

**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.)

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Prepared By: The Professional Staff of the Committee on Appropriations

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BILL: CS/CS/SB 1040

INTRODUCER: Appropriations Committee; Governmental Oversight and Accountability Committee; and Senator Brodeur

SUBJECT: Duties of the Attorney General

DATE: March 22, 2021

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Candelaria</u>	<u>McVaney</u>	<u>GO</u>	<u>Fav/CS</u>
2.	<u>Dale</u>	<u>Sadberry</u>	<u>AP</u>	<u>Fav/CS</u>
3.	_____	_____	<u>RC</u>	_____

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

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/CS/SB 1040 repeals several functions of the Department of Legal Affairs (DLA) and the Attorney General (AG) and transfers several functions to other state agencies. The bill:

- Eliminates the DLA's duties and responsibilities relating to neighborhood improvement districts;
- Transfers the DLA's duties and responsibilities relating to claims for restitution to other state agencies;
- Transfers the duties relating to the convenience businesses to the Department of Business and Professional Regulation (DBPR);
- Modifies the current prohibitions against unconscionable prices; and
- Extends the repeal date for the Attorney General to have access to records ordered by a court in regard to the prescription drug monitoring program to June 30, 2023.

The bill's provisions will reduce the workload of the DLA and increase workload for other state agencies. See Section V.

The bill takes effect on June 30, 2021.

## II. Present Situation:

### **The Attorney General**

The Attorney General (AG) is a statewide elected official directed by the Florida Constitution to serve as the chief legal officer for the State of Florida. The AG is responsible for protecting consumers from various types of fraud, enforcing the state's antitrust laws, defending the state in civil litigation cases, and representing the people of the state when criminals appeal their convictions in state and federal courts.<sup>1</sup> The AG defends the statutes enacted by the Legislature and is authorized to form official legal opinions at the request of public officials on questions relating to the application of state law. The AG serves as a member of the Florida Cabinet along with the Chief Financial Officer and the Commissioner of Agriculture. The AG is the head of the Department of Legal Affairs (DLA) and is responsible for providing all legal services required by any department.<sup>2</sup>

### **Florida Supreme Court Reporter**

Since 1881, the Florida Supreme Court Clerk has been required to deliver to the AG a copy of each volume of Florida Supreme Court opinions in the Clerk's care or custody that the AG's office may be without. The AG must keep the copies at their office at the Capitol and has been, by law, the official Supreme Court reporter since 1885. However, Florida Supreme Court opinions are now published online and in other reports available in the AG's law library.<sup>3</sup>

### **Safe Neighborhood Improvement District**

A safe neighborhood improvement district (district) is a district located in an area in which more than 75 percent of the land is used for residential purposes, commercial, or business purposes, excluding land area used for public facilities.<sup>4</sup> An established district must have a plan to reduce crime through environmental design, environmental security, defensible space techniques, or community policing innovations. A district is required to register within 30 days with the Department of Economic Opportunity (DEO) and the DLA, providing the departments with the district's name, size, location, and type. There are currently 27 active districts in the state.<sup>5</sup> The governing body of the county is eligible to request a grant from the Safe Neighborhoods Program.<sup>6</sup>

### ***Safe Neighborhoods Program***

The Safe Neighborhoods Program was created to provide planning grants and technical assistance on a 100 percent matching basis to the neighborhood improvement districts. Applications for planning grants must have verification that the local governing body has passed

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<sup>1</sup> Office of the Attorney General, *Role and Function of the Attorney General*, available at <http://myfloridalegal.com/pages.nsf/Main/F06F66DA272F37C885256CCB0051916F>, last visited (March 3, 2021)

<sup>2</sup> Section 16.015, F.S.

<sup>3</sup> Section 16.101, F.S.

<sup>4</sup> Section 163.503(1), F.S.

<sup>5</sup> Florida Department of Economic Opportunity, *Division of Community Development, Official List of Special Districts Online*, available at <http://specialdistrictreports.floridajobs.org/webreports/functionsdetail.aspx> (last visited March 9, 2021).

<sup>6</sup> *Id.*

an ordinance creating neighborhood improvement districts, and verification of commitment to provide matching funds for the purpose of planning of neighborhood improvement districts.<sup>7</sup> Planning grants shall be rewarded to eligible applicants, with the amount totaling as follows:

- Property owner’s association neighborhood improvement districts may receive up to \$20,000;
- Local government neighborhood improvement districts may receive up to \$100,000;
- Special neighborhood improvement districts may receive up to \$50,000; and
- Community redevelopment neighborhood improvement districts may receive up to \$50,000.<sup>8</sup>

Each neighborhood improvement district that receives funds is required to submit an audit.

### **State Institutions Claims Program**

The State Institutions Claims Program was created to make restitution of property damages and direct medical expenses for injuries caused by shelter children, foster children, escapees, inmates, or patients of state institutions or developmental disabilities center. Claims for restitution may be filed with the DLA, and the DLA shall have full power to hear, investigate, and determine all questions about the claims. The DLA is authorized to pay individual claims up to \$1,000 or, with respect to children in foster care and their families, up to \$1,500. The DLA is responsible for working with other state agencies to streamline the process of investigations, hearings, and determinations.<sup>9</sup> In the past five years, the Agency for Persons with Disabilities has had 41 claims filed, with 30 of them considered eligible for restitution.<sup>10</sup> In the past five years, the Department of Juvenile Justice has had three claims filed.<sup>11</sup>

### **Price Gouging during a Declared State of Emergency**

Section 501.160, F.S., referred to as the Price Gouging Law, was passed to prevent the dramatic increase in the prices of certain essential commodities during periods of disaster.<sup>12</sup> The price of an essential commodity is considered unconscionable if the amount charged represents a gross disparity between the price of the commodity and the average price of that commodity when rented, leased, or sold in the usual course of business during the 30 days prior to a declaration of emergency. Upon a declaration of a state of emergency by the Governor, a person or their agent is prohibited from renting or selling at an unconscionable price. It is unlawful and a violation of s. 501.204, F.S., for any person to impose unconscionable prices for the rental, lease, or sale of any commodity, dwelling unit, or self-storage unit. Price increases approved by an appropriate governmental entity is not a violation of s. 501.204, F.S. The prohibition on unconscionable pricing within the area of the state of emergency is limited to no more than 60 days under the initial declared state of emergency. The prohibition may be “renewed” by a statement of any

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<sup>7</sup> Section 163.517(2)(a-b), F.S.

<sup>8</sup> Section 163.517(1)(a-d), F.S.

<sup>9</sup> Section 402.181, F.S.

<sup>10</sup> See Agency for Persons with Disabilities, *Senate Bill 1040 Agency Legislative Analysis* (February 24, 2021) (on file with the Senate Committee on Governmental Oversight and Accountability).

<sup>11</sup> See Department of Juvenile Justice, *Senate Bill 1040 Agency Legislative Analysis* (February 25, 2021) (on file with the Senate Committee on Governmental Oversight and Accountability).

<sup>12</sup> Section 501.160, F.S.

subsequent “renewals” of the declared state of emergency. The state attorney or AG may prosecute any violation of s. 501.204, F.S.

### **Convenience Business Security**

The DLA has the rulemaking authority as necessary to implement provisions of the Business Security Act (Act).<sup>13</sup> Rule 2A-5.005, Florida Administrative Code, provides safety standards, training curriculum and enforcement procedures for the Act.

A convenience business is any place of business that is primarily engaged in the retail sale of groceries, or both groceries and gasoline, and that is open for business at any time between 11:00 p.m. and 5:00 a.m.<sup>14</sup> Every convenience business is required to have certain security devices. These include a security camera, a safe or cash management device, a lighted parking lot, a sign stating cash register contains less than \$50, window signage that allows a clear view from outside the building, and a cash management policy limiting cash at hand after 11:00 p.m. If a murder, robbery, sexual battery, aggravated assault, aggravated battery, or kidnapping or false imprisonment, occurs or has occurred at a convenience business since July 1, 1989, the business needs to implement one of the following policies:

- Provide at least two employees on the premises at all times after 11:00 p.m. and before 5:00 a.m.
- Install for use by employees at all times after 11:00 p.m. and before 5:00 a.m., a secured safety enclosure of transparent polycarbonate or other material;
- Provide a security guard on the premises at all times after 11:00 p.m. and before 5:00 a.m.;
- Lock the business premises throughout the hours of 11:00 p.m. to 5:00 a.m., and only transact business through an indirect pass-through trough, trapdoor, or window; or
- Close the business at all times after 11:00 p.m. and before 5:00 a.m.

The DLA will provide notice to any convenience business to which an incident has previously occurred. A business can file a notice for exemption with the DLA if no incident has occurred for no less than 24 months immediately preceding the filing of a notice of exemption.<sup>15</sup> The DLA has the authority to enforce violations of the law that result in civil penalties of up to \$5,000.<sup>16</sup>

### ***Training of Employees***

The owner of a convenience business is required to provide proper robbery deterrence and safety training by an approved curriculum to its retail employees within 60 days of employment. The curriculum shall be submitted to the AG. The AG will review and approve or disapprove the curriculum in writing within 60 days after receipt. Any curriculum approved by the AG since September of 1990 is subject to reapproval by the AG two years from the anniversary of initial approval and biennially thereafter.

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<sup>13</sup> Section 812.176, F.S

<sup>14</sup> Section 812.171, F.S.

<sup>15</sup> Section 812.173(5), F.S.

<sup>16</sup> The Department of Legal Affairs, *The Convenience Business Security Act*, available at <http://www.fcpti.com/fcpti.nsf/pages/CBSA>, (last visited March 5, 2021)

## Prescription Drug Monitoring Program

The Prescription Drug Monitoring Program (PDMP) uses a comprehensive electronic system/database, maintained by the Department of Health (DOH), to monitor the prescribing and dispensing information of certain controlled substances. Section 893.0551(3)(e), F.S., authorizes the AG, upon authorization by a trial court, to use confidential and exempt information from the PDMP database that has been de-identified for active investigations or pending civil or criminal litigation involving prescribed controlled substances. The AG must ensure that the obtained de-identified information is used only for the purpose stated in the court order. The AG must maintain a log of each person with which the information is shared, execute a confidentiality agreement or an agreement bound by a protective order with each such person, ensure the information is maintained in a secure manner, and require each such person to return all information or certify its destruction to the AG upon the final resolution of the matter for which the information was requested.<sup>17</sup> The AG's access to information in the PDMP is scheduled to be repealed on June 30, 2021, unless reviewed and saved from repeal through reenactment by the Legislature.

## The Department of Economic Opportunity

The purpose of the DEO, as established by s. 20.60, F.S., is to assist the Governor in working with the Legislature, state agencies, business leaders, and economic development professionals to formulate and implement coherent and consistent policies and strategies designed to promote economic opportunities for all Floridians. The head of the DEO is the executive director, appointed by the Governor, subject to confirmation by the Senate, and serving at the pleasure of and reporting to the Governor.<sup>18</sup> The DEO has the following divisions:

- The Division of Strategic Business Development;
- The Division of Community Development;
- The Division of Workforce Services;
- The Division of Finance and Administration; and
- The Division of Information Technology.

### III. Effect of Proposed Changes:

**Sections 1** repeals s. 16.10, F.S., which requires the clerk of the Florida Supreme Court to provide the decisions of the Supreme Court and requires the AG to maintain the decisions within the AG's office in the Capitol.

**Section 2** repeals s. 16.101, F.S., which requires the AG to be the reporter for the Florida Supreme Court.

**Section 3** amends s. 163.503, F.S., relating to the Safe Neighborhoods Act, to change the definition of "department" to mean the DEO rather than the DLA.

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<sup>17</sup> Section 893.055(5)(b), F.S.

<sup>18</sup> Section 20.60(2), F.S.

**Section 4** amends s. 163.504, F.S., to eliminate the authority of a city or county that creates a safe neighborhood improvement district to request a grant from the Safe Neighborhood Program.

**Section 5** amends s. 163.5055, F.S., to eliminate the duty of a neighborhood improvement district to register with the DLA (the duty to register with DEO remains), and to eliminate the duty of a local governing body that authorizes the dissolution of a district to notify the DLA (the duty to notify the DEO remains).

**Section 6** amends s. 163.506, F.S., to eliminate a requirement that a new local government neighborhood improvement district notify the DLA within 30 days of its creation (the duty to notify DEO remains).

**Section 7** amends s. 163.508, F.S., to eliminate a requirement that a new property owners' association neighborhood improvement district notify the DLA within 30 days of its creation (the duty to notify DEO remains).

**Section 8** amends s. 163.511, F.S., to eliminate a requirement that a new special residential or business neighborhood improvement district notify the DLA within 30 days of its creation (the duty to notify DEO remains).

**Section 9** repeals s. 163.517, F.S., which creates the Safe Neighborhoods Program.

**Section 10** repeals s. 163.519, F.S., which outlines the duties of the DLA in relation to neighborhood improvement districts.

**Section 11** repeals s. 163.521, F.S., which establishes a grant program for neighborhood improvement districts.

**Section 12** repeals s. 163.5215, F.S., which establishes that the provisions of neighborhood improvement districts may not be construed to modify, limit, expand, or supersede any existing laws relating to the closing or abandonment of public roads, the denial of access to areas for public use, or the use of public facilities.

**Section 13** repeals s. 163.522, F.S., which provides that any county or municipality that has authorized the creation of a community redevelopment area be directed to give consideration to the creation of a neighborhood improvement district within said area.

**Section 14** repeals s. 163.523, F.S., which allows local governments to cooperate with community organizations in the creation of safe neighborhood improvement districts.

**Section 15** amends s. 163.524, F.S., to conform to the changes of the bill.

**Section 16** amends s. 376.84, F.S., to conform to the changes of the bill.

**Section 17** amends s. 402.181, F.S., to require claims to be filed with the Department of Children and Families (DCF), the Department of Juvenile Justice (DJJ), the Department of Health (DOH), the Department of Corrections (DOC), or the Agency for Persons with Disabilities (APD).

The section transfers the power and authority to approve and deny claims from the DLA to the agencies and departments that deal with the claims.

The section provides that the DCF, the DJJ, the DOH, the DOC, and the APD adopt rules to process the claims and to ensure that eligible claimants receive restitution. Previously, the DLA was responsible for working with the departments and agencies to create a process.

**Section 18** amends s. 501.160, F.S., to make the rental or sale of a dwelling unit or self-storage facility that is necessary for habitation or use as a direct result of the emergency at an unconscionable price, unlawful and a violation of unfair methods competition law. The bill allows the governor, by executive order with specific reference, rather than by renewals of the declared state of emergency, to extend the prohibition on essential commodities, or on any dwelling unit or self-storage facility.

**Section 19** amends s. 775.083, F.S., to conform to the changes of the bill.

**Section 20** amends s. 812.171, F.S., to further specify that the definition of a “convenience business” is one which must be licensed by the Division of Alcoholic Beverages and Tobacco within the Department of Business and Professional Regulation (DBPR) pursuant to chapter 210, chapter 561, chapter 562, chapter 563, chapter 564, chapter 565, or chapter 569, as applicable.

**Section 21** amends s. 812.173, F.S., to transfer the duties relating to convenience business security from the DLA to the Division of Alcoholic Beverages and Tobacco within the DBPR. The section also requires notification to the Division within 30 days if certain crimes occur arising out of the operation of the business and requires security measures required under current law be implemented within the same timeframe.

**Section 22** amends s. 812.174, F.S., to transfer the duties relating to convenience business security training for their employees on safety training and robbery deterrence from the AG to the Division of Alcoholic Beverages and Tobacco within the DBPR.

**Section 23** amends s. 812.175, F.S., to transfer the duties relating to violations and fines for convenience business security from the AG to the Division of Alcoholic Beverages and Tobacco within the DBPR.

**Section 24** amends s. 812.176, F.S., to transfer the duties of adopting rules as necessary to implement the provisions of the Convenience Business Security Act from the DLA to the Division of Alcoholic Beverages and Tobacco within the DBPR.

**Section 25** amends ss. 893.055 and 893.0551, F.S., to delay the scheduled repeal of provisions granting the Attorney General access to records ordered by a court in regard to the Prescription Drug Monitoring Program. [The repeal date moves to June 30, 2023. Currently, the repeal date is June 30, 2021.]

**Section 26** provides that the bill take effect June 30, 2021.

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

Not applicable. This bill does not require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

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

None.

**C. Trust Funds Restrictions:**

None.

**D. State Tax or Fee Increases:**

None.

**E. Other Constitutional Issues:**

None identified.

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

None.

**B. Private Sector Impact:**

The bill limits price gouging protections relating to rent of a dwelling unit or a self-service storage facility during a declared state of emergency, which could subject Florida consumers to higher rent prices during a state of emergency.

**C. Government Sector Impact:**

The bill's provisions will shift workload from the DLA to other state agencies. For example, the bill eliminates the DLA's responsibilities for the processing of registrations and dissolutions of safe neighborhood improvement districts. As a result, the DEO may experience a workload increase relating to these functions. Repealing s. 167.517, F.S., related to the Safe Neighborhoods Program, and the ability of a governing body of a municipality or county to request grant funds, will have no fiscal impact. Funding for this program ended in 1992 and the trust fund was eliminated the following year.<sup>19</sup>

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<sup>19</sup> See Department of Legal Affairs, *Senate Bill 1040 Agency Legislative Analysis* (March 10, 2021) (on file with the Senate Appropriations Subcommittee on Criminal and Civil Justice).



Additionally, the bill transfers responsibilities associated with receiving and processing restitution claims from DLA to the DCF, the DJJ, the DOH, the DOC, and the APD. As a result, these agencies may experience increased workloads associated with these functions. Similarly, the bill transfers processing exemption requests, approving proposed training curricula, and enforcing provisions under the Convenience Business Security Act from DLA to the Division of Alcoholic Beverages and Tobacco within the DBPR, which may impact the Division's workload.

#### **VI. Technical Deficiencies:**

None.

#### **VII. Related Issues:**

Lines 416 to 417 change the grant of rulemaking authority under the Convenience Security Act (Act) from the DLA to the DBPR. However, the bill as currently drafted does not provide for the transfer of the Act's sole rule - Rule 2A-5.005, F.A.C., which implements the provisions of the Act. Thus, during the time frame in which the DBPR takes to adopt the rule, there will be no rule in effect regarding the Act. The Legislature may consider an amendment providing an explicit transfer of the administrative rule in chapter 2A-5 from the DLA to the DBPR.

#### **VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 163.503, 163.504, 163.5055, 163.506, 163.508, 163.511, 163.524, 376.84, 402.181, 501.160, 775.083, 812.173, 812.174, 812.175, 812.176, and 960.21.

This bill repeals the following sections of the Florida Statutes: 16.10, 16.101, 163.517, 163.519, 163.521, 163.5215, 163.522, and 163.523.

#### **IX. Additional Information:**

##### **A. Committee Substitute – Statement of Substantial Changes:**

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

##### **CS/CS by Appropriations on March 18, 2021:**

The committee substitute:

- Removes the provision exempting the Crimes Compensation Trust Fund from the service charge to general revenue; and
- Amends the definition of “convenience business” in s. 812.171, F.S. to specify the business must be licensed by the Division of Alcoholic Beverages and Tobacco within the DBPR pursuant to chapter 210, chapter 561, chapter 562, chapter 563, chapter 564, chapter 565, or chapter 569, as applicable.

##### **CS by Governmental Oversight and Accountability on March 10, 2021:**

The CS removes the service charge of the Crimes Compensation Trust Fund from being paid out of moneys collected and deposited into the trust fund.

The CS provides that it is unlawful for a person to rent or sell, at an unconscionable price, any dwelling unit or self-storage facility, which is limited to that which is necessary for consumption or use within the area for which a state of emergency is declared.

**B. Amendments:**

None.