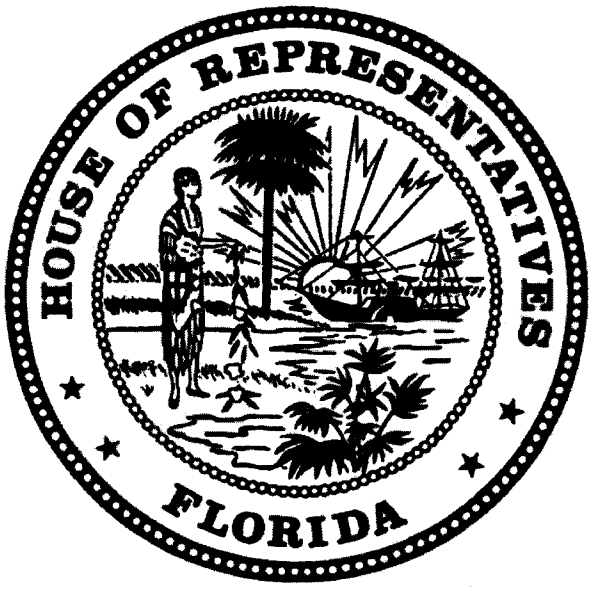


Commerce Committee

Thursday, January 16, 2020
2:30 PM – 4:30 PM
Webster Hall (212 Knott)

Meeting Packet

Jose R. Oliva
Speaker

Mike La Rosa
Chair

The Florida House of Representatives

Commerce Committee

Jose Oliva
Speaker

Mike La Rosa
Chair

Meeting Agenda

Thursday, January 16, 2020
2:30 pm – 4:30 pm
Webster Hall (212 Knott)

I. Call to Order

II. Roll Call

III. Welcome and Opening Remarks

IV. Consideration of the following bill(s):

HB 101 Public Construction by Andrade

CS/CS/HB 115 Keeping Our Graduates Working Act by Health Quality Subcommittee, Business & Professions Subcommittee, Duran

CS/HB 269 Loss Run Statements by Insurance & Banking Subcommittee, Perez

HB 329 Insurance Guaranty Associations by Smith, D.

HB 707 Legislative Review of Occupational Regulations by Renner

HB 6037 Individual Wine Containers by LaMarca

V. Closing Remarks

VI. Adjournment

303 House Office Building, 402 South Monroe Street, Tallahassee, FL 32399-1300
(850) 717-4870

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 101 Public Construction
SPONSOR(S): Andrade and others
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 246

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Business & Professions Subcommittee	12 Y, 0 N	Brackett	Anstead
2) Oversight, Transparency & Public Management Subcommittee	12 Y, 0 N	Villa	Smith
3) Commerce Committee		Brackett DB	Hamon K.W.H.

SUMMARY ANALYSIS

Retainage is a common construction practice that allows a portion of an agreed upon contract price to be withheld until the work is substantially complete to assure that a contractor or subcontractor will complete the construction project.

Current law sets limits on how much retainage can be withheld on state and local government contracts. For construction contracts with the state *for $200,000 or less,* the state may withhold up to ten percent of a payment to a contractor. For construction contracts with the state or local governments that are for *more than $200,000*, the maximum amount that may be retained in a payment is:

- Ten percent of a payment to a contractor before half of the work is completed;
- Five percent of a payment to a contractor after half of the work is completed; and
- Ten percent of a payment to a contractor for the entire project, if the government entity is a municipality with a population of 25,000 or less or a county with a population of 100,000 or less.

The bill changes the limits on retainage permitted to be withheld on state and local government contracts.

For contracts more than $200,000, the bill reduces the maximum amount that may be retained:

- *From ten percent* before half of the work is complete, *and five percent* after half of the work is complete
  - *To five percent* for the entire project; and
- *From ten percent* for the entire project if the government entity is a municipality with a population of 25,000 or less or a county with a population of 100,000 or less
  - *To five percent* for the entire project.

The bill repeals:

- The ability of a contractor to make a request the government entity release up to half of the retained amount after half of the project is completed; and
- The ability of a contractor to withhold more than five percent of each progress payment to his or her subcontractors after half of a project for a government entity is completed.

For contracts less than $200,000, the bill reduces the amount that the state may retain from a progress payment to a contractor *from ten percent to five percent.*

The provisions of the bill do not apply to FDOT construction projects authorized by ch. 337, F.S., or any contract for construction services entered into, pending approval, or advertised by a government entity, on or before October 1, 2020.

The bill may have a fiscal impact on state government and local governments. See Fiscal Comments.

The bill provides for an effective date of October 1, 2020.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Construction Contractors

Construction contractors are certified or registered by the Construction Industry Licensing Board (CILB) housed within the Department of Business and Professional Regulation (DBPR). The CILB consists of 18 members who are appointed by the Governor and confirmed by the Senate.[1] Certified construction contractors are licensed and regulated by the CILB and can practice statewide. Registered contractors are those that choose to practice only within the specific locality where they have chosen to apply for licensure and may only practice within that locality.[2]

Retainage

Payments for construction services are usually made incrementally as progress is made. Retainage is a construction practice whereby a project owner withholds a certain percentage of a payment from the contractor who in turn withholds a certain percentage from the subcontractors until the project is completed. The retained funds are generally paid out when the project is completed.[3]

The purpose of retainage is provide leverage for the property owner and the contractor to ensure the project is completed in a timely fashion. Retainage also serves as a safeguard against possible overpayment to a contractor or subcontractor when the estimated percentage of project completion, used for periodic progress payments, exceeds the actual percentage completed.[4]

Florida Retainage Rates for Construction Contracts with Government Entities

Section 218.72, F.S., defines a "local government entity" to mean a county or municipal government, school board, school district, authority, special taxing district, other political subdivision, or any office, board, bureau, commission, department, branch, division, or institution thereof.

Section 255.072, F.S., defines a "public entity" to mean the state, or any office, board, bureau, commission, department, branch, division, or institution thereof, but the term does not include a local government entity as defined above.

Current law provides that for any construction service contract with a local government entity or a public entity (government entities) that is worth more than $200,000:

- the maximum amount that a government entity may withhold from a progress payment to a contractor is ten percent, until half of the project is completed.
- the maximum amount that a government entity may withhold from a progress payment to a contractor is reduced to five percent, after half of the project is completed.

However, a municipality with a population of 25,000 or less and a county with a population of 100,000 or less may withhold ten percent until the project is completed.[5]

---

[1] S. 489.107, F.S.

[2] *See generally* s. 489.105, F.S.

[3] OPPAGA, *Inflexibility in Contracting and Retainage Practices Could Hurt Construction Industry*, p. 1 (Dec. 2000) http://www.oppaga.state.fl.us/MonitorDocs/Reports/pdf/0026rpt.pdf (last visited on Oct. 20, 2019).

[4] *Id.*; Bausman, Dennis C., *Retainage Practice In The Construction Industry*, Foundation of the American Subcontractors Association, Inc., p. 1 (Nov. 2004) https://www.asacolorado.com/images/stories/documents/legislation/retainageclemsonstudy.pdf (last visited on Oct. 20, 2019).

[5] Ss. 218.735 & 255.078, F.S.

After half of the project is completed, a contractor may request the government entity to release up to half of the retained amount. The government entity must release the requested amount unless the amount is subject to a dispute.[6]

After a contractor completes a project, he or she may submit a request to the government entity for all remaining retained funds. The government entity must release the funds unless there is a good faith dispute that the contractor has not completed an item or items on the government entity's list of items required to complete the project. If there is a good faith dispute, the government entity may withhold an amount not to exceed 150% of the cost to complete the item or items.[7]

When a contractor receives payment from a government entity for work or materials provided by a subcontractor, the contractor must provide the payment to the subcontractor within 10 days of receiving the payment. However, after half of a project with a government entity is completed, a contractor may withhold more than five percent of each progress payment to a subcontractor even though the government entity may not retain more than five percent of each payment to a contractor for work and materials provided by the contractor and his or her subcontractors.[8]

A contractor may withhold more than five percent of each payment based on the contractor's assessment of a subcontractor's past performance, the likelihood that such performance will continue, and the contractor's ability to rely on other safeguards such as a performance bond. If a contractor elects to retain more than five percent, the contractor must notify the subcontractor in writing of his or her determination to withhold more than five percent and the reasons for making that determination, and the contractor may not request the release of such retained funds from the government entity.[9]

For contracts for construction services with the state that are for $200,000 or less, current law requires the Department of Management Services (DMS) to establish rules that allow the state to retain up to ten percent of each payment made to the contractor. In order to comply, DMS enacted Rule 60D-5.0041, F.A.C., which provides that for public works contracts with the state that are worth more than $100,000 but not more than $200,000, a state agency may request DMS to exempt the requirement for a performance and payment bond as long as the state agency retains ten percent of each payment made to the contractor. If the contractor defaults, the agency will use the retained payments to pay any claims of unpaid bills made by laborers, materialmen, and subcontractors.[10]

Chapter 337, F.S., provides that when the Department of Transportation (DOT) uses flexible start and finish times for construction projects, DOT may retain ten percent when a contractor fails to timely commence work or falls behind at any time prior to completion of the contract.[11]

Additional Requirements for Construction Contracts with Government Entities

Current law requires a contractor who contracts with the state, a local government, or another public authority to construct a public building or complete some other public works project that is worth more than $200,000 to obtain a payment bond with an authorized surety insurer equal to the contract price, and a performance bond with an authorized surety insurer. In lieu of a bond, a contractor may file an alternative form of security in the form of cash, a money order, a certified check, a cashier's check, or an irrevocable letter of credit.[12]

---

[6] Ss. 218.735 & 255.078, F.S.
[7] Ss. 218.735 & 255.077, F.S.
[8] Ss. 218.735, 255.073, & 255.078, F.S
[9] Ss. 218.735 & 255.078, F.S.
[10] S. 255.05(1)(f), F.S.; Rule. 60D-5.0041, F.A.C.
[11] S. 337.015(5), F.S.
[12] S. 255.05(1), (7), F.S.

A performance bond issued by a surety guarantees that the contractor or surety will complete the work required under the bonded contract.[13] A payment bond issued by a surety guarantees that the contractor or surety will pay the subcontractors, suppliers, and materialmen associated with the construction project.[14]

Before beginning work, a contractor must execute and record both bonds in the public records of the county where the improvement is located and provide a certified copy of the bonds to the public body commissioning the project. A contractor cannot receive payment until the contractor has provided a certified copy of the bonds.[15]

OPPAGA Study of Retainage in December 2000

During the 2000 Legislative Session, the Legislature directed the Office of Program Policy Analysis and Governmental Accountability (OPPAGA) to conduct a study to evaluate retainage and other construction practices to determine if Florida construction law needed to be revised.[16] At the time, the only contracts that had a statutory cap on retainage were contracts with the state that were worth $200,000 or less, which was set at ten percent.[17]

OPPAGA determined that putting a statutory cap on the amount a property owner could retain could become unfavorable to contractors and subcontractors because property owners and contractors may:

- Seek to protect their property by using alternate forms of leverage that are less favorable than the current system of retainage;
- Be less willing to take the risk associated with working with a new contractor or subcontractor; and
- Not allow an existing contractor or subcontractor to take on a project of an increased size.[18]

Proponents for lower retainage rates argue that requiring a performance bond is a reasonable substitute for retainage because a performance bond ensures the contractor will complete the project to the property owner's satisfaction, and will screen out contractors who are unable to perform a project.[19]

OPPAGA found that a performance bond was not a reasonable substitute for retainage because retainage served as an incentive for a contractor or subcontractor to complete their work in a timely fashion, and a performance bond only guarantees that a project will eventually be completed if a contractor defaults.[20]

OPPAGA also found that a greater portion of risk associated with contracting had shifted from the contractor to the subcontractor. If a subcontractor performed work on a construction project, there could be delays, entirely outside of the subcontractor's control, which prevented the subcontractor from receiving retained money. This could result in the subcontractor waiting for an unreasonable amount of time to receive payment for work the subcontractor completed.[21]

OPPAGA indicated that subcontractors could try to mitigate this risk by planning for these funds not being immediately available or requiring that retained funds be placed in an interest bearing account.[22]

---

[13] *American Home Assurance Co. v. Larkin General Hospital, Ltd.*, 593 So. 2d 195, 198 (Fla. 1992).
[14] *Everett Painting Company, Inc. v. Padula & Wadsworth Construction, Inc.*, 856 So. 2d 1059, 1062 (Fla. 4th DCA 2003).
[15] S. 255.05(1), F.S.
[16] OPPAGA *supra* note 3, at 1; Ch. 2000-372, Laws of Florida.
[17] *See generally* Ch. 255, F.S. (2000).
[18] OPPAGA *supra* note 3, at 3.
[19] Bausman *supra* note 4, at 10.
[20] OPPAGA *supra* note 3, at 4.
[21] OPPAGA *supra* note 3, at 2.
[22] *Id.* at 2 and 7.

However, proponents for lower retainage rates argue that this reduces competition because smaller subcontractors cannot compete for projects because even though they might be capable of doing a project, they do not have the funds to plan for a high percentage of their earned money being retained. Proponents for lower retainage rates also argue that high retainage rates increase the cost of construction projects because contractors and subcontractors are required to charge more in order to ensure they can finance a project.[23]

After the OPPAGA study was completed, the 2005 Legislature passed and the Governor signed into law the current rate of retainage for government entities. The maximum amount a government entity could retain from a progress payment was set at ten percent because that was the industry norm at that time.[24]

Retainage Rates for Other States

According to the American Subcontractors Association, 43 states specify the maximum retainage percentage that the government may withhold from a payment to a contractor.[25] At least ten states, including Florida, Pennsylvania, and Georgia, cap the retainage percentage at ten percent.[26] At least twenty states, including North Carolina, New York, and Virginia, cap the retainage percentage at five percent.[27] South Carolina caps the retainage percentage rate at 3.5 percent. [28]

Retainage Rate for the Federal Government

Federal law requires the federal government to pay a contractor the full amount of a progress payment. Retainage is not used without cause. However, a contracting officer may withhold a percentage of payment based on the officer's assessment of a contractor's past performance and the likelihood such performance will continue. If the officer determines a contractor has not made satisfactory progress, then the officer may retain a maximum of 10 percent of a payment or payments.[29]

Effect of the Bill

The bill reduces the amount that a government entity may retain from a progress payment to a contractor for contracts worth *more than $200,000*:

- *from ten percent,* when less than 50 percent of the project is complete, *and five percent,* when 50 percent or more of the project is complete,
- *to five percent* for the entire project.

The bill reduces the amount that the state may retain from a progress payment to a contractor, for contracts worth $200,000 or less, *from ten percent to five percent.*

The bill reduces the amount that a municipality with a population of 25,000 or less and a county with a population of 100,000 or less may retain from a progress payment to a contractor, for contracts worth more than $200,000, *from ten percent to five percent.*

The bill repeals:

- The ability of a contractor to request the government entity to release up to half of the retained amount after half of the project is completed; and

[23] Bausman *supra* note 4, at 6.
[24] *See* House Analysis of 2005 House Bill 509 (April 22, 2005).
[25] American Subcontractors Association, Inc., *Retainage Law in the 50 States*, https://www.keglerbrown.com/content/uploads/2018/09/Retainage-Law-in-the-50-States-2018.pdf (last visited Nov. 13, 2019).
[26] *Id.*; 62 Pa. Cons. Stat. § 3921(a); Ga. Code Ann. § 13-10-80(b)(2)(A).
[27] *Id.*; N.C. Gen. Stat. § 143-134.1(b1); N.Y. State. Fin. Law § 9-139(f) (New York caps the retainage rate at 5% if the contractor obtains a performance bond); Va. Code Ann. § 2.2-4301 & 4333.
[28] *Id.*; S.C. Code Ann. § 11-35-3030(4).
[29] 48 C.F.R. § 32.103.

- The ability of a contractor to withhold more than five percent of each progress payment to his or her subcontractors after half of a project with a government entity is completed.

The bill specifies that the provisions do not apply to:

- DOT construction contracts authorized under ch. 337, F.S.; and
- Any contract for construction services entered into, pending approval, or advertised by a government entity, on or before October 1, 2020.

B. SECTION DIRECTORY:

Section 1. Amends s. 218.735, F.S., relating to public construction retainage.

Section 2. Amends s. 255.05, F.S., relating to public construction retainage.

Section 3. Amends s. 255.077, F.S., amending a cross-reference.

Section 4. Amends 255.078, F.S., relating to public construction retainage.

Section 5. Provides that the bill does not apply to certain public construction contracts.

Section 6. Provides an effective date of October 1, 2020.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   See Fiscal Comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

See Fiscal Comments.

D. FISCAL COMMENTS:

The bill may result in contractors and subcontractors who provide services in the construction of public projects for the state and local governments receiving more money in progress payments, which could result in more competition for public works projects and lower costs for the state and local governments.

According to DMS, there is no expected financial impact on the state because construction projects under $100,000 would still require the state to retain 5% and DMS will still require contractors to obtain a performance bond for construction projects over $100,000.[30]

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   Not applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditures of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

[30] Florida Department of Management Services, Agency Analysis of 2020 House Bill 101, p. 4 (Oct. 5, 2020).

A bill to be entitled

An act relating to public construction; amending s. 218.735, F.S.; revising the amount of retainage that certain local government entities and contractors may withhold from progress payments for any construction services contract; conforming a provision to changes made by the act; amending s. 255.05, F.S.; revising requirements for Department of Management Services rules governing certain contracts; amending s. 255.077, F.S.; conforming a cross-reference; amending s. 255.078, F.S.; revising the amounts of retainage that certain public entities and contractors may withhold from progress payments for any construction services contract; conforming a provision to changes made by the act; providing applicability; providing an effective date.

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

Section 1. Paragraph (i) of subsection (7) and subsection (8) of section 218.735, Florida Statutes, are amended to read:

218.735 Timely payment for purchases of construction services.—

(7) Each contract for construction services between a local governmental entity and a contractor must provide for the

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

development of a single list of items required to render complete, satisfactory, and acceptable the construction services purchased by the local governmental entity.

(i) If a local governmental entity fails to comply with its responsibilities to develop the list required under paragraph (a) or paragraph (b) within the time limitations provided in paragraph (a), the contractor may submit a payment request for all remaining retainage withheld by the local governmental entity pursuant to this section; and payment of any remaining undisputed contract amount, less any amount withheld pursuant to the contract for incomplete or uncorrected work, must be paid within 20 business days after receipt of a proper invoice or payment request. If the local governmental entity has provided written notice to the contractor specifying the failure of the contractor to meet contract requirements in the development of the list of items to be completed, the local governmental entity need not pay or process any payment request for retainage if the contractor has, in whole or in part, failed to cooperate with the local governmental entity in the development of the list or to perform its contractual responsibilities, if any, with regard to the development of the list or if paragraph (8)(c) ~~(8)(f)~~ applies.

(8)(a) With regard to any contract for construction services, a local governmental entity may withhold from each progress payment made to the contractor an amount not exceeding

5 ~~10~~ percent of the payment as retainage ~~until 50-percent completion of such services~~.

~~(b) After 50-percent completion of the construction services purchased pursuant to the contract, the local governmental entity must reduce to 5 percent the amount of retainage withheld from each subsequent progress payment made to the contractor. For purposes of this subsection, the term "50-percent completion" has the meaning set forth in the contract between the local governmental entity and the contractor or, if not defined in the contract, the point at which the local governmental entity has expended 50 percent of the total cost of the construction services purchased as identified in the contract together with all costs associated with existing change orders and other additions or modifications to the construction services provided for in the contract. However, notwithstanding this subsection, a municipality having a population of 25,000 or fewer, or a county having a population of 100,000 or fewer, may withhold retainage in an amount not exceeding 5 10 percent of each progress payment made to the contractor until final completion and acceptance of the project by the local governmental entity.~~

~~(c) After 50-percent completion of the construction services purchased pursuant to the contract, the contractor may elect to withhold retainage from payments to its subcontractors at a rate higher than 5 percent. The specific amount to be~~

~~withheld must be determined on a case-by-case basis and must be based on the contractor's assessment of the subcontractor's past performance, the likelihood that such performance will continue, and the contractor's ability to rely on other safeguards. The contractor shall notify the subcontractor, in writing, of its determination to withhold more than 5 percent of the progress payment and the reasons for making that determination, and the contractor may not request the release of such retained funds from the local governmental entity.~~

~~(d) After 50-percent completion of the construction services purchased pursuant to the contract, the contractor may present to the local governmental entity a payment request for up to one-half of the retainage held by the local governmental entity. The local governmental entity shall promptly make payment to the contractor, unless the local governmental entity has grounds, pursuant to paragraph (f), for withholding the payment of retainage. If the local governmental entity makes payment of retainage to the contractor under this paragraph which is attributable to the labor, services, or materials supplied by one or more subcontractors or suppliers, the contractor shall timely remit payment of such retainage to those subcontractors and suppliers.~~

(b) ~~(e)~~ This section does not prohibit a local governmental entity from withholding retainage at a rate less than 5 ~~10~~ percent of each progress payment, from incrementally reducing

the rate of retainage pursuant to a schedule provided for in the contract, or from releasing at any point all or a portion of any retainage withheld by the local governmental entity which is attributable to the labor, services, or materials supplied by the contractor or by one or more subcontractors or suppliers. If a local governmental entity makes any payment of retainage to the contractor which is attributable to the labor, services, or materials supplied by one or more subcontractors or suppliers, the contractor must ~~shall~~ timely remit payment of such retainage to those subcontractors and suppliers.

(c) ~~(f)~~ This section does not require the local governmental entity to pay or release any amounts that are the subject of a good faith dispute, the subject of a claim brought pursuant to s. 255.05, or otherwise the subject of a claim or demand by the local governmental entity or contractor.

(d) ~~(g)~~ The time limitations set forth in this section for payment of payment requests apply to any payment request for retainage made pursuant to this section.

(e) ~~(h)~~ Paragraph (a) does ~~Paragraphs (a)-(d) do~~ not apply to construction services purchased by a local governmental entity which are paid for, in whole or in part, with federal funds and are subject to federal grantor laws and regulations or requirements that are contrary to any provision of the Local Government Prompt Payment Act.

(f) ~~(i)~~ This subsection does not apply to any construction

services purchased by a local governmental entity if the total cost of the construction services purchased as identified in the contract is $200,000 or less.

Section 2. Paragraph (f) of subsection (1) of section 255.05, Florida Statutes, is amended to read:

255.05 Bond of contractor constructing public buildings; form; action by claimants.—

(1) A person entering into a formal contract with the state or any county, city, or political subdivision thereof, or other public authority or private entity, for the construction of a public building, for the prosecution and completion of a public work, or for repairs upon a public building or public work shall be required, before commencing the work or before recommencing the work after a default or abandonment, to execute and record in the public records of the county where the improvement is located, a payment and performance bond with a surety insurer authorized to do business in this state as surety. A public entity may not require a contractor to secure a surety bond under this section from a specific agent or bonding company.

(f) The Department of Management Services shall adopt rules with respect to all contracts for $200,000 or less, to provide:

1. Procedures for retaining up to 5 ~~10~~ percent of each request for payment submitted by a contractor and procedures for

determining disbursements from the amount retained on a pro rata basis to laborers, materialmen, and subcontractors, as defined in s. 713.01.

2. Procedures for requiring certification from laborers, materialmen, and subcontractors, as defined in s. 713.01, before final payment to the contractor that such laborers, materialmen, and subcontractors have no claims against the contractor resulting from the completion of the work provided for in the contract.

The state is not liable to any laborer, materialman, or subcontractor for any amounts greater than the pro rata share as determined under this section.

Section 3. Subsection (8) of section 255.077, Florida Statutes, is amended to read:

255.077 Project closeout and payment of retainage.—

(8) If a public entity fails to comply with its responsibilities to develop the list required under subsection (1) or subsection (2), as defined in the contract, within the time limitations provided in subsection (1), the contractor may submit a payment request for all remaining retainage withheld by the public entity pursuant to s. 255.078. The public entity need not pay or process any payment request for retainage if the contractor has, in whole or in part, failed to cooperate with the public entity in the development of the list or failed to

perform its contractual responsibilities, if any, with regard to the development of the list or if s. 255.078(3) ~~s. 255.078(6)~~ applies.

Section 4. Section 255.078, Florida Statutes, is amended, to read:

255.078 Public construction retainage.—

(1) With regard to any contract for construction services, a public entity may withhold from each progress payment made to the contractor an amount not exceeding 5 ~~10~~ percent of the payment as retainage ~~until 50-percent completion of such services~~.

~~(2) After 50-percent completion of the construction services purchased pursuant to the contract, the public entity must reduce to 5 percent the amount of retainage withheld from each subsequent progress payment made to the contractor. For purposes of this section, the term "50-percent completion" has the meaning set forth in the contract between the public entity and the contractor or, if not defined in the contract, the point at which the public entity has expended 50 percent of the total cost of the construction services purchased as identified in the contract together with all costs associated with existing change orders and other additions or modifications to the construction services provided for in the contract.~~

~~(3) After 50-percent completion of the construction services purchased pursuant to the contract, the contractor may~~

~~elect to withhold retainage from payments to its subcontractors at a rate higher than 5 percent. The specific amount to be withheld must be determined on a case-by-case basis and must be based on the contractor's assessment of the subcontractor's past performance, the likelihood that such performance will continue, and the contractor's ability to rely on other safeguards. The contractor shall notify the subcontractor, in writing, of its determination to withhold more than 5 percent of the progress payment and the reasons for making that determination, and the contractor may not request the release of such retained funds from the public entity.~~

~~(4) After 50-percent completion of the construction services purchased pursuant to the contract, the contractor may present to the public entity a payment request for up to one-half of the retainage held by the public entity. The public entity shall promptly make payment to the contractor, unless the public entity has grounds, pursuant to subsection (6), for withholding the payment of retainage. If the public entity makes payment of retainage to the contractor under this subsection which is attributable to the labor, services, or materials supplied by one or more subcontractors or suppliers, the contractor shall timely remit payment of such retainage to those subcontractors and suppliers.~~

(2)~~(5)~~ ~~Neither~~ This section and ~~nor~~ s. 255.077 do not prohibit ~~prohibits~~ a public entity from withholding retainage at

a rate less than 5 ~~10~~ percent of each progress payment, from incrementally reducing the rate of retainage pursuant to a schedule provided for in the contract, or from releasing at any point all or a portion of any retainage withheld by the public entity which is attributable to the labor, services, or materials supplied by the contractor or by one or more subcontractors or suppliers. If a public entity makes any payment of retainage to the contractor which is attributable to the labor, services, or materials supplied by one or more subcontractors or suppliers, the contractor must ~~shall~~ timely remit payment of such retainage to those subcontractors and suppliers.

(3)~~(6)~~ ~~Neither~~ This section and ~~nor~~ s. 255.077 do not require ~~requires~~ the public entity to pay or release any amounts that are the subject of a good faith dispute, the subject of a claim brought pursuant to s. 255.05, or otherwise the subject of a claim or demand by the public entity or contractor.

(4)~~(7)~~ The same time limits for payment of a payment request apply regardless of whether the payment request is for, or includes, retainage.

(5)~~(8)~~ Subsection (1) does ~~Subsections (1)-(4) do~~ not apply to construction services purchased by a public entity which are paid for, in whole or in part, with federal funds and are subject to federal grantor laws and regulations or requirements that are contrary to any provision of the Florida

Prompt Payment Act.

(6)~~(9)~~ This section does not apply to any construction services purchased by a public entity if the total cost of the construction services purchased as identified in the contract is $200,000 or less.

Section 5. (1) This act does not apply to any contract for construction services which is entered into or is pending approval by a public entity, as defined in s. 255.072, Florida Statutes, or by a local governmental entity, as defined in s. 218.72, Florida Statutes, or to any construction services project advertised for bid by the public entity or local governmental entity, on or before October 1, 2020.

(2) The amendments made to ss. 255.05 and 255.078, Florida Statutes, by this act do not apply to contracts executed under chapter 337, Florida Statutes.

Section 6. This act shall take effect October 1, 2020.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 115 Keep Our Graduates Working Act
SPONSOR(S): Health Quality Subcommittee, Business & Professions Subcommittee, Duran
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 356

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Business & Professions Subcommittee	12 Y, 0 N, As CS	Wright	Anstead
2) Health Quality Subcommittee	11 Y, 0 N, As CS	Morris	McElroy
3) Commerce Committee		Wright	Hamon

SUMMARY ANALYSIS

Currently, the Florida Department of Health (DOH) is authorized to discipline a health care practitioner's license for failing to repay a government-backed student loan. Every month, DOH must obtain a list of Florida health care practitioners who have defaulted on their government-backed student loans from the United States Department of Health and Human Services (USHHS). Upon learning that a health care practitioner has defaulted on such a loan, DOH must notify the practitioner that he or she has 45 days to provide DOH with proof of a new repayment plan, or DOH will issue an emergency order suspending the practitioner's license.

If DOH makes a finding in a disciplinary case that a health care practitioner has defaulted on student a loan, DOH, at a minimum, must take the following disciplinary action:

- Suspend the practitioner's license until he or she agrees to new payment terms;
- Place the licensee on probation for the duration of the student loan period; and
- Impose a fine equal to 10 percent of the defaulted loan amount.

The bill:

- Prohibits any state authority, including DOH, from denying the issuance of, suspending, or revoking a professional license based solely on the licensee being delinquent on a payment of or defaulting on his or her student loans;
- Removes the specific provision allowing DOH to discipline a health care practitioner for failing to repay a student loan and the associated mandatory discipline;
- Repeals the requirement that DOH must issue an emergency order suspending a health care practitioner's license for a student loan default, absent timely proof of a new repayment plan; and
- Repeals the requirement that DOH must obtain a monthly list from the USHHS of the health care practitioners who have defaulted on their student loans.

The bill has an indeterminate fiscal impact on state government. The bill is not expected to have a fiscal impact on local governments.

The bill provides for an effective date of July 1, 2020.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Student Loans

Student loans are funds that are lent to students or parents to pay for higher education. Student loans may come from private sources, such as banks or other financial institutions, or from a state or the federal government.[1]

The Office of Student Financial Assistance (OSFA) within the Florida Department of Education (DOE) is responsible for administering state and federally funded programs and serves as the guarantor agency for certain federally-backed student loans.[2] The DOE is directed to exert every lawful and reasonable effort to collect all delinquent unpaid and uncanceled student loans.[3]

Increase in Defaults on Student Loans

An estimated 41.5 million Americans owe more than $1.2 trillion in outstanding federal loan debt. This is more than triple the $340 billion in student loan debt owed by Americans in 2001.[4] With this increase in student loan debt owed by Americans, there has been an increase in the number of people who are defaulting on or failing to pay their student loans. For most federal loans, default generally occurs when a payment has not been made for 270 days.[5] In 2018, 41,013 borrowers who attended Florida schools ranging from universities to trade schools had defaulted on their federal student loans used to attend institutions.[6]

Professional Licenses

An occupational or professional license is a form of regulation that requires individuals who want to perform certain types of work, such as contractors and cosmetologists, to obtain permission from the government to perform the work.[7] Generally, an individual obtains such permission by demonstrating that they have the designated knowledge, skills, and abilities to perform the work by meeting pre-determined criteria established by the government, such as work experience and examinations. If the individual successfully completes the pre-determined criteria, the government issues the individual a license, which allows them to perform the work.[8]

---

[1] Consumer Financal Protection Bureau, *Student Loans: Choosing a loan that's right for you*, https://www.consumerfinance.gov/paying-for-college/choose-a-student-loan/#o1 (last visited Dec. 4, 2019).
[2] Office of Student Financial Assistance, *Mission Statement*, http://www.floridastudentfinancialaid.org/FFELP/mission_statement/mission_statement_052606.html (last visited on Nov. 26, 2019).
[3] S. 1009.95, F.S.
[4] Laura Feiveson, Alvaro Mezza, and Kamila Sommer, *Student Loan Debt and Aggregate Consumption Growth*, Board of Governors of the Federal Reserve System, (February 21, 2018), https://www.federalreserve.gov/econres/notes/feds-notes/student-loan-debt-and-aggregate-consumption-growth-20180221.htm (last visited on Nov. 26, 2019).
[5] United States Department of Education, Federal Student Aid, *Glossary, Default,* https://studentaid.ed.gov/sa/glossary#letter_d (last visited Nov. 26, 2019).
[6] Florida Business Daily, *41,013 borrowers in default on student loans after attending Florida schools,* May 17, 2018, https://flbusinessdaily.com/stories/511416784-41-013-borrowers-in-default-on-student-loans-after-attending-florida-schools (last visited Nov. 26, 2019).
[7] The White House, *Occupational Licensing: A Framework for Policymakers*, 6 (July 2015) https://obamawhitehouse.archives.gov/sites/default/files/docs/licensing_report_final_nonembargo.pdf (last visited on Dec. 30, 2019).
[8] Bureau of Labor Statistics, *Frequently asked questions about data on certifications and licenses*, https://www.bls.gov/cps/certifications-and-licenses-faqs.htm, (last visited on Nov. 26, 2019).

Approximately one-quarter of workers nationwide require a license to practice their profession, and an estimated 28.7 percent of the Florida workforce requires a license from the state.[9]

Disciplining Professional Licenses for Defaulting on Student Loans

In the 1990s, as a result of a rising number of students defaulting on their federally-backed student loans, the federal government urged state legislators to send a message to students, postsecondary institutions, and lenders that high levels of default would not be tolerated. The federal government recommended that states take the following steps to curb student loan default:[10]

- Enact a state tax-refund offset program;
- Enact a wage garnishment program;
- Deny professional licenses to defaulters until they take steps towards repayment;
- Screen potential applicants for state jobs to prevent the hiring of loan defaulters who have not entered into repayment agreements; and
- Ensure that information available to state agencies such as the Department of Motor Vehicles, the tax department, and the unemployment commission is available to the state's guarantee agency.

As a result, many states, including Florida, began adopting various forms of disciplinary licensing laws for defaulting on government-backed student loans. By 2010, about half of the states had some form of disciplinary licensing laws for defaulting on government-backed student loans. Since then, based on shifting concerns, there has been a trend to reduce or eliminate such laws. Currently, approximately 15 states, including Florida, still have some form of such laws.[11]

Proponents of such disciplinary licensing laws argue that:

- The threat of losing a professional license is powerful tool to ensure borrowers stay current on their student loans, and as a result, these laws reduce the number borrowers who default;
- It is in the taxpayers' interest to ensure borrowers are repaying their government-backed student loans because the state or federal government foots the bill if borrowers default; and
- Disciplinary licensing laws do not require people who have defaulted on their student loans to repay their loans to prevent their licenses from being suspended, only that they enter into a new repayment plan.[12]

Opponents of such disciplinary licensing laws argue that states are using their licensing authority as a punitive debt collection tool, and that the purpose of licensing laws is to protect the health and safety of the public, not to operate as defacto debt collectors.[13] Opponents also argue that "if people are unable to work in their chosen field – the one they went to school for and presumably took out loans to fund – how can they be expected to pay their debt?"[14]

Federal Attempts to Prohibit State Disciplinary Licensing Laws

Recently, there have been attempts at the national level to prohibit state disciplinary licensing laws for defaulting on government-backed student loans. Bills were introduced in the United States Congress in

---

[9] White House, *supra* note 7, at 3.
[10] Mary Farrell, *Reducing Student Loan Defaults: A Plan for Action*, Department of Education at 63 (March 21, 1991) https://files.eric.ed.gov/fulltext/ED323879.pdf (last visited Nov. 26, 2019).
[11] Andrew Wagner, *Licensing Suspension for Student Loan Forgiveness*, NCSL (Oct. 1, 2018) http://www.ncsl.org/research/labor-and-employment/license-suspension-for-student-loan-defaulters.aspx (last visited Nov. 26, 2019).
[12] Jessica Silver-Greenberg, Stacey Cowley, & Natalie Kitroeff, *When Unpaid Student Loan Bills Mean You Can No Longer Work*, The New York Times (Nov. 18, 2017) https://www.nytimes.com/2017/11/18/business/student-loans-licenses.html?_r=0 (last visited on Nov. 26, 2019).
[13] *Id.*
[14] Courtney Nagle, *Student Loan Debt Could Affect Your Job in 13 States*, U.S. News, https://www.usnews.com/education/blogs/student-loan-ranger/articles/2019-04-10/these-states-could-revoke-your-professional-license-over-student-loan-debt (last visited Jan. 10, 2020).

2018 and 2019 that would prohibit states from disciplining or denying state issued licenses for defaulting on government-backed student loans, but they did not pass.[15]

Health Care Practitioner Licensing

The Division of Medical Quality Assurance (MQA) within the Florida Department of Health (DOH) is responsible for the licensing and regulation of health care practitioners in the state. The MQA works in conjunction with 22 boards and four councils to license and regulate seven types of health care facilities and more than 200 license types in over 40 health care professions. Each profession is regulated by an individual practice act and by ch. 456, F.S., which provides general regulatory and licensure authority for the MQA.[16] The MQA regulates the following profession categories:[17]

- Acupuncturists;
- Athletic Trainers;
- Chiropractors;
- Clinical Laboratory Personnel;
- Clinical Social Workers, Marriage and Family Counselors, and Mental Health Counselors;
- Dentists;
- Hearing Aid Specialists;
- Massage Therapists;
- Medical Doctors;
- Nurses;
- Nursing Home Administrators;
- Occupational Therapists;
- Opticians;
- Optometrists;
- Orthotists and Prosthetists;
- Osteopathic Doctors;
- Pharmacists;
- Physical Therapists;
- Podiatrists;
- Psychologists;
- Respiratory Care Practitioners;
- Speech-Language Pathologists and Audiologists;
- Dietetics and Nutrition Practitioners;
- Electrologists;
- Licensed Midwifes;
- Physician Assistants;
- Certified Master Social Workers;
- Emergency Medical Technicians;
- Medical Physicists;
- Paramedics;
- Radiologic Technicians; and
- School Psychologists.

[15] Protecting JOBs Act, S.3065, 115th Congress (2017-2018); Protecting JOBs Act, H.R.6156 115th Congress (2017-2018); Protecting JOBs Act, S.609, 116th Congress (2019-2020).
[16] S. 456.001(4), F.S; Florida Department of Health, Division of Medical Quality Assurance, *Annual Report and Long-Range Plan, Fiscal Year 2018-2019*, 6, http://www.floridahealth.gov/licensing-and-regulation/reports-and-publications/_documents/annual-report-1819.pdf (last visited on Nov. 26, 2019).
[17] *Id.* at 7.

DOH Disciplinary Licensing Laws

In 2002, Florida passed a law allowing DOH to discipline a health care practitioner's license for defaulting on a government-backed student loan. The law was founded on the United States Department of Health and Human Services (USHHS) report that there were 9,454 health care practitioners in the nation who defaulted on their student loans, 556 of them being in Florida. Those loan defaults were costing taxpayers over $694 million, of which $45.6 million was attributable to Florida health care practitioners.[18]

Every month, DOH must obtain a list from the United States Department of Health and Human Services (USHHS) through DOE as it relates to Florida licensed health care practitioners who have defaulted on government-backed student loans.[19] Upon learning that a health care practitioner has defaulted on such a student loan, DOH must notify the practitioner that he or she has 45 days to provide DOH with proof of a new repayment plan, or such practitioner will be subject to an emergency order suspending the practitioner's license. Also, DOH may proceed with additional disciplinary action against the practitioner, regardless if he or she provides proof of entering a new repayment plan.[20]

Section 456.072(1)(k), F.S., provides that DOH may discipline a health care practitioner for failing to perform any statutory or legal obligation placed upon a health care practitioner, which specifically includes failing to repay a government-backed student loan or comply with a service scholarship obligation. If DOH finds that a health care practitioner has defaulted on his or her student loans or failed to comply with a service scholarship, at a minimum, DOH must:[21]

- Suspend the practitioner's license until he or she agrees to new loan repayment terms or resumes the scholarship obligation;
- Place the practitioner on probation for the duration of the student loan or scholarship obligation period; and
- Impose a fine equal to 10 percent of the defaulted loan amount.

During the 2017-2018 Fiscal Year, DOH handled 247 cases against health care practitioners for defaulting on student loans, and during the 2018-2019 Fiscal Year, DOH handled 722 cases.[22]

Mediated	88	332
Dismissed	27	75
Discipline Imposed	23	36
No Probable Cause Found	9	41
Licensee is No Longer Licensed	54	55
Licensee is Deceased	3	2
Still Open	43	160
Complaint Withdrawn by DOE	0	21

Department of Business and Professional Regulation

The Department of Business and Professional Regulation (DBPR), through several divisions, regulates and licenses various businesses and professionals in Florida. DBPR has authority over licensees under the following professional boards and programs:[23]

[18] Ch. 2002-254, Laws of Fla.
[19] S. 456.072(1), F.S.
[20] S. 456.074(4), F.S.
[21] S. 456.072(1)(k), F.S.
[22] Gary Landry, Office of Legislative Planning, Department of Health, Student Loan information as promised (Oct. 30, 2019).
[23] S. 20.165, F.S.

- Board of Architecture and Interior Design;
- Board of Auctioneers;
- Barbers' Board;
- Building Code Administrators and Inspectors Board;
- Construction Industry Licensing Board;
- Board of Cosmetology;
- Electrical Contractors' Licensing Board;
- Board of Employee Leasing Companies;
- Board of Landscape Architecture;
- Board of Pilot Commissioners;
- Board of Professional Geologists;
- Board of Veterinary Medicine;
- Home inspection services licensing program;
- Mold-related services licensing program;
- Florida Board of Professional Engineers;
- Board of Accountancy;
- Florida Real Estate Commission; and
- Florida Real Estate Appraisal Board.

DBPR licenses and regulates each of the above professions in accordance with that profession's practice act, and ch. 455, F.S., which provides general regulatory and licensure authority for DBPR.[24]

Section 455.227, F.S., provides that DBPR may discipline a licensee for failing to perform any statutory or legal obligation placed upon a licensee. However, 455.227, F.S., does not specifically state that DBPR may discipline a licensee for defaulting on a student loan. According to DBPR, they have never disciplined a licensee for defaulting on a student loan.[25]

Department of Agriculture and Consumer Services

In addition to regulating agriculture in Florida, the Department of Agriculture and Consumer Services (DACS) protects consumers from unfair and deceptive business practices and provides consumer information.[26] DACS achieves this, in part, through licensing and registering various professionals, including:

- Professional Surveyors and Mappers;
- Private Investigative, Private Security, and Repossession Services;
- Health Studios;
- Telemarketing Services;
- Intrastate Movers and Brokers;
- Sellers of Liquefied Petroleum Gas;
- Pawnbrokers;
- Motor Vehicle Repair Shops; and
- Sellers of Travel.

DACS licenses and regulates each of the above professionals in accordance with that profession's practice act. According to DACS, they do not have authority to discipline a licensee for defaulting on student loans.[27]

---

[24] *Id.*
[25] Colton Madill, Office of Legislative Affairs, Department of Business and Professional Regulation, RE: HB 115 (Oct. 30, 2019).
[26] S. 20.14(2), F.S.
[27] Florida Department of Agriculture and Consumer Services, Agency Analysis of 2020 House Bill 115, p. 2 (Sept. 9, 2019).

Department of Financial Services

The Department of Financial Services (DFS) is the state agency responsible for regulation and licensure of professions related to insurance, fire safety, and funeral and cemetery services.[28]

According to DFS, they do not consider the status of student loans when issuing or regulating licenses, and do not believe they have statutory authority to deny or discipline a license for defaulting on a government issued student loan.[29]

Effect of the Bill

The bill provides definitions for the following terms as they relate to a broad prohibition on licensing discipline for student loans defaults:

- "Default" means the failure to repay a student loan according to the terms agreed to in the promissory note.
- "Delinquency" means the failure to make a student loan payment when it is due.
- "License" means any professional license, certificate, registration, or permit granted by the applicable state authority.
- "State authority" means any department, board, or agency with the authority to grant a license to any person in this state.
- "Student loan" means a federal-guaranteed or state-guaranteed loan for the purposes of postsecondary education.

The bill prohibits any state authority from denying the issuance of, suspending, or revoking a license that it issued to a person who is in default on or delinquent in the payment of his or her student loans based solely on such default or delinquency. The bill requires DOE to comply with this provision when making an effort to collect on student loans.

The bill, related only to health care practitioners:

- Specifically states that failing to repay a government-backed student loan is not a basis for DOH finding that a health care practitioner has committed a punishable offense by failing to perform a statutory or legal obligation placed on the licensee;
- Removes the specific provision allowing DOH to discipline a health care practitioner for failing to comply with a scholarship obligation and the associated mandatory disciplinary action;
- Repeals the requirement that DOH must issue an emergency order suspending a health care practitioner's license for a student loan default absent timely proof of a new repayment plan; and
- Repeals the requirement that DOH must obtain a monthly list from the USHHS of the Florida health care practitioners who have defaulted on their student loans.

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

B. SECTION DIRECTORY:

Section 1 Creates s. 120.82, F.S., prohibiting a state authority from disciplining a professional license in certain situations.

Section 2 Amends s. 456.072, F.S., prohibiting DOH from disciplining a health care practitioner's license in certain situations.

Section 3 Repeals s. 456.0721, F.S., relating to an obligation to receive a report of practitioners in default of student loans.

[28] Chs. 497, 626, 633, and 648, F.S.

[29] Email from Greg Thomas, Director of Insurance Agent & Agency Services, Department of Financial Services, Student Loan Default and DFS Agent and Agency Licensing, (Mar. 18, 2019).

Section 4 Amends s. 456.074, F.S., relating to DOH's ability to immediately suspend a health care practitioner's license in certain situations.

Section 5 Amends s. 1009.95, F.S., requiring DOE to comply s. 120.82, F.S.

Section 6 Provides an effective date of July 1, 2020.

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:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Health care practitioners will no longer be subject to suspension, revocation, or emergency suspension orders solely for defaulting on their student loans, which may allow them to obtain or maintain gainful employment.

D. FISCAL COMMENTS:

According to DOH, they will experience a recurring decrease in revenue due to the loss of the mandated 10% fine imposed on student loan default cases. However, DOH will experience a recurring reduction in workload and cost due to fewer investigations and prosecutions. Additionally, the Compliance Management Unit will no longer have to track licensees on probation due to discipline imposed by a board.[30]

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   None.

2. Other:

   None.

[30] Department of Health, Agency Analysis of 2020 House Bill 115, p. 4 (Oct. 11, 2019).

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On November 6, 2019, the Business & Professions Subcommittee adopted a strike-all amendment and reported the bill favorably as a committee substitute. The amendment:

- Moves a provision in the bill to the Administrative Procedure Act;
- Clarifies the general purpose contained in the bill; and
- Conforms a cross-reference.

On December 11, 2019, the Health Quality Subcommittee adopted an amendment and reported the bill favorably as a committee substitute. The amendment prohibits a state authority from denying an individual a professional license based solely upon the individual being delinquent or defaulting on their student loan.

This analysis is drafted to the committee substitute as passed by the Health Quality Subcommittee.

A bill to be entitled

An act relating to Keep Our Graduates Working Act; creating s. 120.82, F.S.; providing a short title; providing a purpose; providing definitions; prohibiting a state authority from denying a license or suspending or revoking a license on the basis of a delinquency or default in the payment of his or her student loan; amending s. 456.072, F.S.; conforming provisions to changes made by the act; repealing s. 456.0721, F.S., relating to health care practitioners in default on student loan or scholarship obligations; amending ss. 456.074 and 1009.95, F.S.; conforming provisions to changes made by the act; providing an effective date.

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

Section 1. Section 120.82, Florida Statutes, is created to read:

120.82 Keep Our Graduates Working Act.—

(1) SHORT TITLE.—This section may be cited as the "Keep Our Graduates Working Act of 2020."

(2) PURPOSE.—The purpose of this act is to ensure that Floridians who graduate from an accredited college or university can maintain their occupational licenses, as defined in

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

subsection (3), and remain in the workforce while they attempt to pay off their student loan debt.

(3) DEFINITIONS.—As used in this section, the term:

(a) "Default" means the failure to repay a student loan according to the terms agreed to in the promissory note.

(b) "Delinquency" means the failure to make a student loan payment when it is due.

(c) "License" means any professional license, certificate, registration, or permit granted by the applicable state authority.

(d) "State authority" means any department, board, or agency with the authority to grant a license to any person in this state.

(e) "Student loan" means a federal-guaranteed or state-guaranteed loan for the purposes of postsecondary education.

(4) STUDENT LOAN DEFAULT; DELINQUENCY.—A state authority may not deny a license or suspend or revoke a license that it has issued to a person who is in default on or delinquent in the payment of his or her student loans solely on the basis of such default or delinquency.

Section 2. Paragraph (k) of subsection (1) of section 456.072, Florida Statutes, is amended to read:

456.072 Grounds for discipline; penalties; enforcement.—

(1) The following acts shall constitute grounds for which the disciplinary actions specified in subsection (2) may be

taken:

(k) Failing to perform any statutory or legal obligation placed upon a licensee. For purposes of this section, failing to repay a student loan issued or guaranteed by the state or the Federal Government in accordance with the terms of the loan is not ~~or failing to comply with service scholarship obligations shall be~~ considered a failure to perform a statutory or legal obligation~~, and the minimum disciplinary action imposed shall be a suspension of the license until new payment terms are agreed upon or the scholarship obligation is resumed, followed by probation for the duration of the student loan or remaining scholarship obligation period, and a fine equal to 10 percent of the defaulted loan amount~~. Fines collected shall be deposited into the Medical Quality Assurance Trust Fund.

Section 3. Section 456.0721, Florida Statutes, is repealed.

Section 4. Subsection (4) of section 456.074, Florida Statutes, is amended to read:

456.074 Certain health care practitioners; immediate suspension of license.—

~~(4) Upon receipt of information that a Florida-licensed health care practitioner has defaulted on a student loan issued or guaranteed by the state or the Federal Government, the department shall notify the licensee by certified mail that he or she shall be subject to immediate suspension of license~~

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

~~unless, within 45 days after the date of mailing, the licensee provides proof that new payment terms have been agreed upon by all parties to the loan. The department shall issue an emergency order suspending the license of any licensee who, after 45 days following the date of mailing from the department, has failed to provide such proof. Production of such proof shall not prohibit the department from proceeding with disciplinary action against the licensee pursuant to s. 456.073.~~

Section 5. Subsection (1) of s. 1009.95, Florida Statutes, is amended to read:

1009.95 Delinquent accounts.—

(1) The Department of Education is directed to exert every lawful and reasonable effort to collect all delinquent unpaid and uncanceled scholarship loan notes, student loan notes, and defaulted guaranteed loan notes; however, in all such efforts, the department shall comply with s. 120.82.

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

COMMERCE COMMITTEE

HB 115 by Rep. Duran
Keep Our Graduates Working Act

AMENDMENT SUMMARY
January 16, 2020

Amendment 1 by Rep. Duran (Line 42):

The amendment:

- adds "refuse to renew a license" to the list of actions prohibited by state licensing authorities, and
- clarifies that the bill's provisions apply when a health practitioner is on the U.S. Department of Health and Human Services' List of Excluded Individuals and Entities solely for a delinquency or default on a student loan.

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION	
ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

Committee/Subcommittee hearing bill: Commerce Committee
Representative Duran offered the following:

Amendment

Remove lines 42-45 and insert:

may not deny a license, refuse to renew a license, or suspend or revoke a license that it has issued to a person who is in default on or delinquent in the payment of his or her student loans solely on the basis of such default or delinquency.

Section 2. Paragraph (e) of subsection 2 and paragraph (e) of subsection (3) of section 456.0635, Florida Statutes, are amended to read:

(2) Each board within the jurisdiction of the department, or the department if there is no board, shall refuse to admit a candidate to any examination and refuse to issue a license, certificate, or registration to any applicant if the candidate

or applicant or any principal, officer, agent, managing employee, or affiliated person of the candidate or applicant:

(e) Is currently listed on the United States Department of Health and Human Services Office of Inspector General's List of Excluded Individuals and Entities, except when such applicant is listed solely based on a default or delinquency on a student loan as provided in s. 120.82.

This subsection does not apply to an applicant for initial licensure, certification, or registration who was arrested or charged with a felony specified in paragraph (a) or paragraph (b) before July 1, 2009.

(3) The department shall refuse to renew a license, certificate, or registration of any applicant if the applicant or any principal, officer, agent, managing employee, or affiliated person of the applicant:

(e) Is currently listed on the United States Department of Health and Human Services Office of Inspector General's List of Excluded Individuals and Entities, except when such applicant is listed solely based on a default or delinquency on a student loan as provided in s. 120.82.

This subsection does not apply to an applicant for renewal of licensure, certification, or registration who was arrested or

charged with a felony specified in paragraph (a) or paragraph (b) before July 1, 2009.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 269 Loss Run Statements
SPONSOR(S): Insurance & Banking Subcommittee, Insurance & Banking Subcommittee; Perez
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 292

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee	14 Y, 0 N, As CS	Fortenberry	Cooper
2) Commerce Committee		Fortenberry	Hamon

SUMMARY ANALYSIS

A loss run statement is a report from an insurer that shows how many claims a specific insured has filed under that insured's policy during a particular period of time. It may be provided to a prospective insurer when an insured is shopping for a new insurance policy so that the prospective insurer can determine whether to write a policy for the prospective insured and what premium to charge for that policy. Loss run statements typically contain claims history for three to five years.

While insureds may request loss run statements for any line of insurance, insureds seeking new general commercial line policies often request these statement to shop for new insurance. Some insurers have existing loss runs systems that allow their insureds to log into a portal and to obtain their own detailed reports on claims. However, other insurers, may provide insureds with loss run statements that they have created upon request or direct the insureds to obtain such statements from their agents of record.

Often, personal lines loss history can be obtained from public sources, but these publicly available reports may not be completely accurate. Additionally, commercial and health insurance data are not readily available from public sources. While insurers routinely provide loss run information to insureds, Florida has no existing statutory framework regarding when or how insurers must provide this information to insureds. Approximately 11 other states currently have statutory requirements for insurers providing loss run statements to insureds.

The bill establishes a statutory framework for an insurance practice that routinely occurs. The bill defines "loss run statement" as a report that contains the policy number, the period of coverage, the number of claims, the paid losses on all claims, and the date of each loss. The bill defines "provide" as electronically sending a document, or allowing access through an electronic portal to review or generate a document. It also specifies what is not included in a loss run statement.

The bill provides that, for all lines of insurance, an insurer shall provide a loss run statement to an insured within 15 calendar days after receipt of a written request. The loss run statement provided must be a five-year loss run history for five continuous years before the year in which the insured makes the request, or the complete loss run history if it is less than five years. The bill requires that the insurer notify the insured's agent of record that it provided the loss run statement to the insured at the time that the insurer provided it. The bill also prohibits an insurer from charging an insured for the first loss run statement that an insured requests each year. The bill imposes identical requirements to provide loss run statements to insureds whether the insurers are authorized insurers, eligible surplus lines insurers, or unauthorized insurers permitted to issue policies.

The bill has no impact on state or local government revenues and expenditures. It also may have a positive direct economic impact on the private sector.

This bill has an effective date of January 1, 2021.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

A loss run statement[1] is a report from an insurer that shows how many claims a specific insured has filed under that insured's policy during a particular period of time.[2] This report can be provided to a prospective insurer when an insured is shopping for a new insurance policy.[3] The prospective insurer can use the loss run statement to review the types, frequency, and dollar value of prior claims in order to determine whether to write a policy for the prospective insured and what premium to charge for that policy.[4] Prospective insurers often want to review loss run statements showing a loss run history from three to five years to make decisions about writing insurance policies.[5]

While insureds may request loss run statements for any line of insurance, insureds seeking new general liability, business owner's, commercial property, commercial auto insurance, or workers' compensation insurance, often request them to shop for new insurance[6] upon cancelation or nonrenewal of a policy by an insurer or when the insured chooses to shop for new insurance at the time a policy is up for renewal. Some insurers, especially those providing commercial lines coverage or workers' compensation insurance, have existing loss runs systems that allow their insureds to log into a portal and to obtain their own detailed reports on claims.[7] However, other insurers, in these and other lines of insurance, may provide insureds with loss run statements that they have created upon request or direct the insureds to obtain such statements from their agents of record.

Often, personal lines loss history can be obtained from public sources. A Comprehensive Loss Underwriting Exchange, or CLUE, report is a claims report generated by the consumer-reporting agency, LexisNexis.[8] A CLUE report contains claims information reported by insurers for all personal auto and personal property claims in which they pay money, set up a file for a possible claim, or deny a claim.[9] Yet, CLUE reports and other publicly available reports, may not be completely accurate.[10] Additionally, commercial and health insurance data are not readily available from public sources.

While insurers routinely provide loss run information to insureds, Florida has no existing statutory framework regarding when or how insurers much provide this information to insureds. Approximately 11 other states currently have statutory requirements for insurers providing loss run statements to insureds.[11]

---

[1] Loss run statements are also referred to as loss runs or loss run reports.
[2] Insureon, https://www.insureon.com/insurance-glossary/loss-runs (last visited Oct. 31, 2019).
[3] *Id.*
[4] *Id.*
[5] *Id.*
[6] *Id.*
[7] *See, e.g.,* MSIG Loss Runs, https://www.msigusa.com/loss-runs/ and StarStone, http://myaccount.starstoneworkcomp.com/index.htm (last visited Oct. 31, 2019).
[8] Office of the Insurance Commissioner Washington State, https://www.insurance.wa.gov/clue-comprehensive-loss-underwriting-exchange (last visited Oct. 31, 2019).
[9] *Id.*
[10] Information reported by Florida Association of Insurance Agents, which is a nonprofit trade association and a proponent of this bill.
[11] *See, e.g.*, Okla. Stat. Ann. 36, §1204.1, which provides that loss runs or claims history must be made available within 30 days of a written request, and Ky. Rev. Stat. Ann. §304.20-100, which provides that a five-year loss run history must be made available within 20 days following a written request.

Effect of the Bill

The bill establishes a statutory framework for a practice that routinely occurs in the insurance industry. The bill defines "loss run statement" as a report that contains the policy number, the period of coverage, the number of claims, the paid losses on all claims, and the date of each loss. This definition also specifies that "loss run statement" does not include supporting claim file documentation, such as copies of claim files, investigation reports, evaluation statements, insureds' statements, and documents protected by common law or statutory privilege. The bill defines "provide" as electronically sending a document, or allowing access through an electronic portal to review or generate a document.

The bill provides that, for all lines of insurance, an insurer shall provide a loss run statement to an insured within 15 calendar days after receipt of a written request from that insured, but is not required to provide it more frequently than once per policy period. The loss run statement that the insurer provides must be a five-year loss run history for five continuous years before the year in which the insured makes the request, or the complete loss run history if it is less than five years. The bill requires that the insurer notify the insured's agent of record that it provided the loss run statement to the insured at the time that the insurer provided it. The bill establishes that no insurer shall be required to provide loss reserve information as part of a loss run statement. The bill also prohibits an insurer from charging an insured for the first loss run statement that an insured requests annually.

The bill imposes identical requirements on insurers to provide loss run statements to insureds regardless of whether the insurers are authorized insurers[12], eligible surplus lines insurers[13], or unauthorized insurers permitted by the Florida Office of Insurance Regulation (OIR) to issue policies under certain circumstances[14].

B. SECTION DIRECTORY:

Section 1. Creates s. 626.9202, F.S., relating to loss run statements for all lines of insurance.

Section 2. Creates s. 627.0622, F.S., relating to loss run statements for all lines of insurance.

Section 3. Provides an effective date of January 1, 2021.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

[12] An authorized insurer is one authorized by a certificate of authority issued by OIR to transact insurance business in Florida. S. 624.09, F.S.

[13] Chapter 626, part VIII, F.S., sets forth the criteria under which surplus lines carriers may write insurance policies in Florida.

[14] Section 626.918(5) and (6), F.S., establishes the circumstances under which an otherwise unauthorized insurer may issue an insurance policy in Florida.

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Because most insurers likely already provide loss run statements to insureds upon request or via an electronic portal, or they can easily create them, the bill codifies an existing practice and should not place a financial burden upon insurers. The bill may benefit consumers as they may be able to obtain premium discounts if they are able to use loss run statements to show prospective insurers that they have no claim history for a certain period of time.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill neither authorizes nor requires administrative rulemaking.

C. DRAFTING ISSUES OR OTHER COMMENTS:

OIR has pointed out in its analysis of the bill that "provide" is defined only to include electronic access or delivery.[15] Because s. 627.421(1), F.S., allows insureds to receive "policy documents" via mail, the bill may conflict with existing law if loss run statements are considered "policy documents."

Line 74 of the bill contains the word "annually." It is unclear whether this means per calendar year or on a rolling 12-month basis beginning when an insured makes a request for a loss run statement.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On November 6, 2019, the Insurance & Banking Subcommittee considered the bill, adopted one strike all amendment, and reported the bill favorably as a committee substitute. The committee substitute maintained the intent of the originally filed bill and made the following modifications and clarifications to the bill:

- Changed the definition of "loss run statement" so that it more precisely defines what must be included in a loss run statement. In addition, it specifies what is not included.
- Established that any insurer is only required to provide an insured with a loss run statement once per policy period.
- Established that no insurer shall be required to provide loss reserve information as part of a loss run statement.
- Clarified that a workers' compensation insurer may not charge for providing a loss run statement to an insured. This resolved a question regarding a potential conflict with existing workers' compensation statutes.

[15] Florida Office of Insurance Regulation, Agency Analysis of 2020 House Bill 269, p. 5 (Oct. 31, 2019).

- Placed provisions relating to authorized insurers in a different location in statutes than the bill.
- Made various formatting and technical changes.

The staff analysis has been updated to reflect the committee substitute.

A bill to be entitled

An act relating to loss run statements; creating ss. 626.9202 and 627.0622, F.S.; providing definitions; requiring insurers to provide loss run statements to insureds within a specified timeframe; providing notification requirements; providing claims history requirements for loss run statements; prohibiting insurers from being required to provide loss reserve information; prohibiting fees under certain circumstances; providing an effective date.

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

Section 1. Section 626.9202, Florida Statutes, is created to read:

626.9202 Loss run statements for all lines of insurance.—

(1) As used in this section, the term:

(a) "Loss run statement" means a report that contains the policy number, the period of coverage, the number of claims, the paid losses on all claims, and the date of each loss. The term does not include supporting claim file documentation, including, but not limited to, copies of claim files, investigation reports, evaluation statements, insureds' statements, and documents protected by a common law or statutory privilege.

(b) "Provide" means to electronically send a document, or

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

to allow access through an electronic portal to view or generate a document.

(2) Notwithstanding any other law, an insurer shall provide a loss run statement to an insured within 15 calendar days after receipt of the insured's written request, but in no event more frequently than once per policy period.

(3) At the time the loss run statement is provided to the insured, the insurer shall notify the agent of record that the loss run statement was provided to the insured.

(4) A loss run statement provided pursuant to this section must contain a claims history with the insurer for the preceding 5 years or, if the claims history is less than 5 years, a complete claims history with the insurer.

(5) Notwithstanding any other provision of this section, an insurer may not be required to provide loss reserve information.

(6) Notwithstanding any other law, an insurer may not charge any fee to prepare and provide annually one loss run statement in accordance with this section.

Section 2. Section 627.0622, Florida Statutes, is created to read:

627.0622 Loss run statements for all lines of insurance.—

(1) As used in this section, the term:

(a) "Loss run statement" means a report that contains the policy number, the period of coverage, the number of claims, the

paid losses on all claims, and the date of each loss. The term does not include supporting claim file documentation, including, but not limited to, copies of claim files, investigation reports, evaluation statements, insureds' statements, and documents protected by a common law or statutory privilege.

(b) "Provide" means to electronically send a document, or to allow access through an electronic portal to view or generate a document.

(2) Notwithstanding any other law, an insurer shall provide a loss run statement to an insured within 15 calendar days after receipt of the insured's written request, but in no event more frequently than once per policy period.

(3) At the time the loss run statement is provided to the insured, the insurer shall notify the agent of record that the loss run statement was provided to the insured.

(4) A loss run statement provided pursuant to this section must contain a claims history with the insurer for the preceding 5 years or, if the claims history is less than 5 years, a complete claims history with the insurer.

(5) Notwithstanding any other provision of this section, an insurer may not be required to provide loss reserve information.

(6) Notwithstanding any other law, an insurer may not charge any fee to prepare and provide annually one loss run statement in accordance with this section.

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

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

COMMERCE COMMITTEE

CS/HB 269 by Rep. Perez
Loss Run Statements

AMENDMENT SUMMARY
January 16, 2020

Amendment 1 by Rep. Perez (strike-all): The strike-all amendment maintains the intent of the current version of the bill, but establishes that within 15 calendar days of a insured's request for a loss run statement, an insurer must provide to the insured either the loss run statement or, for personal lines of insurance, information on how to obtain a loss run statement from a consumer reporting agency at no charge. The strike-all amendment further establishes that an insured may request a loss run statement from an insurer after receiving information from a consumer reporting agency. If such request is made, an insurer must fulfill it within 15 calendar days.

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	____	(Y/N)
ADOPTED AS AMENDED	____	(Y/N)
ADOPTED W/O OBJECTION	____	(Y/N)
FAILED TO ADOPT	____	(Y/N)
WITHDRAWN	____	(Y/N)
OTHER		

Committee/Subcommittee hearing bill: Commerce Committee

Representative Perez offered the following:

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

Section 1. Section 626.9202, Florida Statutes, is created to read:

626.9202 Loss run statements for all lines of insurance.—

(1) As used in this section, the term:

(a) "Loss run statement" means a report that contains the policy number, the period of coverage, the number of claims, the paid losses on all claims, and the date of each loss. The term does not include supporting claim file documentation, including, but not limited to, copies of claim files, investigation reports, evaluation statements, insureds' statements, and documents protected by a common law or statutory privilege.

(b) "Provide" means to electronically send a document, or to allow access through an electronic portal to view or generate a document.

(2) Notwithstanding any other law, an insurer shall provide to an insured within 15 calendar days after receipt of the insured's written request, either:

(a) A loss run statement; or

(b) For personal lines of insurance, information on how to obtain a loss run statement at no charge through a consumer reporting agency. However, this section does not prohibit an insured from requesting a loss run statement after receiving information from a consumer reporting agency, and the insurer must then provide such loss run statement within 15 calendar days after receipt of the insured's written request.

For the purpose of this subsection, the term "receipt" means receipt by an individual or entity designated by an insurer to receive loss run statement requests.

(3) At the time the loss run statement is provided to the insured, the insurer shall notify the agent of record that the loss run statement was provided to the insured.

(4) A loss run statement provided pursuant to this section must contain a claims history with the insurer for the preceding 5 years or, if the claims history is less than 5 years, a complete claims history with the insurer.

(5) Notwithstanding any other provision of this section, an insurer is not required to provide loss reserve information.

(6) Notwithstanding any other law, an insurer may not charge any fee to prepare and provide annually one loss run statement in accordance with this section.

Section 2. Section 627.444, Florida Statutes, is created to read:

627.444 Loss run statements for all lines of insurance.—

(1) As used in this section, the term:

(a) "Loss run statement" means a report that contains the policy number, the period of coverage, the number of claims, the paid losses on all claims, and the date of each loss. The term does not include supporting claim file documentation, including, but not limited to, copies of claim files, investigation reports, evaluation statements, insureds' statements, and documents protected by a common law or statutory privilege.

(b) "Provide" means to electronically send a document, or to allow access through an electronic portal to view or generate a document.

(2) Notwithstanding any other law, an insurer shall provide to an insured within 15 calendar days after receipt of the insured's written request, either:

(a) A loss run statement; or

(b) For personal lines of insurance, information on how to obtain a loss run statement at no charge through a consumer

reporting agency. However, this section does not prohibit an insured from requesting a loss run statement after receiving information from a consumer reporting agency, and the insurer must then provide such loss run statement within 15 calendar days after receipt of the insured's written request.

For the purpose of this subsection, the term "receipt" means receipt by an individual or entity designated by an insurer to receive loss run statement requests.

(3) At the time the loss run statement is provided to the insured, the insurer shall notify the agent of record that the loss run statement was provided to the insured.

(4) A loss run statement provided pursuant to this section must contain a claims history with the insurer for the preceding 5 years or, if the claims history is less than 5 years, a complete claims history with the insurer.

(5) Notwithstanding any other provision of this section, an insurer is not required to provide loss reserve information.

(6) Notwithstanding any other law, an insurer may not charge any fee to prepare and provide annually one loss run statement in accordance with this section.

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

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

Remove everything before the enacting clause and insert:

A bill to be entitled

An act relating to loss run statements; creating ss. 626.9202 and 627.444, F.S.; providing definitions; requiring insurers to provide loss run statements or specified information to insureds within a specified timeframe under certain circumstances; providing construction; providing notification requirements; providing claims history requirements for loss run statements; providing that insurers are not required to provide loss reserve information; prohibiting fees under certain circumstances; providing an effective date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 329 Insurance Guaranty Associations
SPONSOR(S): Smith, D.
TIED BILLS: **IDEN./SIM. BILLS:** SB 540

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee	14 Y, 0 N	Fortenberry	Cooper
2) Government Operations & Technology Appropriations Subcommittee	8 Y, 0 N	Helpling	Topp
3) Commerce Committee		Fortenberry	Hamon K.W.H.

SUMMARY ANALYSIS

Florida law provides for guaranty associations to ensure policyholders of insolvent insurers are protected with respect to insurance premiums paid and settlement of outstanding claims. Florida has four guaranty associations including the Florida Insurance Guaranty Association (FIGA) and the Florida Workers' Compensation Insurance Guaranty Association (FWCIGA).

FIGA assumes the rights and duties of insolvent Florida insurers, including claims adjusting. Claims filed with a liquidated foreign insurer are referred to that state's guaranty association for handling. FIGA handles claims involving insolvent Florida insurers and claims on Florida policies issued by liquidated foreign insurers. It may be efficient for the employees of another state's guaranty association to be involved in adjusting a Florida claim. The bill allows those employees to adjust Florida claims without being licensed adjusters, if authorized by the contract between FIGA and the other state's guaranty association. It also allows FIGA employees to adjust claims without being licensed adjusters.

If an insurer's assets are insufficient to pay all claims, FIGA can issue post-insolvency assessments against property and casualty insurers to obtain funds to pay the remaining claims. The bill clarifies that the assessment due from member insurers will be a uniform percentage of premium collected instead of based on a proportion of the total net direct written premium for the prior calendar year. The bill establishes that assessment installment payments made by FIGA members may be made quarterly rather than monthly.

FWCIGA assumes the right and duties of the insolvent Florida workers' compensation insurers or self-insurance funds and pays the claims of its policyholders. FWCIGA is funded through the liquidation of insolvent insurers, potentially including a portion of the estates of insolvent insurers in other states. FWCIGA has the authority to levy assessments on workers' compensation insurers if insolvent insurers' estates are insufficient to pay claims. This bill provides additional changes to the assessment methods that were amended significantly in 2016 to conform them to workers' compensation industry standards.

The bill clarifies the method by which assessments are levied against insurers and collected by FWCIGA related to policy deductibles and to retrospectively rated policies. The bill provides the authority for FWCIGA to audit reports from insurers regarding the payments made to FWCIGA and the amounts collected from policyholders. It provides that assessments paid that are required to be remitted by the insurer prior to surcharging policyholders constitute advances of funds to FWCIGA to allow for proper accounting treatment. The bill also makes other technical and structural changes to the statutes controlling FIGA and FWCIGA.

This bill does not impact local or state government revenues or expenditures. It has positive and negative direct economic impacts on the private sector (See *Fiscal Analysis & Economic Impact Statement*).

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Guaranty Associations

Under federal law, insurance companies cannot file for bankruptcy.[1] Instead, they are either rehabilitated or liquidated by their state of domicile. Florida law establishes the system for the treatment of impaired or insolvent insurers[2] in Florida and sets up guaranty payments where necessary.[3] Florida law provides for guaranty associations to ensure policyholders of insolvent insurers are protected with respect to insurance premiums paid and settlement of outstanding claims, up to limits provided by law.[4] A guaranty association is a not-for-profit corporation created by law and directed to protect policyholders from financial losses and delays in claims payment and settlements due to the insolvency of an insurer.[5] Insurers are required to participate in the guaranty associations as a condition of transacting insurance business in Florida. Florida operates four guaranty associations including the Florida Insurance Guaranty Association (FIGA)[6] and the Florida Workers' Compensation Insurance Guaranty Association (FWCIGA)[7].

Florida Insurance Guaranty Association

FIGA provides a "mechanism for the payment of covered claims under certain insurance policies to avoid excessive delay in payment and to avoid financial loss to claimants or policyholders because of the insolvency of an insurer."[8] It issues guaranty fund payments and provides related services for all lines of property and casualty insurance with certain exceptions.[9] When a Florida property and casualty insurer becomes insolvent, FIGA takes over the claims of that insurer and pays the claims of its policyholders, ensuring that policyholders are not left with unpaid claims. FIGA obtains funds to pay the claims of insolvent insurers located in Florida from the liquidation of the assets of insolvent insurers by the Division of Rehabilitation and Liquidation (the Division) in the Florida Department of Financial Services (DFS) and from the liquidation of assets of insolvent insurers located outside Florida that transact insurance business in Florida.[10]

If an insurer's assets are insufficient to pay all claims, FIGA can also issue post-insolvency assessments against property and casualty insurers to obtain funds to pay the remaining claims.[11] Currently, the Florida statute setting forth FIGA's duties and powers states that assessments on members of FIGA are "initially estimated in the proportion that each insurer's net direct written premiums [in Florida] in the classes protected by the account bears to the total of said net direct written premiums received [in Florida] by all such insurers for the preceding calendar year for the kinds of insurance included in such account."[12] Furthermore, each insurer assessed must be provided with at

---

[1] 11 U.S.C. § 109(b)(2).

[2] An "insolvent insurer" means an insurer that was authorized to transact insurance in this state, either at the time the policy was issued or when the insured event occurred, and against which an order of liquidation with a finding of insolvency has been entered by a court of competent jurisdiction if such order has become final by the exhaustion of appellate review. S. 631.904(4), F.S.

[3] Ch. 631, F.S.

[4] *Id.*

[5] *See e.g.,* ss. 631.51 and 631.902, F.S.

[6] Ch. 631, part II, F.S.

[7] Ch. 631, part V, F.S.

[8] S. 631.51, F.S.

[9] S. 631.52, F.S.

[10] *See* s. 631.061, F.S. for grounds for liquidation. *See* s. 631.025, F.S., for an overview of persons subject to proceedings initiated by the Division.

[11] S. 631.57, F.S.

[12] S. 631.57(3)(a), F.S. Stated differently, an insurer's assessment amount would be estimated by determining its part of the whole of the premium written for the prior year for the kinds of insurance included in a certain account and multiplying that proportion by the

least 30 days' written notice as to the date the initial assessment payment is due.[13] When FIGA issues an assessment, it has the option to require that member insurers pay the assessment in a single payment or to allow the member insurers to pay assessment payments in monthly installments, with the first installment being due at the end of the month following the levy of an assessment.[14]

When an insolvent insurer is liquidated in Florida, FIGA assumes the claims and is "deemed the insurer to the extent of its obligation on...covered claims, and,...shall have all rights, duties, defenses, and obligations of the insolvent insurer as if the insurer had not become insolvent."[15] Additionally, FIGA has the right to employ the necessary staff to handle claims and perform other duties for the association.[16] In general, when an insolvent insurer located in another state is liquidated, the claims in that state are referred to its guaranty association for claims handling. However, FIGA handles claims that exist on policies issued in Florida by insolvent foreign insurers.[17] Due to the nature of the claims process and the involvement of more than one state's guaranty association in these claims, it may be appropriate and efficient for an employee of another state's guaranty association to adjust a Florida claim.

Effect of the Bill

Adjusting

The bill allows employees of FIGA to adjust losses for FIGA if those employees hold a license in Florida that allows them to adjust losses or if they held such a license within the last ten years.[18] It also allows FIGA to authorize employees of any state guaranty association whose insurance regulators are members of the National Association of Insurance Commissioners to adjust Florida claims for FIGA.[19] While the bill does not require that the employee adjusting losses be a licensed insurance adjuster in Florida, the employee must maintain appropriate experience and training to adjust claims, and the authorization for the state guaranty association's employee to adjust losses must be included in the contract between FIGA and the state guaranty association whose employee is doing the adjusting. This provision of the bill will allow FIGA and other states' guaranty associations to efficiently provide continuity of claims handling and adjusting claims within Florida and when claims cross state lines.

Assessments

The bill removes the word "net" from "net direct written premium" to use the more common industry terminology of "direct written premium." It also eliminates dividends paid or credited to policyholders from being subtracted from the premium amount when direct written premiums are calculated. To simplify the explanation of the way in which a FIGA member insurer's assessment amount is calculated, the bill eliminates the language from s. 631.57(3)(a), F.S., that requires a determination of each insurer's proportion of net direct written premiums to the total of net direct written premiums

---

entire assessment amount to be collected. For example, if FIGA was assessing its auto insurance account, an auto insurer's assessment would be estimated by determining its share of the entire auto insurance premium written during the prior year and multiplying that by the total assessment amount to be collected.

[13] S. 631.57(3)(a), F.S.

[14] S. 631.57(3)(e)3 and (f)2, F.S.

[15] S. 631.57, F.S.

[16] *Id.*

[17] A foreign insurer is one formed under the laws of any state, district, territory, or commonwealth of the United States other than Florida. S. 624.06, F.S.

[18] DFS has indicated that the licensure status of the person determining the amount of loss (i.e., adjusting a claim) has no bearing on the contractual obligations of the insurer from a regulatory standpoint. Therefore, an insured whose claim is being handled by FIGA by virtue of an insurer insolvency and whose claim was adjusted by an unlicensed employee of FIGA or another state's guaranty association does not lose any rights or remedies should that insured dispute the amount of loss as determined by the adjuster. Email from Greg Thomas, Director Division of Agents and Agency Services, Department of Financial Services, RE: HB 429 (Feb. 14, 2019).

[19] *Id.*

received during the preceding calendar year for the kinds of insurance included within an account. Instead, the assessment due will be a uniform percentage of premium collected.

For clarity, the bill moves the portion of s. 631.57(3)(a), F.S., which requires that FIGA provide each insurer with at least 30 days' written notice as to the date the initial assessment payment is due to s. 631.57(3)(f)1.b, F.S. Notice of an initial payment due date would not apply when the assessment is being paid in a single payment. The bill establishes that when FIGA allows for assessments to be paid in installments, those payments may be made in quarterly, rather than monthly installments. The bill also provides for other technical and structural changes and conforms statutory cross-references as needed.

Florida Workers' Compensation Insurance Guaranty Association

FWCIGA "provides a mechanism for the payment of covered claims under chapter 440 to avoid" delay and financial loss to claimants due to the insolvency of a workers' compensation insurer.[20] FWCIGA services workers' compensation claims against insolvent workers' compensation insurers[21] and self-insurance funds.[22] When a workers' compensation insurer or self-insurance fund becomes insolvent, FWCIGA takes over the claims of that insurer and pays the claims of its policyholders, ensuring that policyholders are not left with unpaid claims. Like FIGA, FWCIGA is funded through the liquidation of insolvent insurers, including a portion of the estates of insolvent insurers in other states. If the assets of the liquidated insurer are insufficient to pay claims, FWCIGA in conjunction with the Office of Insurance Regulation (OIR), may order assessments of workers' compensation insurers and self-insurance funds writing workers' compensation coverage in Florida.[23] FWCIGA levied assessments from its inception in 1998 through 2005.[24] On June 18, 2019, the FWCIGA Board of Directors certified the need for a 1.0% assessment on its member insurers.[25] Subsequently, OIR issued a 1.0% assessment levy on all new and renewal workers' compensation policies with effective dates beginning January 1, 2020, through December 31, 2020.[26] These assessment payments will be due to FWCIGA quarterly after applying and collecting a 1.0% surcharge to all workers' compensation and excess workers' compensation policies.[27]

Method of Assessment

In 2016, the method of assessment for FWCIGA was amended to be more consistent with the methods used to levy assessments on the other Florida guaranty associations.[28] Since the 2016 amendments, the law has provided for two methods by which FWCIGA can collect assessments from workers' compensation insurers and self-insurance funds.[29] FWCIGA may choose to fund an assessment by either of the following methods:[30]

---

[20] S. 631.902, F.S.

[21] "'Insurer' means an insurance carrier or self-insurance fund authorized to insure under chapter 440. For purposes of this act, 'insurer' does not include a qualified local government self-insurance fund, as defined in s. 624.4622, or an individual self-insurer as defined in s. 440.385." S. 631.904(5), F.S.

[22] "'Self-insurance fund' means a group self-insurance fund authorized under s. 624.4621, a commercial self-insurance fund writing workers' compensation insurance authorized under s. 624.462, or an assessable mutual insurer authorized under s. 628.6011. For purposes of this act, the term "self-insurance fund" does not include a qualified local government self-insurance fund, as defined in s. 624.4622, an independent educational institution self-insurance fund as defined in s. 624.4623, an electric cooperative self-insurance fund as described in s. 624.4626, or an individual self-insurer as defined in s. 440.385." S. 631.904(6), F.S.

[23] S. 631.914, F.S.

[24] Florida Workers' Compensation Insurance Guaranty Association, *Assessments*, https://fwciga.org/assessments (last visited Oct. 30, 2019).

[25] *Id.* Pursuant to s. 631.914(4)(a), F.S., an insurer may be exempted from an assessment if, in the opinion of OIR, the assessment would impair the solvency of the insurer.

[26] *Id.*

[27] *Id.*

[28] Ch. 16-170, Laws of Fla.

[29] *See* s. 631.914, F.S.

[30] *See id.*

- Single payment, subject to true-up (pay and recover)[31] – under this method, the insurer pays the assessment to the FWCIGA and then recovers its payment from its insureds through policy surcharges. The assessment payment is due and payable no earlier than 30 days following written notice of the assessment order. For accounting purposes, the billed surcharges are a receivable and an asset for the purposes of the National Association of Insurance Commissioners' Statement of Statutory Accounting Principles Number 4[32] and would be recorded separately from the liability for OIR reports.
- Installment (collect and remit) – under this method, the insurer would bill the insured for the surcharge as policies are written and remit the collected surcharges to the FWCIGA quarterly.[33]

The insurer is required to submit a reconciliation report within 120 days following the end of the 12 month assessment recovery period showing the amount initially paid and the amount of the surcharge collected.[34] This results in a "true-up" of the actual assessment amount if the initial calculation and payment was too low or too high.[35]

Calculation of Insurer Assessment Amount

OIR, upon certification of need by FWCIGA, levies assessments on each insurer "initially estimated in the proportion that the insurer's net direct written premiums" in Florida bear to the total net direct premiums received in Florida by all workers' compensation insurers during the previous calendar year.[36] The assessments levied against insurers and self-insurance funds are computed based upon the net direct written premium amounts set forth in Florida for workers' compensation insurance without consideration for any discount in premium or credit for deductibles.[37]

The assessment is limited to 2 percent of an insurer's or self-insurance fund's net direct written premium in any given calendar year.[38] If the assessment is insufficient to meet FWCIGA's funding need for payments owing to claimants in a calendar year, then, upon certification by FWCIGA, OIR shall levy assessments of up to an additional 1.5 percent of the insurer's net direct written premiums in Florida.[39] Insurers and self-insurance funds must report to FWCIGA the amount of initial payment or installment payments made to FWCIGA and the amount collected from policyholders.[40] The reporting must occur within 120 days after the 12-month assessment period and annually thereafter for 3 years.[41]

Effect of the Bill

The bill clarifies the method by which assessments are levied against insurers and collected by FWCIGA, by providing that OIR shall levy the uniform surcharge percentage on all policies of the same kind or line as it considered in determining an insurer's assessment liability, along with an insurer using this method to fully recoup assessments from policyholders.

The bill clarifies that no insurer's direct written premium calculated for the purposes of determining its premium subject to surcharge will be reduced by any discount or credit for deductibles in any policy.

---

[31] S. 631.914(1)(d), F.S.
[32] *See* National Association of Insurance Commissioners & The Center for Insurance Policy and Research, *Statutory Accounting Principles*, http://www.naic.org/cipr_topics/topic_statutory_accounting_principles.htm (last visited Oct. 30, 2019).
[33] S. 631.914(1)(d), F.S.
[34] S. 631.914(1)(d)3., F.S.
[35] *Id.*
[36] S. 631.914(1)(a), F.S.
[37] *Id.*
[38] *Id.*
[39] S. 631.914(1)(c), F.S.
[40] S. 631.914(1)(a)d.3., F.S.
[41] *Id.*

It also does not reduce an insurer's direct written premium calculated for the purposes of determining the insurer's premium subject to surcharge for any premium adjustment on retrospectively rated policies.[42]

The bill provides the authority for FWCIGA to audit the reports from insurers regarding the payments made to FWCIGA and the amounts collected from policyholders. It provides that assessments paid by workers' compensation insurers constitute advances of funds to FWCIGA under certain circumstances to allow for proper accounting treatment.

The bill removes the word "net" from "net direct written premium" to use the more common industry terminology of "direct written premium." The bill provides for other technical and structural changes and conforms statutory cross-references as needed.

B. SECTION DIRECTORY:

Section 1. Creates s. 626.8621, F.S., relating to adjustments by guaranty association employees.

Section 2. Amends s. 631.54, F.S., relating to definitions.

Section 3. Amends s. 631.57, F.S., relating to powers and duties of the association.

Section 4. Amends s. 625.012, F.S., relating to "assets" defined.

Section 5. Amends s. 631.59, F.S., relating to duties and powers of department and office.

Section 6. Amends s. 631.59, F.S., relating to board of directors.

Section 7. Amends s. 631.914, F.S., relating to assessments.

Section 8. Provides an effective date of July 1, 2020.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

[42] A retrospectively rated policy in one with a rating plan that adjusts the premium to reflect current loss experience of an insured. IRMI, *Retrospective Rating*, https://www.irmi.com/term/insurance-definitions/retrospective-rating (last visited Oct. 30, 2019).

Changing the method by which FWCIGA calculates assessments may increase costs for certain employers and decrease costs for others based on the changes to treatment of premium discounts and credits, or premium adjustments in calculating assessments. However, the modification to the calculation does not change the total amount assessed by FWCIGA.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill neither authorizes nor requires administrative rulemaking.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to insurance guaranty associations; creating s. 626.8621, F.S.; authorizing an employee of the Florida Insurance Guaranty Association or an employee of a guaranty association of another state to adjust losses for the Florida Insurance Guaranty Association if certain conditions are met; amending s. 631.54, F.S.; defining the term "direct written premiums" rather than the term "net direct written premiums"; amending s. 631.57, F.S.; deleting a provision specifying the manner in which the Office of Insurance Regulation initially estimates assessments levied on insurers; deleting a provision specifying the timeline to address notices of such assessments; conforming provisions to changes made by the act; requiring certain assessments to be made quarterly rather than monthly; revising the calculation of insurers' initial payments to the association; amending ss. 625.012, 631.59, and 631.912, F.S.; conforming provisions to changes made by the act; amending s. 631.914, F.S.; revising requirements for the office in levying workers' compensation insurers; providing that an insurer's direct written premium may not be reduced by certain amounts for the purposes of determining insurer assessments or policy surcharges;

authorizing the Florida Workers' Compensation Insurance Guaranty Association to audit certain reports; revising requirements for remitting policy surcharges and assessments; providing that assessments paid by an insurer constitute advances of funds to the association under certain circumstances; revising the requirements for the insurers' reconciliation reports to the Florida Workers' Compensation Insurance Guaranty Association; revising construction; providing an effective date.

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

Section 1. Section 626.8621, Florida Statutes, is created to read:

626.8621 Adjustments by guaranty association employees.—

(1) An employee of the Florida Insurance Guaranty Association, created under part II of chapter 631, may adjust losses for the association if such employee holds, or has held within the past 10 years, licensure in this state which allows for the adjustment of such losses.

(2) An employee of a guaranty association established by another state and whose insurance regulators are members of the National Association of Insurance Commissioners may adjust losses for the Florida Insurance Guaranty Association. The

authorization for such employees to adjust losses must be included in a contract with the Florida Insurance Guaranty Association and the employee's guaranty association or association's authorized representative. The Florida Insurance Guaranty Association shall contract only for employees of other state guaranty associations who maintain the appropriate experience and training for adjusting such claims.

Section 2. Subsection (9) of section 631.54, Florida Statutes, is amended to read:

631.54 Definitions.—As used in this part:

(9) "~~Net~~ Direct written premiums" means direct gross premiums written in this state on insurance policies to which this part applies, less return premiums thereon ~~and dividends paid or credited to policyholders~~ on such direct business. The term ~~"Net direct written premiums"~~ does not include premiums on contracts between insurers or reinsurers.

Section 3. Paragraphs (a), (e), and (f) of subsection (3) of section 631.57, Florida Statutes, are amended to read:

631.57 Powers and duties of the association.—

(3)(a) To the extent necessary to secure funds for the respective accounts for the payment of covered claims, to pay the reasonable costs to administer such accounts, and to secure funds for the account specified in s. 631.55(2)(b) or to retire indebtedness, including, without limitation, the principal, redemption premium, if any, and interest on, and related costs

of issuance of, bonds issued under s. 631.695 and the funding of reserves and other payments required under the bond resolution or trust indenture pursuant to which such bonds have been issued, the office, upon certification of the board of directors, shall levy assessments, in accordance with subparagraph (f)1. or subparagraph (f)2.~~, initially estimated in the proportion that each insurer's net direct written premiums in this state in the classes protected by the account bears to the total of said net direct written premiums received in this state by all such insurers for the preceding calendar year for the kinds of insurance included within such account.~~ Assessments shall be remitted to and administered by the board of directors in the manner specified by the approved plan and paragraph (f). ~~Each insurer so assessed shall have at least 30 days' written notice as to the date the initial assessment payment is due and payable.~~ Every assessment shall be a uniform percentage. The assessments levied against any insurer may not exceed in any one calendar year more than 2 percent of that insurer's ~~net~~ direct written premiums in this state for the kinds of insurance included within such account.

(e)1. In addition to assessments authorized in paragraph (a), and to the extent necessary to secure the funds for the account specified in s. 631.55(2)(b) for the direct payment of covered claims of insurers rendered insolvent by the effects of a hurricane and to pay the reasonable costs to administer such

claims, or to retire indebtedness, including, without limitation, the principal, redemption premium, if any, and interest on, and related costs of issuance of, bonds issued under s. 631.695 and the funding of any reserves and other payments required under the bond resolution or trust indenture pursuant to which such bonds have been issued, the office, upon certification of the board of directors, shall levy emergency assessments upon insurers holding a certificate of authority. The emergency assessments levied against any insurer may not exceed in any one calendar year more than 2 percent of that insurer's ~~net~~ written premiums in this state for the kinds of insurance within the account specified in s. 631.55(2)(b).

2. Emergency assessments authorized under this paragraph shall be levied by the office upon insurers in accordance with paragraph (f), upon certification as to the need for such assessments by the board of directors. If the board participates in the issuance of bonds in accordance with s. 631.695, emergency assessments shall be levied in each year that bonds issued under s. 631.695 and secured by such emergency assessments are outstanding in amounts up to such 2-percent limit as required in order to provide for the full and timely payment of the principal of, redemption premium, if any, and interest on, and related costs of issuance of, such bonds. The emergency assessments are assigned and pledged to the municipality, county, or legal entity issuing bonds under s.

631.695 for the benefit of the holders of such bonds in order to provide for the payment of the principal of, redemption premium, if any, and interest on such bonds, the cost of issuance of such bonds, and the funding of any reserves and other payments required under the bond resolution or trust indenture pursuant to which such bonds have been issued, without further action by the association, the office, or any other party. If bonds are issued under s. 631.695 and the association determines to secure such bonds by a pledge of revenues received from the emergency assessments, such bonds, upon such pledge of revenues, shall be secured by and payable from the proceeds of such emergency assessments, and the proceeds of emergency assessments levied under this paragraph shall be remitted directly to and administered by the trustee or custodian appointed for such bonds.

3. Emergency assessments used to defease bonds issued under this part may be payable in a single payment or, at the option of the association, may be payable in quarterly ~~12 monthly~~ installments with the first installment being due and payable at the end of the month after an emergency assessment is levied and subsequent installments being due by the end of each succeeding month.

4. If emergency assessments are imposed, the report required by s. 631.695(7) must include an analysis of the revenues generated from the emergency assessments imposed under

this paragraph.

5. If emergency assessments are imposed, the references in sub-subparagraph (1)(a)3.b. and s. 631.695(2) and (7) to assessments levied under paragraph (a) must include emergency assessments imposed under this paragraph.

6. If the board of directors participates in the issuance of bonds in accordance with s. 631.695, an annual assessment under this paragraph shall continue while the bonds issued with respect to which the assessment was imposed are outstanding, including any bonds the proceeds of which were used to refund bonds issued pursuant to s. 631.695, unless adequate provision has been made for the payment of the bonds in the documents authorizing the issuance of such bonds.

(f)1. The association, office, and insurers remitting assessments pursuant to paragraph (a) or paragraph (e) must comply with the following:

a. In the order levying an assessment, the office shall specify the actual percentage amount to be collected uniformly from all the policyholders of insurers subject to the assessment and the date on which the assessment year begins, which may not begin before 90 days after the association board certifies such an assessment.

b. Insurers shall make an initial payment to the association before the beginning of the assessment year on or before the date specified in the order of the office. Each

insurer shall have at least 30 days' written notice as to the date on which the initial assessment payment is due and payable.

c. Insurers that have written insurance in the calendar year before the year in which the assessment is certified by the board shall make an initial payment based on the ~~net~~ direct written premium in this state for the classes protected by the account ~~amount~~ from the previous calendar year as set forth in the insurer's annual statement, multiplied by the uniform percentage of premium specified in the order issued by the office. Insurers that have not written insurance in the previous calendar year in any of the lines under the account which are being assessed, but which are writing insurance as of, or after, the date the board certifies the assessment to the office, shall pay an amount based on a good faith estimate of the amount of ~~net~~ direct written premium anticipated to be written in the subject lines of business for the assessment year, multiplied by the uniform percentage of premium specified in the order issued by the office.

d. Insurers shall file a reconciliation report with the association which indicates the amount of the initial payment to the association before the assessment year, whether such amount was based on ~~net~~ direct written premium contained in a previous calendar year annual statement or a good faith projection, the amount actually collected during the assessment year, and such other information contained on a form adopted by the association

and provided to the insurers in advance. If the insurer collected from policyholders more than the amount initially paid, the insurer shall pay the excess amount to the association. If the insurer collected from policyholders an amount which is less than the amount initially paid to the association, the association shall credit the insurer that amount against future assessments. Such payment reconciliation report, and any payment of excess amounts collected from policyholders, shall be completed and remitted to the association within 90 days after the end of the assessment year. The association shall send a final reconciliation report on all insurers to the office within 120 days after each assessment year.

e. Insurers remitting reconciliation reports under this paragraph to the association are subject to s. 626.9541(1)(e).

2. For assessments required under paragraph (a) or paragraph (e), the association may use a quarterly ~~monthly~~ installment method instead of the method described in sub-subparagraphs 1.b. and c. or in combination thereof based on the association's projected cash flow. If the association projects that it has cash on hand for the payment of anticipated claims in the applicable account for at least 6 months, the board may make an estimate of the assessment needed and may recommend to the office the assessment percentage that may be collected as a quarterly ~~monthly~~ assessment. The office may, in the order

levying the assessment on insurers, specify that the assessment is due and payable quarterly ~~monthly~~ as the funds are collected from insureds throughout the assessment year, in which case the assessment shall be a uniform percentage of premium collected during the assessment year and shall be collected from all policyholders with policies in the classes protected by the account. All insurers shall collect the assessment without regard to whether the insurers reported premium in the year preceding the assessment. Insurers are not required to advance funds if the association and the office elect to use the quarterly ~~monthly~~ installment option. All funds collected shall be retained by the association for the payment of current or future claims. This subparagraph does not alter the obligation of an insurer to remit assessments levied pursuant to this subsection to the association.

Section 4. Paragraph (b) of subsection (15) of section 625.012, Florida Statutes, is amended to read:

625.012 "Assets" defined.—In any determination of the financial condition of an insurer, there shall be allowed as "assets" only such assets as are owned by the insurer and which consist of:

(15)

(b) Assessments levied as ~~monthly~~ installments pursuant to s. 631.57(3)(e)3. or s. 631.914 which are paid after policy surcharges are collected so that the recognition of assets is

based on actual premium written offset by the obligation to the Florida Insurance Guaranty Association or the Florida Workers' Compensation Insurance Guaranty Association, Incorporated.

Section 5. Subsection (3) of section 631.59, Florida Statutes, is amended to read:

631.59 Duties and powers of department and office.—

(3) The office shall, upon request of the board of directors, provide the association with a statement of the ~~net~~ direct written premiums of each member insurer.

Section 6. Subsection (1) of section 631.912, Florida Statutes, is amended to read:

631.912 Board of directors.—

(1) The board of directors of the corporation shall consist of 11 persons, 1 of whom is the insurance consumer advocate appointed under s. 627.0613 or designee and 1 of whom is designated by the Chief Financial Officer. The department shall appoint to the board 6 persons selected by private carriers from among the 20 workers' compensation insurers with the largest amount of ~~net~~ direct written premium as determined by the department, and 2 persons selected by the self-insurance funds. The Governor shall appoint one person who has commercial insurance experience. At least two of the private carriers shall be foreign carriers authorized to do business in this state. The board shall elect a chairperson from among its members. The Chief Financial Officer may remove any board member for cause.

Each board member shall be appointed to serve a 4-year term and may be reappointed. A vacancy on the board shall be filled for the remaining period of the term in the same manner by which the original appointment was made.

Section 7. Subsections (1), (2), and (3) of section 631.914, Florida Statutes, are amended to read:

631.914 Assessments.—

(1)(a) To the extent necessary to secure the funds for the payment of covered claims, and also to pay the reasonable costs to administer the same, the Office of Insurance Regulation, upon certification by the board, shall levy assessments on each insurer ~~initially estimated in the proportion that the insurer's net direct written premiums in this state bears to the total of said net direct written premiums received in this state by all such workers' compensation insurers for the preceding calendar year~~. Assessments levied against insurers and self-insurance funds pursuant to this paragraph must be computed and levied on the basis of ~~the full policy premium value on~~ the ~~net~~ direct written premium amount as set forth in the state for workers' compensation insurance ~~without consideration of any applicable discount or credit for deductibles~~. An insurer's direct written premium calculated for the purposes of determining the insurer's assessment or policy surcharge may not be reduced by any discount or credit for deductibles in a policy or by any premium adjustment to a retrospectively rated policy. Insurers and self-

insurance funds must report premiums in compliance with this paragraph, and the association may audit the reports. Assessments shall be remitted to and administered by the board of directors in the manner specified by the approved plan of operation and paragraph (d). ~~Each assessment shall be a uniform percentage applicable to the net direct written premiums of each insurer writing workers' compensation insurance.~~ Assessments levied against insurers and self-insurance funds shall not exceed in any calendar year more than 2 percent of that insurer's ~~net~~ direct written premiums in this state for workers' compensation insurance.

(c)~~(b)~~ The office shall levy the uniform surcharge percentage on all policies of the same kind or line as were considered by the office in determining the assessment liability of the insurer. Member insurers shall collect policy surcharges at a uniform percentage rate on new and renewal policies issued and effective during the period of 12 months beginning on January 1, April 1, July 1, or October 1, whichever is the first day of the following calendar quarter as specified in an order issued by the office ~~directing insurers to pay an assessment to the association~~. The policy surcharge may not begin until 90 days after the board of directors certifies the assessment.

(b)~~(c)~~ If assessments otherwise authorized in paragraph (a) are insufficient to make all payments on reimbursements then owing to claimants in a calendar year, then upon certification

by the board, the office shall levy additional assessments of up to 1.5 percent of the insurer's ~~net~~ direct written premiums in this state.

(d) The association may use an installment method to require the insurer to remit the policy surcharge ~~assessment~~ as collected ~~premium is written~~ or may require the insurer to remit the assessment to the association before collecting the policy ~~policyholder~~ surcharge. ~~If the assessment is remitted before the surcharge is collected, the assessment remitted must be based on an estimate of the assessment due based on the proportion of each insurer's net direct written premium in this state for the preceding calendar year as described in paragraph (a) and adjusted following the end of the 12-month period during which the assessment is levied.~~

1. If the association elects to use the installment method, the office may, in the order levying the assessment on insurers, specify that the policy surcharge ~~assessment~~ is due and payable quarterly as collected ~~premium is written~~ throughout the assessment year. Insurers shall collect policy surcharges at a uniform percentage rate specified by order as described in paragraph (c) ~~(b)~~. Insurers are not required to advance funds if the association and the office elect to use the installment option. Assessments levied under this subparagraph are paid after policy surcharges are collected, and the recognition of assets is based on actual policy surcharges collected ~~premium~~

~~written~~ offset by the obligation to the association.

2. If the association elects to require insurers to remit the assessment before surcharging the policy ~~policyholder~~, the following shall apply:

a. On or before the date specified in the order of the office, insurers shall make an initial payment to the association of the percentage specified in the order multiplied by the insurer's direct written premiums received in this state for the preceding calendar year for the kinds of insurance included within such account before the beginning of the assessment year.

b.~~a.~~ The levy order shall provide each insurer so assessed at least 30 days' written notice of the date the initial assessment payment is due and payable by the insurer.

c.~~b.~~ Insurers shall collect policy surcharges at a uniform percentage rate specified by the order, as described in paragraph (c) ~~(b)~~.

d.~~c.~~ Assessments levied under this subparagraph and ~~are~~ paid by an insurer constitute advances of funds from the insurer to the association ~~before policy surcharges are billed~~ and result in a receivable for policy surcharges to be billed in the future. The amount of billed policy surcharges, to the extent it is likely that it will be realized, meets the definition of an admissible asset as specified in the National Association of Insurance Commissioners' Statement of Statutory Accounting

Principles No. 4. The asset shall be established and recorded separately from the liability. If an insurer is unable to fully recoup the amount of the assessment, the amount recorded as an asset shall be reduced to the amount reasonably expected to be recouped.

3. Insurers must submit a reconciliation report to the association within 120 days after the end of the 12-month assessment period and annually thereafter for a period of 3 years. The report must indicate the amount of the initial payment or installment payments made to the association and the amount of policy surcharges collected ~~written premium pursuant to paragraph (a)~~ for the assessment year. If the insurer's reconciled ~~assessment~~ obligation is more than the amount paid to the association, the insurer shall pay the excess policy surcharges collected to the association. If the insurer's reconciled ~~assessment~~ obligation is less than the initial amount paid to the association, the association shall return the overpayment to the insurer.

(2) Policy surcharges collected ~~Assessments levied~~ under this section are not premium and are not subject to any premium tax, fees, or commissions. Insurers shall treat the failure of an insured to pay policy ~~assessment-related~~ surcharges as a failure to pay premium. An insurer is not liable for any uncollectible policy ~~assessment-related~~ surcharges levied pursuant to this section.

(3) Assessments levied under this section may be levied only upon insurers. This section does not create a cause of action by a policyholder with respect to the levying of an assessment or a policyholder's duty to pay assessment-related policy surcharges.

Section 8. This act shall take effect July 1, 2020.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 707 Legislative Review of Occupational Regulations
SPONSOR(S): Renner
TIED BILLS: **IDEN./SIM. BILLS:** SB 1124

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Commerce Committee		Wright	Hamon
2) Health & Human Services Committee			
3) Appropriations Committee			

SUMMARY ANALYSIS

An occupational or professional license is a form of regulation that requires individuals who want to perform certain types of work to obtain permission from the government before performing such work. These individuals must demonstrate that they have the designated knowledge, skills, and abilities to perform the work in order to obtain the license. In Florida, such licenses are granted and regulated by state agencies and entities through various occupational regulatory programs.

A sunset review is a provision within a statute or regulation requiring the statute or regulation to expire or cease to be effective on a certain date, unless the legislature takes action to renew the statue or regulation. A sunset review allows regulations to be periodically examined to determine if they are necessary or if the need to be changed, improved, or reduced.

The bill schedules the repeal of specified professions over four years, beginning July 1, 2021, and ending July 1, 2024. The bill relates to over one-hundred professions and occupations.

The bill establishes that it is the intent of the legislature to complete a systematic review of the costs and benefits of certain occupational regulatory programs prior to the date set for repeal to determine whether the program should be allowed to expire, be fully renewed, or be renewed with modifications.

The bill will be effective upon becoming law.

The bill has no fiscal impact on local governments and an indeterminate fiscal impact on state government.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Occupational Licensing

An occupational or professional license is a form of regulation that requires individuals who want to perform certain types of work, such as contractors and cosmetologists, to obtain permission from the government to perform the work.[1] Generally, an individual obtains such permission by demonstrating that they have the designated knowledge, skills, and abilities to perform the work by meeting pre-determined criteria established by the government, such as work experience and examinations. If the individual successfully completes the pre-determined criteria, the government issues the individual a license, which allows them to perform the work.[2]

In the 1950s, less than five percent of U.S. workers were required to have an occupational license to do their jobs. Since then, the number of workers required to have a license has risen to more than one-quarter of U.S. workers.[3]

In 2015, The White House published a report on the current state of occupational licensing in the nation. The report found that when designed and implemented carefully, requiring occupational licenses offers important health and safety protections to consumers, as well as benefits to workers. However, the report also found that too often licensing requirements are inconsistent, inefficient, arbitrary, and there is evidence that the current licensing regimes in the U.S. raise the price of goods and services, restrict employment opportunities, and make it more difficult for workers to take their skills across state lines.[4]

Occupational Licensing in Florida

An estimated 28.7 percent of the workforce in Florida has an occupational license from the state.[5] Various governmental entities and agencies in Florida license and regulate such individuals practicing in a wide range of professions, including:[6]

- Department of Business and Professional Regulation (DBPR),
- Department of Health (DOH),
- Department of Financial Services (DFS),
- Department of Agriculture and Consumer Services (DACS),
- Florida Supreme Court (FSC),
- Department of Environmental Protection (DEP),
- Agency for Healthcare Administration (AHCA),
- Department of Children and Families (DCF),
- Department of Elder Affairs (DEA),
- Department of Highway Safety and Motor Vehicles (DHSMV), and
- Office of Financial Regulation (OFR).

---

[1] The White House, *Occupational Licensing: A Framework for Policymakers*, 6 (July 2015) https://obamawhitehouse.archives.gov/sites/default/files/docs/licensing_report_final_nonembargo.pdf (last visited on Dec. 30, 2019).
[2] Bureau of Labor Statistics, *Frequently asked questions about data on certifications and licenses*, https://www.bls.gov/cps/certifications-and-licenses-faqs.htm, (last visited on Dec. 30, 2019).
[3] White House, *supra* note 1, at 3.
[4] *Id.* at 3-5.
[5] *Id.* at 24.
[6] Chs. 20, 25, F.S.

Sunset Reviews of Occupations and Professions

A sunset review is a clause within a statute or regulation requiring the statute or regulation to expire on a certain date unless the legislature takes action to renew the statute or regulation. A sunset review allows regulations to be periodically examined to determine if they are necessary or if the need to be changed, improved, or reduced. Sunset reviews can be useful, because even if a regulation was justified when first introduced, technological and economic advancements may have made the regulation unnecessary or overly burdensome.[7] Thirty-six states have some form of sunset process for existing occupational licensing laws, ranging from automatic program reviews and repeals, to sunset recommendations made from a commission to the state legislature.[8]

Sunset Reviews of Occupations and Professions in Florida

In 1976, the Florida Legislature enacted The Regulatory Reform Act. The Act set up a sunset review process which called for a systematic, cyclical review and repeal of statutes related to the regulatory functions of the executive branch, including statutes regulating professions, occupations, businesses, and industries.[9] In 1978, The Sundown Act was enacted as a supplement to the sunset review law to set up a review for boards of trustees, commissions, and advisory bodies which were connected to executive agency functions.[10]

The law required certain committees within the Legislature to perform an in-depth review and make a recommendation for the continuation, modification, or repeal of certain occupational regulatory programs. The recommendation needed to consider the following criteria:[11]

- Would the absence of the regulation significantly harm or endanger the public health, safety, or welfare?
- Is there a reasonable relationship between the exercise of the police power of the state and the protection of the public health, safety, and welfare?
- Is there a less restrictive method of regulation available that would adequately protect the public?
- Does the regulation have the effect of directly or indirectly increasing the costs of any goods or services involved, and, if so, to what degree?
- Is the increase in cost more harmful to the public than the harm that would result from the absence of regulation?
- Are any facets of the regulatory process designed for the purpose of benefitting, and do they have as their primary effect the benefit of, their regulated entity?

During the sunset review process, if any program was allowed to expire, the personnel positions which were responsible for carrying out the program and all unexpended balances of appropriations, allocations, or other funds for such program were to be reverted to the fund from which they were appropriated, or, if that fund was abolished, to the General Revenue Fund. Any remaining unencumbered revenue collected under a repealed occupational regulatory program were to be refunded on a pro rata basis by the Comptroller (now the Chief Financial Officer), upon request of the person or entity who paid, if such request was made within 1 year after the repeal of the program.[12]

---

[7] White, *supra* note 57 at 48-49; *Improving Occupational Licensing with Sunrise and Sunset Reviews*, National Conference of State Legislatures, (July 2018), http://www.ncsl.org/research/labor-and-employment/improving-occupational-licensing-with-sunrise-and-sunset-reviews.aspx (last visited Dec. 30, 2019); Council on Licensure & Regulation, *Sunrise, Sunset and State Agency Audits*, https://www.clearhq.org/page-486181 (last visited Dec. 30, 2019); Brian Baugus & Feler Bose, *Sunset Legislation in the States: Balancing the Legislature and the Executive*, Mercatus Center, 3 (August 2015).

[8] *Improving Occupational Licensing with Sunrise and Sunset Reviews*, National Conference of State Legislatures, (July 2018), http://www.ncsl.org/research/labor-and-employment/improving-occupational-licensing-with-sunrise-and-sunset-reviews.aspx (last visited Dec. 30, 2019).

[9] Florida Senate Committee on Government Operations, Staff Analysis of 1991 Senate Bill 28-D, p. 2 (Dec. 11, 1991).

[10] *Id.*

[11] S. 11.61(6), F.S. (1991).

[12] S. 11.61(7)-(8), F.S. (1991).

The Act also provided that any cause of action pending on the date any program was repealed, or any cause of action brought thereafter, was to be prosecuted or defended in the name of the state by the Department of Legal Affairs. All regulatory activities related to the repealed program were to cease after the date of repeal.[13]

In 1991, the Senate Government Operations Committee (SCGO) performed a review of the sunset and sundown laws. SCGO found that between 1977 and 1991, 240 program sunset reviews were completed. During that time period, an estimated 20 regulatory laws were repealed, and 50 new ones were created. Based on the mandatory nature of the in-depth review process, it was found that the costs of the sunset reviews were high in terms of legislative and executive agency staff time. The SCGO report also found that the initial reviews of regulatory programs were more useful than any second or subsequent reviews.[14]

In light of the SCGO findings, the sunset reviews for occupations, professions, businesses, and industries under the Regulatory Reform Act, and entities under The Sundown Act, were repealed in 1991. There has not been a comprehensive sunset review process specifically for occupational licensing schemes since.[15]

Effect of the Bill

The bill schedules the repeal of specified occupational regulatory programs, over four years, beginning July 1, 2021, and ending July 1, 2024. The bill relates to over one-hundred professions and occupations.

The bill establishes that it is the intent of the legislature to complete a systematic review of the costs and benefits of certain occupational regulatory programs prior to the date set for repeal to determine whether the program should be allowed to expire, be fully renewed, or be renewed with modifications.

The bill provides:

> "There is established a schedule for systematic review of the costs and benefits of occupational regulatory programs. The Legislature intends to review each program before the scheduled date on which each occupational regulatory program is set to expire through scheduled repeal to determine whether to allow the program to expire, renew the program without modifications, renew the program with modifications, or provide for other appropriate actions."

The bill defines the following terms:

- "Occupational regulatory program" or "program" means any statutory regulatory provision or scheme which places a condition on practicing an occupation, including, but not limited to, programs that require a license, certification, registration, or credential.
- "Local government" means a county, municipality, special district, or political subdivision of the state.
- "Occupation" means a paid job, profession, work, line of work, trade, employment, position, post, career, field, vocation, or craft.

When an occupational regulatory program is allowed to expire or is repealed, the bill requires:

- the personnel positions which are responsible for carrying out the program to be abolished, and all unexpended balances of appropriations, allocations, or other funds for such program revert

[13] S. 11.61(9), F.S. (1991).
[14] SCGO, supra note 8, at 3.
[15] Ch. 91-429, Laws of Fla. Between 2006 and 2011, there was another systematic and scheduled sunset review process which included occupational regulatory programs, but that review process was applicable to every aspect of state agencies as a whole. That process was repealed in 2011. Ch. 2011-35, Laws of Fla.

to the fund from which they were appropriated, or, if that fund is abolished, to the General Revenue Fund, within 60 days;
- any remaining unencumbered revenue collected under a repealed occupational regulatory program to be refunded on a pro rata basis by the Chief Financial Officer, upon request of the person or entity who paid, if such request is made within 1 year after the repeal of the program;
- any cause of action pending on the date the occupational regulatory program was repealed, or any cause of action brought thereafter, to be prosecuted or defended in the name of the state by the Department of Legal Affairs, if prior to repeal such action would have been prosecuted or defended by the occupational regulatory program repealed by this act; and
- all regulatory activities related to the repealed program cease after the date of repeal, except as otherwise authorized.

The bill prohibits any local government from regulating any occupation or profession of any repealed occupational regulatory program, and preempts such regulation to the state, unless local regulation of such occupation is expressly authorized by law.

If after the effective date of the bill a law scheduled for review under the bill is amended or transferred, such action does not eliminate the scheduled repeal of such law, unless otherwise expressly provided in law.

The bill schedules the following occupational licenses for sunset on July 1, 2021:
- Court Reporters and Foreign Language Court Interpreters,
  - regulated by ss. 25.383 and 25.386, F.S., and FSC;
- Boiler Safety Inspectors,
  - regulated by ss. 554.104 and 554.114(1)(d), F.S., and DFS;
- Property Insurance Mediators and Neutral Evaluators,
  - regulated by ss. 627.7015(4) and 627.7074(1)(a), F.S., and DFS;
- Harbor Pilots,
  - regulated by ch. 310, F.S., and DBPR;
- Yacht and Ship Brokers,
  - regulated by ch. 326, F.S., and DBPR;
- Auctioneers and Auctioneer Apprentices,
  - regulated by pt. VI of ch. 468, F.S., and DBPR;
- Talent Agencies,
  - regulated by pt. VII of ch. 468, F.S., and DBPR.
- Community Association Managers,
  - regulated by pt. VIII of ch. 468, F.S., and DBPR;
- Athlete Agents,
  - regulated by pt. IX of ch. 468, F.S., and DBPR;
- Mobile Home Installers,
  - regulated by s. 320.8249, F.S., and DHSMV;
- Paramedics, Emergency Medical Technicians, and 911 Operators,
  - regulated by ss. 401.465, .27, and .271-273, F.S., and DOH;
- Dieticians, Nutritionists, and Nutrition Counselors,
  - regulated by pt. X of ch. 468, F.S., and DOH;
- Athlete Trainers,
  - regulated by pt. XIII of ch. 468, F.S., and DOH;
- Orthotists, Orthotic Fitters, Orthotic Fitter Assistants, Prosthetists, and Pedorthists,
  - regulated by pt. XIV of ch. 468, F.S., and DOH;
- Electrologists,
  - regulated by ch. 479, F.S., and DOH;
- Massage Therapists,
  - regulated by ch. 480, F.S., and DOH.

The bill schedules the following occupational licenses for sunset on July 1, 2022:

- Parenting Coordinators,
  - regulated by s. 61.125, F.S., and FSC;
- Funeral Directors, Embalmers, Direct Disposers, Monument Establishment Sales Agents, and Preneed Sales Agents,
  - regulated by ch. 497, F.S., and DFS;
- Service Warranty Sales Representatives, Motor Vehicle Service Agreement Salespersons, and Home Warranty Sales Representatives,
  - regulated by ss. 634.171, .318, .320, and .420, F.S., and DFS;
- Elevator Safety Professionals,
  - regulated by s. 399.01(16), F.S., and DBPR;
- Employee Leasing Companies,
  - regulated by pt. XI of ch. 468, F.S., and DBPR;
- Pugilistic Event Timekeepers and Announcers,
  - regulated by ch. 548, F.S., and DBPR;
- Home Inspectors,
  - regulated by pt. XV of ch. 468, F.S., and ;
- Mold Service Professionals,
  - regulated by pt. XVI of ch. 468, F.S., and DBPR;
- Well Water Contractors,
  - regulated by ss. 373.302-342, F.S., and DEP;
- Associated Persons of a Securities Dealer and Associated Persons of a State Registered Investment Advisor or Federal Covered Advisor,
  - regulated by s. 517.12(1),(4), F.S., and OFR;
- Acupuncturists,
  - regulated by ch. 457, F.S., and DOH;
- Medical Doctors, Physician Assistants, Anesthesiologist Assistants, and Medical Assistants,
  - regulated by ch. 458, F.S., and DOH;
- Osteopathic Doctors, Physician Assistants, and Anesthesiologist Assistants,
  - regulated by ch. 459, F.S., and DOH;
- Audiologists and Speech-language Pathologists,
  - regulated by pt. I of ch. 468, F.S., and DOH;
- Nursing Home Administrators,
  - regulated by pt. II of ch. 468, F.S., and DOH;
- Occupational Therapists and Occupational Therapist Assistants,
  - regulated by pt. III of ch. 468, F.S., and DOH;
- Radiographers, Radiological Technologists, Radiology Assistants, and X-Ray Machine Operators,
  - regulated by pt. IV of ch. 468, F.S., and DOH;
- Respiratory Therapists and Respiratory Therapy Assistants,
  - regulated by pt. V of ch. 468, F.S., and DOH;
- Commercial Telephone Sellers,
  - regulated by ch. 501, F.S., and DACS;
- Intrastate Movers and Brokers,
  - regulated by ch. 507, F.S., and DACS.

The bills schedules the following occupational licenses for sunset on July 1, 2023:

- Mediators and Arbitrators,
  - regulated by ch. 44.106, F.S., and FSC;
- Firefighters, Fire Protection Systems Contractors, Fire Equipment Dealers, Firesafety Inspectors, and Volunteer Firefighters,
  - regulated by ch. 633, F.S., and DFS;
- Professional Bail Bond Agents and Limited Surety Bail Bond Agents,
  - regulated by ch. 648, F.S., and DFS;

- Farm Labor Contractors,
  - regulated by s. 450.30, F.S., and DBPR;
- Certified Public Accountants,
  - regulated by ch. 473, F.S., and DBPR;
- Veterinarians,
  - regulated by ch. 474, F.S., and DBPR;
- Real Estate Brokers and Salespersons,
  - regulated by pt. I of ch. 475, F.S., and DBPR;
- Barbers,
  - regulated by ch. 476, F.S., and DBPR;
- Cosmetologists and Specialists,
  - regulated by ch. 477, F.S., and DBPR;
- Chiropractic Physicians, Physician Assistants, and Registered Chiropractic Assistants,
  - regulated by ch. 460, F.S., and DOH;
- Podiatric Physicians and Certified Podiatric X-Ray Assistants,
  - regulated by ch. 461, F.S., and DOH;
- Naturopaths,
  - regulated by ch. 462, F.S., and DOH;
- Certified Optometrists and Licensed Optometric Professionals,
  - regulated by ch. 463, F.S., and DOH;
- Clinical Laboratory Personnel and Medical Physicists,
  - regulated by ss. 483.800-828 and .901, F.S., and DOH;
- Opticians and Hearing Aid Specialists,
  - regulated by s. 484.002, .007(3)-(4), .013-.015, and .018(3), F.S., and DOH;
- Physical Therapists and Physical Therapist Assistants,
  - regulated by ch. 486, F.S., and DOH;
- Motor Vehicle Repair Shops,
  - regulated by pt. IX of ch. 559, F.S., and DACS;
- Sellers of Travel,
  - regulated by pt. XI of ch. 559, F.S., and DACS;
- Charitable Solicitors,
  - regulated by s. 496.4101, F.S. and DACS.

The bill schedules the following occupational licenses for sunset on July 1, 2024:

- Property and Casualty Agents, Health and Life Insurance Agents, Title Agents, Portable Electronic Agents, Credit Insurance Agents, In-Transit and Storage Personal Property Insurance Agents, Legal Expense Sales Representatives, Managing General Agents, Motor Vehicle Rental Insurance Agents, Individual Reinsurance Brokers and Managers, Service Representatives, Travel Insurance Agents, All-lines Adjusters, Emergency Adjusters, Public Adjusters and Apprentices, Health Agents, Viatical Settlement Providers and Brokers, ACA Navigators, and Motor Vehicle Physical Damage and Mechanical Breakdown Agents,
  - regulated by ch. 626, F.S., and DFS;
- Engineers,
  - regulated by ch. 471, F.S., and DBPR;
- Professional Geologists,
  - regulated by ch. 492, F.S., and DBPR;
- Architects and Interior Designers,
  - regulated by pt. I of ch. 481, F.S., and DBPR;
- Landscape Architects,
  - regulated by pt. II of ch. 481, F.S., and DBPR;
- Construction Contractors,
  - regulated by pt. I of ch. 489, F.S., and DBPR;
- Electrical Contractors,
  - regulated by pt. II of ch. 489, F.S., and DBPR;

- Septic Tank Contractors,
  - regulated by pt. III of ch. 489, F.S., and DOH;
- Building Code Administrators, Inspectors, and Plans Examiniers,
  - regulated by pt. XII of ch. 468, F.S., and DBPR;
- Registered Core Trainers,
  - regulated by s. 429.52(11)-(12), F.S., and DEA;
- Health Care Risk Manager,
  - regulated by ss. 395.10971-10975, F.S., and AHCA;
- Recovery Residence Administrators,
  - regulated by s. 397.4871, F.S., and DCF;
- Child and Family Care Personnel Operators and Employees,
  - regulated by s. 402.305, F.S., and DCF;
- Registered Nurses, Advanced Registered Nurse Practitioners, and Certified Nurse Assistants,
  - regulated by ch. 464, F.S., and DOH;
- Pharmacists, Pharmacist Interns, and Pharmacist Technicians,
  - regulated by ch. 465, F.S., and DOH;
- Dentists and Dental Hygienists,
  - regulated by ch. 466, F.S., and DOH;
- Licensed Midwives,
  - regulated by ch. 467, F.S., and DOH;
- Psychologists and School Psychologists,
  - regulated by ch. 490, F.S., and DOH;
- Licensed Clinical Social Workers, Marriage and Family Therapists, Mental Health Counselors, Psychotherapists, and Certified Master Social Workers,
  - regulated by ch. 491, F.S., and DOH;
- Surveyors and Mappers,
  - regulated by ch. 472, F.S., and DACS;
- Hypnotists,
  - regulated by ch. 485, F.S., and DOH;
- Pest Control Professionals,
  - regulated by ch. 482, F.S., and DACS;
- Pesticide Application Professionals,
  - regulated by pt. I of ch. 487, F.S., and DACS;
- Body Piercing Salons, Tattoo Artists, Tattoo Establishments, and Certified Environmental Health Professionals,
  - regulated by ss. 381.0101, .0075-.00777, and .00781-00791, F.S., and DOH.

At the time of a scheduled repeal, if an occupational regulatory programs is allowed to expire or is amended, there will also need to be conforming changes made to related statutes and cross-references.

The bill is effective upon becoming law.

B. SECTION DIRECTORY:

Section 1: Creates a process for a legislative sunset review for certain occupational regulatory programs.

Section 2: Schedules certain statutes for sunset on July 1, 2021.

Section 3: Schedules certain statutes for sunset on July 1, 2022.

Section 4: Schedules certain statutes for sunset on July 1, 2023.

Section 5: Schedules certain statutes for sunset on July 1, 2024.

Section 6: Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   The fiscal impact is indeterminate.

2. Expenditures:

   The fiscal impact is indeterminate.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

For any occupational regulatory program that is repealed as a result of the sunset review process, the bill may have a positive impact on individuals who would have otherwise been required to pay licensing fees and comply with extensive licensing requirements. The impact on consumers is indeterminate.

D. FISCAL COMMENTS:

To the extent certain occupational regulatory programs are allowed to expire, state revenues and expenditures related to such programs will decline or be eliminated.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   Not applicable. This bill does not appear to affect county or municipal governments.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to legislative review of occupational regulations; creating s. 11.65, F.S.; providing definitions; establishing a schedule for the systematic review of occupational regulatory programs; authorizing the Legislature to take certain actions before the scheduled repeal of an occupational regulatory program; providing that amending or transferring Florida Statutes does not affect a scheduled repeal; providing for the abolition of units or subunits of government and personnel positions responsible for repealed programs; providing for the reversion of certain unexpended funds and the refund of certain unencumbered revenue of a repealed program; providing for cause of action by or against specified units of government under certain circumstances; providing for certain actions for acts committed before a certain time; preempting the regulation of an occupation to the state if such occupation's regulatory program has been repealed through this act; providing a schedule of repeal for occupational regulatory programs; providing contingent effective dates.

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

Section 1. Section 11.65, Florida Statutes, is created to read:

11.65 Legislative review of occupational regulation.—

(1) As used in this section:

(a) "Occupational regulatory program" or "program" means any statutory regulatory provision or scheme which places a condition on practicing an occupation, including, but not limited to, programs that require a license, certification, registration, or credential.

(b) "Local government" means a county, municipality, special district, or political subdivision of the state.

(c) "Occupation" means a paid job, profession, work, line of work, trade, employment, position, post, career, field, vocation, or craft.

(2) There is established a schedule for systematic review of the costs and benefits of occupational regulatory programs. The Legislature intends to review each program before the scheduled date on which each occupational regulatory program is set to expire through scheduled repeal to determine whether to allow the program to expire, renew the program without modifications, renew the program with modifications, or provide for other appropriate actions.

(3) If a chapter or section of the Florida Statutes scheduled for review by this act is subsequently amended or

transferred, such subsequent amendment or transfer, unless otherwise expressly provided in the act amending or transferring such chapter or section, shall not eliminate the scheduled repeal of such chapter or section.

(4) Within 60 days after the date on which any occupational regulatory program is allowed to expire through scheduled repeal under this act, the personnel positions which are responsible for carrying out the program shall be abolished, and all unexpended balances of appropriations, allocations, or other funds for such program shall revert to the fund from which they were appropriated or, if that fund is abolished, to the General Revenue Fund. Except as authorized under this section, all regulatory activities related to the repealed program shall cease after the date of repeal.

(5) Any remaining unencumbered revenue collected under an occupational regulatory program allowed to expire through repeal shall be refunded on a pro rata basis by the Chief Financial Officer pursuant to s. 215.26, upon request of the person or entity who paid, if such request is made within 1 year after the repeal of the program.

(6) Any cause of action pending on the date the occupational regulatory program was repealed, or any cause of action brought thereafter, shall be prosecuted or defended in the name of the state by the Department of Legal Affairs, if prior to repeal such action would have been prosecuted or

defended by the occupational regulatory program repealed by this act.

(7) Any occupational regulatory program that expires through scheduled repeal in accordance with this act may not be subsequently regulated by a local government. The regulation of any occupation repealed by this act is preempted to the state unless local regulation of such occupation is expressly authorized by law.

Section 2. Pursuant to the Occupational Regulation Sunset Act, the following statutes are repealed effective July 1, 2021: ss. 25.383, 25.386, 310.001, 310.0015, 310.002, 310.011, 310.032, 310.042, 310.051, 310.061, 310.071, 310.073, 310.075, 310.081, 310.091, 310.101, 310.102, 310.111, 310.1112, 310.1115, 310.121, 310.131, 310.141, 310.142, 310.146, 310.151, 310.161, 310.171, 310.181, 310.183, 310.185, 320.8249, 326.001, 326.002, 326.003, 326.004, 326.005, 326.006, 401.27, 401.271, 401.2715, 401.272, 401.273, 401.465, 468.381, 468.382, 468.383, 468.384, 468.385, 468.3851, 468.3852, 468.3855, 468.386, 468.387, 468.388, 468.389, 468.391, 468.392, 468.393, 468.394, 468.395, 468.396, 468.397, 468.398, 468.399, 468.401, 468.402, 468.403, 468.404, 468.405, 468.406, 468.407, 468.408, 468.409, 468.410, 468.411, 468.412, 468.413, 468.414, 468.415, 468.431, 468.4315, 468.432, 468.433, 468.4334, 468.4336, 468.4337, 468.4338, 468.435, 468.436, 468.4365, 468.437, 468.438, 468.451, 468.452, 468.453, 468.4535, 468.4536, 468.454, 468.456, 468.4561,

468.45615, 468.4562, 468.4565, 468.457, 468.501, 468.502, 468.503, 468.504, 468.505, 468.506, 468.507, 468.508, 468.509, 468.51, 468.511, 468.512, 468.513, 468.514, 468.515, 468.516, 468.517, 468.518, 468.70, 468.701, 468.703, 468.705, 468.707, 468.709, 468.711, 468.713, 468.715, 468.717, 468.719, 468.723, 468.80, 468.801, 468.802, 468.803, 468.806, 468.808, 468.809, 468.8095, 468.811, 468.812, 468.813, 478.40, 478.41, 478.42, 478.43, 478.44, 478.45, 478.46, 478.47, 478.48, 478.49, 478.50, 478.54, 480.031, 480.032, 480.033, 480.034, 480.035, 480.036, 480.039, 480.041, 480.0415, 480.042, 480.043, 480.044, 480.046, 480.0465, 480.047, 480.0475, 480.0485, 480.049, 480.052, 480.0535, 488.01, 488.02, 488.03, 488.04, 488.045, 488.05, 488.06, 488.07, 488.08, 554.104, 554.114(1)(d), 627.7015(4), and 627.7074(1)(a).

Section 3. Pursuant to the Occupational Regulation Sunset Act, the following statutes are repealed effective July 1, 2022: ss. 61.125, 373.302, 373.303, 373.306, 373.308, 373.309, 373.313, 373.314, 373.316, 373.319, 373.323, 373.324, 373.325, 373.326, 373.329, 373.333, 373.335, 373.336, 373.337, 373.342, 399.01(16), 457.101, 457.102, 457.103, 457.104, 457.105, 457.107, 457.108, 457.1085, 457.109, 457.116, 457.118, 458.301, 458.303, 458.305, 458.307, 458.309, 458.310, 458.311, 458.3115, 458.3124, 458.313, 458.3135, 458.3137, 458.314, 458.3145, 458.3147, 458.315, 458.3151, 458.316, 458.3165, 458.317, 458.3175, 458.319, 458.3191, 458.3192, 458.3193, 458.320,

458.321, 458.323, 458.324, 458.325, 458.3255, 458.326, 458.327, 458.328, 458.329, 458.3295, 458.331, 458.3311, 458.3312, 458.335, 458.336, 458.337, 458.339, 458.341, 458.343, 458.345, 458.347, 458.3475, 458.348, 458.3485, 458.351, 459.001, 459.002, 459.003, 459.004, 459.005, 459.0055, 459.0066, 459.0075, 459.0076, 459.00761, 459.0077, 459.008, 459.0081, 459.0082, 459.0083, 459.0085, 459.009, 459.0092, 459.011, 459.012, 459.0122, 459.0125, 459.013, 459.0135, 459.0138, 459.0141, 459.0145, 459.015, 459.0151, 459.0152, 459.016, 459.017, 459.018, 459.019, 459.021, 459.022, 459.023, 459.025, 459.026, 468.1105, 468.1115, 468.1125, 468.1135, 468.1145, 468.1155, 468.1165, 468.1175, 468.1185, 468.1195, 468.1205, 468.1215, 468.1225, 468.1245, 468.1246, 468.1255, 468.1265, 468.1275, 468.1285, 468.1295, 468.1296, 468.1315, 468.1635, 468.1645, 468.1655, 468.1665, 468.1675, 468.1685, 468.1695, 468.1705, 468.1715, 468.1725, 468.1735, 468.1745, 468.1755, 468.1756, 468.201, 468.203, 468.204, 468.205, 468.207, 468.209, 468.211, 468.213, 468.215, 468.217, 468.219, 468.221, 468.223, 468.225, 468.3001, 468.3003, 468.301, 468.302, 468.303, 468.304, 468.305, 468.306, 468.3065, 468.307, 468.309, 468.3095, 468.3101, 468.311, 468.3115, 468.312, 468.314, 468.315, 468.35, 468.351, 468.352, 468.353, 468.354, 468.355, 468.358, 468.359, 468.36, 468.361, 468.363, 468.364, 468.365, 468.366, 468.367, 468.368, 468.369, 468.520, 468.521, 468.522, 468.523, 468.524, 468.5245, 468.525, 468.526, 468.527, 468.5275, 468.528, 468.529, 468.530,

468.531, 468.532, 468.533, 468.534, 468.535, 468.83, 468.831, 468.8311, 468.8312, 468.8313, 468.8314, 468.8315, 468.8316, 468.8317, 468.8318, 468.8319, 468.832, 468.8321, 468.8322, 468.8323, 468.8324, 468.8325, 468.84, 468.841, 468.8411, 468.8412, 468.8413, 468.8414, 468.8415, 468.8416, 468.8417, 468.8418, 468.8419, 468.42, 468.8421, 468.8422, 468.8423, 468.8424, 497.144, 497.145, 497.147, 497.148, 497.168, 497.365, 497.366, 497.368, 497.369, 497.370, 497.371, 497.372, 497.373, 497.374, 497.375, 497.376, 497.377, 497.378, 497.379, 497.390, 497.554, 497.602, 497.603, 497.605, 501.605, 501.607, 501.608, 501.609, 501.612, 501.616(2) and (4), 507.01, 507.02, 507.03, 507.04, 507.05, 507.06, 507.07, 507.08, 507.09, 507.10, 507.11, 507.12, 507.13, 517.12(1) and (4), 548.003, 548.017, 634.171, 634.318, 634.320, and 634.420.

Section 4. Pursuant to the Occupational Regulation Sunset Act, the following statutes are repealed effective July 1, 2023: s. 44.106, 450.30, 460.401, 460.402, 460.403, 460.404, 460.405, 460.406, 460.4061, 460.4062, 460.407, 460.408, 460.41, 460.411, 460.412, 460.413, 460.414, 460.4165, 460.4166, 460.4167, 461.001, 461.002, 461.003, 461.004, 461.005, 461.006, 461.007, 461.008, 461.009, 461.012, 461.013, 461.0131, 461.0134, 461.0135, 461.014, 461.018, 462.01, 462.023, 462.08, 462.09, 462.11, 462.13, 462.14, 462.16, 462.17, 462.18, 462.19, 462.2001, 463.0001, 463.001, 463.002, 463.003, 463.004, 463.005, 463.0055, 463.0057, 463.006, 463.007, 463.008, 463.009, 463.011,

463.012, 463.013, 463.0135, 463.014, 463.0141, 463.015, 463.016, 463.018, 473.301, 473.302, 473.303, 473.3035, 473.304, 473.305, 473.306, 473.3065, 473.308, 473.309, 473.3101, 473.311, 473.312, 473.3125, 473.313, 473.314, 473.3141, 473.315, 473.316, 473.318, 473.319, 473.3205, 473.321, 473.322, 473.323, 474.201, 474.202, 474.203, 474.204, 474.205, 474.206, 474.2065, 474.207, 474.211, 474.2125, 474.213, 474.214, 474.2145, 474.215, 474.216, 474.2165, 474.2167, 474.217, 474.2185, 474.221, 475.001, 475.01, 475.011, 475.02, 475.021, 475.03, 475.04, 475.045, 475.05, 475.10, 475.125, 475.15, 475.161, 475.17, 475.175, 475.180, 475.181, 475.182, 475.183, 475.215, 475.22, 475.23, 475.24, 475.25, 475.255, 475.2701, 475.272, 475.274, 475.2755, 475.278, 475.28, 475.2801, 475.31, 475.37, 475.38, 475.41, 475.42, 475.43, 475.451, 475.4511, 475.453, 475.455, 475.482, 475.483, 475.4835, 475.484, 475.485, 475.486, 475.5015, 475.5016, 475.5017, 475.5018, 476.014, 476.024, 476.034, 476.044, 476.054, 476.064, 476.074, 476.114, 476.134, 476.144, 476.154, 476.155, 476.178, 476.184, 476.188, 476.192, 476.194, 476.204, 476.214, 476.234, 476.244, 476.254, 477.011, 477.012, 477.013, 477.0132, 477.0135, 477.014, 477.015, 477.016, 477.017, 477.018, 477.019, 477.0201, 477.0212, 477.0213, 477.022, 477.023, 477.025, 477.026, 477.0263, 477.0265, 477.028, 477.029, 477.031, 483.800, 483.801, 483.803, 483.805, 483.807, 483.809, 483.811, 483.812, 483.813, 483.815, 483.817, 483.819, 483.821, 483.823, 483.824, 483.825, 483.828, 483.901, 484.002, 484.007(3) and (4), 484.013,

484.014, 484.015, 484.018(3), 486.011, 486.015, 486.021, 486.023, 486.025, 486.028, 486.031, 486.041, 486.051, 486.061, 486.0715, 486.081, 486.085, 486.102, 486.103, 486.104, 486.106, 486.1065, 486.107, 486.108, 486.109, 486.115, 486.123, 486.125, 486.135, 486.151, 486.153, 486.161, 486.171, 486.172, 496.4101, 559.901, 559.902, 559.903, 559.904, 559.905, 559.907, 559.909, 559.911, 559.915, 559.916, 559.917, 559.919, 559.920, 559.921, 559.9215, 559.92201, 559.9221, 559.926, 559.927, 559.928, 559.9281, 559.9285, 559.929, 559.9295, 559.931, 559.932, 559.933, 559.9335, 559.934, 559.935, 559.9355, 559.936, 559.937, 559.938, 559.939, 633.132, 633.216, 633.304, 633.316, 633.318, 633.324, 633.328, 633.332, 633.336, 633.338, 633.406, 633.408, 633.412, 633.414, 633.416, 633.418, 633.424, 633.426, 648.24, 648.25, 648.26, 648.27, 648.279, 648.285, 648.29, 648.295, 648.30, 648.31, 648.315, 648.33, 648.34, 648.35, 648.355, 648.36, 648.365, 648.38, 648.381, 648.382, 648.383, 648.384, 648.385, 648.386, 648.387, 648.388, 648.39, 648.40, 648.41, 648.42, 648.421, 648.43, 648.44, 648.441, 648.442, 648.4425, 648.45, 648.46, 648.48, 648.49, 648.50, 648.51, 648.52, 648.525, 648.53, 648.55, 648.57, 648.571, and 648.58.

Section 5. Pursuant to the Occupational Regulation Sunset Act, the following statutes are repealed effective July 1, 2024: 381.0075, 381.00771, 381.00773, 381.00775, 381.00777, 381.00781, 381.00783, 381.00785, 381.00787, 381.00789, 381.00791, 381.0101, 395.10973, 397.4871, 402.305, 429.52(11) and (12), 464.001,

464.002, 464.003, 464.004, 464.005, 464.006, 464.008, 464.009, 464.0095, 464.0096, 464.012, 464.013, 464.014, 464.015, 464.016, 464.017, 464.018, 464.019, 464.0195, 464.0196, 464.0205, 464.022, 464.027, 464.201, 464.202, 464.203, 464.204, 464.205, 464.206, 464.207, 464.208, 465.002, 465.007, 465.0075, 465.008, 465.009, 465.012, 465.0125, 465.0126, 465.013, 465.014, 465.0155, 465.0252, 465.0255(2), (3), and (4), 465.026, 465.0275, 465.0276, 465.186, 465.187, 465.188, 465.189, 465.1893, 465.1901, 466.001, 466.002, 466.003, 466.004, 466.005, 466.006, 466.0065, 466.0067, 466.00671, 466.00672, 466.00673, 466.007, 466.0075, 466.008, 466.009, 466.011, 466.013, 466.0135, 466.014, 466.015, 466.016, 466.017, 466.018, 466.019, 466.021, 466.022, 466.023, 466.0235, 466.024, 466.025, 466.026, 466.027, 466.0275, 466.02751, 466.028, 466.0282, 466.0285, 466.041, 466.051, 467.001, 467.002, 467.003, 467.004, 467.005, 467.006, 467.009, 467.011, 467.012, 467.0125, 467.013, 467.0135, 467.014, 467.015, 467.016, 467.017, 467.019, 467.201, 467.203, 467.205, 467.207, 468.601, 468.602, 468.603, 468.604, 468.605, 468.606, 468.607, 468.609, 468.613, 468.617, 468.619, 468.621, 468.627, 468.629, 468.631, 468.632, 468.633, 471.001, 471.003, 471.0035, 471.005, 471.007, 471.008, 471.009, 471.011, 471.013, 471.015, 471.017, 471.019, 471.0195, 471.021, 471.023, 471.025, 471.027, 471.031, 471.033, 471.037, 471.038, 471.0385, 471.045, 472.001, 472.003, 472.005, 472.006, 472.007, 472.0075, 472.008, 472.009, 472.0101, 472.011, 472.013, 472.0131, 472.0132, 472.0135,

472.015, 472.016, 472.0165, 472.017, 472.018, 472.019, 472.0201, 472.02011, 472.0202, 472.0203, 472.0204, 472.021, 472.023, 472.025, 472.027, 472.029, 472.031, 472.033, 472.0335, 472.0337, 472.034, 472.0345, 472.0351, 472.0355, 472.036, 472.0365, 472.0366, 472.037, 481.201, 481.203, 481.205, 481.2055, 481.207, 481.209, 481.211, 481.213, 481.2131, 481.215, 481.217, 481.219, 481.221, 481.222, 481.223, 481.225, 481.2251, 481.229, 481.231, 481.301, 481.303, 481.305, 481.306, 481.307, 481.309, 481.310, 481.311, 481.313, 481.315, 481.317, 481.319, 481.321, 481.323, 481.325, 481.329, 482.011, 482.021, 482.032, 482.051, 482.061, 482.071, 482.072, 482.0815, 482.091, 482.111, 482.121, 482.132, 482.141, 482.151, 482.152, 482.155, 482.156, 482.1562, 482.157, 482.161, 482.163, 482.165, 482.1821, 482.183, 482.191, 482.211, 482.226, 482.2265, 482.2267, 482.227, 482.231, 482.2401, 482.241, 482.242, 482.243, 485.001, 485.002, 485.003, 485.004, 485.005, 487.011, 487.012, 487.021, 487.025, 487.031, 487.041, 487.042, 487.0435, 487.0437, 487.044, 487.045, 487.046, 487.047, 487.048, 487.049, 487.051, 487.064, 487.071, 487.081, 487.091, 487.101, 487.111, 487.13, 487.15, 487.156, 487.1585, 487.159, 487.160, 487.161, 487.163, 487.171, 487.175, 489.101, 489.103, 489.105, 489.107, 489.108, 489.109, 489.111, 489.113, 489.1131, 489.1136, 489.114, 489.115, 489.116, 489.117, 489.118, 489.119, 489.1195, 489.121, 489.124, 489.125, 489.126, 489.127, 489.128, 489.129, 489.13, 489.131, 489.132, 489.133, 489.134, 489.140, 489.1401, 489.1402, 489.141, 489.142, 489.1425, 489.143,

489.144, 489.145, 489.1455, 489.146, 489.501, 489.503, 489.505, 489.507, 489.509, 489.510, 489.511, 489.513, 489.514, 489.515, 489.516, 489.5161, 489.517, 489.518, 489.5185, 489.519, 489.520, 489.521, 489.522, 489.523, 489.525, 489.529, 489.530, 489.531, 489.5315, 489.532, 489.533, 489.5335, 489.537, 489.538, 489.551, 489.552, 489.553, 489.554, 489.555, 489.556, 489.557, 489.558, 490.001, 490.002, 490.003, 490.004, 490.005, 490.0051, 490.006, 490.007, 490.0085, 490.009, 490.0111, 490.012, 490.0121, 490.014, 490.0141, 490.0143, 490.0145, 490.0147, 490.0148, 490.0149, 490.015, 491.002, 491.003, 491.004, 491.0045, 491.0046, 491.005, 491.0057, 491.006, 491.0065, 491.007, 491.008, 491.0085, 491.009, 491.0111, 491.0112, 491.012, 491.014, 491.0141, 491.0143, 491.0144, 491.0145, 491.0147, 491.0148, 491.0149, 491.015, 491.016, 492.101, 492.102, 492.103, 492.104, 492.105, 492.1051, 492.106, 492.107, 492.108, 492.109, 492.1101, 492.111, 492.112, 492.113, 492.114, 492.115, 492.116, 492.1165, 626.011, 626.015, 626.016, 626.022, 626.025, 626.0428, 626.112, 626.141, 626.161, 626.171, 626.172, 626.175, 626.181, 626.191, 626.201, 626.202, 626.207, 626.211, 626.221, 626.231, 626.241, 626.2415, 626.251, 626.261, 626.266, 626.271, 626.281, 626.2815, 626.2816, 626.2817, 626.291, 626.292, 626.301, 626.311, 626.321, 626.322, 626.331, 626.341, 626.342, 626.371, 626.381, 626.382, 626.431, 626.441, 626.451, 626.461, 626.471, 626.511, 626.536, 626.541, 626.551, 626.561, 626.571, 626.5715, 626.572, 626.593, 626.601, 626.602, 626.611, 626.6115, 626.621,

626.6215, 626.631, 626.641, 626.651, 626.6515, 626.661, 626.681, 626.691, 626.692, 626.711, 626.726, 626.727, 626.728, 626.729, 626.730, 626.731, 626.7315, 626.732, 626.733, 626.734, 626.7351, 626.7352, 626.7353, 626.7354, 626.741, 626.742, 626.743, 626.744, 626.745, 626.7451, 626.7452, 626.7453, 626.7454, 626.7455, 626.748, 626.7491, 626.7492, 626.752, 626.753, 626.754, 626.776, 626.777, 626.778, 626.779, 626.780, 626.781, 626.782, 626.783, 626.784, 626.7845, 626.785, 626.7851, 626.788, 626.789, 626.792, 626.793, 626.794, 626.795, 626.796, 626.797, 626.798, 626.826, 626.827, 626.828, 626.829, 626.830, 626.8305, 626.831, 626.8311, 626.833, 626.834, 626.835, 626.836, 626.837, 626.8373, 626.838, 626.839, 626.841, 626.8411, 626.8412, 626.8413, 626.8414, 626.8417, 626.8418, 626.8419, 626.84195, 626.842, 626.84201, 626.8421, 626.8423, 626.8427, 626.843, 626.8433, 626.8437, 626.844, 626.8443, 626.8447, 626.845, 626.8453, 626.8457, 626.846, 626.8463, 626.8467, 626.847, 626.8473, 626.851, 626.852, 626.853, 626.854, 626.8548, 626.855, 626.856, 626.8561, 626.8582, 626.8584, 626.859, 626.860, 626.861, 626.862, 626.863, 626.864, 626.865, 626.8651, 626.866, 626.8685, 626.869, 626.8695, 626.8696, 626.8697, 626.8698, 626.870, 626.871, 626.8732, 626.8734, 626.8736, 626.8737, 626.8738, 626.874, 626.875, 626.876, 626.877, 626.878, 626.8795, 626.8796, 626.8797, 626.927, 626.9271, 626.9272, 626.9912, 626.9916, 626.995, 626.9951, 626.9952, 626.9953, 626.9954, 626.9955, 626.9956, 626.9957, and 626.9958.

Section 6. Except as otherwise expressly provided in this act, this act shall take effect upon becoming a law.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 6037 Individual Wine Containers
SPONSOR(S): LaMarca
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Business & Professions Subcommittee	13 Y, 0 N	Willson	Anstead
2) Commerce Committee		Willson MW	Hamon K.W.H.

SUMMARY ANALYSIS

In Florida, the Beverage Law regulates the manufacture, distribution, and sale of wine, beer, and liquor by manufacturers, distributors, and vendors. The Division of Alcoholic Beverages and Tobacco in the Department of Business and Professional Regulation administers and enforces the Beverage Law.

Section 564.05, F.S., prohibits the sale of wine in an individual container that holds more than one gallon of wine. However, wine may be sold in a reusable container of 5.16 gallons. Distributors and manufacturers may sell wine to other distributors and manufacturers in containers of any size.

The bill repeals s. 564.05, F.S., relating to limitations on the size of individual wine containers.

The bill does not appear to have a fiscal impact on state or local governments.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Beverage Law

In Florida, the Beverage Law[1] regulates the manufacture, distribution, and sale of wine, beer, and liquor by manufacturers, distributors, and vendors.[2] The Division of Alcoholic Beverages and Tobacco (Division) in the Department of Business and Professional Regulation (DBPR) administers and enforces the Beverage Law.[3]

"Alcoholic beverages" are defined in s. 561.01, F.S., as "distilled spirits and all beverages containing one-half of 1 percent or more alcohol by volume." "Malt beverages" are brewed alcoholic beverages containing malt.[4]

Section 561.14, F.S., specifies the license and registration classifications used in the Beverage Law.

- "Manufacturers" are those "licensed to manufacture alcoholic beverages and distribute the same at wholesale to licensed distributors and to no one else within the state, unless authorized by statute."
- "Distributors" are those "licensed to sell and distribute alcoholic beverages at wholesale to persons who are licensed to sell alcoholic beverages."
- "Importers" are those licensed to sell, or to cause to be sold, shipped, and invoiced, alcoholic beverages to licensed manufacturers or licensed distributors, and to no one else in this state.[5]
- "Vendors" are those "licensed to sell alcoholic beverages at retail only" and may not "purchase or acquire in any manner for the purpose of resale any alcoholic beverages from any person not licensed as a vendor, manufacturer, bottler, or distributor under the Beverage Law."

Wine Containers

Section 564.05, F.S., prohibits the sale of wine in an individual container that holds more than one gallon of wine. However, wine may be sold in a reusable container of 5.16 gallons.

Distributors and manufacturers may sell wine to other distributors and manufacturers in containers of any size.

Any person who violates the prohibition commits a second-degree misdemeanor.[6]

Effect of the Bill

The bill repeals s. 564.05, F.S., relating to limitations on the size of individual wine containers.

---

[1] Section 561.01(6), F.S., provides that the "The Beverage Law" means chs. 561, 562, 563, 564, 565, 567, and 568, F.S.
[2] *See* s. 561.14, F.S.
[3] S. 561.02, F.S.
[4] S. 563.01, F.S.
[5] S. 561.01(5), F.S.
[6] Section 775.082, F.S., provides the penalty for a misdemeanor of the second degree is a term of imprisonment not exceeding 60 days. Section 775.083, F.S., provides the penalty for a misdemeanor of the second degree is a fine not to exceed $500.

B. SECTION DIRECTORY:

Section 1 Repeals s. 564.05, F.S., relating to limitations on the size of individual wine containers.

Section 2 Provides for an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   Not Applicable. This bill does not appear to affect county or municipal governments.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

The bill does not appear to create a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to individual wine containers; repealing s. 564.05, F.S., relating to the limitation of size of individual wine containers; providing an effective date.

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

Section 1. Section 564.05, Florida Statutes, is repealed.

Section 2. This act shall take effect July 1, 2020.

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