and date of birth of the
35 individual; and

36 b. Confirms that the individual wants to receive delivery
37 sales from a tobacco company and understands that, under the
38 laws of this state, the following actions are illegal:

39 (I) Signing another individual's name to the certification;



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40 (II) Selling tobacco products to individuals under the
41 legal minimum purchase age; and

42 (III) Purchasing tobacco products, if the person making the
43 purchase is under the legal minimum purchase age.

44

45 In addition to the requirements of this subsection, a person
46 accepting an order for a delivery sale may request that a
47 consumer provide an electronic mail address.

48 (4) The notice described in paragraph (3)(c) must include
49 prominent and clearly legible statements that sales of tobacco
50 products are:

51 (a) Illegal if made to individuals who are not 21 years of
52 age or older adults.

53

54 The notice must include an explanation of how each tax has been,
55 or is to be, paid with respect to the delivery sale.

56 (5) Each person who mails, ships, or otherwise delivers
57 tobacco products in connection with an order for a delivery sale
58 must:

59 (a) Include as part of the shipping documents, in a clear
60 and conspicuous manner, the following statement: "Tobacco
61 Products: Florida law prohibits shipping to individuals under 21
62 ~~18~~ years of age and requires the payment of all applicable
63 taxes."

64 (b) Use a method of mailing, shipping, or delivery which
65 obligates the delivery service to require:

66 1. The individual submitting the order for the delivery
67 sale or another individual who is 21 years of age or older adult
68 who resides at the individual's address to sign his or her name



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69 to accept delivery of the shipping container. Proof of the legal
70 minimum purchase age of the individual accepting delivery is
71 required only if the individual appears to be under 30 ~~27~~ years
72 of age.

73 2. Proof that the individual is either the addressee or the
74 individual who is 21 years of age or older ~~adult~~ designated by
75 the addressee, in the form of a valid, government-issued
76 identification card bearing a photograph of the individual who
77 signs to accept delivery of the shipping container.

78

79 If the person accepting a purchase order for a delivery sale
80 delivers the tobacco products without using a delivery service,
81 the person must comply with all of the requirements of this
82 section which apply to a delivery service. Any failure to comply
83 with a requirement of this section constitutes a violation
84 thereof.

85 (8)(a) Except as otherwise provided in this section, a
86 violation of this section by a person other than an individual
87 who is not 21 years of age or older ~~an adult~~ is a misdemeanor of
88 the first degree, punishable as provided in s. 775.082 or s.
89 775.083, and:

90 1. For a first violation of this section, the person shall
91 be fined \$1,000 or five times the retail value of the tobacco
92 products involved in the violation, whichever is greater.

93 2. For a second or subsequent violation of this section,
94 the person shall be fined \$5,000 or five times the retail value
95 of the tobacco products involved in the violation, whichever is
96 greater.

97 (b) A person who is 21 years of age or older ~~an adult~~ and



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98 knowingly submits a false certification under subsection (3)
99 commits a misdemeanor of the first degree, punishable as
100 provided in s. 775.082 or s. 775.083. For each offense, the
101 person shall be fined \$10,000 or five times the retail value of
102 the tobacco products involved in the violation, whichever is
103 greater.

104 (e) A person who, in connection with a delivery sale,
105 delivers tobacco products on behalf of a delivery service to an
106 individual who is not 21 years of age or older ~~an adult~~ commits
107 a misdemeanor of the second ~~third~~ degree, punishable as provided
108 in s. 775.082 or s. 775.083.

109 (g) An individual who is not 21 years of age or older ~~an~~
110 ~~adult~~ and who knowingly violates any provision of this section
111 commits a misdemeanor of the second ~~third~~ degree, punishable as
112 provided in s. 775.082 or s. 775.083.

113 Section 2. Paragraph (b) of subsection (1) of section
114 210.15, Florida Statutes, is amended to read:

115 210.15 Permits.—

116 (1)

117 (b) Permits shall be issued only to persons of good moral
118 character who are not less than 21 ~~18~~ years of age. Permits to
119 corporations shall be issued only to corporations whose officers
120 are of good moral character and not less than 21 ~~18~~ years of
121 age. There shall be no exemptions from the permit fees herein
122 provided to any persons, association of persons, or corporation,
123 any law to the contrary notwithstanding.

124 Section 3. Subsection (1) of section 386.212, Florida
125 Statutes, is amended to read:

126 386.212 Smoking and vaping prohibited near school property;



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127 penalty.—

128 (1) It is unlawful for any person under 21 ~~18~~ years of age
129 to smoke tobacco or vape in, on, or within 1,000 feet of the
130 real property comprising a public or private elementary, middle,
131 or secondary school between the hours of 6 a.m. and midnight.
132 This section does not apply to any person occupying a moving
133 vehicle or within a private residence.

134 Section 4. Chapter 569, entitled "Tobacco Products," is
135 renamed "Tobacco and Nicotine Products."

136 Section 5. The Division of Law Revision is directed to:

137 (1) Create part I of chapter 569, Florida Statutes,
138 consisting of ss. 569.002-569.23, Florida Statutes, to be
139 entitled "Tobacco Products."

140 (2) Create part II of chapter 569, Florida Statutes,
141 consisting of ss. 569.31-569.45, Florida Statutes, to be
142 entitled "Nicotine Products."

143 Section 6. Section 569.002, Florida Statutes, is amended to
144 read:

145 569.002 Definitions.—As used in this part ~~chapter~~, the
146 term:

147 (1) "Dealer" is synonymous with the term "retail tobacco
148 products dealer."

149 (2) "Division" means the Division of Alcoholic Beverages
150 and Tobacco of the Department of Business and Professional
151 Regulation.

152 (3) "Nicotine product" has the same meaning as provided in
153 s. 569.31(4).

154 (4) "Nicotine dispensing device" has the same meaning as
155 provided in s. 569.31(3).



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156 (5) "Permit" is synonymous with the term "retail tobacco
157 products dealer permit."

158 (6)~~(4)~~ "Retail tobacco products dealer" means the holder of
159 a retail tobacco products dealer permit.

160 (7)~~(5)~~ "Retail tobacco products dealer permit" means a
161 permit issued by the division pursuant to s. 569.003.

162 (8)~~(6)~~ "Tobacco products" includes loose tobacco leaves,
163 and products made from tobacco leaves, in whole or in part, and
164 cigarette wrappers, which can be used for smoking, sniffing, or
165 chewing.

166 (9)~~(7)~~ "Any person under the age of 21 ~~18~~" does not include
167 any person under the age of 21 ~~18~~ who:

168 (a) ~~Has had his or her disability of nonage removed under~~
169 ~~chapter 743;~~

170 ~~(b)~~ Is in the military reserve or on active duty in the
171 Armed Forces of the United States;

172 ~~(c) Is otherwise emancipated by a court of competent~~
173 ~~jurisdiction and released from parental care and responsibility;~~
174 or

175 (b)~~(d)~~ Is acting in his or her scope of lawful employment
176 with an entity licensed under the provisions of chapter 210 or
177 this part ~~chapter~~.

178 Section 7. Paragraph (c) of subsection (1) of section
179 569.003, Florida Statutes, is amended to read:

180 569.003 Retail tobacco products dealer permits;
181 application; qualifications; fees; renewal; duplicates.—

182 (1)

183 (c) Permits shall be issued annually, upon payment of the
184 annual permit fee prescribed by the division. The division shall



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185 fix the fee in an amount sufficient to meet the costs incurred
186 by it in carrying out its permitting, enforcement, and
187 administrative responsibilities under this part ~~chapter~~, but the
188 fee may not exceed \$50. The proceeds of the fee shall be
189 deposited into the Alcoholic Beverage and Tobacco Trust Fund.

190 Section 8. Section 569.004, Florida Statutes, is amended to
191 read:

192 569.004 Consent to inspection and search without warrant.—
193 An applicant for a permit, by accepting the permit when issued,
194 agrees that the place or premises covered by the permit is
195 subject to inspection and search without a search warrant by the
196 division or its authorized assistants, and by sheriffs, deputy
197 sheriffs, or police officers, to determine compliance with this
198 chapter, including part II of this chapter if the applicant
199 deals, at retail, in nicotine products within the state or
200 allows a nicotine products vending machine to be located on its
201 premises within the state.

202 Section 9. Section 569.006, Florida Statutes, is amended to
203 read:

204 569.006 Retail tobacco products dealers; administrative
205 penalties.—The division may suspend or revoke the permit of the
206 dealer upon sufficient cause appearing of the violation of any
207 of the provisions of this chapter, including part II of this
208 chapter if the dealer deals, at retail, in nicotine products
209 within the state or allows a nicotine products vending machine
210 to be located on its premises within the state, by a dealer or
211 by a dealer's agent or employee. The division may also assess
212 and accept administrative fines of up to \$1,000 against a dealer
213 for each violation. The division shall deposit all fines



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214 collected into the General Revenue Fund as collected. An order
215 imposing an administrative fine becomes effective 15 days after
216 the date of the order. The division may suspend the imposition
217 of a penalty against a dealer, conditioned upon the dealer's
218 compliance with terms the division considers appropriate.

219 Section 10. Subsections (1) and (2) of section 569.007,
220 Florida Statutes, are amended to read:

221 569.007 Sale or delivery of tobacco products;
222 restrictions.—

223 (1) In order to prevent persons under 21 ~~18~~ years of age
224 from purchasing or receiving tobacco products, the sale or
225 delivery of tobacco products is prohibited, except:

226 (a) When under the direct control or line of sight of the
227 dealer or the dealer's agent or employee; or

228 (b) Sales from a vending machine are prohibited under the
229 provisions of paragraph (1)(a) and are only permissible from a
230 machine that is equipped with an operational lockout device
231 which is under the control of the dealer or the dealer's agent
232 or employee who directly regulates the sale of items through the
233 machine by triggering the lockout device to allow the dispensing
234 of one tobacco product. The lockout device must include a
235 mechanism to prevent the machine from functioning if the power
236 source for the lockout device fails or if the lockout device is
237 disabled, and a mechanism to ensure that only one tobacco
238 product is dispensed at a time.

239 (2) The provisions of subsection (1) shall not apply to an
240 establishment that prohibits persons under 21 ~~18~~ years of age on
241 the licensed premises.

242 Section 11. Section 569.0075, Florida Statutes, is amended



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243 to read:

244 569.0075 Gift of sample tobacco products prohibited.—The
245 gift of sample tobacco products to any person under the age of
246 21 ~~18~~ by an entity licensed or permitted under the provisions of
247 chapter 210 or this part ~~chapter~~, or by an employee of such
248 entity, is prohibited and is punishable as provided in s.
249 569.101.

250 Section 12. Subsection (1), paragraphs (b) and (c) of
251 subsection (2), and subsection (3) of section 569.008, Florida
252 Statutes, are amended to read:

253 569.008 Responsible retail tobacco products dealers;
254 qualifications; mitigation of disciplinary penalties; diligent
255 management and supervision; presumption.—

256 (1) The Legislature intends to prevent the sale of tobacco
257 products to persons under 21 ~~18~~ years of age and to encourage
258 retail tobacco products dealers to comply with responsible
259 practices in accordance with this section.

260 (2) To qualify as a responsible retail tobacco products
261 dealer, the dealer must establish and implement procedures
262 designed to ensure that the dealer's employees comply with the
263 provisions of this part ~~chapter~~. The dealer must provide a
264 training program for the dealer's employees which addresses the
265 use and sale of tobacco products and which includes at least the
266 following topics:

267 (b) Methods of recognizing and handling customers under 21
268 ~~18~~ years of age.

269 (c) Procedures for proper examination of identification
270 cards in order to verify that customers are not under 21 ~~18~~
271 years of age.



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272 (3) In determining penalties under s. 569.006, the division
273 may mitigate penalties imposed against a dealer because of an
274 employee's illegal sale of a tobacco product to a person under
275 21 ~~18~~ years of age if the following conditions are met:

276 (a) The dealer is qualified as a responsible dealer under
277 this section.

278 (b) The dealer provided the training program required under
279 subsection (2) to that employee before the illegal sale
280 occurred.

281 (c) The dealer had no knowledge of that employee's
282 violation at the time of the violation and did not direct,
283 approve, or participate in the violation.

284 (d) If the sale was made through a vending machine, the
285 machine was equipped with an operational lock-out device.

286 Section 13. Section 569.009, Florida Statutes, is amended
287 to read:

288 569.009 Rulemaking authority.—The division shall adopt any
289 rules necessary to administer and enforce the provisions of this
290 part ~~chapter~~.

291 Section 14. Section 569.101, Florida Statutes, is amended
292 to read:

293 569.101 Selling, delivering, bartering, furnishing, or
294 giving tobacco products to persons under 21 ~~18~~ years of age;
295 criminal penalties; defense.—

296 (1) It is unlawful to sell, deliver, barter, furnish, or
297 give, directly or indirectly, to any person who is under 21 ~~18~~
298 years of age, any tobacco product.

299 (2) Any person who violates subsection (1) commits a
300 misdemeanor of the second degree, punishable as provided in s.



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301 775.082 or s. 775.083. However, any person who violates
302 subsection (1) for a second or subsequent time within 1 year of
303 the first violation, commits a misdemeanor of the first degree,
304 punishable as provided in s. 775.082 or s. 775.083.

305 (3) A person charged with a violation of subsection (1) has
306 a complete defense if, at the time the tobacco product was sold,
307 delivered, bartered, furnished, or given:

308 (a) The buyer or recipient falsely evidenced that she or he
309 was 21 ~~18~~ years of age or older;

310 (b) The appearance of the buyer or recipient was such that
311 a prudent person would believe the buyer or recipient to be 21
312 ~~18~~ years of age or older; and

313 (c) Such person carefully checked a driver license or an
314 identification card issued by this state or another state of the
315 United States, a passport, or a United States armed services
316 identification card presented by the buyer or recipient and
317 acted in good faith and in reliance upon the representation and
318 appearance of the buyer or recipient in the belief that the
319 buyer or recipient was 21 ~~18~~ years of age or older.

320 Section 15. Section 569.11, Florida Statutes, is amended to
321 read:

322 569.11 Possession, misrepresenting age or military service
323 to purchase, and purchase of tobacco products by persons under
324 21 ~~18~~ years of age prohibited; penalties; jurisdiction;
325 disposition of fines.—

326 (1) It is unlawful for any person under 21 ~~18~~ years of age
327 to knowingly possess any tobacco product. Any person under 21 ~~18~~
328 years of age who violates this subsection commits a noncriminal
329 violation as provided in s. 775.08(3), punishable by:



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330 (a) For a first violation, 16 hours of community service
331 or, instead of community service, a \$25 fine. In addition, the
332 person must attend a school-approved anti-tobacco program, if
333 locally available; or

334 (b) For a second or subsequent violation within 12 weeks
335 after the first violation, a \$25 fine.

336
337 Any second or subsequent violation not within the 12-week period
338 after the first violation is punishable as provided for a first
339 violation.

340 (2) It is unlawful for any person under 21 ~~18~~ years of age
341 to misrepresent his or her age or military service for the
342 purpose of inducing a dealer or an agent or employee of the
343 dealer to sell, give, barter, furnish, or deliver any tobacco
344 product, or to purchase, or attempt to purchase, any tobacco
345 product from a person or a vending machine. Any person under 21
346 ~~18~~ years of age who violates this subsection commits a
347 noncriminal violation as provided in s. 775.08(3), punishable
348 by:

349 (a) For a first violation, 16 hours of community service
350 or, instead of community service, a \$25 fine and, in addition,
351 the person must attend a school-approved anti-tobacco program,
352 if available; or

353 (b) For a second or subsequent violation within 12 weeks
354 after the first violation, a \$25 fine.

355
356 Any second or subsequent violation not within the 12-week period
357 after the first violation is punishable as provided for a first
358 violation.



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359 (3) Any person under 21 ~~18~~ years of age cited for
360 committing a noncriminal violation under this section must sign
361 and accept a civil citation indicating a promise to appear
362 before the county court or comply with the requirement for
363 paying the fine and must attend a school-approved anti-tobacco
364 program, if locally available. If a fine is assessed for a
365 violation of this section, the fine must be paid within 30 days
366 after the date of the citation or, if a court appearance is
367 mandatory, within 30 days after the date of the hearing.

368 (4) A person charged with a noncriminal violation under
369 this section must appear before the county court or comply with
370 the requirement for paying the fine. The court, after a hearing,
371 shall make a determination as to whether the noncriminal
372 violation was committed. If the court finds the violation was
373 committed, it shall impose an appropriate penalty as specified
374 in subsection (1) or subsection (2). A person who participates
375 in community service shall be considered an employee of the
376 state for the purpose of chapter 440, for the duration of such
377 service.

378 (5)(a) If a person under 21 ~~18~~ years of age is found by the
379 court to have committed a noncriminal violation under this
380 section and that person has failed to complete community
381 service, pay the fine as required by paragraph (1)(a) or
382 paragraph (2)(a), or attend a school-approved anti-tobacco
383 program, if locally available, the court may direct the
384 Department of Highway Safety and Motor Vehicles to withhold
385 issuance of or suspend the driver license or driving privilege
386 of that person for a period of 30 consecutive days.

387 (b) If a person under 21 ~~18~~ years of age is found by the



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388 court to have committed a noncriminal violation under this
389 section and that person has failed to pay the applicable fine as
390 required by paragraph (1)(b) or paragraph (2)(b), the court may
391 direct the Department of Highway Safety and Motor Vehicles to
392 withhold issuance of or suspend the driver license or driving
393 privilege of that person for a period of 45 consecutive days.

394 (6) Eighty percent of all civil penalties received by a
395 county court pursuant to this section shall be remitted by the
396 clerk of the court to the Department of Revenue for transfer to
397 the Department of Education to provide for teacher training and
398 for research and evaluation to reduce and prevent the use of
399 tobacco products by children. The remaining 20 percent of civil
400 penalties received by a county court pursuant to this section
401 shall remain with the clerk of the county court to cover
402 administrative costs.

403 Section 16. Section 569.12, Florida Statutes, is amended to
404 read:

405 569.12 Jurisdiction; tobacco product and nicotine product
406 enforcement officers or agents; enforcement.—

407 (1) In addition to the Division of Alcoholic Beverages and
408 Tobacco of the Department of Business and Professional
409 Regulation, any law enforcement officer certified under s.
410 943.10(1), (6), or (8) shall enforce the provisions of this
411 chapter.

412 (2)(a) A county or municipality may designate certain of
413 its employees or agents as tobacco product and nicotine product
414 enforcement officers. The training and qualifications of the
415 employees or agents for such designation shall be determined by
416 the county or the municipality. Nothing in this section shall be



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417 construed to permit the carrying of firearms or other weapons by
418 a tobacco product and nicotine product enforcement agent, nor
419 does designation as a tobacco product and nicotine product
420 enforcement officer provide the employee or agent with the power
421 of arrest or subject the employee or agent to the provisions of
422 ss. 943.085-943.255. Nothing in this section amends, alters, or
423 contravenes the provisions of any state-administered retirement
424 system or any state-supported retirement system established by
425 general law.

426 (b) A tobacco and nicotine product enforcement officer is
427 authorized to issue a citation to a person under the age of 21
428 ~~18~~ when, based upon personal investigation, the officer has
429 reasonable cause to believe that the person has committed a
430 civil infraction in violation of s. 386.212, ~~or~~ s. 569.11, or s.
431 569.42.

432 (3) A correctional probation officer as defined in s.
433 943.10(3) is authorized to issue a citation to a person under
434 the age of 21 ~~18~~ when, based upon personal investigation, the
435 officer has reasonable cause to believe that the person has
436 committed a civil infraction in violation of s. 569.11 or s.
437 569.42.

438 (4) A citation issued to any person violating the
439 provisions of s. 569.11 or s. 569.42 shall be in a form
440 prescribed by the Division of Alcoholic Beverages and Tobacco of
441 the Department of Business and Professional Regulation and shall
442 contain:

443 (a) The date and time of issuance.

444 (b) The name and address of the person to whom the citation
445 is issued.



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446 (c) The date and time the civil infraction was committed.

447 (d) The facts constituting reasonable cause.

448 (e) The number of the Florida statute violated.

449 (f) The name and authority of the citing officer.

450 (g) The procedure for the person to follow in order to
451 contest the citation, perform the required community service,
452 attend the required anti-tobacco or anti-tobacco and anti-
453 nicotine program, or to pay the civil penalty.

454 Section 17. Section 569.14, Florida Statutes, is amended to
455 read:

456 569.14 Posting of a sign stating that the sale of tobacco
457 products or nicotine products to persons under 21 ~~18~~ years of
458 age is unlawful; enforcement; penalty.—

459 (1) A dealer that sells tobacco products shall post a clear
460 and conspicuous sign in each place of business where such
461 products are sold which substantially states the following:

462

463 THE SALE OF TOBACCO PRODUCTS TO PERSONS UNDER THE AGE
464 OF 21 ~~18~~ IS AGAINST FLORIDA LAW. PROOF OF AGE IS
465 REQUIRED FOR PURCHASE.

466

467 (2) A dealer that sells tobacco products and nicotine
468 products or nicotine dispensing devices, ~~as defined in s.~~
469 ~~877.112,~~ may use a sign that substantially states the following:

470

471 THE SALE OF TOBACCO PRODUCTS, NICOTINE PRODUCTS, OR
472 NICOTINE DISPENSING DEVICES TO PERSONS UNDER THE AGE
473 OF 21 ~~18~~ IS AGAINST FLORIDA LAW. PROOF OF AGE IS
474 REQUIRED FOR PURCHASE.



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A dealer that uses a sign as described in this subsection meets the signage requirements of subsection (1) and s. 569.43(1) ~~s. 877.112~~.

(3) The division shall make available to dealers of tobacco products signs that meet the requirements of subsection (1) or subsection (2).

(4) Any dealer that sells tobacco products shall provide at the checkout counter in a location clearly visible to the dealer or the dealer's agent or employee instructional material in a calendar format or similar format to assist in determining whether a person is of legal age to purchase tobacco products. This point of sale material must contain substantially the following language:

IF YOU WERE NOT BORN BEFORE THIS DATE
(insert date and applicable year)
YOU CANNOT BUY TOBACCO PRODUCTS, NICOTINE PRODUCTS,
OR NICOTINE DISPENSING DEVICES.

Upon approval by the division, in lieu of a calendar a dealer may use card readers, scanners, or other electronic or automated systems that can verify whether a person is of legal age to purchase tobacco products. Failure to comply with the provisions contained in this subsection shall result in imposition of administrative penalties as provided in s. 569.006.

(5) The division, through its agents and inspectors, shall enforce this section.

(6) Any person who fails to comply with subsection (1) is



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504 guilty of a misdemeanor of the second degree, punishable as
505 provided in s. 775.082 or s. 775.083.

506 Section 18. Section 569.19, Florida Statutes, is amended to
507 read:

508 569.19 Annual report.—The division shall report annually
509 with written findings to the Legislature and the Governor by
510 December 31, on the progress of implementing the enforcement
511 provisions of this part ~~chapter~~. This must include, but is not
512 limited to:

513 (1) The number and results of compliance visits.

514 (2) The number of violations for failure of a retailer to
515 hold a valid license.

516 (3) The number of violations for selling tobacco products
517 to persons under age 21 ~~18~~, and the results of administrative
518 hearings on the above and related issues.

519 (4) The number of persons under age 21 ~~18~~ cited for
520 violations of s. 569.11 and sanctions imposed as a result of
521 citation.

522 Section 19. Section 569.31, Florida Statutes, is created to
523 read:

524 569.31 Definitions.—As used in this part, the term:

525 (1) "Dealer" is synonymous with the term "retail nicotine
526 products dealer."

527 (2) "Division" means the Division of Alcoholic Beverages
528 and Tobacco of the Department of Business and Professional
529 Regulation.

530 (3) "Nicotine dispensing device" means any product that
531 employs an electronic, chemical, or mechanical means to produce
532 vapor or aerosol from a nicotine product, including, but not



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533 limited to, an electronic cigarette, electronic cigar,
534 electronic cigarillo, electronic pipe, or other similar device
535 or product, any replacement cartridge for such device, and any
536 other container of nicotine in a solution or other form intended
537 to be used with or within an electronic cigarette, electronic
538 cigar, electronic cigarillo, electronic pipe, or other similar
539 device or product.

540 (4) "Nicotine product" means any product that contains
541 nicotine, including liquid nicotine, which is intended for human
542 consumption, whether inhaled, chewed, absorbed, dissolved, or
543 ingested by any means. The term also includes any nicotine
544 dispensing device. The term does not include a:

545 (a) Tobacco product, as defined in s. 569.002;

546 (b) Product regulated as a drug or device by the United
547 States Food and Drug Administration under Chapter V of the
548 Federal Food, Drug, and Cosmetic Act; or

549 (c) Product that contains incidental nicotine.

550 (5) "Permit" is synonymous with the term "retail nicotine
551 products dealer permit."

552 (6) "Retail nicotine products dealer" means the holder of a
553 retail nicotine products dealer permit.

554 (7) "Retail nicotine products dealer permit" means a permit
555 issued by the division under s. 569.32.

556 (8) "Self-service merchandising" means the open display of
557 nicotine products, whether packaged or otherwise, for direct
558 retail customer access and handling before purchase without the
559 intervention or assistance of the dealer or the dealer's owner,
560 employee, or agent. An open display of such products and devices
561 includes the use of an open display unit.



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562 (9) "Any person under the age of 21" does not include any
563 person under the age of 21 who:

564 (a) Is in the military reserve or on active duty in the
565 Armed Forces of the United States; or

566 (b) Is acting in his or her scope of lawful employment.

567 Section 20. Section 569.32, Florida Statutes, is created to
568 read:

569 569.32 Retail nicotine products dealer permits;
570 application; qualifications; renewal; duplicates.—

571 (1)(a) Each person, firm, association, or corporation that
572 seeks to deal, at retail, in nicotine products within the state,
573 or to allow a nicotine products vending machine to be located on
574 its premises in the state, must obtain a retail nicotine
575 products dealer permit for each place of business or premises at
576 which nicotine products are sold. Each dealer owning, leasing,
577 furnishing, or operating vending machines through which nicotine
578 products are sold must obtain a permit for each machine and
579 shall post the permit in a conspicuous place on or near the
580 machine; however, if the dealer has more than one vending
581 machine at a single location or if nicotine products are sold
582 both over the counter and through a vending machine at a single
583 location, the dealer need obtain only one permit for that
584 location.

585 (b) Application for a permit must be made on a form
586 furnished by the division and must set forth the name under
587 which the applicant transacts or intends to transact business,
588 the address of the location of the applicant's place of business
589 within the state, and any other information the division
590 requires. If the applicant has or intends to have more than one



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591 place of business dealing in nicotine products within the state,
592 a separate application must be made for each place of business.
593 If the applicant is a firm or an association, the application
594 must set forth the names and addresses of the persons
595 constituting the firm or association; if the applicant is a
596 corporation, the application must set forth the names and
597 addresses of the principal officers of the corporation. The
598 application must also set forth any other information prescribed
599 by the division for the purpose of identifying the applicant
600 firm, association, or corporation. The application must be
601 signed and verified by oath or affirmation by the owner, if a
602 sole proprietor, or, if the owner is a firm, association, or
603 partnership, by the members or partners thereof, or, if the
604 owner is a corporation, by an executive officer of the
605 corporation or by a person authorized by the corporation to sign
606 the application, together with the written evidence of this
607 authority.

608 (2)(a) Permits may be issued only to persons who are 21
609 years of age or older or to corporations the officers of which
610 are 21 years of age or older.

611 (b) The division may refuse to issue a permit to any
612 person, firm, association, or corporation the permit of which
613 has been revoked, to any corporation an officer of which has had
614 his or her permit revoked, or to any person who is or has been
615 an officer of a corporation the permit of which has been
616 revoked. Any permit issued to a firm, association, or
617 corporation prohibited from obtaining a permit under this
618 chapter shall be revoked by the division.

619 (3) Upon approval of an application for a permit, the



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620 division shall issue to the applicant a permit for the place of
621 business or premises specified in the application. A permit is
622 not assignable and is valid only for the person in whose name
623 the permit is issued and for the place designated in the permit.
624 The permit shall be conspicuously displayed at all times at the
625 place for which issued.

626 Section 21. Section 569.33 Florida Statutes, is created to
627 read:

628 569.33 Consent to inspection and search without warrant.—An
629 applicant for a retail nicotine products dealer permit, by
630 accepting the permit when issued, agrees that the place or
631 premises covered by the permit is subject to inspection and
632 search without a search warrant by the division or its
633 authorized assistants, and by sheriffs, deputy sheriffs, or
634 police officers, to determine compliance with this part.

635 Section 22. Section 569.34, Florida Statutes, is created to
636 read:

637 569.34 Operating without a retail nicotine products dealer
638 permit; penalty.—

639 (1) It is unlawful for a person, firm, association, or
640 corporation to deal, at retail, in nicotine products, in any
641 manner, or to allow a nicotine products vending machine to be
642 located on its premises, without having a retail nicotine
643 product dealer permit as required by s. 569.32. A person who
644 violates this section commits a noncriminal violation,
645 punishable by a fine of not more than \$500.

646 (2) A retail tobacco products dealer, as defined in s.
647 569.002(4), is not required to have a separate or additional
648 retail nicotine products dealer permit to deal, at retail, in



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649 nicotine products within the state, or allow a nicotine products
650 vending machine to be located on its premises in the state. Any
651 retail tobacco products dealer that deals, at retail, in
652 nicotine products or allows a tobacco products vending machine
653 to be located on its premises in the state, is subject to, and
654 must be in compliance with, this part.

655 (3) Any person who violates this section shall be cited for
656 such infraction and shall be cited to appear before the county
657 court. The citation may indicate the time, date, and location of
658 the scheduled hearing and must indicate that the penalty for a
659 noncriminal violation is a fine of not more than \$500.

660 (a) A person cited for an infraction under this section
661 may:

- 662 1. Post a \$500 bond; or
663 2. Sign and accept the citation indicating a promise to
664 appear.

665 (b) A person cited for violating this section may:

- 666 1. Pay the fine, either by mail or in person, within 10
667 days after receiving the citation; or
668 2. If the person has posted bond, forfeit the bond by not
669 appearing at the scheduled hearing.

670 (c) If the person pays the fine or forfeits bond, the
671 person is deemed to have admitted violating this section and to
672 have waived the right to a hearing on the issue of commission of
673 the violation. Such admission may not be used as evidence in any
674 other proceeding.

675 (d) The court, after a hearing, shall make a determination
676 as to whether an infraction has been committed. If the
677 commission of an infraction has been proven beyond a reasonable



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678 doubt, the court may impose a civil penalty in an amount that
679 may not exceed \$500.

680 (e) If a person is found by the court to have committed the
681 infraction, that person may appeal that finding to the circuit
682 court.

683 Section 23. Section 569.35, Florida Statutes, is created to
684 read:

685 569.35 Retail nicotine product dealers; administrative
686 penalties.—The division may suspend or revoke the permit of a
687 dealer, including the retail tobacco products dealer permit of a
688 retail tobacco products dealer as defined in s. 569.002(4), upon
689 sufficient cause appearing of the violation of any of the
690 provisions of this part, by a dealer, or by a dealer's agent or
691 employee. The division may also assess and accept an
692 administrative fine of up to \$1,000 against a dealer for each
693 violation. The division shall deposit all fines collected into
694 the General Revenue Fund as collected. An order imposing an
695 administrative fine becomes effective 15 days after the date of
696 the order. The division may suspend the imposition of a penalty
697 against a dealer, conditioned upon the dealer's compliance with
698 terms the division considers appropriate.

699 Section 24. Section 569.37, Florida Statutes, is created to
700 read:

701 569.37 Sale or delivery of nicotine products;
702 restrictions.—

703 (1) In order to prevent persons under 21 years of age from
704 purchasing or receiving nicotine products, the sale or delivery
705 of nicotine products is prohibited, except:

706 (a) When under the direct control or line of sight of the



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707 dealer or the dealer's agent or employee; or

708 (b) Sales from a vending machine are prohibited under
709 paragraph (a) and are only permissible from a machine that is
710 equipped with an operational lockout device that is under the
711 control of the dealer or the dealer's agent or employee who
712 directly regulates the sale of items through the machine by
713 triggering the lockout device to allow the dispensing of one
714 nicotine product. The lockout device must include a mechanism to
715 prevent the machine from functioning if the power source for the
716 lockout device fails or if the lockout device is disabled, and a
717 mechanism to ensure that only one nicotine product is dispensed
718 at a time.

719 (2)(a) A dealer that sells nicotine products may not sell,
720 permit to be sold, offer for sale, or display for sale such
721 products or devices by means of self-service merchandising.

722 (b) A dealer that sells nicotine products may not place
723 such products or devices in an open display unit unless the unit
724 is located in an area that is inaccessible to customers.

725 (3) The provisions of subsections (1) and (2) shall not
726 apply to an establishment that prohibits persons under 21 years
727 of age on the licensed premises.

728 (4) A dealer or a dealer's agent or employee may require
729 proof of age of a purchaser of a nicotine product before selling
730 the product to that person.

731 Section 25. Section 569.38, Florida Statutes, is created to
732 read:

733 569.38 Gift of sample nicotine products and nicotine
734 dispensing devices.—The gift of sample nicotine products to any
735 person under the age of 21 by an entity permitted under this



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736 part, or by an employee of such entity, is prohibited and is
737 punishable as provided in s. 569.41.

738 Section 26. Section 569.381, Florida Statutes, is created
739 to read:

740 569.381 Responsible retail nicotine products dealers;
741 qualifications; mitigation of disciplinary penalties; diligent
742 management and supervision; presumption.—

743 (1) It is the intent of the Legislature to prevent the sale
744 of nicotine products to persons under 21 years of age and to
745 encourage retail nicotine products dealers to comply with
746 responsible practices in accordance with this section.

747 (2) To qualify as a responsible retail nicotine products
748 dealer, the dealer must establish and implement procedures
749 designed to ensure that the dealer's employees comply with this
750 part. The dealer must provide a training program for the
751 dealer's employees which addresses the use and sale of nicotine
752 products and which includes at least the following topics:

753 (a) Laws covering the sale of nicotine products.

754 (b) Methods of recognizing and handling customers under 21
755 years of age.

756 (c) Procedures for proper examination of identification
757 cards in order to verify that customers are not under 21 years
758 of age.

759 (d) The use of the age audit identification function on
760 electronic point-of-sale equipment, where available.

761 (3) In determining penalties under s. 569.35, the division
762 may mitigate penalties imposed against a dealer because of an
763 employee's illegal sale of a nicotine product to a person under
764 21 years of age if the following conditions are met:



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765 (a) The dealer is qualified as a responsible dealer under
766 this section.

767 (b) The dealer provided the training program required under
768 subsection (2) to that employee before the illegal sale
769 occurred.

770 (c) The dealer had no knowledge of that employee's
771 violation at the time of the violation and did not direct,
772 approve, or participate in the violation.

773 (d) If the sale was made through a vending machine, the
774 machine was equipped with an operational lock-out device.

775 (4) The division shall develop and make available a model
776 nicotine products training program designed to ensure adherence
777 to this part by dealers and their employees which, if followed,
778 will qualify dealers as responsible dealers.

779 (5) Dealers shall exercise diligence in the management and
780 supervision of their premises and in the supervision and
781 training of their employees, agents, or servants. In proceedings
782 to impose penalties under s. 569.35, proof that employees,
783 agents, or servants of the dealer, while in the scope of their
784 employment, committed at least three violations of s. 569.41
785 during a 180-day period shall be prima facie evidence of a lack
786 of due diligence by the dealer in the management and supervision
787 of his or her premises and in the supervision and training of
788 employees, agents, officers, or servants.

789 (6) The division may consider qualification as a
790 responsible retail nicotine products dealer under this section
791 as evidence that the dealer properly exercised the diligence
792 required under this section.

793 Section 27. Section 569.39, Florida Statutes, is created to



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794 read:

795 569.39 Rulemaking authority.—The division shall adopt rules
796 to administer and enforce this part.

797 Section 28. Section 569.41, Florida Statutes, is created to
798 read:

799 569.41 Selling, delivering, bartering, furnishing, or
800 giving nicotine products to persons under 21 years of age;
801 criminal penalties; defense.—

802 (1) It is unlawful to sell, deliver, barter, furnish, or
803 give, directly or indirectly, to any person who is under 21
804 years of age, any nicotine product.

805 (2) Any person who violates subsection (1) commits a
806 misdemeanor of the second degree, punishable as provided in s.
807 775.082 or s. 775.083. However, any person who violates
808 subsection (1) for a second or subsequent time within 1 year
809 after the first violation commits a misdemeanor of the first
810 degree, punishable as provided in s. 775.082 or s. 775.083.

811 (3) A person charged with a violation of subsection (1) has
812 a complete defense if, at the time the nicotine product was
813 sold, delivered, bartered, furnished, or given:

814 (a) The buyer or recipient falsely evidenced that she or he
815 was 21 years of age or older;

816 (b) The appearance of the buyer or recipient was such that
817 a prudent person would believe the buyer or recipient to be 21
818 years of age or older; and

819 (c) Such person carefully checked a driver license or an
820 identification card issued by the state or another state of the
821 United States, a passport, or a United States armed services
822 identification card presented by the buyer or recipient and



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823 acted in good faith and in reliance upon the representation and
824 appearance of the buyer or recipient in the belief that the
825 buyer or recipient was 21 years of age or older.

826 Section 29. Section 569.42, Florida Statutes, is created to
827 read:

828 569.42 Possession, misrepresenting age or military service
829 to purchase, and purchase of nicotine products by persons under
830 21 years of age prohibited; penalties; jurisdiction; disposition
831 of fines.—

832 (1) It is unlawful for any person under 21 years of age to
833 knowingly possess any nicotine product. Any person under 21
834 years of age who violates this subsection commits a noncriminal
835 violation as provided in s. 775.08(3), punishable by:

836 (a) For a first violation, 16 hours of community service
837 or, instead of community service, a \$25 fine. In addition, the
838 person must attend a school-approved anti-tobacco and anti-
839 nicotine program, if locally available; or

840 (b) For a second or subsequent violation within 12 weeks
841 after the first violation, a \$25 fine.

842
843 Any second or subsequent violation not within the 12-week period
844 after the first violation is punishable as provided for a first
845 violation.

846 (2) It is unlawful for any person under 21 years of age to
847 misrepresent his or her age or military service for the purpose
848 of inducing a dealer or an agent or employee of the dealer to
849 sell, give, barter, furnish, or deliver any nicotine product, or
850 to purchase, or attempt to purchase, any nicotine product from a
851 person or a vending machine. Any person under 21 years of age



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852 who violates this subsection commits a noncriminal violation as
853 defined in s. 775.08(3), punishable by:

854 (a) For a first violation, 16 hours of community service
855 or, instead of community service, a \$25 fine and, in addition,
856 the person must attend a school-approved anti-tobacco and anti-
857 nicotine program, if available; or

858 (b) For a second or subsequent violation within 12 weeks
859 after the first violation, a \$25 fine.

860
861 Any second or subsequent violation not within the 12-week period
862 after the first violation is punishable as provided for a first
863 violation.

864 (3) Any person under 21 years of age cited for committing a
865 noncriminal violation under this section must sign and accept a
866 civil citation indicating a promise to appear before the county
867 court or comply with the requirement for paying the fine and
868 must attend a school-approved anti-tobacco and anti-nicotine
869 program, if locally available. If a fine is assessed for a
870 violation of this section, the fine must be paid within 30 days
871 after the date of the citation or, if a court appearance is
872 mandatory, within 30 days after the date of the hearing.

873 (4) A person charged with a noncriminal violation under
874 this section must appear before the county court or comply with
875 the requirement for paying the fine. The court, after a hearing,
876 shall make a determination as to whether the noncriminal
877 violation was committed. If the court finds the violation was
878 committed, it shall impose an appropriate penalty as specified
879 in subsection (1) or subsection (2). A person who participates
880 in community service shall be considered an employee of the



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881 state for the purpose of chapter 440, for the duration of such
882 service.

883 (5)(a) If a person under 21 years of age is found by the
884 court to have committed a noncriminal violation under this
885 section and the person has failed to complete community service,
886 pay the fine as required by paragraph (1)(a) or paragraph
887 (2)(a), or attend a school-approved anti-tobacco and anti-
888 nicotine program, if locally available, the court may direct the
889 Department of Highway Safety and Motor Vehicles to withhold
890 issuance of or suspend the driver license or driving privilege
891 of that person for a period of 30 consecutive days.

892 (b) If a person under 21 years of age is found by the court
893 to have committed a noncriminal violation under this section and
894 that person has failed to pay the applicable fine as required by
895 paragraph (1)(b) or paragraph (2)(b), the court may direct the
896 Department of Highway Safety and Motor Vehicles to withhold
897 issuance of or suspend the driver license or driving privilege
898 of that person for a period of 45 consecutive days.

899 (6) Eighty percent of all civil penalties received by a
900 county court under this section shall be remitted by the clerk
901 of the court to the Department of Revenue for transfer to the
902 Department of Education to provide for teacher training and for
903 research and evaluation to reduce and prevent the use of
904 nicotine products by children. The remaining 20 percent of civil
905 penalties received by a county court under this section shall
906 remain with the clerk of the county court to cover
907 administrative costs.

908 Section 30. Section 569.43, Florida Statutes, is created to
909 read:



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910 569.43 Posting of a sign stating that the sale of nicotine
911 products or nicotine dispensing devices to persons under 21
912 years of age is unlawful; enforcement; penalty.-

913 (1) A dealer that sells nicotine products shall post a
914 clear and conspicuous sign in each place of business at which
915 such products are sold which substantially states the following:

916
917 THE SALE OF NICOTINE PRODUCTS OR NICOTINE DISPENSING
918 DEVICES TO PERSONS UNDER THE AGE OF 21 IS AGAINST
919 FLORIDA LAW. PROOF OF AGE IS REQUIRED FOR PURCHASE.

920
921 (2) The division shall make available to dealers of
922 nicotine products signs that meet the requirements of subsection
923 (1).

924 (3) Any dealer that sells nicotine products shall provide
925 at the checkout counter in a location clearly visible to the
926 dealer or the dealer's agent or employee instructional material
927 in a calendar format or similar format to assist in determining
928 whether a person is of legal age to purchase nicotine products.
929 This point of sale material must contain substantially the
930 following language:

931
932 IF YOU WERE NOT BORN BEFORE THIS DATE
933 (insert date and applicable year)
934 YOU CANNOT BUY TOBACCO PRODUCTS, NICOTINE PRODUCTS, OR NICOTINE
935 DISPENSING DEVICES.

936
937 Upon approval by the division, in lieu of a calendar a dealer
938 may use card readers, scanners, or other electronic or automated



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939 systems that can verify whether a person is of legal age to
940 purchase nicotine products. Failure to comply with the
941 provisions contained in this subsection shall result in
942 imposition of administrative penalties as provided in s. 569.35.

943 (4) The division, through its agents and inspectors, shall
944 enforce this section.

945 (5) Any person who fails to comply with subsection (1)
946 commits a misdemeanor of the second degree, punishable as
947 provided in s. 775.082 or s. 775.083.

948 Section 31. Section 569.44, Florida Statutes, is created to
949 read:

950 569.44 Annual report.—The division shall report annually
951 with written findings to the Legislature and the Governor by
952 December 31, on the progress of implementing the enforcement
953 provisions of this part. This must include, but is not limited
954 to:

955 (1) The number and results of compliance visits.

956 (2) The number of violations for failure of a retailer to
957 hold a valid permit.

958 (3) The number of violations for selling nicotine products
959 to persons under age 21, and the results of administrative
960 hearings on the above and related issues.

961 (4) The number of persons under age 21 cited for violations
962 of s. 569.42 and sanctions imposed as a result of citation.

963 Section 32. Section 569.45, Florida Statutes, is created to
964 read:

965 569.45 Mail order, Internet, and remote sales of nicotine
966 products; age verification.—

967 (1) For purposes of this section, the term:



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968 (a) "Consumer" means a person in the state who comes into
969 possession of any nicotine product who, at the time of
970 possession, is not intending to sell or distribute the nicotine
971 product, or is not a retailer.

972 (b) "Delivery sale" means any sale of nicotine products to
973 a consumer in the state for which:

974 1. The consumer submits the order for the sale by
975 telephonic or other voice transmission, mail, delivery service,
976 or the Internet or other online service; or

977 2. The nicotine products are delivered by use of mail or a
978 delivery service.

979 (c) "Delivery service" means any person engaged in the
980 commercial delivery of letters, packages, or other containers.

981 (d) "Legal minimum purchase age" means the minimum age at
982 which an individual may legally purchase nicotine products in
983 the state.

984 (e) "Retailer" means any person who is required to obtain a
985 retail nicotine products dealer permit or a retail tobacco
986 products dealer permit, as defined in s. 569.002.

987 (f) "Shipping container" means a container in which
988 nicotine products are shipped in connection with a delivery
989 sale.

990 (g) "Shipping document" means a bill of lading, airbill,
991 United States Postal Service form, or any other document used to
992 verify the undertaking by a delivery service to deliver letters,
993 packages, or other containers.

994 (2)(a) A sale of nicotine products constituting a delivery
995 sale under paragraph (1)(c) is a delivery sale regardless of
996 whether the person accepting the order for the delivery sale is



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997 located inside or outside the state.

998 (b) A retailer must obtain a retail nicotine products
999 dealer permit or a retail tobacco products dealer permit, as
1000 defined in s. 569.002, from the division under the requirements
1001 of this chapter before accepting an order for a delivery sale.

1002 (c) A person may not make a delivery sale of nicotine
1003 products to any individual who is not 21 years of age or older.

1004 (d) Each person accepting an order for a delivery sale must
1005 comply with each of the following:

1006 1. The age verification requirements set forth in
1007 subsection (3).

1008 2. The disclosure requirements set forth in subsection (4).

1009 3. The shipping requirements set forth in subsection (5).

1010 (3) A person may not mail, ship, or otherwise deliver
1011 nicotine products in connection with an order for a delivery
1012 sale unless, before the first delivery to the consumer, the
1013 person accepting the order for the delivery sale:

1014 (a) Obtains from the person submitting the order a
1015 certification that includes:

1016 1. Reliable confirmation that the person is 21 years of age
1017 or older; and

1018 2. A statement signed by the person in writing and under
1019 penalty of perjury which:

1020 a. Certifies the address and date of birth of the person;
1021 and

1022 b. Confirms that the person wants to receive delivery sales
1023 from a nicotine products company and understands that, under the
1024 laws of the state, the following actions are illegal:

1025 (I) Signing another person's name to the certification;



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1026 (II) Selling nicotine products to individuals who are not
1027 21 years of age or older; and

1028 (III) Purchasing nicotine products, if the person making
1029 the purchase is not 21 years of age or older.

1030 (b) Makes a good faith effort to verify the information
1031 contained in the certification provided by the individual under
1032 paragraph (a) against a commercially available database that may
1033 be reasonably relied upon for accurate age information or
1034 obtains a photocopy or other image of a valid government-issued
1035 identification card stating the date of birth or age of the
1036 individual.

1037 (c) Provides to the individual, via electronic mail or
1038 other means, a notice meeting the requirements of subsection
1039 (4).

1040 (d) If an order for nicotine products is made pursuant to
1041 an advertisement on the Internet, receives payment for the
1042 delivery sale from the consumer by a credit or debit card issued
1043 in the name of the consumer, or by personal or company check of
1044 the consumer.

1045 (e) The person accepting the order for delivery sale shall
1046 submit, to each credit card acquiring company with which the
1047 person has credit card sales, identification information in an
1048 appropriate form and format so that the words "nicotine product"
1049 may be printed in the purchaser's credit card statement when a
1050 purchase of a nicotine product is made by credit card payment.

1051 (f) Makes a telephone call after 5 p.m. to the purchaser
1052 confirming the order before shipping the nicotine products. The
1053 telephone call may be a person-to-person call or a recorded
1054 message. The person accepting the order for delivery sale is not



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1055 required to speak directly with a person and may leave a message
1056 on an answering machine or through voice mail.

1057
1058 In addition to the requirements of this subsection, a person
1059 accepting an order for a delivery sale may request that a
1060 consumer provide an electronic mail address.

1061 (4) The notice described in paragraph (3)(c) must include
1062 prominent and clearly legible statements that sales of nicotine
1063 products are:

1064 (a) Illegal if made to individuals who are not 21 years of
1065 age or older.

1066 (b) Restricted to those individuals who provide verifiable
1067 proof of age in accordance with subsection (3).

1068 (5) Each person who mails, ships, or otherwise delivers
1069 nicotine products in connection with an order for a delivery
1070 sale must:

1071 (a) Include as part of the shipping documents, in a clear
1072 and conspicuous manner, the following statement: "Nicotine
1073 Products: Florida law prohibits shipping to individuals under 21
1074 years of age."

1075 (b) Use a method of mailing, shipping, or delivery which
1076 obligates the delivery service to require:

1077 1. The individual submitting the order for the delivery
1078 sale or another person 21 years of age or older who resides at
1079 the individual's address to sign his or her name to accept
1080 delivery of the shipping container. Proof of the legal minimum
1081 purchase age of the individual accepting delivery is required
1082 only if the individual appears to be under 30 years of age.

1083 2. Proof that the individual is either the addressee or the



1084 individual who is 21 years of age or older designated by the
1085 addressee, in the form of a valid, government-issued
1086 identification card bearing a photograph of the individual who
1087 signs to accept delivery of the shipping container.

1088
1089 If the person accepting a purchase order for a delivery sale
1090 delivers the nicotine products without using a delivery service,
1091 the person must comply with all of the requirements of this
1092 section which apply to a delivery service. Any failure to comply
1093 with a requirement of this section constitutes a violation
1094 thereof.

1095 (6) This section does not apply to delivery sales of
1096 nicotine products to a retail nicotine products dealer or a
1097 retail tobacco products dealer, as defined in s. 569.002.

1098 (7) An individual 21 years of age or older who knowingly
1099 violates any provision of this section commits a misdemeanor of
1100 the second degree, punishable as provided in s. 775.082 or s.
1101 775.083.

1102 (8) The Attorney General, the Attorney General's designee,
1103 or a state attorney may bring an action in the appropriate court
1104 in the state to prevent or restrain violations of this section
1105 by any person.

1106 Section 33. Section 877.112, Florida Statutes, is repealed.

1107 Section 34. This act shall take effect October 1, 2021.

1108
1109 ===== T I T L E A M E N D M E N T =====

1110 And the title is amended as follows:

1111 Delete everything before the enacting clause
1112 and insert:



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A bill to be entitled

1113
1114 An act relating to tobacco and nicotine products;
1115 amending s. 210.095, F.S.; deleting the definition of
1116 the term "adult"; revising age limitations relating to
1117 mail order, Internet, and remote sales of tobacco
1118 products; amending s. 210.15, F.S.; requiring permits
1119 to be issued to persons or corporations whose officers
1120 are not under 21 years of age; amending s. 386.212,
1121 F.S.; providing that it is unlawful for persons under
1122 21 years of age to smoke tobacco or vape in, on, or
1123 within 1,000 feet of the real property comprising a
1124 public or private elementary, middle, or secondary
1125 school during specified hours; renaming ch. 569, F.S.;
1126 providing directives to the Division of Law Revision;
1127 amending s. 569.002, F.S.; defining the terms
1128 "nicotine product" and "nicotine dispensing device";
1129 conforming provisions to changes made by the act;
1130 amending ss. 569.003, 569.004, and 569.006, F.S.;
1131 conforming provisions to changes made by the act;
1132 amending s. 569.007, F.S.; revising age limitations
1133 relating to the sale and delivery of tobacco products;
1134 revising applicability; amending s. 569.0075, F.S.;
1135 revising age limitations relating to gifting sample
1136 tobacco products; amending s. 569.008, F.S.; revising
1137 legislative intent; revising qualification
1138 requirements for responsible retail tobacco products
1139 dealers; conforming provisions to changes made by the
1140 act; amending s. 569.009, F.S.; conforming a provision
1141 to changes made by the act; amending s. 569.101, F.S.;



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1142 revising age limitations relating to selling,
1143 delivering, bartering, furnishing, or giving tobacco
1144 products to certain persons; amending s. 569.11, F.S.;
1145 revising age limitations relating to possessing and
1146 obtaining tobacco products; amending s. 569.12, F.S.;
1147 expanding the authority of tobacco product enforcement
1148 officers to include nicotine products; amending s.
1149 569.14, F.S.; revising requirements for signage
1150 relating to tobacco products, nicotine products, and
1151 nicotine dispensing devices; conforming provisions to
1152 changes made by the act; amending s. 569.19, F.S.;
1153 conforming provisions to changes made by the act;
1154 creating s. 569.31, F.S.; defining terms; creating s.
1155 569.32, F.S.; requiring retail nicotine product
1156 dealers to acquire a permit; providing requirements
1157 and authorizations for such permit; creating s.
1158 569.33, F.S.; specifying that an applicant for a
1159 retail nicotine products dealer permit consents to
1160 certain inspections and searches upon accepting such
1161 permit; creating s. 569.34, F.S.; prohibiting certain
1162 persons, firms, associations, or corporations from
1163 operating without a permit; providing civil penalties;
1164 creating s. 569.35, F.S.; providing administrative
1165 penalties for retail nicotine product dealers under
1166 certain circumstances; requiring the Division of
1167 Alcoholic Beverages and Tobacco to deposit funds
1168 collected from administrative fines into the General
1169 Revenue Fund; creating s. 569.37, F.S.; providing
1170 restrictions on the sale or delivery of nicotine



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1171 products; creating s. 569.38, F.S.; prohibiting
1172 certain persons from gifting sample nicotine products
1173 to persons under a specified age; creating s. 569.381,
1174 F.S.; providing legislative intent; providing
1175 requirements for a dealer to qualify as a responsible
1176 retail nicotine products dealer; authorizing the
1177 division to mitigate certain penalties; requiring the
1178 division to develop and make available a nicotine
1179 products training program; requiring dealers to
1180 exercise diligence in the management and supervision
1181 of their premises and the supervision and training of
1182 certain persons; creating s. 569.39, F.S.; requiring
1183 the division to adopt rules; creating ss. 569.41 and
1184 569.42, F.S.; providing civil and criminal penalties
1185 relating to selling, delivering, bartering,
1186 furnishing, or giving nicotine products to certain
1187 persons and possessing and acquiring nicotine
1188 products, respectively; creating s. 569.43, F.S.;
1189 providing signage requirements relating to the sale of
1190 nicotine products or nicotine dispensing devices;
1191 providing criminal penalties; creating s. 569.44,
1192 F.S.; requiring the division to provide an annual
1193 report containing specified information to the
1194 Governor and the Legislature; creating s. 569.45,
1195 F.S.; defining terms; providing requirements for mail
1196 order, Internet, and remote sales of nicotine
1197 products; providing applicability; providing criminal
1198 penalties; repealing s. 877.112, F.S., relating to
1199 nicotine products and nicotine dispensing devices;



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1200

providing an effective date.

By Senator Hutson

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 1 A bill to be entitled
 2 An act relating to tobacco and nicotine products;
 3 amending s. 210.15, F.S.; revising the age limits for
 4 permits relating to cigarettes; amending s. 386.212,
 5 F.S.; revising age and time restrictions relating to
 6 the prohibition of smoking and vaping near school
 7 property; amending s. 569.002, F.S.; revising the
 8 definition of the term "tobacco products"; defining
 9 the term "vapor-generating electronic device";
 10 deleting the term "any person under the age of 18";
 11 amending s. 569.003, F.S.; revising the age limits for
 12 retail tobacco products dealer permits; amending s.
 13 569.007, F.S.; revising prohibitions on the sale of
 14 tobacco products from vending machines; conforming
 15 provisions to federal law; amending s. 569.101, F.S.;
 16 requiring that the age of persons purchasing tobacco
 17 products be verified under certain circumstances;
 18 repealing s. 877.112, F.S., relating to nicotine
 19 products and nicotine dispensing devices; amending ss.
 20 210.095, 569.0075, 569.008, 569.11, 569.12, 569.14,
 21 and 569.19, F.S.; conforming provisions to federal
 22 law; conforming provisions to changes made by the act;
 23 providing an effective date.
 24
 25 Be It Enacted by the Legislature of the State of Florida:
 26
 27 Section 1. Paragraph (b) of subsection (1) of section
 28 210.15, Florida Statutes, is amended to read:
 29 210.15 Permits.—

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 30 (1)
 31 (b) Permits shall be issued only to persons of good moral
 32 character who are not less than 21 ~~18~~ years of age. Permits to
 33 corporations shall be issued only to corporations whose officers
 34 are of good moral character and not less than 21 ~~18~~ years of
 35 age. There shall be no exemptions from the permit fees herein
 36 provided to any persons, association of persons, or corporation,
 37 any law to the contrary notwithstanding.
 38 Section 2. Subsection (1) of section 386.212, Florida
 39 Statutes, is amended to read:
 40 386.212 Smoking and vaping prohibited near school property;
 41 penalty.—
 42 (1) It is unlawful for any person under 21 ~~18~~ years of age
 43 to smoke tobacco or vape in, on, or within 1,000 feet of the
 44 real property comprising a public or private elementary, middle,
 45 or secondary school ~~between the hours of 6 a.m. and midnight~~.
 46 This section does not apply to any person occupying a moving
 47 vehicle or within a private residence.
 48 Section 3. Subsections (6) and (7) of section 569.002,
 49 Florida Statutes, are amended to read:
 50 569.002 Definitions.—As used in this chapter, the term:
 51 (6) "Tobacco products" includes:
 52 (a) Any product containing, made of, or derived from
 53 tobacco or nicotine that is intended for human consumption or is
 54 likely to be consumed, whether inhaled, absorbed, or ingested by
 55 any other means, including, but not limited to, a cigarette, a
 56 cigar, pipe tobacco, chewing tobacco, snuff, or snus;
 57 (b) Any vapor-generating electronic device and any
 58 substances that may be aerosolized or vaporized by such device.

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59 whether or not the substance contains nicotine; or

60 (c) Any component, part, or accessory of a product

61 described in paragraph (a) or paragraph (b), whether or not any

62 of these contain tobacco or nicotine, including, but not limited

63 to, filters, rolling papers, blunt or hemp wraps, and pipes.

64

65 The term does not include drugs, devices, or combination

66 products authorized for sale by the United States Food and Drug

67 Administration, as those terms are defined in the Federal Food,

68 Drug, and Cosmetic Act loose tobacco leaves, and products made

69 from tobacco leaves, in whole or in part, and cigarette

70 wrappers, which can be used for smoking, sniffing, or chewing.

71 (7) "Vapor-generating electronic device" means any product

72 that employs an electronic, chemical, or mechanical means

73 capable of producing vapor or aerosol from a nicotine product or

74 any other substance, including, but not limited to, an

75 electronic cigarette, electronic cigar, electronic cigarillo,

76 electronic pipe, or other similar device or product; any

77 replacement cartridge for such device; and any other container

78 of nicotine in a solution or other substance form intended to be

79 used with or within an electronic cigarette, an electronic

80 cigar, an electronic cigarillo, an electronic pipe, a vape pen,

81 an electronic hookah, or other similar device or product. The

82 term includes any component, part, or accessory of the device

83 and also includes any substance intended to be aerosolized or

84 vaporized during the use of the device, whether or not the

85 substance contains nicotine.

86

87 The term does not include drugs, devices, or combination

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88 products authorized for sale by the United States Food and Drug

89 Administration, as those terms are defined in the Federal Food,

90 Drug, and Cosmetic Act "Any person under the age of 18" does not

91 include any person under the age of 18 who:

92 (a) Has had his or her disability of ~~nonage removed under~~

93 ~~chapter 743;~~

94 (b) Is in the military reserve or on active duty in the

95 Armed Forces of the United States;

96 (c) Is otherwise emancipated by a court of competent

97 jurisdiction and released from parental care and responsibility;

98 or

99 (d) Is acting in his or her scope of lawful employment with

100 an entity licensed under the provisions of chapter 210 or this

101 chapter.

102 Section 4. Paragraph (a) of subsection (2) of section

103 569.003, Florida Statutes, is amended to read:

104 569.003 Retail tobacco products dealer permits;

105 application: qualifications; fees; renewal; duplicates.—

106 (2)(a) Permits may be issued only to persons who are 21 or

107 years of age or older or to corporations the officers of which

108 are 21 or older.

109 Section 5. Subsections (1) and (2) of section 569.007,

110 Florida Statutes, are amended to read:

111 569.007 Sale or delivery of tobacco products;

112 restrictions.—

113 (1) In order to prevent persons under 21 or years of age

114 from purchasing or receiving tobacco products, the sale or

115 delivery of tobacco products is prohibited, except:

116 (a) When under the direct control or line of sight of the

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117 dealer or the dealer's agent or employee; or

118 (b) Sales from a vending machine are prohibited under the

119 provisions of paragraph (1)(a) and are only permissible from a

120 machine located in an establishment that prohibits persons under

121 21 years of age on the licensed premises at all times ~~that is~~

122 ~~equipped with an operational lockout device which is under the~~

123 ~~control of the dealer or the dealer's agent or employee who~~

124 ~~directly regulates the sale of items through the machine by~~

125 ~~triggering the lockout device to allow the dispensing of one~~

126 ~~tobacco product. The lockout device must include a mechanism to~~

127 ~~prevent the machine from functioning if the power source for the~~

128 ~~lockout device fails or if the lockout device is disabled, and a~~

129 ~~mechanism to ensure that only one tobacco product is dispensed~~

130 ~~at a time.~~

131 (2) ~~The provisions of subsection (1) shall not apply to an~~

132 ~~establishment that prohibits persons under 18 years of age on~~

133 ~~the licensed premises.~~

134 Section 6. Section 569.101, Florida Statutes, is amended to

135 read:

136 569.101 Selling, delivering, bartering, furnishing, or

137 giving tobacco products to persons under 21 ~~18~~ years of age;

138 criminal penalties; defense.—

139 (1) It is unlawful to sell, deliver, barter, furnish, or

140 give, directly or indirectly, to any person who is under 21 ~~18~~

141 years of age, any tobacco product.

142 (2) Any person who violates subsection (1) commits a

143 misdemeanor of the second degree, punishable as provided in s.

144 775.082 or s. 775.083. However, any person who violates

145 subsection (1) for a second or subsequent time within 1 year of

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146 the first violation, commits a misdemeanor of the first degree,

147 punishable as provided in s. 775.082 or s. 775.083.

148 (3) A person charged with a violation of subsection (1) has

149 a complete defense if, at the time the tobacco product was sold,

150 delivered, bartered, furnished, or given:

151 (a) The buyer or recipient falsely evidenced that she or he

152 was 21 ~~18~~ years of age or older;

153 (b) The appearance of the buyer or recipient was such that

154 a prudent person would believe the buyer or recipient to be 21

155 ~~18~~ years of age or older; and

156 (c) Such person carefully checked a driver license or an

157 identification card issued by this state or another state of the

158 United States, a passport, or a United States armed services

159 identification card presented by the buyer or recipient and

160 acted in good faith and in reliance upon the representation and

161 appearance of the buyer or recipient in the belief that the

162 buyer or recipient was 21 ~~18~~ years of age or older.

163 (4) A person must verify by means of identification

164 specified in paragraph (3)(c) that a person purchasing a tobacco

165 product is not under 21 years of age. Such verification is not

166 required for any person over the age of 29.

167 Section 7. Section 877.112, Florida Statutes, is repealed.

168 Section 8. Paragraphs (a) and (b) of subsection (5) of

169 section 210.095, Florida Statutes, are amended to read:

170 210.095 Mail order, Internet, and remote sales of tobacco

171 products; age verification.—

172 (5) Each person who mails, ships, or otherwise delivers

173 tobacco products in connection with an order for a delivery sale

174 must:

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175 (a) Include as part of the shipping documents, in a clear
 176 and conspicuous manner, the following statement: "Tobacco
 177 Products: Florida law prohibits shipping to individuals under 21
 178 ~~18~~ years of age and requires the payment of all applicable
 179 taxes."
 180 (b) Use a method of mailing, shipping, or delivery which
 181 obligates the delivery service to require:
 182 1. The individual submitting the order for the delivery
 183 sale or another adult who resides at the individual's address to
 184 sign his or her name to accept delivery of the shipping
 185 container. Proof of the legal minimum purchase age of the
 186 individual accepting delivery is required only if the individual
 187 appears to be under 30 ~~27~~ years of age.
 188 2. Proof that the individual is either the addressee or the
 189 adult designated by the addressee, in the form of a valid,
 190 government-issued identification card bearing a photograph of
 191 the individual who signs to accept delivery of the shipping
 192 container.
 193
 194 If the person accepting a purchase order for a delivery sale
 195 delivers the tobacco products without using a delivery service,
 196 the person must comply with all of the requirements of this
 197 section which apply to a delivery service. Any failure to comply
 198 with a requirement of this section constitutes a violation
 199 thereof.
 200 Section 9. Section 569.0075, Florida Statutes, is amended
 201 to read:
 202 569.0075 Gift of sample tobacco products prohibited.—The
 203 gift of sample tobacco products to any person under the age of

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204 ~~21~~ ~~18~~ by an entity licensed or permitted under the provisions of
 205 chapter 210 or this chapter, or by an employee of such entity,
 206 is prohibited and is punishable as provided in s. 569.101.
 207 Section 10. Subsection (1), paragraphs (b) and (c) of
 208 subsection (2), and subsection (3) of section 569.008, Florida
 209 Statutes, are amended to read:
 210 569.008 Responsible retail tobacco products dealers;
 211 qualifications; mitigation of disciplinary penalties; diligent
 212 management and supervision; presumption.—
 213 (1) The Legislature intends to prevent the sale of tobacco
 214 products to persons under 21 ~~18~~ years of age and to encourage
 215 retail tobacco products dealers to comply with responsible
 216 practices in accordance with this section.
 217 (2) To qualify as a responsible retail tobacco products
 218 dealer, the dealer must establish and implement procedures
 219 designed to ensure that the dealer's employees comply with the
 220 provisions of this chapter. The dealer must provide a training
 221 program for the dealer's employees which addresses the use and
 222 sale of tobacco products and which includes at least the
 223 following topics:
 224 (b) Methods of recognizing and handling customers under 21
 225 ~~18~~ years of age.
 226 (c) Procedures for proper examination of identification
 227 cards in order to verify that customers are not under 21 ~~18~~
 228 years of age.
 229 (3) In determining penalties under s. 569.006, the division
 230 may mitigate penalties imposed against a dealer because of an
 231 employee's illegal sale of a tobacco product to a person under
 232 21 ~~18~~ years of age if the following conditions are met:

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233 (a) The dealer is qualified as a responsible dealer under
 234 this section.
 235 (b) The dealer provided the training program required under
 236 subsection (2) to that employee before the illegal sale
 237 occurred.
 238 (c) The dealer had no knowledge of that employee's
 239 violation at the time of the violation and did not direct,
 240 approve, or participate in the violation.
 241 (d) If the sale was made through a vending machine, the
 242 machine was equipped with an operational lock-out device.
 243 Section 11. Section 569.11, Florida Statutes, is amended to
 244 read:
 245 569.11 Possession, misrepresenting age ~~ex-military-service~~
 246 to purchase, and purchase of tobacco products by persons under
 247 21 ~~18~~ years of age prohibited; penalties; jurisdiction;
 248 disposition of fines.-
 249 (1) It is unlawful for any person under 21 ~~18~~ years of age
 250 to knowingly possess any tobacco product. Any person under 21 ~~18~~
 251 years of age who violates this subsection commits a noncriminal
 252 violation as provided in s. 775.08(3), punishable by:
 253 (a) For a first violation, 16 hours of community service
 254 or, instead of community service, a \$25 fine. In addition, the
 255 person must attend a school-approved anti-tobacco program, if
 256 locally available; or
 257 (b) For a second or subsequent violation within 12 weeks
 258 after the first violation, a \$25 fine.
 259
 260 Any second or subsequent violation not within the 12-week period
 261 after the first violation is punishable as provided for a first

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262 violation.
 263 (2) It is unlawful for any person under 21 ~~18~~ years of age
 264 to misrepresent his or her age ~~ex-military-service~~ for the
 265 purpose of inducing a dealer or an agent or employee of the
 266 dealer to sell, give, barter, furnish, or deliver any tobacco
 267 product, or to purchase, or attempt to purchase, any tobacco
 268 product from a person or a vending machine. Any person under 21
 269 ~~18~~ years of age who violates this subsection commits a
 270 noncriminal violation as provided in s. 775.08(3), punishable
 271 by:
 272 (a) For a first violation, 16 hours of community service
 273 or, instead of community service, a \$25 fine and, in addition,
 274 the person must attend a school-approved anti-tobacco program,
 275 if available; or
 276 (b) For a second or subsequent violation within 12 weeks
 277 after the first violation, a \$25 fine.
 278
 279 Any second or subsequent violation not within the 12-week period
 280 after the first violation is punishable as provided for a first
 281 violation.
 282 (3) Any person under 21 ~~18~~ years of age cited for
 283 committing a noncriminal violation under this section must sign
 284 and accept a civil citation indicating a promise to appear
 285 before the county court or comply with the requirement for
 286 paying the fine and must attend a school-approved anti-tobacco
 287 program, if locally available. If a fine is assessed for a
 288 violation of this section, the fine must be paid within 30 days
 289 after the date of the citation or, if a court appearance is
 290 mandatory, within 30 days after the date of the hearing.

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291 (4) A person charged with a noncriminal violation under

292 this section must appear before the county court or comply with

293 the requirement for paying the fine. The court, after a hearing,

294 shall make a determination as to whether the noncriminal

295 violation was committed. If the court finds the violation was

296 committed, it shall impose an appropriate penalty as specified

297 in subsection (1) or subsection (2). A person who participates

298 in community service shall be considered an employee of the

299 state for the purpose of chapter 440, for the duration of such

300 service.

301 (5)(a) If a person under 21 ~~18~~ years of age is found by the

302 court to have committed a noncriminal violation under this

303 section and that person has failed to complete community

304 service, pay the fine as required by paragraph (1)(a) or

305 paragraph (2)(a), or attend a school-approved anti-tobacco

306 program, if locally available, the court may direct the

307 Department of Highway Safety and Motor Vehicles to withhold

308 issuance of or suspend the driver license or driving privilege

309 of that person for a period of 30 consecutive days.

310 (b) If a person under 21 ~~18~~ years of age is found by the

311 court to have committed a noncriminal violation under this

312 section and that person has failed to pay the applicable fine as

313 required by paragraph (1)(b) or paragraph (2)(b), the court may

314 direct the Department of Highway Safety and Motor Vehicles to

315 withhold issuance of or suspend the driver license or driving

316 privilege of that person for a period of 45 consecutive days.

317 (6) Eighty percent of all civil penalties received by a

318 county court pursuant to this section shall be remitted by the

319 clerk of the court to the Department of Revenue for transfer to

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320 the Department of Education to provide for teacher training and

321 for research and evaluation to reduce and prevent the use of

322 tobacco products by children. The remaining 20 percent of civil

323 penalties received by a county court pursuant to this section

324 shall remain with the clerk of the county court to cover

325 administrative costs.

326 Section 12. Paragraph (b) of subsection (2) and subsection

327 (3) of section 569.12, Florida Statutes, are amended to read:

328 569.12 Jurisdiction; tobacco product enforcement officers

329 or agents; enforcement.--

330 (2)

331 (b) A tobacco product enforcement officer is authorized to

332 issue a citation to a person under the age of 21 ~~18~~ when, based

333 upon personal investigation, the officer has reasonable cause to

334 believe that the person has committed a civil infraction in

335 violation of s. 386.212 or s. 569.11.

336 (3) A correctional probation officer as defined in s.

337 943.10(3) is authorized to issue a citation to a person under

338 the age of 21 ~~18~~ when, based upon personal investigation, the

339 officer has reasonable cause to believe that the person has

340 committed a civil infraction in violation of s. 569.11.

341 Section 13. Section 569.14, Florida Statutes, is amended to

342 read:

343 569.14 Posting of a sign stating that the sale of tobacco

344 products to persons under 21 ~~18~~ years of age is unlawful;

345 enforcement; penalty.--

346 (1) A dealer that sells tobacco products shall post a clear

347 and conspicuous sign in each place of business where such

348 products are sold which substantially states the following:

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349 THE SALE OF TOBACCO PRODUCTS TO PERSONS UNDER THE AGE
 350 OF 21 ~~18~~ IS AGAINST FLORIDA LAW. PROOF OF AGE IS
 351 REQUIRED FOR PURCHASE.
 352
 353 (2) A dealer that sells tobacco products and nicotine
 354 products or nicotine dispensing devices, as defined in s.
 355 877.112, may use a sign that substantially states the following:
 356
 357 THE SALE OF TOBACCO PRODUCTS, NICOTINE PRODUCTS, OR
 358 NICOTINE DISPENSING DEVICES TO PERSONS UNDER THE AGE
 359 OF 18 IS AGAINST FLORIDA LAW. PROOF OF AGE IS REQUIRED
 360 FOR PURCHASE.
 361
 362 A dealer that uses a sign as described in this subsection meets
 363 the signage requirements of subsection (1) and s. 877.112.
 364
 365 (3) The division shall make available to dealers of tobacco
 366 products signs that meet the requirements of subsection (1) ~~or~~
 367 ~~subsection (2)~~.
 368 (3)(4) Any dealer that sells tobacco products shall provide
 369 at the checkout counter in a location clearly visible to the
 370 dealer or the dealer's agent or employee instructional material
 371 in a calendar format or similar format to assist in determining
 372 whether a person is of legal age to purchase tobacco products.
 373 This point of sale material must contain substantially the
 374 following language:
 375
 376 IF YOU WERE NOT BORN BEFORE THIS DATE
 377 (insert date and applicable year)

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378 YOU CANNOT BUY TOBACCO PRODUCTS.
 379
 380 Upon approval by the division, in lieu of a calendar a dealer
 381 may use card readers, scanners, or other electronic or automated
 382 systems that can verify whether a person is of legal age to
 383 purchase tobacco products. Failure to comply with the provisions
 384 contained in this subsection shall result in imposition of
 385 administrative penalties as provided in s. 569.006.
 386 (4)(5) The division, through its agents and inspectors,
 387 shall enforce this section.
 388 (5)(6) Any person who fails to comply with subsection (1)
 389 is guilty of a misdemeanor of the second degree, punishable as
 390 provided in s. 775.082 or s. 775.083.
 391
 392 Section 14. Subsections (3) and (4) of section 569.19,
 393 Florida Statutes, are amended to read:
 394 569.19 Annual report.—The division shall report annually
 395 with written findings to the Legislature and the Governor by
 396 December 31, on the progress of implementing the enforcement
 397 provisions of this chapter. This must include, but is not
 398 limited to:
 399 (3) The number of violations for selling tobacco products
 400 to persons under age 21 ~~18~~, and the results of administrative
 401 hearings on the above and related issues.
 402 (4) The number of persons under age 21 ~~18~~ cited for
 403 violations of s. 569.11 and sanctions imposed as a result of
 404 citation.
 405
 406 Section 15. This act shall take effect October 1, 2021.

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THE FLORIDA SENATE

APPEARANCE RECORD

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

Meeting Date 3-9-21
Bill Number (if applicable) SB 1080 Tobacco

Amendment Barcode (if applicable) 859156 DE

Topic Vaping

Name Joseph McCormick

Job Title President

Address 1435 E. Lafayette St #105 Phone 407-508-0340

Tallahassee FL 32301
City State Zip

Email jd@Flsmokefree.org

Speaking: For Against Information

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

Representing Florida Smoke Free Association

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/9/21

Meeting Date

1080

Bill Number (if applicable)

859156

Amendment Barcode (if applicable)

Topic Tobacco & Nicotine Products

Name Susan Harbin

Job Title Senior Director Government Relations

Address

Phone 770-546-8845

Street

Email susan.harbin@cancer.org

City

State

Zip

Speaking: For

Against

Information

In Support

Against

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

Representing American Cancer Society Cancer Action Network

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.

YOU MUST PRINT AND DELIVER THIS FORM TO THE ASSIGNED TESTIMONY ROOM

THE FLORIDA SENATE

APPEARANCE RECORD

3/9/21

Meeting Date

SB 1080

Bill Number (if applicable)

Topic Tobacco and Nicotine Products

Name Alexandra Abboud

Job Title Governmental Affairs Liaison

Address 118 E Jefferson Street

Street

Phone 850-224-1089

Tallahassee

City

FL

State

32301

Zip

Email aabboud@floridadental.org

Speaking: For

Against

Information

Waive Speaking: In Support

Against

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

Representing The Florida Dental Association

Appearing at request of Chair: Yes

No

Lobbyist registered with Legislature: Yes

No

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

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/9/21

Meeting Date

1080

Bill Number (if applicable)

Topic Tobacco 21

Amendment Barcode (if applicable)

Name Jennifer Cunningham

Job Title State Government Affairs Manager

Address 1000 F St NW

Phone 404 290 4231

Street

Washington

City

20004

Zip

Email

jennifer.cunningham@judt.com

Speaking: For

Against

Information

In Support

Against

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

Representing WVVA LANDS

Appearing at request of Chair: Yes

No

Lobbyist registered with Legislature: Yes

No

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

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

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Regulated Industries

BILL: CS/SB 856

INTRODUCER: Regulated Industries Committee and Senator Hutson

SUBJECT: State Preemption of Transportation Energy Infrastructure Regulation

DATE: March 10, 2021

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Sharon _____	Imhof _____	RI _____	CS/Fav _____
2.	_____	_____	CA _____	_____
3.	_____	_____	RC _____	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 856 centralizes transportation energy infrastructure regulation by expressly preempting transportation energy infrastructure regulation to the state.

Defines “transportation energy infrastructure” as infrastructure supporting the production, importation, storage, and distribution of fuel. It defines “fuel” as including petroleum fuel, petroleum products, gasoline, diesel fuel, motor fuel, marine fuel, aviation fuel, renewable fuel, alternative fuel, natural gas fuel, hydrogen fuel, and electricity, when such fuel sources are used for transportation.

Provides that the legislature recognizes affordable, reliable, and sustainable energy throughout the state as dependent on transportation energy infrastructure networks that extend beyond local government boundaries and the importance of consumer choice in the energy market.

Prohibits local governments from imposing requirements that are more stringent than state law and from implementing any law, ordinance, regulation, policy, or resolution that prohibits, restricts, or requires, or that has the effect of prohibiting, restricting, or requiring, the construction of new transportation energy infrastructure or the expansion, upgrading, or repair of existing energy infrastructure, or imposing any requirement regulating transportation energy infrastructure that is more stringent than state law or rule.

The bill provides an exception for local ordinances regulating petroleum storage system construction, operation, and maintenance which were enacted pursuant to section 376.317(3)(a), F.S.

Local governments are also prohibited from amending comprehensive plans, land use maps, zoning districts, or land development regulations in a way that would conflict with existing transportation energy infrastructure classification, including an amendment that would render existing transportation energy infrastructure to be nonconforming.

The bill does not limit the authority of a local government to adopt, implement, modify, and enforce applicable federal and state requirements for transportation energy infrastructure, including safety and building standards.

The bill also voids any existing or future laws, ordinances, regulations, policies, or resolutions that are contrary to the bill.

The bill is effective July 1, 2021.

II. Present Situation:

Local Government Authority

The Florida Constitution grants local governments home rule authority. Specifically, non-charter county governments may exercise those powers of self-government that are provided by general or special law.¹ Those counties operating under a county charter have all powers of local self-government not inconsistent with general law or special law approved by the vote of the electors.² Likewise, municipalities have those governmental, corporate, and proprietary powers that enable them to conduct municipal government, perform their functions and provide services, and exercise any power for municipal purposes, except as otherwise provided by law.³

In Florida, special districts are separate governmental entities created for a special purpose that have jurisdiction to operate within a limited geographic boundary.⁴ Special districts are created by general law, special act, local ordinance, or by rule of the Governor and Cabinet.⁵ Throughout the state there are over 1,770 active special districts encompassing more than 80 specialized

¹ FLA. CONST. art. VIII, s. 1(f).

² FLA. CONST. art. VIII, s. 1(g).

³ FLA. CONST. art. VIII, s. 2(b). *See also* s. 166.021(1), F.S.

⁴ Section 189.012(6), F.S.

⁵ *Id.*

governmental functions.⁶ Types of special districts vary and can include anything from mosquito control districts to gas districts.⁷ In Florida, there are currently four special natural gas districts.⁸

Interlocal Cooperation and the Florida Municipal Power Agency

The Florida Interlocal Cooperation Act of 1969 (act) allows local governmental units to make the most efficient use of their powers by enabling them to cooperate with other localities on a basis of mutual advantage.⁹ The act provides that local governmental entities may jointly exercise their powers by entering into a contract in the form of an interlocal agreement.¹⁰ Under such an agreement, the local governmental units may create a separate legal or administrative entity “to provide services and facilities in a manner and pursuant to forms of governmental organization that will accord best with geographic, economic, population, and other factors influencing the needs and development of local communities.”¹¹

In 1978, the Florida Municipal Power Agency (FMPA) was created through a series of interlocal agreements under s. 163.01, F.S., to provide wholesale power supply to municipal electric utilities. FMPA is currently owned by 31 municipalities.¹² Through various joint power supply projects,¹³ the FMPA supplies all of the electrical power needs of 13 member utilities and a part of the power needs for seven other member utilities.¹⁴ Through these projects, FMPA members maintain ownership interests in various electrical power plants throughout Florida. FMPA manages the transmission of electrical power over facilities owned by FMPA or its members.¹⁵

Federal Regulation

The Clean Air Act requires U.S. Environmental Protection Agency (EPA) to regulate fuels and fuel additives for use in motor vehicle, motor vehicle engine, if the fuel, fuel additive or any emission products causes or contributes to air or water pollution that may endanger the public

⁶ See Florida Department of Economic Opportunity, *Introduction to Special Districts*, <https://floridajobs.org/community-planning-and-development/special-districts/special-district-accountability-program/florida-special-district-handbook-online/introduction-to-special-districts> (last visited Mar. 5, 2021).

⁷ See Florida Department of Economic Opportunity, *Official List of Special Districts*, <http://specialdistrictreports.floridajobs.org/webreports/websitelist.aspx> (last visited Mar. 5, 2021).

⁸ See Florida Public Service Commission, *Facts & Figures of the Florida Utility Industry*, <http://www.psc.state.fl.us/Files/PDF/Publications/Reports/General/Factsandfigures/April%202020.pdf> (last visited Mar. 5, 2021).

⁹ Section 163.01(2), F.S.

¹⁰ Section 163.01(5), F.S.

¹¹ Section 163.01(2), F.S.

¹² Currently, FMPA serves the following municipalities: Alachua, Bartow, Blountstown, Bushnell, Chattahoochee, Clewiston, Fort Meade, Fort Pierce, Gainesville, Green Cove Springs, Havana, Homestead, Jacksonville Beach, Key West, Kissimmee, Lake Worth, Lakeland, Leesburg, Moore Haven, Mount Dora, New Smyrna Beach, Newberry, Ocala, Orlando, Quincy, St. Cloud, Starke, Vero Beach, Wauchula, Williston, and Winter Park. Florida Municipal Power Agency, *Members*, <http://fmpa.com/about/members/> (last visited Mar. 5, 2021).

¹³ Section 361.12, F.S., authorizes any electric utility, or any organization, association, or separate legal entity whose membership consists only of electric utilities, to join with any other such entity to finance, acquire, construct, manage, operate, or own an electric power supply project for the joint generation or transmission of electrical energy, or both. Further, s. 361.13, F.S., authorizes any such entity to purchase capacity or energy, or both, in an agreed upon quantity from any project in which the purchaser has an ownership interest.

¹⁴ See Florida Municipal Power Agency, *Projects*, <https://fmpa.com/power-supply-projects/> (last visited Mar. 5, 2021).

¹⁵ See Florida Municipal Power Agency, *Value of Public Power*, <https://fmpa.com/value-of-public-power/> (last visited Mar. 5, 2021).

health or welfare. The EPA is required to also address emission products of fuel or fuel additives that may impair any emission control devices used on vehicles or engines.¹⁶

The Office of Underground Storage Tanks in the EPA (OUST) regulates underground storage tanks (USTs). All portions of a UST system must be compatible with the fuel being stored. Demonstrations of compatibility must be provided for tank, piping, containment sumps, pumping equipment, release detection equipment, spill equipment, and overfill equipment.¹⁷ The single largest source of energy information available is the Department of Energy's Energy Information Administration (EIA). The EIA publishes extensive reports on natural gas and other energy sources.¹⁸

Domestic natural gas markets are regulated in part by the Federal Energy Regulatory Commission. The commission's chief area of concern is the interstate natural gas market.

Natural gas moves for the most part by pipeline in the United States. The safety of those pipelines is the concern of the Department of Transportation's Office of Pipeline Safety.

Renewable fuels include liquid and gaseous fuels, and electricity derived from renewable feedstock sources.¹⁹

Advanced biofuels (D5) are produced from any type of renewable biomass (sugarcane, biobutanol, bionaphtha) except corn starch ethanol. Required life cycle GHG emissions reduction is at least 50% compared to the petroleum baseline. Biomass-based diesel (D4) includes biodiesel and renewable diesel produced from biomass such as soybean oil, canola oil, waste oil, or animal fats. Required life cycle GHG emissions reduction is at least 50% compared to the diesel baseline. Cellulosic biofuel (D3 or D7) produced from cellulose or hemicellulose of corn stover, wood chips, *Miscanthus*, or biogas. To be eligible for D7 RINs the fuel must be cellulosic diesel. Required life cycle GHG emissions reduction is at least 60% compared to the petroleum baseline. Conventional renewable biofuel (D6) includes ethanol derived from corn starch, or any other qualifying renewable fuel. Required life cycle GHG emissions reduction is at least 20% compared to the average petroleum baseline.²⁰

¹⁶ See Federal Gasoline Regulations, available at <https://www.epa.gov/gasoline-standards/federal-gasoline-regulations>, (last visited March 10, 2021). Gasoline regulations are under 40 CFR Part 80 ("Regulation of Fuels and Fuel Additives"): subparts A (general provisions, applying to all 40 CFR Part 890 fuels programs), B (controls and prohibitions), C (oxygenated gasoline), D & E (reformulated gasoline), G (detergent gasoline program), H & O (gasoline sulfur) and J & L (gasoline toxics).

¹⁷ Ethanol Code, Standards and Safety, available at https://afdc.energy.gov/fuels/ethanol_codes.html, (last visited March 10, 2021).

¹⁸ Natural Gas Regulation – Other Gas-Related Information Sources, available at <https://www.energy.gov/fe/natural-gas-regulation-other-gas-related-information-sources>, (last visited March 10, 2021). Code of Federal Regulation (CFR) Title 40 Subtitle 1 Subchapter 1 Parts 280-282. The federal UST regulation was updated in October 2015 with section CFR 280.32 to specify additional compatibility requirements for owners and operators who store regulated substances, including gasoline containing greater than 10% ethanol (E10) and diesel containing greater than 20% biodiesel (B20).

¹⁹ Renewable Fuel, available at <https://www.sciencedirect.com/topics/engineering/renewable-fuel>, (last visited March 10, 2021).

²⁰ *Id.*

Local Authority to Regulate Energy Infrastructure

Local Regulation of Oil and Gas Exploration and Production

While cities and counties do not operate oil and gas permitting programs in Florida, some, through their land use regulations or zoning ordinances, require special exceptions for oil and gas activities or limit oil and gas activities to certain zoning classifications.²¹ When authorizing oil and gas exploration and production activities, local governments consider factors such as consistency with their comprehensive plan, injuries to communities or the public welfare, and compliance with zoning ordinances.²²

In certain instances, the Department of Environmental Protection (DEP) may not issue a permit without specified approval. The DEP may not issue permits to drill a gas or oil well:

- Within the corporate limits of a municipality without a resolution approving the permit from the governing authority;²³
- In tidal waters abutting or immediately adjacent to the corporate limits of a municipality or within three miles of such corporate limits extending from the line of mean high tide into such waters without a resolution approving the permit from the governing authority;²⁴ or
- On any improved beach, located outside of an incorporated town or municipality, or at a location in the tidal waters abutting or immediately adjacent to an improved beach, or within three miles of an improved beach extending from the line of mean high tide into such tidal waters without a resolution approving the permit from the county commission.²⁵

If the proposed oil or gas well is on lands owned by the Board of Trustees of the Internal Improvement Trust Fund, it may not grant a lease for gas, oil, or mineral rights:

- Within the corporate limits of a municipality without a resolution approving the lease from the governing authority;²⁶
- In tidal waters abutting or immediately adjacent to the corporate limits of a municipality or within 3 miles of such corporate limits extending from the line of mean high tide into such waters without a resolution approving the lease from the governing authority;²⁷
- On any improved beach, located outside of an incorporated town or municipality, or at a location in the tidal waters abutting or immediately adjacent to an improved beach, or within 3 miles of an improved beach extending from the line of mean high tide into such tidal waters without a resolution approving the lease from the county commission;²⁸ or
- In Florida's territorial waters in the Gulf of Mexico or Atlantic Ocean.²⁹

Six municipalities (Estero, Bonita Springs, Coconut Creek, Cape Coral, Dade, and Zephyrhills) and thirteen counties (Alachua, Bay, Brevard, Broward, Citrus, Indian River, Martin, Miami-

²¹ See, e.g., Lee County's Land Development Code §§ 34-1651 and 34-145(c).

²² *Id.*

²³ Section 377.24(5), F.S.

²⁴ Section 377.24(6), F.S.

²⁵ Section 377.24(7), F.S.

²⁶ Section 253.61(1)(a), F.S.

²⁷ Section 253.61(1)(b), F.S.

²⁸ Section 253.61(1)(c), F.S.

²⁹ Section 253.61(1)(d), F.S.

Dade, Osceola, Pinellas, St. Lucie, Volusia, Wakulla, and Walton) have banned one or more forms of well stimulation techniques, commonly referred to as “fracking,” by ordinance.³⁰

Additionally, many other counties and cities have passed resolutions supporting various types of bans and moratoriums relating to fracking.³¹

State Regulation of Energy Infrastructure

Florida Department of Environmental Protection

The DEP possesses the authority to issue permits:

- For drilling, exploring, or production of oil, gas, or other petroleum products that are to be extracted from below the surface of the land, including submerged land, only through the well hole drilled for oil, gas, and other petroleum products.³²
- To explore for and extract minerals that are subject to extraction from the land by means other than through a well hole.³³
- To establish natural gas storage facilities or construct wells for the injection and recovery of any natural gas for storage in natural gas storage reservoirs.³⁴

However, DEP may not permit drilling for, or production of, oil, gas, or other petroleum products within:

- Florida’s territorial waters in the gulf of Mexico or Atlantic Ocean;³⁵
- In bays or estuaries;³⁶
- Within one mile of coastline;³⁷
- Within one mile of seaward boundary of any local, state, or federal park or aquatic or wildlife preserve,³⁸ and
- Within one mile inland from the shoreline of the Gulf of Mexico, the Atlantic Ocean, or any bay or estuary or within 1 mile of any freshwater lake, river, or stream unless the department

³⁰ See Village of Estero, Ordinance No. 2015-19; Bonita Spring’s Land Development Code, Chapter 4, Article VI, Division 15, Section 4-1380; Coconut Creek’s Land Development Code, Article IV, Section 13-1000; City of Cape Coral, Ordinance §3.23; City of Dade, Ordinance No. 2016-08; City of Zephyrhills, Ordinance No. 1310-16; Alachua County’s Code of Ordinances, §77.13.5; Bay County’s Land Development Regulation, §311; Brevard County’s Code of Ordinances, §46-375; Citrus County’s Code of Ordinances, §66-133; Indian River County’s Code of Ordinances, §317.03; Osceola County’s Land Development Code, §4.12.3; Broward County’s Code of Ordinances, §27-193; Martin County’s Code of Ordinances, §67.441; Miami-Dade County’s Code of Ordinances, §33-437; Pinellas County’s Code of Ordinances, §58-489; St. Lucie County’s Code of Ordinances, Policy 6.1.5.7; Volusia County’s Code of Ordinances, §50-42; Wakulla County’s Code of Ordinances, §6-34; Walton County’s Code of Ordinances, §9-156.

³¹ See Food & Water Watch, *Local Regulations Against Fracking*, <https://www.foodandwaterwatch.org/insight/local-resolutions-against-fracking> (last visited Mar. 5, 2021) (listing of local governments nationwide that passed resolutions against fracking).

³² Section 377.242(1)(a), F.S.

³³ Section 377.242(2), F.S.

³⁴ Section 377.242(3), F.S.

³⁵ Sections 377.24(9) and 377.242(1)(a)5., F.S.

³⁶ Section 377.242(1)(a)1., F.S.

³⁷ Section 377.242(1)(a)2., F.S.

³⁸ Section 377.242(1)(a)3., F.S.

is satisfied that the natural resources of such bodies of water and shore areas of the state will be adequately protected in the event of accident or blowout.³⁹

The DEP monitors and inspects drilling operations, producing wells, or injecting wells.⁴⁰ Each permit issued by DEP must contain an agreement that the permit holder will not prevent inspection by division personnel at any time.⁴¹

The DEP is vested with the authority to adopt rules and issue orders that must “ensure that all precautions are taken to prevent the spillage of oil or any other pollutant in all phases of the drilling for, and extracting of, oil, gas, or other petroleum products, or during the injection of gas into and recovery of gas from a natural gas storage reservoir.”⁴²

The DEP’s Oil and Gas Program (program) oversees permitting for oil and gas production in the state.⁴³ The program regulates the conservation of oil and gas resources, drilling of wells, health and human safety, and environmental protection.⁴⁴ The program is governed by part 1 of ch. 377, F.S. and Florida Administrative Code Rules 62C-25 through 62C-30.⁴⁵

Well Stimulation and Fracking

Well stimulation refers to any action taken by a well operator to increase the inherent productivity of an oil or gas well.⁴⁶ Common examples of well stimulation treatments are hydraulic fracturing, commonly referred to as “fracking,” and acid fracturing.⁴⁷ Both hydraulic fracturing and acid fracturing involve the pressurized injection of fluids and chemicals to create fractures within a rock formation.⁴⁸ The fractures then allow for more oil and gas to escape the rock formation and migrate up the well.⁴⁹

The DEP’s rules currently require an operator to notify the DEP before beginning any workover operation on an oil or gas well.⁵⁰ A workover is defined as “an operation involving a deepening, plug back, repair, cement squeeze, perforation, hydraulic fracturing, acidizing, or other chemical treatment which is performed in a production, disposal, or injection well in order to restore, sustain, or increase production, disposal, or injection rates.”⁵¹

³⁹ Section 377.242(1)(a)4., F.S.

⁴⁰ Section 377.22(2)(g), F.S.

⁴¹ Section 377.242, F.S.

⁴² Section 377.22(2), F.S. *See also* ss. 377.22(2)(a)-(y), F.S., (listing additional, but not all, purposes of rules and orders issued by DEP).

⁴³ Florida Department of Environmental Protection, *Oil and Gas Program*, <https://floridadep.gov/water/oil-gas> (last visited Mar. 5, 2021).

⁴⁴ *Id.*

⁴⁵ The Oil and Gas Program is governed by part 1 of ch. 377, F.S., and Fla. Admin. Code R. 62C-25 through 62C-30.

⁴⁶ Keith B. Hall, *Recent Developments in Hydraulic Fracturing Regulation and Litigation*, 29 J. LAND USE & ENVTL. L. 29, 22 (2013).

⁴⁷ *Id.* at 1-2.

⁴⁸ *Id.*

⁴⁹ *Id.* at 2.

⁵⁰ Fla. Admin. Code R. 62C-29.006(1).

⁵¹ Fla. Admin. Code R. 62C-25.002(61).

Florida Public Service Commission

The Florida Public Service Commission (PSC) is an arm of the legislative branch of government.⁵² The role of the PSC is to ensure that Florida's consumers receive some of their most essential services – electric, natural gas, telephone, water, and wastewater – in a safe, affordable, and reliable manner.⁵³ In doing so, the PSC exercises regulatory authority over utilities in one or more of three key areas: rate base/economic regulation; competitive market oversight; and monitoring of safety, reliability, and service issues.⁵⁴ The PSC monitors the safety and reliability of the electric power grid⁵⁵ and may order the addition or repair of infrastructure as necessary.⁵⁶ Further, the PSC reviews application to determine the need for certain new electrical power plants⁵⁷ and certain large transmission lines as part of the DEP's siting process.⁵⁸

In 2020, the PSC regulated

- 5 investor-owned electric utilities;
- 8 investor-owned natural gas utilities; and
- 147 investor-owned water and/or wastewater utilities.⁵⁹

The PSC does not fully regulate publicly owned municipal or cooperative electric utilities.⁶⁰ However, it does have jurisdiction over 35 municipally owned electric systems and 18 rural electric cooperatives with regard to rate structure, territorial boundaries, bulk power supply operations, and planning.⁶¹ Additionally, the PSC has jurisdiction over 27 municipally owned natural gas utilities and four gas districts with regard to territorial boundaries, safety, and safety authority over all electric and natural gas systems operating in the state.⁶²

Florida Department of Agriculture and Consumer Services

The Florida Department of Agriculture and Consumer Services (DACCS) is responsible for the administration of a number of programs relating to energy infrastructure and houses the Office of Energy.⁶³ Moreover, the DACCS is responsible for the administration of a number of programs relating to energy infrastructure, including the Renewable Energy and Energy-Efficient

⁵² Section 350.001 F.S.

⁵³ See Florida Public Service Commission, *The PSC's Role*, <http://www.psc.state.fl.us> (last visited Mar. 5, 2021).

⁵⁴ *Id.*

⁵⁵ Section 366.04(5) and (6), F.S.

⁵⁶ Section 366.05(1) and (8), F.S.

⁵⁷ Section 403.519, F.S.

⁵⁸ Section 403.537, F.S.

⁵⁹ Florida Public Service Commission, *Annual Report*, (2020) available at <http://www.psc.state.fl.us/Files/PDF/Publications/Reports/General/Annualreports/2020.pdf> (last visited Mar. 5, 2021).

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² *Id.*

⁶³ See s. 377.805, F.S.

Technologies Grants Program,⁶⁴ the Energy Efficiency and Conservation Clearinghouse,⁶⁵ the Florida Green Government Grants Act,⁶⁶ the Natural Gas Fuel Fleet Vehicle Rebate Program.⁶⁷ Additionally DACS has as the statutory authority to allocate federal energy conservation bonds⁶⁸ and to post information on its website relating to alternative fueling stations or electric vehicle charging stations that are available for public use.⁶⁹

Preemption

Local governments have broad authority to legislate on any matter that is not inconsistent with federal or state law. A local government enactment may be inconsistent with state law if (1) the Legislature has preempted a particular subject area or (2) the local enactment conflicts with a state statute. Where state preemption applies, it precludes a local government from exercising authority in that particular area.⁷⁰

Florida law recognizes two types of preemption: express and implied. Express preemption requires a specific legislative statement; it cannot be implied or inferred.⁷¹ Express preemption of a field by the Legislature must be accomplished by clear language stating that intent.⁷² In cases where the Legislature expressly or specifically preempts an area, there is no problem with ascertaining what the Legislature intended.⁷³

In cases determining the validity of ordinances enacted in the face of state preemption, the effect has been to find such ordinances null and void.⁷⁴ In one case, the court stated that implied preemption “is actually a decision by the courts to create preemption in the absence of an explicit legislative directive.”⁷⁵ Preemption of a local government enactment is implied only where the

⁶⁴ Section 377.804, F.S. (establishing within DACS the Renewable Energy and Energy-Efficient Technologies Grants Program “to provide renewable energy matching grants for demonstration, commercialization, research, and development projects relating to renewable energy technologies . . .”).

⁶⁵ Section 377.805, F.S., (requiring the development of a clearinghouse of “information regarding cost savings associated with various energy efficiency and conservation measures” by the Office of Energy in consultation with the Public Service Commission, the Florida Building Commission, and the Florida Energy Systems Consortium).

⁶⁶ Section 377.808, F.S., (directing DACS to use appropriated funds to award grants that assist local governments and school districts with development and implementation of programs aimed at achieving green standards).

⁶⁷ Section 377.810, F.S., (establishing the program within DACS to help reduce transportation costs and encourage freight mobility investments contributing to the state’s economic growth).

⁶⁸ Section 37.816, F.S.

⁶⁹ Section 377.815, F.S.

⁷⁰ See James R. Wolf and Sarah Harley Bolinder, *The Effectiveness of Home Rule: A Preemption and Conflict Analysis*, Fla. B.J. 92 (June 2009) available at <https://www.floridabar.org/the-florida-bar-journal/the-effectiveness-of-home-rule-a-preemption-and-conflict-analysis/> (last visited Mar. 5, 2021).

⁷¹ See *City of Hollywood v. Mulligan*, 934 So. 2d 1238, 1243 (Fla. 2006); *Phantom of Clearwater, Inc. v. Pinellas County*, 894 So.2d 1011, 1018 (Fla. 2d DCA 2005), approved in *Phantom of Brevard, Inc. v. Brevard County*, 3 So. 3d 309 (Fla. 2008).

⁷² *Mulligan*, 934 So. 2d at 1243.

⁷³ *Sarasota Alliance for Fair Elections, Inc. v. Browning*, 28 So. 3d 880, 886 (Fla. 2010). Examples of activities “expressly preempted to the state” include: operator use of commercial mobile radio services and electronic communications devices in motor vehicles, s. 316.0075, F.S.; regulation of the use of cameras for enforcing provisions of the Florida Uniform Traffic Control Law, s. 316.0076, F.S.; and, the adoption of standards and fines related to specified subject areas under the purview of the Department of Agriculture and Consumer Services, s. 570.07, F.S.

⁷⁴ See, e.g., *Nat’l Rifle Ass’n of Am., Inc. v. City of S. Miami*, 812 So. 2d 504 (Fla. 3d DCA 2002).

⁷⁵ *Phantom of Clearwater, Inc.*, 894 So. 2d at 1019.

legislative scheme is so pervasive as to evidence an intent to preempt the particular area, and strong public policy reasons exist for finding preemption.⁷⁶ Implied preemption is found where the local legislation would present the danger of conflict with the state’s pervasive regulatory scheme.⁷⁷

III. Effect of Proposed Changes:

CS/SB 856 creates s. 377.707, F.S., relating to state preemption of energy infrastructure regulation.

The bill centralizes transportation energy infrastructure regulation by expressly preempting transportation energy infrastructure regulation to the state.

The bill defines “transportation energy infrastructure” as infrastructure supporting fuel’s:

- Production,
- Importation,
- Storage, and
- Distribution.

The bill defines “fuel” as including the following, when such fuel sources are used for transportation:

- Petroleum fuel,
- Petroleum products,
- Gasoline,
- Diesel fuel,
- Motor fuel, Marine fuel,
- Aviation fuel,
- Renewable fuel,
- Alternative fuel,
- Natural gas fuel,
- Hydrogen fuel, and
- Electricity.

The bill provides that the legislature recognizes affordable, reliable, and sustainable energy throughout the state as dependent on transportation energy infrastructure networks that extend beyond local government boundaries and the importance of consumer choice in the energy market.

The bill prohibits local governments from imposing requirements that are more stringent than state law and from implementing any law, ordinance, regulation, policy, or resolution that prohibits, restricts, or requires, the construction of new transportation energy infrastructure or the expansion, upgrading, or repair of existing energy infrastructure, or imposing any requirement regulating transportation energy infrastructure that is more stringent than state law or rule.

⁷⁶ *Id.*

⁷⁷ *Sarasota Alliance for Fair Elections, Inc.*, 28 So. 3d at 886.

The bill prohibits local governments from imposing requirements that have the effect of prohibiting, restricting, or requiring, the construction of new transportation energy infrastructure or the expansion, upgrading, or repair of existing energy infrastructure, or imposing any requirement regulating transportation energy infrastructure that is more stringent than state law or rule.

The bill provides an exception for local ordinances regulating petroleum storage system construction, operation, and maintenance which were enacted pursuant to section 376.317(3)(a), F.S.

The bill does not limit the authority of a local government to adopt, implement, modify, and enforce applicable federal and state requirements for transportation energy infrastructure, including safety and building standards.

Local governments are also prohibited from amending comprehensive plans, land use maps, zoning districts, or land development regulations in a way that would conflict with existing transportation energy infrastructure classification, including an amendment that would render existing transportation energy infrastructure to be nonconforming.

The bill also voids any existing or future local laws, ordinances, regulations, policies, or resolutions that are contrary to the provisions of the bill.

The bill is effective July 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

Article I, section 10 of the Florida Constitution prohibits the passage of any law which impairs the obligation of contracts. The Florida Supreme Court has held that, relating to the interpretation of substantive changes to statutory law, the general rule is that in the absence of clear legislative intent to the contrary, a law affecting substantive rights,

liabilities and duties is presumed to apply prospectively but not retroactively. Florida courts have also held that “Even where the Legislature has expressly stated that a statute will have retroactive application, this Court will reject such an application if the statute impairs a vested right, creates a new obligation, or imposes a new penalty.”

Current law authorizes local governments to provide and contract for certain services related to energy infrastructure. To the extent that the bill may retroactively abrogate such contracts, the bill may impair a local government’s vested rights or contractual obligations or ability to satisfy a contractual obligation.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Indeterminate.

C. Government Sector Impact:

Indeterminate.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 377.707 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – of Substantial Changes:

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

CS by Regulated Industries on March 9, 2021:

The committee substitute:

- Narrows the scope of the bill to transportation energy infrastructure.
- Moves the legislative findings from a preamble to a subsection within s. 377.707, F.S., and expands the findings to include the importance of consumer choice in the energy market.
- Deletes the definition of energy infrastructure.

- Defines “fuel,” as including petroleum fuel, petroleum products, gasoline, diesel fuel, motor fuel, marine fuel, aviation fuel, renewable fuel, alternative fuel, natural gas fuel, hydrogen fuel, and electricity, when such fuel sources are used for transportation.
- Defines “transportation energy infrastructure” to mean infrastructure supporting the production, importation, storage, and distribution of fuel.
- Preempts the regulation of transportation energy infrastructure to the state.
- Prohibits local governments from adopting laws that prohibit, restrict, or require the construction of new transportation energy infrastructure or the expansion, upgrading, or repair of existing transportation energy infrastructure.
- Prohibits local governments from imposing requirements regulating transportation energy infrastructure that are more stringent than state law or rule, with the exception of local ordinances regulating petroleum storage system construction, operation, and maintenance, pursuant to s. 376.317(3)(a), F.S.
- Prohibits local governments from amending comprehensive plans, land use maps, zoning districts, or land development regulations in a way that would render existing transportation energy infrastructure to be nonconforming.



352804

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/09/2021	.	
	.	
	.	
	.	

The Committee on Regulated Industries (Hutson) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Section 377.707, Florida Statutes, is created to
read:

377.707 State preemption of transportation energy
infrastructure regulation.-

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

(a) "Fuel" includes, but is not limited to, petroleum fuel,



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11 petroleum products, gasoline, diesel fuel, motor fuel, marine
12 fuel, aviation fuel, renewable fuel, alternative fuel, natural
13 gas fuel, hydrogen fuel, and electricity, when such fuel sources
14 are used for transportation.

15 (b) "Transportation energy infrastructure" means
16 infrastructure supporting the production, importation, storage,
17 and distribution of fuel.

18 (2) The Legislature recognizes that affordable, reliable,
19 and sustainable energy throughout this state is dependent upon
20 transportation energy infrastructure networks extending beyond
21 local government boundaries and recognizes the importance of
22 consumer choice in the energy market.

23 (3) The regulation of transportation energy infrastructure
24 is expressly preempted to the state. A local government is
25 prohibited from doing any of the following:

26 (a) Adopting or implementing any law, ordinance,
27 regulation, policy, or resolution that prohibits, restricts, or
28 requires, or that has the effect of prohibiting, restricting, or
29 requiring, the construction of new transportation energy
30 infrastructure or the expansion, upgrading, or repair of
31 existing transportation energy infrastructure, or imposing any
32 requirement regulating transportation energy infrastructure that
33 is more stringent than state law or department rule, except for
34 local ordinances regulating petroleum storage system
35 construction, operation, and maintenance which were enacted
36 pursuant to section 376.317(3)(a).

37 (b) Amending its comprehensive plan, land use map, zoning
38 districts, or land development regulations in a manner that
39 would conflict with an existing transportation energy



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40 infrastructure classification as a permitted and allowable use,
41 including, but not limited to, an amendment that causes an
42 existing transportation energy infrastructure to be a
43 nonconforming use, structure, or development.

44 (c) Imposing requirements that are more stringent than
45 state law or rule.

46 (4) This section does not limit the authority of a local
47 government to adopt, implement, modify, and enforce:

48 (a) Applicable federal and state requirements for
49 transportation energy infrastructure, including safety and
50 building standards; or

51 (b) Local safety and building standards that do not
52 conflict with federal or state safety and security requirements
53 for transportation energy infrastructure.

54 (5) Any existing or future law, ordinance, regulation,
55 policy, or resolution that is contrary to this section is void.

56 Section 2. This act shall take effect July 1, 2021.

57
58 ===== T I T L E A M E N D M E N T =====

59 And the title is amended as follows:

60 Delete everything before the enacting clause
61 and insert:

62 A bill to be entitled
63 An act relating to the state preemption of
64 transportation energy infrastructure regulation;
65 creating s. 377.707, F.S.; defining terms; providing
66 legislative findings; preempting the regulation of
67 transportation energy infrastructure to the state;
68 prohibiting a local government from taking specified



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69
70
71

actions relating to the regulation of transportation
energy infrastructure; proving exceptions; providing
construction; providing an effective date.

By Senator Hutson

7-00988A-21 2021856

1 A bill to be entitled
 2 An act relating to the state preemption of energy
 3 infrastructure regulations; creating s. 377.6013,
 4 F.S.; defining the term "energy infrastructure";
 5 preempting to the state the regulation of the
 6 construction of energy infrastructure; providing
 7 construction; providing an effective date.

8
 9 WHEREAS, the Legislature finds that affordable, reliable,
 10 and sustainable energy throughout this state is dependent upon
 11 energy infrastructure networks extending beyond local
 12 governmental boundaries, and

13 WHEREAS, the Legislature recognizes the importance of
 14 consumer choice in the energy market, NOW, THEREFORE,
 15

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

17
 18 Section 1. Section 377.6013, Florida Statutes, is created
 19 to read:

20 377.6013 Construction of energy infrastructure;
 21 preemption.-

22 (1) As used in this section, the term "energy
 23 infrastructure" means infrastructure used to support the
 24 production, import, storage, and distribution of natural gas;
 25 petroleum; petroleum products; electricity; biomass; renewable
 26 fuels; hydrogen; or solar, wind, or geothermal energy.

27 (2) The regulation of the construction of energy
 28 infrastructure is expressly preempted to the state. A local
 29 governmental entity may not do any of the following:

7-00988A-21 2021856

30 (a) Implement any law, ordinance, regulation, policy, or
 31 resolution that prohibits, restricts, or requires, or has the
 32 effect of prohibiting, restricting, or requiring, the
 33 construction of new or the expansion, upgrading, or repair of,
 34 existing energy infrastructure.

35 (b) Impose requirements that are more stringent than state
 36 law or rule.

37 Section 2. Any local governmental law, ordinance,
 38 regulation, policy, or resolution that is preempted by this act
 39 and that existed before, on, or after July 1, 2021, is void.

40 Section 3. This act shall take effect July 1, 2021.

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/9/21
Meeting Date

SB 85C
Bill Number (if applicable)

352804
Amendment Barcode (if applicable)

Topic State Reception of Energy for fruit products.
Resolutions

Name META CALDER

Job Title

Address 3740 RAVINE DR, Phone 850-226-5900

City TALLAHASSEE FL 32312 Email meta@leavesofgreen.com
State Zip

Speaking: For Against Information

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

Representing FLORIDA LEAGUE OF WOMEN VOTERS

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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Reg End 9:00

THE FLORIDA SENATE

856

APPEARANCE RECORD

3/9/21

Meeting Date

Bill Number (if applicable)

Topic State Preemption of Energy Infrastructure Regulations

Amendment Barcode (if applicable)

Name Brewster Bevis

Job Title Senior Vice President

Phone 224-7173

Address 513 N Adams St

Street

Tallahassee

City

FL

State

32301

Zip

Email bbevis@aif.com

Speaking: For Against

Information

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

Representing Associated Industries of Florida

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/9/21
Meeting Date

Bill Number (if applicable)
5B856

Topic Energy Inf
Rev. Andy Oliver

Amendment Barcode (if applicable)

Job Title Pastor

Address 1363 42nd Ave W Phone 727-208-1522

Street

City St Petersburg FL 33703

State

Zip

Email andy@allendaleumc.org

Speaking: For Against

Information

Waive Speaking: In Support Against

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

Representing Allendale United Methodist Church

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE

APPEARANCE RECORD

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3-9-21
Meeting Date

SB 850
Bill Number (if applicable)

Topic Energy Infrastructure

Amendment Barcode (if applicable)

Name Kristellys Estanga

Job Title Aide to City Commissioner

Address 406 W 8th Ave Phone 954 804 9000

City Tallahassee State FL Zip 32303

Email Kristellys@myfloridacomm.com

Speaking: For Against Information

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

Representing myself

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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APPEARANCE RECORD

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3/9/21
Meeting Date

856
Bill Number (if applicable)

Topic Energy Infrastructure Preemption

Amendment Barcode (if applicable)

Name Rebecca O'Hara

Job Title Deputy General Counsel

Address PO Box 1757 Phone 222 9684

Street

Tallahassee FL 32302

City

State

Zip

Email robhara@flcities.com

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

Representing Fla. League of Cities

Appearing at request of Chair: Yes No Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE

APPEARANCE RECORD

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

2/21/21
Meeting Date

856
Bill Number (if applicable)

Topic Sustainability of Energy Infrastructure

Amendment Barcode (if applicable)

Name Armani M. Bellomo

Job Title Student

Address 500 Chapel Dr. Unit 231

Phone 786-683-5703

City Tallahassee FL 32304

Email armanibellomo@gmail.com

Speaking: For Against Information

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

Representing myself

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE

APPEARANCE RECORD

3/9/2021

Meeting Date

856

Bill Number (if applicable)

Topic State Preemption of Energy Infrastructure Regulations

Amendment Barcode (if applicable)

Name Jonathan Webber

Job Title Deputy Director

Address 1700 N. Monroe St. #11-286

Phone 954-593-4449

Street

Tallahassee

FL

32303

Email jwebber@fcvoters.org

City

State

Zip

Speaking: For

Against

Information

In Support

Against

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

Representing Florida Conservation Voters

Appearing at request of Chair: Yes

No

Yes

No

Lobbyist registered with Legislature:

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

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S-001 (10/14/14)

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THE FLORIDA SENATE

APPEARANCE RECORD

3/9/2021

Meeting Date

SB856

Bill Number (if applicable)

Topic Senate Regulated Industries

Amendment Barcode (if applicable)

Name Nicole Fogarty

Job Title Legislative Affairs Director

Address 2300 Virginia Ave.

Phone 772-708-3954

Street

Fort Pierce

FL

34982

Email FogartyN@stlucieco.org

City

State

Zip

Speaking: For Against

Information

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

Representing St. Lucie County

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/9/21

Meeting Date

SB 856

Bill Number (if applicable)

Topic Preemption of Energy Infrastructure

Amendment Barcode (if applicable)

Name Jane West

Job Title Policy + Planning Director

Address 24 Cathedral Pl

Phone 904-671-4008

Street

City St Augustine FL

Zip 32080

State

Email jwest@1000of.org

Speaking: For Against

Information

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

Representing 1000 Friends of Florida

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE

APPEARANCE RECORD

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

3/9/21
Meeting Date

SB 856
Bill Number (if applicable)

Topic State Budget of Energy Infrastructure Regulation
Name META CALDER

Amendment Barcode (if applicable)

Job Title _____

Address 3740 RAVINE DR Phone 850-228-5900

Street

TALLAHASSEE FL 32312

City

State

Zip

Email meta@calder.org

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

Representing FLORIDA LEAGUE OF WOMEN VOTERS

Appearing at request of Chair: Yes No Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE

APPEARANCE RECORD

Meeting Date 3/8/21 Bill Number (if applicable) 856

Topic Energy Infrastructure State Preemption Amendment Barcode (if applicable)

Name Grace Lovett

Job Title VP of Governmental Affairs

Address 227 S. Adams St. Phone 850-222-4082

City Tallahassee State FL Zip 32301 Email grace@arf.org

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

Representing Florida Retail Federation

Appearing at request of Chair: Yes No Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/9/2021
Meeting Date

SB 856
Bill Number (if applicable)

Topic Preemption Energy Infrastructure

Amendment Barcode (if applicable)

Name Salome Garcia

Job Title Policy Manager

Address 1420 N Meridian

Phone 786 387 5111

City Tallahassee FL State Zip

Email Salome@CLEOInstitute.org

Speaking: For Against Information

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

Representing CLEO INSTITUTE

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE

APPEARANCE RECORD

3/9/21

Meeting Date

856

Bill Number (if applicable)

Topic Preemption

Amendment Barcode (if applicable)

Name Kim Ross

Job Title Executive Director, ReThink Energy Action Fund

Address 603 N MLK Jr Blvd

Street

Phone 850-888-2565

Tallahassee

City

FL

State

32301

Zip

Email kim@rethinkenergyflorida.org

Speaking: For Against

Information

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

Representing _____

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE

3/9/21 REG. IND. A3

APPEARANCE RECORD

856

Meeting Date

Bill Number (if applicable)

Topic Preemption of Energy Infrastructure

Amendment Barcode (if applicable)

Name David Cullen

Job Title _____

Address 1934 Shelby Court

Phone 941-323-2404

Street

Tallahassee

FL

32308

Email cullenasea@gmail.com

City

State

Zip

Speaking: For Against

Information

In Support Against

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

Representing Sierra Club Florida

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/9/2021
Meeting Date

50856
Bill Number (if applicable)

Topic Transportation Infrastructure
Amendment Barcode (if applicable)

Name Eric Hamilton

Job Title Associate Director American Petroleum Institute

Address 215 S. Monroe St. Tallahassee Phone 830 559 1904

Tallahassee FL 32301 Email hamilton@api.org
Street City State Zip

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

Representing American Petroleum Institute

Appearing at request of Chair: Yes No Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE

APPEARANCE RECORD

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

3/9/21

Meeting Date

856

Bill Number (if applicable)

Topic PROMPTON-ENERGY / INFRASTRUCTURE Amendment Barcode (if applicable)

Name MATTHEW ALFORD

Job Title EXEC. DIR. DRIVE ELECTRIC FLORIDA

Address Phone (850) 556-6787

Street

Email MATTHEW.ALFORD@DRIVEELECTRICFLORIDA.COM

City

State

Zip

Speaking: For Against

Information

Waive Speaking: In Support Against

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

Representing DRIVE ELECTRIC FLORIDA

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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THE FLORIDA SENATE

APPEARANCE RECORD

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

856

~~856~~

3/9/21

Meeting Date

Bill Number (if applicable)

Topic Energy Preemption

Amendment Barcode (if applicable)

Name Ryan Mathew

Job Title Leg Counsel

Phone

681 7383

Address

PO Box 10930

Street

TW

City

FL

State

32301

Zip

ryan@panfl.net

Email

Speaking: For

Against

Information

Waive Speaking: In Support

Against

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

Representing

FL Mini Electric Assoc

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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S-001 (10/14/14)

APPEARANCE RECORD

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

3/9/2021
Meeting Date

SB 856

Bill Number (if applicable)

Topic State Preemption of Energy Infrastructure

Amendment Barcode (if applicable)

Name Ned Bowman

Job Title Executive Director

Address 1983 Centre Point Blvd

Phone 850 877-5178

Street Tallahassee

City FL

State FL

Zip 32308

Email Ned@FPMA

Speaking: For Against Information

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

Representing FPMA

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE

APPEARANCE RECORD

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

3/9/21
Meeting Date

856
Bill Number (if applicable)

Topic Energy Exemption
Name Ida V. Eskamani

Amendment Barcode (if applicable)

Job Title

Address

Phone

Street

City

Email

State

Zip

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

Representing Florida Rising

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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APPEARANCE RECORD

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3/9/21

Meeting Date

856

Bill Number (if applicable)

Topic Energy Infrastructure Legislation

Amendment Barcode (if applicable)

Name Marty Cassini

Job Title Manager

Phone 954-357-6440

Address 100 S. Andrews Ave

Street Fort Lauderdale City FL State FL Zip 33301

Email mcassini@board.org

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

Speaking: For Against Information

Representing Broward County

Appearing at request of Chair: Yes No Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE

APPEARANCE RECORD

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

3/9/21

Meeting Date

SB 856

Bill Number (if applicable)

Topic SB 856

Amendment Barcode (if applicable)

Name JEFF SCALA

Job Title Associate Director of Public Policy

Address 100 S Monroe Street

Phone (727) 637-4081

City Tallahassee

Email jscal@fl-countries.com

State FL

Zip

32301

Speaking: For Against Information Waive Speaking: In Support Against

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

Representing Florida Association of Counties

Appearing at request of Chair: Yes No Lobbyist registered with Legislature: Yes No

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THE FLORIDA SENATE

APPEARANCE RECORD

3/9/2021

Meeting Date

856

Bill Number (if applicable)

Topic

Amendment Barcode (if applicable)

Name Dale Calhoun

Job Title Executive Director

Address 201 S Monroe St Unit A

Phone 8506810496

Street

Tallahassee

FL

32301

City

State

Zip

Email dale.calhoun@floridagas.org

Speaking: For

Against

Information

In Support

Against

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

Representing Florida Natural Gas Association & Florida Propane Gas Association

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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S-001 (10/14/14)

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THE FLORIDA SENATE

APPEARANCE RECORD

3/9/21

Meeting Date

856

Bill Number (if applicable)

Topic State Preemption of Energy Infrastructure

Amendment Barcode (if applicable)

Name Michael Cassel

Job Title AVP, Regulatory & Government Affairs

Address 208 Wildlight Ave

Phone 561-252-0250

Street

Yulee

FL

32097

Email mcassel@chpk.com

City

State

Zip

Speaking: For Against

Information

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

Representing Chesapeake Utilities Corporation

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/9/21
Meeting Date

856
Bill Number (if applicable)

Topic RENEWABLE ENERGY Amendment Barcode (if applicable)

Name RAMIRO SICRE

Job Title Manager, Government Affairs

Address 201 Wildlight Ave Phone 561-601-6311

Yulee, Florida 32920 Email RSicre@FPLC.com

City State Zip

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

Representing Florida Public Utilities

Appearing at request of Chair: Yes No Lobbyist registered with Legislature: Yes No

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The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Regulated Industries

BILL: CS/SB 1128

INTRODUCER: Regulated Industries Committee and Senator Hutson

SUBJECT: Preemption on Restriction of Utility Services

DATE: March 10, 2021

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Sharon _____	Imhof _____	RI _____	CS/Fav _____
2.	_____	_____	CA _____	_____
3.	_____	_____	RC _____	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1128 prohibits municipalities, counties, special districts, or other political subdivisions from enacting or enforcing a resolution, ordinance, rule, code, or policy that restricts or prohibits the types or the fuel sources of energy production used, delivered, converted, or supplied to customers by a public utility, municipal electric utility, natural gas utility, natural gas transmission company, a category I liquefied petroleum gas dealer, or a category II liquefied petroleum gas dispenser.

The bill voids any resolutions, ordinances, rules, codes, policies, or actions by any municipality county, special district, or political subdivision charter, existing on or before the bill's effective date, which are preempted by this bill.

The bill is effective July 1, 2021.

II. Present Situation:

Local Government Authority

The Florida Constitution grants local governments broad home rule authority. Specifically, non-charter county governments may exercise those powers of self-government that are provided by general or special law.¹ Those counties operating under a county charter have all powers of local

¹ FLA. CONST. art. VIII, s. 1(f).

self-government not inconsistent with general law or special law approved by the vote of the electors.² Likewise, municipalities have those governmental, corporate, and proprietary powers that enable them to conduct municipal government, perform their functions and provide services, and exercise any power for municipal purposes, except as otherwise provided by law.³

In Florida, special districts are separate governmental entities created for a special purpose that have jurisdiction to operate within a limited geographic boundary.⁴ Special districts are created by general law, special act, local ordinance, or by rule of the Governor and Cabinet.⁵ Throughout the state there are over 1,770 active special districts encompassing more than 80 specialized governmental functions.⁶

Interlocal Cooperation and the Florida Municipal Power Agency

The Florida Interlocal Cooperation Act of 1969 (Act) allows local governmental units to make the most efficient use of their powers by enabling them to cooperate with other localities on a basis of mutual advantage.⁷ The Act provides that local governmental entities may jointly exercise their powers by entering into a contract in the form of an interlocal agreement.⁸ Under such an agreement, the local governmental units may create a separate legal or administrative entity “to provide services and facilities in a manner and pursuant to forms of governmental organization that will accord best with geographic, economic, population, and other factors influencing the needs and development of local communities.”⁹

In 1978, the Florida Municipal Power Agency (FMPA) was created through a series of interlocal agreements under s. 163.01, F.S., to provide wholesale power supply to municipal electric utilities. FMPA is currently owned by 31 municipalities.¹⁰ Through various joint power supply projects,¹¹ the FMPA supplies all of the electrical power needs of 13 member utilities and a part of the power needs for seven other member utilities.¹² Through these projects, FMPA members

² FLA. CONST. art. VIII, s. 1(g).

³ FLA. CONST. art. VIII, s. 2(b). *See also* s. 166.021(1), F.S.

⁴ Section 189.012(6), F.S.

⁵ *Id.*

⁶ *See* Florida Department of Economic Opportunity, *Introduction to Special Districts*, <https://floridajobs.org/community-planning-and-development/special-districts/special-district-accountability-program/florida-special-district-handbook-online/introduction-to-special-districts> (last visited Mar. 5, 2021).

⁷ Section 163.01(2), F.S.

⁸ Section 163.01(5), F.S.

⁹ Section 163.01(2), F.S.

¹⁰ Currently, FMPA serves the following municipalities: Alachua, Bartow, Blountstown, Bushnell, Chattahoochee, Clewiston, Fort Meade, Fort Pierce, Gainesville, Green Cove Springs, Havana, Homestead, Jacksonville Beach, Key West, Kissimmee, Lake Worth, Lakeland, Leesburg, Moore Haven, Mount Dora, New Smyrna Beach, Newberry, Ocala, Orlando, Quincy, St. Cloud, Starke, Vero Beach, Wauchula, Williston, and Winter Park. Florida Municipal Power Agency, *Members*, <http://fmpa.com/about/members/> (last visited Mar. 5, 2021).

¹¹ Section 361.12, F.S., authorizes any electric utility, or any organization, association, or separate legal entity whose membership consists only of electric utilities, to join with any other such entity to finance, acquire, construct, manage, operate, or own an electric power supply project for the joint generation or transmission of electrical energy, or both. Further, s. 361.13, F.S., authorizes any such entity to purchase capacity or energy, or both, in an agreed upon quantity from any project in which the purchaser has an ownership interest.

¹² *See* Florida Municipal Power Agency, *Projects*, <https://fmpa.com/power-supply-projects/> (last visited Mar. 5, 2021).

maintain ownership interests in various electrical power plants throughout Florida. FMPA manages the transmission of electrical power over facilities owned by FMPA or its members.¹³

Preemption

Local governments have broad authority to legislate on any matter that is not inconsistent with federal or state law. A local government enactment may be inconsistent with state law if (1) the Legislature has preempted a particular subject area or (2) the local enactment conflicts with a state statute. Where state preemption applies, it precludes a local government from exercising authority in that particular area.¹⁴

Florida law recognizes two types of preemption: express and implied. Express preemption requires a specific legislative statement; it cannot be implied or inferred.¹⁵ Express preemption of a field by the Legislature must be accomplished by clear language stating that intent.¹⁶ In cases where the Legislature expressly or specifically preempts an area, there is no problem with ascertaining what the Legislature intended.¹⁷

In cases determining the validity of ordinances in violation of state preemption, the effect has been to find such ordinances null and void.¹⁸ In one case, the court stated that implied preemption “is actually a decision by the courts to create preemption in the absence of an explicit legislative directive.”¹⁹ Preemption of a local government enactment is implied only where the legislative scheme is so pervasive as to evidence an intent to preempt the particular area, and strong public policy reasons exist for finding preemption.²⁰ Implied preemption is found where the local legislation would present the danger of conflict with the state’s pervasive regulatory scheme.²¹

Florida Public Service Commission

The Florida Public Service Commission (PSC) is an arm of the legislative branch of government.²² The role of the PSC is to ensure that Florida’s consumers receive utility services,

¹³ See Florida Municipal Power Agency, *Value of Public Power*, <https://fmpa.com/value-of-public-power/> (last visited Mar. 5, 2021).

¹⁴ See James R. Wolf and Sarah Harley Bolinder, *The Effectiveness of Home Rule: A Preemption and Conflict Analysis*, 83 Fla. B.J. 92 (June 2009) available at <https://www.floridabar.org/the-florida-bar-journal/the-effectiveness-of-home-rule-a-preemption-and-conflict-analysis/> (last visited Mar. 5, 2021).

¹⁵ See *City of Hollywood v. Mulligan*, 934 So. 2d 1238, 1243 (Fla. 2006); *Phantom of Clearwater, Inc. v. Pinellas County*, 894 So.2d 1011, 1018 (Fla. 2d DCA 2005), approved in *Phantom of Brevard, Inc. v. Brevard County*, 3 So. 3d 309 (Fla. 2008).

¹⁶ *Mulligan*, 934 So. 2d at 1243.

¹⁷ *Sarasota Alliance for Fair Elections, Inc. v. Browning*, 28 So. 3d 880, 886 (Fla. 2010). Examples of activities “expressly preempted to the state” include: operator use of commercial mobile radio services and electronic communications devices in motor vehicles, s. 316.0075, F.S.; regulation of the use of cameras for enforcing provisions of the Florida Uniform Traffic Control Law, s. 316.0076, F.S.; and, the adoption of standards and fines related to specified subject areas under the purview of the Department of Agriculture and Consumer Services, s. 570.07, F.S.

¹⁸ See, e.g., *Nat’l Rifle Ass’n of Am., Inc. v. City of S. Miami*, 812 So. 2d 504 (Fla. 3d DCA 2002).

¹⁹ *Phantom of Clearwater, Inc.*, 894 So. 2d at 1019.

²⁰ *Id.*

²¹ *Sarasota Alliance for Fair Elections, Inc.*, 28 So. 3d at 886.

²² Section 350.001 F.S.

including electric, natural gas, telephone, water, and wastewater, in a safe, affordable, and reliable manner.²³ In order to do so, the PSC exercises authority over public utilities in one or more of the following areas: (1) Rate or economic regulation; (2) Market competition oversight; and/or (3) Monitoring of safety, reliability, and service issues.²⁴ The PSC monitors the safety and reliability of the electric power grid²⁵ and may order the addition or repair of infrastructure as necessary.²⁶ Further, the PSC reviews applications to determine the need for certain new electrical power plants²⁷ and certain large transmission lines as part of the Department of Environmental Protection's siting process.²⁸

The PSC does not fully regulate publicly owned municipal electric utilities.²⁹ However, it does have jurisdiction over municipally owned electric systems with regard to rate structure, territorial boundaries, bulk power supply operations, and planning.³⁰ Additionally, the PSC has jurisdiction over 27 municipally owned natural gas utilities and four gas districts with regard to territorial boundaries, safety, and safety authority over all electric and natural gas systems operating in the state.³¹

A public utility includes any person or legal entity supplying electricity or gas, including natural, manufactured, or similar gaseous substance, to or for the public within the state.³² Notably, courts have ruled that the sale of electricity to even a single customer makes the provider a "public utility" subjecting them to the PSC's regulatory jurisdiction, under s. 366.02(1), F.S.³³ The PSC's jurisdiction over public utilities is exclusive and superior to all other boards, agencies, political subdivisions, municipalities, towns, villages, or counties, and in cases of conflict the PSC is to prevail.³⁴

Investor-Owned Electric Utilities Companies

There are five investor-owned electric utility companies in Florida: Florida Power & Light Company, Duke Energy Florida, Tampa Electric Company, Gulf Power Company, and Florida Public Utilities Corporation.³⁵ Investor-owned electric utility rates and revenues are regulated by the Florida Public Service Commission.³⁶ Accordingly, these utilities must file periodic earnings reports, either monthly, quarterly, or semi-annually, depending upon each company's size. These

²³ See Florida Public Service Commission, *The PSC's Role*, <http://www.psc.state.fl.us> (last visited Mar. 5, 2021).

²⁴ *Id.*

²⁵ Sections 366.04(5) and (6), F.S.

²⁶ Sections 366.05(1) and (8), F.S.

²⁷ Section 403.519, F.S.

²⁸ Section 403.537, F.S.

²⁹ Florida Public Service Commission, *2020 FPSC Annual Report*, available at <http://www.psc.state.fl.us/Files/PDF/Publications/Reports/General/Annualreports/2020.pdf> (last visited Mar. 5, 2021).

³⁰ *Id.*

³¹ *Id.*

³² Section 366.02(1), F.S.

³³ *Florida Public Service Com'n v. Bryson*, 569 So. 2d 1253, 1255 (Fla. 1990) (finding that even a property management company is a public utility within the PSC's regulatory jurisdiction); *PW Ventures, Inc. v. Nichols*, 533 So. 2d 281, 284 (Fla. 1988) (finding that "to the public," as used in ch. 366, F.S., means "to any member of the public," rather than "to the general public").

³⁴ Section 366.04 (1), F.S.

³⁵ *Id.*

³⁶ Florida Department of Agriculture and Consumer Services, *Electric Utilities*, <https://www.fdacs.gov/Energy/Florida-Energy-Clearinghouse/Electric-Utilities> (last visited Mar. 5, 2021).

more frequent company filings allow the PSC to monitor earnings levels on an ongoing basis and adjust customer rates quickly if a company appears to be overearning.³⁷

Municipally Owned Electric Utilities

A municipal electric utility is an electric utility system owned or operated by a municipality engaged in serving residential, commercial or industrial customers, usually within the boundaries of the municipality.³⁸ Municipally owned utility rates and revenues are regulated by their city commission.³⁹ As noted above, the PSC does have limited jurisdiction over municipally owned electric utilities.⁴⁰ In total there are 34 municipal electric companies in Florida.⁴¹ Most municipal electric utilities are represented by the Florida Municipal Electric Association which serves over three million Floridians.⁴²

Natural Gas Utilities

Florida's natural gas network is comprised of four interstate pipelines and two intrastate pipelines.⁴³ The two intrastate pipelines, falling within the definition of a "natural gas transmission company," pursuant to s. 368.103(4), are Peninsular Pipeline Company, Inc. and SeaCoast Gas Transmission LLC.⁴⁴ Florida's natural gas network supplies natural gas to five investor-owned natural gas utilities, 27 municipal natural gas utilities, and four special gas districts.⁴⁵

Pursuant to ch. 366, F.S., the PSC has regulatory authority over the investor-owned natural gas utilities in all aspects of operations, including safety; authority over municipally-owned natural gas utilities that is limited to safety and territorial boundary disputes; and authority over special gas districts that is limited to safety and territorial boundary disputes.⁴⁶

Florida Department of Agriculture and Consumer Services

The Florida Department of Agriculture and Consumer Services (DACS) is responsible for the administration of a number of programs relating to energy infrastructure and houses the Office of Energy.⁴⁷ The DACS is also responsible for licensing individuals and businesses that sell, transport, dispense or store liquefied petroleum (LP) gas and that manufacture, install, service or repair LP gas containers, systems or appliances.⁴⁸ The FDACS inspects facilities where LP gas is sold or stored and investigates accidents involving LP gas or equipment.⁴⁹

³⁷ FPSC, *2020 Annual Report*, *supra* at n. 29.

³⁸ FDACS, *Electric Utilities*, *supra* at n. 36.

³⁹ *Id.*

⁴⁰ FPSC, *2020 Annual Report*, *supra* at n. 29.

⁴¹ FDACS, *Electric Utilities*, *supra* at n. 36.

⁴² Florida Municipal Electric Association, *About FMEA*, <https://www.publicpower.com/about-us> (last visited Mar. 5, 2021).

⁴³ Florida Department of Agriculture and Consumer Services, *Natural Gas Utilities*, <https://www.fdacs.gov/Energy/Florida-Energy-Clearinghouse/Natural-Gas-Utilities> (last visited Mar. 5, 2021).

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ FPSC, *2020 Annual Report*, *supra* at n. 29.

⁴⁷ *See* s. 377.805, F.S.

⁴⁸ *See* ch. 527, F.S.; Florida Department of Agriculture and Consumer Services, *Liquefied Petroleum Gas Licenses*, <https://www.fdacs.gov/Business-Services/LP-Gas-Licenses> (last visited Mar. 10, 2021).

⁴⁹ *Id.*

A Category I LP Gas Dealer is any person selling any LP gas to consumers for industrial, commercial, or domestic use, leasing appliances and equipment for LP gas, or installing or servicing any equipment used for LP gas.⁵⁰ A Category II LP Gas Dispenser is any person operating an LP gas dispensing unit for serving liquid product to consumers and includes sales of appliances and equipment.⁵¹

Sustainable Energy

Public Utility Regulatory Policies Act (PURPA)

In 1978, the federal government enacted the Public Utility Regulatory Policies Act (PURPA),⁵² which required promotion of energy efficiency and use of renewables.⁵³ The act required utilities to purchase power from “qualifying facilities,” which fall into two categories: qualifying small power production facilities and qualifying cogeneration facilities.⁵⁴ The PURPA directed the Federal Energy Regulatory Commission to implement the provisions, which in turn, directed the states to implement the provisions. In response, the Florida Legislature created s. 366.051, F.S., directing the utilities to purchase power from the cogenerators or small power producers and defining “full avoided costs.”

Florida Energy Efficiency and Conservation Act

Under the Florida Energy Efficiency and Conservation Act (FEECA),⁵⁵ enacted in 1980, the Legislature directed the PSC to develop and adopt programs for increasing energy efficiency and conservation, intending, in part, that solar energy and renewable energy sources be encouraged.⁵⁶ The Legislature’s goal is to advance the conservation of expensive resources, such as petroleum fuels in order to reduce and control electric consumption.⁵⁷

Renewable Energy

In 2005, the Legislature created s. 366.91, F.S., to address renewable energy. This section requires utilities to continuously offer a purchase contract to renewable energy producers for a minimum of ten years.⁵⁸ It also includes municipal electric utilities and rural electric cooperatives whose annual sales are greater than 2,000 gigawatt hours.⁵⁹

In 2006, the Legislature created s. 366.92, F.S., relating to renewable energy policy, to authorize the PSC to adopt appropriate goals for increasing the use of existing, expanded, and new Florida renewable resources.

⁵⁰ Section 527.01(6), F.S. *See also*, FDACS, *Liquefied Petroleum Gas Licenses*, *supra* at n. 48.

⁵¹ Section 527.01(7), F.S. *See also*, FDACS, *Liquefied Petroleum Gas Licenses*, *supra* at n. 48.

⁵² 16 U.S.C. ch. 46 § 2601 et seq.

⁵³ Federal Energy Regulatory Commission, *PURPA Qualifying Facilities*, <https://www.ferc.gov/qf> (last visited Mar. 5, 2021).

⁵⁴ *Id.*

⁵⁵ Sections 366.80-366.85, F.S.

⁵⁶ Section 366.81, F.S.

⁵⁷ *Id.*

⁵⁸ Section 366.91, F.S.

⁵⁹ Section 366.91(4), F.S.

Renewable Portfolio Standards and Goals

Renewable portfolio standards (RPS) are policies, either voluntary or formal, designed to increase the use of renewable energy sources for electricity generation.⁶⁰ RPS policies that a specified percentage of the electricity sold by utilities comes from renewable resources.⁶¹ Currently, there is not a national RPS in place.⁶² However, most states have enacted their own RPS programs. Over the past year, state governments nationwide have been revising their RPS policies, requiring that a specified percentage of electricity sold come from renewable sources.⁶³

In 2007, Florida Governor Crist signed a series of three executive orders initiating Florida's energy policy and declaring the Florida's commitment to be a leader in establishing energy security and reducing greenhouse gases:

- Executive Order 07-126; Establishing Climate Change Leadership by Example: Immediate Actions to Reduce Greenhouse Gas Emissions from Florida State Government.⁶⁴
- Executive Order 07-127; Establishing Immediate Actions to Reduce Greenhouse Gas Emissions within Florida.⁶⁵
- Executive Order 07-128; Florida Governor's Action Team on Energy and Climate Change.⁶⁶

In Executive Order 07-127, the Governor requested the PSC initiate rulemaking to require that utilities produce at least 20 percent of their electricity from renewable sources with a strong focus on solar and wind energy. In September 2007, the PSC began holding workshops to study the issue of renewable portfolio standards.

Currently, Florida is one of only 12 states that does not have either a formal renewable energy portfolio or a voluntary renewable energy portfolio.⁶⁷

III. Effect of Proposed Changes:

The bill creates s. 366.032, F.S., to preempt municipalities, counties, special districts, or other political subdivisions from restricting utility service choice, irrespective of fuel source. The bill prohibits these entities from enacting or enforcing any resolutions, ordinances, rules, codes, or

⁶⁰ U.S. Energy Information Administration, *Renewable Energy Explained: Portfolio Standards*, [https://www.eia.gov/energyexplained/renewable-sources/portfolio-standards.php#:~:text=Renewable%20portfolio%20standards%20\(RPS\)%2C,energy%20sources%20for%20electricity%20generation.&text=However%2C%20most%20states%20have%20enacted%20their%20own%20RPS%20programs](https://www.eia.gov/energyexplained/renewable-sources/portfolio-standards.php#:~:text=Renewable%20portfolio%20standards%20(RPS)%2C,energy%20sources%20for%20electricity%20generation.&text=However%2C%20most%20states%20have%20enacted%20their%20own%20RPS%20programs). (last visited Mar. 5, 2021).

⁶¹ National Conference of State Legislatures, *State Renewable Portfolio Standards and Goals*, <https://www.ncsl.org/research/energy/renewable-portfolio-standards.aspx> (last visited Mar. 5, 2021)

⁶² USEIA, *Renewable Energy Explained: Portfolio Standards*, *supra* at n. 60.

⁶³ *Id.*

⁶⁴ Fla. Exec. Order No. 07-126, available at <http://www.fsec.ucf.edu/en/media/enews/2007/pdf/07-126-actions.pdf> (last visited Mar. 5, 2021).

⁶⁵ Fla. Exec. Order No. 07-127, available at <http://www.fsec.ucf.edu/en/media/enews/2007/pdf/07-127-emissions.pdf> (last visited Mar. 5, 2021).

⁶⁶ See Sellers, Lawrence E. & Curtin, Lawrence N., *Holland & Knight Newsletter: Florida Addresses Greenhouse Gas Issues* <https://www.hklaw.com/en/insights/publications/2007/09/florida-addresses-greenhouse-gas-issues> (last visited Mar. 5, 2021).

⁶⁷ NCSL, *State Renewable Portfolio Standards and Goals*, *supra* at n. 61.

policies that restrict a property owner, tenant, or utility service customer's choice of utility service type from a utility service provider that serves the affected property.

The bill voids any resolutions, ordinances, rules, codes, policies, or actions by any municipality, county, special district, or political subdivision charter, existing on or before the bill's effective date, which are preempted by this bill.

The bill is effective July 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The bill prohibits local governments from imposing any restriction on the types or the fuel sources of energy production which a utility may use, deliver, convert, or supply to its customers.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill may have an indeterminate effect on the private utilities sector as it voids any restrictions or prohibitions imposed by local governments on the types or the fuel sources of energy production which a utility may use, deliver, convert, or supply to its customers.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 366.032 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 Regulated Industries Committee on March 9, 2021:

The committee substitute prohibits municipalities, counties, special districts, or other political subdivisions from enacting or enforcing a resolution, ordinance, rule, code, or policy that restricts or prohibits the types or the fuel sources of energy production used, delivered, converted, or supplied to customers by a public utility, municipal electric utility, natural gas utility, natural gas transmission company, a category I liquefied petroleum gas dealer, or a category II liquefied petroleum gas dispenser.

Amendments:

None.



419346

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/09/2021	.	
	.	
	.	
	.	

The Committee on Regulated Industries (Hutson) recommended the following:

Senate Amendment (with title amendment)

Delete lines 23 - 46

and insert:

(1) A municipality, a county, a special district, or another political subdivision of the state may not enact or enforce a resolution, an ordinance, a rule, a code, or a policy or take any action that restricts or prohibits, or that has the effect of restricting or prohibiting, the types or the fuel sources of energy production which may be used, delivered,



419346

11 converted, or supplied by a public utility as defined in this
12 chapter, a municipal electric utility, a natural gas utility as
13 defined in s. 366.04(3)(c), a natural gas transmission company
14 as defined in s. 368.103, or a category I liquefied petroleum
15 gas dealer or a category II liquefied petroleum gas dispenser as
16 defined in chapter 527 to customers that such entities are
17 authorized to serve.

18 (2) Any municipality, county, special district, or
19 political subdivision charter, resolution, ordinance, rule,
20 code, policy, or action that is preempted by this act and that
21 existed before or on July 1, 2021, is void.

22
23 ===== T I T L E A M E N D M E N T =====

24 And the title is amended as follows:

25 Delete lines 3 - 13

26 and insert:

27 utility services; creating s. 366.032, F.S. ;
28 prohibiting municipalities, counties, special
29 districts, or other political subdivisions from
30 enacting or enforcing provisions or taking actions
31 that restrict or prohibit the types or fuel sources of
32 energy production which may be used, delivered,
33 converted, or supplied to customers by specified
34 entities; providing

By Senator Hutson

7-00593A-21 20211128

1 A bill to be entitled
 2 An act relating to preemption on restriction of
 3 utility services; creating s. 366.032, F.S.; defining
 4 the term "utility service provider"; prohibiting
 5 municipalities, counties, special districts, or other
 6 political subdivisions from enacting or enforcing
 7 provisions or taking actions that restrict or prohibit
 8 property owners, tenants, or utility service customers
 9 from choosing their utility service from a utility
 10 service provider that serves the property,
 11 irrespective of the fuel source; retaining the right
 12 of municipalities to levy taxes on public services and
 13 to receive revenue from public utilities; providing
 14 for preemption; providing for retroactive application;
 15 providing an effective date.

16
 17 Be It Enacted by the Legislature of the State of Florida:

18
 19 Section 1. Section 366.032, Florida Statutes, is created to
 20 read:

21 366.032 Preemption on utility service restrictions and
 22 prohibitions; retroactive applicability.—

23 (1) As used in this section, the term "utility service
 24 provider" means any person, corporation, partnership,
 25 association, or political subdivision, whether private,
 26 municipal, county, special district, or cooperative, which is
 27 engaged in the sale or supply of electricity or gas to or for
 28 the public within this state.

29 (2) A municipality, county, special district, or any other

Page 1 of 2

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

7-00593A-21 20211128

30 political subdivision of the state may not enact or enforce a
 31 resolution, ordinance, rule, code, or policy or take any action
 32 that restricts or prohibits or has the effect of restricting or
 33 prohibiting a property owner, tenant, or utility service
 34 customer from choosing his or her utility service, whether
 35 electric, manufactured gas, liquefied petroleum gas, natural
 36 gas, hydrogen, fuel oil, a renewable source, or any other
 37 source, from a utility service provider that serves the affected
 38 property. However, this section does not restrict a
 39 municipality's right and power to levy taxes on public services
 40 under s. 166.231 or affect the right of any municipality to
 41 receive revenue from any public utility.

42 (3) Any municipality, county, special district, or
 43 political subdivision charter, resolution, ordinance, rule,
 44 code, policy, or action that is preempted by this act and that
 45 existed before, on, or after the effective date of this act is
 46 void.

47 Section 2. This act shall take effect July 1, 2021.

Page 2 of 2

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

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THE FLORIDA SENATE

APPEARANCE RECORD

3/9/21

Meeting Date

1128

Bill Number (if applicable)

419346

Topic Preemption on Restriction of Utility Services

Amendment Barcode (if applicable)

Name Rebecca O'Hara

Job Title Deputy General Counsel

Address PO Box 1757

Phone 850-222-9684

Street

Tallahassee

FL

32302

Email rohara@flcities.com

City

State

Zip

Speaking: For

Against

Information

Waive Speaking: In Support

Against

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

Representing Florida League of Cities

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)

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3/9/21 Reg Ind. 9:00

THE FLORIDA SENATE

APPEARANCE RECORD

1128

Bill Number (if applicable)

3/9/21

Meeting Date

Amendment Barcode (if applicable)

Topic Preemption on Restriction of Utility Services

Name Brewster Bevis

Job Title Senior Vice President

Phone 224-7173

Address 513 N Adams St

Street

Tallahassee

City

FL

State

32301

Zip

Email bbevis@aif.com

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

Speaking: For Against Information

Representing Associated Industries of Florida

Appearing at request of Chair: Yes No Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE

APPEARANCE RECORD

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

Meeting Date
3/9/21

Bill Number (if applicable)
SB 1128

Topic

Preemption on Utility Services

Name

Jane West

Job Title

Policy + Planning Director

Address

24 Cathedral Pl

Phone

904.671.4008

Street

St Augustine

City

State

FL

Zip

32080

Email

jwest@1000666.org

Speaking:

For

Against

Information

Waive Speaking: In Support

Against

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

Representing

1000 Friends of Florida

Appearing at request of Chair: Yes No

Yes No

Lobbyist registered with Legislature: Yes No

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THE FLORIDA SENATE

APPEARANCE RECORD

3/9/2021

Meeting Date

1128

Bill Number (if applicable)

Topic Preemption on Restriction of Utility Services

Amendment Barcode (if applicable)

Name Jonathan Webber

Job Title Deputy Director

Address 1700 N. Monroe St. #11-286

Phone 954-593-4449

Street

Tallahassee

FL

32303

Email jwebber@fcvoters.org

City

State

Zip

Speaking: For



Against



Information

Waive Speaking: In Support



Against

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

Representing Florida Conservation Voters



Yes



No

Lobbyist registered with Legislature:



Yes



No

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THE FLORIDA SENATE

APPEARANCE RECORD

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

3/2/21
Meeting Date

1220
Bill Number (if applicable)

Topic Sustainability Energy Independence

Amendment Barcode (if applicable)

Name Armani M. Arellano

Job Title Student

Address 500 Chapel Drive Unit 231 Phone 786 683 5703

Tallahassee FL 32304
City State Zip

Email armaniarellano@gmail.com

Speaking: For Against Information

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

Representing Myself

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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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)

3/10/21 Meeting Date

1128 Bill Number (if applicable)

Topic Preemption on Restriction of Utility Services Amendment Barcode (if applicable)

Name META CALDER

Job Title

Address 3740 RAVINE DR. Phone 850-228-5900

Street

TALLAHASSEE FL 32310 Email metacalder@gmail.com

City

State

Zip

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

Representing FLORIDA LEAGUE OF WOMEN VOTERS

Appearing at request of Chair: [] Yes [X] No Lobbyist registered with Legislature: [] Yes [X] No

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

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THE FLORIDA SENATE

APPEARANCE RECORD

3/9/21

Meeting Date

1128

Bill Number (if applicable)

Topic Preemption

Amendment Barcode (if applicable)

Name Kim Ross

Job Title Executive Director, ReThink Energy Action Fund

Address 603 N MLK Jr Blvd

Phone 850-888-2565

Street

Tallahassee

FL

City

State

32301

Zip

Email kim@rethinkenergyflorida.org

Speaking: For

Against

Information

Waive Speaking:

In Support

Against

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

Representing _____

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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**THE FLORIDA SENATE
APPEARANCE RECORD**

3/9/21 REG. IND. A3

1128

Meeting Date

Bill Number (if applicable)

Topic Preemption on Restriction of Utility Services

Amendment Barcode (if applicable)

Name David Cullen

Job Title _____

Address 1934 Shelby Court

Phone 941-323-2404

Street

Tallahassee

FL

32308

City

State

Zip

Email cullenasea@gmail.com

Speaking: For Against

Information

Waive Speaking: In Support Against

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

Representing Sierra Club Florida

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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APPEARANCE RECORD

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

03/29/21
Meeting Date

1128

Bill Number (if applicable)

Topic Pre-emption on Restriction of Utility Services

Amendment Barcode (if applicable)

Name Gianna Trovare

Job Title _____

Address _____

Street

Phone _____

Email _____

City

State

Zip

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

Representing The CEO institute

Appearing at request of Chair: Yes No Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE

APPEARANCE RECORD

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

8/9/21 Meeting Date

1128

Bill Number (if applicable)

Topic Utility Preemption

Amendment Barcode (if applicable)

Name Ida V. Eskaman

Job Title

Address

Street

Phone

City

Email

State Zip

Speaking: For Against Information

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

Representing Florida Rising

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE

APPEARANCE RECORD

3/9/2021

Meeting Date

1128

Bill Number (if applicable)

Topic Preemption on Restriction of Utility Services

Amendment Barcode (if applicable)

Name Christopher Emmanuel

Job Title Policy Director

Address 136 S Bronough St Phone _____

Tallahassee FL 32301 _____
City State Zip Email _____

Speaking: For Against Information

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

Representing Florida Chamber of Commerce

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE

APPEARANCE RECORD

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

3-9-21

Meeting Date

SB 1128

Bill Number (if applicable)

Topic PREEMPTION ON RESTRICTION OF UTILITY SERVICES

Amendment Barcode (if applicable)

Name DAVE BENNETT

Job Title DIRECTOR OF GOVERNMENTAL AFFAIRS

Address 2600 CENTENNIAL PLACE

Phone 941-468-8479

Street

TALLAHASSEE

FL

State

32308

Zip

Email

DBENNETT@FHQA.COM

Speaking: For Against Information

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

Representing FLORIDA HOME BUILDERS ASSOCIATION

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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THE FLORIDA SENATE

APPEARANCE RECORD

3/9/2021

Meeting Date

1128

Bill Number (if applicable)

Topic

Amendment Barcode (if applicable)

Name Dale Calhoun

Job Title Executive Director

Address 201 S Monroe St Unit A

Phone 8506810496

Street

Tallahassee

FL

32301

State

Zip

Email dale.calhoun@floridagas.org

Speaking: For

Against

Information

Waive Speaking: In Support

Against

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

Representing Florida Natural Gas Association & Florida Propane Gas Association

Appearing at request of Chair: Yes

No

Lobbyist registered with Legislature: Yes

No

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S-001 (10/14/14)

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THE FLORIDA SENATE

APPEARANCE RECORD

03/09/21

Meeting Date

1128

Bill Number (if applicable)

Topic Preemption on Restriction of Utility Services

Amendment Barcode (if applicable)

Name Rebecca O'Hara

Job Title Deputy General Counsel

Address PO Box 1757

Phone 850-222-9684

Street

Tallahassee

FL

32302

Email rohara@flicities.com

City

State

Zip

Speaking: For Against

Information

Waive Speaking: In Support Against

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

Representing Florida League of Cities

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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S-001 (10/14/14)

APPEARANCE RECORD

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

3-9-21

Meeting Date

SB128

Bill Number (if applicable)

Topic Energy Infrastructure

Amendment Barcode (if applicable)

Name Rev. Andy Oliver

Job Title Pastor

Address 1363 42nd Ave W Phone 727 200 1522

Street

City St Petersburg State FL Zip 33703

City

State

Zip

Email andy@allenlake.com
org

Speaking: For

Against

Information

Waive Speaking: In Support Against

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

Representing Allen Lake United Methodist Church

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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THE FLORIDA SENATE

APPEARANCE RECORD

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

3-9-21
Meeting Date

SB 1128
Bill Number (if applicable)

Topic Energy Infrastructure

Amendment Barcode (if applicable)

Name Kristellys Estanga

Job Title Aide to City Commissioner

Address 1106 W 8th Ave Phone 954 804-1100

Street

Talahassee FL 32303 Email kristellys@gmail.com

City

State

Zip

Speaking: For Against Information

Waive Speaking: In Support Against

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

Representing myself

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

CourtSmart Tag Report

Room: KB 412

Case No.: -

Type:

Caption: Regulated Industries Committee

Judge:

Started: 3/9/2021 9:01:29 AM

Ends: 3/9/2021 10:40:04 AM

Length: 01:38:36

9:01:28 AM Meeting called to order and roll call
9:01:39 AM Pledge of Allegiance
9:02:19 AM Introductory comments and Covid-19 precautions
9:02:50 AM SB 1342 is going to be TP'd
9:03:10 AM Tab 6, SB 338, Specialty Contracting Services by Senator Gruters
9:03:16 AM Senator Gruters to explain the bill
9:04:11 AM Question by Senator Stewart
9:04:25 AM Response by Senator Gruters
9:04:39 AM Dallas Thiesen, Florida Swimming Pool Association
9:05:30 AM Senator Gruters waives close
9:05:37 AM Roll call on SB 338
9:05:43 AM SB 338 is reported favorably
9:05:58 AM Tab 1, SB 896, Renewable Natural Gas by Senator Brodeur
9:06:03 AM SB 896 is TP'd
9:06:15 AM Tab 2, SB 1294, Cottage Food Operations by Senator Brodeur
9:06:22 AM Senator Brodeur to explain the bill
9:08:35 AM Question by Senator Stewart
9:08:40 AM Response by Senator Brodeur
9:09:05 AM Question by Senator Stewart
9:09:24 AM Response by Senator Brodeur
9:09:29 AM Question by Senator Stewart
9:09:38 AM Response by Senator Brodeur
9:10:07 AM Sal Nuzzo, James Madison Institute waives time in support
9:10:41 AM Christian Camara, Institute for Justice
9:11:52 AM Diego Echeverri, Americans for Prosperity waiving is support
9:11:54 AM Senator Gruters in debate
9:12:42 AM Senator Brodeur closes on the bill
9:12:54 AM Roll call on SB 1294
9:13:08 AM SB 1294 is reported favorably
9:13:30 AM Chair Hutson turns chair over to Vice Chair Book
9:13:40 AM Tab 7, SB 1080, Tobacco and Nicotine Products by Senator Hutson
9:13:49 AM Barcode 859156 Delete-All Amendment by Senator Hutson
9:15:41 AM Question by Senator Hooper
9:15:48 AM Response by Senator Hutson
9:16:31 AM Joseph McCormick, Florida Smoke Free Association
9:18:18 AM Susan Harbin, American Cancer Society
9:19:33 AM Senator Hooper in debate
9:20:38 AM Senator Hutson waives close on amendment
9:20:47 AM Amendment 859156 adopted
9:20:57 AM Jennifer Cunningham, Juul Labs
9:21:38 AM Alexandra Abboud, Florida Dental Association waiving is support
9:22:17 AM Senator Hutson Waives close
9:22:21 AM Roll call on CS/SB 1080
9:22:26 AM CS/SB 1080 is reported Favorably as a CS
9:22:45 AM Tab 8, SB 856, State Preemption of Energy Infrastructure Regulations by Senator Hutson
9:22:51 AM Senator Hutson to explain the Delete-all 352804
9:24:52 AM Senator Hooper for a question
9:25:51 AM Response by Senator Hutson
9:27:19 AM Meta Calder, Florida League of Women Voters speaking against the amendment
9:29:08 AM Senator Hutson to close on the amendment
9:29:16 AM Amendment barcode 352804 adopted
9:29:43 AM Senator Stewart question on the bill as amended

9:30:40 AM Response by Senator Hutson
9:31:47 AM Follow-up question by Senator Stewart
9:32:00 AM Response by Senator Hutson
9:33:18 AM Follow up question by Senator Stewart
9:33:30 AM Response by Senator Hutson
9:35:00 AM Jonathan Webber, Florida Conservation Voters speaking against the bill
9:38:02 AM Nichole Fogarty, Leg. Affairs, St. Lucie County waiving against
9:38:11 AM Jane West, Policy and Planning Director, 1000 Friends of Florida waiving against
9:38:16 AM Meta Calder, Florida League of Women Voters waives against
9:38:32 AM Grace Lovett, Florida Retail Federation waives in support
9:38:47 AM Salome Garcia, CLEO Institute speaking against the bill
9:40:11 AM Kim Ross, Exec. Director, ReThink Energy Action Fund speaking against the bill
9:41:28 AM David Cullen, Sierra Club Florida speaking against the bill
9:42:45 AM Eric Hamilton, American Petroleum Institute speaking for the bill
9:43:44 AM Matthew Alford, Drive Electric Florida speaking against the bill
9:44:59 AM Ryan Mathews, Florida Muni. Electric Assoc. speaking against the bill
9:45:28 AM Ned Bowman, FPMA waiving in support
9:45:32 AM Ida Eskamani, Florida Rising speaking against the bill
9:47:06 AM Marty Cassini, Broward County
9:47:41 AM Jeff Scala, Florida Association of Counties speaking against the bill
9:48:27 AM Dale Calhoun, Florida Natural Gas Assoc. & Florida Propane Gas Assoc. waives in support
9:48:51 AM Michael Cassell, Chesapeake Utilities Corp. waives in support
9:49:01 AM Ramiro Sicre, Florida Public Utilities waiving in support
9:49:04 AM Brewster Bevis, Associated Industries of Florida waives in support
9:49:19 AM Armoni Arellono speaking against
9:50:34 AM Rebecca O'Hara, Florida League of Cities
9:52:12 AM Senator Hooper in debate
9:54:58 AM Senator Stewart in debate
9:55:57 AM Senator Rouson in debate
9:57:02 AM Senator Book in debate
9:57:15 AM Senator Hutson closes on the bill as amended
9:58:03 AM Roll call on CS/SB 856
9:59:06 AM CS/SB 856 is reported favorably
9:59:34 AM Tab 9, SB 1128, State Preemption of Energy Infrastructure Regulations
10:00:05 AM Senator Hutson to explain the bill and amendment 419346
10:00:41 AM Rebecca O'Hara, Fla. League of Cities for the amendment
10:01:54 AM Amendment 419346 adopted
10:02:08 AM Back on the bill as amended
10:02:16 AM Jane West, 1000 Friends of Florida waiving against
10:02:33 AM Jonathan Webber, Florida Conservation Voters speaking against the bill
10:03:41 AM Armoni Arellano
10:05:01 AM Meta Calder, Florida League of Women Voters, speaking against
10:05:38 AM Kim Ross, ReThink Energy Action Fund speaking against
10:06:11 AM David Cullen, Sierra Club Florida speaking against
10:07:02 AM Aianna Trocire, The CLFO Institute
10:07:10 AM Ida Eskamani, Florida Rising speaking against
10:08:18 AM Christopher Emmanuul, Florida Chamber of Commerce waiving in support
10:08:20 AM Dave Bennett, Florida Home Builders Association waives in support
10:08:21 AM Brewster Bevis, Associated Industries of Florida waives in support
10:08:26 AM Dale Calhoun, Florida Natural Gas Assoc. and Florida Propane Gas Assoc. waives in support
10:09:00 AM Rev. Andy Oliver, St. Petersburg Florida speaking against
10:10:34 AM Senator Hutson closes on the bill as amended
10:11:03 AM Roll call on CS/SB 1128
10:11:10 AM CS/SB 1128 is reported favorably
10:11:39 AM Meeting turned back over to Chair Hutson
10:11:53 AM Tab 4, SB 1370, Medical Treatment of Animals by Senator Rodriguez
10:11:56 AM Senator Rodriguez to explain the bill
10:12:55 AM Late-filed amend barcode 963556 introduced
10:13:00 AM Senator Rodriguez to explain the amendment
10:13:34 AM Amendment 963556 adopted
10:14:06 AM Christian Camarra, Institute for Justice waiving in support
10:14:24 AM Carinne Mixon, ASPCA speaking for the bill

10:16:31 AM Senator Hooper in debate
10:18:51 AM Senator Rodrigues in debate
10:20:43 AM Senator Hooper in debate
10:21:39 AM Senator Rodriguez closes on the bill
10:21:54 AM Roll call on CS/SB 1370
10:22:27 AM CS/SB 1370 is reported favorably
10:22:49 AM Tab 5, SB 1592, Broadband Internet Infrastructure by Senator Burgess
10:22:58 AM Senator Burgess to explain the bill
10:24:50 AM Question by Senator Rouson
10:25:06 AM Response by Senator Burgess
10:25:57 AM Question by Senator Rouson
10:26:57 AM Response by Senator Burgess
10:27:14 AM Question by Senator Rouson
10:27:20 AM Response by Senator Burgess
10:27:28 AM Brewster Bevis, Associated Industries of Florida waives in support
10:27:46 AM Charley Dudley, Florida Internet and Television Association speaking for the bill
10:29:53 AM David Shepp, City of Lakeland speaking against the bill
10:30:38 AM Ryan Matthews, Florida Municipal Electric Association speaking against the bill
10:32:34 AM Sal Nuzzo, The James Madison Institute speaking for the bill
10:34:31 AM David Serdan
10:35:48 AM Senator Albitton in debate
10:38:27 AM Senator Stewart in debate
10:38:58 AM Senator Burgess closes on the bill
10:39:08 AM Roll call on SB 1592
10:39:23 AM SB 1592 is reported favorably
10:39:42 AM Senator Rouson moves we adjourn