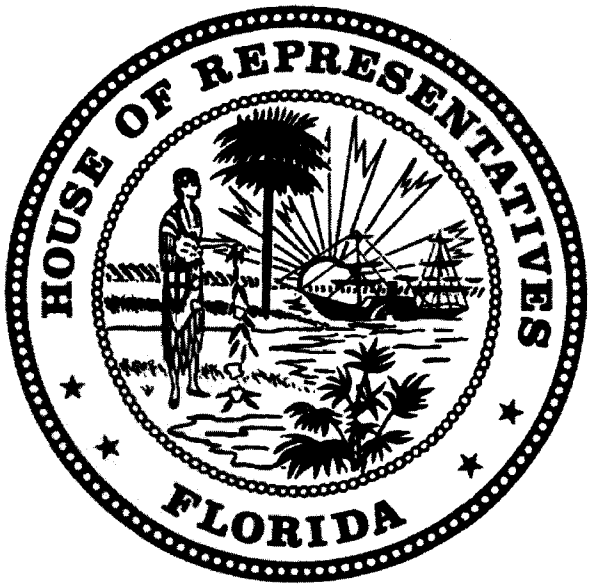



# Commerce Committee

**Thursday, February 6, 2020**
**9:00 AM –11:00 AM**
**Webster Hall (212 Knott)**

# Meeting Packet

**Jose Oliva**
**Speaker**

**Mike La Rosa**
**Chair**

# The Florida House of Representatives

**Commerce Committee**

**Jose Oliva**
**Speaker**

**Mike La Rosa**
**Chair**

## Meeting Agenda

Thursday, February 6, 2020
9:00 am – 11:00 am
Webster Hall (212 Knott)

I. Call to Order

II. Roll Call

III. Welcome and Opening Remarks

IV. Consideration of the following bill(s):

CS/HB 459 Building Design by Business & Professions Subcommittee, Overdorf

HB 717 Space Florida Financing by Sirois

HB 773 Medically Essential Electric Utility Service by Maggard

CS/HB 813 Protection of Vulnerable Investors by Insurance & Banking Subcommittee, McClure

HB 1155 Legislative Review of Proposed Regulation of Unregulated Functions by Hage

HB 6057 Sports Development Program by Avila

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 #:** CS/HB 459 Building Design
**SPONSOR(S):** Business & Professions Subcommittee, Overdorf
**TIED BILLS:** **IDEN./SIM. BILLS:** SB 954

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR or BUDGET/POLICY CHIEF |
|---|---|---|---|
| 1) Business & Professions Subcommittee | 13 Y, 0 N, As CS | Brackett | Anstead |
| 2) Government Operations & Technology Appropriations Subcommittee | 9 Y, 2 N | Helpling | Topp |
| 3) Commerce Committee | | Brackett DB | Hamon K.W.H. |

## SUMMARY ANALYSIS

Property development in Florida is governed in part by both the Community Planning Act and the Florida Building Code. The Community Planning Act governs how local governments create and adopt local comprehensive plans, implement land development regulations, and issue development orders and permits. Some local governments have implemented regulations that require new single- and two- family dwellings in the community to have specific building design elements such as exterior paint color, exterior building material, architectural style of windows and doors, and location of windows and doors.

The Florida Building Commission (Commission), located within the Department of Business and Professional Regulation, implements and adopts the Florida Building Code. The Building Code is the statewide building code for all construction in the state. Every local government must enforce the Building Code and issue building permits. Local governments may adopt amendments to the Building Code provided they follow the requirements in current law. Local amendments to the Building Code expire when the newest edition of the Building Code takes effect.

The bill:

- Prohibits local governments from applying land development regulations that require specific building design elements to single- and two- family dwellings, unless certain conditions are met.
- Provides that local governments may apply land development regulations requiring certain building design elements to single- and two- family dwellings when:
  - The dwelling is a historic property or a contributing property to a historic district;
  - The regulations are adopted in order to implement the National Flood Insurance Program; or
  - The regulations are adopted in accordance with and in compliance with the procedures for adopting local amendments to the Florida Building Code.
- Defines the term "building design elements" to mean exterior color, type or style of exterior cladding, style or material of roof structures or porches, exterior nonstructural architectural ornamentation, location or architectural styling of windows or doors, and number, type, and layout of rooms.
- Provides that the term "building design elements" does not include a dwelling's height, bulk, orientation, location on a zoning lot, or the use of buffering or screening to minimize potential adverse physical or visual impacts or protect the privacy of neighbors.

The bill also allows a substantially affected person to submit a petition to the Commission for a non-binding advisory opinion on whether a local government regulation is an amendment to the Building Code, and establishes a process for such.

The Commission may see an increased workload related to establishing a process for accepting petitions from affected persons and issuing non-binding advisory opinions. However, the workload should be able to be absorbed within existing resources. There may be decreased costs related to construction for the private sector. See *Fiscal Analysis & Economic Impact Statement.*

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

## FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

**Current Situation**

*The Community Planning Act*

Adopted in 1985, the Local Government Comprehensive Planning and Land Development Regulation Act, also known as Florida's Growth Management Act, was significantly revised in 2011, becoming the Community Planning Act.[1] The Community Planning Act governs how local governments create and adopt their local comprehensive plans.

It is the intent of the Act that local governments manage growth through comprehensive land use plans that preserve, promote, protect, and improve the public health, safety, comfort, good order, appearance, convenience, law enforcement and fire prevention, and general welfare.[2]

Local comprehensive plans must include principles, guidelines, standards, and strategies for the orderly and balanced future land development of the area and reflect community commitments to implement the plan. Plans also are required to identify procedures for monitoring, evaluating, and appraising implementation of the plan.[3] Plans may include optional elements,[4] but must include the following nine elements:[5]

- Capital improvements;
- Future land use plan;
- Intergovernmental coordination;
- Conservation;
- Transportation;
- Sanitary sewer, solid waste, drainage, potable water, and aquifer recharge;
- Recreation and open space;
- Housing; and
- Coastal management (for coastal local governments).

The comprehensive plan is implemented via land development regulations. Land development regulations are ordinances that regulate any aspect of development including any local government zoning, rezoning, subdivision, building construction, sign regulations, or any regulation that controls the development of land.[6]

Each county and municipality must adopt and enforce land development regulations that are consistent with and implement their adopted comprehensive plan.[7] All local government land development regulations must be consistent with the local government's comprehensive plan.[8]

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[1] Ch. 11-139, Laws of Fla.
[2] S. 163.3161(4), F.S.
[3] S. 163.3177(1), F.S.
[4] *Id.*
[5] Ss. 163.3177(3) & (6), F.S.
[6] Ss. 163.3164(26) & 163.3202(1), F.S.
[7] S. 163.3202(1), F.S.
[8] S. 163.3194(1)(b), F.S.

Some local governments in Florida have adopted land development regulations that place restrictions on the design of new single- and two- family buildings such as the:

- External paint color;[9]
- Architectural style of:[10]
  - Windows;
  - Doors, including garage doors;
  - Front porches; and
  - Roofs.
- Exterior building material;[11] and
- Location of windows and garage doors.[12]

Some local governments may be adopting ordinances related to building design elements because the local government is adopting the principles of "new urbanism." New urbanism is a land development policy that attempts to solve issues created by urban sprawl, such as traffic jams, ugliness, and lifeless downtowns, by establishing compact, mixed-use, and pedestrian friendly communities. The principles of new urbanism can be achieved through creating mixed-use areas with residential areas located within walking distance of commercial areas located in a town center, creating parks and civic spaces located near the town center, and building narrow streets with sidewalks and trees to promote walking.[13]

New urbanism also includes creating communities and neighborhoods that have a certain style of architecture and design and, thus, are more pleasant to live in and walk through. Local governments can accomplish this by requiring buildings, including single- and two- family buildings, within their jurisdictions to have specific building design elements.[14]

Opponents of the adoption of the building design element ordinances argue that these types of building design elements increase housing costs.[15] Local governments also argue that the building design element ordinances prevent poorly designed buildings from lowering the value of surrounding properties. Prohibiting such ordinances, they say, will prevent them from developing a plan for their own community.[16]

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[9] Osceola County Land Development Code, § Ch. 3, Article 3.2.2.; Code of the City of Orlando, § Ch. 58, Part 3, Section 58.517; Orange County Code, § Chapter 38, Article VIII, Division 8.

[10] Osceola County Land Development Code, § Ch. 3, Article 3.2.2.; Code of the City of Orlando, § Ch. 58, Part 3, Section 58.517; City of Winter Park Code of Ordinances, § Ch. 58, Art. 3, Section 58-67; Orange County Code, § Chapter 38, Article VIII, Division 8.

[11] Orange County Code, § Chapter 38, Article VIII, Division 8; City of Winter Park Code of Ordinances, § Ch. 58, Art. 3, Section 58-67

[12] Code of the City of Orlando, § Ch. 58, Part 3, Section 58.517.

[13] Doris S. Goldstein, *New Urbanism: Recreating Florida by Rewriting the Rules*, Florida Bar Journal, April 2006, at 63; Michigan Land Institute, 10 Principles of New Urbanism, http://www.mlui.org/mlui/news-views/articles-from-1995-to-2012.html?archive_id=678#.Xhd62ehKiUk (last visited Jan. 9, 2020); Congress for the New Urbanism, *What is New Urbanism?*, https://www.cnu.org/resources/what-new-urbanism (last visited Jan. 9, 2020).

[14] *Id.*

[15] Michael Bezruki, *Governor Signs Arkansas Housing Affordability Bill Into Law*, National Home Association of Home Builders, March 15, 2019, http://nahbnow.com/2019/03/governor-signs-arkansas-housing-affordability-bill-into-law/ (last visited Jan. 7, 2020); Doug Thompson, *Restrictions on home building barred in Arkansas*, Northwest Arkansas Democrat Gazette, March 17, 2019, https://www.nwaonline.com/news/2019/mar/17/restrictions-on-home-building-barred-in/ (last visited Jan. 7, 2020).

[16] Daniel Herriges, *Building Design Requirements Are Sometimes Bad for Cities. But Abolishing Them All Is Worse*, Strong Towns, April 11, 2019 https://www.strongtowns.org/journal/2019/4/11/design-standards-are-an-important-tool-for-cities-dont-do-away-with-them (last visited Jan. 7, 2020); Elaina Sauber, Housing design bill worries Franklin officials, Tennessean, April 18, 2017 https://www.tennessean.com/story/news/local/williamson/2017/04/18/housing-design-bill-worries-franklin-officials/100561994/ (last visited Jan. 8, 2020).

*States That Prohibit Local Government Regulations For Building Design Elements*

North Carolina and Arkansas prohibit local governments from adopting regulations that require specific building design elements for single- and two- family dwellings unless certain conditions exist.[17] Tennessee and Georgia considered bills to enact laws similar to North Carolina and Arkansas; however, the bills did not pass.[18]

Passed in 2015, North Carolina's law prohibits cities and counties from adopting regulations that require "building design elements" for single- and two- family dwellings. The North Carolina law also prohibits such regulations from being applied to any zoning district, special use district, conditional use district, or conditional district unless voluntarily consented to by the owners of all the properties subject to the proposed regulation.[19]

The North Carolina law defines "building design elements" to include the:[20]

- Exterior building color;
- Type or style of exterior cladding[21] material;
- Style or materials of roof structures or porches;
- Exterior nonstructural architectural ornamentation;
- Location or architectural styling of windows and doors, including garage doors;
- Number and types of rooms; and
- Interior layout of rooms.

The phrase does not include:[22]

- A single- and two- family dwelling's:
  - Height;
  - Bulk;
  - Orientation; and
  - Location of a structure on a zoning lot.
- The use of buffering or screening to minimize visual impacts or impact of light and noise; and
- Regulations governing permitted uses of land.

The North Carolina law allows cities and counties to adopt and enforce regulations that require "building design elements" for single- and two- family dwellings if:[23]

- The dwelling is located in an area designated as a local historic district;
- The dwelling is located in an area designated as a historic district on the National Register of Historic Places;[24]
- The dwelling is individually designated as a local, state, or national historic landmark;

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[17] N.C. Gen. Stat. § 160A-381; Ark. Code Ann. § 14-17-212 & 14-56-204.

[18] Georgia General Assembly, 2019-2020 Regular Session - HB 302, http://www.legis.ga.gov/Legislation/en-US/display/20192020/HB/302 (last visited Jan. 8, 2020); Tennessee General Assembly, 2017-2018 Session – HB 476 http://wapp.capitol.tn.gov/apps/Billinfo/default.aspx?BillNumber=HB0476&ga=110 (last visited Jan. 8, 2020).

[19] N.C. Gen. Stat. § 160A-381; R. Erika Churchill, Staff Attorney for the North Carolina General Assembly, Analysis of S.L. 2015-86, https://dashboard.ncleg.net/api/Services/BillSummary/2015/S25-SMST-147(sl) (last visited Jan. 3, 2020); General Assembly of North Carolina, Session Law 2015-86 Senate Bill 25, June 9, 2015 https://www.ncleg.gov/Sessions/2015/Bills/Senate/PDF/S25v3.pdf (last visited Jan. 3, 2020).

[20] N.C. Gen. Stat. § 160A-381.

[21] The Florida Building Code and the North Carolina Building Code both define "cladding" as the material that covers the exterior surface of a building, and is directly affected by wind load. S. 202 of the Florida Building Code (Residential), Seventh Edition; S. 202 of the 2018 North Carolina Building Code (Residential).

[22] *Id.*

[23] *Id.*

[24] The National Register of Historic Places is the federal government's official list of historic places in the United States. The National Historic Preservation Act of 1966 authorized the register, which is administered by the National Park Service. National Park Service, *What is the National Register of Historic Places*, https://www.nps.gov/subjects/nationalregister/what-is-the-national-register.htm (last visited Jan. 5, 2020).

- The regulations are directly and substantially related to the requirements of North Carolina's Building Code;
- The regulations are applied to manufactured housing in a manner consistent with state and federal law; and
- The regulations are adopted as a condition for participation in the National Flood Insurance Program.[25]

The prohibition of local regulations that relate to building design elements does not affect the validity or enforceability of private covenants or other contractual agreements relating to building design elements between property owners.[26]

In 2019, Arkansas passed a similar law that also prohibited cities and counties from adopting regulations that require "building design elements" for single-family dwellings. The law defines "building design elements" the same as North Carolina except Arkansas also includes minimum square footage in its definition.[27]

In addition to the exceptions provided in the North Carolina law, Arkansas also allows cities and counties to adopt and enforce building design elements regulations if:

- The dwelling is in a central business district, which can be created by a city to revitalize its urban center;
- The dwelling existed and was subject to the local regulation prior to the prohibition being enacted; or
- The regulations are directly related to an immediate public health or safety hazard and the regulation is derived from the local government's police power.[28]

Arkansas also provides that the prohibition of local regulations that relate to building design elements does not affect the validity or enforceability of covenants or contracts between a property owner and a city or county.[29]

*The Florida Building Code*

In 1974, Florida adopted legislation requiring all local governments to adopt and enforce a minimum building code that would ensure that Florida's minimum standards were met. Local governments could choose from four separate model codes. The state's role was limited to adopting all or relevant parts of new editions of the four model codes. Local governments could amend and enforce their local codes, as they desired.[30]

In 1992, Hurricane Andrew demonstrated that Florida's system of local codes did not work. Hurricane Andrew easily destroyed those structures that were allegedly built according to the strongest code. A study commission was appointed to review the system of local codes and make recommendations for modernizing the system. The 1998 Legislature adopted the study commission's recommendations for a single state building code and enhanced the oversight role of the state over local code enforcement. The 2000 Legislature authorized implementation of the Florida Building Code (Building Code), and that first edition replaced all local codes on March 1, 2002.[31] The Building Code is updated triannually. The

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[25] The National Flood Insurance Program is administered by FEMA. The goal of the program is to reduce the impact of flooding on private and public structures by providing affordable insurance to property owners, and encouraging communities to adopt and enforce floodplain management regulations. FEMA, *The National Flood Insurance Program*, https://www.fema.gov/national-flood-insurance-program (last visited Jan. 6, 2020).

[26] *Id.*

[27] Ark. Code Ann. § 14-17-212 & 14-56-204; H.R. 170, 92nd Leg. Reg. Sess. (AR 2019).

[28] *Id.*

[29] *Id.*

[30] The Florida Building Commission Report to the 2006 Legislature, *Florida Department of Community Affairs,* p. 4, *available at* http://www.floridabuilding.org/fbc/publications/2006_Legislature_Rpt_rev2.pdf (last visited Nov. 11, 2019).

[31] *Id.*

current edition of the Building Code is the sixth edition, which is referred to as the 2017 Florida Building Code.[32]

Part IV of ch. 553, F.S., is known as the "Florida Building Codes Act" (Act), which provides a mechanism for the uniform adoption, updating, interpretation, and enforcement of a single, unified state building code that must be applied, administered, and enforced uniformly and consistently from jurisdiction to jurisdiction.[33] The Building Code is adopted, updated, and interpreted by the Florida Building Commission, and is enforced by local governments.[34]

The main purpose of the Building Code is to regulate new construction or proposed modifications to existing structures in order to give the occupants the highest level of safety and the least amount of defects.[35]

*The Florida Building Commission*

The Florida Building Commission (Commission) implements the Building Code. The Commission reviews several International Codes published by the International Code Council, the National Electric Code, and other nationally adopted model codes to determine if the Building Code needs to be updated and adopts an updated Building Code every three years.[36]

The Commission, which is housed within the Department of Business and Professional Regulation (DBPR), is a 27-member technical body made up of design professionals, contractors, and government experts in various disciplines covered by the Building Code.[37] The Commission is responsible for the development, maintenance, and interpretation of the Building Code. Members are appointed by the Governor and confirmed by the Senate.[38]

The Commission has 11 Technical Advisory Committees (TAC) ranging from the building structural TAC to the swimming pool TAC.[39] TACs are made up of commission members and other parties who advise the commission on declaratory statements, proposed amendments, and any other areas of interest of the commission.[40]

*Local Enforcement of the Florida Building Code*

The Legislature has provided local governments with the power to inspect all buildings, structures, and facilities within their jurisdiction to protect the public's health, safety, and welfare.[41]

Every local government must enforce the Building Code and issue building permits.[42] It is unlawful for a person, firm, or corporation to construct, erect, alter, repair, secure, or demolish any building without first obtaining a permit from the local government enforcing agency or from such persons as may, by resolution or regulation, be directed to issue such permit, upon the payment of reasonable fees as set forth in a schedule of fees adopted by the enforcing agency.[43]

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[32] S. 553.73(7), F.S.; Florida Building Commission Homepage https://floridabuilding.org/c/default.aspx (last visited Nov. 11, 2019).
[33] *See* s. 553.72(1), F.S.
[34] Ss. 553.72, & 553.73, F.S.
[35] Florida Building Commission, *Advanced Florida Building Code Principals*, http://www.floridabuilding.org/Upload/Courses_trp/421-2-MATERIAL-Adv%20FL%20Bldg%20Code%20-%20Course%20PDF%20version%207.0.pdf (last visited Jan. 9, 2020).
[36] S. 553.73, F.S.
[37] S. 553.74, F.S.
[38] Ss. 553.73, & 553.74, F.S.
[39] DBPR, *Florida Building Code Online*, https://www.floridabuilding.org/c/c_commission.aspx (last visited Dec. 27, 2019).
[40] S. 553.73(3), F.S.; Rule 61G20-2.001, F.A.C.
[41] S. 553.72, F.S.
[42] Ss. 125.01(1)(bb), 125.56(1), & 553.80(1), F.S.
[43] *See* Ss. 125.56(4)(a) & 553.79(1), F.S.

A building permit is an official document or certificate issued by the local building official that authorizes performance of a specific activity.[44] A building official is a local government employee or a person contracted by a local government who supervises Building Code activities, including plan review, enforcement, and inspection to ensure work complies with the Building Code.[45]

*Amendments to the Building Code*

The Commission and local governments may adopt technical and administrative amendments to the Building Code. A technical amendment to the Building Code is an alteration to the prescriptive requirements or reference standards for construction. An administrative amendment is an addition or alteration of the code enforcement requirements of the Building Code.[46]

Local governments may adopt amendments to the Building Code that are more stringent than the Building Code that are limited to the local government's jurisdiction. Amendments by local governments expire upon the adoption of the newest edition of the Building Code, and, thus, the local government would need to go through the amendment process every three years in order to maintain a local amendment to the Building Code.[47]

Current law allows local governments to adopt technical amendments to the Building Code every six months if:[48]

- The local government's governing body holds a public hearing to discuss the amendment, which has been advertised in a newspaper of general circulation at least 10 days before the meeting;
- Following the hearing, the governing body determines that an amendment is needed to address a local need that is not addressed by the Building Code;
- The amendment is no more stringent than necessary to address the local need;
- The local amendment is not discriminatory against materials, products, or construction techniques of demonstrated capabilities;
- The local amendment does not introduce a new subject that is not addressed by the Building Code;
- The local amendment includes a fiscal impact statement, which documents the costs and benefits of the amendment including the impact to local government, property and building owners, industry, and the cost of compliance; and
- The local government sends the amendment to the Commission.

A technical amendment adopted by a local government takes effect 30 days after the Commission receives the amendment and publishes the amendment on its website.[49]

The Commission may review local amendments and issue nonbinding recommendations to local governments about whether the local government complied with the requirements to adopt an amendment. If the Commission decides to review a local amendment it must send the amendment to the applicable TAC for review.[50]

The TAC must make a recommendation to the Commission about whether the local amendment complies with the requirements of current law. The Commission must provide the nonbinding recommendation to the local government within 30 days of adopting the recommendation.[51]

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[44] S. 202 of the Building Code (Building), Sixth Edition.
[45] S. 468.603(2), F.S.
[46] S. 553.73, F.S.; Rule 61G20-2.002, F.A.C.
[47] S. 553.73(4), F.S.
[48] *Id.*
[49] 553.73(4), F.S.; Rule-61G20-2.003, F.A.C.
[50] *Id.*
[51] *Id.*

Each county and municipality that adopts technical amendments to the Building Code must establish a countywide compliance review board by interlocal agreement. The compliance review board reviews any amendment adopted by a local government in its county that is challenged by a substantially affected party in order to determine if the amendment has been adopted in accordance with the requirements of current law.[52]

A local government or the substantially affected party may appeal the compliance review board's decision to the Commission within 14 days of the board's decision. The Commission must refer the appeal to the Division of Administrative Hearings for a hearing by an administrative law judge. The administrative law judge must hold a hearing within 30 days of being assigned the appeal, and must enter a recommended order within 30 days of the conclusion of the hearing.[53]

The Commission must enter a final order within 30 days after the administrative law judge issues a recommended order. In proceedings before a compliance review board or the Commission, the local government has the burden to prove an amendment has been adopted in accordance with the requirements of current law.[54]

*Interpretations of the Building Code*

The Commission may issue declaratory statements regarding interpretations of the Florida Building Code, review local building officials' interpretation of the Building Code, and give binding interpretations of the Building Code.[55]

A substantially affected person, state agency, or a local government may petition the Commission in writing for a declaratory statement relating to interpretations of the Building Code, or the enforcement or administration of the Building Code by local governments. The Commission must issue a declaratory statement or deny a petition within 90 days of receiving the petition. Declaratory statements are binding upon all jurisdictions and are subject to judicial review by a district court of appeal.[56]

A substantially affected person may also petition the Commission to review a local building official's interpretation of the Building Code. A substantially affected person includes an owner or builder subject to a decision of the local building official or an association of owners or builders having members who are subject to a decision of the local building official.[57]

A substantially affected person may petition the Commission to review a local building official's interpretation of the Building Code if:[58]

- The substantially affected person has appealed the building official's interpretation to the local board of appeals, if such board exists;
- The substantially affected person files a written petition to the Commission on a form adopted by the Commission which contains:
    - The name and address of the local government and the local building official;
    - The name, address, and phone number of the substantially affected person, and explanation of how they are substantially affected by the building official's interpretation;
    - A statement of the provisions of the Building Code that are being interpreted, the building official's interpretation of those sections, and the substantially affected person's interpretation of those sections; and
    - The local building official's response.

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[52] S. 553.73(4), F.S.
[53] *Id.*
[54] *Id.*
[55] S. 553.775, F.S.
[56] Ss. 553.775(3), 120.565, &120.68, F.S.
[57] S. 553.775(3), F.S.
[58] *Id.*

- The substantially affected person has given the petition to the local building official and at least five days for the building official to respond.

Upon receiving a written petition to review a local building official's interpretation of the Building Code, the Commission must provide copies to a panel, and publish the petition and the local building official's response on the Commission's website and allow for comments to be posted by interested parties. The panel must have seven members made up of five building officials, an architect, and an engineer. The Commission must coordinate with the Building Officials Association of Florida[59] to designate the panel.[60]

The panel must conduct proceedings necessary to issue a determination, and consider the written petition, the local building official's response, and any comments posted on the Commission's website. The panel must issue a determination within 21 days of the petition being filed with the Commission. The determination is binding upon all parties and all jurisdictions in Florida.[61] The determination must be published on the Commission's website and the Florida Administrative Register.[62]

A party may appeal the panel's determination by filing an appeal with the Commission within 30 days of the panel's determination. The Commission must conduct a hearing in accordance with the Administrative Procedure Act. The burden of proof in the hearing is on the party appealing the panel's determination. The Commission's ruling is subject to judicial review by a district court of appeal.[63]

**Effect of the Bill**

*Community Planning Act — Effect of the Bill*

The bill prohibits local governments from applying land development regulations that relate to building design elements to single- or two- family dwellings.

The bill defines the term "building design elements" to mean:
- Exterior building color;
- Type or style of exterior cladding material;
- Style or material of roof structures or porches;
- Exterior nonstructural architectural ornamentation;
- Location or architectural styling of windows or doors, including garage doors;
- Number and type of rooms; and
- Interior layout of rooms.

The term does not include:
- A single- and two- family dwelling's:
  - Height;
  - Bulk;
  - Orientation;
  - Location on a zoning lot; or

[59] The Building Officials Association of Florida is the largest community of building officials, building inspectors, plans examiners, and building code compliance professionals in the state. Its goal is to ensure the health, safety, and welfare of the public through safe building practices by equipping building professions through education, advocacy, leadership, and code development. Building Officials Association of Florida, *About BOAF*, https://boaf.net/page/About (last visited Jan. 8, 2020).
[60] *Id.*
[61] *Id.*
[62] *Id.*; The Florida Administrative Register is a daily publication which gives the public current information about the status of proposed rules, notice of agency public meetings, workshops and hearings, and anything else required by law. Florida Administrative Code & Florida Administrative Register, *FL Rules FAQ*, https://www.flrules.org/Help/newHelp.asp#FAW (last visited Jan. 15, 2020).
[63] Ss. 553.775(3), & 120.68, F.S.

- The use of buffering or screening to minimize potential adverse physical or visual impacts or protect the privacy of neighbors.

The bill allows local governments to apply regulations that require "building design elements" to single- and two- family dwellings if:

- The dwelling is listed in the National Register of Historic Places;
- The dwelling is a contributing property to a historic district in the National Register of Historic Places;
- The dwelling is listed as a historic property or a contributing property to a historic district by a local preservation ordinance;
- The regulations are adopted in order to implement the National Flood Insurance Program; or
- The regulations are adopted in accordance and compliance with adopting local amendments to the Florida Building Code.

The bill also provides that the prohibition of zoning and development regulations that relate to building design elements does not affect the validity or enforceability of private covenants or other contractual agreements relating to building design elements.

*Florida Building Commission — Effect of the Bill*

The bill provides that a substantially affected person may petition the Commission for a non-binding advisory opinion for any local government regulation, law, ordinance, policy, amendment, or land use or zoning provision (regulation) that the person believes is a technical amendment to the Building Code and was not adopted in accordance with the process for adopting local amendments to the Building Code.

A "local government" means a county, municipality, special district, or political subdivision of the state.

A "substantially affected person" includes an owner or builder subject to the local government's regulation or an association of owners or builders who have members who are subject to the regulation.

The Commission must issue a non-binding advisory opinion stating whether a local government regulation is a technical amendment to the Building Code **if**:

- A substantially affected person files a petition with the Commission, in accordance with the Commission's directions for filing the petition, and on a form adopted by the Commission which contains at a minimum:
    - The name of the local government that enacted the regulation;
    - The name and address of the local government's general counsel;
    - The name, address, and phone number of the substantially affected person;
    - An explanation of how the person is substantially affected by the local government's regulation; and
    - A statement of why the regulation is a technical amendment to the Building Code, and which provisions of the Building Code are amended by the regulation, if any.
- The substantially affected person has given the petition to the local government's general counsel or administrator by certified mail, return receipt requested. The local government may respond within 14 days by certified mail, return receipt requested.

Upon receiving a petition to review a local government's regulation, the Commission must publish the petition and the local government's response on the Commission's website and allow for comments to be posted by interested parties. The Commission may provide the petition, the local government's response, and any comments posted by interested parties to a TAC for review and a recommendation.

The Commission must consider the petition, the local government's response, any comments posted on the Commission's website, and any recommendation provided by a TAC. The Commission must issue a non-binding advisory opinion stating whether the local government's regulation is a technical amendment to the Building Code within 30 days of receiving the petition. The Commission must also publish the non-binding advisory opinion on its website and the Florida Administrative Register.

B. SECTION DIRECTORY:

Section 1. Amending s. 163.3202, F.S., prohibiting local governments from enacting certain regulations for certain residential buildings.

Section 2. Amending s. 553.73, F.S., allowing the Florida Building Commission to review local government regulations and issue advisory opinions in certain situations.

Section 3. Amending s. 125.01, F.S., amending cross-references.

Section 4. Amending s. 125.56, F.S., amending cross-references.

Section 5. Providing an effective date of July 1, 2020.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The Commission may see an increased workload related to establishing a process for accepting petitions from affected persons and issuing non-binding advisory opinions. However, the workload should be able to be absorbed within existing resources.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

Indeterminate. Local governments may have additional expenditures because of an increase in legal challenges to zoning and other regulations.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Indeterminate. However, prohibiting certain building design elements ordinances and other regulations may lead to a decrease in the cost of construction.

D. FISCAL COMMENTS:

None.

## III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

None.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill requires the Commission to adopt the form for the petition to request a non-binding advisory opinion, and the directions for filing the form. It appears that sufficient rulemaking authority exists in s. 553.76(4), F.S.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

## IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 15, 2020, the Business & Professions Subcommittee adopted a strike-all amendment and reported the bill favorably as a committee substitute. The committee substitute:

- Clarifies the exception that allows local governments to apply building design element regulations to single- and two-family residences when the regulations are adopted in accordance with and in compliance with the process for adopting local amendments to the Florida Building Code.
- Removes the provision that grants the Florida Building Commission the ability to void a local government regulation if the Commission determines the regulation is an amendment to the Building Code.
- Provides that a substantially affected person may submit a request to the Florida Building Commission for a non-binding advisory opinion on whether a local regulation is an amendment to the Building Code, and establishes a process for such.
- Defines "substantially affected person."

The staff analysis is drafted to the committee substitute as passed by the Business & Professions Subcommittee.

A bill to be entitled

An act relating to building design; amending s. 163.3202, F.S.; providing that certain regulations relating to building design elements may not be applied to certain structures; providing exceptions; defining the term "building design elements"; providing applicability; amending s. 553.73, F.S.; authorizing a substantially affected person to file a petition with the Florida Building Commission to review certain local government regulations, laws, ordinances, policies, amendments, or land use or zoning provisions; defining the term "local government"; providing requirements for the petition and commission; requiring the commission to issue a nonbinding advisory opinion within a specified timeframe; making technical changes; amending ss. 125.01 and 125.56, F.S.; conforming cross-references to changes made by the act; making technical changes; providing an effective date.

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

Section 1. Subsection (5) of section 163.3202, Florida Statutes, is renumbered as subsection (6), and a new subsection (5) is added to that section to read:

163.3202 Land development regulations.—

(5)(a) Land development regulations relating to building design elements may not be applied to a single- or two-family dwelling unless:

1. The dwelling is listed in the National Register of Historic Places, as defined in s. 267.021; or is a contributing property to a National Register Historic District; or is designated as a historic property or a contributing property to a historic district, under the terms of a local preservation ordinance.

2. The regulations are adopted in order to implement the National Flood Insurance Program.

3. The regulations are adopted pursuant to and in compliance with chapter 553.

(b) For purposes of this subsection, the term "building design elements" means the external building color; type or style of exterior cladding material; style or material of roof structures or porches; exterior nonstructural architectural ornamentation; location or architectural styling of windows or doors, including garage doors; number and type of rooms; and interior layout of rooms. The term does not include the height, bulk, orientation, or location of a structure on a zoning lot; or the use of buffering or screening to minimize potential adverse physical or visual impacts or protect the privacy of neighbors.

(c) This subsection does not affect the validity or enforceability of private covenants or other contractual agreements relating to building design elements.

Section 2. Subsection (4) of section 553.73, Florida Statutes, is amended to read:

553.73 Florida Building Code.—

(4)(a) All entities authorized to enforce the Florida Building Code under ~~pursuant to~~ s. 553.80 shall comply with applicable standards for issuance of mandatory certificates of occupancy, minimum types of inspections, and procedures for plans review and inspections as established by the commission by rule. Local governments may adopt amendments to the administrative provisions of the Florida Building Code, subject to the limitations in ~~of~~ this subsection ~~paragraph~~. Local amendments must ~~shall~~ be more stringent than the minimum standards described in this section ~~herein~~ and must ~~shall~~ be transmitted to the commission within 30 days after enactment. The local government shall make such amendments available to the general public in a usable format. The State Fire Marshal is responsible for establishing the standards and procedures required in this subsection ~~paragraph~~ for governmental entities with respect to applying the Florida Fire Prevention Code and the Life Safety Code.

(b) Local governments may, subject to the limitations in ~~of~~ this section and not more than once every 6 months, adopt

amendments to the technical provisions of the Florida Building Code that ~~which~~ apply solely within the jurisdiction of such government and that ~~which~~ provide for more stringent requirements than those specified in the Florida Building Code~~, not more than once every 6 months~~. A local government may adopt technical amendments that address local needs if:

1. The local governing body determines, following a public hearing which has been advertised in a newspaper of general circulation at least 10 days before the hearing, that there is a need to strengthen the requirements of the Florida Building Code. The determination must be based upon a review of local conditions by the local governing body, which review demonstrates by evidence or data that the geographical jurisdiction governed by the local governing body exhibits a local need to strengthen the Florida Building Code beyond the needs or regional variation addressed by the Florida Building Code, that the local need is addressed by the proposed local amendment, and that the amendment is no more stringent than necessary to address the local need.

2. Such additional requirements are not discriminatory against materials, products, or construction techniques of demonstrated capabilities.

3. Such additional requirements do ~~may~~ not introduce a new subject not addressed in the Florida Building Code.

(c)~~4.~~ The enforcing agency shall make readily available,

in a usable format, all amendments adopted under ~~pursuant to~~ this section.

(d)~~5.~~ Any amendment to the Florida Building Code shall be transmitted within 30 days after adoption by the ~~adopting~~ local government to the commission. The commission shall maintain copies of all such amendments in a format that is usable and obtainable by the public. Local technical amendments are ~~shall~~ not ~~become~~ effective until 30 days after the amendment has been received and published by the commission.

(e)~~6.~~ An ~~Any~~ amendment to the Florida Building Code adopted by a local government under ~~pursuant to~~ this subsection is ~~paragraph shall be~~ effective only until the adoption ~~by the commission~~ of the new edition of the Florida Building Code by the commission every third year. At such time, the commission shall review such amendment for consistency with the criteria in paragraph (9)(a) and adopt such amendment as part of the Florida Building Code or rescind the amendment. The commission shall immediately notify the respective local government of the rescission of any amendment. After receiving such notice, the respective local government may readopt the rescinded amendment under ~~pursuant to~~ the provisions of this subsection ~~paragraph~~.

(f)~~7.~~ Each county and municipality desiring to make local technical amendments to the Florida Building Code shall ~~by interlocal agreement~~ establish by interlocal agreement a countywide compliance review board to review any amendment to

the Florida Building Code that is~~,~~ adopted by a local government within the county under ~~pursuant to~~ this subsection and ~~paragraph,~~ that is challenged by a ~~any~~ substantially affected party for purposes of determining the amendment's compliance with this subsection ~~paragraph~~. If challenged, the local technical amendments are ~~shall~~ not ~~become~~ effective until the time for filing an appeal under paragraph (g) ~~pursuant to subparagraph 8.~~ has expired or, if there is an appeal, until the commission issues its final order determining if the adopted amendment is in compliance with this subsection.

(g)~~8.~~ If the compliance review board determines such amendment is not in compliance with this subsection ~~paragraph~~, the compliance review board shall notify such local government of the noncompliance and that the amendment is invalid and unenforceable until the local government corrects the amendment to bring it into compliance. The local government may appeal the decision of the compliance review board to the commission. If the compliance review board determines that such amendment is ~~to be~~ in compliance with this subsection ~~paragraph~~, any substantially affected party may appeal such determination to the commission. Any such appeal must ~~shall~~ be filed with the commission within 14 days after ~~of~~ the board's written determination. The commission shall promptly refer the appeal to the Division of Administrative Hearings by electronic means through the division's website for the assignment of an

administrative law judge. The administrative law judge shall conduct the required hearing within 30 days after being assigned to the appeal, and shall enter a recommended order within 30 days after ~~of~~ the conclusion of such hearing. The commission shall enter a final order within 30 days after an order is rendered ~~thereafter~~. ~~The provisions of~~ Chapter 120 and the uniform rules of procedure shall apply to such proceedings. The local government adopting the amendment that is subject to challenge has the burden of proving that the amendment complies with this subsection ~~paragraph~~ in proceedings before the compliance review board and the commission, as applicable. Actions of the commission are subject to judicial review under ~~pursuant to~~ s. 120.68. The compliance review board shall determine whether its decisions apply to a respective local jurisdiction or apply countywide.

(h)~~9.~~ An amendment adopted under this subsection ~~paragraph~~ shall include a fiscal impact statement that ~~which~~ documents the costs and benefits of the proposed amendment. Criteria for the fiscal impact statement shall include the impact to local government relative to enforcement and~~,~~ the impact to property and building owners and~~, as well as to~~ industry~~,~~ relative to the cost of compliance. The fiscal impact statement may not be used as a basis for challenging the amendment for compliance.

(i)~~10.~~ In addition to paragraphs (f) and (g) ~~subparagraphs 7. and 9.~~, the commission may review any amendments adopted



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

under ~~pursuant to~~ this subsection and make nonbinding recommendations related to compliance of such amendments with this subsection.

(j) ~~(c)~~ Any amendment adopted by a local enforcing agency under ~~pursuant to~~ this subsection may ~~shall~~ not apply to state or school district owned buildings, manufactured buildings or factory-built school buildings approved by the commission, or prototype buildings approved under ~~pursuant to~~ s. 553.77(3). The respective responsible entities shall consider the physical performance parameters substantiating such amendments when designing, specifying, and constructing such exempt buildings.

(k) ~~(d)~~ A technical amendment to the Florida Building Code related to water conservation practices or design criteria adopted by a local government under ~~pursuant to~~ this subsection is not ~~rendered~~ void when the code is updated if the technical amendment is necessary to protect or provide for more efficient use of water resources as provided in s. 373.621. However, any such technical amendment carried forward into the next edition of the code under ~~pursuant to~~ this subsection ~~paragraph~~ is subject to review or modification as provided in this part.

(l) If a local government adopts a regulation, law, ordinance, policy, amendment, or land use or zoning provision without using the process established in this subsection, and a substantially affected person considers such regulation, law, ordinance, policy, amendment, or land use or zoning provision to

be a technical amendment to the Florida Building Code, then the substantially affected person may submit to the commission a petition for a nonbinding advisory opinion. If a substantially affected person submits a request in accordance with this paragraph, the commission shall issue a nonbinding advisory opinion stating whether or not the commission interprets the regulation, law, ordinance, policy, amendment, or land use or zoning provision as a technical amendment to the Florida Building Code. As used in this paragraph, the term "local government" means a county, municipality, special district, or political subdivision of the state.

1. Requests to review a local government regulation, law, ordinance, policy, amendment, or land use or zoning provision may be initiated by any substantially affected person. A substantially affected person includes an owner or builder subject to the regulation, law, ordinance, policy, amendment, or land use or zoning provision, or an association of owners or builders having members who are subject to the regulation, law, ordinance, policy, amendment, or land use or zoning provision.

2. In order to initiate a review, a substantially affected person must file a petition with the commission. The commission shall adopt a form for the petition and directions for filing, which shall be published on the Building Code Information System. The form shall, at a minimum, require the following:

a. The name of the local government that enacted the

regulation, law, ordinance, policy, amendment, or land use or zoning provision.

b. The name and address of the local government's general counsel or administrator.

c. The name, address, and telephone number of the petitioner; the name, address, and telephone number of the petitioner's representative, if any; and an explanation of how the petitioner's substantial interests are being affected by the regulation, law, ordinance, policy, amendment, or land use or zoning provision.

d. A statement explaining why the regulation, law, ordinance, policy, amendment, or land use or zoning provision is a technical amendment to the Florida Building Code, and which provisions of the Florida Building Code, if any, are being amended by the regulation, law, ordinance, policy, amendment, or land use or zoning provision.

3. The petitioner shall serve the petition on the local government's general counsel or administrator by certified mail, return receipt requested, and send a copy of the petition to the commission, in accordance with the commission's published directions. The local government shall respond to the petition in accordance with the form by certified mail, return receipt requested, within 14 days after receipt of the petition, including Saturdays, Sundays, and legal holidays.

4. Upon receipt of a petition that meets the requirements

of this paragraph, the commission shall publish the petition, including any response submitted by the local government, on the Building Code Information System in a manner that allows interested persons to address the issues by posting comments.

5. Before issuing an advisory opinion, the commission shall consider the petition, the response, and any comments posted on the Building Code Information System. The commission may also provide the petition, the response, and any comments posted on the Building Code Information System to a technical advisory committee, and may consider any recommendation provided by the technical advisory committee. The commission shall issue an advisory opinion stating whether the regulation, law, ordinance, policy, amendment, or land use or zoning provision is a technical amendment to the Florida Building Code within 30 days after the filing of the petition, including Saturdays, Sundays, and legal holidays. The commission shall publish its advisory opinion on the Building Code Information System and in the Florida Administrative Register. The commission's advisory opinion is nonbinding and is not a declaratory statement under s. 120.565.

Section 3. Paragraph (bb) of subsection (1) of section 125.01, Florida Statutes, is amended to read:

125.01 Powers and duties.—

(1) The legislative and governing body of a county shall have the power to carry on county government. To the extent not

inconsistent with general or special law, this power includes, but is not restricted to, the power to:

(bb) Enforce the Florida Building Code~~,~~ as provided in s. 553.80~~,~~ and adopt and enforce local technical amendments to the Florida Building Code as provided in s. 553.73(4)~~, pursuant to s. 553.73(4)(b) and (c)~~.

Section 4. Subsection (1) of section 125.56, Florida Statutes, is amended to read:

125.56 Enforcement and amendment of the Florida Building Code and the Florida Fire Prevention Code; inspection fees; inspectors; etc.—

(1) The board of county commissioners of each of the several counties of the state may enforce the Florida Building Code and the Florida Fire Prevention Code~~,~~ as provided in ss. 553.80, 633.206, and 633.208~~,~~ and, at its discretion, adopt local technical amendments to the Florida Building Code as provided in s. 553.73(4)~~, pursuant to s. 553.73(4)(b) and (c)~~ and local technical amendments to the Florida Fire Prevention Code as provided in~~, pursuant to~~ s. 633.202~~,~~ to provide for the safe construction, erection, alteration, repair, securing, and demolition of any building within its territory outside the corporate limits of any municipality. Upon a determination to consider amending the Florida Building Code or the Florida Fire Prevention Code by a majority of the members of the board of county commissioners of such county, the board shall call a

public hearing and comply with the public notice requirements of s. 125.66(2). The board shall hear all interested parties at the public hearing and may then amend the building code or the fire code consistent with the terms and purposes of this act. Upon adoption, an amendment to the code shall be in full force and effect throughout the unincorporated area of such county until otherwise notified by the Florida Building Commission under ~~pursuant to~~ s. 553.73 or the State Fire Marshal under ~~pursuant to~~ s. 633.202. This subsection does not ~~Nothing herein contained shall be construed to~~ prevent the board of county commissioners from repealing such amendment to the building code or the fire code at any regular meeting of such board.

Section 5. This act shall take effect July 1, 2020.

**COMMERCE COMMITTEE**

**HB 459 by Rep. Overdorf**
**Building Design**

**AMENDMENT SUMMARY**
**February 6, 2020**

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**Amendment 1 by Rep. Overdorf (line 30):**
The amendment:

- Provides that local governments may apply building design elements to single- and two-family dwellings **located** in historic districts instead of only dwellings **that contribute** to historic districts.
- Provides that local governments may apply building design elements to single- and two-family dwellings located in community redevelopment areas.

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 Overdorf offered the following:

**Amendment**

Remove lines 30-39 and insert:

1. The dwelling is listed in the National Register of Historic Places, as defined in s. 267.021; or is located in a National Register Historic District; or is designated as a historic property or located in a historic district, under the terms of a local preservation ordinance.

2. The regulations are adopted in order to implement the National Flood Insurance Program.

3. The regulations are adopted pursuant to and in compliance with chapter 553.

4. The dwelling is located in a community redevelopment area, as defined in s. 163.340(10).

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 717 Space Florida Financing
**SPONSOR(S):** Sirois
**TIED BILLS:** **IDEN./SIM. BILLS:** SB 1070

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR or BUDGET/POLICY CHIEF |
|---|---|---|---|
| 1) Workforce Development & Tourism Subcommittee | 14 Y, 0 N | Willson | Barry |
| 2) Ways & Means Committee | 15 Y, 0 N | Aldridge | Langston |
| 3) Commerce Committee | | Willson MW | Hamon K.W.H. |

### SUMMARY ANALYSIS

Established by the Legislature in 2006, Space Florida was created to promote aerospace business development by facilitating business and infrastructure financing, spaceport operations, research and development, workforce development and innovative education programs. Space Florida is an independent special district which covers the entire state.

Current law authorizes Space Florida to issue bonds and other obligations to pay for projects, facilities, services, and other activities, including the retirement or refunding of existing bonds and obligations.

The bill amends or repeals a number of financing provisions within the Space Florida Act (Part II, ch. 331, F.S.). Specifically, the bill clarifies certain definitions, specifies that revenue bonds issued by Space Florida are not pledges of the full faith and credit of Space Florida and may not be secured by state appropriations, reduces the maximum length to maturity for bonds, and allows Space Florida to validate its bonds pursuant to ch. 75, F.S.

The bill also removes both the requirement that Space Florida notify the presiding officers and appropriations chairs of both houses of the Legislature before presenting a bond proposal to the Governor and Cabinet and the requirement for the Governor and Cabinet to approve its issuance.

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

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

## FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

### Space Florida

Space Florida was established by the Legislature in 2006 to consolidate Florida's three existing space entities, namely the Florida Space Authority, the Florida Space Research Institute, and the Florida Aerospace Finance Corporation, into a single organization.[1] Space Florida was created to promote aerospace business development by facilitating business and infrastructure financing, spaceport operations, research and development, workforce development and innovative education programs.[2] Space Florida acts as the single point of contact for state aerospace-related activities with federal agencies, the military, state agencies, businesses, and the private sector.[3] Space Florida may purchase or construct facilities; set rates, fees, and charges for the use of facilities; and undertake joint financing with municipalities or private sector entities for any project.[4]

Space Florida is governed by a 13-member independent board of directors that consists of members appointed by the Governor, the President of the Senate, the Speaker of the House of Representatives, and members of the board of directors of Enterprise Florida, Inc.[5] The Governor serves ex officio, or may appoint a designee to serve as the chair and a voting member of the board.

Space Florida is an independent special district and a subdivision of the state. The boundary and services area for the Space Florida special district covers the entire state. Space Florida is subject to the provisions of the Uniform Special District Accountability Act, to the extent that the provisions of that act do not conflict with the Space Florida Act.[6]

### Special Districts

In 1989, the Legislature passed the Uniform Special District Accountability Act.[7] This Act sets forth the general provisions for all special districts, addressing such provisions as the creation, operation, financial reporting, taxation, assessments, elections, definitions, compliance with general law provisions, and comprehensive planning of special districts. Like municipalities and counties, special districts generally do not pay sales tax on goods and services and may be able to finance with tax-exempt bonds issued at reduced interest rates.

Generally, the charter creating an independent special district must contain the following information:

- The purpose of the special district;
- The powers, functions and duties of the special district relating to ad valorem taxes, bonds and other revenue-raising abilities, budget preparation and approval, liens and lien foreclosures, and the use of tax deeds and certificates for non-ad valorem assessments and contractual agreements;
- Method for establishing the district and amending the district charter;

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[1] SPACE FLORIDA, *Open Government*, https://www.spaceflorida.gov/about/open-government/ (last visited Jan. 9, 2020).

[2] Section 331.302, F.S.

[3] Section 331.3011, F.S.

[4] Section 331.305, F.S.

[5] Section 331.3081., F.S.

[6] Sections 331.301–331.371, F.S.

[7] Chapter 189, F.S.

- The membership, organization, compensation, and administrative duties of the governing board and its members;
- Applicable financial disclosure, noticing, and reporting requirements;
- Procedures and requirements for bond issues, if the special district will issue bonds;
- Election procedures and requirements;
- Method for financing the district;
- Authorized millage rate, and methods for collecting non-ad valorem assessments, fees, or service charges;
- Planning requirements; and
- District boundaries.

**Debt Financing and Space Florida**

Current law authorizes Space Florida to issue revenue bonds, assessment bonds, or any other bonds or obligations authorized by law, and to provide for the retirement or refunding of any bonds or obligations of Space Florida. Space Florida is allowed to pay for the acquisition, construction, reconstruction, extension, repair, improvement, or maintenance of any project, including payloads and space flight hardware, equipment for research, development, and educational activities, and to provide for any facility, service or other activity of Space Florida.[8]

Space Florida's board, by resolution at a noticed and public meeting, authorizes the issuance of bonds, fixes the aggregate amount of bonds to be issued, and sets:

- The purpose or purposes for which the moneys derived therefrom shall be expanded;
- The rate or rates of interest;
- The denomination of the bonds;
- Whether or not the bonds are to be issued in one or more series;
- The date or dates thereof;
- The date or dates of maturity;
- The medium of payment;
- The place or places within or outside the state where payment shall be made;
- Registration privileges;
- Redemption terms and privileges (whether with or without premium);
- The manner of execution;
- The form of the bonds including any interest coupons to be attached thereto;
- The manner of execution of bonds and coupons and any and all other terms, covenants, and conditions thereof; and
- The establishment of reserve or other funds.

However, the bonds' term cannot exceed 40 years from their respective dates of issuance.[9]

Revenue bonds may be secured by the rates, fees, rentals, tolls, fares, or other charges to be collected from the users of any project, from any revenue-producing undertaking or activity of Space Florida, or from any source of pledged security.[10] Revenue bonds do not constitute an indebtedness of Space Florida unless they are additionally secured by the full faith and credit of Space Florida.[11]

[8] Section 331.305(20), F.S.
[9] Section 331.340, F.S.
[10] Section 331.331, F.S.
[11] Section 331.331(2), F.S.

Space Florida may also issue refunding bonds, bond anticipation notes,[12] obtain loans, and issue debt to pay for costs and expenses.[13] Space Florida is authorized to pledge its full faith and credit as additional security for the payment of any bonds that it issues.[14]

Space Florida must provide 14 days' notice to the presiding officers and appropriations chairs of both houses of the Legislature prior to presenting a bond proposal to the Governor and Cabinet. If either presiding officer or appropriations chair objects to the bonding proposal within the 14-day-notice period, the bond issuance may be approved only by a vote of three-fourths of the members of the Governor and Cabinet.[15] In 1991, the legislature modified Chapter 331, F.S., to provide a definition of the term "conduit bonds" and further authorized the Spaceport's Authority[16] to issue conduit bonds[17] without Cabinet approval and notice to the Legislature.[18] This authority came as an exclusion to the 1991 revision to s. 331.303 (21), F.S., that provided, "Until December 31, 1994, bonds, other than conduit bonds, issued under the authority contained in this act shall not exceed a total of $500 million and must first be approved by a majority of the members of the Governor and Cabinet." In 1999, this language was removed, leaving the requirements for notice to the Legislature and approval by the Governor and Cabinet.[19]

Section 331.346, F.S., provides for the validity of bonds and the procedures by which bonds issued by Space Florida are validated. Chapter 75, F.S., also specifies the procedures for bond validation issued by entities of the state. The bond validation chapter provides for jurisdiction of claims, plaintiffs, notice, appeal and review, as well as commencement of action after validation.

Section 331.334, F.S., provides for the pledging of assessments and other revenues and properties as additional security on bonds. Pursuant to this section, Space Florida may hold an election in the manner provided by law for special districts and pledge its full faith and credit for any of its bonds to ensure the full payment of principal, interest, and any other funds provided for if pledged revenues are insufficient for such payment. Space Florida by resolution of the board may also pledge as additional bond security the revenues from any project of Space Florida, utility service, assessments, and any other sources of revenue or funds, or any combination of the foregoing, and may pledge or mortgage any of the properties, rights, interest, or other assets of Space Florida. Bonds issued by Space Florida are not secured by the full faith and credit of the State of Florida and do not constitute an obligation, either general or special, thereof. The board may also provide with respect to any bonds of Space Florida that such bonds are payable, in whole or in part, as to principal amount or interest, or both, out of rates, fees, rentals, tolls, fares, or other charges collected with respect to any of the projects of Space Florida.

Section 331.335, F.S., provides that all pledges of revenues and assessments made pursuant to the provisions of the Space Florida Act are valid and binding from the time the pledges are made. All revenues and assessments pledged and thereafter collected are immediately subject to the lien of the pledges without any physical delivery thereof or further action, and the lien of such pledges are valid and binding as against all parties having claims of any kind in tort, contract, or otherwise against Space Florida, irrespective of whether such parties have notice.

In addition to other powers authorized, Space Florida may, at any time after the issuance of any bonds Space Florida has authorized, borrow money for the purposes for which the bonds are to be issued in

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[12] Section 331.336, F.S.

[13] Section 331.337, F.S.

[14] Section 331.334, F.S.

[15] Section 331.305(20), F.S.

[16] The Spaceport Florida Authority was created in 1991. Space Florida is its successor. *See* Ch. 91-265, L.O.F.

[17] The term "conduit bond" was defined to mean "any bond of the authority which is a nonrecourse obligation of the authority payable from the proceeds of such bonds and related financing agreements. Section 331.303(6), F.S. (1992).

[18] Chapter 91-265, L.O.F.

[19] Section 73, ch. 99-385 L.O.F.

anticipation of the receipt of the proceeds of the sale of the bonds and issue bond anticipation notes[20] in a principal amount not to exceed the authorized maximum amount of the bonds issued. The board may in its discretion, in lieu of retiring the notes by means of bonds, retire them by means of current revenues or from any assessments levied for the payment of the bonds, but in such event a like amount of the bonds authorized may not be issued.[21]

Effect of the Bill

The bill clarifies that as a special district, Space Florida is subject to s. 189.051, F.S., which provides requirements for bond issuance if a referendum is not required. Under that section, a special district must ensure that, at time of closing, the bonds meet at least one of the following requirements:

- The bonds were rated in one of the highest four ratings by a nationally recognized rating service;
- The bonds were privately placed with or otherwise sold to accredited investors;
- The bonds were backed by a letter of credit from a bank, savings and loan association, or other creditworthy guarantor, or by bond insurance, guaranteeing payment of principal and interest on the bonds; or
- The bonds were accompanied by an independent financial advisory opinion stating that estimates of debt service coverage and probability of debt repayment are reasonable, which opinion was provided by an independent financial advisory, consulting, or accounting firm registered where professional registration is required by law and which is in good standing with the state and in conformance with all applicable professional standards for such opinions.

The bill revises the term "bonds" to delete reference to any other type of bond other than a revenue bond and expanded to include any other type of debt, including bank loans issued by Space Florida for the purpose of raising financing for its projects. Thus, Space Florida may continue to do short-term borrowing.

Space Florida's bond issuing powers are revised to conform to the new definition of the term "bonds." In addition, the provision requiring Space Florida to provide 14 days' notice to the presiding officers and appropriations chairs of both houses of the Legislature before presenting a bond proposal to the Governor and Cabinet and the procedure requiring a three-fourths of the members of the Governor and Cabinet to approve the bonding proposal if either presiding officer or appropriations chair objects to the bonding proposal within a 14-day notice period is removed.[22]

Section 331.331(2), is amended to include assessments as an authorized revenue source with which revenue bonds may be secured. The section further clarifies that state appropriations may not be used as a pledged revenue source. Finally, the section is amended to state that the revenue bonds may not be secured by the full faith and credit of Space Florida.[23]

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[20] The notes must be in such denomination or denominations, bear interest at such rate or rates, mature at such time or times, be renewable for such additional term or terms, and be in such form and executed in such manner as the board prescribes. The notes may be sold at public sale, or if such notes are renewable notes, may be exchanged for notes then outstanding on such terms as the board determines. Notes are to be paid from the proceeds of such bonds when issued.

[21] Section 331.336, F.S.

[22] Section 331.305, F.S.; The original bill establishing the Spaceport Florida Authority, provided:
". . . for the first year of operation, bonds issued under the authority contained in this act shall not exceed a total 210 million and must first be approved by a majority of the members of the Governor and Cabinet. The authority must provide 14 days' notice to the presiding officers and appropriations chairmen of both houses of the legislature prior to presenting a bond proposal to the governor and Cabinet. If either presiding officer or appropriations chairman object to the bonding proposal within the 14 day notice period the bond issuance may be approved only by a vote of two-thirds of the members of the Governor and Cabinet." Section 5, ch. 89-300, L.O.F.

[23] Section 331.331, F.S.

The section providing for Lien of Pledges is amended to conform to the changes to sources of revenue. Because assessments are included in the sources of revenue, specifically referring to assessments in addition to revenues is no longer necessary.[24]

The bill reduces to 30 years from 40 years the maximum term for which a bond may be issued.[25]

Section 331.346, F.S., provides criteria by which Space Florida must validate its bonds. The bill authorizes Space Florida, as an alternative, to validate its bonds pursuant to ch. 75, F.S., which is a process used by other Florida governmental entities and is more familiar to the bonding community.

The additional bonding authority and requirements provided in ss. 331.334, 331.336, and 331.337, F.S., are repealed. Space Florida still may issue bonds on its own behalf, as well as on a conduit basis, but Space Florida will not have the authority to issue general obligation bonds.

The bill takes effect July 1, 2020.

B. SECTION DIRECTORY:

Section 1: Amends s. 331.302, F.S.; specifying that Space Florida is subject to the bonding provisions in s. 189.051, F.S.

Section 2: Amends s. 331.303, F.S.; revising the definition of the term "bonds."

Section 3: Amends s. 331.305, F.S.; revising powers of Space Florida regarding bond issuance and removing the requirement that the Legislature must be notified and that the Governor and Cabinet must approve Space Florida's bond proposals.

Section 4: Amends s. 331.331, F.S.; revising provisions relating to securing the issuance of revenue bonds and specifying that revenue bonds issued by Space Florida may not constitute an indebtedness of Space Florida and may not be secured by state appropriations.

Section 5: Repeals s. 331.334, F.S., relating to pledging assessments and other revenues and properties as additional security on bonds; s. 331.336, F.S., relating to issuance of bond anticipation notes; and s. 331.337, F.S., relating to short-term borrowing.

Section 6: Amends s. 331.335, F.S.; revising provisions relating to lien of pledges.

Section 7: Amends s. 331.340, F.S.; reducing the maximum term for bonds issued by Space Florida from 40 years to 30 years from the date of issuance.

Section 8: Amends s. 331.346, F.S.; authorizing Space Florida to validate bonds pursuant to ch. 75, F.S.

Section 9: Provides an effective date of July 1, 2020.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

[24] Section 331.335, F.S.

[25] Section 331.340, F.S.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may result in a positive direct economic impact for businesses that are involved in activities financed by Space Florida.

D. FISCAL COMMENTS:

None.

## 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

A bill to be entitled

An act relating to Space Florida financing; amending s. 331.302, F.S.; specifying bonding provisions to which Space Florida is subject; amending s. 331.303, F.S.; revising the definition of the term "bonds"; amending s. 331.305, F.S.; revising powers of Space Florida regarding bond issuance; deleting provisions regarding presentation of bond proposals to, and approval of bond issuance by, the Governor and Cabinet; amending s. 331.331, F.S.; revising provisions relating to securing the issuance of revenue bonds; repealing s. 331.334, F.S., relating to pledging assessments and other revenues and properties as additional security on bonds; repealing s. 331.336, F.S., relating to issuance of bond anticipation notes; repealing s. 331.337, F.S., relating to short-term borrowing; amending s. 331.335, F.S.; revising provisions relating to lien of pledges; amending s. 331.340, F.S.; revising bond maturity date requirements; amending s. 331.346, F.S.; authorizing Space Florida to validate bonds pursuant to certain provisions; providing an effective date.

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



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

Section 1. Subsection (5) of section 331.302, Florida Statutes, is amended to read:

331.302 Space Florida; creation; purpose.—

(5) Space Florida is subject to applicable provisions of chapter 189, including, but not limited to, s. 189.051. To the extent that any provisions of chapter 189 conflict with this act, this act shall prevail.

Section 2. Subsection (3) of section 331.303, Florida Statutes, is amended to read:

331.303 Definitions.—

(3) "Bonds" means revenue bonds or other evidences of indebtedness, including bank loans, ~~assessment bonds, or other bonds or obligations~~ issued by Space Florida for the purpose of raising financing for its projects.

Section 3. Subsection (20) of section 331.305, Florida Statutes, is amended to read:

331.305 Powers of Space Florida.—Space Florida may:

(20) Issue revenue bonds or other evidences of indebtedness, including bank loans, ~~assessment bonds, or any other bonds or obligations~~ authorized by ~~the provisions of~~ this act or any other law~~, or any combination of the foregoing,~~ and pay all or part of the cost of the acquisition, construction, reconstruction, extension, repair, improvement, or maintenance of any project or combination of projects, including payloads and space flight hardware, and equipment for research,

development, and educational activities, to provide for any facility, service, or other activity of Space Florida, and provide for the retirement or refunding of any bonds or obligations of Space Florida, or for any combination of the foregoing purposes. ~~Space Florida must provide 14 days' notice to the presiding officers and appropriations chairs of both houses of the Legislature prior to presenting a bond proposal to the Governor and Cabinet. If either presiding officer or appropriations chair objects to the bonding proposal within the 14-day notice period, the bond issuance may be approved only by a vote of three-fourths of the members of the Governor and Cabinet.~~

Section 4. Subsection (2) of section 331.331, Florida Statutes, is amended to read:

331.331 Revenue bonds.—

(2) The issuance of revenue bonds may be secured by or payable from the gross or net pledge of the revenues to be derived from any project or combination of projects;~~,~~ from the rates, fees, rentals, tolls, fares, assessments, or other charges to be collected from the users of any project or projects; from any revenue-producing undertaking or activity of Space Florida; or from any source of pledged security other than state appropriations. Such bonds are ~~shall~~ not ~~constitute an indebtedness of Space Florida unless such bonds are additionally~~ secured by the full faith and credit of Space Florida. Bonds



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

issued by Space Florida are not secured by the full faith and credit of the State of Florida and do not constitute an obligation, either general or special, thereof.

Section 5. Sections 331.334, 331.336, and 331.337, Florida Statutes, are repealed.

Section 6. Section 331.335, Florida Statutes, is amended to read:

331.335 Lien of pledges.—All pledges of revenues ~~and assessments~~ made pursuant to ~~the provisions of~~ this act shall be valid and binding from the time when such pledges are made. All such revenues ~~and assessments~~ so pledged and thereafter collected shall immediately be subject to the lien of such pledges without any physical delivery thereof or further action, and the lien of such pledges shall be valid and binding as against all parties having claims of any kind in tort, contract, or otherwise against Space Florida, irrespective of whether such parties have notice thereof.

Section 7. Section 331.340, Florida Statutes, is amended to read:

331.340 Authorization and form of bonds.—Bonds may be authorized by resolution or resolutions of the board which are ~~shall be~~ adopted by a majority of all of the members thereof then in office and present at the meeting at which the resolution or resolutions are adopted and shall be approved as provided in s. 331.305. The resolution or resolutions of the

board may be adopted at the same meeting at which they are introduced~~,~~ and shall be published and noticed. The board may by resolution authorize the issuance of bonds and determine~~, fix~~ the aggregate amount of bonds to be issued, the purpose or purposes for which the moneys derived therefrom shall be expanded, the rate or rates of interest, the denomination of the bonds, whether ~~or not~~ the bonds are to be issued in one or more series, the date or dates thereof, the date or dates of maturity, which shall not exceed 30 ~~40~~ years from their respective dates of issuance, the medium of payment, the place or places within or without the state where payment shall be made, registration privileges, redemption terms and privileges (whether with or without premium), the manner of execution, the form of the bonds including any interest coupons to be attached thereto, the manner of execution of bonds and coupons, and any and all other terms, covenants, and conditions thereof, and the establishment of reserve or other funds. Such authorizing resolution may further provide that such bonds may be executed manually or by engraved, lithographed, or facsimile signature, provided that where signatures are engraved, lithographed, or facsimile, a ~~no~~ bond shall not be valid unless countersigned by a registrar or other officer designated by appropriate resolution of the board. The seal of Space Florida may be affixed, lithographed, engraved, or otherwise reproduced in facsimile on such bonds. In case any officer whose signature or

a facsimile of whose signature appears ~~shall appear~~ on any bonds or coupons ceases ~~shall cease~~ to be such officer before the delivery of such bonds, such signature or facsimile is ~~shall~~ nevertheless ~~be~~ valid and sufficient for all purposes ~~the same~~ as if the officer had remained in office until such delivery.

Section 8. Section 331.346, Florida Statutes, is amended to read:

331.346 Validity of bonds; validation proceedings.—Any bonds issued by Space Florida shall be incontestable in the hands of bona fide purchasers or holders for value and shall not be invalid because of any irregularity or defect in the proceedings for the issue and sale thereof. Before ~~Prior to~~ the issuance of any bonds, Space Florida shall publish a notice at least once in a newspaper or newspapers published or of general circulation in the appropriate counties in the state, stating the date of adoption of the resolution authorizing such obligations, the amount, maximum rate of interest, and maturity of such obligations, and the purpose in general terms for which such obligations are to be issued, and further stating that no action or proceeding questioning the validity of such obligations or of the proceedings authorizing the issuance thereof, or of any covenants made therein, must be instituted within 20 days after the first publication of such notice, or the validity of such obligations, proceedings, and covenants shall not be thereafter questioned in any court whatsoever. If

no such action or proceeding is so instituted within such 20-day period, then the validity of such obligations, proceedings, and covenants shall be conclusive, and all persons or parties whatsoever shall be forever barred from questioning the validity of such obligations, proceedings, or covenants in any court whatsoever. Alternatively, Space Florida may validate its bonds pursuant to chapter 75.

Section 9. This act shall take effect July 1, 2020.

**COMMERCE COMMITTEE**

**HB 717 by Rep. Sirois**
**Space Florida Financing**

**AMENDMENT SUMMARY**
**February 6, 2020**

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**Amendment 1 by Rep. Sirois (line 49):**
The amendment adds "environmental mitigation" to the non-exhaustive list of activities that Space Florida is authorized to finance.

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 | | |

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Committee/Subcommittee hearing bill: Commerce Committee

Representative Sirois offered the following:

**Amendment (with title amendment)**

Remove line 49 and insert:

of any project or combination of projects, including environmental mitigation, payloads

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

Remove line 7 and insert:

Florida; deleting provisions

**COMMERCE COMMITTEE**

**HB 717 by Rep. Sirois**
**Space Florida Financing**

**AMENDMENT SUMMARY**
**February 6, 2020**

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**Amendment 2 by Rep. Sirois (line 106):**
The amendment corrects a drafting error.

Amendment No. 2

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 Sirois offered the following:

**Amendment**

Remove line 106 and insert:

expended ~~expanded~~, the rate or rates of interest, the denomination of the

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 773 Medically Essential Electric Utility Service
**SPONSOR(S):** Maggard
**TIED BILLS:** **IDEN./SIM. BILLS:**

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR or BUDGET/POLICY CHIEF |
|---|---|---|---|
| 1) Energy & Utilities Subcommittee | 14 Y, 0 N | Keating | Keating |
| 2) Health & Human Services Committee | 14 Y, 0 N | Grabowski | Calamas |
| 3) Commerce Committee | | Keating | Hamon |

## SUMMARY ANALYSIS

Florida law, through s. 366.15, F.S., establishes procedures that each investor-owned electric utility (IOU) must follow when providing service to residential customers who depend on electric powered equipment for physician-certified medical reasons. This service is referred to as "medically essential" electric service.

The bill expands s. 366.15, F.S., to require that municipal electric utilities and rural electric cooperatives offer medically essential electric service programs on terms similar to IOUs. The bill also requires that all electric utilities provide additional consumer education about medically essential electric service programs. In particular, the bill:

- Requires each electric utility to post on its website a written explanation of the certification process, including a standard certification form.
- Requires each electric utility to provide a written explanation of the certification process to each residential customer at the time the customer opens an account and semiannually thereafter.
- Requires licensed physicians, physician assistants, and advanced registered nurse practitioners to inform eligible patients of the right to participate in medically essential electric service programs and to provide such patients a copy of s. 366.15, F.S., and, if requested, a completed medical certification.

The bill also modifies the certification and notice requirements associated with medically essential electric service programs. In particular, the bill:

- Expands the types of health care practitioners that may provide medical certification to also include licensed physician assistants and advanced registered nurse practitioners.
- Requires each medical certification to specify the time period for which service is expected to remain medically essential, up to 60 months.
- Requires the electric utility to provide recertification materials to certified customers at least 60 days prior to expiration of the customer's certification, and allows the utility to send recertification materials to the customer by e-mail if the customer has provided an email address.
- Requires an electric utility to provide additional notice to a certified customer before any disconnection of service for nonpayment, including notice by electronic means.

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:

**Present Situation**

Florida law, through s. 366.15, F.S., establishes procedures that each investor-owned electric utility[1] (IOU) must follow when providing service to residential customers who depend on electric powered equipment for physician-certified medical reasons. This service is referred to as "medically essential"[2] electric service.

Under the law, each IOU must:

- Designate employees who are authorized to direct the continuation or restoration of medically essential electric service.
- Provide annually to all customers a written explanation of the certification process for medically essential electric service, which includes:
  - Submittal of completed forms supplied by the utility, including a certification form completed by a physician licensed under ch. 458 or ch. 459, F.S., which states in medical and nonmedical terms why the electric service is medically essential; and
  - Recertification by a physician every 12 months.
- Provide recertification materials to a certified customer by mail at least 30 days prior to expiration of the customer's certification, and allow the customer to submit completed recertification forms within 30 days after the expiration of certification.
- Provide notice to a certified customer before any disconnection of service for nonpayment:
  - By telephone at least 24 hours before the scheduled disconnection;
  - In person at the customer's residence no later than 4 p.m. of the day before the scheduled disconnection, if the customer cannot be reached in a timely manner by telephone; and
  - By leaving written notification at the residence, if the customer cannot be reached by telephone or in person.
- Provide notice of any scheduled service interruptions to certified customers.

If a certified customer notifies its IOU of a need for financial assistance, the law requires the IOU to provide the customer with information on sources of state or local agency funding that may provide financial assistance to such customers. In addition, if an IOU operates a program to receive voluntary contributions from its customers to provide financial assistance to persons unable to pay for service, the IOU must train its customer service representatives to assist certified customers in identifying the program and any agencies to which the IOU has distributed the contributed funds.

The law provides that each certified customer maintains the responsibility to make satisfactory arrangements with the IOU to ensure payment for service consistent with the requirements of the IOU's tariff. Further, the law provides that each certified customer is solely responsible for any backup equipment or power supply and a planned course of action in the event of a power outage or interruption of service. The law specifies that an IOU may disconnect service to a residence whenever an emergency may threaten the health or safety of a person, the surrounding area, or the public utility's distribution system, provided that the IOU must promptly restore service as soon as feasible. The law states that it does not form the basis for any cause of action against an IOU.

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[1] Florida's investor-owned electric utilities are Florida Power & Light Company, Duke Energy Florida, Tampa Electric Company, Gulf Power Company, and Florida Public Utilities Company. These utilities are referred to in statute as "public utilities" for purposes of regulation by the Public Service Commission. S. 366.02, F.S.

[2] The term "medically essential" is defined as "the medical dependence on electric-powered equipment that must be operated continuously or as circumstances require as specified by a physician to avoid the loss of life or immediate hospitalization of the customer or another permanent resident at the residential service address." S. 366.15(1), F.S.

The law does not apply to municipal electric utilities or rural electric cooperatives, but the majority of those utilities maintain programs for medically essential electric service, many under terms similar to the terms specified in law for IOUs.[3] The rates and service of municipal electric utilities and rural electric cooperatives are not regulated by the Public Service Commission (PSC).

Chapter 456, F.S., addresses the regulation of specified health care professions by the Department of Health. It does not address certification of patients for medically essential electric service.

**Effect of Proposed Changes**

In summary, the bill requires additional consumer education about medically essential electric service programs and establishes additional protections for utility customers that are certified under such programs. In addition, the bill expands the law to include municipal electric utilities and rural electric cooperatives.

The bill amends s. 366.15, F.S., to replace most references to "public utility" – the term used in ch. 366, F.S., to describe investor-owned electric utilities – with the term "electric utility." The term "electric utility" is used in ch. 366, F.S., to refer to all types of electric utilities, including investor-owned electric utilities, municipal electric utilities, and rural electric cooperatives. Thus, the bill expands the statutory requirements for medically essential electric service to all retail electric utilities in the state,[4] though it clarifies that the provision of medically essential electric service by municipal electric utilities and rural electric cooperatives will not be regulated or overseen by the PSC.

The bill requires additional consumer education about medically essential electric service. In particular, the bill:

- Requires that each electric utility post on its website a written explanation of the certification process, including a standard certification form adopted by the utility.
- Requires that each electric utility provide a written explanation of the certification process to each residential customer at the time the customer opens an account with the utility and semiannually thereafter, either through a bill insert or by electronic means.
- Creates s. 456.45, F.S., to require certain health care practitioners – licensed physicians, physician assistants, and advanced registered nurse practitioners – to inform a patient of the right to participate in medically essential electric service programs and to provide the patient with a written copy of s. 366.15, F.S., if the patient may be at risk of loss of life or immediate hospitalization due to the loss of electric service at the patient's residence. At the request of such a patient, the practitioner must provide the patient a completed medical certification using the form adopted by the utility and document the certification in the patient's record.

The bill also modifies the statutory requirements for medically essential electric service. With respect to the certification process, the bill:

- Expands the types of health care practitioners that may provide medical certification to also include licensed physician assistants and advanced registered nurse practitioners.
- Requires each utility to adopt a standard certification form and specifies the information to be included in the form, including: the customer's name, account number, service address, and contact information; the name of the permanent resident at the service address who is medically dependent on electric-powered equipment; and the name of that person's certifying health practitioner. The bill requires that the standard certification form include a separate

[3] As of December 31, 2018, IOUs served 75.5% of residential customers in the state (7,183,302), while municipal electric utilities served 13.5% (1,288,251) and rural electric cooperatives served 11% (1,043,694). *See* Florida Public Service Commission, *Statistics of the Florida Electric Utility Industry*, October 2019, at 45, *available at* http://www.psc.state.fl.us/Files/PDF/Publications/Reports/Electricgas/Statistics/2018.pdf (last visited Jan. 11, 2020).

[4] The bill does not extend certain accounting and training requirements in s. 366.15(10)(b)2., F.S., to municipal electric utilities and rural electric cooperatives.

section to be completed by the certifying health care practitioner, which must include: the name, business address, and medical license number of the certifying health care practitioner; a statement in medical and nonmedical terms that specifies why electric service is medically essential; and the time period for which the service is expected to remain medically essential.
- Allows for medical certification up to 60 months.
- Requires recertification upon expiration of the current certification period but no sooner than 12 months after issuance of the current certification.
- Allows the electric utility to send recertification materials to the customer by e-mail if the customer has provided an email address to the utility.
- Requires the electric utility to provide recertification materials to certified customers at least 60 days prior to expiration of the customer's certification.
- Allows the electric utility, no more often than once every 12 months, to request verification from the customer that the person for whom service is certified continues to reside at the service address.

With respect to disconnection of service for nonpayment, the bill:
- Requires that each electric utility provide certified customers no less time than other residential customers to make payment or payment arrangements (in any event, no less than 20 days from the date a bill is mailed or delivered by the electric utility) prior to the utility scheduling disconnection of service.
- Requires the electric utility to provide, in addition to any notice provided in its normal course of business, notice to certified customers:
    - By telephone and in writing – including by electronic means if the customer has provided contact information to receive electronic communications – no later than 15 days before, and again no later than 7 days before, the scheduled disconnection;
    - In person at the customer's residence no later than 2 business days before the scheduled disconnection, if the customer cannot be reached in a timely manner by telephone; and
    - In writing by electronic means, in addition to leaving written notification at the residence, if in-person contact is not made.

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

B. SECTION DIRECTORY:

**Section 1.** Amends s. 366.11, F.S., related to certain exemptions from regulation under ch. 366, F.S.

**Section 2.** Amends s. 366.15, F.S., related to medically essential electric public utility service.

**Section 3.** Creates s. 456.45, F.S., related to certification of medically essential electric utility service.

**Section 4.** 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:

Electric utilities that currently provide medically essential electric service programs may incur costs to modify those programs to comply with the bill. The small minority of electric utilities that do not currently provide such programs will incur costs to establish those programs in compliance with the bill.

D. FISCAL COMMENTS:

None.

## III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to: require counties or municipalities to spend funds or take an action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of a 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

None.

A bill to be entitled

An act relating to medically essential electric utility service; amending s. 366.11, F.S.; specifying that the fact that certain electric utilities must provide medically essential electric service does not require them to otherwise be regulated by the Public Service Commission; amending s. 366.15, F.S.; revising and defining terms; providing notification requirements for electric utilities relating to the certification process for obtaining medically essential electric service and service disconnection; providing certification requirements for customers; specifying duties of electric utilities; revising penalties for falsification of such certification; providing construction; creating s. 456.45, F.S.; requiring certain health care practitioners to inform certain patients of such certification process; requiring such practitioners to provide patients with completed medical certifications and document the certification; providing an effective date.

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

Section 1. Subsection (1) of section 366.11, Florida Statutes, is amended to read:



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

366.11 Certain exemptions.—

(1) No provision of this chapter shall apply in any manner, other than as specified in ss. 366.04, 366.05(7) and (8), 366.051, 366.055, 366.093, 366.095, 366.14, 366.15, 366.80-366.83, and 366.91, to utilities owned and operated by municipalities, whether within or without any municipality, or by cooperatives organized and existing under the Rural Electric Cooperative Law of the state, or to the sale of electricity, manufactured gas, or natural gas at wholesale by any public utility to, and the purchase by, any municipality or cooperative under and pursuant to any contracts now in effect or which may be entered into in the future, when such municipality or cooperative is engaged in the sale and distribution of electricity or manufactured or natural gas, or to the rates provided for in such contracts.

Section 2. Section 366.15, Florida Statutes, is amended to read:

366.15 Medically essential electric ~~public~~ utility service.—

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

(a) "Health care practitioner" means a physician or physician assistant licensed under chapter 458 or chapter 459 or an advanced registered nurse practitioner licensed under chapter 464.

(b) "Medically essential" means the medical dependence on

electric-powered equipment that must be operated continuously or as circumstances require as specified by a health care practitioner ~~physician~~ to avoid the loss of life or immediate hospitalization of the customer or another permanent resident at the residential service address.

(2) Each electric ~~public~~ utility shall designate employees who are authorized to direct an ordered continuation or restoration of medically essential electric service. An electric ~~A public~~ utility shall not impose upon any customer any additional deposit to continue or restore medically essential electric service.

(3)(a) Each electric ~~public~~ utility shall post on its website a written explanation of the certification process for obtaining medically essential electric service. The website must include the standard certification form adopted by the utility pursuant to paragraph (b). Each electric utility shall ~~annually~~ provide a written explanation of the certification process ~~for medically essential electric service~~ to each residential utility customer:

1. When the customer opens an account for electric service with the electric utility; and

2. At least semiannually either by a written bill insert or, if the customer has provided contact information to receive electronic communications from the utility, by electronic means.

(b)1. Each electric utility must adopt a standard

certification form to be completed and signed by each residential customer who wishes to have his or her service certified as medically essential. The certification form must include the customer's service address, the customer's name and the account number for the service address, the name of the permanent resident at the service address who is medically dependent on electric-powered equipment and the name of that person's certifying health care practitioner, and the customer's contact information for purposes of receiving communications from the utility by telephone and by electronic means if the customer has provided authorization to receive electronic communications.

2. The certification form must include a separate page to be completed and signed by a health care practitioner certifying that electric service is medically essential for the customer or other permanent resident at the service address. This page of the certification form must include the name, business address, and medical license number of the certifying health care practitioner; a statement by the certifying health care practitioner, in medical and nonmedical terms, that specifies the reasons why the electric service is medically essential, as defined in subsection (1); and a specification of the time period for which the electric service is expected to remain medically essential.

(c) Certification that ~~of~~ a customer's electricity needs are ~~as~~ medically essential requires the customer ~~to complete forms supplied by the public utility and~~ to submit to the utility a completed standard certification form which includes the health care practitioner's certification ~~a form completed by a physician licensed in this state pursuant to chapter 458 or chapter 459 which states in medical and nonmedical terms why the electric service is medically essential~~. The certification may not extend beyond 60 months. Falsification of the ~~False~~ certification ~~of medically essential service by a physician~~ is a violation of s. 458.331(1)(h), ~~or~~ s. 459.015(1)(i), or s. 464.018(1)(f).

(d) ~~(b)~~ Medically essential service must ~~shall~~ be recertified at the expiration of the time period specified in the certification or ~~once every~~ 12 months after certification, whichever is later. The electric ~~public~~ utility shall send the ~~certified~~ customer by regular mail, or by e-mail if the customer has provided the utility with his or her e-mail address, a package of recertification materials, including recertification forms, at least 60 ~~30~~ days before ~~prior to~~ the expiration of the customer's certification. The materials shall advise the ~~certified~~ customer that he or she must complete and submit the recertification forms within 30 days after the expiration of the customer's existing certification. If the recertification form is ~~forms are~~ not received within this 30-day period, the

electric ~~public~~ utility may terminate the customer's certification. No more than once every 12 months during the term of the certification, the electric utility may request verification from the customer that the person for whom electric service is certified continues to reside at the service address.

(4) Each electric ~~public~~ utility must ~~shall~~ certify a customer's electric service as medically essential if the customer completes the requirements of subsection (3).

(5) Notwithstanding any other provision of this section, an electric ~~a public~~ utility may disconnect service to a residence whenever an emergency may threaten the health or safety of a person, the surrounding area, or the electric ~~public~~ utility's distribution system. The electric ~~public~~ utility shall act promptly to restore service as soon as feasible.

(6) A customer whose electric service is certified as medically essential under this section is entitled, at a minimum, to the same time period for payment of bills that applies to all other residential customers served by the electric utility. However, the time period may not be fewer than 20 days after the date the bill is mailed or delivered by the utility. If payment or a satisfactory payment arrangement has not been made within the specified time period, the electric utility may schedule disconnection of service for nonpayment of the bill. In addition to any other notice provided in the utility's normal course of business, before the electric utility

disconnects service it must provide the following notice to each customer whose electric service is certified as medically essential under this section:

(a) No later than 15 days, and again no later than 7 days, before a scheduled disconnection ~~24 hours before any scheduled disconnection of service for nonpayment of bills to a customer who requires medically essential service~~, the electric ~~a public~~ utility shall attempt to contact the customer by telephone ~~in order~~ to provide notice of the scheduled disconnection and shall provide the notice in writing, including by electronic means if the customer has provided contact information to receive electronic communications from the electric utility.

(b) If ~~the customer does not have a telephone number listed on the account or if~~ the electric ~~public~~ utility cannot reach the customer or other adult resident of the premises by telephone by the specified time, the electric ~~public~~ utility shall send a representative to the customer's residence to attempt to contact the customer~~,~~ no later than 2 business days ~~4 p.m. of the day~~ before the scheduled disconnection. If contact is not made, however, the electric ~~public~~ utility must ~~may~~ leave written notification at the residence advising the customer of the scheduled disconnection and shall provide the notice by electronic means if the customer has provided contact information to receive electronic communications from the electric utility.

Thereafter, the electric ~~public~~ utility may disconnect service on the scheduled disconnection ~~specified~~ date if payment or a satisfactory payment arrangement has not been made.

(7) Each electric ~~public~~ utility customer who requires medically essential service is responsible for making satisfactory arrangements with the electric ~~public~~ utility to ensure payment for such service, and such arrangements must be consistent with the requirements of the utility's tariff.

(8) Each electric ~~public~~ utility customer who requires medically essential service is solely responsible for any backup equipment or power supply and a planned course of action in the event of a power outage or interruption of service.

(9) Each electric ~~public~~ utility that provides electric service to any customer whose electric service is certified as medically essential pursuant to this section ~~who requires medically essential service~~ shall call, contact, or otherwise advise such customer of scheduled service interruptions.

(10)(a) Each electric ~~public~~ utility shall provide information on sources of state or local agency funding which may provide financial assistance to the ~~public~~ utility's customers who require medically essential service and who notify the ~~public~~ utility of their need for financial assistance.

(b)1. Each electric ~~public~~ utility that operates a program to receive voluntary financial contributions from the ~~public~~

utility's customers to provide assistance to persons who are unable to pay for the ~~public~~ utility's services shall maintain a list of all agencies to which the ~~public~~ utility distributes such funds for such purposes and shall make the list available to any such person who requests the list.

2. Each public utility that operates such a program shall:

a. Maintain a system of accounting for the specific amounts distributed to each such agency, and the public utility and such agencies shall maintain a system of accounting for the specific amounts distributed to persons under such respective programs.

b. Train its customer service representatives to assist any person who possesses a medically essential certification as provided in this section in identifying such agencies and programs.

(11) Nothing in this act forms ~~shall form~~ the basis for any cause of action against an electric ~~a public~~ utility. Failure to comply with any obligation created by this act does not constitute evidence of negligence on the part of the electric ~~public~~ utility.

(12) Nothing in this section shall be construed to authorize the commission to regulate or supervise the provision of medically essential electric service pursuant to this section by:

(a) Any electric utility owned and operated by a



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

municipality; or

(b) Any rural electric cooperative organized under chapter 425.

Section 3. Section 456.45, Florida Statutes, is created to read:

456.45 Certification of medically essential electric service.—

(1) As used in this section, the term "health care practitioner" means a physician or physician assistant licensed under chapter 458 or chapter 459 or an advanced registered nurse practitioner licensed under chapter 464.

(2) A health care practitioner who determines that a patient may be at risk of loss of life or immediate hospitalization if the patient were to lose electric service at the patient's residential service address shall inform the patient of his or her right to obtain certification under the medically essential electric service program provided by the patient's electric utility pursuant to s. 366.15, and provide the patient with a written copy of the law.

(3) Upon the request of such a patient, the health care practitioner must provide the patient with a completed medical certification using the standard certification form adopted by the patient's electric utility and made available on the utility's website pursuant to s. 366.15(3) and must document the certification in the patient's medical record.

Section 4. This act shall take effect July 1, 2020.



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

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 813 Protection of Vulnerable Investors
**SPONSOR(S):** Insurance & Banking Subcommittee, McClure
**TIED BILLS:** **IDEN./SIM. BILLS:** SB 1672

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR or BUDGET/POLICY CHIEF |
|---|---|---|---|
| 1) Insurance & Banking Subcommittee | 15 Y, 0 N, As CS | Hinshelwood | Cooper |
| 2) Children, Families & Seniors Subcommittee | 11 Y, 0 N | Morris | Brazzell |
| 3) Commerce Committee | | Hinshelwood | Hamon K.W.H. |

### SUMMARY ANALYSIS

Although investment fraud is not a new occurrence in the financial marketplace, recent economic forces such as the rise of technology and the information age have created an environment conducive to financial exploitation. In an effort to address financial exploitation of seniors, the Financial Industry Regulatory Authority (FINRA), of which most securities broker-dealers are members, implemented rules to provide its members with the ability to place a hold on a disbursement of funds or securities from a customer's account if they have a reasonable basis to believe that financial exploitation of a "specified adult" has occurred, is occurring, has been attempted, or will be attempted. The term "specified adult" refers to a natural person age 65 and older; or a natural person age 18 and older who the FINRA member reasonably believes has a mental or physical impairment that renders the individual unable to protect his or her own interests. These rules took effect February 5, 2018. However, they do not apply to broker-dealers and investment advisers who are not FINRA members.

Similar to the FINRA rules, the bill allows a dealer or investment adviser to delay a disbursement or transaction of funds or securities from the account of a specified adult or an account for which a specified adult is a beneficiary or beneficial owner if the dealer or investment adviser reasonably believes that financial exploitation of the specified adult has occurred, is occurring, has been attempted, or will be attempted in connection with the disbursement or transaction. A specified adult is an individual who is age 65 or older or who meets the definition of "vulnerable adult" under Florida's Adult Protective Services Act.

The suspected financial exploitation must be immediately reported to the Florida Abuse Hotline if so required by the Adult Protective Services Act. Not later than three business days after placing a delay, the dealer or investment adviser must notify all parties authorized to transact business on the account as well as any designated trusted contact, unless such person is believed to be engaged in the suspected financial exploitation. Not later than three business days after placing or extending a delay, the dealer or investment adviser must notify the Office of Financial Regulation of the delay or extension.

A delay expires in 15 business days but may be terminated sooner. The dealer or investment adviser may extend the delay for up to an additional 10 business days. The length of the hold may be shortened or extended by a court of competent jurisdiction. The bill requires a dealer or investment adviser to annually conduct training that is reasonably designed to educate associated persons on issues pertaining to financial exploitation. A dealer, an investment adviser, or an associated person who in good faith and exercising reasonable care complies with the bill is immune from any administrative or civil liability that might otherwise arise from a delay in a disbursement or transaction.

The bill has no fiscal impact on local governments, an indeterminate fiscal impact on state government, and an indeterminate positive fiscal impact on the private sector.

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

## FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

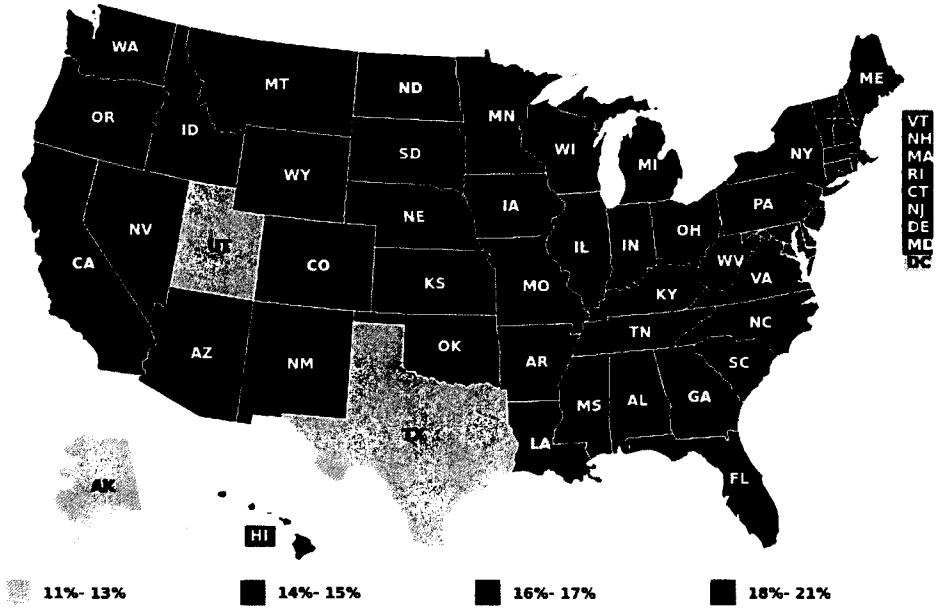
A. EFFECT OF PROPOSED CHANGES:

**Background**

*Vulnerable Adults in Florida*

As the country's "baby-boomer" population reaches retirement age and life expectancy increases, the nation's elder population is projected to increase from 49.2 million in 2016[1] to 77 million by 2034.[2] Florida has long been a destination state for senior citizens and has the highest percentage of senior residents in the entire nation.[3] In 2018, Florida had an estimated 4.3 million people age 65 and older, approximately 20 percent of the state's population.[4] By 2030, this number is projected to increase to 5.9 million, meaning the elderly will make up approximately one quarter of the state's population and will account for most of the state's growth.[5]

National Distribution of Population Ages 65 and Older (2018)[6]




[1] Press Release, U.S. Census Bureau, *The Nation's Older Population is Still Growing, Census Bureau Reports* (June 22, 2017), Release Number: CB17-100, *available at*: https://www.census.gov/newsroom/press-releases/2017/cb17-100.html (last visited Feb. 3, 2020).
[2] Press Release, U.S. Census Bureau, *Older People Projected to Outnumber Children for First Time in U.S. History* (revised Oct. 8, 2019), available at: https://www.census.gov/newsroom/press-releases/2018/cb18-41-population-projections.html (last visited Feb. 3, 2020).
[3] *Where Do the Oldest Americans Live?*, Pew Research Center, July 9, 2015, available at: https://www.pewresearch.org/fact-tank/2015/07/09/where-do-the-oldest-americans-live/ (last visited Feb. 3, 2020).
[4] U.S. Census Bureau, *Annual Estimates of the Resident Population for Selected Age Groups by Sex for the United States*, available at: https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?src=bkmk (last visited Feb. 3, 2020).
[5] Florida Office of Economic & Demographic Research, *Population Data: 2016, 2020, 2025, 2030, 2035, 2040, & 2045, County by Age, Race, Sex, and Hispanic Origin*, pp. 89-90 and 269-70, available at: http://edr.state.fl.us/Content/population-demographics/data/Medium_Projections_ARSH.pdf (last visited Feb. 3, 2020); Florida Office of Economic & Demographic Research, *Econographic News: Economic and Demographic News for Decision Makers, 2019, Vol. 1*, available at: http://edr.state.fl.us/content/population-demographics/reports/econographicnews-2019v1.pdf (last visited Feb. 3, 2020).
[6] Kaiser Family Foundation, *State Health Facts, Population Distribution by Age,* https://www.kff.org/other/state-indicator/distribution-by-age/ (last visited Feb. 3, 2020).

The term "disability" as enacted in the Americans with Disabilities Act[7] means a physical or mental impairment that substantially limits one or more major life activities such as caring for oneself, performing manual tasks, seeing, walking, hearing, standing, learning, thinking, and communicating. The definition also includes individuals with a previous record of such an impairment and, under certain circumstances, who are generally regarded as having such an impairment. Types of disabilities include ambulatory, hearing, cognitive, vision, independent living, and self-care.[8] Disabilities can be related to conditions present at birth, associated with developmental conditions, related to an injury, or associated with a longstanding condition.[9]

Approximately 12.7% (over 40 million people) of the U.S. population has a disability.[10] Florida's disability population is estimated at 13.6% (over 2.8 million people).[11]

*Federal Securities Regulation*

The federal Securities Exchange Act of 1934 ('34 Act) requires registration of securities market participants like broker-dealers and exchanges.[12] Generally, any person acting as "broker" or "dealer" as defined in the '34 Act must be registered with the United States Securities and Exchange Commission (SEC) and join a self-regulatory organization (SRO), like the Financial Industry Regulatory Authority (FINRA) or a national securities exchange. The '34 Act broadly defines "broker" as "any person engaged in the business of effecting transactions in securities for the account of others," which the SEC has interpreted to include involvement in any of the key aspects of a securities transaction, including solicitation, negotiation, and execution.[13] A "dealer" is "any person engaged in the business of buying and selling securities . . . for such person's own account through a broker or otherwise."[14] Certain entities in the securities industry are often referred to as "broker-dealers" because the institution is a "broker" when executing trades on behalf of a customer, but is a "dealer" when executing trades for its own account. In addition to being registered with the SEC, broker-dealers must comply with state registration requirements.

*State Securities Regulation*

In addition to federal securities laws, "Blue Sky Laws" are state laws designed to protect investors against fraudulent sales practices and activities by requiring companies making offerings of securities to register their offerings before they can be sold in that state and by requiring licensure for brokerage firms, their brokers, and investment adviser representatives.[15]

In Florida, the Office of Financial Regulation's (OFR's) Division of Securities oversees the Securities and Investor Protection Act, ch. 517, F.S., which regulates the offer and sale of securities in, to, or from Florida by firms, branch offices, and individuals affiliated with these firms.

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[7] 42 U.S.C. § 12101.
[8] United States Census Bureau, *Types of Disabilities,* https://www.census.gov/library/visualizations/2019/comm/types-of-disabilities.html (last visited Feb. 3, 2020).
[9] Centers for Disease Control and Prevention, *Disability Health Overview,* https://www.cdc.gov/ncbddd/disabilityandhealth/disability.html (last visited Feb. 3, 2020).
[10] United States Census Bureau 2018 American Community Survey, *Disability Characteristics,* https://data.census.gov/cedsci/table?q=disability%20characteristics&hidePreview=false&tid=ACSST1Y2018.S1810&t=Disability&vintage=2018 (last visited Feb. 3, 2020).
[11] United States Census Bureau, https://data.census.gov/cedsci/map?q=disability%20characteristics&hidePreview=false&tid=ACSST1Y2018.S1810&t=Disability&vintage=2018&cid=S1810_C01_001E (last visited Feb. 3, 2020).
[12] 15 U.S.C. §§ 78c(a)(4) and 78o; U.S. Securities and Exchange Commission, *Guide to Broker-Dealer Registration*, http://www.sec.gov/divisions/marketreg/bdguide.htm#II (last visited Feb. 3, 2020).
[13] *Id.*
[14] 15 U.S.C. §§ 78c(a)(5).
[15] U.S. Securities and Exchange Commission, *Blue Sky Laws*, http://www.sec.gov/answers/bluesky.htm (last visited Feb. 3, 2020).

The Securities and Investor Protection Act requires the following individuals or businesses to be registered with OFR under s. 517.12, F.S., in order for such persons to sell or offer to sell any securities in or from offices in this state, or to sell securities to persons in this state from offices outside this state:[16]

- "Dealers," which include:[17]
  - Any person, other than an associated person registered under ch. 517, F.S., who engages, either for all or part of her or his time, directly or indirectly, as broker or principal in the business of offering, buying, selling, or otherwise dealing or trading in securities issued by another person.
  - Any issuer who through persons directly compensated or controlled by the issuer engages, either for all or part of her or his time, directly or indirectly, in the business of offering or selling securities which are issued or are proposed to be issued by the issuer.
- "Investment advisers," which:[18]
  - Include any person who receives compensation, directly or indirectly, and engages for all or part of her or his time, directly or indirectly, or through publications or writings, in the business of advising others as to the value of securities or as to the advisability of investments in, purchasing of, or selling of securities, except a dealer whose performance of these services is solely incidental to the conduct of her or his business as a dealer and who receives no special compensation for such services.
  - Does not include a "federal covered adviser."[19]
- "Associated persons," which include:[20]
  - With respect to a dealer or investment adviser, any of the following:
    - Any partner, officer, director, or branch manager of a dealer or investment adviser or any person occupying a similar status or performing similar functions;
    - Any natural person directly or indirectly controlling or controlled by such dealer or investment adviser, other than an employee whose function is only clerical or ministerial; or
    - Any natural person, other than a dealer, employed, appointed, or authorized by a dealer, investment adviser, or issuer to sell securities in any manner or act as an investment adviser as defined in s. 517.021, F.S.
  - With respect to a federal covered adviser, any person who is an investment adviser representative and who has a place of business in this state.

*Vulnerability of Seniors to Investment Fraud*

Although investment fraud is not a new occurrence in the financial marketplace, recent economic forces have created an environment conducive to swindlers practicing their craft.[21] Such economic forces include:[22]

- The decline of traditional pensions, which has resulted in fewer Americans relying on expert money managers to invest their retirement funds in a fast-moving and complex investment market.
- The rise of technology, which has made it significantly easier for scammers to reach a broad set of investors with sophisticated robotic and predictive telephone dialing, email, television, and social media.

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[16] S. 517.12(1), F.S.
[17] S. 517.021(6)(a), F.S. The term "dealer", as defined under Florida law, encompasses the definitions of "broker" and "dealer" under federal law.
[18] S. 517.021(14)(a), F.S.
[19] S. 517.021(9), (14)(b)9., F.S. A federal covered adviser must be registered under federal law and must provide a notice-filing to OFR. Ss. 517.021 and 517.1201, F.S.
[20] S. 517.021(2), F.S.
[21] Doug Shadel and Karla Pak, *AARP Investment Fraud Vulnerability Study*, AARP (2017), https://www.aarp.org/content/dam/aarp/research/surveys_statistics/econ/2017/investment-fraud-vulnerability.doi.10.26419%252Fres.00150.001.pdf (last visited Feb. 3, 2020).
[22] *Id.*

- The rise of the information age, which has given scammers unlimited access to personal information about investors, making it easier for them to customize their messages and harder for investors to discern who is truly on their side.

Older Americans have accumulated an estimated $18 trillion in assets.[23] In recent years, financial research has focused on understanding the vulnerability of seniors to investment fraud. In a 2012 study prepared for the FINRA Investor Education Foundation, adults 65 and older were found to be more likely than those who are younger to receive solicitations in the mail and over the telephone.[24] Survey respondents age 65 and older were also more likely to be solicited for fraud, more likely to engage with potentially fraudulent financial opportunities, and more likely to have lost money.[25]

A more recent study sponsored by AARP sought to identify psychological, behavioral, and demographic risk factors that might make investors more vulnerable to investment fraud.[26] The study identified the following psychological risk factors:[27]

- Belief that accumulation of wealth is an important measure of success in life.
- Openness to new opportunities presented by salespersons.
- Belief that the most profitable investments are those not regulated by the government.
- Belief in taking chances with one's money if those chances are likely to pay off.

Many behavioral factors that put victims at risk flow directly from the psychological risk factors above.[28] The mindset of openness to sales pitches may result in signaling a desire to be pitched with investment opportunities.[29] Compared to the general investor population, more fraud victims engaged in active trading of five or more trades in a year, and the victims were more likely to make remote investments.[30] As for demographic risk factors, the study found that many more of the victims were older (age 70+), male, married, and veterans.[31]

In 2013, the Financial Crimes Enforcement Network (FinCEN), which receives and maintains the database of suspicious activity reports (SARs),[32] introduced electronic SAR filing with a designated category for "elder financial exploitation".[33] Recent analysis of SARs related to elder financial exploitation has revealed the following:

- Among the SARs that reported a loss to an older adult, the average amount lost was $34,200; in 7 percent of these SARs, the loss exceeded $100,000.[34]
- One-third of the individuals who lost money were ages 80 and older, and adults ages 70 to 79 had the highest average monetary loss ($45,300).[35]
- Where an individual has incurred an actual loss, the amount of loss reflects substantial financial hardship for elders: The median suspicious activity amount from one sample of scam-related

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[23] National Conference of State Legislatures, *Combatting Elder Financial Exploitation,* https://www.ncsl.org/research/financial-services-and-commerce/combatting-elder-financial-exploitation.aspx (last visited Feb. 3, 2020).
[24] FINRA Investor Education Foundation, *Financial Fraud and Fraud Susceptibility in the United States: Research Report from a 2012 National Survey*, 11 (Sept. 2013), https://www.finrafoundation.org/sites/finrafoundation/files/Financial-Fraud-And-Fraud-Susceptibility-In-The-United-States_0_0_0.pdf (last visited Feb. 3, 2020).
[25] *Id.* at 17-18.
[26] Doug Shadel and Karla Pak, *supra* note 21, at 14.
[27] *Id.*
[28] *Id.* at 15.
[29] *Id.*
[30] *Id.*
[31] *Id.* at 6 and 15.
[32] A SAR "is a document that financial institutions, and those associated with their business, must file with the Financial Crimes Enforcement Network (FinCEN) whenever there is a suspected case of money laundering or fraud. These reports are tools to help monitor any activity within finance-related industries that is deemed out of the ordinary, a precursor of illegal activity, or might threaten public safety." Thomson Reuters, *What is a suspicious activity report?*, https://legal.thomsonreuters.com/en/insights/articles/what-is-a-suspicious-activity-report (last visited Feb. 3, 2020).
[33] Consumer Financial Protection Bureau, *Suspicious Activity Reports on Elder Financial Exploitation: Issues and Trends*, 3 (Feb. 2019), https://files.consumerfinance.gov/f/documents/cfpb_suspicious-activity-reports-elder-financial-exploitation_report.pdf (last visited Feb. 3, 2020).
[34] *Id.* at 4.
[35] *Id.*

SARs was $6,105, and for theft-related SARs it was $15,964. These amounts represent 16 and 41 percent, respectively, of the median income of $38,515 for households maintained by individuals 65 and over in 2015 (as reported by the U.S. Census Bureau).[36]
- The total number of SAR filings and total suspicious activity amounts increased 20 percent and 30 percent, respectively, each year during the period studied (October 2013 – August 2019).[37]

*FINRA Rules Relating to Financial Exploitation of Seniors*

FINRA is an SRO regulated by the United States Security Exchange Commission. Most broker-dealers in the United States are members of FINRA. As members, such broker-dealers are subject to FINRA rules and examination by FINRA. In an effort to address financial exploitation of seniors, FINRA implemented rules to provide its members with a way to respond to situations in which they have a reasonable basis to believe that financial exploitation of a "specified adult" has occurred, is occurring, has been attempted, or will be attempted.[38]

FINRA defines "specified adult" and "financial exploitation" as follows:
- "Specified adult" is a natural person age 65 and older; or . . . a natural person age 18 and older who the [FINRA] member reasonably believes has a mental or physical impairment that renders the individual unable to protect his or her own interests.[39]
- "Financial exploitation" means:
    - The wrongful or unauthorized taking, withholding, appropriation, or use of a specified adult's funds or securities; or
    - Any act or omission by a person, including through the use of a power of attorney, guardianship, or any other authority regarding a specified adult, to:
        - Obtain control, through deception, intimidation or undue influence, over the specified adult's money, assets, or property; or
        - Convert the specified adult's money, assets, or property.[40]

Under the new rules, FINRA members have the ability to contact a customer's designated trusted contact person and, when appropriate, place a temporary hold on a disbursement of funds or securities from a customer's account.[41] The temporary hold expires after 15 business days, but the FINRA member may extend the hold by up to an additional 10 business days if the member's internal review of facts and circumstances supports its reasonable belief that the financial exploitation has occurred, is occurring, has been attempted, or will be attempted.[42]

These rules took effect February 5, 2018.[43] However, they do not apply to broker-dealers and investment advisers who are not FINRA members.

*Mandatory Reporting for Abuse or Exploitation of Vulnerable Adults*

The Florida Department of Children and Families (DCF) houses the Adult Protective Services Program (APS). APS is responsible for preventing further harm to vulnerable adults who are victims of abuse,

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[36] FinCen, *Financial Trend Analysis: Elders Face Increased Financial Threat from Domestic and Foreign Actors*, 7 (Dec. 2019), https://www.fincen.gov/sites/default/files/shared/FinCEN%20Financial%20Trend%20Analysis%20Elders_FINAL%20508.pdf (last visited Feb. 3, 2020).
[37] *Id.* at 1.
[38] FINRA, *Regulatory Notice 17-11 (Financial Exploitation of Seniors)* (Mar. 2017), https://www.finra.org/sites/default/files/Regulatory-Notice-17-11.pdf (last visited Feb. 3, 2020).
[39] FINRA, *Rule 2165. Financial Exploitation of Specified Adults,* https://www.finra.org/rules-guidance/rulebooks/finra-rules/2165 (last visited Feb. 3, 2020).
[40] *Id.*
[41] *Id.*
[42] *Id.*
[43] *Id.*

neglect, exploitation, or self-neglect.[44] Florida law currently contains a mandatory reporting requirement in ch. 415, F.S., the Adult Protective Services Act (APS Act), which states that any person "who knows, or has reasonable cause to suspect, that a vulnerable adult has been or is being abused, neglected, or exploited shall immediately report such knowledge or suspicion to the Florida Abuse Hotline."[45]

The APS Act defines "vulnerable adult" and "exploitation" as follows:

- "Vulnerable adult" is a person 18 years of age or older whose ability to perform the normal activities of daily living or to provide for his or her own care or protection is impaired due to a mental, emotional, sensory, long-term physical, or developmental disability or dysfunction, or brain damage, or the infirmities of aging.[46]
- "Exploitation" means a person who:[47]
    - Stands in a position of trust and confidence with a vulnerable adult and knowingly, by deception or intimidation, obtains or uses, or endeavors to obtain or use, a vulnerable adult's funds, assets, or property with the intent to temporarily or permanently deprive a vulnerable adult of the use, benefit, or possession of the funds, assets, or property for the benefit of someone other than the vulnerable adult; or
    - Knows or should know that the vulnerable adult lacks the capacity to consent, and obtains or uses, or endeavors to obtain or use, the vulnerable adult's funds, assets, or property with the intent to temporarily or permanently deprive the vulnerable adult of the use, benefit, or possession of the funds, assets, or property for the benefit of someone other than the vulnerable adult.
- "Exploitation" may include, but is not limited to:[48]
    - Breaches of fiduciary relationships, such as the misuse of a power of attorney or the abuse of guardianship duties, resulting in the unauthorized appropriation, sale, or transfer of property;
    - Unauthorized taking of personal assets;
    - Misappropriation, misuse, or transfer of moneys belonging to a vulnerable adult from a personal or joint account; or
    - Intentional or negligent failure to effectively use a vulnerable adult's income and assets for the necessities required for that person's support and maintenance.

The Florida Abuse Hotline screens allegations of child and adult abuse and neglect to determine whether the information meets the criteria of an abuse report.[49] If the criteria is met, a protective investigation is initiated to confirm whether or not there is evidence that abuse, neglect, or exploitation occurred; whether there is an immediate or long-term risk to the victim; and whether the victim needs additional services to safeguard his or her well-being.[50] APS services include:[51]

- On-site investigation of reports of alleged abuse, neglect, exploitation or self-neglect;
- Determination of immediate risk to the victim and provision of necessary emergency services;
- Evaluation of the need for and provision of protective supervision; and,
- Provision of on-going protective services.

A person who participates in making a report to the Florida Abuse Hotline or who participates in a judicial proceeding resulting therefrom "is presumed to be acting in good faith and, unless lack of good faith is shown by clear and convincing evidence, is immune from any liability, civil or criminal, that otherwise might be incurred or imposed."[52]

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[44] Florida Department of Children and Families, *Adult Protective Services: Protecting Vulnerable Adults*, https://www.myflfamilies.com/service-programs/adult-protective-services/protecting-vulnerable-adults.shtml (last visited Feb. 3, 2020).
[45] S. 415.1034(1)(a), F.S.; Florida Department of Children and Families, *Abuse Hotline: Report Abuse Online*, https://www.myflfamilies.com/service-programs/abuse-hotline/report-online.shtml (last visited Feb. 3, 2020).
[46] S. 415.102(28), F.S.
[47] S. 415.102(8), F.S.
[48] *Id.*
[49] Florida Department of Children and Families, *supra* note 43.
[50] *Id.*
[51] *Id.*
[52] S. 415.1036(1), F.S.

**Effect of the Bill**

The bill allows a dealer or investment adviser to delay a disbursement or transaction of funds or securities from an account of a specified adult or an account for which a specified adult is a beneficiary or beneficial owner if the dealer or investment adviser reasonably believes that financial exploitation of the specified adult has occurred, is occurring, has been attempted, or will be attempted in connection with the disbursement or transaction. A "specified adult" is an individual who is age 65 or older or who meets the definition of "vulnerable adult" under the APS Act.

The bill defines "financial exploitation" to mean "the wrongful or unauthorized taking, withholding, appropriation, or use of money, assets; or property of a specified adult, or any act or omission by a person, including through the use of a power of attorney, guardianship, or conservatorship of a specified adult, to:

- Obtain control over the specified adult's money, assets, or property through deception, intimidation, or undue influence to deprive him or her of the ownership, use, benefit, or possession of the money, assets, or property; or
- Convert the specified adult's money, assets, or property to deprive him or her of the ownership, use, benefit, or possession of the money, assets, or property."

The bill adds dealers, investment advisers, and associated persons to the list of specified mandatory reporters under the APS Act. If the financial exploitation involves a specified adult who meets the definition of a "vulnerable adult" under the APS Act, the dealer, investment adviser, or associated person must immediately notify DCF, via the Florida Abuse Hotline.[53]

Additionally, not later than three business days after placing a delay, the dealer or investment adviser must:

- Notify in writing all parties authorized to transact business on the account as well as any designated trusted contact,[54] using the contact information provided for the account, with the exception of any party the dealer or investment adviser reasonably believes has engaged in, is engaging in, has attempted to engage in, or will attempt to engage in the suspected financial exploitation of the specified adult. The notice, which may be provided electronically, must provide the reason for the delay.
- Notify OFR of the delay by telephone, using a number designated by the OFR, or electronically on a form prescribed by rule. The notice must identify the dealer or investment adviser that made the delay.

The dealer or investment adviser must immediately initiate an internal review of the facts and circumstances that formed the basis of the reasonable belief of financial exploitation.

A delay expires 15 business days after the date on which the delay was placed. The dealer or investment adviser may extend the delay for up to 10 business days if its review of available facts and circumstances continues to support its reasonable belief that financial exploitation of the specified adult has occurred, is occurring, has been attempted, or will be attempted. Not later than three business days after an extension, the dealer or investment adviser must notify OFR of the extension. The notice must identify the dealer or investment adviser that extended the delay and the date on which the delay was originally made. The length of the delay may be shortened or extended at any time by a court of competent jurisdiction. The bill does not prevent a dealer or investment adviser from terminating a delay after communication with the parties authorized to transact business on the account and any trusted contact on the account.

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[53] Chapter 415, F.S., does not require a person to report suspected exploitation of an adult age 65 or older who does not meet the definition of "vulnerable adult".

[54] The bill defines "trusted contact" to mean "a natural person 18 years of age or older who the account owner has expressly identified and who is recorded in a dealer's or investment adviser's books and records as a person who may be contacted about the account."

A dealer or investment adviser must make available to OFR, upon request, all records relating to a delay made by the dealer or investment adviser, as prescribed by rule.

Before placing a delay on a disbursement or transaction, a dealer or investment adviser must develop training policies or programs reasonably designed to educate associated persons on issues pertaining to financial exploitation; must conduct training for all associated persons at least annually and maintain a written record of all trainings conducted; and develop, maintain, and enforce written procedures regarding the manner in which suspected financial exploitation is reviewed internally, including, if applicable, the manner in which suspected financial exploitation is required to be reported to supervisory personnel. The dealer or investment adviser must maintain a written record of compliance with these training requirements.

A dealer, an investment adviser, or an associated person who in good faith and exercising reasonable care complies with the bill is immune from any administrative or civil liability that might otherwise arise from a delay in a disbursement or transaction. The bill does not create new rights for or impose new obligations on a dealer, an investment adviser, or an associated person under other applicable law. In addition, the bill does not limit the right of a dealer, an investment adviser, or an associated person to otherwise refuse or place a delay on a disbursement or transaction under other applicable law or under an applicable customer agreement. Absent a reasonable belief of financial exploitation, the bill does not alter a dealer's, an investment adviser's, or an associated person's obligation to comply with instructions from a client to buy or sell securities, disburse funds or transfer securities from an account, close an account, or transfer an account to another dealer, investment adviser, or associated person.

The bill provides the following statement of legislative findings and intent:

> The Legislature finds that many persons in this state, because of age or disability, are at increased risk of financial exploitation and loss of their assets, funds, investments, and investment accounts. The Legislature further finds that senior investors in this state are at a statistically higher risk of being targeted for financial exploitation, regardless of diminished capacity or other disability, because of their accumulation of substantial assets and wealth compared to younger age groups. In enacting this section, the Legislature recognizes the freedom of specified adults to manage their assets, make investment choices, and spend their funds, and intends that such rights may not be infringed absent a reasonable belief of financial exploitation as provided in this section. The Legislature therefore intends to provide for the prevention of financial exploitation of such persons. The Legislature intends to encourage the constructive involvement of securities dealers, investment advisers, and associated persons who take action based upon the reasonable belief that specified adults with investment accounts have been or are the subject of financial exploitation, and to provide securities dealers, investment advisers, and associated persons immunity from liability for taking actions as authorized herein. The Legislature intends to balance the rights of specified adults to direct and control their assets, funds, and investments and exercise their constitutional rights consistent with due process with the need to provide securities dealers, investment advisers, and associated persons the ability to place narrow, time-limited restrictions on these rights in an effort to decrease specified adults' risk of loss due to abuse, neglect, or financial exploitation.

B. SECTION DIRECTORY:

**Section 1.** Amends s. 415.1034, F.S., relating to mandatory reporting of abuse, neglect, or exploitation of vulnerable adults; mandatory reports of death.

**Section 2.** Creates s. 517.34, F.S., relating to protection of specified adults.

**Section 3.** 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:

   The fiscal impact to OFR is indeterminate and depends on the number of reports of delays or extensions received from OFR licensees.[55] In the event that OFR receives a large number of reports, OFR may need an additional FTE employee in the future to accommodate the new workload.[56] OFR would also incur insignificant costs associated with rulemaking, which can be absorbed within its current budget.[57] There is no fiscal impact to DCF because current law already mandates that any person report suspected abuse, neglect, or exploitation of vulnerable adults to the Florida Abuse Hotline; and investigation of such allegation is a mandated function for the agency.[58]

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

As permitted by the bill, the placement of a delay on a disbursement or transaction, may decrease losses to investors who are financially preyed upon because such a delay may prevent the money from ever getting into the hands of the bad actor. Once the bad actor receives the money, it is difficult, or in some cases impossible, to ever recover the money. Given the inability to quantify avoidance of future losses to investors, the impact on the private sector is indeterminate.

D. FISCAL COMMENTS:

None.

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[55] Email from Alex Anderson, Director of Governmental Relations for OFR, Fiscal impact HB 813 (Jan. 10, 2020).
[56] *Id.*
[57] *Id.*
[58] Florida Department of Children and Families, Agency Analysis of 2020 House Bill 813 (Jan 6, 2020).

## 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 requires rulemaking for creation of a form for the dealer or investment adviser to report a delay to OFR and requires rulemaking related to records that the dealer or investment adviser must make available to OFR upon request. Additionally, ch. 517, F.S., provides the Financial Services Commission[59] authority to "adopt rules . . . to implement the provisions of [the chapter] conferring powers or duties upon [OFR], including, without limitation, adopting rules and forms governing reports." S. 517.03(1), F.S.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

## IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 15, 2020, the Insurance & Banking Subcommittee considered one amendment, which was adopted, and reported the bill favorably as a committee substitute. The committee substitute makes the following changes to the bill:

- Adds legislative findings and intent.
- Removes language that expressly states what facts and circumstances may form the basis of the dealer's or investment adviser's reasonable belief of financial exploitation.
- Requires the creation of a form by rule for the dealer or investment adviser to report a delay to OFR.
- Amends the required content of the report to OFR to require the name of the investment adviser and the date on which the delay was made, rather than the reason for the delay.
- Removes language that would have allowed the Department of Children and Families to provide the status or result of any investigation to the reporting dealer or investment adviser.
- Requires the dealer or investment adviser to immediately initiate an internal review of the facts and circumstances that formed the basis of the reasonable belief of financial exploitation.
- Specifies that the notification to OFR of any extension of the delay must contain the date on which the delay was originally made.
- Requires rulemaking related to records that the dealer or investment adviser must make available to OFR upon request.
- Amends the provision that grants civil and administrative immunity to the dealer, investment adviser, or associated person for placing a delay on a disbursement or transaction.
- Requires dealers and investment advisers, before placing a hold, to:
  - Develop and conduct annual training for associated persons and maintain written records of compliance with such requirement; and
  - Develop, maintain, and enforce written procedures regarding the manner in which suspected financial exploitation is reviewed internally.
- Makes other technical changes.

[59] The Financial Services Commission (commission) is composed of the Governor, Attorney General, Chief Financial Officer, and Commissioner of Agriculture. S. 20.121(3), F.S. The commission members are OFR's agency head for the purpose of rulemaking. S. 20.121(3)(c), F.S.

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

A bill to be entitled

An act relating to the protection of vulnerable investors; amending s. 415.1034, F.S.; requiring securities dealers, investment advisers, and associated persons to immediately report knowledge or suspicion of abuse, neglect, or exploitation of vulnerable adults to the Department of Children and Families' central abuse hotline; creating s. 517.34, F.S.; providing definitions; providing legislative findings and intent; authorizing dealers and investment advisers to delay certain disbursements or transactions based on a reasonable belief of financial exploitation of a specified adult under certain circumstances; requiring a dealer or investment adviser to notify certain persons and the Office of Financial Regulation of such delays within a specified timeframe; requiring a dealer or investment adviser to review the basis for a reasonable belief of financial exploitation of a specified adult; specifying the expiration of such delays; authorizing a dealer or investment adviser to extend a delay under certain circumstances; requiring a dealer or investment adviser to notify the office within a specified timeframe after such extension begins; providing that the length of such delays may be shortened or extended

by a court of competent jurisdiction; providing that delays may be terminated by dealers or investment advisers under certain circumstances; requiring that certain records be made available to the office; providing immunity from administrative and civil liability for dealers, investment advisers, and associated persons who in good faith and exercising reasonable care comply with specified provisions; requiring dealers and investment advisers to develop certain training policies or programs; requiring dealers and investment advisers to conduct annual training for associated persons and maintain written records of compliance with such requirement; requiring dealers and investment advisers to develop, maintain, and enforce certain written procedures; providing construction; providing an effective date.

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

Section 1. Paragraph (a) of subsection (1) of section 415.1034, Florida Statutes, is amended to read:

415.1034 Mandatory reporting of abuse, neglect, or exploitation of vulnerable adults; mandatory reports of death.—

(1) MANDATORY REPORTING.—

(a) Any person, including, but not limited to, any:

1. Physician, osteopathic physician, medical examiner, chiropractic physician, nurse, paramedic, emergency medical technician, or hospital personnel engaged in the admission, examination, care, or treatment of vulnerable adults;

2. Health professional or mental health professional other than one listed in subparagraph 1.;

3. Practitioner who relies solely on spiritual means for healing;

4. Nursing home staff; assisted living facility staff; adult day care center staff; adult family-care home staff; social worker; or other professional adult care, residential, or institutional staff;

5. State, county, or municipal criminal justice employee or law enforcement officer;

6. Employee of the Department of Business and Professional Regulation conducting inspections of public lodging establishments under s. 509.032;

7. Florida advocacy council or Disability Rights Florida member or a representative of the State Long-Term Care Ombudsman Program; ~~or~~

8. Bank, savings and loan, or credit union officer, trustee, or employee; or

9. Dealer, investment adviser, or associated person under chapter 517,

who knows, or has reasonable cause to suspect, that a vulnerable adult has been or is being abused, neglected, or exploited must ~~shall~~ immediately report such knowledge or suspicion to the central abuse hotline.

Section 2. Section 517.34, Florida Statutes, is created to read:

517.34 Protection of specified adults.—

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

(a) "Financial exploitation" means the wrongful or unauthorized taking, withholding, appropriation, or use of money, assets, or property of a specified adult; or any act or omission by a person, including through the use of a power of attorney, guardianship, or conservatorship of a specified adult, to:

1. Obtain control over the specified adult's money, assets, or property through deception, intimidation, or undue influence to deprive him or her of the ownership, use, benefit, or possession of the money, assets, or property; or

2. Convert the specified adult's money, assets, or property to deprive him or her of the ownership, use, benefit, or possession of the money, assets, or property.

(b) "Specified adult" means a natural person 65 years of age or older, or a vulnerable adult as defined in s. 415.102.

(c) "Trusted contact" means a natural person 18 years of age or older who the account owner has expressly identified and

who is recorded in a dealer's or investment adviser's books and records as the person who may be contacted about the account.

(2) The Legislature finds that many persons in this state, because of age or disability, are at increased risk of financial exploitation and loss of their assets, funds, investments, and investment accounts. The Legislature further finds that senior investors in this state are at a statistically higher risk of being targeted for financial exploitation, regardless of diminished capacity or other disability, because of their accumulation of substantial assets and wealth compared to younger age groups. In enacting this section, the Legislature recognizes the freedom of specified adults to manage their assets, make investment choices, and spend their funds, and intends that such rights may not be infringed absent a reasonable belief of financial exploitation as provided in this section. The Legislature therefore intends to provide for the prevention of financial exploitation of such persons. The Legislature intends to encourage the constructive involvement of securities dealers, investment advisers, and associated persons who take action based upon the reasonable belief that specified adults with investment accounts have been or are the subject of financial exploitation, and to provide securities dealers, investment advisers, and associated persons immunity from liability for taking actions as authorized herein. The Legislature intends to balance the rights of specified adults to

direct and control their assets, funds, and investments and exercise their constitutional rights consistent with due process with the need to provide securities dealers, investment advisers, and associated persons the ability to place narrow, time-limited restrictions on these rights in an effort to decrease specified adults' risk of loss due to abuse, neglect, or financial exploitation.

(3) A dealer or investment adviser may delay a disbursement or transaction of funds or securities from an account of a specified adult or an account for which a specified adult is a beneficiary or beneficial owner if all of the following apply:

(a) The dealer or investment adviser reasonably believes that financial exploitation of the specified adult has occurred, is occurring, has been attempted, or will be attempted in connection with the disbursement or transaction.

(b) Not later than 3 business days after the date on which the delay was first placed, the dealer or investment adviser notifies in writing all parties authorized to transact business on the account and any trusted contact on the account, using the contact information provided for the account, with the exception of any party the dealer or investment adviser reasonably believes has engaged in, is engaging in, has attempted to engage in, or will attempt to engage in the suspected financial exploitation of the specified adult. The notice, which may be

provided electronically, must provide the reason for the delay.

(c) Not later than 3 business days after the date on which the delay was first placed, the dealer or investment adviser notifies the office of the delay by telephone using a number designated by the office for such purpose or electronically on a form prescribed by commission rule. The notice must identify the dealer or investment adviser that made the delay, the name of the person who authorized the delay, and the date on which the delay was made.

(d) The dealer or investment adviser immediately initiates an internal review of the facts and circumstances that caused the dealer or investment adviser to reasonably believe that the financial exploitation of the specified adult has occurred, is occurring, has been attempted, or will be attempted.

(4) A delay on a disbursement or transaction under subsection (3) expires 15 business days after the date on which the delay was first placed. However, the dealer or investment adviser may extend the delay for up to 10 additional business days if the dealer's or investment adviser's review of the available facts and circumstances continues to support such dealer's or investment adviser's reasonable belief that financial exploitation of the specified adult has occurred, is occurring, has been attempted, or will be attempted. A dealer or investment adviser that extends a delay shall notify the office in accordance with paragraph (3)(c) not later than 3 business

days after the date on which the extension was applied. The notice must identify the dealer or investment adviser that extended the delay and the date on which the delay was originally made. The length of the delay may be shortened or extended at any time by a court of competent jurisdiction. This subsection does not prevent a dealer or investment adviser from terminating a delay after communication with the parties authorized to transact business on the account and any trusted contact on the account.

(5) A dealer or investment adviser must make available to the office, upon request, all records relating to a delay made by the dealer or investment adviser pursuant to this section, as prescribed by commission rule.

(6) A dealer, an investment adviser, or an associated person who in good faith and exercising reasonable care complies with this section is immune from any administrative or civil liability that might otherwise arise from such delay in a disbursement or transaction in accordance with this section. This subsection does not supersede or diminish any immunity granted under chapter 415.

(7) Before placing a delay on a disbursement or transaction pursuant to this section, a dealer or an investment adviser shall do all of the following:

(a) Develop training policies or programs reasonably designed to educate associated persons on issues pertaining to

financial exploitation.

(b) Conduct training for all associated persons at least annually and maintain a written record of all trainings conducted.

(c) Develop, maintain, and enforce written procedures regarding the manner in which suspected financial exploitation is reviewed internally, including, if applicable, the manner in which suspected financial exploitation is required to be reported to supervisory personnel.

(8) Absent a reasonable belief of financial exploitation as provided in this section, this section does not alter a dealer's, an investment adviser's, or an associated person's obligation to comply with instructions from a client to buy or sell securities, disburse funds or transfer securities from an account, close an account, or transfer an account to another dealer, investment adviser, or associated person.

(9) This section does not create new rights for or impose new obligations on a dealer, an investment adviser, or an associated person under other applicable law. This section does not limit the right of a dealer, an investment adviser, or an associated person to otherwise refuse or place a delay on a disbursement or transaction under other applicable law or under an applicable customer agreement.

Section 3. This act shall take effect July 1, 2020.

**COMMERCE COMMITTEE**

**HB 813 by Rep. McClure**
**Protection of Vulnerable Investors**

**AMENDMENT SUMMARY**
**February 6, 2020**

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**Amendment 1 by Rep. Donalds (line 154):** The amendment:

- Specifies information that must be contained in the notification to the OFR when a dealer or investment adviser places a delay.
- Requires that the notification of a delay or an extension be submitted on a form prescribed by rule.
- Makes a technical change.

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 Donalds offered the following:

**Amendment**

Remove lines 154-186 and insert:

notifies the office of the delay electronically on a form prescribed by commission rule. The form must be consistent with the purposes of this section and may include only the following information:

1. The date the notification is submitted to the office.

2. The date on which the delay was first placed.

3. The following information about the specified adult:

a. Gender.

b. Age.

c. Zip code of residence address.

4. The following information about the dealer or investment adviser who placed the delay:

a. Name.

b. Title.

c. Firm name.

d. Business address.

5. A section with the following questions for which the only allowable responses are "Yes" or "No":

a. Is financial exploitation of a specified adult suspected in connection with a transaction or disbursement?

b. Are funds currently at risk of being lost?

The form must contain substantially the following statement in conspicuous type: "The office may take disciplinary action against any person making a knowing and willful misrepresentation on this form."

(d) The dealer or investment adviser immediately initiates an internal review of the facts and circumstances that caused the dealer or investment adviser to reasonably believe that the financial exploitation of the specified adult has occurred, is occurring, has been attempted, or will be attempted.

(4) A delay on a disbursement or transaction under subsection (3) expires 15 business days after the date on which the delay was first placed. However, the dealer or investment adviser may extend the delay for up to 10 additional business

days if the dealer's or investment adviser's review of the available facts and circumstances continues to support such dealer's or investment adviser's reasonable belief that financial exploitation of the specified adult has occurred, is occurring, has been attempted, or will be attempted. A dealer or investment adviser that extends a delay shall notify the office on a form prescribed by commission rule not later than 3 business days after the date on which the extension was applied. The notice must identify the dealer or investment adviser that extended the delay and the date on which the delay was originally made. The length of the delay may be shortened or extended at any time by a court of competent jurisdiction. This subsection does not prevent a dealer or investment adviser from terminating a delay after communication with the parties authorized to transact business on the account and any trusted contact on the account.

(5) A dealer or investment adviser must make available to the office, upon request, all records relating to a delay placed

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 1155 Legislative Review of Proposed Regulation of Unregulated Functions
**SPONSOR(S):** Hage
**TIED BILLS:** **IDEN./SIM. BILLS:** SB 1614

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR or BUDGET/POLICY CHIEF |
|---|---|---|---|
| 1) Business & Professions Subcommittee | 13 Y, 0 N | Brackett | Anstead |
| 2) Oversight, Transparency & Public Management Subcommittee | 10 Y, 2 N | Villa | Smith |
| 3) Commerce Committee | | Brackett DB | Hamon K.W.H. |

## SUMMARY ANALYSIS

A sunrise review is a formal process of review requiring a cost-benefit analysis be conducted before legislation proposing to regulate an unregulated profession or occupation is enacted.

Florida's sunrise review, which was enacted in 1991, is called the Sunrise Act. The Sunrise Act requires the Legislature to consider certain factors before determining whether to regulate an unregulated profession or occupation. Those factors include:

- Whether the unregulated practice of the profession or occupation will substantially harm or endanger the public health, safety, or welfare;
- Whether the practice of the profession or occupation requires specialized skill or training;
- Whether the regulation will have an unreasonable effect on job creation or job retention in the state;
- Whether the public is or can be effectively protected by other means; and
- Whether the overall cost-effectiveness and economic impact of the proposed regulation, including the indirect costs to consumers, will be favorable.

The bill amends the Sunrise Act to:

- Provide that in addition to applying to legislation that regulates an unregulated profession or occupation, the Sunrise Act also applies to legislation that substantially expands regulation of an already regulated profession or occupation;
- Require proponents of a regulation to provide certain information to the President of the Senate, the Speaker of the House of Representatives, and the state agency that is proposed to have jurisdiction of the regulation, no later than 30 days prior to the session in which the legislation is to be filed; and
- Require the state agency proposed to have jurisdiction to provide certain information to the President of the Senate, the Speaker of the House of Representatives, and the proponents of the regulation within 25 days after receiving the legislation.

The bill may have a 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**

*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 permission from the government to perform a certain type of work 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 exams. 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 a license to do their jobs. Since then the number of workers required to have a license has risen five-fold to more than one-quarter of U.S. workers with most of these workers being licensed by the states. Almost two-thirds of this change stems from an increase in the number of professions that require a license. The number of licensed workers is even higher in Florida, with an estimated 28.7 percent of the workforce being licensed by the state.[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 license regime in the U.S. raises the price of goods and services, restricts employment opportunities, and makes it more difficult for workers to take their skills across state lines.[4]

The report stated that because occupations are diverse in their tasks, designing and implementing successful occupational license regulations often requires a tailored approach. However, there are a number of common factors that policymakers should consider when contemplating enacting, revising, or repealing an occupational regulation. Policymakers should:[5]

- Ensure that restrictions are closely targeted to protecting public health and safety, and are not overly burdensome;
- Facilitate a careful consideration of licensure's costs and benefits; and
- Work to reduce licensing's barriers to mobility.

Policymakers can facilitate a careful consideration of licensure costs and benefits through both sunrise and sunset reviews. However, evidence suggests that sunrise reviews are more successful at limiting the growth of licensing since removing a license is much more difficult than enacting one. Additionally, state regulators suggested that sunrise reviews may be more effective than sunset reviews.[6]

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[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 Jan. 14, 2020).
[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 Jan. 14, 2020).
[3] White House *supra* note 1 at 3 & 24.
[4] *Id.*
[5] *Id.* at 41-43
[6] *Id.* at 42, 48-49.

*Sunrise Review*

Generally, a sunrise review is a formal process where a legislature scrutinizes legislation proposing to regulate an unregulated profession or occupation by requiring a cost-benefit analysis before the legislation is enacted. Most sunrise reviews require the proponents of the regulation to outline the potential impacts, costs, and benefits of the proposed regulation. Some states require the proponents of the regulation to provide certain information to a legislative committee or a state agency for analysis and evaluation, which is then provided to the legislature. Policymakers can review the information provided before moving forward with the legislation.[7]

Currently 12 states, including Florida, have sunrise reviews.[8] However, states vary widely in how independently and thoroughly they administer sunrise reviews. Colorado requires proponents of regulation to submit the proposed regulation along with the potential impacts, costs, and benefits to the Colorado Department of Regulatory Agencies for analysis and evaluation.[9] Minnesota requires proponents of regulation to file a report outlining the regulation's potential impacts, costs, and benefits with the legislature within 15 days of the bill being introduced.[10] Maine requires sunrise reviews for legislation regulating an unregulated profession or occupation and legislation that substantially expands regulation of an already regulated profession or occupation.[11] Florida currently requires proponents of regulation to file information about the regulation's potential impacts, costs, and benefits upon request.[12]

*Florida's Sunrise Act*

Section 11.62, F.S., is Florida's sunrise review, which is called the Sunrise Act. The Sunrise Act states that regulation should not be adopted unless it is:

- Necessary to protect the public health, safety, or welfare from significant and discernible harm or damage;
- Exercised only to the extent necessary to prevent the harm; and
- Limited so as not to unnecessarily restrict entry into the practice of the profession or adversely affect public access to the professional services.

In determining whether to regulate a profession or occupation, the Sunrise Act requires the Legislature to consider the following:

- Whether the unregulated practice of the profession or occupation will substantially harm or endanger the public health, safety, or welfare, and whether the potential for harm is recognizable and not remote;
- Whether the practice of the profession or occupation requires specialized skill or training and whether that skill or training is readily measurable or quantifiable so that examination or training requirements would reasonably assure initial and continuing professional or occupational ability;
- Whether the regulation will have an unreasonable effect on job creation or job retention in the state or will place unreasonable restrictions on the ability of individuals who seek to practice or who are practicing a given profession or occupation to find employment;
- Whether the public is or can be effectively protected by other means; and
- Whether the overall cost-effectiveness and economic impact of the proposed regulation, including the indirect costs to consumers, will be favorable.

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[7] *Id.* at 48; Iris Hentze, *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 Jan. 14, 2020); Council on Licensure & Regulation, *Sunrise, Sunset and State Agency Audits*, https://www.clearhq.org/page-486181 (last visited Jan. 14, 2020).

[8] Council on Licensure & Regulation *supra* note 5.

[9] Colo. Rev. Stat. § 24-34-104.1.

[10] Minn. Stat. § 214.002.

[11] ME. Rev. Stat. Ann. Tit. 32-1A, § 60-J.

[12] S. 11.62(4), F.S.

The Sunrise Act requires proponents of legislation that propose new regulation on professions or occupations to provide the following information, **upon request,** by the agency proposed to have jurisdiction or the legislative committee to which the legislation is referred, to document the need for regulation:

- The number of individuals or businesses that would be subject to the regulation;
- The name of each association that represents members of the profession or occupation, together with a copy of its codes of ethics or conduct;
- Documentation of the nature and extent of the harm to the public caused by the unregulated practice of the profession or occupation, including a description of any complaints that have been lodged against persons who have practiced the profession or occupation in this state during the preceding three years;
- A list of states that regulate the profession or occupation, and the dates of enactment of each law providing for such regulation and a copy of each law;
- A list and description of state and federal laws that have been enacted to protect the public with respect to the profession or occupation and a statement of the reasons why these laws have not proven adequate to protect the public;
- A description of the voluntary efforts made by members of the profession or occupation to protect the public and a statement of the reasons why these efforts are not adequate to protect the public;
- A copy of any federal legislation mandating regulation;
- An explanation of the reasons why other types of less restrictive regulation would not effectively protect the public;
- The cost, availability, and appropriateness of training and examination requirements;
- The cost of regulation, including the indirect cost to consumers, and the method proposed to finance the regulation;
- The cost imposed on applicants or practitioners or on employers of applicants or practitioners as a result of the regulation;
- The details of any previous efforts in this state to implement regulation of the profession or occupation; and
- Any other information the agency or the committee considers relevant to the analysis of the proposed legislation.

The Sunrise Act requires the agency proposed to have jurisdiction over the regulation to provide the Legislature with the following information:

- The resources required to implement and enforce the regulation;
- The technical sufficiency of the proposal, including its consistency with the regulation of other professions; and
- Any alternatives that may result in less restrictive or more cost-effective regulation.

In determining whether to recommend regulation, the legislative committee reviewing the proposal must assess whether the proposed regulation is:

- Justified based on the statutory criteria and the information provided by both the proponents of regulation and the agency responsible for its implementation;
- The least restrictive and most cost-effective regulatory scheme necessary to protect the public; and
- Technically sufficient and consistent with the regulation of other professions under existing law.

*State Agency Rulemaking and Statements of Estimated Regulatory Costs (SERC)*

The Administrative Procedure Act (APA)[13] sets forth a uniform set of procedures that agencies must follow when exercising authority to make rules delegated to the agency by the Legislature. Rulemaking

[13] Ch. 120, F.S.

authority is delegated by the Legislature through statute and authorizes agencies to "adopt, develop, establish, or otherwise create" rules.[14]

The APA requires an agency to complete a statement of estimated regulatory costs (SERC) in certain circumstances. A SERC is an agency estimate of the potential impact of a proposed rule on the public, particularly the potential costs to the public of complying with the proposed rule, as well as to the agency and other governmental entities to implement the rule. Agencies are encouraged to prepare a SERC before adopting, amending, or repealing any rule. A SERC is required, however, if the proposed rule will have a negative impact on small businesses or increase regulatory costs by more than $200,000 in the aggregate within one year after implementation of the rule.[15] A SERC must include:[16]

- Good faith estimates of the number of people and entities affected by the proposed rule;
- Good faith estimates of the cost to the agency and other governmental entities to implement the proposed rule;
- Good faith estimates of the transactional costs likely to be incurred by people, entities, and governmental agencies for compliance. Transactional costs is defined to mean direct costs that are readily ascertainable based upon standard business practices, and include filing fees, the cost of obtaining a license, the cost of equipment required to be installed or used or procedures required to be employed in complying with the rule, additional operating costs;
- An analysis of the proposed rule's impact on small businesses, counties, and cities; and
- Any additional information that the agency determines may be useful.

The SERC must also include an economic analysis on the likelihood that the proposed rule will have an adverse impact in excess of $1 million within the first 5 years of implementation on:[17]

- Economic growth, private-sector job creation or employment, or private-sector investment;
- Business competitiveness, productivity, or innovation; or
- Regulatory costs, including any transactional costs.

**Effect of the Bill**

The bill provides that in addition to applying to legislation that regulates an unregulated profession or occupation, the Sunrise Act also applies to legislation that substantially expands regulation of an already regulated profession or occupation. The bill defines the term "substantial expansion of regulation" to mean to expand the scope of practice for current practitioners of a profession or occupation by regulating an activity that is not regulated by the state.

The bill requires proponents of legislation proposing regulation to provide the Legislature and the state agency proposed to have jurisdiction certain information documenting the need for regulation by a certain time, instead of doing so only upon request. The proponents must also file a draft of the legislation and a summary of any bills on the same subject that have been filed with the Legislature in the preceding five years. The proponents must provide this information to the President of the Senate, the Speaker of the House of Representatives, and the agency proposed to have jurisdiction over the regulation at least 30 days before the session in which the legislation is filed.

In addition to the current information an agency must provide to the Legislature, the bill provides that an agency must also provide the Legislature with the following information:

- Good faith estimates of the number of people and entities affected by the proposed regulation;
- Good faith estimates of transactional costs likely to be incurred by people, entities, and governmental agencies for compliance. Transactional costs are defined to mean direct costs that are ascertainable based upon standard business practices, and include filing fees, the cost

[14] Ss. 120.52(16)-(17) & 120.54(1)(a), F.S; Ch. 120, F.S.
[15] Ss. 120.54(3)(b) & 120.541(2), F.S.
[16] S. 120.541(2), F.S.
[17] *Id.*

of obtaining a license, regulatory compliance costs, operating costs, the cost of monitoring and reporting, and any other costs necessary to comply with the rule;
- The anticipated costs to implement and enforce the proposed regulation, and any anticipated license fees necessary to cover the anticipated costs;
- Whether additional statutory or rulemaking authority is necessary to implement and enforce the proposed regulation;
- A comparison of similarly situated professions and occupations regulated by the agency;
- The anticipated impact of the proposed regulation on small businesses, counties, and cities;
- The anticipated impact of the proposed regulation on economic growth, private-sector job creation or employment, and business competitiveness, including the ability of persons doing business in the state to compete with persons doing business in other states or domestic markets; and
- Any other information the agency determines relevant to the analysis of the proposed regulation.

The bill provides that the state agency proposed to have jurisdiction must provide the information to the President of the Senate, the Speaker of the House of Representatives, and the proponents of the legislation within 25 days of receiving the draft legislation from the proponents. If a state agency fails to provide the required information, they must notify the proponents of the legislation, the President of the Senate, and the Speaker of the House of Representatives that they could not comply with the Sunrise Act's requirements because the agency was unable to acquire sufficient information.

B. SECTION DIRECTORY:

Section 1. Amends s. 11.62, F.S., revising the requirements of the Sunrise Act.

Section 2. 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:

Indeterminate. The bill will require agencies to provide certain information to the Legislature. The cost to provide the information is indeterminate but may be absorbed within existing resources.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may have an indeterminate, positive impact on the private sector.

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:

None. The bill does not require agency rulemaking.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

## IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to legislative review of proposed regulation of unregulated functions; amending s. 11.62, F.S.; defining terms; providing that certain requirements must be met before the adoption of a regulation of an unregulated profession or occupation or the substantial expansion of regulation of a regulated profession or occupation; requiring the proponents of legislation that proposes such regulation to provide certain information to the state agency proposed to have jurisdiction over the regulation and the Legislature by a certain date; requiring such state agency to provide certain information to the Legislature within a certain time period; providing an exception; revising information that a legislative committee must consider when determining whether a regulation is justified; providing an effective date.

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

Section 1. Section 11.62, Florida Statutes, is amended to read:

11.62 Legislative review of proposed regulation of unregulated functions.—



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

(1) This section may be cited as the "Sunrise Act."

(2) It is the intent of the Legislature:

(a) That no profession or occupation be subject to regulation by the state unless the regulation is necessary to protect the public health, safety, or welfare from significant and discernible harm or damage and that the police power of the state be exercised only to the extent necessary for that purpose; and

(b) That no profession or occupation be regulated by the state in a manner that unnecessarily restricts entry into the practice of the profession or occupation or adversely affects the availability of the professional or occupational services to the public.

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

(a) "Substantial expansion of regulation" means to expand the scope of practice for current practitioners of a profession or occupation by regulating an activity that is not regulated by the state.

(b) "Transactional costs" means direct costs that are ascertainable based upon standard business practices, including filing fees, license fees, regulatory compliance costs, operating costs, monitoring and reporting costs, and any other costs necessary to comply with the proposed regulation.

(4) In determining whether to regulate a profession or occupation, the Legislature shall consider the following

factors:

(a) Whether the unregulated practice of the profession or occupation will substantially harm or endanger the public health, safety, or welfare, and whether the potential for harm is recognizable and not remote;

(b) Whether the practice of the profession or occupation requires specialized skill or training, and whether that skill or training is readily measurable or quantifiable so that examination or training requirements would reasonably assure initial and continuing professional or occupational ability;

(c) Whether the regulation will have an unreasonable effect on job creation or job retention in the state or will place unreasonable restrictions on the ability of individuals who seek to practice or who are practicing a given profession or occupation to find employment;

(d) Whether the public is or can be effectively protected by other means; and

(e) Whether the overall cost-effectiveness and economic impact of the proposed regulation, including the indirect costs to consumers, will be favorable.

(5) In order to ensure that the Legislature only adopts those regulations that are necessary to protect the public, and are the least restrictive regulatory alternative consistent with the public interest, the requirements of this section must be met before the adoption of:

(a) Any regulation of a profession or occupation not already expressly subject to state regulation; or

(b) Any regulation that substantially expands the regulation of a regulated profession or occupation.

(6) ~~(4)~~ The proponents of legislation, including any individual, group, or entity, that proposes ~~provides for~~ the regulation of an unregulated profession or occupation or the substantial expansion of regulation of a regulated profession or occupation ~~not already expressly subject to state regulation~~ shall provide~~, upon request,~~ the following information in writing to the state agency that is proposed to have jurisdiction over the regulation, the President of the Senate, and the Speaker of the House of Representatives at least 30 days before the regular session of the Legislature in which the legislation is to be filed ~~and to the legislative committees to which the legislation is referred~~:

(a) A copy of the draft legislation proposing to regulate an unregulated profession or occupation or the substantial expansion of regulation of a regulated profession or occupation;

(b) ~~(a)~~ The number of individuals or businesses that would be subject to the regulation;

(c) ~~(b)~~ The name of each association that represents members of the profession or occupation, together with a copy of its codes of ethics or conduct;

(d) ~~(c)~~ Documentation of the nature and extent of the harm

to the public caused by the unregulated practice of the profession or occupation, including a description of any complaints that have been lodged against persons who have practiced the profession or occupation in this state during the preceding 3 years;

(e) ~~(d)~~ A list of states that regulate the profession or occupation, and the dates of enactment of each law providing for such regulation and a copy of each law;

(f) ~~(e)~~ A list and description of state and federal laws that have been enacted to protect the public with respect to the profession or occupation and a statement of the reasons why these laws have not proven adequate to protect the public;

(g) ~~(f)~~ A description of the voluntary efforts made by members of the profession or occupation to protect the public and a statement of the reasons why these efforts have not proven ~~are not~~ adequate to protect the public;

(h) ~~(g)~~ A copy of any federal legislation mandating regulation;

(i) ~~(h)~~ An explanation of the reasons why other types of less restrictive regulation would not effectively protect the public;

(j) ~~(i)~~ The cost, availability, and appropriateness of training and examination requirements;

(k) ~~(j)~~ The cost of regulation, including the indirect cost to consumers, and the method proposed to finance the regulation;

(l) ~~(k)~~ The cost imposed on applicants or practitioners or on employers of applicants or practitioners as a result of the regulation;

(m) ~~(l)~~ The details of any previous efforts in this state to implement regulation of the profession or occupation, including a summary of bills filed in the Legislature on the same subject in the preceding 5 years; and

(n) ~~(m)~~ Any other information the proponents of the legislation consider ~~agency or the committee considers~~ relevant to the analysis of the proposed legislation.

(7) ~~(5)~~ The state agency proposed to have jurisdiction over the regulation shall provide the President of the Senate and the Speaker of the House of Representatives with the following information within 25 days after the proponents of the legislation submit the draft legislation to the state agency in accordance with subsection (6) ~~The agency shall provide the Legislature with information concerning the effect of proposed legislation that provides for new regulation of a profession or occupation regarding~~:

(a) The departmental resources necessary to implement and enforce the proposed regulation, including, but not limited to, the anticipated costs to implement and enforce the proposed regulation and any anticipated license fees necessary to cover the anticipated costs. ~~;~~

(b) Whether additional statutory or rulemaking authority

is necessary to implement and enforce the proposed regulation.

(c) A comparison of similarly situated professions and occupations regulated by the state agency.

(d) The anticipated impact on small businesses as defined in s. 288.703 and small counties and small cities as defined in s. 120.52.

(e) The anticipated impact on business competitiveness, including the ability of persons doing business in the state to compete with persons doing business in other states or domestic markets.

(f) The anticipated impact on economic growth and private sector job creation or employment.

(g) The technical sufficiency of the proposal for regulation, including its consistency with the regulation of other professions and occupations under existing law.~~; and~~

(h)~~(c)~~ If applicable, any alternatives to the proposed regulation which may result in a less restrictive or more cost-effective regulatory scheme.

(i) A good faith estimate of the number of individuals or businesses that would be subject to the proposed regulation.

(j) A good faith estimate of the transactional costs likely to be incurred by individuals and entities, including local government entities, that would be required to comply with the proposed regulation.

(k) Any other information the state agency determines

relevant to the analysis of the proposed regulation.

(8) If the state agency that is proposed to have jurisdiction over the regulation is unable to provide the information required by subsection (7), such state agency shall notify the proponents of the legislation, the President of the Senate, and the Speaker of the House of Representatives that the agency was unable to acquire sufficient information to comply with that subsection.

(9) ~~(6)~~ When making a recommendation concerning proposed legislation providing for new regulation of a profession or occupation, a legislative committee shall determine:

(a) Whether the regulation is justified based on the criteria ~~specified in subsection (3), the information submitted pursuant to request under subsection (4),~~ and ~~the~~ information provided under subsections (4), (6), and (7) ~~subsection (5)~~;

(b) The least restrictive and most cost-effective regulatory scheme that will adequately protect the public; and

(c) The technical sufficiency of the proposed legislation, including its consistency with the regulation of other professions and occupations under existing law.

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

# HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 6057 Sports Development Program
**SPONSOR(S):** Avila
**TIED BILLS:** **IDEN./SIM. BILLS:**

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR or BUDGET/POLICY CHIEF |
|---|---|---|---|
| 1) Workforce Development & Tourism Subcommittee | 10 Y, 1 N | Willson | Barry |
| 2) Ways & Means Committee | 15 Y, 0 N | Berg | Langston |
| 3) Commerce Committee | | Willson MW | Hamon K.W.H. |

## SUMMARY ANALYSIS

The Sports Development Program (Program) provides state funding for constructing, reconstructing, renovating, or improving professional sports facilities, as provided under s. 288.11625, F.S. The Program is administered by the Department of Economic Opportunity (DEO). In order to receive funding under the Program, DEO must first recommend the applicant's request for funding to the Legislature and receive approval, then certify the approved request for funding as an annual distribution amount to the Department of Revenue.

The Program is funded by state sales and use tax revenues. Individual facilities may receive up to $3 million annually, and no more than $13 million can be distributed under the Program in a single year. A facility can receive distributions for up to 30 years and up to $90 million per certified facility.

The professional sport franchises that can participate in the program include the National Football League, the National Hockey League, the National Basketball League, Major and Minor League Baseball, Major League Soccer, the North American Soccer League, the Professional Rodeo Cowboys Association, the promoter or host of a signature event administered by the Breeders' Cup Limited or the promotor of a signature event hosted by the National Association of Stock Car Auto Racing (NASCAR).

The Legislature created the Sports Development Program in 2014. To date, no facilities or applicants have been approved to receive funding and no distributions have been made under the Program.

The bill repeals s. 288.11625, F.S., eliminating the Sports Development Program, and updates a number of related sections to conform with the elimination of the Program.

The bill takes effect July 1, 2020.

## FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

**Current Situation**

Florida Sports and Facilities

Florida is home to many professional and semi-professional sports teams, organizations and facilities, including professional football, basketball, baseball, hockey, and soccer teams, National Association of Stock Car Racing (NASCAR) sanctioned tracks, and professional equestrian and rodeo events. Generally, team facilities are located on property leased by or purchased from local governments.

The following table provides basic information about the 10 professional sports franchises in Florida that could qualify for the Sports Development Program and their facilities:

| Franchise | Sport | League | Year Founded | Facility | Facility Opened | County |
|---|---|---|---|---|---|---|
| Miami Dolphins | Football | NFL | 1966 | Hard Rock Stadium (originally Joe Robbie Stadium) | 1987 | Miami-Dade |
| Tampa Bay Buccaneers | Football | NFL | 1976 | Raymond James Stadium | 1998 | Hillsborough |
| Miami Heat | Basketball | NBA | 1988 | American Airlines Arena | 1999 | Miami-Dade |
| Orlando Magic | Basketball | NBA | 1989 | Amway Center | 2010 | Orange |
| Tampa Bay Lightning | Hockey | NHL | 1992 | Amalie Arena (previously Tampa Bay Times Forum) | 1996 | Hillsborough |
| Florida Panthers | Hockey | NHL | 1993 | BB&T Center | 1998 | Broward |
| Miami Marlins | Baseball | MLB | 1993 | Marlins Park | 2012 | Miami-Dade |
| Jacksonville Jaguars | Football | NFL | 1995 | TIAA Bank Field (previously EverBank Field) | 1995 | Duval |
| Tampa Bay Rays | Baseball | MLB | 1998 | Tropicana Field (occupied by Rays since 1998) | 1990 | Pinellas |
| Orlando City Soccer Club/ "Lions" | Soccer | MLS | 2015 | Exploria Stadium (previously Orlando City Stadium) | 2017 | Orange |

In addition to the 10 major professional sports teams, Florida is also home to the MLB's Spring Training Grapefruit League, with 15 teams holding preseason training and exhibition games in the state.[1]

[1] For general information related to professional sports in Florida, see Florida Sports Foundation at http://www.flasports.com/ (last visited Jan. 16, 2020).

**State Incentives for Professional Sports Franchises**

Professional Sports Franchise Program

The Professional Sports Franchise program allows professional sports franchises in Florida to receive state sales and use tax revenue to pay for the construction or renovation of a facility for a new or retained professional sports franchise.[2] Local governments, non-profit, and for-profit entities may apply to the program. Approved applicants are eligible to receive up to $2,000,004 per year for a period of up to 30 years.[3] No more than eight facilities can be certified under this program at one time.[4]

Currently, eight facilities receive distributions under the Professional Sports Franchise Program. Each facility is currently on track to receive $60 million, which is the maximum distribution allowable under this program ($166,667 per month or $2,000,004 per year, over 30 years), as follows:

| Facility name | Location, Certified entity, & Certification Date | Franchise | First and Final Payments | Lease Expiration Date | Total payments as of Feb. 2019 |
|---|---|---|---|---|---|
| Hard Rock Stadium (formerly Sun Life, Land Shark, Dolphin, Pro Player, Joe Robbie) | Miami, S. FL. Stadium Corp., May 1993 | Miami Marlins[5] | 06/1994 06/2023 | 99 year land lease, issued 1987 | $51,333,436 |
| TIAA Bank Field (previously EverBank Field) | Jacksonville, City of Jacksonville, April 1994 | Jacksonville Jaguars | 06/1994 05/2024 | 2030 | $49,500,099 |
| Tropicana Field | St. Petersburg, City of St. Petersburg, May 1995 | Tampa Bay Rays | 07/1995 06/2025 | 2027 | $47,333,428 |
| Amelie Arena (previously Tampa Bay Times Forum) | Tampa, Tampa Bay Sports Authority, July 1995 | Tampa Bay Lightning | 09/1995 08/2025 | 2025 | $47,000,094 |
| BB&T Center | Sunrise, Broward County, June 1996 | Florida Panthers | 08/1996 07/2026 | 2028 | $45,166,757 |
| Raymond James Stadium | Tampa, Hillsborough County, November 1996 | Tampa Bay Buccaneers | 01/1997 12/2026 | 2028 | $44,333,422 |
| American Airlines Arena | Miami, BPL, LTD, February 1998 | Miami Heat | 03/1998 03/2028 | 2030 | $41,833,417 |
| Amway Center | Orlando, City of Orlando, November 2007 | Orlando Magic | 02/2008 01/2038 | 2036 | $22,166,711 |
| | | | | **TOTAL:** | **$348,667,364** |

*(Information from the Department of Revenue[6] and OPPAGA[7])*

[2] S. 288.1162, F.S.
[3] S. 212.20(6)(d)6.b., F.S.
[4] S. 288.1162(6), F.S.
[5] The Marlins franchise relocated from Sun Life Stadium to Marlins Park in 2012.
[6] Email from Lynne Moeller, Office of Legislative & Cabinet Services, Department of Revenue, Pro Sports summary by fiscal year as of 2-28-19 (Feb. 19, 2019).

Sports Development Program

Section 288.11625, F.S., allows for distributions of state sales and use tax revenue pursuant to s. 212.20, F.S., to fund professional sports franchise facilities. The Department of Economic Opportunity (DEO) administers the Program and is responsible for screening applicants[8] for state funding. The purpose of the Program is to provide state funding for the construction, reconstruction, renovation, or improvement of a sports facility,[9] the proposed acquisition of land to construct a new facility, and construction of improvements to state-owned land necessary for the efficient use of the facility.

*General Application and Approval Process*

DEO accepts applications between June 1 and November 1 each year. Within 60 days of receiving a completed application, DEO is required to evaluate the application and notify the applicant in writing of their decision to recommend or deny approval. DEO provides the Legislature with a list of the recommended applicants, ranked in the order of the project's likelihood to positively impact the state. To receive funding, an application must be approved by the Legislature in a conforming bill or general law approved by the Governor, and DEO must certify the applicant and its approved request for funding and notify the Department of Revenue (DOR) of the initial certification and distribution amount.

An applicant remains certified for 30 years or the length of the agreement between the beneficiary[10] and the local government that owns the facility or the property on which the facility is or will be located, whichever is less.

DEO may only recommend one distribution per applicant, facility or beneficiary. Furthermore, no facility or beneficiary can receive more than one distribution under s. 212.20, F.S., for any state-administered, sports-related program.[11] An exception exists for applicants who can show that the beneficiary that was the subject of a previous distribution under s. 212.20, F.S., no longer plays at the facility that is the subject of the application under the new program.

*"Special" Application Process for New Facilities or Projects Commenced Before July 1, 2014*[12]

Section 288.11625(11), F.S., provides for an alternative application process to receive state funding under the Program. Under this process, the Legislative Budget Commission (LBC) can approve applications for new facilities or projects that commenced between March 1, 2013, and July 1, 2014, and such applicants are not subject to the competitive evaluation and ranking component. An applicant

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[7] OPPAGA, Report No. 17-13, Florida Economic Development Program Evaluations-Year 5, p. 56 (Dec. 28, 2017).
[8] Section 288.11625(2), F.S. An "Applicant" is a unit of local government which is responsible for the construction, management, or operation of a facility; or an entity that is responsible for the construction, management, or operation of a facility if a unit of local government holds title to the underlying property on which the facility is located.
[9] *Id.* A "Facility" is a structure, and its adjoining parcels of local-government-owned land, primarily used to host games or events held by a beneficiary and does not include any portion used to provide transient lodging.
[10] *Id.* A "Beneficiary" is a professional sports franchise of the NFL, NHL, NBA, the National League or American League of MLB, Minor League Baseball, MLS, the North American Soccer League (NASL), the Professional Rodeo Cowboys Association (PRCA), the promoter or host of a signature event administered by Breeders' Cup Limited, or the promoter of a signature event sanctioned by the National Association for Stock Car Auto Racing (NASCAR). A beneficiary may also be an applicant under this program.
[11] Such sports-related programs include Professional Sports Franchises (s. 288.1162, F.S.), Spring Training Baseball Franchises (s. 288.11621, F.S.), Sports Development (s. 288.11625, F.S.), and Retention of MLB Spring Training Franchises (s. 288.11631, F.S.). However, if an applicant for the Sports Development Program is already receiving distributions under the Professional Sports Franchises Program (s. 288.1162, F.S.) for the same facility or beneficiary, the applicant is eligible for an additional distribution of up to $1 million if the total project cost exceeds $100 million.
[12] DEO Memorandum, *Re Sports Development Statute,* http://www.floridajobs.org/docs/default-source/division-of-strategic-business-development/sports-development-program/sports-development-statute-memo.pdf?sfvrsn=6 (last visited Jan. 16, 2020).

certified under the special application process remains subject to other provisions and requirements under the Program.

*Distribution of State Funds*

The amount that an applicant may receive is based on 75 percent of the average annual new incremental state sales taxes generated by sales at the facility. Such annual distribution are limited by the following tiered system:

- If the total project cost is $200 million or greater, the annual distribution amount may be up to $3 million.
- If the total project cost is at least $100 million, but less than $200 million, the annual distribution amount may be up to $2 million.
- If the total project cost is at least $30 million, but less than $100 million, the annual distribution amount may be up to $1 million.

DEO is required to consult with DOR and the Office of Economic and Demographic Research (EDR) to develop a standard calculation for estimating the average annual new incremental state sales taxes generated by sales at the facility.

*Use of Funds*

Once certified, applicants may use Sports Development Program funds for the following purposes:

- Constructing, reconstructing, renovating, or improving a facility or reimbursing such costs;
- Paying or pledging for the payment of debt service on bonds issued for the construction or renovation of a facility;
- Funding debt service reserve funds, arbitrage rebate obligations, or other amounts payable with respect thereto on bonds issued for the construction or renovation of a facility; and
- Reimbursing the costs associated with debt service payments or refinancing of bonds issued for the construction or renovation of a facility.

*Contract*

Certified applicants must enter into a contract with DEO that:

- Specifies the terms of the state's investment;
- States the criteria that the certified applicant must meet in order to remain certified;
- Requires the applicant to submit the independent analyses required by the Program;
- Specifies information that the certified applicant must report to DEO; and
- Includes any provisions deemed prudent by DEO.

The contract must also require the applicant to reimburse the state, after all distributions have been made, any amount by which the total distributions made under the program exceed actual new incremental state sales taxes generated by sales at the facility during the contract, plus a 5% penalty on that amount. Reimbursements due to the state must be made within 90 days after the last distribution. If the applicant is unable or unwilling to reimburse the state, DEO may place a lien on the applicant's facility. If the applicant is a municipality or county, it may reimburse the state from its half-cent sales tax allocation.

*Repayment of Distributions*

A certified applicant may be required to repay distributions if:

- An applicant's beneficiary breaks the terms of its agreements and relocates, or no longer occupies or uses the facility as the facility's primary tenant. The beneficiary is required to reimburse the state for such distributed funds, plus a five percent penalty, if the beneficiary relocates before the agreement expires.
- DEO determines that the applicant submitted false, misleading, deceptive, or otherwise untrue information. As above, the applicant is required to reimburse the state, plus a five percent penalty. Applicants that are a municipality or a county may reimburse the state from their half-cent sales tax allocation.

*Applicant History under the Sports Development Program*

To date, no applicants have been certified and no funds have been distributed under the Program.

In FY14-15, DEO received four applications: the City of Jacksonville, the City of Orlando, Daytona International Speedway, LLC, and South Florida Stadium, LLC. All applicants qualified for the "special" application process.

In FY15-16, DEO received four applications: Buccaneers Football Stadium Limited Partnership, the City of Jacksonville, Daytona International Speedway, LLC, and South Florida Stadium, LLC. The Buccaneers application was incomplete and not transmitted to the Legislature, the other applications qualified for the special application process.

In FY 16-17, DEO received one application, from Buccaneers Stadium, LLC. DEO reviewed the application under the "general" application process.

DEO did not receive any applications for the Program in FY 17-18 or FY 18-19.[13]

Sales and Use Tax

Chapter 212, F.S., contains the state's statutory provisions authorizing the levy and collection of Florida's sales and use tax, as well as the exemptions and credits applicable to certain items or uses under specified circumstances. A 6 percent sales and use tax is levied on tangible personal property and a limited number of services. Additionally, s. 212.20, F.S., contains statutory direction for the schedule of distributions approved pursuant to ss. 288.1162 and 288.11625, F.S.

Local Government Half-cent Sales Tax (Section 218.64, F.S.)

Authorized in 1982, the Local Government Half-cent Sales Tax Program generates the largest amount of revenue for local governments among the state-shared revenue sources currently authorized by the Legislature.[14] It distributes a portion of state sales tax revenue via three separate distributions to eligible county or municipal governments. Additionally, the program distributes a portion of communications services tax revenue to eligible local governments. Allocation formulas serve as the basis for these separate distributions. The program's primary purpose is to provide relief from ad valorem and utility taxes in addition to providing counties and municipalities with revenues for local programs.[15]

Municipalities are authorized to spend their portion of the local government half-cent sales tax for:
- municipality-wide programs,
- reimbursing the state as required by the Sports Development Program, or
- municipality-wide property tax or municipal utility tax relief.

[13] Email from Karis Lockhart, Deputy Director of Legislative Affairs, DEO, RE: Sports Development Program (Jan. 17, 2020).
[14] Ch. 82-154, Laws of Fla.
[15] EDR, 2018 Local Government Financial Information Handbook (September 2018), p. 55.

Counties are authorized to spend their portion of the local government half-cent sales tax for countywide tax relief or countywide programs. Subject to certain conditions, counties may also use up to $3 million annually of the local government half-cent sales tax for the following purposes:

- new or retained professional sports franchises under s. 288.1162, F.S. or a spring training franchise under s. 288.11621, F.S.
- a certified applicant as a motorsport entertainment complex under s. 288.1171, F.S., or
- reimbursing the state as required by the Sports Development Program.

Additionally, counties and municipalities are authorized to pledge proceeds of the local government half-cent sales tax for the payment of principal and interest on any capital project.

Economic Development Programs Evaluation

Section 288.0001, F.S., requires EDR and OPPAGA to include the Sports Development Program among the list of economic development programs scheduled to be reviewed and analyzed by January 1, 2018, and every three years thereafter. As no applicants have been certified under the Program and no funds have been distributed, neither OPPAGA[16] nor EDR[17] was able to review and analyze the Program in its first three-year reporting cycle.

**Effect of Proposed Changes**

The bill repeals s. 288.11625, F.S., eliminating the Sports Development Program. To conform with the elimination of the Program, the bill also removes provisions relating to the distribution of funds under the program, reimbursement provisions, and reporting requirements.

The bill takes effect July 1, 2020.

B. SECTION DIRECTORY:

Section 1 Repeals s. 288.11625, F.S., relating to the Sports Development Program.

Section 2 Amends s. 212.20, F.S., conforming provisions to changes made by the act.

Section 3 Amends s. 212.205, F.S.; conforming a cross-reference.

Section 4 Amends s. 218.64, F.S.; conforming provisions to changes made by the act.

Section 5 Amends s. 288.0001, F.S.; conforming provisions to changes made by the act.

Section 6 Provides for an effective date.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

[16] OPPAGA, Report No. 17-13, Florida Economic Development Program Evaluations-Year 5, p. 45 (Dec. 28, 2017).
[17] EDR, Return on Investment for the Florida Sports Foundation Grants and Related Programs, p. 1 (Jan. 1, 2018).

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Indeterminate. No state funding was authorized and no applicants were ever approved by the Legislature under the program being repealed.

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 does not appear to create the 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 the Sports Development Program; repealing s. 288.11625, F.S., relating to the Sports Development Program; amending ss. 212.20, 212.205, 218.64, and 288.0001, 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 288.11625, Florida Statutes, is repealed.

Section 2. Paragraph (d) of subsection (6) of section 212.20, Florida Statutes, is amended to read:

212.20 Funds collected, disposition; additional powers of department; operational expense; refund of taxes adjudicated unconstitutionally collected.—

(6) Distribution of all proceeds under this chapter and ss. 202.18(1)(b) and (2)(b) and 203.01(1)(a)3. is as follows:

(d) The proceeds of all other taxes and fees imposed pursuant to this chapter or remitted pursuant to s. 202.18(1)(b) and (2)(b) shall be distributed as follows:

1. In any fiscal year, the greater of $500 million, minus an amount equal to 4.6 percent of the proceeds of the taxes collected pursuant to chapter 201, or 5.2 percent of all other taxes and fees imposed pursuant to this chapter or remitted



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pursuant to s. 202.18(1)(b) and (2)(b) shall be deposited in monthly installments into the General Revenue Fund.

2. After the distribution under subparagraph 1., 8.9744 percent of the amount remitted by a sales tax dealer located within a participating county pursuant to s. 218.61 shall be transferred into the Local Government Half-cent Sales Tax Clearing Trust Fund. Beginning July 1, 2003, the amount to be transferred shall be reduced by 0.1 percent, and the department shall distribute this amount to the Public Employees Relations Commission Trust Fund less $5,000 each month, which shall be added to the amount calculated in subparagraph 3. and distributed accordingly.

3. After the distribution under subparagraphs 1. and 2., 0.0966 percent shall be transferred to the Local Government Half-cent Sales Tax Clearing Trust Fund and distributed pursuant to s. 218.65.

4. After the distributions under subparagraphs 1., 2., and 3., 2.0810 percent of the available proceeds shall be transferred monthly to the Revenue Sharing Trust Fund for Counties pursuant to s. 218.215.

5. After the distributions under subparagraphs 1., 2., and 3., 1.3653 percent of the available proceeds shall be transferred monthly to the Revenue Sharing Trust Fund for Municipalities pursuant to s. 218.215. If the total revenue to be distributed pursuant to this subparagraph is at least as

great as the amount due from the Revenue Sharing Trust Fund for Municipalities and the former Municipal Financial Assistance Trust Fund in state fiscal year 1999-2000, no municipality shall receive less than the amount due from the Revenue Sharing Trust Fund for Municipalities and the former Municipal Financial Assistance Trust Fund in state fiscal year 1999-2000. If the total proceeds to be distributed are less than the amount received in combination from the Revenue Sharing Trust Fund for Municipalities and the former Municipal Financial Assistance Trust Fund in state fiscal year 1999-2000, each municipality shall receive an amount proportionate to the amount it was due in state fiscal year 1999-2000.

6. Of the remaining proceeds:

a. In each fiscal year, the sum of $29,915,500 shall be divided into as many equal parts as there are counties in the state, and one part shall be distributed to each county. The distribution among the several counties must begin each fiscal year on or before January 5th and continue monthly for a total of 4 months. If a local or special law required that any moneys accruing to a county in fiscal year 1999-2000 under the then-existing provisions of s. 550.135 be paid directly to the district school board, special district, or a municipal government, such payment must continue until the local or special law is amended or repealed. The state covenants with holders of bonds or other instruments of indebtedness issued by

local governments, special districts, or district school boards before July 1, 2000, that it is not the intent of this subparagraph to adversely affect the rights of those holders or relieve local governments, special districts, or district school boards of the duty to meet their obligations as a result of previous pledges or assignments or trusts entered into which obligated funds received from the distribution to county governments under then-existing s. 550.135. This distribution specifically is in lieu of funds distributed under s. 550.135 before July 1, 2000.

b. The department shall distribute $166,667 monthly to each applicant certified as a facility for a new or retained professional sports franchise pursuant to s. 288.1162. Up to $41,667 shall be distributed monthly by the department to each certified applicant as defined in s. 288.11621 for a facility for a spring training franchise. However, not more than $416,670 may be distributed monthly in the aggregate to all certified applicants for facilities for spring training franchises. Distributions begin 60 days after such certification and continue for not more than 30 years, except as otherwise provided in s. 288.11621. A certified applicant identified in this sub-subparagraph may not receive more in distributions than expended by the applicant for the public purposes provided in s. 288.1162(5) or s. 288.11621(3).

c. Beginning 30 days after notice by the Department of

Economic Opportunity to the Department of Revenue that an applicant has been certified as the professional golf hall of fame pursuant to s. 288.1168 and is open to the public, $166,667 shall be distributed monthly, for up to 300 months, to the applicant.

d. Beginning 30 days after notice by the Department of Economic Opportunity to the Department of Revenue that the applicant has been certified as the International Game Fish Association World Center facility pursuant to s. 288.1169, and the facility is open to the public, $83,333 shall be distributed monthly, for up to 168 months, to the applicant. This distribution is subject to reduction pursuant to s. 288.1169. A lump sum payment of $999,996 shall be made after certification and before July 1, 2000.

e. The department shall distribute up to $83,333 monthly to each certified applicant as defined in s. 288.11631 for a facility used by a single spring training franchise, or up to $166,667 monthly to each certified applicant as defined in s. 288.11631 for a facility used by more than one spring training franchise. Monthly distributions begin 60 days after such certification or July 1, 2016, whichever is later, and continue for not more than 20 years to each certified applicant as defined in s. 288.11631 for a facility used by a single spring training franchise or not more than 25 years to each certified applicant as defined in s. 288.11631 for a facility used by more

than one spring training franchise. A certified applicant identified in this sub-subparagraph may not receive more in distributions than expended by the applicant for the public purposes provided in s. 288.11631(3).

~~f. Beginning 45 days after notice by the Department of Economic Opportunity to the Department of Revenue that an applicant has been approved by the Legislature and certified by the Department of Economic Opportunity under s. 288.11625 or upon a date specified by the Department of Economic Opportunity as provided under s. 288.11625(6)(d), the department shall distribute each month an amount equal to one-twelfth of the annual distribution amount certified by the Department of Economic Opportunity for the applicant. The department may not distribute more than $7 million in the 2014-2015 fiscal year or more than $13 million annually thereafter under this sub-subparagraph.~~

f.~~g.~~ Beginning December 1, 2015, and ending June 30, 2016, the department shall distribute $26,286 monthly to the State Transportation Trust Fund. Beginning July 1, 2016, the department shall distribute $15,333 monthly to the State Transportation Trust Fund.

7. All other proceeds must remain in the General Revenue Fund.

Section 3. Section 212.205, Florida Statutes, is amended to read:



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212.205 Sales tax distribution reporting.—By March 15 of each year, each person who received a distribution pursuant to s. 212.20(6)(d)6.b.-e. ~~s. 212.20(6)(d)6.b.-f.~~ in the preceding calendar year shall report to the Office of Economic and Demographic Research the following information:

(1) An itemized accounting of all expenditures of the funds distributed in the preceding calendar year, including amounts spent on debt service.

(2) A statement indicating what portion of the distributed funds have been pledged for debt service.

(3) The original principal amount and current debt service schedule of any bonds or other borrowing for which the distributed funds have been pledged for debt service.

Section 4. Subsection (2) and paragraph (c) of subsection (3) of section 218.64, Florida Statutes, are amended to read:

218.64 Local government half-cent sales tax; uses; limitations.—

(2) Municipalities shall expend their portions of the local government half-cent sales tax only for municipality-wide programs~~, for reimbursing the state as required pursuant to s. 288.11625,~~ or for municipality-wide property tax or municipal utility tax relief. All utility tax rate reductions afforded by participation in the local government half-cent sales tax shall be applied uniformly across all types of taxed utility services.

(3) Subject to ordinances enacted by the majority of the



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members of the county governing authority and by the majority of the members of the governing authorities of municipalities representing at least 50 percent of the municipal population of such county, counties may use up to $3 million annually of the local government half-cent sales tax allocated to that county for any of the following purposes:

~~(e) Reimbursing the state as required under s. 288.11625.~~

Section 5. Paragraph (e) of subsection (2) of section 288.0001, Florida Statutes, is amended to read:

288.0001 Economic Development Programs Evaluation.—The Office of Economic and Demographic Research and the Office of Program Policy Analysis and Government Accountability (OPPAGA) shall develop and present to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the chairs of the legislative appropriations committees the Economic Development Programs Evaluation.

(2) The Office of Economic and Demographic Research and OPPAGA shall provide a detailed analysis of economic development programs as provided in the following schedule:

~~(e) Beginning January 1, 2018, and every 3 years thereafter, an analysis of the Sports Development Program established under s. 288.11625.~~

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



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