

**HOUSE OF REPRESENTATIVES  
FINAL BILL ANALYSIS**

<b>BILL #:</b>	CS/CS/HB 925	<b>FINAL HOUSE FLOOR ACTION:</b>		
<b>SUBJECT/SHORT TITLE</b>	Department of Financial Services	118	Y's 0	N's
<b>SPONSOR(S):</b>	Commerce Committee; Insurance & Banking Subcommittee; Miller, M.; Plakon and others	<b>GOVERNOR'S ACTION:</b>	Approved	
<b>COMPANION BILLS:</b>	CS/CS/SB 986			

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**SUMMARY ANALYSIS**

CS/CS/HB 925 passed the House on April 20, 2017. On April 25, 2017, the House reconsidered the vote by which the bill passed and returned the bill to the Third Reading Calendar. On April 26, 2017, the House adopted two amendments and passed the bill, as amended. The Senate amended the bill on May 2, 2017, and passed the bill, as amended, on May 3, 2017. The House concurred in the Senate amendment and passed the bill, as amended, on May 4, 2017.

The bill amends statutes relating to the Department of Financial Services (DFS). The bill:

- Replaces the Treasury Investment Committee with the Treasury Investment Council within the Division of Treasury and provides for the duties of the council;
- Applies timely payment and other requirements related to state payments, warrants, and invoices for payments made in relation to certain agreements funded with federal or state assistance;
- Updates the 1991 Boiler Safety Act (Act) as to installation requirements, who can conduct inspections of boilers in public assembly locations, continuing education of inspectors, and changes criminal penalties to administrative fines for violations of the Act;
- Authorizes the DFS, within existing resources, to expend funds for the purpose of staff professional development for certain divisions;
- Allows certain licensed insurance professionals who are active participants in insurance associations to annually earn two hours of continuing education credits for attendance in four or more hours of association meetings;
- Exempts persons who have the Universal Claims Certification from the Claims and Litigation Management Alliance from the licensure examination for all-lines adjuster and adds that certification training to the approved continuing education requirements for certain adjusters and agents;
- Provides that upon a grant of a pardon or the restoration of civil rights, criminal offenses that would otherwise temporarily or permanently bar certain individuals or entities seeking licensure as an insurance agent, agency, or public adjuster do not automatically bar or disqualify the applicant;
- Clarifies certain exceptions to the unlicensed transaction of life or health insurance;
- Provides that a regular employee of an insurer may handle claims with respect to residential property when the sublimit coverage is less than \$500;
- Removes the July 1, 2018, deadline for Holocaust victims to file insurance claims or civil actions to obtain proceeds from an insurance policy;
- Allows for the use of firefighter's confidential information for the purposes of certain studies; and
- Removes a requirement for an individual to send a written notice of claim or serve a summons on the DFS for an action against a county.

The bill has an indeterminate effect on state revenues and expenditures. The impact on the private sector from changes to the Boiler Safety Act is not known.

The bill was approved by the Governor on June 26, 2017, ch. 2017-175, L.O.F., and will become effective on July 1, 2017.

**I. SUBSTANTIVE INFORMATION**

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

**STORAGE NAME:** h0925z1.IBS

**DATE:** June 28, 2017

## A. EFFECT OF CHANGES:

### **Background**

The Chief Financial Officer (CFO) is a member of the Cabinet and serves as the chief fiscal officer of the state. The CFO is agency head of the Department of Financial Services (DFS). The DFS performs a wide variety of functions. For example, the DFS processes various state payments, warrants, and invoices. It administers the Boiler Safety Act.<sup>1</sup> The DFS regulates insurance agencies, agents, and insurance adjusters.

### ***Treasury Investment Committee***

Currently, the Treasury Investment Committee (TIC) is established within the DFS Division of Treasury.<sup>2</sup> It consists of five members, at least three of whom are professionals from the private sector, appointed by the CFO, who possess special knowledge, experience, and familiarity in finance, investments, or accounting. The TIC administers the Treasury Investment Program consistent with policies approved by the CFO for deposits and investments of public funds.<sup>3</sup>

### **Effect of the bill**

The bill changes the name of the Treasury Investment Committee to the Treasury Investment Council. It requires that three of the five council members be from the private sector. Current members serve at the pleasure of the CFO. The bill changes the term from one to four years from the date of appointment, but retains the ability of the CFO to remove members. The bill requires the council to review the investments required by current law<sup>4</sup> and meet with staff of the Division of Treasury at least biannually. The council will provide recommendations to the Division of Treasury and the CFO regarding investment policy, strategy, and procedures. It provides that council members may receive per diem and travel expenses pursuant to s. 112.061, F.S.

### ***Payment of Vendor Invoices by the State***

Current law governs payments, warrants, and invoices by state agencies or the judicial branch to vendors.<sup>5</sup> An invoice submitted to a state agency or the judicial branch must be recorded in the financial systems of the state, approved for payment by the agency or the judicial branch, and filed with the CFO no later than 20 days after receipt of the invoice, unless there is a dispute or some other reason not to pay.<sup>6</sup> In most cases, the DFS must approve payment of an invoice no later than 10 days after the agency has approved the invoice.

If a warrant in payment of an invoice is not issued within 40 days after receipt of the invoice and receipt, inspection, and approval of the goods and services, the agency or judicial branch must pay to the vendor interest at the statutory interest rate.<sup>7</sup> The interest requirements do not apply to payments for agreements funded with state or federal financial assistance.

### **Effect of the bill**

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<sup>1</sup> ss. 554.1011-554.115, F.S.

<sup>2</sup> s. 17.575, F.S.

<sup>3</sup> s. 17.575(2), F.S.

<sup>4</sup> s. 17.575, F.S.

<sup>5</sup> s. 215.422, F.S.

<sup>6</sup> s. 215.422(1), F.S.

<sup>7</sup> s. 215.422(3)(b), F.S.

The bill provides that the current payment requirements, including payment of interest for late payments, apply to agreements involving state or federal financial assistance.<sup>8</sup>

### ***The Boiler Safety Act***

A boiler is “a closed vessel in which water or other liquid is heated, steam or vapor is generated, steam is superheated, or any combination of these functions is accomplished, under pressure or vacuum, for use external to itself, by the direct application of energy from the combustion of fuels or from electricity or solar energy. The term ‘boiler’ includes fired units for heating or vaporizing liquids other than water where these units are separate from processing systems and are complete within themselves.”<sup>9</sup> Florida’s Boiler Safety Act (Act) provides requirements for installation of boilers in public assembly locations, boiler code requirements, education requirements, and penalties for violations.<sup>10</sup> The Act has remained essentially unchanged since 1991.

Under the Act an installation permit is not required for a new boiler. The DFS reports that this frequently prevents the first inspection from being performed in a timely manner.<sup>11</sup> However, boilers owned and located in public assembly locations are required to obtain a certificate of compliance, before legally operating a boiler.<sup>12</sup> Public assembly locations include schools, day care centers, community centers, churches, theaters, hospitals, nursing and convalescent homes, stadiums, amusement parks, hotels, restaurants, and other locations open to the public (including breweries and dry cleaners).

An inspection of each boiler is required by either the insurance company that insures it, or by the Division of State Fire Marshal (Division). Once an inspection has been performed and all code violations have been cleared, the inspection must be filed with the Division.

### **Effect of the bill**

The bill amends and reorganizes the Boiler Safety Act.

### ***Certification and Miscellaneous Changes***

The bill creates a definition for “authorized inspection agency” in a manner that allows various entities to conduct boiler inspections if their boiler inspectors hold valid certificates of compliance. Such entities include local governments or governmental subdivisions that have adopted into law the Boiler and Pressure Vessel Code of the American Society of Mechanical Engineers<sup>13</sup> and National Board Inspection Code for the construction, installation, inspection, maintenance, and repair of boilers to regulate boilers in public assembly locations.<sup>14</sup> The bill includes insurers authorized to transact boiler and machinery insurance in Florida and inspecting agencies accredited in accordance with the National Board of Boiler and Pressure Vessel Inspector’s program entitled “Accreditation of Authorized Inspection Agencies (AIA) Performing Inservice or Repair/Alteration Inspection Activities,” document number NB-369, as authorized inspection agencies.<sup>15</sup>

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<sup>8</sup> s. 215.971, F.S.

<sup>9</sup> s. 554.1021(1), F.S.

<sup>10</sup> s. 554.109, F.S.

<sup>11</sup> Florida Department of Financial Services, Agency Analysis of 2017 House Bill 925, p. 2 (Mar. 8, 2017).

<sup>12</sup> *Id.*

<sup>13</sup> AM. SOC’Y OF MECHANICAL ENGINEERS, *AMSE Boiler and Pressure Vessel Code*, [https://www.asme.org/getmedia/1adfc3df-7dab-44bf-a078-8b1c7d60bf0d/ASME\\_BPVC\\_2013-Brochure.aspx](https://www.asme.org/getmedia/1adfc3df-7dab-44bf-a078-8b1c7d60bf0d/ASME_BPVC_2013-Brochure.aspx) (last visited Mar. 14, 2017).

<sup>14</sup> THE NAT’L BOARD OF BOILER AND PRESSURE VESSEL INSPECTORS, *National Board Inspection Code*, <http://www.nationalboard.org/Index.aspx?pageID=4> (last visited Mar. 14, 2017).

<sup>15</sup> THE NAT’L BOARD OF BOILER AND PRESSURE VESSEL INSPECTORS, *Accreditation of Authorized Inspection Agencies (AIA) Performing Inservice or Repair/Alteration Inspection Activities*, <https://www.nationalboard.org/SiteDocuments/Commissioned%20Inspectors/NB-369.pdf> (last visited Mar. 14, 2017).

The bill requires the installer of any boiler place in use after July 1, 2017, to apply for a permit to install the boiler with the chief boiler inspector.<sup>16</sup> The application must be on a form adopted by the DFS by rule and must include the ASME manufacturer's data report and other information required by law before the boiler is placed in service.<sup>17</sup>

The bill provides that a person may not be, act as, or advertise or hold himself or herself out to be a boiler inspector unless he or she holds a certificate of competency issued by the DFS. A person seeking certification must apply to take the certification examination.<sup>18</sup> A person may take the certification examination if he/she:

- Has submitted the application for examination and the required fee;
- Is at least 18 years of age;
- Has completed the 2-hour training course; and
  - Has at least 3 years of experience in the construction, installation, inspection, operation, maintenance, or repair of high pressure, high temperature water boilers; or
  - Meets the requirements to qualify as a commissioned inspector by the National Board of Boiler and Pressure Vessel Inspectors as set forth in NB-263, Rules for National Board Inservice and New Construction Commissioned Inspectors, as adopted by DFS rule.

The bill requires the DFS to adopt by rule a two-hour training course on the requirements of the Boiler Safety Act and related rules. The course must be made available online and may be made available in a classroom. The bill allows a boiler insurance company to include the DFS course as part of its training of boiler inspector students.

The chief boiler inspector must issue a certificate of competency to an applicant who meets the qualifications, passes the required examination, and obtains a commission from the National Board of Boiler and Pressure Vessel Inspectors.

The bill changes the title "chief inspector" to "chief boiler inspector" and makes technical changes. It also changes the title "deputy inspector" to "deputy boiler inspector." The bill provides that deputy boiler inspectors will conduct inspections of uninsured boilers and engage in public outreach and other duties as assigned by the chief boiler inspector.

The bill requires inspections of boilers in public assembly locations within 30 days after the expiration of the boiler's certificate of operation and providing reporting requirements. The bill provides for more frequent inspections if a boiler has had previous code violations. The bill creates provisions relating to inspections by insurers or local governments.

The bill requires that boiler insurance companies notify the chief boiler inspector within 30 days after the issuance of a new or renewal boiler and machinery insurance policy.

The bill amends Florida law relating to fees paid to the DFS for certification inspections, applications, and examinations. It requires that an application for a boiler permit include the inspection fee, rather than requiring it be collected after the inspection. The bill does not raise any of the current fees.

The bill repeals current provisions dealing with examinations and certifications of inspectors, respectively.<sup>19</sup> Because boiler inspectors are already required to take an examination conducted by the National Board of Boiler and Pressure Vessel Inspectors, the state examination requirement is duplicative.

### *Discipline and Fines/Penalties*

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<sup>16</sup> The chief boiler inspector is appointed by the CFO pursuant to s. 554.105, F.S.

<sup>17</sup> Current law requires the information at least 90 days after the boiler is placed in service. s. 554.103(2), F.S.

<sup>18</sup> The examination required by the bill is the examination administered by the National Board of Boiler and Pressure Vessel Inspectors.

<sup>19</sup> See ss. 554.112; 554.113, F.S.

The bill removes criminal penalties for violations of the Act. Current law provides that specified violations are a second-degree misdemeanor. The bill provides for administrative fines of:

- \$10 per day for the first 10 days of noncompliance,
- \$50 per day for the next 20 days of noncompliance, and
- \$100 per day for subsequent days.

Violations that can lead to financial penalties are:

- Operating a boiler without a valid certificate,
- Using a certificate for any boiler other than the boiler for which it was intended, and
- Inspecting a boiler without holding a valid certificate.

The bill also provides penalties if boiler insurance companies or authorized inspection agencies fail to comply with inspection requirements.

The bill creates a provision to give the DFS discretion to impose fines in lieu of or in addition to revocation or suspension of certificates. Fine amounts are up to \$500 for non-willful violations and up to \$3,500 for willful violations. It provides for suspension or revocation of certificates if the fines are not paid within 30 or 90 days.

The bill creates a provision to require a boiler insurance company that insures any boiler in this state to file a report with the chief boiler inspector regarding claims paid by the insurer under policies insuring boilers in this state. The report must include the type of establishment in which the boiler was located, the location of the establishment, the amount of the loss, the apparent cause of the loss, and any other information that the DFS determines is not inconsistent with the intent of the safety objectives of the State Boiler Code. The bill requires the DFS to adopt a form by rule for submission of the report.

### ***Regulation of Insurance Agents and Adjusters***

The DFS Division of Insurance Agents and Agency Services regulates insurance agents, agencies, and adjusters.<sup>20</sup> The regulation includes licensing, disciplinary actions, and education.

#### **Effect of the bill**

The bill adds Universal Claims Certification from Claims and Litigation Management Alliance to the professional certifications that may be asserted in lieu of the examination required for licensure as an all-lines adjuster and that satisfy the continuing education requirement generally required of all individuals who are licensed to sell, solicit, or adjust insurance in Florida.

The bill amends Florida law relating to continuing education requirements for licensees. The bill provides that “active participants” in “associations” may receive two hours of continuing education credit each calendar year. It defines active participant as a member who attends four or more hours of association activities each year. The bill defines association to include:

- Florida Association of Insurance Agents (FAIA);
- National Association of Insurance and Financial Advisors (NAIFA);
- Florida Association of Health Underwriters (FAHU);
- Latin American Association of Insurance Agencies (LAAIA);
- Florida Association of Public Insurance Adjusters (FAPIA);
- Florida Bail Agents Association (FBAA); or

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<sup>20</sup> JEFF ATWATER: FLORIDA’S CHIEF FINANCIAL OFFICER, *Division of Insurance Agent and Agency Services*, <http://www.myfloridacfo.com/Division/Agents/> (last visited Mar. 14, 2017).

- Professional Bail Agents of the United States (PBUS).

In addition, the bill allows a person to assert any part of the 24 hours required for certification under the Claims and Litigation Management Alliance Universal Claims Certification to satisfy required continuing education. Of the 24 hours required for certification, 19 hours may be asserted in Florida to satisfy the elective continuing education course requirements; 5 hours may be asserted to satisfy the mandatory biennial continuing education update.

Current law provides that persons with specified<sup>21</sup> felony convictions<sup>22</sup> are permanently barred from applying for licensure under ch. 626, F.S.<sup>23</sup> It also provides that persons with convictions for other than permanent bar felonies are barred from licensure for specified periods of time. In *Kauk v. Department of Financial Services*,<sup>24</sup> the court considered whether the per se bar in current statute applied to someone who had had his civil rights restored through executive clemency. The court held that the DFS could not impose a bar against Kauk because Kauk had had his civil rights restored and a hearing officer had found Kauk to be a “citizen fully rehabilitated.”<sup>25</sup> The bill codifies the holding of *Kauk* by providing that the current time restrictions do not apply to someone who has had his or her civil rights restored or has been issued a pardon. The bill does not require the DFS to issue a license if a person has been granted a pardon or had his or her civil rights restored. Rather, it provides that the DFS cannot consider the finding of guilt or entry of the plea for which clemency was granted as grounds to deny the application.

Currently, the disqualifying period for applying for licensure begins to run upon completion of the criminal sentence including the payment of all fines, restitution, and court costs.<sup>26</sup> The bill provides that the time begins to run upon completion of an applicant’s criminal sentence (including the end of any period of probation or community control) and provides that a license cannot be issued until all fines, restitution, and court costs are paid. This will allow applicants who pay their restitution during, for example, a period of probation, to be licensed sooner.

The bill also codifies the holding of *Kauk* related to application for registration<sup>27</sup> as a health insurance navigator.<sup>28</sup>

Currently, the DFS is required to deny an application, suspend, revoke, or refuse to renew or continue the license or appointment of any applicant for convictions of felonies involving moral turpitude.<sup>29</sup> The bill deletes the reference to “moral turpitude” resulting in a requirement for the DFS to deny, suspend, revoke, refuse to renew or continue the license or appointment for all felonies. Current law provides the DFS with the discretion to deny an application for, suspend, revoke, or refuse to renew or continue the license or appointment who has been convicted of any felony, unless it is a mandatory requirement under statute.<sup>30</sup> The bill deletes the DFS’s discretionary authority related to felony convictions.

The bill allows trustees to advise persons, settlors, or beneficiaries regarding their interests in a trust regarding life or health insurance plans. It clarifies that individuals who provide health insurance

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<sup>21</sup> Section 626.207, F.S., specifies that conviction of the following felonies results in permanent bar from licensure: a felony of the first degree; a capital felony; a felony involving money laundering, fraud, or embezzlement; or a felony directly related to financial services business. The bill removes “fraud” from the specified felonies.

<sup>22</sup> When “conviction” is used when discussing DFS agent and agency regulatory statutes in this bill analysis, it means a conviction or the entry of guilty or nolo contendere plea regardless of whether adjudication was withheld.

<sup>23</sup> Persons and entities licensed by the DFS include agents, agencies, adjusters, adjusting firms, customer representatives, or managing general agents.

<sup>24</sup> 131 So.3d 805 (Fla. 1st DCA 2014).

<sup>25</sup> *Id.* at 808.

<sup>26</sup> s. 626.207, F.S.

<sup>27</sup> s. 626.9954, F.S.

<sup>28</sup> Section 626.9951, F.S., defines “Navigator” as “an individual authorized by an exchange to serve as a navigator, or who works on behalf of an entity authorized by an exchange to serve as a navigator, pursuant to 42 U.S.C. s. 18031(i)(1), who facilitates the selection of a qualified health plan through the exchange and performs any other duties specified under 42 U.S.C. s. 18031(i)(3).”

<sup>29</sup> s. 626.611(1)(n), F.S.

<sup>30</sup> See s. 626.621(8), F.S.; *cf.* s. 626.611, F.S.

counsel and advice when acting as a trustee advising a settlor, a beneficiary, or a person regarding his or her interests in a trust or are an employee who counsels and advises employees of the same business, union or association are not practicing the unlicensed transaction of health insurance.

The bill allows a regular employee of a property insurer handling claims to adjust claims with respect to residential property insurance when the sublimit coverage does not exceed \$500.

### ***Notice of Actions Against the State***

Section 768.28, F.S., is the State's waiver of sovereign immunity statute. The DFS Division of Risk Management is responsible for the management of claims reported by or against state agencies and universities for coverage under the self-insurance fund known as the "State Risk Management Trust Fund."<sup>31</sup> Current law requires notice or service on DFS in certain situations.<sup>32</sup>

#### **Effect of the bill**

The bill modifies the process related to the state's waiver of sovereign immunity. Currently, an action cannot be initiated against the state or one of its agencies or subdivisions unless a claimant presents the claim in writing to the appropriate agency, and also, except for a municipality or the Florida Space Authority, the DFS.<sup>33</sup> Accordingly, DFS reports that it receives many notices when claimants make claims against counties.<sup>34</sup> The DFS Division of Risk Management is not involved in claims against counties so the DFS believes it is not necessary for DFS to receive the notice. The bill provides that a claimant does not have to present notice to the DFS if the claim is against a municipality, the Florida Space Authority, or a "county."

Similarly, current law provides the requirement for service of process in an action related to the waiver of sovereign immunity.<sup>35</sup> Process must be served on the agency head, and also, except for municipalities or the Florida Space Authority, the DFS. The bill provides that process must be served on the agency head, and also, except for municipalities, the Florida Space Authority, or a county, upon the DFS.

### ***Holocaust Victims***

Current law provides that any insurer doing business in this state, in receipt of a claim from a Holocaust victim or from a beneficiary, descendant, or heir of a Holocaust victim, must:

- Diligently and expeditiously investigate all such claims;
- Allow such claimants to meet a reasonable, not unduly restrictive, standard of proof to substantiate a claim, pursuant to standards established by the DFS; and
- Permit claims irrespective of any statute of limitations or notice requirements imposed by any insurance policy issued, provided the claim is submitted on or before July 1, 2018.<sup>36</sup>

Any action brought by Holocaust victims or by a beneficiary, heir, or a descendant of a Holocaust victim seeking proceeds of an insurance policy issued or in effect between 1920 and 1945, may not be dismissed for failure to comply with the statute of limitations if the action is commenced on or before July 1, 2018.

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<sup>31</sup> JEFF ATWATER: FLORIDA'S CHIEF FINANCIAL OFFICER, *Division of Risk Management*, <http://www.myfloridacfo.com/Division/Risk/> (last visited Mar. 14, 2017).

<sup>32</sup> s. 768.28, F.S.

<sup>33</sup> s. 768.28(6)(a), F.S.

<sup>34</sup> Florida Department of Financial Services, Agency Analysis of 2017 House Bill 925, p. 4 (Mar. 8, 2017).

<sup>35</sup> s. 768.28(7), F.S.

<sup>36</sup> See s. 626.9543, F.S.

## Effect of the bill

Current relief for Holocaust victims or a beneficiary, heir, or a descendant of a Holocaust victim has a filing deadline of July 1, 2018.<sup>37</sup> The bill removes the July 1, 2018, deadline and would allow actions to be brought without any statute of limitations.

### ***Miscellaneous Provisions*** (sections 18, 32, 34-36)

Currently, the Office of Insurance Regulation may expend funds, subject to availability, for the professional development of its staff. Expenditures may include dues for professional organizations, fees for examinations leading to professional designations, and relevant training courses. The bill gives the DFS a similar ability to expend funds, within existing resources, for professional development of staff of specified divisions.

The bill amends current law relating to studies of firefighter employee occupational diseases.<sup>38</sup> The bill provides that DFS may contract for studies, subject to the availability of funds, of occupational diseases of firefighters. When such a study or another study that is wholly or partly funded under an agreement with the DFS tracks a disease of an individual firefighter or a person in another fire-related field, the DFS may, with associated security measures, release confidential information, including a social security number, of that individual to a party who has entered into an agreement.

The bill also makes several changes to statutory citations to conform to changes by the bill.

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<sup>37</sup> s. 626.9543, F.S.

<sup>38</sup> See s. 633.516, F.S.



## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

See Fiscal Comments.

#### 2. Expenditures:

See Fiscal Comments.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

#### 1. Revenues:

The bill does not appear to have an impact on local government revenues.

#### 2. Expenditures:

The bill does not appear to have an impact on expenditures.

### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The impact on the private sector from changes to the Boiler Safety Act is not known.

### D. FISCAL COMMENTS:

The changes to the Boiler Safety Act could have an indeterminate fiscal impact on the DFS.<sup>39</sup>

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<sup>39</sup> Florida Department of Financial Services, Agency Analysis of 2017 House Bill 925, p. 8 (Mar. 8, 2017).