Commerce Committee

Thursday, February 13, 2020
9:00 AM –12:00 PM
Webster Hall (212 Knott)

Meeting Packet

Jose Oliva
Speaker

Mike La Rosa
Chair

The Florida House of Representatives

Commerce Committee

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Meeting Agenda

Thursday, February 13, 2020
9:00 am – 12:00 pm
Webster Hall (212 Knott)

I. Call to Order

II. Roll Call

III. Welcome and Opening Remarks

IV. Consideration of the following bill(s):

- CS/CS/HB 283 Liens and Bonds by Civil Justice Subcommittee, Business & Professions Subcommittee, Toledo
- CS/HB 343 Recreational Vehicles by Business & Professions Subcommittee, Fetterhoff
- CS/HB 755 Pub. Rec. and Meetings/911 and E911 Communication Systems by Energy & Utilities Subcommittee, DuBose
- CS/HB 867 Public Accountancy by Business & Professions Subcommittee, Stevenson
- CS/HB 969 Broadband Internet Service by Transportation & Tourism Appropriations Subcommittee, Drake
- CS/HB 1077 Department of Financial Services by Insurance & Banking Subcommittee, LaMarca
- CS/HB 1137 Consumer Protection by Insurance & Banking Subcommittee, Clemons

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

- CS/HB 1169 Speciality Contracting by Business & Professions Subcommittee, McClure

- CS/HB 1275 Amusement Rides by Agriculture & Natural Resources Appropriations Subcommittee, Pritchett

- HB 1369 Sports Franchises and Facilities by Pigman

- CS/HB 1409 Pub. Rec./Records of Insurers/Department of Financial Services by Oversight, Transparency & Public Management Subcommittee, Grant, M.

- CS/HB 1439 Bank Property of Deceased Account Holders by Insurance & Banking Subcommittee, Yarborough

- HB 7071 Contingency Risk Multipliers by Judiciary Committee, Beltran

V. Consideration of the following proposed committee substitute(s):

- PCS for CS/HB 203 -- Growth Management

VI. Closing Remarks

VII. Adjournment

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 283 Liens and Bonds
SPONSOR(S): Civil Justice Subcommittee, Business & Professions Subcommittee, Toledo and others
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Business & Professions Subcommittee	10 Y, 1 N, As CS	Brackett	Anstead
2) Civil Justice Subcommittee	14 Y, 0 N, As CS	Mawn	Luczynski
3) Commerce Committee		Brackett	Hamon

SUMMARY ANALYSIS

A construction lien protects those who provide work or materials to improve property for a property owner, and who are not in direct contract with the owner, such as subcontractors, laborers, and material suppliers. Any person who provides services, labor, or materials for improving, repairing, or maintaining real property (except public property) may place a construction lien on the property if they are not paid for their services and all notice requirements are met.

The bill:

- Provides that a person may not be required to sign a waiver or release of lien that is different from the form provided in statute in exchange for payment, except pursuant to contractual agreement;
- Prohibits any provisions in a waiver or release of lien that are not related to the waiver or release unless the person has agreed to those provisions in their initial contract.
- Provides that the statutory requirements for a waiver of a right to claim against a bond for public construction projects also apply to Department of Transportation construction projects.
- Provides that licensed building and general contractors who provide construction management services may record a construction lien.
- Clarifies that construction liens may be filed against a lease for private leaseholds on public property.
- Provides that a person may file one claim of lien for multiple contracts with the same owner.
- Provides that an owner may not record a notice of termination until each person who worked on the property has been paid.
- Provides that an owner must provide a copy of the notice of termination to a person who timely serves a notice to owner after the notice of termination has been recorded.
- Allows a lien to be transferred to a payment bond obtained by a subcontractor if the person who filed the lien is working for the subcontractor.
- Increases the amount needed to obtain a security in order to transfer a lien to the security.
- Provides that a prevailing party is entitled to attorney's fees in actions to enforce liens transferred to securities.
- Clarifies the definition of "final furnishing" related to specially fabricated materials.
- Removes the requirement that a notice of commencement must include:
  - The owner or lessee's interest in the property; and
  - A statement that an ownership interest is a leasehold interest if a lessee contracted for the work.

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

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Construction Liens

Florida law ensures that people who work on construction projects can obtain payment for their work. Any person who provides services, labor, or materials for improving, repairing, or maintaining real property (except public property) may place a construction lien on the property, provided the person meets the procedural guidelines set forth in current law.[1]

The construction lien law requires various notices, demands, and requests to be provided in writing to the homeowner, contractor, subcontractor, lender, and building officials. Florida law requires that some notices, demands, and requests be in the statutory form provided in statute, while others do not have to be in the statutory form. The following notices are required by the act: Notice of Commencement,[2] Notice to Owner,[3] Claim of Lien,[4] Notice of Termination,[5] Waiver or Release of Lien,[6] Notice of Contest of Lien,[7] Contractor's Final Payment Affidavit,[8] and Demands of Written Statement of Account.[9]

Under part I of chapter 713, F.S., a person who is not in privity or direct contract with the owner, such as subcontractors and material suppliers, who intends to secure the right to claim a lien against the property must take several additional steps. For example, if a payment bond does not apply, a services or materials provider must serve a notice to owner[10] (in the statutory form provided) that sets forth the person's name and address and the nature of the services or materials furnished or to be furnished to the owner's property.[11] The notice informs the owner of who is providing services or materials on their property, and that the person serving the notice is looking to the owner to ensure he or she receives payment for their services or materials.[12] The notice to owner must be served no later than 45 days after the person begins furnishing labor, services, or materials.[13]

Once the owner receives a notice to owner, the owner must obtain a waiver or release of lien (not required to be in the statutory form) from that person before paying the contractor. Otherwise, a payment to the contractor may constitute an improper payment and the owner is liable to the person if he or she is not paid by the contractor.[14]

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[1] Ch. 713, F.S.
[2] S. 713.13, F.S;.
[2] S. 713.06(2), F.S; *MHB Construction Services, LLC v. RM-NA HB Waterway Shoppes, L.L.C.*, 74 So. 3d 587, 589 (Fla. 4th DCA 2011) ("Though the Notice of Commencement was originally required to trigger a commencement date from which to measure time limitations under the Mechanic's Lien Law, the information contained in the Notice of Commencement provides all the details necessary to complete a Notice to Owner.")
[3] S. 713.06(2), F.S.
[4] S. 713.08, F.S.
[5] S. 713.132, F.S.
[6] S. 713.20, F.S.
[7] S. 713.22(2), F.S.
[8] S. 713.06(3), F.S.
[9] S. 713.16, F.S.
[10] S. 713.06(2), F.S.
[11] S. 713.06(2)(a), F.S.
[12] *Stocking Building Supply of Florida, Inc. v. Soares Da Costa Construction Services, LLC*, 76 So. 3d 313, 319 (Fla 3d DCA 2011).
[13] *Id.*
[14] *Id.*; S. 713.06, F.S.

A payment bond is a type of bond that guarantees that a contractor will pay subcontractors, laborers, and material suppliers for their work.[15] It forms a three-part contract between the owner, the contractor, and the surety, and ensures that liens are not filed on the project. A payment bond for a construction project exempts the owner from the construction lien law because the surety insurer providing the bond guarantees the subcontractors, laborers, and material suppliers will receive payment for their work or materials. Current law requires contractors to obtain a payment bond for public projects over $100,000.[16]

Waiver or Release of Lien - Current Law

Prior to making a payment to a contractor, an owner must request that a person who served a notice to owner provide a waiver or release of lien. A waiver or release of lien is essentially a receipt provided by the person who served a notice to owner acknowledging payment for services performed or materials provided and a waiver of their ability to file a lien for those services or materials.[17] A waiver or release of lien can be a partial waiver for some of the person's services or materials or it can be a final waiver for all of the person's services or materials.[18] A person may not waive or release their right to file a lien prior to doing work or providing materials. However, a person may waive or release their right to file a lien prior to receiving payment for their services or materials.[19]

Current law provides a statutory form for a waiver or release of lien. However, current law does not require that the waiver or release of lien be in the statutory form.[20] Thus, a waiver or release of lien may be substantially different from the form and it may include additional provisions that are not included in the form. However, an owner may not require a person to sign a waiver or release of lien that is substantially different from the form.[21]

The form provides that the person who served the notice to owner waives their right to claim a lien for services or materials provided for the job on the owner's property in exchange for a certain sum of money.[22] The form entitled "Waiver and Release of Lien Upon Partial or Final Payment" states:

> "The undersigned lienor, in consideration of the (sum of or final payment in the amount of) $, hereby waives and releases its lien and right to claim a lien for labor, services, or materials furnished to (insert the name of your customer) on the job of (insert the name of the owner) to the described property (insert description of the property)."[23]

Industry blogs and news reports indicate it has become routine in the industry for the form for a waiver or release of lien to include other miscellaneous provisions, and that subcontractors and material suppliers should be warned about signing a waiver or release of lien without understanding the extra provisions. They advise to carefully inspect a waiver or release to ensure someone does not unknowingly sign a waiver or release that includes additional provisions such as a waiver or release of all claims, damages, losses, or expenses.[24]

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[15] *See* Bond, Black's Law Dictionary (11th ed. 2019).
[16] S. 255.05, F.S.
[17] S. 713.20, F.S.; Leonard Klingen, *Florida's unwieldy but effective construction lien law*, Florida Bar Journal (Jan./Feb. 2019), https://www.floridabar.org/the-florida-bar-journal/floridas-unwieldy-but-effective-construction-lien-law/ (last visited Jan. 16, 2020).
[18] S. 713.20, F.S.
[19] *Id.*
[20] *Id.*
[21] *Id.*
[22] *Id.*
[23] *Id.*
[24] Alex Benarroche, *Florida's "Non-Required" Statutory Lien Waivers Can Lead to Confusion*, Levelset (May 20, 2019), https://www.levelset.com/blog/florida-statutory-lien-waivers-lead-to-confusion/ (last visited Jan. 16, 2020); Craig Distel, *Understanding waivers and releases for Florida construction contractors*, (Dec. 20, 2018), https://mcdonaldhopkins.com/Insights/Blog/Industry-Insights/2018/12/20/Understanding-waivers-and-releases-for-Florida-construction-contractors (last visited Jan. 16, 2020).

Right to Claim Against a Payment Bond - Current Law

Similar to a waiver or release of lien, in a situation where there is a payment bond, prior to making a payment to a subcontractor, laborer, or material supplier, a contractor may request the person provide a waiver of right to claim against the payment bond.

A waiver of right to claim against a bond is similar to a waiver or release of lien. Like a waiver or release of lien, a waiver of right to claim against the bond is essentially a receipt provided by the person acknowledging payment for services performed or materials provided and a waiver of their ability to seek payment from the surety.[25]
Current law provides a statutory form for a waiver of right to claim against a bond, which is similar to a waiver or release of a lien. Current law provides that a contractor may not require a person to sign a waiver of right to claim against a bond that is substantially different from the form. However, also like a waiver or release of lien, the statutory form for the waiver of right to claim against a bond is not required, and a waiver of right to claim against a bond may be different from the form and it may include additional provisions that are not included in the statutory form.[26]

According to industry experts, any person required to provide a claim against a bond must ensure they carefully inspect a waiver or release to ensure they do not unknowingly sign a waiver or release that includes additional provisions such as a waiver or release of all claims, damages, losses, or expenses.[27]

Waiver or Release of Lien and Right to Claim Against a Payment Bond - Effect of the Bill

The bill provides that a person may not be required to sign a waiver or release of lien or a right to claim against a payment bond that is different from the statutory forms in order to receive payment, unless the person agreed to sign a different form in his or her contract with the contractor.

The bill provides that any provision in a waiver or release of lien or a right to claim against a bond that is not related to the waiver or release of lien or the right to claim against a bond is not enforceable, unless the person agreed to those provisions in his or her contract with the contractor.

Payment Bonds for Department of Transportation Construction Jobs - Current Law

Current law requires the successful bidder on a construction or maintenance contact project for the Department of Transportation (DOT) to obtain a payment bond.[28] Subcontractors, laborers, and material suppliers are able to make a claim against the bond if they do not get paid.[29]

These types of bonds work similarly to other construction payment bonds. A person cannot waive their right to make a claim against the bond in advance, but they can waive their right to make a claim against the bond in order to receive payment. However, current law does not require that the statutory form for a waiver of right to claim against a bond be used for waivers related to DOT construction or maintenance projects, so a person may be required to sign a waiver that has additional provisions in it that are not related to the waiver.[30]

Payment Bonds for Department of Transportation Construction Jobs - Effect of the Bill

The bill requires that the statutory form for waiving a right to claim against a bond be used for DOT construction and maintenance projects.

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[25] Ss. 255.05(2), and 713.235, F.S.
[26] *Id.*
[27] Benarroche, *supra* note 23.
[28] S. 337.18, F.S.
[29] *Id.*
[30] *Id.*

For DOT construction or maintenance projects, the bill provides:

- A person may not be required to sign a waiver of a right to claim against a payment bond that is different from the statutory form in order to receive payment unless the person signed a contract, which requires the person to sign a different form; and
- Any provision in a waiver of a right to claim against a bond that is not related to the waiver or release of lien or the right to claim against a bond is not enforceable, unless the person agreed to those provisions in his or her contract with the contractor.

Licensed General and Building Contractors - Current Law

Licensed construction contractors are either certified by or registered with the Construction Industry Licensing Board (CILB). The CILB is housed in the Department of Business and Professional Regulation (DBPR) and consists of 18 members who are appointed by the Governor and confirmed by the Senate. The CILB is responsible for licensing, regulating, and disciplining certified construction contractors.[31]

"Certified contractors" are individuals who pass the state competency examination and obtain a certificate of competency issued by DBPR. Certified contractors are permitted to practice in any jurisdiction in the state.[32]

"Registered contractors" are individuals that have taken and passed a local competency examination and can practice contracting only in the local jurisdiction for which the license is issued.[33]

A licensed "general contractor" is a person who may contract for any type of construction service, and may perform any type of construction service unless they are required to subcontract the work to a licensed subcontractor.[34]

A licensed "building contractor" is a person who may contract for construction services for commercial and residential buildings that do not exceed three stories in height, or for construction for any size building if the construction does not affect the structural frame of the building. A licensed building contractor may perform any of the above construction services unless they are required to subcontract the work to a licensed subcontractor.[35]

Construction Management Services - Current Law

Construction managers and construction management entities or companies are responsible for the overall management of a construction project from the predesign phase to the completion of the project.[36] This can include providing preconstruction planning, reviewing designs, estimating costs, determining the value of different building products, project scheduling, contract negotiation, bid procedures, and coordination of trade contractors and safety programs.[37]

Construction managers and construction management businesses are not regulated or licensed by the DBPR.

Generally, construction managers and construction management businesses are also not required to be licensed contractors, engineers or architects. However, if the construction manager or construction

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[31] *See generally* ch. 489, F.S.
[32] S. 489.105, F.S.
[33] S. 489.103, F.S.
[34] Ss. 489.105(3), and 489.113, F.S.
[35] *Id.*
[36] The Florida Bar, Florida Construction Law Practice, Chapter 4: Rights and Liabilities of Construction Managers (9th ed. 2018).
[37] *Id.*

management business is performing any activity that otherwise requires a license, they must have that specific license or employ someone that holds such license.[38]

Section 255.103, F.S., allows a local government entity to hire a construction manager for a construction project. The construction manager is "responsible for construction project scheduling and coordination in both preconstruction and construction phases and generally responsible for the successful, timely, and economical completion of the construction project."[39]

Section 255.103, F.S., also allows a local government to hire a program management entity. The program management entity is "responsible for schedule control, cost control, and coordination in providing or procuring planning, design, and construction services."[40] Construction managers and program management entities hired by local governments are not required to be a licensed contractor, engineer, or architect. However, if such persons or entities are not licensed, they must hire a licensed professional to perform any job that does require a license.[41]

Section 255.32, F.S., allows the state to hire construction managers for construction projects. Construction managers hired by the state must be licensed general or building contractors. The construction manager "coordinates and supervises a construction project from the conceptual development stage through final construction, including the scheduling, selection, contracting with, and directing of specialty trade contractors, and the value engineering of a project."[42]

The construction lien law allows any person who provides services, labor, or materials for improving real property (except public property) to place a construction lien on the property.[43] However, it is unclear if construction managers may place a lien on a property because they do not necessarily provide labor, services, or materials that improves real property.[44] Some courts have determined that construction managers are not permitted to file such a lien.[45] The lien law also provides that a contractor may file a lien for any money owed to him or her for labor, services, or materials.[46] The construction lien law defines a "contractor" as any person other than materialmen or laborer who contracts with an owner to improve the owner's real property. The definition also includes a licensed architect and engineer who improve real property through a design-build contract.[47] However, the contractor definition does not include construction manager services.[48]

Licensed General and Building Contractors and Construction Management Services - Effect of the Bill

The bill amends the construction lien law's definition of "contractor" to include any licensed general or building contractor who provides construction management or program management services. This gives licensed general and building contractors who provide construction management or program management services the ability to file a lien for their services.

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[38] *Id.*
[39] S. 255.103(2), F.S.
[40] S. 255.103(3), F.S.
[41] *Id.*
[42] S. 255.32(1)(a), F.S.
[43] *See generally* ch. 713, F.S.
[44] Scott Wolfe Jr., *Can Construction Managers File Mechanics Liens?* Levelset, (Jul. 19, 2019), https://www.levelset.com/blog/can-construction-managers-file-mechanics-liens/ (last visited Jan. 16, 2020).
[45] *O'Kon and Company, Inc. v. Riedel*, 540 So. 2d 836, 839-40 (Fla. 1st DCA 1988) ("Chapter 713 which provides for professionals offering services to file a lien for services, does not include 'project managers.'"); *Medellin v. MLA Consulting, Inc.*, 69 So. 3d 372 (Fla. 5th DCA 2011) (A person cannot file a construction lien for home construction consulting services because it does not improve real property.); *See* The Florida Bar *supra* note 35.
[46] S. 713.05, F.S.
[47] S. 713.01(8), F.S.
[48] *Id.*

The bill defines construction management services to mirror the definition of a construction management entity in s. 255.103, F.S., providing that such services include: "responsibility for scheduling and coordination in both preconstruction and construction phases and for the successful, timely, and economical completion of the construction project."

The bill also defines program management services to mirror the definition of a program management entity in s. 255.103, F.S., providing that such services include: "responsibility for scheduling control, cost control, and coordination in providing or procuring planning, design, and construction."

Construction Liens for Private Leasehold Interests in Public Property - Current Law

Although construction liens generally apply to the owner of the property improved, construction liens may also apply in situations where the property owner's tenant has contracted for the improvement.[49]

However, if a tenant contracts for improvements to real property, the contractor is only able to file a lien against the tenant's leasehold interest, instead of against the real property, unless the tenant contracts for an improvement with the landlord's agreement.[50]

Construction liens may not be filed against public property, but construction lien law does not currently indicate whether liens may be filed against the private leasehold interests of a tenant on public property.[51] However, according to industry experts, in some cases liens may be filed against private leasehold interests on public property, such as when airlines and car rental agencies lease property within public airports.[52]

Construction Liens for Private Leasehold Interests in Public Property - Effect of the Bill

The bill amends the definition of "real property" to include private leaseholds on public property, which allows a person to file a construction lien against a private leasehold interest on public property.

Final Furnishing of Specially Fabricated Materials - Current Law

In order to record a construction lien on real property, a person must record a claim of lien with the clerk of court of the county where the property is located and serve the owner with the claim of lien. The person must serve the owner with the claim of lien before recording the lien or within 15 days of recording the lien.[53] If a claim of lien is not recorded, the lien is void to the extent that the failure or delay is shown to have prejudiced any person entitled to rely on service of the claim of lien.[54]

A person may file a claim of lien at any time during the progress of work. However, a person may not file a claim of lien later than 90 days after the final furnishing of labor or materials by the person.[55]

Current law provides that the final furnishing date is the last day the person furnishes labor, services, or materials. The date may not be measured by other standards, such as the issuance of a certificate of occupancy or the issuance of a certificate of final completion, and does not include correction of deficiencies in the person's previously performed work or materials supplied. Further, with respect to

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[49] Adam B. Edgecombe, *How do construction liens impact a commercial landlord in Florida?*, JimersonBirr (May 7, 2019), https://www.jimersonfirm.com/blog/2019/05/how-construction-liens-impact-commercial-landlord/ (last visited Jan. 16, 2020).
[50] S. 713.10, F.S.
[51] *See generally* ch. 713, F.S.
[52] H. Wesley, *Property Interests Subject to Construction Liens in Florida*, (Sep. 21, 2018), https://www.lorman.com/resources/property-interests-subject-to-construction-liens-in-florida-17322 (last visited Jan. 16, 2020); 8 Fla. Prac., Constr. Law Manual § 8.3 (2019-2020 ed.).
[53] S. 713.08, F.S.
[54] S. 713.08(4), F.S.
[55] S. 713.08(5), F.S.

rental equipment, the term means the date that the rental equipment was last on the job site and available for use.[56]

Materials must be incorporated in the jobsite in order for the materials to be considered furnished. Current law provides that the delivery of materials to the jobsite is prima facie evidence that the materials have been incorporated into the jobsite.[57]

However, "specially fabricated materials" do not have to be incorporated into a jobsite in order for the materials to be considered furnished. Specially fabricated materials are materials made for a particular project and are not suited or readily adaptable for use in a different project.[58]

Since specially fabricated materials cannot be used for another project, Florida courts have determined that specially fabricated materials do not have to be delivered to a jobsite in order for the supplier to file a lien on the real property.[59] However, current law does not provide a date to determine the last day specially fabricated materials are furnished.

Final Furnishing of Specially Fabricated Materials - Effect of the Bill

The bill provides that the final furnishing date for specially fabricated materials is the date that the last portion of the specially fabricated materials is delivered to the jobsite, or if any portion of the specially fabricated materials is not delivered to the jobsite by no fault of the material supplier, the final furnishing date is the later of:

- One year after the date the material supplier completes the fabrication;
- One year after the date the material supplier receives the last portion of the specially fabricated materials needed to complete the order; or
- The date the notice of commencement expires.

Claim of Lien - Current Law

A person may record a single claim of lien for multiple services or materials that are provided to different lots, parcels, or tracts of land (properties) as long as the multiple services or materials are under the same contract, the contract is directly with the owner, and the properties have the same owner.[60] However, a person may not record a single claim of lien for multiple services or materials if there is more than one contract, even if the contracts for services and materials are with the same owner.[61]

Claim of Lien - Effect of the Bill

The bill provides that a person may record a single claim of lien for multiple services or materials for multiple contracts and multiple properties as long as the contracts are directly with the owner, and the owner is the same owner for all the contracts and properties.

Notice of Commencement - Current Law

Before construction begins, a property owner or the owner's authorized agent generally must file a notice of commencement for recording by the clerk of court in the official records. The notice of commencement must also be posted on the construction site, and filed with the building department

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[56] S. 713.01(12), F.S.
[57] S. 713.01(13), F.S.
[58] *Surf Properties v. Markowitz Bros.*, 75 So. 298, 302 (Fla. 1954).
[59] *Oolite Industries, Inc. v. Millman Construction Company, Inc.*, 501 So. 2d 655, 656 (Fla. 3rd DCA 1987); *Aquatic Plant Management, Inc. v. Paramount Engineering, Inc.*, 977 So. 2d 600, 603 (Fla. 4th DCA 2007).
[60] S. 713.09, F.S.
[61] *Lee v. All Florida Construction Co.*, 662 So. 2d 365, 366-67 (Fla. 5th DCA 1995).

before the first inspection.[62] The notice of commencement determines the priority of construction liens, provides details needed to fill out a notice to owner, establishes the date on which the statute of limitations begins to run, and protects owners from double payments.[63]
Current law provides a statutory form for the notice of commencement, and the notice must be substantially similar to the form. The notice of commencement must contain information describing: the real property on which the improvement will be located; a general description of the improvement; the name and address of the owner and contractor; information relating to a surety bond, if a bond applies; the contact information for the lender for the project; contact information designated by the owner upon whom notices may be served; the notice's expiration date; a warning in all caps stating that the notice must be recorded and payments after the notice expires could be improper and lead to the owner paying twice.[64]

The owner's information required in the notice of commencement must include:[65]

- The name and address of the owner or lessee if the lessee contracted for the work;
- The owner or lessee's interest in the property;
- A statement that the ownership interest is a leasehold interest if a lessee contracted for the work;
- The name and address of the fee simple titleholder[66] (if different from the owner); and
- Any person designated by the owner to receive a claim of lien.

Notice of Commencement - Effect of the Bill

The bill repeals the requirement that the notice of commencement must include:

- The owner or lessee's interest in the property; and
- A statement that the ownership interest is a leasehold interest if a lessee contracted for the work.

Notice of Termination - Current Law

Current law allows an owner to terminate a notice of commencement before it expires. In order to terminate a notice of commencement, an owner must record a notice of termination that includes:[67]

- All the information in the notice of commencement, including the reference numbers in the official records of the clerk of court and the date of the notice of commencement;
- The date which the notice of commencement is terminated, which may not be earlier than 30 days after the notice of termination is recorded;
- A statement that all persons who worked on the property have been paid in full; and
- A statement that the owner has served a copy of the notice of termination to every person with a direct contract with the owner and every person who timely served a notice to owner and will serve a copy of the notice of termination on each lienor who timely serves a notice to owner after the notice of termination has been recorded.

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[62] Ss. 713.13(1)(a), and 713.135(1)(d), F.S.
[63] *Stocking Building Supply of Florida, Inc.*, 76 So. 3d at 317; The Florida Senate Committee on Regulated Industries, *Review of the Florida Construction Lien Law*, November 2007, http://archive.flsenate.gov/data/Publications/2008/Senate/reports/interim_reports/pdf/2008-149ri.pdf (last visited Jan. 16, 2020); Fred Dudley, William A. Buzzett, & Deborah Kaveney Kearney, *Construction Lien Law Reform: The Equilibrium of Change*, 18 Fla. St. U. L. Rev., 278 (1991).
[64] S. 713.13(1)(a), F.S.
[65] S. 713.13(1)(d), F.S.
[66] The construction lien law does not define fee simple titleholder; however, Black's Law Dictionary defines fee simple title as an interest in land that, being the broadest property interest allowed by law, endures until the current holder dies without heirs. Black's Law Dictionary (11th ed. 2019).
[67] S. 713.132(1), F.S.

An owner may record a notice of termination after:[68]

- The construction project has been completed; or
- Work stops on the project and every person who worked on the property has been paid.

If the owner serves a copy of the notice of termination on every person with a direct contract with the owner and who served a notice to owner before the recoding of the notice of termination, a notice of commencement will terminate 30 days after the notice of termination is recorded or on the termination date stated in the notice, whichever is later.[69]

Notice of Termination - Effect of the Bill

The bill provides that an owner must serve a copy of the notice of termination on any person who timely serves a notice to the owner after the owner has recorded the notice of termination. The bill also provides that a notice of termination takes effect against such person 30 days after he or she receives the copy of the notice of termination. Further, the bill provides that the notice of termination must include a statement that the owner will serve a copy of the notice on any person who timely serves a notice to owner after the notice of termination has been recorded.

The bill allows an owner to record a notice of termination only after all persons who have worked on the property have been paid, and removes the option for the owner to file a notice of termination after a construction project has completed. The bill also removes the requirement that a person may not record a notice of termination until work has stopped on the project, when choosing to record after every person has been paid.

The bill clarifies that the notice of termination must include the notice of commencement's date that was affixed by the clerk of court.

Manner of Serving Documents - Current Law

Documents permitted or required under the Construction Lien law, and notices to contractors for payment bonds for public construction projects must be served by one of the following methods:[70]

- By actual delivery to the person being served;
- By common carrier delivery service or by registered, Global Express Guaranteed, or certified mail, to the person being served with postage or shipping paid by the sender and with evidence of delivery; or
- By posting on the construction site if service cannot be performed by the other two methods.

Service of a document by common carrier delivery service or by registered, Global Express Guaranteed, or certified mail is effective on the day the notice, claim, or waiver is mailed, if it is:[71]

- Sent to the last address shown in the notice of commencement or, in the absence of a notice, to the last address shown in the building permit application, or to the last known address of the person to be served; and
- Returned as being "refused," "moved, not forwardable," or "unclaimed," or is otherwise not delivered or deliverable through no fault of the person serving the item.

However, for construction projects where there is a payment bond, a notice to contractor is effective on the date of mailing if:[72]

- The notice is mailed by registered, Global Express Guaranteed, or certified mail, with postage prepaid, to the person to be served at the last address show in the notice of commencement,

[68] S. 713.132(3), F.S.
[69] S. 713.132(4), F.S.
[70] S. 713.18(1), F.S.
[71] S. 713.18(3), F.S.
[72] S. 713.18, F.S.

the last address shown in the building permit application, or the last known address of the person being served;
- The notice is mailed within 40 days after the date the person first furnishes labor, services, or materials; and
- The person who served the notice maintains a registered or certified mail log that shows the mail number issued by the United States Postal Service (USPS), the name and address of the person served, and the date stamp of the USPS confirming the date of mailing; or maintains electronic tracking records generated by the USPS containing the tracking number, the name and address of the person served, and verification of the date of receipt by the USPS.

Manner of Serving Documents - Effect of the Bill

The bill clarifies that "actual delivery to the person being served" means "hand delivery to the person being served."

The bill provides that, in addition to notice to contractors, any document permitted or required for payment bonds for public construction projects must be served by one of the following methods:
- By hand delivery to the person being served;
- By common carrier delivery service or by registered, Global Express Guaranteed, or certified mail, to the person being served with postage or shipping paid by the sender and with evidence of delivery; or
- By posting on the construction site if service cannot be performed by the other two methods.

The bill provides that service by common carrier delivery service or by registered, Global Express Guaranteed, or certified mail is effective on the day the notice, claim, or waiver is mailed or **shipped**.

The bill provides that a notice to owner for a construction project where there is no payment bond is effective on the date of mailing if the person serving it meets the same requirements for a notice to contractor.

Notice of Nonpayment for a Payment Bond - Current Law

Since a payment bond exempts the owner from having construction liens placed on their real property, the surety guarantees a subcontractor, laborer, or material supplier that they will receive payment from the general contractor. If the general contractor fails to pay, the subcontractor, laborer, or material supplier will seek payment from the surety. In order to receive protection under a payment bond for a public or private project, a subcontractor, laborer, or material supplier lacking a direct contract with the contractor must provide a written notice of nonpayment to the contractor and the surety.[73]

Notice of Nonpayment for a Payment Bond - Effect of the Bill

The bill provides that a subcontractor, laborer, or material supplier must provide a notice of nonpayment to the general contractor and a copy of the notice of nonpayment to the surety.

Transfer of Liens to a Security - Current Law

If a lien is recorded against a piece of property, any person who has an interest in the property may have the lien transferred off the property and on to a security by depositing money with the clerk of court or filing a bond executed by a licensed surety insurer with the clerk of court.[74] The amount of money deposited or the bond must be in an amount that includes:[75]
- The amount of the lien;

[73] Ss. 255.05(2), and 713.23(1)(d), F.S.
[74] S. 713.24(1), F.S.
[75] *Id.*

- Interest for at least three years; and
- $1,000 or 25 percent of the lien amount, whichever is greater.

Any person who has an interest in the security or the liened property may file an action in the civil court where the security is deposited to enforce a lien or to recover against the security. An action to enforce a transferred lien must be commenced within one year of filing the lien. If a person has filed an action to enforce a lien and the lien is transferred to a security, the person must file an action to recover against the lien within one year of the transfer.[76]

Contractors can transfer liens filed by one of their subcontractors, laborers, or material suppliers to a security to appease an owner who is worried about their property. This allows a project to keep moving forward while still providing a remedy for non-payment.[77]

Transfer of Liens to a Security - Effect of the Bill

The bill increases the amount required to transfer a lien by providing that the amount deposited or the amount of the bond, in addition to the amount of the lien and interest, must include $1,000 or 35 percent of the lien amount, whichever is greater.

The bill provides that a lien may also be transferred to a payment bond obtained by a subcontractor if:
- The lien is filed by a person working under the subcontractor;
- The lien is not filed by the subcontractor or the contractor; and
- The subcontractor obtained the payment bond at the time of beginning work.

Any provision in the subcontractor's payment bond is unenforceable if it:
- Restricts the classes of persons who may file a claim against the bond;
- Restricts the venue of any proceeding involving the bond;
- Limits or expands the duration of the bond; or
- Includes any additional condition required to enforce a claim for a payment against the bond that is not required by the construction lien law.

Attorney's Fees - Current Law

The prevailing party in an action to enforce a lien or a claim against a bond is entitled to reasonable attorney's fees.

Attorney's Fees - Effect of the Bill

The bill provides that a prevailing party in an action to enforce a lien transferred to a security is also entitled to reasonable attorney's fees.

B. SECTION DIRECTORY:

Section 1. Amends s. 255.05, F.S., relating to bonds of contractor constructing public buildings; form; action by claimants.

Section 2. Amends s. 337.18, F.S., relating to surety bonds for construction or maintenance contracts; requirement with respect to contract award; bond requirements; defaults; damage assessments.

[76] S. 713.24, F.S.

[77] Levelset, *Primer on Mechanics Lien Bonds and Bonding a Mechanics Lien*, (Aug. 29, 2019), https://www.levelset.com/blog/primer-on-mechanic-lien-bonds-and-bonding-off-a-mechanics-lien/ (last visited Jan. 16, 2020).

Section 3. Amends s. 713.01, F.S., relating to definitions.

Section 4. Amends s. 713.09, F.S., relating to single claim of lien.

Section 5. Amends s. 713.13, F.S., relating to notice of commencement.

Section 6. Amends s. 713.132, F.S., relating to notice of termination.

Section 7. Amends s. 713.18, F.S., relating to manner of serving notices and other instruments.

Section 8. Amends s. 713.20, F.S., relating to waiver or release of liens.

Section 9. Amends s. 713.23, F.S., relating to payment bond.

Section 10. Amends s. 713.235, F.S., relating to waivers of right to claim against payment bond; forms.

Section 11. Amends s. 713.24, F.S., relating to transfer of liens to security.

Section 12. Amends s. 713.29, F.S., relating to attorney's fees.

Section 13. 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:

Unknown.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On December 11, 2019, the Business & Professions Subcommittee adopted a strike-all amendment and reported the bill favorably as a committee substitute. The committee substitute:

- Provides that a subcontractor may not be required to sign a waiver or release of lien that is different from the form provided in statute in exchange for payment;
- Prohibited any provisions in a waiver or release of lien that are not related to the waiver or release unless the subcontractor has agreed to those provisions in their initial contract.
- Provides that the statutory requirements for waivers of right to claim against a bond for public construction projects also apply to DOT construction projects.
- Provides that licensed building and general contractors who provide construction management services may record a construction lien.
- Provides that construction liens may be filed against a lease when a construction project is for a private entity leasing public property.
- Provides that a person may file one claim of lien for multiple contracts with the same owner.
- Removes the use of the term "owner of record" from the notice of commencement thereby maintaining current law.
- Provides that an owner may not record a notice of termination until each person who worked on the property has been paid.
- Provides that an owner must provide a copy of the notice of termination to a person who timely serves a notice to owner after the notice of termination has been recorded.
- Allows a lien to be transferred to a payment bond obtained by a subcontractor if the person who filed the lien is working for the subcontractor.
- Increased the amount needed to obtain a bond in order to transfer a lien to the bond.
- Provides that a prevailing party is entitled to attorney's fees in actions to enforce liens that have been transferred to bonds.

On January 16, 2020, the Civil Justice Subcommittee adopted a strike-all amendment and reported the bill favorably as a committee substitute. The committee substitute:

- Deletes a provision of the bill giving a construction lien priority over any subordinate liens relating back to a lien recorded before the construction lien attached.
- Clarifies that a recorded notice of termination must contain the recording date affixed by the recording office on the recorded notice of commencement.
- Clarifies that a notice of termination must be served on a lienor who timely and properly served a notice to owner before the recording of the notice of termination.

- Changes references from "property records" to "official records" and from "instruments" to "documents" for purposes of serving documents.
- Provides the permissible manners of service for notices related to:
    - Contest of claim against a payment bond;
    - Intent to look to the bond for protection; and
    - Performance of labor or materials delivery and nonpayment.
- Changes a permissible manner of document service from actual delivery to hand delivery for documents required under the construction lien and related statutes.
- Clarifies that when a person serves a document required under the construction lien law and related statutes by common carrier delivery service or other mail he or she must mail or serve the document to the address of the person being served.
- Provides that service of a notice to contractor combined with a notice to owner is effective as of the date of mailing.

The analysis is drafted to the committee substitute to the committee substitute as passed by the Civil Justice Subcommittee.

A bill to be entitled

An act relating to liens and bonds; amending s. 255.05, F.S.; requiring that a copy of a notice of nonpayment be served on the surety; prohibiting a person from requiring a claimant to furnish a certain waiver in exchange for or to induce certain payments; providing that specified provisions in certain waivers are unenforceable; providing an exception; amending s. 337.18, F.S.; providing that certain waivers apply to certain contracts; amending s. 713.01, F.S.; revising definitions; amending s. 713.09, F.S.; authorizing a lienor to record one claim of lien for multiple direct contracts; amending s. 713.13, F.S.; revising information to be included in a notice of commencement; amending s. 713.132, F.S.; revising requirements for a notice of termination; amending s. 713.18, F.S.; providing the manner in which documents relating to certain construction bonds must be served; providing that service of a document may be by hand delivery; providing that service of a document is effective on the date of mailing or shipping; making technical changes; amending ss. 713.20 and 713.235, F.S.; prohibiting a person from requiring a lienor to furnish a certain waiver or release in exchange for or to induce certain payments; providing that specified

provisions in certain waivers or releases are unenforceable; providing an exception; amending s. 713.23, F.S.; requiring that a copy of a notice of nonpayment be served on the surety; amending s. 713.24, F.S.; revising the process to transfer a lien to security; revising the amounts of certain deposits or bonds; amending s. 713.29, F.S.; authorizing attorney fees in actions to enforce a lien that has been transferred to security; providing an effective date.

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

Section 1. Paragraphs (a), (d), and (f) of subsection (2) of section 255.05, Florida Statutes, are amended to read:

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

(2)(a)1. If a claimant is no longer furnishing labor, services, or materials on a project, a contractor or the contractor's agent or attorney may elect to shorten the time within which an action to enforce any claim against a payment bond must be commenced by recording in the clerk's office a notice in substantially the following form:

NOTICE OF CONTEST OF CLAIM

AGAINST PAYMENT BOND

To: ...(Name and address of claimant)...

You are notified that the undersigned contests your notice of nonpayment, dated ....., ..., and served on the undersigned on ....., ..., and that the time within which you may file suit to enforce your claim is limited to 60 days after the date of service of this notice.

DATED on ....., ...

Signed: ...(Contractor or Attorney)...

The claim of a claimant upon whom such notice is served and who fails to institute a suit to enforce his or her claim against the payment bond within 60 days after service of such notice is extinguished automatically. The contractor or the contractor's attorney shall serve a copy of the notice of contest on ~~to~~ the claimant at the address shown in the notice of nonpayment or most recent amendment thereto and shall certify to such service on the face of the notice and record the notice.

2. A claimant, except a laborer, who is not in privity with the contractor shall, before commencing or not later than 45 days after commencing to furnish labor, services, or materials for the prosecution of the work, serve the contractor with a written notice that he or she intends to look to the bond for protection. A claimant who is not in privity with the contractor and who has not received payment for furnishing his or her labor, services, or materials shall serve a written notice of nonpayment on the contractor and a copy of the notice

on the surety. The notice of nonpayment shall be under oath and served during the progress of the work or thereafter but may not be served earlier than 45 days after the first furnishing of labor, services, or materials by the claimant or later than 90 days after the final furnishing of the labor, services, or materials by the claimant or, with respect to rental equipment, later than 90 days after the date that the rental equipment was last on the job site available for use. Any notice of nonpayment served by a claimant who is not in privity with the contractor which includes sums for retainage must specify the portion of the amount claimed for retainage. An action for the labor, services, or materials may not be instituted against the contractor or the surety unless the notice to the contractor and notice of nonpayment have been served, if required by this section. Notices required or permitted under this section must be served in accordance with s. 713.18. A claimant may not waive in advance his or her right to bring an action under the bond against the surety. In any action brought to enforce a claim against a payment bond under this section, the prevailing party is entitled to recover a reasonable fee for the services of his or her attorney for trial and appeal or for arbitration, in an amount to be determined by the court, which fee must be taxed as part of the prevailing party's costs, as allowed in equitable actions. The time periods for service of a notice of nonpayment or for bringing an action against a contractor or a surety <u>are</u>

~~shall be~~ measured from the last day of furnishing labor, services, or materials by the claimant and may not be measured by other standards, such as the issuance of a certificate of occupancy or the issuance of a certificate of substantial completion. The negligent inclusion or omission of any information in the notice of nonpayment that has not prejudiced the contractor or surety does not constitute a default that operates to defeat an otherwise valid bond claim. A claimant who serves a fraudulent notice of nonpayment forfeits his or her rights under the bond. A notice of nonpayment is fraudulent if the claimant has willfully exaggerated the amount unpaid, willfully included a claim for work not performed or materials not furnished for the subject improvement, or prepared the notice with such willful and gross negligence as to amount to a willful exaggeration. However, a minor mistake or error in a notice of nonpayment, or a good faith dispute as to the amount unpaid, does not constitute a willful exaggeration that operates to defeat an otherwise valid claim against the bond. The service of a fraudulent notice of nonpayment is a complete defense to the claimant's claim against the bond. The notice of nonpayment under this subparagraph must include the following information, current as of the date of the notice, and must be in substantially the following form:

NOTICE OF NONPAYMENT

To: ...(name of contractor and address)...

...(name of surety and address)...

The undersigned claimant notifies you that:

1. Claimant has furnished ...(describe labor, services, or materials)... for the improvement of the real property identified as ...(property description).... The corresponding amount unpaid to date is $...., of which $.... is unpaid retainage.

2. Claimant has been paid to date the amount of $.... for previously furnishing ...(describe labor, services, or materials)... for this improvement.

3. Claimant expects to furnish ...(describe labor, services, or materials)... for this improvement in the future (if known), and the corresponding amount expected to become due is $.... (if known).

I declare that I have read the foregoing Notice of Nonpayment and that the facts stated in it are true to the best of my knowledge and belief.

DATED on ....., ...

...(signature and address of claimant)...

STATE OF FLORIDA

COUNTY OF .....

The foregoing instrument was sworn to (or affirmed) and subscribed before me this....day of ...., ...(year)..., by ...(name of signatory)....

...(Signature of Notary Public - State of Florida)...

...(Print, Type, or Stamp Commissioned Name of Notary Public)...

Personally Known ..... OR Produced Identification .....

Type of Identification Produced.....

(d) A person may not require a claimant to furnish a waiver that is different from the forms in paragraphs (b) and (c) in exchange for, or to induce payment of, a progress payment or final payment, unless the claimant has entered into a direct contract that requires the claimant to furnish a waiver that is different from the forms in paragraphs (b) and (c).

(f) Any provisions in a waiver that are ~~is~~ not related to the waiver of right to claim against a payment bond as provided in this subsection are unenforceable, unless the claimant has otherwise agreed to those provisions in the claimant's direct contract ~~substantially similar to the forms in this subsection is enforceable in accordance with its terms~~.

Section 2. Paragraph (c) of subsection (1) of section 337.18, Florida Statutes, is amended to read:

337.18 Surety bonds for construction or maintenance contracts; requirement with respect to contract award; bond requirements; defaults; damage assessments.—

(1)

(c) A claimant, except a laborer, who is not in privity with the contractor shall, before commencing or not later than 90 days after commencing to furnish labor, materials, or

supplies for the prosecution of the work, furnish the contractor with a notice that he or she intends to look to the bond for protection. A claimant who is not in privity with the contractor and who has not received payment for his or her labor, materials, or supplies shall deliver to the contractor and to the surety written notice of the performance of the labor or delivery of the materials or supplies and of the nonpayment. The notice of nonpayment may be served at any time during the progress of the work or thereafter but not before 45 days after the first furnishing of labor, services, or materials, and not later than 90 days after the final furnishing of the labor, services, or materials by the claimant or, with respect to rental equipment, not later than 90 days after the date that the rental equipment was last on the job site available for use. An action by a claimant, except a laborer, who is not in privity with the contractor for the labor, materials, or supplies may not be instituted against the contractor or the surety unless both notices have been given. Notices required or permitted under this section may be served in any manner provided in s. 713.18, and provisions for the waiver of claims against a payment bond contained in s. 255.05(2) apply to all contracts under this section.

Section 3. Subsections (8), (12), and (26) of section 713.01, Florida Statutes, are amended to read:

713.01 Definitions.—As used in this part, the term:

(8) "Contractor" means a person other than a materialman or laborer who enters into a contract with the owner of real property for improving it, or who takes over from a contractor as so defined the entire remaining work under such contract. The term "contractor" includes an architect, landscape architect, or engineer who improves real property pursuant to a design-build contract authorized by s. 489.103(16). The term "contractor" also includes a licensed general contractor or building contractor, as those terms are defined in s. 489.105(3)(a) and (b), who provides construction management services, which include responsibility for scheduling and coordination in both preconstruction and construction phases and for the successful, timely, and economical completion of the construction project, or who provides program management services, which include responsibility for schedule control, cost control, and coordination in providing or procuring planning, design, and construction.

(12) "Final furnishing" means the last date that the lienor furnishes labor, services, or materials. Such date may not be measured by other standards, such as the issuance of a certificate of occupancy or the issuance of a certificate of final completion, and does not include the correction of deficiencies in the lienor's previously performed work or materials supplied. With respect to rental equipment, the term means the date that the rental equipment was last on the ~~job~~

site of the improvement and available for use. With respect to specially fabricated materials, the term means the date that the last portion of the specially fabricated materials is delivered to the site of the improvement, or if any portion of the specially fabricated materials is not delivered to the site of the improvement by no fault of the lienor, the term means 1 year after the date the lienor completes the fabrication, 1 year after the date the lienor receives the last portion of the specially fabricated materials needed to complete the order, or the date the notice of commencement expires, whichever is later.

(26) "Real property" means the land that is improved and the improvements thereon, including fixtures, except any such property owned by the state or any county, municipality, school board, or governmental agency, commission, or political subdivision, provided, however, that a private leasehold interest in such government-owned property which is improved and the leasehold improvements shall be considered real property for purposes of this part.

Section 4. Section 713.09, Florida Statutes, is amended to read:

713.09 Single claim of lien.—A lienor may ~~is required to~~ record only one claim of lien covering his or her entire demand against the real property when the amount demanded is for labor or services or material furnished for more than one improvement under the same direct contract or multiple direct contracts. The

single claim of lien is sufficient even though the improvement is for one or more improvements located on separate lots, parcels, or tracts of land. If materials to be used on one or more improvements on separate lots, parcels, or tracts of land ~~under one direct contract~~ are delivered by a lienor to a place designated by the person with whom the materialman contracted, other than the site of the improvement, the delivery to the place designated is prima facie evidence of delivery to the site of the improvement and incorporation in the improvement. The single claim of lien may be limited to a part of multiple lots, parcels, or tracts of land and their improvements or may cover all of the lots, parcels, or tracts of land and improvements. If a ~~In each~~ claim of lien under this section is for multiple direct contracts, the owner under the direct contracts ~~contract~~ must be the same person for all lots, parcels, or tracts of land against which a single claim of lien is recorded.

Section 5. Paragraphs (a) and (d) of subsection (1) of section 713.13, Florida Statutes, are amended to read:

713.13 Notice of commencement.—

(1)(a) Except for an improvement that is exempt under ~~pursuant to~~ s. 713.02(5), an owner or the owner's authorized agent before actually commencing to improve any real property, or recommencing completion of any improvement after default or abandonment, whether or not a project has a payment bond complying with s. 713.23, shall record a notice of commencement

in the clerk's office and forthwith post either a certified copy thereof or a notarized statement that the notice of commencement has been filed for recording along with a copy thereof. The notice of commencement shall contain the following information:

1. A description sufficient for identification of the real property to be improved. The description should include the legal description of the property and also should include the street address and tax folio number of the property if available or, if there is no street address available, such additional information as will describe the physical location of the real property to be improved.

2. A general description of the improvement.

3. The name and address of the owner, the owner's interest in the site of the improvement, and the name and address of the fee simple titleholder, if other than such owner.

4. The name and address of the lessee, if the ~~A~~ lessee ~~who~~ contracts for the improvements as ~~is~~ an owner as defined in s. 713.01 ~~under s. 713.01(23) and must be listed as the owner together with a statement that the ownership interest is a leasehold interest~~.

5.~~4.~~ The name and address of the contractor.

6.~~5.~~ The name and address of the surety on the payment bond under s. 713.23, if any, and the amount of such bond.

7.~~6.~~ The name and address of any person making a loan for the construction of the improvements.

8.~~7.~~ The name and address within the state of a person other than himself or herself who may be designated by the owner as the person upon whom notices or other documents may be served under this part; and service upon the person so designated constitutes service upon the owner.

(d) A notice of commencement must be in substantially the following form:

Permit No..... Tax Folio No.....

NOTICE OF COMMENCEMENT

State of....

County of....

The undersigned hereby gives notice that improvement will be made to certain real property, and in accordance with Chapter 713, Florida Statutes, the following information is provided in this Notice of Commencement.

1. Description of property: ...(legal description of the property, and street address if available)....

2. General description of improvement:.....

3.a. Owner: ...(name and address)....

b. Owner's phone number:.....

c. Name and address of fee simple titleholder (if different from Owner listed above):.....

4.a. Lessee, if the lessee contracted for the improvements: ...(name and address)....

b. Lessee's phone number:..... ~~owner information or Lessee~~

~~information if the Lessee contracted for the improvement:~~

~~a. Name and address:.....~~

~~b. Interest in property:.....~~

~~c. Name and address of fee simple titleholder (if different from Owner listed above):.....~~

5.a.~~4.a.~~ Contractor: ...(name and address)....

b. Contractor's phone number:.....

6.~~5.~~ Surety (if applicable, a copy of the payment bond is attached):

a. Name and address:.....

b. Phone number:.....

c. Amount of bond: $.....

7.a.~~6.a.~~ Lender: ...(name and address)....

b. Lender's phone number:.....

8.~~7.~~ Persons within the State of Florida designated by Owner upon whom notices or other documents may be served as provided in ~~by~~ Section 713.13(1)(a)8. ~~713.13(1)(a)7.~~, Florida Statutes:

a. Name and address:.....

b. Phone numbers of designated persons:.....

9.a.~~8.a.~~ In addition to himself or herself, Owner designates ..... of ..... to receive a copy of the Lienor's Notice as provided in Section 713.13(1)(b), Florida Statutes.

b. Phone number of person or entity designated by

owner:.....

10.~~9.~~ Expiration date of notice of commencement (the expiration date will be 1 year after ~~from~~ the date of recording unless a different date is specified).....

WARNING TO OWNER: ANY PAYMENTS MADE BY THE OWNER AFTER THE EXPIRATION OF THE NOTICE OF COMMENCEMENT ARE CONSIDERED IMPROPER PAYMENTS UNDER CHAPTER 713, PART I, SECTION 713.13, FLORIDA STATUTES, AND CAN RESULT IN YOUR PAYING TWICE FOR IMPROVEMENTS TO YOUR PROPERTY. A NOTICE OF COMMENCEMENT MUST BE RECORDED AND POSTED ON THE JOB SITE BEFORE THE FIRST INSPECTION. IF YOU INTEND TO OBTAIN FINANCING, CONSULT WITH YOUR LENDER OR AN ATTORNEY BEFORE COMMENCING WORK OR RECORDING YOUR NOTICE OF COMMENCEMENT.

...(Signature of Owner or Lessee, or Owner's or Lessee's Authorized Officer/Director/Partner/Manager)...

...(Signatory's Title/Office)...

The foregoing instrument was acknowledged before me this .... day of ...., ...(year)..., by ...(name of person)... as ...(type of authority, . . . e.g. officer, trustee, attorney in fact)... for ...(name of party on behalf of whom instrument was executed)....

...(Signature of Notary Public - State of Florida)...

...(Print, Type, or Stamp Commissioned Name of Notary Public)...

Personally Known .... OR Produced Identification ....

Type of Identification Produced.....

Section 6. Paragraphs (b) and (f) of subsection (1) and subsections (3) and (4) of section 713.132, Florida Statutes, are amended to read:

713.132 Notice of termination.—

(1) An owner may terminate the period of effectiveness of a notice of commencement by executing, swearing to, and recording a notice of termination that contains:

(b) The official records' ~~recording office document book and page~~ reference numbers and recording date affixed by the recording office on ~~of~~ the recorded notice of commencement;

(f) A statement that the owner has, before recording the notice of termination, served a copy of the notice of termination ~~on the contractor and~~ on each lienor who has a direct contract with the owner or who has timely served a notice to owner, and a statement that the owner will serve a copy of the notice of termination on each lienor who timely serves a notice to owner after the notice of termination has been recorded. The owner is not required to serve a copy of the notice of termination on any lienor who has executed a waiver and release of lien upon final payment in accordance with s. 713.20.

(3) An owner may ~~not~~ record a notice of termination at any time after ~~except after completion of construction, or after construction ceases before completion and~~ all lienors have been paid in full or pro rata in accordance with s. 713.06(4).

(4) If an owner or a contractor, by fraud or collusion, knowingly makes any fraudulent statement or affidavit in a notice of termination or any accompanying affidavit, the owner and the contractor, or either of them, ~~as the case may be,~~ is liable to any lienor who suffers damages as a result of the filing of the fraudulent notice of termination, ~~;~~ and any such lienor has a right of action for damages ~~occasioned thereby~~.

(5) ~~(4)~~ A notice of termination must be served before recording on each lienor who has a direct contract with the owner and on each lienor who has timely and properly served a notice to owner in accordance with this part before the recording of the notice of termination. A notice of termination must be recorded in the official records of the county in which the project is located. If properly served before recording in accordance with this subsection, the notice of termination terminates the period of effectiveness of the notice of commencement 30 days after the notice of termination is recorded in the official records ~~is effective to terminate the notice of commencement at the later of 30 days after recording of the notice of termination~~ or a later ~~the~~ date stated in the notice of termination as the date on which the notice of commencement is terminated. However, if a lienor, who began work under the notice of commencement before its termination, lacks a direct contract with the owner, and timely serves his or her notice to owner after the notice of termination has been recorded, the

owner must serve a copy of the notice of termination upon such lienor, and the termination of the notice of commencement as to that lienor is effective 30 days after service of the notice of termination ~~if the notice of termination has been served pursuant to paragraph (1)(f) on the contractor and on each lienor who has a direct contract with the owner or who has served a notice to owner~~.

Section 7. Section 713.18, Florida Statutes, is amended to read:

713.18 Manner of serving documents ~~notices and other instruments~~.—

(1) Service of any document ~~notices, claims of lien, affidavits, assignments, and other instruments~~ permitted or required under this part, s. 255.05, or s. 337.18, or copies thereof when so permitted or required, unless otherwise specifically provided in this part, must be made by one of the following methods:

(a) By hand ~~actual~~ delivery to the person to be served; if a partnership, to one of the partners; if a corporation, to an officer, director, managing agent, or business agent; or, if a limited liability company, to a member or manager.

(b) By common carrier delivery service or by registered, Global Express Guaranteed, or certified mail to the person to be served, with postage or shipping paid by the sender and with evidence of delivery, which may be in an electronic format.

(c) By posting on the site of the improvement if service as provided by paragraph (a) or paragraph (b) cannot be accomplished.

(2) ~~Notwithstanding subsection (1),~~ Service of a notice to owner or a preliminary notice to contractor under s. 255.05, s. 337.18, s. 713.06, or s. 713.23 is effective as of the date of mailing if:

(a) The notice is mailed by registered, Global Express Guaranteed, or certified mail, with postage prepaid, to the person to be served at any of the addresses set forth in subsection (3);

(b) The notice is mailed within 40 days after the date the lienor first furnishes labor, services, or materials; and

(c)1. The person who served the notice maintains a registered or certified mail log that shows the registered or certified mail number issued by the United States Postal Service, the name and address of the person served, and the date stamp of the United States Postal Service confirming the date of mailing; or

2. The person who served the notice maintains ~~electronic~~ tracking records approved or generated by the United States Postal Service containing the postal tracking number, the name and address of the person served, and verification of the date of receipt by the United States Postal Service.

(3)(a) Service of a document under ~~an instrument pursuant~~

~~to~~ this section is effective on the date of mailing or shipping ~~the instrument~~ if it:

1. Is sent to the last address shown in the notice of commencement or any amendment thereto or, in the absence of a notice of commencement, to the last address shown in the building permit application, or to the last known address of the person to be served; and

2. Is returned as being "refused," "moved, not forwardable," or "unclaimed," or is otherwise not delivered or deliverable through no fault of the person serving the document ~~item~~.

(b) If the address shown in the notice of commencement or any amendment to the notice of commencement, or, in the absence of a notice of commencement, in the building permit application, is incomplete for purposes of mailing or delivery, the person serving the document ~~item~~ may complete the address and properly format it according to United States Postal Service addressing standards using information obtained from the property appraiser or another public record without affecting the validity of service under this section.

(4) A document ~~notice~~ served by a lienor on one owner or one partner of a partnership owning the real property is deemed notice to all owners and partners.

Section 8. Subsections (6) and (8) of section 713.20, Florida Statutes, are amended to read:

713.20 Waiver or release of liens.—

(6) A person may not require a lienor to furnish a lien waiver or release of lien that is different from the forms in subsection (4) or subsection (5) in exchange for, or to induce payment of, a progress payment or final payment, unless the lienor has entered into a direct contract that requires the lienor to furnish a waiver or release that is different from the forms in subsection (4) or subsection (5).

(8) Any provisions in a lien waiver or lien release that are ~~is~~ not related to the waiver or release of lien rights as provided in this section are unenforceable, unless the lienor has otherwise agreed to those provisions in the lienor's direct contract ~~substantially similar to the forms in subsections (4) and (5) is enforceable in accordance with the terms of the lien waiver or lien release~~.

Section 9. Paragraph (d) of subsection (1) of section 713.23, Florida Statutes, is amended to read:

713.23 Payment bond.—

(1)

(d) In addition, a lienor who has not received payment for furnishing his or her labor, services, or materials must, as a condition precedent to recovery under the bond, serve a written notice of nonpayment on ~~to~~ the contractor and a copy of the notice on the surety. The notice must be under oath and served during the progress of the work or thereafter, but may not be

served later than 90 days after the final furnishing of labor, services, or materials by the lienor, or, with respect to rental equipment, later than 90 days after the date the rental equipment was on the job site and available for use. A notice of nonpayment that includes sums for retainage must specify the portion of the amount claimed for retainage. The required notice satisfies this condition precedent with respect to the payment described in the notice of nonpayment, including unpaid finance charges due under the lienor's contract, and with respect to any other payments which become due to the lienor after the date of the notice of nonpayment. The time period for serving a notice of nonpayment is ~~shall be~~ measured from the last day of furnishing labor, services, or materials by the lienor and may not be measured by other standards, such as the issuance of a certificate of occupancy or the issuance of a certificate of substantial completion. The failure of a lienor to receive retainage sums not in excess of 10 percent of the value of labor, services, or materials furnished by the lienor is not considered a nonpayment requiring the service of the notice provided under this paragraph. If the payment bond is not recorded before commencement of construction, the time period for the lienor to serve a notice of nonpayment may at the option of the lienor be calculated from the date specified in this section or the date the lienor is served a copy of the bond. However, the limitation period for commencement of an action on

the payment bond as established in paragraph (e) may not be expanded. The negligent inclusion or omission of any information in the notice of nonpayment that has not prejudiced the contractor or surety does not constitute a default that operates to defeat an otherwise valid bond claim. A lienor who serves a fraudulent notice of nonpayment forfeits his or her rights under the bond. A notice of nonpayment is fraudulent if the lienor has willfully exaggerated the amount unpaid, willfully included a claim for work not performed or materials not furnished for the subject improvement, or prepared the notice with such willful and gross negligence as to amount to a willful exaggeration. However, a minor mistake or error in a notice of nonpayment, or a good faith dispute as to the amount unpaid, does not constitute a willful exaggeration that operates to defeat an otherwise valid claim against the bond. The service of a fraudulent notice of nonpayment is a complete defense to the lienor's claim against the bond. The notice under this paragraph must include the following information, current as of the date of the notice, and must be in substantially the following form:

NOTICE OF NONPAYMENT

To ...(name of contractor and address)...

...(name of surety and address)...

The undersigned lienor notifies you that:

1. The lienor has furnished ...(describe labor, services, or materials)... for the improvement of the real property

identified as ...(property description).... The corresponding amount unpaid to date is $...., of which $.... is unpaid retainage.

2. The lienor has been paid to date the amount of $.... for previously furnishing ...(describe labor, services, or materials)... for this improvement.

3. The lienor expects to furnish ...(describe labor, services, or materials)... for this improvement in the future (if known), and the corresponding amount expected to become due is $.... (if known).

I declare that I have read the foregoing Notice of Nonpayment and that the facts stated in it are true to the best of my knowledge and belief.

DATED on ....., ...

...(signature and address of lienor)...

STATE OF FLORIDA

COUNTY OF.....

The foregoing instrument was sworn to (or affirmed) and subscribed before me this .... day of ...., ...(year)..., by ...(name of signatory)....

...(Signature of Notary Public - State of Florida)...

...(Print, Type, or Stamp Commissioned Name of Notary Public)...

Personally Known ..... OR Produced Identification .....

Type of Identification Produced.....

Section 10. Subsections (3) and (5) of section 713.235, Florida Statutes, are amended to read:

713.235 Waivers of right to claim against payment bond; forms.—

(3) A person may not require a claimant to furnish a waiver that is different from the forms in subsections (1) and (2) in exchange for, or to induce payment of, a progress payment or final payment, unless the claimant has entered into a direct contract that requires the claimant to furnish a waiver that is different from the forms in subsections (1) and (2).

(5) Any provisions in a waiver that are ~~is~~ not related to the waiver of a claim against the payment bond as provided in this section are unenforceable, unless the claimant has otherwise agreed to those provisions in the claimant's direct contract ~~substantially similar to the forms in this section is enforceable in accordance with its terms~~.

Section 11. Subsection (1) of section 713.24, Florida Statutes, is amended to read:

713.24 Transfer of liens to security.—

(1) Any lien claimed under this part may be transferred, by any person having an interest in the real property upon which the lien is imposed or the contract under which the lien is claimed, from such real property to other security by doing one of the following ~~either~~:

(a) Depositing in the clerk's office a sum of money;~~, or~~

(b) Recording ~~Filing~~ in the clerk's office a bond executed as surety by a surety insurer licensed to do business in this state; or

(c) Recording in the clerk's office a bond executed as surety by a surety insurer licensed to do business in this state, which was furnished by a subcontractor under whose subcontract the lienor's claim emanates, and which must be recorded and served with a notice of bond in the same manner as a payment bond furnished under s. 713.23(2). For purposes of this paragraph, the subcontract payment bond must have been furnished at the time the subcontractor's work commenced and before the claim of lien was recorded. The subcontract payment bond may not be used to transfer a lien of the contractor or the subcontractor that is the principal on the subcontract payment bond. Any provision in the subcontract payment bond that restricts the classes of persons who are protected by the subcontract payment bond, restricts the venue of any proceeding relating to the subcontract payment bond, limits or expands the effective duration of the subcontract payment bond, or includes conditions precedent to the enforcement of a claim against the subcontract payment bond beyond those provided in this part is unenforceable.~~,~~

Such deposit or bond must ~~either to~~ be in an amount at least equal to the amount demanded in such claim of lien, plus

interest thereon at the legal rate for 3 years, plus $1,000 or 35 ~~25~~ percent of the amount demanded in the claim of lien, whichever is greater, to apply on any attorney ~~attorney's~~ fees and court costs that may be taxed in any proceeding to enforce said lien. Such deposit or bond shall be conditioned to pay any judgment or decree which may be rendered for the satisfaction of the lien for which such claim of lien was recorded. Upon making such deposit or filing such bond, the clerk shall make and record a certificate showing the transfer of the lien from the real property to the security and shall mail a copy thereof by registered or certified mail to the lienor named in the claim of lien so transferred, at the address stated therein. Upon filing the certificate of transfer, the real property shall thereupon be released from the lien claimed, and such lien shall be transferred to said security. In the absence of allegations of privity between the lienor and the owner, and subject to any order of the court increasing the amount required for the lien transfer deposit or bond, no other judgment or decree to pay money may be entered by the court against the owner. The clerk shall be entitled to a service charge for making and serving the certificate, in the amount of up to $20, from which the clerk shall remit $5 to the Department of Revenue for deposit into the General Revenue Fund. If the transaction involves the transfer of multiple liens, an additional charge of up to $10 for each additional lien shall be charged, from which the clerk shall

remit $2.50 to the Department of Revenue for deposit into the General Revenue Fund. For recording the certificate and approving the bond, the clerk shall receive her or his usual statutory service charges as prescribed in s. 28.24. Any number of liens may be transferred to one such security.

Section 12. Section 713.29, Florida Statutes, is amended to read:

713.29 Attorney ~~Attorney's~~ fees.—In any action brought to enforce a lien, including a lien that has been transferred to security, or to enforce a claim against a bond under this part, the prevailing party is entitled to recover a reasonable fee for the services of her or his attorney for trial and appeal or for arbitration, in an amount to be determined by the court, which fee must be taxed as part of the prevailing party's costs, as allowed in equitable actions.

Section 13. This act shall take effect July 1, 2020.

COMMERCE COMMITTEE

HB 283 by Rep. Toledo
Liens and Bonds

AMENDMENT SUMMARY
February 13, 2020

Amendment 1 by Rep. Toledo (Strike-all amendment):
The strike-all amendment differs from the original bill in the following ways:

- Clarifies that construction lien and bond documents may be notarized by online notarization in addition to in person notarization.
- Clarifies that provisions governing the waivers of the right to claim against a bond for public and private contracts also apply to DOT contracts.
- Removes the bill's provision providing a final furnishing date for specifically fabricated materials.
- Removes from current law the requirement that a contractor, subcontractor, laborer, or material supplier post construction lien or bond related notices and documents on the construction jobsite if they cannot serve the document by hand delivery or mail.
- Clarifies that in order to be effective on the date of mailing, construction lien and bond documents served to a person by mail must be sent to:
    - The person's address listed on the notice of commencement;
    - The person's address listed on the building permit application if there is not a notice of commencement; or
    - The person's last known address if there is not a notice of commencement or building permit application.
- Removes the bill's provision that allows a lien to be transferred to a payment bond obtained by a subcontractor if the person who filed the lien is working for the subcontractor.
- Removes the bill's provision that increases the amount needed to obtain a security in order to transfer a lien to the security.

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 Toledo offered the following:

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

Section 1. Subsection (12) is added to 255.05, Florida Statutes, and paragraphs (a), (d), and (f) of subsection (2) of that section, are amended to read:

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

(2)(a)1. If a claimant is no longer furnishing labor, services, or materials on a project, a contractor or the contractor's agent or attorney may elect to shorten the time within which an action to enforce any claim against a payment bond must be commenced by recording in the clerk's office a notice in substantially the following form:

NOTICE OF CONTEST OF CLAIM
AGAINST PAYMENT BOND

To: ...(Name and address of claimant)...

You are notified that the undersigned contests your notice of nonpayment, dated ....., ..., and served on the undersigned on ....., ..., and that the time within which you may file suit to enforce your claim is limited to 60 days after the date of service of this notice.

DATED on ....., ...

Signed: ...(Contractor or Attorney)...

The claim of a claimant upon whom such notice is served and who fails to institute a suit to enforce his or her claim against the payment bond within 60 days after service of such notice is extinguished automatically. The contractor or the contractor's attorney shall serve a copy of the notice of contest <u>on</u> ~~to~~ the claimant at the address shown in the notice of nonpayment or most recent amendment thereto and shall certify to such service on the face of the notice and record the notice.

2. A claimant, except a laborer, who is not in privity with the contractor shall, before commencing or not later than 45 days after commencing to furnish labor, services, or materials for the prosecution of the work, serve the contractor

with a written notice that he or she intends to look to the bond for protection. A claimant who is not in privity with the contractor and who has not received payment for furnishing his or her labor, services, or materials shall serve a written notice of nonpayment on the contractor and a copy of the notice on the surety. The notice of nonpayment shall be under oath and served during the progress of the work or thereafter but may not be served earlier than 45 days after the first furnishing of labor, services, or materials by the claimant or later than 90 days after the final furnishing of the labor, services, or materials by the claimant or, with respect to rental equipment, later than 90 days after the date that the rental equipment was last on the job site available for use. Any notice of nonpayment served by a claimant who is not in privity with the contractor which includes sums for retainage must specify the portion of the amount claimed for retainage. An action for the labor, services, or materials may not be instituted against the contractor or the surety unless the notice to the contractor and notice of nonpayment have been served, if required by this section. Notices required or permitted under this section must be served in accordance with s. 713.18. A claimant may not waive in advance his or her right to bring an action under the bond against the surety. In any action brought to enforce a claim against a payment bond under this section, the prevailing party is entitled to recover a reasonable fee for the services of his

or her attorney for trial and appeal or for arbitration, in an amount to be determined by the court, which fee must be taxed as part of the prevailing party's costs, as allowed in equitable actions. The time periods for service of a notice of nonpayment or for bringing an action against a contractor or a surety are ~~shall be~~ measured from the last day of furnishing labor, services, or materials by the claimant and may not be measured by other standards, such as the issuance of a certificate of occupancy or the issuance of a certificate of substantial completion. The negligent inclusion or omission of any information in the notice of nonpayment that has not prejudiced the contractor or surety does not constitute a default that operates to defeat an otherwise valid bond claim. A claimant who serves a fraudulent notice of nonpayment forfeits his or her rights under the bond. A notice of nonpayment is fraudulent if the claimant has willfully exaggerated the amount unpaid, willfully included a claim for work not performed or materials not furnished for the subject improvement, or prepared the notice with such willful and gross negligence as to amount to a willful exaggeration. However, a minor mistake or error in a notice of nonpayment, or a good faith dispute as to the amount unpaid, does not constitute a willful exaggeration that operates to defeat an otherwise valid claim against the bond. The service of a fraudulent notice of nonpayment is a complete defense to the claimant's claim against the bond. The notice of nonpayment

under this subparagraph must include the following information, current as of the date of the notice, and must be in substantially the following form:

NOTICE OF NONPAYMENT

To: ...(name of contractor and address)...

...(name of surety and address)...

The undersigned claimant notifies you that:

1. Claimant has furnished ...(describe labor, services, or materials)... for the improvement of the real property identified as ...(property description).... The corresponding amount unpaid to date is $...., of which $.... is unpaid retainage.

2. Claimant has been paid to date the amount of $.... for previously furnishing ...(describe labor, services, or materials)... for this improvement.

3. Claimant expects to furnish ...(describe labor, services, or materials)... for this improvement in the future (if known), and the corresponding amount expected to become due is $.... (if known).

I declare that I have read the foregoing Notice of Nonpayment and that the facts stated in it are true to the best of my knowledge and belief.

DATED on ....., ...

...(signature and address of claimant)...

STATE OF FLORIDA
COUNTY OF .....

The foregoing instrument was sworn to (or affirmed) and subscribed before me by means of ☐ physical presence or ☐ online notarization, this....day of ...., ...(year)..., by ...(name of signatory)....

...(Signature of Notary Public - State of Florida)...

...(Print, Type, or Stamp Commissioned Name of Notary Public)...

Personally Known ..... OR Produced Identification .....

Type of Identification Produced.....

(d) A person may not require a claimant to furnish a waiver that is different from the forms in paragraphs (b) and (c) in exchange for, or to induce payment of, a progress payment or final payment, unless the claimant has entered into a direct contract that requires the claimant to furnish a waiver that is different from the forms in paragraphs (b) and (c).

(f) Any provisions in a waiver that are ~~is~~ not related to the waiver of right to claim against a payment bond as provided

in this subsection are unenforceable, unless the claimant has otherwise agreed to those provisions in the claimant's direct contract ~~substantially similar to the forms in this subsection is enforceable in accordance with its terms~~.

(12) Unless otherwise provided in this section, service of any document must be served in accordance with s. 713.18.

Section 2. Subsection (6) is added to 337.18, Florida Statutes, and paragraph (c) of subsection (1) of that section, is amended to read:

337.18 Surety bonds for construction or maintenance contracts; requirement with respect to contract award; bond requirements; defaults; damage assessments.—

(1)

(c) A claimant, except a laborer, who is not in privity with the contractor shall, before commencing or not later than 90 days after commencing to furnish labor, materials, or supplies for the prosecution of the work, furnish the contractor with a notice that he or she intends to look to the bond for protection. A claimant who is not in privity with the contractor and who has not received payment for his or her labor, materials, or supplies shall deliver to the contractor and to the surety written notice of the performance of the labor or delivery of the materials or supplies and of the nonpayment. The notice of nonpayment may be served at any time during the progress of the work or thereafter but not before 45 days after

the first furnishing of labor, services, or materials, and not later than 90 days after the final furnishing of the labor, services, or materials by the claimant or, with respect to rental equipment, not later than 90 days after the date that the rental equipment was last on the job site available for use. An action by a claimant, except a laborer, who is not in privity with the contractor for the labor, materials, or supplies may not be instituted against the contractor or the surety unless both notices have been given. Notices required or permitted under this section may be served in any manner provided in s. 713.18, and provisions for the waiver of right to claim against a payment bond contained in s. 713.235 apply to all contracts under this section.

(6) Unless otherwise provided in this section, service of any document must be served in accordance with s. 713.18.

Section 3. Subsections (8) and (26) of section 713.01, Florida Statutes, are amended to read:

713.01 Definitions.—As used in this part, the term:

(8) "Contractor" means a person other than a materialman or laborer who enters into a contract with the owner of real property for improving it, or who takes over from a contractor as so defined the entire remaining work under such contract. The term "contractor" includes an architect, landscape architect, or engineer who improves real property pursuant to a design-build contract authorized by s. 489.103(16). The term "contractor"

also includes a licensed general contractor or building contractor, as those terms are defined in s. 489.105(3)(a) and (b), who provides construction management services, which include responsibility for scheduling and coordination in both preconstruction and construction phases and for the successful, timely, and economical completion of the construction project, or who provides program management services, which include responsibility for schedule control, cost control, and coordination in providing or procuring planning, design, and construction.

(26) "Real property" means the land that is improved and the improvements thereon, including fixtures, except any such property owned by the state or any county, municipality, school board, or governmental agency, commission, or political subdivision. The term "real property" includes a private leasehold interest that is improved, and the improvements thereto, on land that is owned by the state or any county, municipality, school board, or governmental agency, commission, or political subdivision.

Section 4. Section 713.09, Florida Statutes, is amended to read:

713.09 Single claim of lien.—A lienor may ~~is required to~~ record only one claim of lien covering his or her entire demand against the real property when the amount demanded is for labor or services or material furnished for more than one improvement

under the same direct contract or multiple direct contracts. The single claim of lien is sufficient even though the improvement is for one or more improvements located on separate lots, parcels, or tracts of land. If materials to be used on one or more improvements on separate lots, parcels, or tracts of land ~~under one direct contract~~ are delivered by a lienor to a place designated by the person with whom the materialman contracted, other than the site of the improvement, the delivery to the place designated is prima facie evidence of delivery to the site of the improvement and incorporation in the improvement. The single claim of lien may be limited to a part of multiple lots, parcels, or tracts of land and their improvements or may cover all of the lots, parcels, or tracts of land and improvements. If a ~~In each~~ claim of lien under this section is for multiple direct contracts, the owner under the direct contracts ~~contract~~ must be the same person for all lots, parcels, or tracts of land against which a single claim of lien is recorded.

Section 5. Subsection (4) is added to 713.10, Florida Statutes, and paragraph (b) of subsection (2) of that section, is amended to read:

713.10 Extent of liens.—

(2)

(b) The interest of the lessor is not subject to liens for improvements made by the lessee when:

1. The lease, or a short form or a memorandum of the lease that contains the specific language in the lease prohibiting such liability, is recorded in the official records of the county where the premises are located before the recording of a notice of commencement for improvements to the premises and the terms of the lease expressly prohibit such liability; or

2. The terms of the lease expressly prohibit such liability, and a notice advising that leases for the rental of premises on a parcel of land prohibit such liability has been recorded in the official records of the county in which the parcel of land is located before the recording of a notice of commencement for improvements to the premises, and the notice includes the following:

a. The name of the lessor.

b. The legal description of the parcel of land to which the notice applies.

c. The specific language contained in the various leases prohibiting such liability.

d. A statement that all or a majority of the leases entered into for premises on the parcel of land expressly prohibit such liability.

~~3. The lessee is a mobile home owner who is leasing a mobile home lot in a mobile home park from the lessor.~~

A notice that is consistent with subparagraph 2. effectively prohibits liens for improvements made by a lessee even if other leases for premises on the parcel do not expressly prohibit liens or if provisions of each lease restricting the application of liens are not identical.

(4) The interest of the lessor is not subject to liens for improvements made by the lessee when the lessee is a mobile home owner who is leasing a mobile home lot in a mobile home park from the lessor.

Section 6. Paragraphs (a) and (d) of subsection (1) of section 713.13, Florida Statutes, are amended to read:

713.13 Notice of commencement.—

(1)(a) Except for an improvement that is exempt under ~~pursuant to~~ s. 713.02(5), an owner or the owner's authorized agent before actually commencing to improve any real property, or recommencing completion of any improvement after default or abandonment, whether or not a project has a payment bond complying with s. 713.23, shall record a notice of commencement in the clerk's office and forthwith post either a certified copy thereof or a notarized statement that the notice of commencement has been filed for recording along with a copy thereof. The notice of commencement shall contain the following information:

1. A description sufficient for identification of the real property to be improved. The description should include the legal description of the property and also should include the

street address and tax folio number of the property if available or, if there is no street address available, such additional information as will describe the physical location of the real property to be improved.

2. A general description of the improvement.

3. The name and address of the owner, the owner's interest in the site of the improvement, and the name and address of the fee simple titleholder, if other than such owner.

4. The name and address of the lessee, if the ~~A~~ lessee ~~who~~ contracts for the improvements as ~~is~~ an owner as defined in s. 713.01 ~~under s. 713.01(23) and must be listed as the owner together with a statement that the ownership interest is a leasehold interest~~.

5.~~4.~~ The name and address of the contractor.

6.~~5.~~ The name and address of the surety on the payment bond under s. 713.23, if any, and the amount of such bond.

7.~~6.~~ The name and address of any person making a loan for the construction of the improvements.

8.~~7.~~ The name and address within the state of a person other than himself or herself who may be designated by the owner as the person upon whom notices or other documents may be served under this part; and service upon the person so designated constitutes service upon the owner.

(d) A notice of commencement must be in substantially the following form:

Permit No..... Tax Folio No.....

NOTICE OF COMMENCEMENT

State of....

County of....

The undersigned hereby gives notice that improvement will be made to certain real property, and in accordance with Chapter 713, Florida Statutes, the following information is provided in this Notice of Commencement.

1. Description of property: ...(legal description of the property, and street address if available)....

2. General description of improvement:.....

3.a. Owner: ...(name and address)....

b. Owner's phone number:.....

c. Name and address of fee simple titleholder (if different from Owner listed above):.....

4.a. Lessee, if the lessee contracted for the improvements: ...(name and address)....

b. Lessee's phone number:..... ~~owner information or Lessee information if the Lessee contracted for the improvement:~~

~~a. Name and address:.....~~

~~b. Interest in property:.....~~

~~c. Name and address of fee simple titleholder (if different from Owner listed above):.....~~

5.a.~~4.a.~~ Contractor: ...(name and address)....

b. Contractor's phone number:.....

6.~~5.~~ Surety (if applicable, a copy of the payment bond is attached):

a. Name and address:.....

b. Phone number:.....

c. Amount of bond: $.....

7.a.~~6.a.~~ Lender: ...(name and address)....

b. Lender's phone number:.....

8.~~7.~~ Persons within the State of Florida designated by Owner upon whom notices or other documents may be served as provided in ~~by~~ Section 713.13(1)(a)8. ~~713.13(1)(a)7.~~, Florida Statutes:

a. Name and address:.....

b. Phone numbers of designated persons:.....

9.a.~~8.a.~~ In addition to himself or herself, Owner designates ..... of ..... to receive a copy of the Lienor's Notice as provided in Section 713.13(1)(b), Florida Statutes.

b. Phone number of person or entity designated by owner:.....

10.~~9.~~ Expiration date of notice of commencement (the expiration date will be 1 year after ~~from~~ the date of recording unless a different date is specified).....

WARNING TO OWNER: ANY PAYMENTS MADE BY THE OWNER AFTER THE EXPIRATION OF THE NOTICE OF COMMENCEMENT ARE CONSIDERED IMPROPER PAYMENTS UNDER CHAPTER 713, PART I, SECTION 713.13, FLORIDA

STATUTES, AND CAN RESULT IN YOUR PAYING TWICE FOR IMPROVEMENTS TO YOUR PROPERTY. A NOTICE OF COMMENCEMENT MUST BE RECORDED AND POSTED ON THE JOB SITE BEFORE THE FIRST INSPECTION. IF YOU INTEND TO OBTAIN FINANCING, CONSULT WITH YOUR LENDER OR AN ATTORNEY BEFORE COMMENCING WORK OR RECORDING YOUR NOTICE OF COMMENCEMENT.

...(Signature of Owner or Lessee, or Owner's or Lessee's Authorized Officer/Director/Partner/Manager)...

...(Signatory's Title/Office)...

STATE OF FLORIDA

COUNTY OF .....

The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization, this .... day of ...., ...(year)..., by ...(name of person)... as ...(type of authority, . . . e.g. officer, trustee, attorney in fact)... for ...(name of party on behalf of whom instrument was executed)....

...(Signature of Notary Public - State of Florida)...

...(Print, Type, or Stamp Commissioned Name of Notary Public)...

Personally Known .... OR Produced Identification ....

Type of Identification Produced.....

Section 7. Paragraphs (b) and (f) of subsection (1) and subsections (3) and (4) of section 713.132, Florida Statutes, are amended to read:

713.132 Notice of termination.—

(1) An owner may terminate the period of effectiveness of a notice of commencement by executing, swearing to, and recording a notice of termination that contains:

(b) The official records' ~~recording office document book and page~~ reference numbers and recording date affixed by the recording office on ~~of~~ the recorded notice of commencement;

(f) A statement that the owner has, before recording the notice of termination, served a copy of the notice of termination ~~on the contractor and~~ on each lienor who has a direct contract with the owner or who has timely served a notice to owner, and a statement that the owner will serve a copy of the notice of termination on each lienor who timely serves a notice to owner after the notice of termination has been recorded. The owner is not required to serve a copy of the notice of termination on any lienor who has executed a waiver and release of lien upon final payment in accordance with s. 713.20.

(3) An owner may ~~not~~ record a notice of termination at any time after ~~except after completion of construction, or after construction ceases before completion and~~ all lienors have been paid in full or pro rata in accordance with s. 713.06(4).

(4) If an owner or a contractor, by fraud or collusion, knowingly makes any fraudulent statement or affidavit in a notice of termination or any accompanying affidavit, the owner and the contractor, or either of them, ~~as the case may be,~~ is liable to any lienor who suffers damages as a result of the filing of the fraudulent notice of termination,~~;~~ and any such lienor has a right of action for damages ~~occasioned thereby~~.

(5)~~(4)~~ A notice of termination must be served before recording on each lienor who has a direct contract with the owner and on each lienor who has timely and properly served a notice to owner in accordance with this part before the recording of the notice of termination. A notice of termination must be recorded in the official records of the county in which the project is located. If properly served before recording in accordance with this subsection, the notice of termination terminates the period of effectiveness of the notice of commencement 30 days after the notice of termination is recorded in the official records ~~is effective to terminate the notice of commencement at the later of 30 days after recording of the notice of termination~~ or a later ~~the~~ date stated in the notice of termination as the date on which the notice of commencement is terminated. However, if a lienor, who began work under the notice of commencement before its termination, lacks a direct contract with the owner, and timely serves his or her notice to owner after the notice of termination has been recorded, the

owner must serve a copy of the notice of termination upon such lienor, and the termination of the notice of commencement as to that lienor is effective 30 days after service of the notice of termination ~~if the notice of termination has been served pursuant to paragraph (1)(f) on the contractor and on each lienor who has a direct contract with the owner or who has served a notice to owner~~.

Section 8. Section 713.18, Florida Statutes, is amended to read:

713.18 Manner of serving documents ~~notices and other instruments~~.—

(1) Unless otherwise specifically provided by law, service of any document ~~notices, claims of lien, affidavits, assignments, and other instruments~~ permitted or required under this part, s. 255.05, or s. 337.18, or copies thereof when so permitted or required, ~~unless otherwise specifically provided in this part,~~ must be made by one of the following methods:

(a) By hand ~~actual~~ delivery to the person to be served; if a partnership, to one of the partners; if a corporation, to an officer, director, managing agent, or business agent; or, if a limited liability company, to a member or manager.

(b) By common carrier delivery service or by registered, Global Express Guaranteed, or certified mail to the person to be served, with postage or shipping paid by the sender and with evidence of delivery, which may be in an electronic format.

~~(c) By posting on the site of the improvement if service as provided by paragraph (a) or paragraph (b) cannot be accomplished.~~

(2) Notwithstanding subsection (1), Service of a notice to owner or a preliminary notice to contractor under this part, s. 255.05, or s. 337.18~~, or s. 713.23~~ is effective as of the date of mailing and the requirements for service under this section have been satisfied if:

(a) The notice is mailed by registered, Global Express Guaranteed, or certified mail, with postage prepaid, to the person to be served, and addressed as prescribed ~~at any of the addresses set forth~~ in subsection (3);

(b) The notice is mailed within 40 days after the date the lienor first furnishes labor, services, or materials; and

(c)1. The person who served the notice maintains a registered or certified mail log that shows the registered or certified mail number issued by the United States Postal Service, the name and address of the person served, and the date stamp of the United States Postal Service confirming the date of mailing; or

2. The person who served the notice maintains ~~electronic~~ tracking records approved or generated by the United States Postal Service containing the postal tracking number, the name and address of the person served, and verification of the date of receipt by the United States Postal Service.

(3)(a) Notwithstanding subsection (1), service of a document under ~~an instrument pursuant to~~ this section is effective on the date of mailing or shipping and the requirements for service under this section have been satisfied ~~the instrument~~ if it:

1. Is sent using one of the methods provided in paragraph (1)(b) to the last address shown in the notice of commencement or any amendment thereto or, in the absence of a notice of commencement, to the last address shown in the building permit application, or, in the absence of a notice of commencement and building permit application, to the last known address of the person to be served, unless otherwise specifically provided in this part, s. 255.05, or s. 337.18; and

2. Is returned as being "refused," "moved, not forwardable," or "unclaimed," or is otherwise not delivered or deliverable through no fault of the person serving the document ~~item~~.

(b) If the address shown in the notice of commencement or any amendment thereto ~~to the notice of commencement~~, or, in the absence of a notice of commencement, in the building permit application, is incomplete for purposes of mailing or delivery, the person serving the document ~~item~~ may complete the address and properly format it according to United States Postal Service addressing standards using information obtained from the property appraiser or another public record without affecting

the validity of service under this section.

(4) A document ~~notice~~ served by a lienor on one owner or one partner of a partnership owning the real property is deemed serve ~~notice~~ to all owners and partners.

Section 9. Subsections (6) and (8) of section 713.20, Florida Statutes, are amended to read:

713.20 Waiver or release of liens.—

(6) A person may not require a lienor to furnish a lien waiver or release of lien that is different from the forms in subsection (4) or subsection (5) in exchange for, or to induce payment of, a progress payment or final payment, unless the lienor has entered into a direct contract that requires the lienor to furnish a waiver or release that is different from the forms in subsection (4) or subsection (5).

(8) Any provisions in a lien waiver or lien release that are ~~is~~ not related to the waiver or release of lien rights as provided in this section are unenforceable, unless the lienor has otherwise agreed to those provisions in the lienor's direct contract ~~substantially similar to the forms in subsections (4) and (5) is enforceable in accordance with the terms of the lien waiver or lien release~~.

Section 10. Paragraph (d) of subsection (1) of section 713.23, Florida Statutes, is amended to read:

713.23 Payment bond.—

(1)

(d) In addition, a lienor who has not received payment for furnishing his or her labor, services, or materials must, as a condition precedent to recovery under the bond, serve a written notice of nonpayment on ~~to~~ the contractor and a copy of the notice on the surety. The notice must be under oath and served during the progress of the work or thereafter, but may not be served later than 90 days after the final furnishing of labor, services, or materials by the lienor, or, with respect to rental equipment, later than 90 days after the date the rental equipment was on the job site and available for use. A notice of nonpayment that includes sums for retainage must specify the portion of the amount claimed for retainage. The required notice satisfies this condition precedent with respect to the payment described in the notice of nonpayment, including unpaid finance charges due under the lienor's contract, and with respect to any other payments which become due to the lienor after the date of the notice of nonpayment. The time period for serving a notice of nonpayment is ~~shall be~~ measured from the last day of furnishing labor, services, or materials by the lienor and may not be measured by other standards, such as the issuance of a certificate of occupancy or the issuance of a certificate of substantial completion. The failure of a lienor to receive retainage sums not in excess of 10 percent of the value of labor, services, or materials furnished by the lienor is not considered a nonpayment requiring the service of the notice

provided under this paragraph. If the payment bond is not recorded before commencement of construction, the time period for the lienor to serve a notice of nonpayment may at the option of the lienor be calculated from the date specified in this section or the date the lienor is served a copy of the bond. However, the limitation period for commencement of an action on the payment bond as established in paragraph (e) may not be expanded. The negligent inclusion or omission of any information in the notice of nonpayment that has not prejudiced the contractor or surety does not constitute a default that operates to defeat an otherwise valid bond claim. A lienor who serves a fraudulent notice of nonpayment forfeits his or her rights under the bond. A notice of nonpayment is fraudulent if the lienor has willfully exaggerated the amount unpaid, willfully included a claim for work not performed or materials not furnished for the subject improvement, or prepared the notice with such willful and gross negligence as to amount to a willful exaggeration. However, a minor mistake or error in a notice of nonpayment, or a good faith dispute as to the amount unpaid, does not constitute a willful exaggeration that operates to defeat an otherwise valid claim against the bond. The service of a fraudulent notice of nonpayment is a complete defense to the lienor's claim against the bond. The notice under this paragraph must include the following information, current as of the date of the notice, and must be in substantially the following form:

NOTICE OF NONPAYMENT

To ...(name of contractor and address)...

...(name of surety and address)...

The undersigned lienor notifies you that:

1. The lienor has furnished ...(describe labor, services, or materials)... for the improvement of the real property identified as ...(property description).... The corresponding amount unpaid to date is $...., of which $.... is unpaid retainage.

2. The lienor has been paid to date the amount of $.... for previously furnishing ...(describe labor, services, or materials)... for this improvement.

3. The lienor expects to furnish ...(describe labor, services, or materials)... for this improvement in the future (if known), and the corresponding amount expected to become due is $.... (if known).

I declare that I have read the foregoing Notice of Nonpayment and that the facts stated in it are true to the best of my knowledge and belief.

DATED on ....., ...

...(signature and address of lienor)...

STATE OF FLORIDA

COUNTY OF.....

The foregoing instrument was sworn to (or affirmed) and subscribed before me by means of ☐ physical presence or ☐ online

notarization, this .... day of ...., ...(year)..., by ...(name of signatory)....

...(Signature of Notary Public - State of Florida)...

...(Print, Type, or Stamp Commissioned Name of Notary Public)...

Personally Known ..... OR Produced Identification .....

Type of Identification Produced

Section 11. Subsections (3) and (5) of section 713.235, Florida Statutes, are amended to read: 713.235 Waivers of right to claim against payment bond; forms.—

(3) A person may not require a claimant to furnish a waiver that is different from the forms in subsections (1) and (2) in exchange for, or to induce payment of, a progress payment or final payment, unless the claimant has entered into a direct contract that requires the claimant to furnish a waiver that is different from the forms in subsections (1) and (2).

(5) Any provisions in a waiver that are ~~is~~ not related to the waiver of the right to claim against the payment bond as provided in this section are unenforceable, unless the claimant has otherwise agreed to those provisions in the claimant's direct contract ~~substantially similar to the forms in this section is enforceable in accordance with its terms~~.

Section 12. Section 713.29, Florida Statutes, is amended to read:

713.29 Attorney ~~Attorney's~~ fees.—In any action brought to

enforce a lien, including a lien that has been transferred to security, or to enforce a claim against a bond under this part, the prevailing party is entitled to recover a reasonable fee for the services of her or his attorney for trial and appeal or for arbitration, in an amount to be determined by the court, which fee must be taxed as part of the prevailing party's costs, as allowed in equitable actions.

Section 13. This act shall take effect July 1, 2020.

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

Remove everything before the enacting clause and insert:

An act relating to liens and bonds; amending s. 255.05, F.S.; requiring that a copy of a notice of nonpayment be served on the surety; prohibiting a person from requiring a claimant to furnish a certain waiver in exchange for or to induce certain payments; providing that specified provisions in certain waivers are unenforceable; providing an exception; revising process to notarize a notice of nonpayment; amending s. 337.18, F.S.; providing that certain waivers apply to certain contracts; amending s. 713.01, F.S.; revising definitions; amending s. 713.09, F.S.; authorizing a lienor to record one claim of lien for multiple direct contracts; amending s. 713.10, F.S.; revising the extent of liens; amending s. 713.13,

F.S.; revising information to be included in a notice of commencement; revising process to notarize a notice of commencement; amending s. 713.132, F.S.; revising requirements for a notice of termination; amending s. 713.18, F.S.; providing the manner in which documents relating to certain construction bonds must be served; providing that service of a document may be by hand delivery; providing that service of a document is effective on the date of mailing or shipping; making technical changes; amending ss. 713.20 and 713.235, F.S.; prohibiting a person from requiring a lienor to furnish a certain waiver or release in exchange for or to induce certain payments; providing that specified provisions in certain waivers or releases are unenforceable; providing an exception; amending s. 713.23, F.S.; requiring that a copy of a notice of nonpayment be served on the surety; revising process to notarize a notice of nonpayment; amending s. 713.29, F.S.; authorizing attorney fees in actions to enforce a lien that has been transferred to security; providing an effective date

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 343 Recreational Vehicles
SPONSOR(S): Business & Professions Subcommittee, Fetterhoff
TIED BILLS: **IDEN./SIM. BILLS:** SB 422

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Business & Professions Subcommittee	12 Y, 0 N, As CS	Thompson	Anstead
2) State Affairs Committee	21 Y, 0 N	Etheridge	Williamson
3) Commerce Committee		Thompson	Hamon

SUMMARY ANALYSIS

The Department of Agriculture and Consumer Services (DACS) Bureau of Compliance is the primary agency charged with the regulation of the liquefied petroleum (LP) gas industry, and ensuring that persons engaged in the LP gas industry are trained and compliant with acceptable safety codes and standards statewide.

Prior to 2018, in order to refill, repair, or replace propane gas and equipment on recreational vehicles (RVs) in Florida, a category IV LP gas dispenser and recreational vehicle servicers license (RV dealers/installers) was required.

Effective July 2018, the category IV LP gas dispenser and recreational vehicle servicer license, which included RV dealers/installers, was consolidated under the requirements of other similar LP gas license types (category I dealer, category II dispenser, and category V installer). Thus, in order to continue to operate, LP gas RV dealers/installers were required to obtain a license in one or more of the other categories, depending on their business.

The bill:

- Requires DACS to establish by rule the requirements for agents qualified to administer LP gas examinations;
- Requires DACS to establish by rule a specific test for RV dealers/installers;
- Requires DACS to ensure that test content is specific to RV dealer/installer activities;
- Limits those who pass the category I RV dealer/installer test to category I activities solely related to the service and repair of RVs; and
- Clarifies that in order to be eligible to apply for certification as a master qualifier, "verifiable LP gas experience" or "professional certification" is required.

The bill is not expected to have a fiscal impact on state or local government.

The effective date of the bill is July 1, 2020.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Liquefied Petroleum Gas

The Department of Agriculture and Consumer Services (DACS) Bureau of Compliance is the primary agency charged with regulating the liquefied petroleum (LP) gas industry, including licensing, inspection, training, and examination requirements, in accordance with ch. 527, F.S. These responsibilities enable DACS to ensure that those persons engaged in LP gas-related business activities in this state are trained and that compliance with acceptable safety codes and standards is achieved statewide.[1]

LP gas is defined in statute as any material composed predominantly of any of the following hydrocarbons, or mixtures of the same:

- Propane;
- Propylene;
- Butanes (normal butane or isobutane); and
- Butylenes.[2]

Propane, the most widely used LP gas, is an energy source for hotels, restaurants, schools, hospitals, nursing homes, universities, private homes, recreational vehicles, agricultural and industrial facilities, and is used as an alternative fuel for vehicles.[3]

Business Licenses

Current law provides licensing requirements for businesses that engage in certain LP gas-related activities, including sales, installations, service and repair work, manufacture of equipment, and other miscellaneous activities. DACS must license applicants that it determines to be competent, qualified, and trustworthy. Violations for willfully operating without a license are a third degree felony.[4]

The license categories and associated fees are as follows:[5]

License Category	Annual License Fee
Category I LP gas dealer	$400
Category II LP gas dispenser	$400
Category III LP gas cylinder exchange unit operator	$65
Category IV dealer in appliances and equipment	$65
Category V LP gas installer	$200
Category VI miscellaneous operator	$200

Licensees may elect to renew their license annually, biennially, or triennially, and are required to meet the same requirements and conditions, including fee amounts, for each licensed year. An expired

[1] Florida Department of Agriculture and Consumer Services, *Safe Dispensing of Propane, Propane Dispensing Unit Operator Training Manual*, https://www.fdacs.gov/content/download/78592/file/Safe-Dispensing-of-Propane-Manual.pdf (last visited Nov. 23, 2019).
[2] S. 527.01(1), F.S.
[3] Florida Department of Agriculture and Consumer Services, *supra* note 1, at 4.
[4] S. 527.02, F.S.
[5] *Id.*

license will become inoperative, and the fee for restoration of an expired license is equal to the original license fee and must be paid before the licensee is allowed to resume operations.[6]

Training and Examinations

DACS is responsible for enforcing reasonable standards of competency, including, but not limited to, the training, licensure, testing, and qualifying of persons participating in the LP gas industry.[7] DACS is also authorized to adopt rules that are:[8]

- In the interest of public health, safety, and welfare and to promote the safe handling of LP gas, equipment, and systems; and
- Reasonably necessary to assure the competence of persons to safely engage in the business of LP gas.

According to the DACs website, training is required for all employees of an LP gas-related business, and refresher training must be conducted at three-year intervals.[9]

In addition, any person applying for a license to engage in category I dealer, category II dispenser, or category V installer activities must prove competency by passing a written examination administered by DACS or its agent.[10]

Qualifiers

Each category I dealer, category II dispenser, or category V installer licensee must employ a full-time employee who has received a qualifier certificate from DACS. Qualifiers are required to function in a supervisory capacity, and a separate qualifier must be present for every 10 employees.[11]

An applicant for a qualifier certificate must:

- Be employed by a category I dealer, category II dispenser, or category V installer licensee;
- Submit to DACS a nonrefundable $20 examination fee; and
- Pass a competency examination with a grade of 70 percent or above in each area tested.[12]

Qualifier registration expires three years after the date of issuance. Qualifiers must renew their qualification 30 calendar days before expiration, upon:

- Application to DACS;
- Payment of a $20 renewal fee; and
- Documentation of the completion of a minimum of 16 hours of approved continuing education courses, as defined by DACS rule, during the previous three-year period.[13]

Persons failing to renew before the expiration date must reapply and take a qualifier competency examination in order to reestablish qualifier status.[14]

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[6] S. 527.03, F.S.
[7] S. 527.055(1)(b), F.S.
[8] S. 527.06
[9] Florida Department of Agriculture and Consumer Services, *LP Gas Training*, https://www.fdacs.gov/Business-Services/LP-Gas-Inspection/LP-Gas-Training (last visited Nov. 23, 2019).
[10] S. 527.0201(1), F.S.
[11] S. 527.0201(1)-(4), F.S.
[12] *Id.*
[13] *Id.*
[14] *Id.*

Master Qualifiers

In addition to the qualifier requirements, each category I dealer and category V installer licensee is required to have a manager, owner, or employee at each licensed location who has received a master qualifier certificate from DACS. The master qualifier must be a manager, owner, or someone otherwise primarily responsible for overseeing the operations of the licensed location and must provide documentation to DACS.[15]

An applicant for a master qualifier certificate must:

- Be employed by a category I dealer or category V installer licensee;
- Submit to DACS a nonrefundable $30 examination fee;
- Have been a registered qualifier for at least three years immediately preceding the application; and
- Pass a master qualifier competency examination with a grade of 70 percent or above in each area tested.[16]

Master qualifier registration expires three years after the date of issuance[17] and may be renewed by submitting to DACS:

- Proof of employment;
- Payment of a $30 certificate renewal fee; and
- Documentation of the completion of a minimum of 16 hours of approved continuing education courses, as defined by department rule, during the previous three-year period.[18]

Insurance

Prior to a receiving a license, LP gas license applicants, other than category IV dealers in appliances and equipment and category III LP gas cylinder exchange unit operators, must provide DACS with proof of bodily injury and property damage liability insurance coverage of at least $1 million. However, the Commissioner of Agriculture may accept a $1 million bond in lieu of the coverage requirement.[19]

For a class III license, coverage of at least $300,000 is required, and the Commissioner of Agriculture may accept a bond of at least $300,000 in lieu of the coverage requirement.[20]

Recreational Vehicle Dealers or Installers

Propane is widely used in recreational vehicles (RVs) to regulate temperature, cook meals, provide hot water, and refrigerate food. Typically, motorized RVs have a fixed propane tank and towable RVs have a removable propane tank.[21] In Florida, the refilling, repairing, or replacing of propane gas and equipment must be completed by a properly trained employee of a licensed LP gas-related business.[22] These individuals are referred to by DACS as RV dealers/installers.[23]

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[15] S. 527.0201(5), F.S.
[16] *Id.*
[17] *Id.*
[18] *Id.*
[19] S. 527.04(1), F.S.
[20] S. 527.04(2), F.S.
[21] Winnebagolife, *An Easy Guide to Finding Propane for Your RV*, https://winnebagolife.com/2019/05/finding-propane-for-your-rv (last visited Nov. 23, 2019).
[22] *See* ch. 527, F.S.
[23] DACS, Agency Analysis of 2019 House Bill 343 (Oct. 21, 2019).

Prior to July 2018, RV dealers/installers were classified separately in Florida law as a "category IV LP gas dispenser and recreational vehicle servicer" and were defined as:

> any person engaging in the business of operating a liquefied petroleum gas dispensing unit for the purpose of serving liquid product to the ultimate consumer for industrial, commercial, or domestic use, and selling or offering to sell, or leasing or offering to lease, apparatus, appliances, and equipment for the use of liquefied petroleum gas, and whose services include the installation, service, or repair of recreational vehicle liquefied petroleum gas appliances and equipment.[24]

RVs were defined as "a motor vehicle designed to provide temporary living quarters for recreational, camping, or travel use, which has its own propulsion or is mounted on or towed by another motor vehicle."[25]

In order to engage in LP gas-related activities, category IV businesses were required to obtain licensure from DACS by meeting all applicable requirements within the chapter of law governing the LP gas industry, including training, examination, initial and renewal license fees, insurance coverage, and qualifiers.[26]

However, legislation passed during the 2018 Legislative Session that became effective July 2018, resulted in the category IV license type being deleted from statute.[27] According to DACS, the changes were sought to meet current business practices, to simplify the registration process and to streamline the regulatory structure. DACS collaborated with the Florida LP Gas Association and other industry leaders to modernize the LP gas statute.[28]

Current Situation

Since July 2018, depending on the type of work being performed, a RV dealer/installer is required to obtain either a category I dealer, II dispenser, or V installer license and is required to meet all applicable licensing and examination requirements in order to operate lawfully in the state. Current law does not provide a separate LP gas license category specifically for RV dealers/installers.

According to DACS, RV dealers/installers are required to obtain a category V installer license, and if the RV dealer/installer also dispenses LP gas, a category II dispenser license must be obtained as well. In lieu of multiple licenses, RV dealers/installers may obtain a category I dealer license that allows them to perform both service and dispensing functions.[29]

According to DACS, there are 50 licensed RV dealers/installers in the state.[30]

Effect of Proposed Changes

The bill requires DACS to specify by rule the requirements for agents qualified to administer written competency examinations required for LP gas licensure.

The bill requires DACS to establish by rule a separate test for persons applying for a license to engage in category I activities solely related to the service or repair of RVs.

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[24] *See* ch. 527, F.S. (2017).
[25] *Id.*
[26] *Id.*.
[27] Ch. 2018-84, Laws of Fla.
[28] Florida Department of Agriculture and Consumer Services, Agency Analysis of 2018 House Bill 553, p. 9 (Nov. 21, 2017).
[29] *Id.* at 1.
[30] *Id.* at 3.

The bill requires the category I RV dealer/installer test to include and ensure competency in the following activities as they relate to RVs:

- Operating a LP gas dispensing unit to serve liquid product to a consumer for industrial, commercial, or domestic use;
- Selling or offering to sell, or leasing or offering to lease, apparatus, appliances, and equipment for the use of LP gas; and
- Installing, servicing, or repairing RV LP gas appliances and equipment.

The bill limits a qualifier or master qualifier who has passed the category I RV dealer/installer test to category I activities solely related to the service and repair of RVs.

In addition, the bill replaces the requirement that master qualifier applicants have at least 3-years experience as a registered qualifier to instead require such applicants to:

- Have a minimum of 3 years of verifiable LP gas experience; or
- Hold a professional certification by an LP gas manufacturer.

The bill also defines an RV as:

- "a motor vehicle that is designed to provide temporary living quarters for recreational, camping, or travel use and that has its own propulsion or is mounted on or towed by another motor vehicle."

B. SECTION DIRECTORY:

Section 1. Amends s. 527.01, F.S., defining the term "recreational vehicle."

Section 2. Amends s. 527.0201, F.S., relating to qualifiers; master qualifiers; examinations.

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:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Authorizing a separate and distinct category I RV dealer/installer licensure test and allowing applicants to use experience or professional certification to be eligible to apply for certification as a master qualifier may remove unnecessary barriers to professional licensure and employment in the category I RV dealer/installer industry, which may allow more workers to practice their chosen profession.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill requires DACS to adopt rules specifying the requirements for agents qualified to administer written competency examinations and establishing a separate test for persons applying for a license to engage in category I activities solely related to the service or repair of RVs. It appears that sufficient rulemaking authority exists in s. 527.06(1), 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:

- Requires DACS to establish by rule the requirements for agents qualified to administer LP gas examinations;
- Requires DACS to establish by rule a specific test for RV dealers/installers;
- Requires DACS to ensure that test content is specific to RV dealer/installer activities;
- Limits those who pass the category I RV dealer/installer test to category I activities solely related to the service and repair of RVs; and
- Clarifies that in order to be eligible to apply for certification as a master qualifier, "verifiable LP gas experience" or "professional certification" is required.

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

A bill to be entitled

An act relating to recreational vehicles; amending s. 527.01, F.S.; defining the term "recreational vehicle"; amending s. 527.0201, F.S.; requiring the Department of Agriculture and Consumer Services to adopt rules specifying requirements for agents to administer certain competency examinations and establishing a competency test for a license to engage in activities solely related to the service and repair of recreational vehicles; authorizing certain qualifiers and master qualifiers to engage in activities solely related to the service and repair of recreational vehicles; requiring verifiable LP gas experience or professional certification by an LP gas manufacturer in order to apply for certification as a master qualifier; providing an effective date.

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

Section 1. Subsection (18) is added to section 527.01, Florida Statutes, to read:

527.01 Definitions.—As used in this chapter:

(18) "Recreational vehicle" means a motor vehicle that is designed to provide temporary living quarters for recreational, camping, or travel use and that has its own propulsion or is

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

mounted on or towed by another motor vehicle.

Section 2. Subsection (1) and paragraph (a) of subsection (5) of section 527.0201, Florida Statutes, are amended to read:

527.0201 Qualifiers; master qualifiers; examinations.—

(1) In addition to the requirements of s. 527.02, a ~~any~~ person applying for a license to engage in category I, category II, or category V activities must prove competency by passing a written examination administered by the department or its agent with a grade of 70 percent or above in each area tested. Each applicant for examination shall submit a $20 nonrefundable fee.

(a) The department shall by rule specify the general areas of competency to be covered by each examination and the relative weight to be assigned in grading each area tested.

(b) The department shall by rule specify the requirements for agents qualified to administer the written competency examinations required by this part.

(c) The department shall by rule establish a separate test for persons applying for a license to engage in category I activities solely related to the service and repair of recreational vehicles. The category I recreational vehicle dealer/installer test shall include and ensure competency in the following activities as they relate to recreational vehicles:

1. Operating a liquefied petroleum gas dispensing unit to serve liquid product to a consumer for industrial, commercial, or domestic use;

2. Selling or offering to sell, or leasing or offering to lease, apparatus, appliances, and equipment for the use of liquefied petroleum gas; and

3. Installing, servicing, or repairing recreational vehicle liquefied petroleum gas appliances and equipment.

(d) Any qualifier or master qualifier who has passed the category I recreational vehicle dealer/installer test may engage in category I activities solely related to the service and repair of recreational vehicles.

(5) In addition to all other licensing requirements, each category I and category V licensee must, at the time of application for licensure, identify to the department one master qualifier who is a full-time employee at the licensed location. This person shall be a manager, owner, or otherwise primarily responsible for overseeing the operations of the licensed location and must provide documentation to the department as provided by rule. The master qualifier requirement shall be in addition to the requirements of subsection (1).

(a) In order to apply for certification as a master qualifier, each applicant must have ~~been a registered qualifier for~~ a minimum of 3 years of verifiable LP gas experience or hold a professional certification by an LP gas manufacturer as adopted by department rule immediately preceding submission of the application, must be employed by a licensed category I or category V licensee~~,~~ or an applicant for such license, and must

pass a master qualifier competency examination <u>administered by the department or its agent</u>. Master qualifier examinations shall be based on Florida's laws, rules, and adopted codes governing liquefied petroleum gas safety, general industry safety standards, and administrative procedures. The applicant must successfully pass the examination with a grade of 70 percent or above. Each applicant for master qualifier registration must submit to the department a nonrefundable $30 examination fee before the examination.

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

Commerce Committee

CS/HB 343 by Rep. Fetterhoff
Recreational Vehicles

AMENDMENT SUMMARY
February 13, 2020

Amendment 1 by Rep. Fetterhoff (42-57):

- Corrects terminology and makes technical and conforming changes.

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 Fetterhoff offered the following:

Amendment (with title amendment)

Remove lines 42-57 and insert:

(c) The department shall by rule establish a separate written competency examination for persons applying for a license to engage in category I activities solely related to the service and repair of recreational vehicles. The category I recreational vehicle dealer/installer examination shall include and ensure competency in the following activities as they relate to recreational vehicles:

1. Operating a liquefied petroleum gas dispensing unit to serve liquid product to a consumer for industrial, commercial, or domestic use;

2. Selling or offering to sell, or leasing or offering to lease, apparatus, appliances, and equipment for the use of liquefied petroleum gas; and

3. Installing, servicing, or repairing recreational vehicle liquefied petroleum gas appliances and equipment.

(d) Any qualifier or master qualifier who has passed the category I recreational vehicle dealer/installer examination may engage

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

Remove line 8 and insert:
establishing a written competency examination for a license to engage

Commerce Committee

CS/HB 343 by Rep. Fetterhoff
Recreational Vehicles

AMENDMENT SUMMARY
February 13, 2020

Amendment 2 by Rep. Fetterhoff (19-20):

- Preempts all permitting authority to the Department of Health (DOH) for recreational vehicle (RV) parks, mobile home parks, lodging parks, and recreational camps.
- Requires new park or camp owners to apply to DOH for a permit within 60 days after the date of transfer, instead of before the date of transfer.
- Allows an RV park damaged or destroyed by a natural disaster to be rebuilt on the same site using the same density standards established at the time of the RV park's initial approval.
- Creates a rebuttable presumption that an RV park guest is a transient guest.
- Provides a method for the disposal of property left by a transient guest with an outstanding account who vacates an RV park without notice.
- Adds a posted park rules and regulations violation to the list of reasons a park operator may eject a transient guest or visitor from park premises and provides notice of ejection requirements.
- Provides that a park operator may refuse a transient guest or visitor access to the premises for specified conduct and request that such person leave the premises.
- Modifies the duties of a law enforcement officer called to assist with a person illegally on an RV park's premises to allow removal of such a person in lieu of arrest and limits the officer's liability.

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 Fetterhoff offered the following:

Amendment (with title amendment)

Between lines 19 and 20, insert:

Section 1. Section 513.012, Florida Statutes, is amended to read:

513.012 Public health laws; enforcement.—It is the intent of the Legislature that mobile home parks, lodging parks, recreational vehicle parks, and recreational camps be exclusively regulated under this chapter. As such, the department shall administer and enforce, with respect to such parks and camps, laws and rules relating to sanitation, control of communicable diseases, illnesses and hazards to health among humans and from animals to humans, and permitting and operational matters in order to protect the general health and

well-being of the residents ~~people~~ of and visitors to the state. However, nothing in this chapter qualifies a mobile home park, a lodging park, a recreational vehicle park, or a recreational camp for a liquor license issued under s. 561.20(2)(a)1. Mobile home parks, lodging parks, recreational vehicle parks, and recreational camps regulated under this chapter are exempt from regulation under the provisions of chapter 509.

Section 2. Subsection (5) of section 513.02, Florida Statutes, is amended to read:

513.02 Permit.—

(5) When a park or camp regulated under this chapter is sold or its ownership transferred, the transferee must apply for a permit to the department within 60 days after ~~before~~ the date of transfer. The applicant must provide the department with a copy of the recorded deed or lease agreement before the department may issue a permit to the applicant.

Section 3. Section 513.051, Florida Statutes, is amended to read:

513.051 Preemption.—The department is the exclusive regulatory and permitting authority for sanitary and permitting standards for all mobile home parks, lodging parks, recreational vehicle parks, and recreational camps in accordance with ~~the provisions of~~ this chapter.

Section 4. Subsection (3) is added to section 513.112, Florida Statutes, to read:

513.112 Maintenance of guest register and copy of laws.—

(3) When a guest occupies a recreational vehicle in a recreational vehicle park for less than 6 months, as evidenced by the length of stay shown in the guest register, there is a rebuttable presumption that the occupancy is transient.

Section 5. Subsection (3) of section 513.1115, Florida Statutes, is renumbered as subsection (4) and amended, and a new subsection (3) is added to that section, to read:

513.1115 Placement of recreational vehicles on lots in permitted parks.—

(3) If a recreational vehicle park is damaged or destroyed as a result of wind, water, or other natural disaster, the park may be rebuilt on the same site using the same density standards that were approved and permitted before the park was damaged or destroyed.

(4) ~~(3)~~ This section does not limit the regulation of the uniform firesafety standards established under s. 633.206. However, this section shall supersede any other county, municipality, or special district ordinance or regulation regarding the lot size, lot density, or separation or setback distance of a recreational vehicle park which goes into effect after the initial permitting and construction of the park.

Section 6. Section 513.115, Florida Statutes, is amended to read:

513.115 Unclaimed property.—Any property having an

identifiable owner which ~~is left in a recreational vehicle park by a guest, other than property belonging to a guest who has vacated the premises without notice to the operator and with an outstanding account, which property~~ remains unclaimed after having been held by a ~~the~~ park for 90 days after written notice was provided to the guest or the owner of the property~~,~~ becomes the property of the park. Any property that is left by a guest who has vacated the premises without notice to the operator and who has an outstanding account is considered abandoned property, and disposition thereof shall be governed by the Disposition of Personal Property Landlord and Tenant Act under s. 715.10 or under 705.185, as applicable.

Section 7. Section 513.118, Florida Statutes, is amended to read:

513.118 Conduct on premises; refusal of service.—

(1) The operator of a recreational vehicle park may refuse to provide accommodations, ~~or~~ service, or access to the premises to any transient guest or visitor ~~person~~ whose conduct on the premises of the park displays intoxication, profanity, lewdness, or brawling; who indulges in such language or conduct as to disturb the peace, quiet enjoyment, or comfort of other guests; who engages in illegal or disorderly conduct; or whose conduct constitutes a nuisance or safety hazard.

(2) The operator of a recreational vehicle park may request that a transient guest or visitor who violates

subsection (1) leave the premises immediately. A person who refuses to leave the premises commits the offense of trespass as provided in s. 810.08 and the operator may call a law enforcement officer to have the person and his or her property removed under the supervision of the officer. A law enforcement officer is not liable for any claim involving the removal of the person or property from the recreational vehicle park under this section, except as provided in s. 768.28. If conditions do not allow for immediate removal of the person's property, he or she may arrange a reasonable time, not to exceed 48 hours, with the operator to come remove the property, accompanied by a law enforcement officer.

(3) Such refusal of accommodations, ~~or~~ service, or access to the premises may ~~shall~~ not be based upon race, color, national origin, sex, physical disability, or creed.

Section 8. Section 513.13, Florida Statutes, is amended to read:

513.13 Recreational vehicle parks; ejection ~~eviction~~; grounds; proceedings.—

(1) The operator of any recreational vehicle park may remove or cause to be removed from such park, in the manner provided in this section, any transient guest of the park who, while on the premises of the park, illegally possesses or deals in a controlled substance as defined in chapter 893; who ~~or~~ disturbs the peace, quiet enjoyment, and comfort of other

persons; who causes harm to the physical park; who violates the posted park rules and regulations; or who fails to make payment of rent at the rental rate agreed upon and by the time agreed upon. The admission of a person to, or the removal of a person from, any recreational vehicle park may ~~shall~~ not be based upon race, color, national origin, sex, physical disability, or creed.

(2) The operator of any recreational vehicle park shall notify such guest that the park no longer desires to entertain the guest and shall request that such guest immediately depart from the park. Such notice shall be given in writing, as follows: "You are hereby notified that this recreational vehicle park no longer desires to entertain you as its guest, and you are requested to leave at once. To remain after receipt of this notice is a misdemeanor under the laws of this state." If such guest has paid in advance, the park shall, at the time such notice is given, tender to the guest the unused portion of the advance payment. Any guest who remains or attempts to remain in such park after being requested to leave commits ~~is guilty of~~ a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(3) If a guest has accumulated an outstanding account in excess of an amount equivalent to 3 ~~three~~ nights' rent at a recreational vehicle park, the operator may disconnect all utilities of the recreational vehicle and notify the guest that

the action is for the purpose of requiring the guest to confront the operator or permittee and arrange for the payment of the guest's account. Such arrangement must be in writing, and a copy shall be furnished to the guest. Upon entering into such agreement, the operator shall reconnect the utilities of the recreational vehicle.

(4) If any person is illegally on the premises of any recreational vehicle park, the operator of such park may call upon any law enforcement officer of this state for assistance. It is the duty of such law enforcement officer, upon the request of such operator, to remove from the premises or place under arrest ~~and take into custody for violation of this section~~ any guest who, according to the park operator, violated ~~violates~~ subsection (1) or subsection (2) ~~in the presence of the officer~~. If a warrant has been issued by the proper judicial officer for the arrest of any guest who violates ~~violator of~~ subsection (1) or subsection (2), the officer shall serve the warrant, arrest the guest ~~person~~, and take the guest ~~person~~ into custody. Upon removal or arrest, with or without warrant, the guest is deemed to have abandoned or given up any right to occupancy ~~or to have abandoned the guest's right to occupancy~~ of the premises of the recreational vehicle park; and the operator of the park shall employ all reasonable and proper means to care for any personal property left on the premises by such guest and shall refund any unused portion of moneys paid by such guest for the occupancy of

such premises. If conditions do not allow for immediate removal of the guest's property, he or she may arrange a reasonable time, not to exceed 48 hours, with the operator to come remove the property, accompanied by a law enforcement officer.

(5) In addition to the grounds for ejection ~~eviction~~ established by law, grounds for ejection ~~eviction~~ may be established in a written lease agreement between a recreational vehicle park operator or permittee and a recreational vehicle park occupant.

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

Remove line 2 and insert:

An act relating to recreational vehicle industries; amending s. 513.012, F.S.; revising legislative intent; amending s. 513.02, F.S.; providing a timeframe for the application of a permit; amending s. 513.051, F.S.; preempting to the Department of Health the regulatory authority for permitting standards; amending s. 513.112, F.S.; providing that evidence of a certain length of stay in a guest register creates a rebuttable presumption that a guest is transient; amending s. 513.1115, F.S.; providing standards for a damaged or destroyed recreational vehicle park to be rebuilt under certain circumstances; superseding certain ordinances or regulations; amending s. 513.115, F.S.; specifying when certain property

becomes abandoned; providing for disposition of such property; amending s. 513.118, F.S.; authorizing a park operator to refuse access to the premises and to eject transient guests or visitors based on specified conduct; providing that a person who refuses to leave the park premises commits the offense of trespass; providing immunity from liability for certain law enforcement officers; providing an exception; providing for removal of property; amending s. 513.13, F.S.; providing for ejection from a park and specifying grounds and requirements therefor; providing for removal of property; amending s.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 755 Pub. Rec. and Meetings/911 and E911 Communication Systems
SPONSOR(S): Energy & Utilities Subcommittee; DuBose
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 1060

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Energy & Utilities Subcommittee	14 Y, 0 N, As CS	Keating	Keating
2) Oversight, Transparency & Public Management Subcommittee	15 Y, 0 N	Villa	Smith
3) Commerce Committee		Keating CK	Hamon K.W.H.

SUMMARY ANALYSIS

The Florida Constitution provides every person the right to inspect or copy any public record made or received in connection with the official business of the legislative, executive, or judicial branches of government. However, the Legislature may provide by general law for the exemption of records from the constitutional requirements.

Current law provides public record exemptions for various records related to the physical security of certain structures and for certain information related to the Nationwide Public Safety Broadband Network. There is not a specific public record exemption for records related to infrastructure used to provide 911 or E911 communication service.

The bill creates a public record exemption for specific records that identify the design, scope, and location of 911 or E911 communication system infrastructure owned and operated by an agency before, on, or after the effective date of the bill. The bill also creates a public meeting exemption for any portion of a meeting that would reveal these records. Specifically, the bill creates a public record exemption for:

- Building plans, blueprints, schematic drawings, and diagrams, including draft, preliminary, and final formats, which depict the structural elements of 911 or E911 communication system infrastructure, including towers, antennae, equipment or facilities used to provide 911 or E911 communication services, or other 911 or E911 communication structures or facilities owned and operated by an agency; and
- Geographical maps indicating the actual or proposed locations of 911 or E911 communication system infrastructure, including towers, antennae, equipment or facilities used to provide 911 or E911 services, or other 911 or E911 communication structures or facilities owned and operated by an agency.

The bill identifies specific circumstances in which these records may be disclosed. Further, the bill requires that all portions of a public meeting exempted by the bill be recorded and transcribed. The bill provides that such recordings and transcripts are confidential and exempt from disclosure as public records except to the extent that any portion of the recording or transcript is determined by a court of competent jurisdiction, after an in camera review, to reveal nonexempt data.

The bill provides for repeal of the exemptions on October 2, 2025, unless reviewed and saved from repeal through reenactment by the Legislature. The bill provides a public necessity statement as required by the State Constitution.

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

The bill provides that it will take effect upon becoming law.

Article I, section 24(c) of the Florida Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public meeting or public record exemption. The bill creates a new public meeting and public record exemption; thus, it requires a two-thirds vote for final passage.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Public Records

Article I, section 24(a) of the Florida Constitution sets forth the state's public policy regarding access to government records. This section guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government. The Legislature, however, may provide by general law for the exemption of records from the requirements of Article I, section 24(a).[1] The general law must state with specificity the public necessity justifying the exemption[2] and must be no more broad than necessary to accomplish its purpose.[3]

Public Meetings

Article I, section 24(b) of the Florida Constitution sets forth the state's public policy regarding access to government meetings. The section requires that all meetings of any collegial public body of the executive branch of state government or of any collegial public body of a county, municipality, school district, or special district, at which official acts are to be taken or at which public business of such body is to be transacted or discussed, be open and noticed to the public.

Public policy regarding access to government meetings also is addressed in the Florida Statutes. Section 286.011, F.S., known as the "Government in the Sunshine Law" or "Sunshine Law," further requires that all meetings of any board or commission of any state agency or authority or of any agency or authority of any county, municipal corporation, or political subdivision, at which official acts are to be taken be open to the public at all times.[4] The board or commission must provide reasonable notice of all public meetings.[5] Public meetings may not be held at any location that discriminates on the basis of sex, age, race, creed, color, origin, or economic status or that operates in a manner that unreasonably restricts the public's access to the facility.[6] Minutes of a public meeting must be promptly recorded and open to public inspection.[7]

The Legislature may provide by general law for the exemption of meetings from the requirements of article I, section 24(b) of the Florida Constitution.[8] The general law must state with specificity the public necessity justifying the exemption[9] and must be no more broad than necessary to accomplish its purpose.[10]

Open Government Sunset Review

The Open Government Sunset Review Act[11] provides that a public meeting and public record exemption may be created or maintained only if it serves an identifiable public purpose. In addition, it may be no more broad than necessary to meet one of the following purposes:

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[1] FLA. CONST. art. I, s. 24(c).
[2] This portion of a public record exemption is commonly referred to as a "public necessity statement."
[3] FLA. CONST. art. I, s. 24(c).
[4] S. 286.011(1), F.S.
[5] *Id.*
[6] S. 286.011(6), F.S.
[7] S. 286.011(2), F.S.
[8] FLA. CONST. art. I, s. 24(c).
[9] This portion of a public meeting exemption is commonly referred to as a "public necessity statement."
[10] FLA. CONST. art. I, s. 24(c).
[11] S. 119.15, F.S.

- Allow the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption.
- Protect sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety; however, only the identity of an individual may be exempted under this provision.
- Protect trade or business secrets.[12]

The Act requires the automatic repeal of a public meeting or public record exemption on October 2nd of the fifth year after its creation or substantial amendment, unless the Legislature reenacts the exemption.[13]

Public Record and Public Meeting Exemptions for Building Security and Public Safety Communications System Information

Current law provides a public record exemption for various records related to the physical security of certain structures. For example, building plans, blueprints, schematic drawings, and diagrams, including draft, preliminary, and final formats, which depict the internal layout and structural elements of a building, arena, stadium, water treatment facility, or other structure owned or operated by an agency[14] are exempt from disclosure as a public record.[15] This information may be disclosed to another governmental entity if necessary in the performance of its duties and responsibilities or to a licensed architect, contractor, or engineer who is performing work on or related to the structure at issue. If disclosed, the entity that receives the information must maintain its exempt status.

In addition, current law provides a public record exemption for certain information related to the Nationwide Public Safety Broadband Network[16] that is held by an agency. This information, which includes geographical maps indicating actual or proposed locations of network infrastructure or facilities, among other things, is confidential and exempt from disclosure as a public record.[17]

Effect of Proposed Changes

The bill creates a public record exemption for specific records that identify the design, scope, and location of 911 or E911 communication system infrastructure owned and operated by an agency before, on, or after the effective date of the bill. The bill also creates a public meeting exemption for any portion of a meeting that would reveal these records.

Specifically, the bill provides the following records are exempt[18] from public record requirements:

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[12] S. 119.15(6)(b), F.S.

[13] S. 119.15(3), F.S.

[14] For purposes of the public record law, an "agency" means "any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency." S. 119.011(2), F.S.

[15] S. 119.071(3)(b), F.S.

[16] In 2012, Federal law mandated the development of a nationwide, interoperable public safety broadband network. The network is based on a single, national network architecture that evolves with technological advances and that initially consists of a core network of national and regional data center that provides connectivity between the radio access network and the public Internet or public switched network, or both. 47 U.S.C. s. 1422. The network was created "to give public safety 21st century communication tools to help save lives, solve crimes and keep our communities and emergency responders safe." FirstNet, *The Network*, https://firstnet.gov/network (last visited Feb. 10, 2020).

[17] S. 119.071(3)(d), F.S.

[18] There is a difference between records the Legislature designates exempt from public record requirements and those the Legislature deems confidential and exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances. *See WFTV, Inc. v. Sch. Bd. of Seminole*, 874 So. 2d 48, 53 (Fla. 5th DCA 2004), *review denied* 892 So.2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 1994); *Williams v. City of Minneola*, 575 So.2d 683, 687 (Fla. 5th DCA 1991). If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released by the

- Building plans, blueprints, schematic drawings, and diagrams, including draft, preliminary, and final formats, which depict the structural elements of 911 or E911 communication system infrastructure, including towers, antennae, equipment or facilities used to provide 911 or E911 communication services, or other 911 or E911 communication structures or facilities owned and operated by an agency; and
- Geographical maps indicating the actual or proposed locations of 911 or E911 communication system infrastructure, including towers, antennae, equipment or facilities used to provide 911 or E911 services, or other 911 or E911 communication structures or facilities owned and operated by an agency.

The bill provides that this information may be disclosed in three circumstances, provided that any entity who receives the information must maintain its exempt status. First, it may be disclosed to another governmental entity if necessary for the receiving entity to perform its duties and responsibilities. Second, it may be disclosed to a licensed architect, contractor, or engineer who is performing work on or related to the 911 or E911 communication system infrastructure. Third, it may be disclosed upon a showing of good cause before a court of competent jurisdiction.

The bill requires that all portions of a public meeting exempted by the bill must be recorded and transcribed. The bill provides that such recordings and transcripts are confidential and exempt from disclosure as public records except to the extent that any portion of the recording or transcript is determined by a court of competent jurisdiction, after an in camera review, to reveal nonexempt data.

The bill provides a statement of public necessity as required by the Florida Constitution. It includes the following legislative findings:

- The records for which the bill creates a public record exemption and public meeting exemption identify information concerning the design, scope, and location of 911 and E911 communication system infrastructure, both within and external to buildings and other structures.
- These records could be used by criminals or terrorists to examine 911 and E911 communication system infrastructure for vulnerabilities and to plan and execute criminal actions including cyber-crime, arson, and terrorism.
- This infrastructure must be protected to avoid disruption during an active shooter or other terror event, as disruption could result in greater loss of life and property damage.
- It is a public necessity to exempt these records from disclosure to reduce exposure to these security threats and to protect the public.

The public record and public meeting exemptions are subject to the Open Government Sunset Review Act and will be repealed on October 2, 2025, unless reviewed and saved from repeal through reenactment by the Legislature.

B. SECTION DIRECTORY:

Section 1. Amends s. 119.071, F.S., relating to general exemptions from inspection or copying of public records.

Section 2. Amends s. 286.0113, F.S., relating to general exemptions from public meetings.

Section 3. Provides a public necessity statement as required by the Florida Constitution.

Section 4. Provides for the bill to take effect upon becoming a law.

custodian of the record to anyone other than the persons or entities specifically designated in statute. *See* Op. Att'y Gen. Fla. 85-62 (1985).

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:

   See Fiscal Comments, below.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The bill could have a minimal fiscal impact on government entities that handle records that qualify for the exemptions created by the bill. Staff responsible for complying with public meeting and public record requirements may require training related to implementation of the exemptions. The costs, however, would be absorbed, as they are part of the day-to-day responsibilities of these entities.

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 take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

   Vote Requirement
   Article I, section 24(c) of the Florida Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created public meeting or public record exemption. The bill creates a new public meeting and public record exemption; thus, it requires a two-thirds vote for final passage.

   Public Necessity Statement
   Article I, section 24(c) of the Florida Constitution requires a public necessity statement for a newly created or expanded public meeting or public record exemption. The bill creates a new public meeting and public record exemption and includes a statement supporting the public necessity for these exemptions.

Breadth of Exemption

Article I, section 24(c) of the Florida Constitution requires a newly created public meeting or public record exemption to be no broader than necessary to accomplish the stated purpose of the law. The bill creates a public record exemption for specified documents that depict structural elements of 911 or E911 communication system infrastructure and the locations of such infrastructure used to provide 911 or E911 services. The bill creates a public meeting exemption for only the portion of a public meeting that would reveal such documents. The bill identifies specific entities to whom the exempt information may be disclosed as necessary. The exemption does not appear to be in conflict with the constitutional requirement that it be no broader than necessary to accomplish its purpose.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS / COMMITTEE SUBSTITUTE CHANGES

On January 21, 2020, the Energy & Utilities Subcommittee adopted one amendment to the bill and reported the bill favorably as a committee substitute. The amendment:

- Requires recording and transcription of the portions of a public meeting exempted by the bill, and provides that these recordings and transcripts are confidential and exempt from the public records law except to the extent that any portion of the recording or transcript is determined by a court of competent jurisdiction to reveal nonexempt data.
- Corrects the date upon which the exemptions created by the bill will stand repealed unless reviewed and saved from repeal through reenactment by the Legislature.

This analysis addresses the committee substitute as approved by the Energy & Utilities Subcommittee.

A bill to be entitled

An act relating to public records and meetings; amending s. 119.071, F.S.; providing an exemption from public records requirements for certain documents which depict the structural elements of certain 911 or E911 communication system infrastructure, structures, or facilities; providing an exemption from public records requirements for geographical maps indicating the actual or proposed locations of certain 911 or E911 communication system infrastructure, structures, or facilities; providing for retroactive application; authorizing disclosure under certain circumstances; providing for future legislative review and repeal of the exemptions; amending s. 286.0113, F.S.; providing an exemption from public meetings requirements for portions of meetings that would reveal certain documents depicting the structural elements of 911 or E911 communication system infrastructure, structures, or facilities, or geographic maps indicating the locations or proposed locations of 911 or E911 communication system infrastructure, structures, or facilities; requiring the recording and transcription of exempt portions of such meetings; providing an exemption from public records requirements for such recordings and transcripts; providing an exception;

providing for future legislative review and repeal of the exemption; providing a statement of public necessity; providing an effective date.

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

Section 1. Paragraph (e) is added to subsection (3) of section 119.071, Florida Statutes, to read:

119.071 General exemptions from inspection or copying of public records.—

(3) SECURITY AND FIRESAFETY.—

(e)1.a. Building plans, blueprints, schematic drawings, and diagrams, including draft, preliminary, and final formats, which depict the structural elements of 911 or E911 communication system infrastructure, including towers, antennae, equipment or facilities used to provide 911 or E911 communication services, or other 911 or E911 communication structures or facilities owned and operated by an agency are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

b. Geographical maps indicating the actual or proposed locations of 911 or E911 communication system infrastructure, including towers, antennae, equipment or facilities used to provide 911 or E911 services, or other 911 or E911 communication structures or facilities owned and operated by an agency are

exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

2. This exemption applies to building plans, blueprints, schematic drawings, and diagrams, including draft, preliminary, and final formats, which depict the structural elements of 911 or E911 communication system infrastructure or other 911 and E911 communication structures or facilities owned and operated by an agency, and geographical maps indicating actual or proposed locations of 911 or E911 communication system infrastructure or other 911 or E911 communication structures or facilities owned and operated by an agency, before, on, or after the effective date of this act.

3. Information made exempt by this paragraph may be disclosed:

a. To another governmental entity if disclosure is necessary for the receiving entity to perform its duties and responsibilities;

b. To a licensed architect, engineer, or contractor who is performing work on or related to the 911 or E911 communication system infrastructure, including towers, antennae, equipment or facilities used to provide 911 or E911 communication services, or other 911 or E911 communication structures or facilities owned and operated by an agency; or

c. Upon a showing of good cause before a court of competent jurisdiction.

4. The entities or persons receiving such information must maintain the exempt status of the information.

5. This paragraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2025, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2. Subsection (4) is added to section 286.0113, Florida Statutes, to read:

286.0113 General exemptions from public meetings.—

(4)(a) Any portion of a meeting that would reveal building plans, blueprints, schematic drawings, or diagrams, including draft, preliminary, and final formats, which depict the structural elements of 911 or E911 communication system infrastructure, including towers, antennae, equipment or facilities used to provide 911 or E911 communication services, or other 911 and E911 communication structures or facilities made exempt by s. 119.071(3)(e)1.a. is exempt from s. 286.011 and s. 24, Art. I of the State Constitution.

(b) Any portion of a meeting that would reveal geographical maps indicating the actual or proposed locations of 911 or E911 communication system infrastructure, including towers, antennae, equipment or facilities used to provide 911 or E911 communication services, or other 911 or E911 communication structures or facilities made exempt by s. 119.071(3)(e)1.b. is exempt from s. 286.011 and s. 24, Art. I of the State

Constitution.

(c) No portion of an exempt meeting under paragraphs (a) or (b) may be off the record. All exempt portions of such meeting shall be recorded and transcribed. Such recordings and transcripts are confidential and exempt from disclosure under s. 119.07(1) and s. 24(a), Art. I of the State Constitution unless a court of competent jurisdiction, after an in-camera review, determines that the meeting was not restricted to the discussion of the information made exempt by s. 119.071(3)(e)1.a. or b. In the event of such a judicial determination, only that portion of the recording and transcript which reveals nonexempt information may be disclosed to a third party.

(d) This subsection is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2025, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 3. The Legislature finds that it is a public necessity that building plans, blueprints, schematic drawings, and diagrams, including draft, preliminary, and final formats, which depict the structural elements of 911 or E911 communication system infrastructure, including towers, antennae, equipment or facilities used to provide 911 or E911 communication services, and other 911 or E911 communication structures or facilities owned and operated by an agency, and geographic maps indicating the actual or proposed locations of

such communication system infrastructure, structures, or facilities should be made exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution to ensure the security of emergency communication infrastructure, structures, and facilities. In addition, the Legislature finds that it is a public necessity that any portion of a meeting revealing such documents and maps that are held by an agency should be made exempt from s. 286.011, Florida Statutes, and s. 24(b), Art. I of the State Constitution. Building plans, blueprints, schematic drawings, and diagrams, including draft, preliminary, and final formats, received and held by counties, municipalities, and other governmental agencies that depict the structural elements of 911 or E911 communication system infrastructure, structures, and facilities are currently subject to release as public records upon request. Similarly, geographical maps showing the present or proposed locations of such 911 or E911 communication system infrastructure, structures, and facilities that are in the possession of counties, municipalities, and other governmental agencies are also subject to release as public records upon request. Counties, municipalities and other governmental agencies may review the building plans or geographical maps to ensure compliance with land development regulations, building codes, agency rules, and standards to protect the public health and safety. These building plans include diagrams and schematic

drawings of emergency communication systems, electrical systems, and other physical plant and security details which depict the structural elements of such emergency communications facilities and structures. 911 and E911 communication facilities, including towers and antennae, are a vital link in the chain of survival. Such critical infrastructure must be protected as any disruption during an active shooter or other terror event is very likely to result in greater loss of life and property damage. To function properly, towers and antennae need to be visible, increasing the security risk of such facilities. Because architectural and engineering plans reviewed and held by counties, municipalities and other government agencies include information about tower, equipment, ancillary facilities, critical systems, and restricted areas, these plans could be used by criminals or terrorists to examine the physical plant for vulnerabilities. Information contained in these documents could aid in the planning of, training for, and execution of criminal actions including cyber-crime, arson, and terrorism. Consequently, the Legislature finds that it is a public necessity to exempt such information from public records requirements to reduce exposure to security threats and protect the public.

Section 4. This act shall take effect upon becoming a law.

COMMERCE COMMITTEE

CS/HB 755 by Rep. DuBose
PUB. REC. AND MEETINGS / 911 AND E911 COMMUNICATION SYSTEMS

AMENDMENT SUMMARY
February 12, 2020

Amendment 1 by Rep. DuBose (Strike-all)

- Clarifies that the public record and public meeting exemptions created by the bill apply to public safety radio communication system infrastructure.
- Provides a definition for "public safety radio" for purposes of the exemptions created by the bill.

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 DuBose offered the following:

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

Section 1. Paragraph (e) is added to subsection (3) of section 119.071, Florida Statutes, to read:

119.071 General exemptions from inspection or copying of public records.—

(3) SECURITY AND FIRESAFETY.—

(e)1.a. Building plans, blueprints, schematic drawings, and diagrams, including draft, preliminary, and final formats, which depict the structural elements of 911, E911, or public safety radio communication system infrastructure, including towers, antennae, equipment or facilities used to provide 911, E911, or public safety radio communication services, or other

911, E911, or public safety radio communication structures or facilities owned and operated by an agency are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

b. Geographical maps indicating the actual or proposed locations of 911, E911, or public safety radio communication system infrastructure, including towers, antennae, equipment or facilities used to provide 911, E911, or public safety radio services, or other 911, E911, or public safety radio communication structures or facilities owned and operated by an agency are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

2. This exemption applies to building plans, blueprints, schematic drawings, and diagrams, including draft, preliminary, and final formats, which depict the structural elements of 911, E911, or public safety radio communication system infrastructure or other 911, E911, or public safety radio communication structures or facilities owned and operated by an agency, and geographical maps indicating actual or proposed locations of 911, E911, or public safety radio communication system infrastructure or other 911, E911, or public safety radio communication structures or facilities owned and operated by an agency, before, on, or after the effective date of this act.

3. Information made exempt by this paragraph may be disclosed:

a. To another governmental entity if disclosure is necessary for the receiving entity to perform its duties and responsibilities;

b. To a licensed architect, engineer, or contractor who is performing work on or related to the 911, E911, or public safety radio communication system infrastructure, including towers, antennae, equipment or facilities used to provide 911, E911, or public safety radio communication services, or other 911, E911, or public safety radio communication structures or facilities owned and operated by an agency; or

c. Upon a showing of good cause before a court of competent jurisdiction.

4. The entities or persons receiving such information must maintain the exempt status of the information.

5. For purposes of this paragraph, "public safety radio" refers to the means of communication between and among 911 public safety answering points, dispatchers, and first responder agencies using those portions of the radio frequency spectrum designated by the Federal Communications Commission under 47 C.F.R. 90 for public safety purposes.

6. This paragraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2025, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2. Subsection (4) is added to section 286.0113, Florida Statutes, to read:

286.0113 General exemptions from public meetings.—

(4)(a) Any portion of a meeting that would reveal building plans, blueprints, schematic drawings, or diagrams, including draft, preliminary, and final formats, which depict the structural elements of 911, E911, or public safety radio communication system infrastructure, including towers, antennae, equipment or facilities used to provide 911, E911, or public safety radio communication services, or other 911, E911, or public safety radio communication structures or facilities made exempt by s. 119.071(3)(e)1.a. is exempt from s. 286.011 and s. 24, Art. I of the State Constitution.

(b) Any portion of a meeting that would reveal geographical maps indicating the actual or proposed locations of 911, E911, or public safety radio communication system infrastructure, including towers, antennae, equipment or facilities used to provide 911, E911, or public safety radio communication services, or other 911, E911, or public safety radio communication structures or facilities made exempt by s. 119.071(3)(e)1.b. is exempt from s. 286.011 and s. 24, Art. I of the State Constitution.

(c) No portion of an exempt meeting under paragraphs (a) or (b) may be off the record. All exempt portions of such meeting shall be recorded and transcribed. Such recordings and

transcripts are confidential and exempt from disclosure under s. 119.07(1) and s. 24(a), Art. I of the State Constitution unless a court of competent jurisdiction, after an in-camera review, determines that the meeting was not restricted to the discussion of the information made exempt by s. 119.071(3)(e)1.a. or b. In the event of such a judicial determination, only that portion of the recording and transcript which reveals nonexempt information may be disclosed to a third party.

(d) For purposes of this subsection, "public safety radio" refers to the means of communication between and among 911 public safety answering points, dispatchers, and first responder agencies using those portions of the radio frequency spectrum designated by the Federal Communications Commission under 47 C.F.R. 90 for public safety purposes.

(e) This subsection is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2025, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 3. The Legislature finds that it is a public necessity that building plans, blueprints, schematic drawings, and diagrams, including draft, preliminary, and final formats, which depict the structural elements of 911, E911, or public safety radio communication system infrastructure, including towers, antennae, equipment or facilities used to provide 911, E911, or public safety radio communication services, and other

911, E911, or public safety radio communication structures or facilities owned and operated by an agency, and geographical maps indicating the actual or proposed locations of such communication system infrastructure, structures, or facilities should be made exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution to ensure the security of emergency communication infrastructure, structures, and facilities. In addition, the Legislature finds that it is a public necessity that any portion of a meeting revealing such documents and maps that are held by an agency should be made exempt from s. 286.011, Florida Statutes, and s. 24(b), Art. I of the State Constitution. Building plans, blueprints, schematic drawings, and diagrams, including draft, preliminary, and final formats, received and held by counties, municipalities, and other governmental agencies that depict the structural elements of 911, E911, or public safety radio communication system infrastructure, structures, and facilities are currently subject to release as public records upon request. Similarly, geographical maps showing the present or proposed locations of such 911, E911, or public safety radio communication system infrastructure, structures, and facilities that are in the possession of counties, municipalities, and other governmental agencies are also subject to release as public records upon request. Counties, municipalities and other governmental agencies may review the building plans or geographical maps to

ensure compliance with land development regulations, building codes, agency rules, and standards to protect the public health and safety. These building plans include diagrams and schematic drawings of emergency communication systems, electrical systems, and other physical plant and security details which depict the structural elements of such emergency communications facilities and structures. 911, E911, and public safety radio communication facilities, including towers and antennae, are a vital link in the chain of survival. Such critical infrastructure must be protected as any disruption during an active shooter or other terror event is very likely to result in greater loss of life and property damage. To function properly, towers and antennae need to be visible, increasing the security risk of such facilities. Because architectural and engineering plans reviewed and held by counties, municipalities and other government agencies include information about tower, equipment, ancillary facilities, critical systems, and restricted areas, these plans could be used by criminals or terrorists to examine the physical plant for vulnerabilities. Information contained in these documents could aid in the planning of, training for, and execution of criminal actions including cyber-crime, arson, and terrorism. Consequently, the Legislature finds that it is a public necessity to exempt such information from public records requirements to reduce exposure to security threats and protect the public.

Section 4. This act shall take effect upon becoming a law.

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

Remove lines 5-20 and insert:

which depict the structural elements of certain 911, E911, or public safety radio communication system infrastructure, structures, or facilities; providing an exemption from public records requirements for geographical maps indicating the actual or proposed locations of certain 911, E911, or public safety radio communication system infrastructure, structures, or facilities; providing for retroactive application; authorizing disclosure under certain circumstances; providing for future legislative review and repeal of the exemptions; amending s. 286.0113, F.S.; providing an exemption from public meetings requirements for portions of meetings that would reveal certain documents depicting the structural elements of 911, E911, or public safety radio communication system infrastructure, structures, or facilities, or geographical maps indicating the locations or proposed locations of 911, E911, or public safety radio

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 867 Public Accountancy
SPONSOR(S): Business & Professions Subcommittee, Stevenson
TIED BILLS: **IDEN./SIM. BILLS:** SB 1140

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Business & Professions Subcommittee	10 Y, 0 N, As CS	Wright	Anstead
2) Commerce Committee		Wright	Hamon

SUMMARY ANALYSIS

In Florida, public accountancy is regulated by the Board of Accountancy under the Department of Business and Professional Regulation. The practice of public accountancy includes offering to the public the performance of services involving audits, reviews, compilations, tax preparation, management advisory or consulting services, or preparation of financial statements. In order to practice public accountancy, a person must be licensed as a certified public accountant (CPA).

Every biennium, CPAs must complete 80 hours of continuing professional education (CPE), by board rule. At least 5 percent of the total hours required by the board must be in the subject of public accounting ethics.

Applicants for CPA licensure by endorsement must be of good moral character; complete certain CPE requirements; and either not be licensed but have passed an equivalent examination in another state or territory, or hold a license from another state or territory if the criteria issuance is equivalent to that of Florida.

Inactive status for CPA licenses can be initiated voluntarily by the licensee, or for failure to meet the CPE license renewal requirements. The board is authorized to adopt rules establishing the minimum requirements for placing a license on inactive status, renewing an inactive license, and reactivating the inactive license. Currently, a retired status for CPA licensure does not exist.

Current law allows counties and school districts, through a referendum or a county commission vote, to levy a discretionary sales surtax. For all discretionary sales surtax referendum held on or after March 23, 2018, a performance audit of the program associated with the proposed surtax must be conducted by an independent CPA, who is selected and paid by the Office of Program Policy Analysis and Government Accountability.

The bill:

- Clarifies the licensure by endorsement provision for applicants that have passed an examination but do not hold a license in "another" state or territory, to instead not require a license in "any" state or territory;
- Allows nonresidents seeking CPA license renewal to satisfy the CPE requirements (except for the ethics component), with applicable CPE requirements in the state in which his or her office is located, or Florida CPE requirements, if the other state has no CPE license renewal requirements;
- Specifies that a "majority" of the total CPE hours required for ethics training must include a review of the provisions of ch. 455, F.S., and ch. 473, F.S., and the related administrative rules;
- Creates a "retired status" for active or inactive CPA licensees over 55 years old; and
- Removes the requirement that performance audits for local discretionary sales surtaxes may only be completed by a CPA.

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

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Practice of Public Accountancy

Background

The Florida Board of Accounting (board) in the Department of Business and Professional Regulation (DBPR) is the agency responsible for regulating and licensing more than 35,000 active and inactive certified public accountants (CPA) and more than 5,400 accounting firms in Florida. The Division of Certified Public Accounting provides administrative support to the 9-member board, which consists of 7 CPAs and 2 laypersons.[1]

To engage in the practice of public accounting, an individual or firm must be licensed and business entities must meet certain formation requirements.[2]

The "practice of public accountancy" includes offering to the public the performance of services involving audits, reviews, compilations, tax preparation, management advisory or consulting services, or preparation of financial statements.[3]

The initial licensing fee for a CPA license is $50, and the biennial renewal fee is $95.[4]

A person may be charged with a first-degree misdemeanor if they are not a licensed CPA and they perform:[5]

- Services involving the expression of an opinion on financial statements,
- The attestation as an expert in accountancy to the reliability or fairness of presentation of financial information,
- The utilization of any form of opinion or financial statements that provide a level of assurance,
- The utilization of any form of disclaimer of opinion which conveys an assurance of reliability as to matters not specifically disclaimed, or
- The expression of an opinion on the reliability of an assertion by one party for the use by a third party.

License by Endorsement

An applicant is eligible for licensure by endorsement if the applicant:[6]

- is of good moral character;
- has completed 80 hours of continuing professional education (CPE) if it has been at least 2 years since passing the licensing examination;[7] and either:
    - is not licensed, but has otherwise met the licensing requirements and has passed a licensing examination that is substantially equivalent to the Florida examination; or
    - holds a valid license to practice public accounting issued by another state or territory of the United States, if the criteria for issuance of such license are substantially equivalent to a Florida license or is otherwise permitted.

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[1] S. 473.303, F.S.
[2] S. 473.302, F.S.
[3] S. 473.302(8), F.S.
[4] Email from Colton Madill, Deputy Legislative Affairs Director, Florida Department of Business and Professional Regulation, RE: DBPR Fee Schedule (Jan. 3, 2020).
[5] S. 473.322(1)(c), F.S.
[6] S. 468.8414(3), (4), F.S.
[7] R. 61H1-29.003, F.A.C.

Continuing Education

CPAs are required to complete 80 hours[8] of CPE in public accounting subjects every 2 years to renew their license. The board has the authority to prescribe by rule additional CPE hours, not to exceed 25 percent of the total hours required, for failure to complete the hours required for renewal by the end of the reestablishment period.[9]

At least 25 percent of the total hours required by the board must be in accounting-related and auditing-related subjects, as distinguished from other subjects that include federal and local taxation matters and management services.[10]

Five percent of the total hours required by the board must be in ethics applicable to the practice of public accounting. This requirement must be administered by providers approved by the board and include a review of the provisions of ch. 455, F.S., ch. 473, F.S., and the related administrative rules.[11]

Inactive Licenses

CPAs are authorized to request their license be placed on inactive status, or the licensee may be placed on inactive status for failing to meet the CPE requirements for license renewal. The board is authorized to adopt rules establishing the minimum requirements for placing a license on inactive status, renewing an inactive license, and reactivating the inactive license.[12]

The fee for reactivating an inactive CPA license is $250.[13] The maximum CPE requirements for reactivating an inactive or delinquent license are 120 hours, including:

- At least 30 hours in accounting-related and auditing-related subjects;
- Not more than 30 hours in behavioral subjects; and
- A minimum of 8 hours in ethics subjects approved by the board.

Retired Status

The American Institute of CPAs (AICPA) estimates that approximately 75 percent of its members will be eligible to retire by the year 2020. According to AICPA, "many of these retirees are well respected business leaders in their communities who would like to find ways to continue to be of service, without necessarily remaining an active CPA in practice."[14]

The AICPA provides a uniform retired CPA status in their model rules that states may adopt allowing retired CPAs to offer a limited array of volunteer, uncompensated services to the public. Inactive CPAs, of at least 55 years of age are allowed to refer to themselves as "Retired-CPAs" and register as such with their state board of accountancy. They are able to participate in activities such as volunteer tax preparation services, government-sponsored business mentoring programs, and on boards of nonprofit organizations.[15]

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[8] S. 473.312(1)(a), F.S. allows the board to require between 48 and 80 hours of CPE every 2 years. The board requires 80 hours in r. 61H1-33.003, F.A.C.
[9] S. 473.312(1)(a), F.S.
[10] *Id.*
[11] S. 473.312(1)(b),(c), F.S.
[12] S. 473.313, F.S.
[13] R. 61H1-31.006, F.A.C.
[14] American Institute of Certified Public Accountants, https://www.aicpa.org/advocacy/state/retiredcpastatusexposuredraft.html (last visited Jan. 10, 2020).
[15] *Id.*

Effect of the Bill

The bill revises the CPA license by endorsement provision for applicants that have passed an examination but do not hold a license in "another" state or territory. The bill simply changes "another" state or territory to "any" state or territory.

The bill allows nonresident CPA licensees who are seeking renewal of a license in this state to satisfy the CPE requirements (except for the ethics component), if the nonresident licensee has complied with applicable CPE requirements in the state in which his or her office is located. If the state in which the nonresident licensee's office is located has no CPE license renewal requirements, the nonresident licensee must comply with Florida CPE requirements.

The bill specifies that a "majority" of the total CPE hours required for ethics training must include a review of the provisions of ch. 455, F.S., ch. 473, F.S., and the related administrative rules. Currently, no amount is specified.

The bill creates a "retired status" for CPA licensees. The bill defines a "retired licensee" as a licensee whose license has been placed in retired status by the department.

Retired status license applicants are required to:

- Be at least 55 years old;
- Hold a current active or inactive CPA license;
- Apply for the status to DBPR; and
- Be in good standing and not the subject of any sanction or disciplinary action.

Applications must be prescribed by the board and the applicant must attest that they have no association with accounting or any of the services described in s. 473.302(8)(a), (c), or (d), F.S.

Licensees granted retired status who reenter the workforce in a position that has an association with accounting or any of the services described in s. 473.302(8)(a), (c), or (d), F.S., automatically lose the retired status except for the uncompensated volunteer services that retirees are allowed to participate in.

Licensees granted retired status are allowed to:

- Serve without compensation on a board of directors or board of trustees;
- Provide volunteer tax preparation services;
- Participate in a government-sponsored business mentoring program such as the Internal Revenue Service's Volunteer Income Tax Assistance program or the Small Business Administration's SCORE program; and
- Participate in an advisory role for a similar charitable, civic, or other nonprofit organization.

The board must require retired licensees to affirm in writing their understanding of the limited types of activities allowed while in retired status and their professional duty to ensure competency to participate in the activities.

Retired licensees are authorized to:

- Accept routine reimbursement for actual costs of travel and meals associated with volunteer services or de minimis per diem amounts paid to the licensee to cover such expenses as allowed by law;
- Use the title of "retired CPA" on business cards, letterhead or other printed or electronic documents as long as it is used in a manner that is not confusing to the public; and
- Reactivate the license in a conditional manner determined by the board. The conditions of reactivation must require the payment of fees and the completion of any CPE requirements.

Retired licensees are not required to:

- Have a certificate issued with the word "retired" on the certificate; or
- Maintain the CPE requirements under s. 473.312, F.S.

Retired licensees are prohibited from offering or rendering professional services that require:

- The licensee's signature; and
- Use of the CPA title, regardless of whether the word "retired" is attached to such title.

Performance Audits for Discretionary Sales Surtaxes

The Florida Constitution preempts all forms of taxation, except ad valorem taxes on real and tangible personal property, to the state unless otherwise provided by general law.[16] Current law provides counties and school districts with limited authority to levy a discretionary sales surtax for specific purposes on transactions subject to state sales tax.[17] These purposes include:

- Operating a transportation system in a charter county;[18]
- Financing local government infrastructure projects;[19]
- Providing additional revenue for counties having less than 50,000 residents as of April 1, 1992;[20]
- Providing medical care for indigent persons;[21]
- Funding trauma centers;[22]
- Operating, maintaining, and administering a county public general hospital;[23]
- Constructing and renovating schools;[24]
- Providing emergency fire rescue services and facilities; and[25]
- Funding pension liability shortfalls.[26]

Most local discretionary sales surtaxes may only be approved by referendum, while some may be approved by an extraordinary vote of the county commission.[27]

For all discretionary sales surtax referendum held on or after March 23, 2018, a performance audit of the government program associated with the proposed surtax must be conducted by an independent, licensed CPA.[28] The Office of Program Policy Analysis and Government Accountability (OPPAGA) is responsible for both selecting the CPA and paying for the CPA's services. OPPAGA must procure the CPA to conduct the performance audit within 60 days of receiving the final resolution or ordinance.[29] The results of the performance audit, including any findings, recommendations, or other accompanying documents, must be made available on the website of the county or school district at least 60 days prior to the referendum and must be maintained on the website for at least 2 years.[30]

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[16] Art. VII, s. 1(a), Fla. Const.
[17] Ss. 212.054 and 212.055, F.S.
[18] S. 212.055(1), F.S.
[19] S. 212.055(2), F.S.
[20] S. 212.055(3), F.S.; Note that the small county surtax may be levied by extraordinary vote of the county governing board if the proceeds are to be expended only for operating purposes.
[21] S. 212.055(4)(a), F.S. (for counties with more than 800,000 residents); s. 212.055(7), F.S. (for counties with less than 800,000 residents).
[22] S. 212.055(4)(b), F.S.
[23] S. 212.055(5), F.S.
[24] S. 212.055(6), F.S.
[25] S. 212.055(8), F.S.
[26] S. 212.055(9), F.S.
[27] *See generally* s. 212.055, F.S.; *but see* s. 212.055(3), F.S. (small county surtax may be approved by extraordinary vote of the county commission as long as surtax revenues are not used for servicing bond indebtedness), s. 212.055(4), F.S. (indigent care and trauma center surtax may be approved by extraordinary vote of the county commission), and s. 212.055(5), F.S. (county public hospital surtax may be approved by extraordinary vote of the county commission).
[28] S. 212.055(10)(a), F.S.
[29] S. 212.055(11)(b)3., F.S.
[30] S. 212.055(10)(b), F.S.

A "performance audit" related to a local surtax means an examination of the program conducted according to applicable government auditing standards or auditing and evaluation standards of other appropriate authoritative bodies. At a minimum, a performance audit must include an examination of issues related to the following:[31]

- The economy, efficiency, or effectiveness of the program.
- The structure or design of the program to accomplish its goals and objectives.
- Alternative methods of providing program services or products.
- Goals, objectives, and performance measures used by the program to monitor and report program accomplishments
- The accuracy or adequacy of public documents, reports, and requests prepared by the county or school district which relate to the program.
- Compliance of the program with appropriate policies, rules, and laws.

Legislative Performance Audits

Performance audits are performed by and for various state legislative bodies, including the Legislative Auditing Committee, OPPAGA, and the Auditor General.[32]

For these purposes, "performance audit" means an examination of a program, activity, or function of a governmental entity, conducted in accordance with applicable government auditing standards or auditing and evaluation standards of other appropriate authoritative bodies. The term includes an examination of issues related to:[33]

- Economy, efficiency, or effectiveness of the program.
- Structure or design of the program to accomplish its goals and objectives.
- Adequacy of the program to meet the needs identified by the Legislature or governing body.
- Alternative methods of providing program services or products.
- Goals, objectives, and performance measures used by the agency to monitor and report program accomplishments.
- The accuracy or adequacy of public documents, reports, or requests prepared under the program by state agencies.
- Compliance with appropriate policies, rules, or laws.
- Any other issues related to governmental entities as directed by the Legislative Auditing Committee.

Effect of the Bill

The bill removes the requirement that performance audits for local discretionary sales surtaxes may only be completed by an independent CPA.

The bill aligns the meaning of "performance audit" used in s. 212.055(11), F.S., related to performance audits for local discretionary surtaxes, to be the same as the meaning in s. 11.45(1)(j), F.S., related to performance audits performed by legislative bodies.

B. SECTION DIRECTORY:

Section 1 Amends s. 212.055, F.S., removing the requirement that performance audits for discretionary sales surtaxes be performed by a CPA.

Section 2 Amends s. 473.308, F.S., revising a requirement for obtaining a license by endorsement.

[31] S. 212.055(11)(c), F.S.
[32] Ss. 11.40-11.51, F.S.
[33] S. 11.45(1)(j), F.S.

Section 3 Amends s. 473.311, F.S., providing license renewal requirements for nonresident licensees.

Section 4 Amends s. 473.312, F.S., providing requirements for continuing education content.

Section 5 Amends s. 473.313, F.S., providing requirements for retired status licenses.

Section 6 Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill will allow retired CPAs to serve their community in certain areas of public accountancy without maintaining a license with DBPR. Some out-of-state CPAs may need to complete less CPE in order to maintain a Florida CPA license.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

The board will need to update rules regarding CPE and generate rules for retired status licenses. There is sufficient rulemaking authority to do so.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On February 4, 2020, the Business & Professions Subcommittee considered a proposed committee substitute, adopted an amendment, and reported the bill favorably as a committee substitute. The following changes were made to the bill:

- the requirement that performance audits for local discretionary sales surtaxes may only be performed by a CPA was removed, and
- the meaning of "performance audit" used for local discretionary surtaxes was aligned with other sections of Florida statutes.

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

A bill to be entitled

An act relating to public accountancy; amending s. 212.055, F.S.; authorizing a vendor to complete a performance audit of the program associated with a proposed surtax; revising the definition of the term "performance audit"; amending s. 473.308, F.S.; requiring certain applicants to not be licensed in any state or territory in order to be licensed by endorsement; amending s. 473.311, F.S.; providing license renewal requirements for nonresident licensees; amending s. 473.312, F.S.; requiring that a majority of the hours required for continuing education include specific content; amending s. 473.313, F.S.; authorizing certain Florida certified public accountants to apply to the Department of Business and Professional Regulation to have their license placed in a retired status; providing requirements for such conversion; providing requirements and prohibitions for retired licensees; authorizing retired licensees to use a specified title under certain circumstances; providing that retired licensees are not required to maintain continuing education requirements; authorizing retired licensees to reactivate their licenses if certain conditions are met; defining the term "retired licensee"; providing

an effective date.

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

Section 1. Paragraph (c) of subsection (1) and paragraphs (a), (b), and (c) of subsection (11) of section 212.055, Florida Statutes, are amended to read:

212.055 Discretionary sales surtaxes; legislative intent; authorization and use of proceeds.—It is the legislative intent that any authorization for imposition of a discretionary sales surtax shall be published in the Florida Statutes as a subsection of this section, irrespective of the duration of the levy. Each enactment shall specify the types of counties authorized to levy; the rate or rates which may be imposed; the maximum length of time the surtax may be imposed, if any; the procedure which must be followed to secure voter approval, if required; the purpose for which the proceeds may be expended; and such other requirements as the Legislature may provide. Taxable transactions and administrative procedures shall be as provided in s. 212.054.

(1) CHARTER COUNTY AND REGIONAL TRANSPORTATION SYSTEM SURTAX.—

(c)1. The proposal to adopt a discretionary sales surtax as provided in this subsection and to create a trust fund within the county accounts shall be placed on the ballot in accordance

with law and must be approved in a referendum held at a general election in accordance with subsection (10).

2. If the proposal to adopt a surtax is by initiative, the petition sponsor must, at least 180 days before the proposed referendum, comply with all of the following:

a. Provide a copy of the final resolution or ordinance to the Office of Program Policy Analysis and Government Accountability. The Office of Program Policy Analysis and Government Accountability shall procure a vendor to complete a performance audit as defined in paragraph (11)(c) ~~certified public accountant in accordance with subsection (11) for the performance audit~~.

b. File the initiative petition and its required valid signatures with the supervisor of elections. The supervisor of elections shall verify signatures and retain signature forms in the same manner as required for initiatives under s. 100.371(11).

3. The failure of an initiative sponsor to comply with the requirements of subparagraph 2. renders any referendum held void.

(11) PERFORMANCE AUDIT.—

(a) To adopt a discretionary sales surtax under this section, ~~an independent certified public accountant licensed pursuant to chapter 473 shall conduct~~ a performance audit of the program associated with the proposed surtax must be conducted.

(b)1. At least 180 days before the referendum is held, the county or school district shall provide a copy of the final resolution or ordinance to the Office of Program Policy Analysis and Government Accountability.

2. Within 60 days after receiving the final resolution or ordinance, the Office of Program Policy Analysis and Government Accountability shall procure a vendor to complete a performance audit of the program associated with the proposed surtax ~~the certified public accountant~~ and may use carryforward funds to pay for the audit ~~the services of the certified public accountant~~.

3. At least 60 days before the referendum is held, the performance audit must be completed and the audit report, including any findings, recommendations, or other accompanying documents, must be made available on the official website of the county or school district.

4. The county or school district shall keep the information on its website for 2 years from the date it was posted.

5. The failure to comply with the requirements under subparagraph 1. or subparagraph 3. renders any referendum held to adopt a discretionary sales surtax void.

(c) For purposes of this subsection, the term "performance audit" has the same meaning as provided in s. 11.45(1)(j). ~~means an examination of the program conducted according to applicable~~

~~government auditing standards or auditing and evaluation standards of other appropriate authoritative bodies. At a minimum, a performance audit must include an examination of issues related to the following:~~

~~1. The economy, efficiency, or effectiveness of the program.~~

~~2. The structure or design of the program to accomplish its goals and objectives.~~

~~3. Alternative methods of providing program services or products.~~

~~4. Goals, objectives, and performance measures used by the program to monitor and report program accomplishments.~~

~~5. The accuracy or adequacy of public documents, reports, and requests prepared by the county or school district which relate to the program.~~

~~6. Compliance of the program with appropriate policies, rules, and laws.~~

Section 2. Subsection (7) of section 473.308, Florida Statutes, is amended to read:

473.308 Licensure.—

(7) The board shall certify as qualified for a license by endorsement an applicant who:

(a)1. Is not licensed and has not been licensed in <u>any</u> ~~another~~ state or territory and who has met the requirements of this section for education, work experience, and good moral

character and has passed a national, regional, state, or territorial licensing examination that is substantially equivalent to the examination required by s. 473.306; and

2. Has completed such continuing education courses as the board deems appropriate, within the limits for each applicable 2-year period as set forth in s. 473.312, but at least such courses as are equivalent to the continuing education requirements for a Florida certified public accountant licensed in this state during the 2 years immediately preceding her or his application for licensure by endorsement; or

(b)1.a. Holds a valid license to practice public accounting issued by another state or territory of the United States, if the criteria for issuance of such license were substantially equivalent to the licensure criteria that existed in this state at the time the license was issued;

b. Holds a valid license to practice public accounting issued by another state or territory of the United States but the criteria for issuance of such license did not meet the requirements of sub-subparagraph a.; has met the requirements of this section for education, work experience, and good moral character; and has passed a national, regional, state, or territorial licensing examination that is substantially equivalent to the examination required by s. 473.306; or

c. Holds a valid license to practice public accounting issued by another state or territory of the United States for at

least 10 years before the date of application; has passed a national, regional, state, or territorial licensing examination that is substantially equivalent to the examination required by s. 473.306; and has met the requirements of this section for good moral character; and

2. Has completed continuing education courses that are equivalent to the continuing education requirements for a Florida certified public accountant licensed in this state during the 2 years immediately preceding her or his application for licensure by endorsement.

Section 3. Subsection (1) of section 473.311, Florida Statutes, is amended to read:

473.311 Renewal of license.—

(1)(a) The department shall renew a license issued under s. 473.308 upon receipt of the renewal application and fee and upon certification by the board that the Florida certified public accountant has satisfactorily completed the continuing education requirements of s. 473.312.

(b) A nonresident licensee seeking renewal of a license in this state shall be determined to have met the continuing education requirements in s. 473.312, except for the requirements in s. 473.312(1)(c), if the licensee has complied with the continuing education requirements applicable in the state in which his or her office is located. If the state in which the nonresident licensee's office is located has no

continuing education requirements for license renewals, the nonresident licensee must comply with the continuing education requirements in s. 473.312.

Section 4. Paragraph (c) of subsection (1) of section 473.312, Florida Statutes, is amended to read:

473.312 Continuing education.—

(1)

(c) Not less than 5 percent of the total hours required by the board shall be in ethics applicable to the practice of public accounting. This requirement shall be administered by providers approved by the board and a majority of the hours shall include a review of the provisions of chapter 455 and this chapter and the related administrative rules.

Section 5. Section 473.313, Florida Statutes, is amended to read:

473.313 Inactive status and retired status.—

(1) A Florida certified public accountant may request that her or his license be placed in an inactive status by making application to the department. The board may prescribe by rule fees for placing a license on inactive status, renewal of inactive status, and reactivation of an inactive license.

(a) ~~(2)~~ A license that has become inactive under this subsection ~~(1)~~ or for failure to complete the requirements in s. 473.312 may be reactivated under s. 473.311 upon application to the department. The board may prescribe by rule continuing

education requirements as a condition of reactivating a license. The maximum continuing education requirements for reactivating a license are 120 hours, including at least 30 hours in accounting-related and auditing-related subjects, not more than 30 hours in behavioral subjects, and a minimum of 8 hours in ethics subjects approved by the board, for the reactivation of a license that is inactive or delinquent.

(b) ~~(3)~~ A license that is delinquent for failure to report completion of the requirements in s. 473.312 may be reactivated under s. 473.311 upon application to the department. Reactivation requires the payment of an application fee as determined by the board and certification by the Florida certified public accountant that the applicant satisfactorily completed the continuing education requirements set forth under s. 473.311. If the license is delinquent on January 1 because of failure to report completed continuing education requirements, the applicant must submit a complete application to the board by March 15 immediately after the delinquent period.

(c) ~~(4)~~ Any Florida certified public accountant holding an inactive license may be permitted to reactivate such license in a conditional manner. The conditions of reactivation shall require the payment of fees and the completion of required continuing education.

(d) ~~(5)~~ Notwithstanding the provisions of s. 455.271, the board may, at its discretion, reinstate the license of an

individual whose license has become null and void if the individual has made a good faith effort to comply with this section but has failed to comply because of illness or unusual hardship. The individual shall apply to the board for reinstatement in a manner prescribed by rules of the board and shall pay an application fee in an amount determined by rule of the board. The board shall require that the individual meet all continuing education requirements as provided in subsection (2), pay appropriate licensing fees, and otherwise be eligible for renewal of licensure under this chapter.

(2) A Florida certified public accountant who is at least 55 years of age and currently holds an active or inactive license under this chapter may apply to the department for her or his license to be placed in a retired status. The application must be prescribed by the board and must state that the applicant has no association with accounting or any of the services described in s. 473.302(8)(a), (c), or (d). If a licensee who has been granted retired status reenters the workforce in a position that has an association with accounting or any of the services described in s. 473.302(8)(a), (c), or (d), the licensee automatically loses her or his retired status except as provided in paragraph (a).

(a) A retired licensee who serves without compensation on a board of directors or board of trustees, provides volunteer tax preparation services, participates in a government-sponsored

business mentoring program such as the Internal Revenue Service's Volunteer Income Tax Assistance program or the Small Business Administration's SCORE program, or participates in an advisory role for a similar charitable, civic, or other nonprofit organization shall continue to be eligible for retired status.

(b) The board shall require a retired licensee to affirm in writing her or his understanding of the limited types of activities in which she or he may engage while in retired status and that she or he has a professional duty to ensure that she or he holds the professional competencies necessary to participate in such activities.

(c) Licensees may convert their license to retired status only if they hold a license in good standing and are not the subject of any sanction or disciplinary action.

(d) A retired licensee may accept routine reimbursement for actual costs of travel and meals associated with volunteer services or de minimis per diem amounts paid to the licensee to cover such expenses as allowed by law.

(e) A retired licensee may use the title of "retired CPA" on any business card or letterhead or any other printed or electronic document. However, such title must not be applied in such a manner that could confuse the public as to the current status of the licensee. The licensee is not required to have a certificate issued with the word "retired" on the certificate.

(f) A retired licensee is not required to maintain the continuing education requirements under s. 473.312.

(g) A retired licensee may not offer or render professional services that require her or his signature and use of the CPA title, regardless of whether the word "retired" is attached to such title.

(h) A retired licensee may reactivate her or his license in a conditional manner determined by the board. The conditions of reactivation must require the payment of fees and the completion of any required continuing education.

For the purposes of this subsection, the term "retired licensee" means a licensee whose license has been placed in retired status by the department.

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

COMMERCE COMMITTEE

HB 867 by Rep. Stevenson
Public Accountancy

AMENDMENT SUMMARY
February 13, 2020

Amendment 1 by Rep. Stevenson (Line 282):

The amendment provides that retired status CPA licensees may reactivate their licenses using current procedures for other inactive licensees.

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 Stevenson offered the following:

Amendment

Remove lines 282-285 and insert:

(h) A retired licensee may reactivate his or her license in the same manner described in paragraph (1)(c).

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 969 Broadband Internet Service
SPONSOR(S): Transportation & Tourism Appropriations Subcommittee; Drake
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) Transportation & Tourism Appropriations Subcommittee	12 Y, 0 N, As CS	Cobb	Davis
3) Commerce Committee		Keating CK	Hamon K.W.H.

SUMMARY ANALYSIS

In 2009, the Legislature authorized the Department of Management Services (DMS) to perform certain functions to promote the increased use of broadband Internet service in the state. Under this authority, DMS was awarded federal grant funding through a 2009 U.S. Department of Commerce State Broadband Initiative program. Those funds have since been depleted, and the state broadband program is dormant.

The bill designates the Department of Economic Opportunity (DEO) as the lead state agency to facilitate the expansion of broadband Internet service in the state. It creates the Florida Office of Broadband (Office) within DEO's Division of Community Development for purposes of developing, marketing, and promoting broadband Internet service in the state.

The bill transfers to the new office most of the powers and duties previously given to DMS. Specifically, the Office must:

- Create a strategic plan for increasing the use of broadband Internet service in the state;
- Build local technology planning teams representing, among others, libraries, schools, colleges and universities, local health care providers, private businesses, community organizations, economic development organizations, local governments, tourism, parks and recreation, and agriculture; and
- Encourage the use of broadband Internet service, especially in rural, unserved, and underserved areas of the state through grant programs.
- Monitor, participate in, and provide input in proceedings of the Federal Communications Commission and other federal agencies related to the geographic availability and deployment of broadband Internet service in Florida.

For these purposes, the bill authorizes DEO to apply for and accept federal grant funds, enter into necessary or useful contracts, and establish any committee or workgroup to administer the program.

The bill also repeals ch. 2012-131, L.O.F., which became obsolete when the federal grant funds previously awarded to DMS were depleted.

The bill provides that up to $5 million of the funds transferred to Florida's Turnpike Enterprise for the Multi-use Corridors of Regional Economic Significance (M-CORES) program may be used for projects that assist in the development of broadband infrastructure within or adjacent to a multiuse corridor.

DEO estimates that in order to implement the bill initially the workload will be absorbed by existing staff. There is no estimate as to any further recurring costs necessary to operate the program. The bill provides for an additional use of M-CORES funds, but does not affect revenues or expenditures. See fiscal comments.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Fixed and mobile broadband services provide access to numerous employment, education, entertainment, and health care opportunities.[1] Communities that lack broadband access can have difficulty attracting new capital investment. While Florida's urban areas are served at a fixed broadband coverage rate of 98 percent, its rural areas are served at a rate of 75.2 percent.[2] This disparity is caused primarily by high per-unit construction costs required to build broadband infrastructure across larger swaths of rural geographic areas.[3]

Florida Broadband Program

In 2009, the Legislature authorized the Department of Management Services (DMS) to work collaboratively with Enterprise Florida, state agencies, local governments, private businesses, and community organizations to:

- Assess the needs for broadband Internet service and develop data and maps that provide a baseline assessment of the availability and speed of broadband service throughout Florida;
- Create a strategic plan to increase use of broadband Internet service in Florida;
- Build local technology planning teams representing, among others, libraries, schools, colleges and universities, local health care providers, private businesses, community organizations, economic development organizations, local governments, tourism, parks and recreation, and agriculture; and
- Encourage the use of broadband Internet service, especially in rural, unserved, and underserved areas of the state through grant programs.

DMS was also authorized to apply for and accept federal funds, as well as gifts and donations from individuals, foundations, and private organizations, for these purposes.[4]

In 2009, the U.S. Department of Commerce's National Telecommunications Information Administration (NTIA) launched the State Broadband Initiative (SBI) to implement two federal laws, the American Recovery and Reinvestment Act of 2009 and the Broadband Data Improvement Act of 2008. According to the NTIA's SBI website,[5] twelve separate entities within Florida were awarded grants totaling $183.7 million for broadband infrastructure, sustainable adoption, and public computer center projects. Among those grants, DMS was awarded a total of $8,877,028.[6]

In 2012, the Legislature passed a law transferring the state's broadband program from DMS to the Department of Economic Opportunity (DEO) and designating DEO as the single state entity to receive

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[1] U.S. Federal Communications Commission, *2018 Broadband Deployment Report,* at 1 (Feb. 2, 2018), available at https://docs.fcc.gov/public/attachments/FCC-18-10A1.pdf (last visited Feb. 10, 2020).
[2] *Id.,* at 58-59. For purposes of this data, 'fixed broadband services' are measured at 25 megabits per second downstream and 3 megabits per second upstream.
[3] American Broadband Initiative, *Milestones Report*, at 11 (Feb. 13, 2019), *available at* https://broadbandusa.ntia.doc.gov/sites/default/files/resource-files/american_broadband_initiative_milestones_report_feb_2019_0.pdf (last visited Feb. 10, 2020).
[4] Ch. 2009-226, L.O.F., codified at s. 364.0135, F.S.
[5] Broadband USA - NTIA, *State Broadband Initiative*, http://www2.ntia.doc.gov/SBDD (last visited Feb. 10, 2020).
[6] Broadband USA - NTIA, *Florida Department of Management Services,* http://www2.ntia.doc.gov/grantee/florida-department-of-management-services (last visited Feb. 10, 2020).

and manage all federal SBI funds.[7] By its terms, this law would become effective only if the U.S. Department of Commerce approved the transfer of the existing federal SBI grant from DMS to DEO. This approval was never provided, thus the program remains under DMS. After depletion of the remaining SBI grant funds, the state broadband program has been unfunded and dormant.

Federal Broadband Initiatives

In January 2020, the Federal Communications Commission (FCC) established the Rural Digital Opportunity Fund (Fund) to fund the deployment of broadband networks in rural America over the next decade.[8] The program will consist of two phases. Using data from the FCC's previous mapping efforts, the first phase will begin later this year and will make available up to $16 billion to target census blocks that are wholly unserved with fixed broadband speeds of at least 25 megabits per second (Mbps) downstream and 3 Mbps upstream (25/3 Mbps). Using more precise data to be developed through a new FCC mapping effort, the second phase will make available at least $4.4 billion to target census blocks where some locations lack access to 25/3 Mbps broadband.

In addition, the U.S. Department of Agriculture (USDA), through its ReConnect Program, offers federal loans, grants, and loan/grant combinations to facilitate broadband deployment to rural areas without access to sufficient broadband service.[9] Eligible entities include cooperatives and non-profits, for-profit companies, and state and local governments and their agencies and political subdivisions. Applicants requesting a grant or a loan/grant combination under the ReConnect Program are required to submit a scoring sheet by which USDA may analyze nine separate evaluation criteria to score the application. One of the evaluation criteria is whether the proposed project is in a state with a broadband plan that has been updated within the previous 5 years.[10]

Department of Transportation—Multi-use Corridors of Regional Economic Significance

The Florida Department of Transportation's (FDOT) Multi-use Corridors of Regional Economic Significance Program (M-CORES) is designed to advance construction of regional corridors that will accommodate multiple modes of transportation and multiple types of infrastructure, including those that promote broadband connectivity.[11] The FDOT must give preference to feeder roads, interchanges, and appurtenances that create or facilitate multiuse corridor access and connectivity when using these funds.

Effect of Proposed Changes

The bill designates DEO as the lead state agency to facilitate the expansion of broadband Internet service in the state. It creates the Florida Office of Broadband (Office) within DEO's Division of Community Development for purposes of developing, marketing, and promoting broadband Internet service in the state.

The bill maintains most of the requirements previously imposed on DMS and imposes them instead on the new office. Specifically, the Office must:

- Create a strategic plan for increasing the use of broadband Internet service in the state which must include a process to review and verify public input regarding transmission speeds and availability of broadband Internet service throughout the state;

[7] Ch. 2012-131, L.O.F.
[8] U.S. Federal Communications Commission, *FCC Launches $20 Billion Rural Digital Opportunity Fund,* https://www.fcc.gov/document/fcc-launches-20-billion-rural-digital-opportunity-fund-0 (last visited Feb. 10, 2020).
[9] USDA, *Broadband*, https://www.usda.gov/broadband (last visited Feb. 10, 2020).
[10] *Id.*
[11] S. 338.2278(1)(d), F.S. *See also* Florida Department of Transportation, *M-CORES*, https://floridamcores.com/ (last visited Feb. 10, 2020).

- Build local technology planning teams representing, among others, libraries, schools, colleges and universities, local health care providers, private businesses, community organizations, economic development organizations, local governments, tourism, parks and recreation, and agriculture; and
- Encourage the use of broadband Internet service, especially in rural, unserved, and underserved[12] areas of the state through grant programs.
- Monitor, participate in, and provide input in proceedings of the FCC and other federal agencies related to the geographic availability and deployment of broadband Internet service as necessary to ensure that Florida's rural, unserved, and underserved areas are best positioned to benefit from federal and state broadband deployment programs.

For these purposes, the bill authorizes DEO to apply for and accept federal grant funds, enter into necessary or useful contracts, and establish any committee or workgroup to administer the program.

The bill repeals ch. 2012-131, L.O.F. This law is obsolete. The contingency upon which this law would have become effective – federal approval of the transfer from DMS to DEO of a now-depleted federal grant – did not, and can no longer, occur.

The bill provides that up to $5 million of the funds transferred to Florida's Turnpike Enterprise for the Multi-use Corridors of Regional Economic Significance (M-CORES) program may be used for projects that assist in the development of broadband infrastructure within or adjacent to a multiuse corridor. The bill requires that priority be given to broadband infrastructure projects located in a rural area of opportunity[13] that is adjacent to a multiuse corridor.

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

B. SECTION DIRECTORY:

Section 1. Amends s. 339.0801, F.S., relating to the use of revenues for the Multi-use Corridors of Regional Economic Significance program.

Section 2. Amends s. 364.0135, F.S., relating to promotion of broadband adoption.

Section 3. Repeals ch. 2012-131, L.O.F.

Section 4. Provides an effective date of July 1, 2020.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

[12] The bill defines "underserved" to mean a geographic area of this state in which there is no provider of broadband Internet service that offers a connection to the Internet with a capacity for transmission at a consistent speed of at least 10 Mbps downstream and at least 1 Mbps upstream

[13] Section 288.0656, F.S., defines a rural area of opportunity (RAO) as a rural community, or region composed of rural communities, designated by the Governor, that has been adversely affected by an extraordinary economic event, severe of chronic distress, or natural disaster that presents a unique economic development opportunity of regional impact. RAO's are eligible for assistance and other support through the Rural Economic Development Initiative, administered by DEO. According to DEO's website, the currently designated RAOs are:

- The Northwest RAO, comprised of Calhoun, Franklin, Gadsden, Gulf, Holmes, Jackson, Liberty, Wakulla, and Washington counties, and the part of Walton County north of the Intracoastal Waterway, including the cities of DeFuniak Springs, Freeport, and Paxton;
- The South Central RAO, comprised of DeSoto, Glades, Hardee, Hendry, Highlands, and Okeechobee counties, the cities of Pahokee, Belle Glade, and South Bay in Palm Beach County, and the city of Immokalee in Collier County; and
- The North Central RAO, comprised of Baker, Bradford, Columbia, Dixie, Gilchrist, Hamilton, Jefferson, Lafayette, Levy, Madison, Putnam, Suwannee, Taylor, and Union Counties.

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   DEO estimates that in order to implement the bill initially the workload will be absorbed by existing staff. There is no estimate as to any further recurring costs necessary to operate the program.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The bill may improve the opportunity for entities within the state to receive funding to support deployment of broadband Internet service in rural, underserved, and unserved areas of the state, which may enhance economic development in those areas.

The bill provides that up to $5 million of funds transferred to the Florida Turnpike Enterprise may be used for projects that assist in the development of broadband infrastructure within or adjacent to a multiuse corridor. Current law transfers $35 million to the Turnpike Enterprise. This provision simply expands the use of these funds to include broadband infrastructure, thus it will not affect revenues nor expenditures.

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 provide rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS / COMMITTEE SUBSTITUTE CHANGES

On February 3, 2020, the Transportation & Tourism Appropriations Subcommittee adopted one amendment, and one amendment to the amendment. In summary, the amendments:

- Provide that up to $5 million of the funds transferred to Florida's Turnpike Enterprise for the M-CORES program may be used for projects that assist in the development of broadband infrastructure within or adjacent to a multiuse corridor;
- Provide a definition of for the term "underserved";
- Provide that the broadband strategic plan must include a process to review and verify public input regarding transmission speeds and availability of broadband Internet service throughout the state; and
- Provide that DEO must monitor, participate in, and provide input in proceedings of the FCC and other federal agencies related to the geographic availability and deployment of broadband Internet service in Florida.

This analysis is written to the committee substitute as passed out of the Transportation & Tourism Appropriations Subcommittee.

A bill to be entitled

An act relating to broadband Internet service; amending s. 339.0801, F.S.; authorizing certain funds within the State Transportation Trust Fund to be used for certain broadband infrastructure projects within or adjacent to multiuse corridors; requiring the Department of Transportation to give priority to certain projects; amending s. 364.0135, F.S.; defining terms; designating the Department of Economic Opportunity as the lead state agency to facilitate the expansion of broadband Internet service in the state; requiring the department to work collaboratively with certain entities; creating the Florida Office of Broadband within the Division of Community Development in the department; providing purpose and duties of the office; repealing chapter 2012-131, Laws of Florida, relating to broadband Internet service; providing an effective date.

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

Section 1. Paragraph (b) of subsection (2) of section 339.0801, Florida Statutes, is amended to read:

339.0801 Allocation of increased revenues derived from amendments to s. 319.32(5)(a) by ch. 2012-128.—Funds that result

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

from increased revenues to the State Transportation Trust Fund derived from the amendments to s. 319.32(5)(a) made by this act must be used annually, first as set forth in subsection (1) and then as set forth in subsections (2)-(5), notwithstanding any other provision of law:

(2)

(b) Beginning with the 2022-2023 fiscal year and annually thereafter, $35 million shall be transferred to Florida's Turnpike Enterprise, to be used in accordance with s. 338.2278, with preference to feeder roads, interchanges, and appurtenances that create or facilitate multiuse corridor access and connectivity. Of those funds, and to the maximum extent feasible, up to $5 million annually may be used for projects that assist in the development of broadband infrastructure within or adjacent to a multiuse corridor. The department shall give priority consideration to broadband infrastructure projects located in any area designated as a rural area of opportunity under s. 288.0656 and adjacent to a multiuse corridor.

Section 2. Section 364.0135, Florida Statutes, is amended to read:

364.0135 Promotion of broadband adoption; Florida Office of Broadband.—

(1) LEGISLATIVE FINDINGS.—The Legislature finds that the sustainable adoption of broadband Internet service is critical to the economic and business development of the state and is

beneficial for libraries, schools, colleges and universities, health care providers, and community organizations.

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

(a) "Department" means the Department of Economic Opportunity.

(b) "Office" means the Florida Office of Broadband.

(c) "Sustainable adoption" means the ability for communications service providers to offer broadband services in all areas of the state by encouraging adoption and utilization levels that allow for these services to be offered in the free market absent the need for governmental subsidy.

(d) "Underserved" means a geographic area of the state in which there is no provider of broadband Internet service that offers a connection to the Internet with a capacity for transmission at a consistent speed of at least 10 megabits per second downstream and at least 1 megabit per second upstream.

(3) ~~(2)~~ STATE AGENCY.—The department is designated as the lead state agency to facilitate the expansion of broadband Internet service in the state. The department shall ~~of Management Services is authorized to~~ work collaboratively with private businesses~~,~~ and ~~to~~ receive staffing support and other resources from, Enterprise Florida, Inc., state agencies, local governments, ~~private businesses,~~ and community organizations. ~~to:~~

(4) FLORIDA OFFICE OF BROADBAND.—The Florida Office of

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

Broadband is created within the Division of Community Development in the department for the purpose of developing, marketing, and promoting broadband Internet services in the state. The office, in the performance of its duties, shall do all of the following:

(a) ~~Monitor the adoption of broadband Internet service in collaboration with communications service providers, including, but not limited to, wireless and wireline Internet service providers, to develop geographical information system maps at the census tract level that will:~~

~~1. Identify geographic gaps in broadband services, including areas unserved by any broadband provider and areas served by a single broadband provider;~~

~~2. Identify the download and upload transmission speeds made available to businesses and individuals in the state, at the census tract level of detail, using data rate benchmarks for broadband service used by the Federal Communications Commission to reflect different speed tiers; and~~

~~3. Provide a baseline assessment of statewide broadband deployment in terms of percentage of households with broadband availability.~~

~~(b)~~ Create a strategic plan that has goals and strategies for increasing the use of broadband Internet service in the state. The plan must include a process to review and verify public input regarding transmission speeds and availability of

broadband Internet service throughout the state.

(b) ~~(c)~~ Build and facilitate local technology planning teams or partnerships with members representing cross-sections of the community, which may include, but are not limited to, representatives from the following organizations and industries: libraries, K-12 education, colleges and universities, local health care providers, private businesses, community organizations, economic development organizations, local governments, tourism, parks and recreation, and agriculture.

(c) ~~(d)~~ Encourage the use of broadband Internet service, especially in the rural, unserved, or ~~and~~ underserved communities of the state through grant programs having effective strategies to facilitate the statewide deployment of broadband Internet service. For any grants to be awarded, priority must be given to projects that:

1. Provide access to broadband education, awareness, training, access, equipment, and support to libraries, schools, colleges and universities, health care providers, and community support organizations.

2. Encourage the sustainable adoption of broadband in primarily underserved ~~unserved~~ areas by removing barriers to entry.

3. Work toward encouraging investments in establishing affordable and sustainable broadband Internet service in underserved ~~unserved~~ areas of the state.

4. Facilitate the development of applications, programs, and services, including, but not limited to, telework, telemedicine, and e-learning to increase the usage of, and demand for, broadband Internet service in the state.

(d) Monitor, participate in, and provide input in proceedings of the Federal Communications Commission and other federal agencies related to the geographic availability and deployment of broadband Internet service in the state as necessary to ensure that this information is accurately presented and that rural, unserved, and underserved areas of the state are best positioned to benefit from federal and state broadband deployment programs.

(5) ~~(3)~~ ADMINISTRATION.—The department may:

(a) Apply for and accept federal funds for purposes of this section~~, as well as gifts and donations from individuals, foundations, and private organizations~~.

(b) ~~(4) The department may~~ Enter into contracts necessary or useful to carry out the purposes of this section.

(c) ~~(5) The department may~~ Establish any committee or workgroup to administer and carry out the purposes of this section.

Section 3. Chapter 2012-131, Laws of Florida, is repealed.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1077 Department of Financial Services
SPONSOR(S): Insurance & Banking Subcommittee, LaMarca
TIED BILLS: **IDEN./SIM. BILLS:** SB 1404

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee	12 Y, 0 N, As CS	Salter	Cooper
2) Commerce Committee		Salter	Hamon

SUMMARY ANALYSIS

The bill modifies several areas regulated by the Department of Financial Services (DFS), including:

- **Division of Public Assistance Fraud (DPAF)**: Current law does not list DPAF as a criminal justice agency. The bill establishes DPAF as a criminal justice agency, allowing proper execution of fighting public assistance fraud.
- **Board of Funeral, Cemetery, and Consumer Services**: Currently, the Chief Financial Officer of DFS is required to nominate three members per vacant position on the Board, and requires six voting members for a quorum. The bill requires only one nomination per vacancy and changes the definition of a quorum. The bill also removes unnecessary member staggering requirements and provides clarification regarding other board member requirements.
- **Disqualification and Penalties of Applicants and Licensees**: Current law lacks a provision under which a person can be disqualified for licensure based on a criminal record. The bill creates a permanent bar to licensure based on certain crimes and disqualifying periods for various felonies and misdemeanors.
- **Violations by Unlicensed Persons**: Current law does not specify activity prohibited without a license under ch. 497, F.S. The bill prohibits specific unlicensed activity and changes the penalty for unlicensed funeral activity from a second-degree misdemeanor to a third-degree felony.
- **Explosives**: A two-component explosive is currently defined as having a detonator that is a No.6 blasting cap. The bill changes this distinction to "any detonator" to fall in line with current practice.
- **Uniform Fire Alarm Permit Application**: Under current law, contractors are required to apply for, and receive, a permit prior to installing, replacing, or repairing a fire alarm system. The bill expedites repairs of systems that have previously been permitted by the local enforcement agency by allowing repair to begin after filing an application. Contractors would not have to wait to receive the permit, although the permit and approval from the local enforcement agency is still required to ensure compliance.
- **Influencing a Firesafety Inspector**: The bill prohibits any person from influencing a firesafety inspector into violating the Fire Prevention Code, rules adopted by the State Fire Marshal, or any provision of ch. 631, F.S., or from offering compensation related to such violations. It also prohibits a firesafety inspector from knowingly accepting an attempt to improperly influence the performance of his or her duties.
- **Volunteer Firefighter Service**: Currently, a volunteer firefighter who is transitioning to become a career firefighter is prohibited from entering immediately dangerous to life and health environments. The bill allows the transitioning firefighter to act in the same capacity as when they were a volunteer firefighter, as long as they are under supervision of a career firefighter and the period of transition does not go beyond one year.
- **False Personation**: Current law prohibits impersonation of an officer of DFS and a fire or arson investigator of DFS. The bill adds language to include any personnel or representative of the Division of Investigative and Forensic Services.

The bill has no fiscal impact on state or local government revenue or expenditures. It has no known positive or negative economic impacts on the private sector.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

The Department of Financial Services (DFS) is composed of 13 divisions and one independent office. They are the Divisions of:

- Accounting and Auditing;
- Consumer Services;
- Funeral, Cemetery, and Consumer Services;
- Insurance Agent and Agency Services;
- Investigative and Forensic Services (DIFS);
- Public Assistance Fraud (DPAF);
- Rehabilitation and Liquidation;
- Risk Management;
- State Fire Marshal;
- Treasury;
- Unclaimed Property;
- Workers' Compensation;
- Administration; and the
- Office of Insurance Consumer Advocate.

Division of Public Assistance Fraud

When DIFS was created in 2016, DPAF was not designated as a criminal justice agency, limiting access to information within criminal records systems. Under current law, "criminal justice agency" means a court,[1] the Department of Law Enforcement,[2] the Department of Juvenile Justice,[3] the protective investigations component of the Department of Children and Families, which investigates the crimes of abuse and neglect,[4] and any other governmental agency or subunit thereof that performs the administration of criminal justice pursuant to a statute or rule of court and that allocates a substantial part of its annual budget to the administration of criminal justice.[5] DPAF currently operates, in part, as a criminal justice agency. However, current statute does not appropriately reflect this.

Effect of the Bill

The bill establishes DPAF as a criminal justice agency, permitting broader access to criminal records. The effect of this change should improve the department's investigation and enforcement capabilities.

Board of Funeral, Cemetery, and Consumer Services

The Board of Funeral, Cemetery, and Consumer Services (The Board) consists of ten members, nine of which are nominated by the Chief Financial Officer (CFO), confirmed by the Senate, and appointed by the Governor.[6] The tenth member is the State Health Officer or his or her designee.[7] Currently, the CFO is required to nominate three persons for each vacancy on the board. Often times, the CFO does not receive three or more applications for any given vacancy. Additionally, one Board member must be

[1] S. 943.045 (11)(a), F.S.
[2] S. 943.045 (11)(b), F.S.
[3] S. 943.045 (11)(c), F.S.
[4] S. 943.045 (11)(d), F.S.
[5] S. 943.045 (11)(e), F.S.
[6] S. 497.101 (1), F.S.
[7] *Id.*

a Certified Public Accountant (CPA) not affiliated with the death care industry. This position has been vacant since September 2017.[8]

In order for the Board to conduct business, a quorum must be present. A quorum currently means the presence of six board members. A quorum has proved difficult to meet due to vacant positions, member absences, and member recusals. Current law requires staggered appointments of initial Board members. DFS is required to adopt rules establishing forms and procedures for application for membership on the Board.

Effect of the Bill

The bill amends the requirement of three nominees per vacancy to an option of one to three nominations. Two members, instead of three, would still be required to be residents of the state, to have never been licensed as funeral directors or embalmers, and to have no connection to the death care industry. The CPA qualification of having never been licensed as a funeral director or embalmer remains, while the CPA would be allowed to be associated with the death care industry.

The bill also removes the provision requiring staggered appointments following expiration of the terms of initial board members. Because staggered terms are already in effect, the provision no longer is necessary. The bill eliminates the delegated rulemaking authority to DFS for establishing forms by which persons can apply for membership. Because the Governor makes the appointments, that delegation is unnecessary.

Disqualification and Penalties of Applicants and Licensees

Individuals, or the individual on behalf of an entity, applying for licensure or relicensure under ch. 497, F.S., must disclose their criminal records in accordance with s. 497.412, F.S. Applicants must disclose any felony or misdemeanor directly or indirectly relating to the death care industry, no matter when it was committed.[9] Felonies unrelated to the death care industry and committed within the 20 years immediately preceding the application under ch. 497, F.S., must be disclosed.[10] Misdemeanors unrelated to the death care industry and committed within the five years immediately preceding the application under ch. 497, F.S., must also be disclosed.[11] Chapter 497, F.S., currently lacks any ability to disqualify an application for licensure on the basis of an applicant's criminal record.

Effect of the Bill

The bill creates a permanent bar from licensure under certain circumstances. An applicant can be permanently barred from licensure under ch. 497, F.S., if the applicant has been found guilty of or has pleaded guilty or nolo contendere[12] to any of the following, regardless of adjudication:

(a) A felony of the first degree,
(b) A capital felony,
(c) A felony money laundering offense, or
(d) A felony embezzlement.

The bill also creates disqualification periods for various felonies and misdemeanors. All felonies involving moral turpitude[13] that do not fall under the permanent bar are subject to a ten-year disqualifying period. All felonies that do not fall under the permanent bar and that do not involve moral

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[8] Department of Financial Services, Agency Analysis of House Bill 1077, p.2 (Jan. 14, 2020).
[9] S. 497.412(10)(c)1., F.S.
[10] S. 497.412(10)(c)2., F.S.
[11] S. 497.412(10)(c)3., F.S.
[12] A nolo contendere plea is a plea by which a defendant in a criminal prosecution accepts conviction but does not plead or admit guilt. *Lexico English Dictionary*, https://www.lexico.com/definition/nolo_contendere (last visited Feb. 10, 2020).
[13] "A crime involves moral turpitude if it is an act of baseness, vileness, or depravity in the private and social duties which a person owes to others and to society in general." 16 Fla. Jur. 2d Criminal Law – Substantive Principles/Offenses §6.

turpitude are subject to a five-year disqualifying period. All misdemeanors directly related to the financial services business[14] are subject to a five-year disqualifying period. A disqualifying period begins upon an applicant's final release from criminal supervision or upon completion of a criminal sentence. A license may not be issued until all related fines, court costs & fees, and court-ordered restitution have been paid.

Once a disqualifying period has elapsed, the applicant carries the burden of showing that they have been rehabilitated, they do not pose a risk to the public, they are fit and trustworthy to engage in business regulated by ch. 497, F.S., and they are otherwise qualified. A grant of a pardon or the restoration of civil rights pursuant to ch. 940, F.S., and s. 8 Art. IV of the State Constitution, with respect to a finding of guilt or a plea does not bar an applicant from licensure.[15]

The bill gives rulemaking authority to the DFS for purposes of implementation. The rules must include additional disqualifying periods upon a finding of the commitment of multiple crimes, and may include other factors reasonably related to the applicant's criminal history.[16] The rules must provide for mitigating and aggravating factors. Mitigating factors must not result in a disqualifying period of less than five years. Mitigating factors will not apply to the five year disqualifying period for all felonies unrelated to both the death care industry and moral turpitude or the five year disqualifying period for all misdemeanors directly related to the financial services business.

The Board may grant an exemption from disqualification due to an applicant's criminal record if the applicant has paid in full any fee, fine, fund, lien, civil judgment, restitution, or cost of prosecution imposed by the court as part of a judgment and sentence relating to the disqualifying offense. Additionally, five years must have elapsed since the applicant has completed or been lawfully released from confinement, supervision, or nonmonetary condition imposed by a court for the disqualifying offense. In order for the Board to grant an exemption, an applicant must clearly and convincingly demonstrate that he or she would not pose a risk to persons or property if granted a license under ch. 497, F.S.

Evidence presented to the Board by an applicant for a potential exemption must include the following:

1. Facts and circumstances surrounding the disqualifying offense,
2. The time that has elapsed since the offense,
3. The nature of the offense and the harm caused to the victim(s),
4. The applicant's history before and after the offense, and
5. Any other evidence or circumstances indicating that the applicant will not present a danger if licensed or certified.

The Board holds discretion whether to grant or deny an exemption. The Board's decision is subject to ch. 120, F.S., the Administrative Procedure Act. A formal proceeding under s. 120.57(1)[17] is available to an applicant only if the applicant disputes material facts that the DLE relied upon in order to reach a decision.

Violations by Unlicensed Persons

Chapter 497, F.S., requires a license for specific death care industry practices, although it does not include specific examples of what is considered a licensed or unlicensed practice. Current law provides a penalty of a second-degree misdemeanor for individuals who engage in activity requiring licensure without possessing a license.[18]

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[14] The bill defines financial services business as "any financial activity regulated by the Department of Financial Services, the Office of Insurance Regulation, or the Office of Financial Regulation."
[15] See drafting comments.
[16] See drafting comments.
[17] This section lays out additional procedures applicable to hearings involving disputed issues of material fact under the Administrative Procedure Act.
[18] S. 497.159(6), F.S.

Effect of the Bill

The bill specifies that a person may not be, act as, or advertise himself or herself to be a funeral director, embalmer, or direct disposer unless he or she is licensed by DFS. The bill also specifies that a person may not be, act as, or advertise himself or herself as a preneed[19] sales agent unless currently licensed by DFS and is appointed by a preneed main licensee, for whom they are executing preneed contracts. Any violation of these newly created subsections would result in a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, F.S.

Explosives

Chapter 552, F.S., addresses the manufacture, distribution, and use of explosives, which are regulated by the State Fire Marshal. The current definition of a two-component explosive requires detonation to be triggered by a No. 6 blasting cap. This specific blasting cap has gone out of production and current blasting caps do not fall under the same rating system. Current blasting caps fall outside of this definition and therefore are not effectively regulated.

Effect of the Bill

The bill removes the No. 6 blasting cap specification and changes it to any detonator. The amendment to this subsection brings the language in line with current practices.

Uniform Fire Alarm Permit Application

Contractors can work on installing or repairing a fire alarm system only after receiving a permit. Local enforcement agencies often require a plan review for installation or replacement. If a plan review is required, a contractor must file a Uniform Fire Alarm Permit Application with the local enforcement agency and receive the permit prior to installing or replacing a fire alarm. If the local enforcement agency requires a fire alarm permit for a repair to an existing alarm system previously permitted by the local enforcement agency, a contractor must receive the permit prior to repairing the system.

Effect of the Bill

The bill allows a contractor to begin a repair after filing the application instead of waiting for the permit to be received. However, this change only applies if the local enforcement agency requires a permit to repair an existing alarm system that was previously permitted by the agency. If a contractor begins the repair prior to receiving the permit, the repaired fire alarm will not be compliant with the local enforcement agency until the permit is issued and the agency has approved the repair. This allows repairs to be completed in a more efficient manner.

Influencing a Firesafety Inspector

If the State Fire Marshal (SFM) finds a violation of ch. 633, F.S., or a violation of any rule or order of the SFM, the SFM has the authority to deny, refuse to renew, suspend, or revoke the certificate of a firesafety inspector.[20] In addition, any person who violates a provision of ch. 633, F.S., or any order or rule of the SFM commits a misdemeanor of the second degree.[21]

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[19] Preneed contract means "any arrangement or method, of which the provider of funeral merchandise or services has actual knowledge, whereby any person agrees to furnish funeral merchandise or service in the future." S. 497.005 (61), F.S.

[20] S. 633.216 (6)(b), F.S.

[21] S. 633.124 (1), F.S.

Effect of the Bill

The bill prohibits any person from influencing a firesafety inspector by threatening, coercing, tricking, or attempting to threaten, coerce, or trick a firesafety inspector into violating the Florida Fire Prevention Code, rules adopted by the SFM, or any provision of ch. 633, F.S. It also prohibits any person from offering compensation to a firesafety inspector related to committing such violations. Additionally, the bill prohibits a firesafety inspector from knowingly and willfully accepting an attempt to improperly influence the performance of his or her duties. A violation by a firesafety inspector of this new provision allows the SFM to deny, refuse to renew, suspend, or revoke a firesafety inspector's certificate.[22] Moreover, any person who violates the bill's provisions commits a misdemeanor of the second degree.[23]

Volunteer Firefighter Service

Volunteer firefighters are required to obtain a Firefighter Certificate of Completion through training. With this certificate, they can enter into immediately dangerous to life and health (IDLH) environments, just as career firefighters can. Volunteer firefighters can become career firefighters, if they complete a Certificate of Compliance. Currently, if a volunteer firefighter chooses to become a career firefighter, he or she is no longer able to enter an IDLH environment while completing the Certificate of Compliance.

Effect of the Bill

The bill allows volunteer firefighters who are in transition to become career firefighters to function in the same capacity in which they acted as volunteer firefighters. The period for which they remain volunteers cannot extend beyond one year, collectively or consecutively. A volunteer firefighter in transition must hold a Certificate of Completion with a fire service provider and subsequently be employed as a regular or permanent firefighter. The volunteer firefighter in transition must be under the direct supervision of an individual holding a valid firefighter Certificate of Compliance. This allows Fire Service Providers to transition qualified personnel from volunteer to career status without stripping their ability to perform.

False Personation

Section 843.08, F.S., lays out the penalties for false personation (impersonation), which is treated as an obstruction of justice, a third-degree felony. If the impersonation is committed with another felony, it is considered a second-degree felony. If it is committed and causes death or personal injury to another individual, it is considered a first-degree felony. Current law prohibits impersonation of a fire or arson investigator of DFS and any officer of DFS but does not address officers of DIFS.

Effect of the Bill

The bill would take out the specificity of a fire or arson investigator of DFS and instead add "any personnel or representative of the Division of Investigative and Forensic Services," making the specific protection broader. This change makes it a felony to impersonate any DIFS personnel and any DFS officer.

B. SECTION DIRECTORY:

Section 1: Amends s. 20.121, F.S., relating to the Department of Financial Services.

Section 2: Amends s. 497.101, F.S., relating to the Board of Funeral, Cemetery, and Consumer Services; membership; appointment; terms.

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[22] S. 633.216 (6)(b), F.S.
[23] S. 633.124 (1), F.S.

Section 3: Creates s. 497.1411, F.S., relating to disqualification of applicants and licensees; penalties against licensees; rulemaking.

Section 4: Amends s. 497.157, F.S., relating to unlicensed practice; remedies concerning violations by unlicensed persons.

Section 5: Amends s. 552.081, F.S., relating to definitions.

Section 6: Amends s. 553.7921, F.S., relating to fire alarm permit application to local enforcement agency.

Section 7: Creates s. 633.217, F.S., relating to influencing a firesafety inspector; prohibited acts.

Section 8: Amends s. 633.416, F.S., relating to firefighter employment and volunteer firefighter service; saving clause.

Section 9: Amends s. 843.08, F.S., relating to false personation.

Section 10: Amends s. 943.045, F.S., relating to definitions.

Section 11: 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:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to require counties or municipalities to spend funds or take 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 state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The DFS is directed to adopt rules to:[24]

- Administer s. 497.1411, F.S.;
- Provide for additional disqualifying periods due to commitment of multiple crimes, which may include other factors reasonably related to the applicant's criminal history; and
- Provide for mitigating and aggravation factors.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Pardon (lines 218–220): The language of the bill makes it seem as if a pardon is currently a reason for a permanent bar or a period of disqualification. However, the DFS analysis points out that a grant, pardon, or restoration of civil rights for a crime delineated by the section results in the crime not being a bar to licensure.[25] It is recommended than an amendment be added to reconcile this gap in the language and the analysis.

Rulemaking Authority (lines 193–200): The bill allocates rulemaking authority to DFS in relation to barring or disqualifying licensure. Current law vests sole authority in the Board to determine any and all criteria for licensure,[26] and to renew and decline to renew licenses under ch. 497, F.S.[27] Both paragraphs include rulemaking authority, therefore there appears to be a conflict with the delegation to DFS.[28]

Administrative Procedures Act (lines 246–250): Chapter 120, F.S., the Administrative Procedures Act, allows for a formal proceeding when an applicant disputes the material facts that an agency or board relies upon to make a licensure decision. This chapter already applies to licensure decisions by the Board. Therefore, the bill language establishing the right to a formal hearing appears unnecessary.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 21, 2020, the Insurance & Banking Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment created s. 633.217, F.S., relating to firesafety inspectors, to prohibit:

• Any person from influencing a firesafety inspector by threatening, coercing, tricking, or attempting to threaten, coerce, or trick, a firesafety inspector into violating, or offering to compensate the firesafety

[24] See drafting comments.
[25] Department of Financial Services, Agency Analysis of House Bill 1077, p.4 (Jan. 14, 2020).
[26] S. 497.103 (1)(a), F.S.
[27] S. 497.103 (1)(k), F.S.,
[28] While the Board is housed in DFS, they have independent authority.

inspector to induce a violation of, any provision of the Florida Fire Prevention Code, a rule adopted by the State Fire Marshal, or ch. 633, F.S.

• A firesafety inspector from knowingly and willfully accepting an attempt by a person to influence the firesafety inspector into violating any provision of the Florida Fire Prevention Code, any rule adopted by the State Fire Marshal, or any provision of ch. 633, F.S.

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

A bill to be entitled

An act relating to the Department of Financial Services; amending s. 20.121, F.S.; specifying powers and duties of the Division of Public Assistance Fraud; amending s. 497.101, F.S.; revising provisions relating to membership of the Board of Funeral, Cemetery, and Consumer Services; creating s. 497.1411, F.S.; providing definitions; providing for permanent disqualification of applicants for licensure under chapter 497, F.S., upon conviction of certain offenses; providing for disqualifying periods for such applicants who have been convicted of certain offenses; requiring rulemaking; providing for calculation of disqualifying periods; providing for applicants to show rehabilitation after completion of a disqualifying period; providing for the effect of a pardon or clemency; providing for exemptions from disqualification in certain circumstances; providing procedures for consideration of applications for such exemptions; amending s. 497.157, F.S.; prohibiting persons from acting as or advertising themselves as being certain persons unless they are so licensed; prohibiting persons from engaging in certain activities requiring licensure without holding required licenses; providing criminal penalties;

amending s. 552.081, F.S.; revising the definition of two-component explosives for the purpose of regulation by the Division of State Fire Marshal; amending s. 553.7921, F.S.; revising requirements for repair of an existing alarm system that was previously permitted by a local enforcement agency; creating s. 633.217, F.S.; prohibiting certain actions to influence a firesafety inspector into violating certain provisions; prohibiting a firesafety inspector from knowingly and willfully accepting an attempt to influence the firesafety inspector into violating certain provisions; amending s. 633.416, F.S.; providing that certain persons serving as volunteer firefighters may serve as a regular or permanent firefighter for a limited period subject to certain restrictions; amending s. 843.08, F.S.; prohibiting false personation of personnel or representatives of the Division of Investigative and Forensic Services; providing criminal penalties; amending s. 943.045, F.S.; providing the investigations component of the Department of Financial Services is a criminal justice agency for specified purposes; providing an effective date.

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

Section 1. Paragraph (f) of subsection (2) of section 20.121, Florida Statutes, is amended to read:

20.121 Department of Financial Services.—There is created a Department of Financial Services.

(2) DIVISIONS.—The Department of Financial Services shall consist of the following divisions and office:

(f) The Division of Public Assistance Fraud, which shall function as a criminal justice agency for purposes of ss. 943.045-943.08. The division shall conduct investigations pursuant to s. 414.411 within or outside of this state as it deems necessary. If, during an investigation, the division has reason to believe that any criminal law of this state has or may have been violated, it shall refer any records tending to show such violation to state or federal law enforcement or prosecutorial agencies and shall provide investigative assistance to those agencies as required.

Section 2. Subsections (1), (2), (3), (6), and (8) of section 497.101, Florida Statutes, are amended to read:

497.101 Board of Funeral, Cemetery, and Consumer Services; membership; appointment; terms.—

(1) The Board of Funeral, Cemetery, and Consumer Services is created within the Department of Financial Services and shall consist of 10 members, 9 of whom shall be appointed by the Governor from nominations made by the Chief Financial Officer

and confirmed by the Senate. The Chief Financial Officer shall nominate one to three persons for each of the nine vacancies on the board, and the Governor shall fill each vacancy on the board by appointing one of the ~~three~~ persons nominated by the Chief Financial Officer to fill that vacancy. If the Governor objects to each of the ~~three~~ nominations for a vacancy, she or he shall inform the Chief Financial Officer in writing. Upon notification of an objection by the Governor, the Chief Financial Officer shall submit one to three additional nominations for that vacancy until the vacancy is filled. One member must be the State Health Officer or her or his designee.

(2) Two members of the board shall be funeral directors licensed under part III of this chapter who are associated with a funeral establishment. One member of the board shall be a funeral director licensed under part III of this chapter who is associated with a funeral establishment licensed under part III of this chapter that has a valid preneed license issued pursuant to this chapter and who owns or operates a cinerator facility approved under chapter 403 and licensed under part VI of this chapter. Two members of the board shall be persons whose primary occupation is associated with a cemetery company licensed pursuant to this chapter. Two ~~Three~~ members of the board shall be consumers who are residents of the state, have never been licensed as funeral directors or embalmers, are not connected with a cemetery or cemetery company licensed pursuant to this

chapter, and are not connected with the death care industry or the practice of embalming, funeral directing, or direct disposition. One of the two consumer members shall be at least 60 years of age~~, and one shall be licensed as a certified public accountant under chapter 473~~. One member of the board shall be a consumer who is a resident of this state; licensed as a certified public accountant under chapter 473; has never been licensed as a funeral director or embalmer; is not a principal or employee of any licensee licensed under this chapter; and does not otherwise have control, as defined in s. 497.005, over any licensee licensed under this chapter. One member of the board shall be a principal of a monument establishment licensed under this chapter as a monument builder. One member shall be the State Health Officer or her or his designee. There shall not be two or more board members who are principals or employees of the same company or partnership or group of companies or partnerships under common control.

(3) Board members shall be appointed for terms of 4 years, and the State Health Officer shall serve as long as that person holds that office. The designee of the State Health Officer shall serve at the pleasure of the Governor. ~~When the terms of the initial board members expire, the Chief Financial Officer shall stagger the terms of the successor members as follows: one funeral director, one cemetery representative, the monument builder, and one consumer member shall be appointed for terms of~~

~~2 years, and the remaining members shall be appointed for terms of 4 years. All subsequent terms shall be for 4 years.~~

(6) The headquarters and records of the board shall be in the Division of Funeral, Cemetery, and Consumer Services of the Department of Financial Services in the City of Tallahassee. The board may be contacted through the Division of Funeral, Cemetery, and Consumer Services of the Department of Financial Services in the City of Tallahassee. The Chief Financial Officer shall annually appoint from among the board members a chair and vice chair of the board. The board shall meet at least every 6 months, and more often as necessary. Special meetings of the board shall be convened upon the direction of the Chief Financial Officer. A quorum is necessary for the conduct of business by the board. Unless otherwise provided by law, a majority of the board members eligible to vote shall constitute a quorum for the purpose of conducting its business ~~six board members shall constitute a quorum for the conduct of the board's business~~.

~~(8) The department shall adopt rules establishing forms by which persons may apply for membership on the board and procedures for applying for such membership. Such forms shall require disclosure of the existence and nature of all current and past employments by or contracts with, and direct or indirect affiliations or interests in, any entity or business that at any time was licensed by the board or by the former~~

~~Board of Funeral and Cemetery Services or the former Board of Funeral Directors and Embalmers or that is or was otherwise involved in the death care industry, as specified by department rule.~~

Section 3. Section 497.1411, Florida Statutes, is created to read:

497.1411 Disqualification of applicants and licensees; penalties against licensees; rulemaking.—

(1) For purposes of this section, the term:

(a) "Applicant" means an individual applying for licensure or relicensure under this chapter, and an officer, director, majority owner, partner, manager, or other person who manages or controls an entity applying for licensure or relicensure under this chapter.

(b) "Felony of the first degree" and "capital felony" include all felonies designated as such in this state, at the time of the commission of the offense, as well as any offense in another jurisdiction that is substantially similar to an offense so designated in this state.

(c) "Financial services business" means any financial activity regulated by the Department of Financial Services, the Office of Insurance Regulation, or the Office of Financial Regulation.

(2) An applicant who has been found guilty of or has pleaded guilty or nolo contendere to any of the following

crimes, regardless of adjudication, is permanently barred from licensure under this chapter:

(a) A felony of the first degree.

(b) A capital felony.

(c) A felony money laundering offense.

(d) A felony embezzlement.

(3) An applicant who has been found guilty of or has pleaded guilty or nolo contendere to a crime not included in subsection (2), regardless of adjudication, is subject to:

(a) A 10-year disqualifying period for all felonies involving moral turpitude that are not specifically included in the permanent bar contained in subsection (2).

(b) A 5-year disqualifying period for all felonies to which neither the permanent bar in subsection (2) nor the 10-year disqualifying period in paragraph (a) applies.

(c) A 5-year disqualifying period for all misdemeanors directly related to the financial services business.

(4) The department shall adopt rules to administer this section. The rules must provide for additional disqualifying periods due to the commitment of multiple crimes and may include other factors reasonably related to the applicant's criminal history. The rules shall provide for mitigating and aggravating factors. However, mitigation may not result in a period of disqualification of less than 5 years and may not mitigate the disqualifying periods in paragraphs (3)(b) and (c).

(5) For purposes of this section, a disqualifying period begins upon the applicant's final release from supervision or upon completion of the applicant's criminal sentence. The department may not issue a license to an applicant unless all related fines, court costs and fees, and court-ordered restitution have been paid.

(6) After the disqualifying period has expired, the burden is on the applicant to demonstrate that he or she has been rehabilitated, does not pose a risk to the public, is fit and trustworthy to engage in business regulated by this chapter, and is otherwise qualified for licensure.

(7) Notwithstanding subsections (2) and (3), upon a grant of a pardon or the restoration of civil rights pursuant to chapter 940 and s. 8, Art. IV of the State Constitution with respect to a finding of guilt or a plea under subsection (2) or subsection (3), or such pardon or the restoration of civil rights under the laws of another jurisdiction with respect to a conviction in that jurisdiction, such finding or plea no longer bars or disqualifies the applicant from licensure under this chapter; however, such a pardon or restoration of civil rights does not require the department to award such license.

(8)(a) The Board of Funeral, Cemetery, and Consumer Services may grant an exemption from disqualification to any person disqualified from licensure under this section because of a criminal record if:

1. The applicant has paid in full any fee, fine, fund, lien, civil judgment, restitution, or cost of prosecution imposed by the court as part of the judgment and sentence for any disqualifying offense; and

2. At least 5 years have elapsed since the applicant completed or has been lawfully released from confinement, supervision, or nonmonetary condition imposed by the court for a disqualifying offense.

(b) For the board to grant an exemption under this subsection, the applicant must clearly and convincingly demonstrate that he or she would not pose a risk to persons or property if licensed under this chapter, evidence of which must include, but need not be limited to, facts and circumstances surrounding the disqualifying offense, the time that has elapsed since the offense, the nature of the offense and harm caused to the victim, the applicant's history before and after the offense, and any other evidence or circumstances indicating that the applicant will not present a danger if licensed or certified.

(c) The board has discretion whether to grant or deny an exemption under this subsection. The board's decision is subject to chapter 120, except that a formal proceeding under s. 120.57(1) is available only if there are disputed issues of material fact that the department relied upon in reaching its decision.

Section 4. Subsections (2) through (5) of section 497.157, Florida Statutes, are renumbered as subsections (4) through (7), respectively, new subsections (2), (3) and (8) are added to that section, and present subsection (3) is amended, to read:

497.157 Unlicensed practice; remedies concerning violations by unlicensed persons.—

(2) A person may not be, act as, or advertise or hold himself or herself out to be a funeral director, embalmer, or direct disposer, unless he or she is currently licensed by the department.

(3) A person may not be, act as, or advertise or hold himself or herself out to be a preneed sales agent unless he or she is currently licensed by the department and appointed by a preneed main licensee for which they are executing preneed contracts.

(5)~~(3)~~ Where the department determines that an emergency exists regarding any violation of this chapter by any unlicensed person or entity, the department may issue and serve an immediate final order upon such unlicensed person or entity, in accordance with s. 120.569(2)(n). Such an immediate final order may impose such prohibitions and requirements as are reasonably necessary to protect the public health, safety, and welfare, and shall be effective when served.

(a) For the purpose of enforcing such an immediate final order, the department may file an emergency or other proceeding

in the circuit courts of the state seeking enforcement of the immediate final order by injunctive or other order of the court. The court shall issue its injunction or other order enforcing the immediate final order pending administrative resolution of the matter under subsection (4) ~~(2)~~, unless the court determines that such action would work a manifest injustice under the circumstances. Venue for judicial actions under this paragraph shall be, at the election of the department, in the courts of Leon County, or in a county where the respondent resides or has a place of business.

(b) After serving an immediate final order to cease and desist upon any person or entity, the department shall within 10 days issue and serve upon the same person or entity an administrative complaint as set forth in subsection (4) ~~(2)~~, except that, absent order of a court to the contrary, the immediate final order shall be effective throughout the pendency of proceedings under subsection (4) ~~(2)~~.

(8) Any person who is not licensed under this chapter and who engages in activity requiring licensure under this chapter commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 5. Subsection (13) of section 552.081, Florida Statutes, is amended to read:

552.081 Definitions.—As used in this chapter:

(13) "Two-component explosives" means any two inert

components which, when mixed, become capable of detonation by any detonator ~~a No. 6 blasting cap~~, and shall be classified as a Class "A" explosive when so mixed.

Section 6. Subsection (2) of section 553.7921, Florida Statutes, is renumbered as subsection (3), subsection (1) of that section is amended, and a new subsection (2) is added to that section, to read:

553.7921 Fire alarm permit application to local enforcement agency.—

(1) A contractor must file a Uniform Fire Alarm Permit Application as provided in subsection (3) ~~(2)~~ with the local enforcement agency and must receive the fire alarm permit before~~:~~

~~(a)~~ installing or replacing a fire alarm if the local enforcement agency requires a plan review for the installation or replacement~~; or~~

~~(b) Repairing an existing alarm system that was previously permitted by the local enforcement agency if the local enforcement agency requires a fire alarm permit for the repair~~.

(2) If the local enforcement agency requires a fire alarm permit to repair an existing alarm system that was previously permitted by the local enforcement agency, a contractor may begin work after filing a Uniform Fire Alarm Permit Application as provided in subsection (3). A fire alarm repaired pursuant to this subsection shall not be considered compliant until the

required permit has been issued and the local enforcement agency has approved the repair.

Section 7. Section 633.217, Florida Statutes, is created to read:

633.217 Influencing a firesafety inspector; prohibited acts.—

(1) A person may not influence a firesafety inspector by:

(a) Threatening, coercing, tricking, or attempting to threaten, coerce, or trick, the firesafety inspector into violating any provision of the Florida Fire Prevention Code, any rule adopted by the State Fire Marshal, or any provision of this chapter.

(b) Offering any compensation to the firesafety inspector to induce a violation of the Florida Fire Prevention Code, any rule adopted by the State Fire Marshal, or any provision of this chapter.

(2) A firesafety inspector may not knowingly and willfully accept an attempt by a person to influence the firesafety inspector into violating any provision of the Florida Fire Prevention Code, any rule adopted by the State Fire Marshal, or any provision of this chapter.

Section 8. Subsection (1) of section 633.416, Florida Statutes, is amended to read:

633.416 Firefighter employment and volunteer firefighter service; saving clause.—

(1) A fire service provider may not employ an individual to:

(a) Extinguish fires for the protection of life or property or to supervise individuals who perform such services unless the individual holds a current and valid Firefighter Certificate of Compliance. However, a person who is currently serving as a volunteer firefighter and holds a volunteer firefighter certificate of completion with a fire service provider, who is then employed as a regular or permanent firefighter, by such fire service provider, may function, for a period of 1 year under the direct supervision of an individual holding a valid firefighter certificate of compliance, in the same capacity in which he or she acted as a volunteer firefighter, provided that he or she has completed all training required by the volunteer organization. Under no circumstance can this period extend beyond 1 year either collectively or consecutively from the start of employment to obtain a Firefighter Certificate of Compliance; or

(b) Serve as the administrative and command head of a fire service provider for a period in excess of 1 year unless the individual holds a current and valid Firefighter Certificate of Compliance or Special Certificate of Compliance.

Section 9. Section 843.08, Florida Statutes, is amended to read:

843.08 False personation.—A person who falsely assumes or

pretends to be a firefighter, a sheriff, an officer of the Florida Highway Patrol, an officer of the Fish and Wildlife Conservation Commission, an officer of the Department of Environmental Protection, ~~a fire or arson investigator of the Department of Financial Services,~~ an officer of the Department of Financial Services, or any personnel or representative of the Division of Investigative and Forensic Services, an officer of the Department of Corrections, a correctional probation officer, a deputy sheriff, a state attorney or an assistant state attorney, a statewide prosecutor or an assistant statewide prosecutor, a state attorney investigator, a coroner, a police officer, a lottery special agent or lottery investigator, a beverage enforcement agent, a school guardian as described in s. 30.15(1)(k), a security officer licensed under chapter 493, any member of the Florida Commission on Offender Review or any administrative aide or supervisor employed by the commission, any personnel or representative of the Department of Law Enforcement, or a federal law enforcement officer as defined in s. 901.1505, and takes upon himself or herself to act as such, or to require any other person to aid or assist him or her in a matter pertaining to the duty of any such officer, commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. However, a person who falsely personates any such officer during the course of the commission of a felony commits a felony of the second degree,

punishable as provided in s. 775.082, s. 775.083, or s. 775.084. If the commission of the felony results in the death or personal injury of another human being, the person commits a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 10. Paragraph (f) is added to subsection (11) of section 943.045, Florida Statutes, to read:

943.045 Definitions; ss. 943.045-943.08.—The following words and phrases as used in ss. 943.045-943.08 shall have the following meanings:

(11) "Criminal justice agency" means:

(f) The investigations component of the Department of Financial Services, which investigates the crimes of fraud and official misconduct in all public assistance given to residents of the state or provided to others by the state.

Section 11. This act shall take effect July 1, 2020.

COMMERCE COMMITTEE

HB 1077 by Rep. LaMarca
Department of Financial Services

AMENDMENT SUMMARY
February 12, 2020

Amendment 1 by Rep. LaMarca (strike-all) includes the original provisions of the bill, with a few minor revisions, and does the following:

- Adds a new requirement to state risk management and safety programs, prohibiting retaliatory conduct against a sexual harassment victim, prohibiting willful and knowledgeable distribution of a victim's personal identifying information, and providing penalties for related violations.
- Revises the crimes which must be disclosed in order to apply for a license, and deletes conflicting penalties, under chapter 497, F.S., related to Funeral, Cemetery, and Consumer Services.
- Revises provisions concerning notice to purchasers of preneed contracts.
- Allows Contractor I or II licensees to alter an existing fire sprinkler system involving 249 or fewer sprinkler heads if there is no change in occupancy of the affected areas, no change in the water demand, and the occupancy hazard classification is reduced or remains the same.
- Specifies that training courses offered by the State Fire College must include a written and a practical element and be approved by the State Fire Marshal.
- Revises the continued education hours required for individuals licensed to solicit, sell, or adjust insurance in the state.
- Renames the Florida Blockchain Task Force to "Florida Financial Technology and Blockchain Task Force;" requires the task force to consider financial technology innovations related to money transmitters and payment instrument sellers; and extends the expiration of the task force to January 31, 2021.

Amendment to amendment 1 by Rep. Santiago (line 531):

The amendment to the amendment:

- Limits certain assessments of radio coverage and signal strength for two-way radio communications by local authorities to no more than once every 3 years for high rises and once every 5 years for all over buildings.
- Prohibits a local authority from withholding a certificate of occupancy for a building based on a determination that an updated two-way radio communication system is needed, if an architect or engineer determines that the enhancement is not necessary to meet the minimum standards for the interior radio coverage and signal strength.
- Limits installation of such two-way radio communication systems until at least 90 days after completion of the buildings required assessment report.

Amendment to amendment 2 by Rep. Fischer (line 532):

- The amendment to the amendment extends the current expiration date of July 1, 2021 to July 1, 2024, for provisions that allow residents in apartment buildings to place garbage cans containing combustible waste and refuse in exit access corridors during certain hours.

Amendment to amendment 3 by Rep. Fitzenhagen (line 1011):

- The amendment to the amendment prohibits the Office of Financial Regulation from filing notice of a family trust company application in the Florida Administrative Register.

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 LaMarca offered the following:

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

Section 1. Paragraph (f) of subsection (2) of section 20.121, Florida Statutes, is amended to read:

20.121 Department of Financial Services.—There is created a Department of Financial Services.

(2) DIVISIONS.—The Department of Financial Services shall consist of the following divisions and office:

(f) The Division of Public Assistance Fraud, which shall function as a criminal justice agency for purposes of ss. 943.045-943.08. The division shall conduct investigations pursuant to s. 414.411 within or outside of this state as it deems necessary. If, during an investigation, the division has

reason to believe that any criminal law of this state has or may have been violated, it shall refer any records tending to show such violation to state or federal law enforcement or prosecutorial agencies and shall provide investigative assistance to those agencies as required.

Section 2. Section 284.45, Florida Statutes, is created to read:

284.45 Sexual harassment victims.—

(1) Individuals working for an entity covered by the State Risk Management Trust Fund are prohibited from engaging in retaliatory conduct, of any kind, against a sexual harassment victim. As used in this section, the term "sexual harassment victim" means an individual employed with or being considered for employment with an entity participating in the State Risk Management Trust Fund, who becomes a victim of workplace sexual harassment, through the course of employment, or being considered for employment, with such entity.

(2) The willful and knowing dissemination of personal identifying information of a sexual harassment victim to any party other than a government entity in furtherance of its official duties or pursuant to a court order is a misdemeanor of the first degree, and punishable as provided in s. 775.082. For purposes of this subsection personal identifying information includes the name of the victim and his or her:

(a) Home address;

(b) Home phone number;

(c) Cellular phone number;

(d) E-mail address;

(e) Social media account username or URL; or

(f) Any other information that could reasonably be used to identify, locate, or contact the alleged victim.

Section 3. Subsections (1), (2), (3), (6), and (8) of section 497.101, Florida Statutes, are amended to read:

497.101 Board of Funeral, Cemetery, and Consumer Services; membership; appointment; terms.—

(1) The Board of Funeral, Cemetery, and Consumer Services is created within the Department of Financial Services and shall consist of 10 members, 9 of whom shall be appointed by the Governor from nominations made by the Chief Financial Officer and confirmed by the Senate. The Chief Financial Officer shall nominate one to three persons for each of the nine vacancies on the board, and the Governor shall fill each vacancy on the board by appointing one of the ~~three~~ persons nominated by the Chief Financial Officer to fill that vacancy. If the Governor objects to each of the ~~three~~ nominations for a vacancy, she or he shall inform the Chief Financial Officer in writing. Upon notification of an objection by the Governor, the Chief Financial Officer shall submit one to three additional nominations for that vacancy until the vacancy is filled. One member must be the State Health Officer or her or his designee.

(2) Two members of the board shall be funeral directors licensed under part III of this chapter who are associated with a funeral establishment. One member of the board shall be a funeral director licensed under part III of this chapter who is associated with a funeral establishment licensed under part III of this chapter that has a valid preneed license issued pursuant to this chapter and who owns or operates a cinerator facility approved under chapter 403 and licensed under part VI of this chapter. Two members of the board shall be persons whose primary occupation is associated with a cemetery company licensed pursuant to this chapter. Two ~~Three~~ members of the board shall be consumers who are residents of the state, have never been licensed as funeral directors or embalmers, are not connected with a cemetery or cemetery company licensed pursuant to this chapter, and are not connected with the death care industry or the practice of embalming, funeral directing, or direct disposition. One of the two consumer members shall be at least 60 years of age~~, and one shall be licensed as a certified public accountant under chapter 473~~. One member of the board shall be a consumer who is a resident of this state; licensed as a certified public accountant under chapter 473; has never been licensed as a funeral director or embalmer; is not a principal or employee of any licensee licensed under this chapter; and does not otherwise have control, as defined in s. 497.005, over any licensee licensed under this chapter. One member of the

board shall be a principal of a monument establishment licensed under this chapter as a monument builder. One member shall be the State Health Officer or her or his designee. There shall not be two or more board members who are principals or employees of the same company or partnership or group of companies or partnerships under common control.

(3) Board members shall be appointed for terms of 4 years, and the State Health Officer shall serve as long as that person holds that office. The designee of the State Health Officer shall serve at the pleasure of the Governor. ~~When the terms of the initial board members expire, the Chief Financial Officer shall stagger the terms of the successor members as follows: one funeral director, one cemetery representative, the monument builder, and one consumer member shall be appointed for terms of 2 years, and the remaining members shall be appointed for terms of 4 years. All subsequent terms shall be for 4 years.~~

(6) The headquarters and records of the board shall be in the Division of Funeral, Cemetery, and Consumer Services of the Department of Financial Services in the City of Tallahassee. The board may be contacted through the Division of Funeral, Cemetery, and Consumer Services of the Department of Financial Services in the City of Tallahassee. The Chief Financial Officer shall annually appoint from among the board members a chair and vice chair of the board. The board shall meet at least every 6 months, and more often as necessary. Special meetings of the

board shall be convened upon the direction of the Chief Financial Officer. A quorum is necessary for the conduct of business by the board. Unless otherwise provided by law, a majority of the board members eligible to vote shall constitute a quorum for the purpose of conducting its business ~~six board members shall constitute a quorum for the conduct of the board's business~~.

~~(8) The department shall adopt rules establishing forms by which persons may apply for membership on the board and procedures for applying for such membership. Such forms shall require disclosure of the existence and nature of all current and past employments by or contracts with, and direct or indirect affiliations or interests in, any entity or business that at any time was licensed by the board or by the former Board of Funeral and Cemetery Services or the former Board of Funeral Directors and Embalmers or that is or was otherwise involved in the death care industry, as specified by department rule.~~

Section 4. Section 497.1411, Florida Statutes, is created to read:

497.1411 Disqualification of applicants and licensees; penalties against licensees; rulemaking.—

(1) For purposes of this section, the term:

(a) "Applicant" means an individual applying for licensure or relicensure under this chapter, and an officer, director,

majority owner, partner, manager, or other person who manages or controls an entity applying for licensure or relicensure under this chapter.

(b) "Felony of the first degree" and "capital felony" include all felonies designated as such in this state, at the time of the commission of the offense, as well as any offense in another jurisdiction that is substantially similar to an offense so designated in this state.

(c) "Financial services business" means any financial activity regulated by the Department of Financial Services, the Office of Insurance Regulation, or the Office of Financial Regulation.

(2) An applicant who has been found guilty of or has pleaded guilty or nolo contendere to any of the following crimes, regardless of adjudication, is permanently barred from licensure under this chapter:

(a) A felony of the first degree.

(b) A capital felony.

(c) A felony money laundering offense.

(d) A felony embezzlement.

(3) An applicant who has been found guilty of or has pleaded guilty or nolo contendere to a crime not included in subsection (2), regardless of adjudication, is subject to:

(a) A 10-year disqualifying period for all felonies involving moral turpitude that are not specifically included in the permanent bar contained in subsection (2).

(b) A 5-year disqualifying period for all felonies to which neither the permanent bar in subsection (2) nor the 10-year disqualifying period in paragraph (a) applies.

(c) A 5-year disqualifying period for all misdemeanors directly related to the financial services business.

(4) The board shall adopt rules to administer this section. The rules must provide for additional disqualifying periods due to the commitment of multiple crimes and may include other factors reasonably related to the applicant's criminal history. The rules shall provide for mitigating and aggravating factors. However, mitigation may not result in a period of disqualification of less than 5 years and may not mitigate the disqualifying periods in paragraphs (3)(b) and (c).

(5) For purposes of this section, a disqualifying period begins upon the applicant's final release from supervision or upon completion of the applicant's criminal sentence. The department may not issue a license to an applicant unless all related fines, court costs and fees, and court-ordered restitution have been paid.

(6) After the disqualifying period has expired, the burden is on the applicant to demonstrate that he or she has been rehabilitated, does not pose a risk to the public, is fit and

trustworthy to engage in business regulated by this chapter, and is otherwise qualified for licensure.

(7) Notwithstanding subsections (2) and (3), an applicant who has been found guilty of, or has pleaded guilty or nolo contendere to, a crime in subsection (2) or subsection (3), and has subsequently been granted a pardon or the restoration of civil rights pursuant to chapter 940 and s. 8, Art. IV of the State Constitution, or such pardon or the restoration of civil rights under the laws of another jurisdiction with respect to a conviction in that jurisdiction, is not barred or disqualified from licensure under this chapter; however, such a pardon or restoration of civil rights does not require the department to award such license.

(8)(a) The Board of Funeral, Cemetery, and Consumer Services may grant an exemption from disqualification to any person disqualified from licensure under subsection (3) if:

1. The applicant has paid in full any fee, fine, fund, lien, civil judgment, restitution, or cost of prosecution imposed by the court as part of the judgment and sentence for any disqualifying offense; and

2. At least 5 years have elapsed since the applicant completed or has been lawfully released from confinement, supervision, or nonmonetary condition imposed by the court for a disqualifying offense.

(b) For the board to grant an exemption under this subsection, the applicant must clearly and convincingly demonstrate that he or she would not pose a risk to persons or property if licensed under this chapter, evidence of which must include, but need not be limited to, facts and circumstances surrounding the disqualifying offense, the time that has elapsed since the offense, the nature of the offense and harm caused to the victim, the applicant's history before and after the offense, and any other evidence or circumstances indicating that the applicant will not present a danger if licensed or certified.

(c) The board has discretion whether to grant or deny an exemption under this subsection. The board's decision is subject to chapter 120.

(9) The disqualification periods provided in this section will not apply to the renewal of a license or to a new application for licensure if the applicant has an active license as of the effective date of this section, and the applicable criminal history was considered by the Board on the prior approval of any active license(s) held by the applicant. This section does not affect any criminal history disclosure requirements of chapter 497.

Section 5. Subsections (9) and (10) of section 497.142, Florida Statutes, are amended to read:

497.142 Licensing; fingerprinting and criminal background checks.—

(9) If any applicant under this chapter has been, ~~within the 10 years preceding the application under this chapter,~~ convicted or found guilty of, or entered a plea of nolo contendere to, regardless of adjudication, any crime in any jurisdiction, the application shall not be deemed complete until such time as the applicant provides such certified true copies of the court records evidencing the conviction, finding, or plea, as required in this section or as the licensing authority may by rule require.

(10)(a) When applying for any license under this chapter, every applicant must disclose the applicant's criminal records in accordance with this subsection. When applying for renewal of any license under this chapter, every licensee must disclose only those criminal offenses required to be disclosed under this subsection since the most recent renewal of her or his license or, if the license has not been renewed, since the licensee's initial application.

(b) The criminal record required to be disclosed shall be any crime listed in paragraph (c) for which the person or entity required to make disclosure has been convicted or to which that person or entity entered a plea of guilty or nolo contendere. Disclosure is required regardless of whether adjudication is entered or withheld by the court.

(c) Crimes to be disclosed are:

1. Any felony ~~or misdemeanor~~, no matter when committed~~,~~ ~~that was directly or indirectly related to or involving any aspect of the practice or business of funeral directing, embalming, direct disposition, cremation, funeral or cemetery preneed sales, funeral establishment operations, cemetery operations, or cemetery monument or marker sales or installation~~.~~

2. Any misdemeanor, no matter when committed, that was directly or indirectly related to the financial services business as defined in s. 497.1411 ~~Any other felony not already disclosed under subparagraph 1. that was committed within the 20 years immediately preceding the application under this chapter~~.

3. Any other misdemeanor not already disclosed under subparagraph 2. ~~subparagraph 1.~~ that was committed within the 5 years immediately preceding the application under this chapter.

Section 6. Subsections (2) through (5) of section 497.157, Florida Statutes, are renumbered as subsections (4) through (7), respectively, new subsections (2), (3) and (8) are added to that section, and present subsection (3) is amended, to read:

497.157 Unlicensed practice; remedies concerning violations by unlicensed persons.—

(2) A person may not be, act as, or advertise or hold himself or herself out to be a funeral director, embalmer, or

direct disposer, unless he or she is currently licensed by the department.

(3) A person may not be, act as, or advertise or hold himself or herself out to be a preneed sales agent unless he or she is currently licensed by the department and appointed by a preneed main licensee for which they are executing preneed contracts.

(5)~~(3)~~ Where the department determines that an emergency exists regarding any violation of this chapter by any unlicensed person or entity, the department may issue and serve an immediate final order upon such unlicensed person or entity, in accordance with s. 120.569(2)(n). Such an immediate final order may impose such prohibitions and requirements as are reasonably necessary to protect the public health, safety, and welfare, and shall be effective when served.

(a) For the purpose of enforcing such an immediate final order, the department may file an emergency or other proceeding in the circuit courts of the state seeking enforcement of the immediate final order by injunctive or other order of the court. The court shall issue its injunction or other order enforcing the immediate final order pending administrative resolution of the matter under subsection (4)~~(2)~~, unless the court determines that such action would work a manifest injustice under the circumstances. Venue for judicial actions under this paragraph shall be, at the election of the department, in the courts of

Leon County, or in a county where the respondent resides or has a place of business.

(b) After serving an immediate final order to cease and desist upon any person or entity, the department shall within 10 days issue and serve upon the same person or entity an administrative complaint as set forth in subsection (4) ~~(2)~~, except that, absent order of a court to the contrary, the immediate final order shall be effective throughout the pendency of proceedings under subsection (4) ~~(2)~~.

(8) Any person who is not licensed under this chapter and who engages in activity requiring licensure under this chapter commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 7. Subsection (6) of section 497.159, Florida Statutes, is amended to read:

497.159 Crimes.—

~~(6) Any person who is not licensed under this chapter who engages in activity requiring licensure under this chapter, commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.~~

Section 8. Subsection (7) of section 497.459, Florida Statutes, is amended to read:

497.459 Cancellation of, or default on, preneed contracts; required notice.—

(7) NOTICE TO PURCHASER OR LEGALLY AUTHORIZED PERSON.—

(a) To ensure the performance of unfulfilled preneed contracts, upon the occurrence of the earliest of either ~~any~~ of the following events, a preneed licensee shall provide to the purchaser or to the beneficiary's legally authorized person written notice of the preneed licensee's intent to distribute funds as described herein in accordance with the terms of the preneed contract, if any such terms exist ~~obligation of the preneed licensee remains to be fulfilled under the contract~~:

1. Fifty years after the date of execution of the preneed contract by the purchaser.

2. The beneficiary of the preneed contract attains the age of 105 years of age or older.

~~3. The social security number of the beneficiary of the preneed contract, as shown on the contract, is contained within the United States Social Security Administration Death Master File.~~

A preneed licensee shall conduct the analysis of its preneed contracts at least every 3 years, which period shall commence upon the first analysis conducted pursuant to this section. The first analysis by a preneed licensee shall occur by July 1 2021.

(b)1. The notice in paragraph (a) must be provided by certified mail, registered mail, or permitted delivery service, return receipt requested, to the last known mailing address of the purchaser or the beneficiary's legally authorized person,

whichever is applicable, as provided to the preneed licensee. If the notice is returned as undeliverable within 30 calendar days after the preneed licensee sent the notice, the preneed licensee ~~trustee~~ shall perform a diligent search and inquiry to obtain a different address for the purchaser or the beneficiary's legally authorized person, whichever is applicable. For purposes of this subparagraph, any address known and used by the purchaser or the beneficiary's legally authorized person, whichever is applicable, for sending regular mailings or other communications from the purchaser or the beneficiary's legally authorized person, whichever is applicable, to the preneed licensee or any address produced through a current address service or searchable database shall be included with other addresses produced from the diligent search and inquiry, if any. If the preneed licensee's ~~trustee's~~ diligent search and inquiry produces an address different from the notice address, the preneed licensee ~~trustee~~ shall mail a copy of the notice by certified mail, registered mail, or permitted delivery service, return receipt requested, to any and all addresses produced as a result of the diligent search and inquiry.

2. If the purchaser or the beneficiary's legally authorized person, whichever is applicable, fails to respond to such notice within 3 years ~~120 days~~ after delivery of the last mailed notice under subparagraph 1., the funds held in trust ~~must be distributed in accordance with the terms of the preneed~~

~~contract, the trust agreement, and any applicable provisions of chapter 717~~ shall be distributed as follows within 60 days of the end of the 3-year period escribed herein and in accordance with any applicable provisions of chapter 717:

1. The principle deposited into trust shall be remitted to the Unclaimed Property Trust Fund.

2. Any additional funds in trust shall be remitted to the preneed licensee.

Upon the occurrence of the distribution from trust, the preneed licensee is absolved of all liability associated with the preneed contract for which funds were distributed, including any obligation to refund any monies paid by a Purchaser of a preneed contract. The names of the Purchaser and Beneficiary of any preneed contract for which funds were distributed shall be provided to the Division of Unclaimed Property at the time such funds are remitted to the Unclaimed Property Trust Fund..

(c) Any Purchaser and Beneficiary that receives the notice required under this subsection retain all rights to fulfillment or cancellation of the preneed contract during the time between the issuance of the notice and the distribution described in subparagraph (b)2. Legally authorized persons, in the priority set forth in this chapter, of the purchaser or beneficiary may obtain fulfillment or cancellation of the preneed contract. Such fulfillment may include identifying a new beneficiary on the

preneed contract. A preneed licensee shall provide fulfillment or cancellation of the preneed contract upon the attestation of any one legally authorized person that he or she is not aware of an objection to the requested action by any person in his or her priority class or a higher priority class. In the event that the legally authorized person chooses to identify a new beneficiary on the preneed contract, such preneed contract shall be considered to be effective as of the date of the identification of the new beneficiary. ~~This subsection does not affect a purchaser's rights to cancel the preneed contract and receive a refund or a preneed licensee's obligations to refund established by this chapter.~~

(d) The licensing authority shall have authority to adopt rules for the review and approval of notice forms used by preneed licensees to provide notice under this subsection.

Section 9. Subsection (13) of section 552.081, Florida Statutes, is amended to read:

552.081 Definitions.—As used in this chapter:

(13) "Two-component explosives" means any two inert components which, when mixed, become capable of detonation by any detonator ~~a No. 6 blasting cap~~, and shall be classified as a Class "A" explosive when so mixed.

Section 10. Subsection (2) of section 553.7921, Florida Statutes, is renumbered as subsection (3), subsection (1) of

that section is amended, and a new subsection (2) is added to that section, to read:

553.7921 Fire alarm permit application to local enforcement agency.—

(1) A contractor must file a Uniform Fire Alarm Permit Application as provided in subsection (3) ~~(2)~~ with the local enforcement agency and must receive the fire alarm permit before~~:~~

~~(a)~~ installing or replacing a fire alarm if the local enforcement agency requires a plan review for the installation or replacement~~; or~~

~~(b) Repairing an existing alarm system that was previously permitted by the local enforcement agency if the local enforcement agency requires a fire alarm permit for the repair~~.

(2) If the local enforcement agency requires a fire alarm permit to repair an existing alarm system that was previously permitted by the local enforcement agency, a contractor may begin work after filing a Uniform Fire Alarm Permit Application as provided in subsection (3). A fire alarm repaired pursuant to this subsection shall not be considered compliant until the required permit has been issued and the local enforcement agency has approved the repair.

Section 11. Subsection (3) of section 633.102, Florida Statutes, is amended to read:

633.102 Definitions.—As used in this chapter, the term:

(3)(a) "Contractor I" means a contractor whose business includes the execution of contracts requiring the ability to lay out, fabricate, install, inspect, alter, repair, and service all types of fire protection systems, excluding preengineered systems.

(b) "Contractor II" means a contractor whose business is limited to the execution of contracts requiring the ability to lay out, fabricate, install, inspect, alter, repair, and service water sprinkler systems, water spray systems, foam-water sprinkler systems, foam-water spray systems, standpipes, combination standpipes and sprinkler risers, all piping that is an integral part of the system beginning at the point of service as defined in this section, sprinkler tank heaters, air lines, thermal systems used in connection with sprinklers, and tanks and pumps connected thereto, excluding preengineered systems.

(c) "Contractor III" means a contractor whose business is limited to the execution of contracts requiring the ability to fabricate, install, inspect, alter, repair, and service carbon dioxide systems, foam extinguishing systems, dry chemical systems, and Halon and other chemical systems, excluding preengineered systems.

(d) "Contractor IV" means a contractor whose business is limited to the execution of contracts requiring the ability to lay out, fabricate, install, inspect, alter, repair, and service automatic fire sprinkler systems for detached one-family

dwellings, detached two-family dwellings, and mobile homes, excluding preengineered systems and excluding single-family homes in cluster units, such as apartments, condominiums, and assisted living facilities or any building that is connected to other dwellings. A Contractor IV is limited to the scope of practice specified in NFPA 13D.

(e) "Contractor V" means a contractor whose business is limited to the execution of contracts requiring the ability to fabricate, install, inspect, alter, repair, and service the underground piping for a fire protection system using water as the extinguishing agent beginning at the point of service as defined in this act and ending no more than 1 foot above the finished floor.

The definitions in this subsection may not be construed to include engineers or architects and do not limit or prohibit a licensed fire protection engineer or architect with fire protection design experience from designing any type of fire protection system. A distinction is made between system design concepts prepared by the design professional and system layout as defined in this section and typically prepared by the contractor. However, a person certified as a Contractor I or~~,~~ Contractor II~~, or Contractor IV~~ under this chapter may design new fire protection systems of 49 or fewer sprinklers~~;, and~~ may design the alteration of an existing fire sprinkler system if

the alteration consists of the ~~relocation,~~ addition~~, or deletion~~ of ~~not more than~~ 49 or fewer sprinklers, notwithstanding the size of the existing fire sprinkler system; or may design the alteration of an existing fire sprinkler system if the alteration consists of the relocation or deletion of 249 or fewer sprinklers, notwithstanding the size of the existing fire sprinkler system, if there is no change of occupancy, as defined in the Florida Building Code, of the affected areas and there is no change in the water demand as defined in National Fire Protection Association publication NFPA No. 13 "Standard for the Installation of Sprinkler Systems," and if the occupancy hazard classification as defined in NFPA 13 is reduced or remains the same as a result of the alteration. A person certified as a Contractor I, Contractor II, or Contractor IV may design or alter a fire protection system, the scope of which complies with NFPA 13D, Standard for the Installation of Sprinkler Systems in One- and Two-Family Dwellings and Manufactured Homes, as adopted by the State Fire Marshal, notwithstanding the number of fire sprinklers. Contractor-developed plans may not be required by any local permitting authority to be sealed by a registered professional engineer.

Section 12. Section 633.217, Florida Statutes, is created to read:

633.217 Influencing a firesafety inspector; prohibited acts.—

(1) A person may not influence a firesafety inspector by:

(a) Threatening, coercing, tricking, or attempting to threaten, coerce, or trick, the firesafety inspector into violating any provision of the Florida Fire Prevention Code, any rule adopted by the State Fire Marshal, or any provision of this chapter.

(b) Offering any compensation to the firesafety inspector to induce a violation of the Florida Fire Prevention Code, any rule adopted by the State Fire Marshal, or any provision of this chapter.

(2) A firesafety inspector may not knowingly and willfully accept an attempt by a person to influence the firesafety inspector into violating any provision of the Florida Fire Prevention Code, any rule adopted by the State Fire Marshal, or any provision of this chapter.

Section 13. Paragraphs (d), (g), and (h) of subsection (4) of section 633.304, Florida Statutes, are amended to read:

633.304 Fire suppression equipment; license to install or maintain.—

(4)

(d) A license of any class may not be issued or renewed by the division and a license of any class does not remain operative unless:

1. The applicant has submitted to the State Fire Marshal evidence of registration as a Florida corporation or evidence of compliance with s. 865.09.

2. The State Fire Marshal or his or her designee has by inspection determined that the applicant possesses the equipment required for the class of license sought. The State Fire Marshal shall give an applicant a reasonable opportunity to correct any deficiencies discovered by inspection. To obtain such inspection, an applicant with facilities located outside this state must:

a. Provide a notarized statement from a professional engineer licensed by the applicant's state of domicile certifying that the applicant possesses the equipment required for the class of license sought and that all such equipment is operable; or

b. Allow the State Fire Marshal or her or his designee to inspect the facility. All costs associated with the State Fire Marshal's inspection must be paid by the applicant. The State Fire Marshal, in accordance with s. 120.54, may adopt rules to establish standards for the calculation and establishment of the amount of costs associated with any inspection conducted by the State Fire Marshal under this section. Such rules must include procedures for invoicing and receiving funds in advance of the inspection.

3. The applicant has submitted to the State Fire Marshal proof of insurance providing coverage for comprehensive general liability for bodily injury and property damage, products liability, completed operations, and contractual liability. The State Fire Marshal shall adopt rules providing for the amounts of such coverage, but such amounts may not be less than $300,000 for Class A or Class D licenses, $200,000 for Class B licenses, and $100,000 for Class C licenses; and the total coverage for any class of license held in conjunction with a Class D license may not be less than $300,000. The State Fire Marshal may, at any time after the issuance of a license or its renewal, require upon demand, and in no event more than 30 days after notice of such demand, the licensee to provide proof of insurance, on the insurer's form, containing confirmation of insurance coverage as required by this chapter. Failure, for any length of time, to provide proof of insurance coverage as required must result in the immediate suspension of the license until proof of proper insurance is provided to the State Fire Marshal. An insurer that provides such coverage shall notify the State Fire Marshal of any change in coverage or of any termination, cancellation, or nonrenewal of any coverage.

4. The applicant applies to the State Fire Marshal, provides proof of experience, and successfully completes a prescribed training course that includes both written and practical training offered at ~~by~~ the State Fire College and ~~or~~

~~an equivalent course~~ approved by the State Fire Marshal as applicable to the class of license being sought. This subparagraph does not apply to any holder of or applicant for a permit under paragraph (g) or to a business organization or a governmental entity seeking initial licensure or renewal of an existing license solely for the purpose of inspecting, servicing, repairing, marking, recharging, and maintaining fire extinguishers used and located on the premises of and owned by such organization or entity.

5. The applicant has a current retestor identification number that is appropriate for the license for which the applicant is applying and that is listed with the United States Department of Transportation.

6. The applicant has passed, with a grade of at least 70 percent, a written examination testing his or her knowledge of the rules and statutes governing the activities authorized by the license and demonstrating his or her knowledge and ability to perform those tasks in a competent, lawful, and safe manner. Such examination must be developed and administered by the State Fire Marshal, or his or her designee in accordance with policies and procedures of the State Fire Marshal. An applicant shall pay a nonrefundable examination fee of $50 for each examination or reexamination scheduled. A reexamination may not be scheduled sooner than 30 days after any administration of an examination to an applicant. An applicant may not be permitted to take an

examination for any level of license more than a total of four times during 1 year, regardless of the number of applications submitted. As a prerequisite to licensure of the applicant, he or she:

a. Must be at least 18 years of age.

b. Must have 4 years of proven experience as a fire equipment permittee at a level equal to or greater than the level of license applied for or have a combination of education and experience determined to be equivalent thereto by the State Fire Marshal. Having held a permit at the appropriate level for the required period constitutes the required experience.

c. Must not have been convicted of a felony or a crime punishable by imprisonment of 1 year or more under the law of the United States or of any state thereof or under the law of any other country. "Convicted" means a finding of guilt or the acceptance of a plea of guilty or nolo contendere in any federal or state court or a court in any other country, without regard to whether a judgment of conviction has been entered by the court having jurisdiction of the case. If an applicant has been convicted of any such felony, the applicant is excluded from licensure for a period of 4 years after expiration of sentence or final release by the Florida Commission on Offender Review unless the applicant, before the expiration of the 4-year period, has received a full pardon or has had her or his civil rights restored.

This subparagraph does not apply to any holder of or applicant for a permit under paragraph (g) or to a business organization or a governmental entity seeking initial licensure or renewal of an existing license solely for the purpose of inspecting, servicing, repairing, marking, recharging, hydrotesting, and maintaining fire extinguishers used and located on the premises of and owned by such organization or entity.

(g) A permit of any class may not be issued or renewed to a person by the division, and a permit of any class does not remain operative, unless the person has:

1. Submitted a nonrefundable examination fee in the amount of $50.

2. Successfully completed a training course that includes both written and practical training offered at ~~by~~ the State Fire College and ~~or an equivalent course~~ approved by the State Fire Marshal as applicable to the class of license being sought.

3. Passed, with a grade of at least 70 percent, a written examination testing his or her knowledge of the rules and statutes governing the activities authorized by the permit and demonstrating his or her knowledge and ability to perform those tasks in a competent, lawful, and safe manner. Such examination must be developed and administered by the State Fire Marshal in accordance with the policies and procedures of the State Fire Marshal. An examination fee must be paid for each examination

scheduled. A reexamination may not be scheduled sooner than 30 days after any administration of an examination to an applicant. An applicant may not be permitted to take an examination for any level of permit more than four times during 1 year, regardless of the number of applications submitted. As a prerequisite to taking the permit examination, the applicant must be at least 16 years of age.

(h) An applicant for a license or permit under this section who fails the examination may take it three more times during the 1-year period after he or she originally filed an application for the examination. If the applicant fails the examination within 1 year after the application date and he or she seeks to retake the examination, he or she must file a new application, pay the application and examination fees, and successfully complete a prescribed training course that includes both written and practical training offered at ~~by~~ the State Fire College and ~~or an equivalent course~~ approved by the State Fire Marshal as applicable to the class of license being sought. The applicant may not submit a new application within 6 months after the date of his or her fourth reexamination. An applicant who passes the examination but does not meet the remaining qualifications prescribed by law and rule within 1 year after the application date must file a new application, pay the application and examination fee, successfully complete a prescribed training course that includes both written and

practical training offered at ~~approved by~~ the State Fire College and ~~or an equivalent course~~ approved by the State Fire Marshal as applicable to the class of license being sought, and pass the written examination.

Section 14. Subsection (1) of section 633.416, Florida Statutes, is amended to read:

633.416 Firefighter employment and volunteer firefighter service; saving clause.—

(1) A fire service provider may not employ an individual to:

(a) Extinguish fires for the protection of life or property or to supervise individuals who perform such services unless the individual holds a current and valid Firefighter Certificate of Compliance. However, a person who is currently serving as a volunteer firefighter and holds a volunteer firefighter certificate of completion with a fire service provider, who is then employed as a regular or permanent firefighter, by such fire service provider, may function, for a period of 1 year under the direct supervision of an individual holding a valid firefighter certificate of compliance, in the same capacity in which he or she acted as a volunteer firefighter, provided that he or she has completed all training required by the volunteer organization. Under no circumstance can this period extend beyond 1 year either collectively or

consecutively from the start of employment to obtain a Firefighter Certificate of Compliance; or

(b) Serve as the administrative and command head of a fire service provider for a period in excess of 1 year unless the individual holds a current and valid Firefighter Certificate of Compliance or Special Certificate of Compliance.

Section 15. Section 843.08, Florida Statutes, is amended to read:

843.08 False personation.—A person who falsely assumes or pretends to be a firefighter, a sheriff, an officer of the Florida Highway Patrol, an officer of the Fish and Wildlife Conservation Commission, an officer of the Department of Environmental Protection, ~~a fire or arson investigator of the Department of Financial Services,~~ an officer of the Department of Financial Services, or any personnel or representative of the Division of Investigative and Forensic Services, an officer of the Department of Corrections, a correctional probation officer, a deputy sheriff, a state attorney or an assistant state attorney, a statewide prosecutor or an assistant statewide prosecutor, a state attorney investigator, a coroner, a police officer, a lottery special agent or lottery investigator, a beverage enforcement agent, a school guardian as described in s. 30.15(1)(k), a security officer licensed under chapter 493, any member of the Florida Commission on Offender Review or any administrative aide or supervisor employed by the commission,

any personnel or representative of the Department of Law Enforcement, or a federal law enforcement officer as defined in s. 901.1505, and takes upon himself or herself to act as such, or to require any other person to aid or assist him or her in a matter pertaining to the duty of any such officer, commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. However, a person who falsely personates any such officer during the course of the commission of a felony commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. If the commission of the felony results in the death or personal injury of another human being, the person commits a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 16. Paragraph (f) is added to subsection (11) of section 943.045, Florida Statutes, to read:

943.045 Definitions; ss. 943.045-943.08.—The following words and phrases as used in ss. 943.045-943.08 shall have the following meanings:

(11) "Criminal justice agency" means:

(f) The investigations component of the Department of Financial Services, which investigates the crimes of fraud and official misconduct in all public assistance given to residents of the state or provided to others by the state.

Section 17. Effective January 1, 2021, subsection (3) of section 626.2815, Florida Statutes, is amended to read:

626.2815 Continuing education requirements.—

(3) Each licensee except a title insurance agent must complete a 4-hour ~~5-hour~~ update course every 2 years which is specific to the license held by the licensee. The course must be developed and offered by providers and approved by the department. The content of the course must address all lines of insurance for which examination and licensure are required and include the following subject areas: insurance law updates, ethics for insurance professionals, disciplinary trends and case studies, industry trends, premium discounts, determining suitability of products and services, and other similar insurance-related topics the department determines are relevant to legally and ethically carrying out the responsibilities of the license granted. A licensee who holds multiple insurance licenses must complete an update course that is specific to at least one of the licenses held. Except as otherwise specified, any remaining required hours of continuing education are elective and may consist of any continuing education course approved by the department under this section.

(a) Except as provided in paragraphs (b), (c), (d), (e), (i), and (j), each licensee must also complete 20 ~~19~~ hours of elective continuing education courses every 2 years.

(b) A licensee who has been licensed for 6 or more years must also complete a minimum of 16 ~~15~~ hours of elective continuing education every 2 years.

(c) A licensee who has been licensed for 25 years or more and is a CLU or a CPCU or has a Bachelor of Science degree in risk management or insurance with evidence of 18 or more semester hours in insurance-related courses must also complete a minimum of 5 hours of elective continuing education courses every 2 years.

(d) An individual who holds a license as a customer representative and who is not a licensed life or health agent must also complete a minimum of 6 ~~5~~ hours of continuing education courses every 2 years.

(e) An individual subject to chapter 648 must complete the 4-hour ~~5-hour~~ update course and a minimum of 10 ~~9~~ hours of elective continuing education courses every 2 years.

(f) Elective continuing education courses for public adjusters must be specifically designed for public adjusters and approved by the department. Notwithstanding this subsection, public adjusters for workers' compensation insurance or health insurance are not required to take continuing education courses pursuant to this section.

(g) Excess hours accumulated during any 2-year compliance period may be carried forward to the next compliance period.

(h) An individual teaching an approved course of instruction or lecturing at any approved seminar and attending the entire course or seminar qualifies for the same number of classroom hours as would be granted to a person taking and successfully completing such course or seminar. Credit is limited to the number of hours actually taught unless a person attends the entire course or seminar. An individual who is an official of or employed by a governmental entity in this state and serves as a professor, instructor, or in another position or office, the duties and responsibilities of which are determined by the department to require monitoring and review of insurance laws or insurance regulations and practices, is exempt from this section.

(i) For compliance periods beginning on or after October 1, 2014, any person who holds a license as a title insurance agent must complete a minimum of 10 hours of continuing education credit every 2 years in title insurance and escrow management specific to this state and approved by the department, which shall include at least 3 hours of continuing education on the subject matter of ethics, rules, or compliance with state and federal regulations relating specifically to title insurance and closing services.

(j) For a licensee who is an active participant in an association, 2 hours of elective continuing education credit per

calendar year may be approved by the department, if properly reported by the association.

Section 18. Section 40 of chapter 2019-140, Laws of Florida, is amended to read:

Section 40. (1) The Legislature finds that:

(a) Blockchain technology and distributed ledger technology allow the secure recording of transactions through cryptographic algorithms and distributed record sharing, and such technology has reached a point where the opportunities for efficiency, cost savings, and cybersecurity deserve study.

(b) Blockchain technology is a promising way to facilitate more efficient government service delivery models and economies of scale, including facilitating safe paperless transactions and recordkeeping that are nearly impervious to cyberattacks and data destruction.

(c) Blockchain technology can reduce the prevalence of disparate government computer systems, databases, and custom-built software interfaces; reduce costs associated with maintenance and implementation; streamline information sharing; and allow more areas of the state to electronically participate in government services.

(d) Nations, other states, and municipalities across the world are studying and implementing governmental reforms that bolster trust and reduce bureaucracy through verifiable open source blockchain technology in a variety of areas, including,

but not limited to, medical and health records, land records, banking, tax and fee payments, smart contracts, professional accrediting, and property auctions.

(e) It is in the public interest to establish a Florida Financial Technology and Blockchain Task Force comprised of government and industry representatives to study the ways in which state, county, and municipal governments can benefit from a transition to a blockchain-based system for recordkeeping, security, and service delivery and to develop and submit recommendations to the Governor and the Legislature concerning the potential for implementation of blockchain-based systems that promote government efficiencies, better services for citizens, economic development, and safer cyber-secure interaction between government and the public.

(2) The Florida Financial Technology and Blockchain Task Force, a task force as defined in s. 20.03, Florida Statutes, is established within the Department of Financial Services to explore and develop a master plan for fostering the expansion of financial technology and the blockchain industry in the state, to recommend policies and state investments to help make this state a leader in financial and blockchain technologies ~~technology~~, and to issue a report to the Governor and the Legislature. The task force shall study if and how state, county, and municipal governments can benefit from a transition to a blockchain-based system for recordkeeping, data security,

financial transactions, and service delivery and identify ways to improve government interaction with businesses and the public. The task force shall also consider financial technology innovations related to money transmitters and payment instrument sellers, as defined in s. 560.103, Florida Statutes, including mediums of exchange that are in electronic or digital form, and identify new products and services that could lead to business growth in the state.

(a) The master plan shall:

1. Identify the economic growth and development opportunities presented by financial and blockchain technologies ~~technology~~.

2. Assess the existing blockchain industry in the state.

3. Identify innovative and successful blockchain applications currently used by industry and other governments to determine viability for state applications.

4. Review workforce needs and academic programs required to build blockchain technology expertise across all relevant industries.

5. Make recommendations to the Governor and the Legislature that will promote innovation and economic growth by reducing barriers to and expediting the expansion of the state's financial technology and blockchain industries ~~industry~~.

(b) The task force shall consist of 13 members. Membership shall be as follows:

1. Three agency heads or executive directors of cabinet agencies, or their designees, appointed by the Governor.

2. Four members of the public or private sector with knowledge and experience in blockchain technology, appointed by the Governor.

3. Three members from the public or private sector with knowledge and experience in blockchain technology, appointed by the Chief Financial Officer.

4. One member from the private sector with knowledge and experience in blockchain technology, appointed by the President of the Senate.

5. One member from the private sector with knowledge and experience in blockchain technology, appointed by the Speaker of the House of Representatives.

6. One certified public accountant licensed pursuant to chapter 473 with knowledge and experience in blockchain technology, appointed by the Governor.

Members of the task force shall reflect the ethnic diversity of the state.

(c) Within 90 days after the effective date of this act, a majority of the members of the task force must be appointed and the task force shall hold its first meeting. The task force shall elect one of its members to serve as chair. Members of the task force shall serve for the duration of the existence of the

task force. Any vacancy that occurs shall be filled in the same manner as the original appointment. Task force members shall serve without compensation, and are not entitled to reimbursement for per diem or travel expenses.

(d) The task force shall study blockchain technology, including, but not limited to, the following:

1. Opportunities and risks associated with using blockchain and distributed ledger technology for state and local governments.

2. Different types of blockchains, both public and private, and different consensus algorithms.

3. Projects and cases currently under development in other states and local governments, and how these cases could be applied in this state.

4. Ways the Legislature can modify general law to support secure paperless recordkeeping, increase cybersecurity, improve interactions with citizens, and encourage blockchain innovation for businesses in the state.

5. Identifying potential economic incentives for companies investing in blockchain technologies in collaboration with the state.

6. Recommending projects for potential blockchain solutions, including, but not limited to, use cases for state agencies that would improve services for citizens or businesses.

7. Identifying the technical skills necessary to develop blockchain technology and ensuring that instruction in such skills is available at secondary and postsecondary educational institutions in this state.

(3) The task force shall submit a report to the Governor, the President of the Senate, and the Speaker of the House of Representatives and present its findings to the appropriate legislative committees in each house of the Legislature by January 31, 2021 ~~within 180 days after the initial meeting of the task force~~. The report must include:

(a) A general description of the costs and benefits of state and local government agencies using blockchain technology.

(b) Recommendations concerning the feasibility of implementing blockchain technology in the state and the best approach to finance the cost of implementation.

(c) Recommendations for specific implementations to be developed by relevant state agencies.

(d) Any draft legislation the task force deems appropriate to implement such blockchain technologies.

(e) Identification of one pilot project that may be implemented in the state.

(f) Any other information deemed relevant by the task force.

(4) The task force is entitled to the assistance and services of any state agency, board, bureau, or commission as necessary and available for the purposes of this section.

(5) The Department of Financial Services shall provide support staff for the task force and any relevant studies, data, and materials in its possession to assist the task force in the performance of its duties.

(6) The task force shall terminate upon submission of the report and the presentation of findings.

(7) This section shall take effect upon this act becoming a law.

Section 19. Except as otherwise expressly provided in this act and except for this section, which shall take effect upon this act becoming a law, this act shall take effect July 1, 2020.

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

Remove everything before the enacting clause and insert:

A bill to be entitled

An act relating to the Department of Financial Services; amending s. 20.121, F.S.; specifying powers and duties of the Division of Public Assistance Fraud; creating s. 284.45, F.S.; prohibiting individuals

working for an entity covered by the State Risk Management Trust Fund from engaging in retaliatory conduct against a sexual harassment victim; defining the term "sexual harassment victim"; prohibiting the release of personal identifying information of sexual harassment victims; providing criminal penalties; amending s. 497.101, F.S.; revising provisions relating to membership of the Board of Funeral, Cemetery, and Consumer Services; creating s. 497.1411, F.S.; providing definitions; providing for permanent disqualification of applicants for licensure under ch. 497, F.S., upon conviction of certain offenses; providing for disqualifying periods for such applicants who have been convicted of certain offenses; requiring rulemaking; providing for calculation of disqualifying periods; providing for applicants to show rehabilitation after completion of a disqualifying period; providing for the effect of a pardon or clemency; providing for exemptions from disqualification in certain circumstances; providing procedures for consideration of applications for such exemptions; amending s. 497.142, F.S.; revising provisions relating to criminal background checks for applicants under ch. 497, F.S.; amending s. 497.157, F.S.; prohibiting persons from acting as or

advertising themselves as being certain persons unless they are so licensed; prohibiting persons from engaging in certain activities requiring licensure without holding required licenses; providing criminal penalties; amending s. 497.159, F.S.; deleting provisions relating to criminal penalties for persons engaging in activities requiring a license under ch. 497, F.S.; amending s. 497.459, F.S.; revises provisions concerning notice to purchasers of preneed contracts; amending s. 552.081, F.S.; revising the definition of two-component explosives for the purpose of regulation by the Division of State Fire Marshal; amending s. 553.7921, F.S.; revising requirements for repair of an existing alarm system that was previously permitted by a local enforcement agency; s. 633.102, F.S.; amending s. 633.102, F.S.; revising provisions concerning licensure for design, installation, and alteration of fire sprinklers; creating s. 633.217, F.S.; prohibiting certain actions to influence a firesafety inspector into violating certain provisions; prohibiting a firesafety inspector from knowingly and willfully accepting an attempt to influence the firesafety inspector into violating certain provisions; amending s. 633.304, F.S.; specifying that training courses offered by the State

Fire College must include a written and a practical element and be approved by the State Fire Marshal; amending s. 633.416, F.S.; providing that certain persons serving as volunteer firefighters may serve as a regular or permanent firefighter for a limited period subject to certain restrictions; amending s. 843.08, F.S.; prohibiting false personation of personnel or representatives of the Division of Investigative and Forensic Services; providing criminal penalties; amending s. 943.045, F.S.; providing the investigations component of the Department of Financial Services is a criminal justice agency for specified purposes; amending s. 626.2815, F.S.; revising continuing education requirements for title insurance agents; renaming the Florida Blockchain Task Force as the Florida Financial Technology and Blockchain Task Force; revising the duties of the task force; revising the date of a report; providing effective dates.

Amendment No. aa1

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 Santiago offered the following:

Amendment to Amendment (434827) by Representative LaMarca (with title amendment)

Between lines 531 and 532 of the amendment, insert:

Section 1. Subsection (18) of section 633.202, Florida Statutes, is amended to read:

633.202 Florida Fire Prevention Code.—

(18) The authority having jurisdiction shall determine the minimum radio signal strength for fire department communications in all new high-rise and existing high-rise buildings. Existing buildings are not required to comply with minimum radio strength for fire department communications and two-way radio system enhancement communications as required by the Florida Fire Prevention Code until January 1, 2022. However, by December 31,

2019, an existing building that is not in compliance with the requirements for minimum radio strength for fire department communications must apply for an appropriate permit for the required installation with the local government agency having jurisdiction and must demonstrate that the building will become compliant by January 1, 2022. Existing apartment buildings are not required to comply until January 1, 2025. However, existing apartment buildings are required to apply for the appropriate permit for the required communications installation by December 31, 2022.

(a) The authority having jurisdiction may require assessment of a new or existing building's interior radio coverage and signal strength, for purposes of determining the need for two-way radio communications enhancement system within the building, no more frequently than:

1. For a high-rise building, once every 3 years; or

2. For any other building, once every 5 years.

(b) When an assessment of a new building's interior radio coverage and signal strength determines that installation of a two-way radio communications enhancement system is required, the jurisdiction may not withhold issuance of a certificate of occupancy for the building, if the Florida licensed architect or engineer who designed the building, in his or her professional judgment, projected based on the available evidence of radio coverage that a two-way radio communications enhancement system

would not be necessary to meet the minimum standards for interior radio coverage and signal strength. The local authority having jurisdiction must not require installation of the two-way radio communications enhancement system until at least 90 days after completion of the building's interior radio coverage and signal strength assessment report.

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

Remove line 1067 of the amendment and insert:
alteration of fire sprinklers; amending s. 633.202, F.S.; providing requirements for local jurisdictions related to assessments and installation of two-way radio communications enhancement systems; creating s. 633.217,

Amendment No. aa2

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 Fischer offered the following:

Amendment to Amendment (434827) by Representative LaMarca (with title amendment)

Between lines 531 and 532 of the amendment, insert:

Section 12. Paragraph (e) of subsection (20) of section 633.202, Florida Statutes, is amended to read:

633.202 Florida Fire Prevention Code.—

(20)

(e) This subsection is repealed on July 1, 2024 ~~2021~~.

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

Remove line 1067 of the amendment and insert:

alteration of fire sprinklers; amending s. 633.202, F.S.; extending a repeal date; creating s. 633.217,

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 Fitzenhagen offered the following:

Amendment to Amendment (434827) by Representative LaMarca (with title amendment)

Between lines 1010 and 1011 of the amendment, insert:

Section 19. Section 662.149, Florida Statutes, is created to read:

662.149 Publication exemption for applications.—Notwithstanding s. 120.80(3)(a)1.a., the office may not file in the Florida Administrative Register notice of an application filed pursuant to this chapter.

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

Remove line 1093 of the amendment and insert:

report; prohibiting the Office of Financial Regulation from filing notice of a family trust company application in the Florida Administrative Register; providing effective dates.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1137 Consumer Protection
SPONSOR(S): Insurance & Banking Subcommittee, Clemons
TIED BILLS: **IDEN./SIM. BILLS:** SB 1492

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee	12 Y, 0 N, As CS	Fortenberry	Cooper
2) Government Operations & Technology Appropriations Subcommittee	13 Y, 0 N	Helpling	Topp
3) Commerce Committee		Fortenberry	Hamon

SUMMARY ANALYSIS

The bill makes the following changes to the laws governing the divisions under the Florida Department of Financial Services (DFS):

- **Consumer Credit Scores and Security Freezes**–The bill eliminates consumer reporting agencies' ability to charge a fee for a personal identification number used to place a security freeze. The bill requires that insurers notify applicants of the availability of DFS's financial literacy resources at the time they notify them of the use of credit scores and reports for underwriting purposes.
- **Consumer Services**–The bill requires that licensees provide documents when responding to written requests from DFS or the Office of Insurance Regulation and it eliminates obsolete penalties.
- **Professions**–The bill establishes insurance adjusting firms' licensure requirements and penalties for licensees who aid and abet unlicensed individuals, adds grounds upon which DFS may revoke or suspend licenses, and permits suspension of a title insurance agent's license for two years
- **Agency Names**–DFS may disapprove insurance agency names when they may mislead the public, but DFS seeks the specific authority to disapprove agency names that contain "Medicare" and "Medicaid." This bill provides the authority for DFS to disapprove agency names containing those words.
- **Industrial Class Insurers**–The bill amends the laws regarding industrial life insurance, small policies written upon individual lives, so that no such policies may be sold in Florida after July 1, 2020.
- **Policyholder Rights**–The bill extends the time that a policyholder has to cancel a contract with a public adjuster, and amends the Homeowners Claim Bill of Rights and property insurer claim's handling requirements, including policyholder notification of a change in adjuster.
- **Export to Surplus Lines**–The bill mandates that the notification regarding the export of a policy to the surplus lines market, currently given only to commercial policyholders, be given to all policyholders.
- **Unfair or Deceptive Acts**–Sliding, an insurance agent's failure to fully disclose the details of, and obtain consent to, purchase of service and products, is prohibited. The bill adds two grounds, based upon effectuating an entire insurance policy without consent, to the list of acts that constitute sliding.
- **Foreign Venue Clauses Prohibited**–Florida law does not mandate that dispute resolution for policies sold in Florida, and insuring property in Florida, on the admitted or surplus lines markets, occur within the state. The bill amends the law so that dispute resolution for such policies must occur in Florida.
- **Florida Insurance Guaranty Association (FIGA) Deductible**–Currently, a policyholder whose claim is covered by FIGA must pay a $100 deductible on that claim. The bill eliminates that deductible.
- **Unclaimed Property**–Florida law provides a detailed framework for the recovery of unclaimed property held by DFS. The bill creates uniform forms for use by claimants' representatives involved in the recovery process and caps the fees such representatives may charge.

The bill may have a positive impact on state revenues. It has no impact on state expenditures or local government revenues or expenditures. The bill may have a positive economic benefit to consumers and a possible indeterminate negative economic impact on insurers.

Except where otherwise provided, the bill is effective upon becoming law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

The Department of Financial Services (DFS) is composed of 13 divisions and one independent office. They are the Divisions of:

- Accounting and Auditing;
- Consumer Services;
- Funeral, Cemetery, and Consumer Services;
- Insurance Agent and Agency Services;
- Investigative and Forensic Services (DIFS);
- Public Assistance Fraud (DPAF);
- Rehabilitation and Liquidation;
- Risk Management;
- State Fire Marshal;
- Treasury;
- Unclaimed Property;
- Workers' Compensation;
- Administration; and the
- Office of Insurance Consumer Advocate.

Consumer Credit Reports and Scores and Security Freezes

Security Freezes

Section 501.0051, F.S., permits a consumer to put a security freeze on his or her credit report, which prohibits a consumer reporting agency from releasing the consumer's credit report, credit score, or any information contained within the consumer report without express authorization. In order to place a security freeze, a consumer must utilize a unique personal identification number (PIN). In 2018, the law was amended to prevent a credit reporting agency from charging a fee of up to $10 for a consumer to place a security freeze.[1] However, current law permits a consumer reporting agency to charge a consumer up to $10 to provide or reissue a unique PIN to a consumer.

Effect of the Bill

The bill removes a credit reporting agency's ability to charge a fee of $10 or less to reissue or provide a unique PIN to a consumer to use to obtain a credit report security freeze.

Credit Reports or Scores

Under certain circumstances, insurers are permitted to utilize applicants' credit reports and scores in underwriting and rating decisions.[2] The insurer must notify applicants that credit reports and scores are being utilized for these purposes.[3] DFS currently offers free financial literacy programs and maintains a toll-free insurance consumer helpline and a website to assist consumers with insurance questions, concerns, and complaints.[4] Insurers are not required to provide applicants with information regarding these resources when they notify them of the use of their credit reports and scores.

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[1] Ch. 2018–62, Laws of Fla.
[2] *See* s. 626.9741, F.S.
[3] *Id.*
[4] Florida Department of Financial Services, Agency Analysis of House Bill 1137, p. 3 (Jan. 15, 2020).

Effect of the Bill

The bill provides that, at the same time that insurers inform consumers of the use of credit reports and scores for underwriting and rating purposes, the insurers must provide consumers with notification that DFS offers free financial literacy programs to assist them in understanding how credit scores are calculated, what factors are considered, and how credit works.

Companies' Responses to Department of Financial Services Division of Consumer Services

Current law requires that licensees holding certificates of authority from DFS (agents and agencies) or the Office of Insurance Regulation (OIR) (insurance companies) must respond to written requests from DFS or OIR concerning consumer complaints. It does not require that the licensees provide documents in response to such requests.[5] Additionally, the law contains administrative penalties for an individual's noncompliance with DFS's or OIR's written requests related to consumer complaints that have never been utilized and are obsolete.[6]

Effect of the Bill

The bill adds requested documents to the response that a licensee must provide to DFS or OIR when one of those agencies makes a written request to a licensee regarding a consumer complaint, but specifies that documents need not be released if they are protected by attorney-client privilege. It also eliminates the monetary penalties for noncompliance by an individual, while leaving them in place for noncompliance by a licensed entity.

Requirements Placed on Licensees of the Department of Financial Services

Agents, Customer and Service Representatives, Adjusters, Insurance Agencies, Managing General Agents, and Insurance Adjusting Firms

Section 626.112, F.S., sets forth various requirements that insurance agents, agencies, adjusters, customer and service representatives, and managing general agents must meet in order to operate within Florida. However, it includes no requirements for insurance adjusting firms. DFS has indicated that the lack of requirements renders them unable to track and address concerns with adjusting firms and adjusters who work for them.[7]

Additionally, while current law provides penalties for acting as an unlicensed insurance agent, adjuster, customer or service representative, or managing general agent, it does not provide any penalties for aiding or abetting an unlicensed person in transacting insurance or otherwise engaging in insurance activities within the state.

Effect of the Bill

The bill establishes that no individual or entity may act as an adjusting firm unless it complies with the legal requirements for obtaining an adjusting firm license for each location where activity occurs that only a licensed adjuster may perform. However, a licensed adjusting firm owned and operated by a single licensed adjuster conducting business in his or her individual name and not employing or using the services of other licensees is exempt from this requirement. If an adjusting firm is required to be licensed, but fails to apply for licensure, it may be assessed an administrative penalty of up to $10,000.

[5] S. 627.307, F.S.
[6] Florida Department of Financial Services (DFS), Agency Analysis of House Bill 1137, p. 2 (Jan. 15, 2020).
[7] *Id.*

The bill also establishes that any person who knowingly aids or abets an unlicensed person in transacting insurance or otherwise engaging in insurance activities in Florida without a license commits a third-degree felony.

Grounds for Refusal, Suspension, or Revocation of Agent's, Adjuster's, Customer or Service Representative's, or Managing General Agent's License or Appointment

Section 626.621, F.S., provides grounds under which DFS may deny an application for, suspend, revoke, or refuse to renew or continue the license or appointment of an applicant, agent, adjuster, customer or service representative, or managing general agent. Currently, these licensees or appointees are not required to maintain the privacy of consumers' financial and medical information.[8] Additionally, Florida law does not provide for administrative action when a person violates Federal Trade Commission laws regarding telephone solicitation.[9]

Effect of the Bill

The bill adds the following to the grounds for which DFS can deny an application for, suspend, revoke, or refuse to renew or continue the license or appointment of the above-listed persons:

- permitting a consumer's or customer's personal financial or medical information to be made available or accessible to the general public; and
- initiating in-person or telephone solicitation after 9 p.m. or before 8 a.m. local time of the prospective customer unless the prospective customer requests such contact.

Title Insurance Agents

DFS regulates title insurance agents under ch. 626, part v, F.S. While Florida law provides that the licenses of most insurance agents or agencies may be suspended for two years for violations of the Florida Insurance Code, s. 626.8443, F.S., only provides DFS with the authority to suspend a title insurance agent's or agency's license for one year.[10]

Effect of the Bill

The bill extends the period for which a title agent's or agency's license can be suspended from one year to two years to conform to suspension periods for other license types, to allow the agent or agency more time to renew the suspended license before it expires, and to ensure greater consumer protection.[11]

Bail Bond Agents

Under s. 648.30, F.S., bail bond agents and temporary bail bond agents must be licensed in order to operate within Florida. While this statute provides for penalties for operating as a bail bond agent or temporary bail bond agent without a license, it does not currently provide any penalty for a licensee under ch. 648, F.S., who aids or abets an unlicensed individual to violate the provisions of the chapter.[12]

[8] *Id.*
[9] *Id.*
[10] *Id.* at 3.
[11] *Id.* at 6.
[12] S. 648.30, F.S.

Effect of the Bill

The bill provides that any licensee under ch. 648, F.S. who knowingly aids or abets an unlicensed person in violating the licensure and appointment requirements of the chapter commits a third-degree felony.

Agency Names

Existing Florida law permits DFS to disapprove insurance agency names under certain circumstances, including when those names may mislead the public.[13] DFS has concerns that the inclusion of the words "Medicare" or "Medicaid" in the name of an insurance agency may confuse "vulnerable consumers" about the nature of the agency, but it lacks the specific authority to disapprove an agency name that includes those words.[14]

Effect of the Bill

The bill adds Medicare and Medicaid to the grounds for which DFS may disapprove an insurance agency name. An agency licensed as of July 1, 2020, whose name contains the word Medicare or Medicaid, may continue to use the name as long as its license remains valid. If its license expires, is suspended, or is revoked, it may not be relicensed using the existing name.

Industrial Class Insurers

Industrial class insurers write industrial life insurance policies, which are life insurance policies written upon individual lives in small amounts for which agents generally collect weekly or monthly premiums.[15] In general, the prevalence of industrial life insurance policies has continued to decline. Based upon data available from DFS, no new industrial life insurance has been written in the past year and few licensed life insurers continue to maintain industrial life insurance policies.[16]

Effect of the Bill

The bill amends and repeals the statutes related to industrial class insurers and industrial life insurance so that no industrial life insurance policy may be sold in Florida after July 1, 2020. The bill has no effect on industrial life insurance policies that were sold prior to that date and have continued to remain in force.

Policyholder Rights

Public Adjusters

Public adjusters are regulated under ch. 626, part VI, F.S. Florida law defines a public adjuster as someone who, for something of value, directly or indirectly, prepares, completes, or files an insurance claim for an insured or third-party claimant, or who, for something of value, acts on behalf of, or aids, an insured or third-party claimant in settling a claim for loss or damage covered by an insurance contract, or who advertises for employment as an adjuster of such claims.[17] In general, a claimant executes a contract for the public adjuster to provide claims adjusting services.[18] At present, such a contract may only be canceled within three days after the latter of the date on which the contract was executed on

[13] S. 626.062, F.S.
[14] DFS, *supra*, at 2.
[15] Merriam-Webster Dictionary, https://www.merriam-webster.com/dictionary/industrial%20life%20insurance (last visited January 26, 2020).
[16] DFS, *supra*, at 3.
[17] S. 626.854, F.S.
[18] *See id.*

which the claimant has notified the insurer of the claim.[19] According to information received from DFS, following the hurricanes that have affected Florida in recent years, consumers have complained about claims resolution delays due to the lack of responsiveness of public adjusters they hired and the inability to cancel contracts they have executed with these adjusters.[20]

Effect of the Bill

The bill establishes that, during a state of emergency declared by the Florida Governor, and for one year after the date of loss, an insured or claimant may cancel a contract with a public adjuster without penalty or obligation within the latter of 21 calendar days after the date on which the contract was executed or the date on which the insured or claimant notified the insurer of the claim. In the absence of a declared state of emergency and beyond the one-year period following any declared state of emergency, an insured or claimant has seven calendar days, after the latter of the date on which the policyholder executed a contract with a public adjuster or the date on which the insured or claimant notified the insurer of the claim, to cancel the contract without penalty or obligation.

Homeowner Claims Bill of Rights and Policy Delivery

Section 627.7142, F.S., contains a Homeowners Claim Bill of Rights (Bill of Rights) that insurers issuing personal lines residential property insurance policies in Florida must provide to policyholders within 14 days after receiving an initial communication with respect to a claim. While the Bill of Rights does not contain all of the rights of a policyholder, it is designed to summarize some of the significant rights, including rights regarding communications from insurers, payments of claims, and resolution of disputed claims.[21] At present, when timeframes are listed in the Bill of Rights, they do not specify whether they are determined in calendar or business days.[22] The Bill of Rights contains no requirements that an insurer notify the policyholder when it assigns a different adjuster to the claim. It does not specify that a policyholder may be entitled to receive interest from an insurer when they insurer fails to timely fulfil claim obligations. Furthermore, the Bill of Rights does not mention that a policyholder may take video of damage before and after repairs in addition to photographs of the damage.

Section 627.421, F.S., provides certain requirements for the delivery of an insurance policy to a policyholder following the inception of coverage. However, it does not require that a personal lines residential policyholder receive notice of his or her hurricane coverages at any point following the initial delivery of a policy.

Effect of the Bill

The bill amends the Bill of Rights in the following ways:

- clarifies that all timeframes mentioned within it will be calculated based upon calendar days;
- states that a policyholder to which the Bill of Rights applies must receive notification from the insurance company within seven calendar days if there has been a change in the company adjuster assigned to a claim and the notification must include the assigned adjuster's contact information
- states that a policyholder to which the Bill of Rights applies must receive the payment of interest from the insurance company if the insurance company does not pay full settlement of a claim or deny the claim within 90 calendar days after the claim is filed; and
- clarifies that in addition to photographs, a policyholder may take video of damage before and after repairs.

[19] *Id.*
[20] DFS, *supra*, at 3.
[21] S. 627.7142, F.S.
[22] *Id.*

The bill amends the statute regarding delivery of insurance policies to require that for personal lines residential property insurance policies, between March 1, and June 1, each year, the insurer shall deliver a notification to all policyholders that outlines the hurricane coverage provided in the policy, including the hurricane deductible and the coverages and exclusions. This notification will be provided only to policyholders who have a valid email address on file with their insurers.

Insurer's Duties to Acknowledge and Investigate Claims

Pursuant to Florida law, residential property insurers have certain obligations regarding the handling of claims, including responding to communications and timely payment or denial of claims.[23] Policyholders have complained to DFS that repeated changes in adjusters for insurance companies have contributed to significant claim delays.[24] In addition, policyholders have indicated that because of a lack of access to claims information, their insurance agents are not able to respond claims-related questions in a meaningful way.[25]

The applicable law neither requires that any licensed adjuster assigned by an insurer to conduct a physical inspection of damage property provide the policyholder with his or her name, license number, and contact information, nor requires that the insurer provide a copy of the inspection report to the policyholder following receipt from the adjuster. There is no statutory requirement that an insurer notify a policyholder when it has assigned a new adjuster to the policyholder's claim. Further, the law does not contain any mandate that the insurer inform the policyholder of the fact that an estimate may be preliminary in nature and may be revised or the fact that when a partial payment is issued the insurer is continuing to evaluate a claim and may issue additional payments.

Effect of the Bill

The bill makes the following changes existing law regarding the investigation and adjusting of residential property insurance claims:

- If an investigation of a claim involves a physical inspection of property, a licensed adjuster assigned by the insurer must provide a policyholder with his or her name, license number, and contact information.
- If an insurer assigns the claim to a new licensed adjuster following the receipt of the report, the insurer must provide the policyholder with the name, license number, and contact information for the newly assigned licensed adjuster within seven days after the change. Any subsequent changes to the assigned licensed adjuster must be handled in the same way.
- An insurer must establish a process so that the named agent of record[26] for an insurance policy is provided access to the information gathered from an inspection by an adjuster so that the agent of record can answer policyholder questions regarding claims.
- When providing a preliminary or partial damage claim estimate or a preliminary or partial claim payment, an insurer must provide a detailed disclosure as specified in the bill.

The bill establishes that s. 627.70131, F.S., regarding residential property insurance claims, shall be applicable to surplus lines policies in addition to policies written on the admitted market.

Export of Policies to Surplus Lines

When insurance is not available to Florida consumers from authorized insurance carriers[27], it generally becomes necessary and legally permissible to obtain a policy on the surplus lines market.[28] However,

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[23] *See* s. 627.70131, F.S.
[24] DFS, *supra*, at 4.
[25] *Id.*
[26] An agent of record means that agent named on the declarations page of the insurance policy.
[27] Authorized insurance carriers are those who have received a certificate of authority from OIR to transact insurance business within the state. S. 624.06, F.S.

under current surplus lines law, only consumers purchasing commercial insurance policies on the surplus lines market receive notification at the time of purchase that policies are being issued on that market.[29] Consequently, the first time that some residential policyholders are informed that their policies have been issued by surplus lines carriers is after their policies have been issued.[30] The notification currently provided to commercial policyholders whose policies are issued on the surplus lines market also includes the statement that "superior coverage may be available in the admitted market and at a lesser cost."[31]

Effect of the Bill

The bill amends surplus lines law to require that, at the time policies are exported to the surplus lines market, the notification statement currently signed by consumers whose commercial insurance policies are being exported to the surplus lines market must be signed, or otherwise acknowledged by all consumers whose insurance policies are being exported to the surplus lines market. The bill also replaces the statement "superior coverage may be available in the admitted market and at a lesser cost," with "coverage may be available in the admitted market."

Unfair Methods of Competition and Unfair or Deceptive Acts–Sliding

The Florida Insurance Code prohibits licensees from engaging in unfair methods of competition and unfair or deceptive acts or practices, including sliding.[32] Sliding is the practice of an insurance agent's failure to fully disclose the details of, and obtain consent to, the purchase of services and products.[33] Under Florida law, sliding currently includes: representing to an applicant that a specific ancillary coverage or product is required by law when it is not; representing to an applicant that a specific ancillary coverage or product is included in the policy applied for without an additional charge where there is a charge for it; and charging an applicant for a specific ancillary coverage or product, in addition to the cost of insurance applied for, without informing the applicant.[34] According to DFS, some Florida insurers have begun a practice of effectuating entire policies without informing consumers they have done so.[35]

Effect of the Bill

The bill adds the following to the list of prohibited conduct that constitutes sliding:

- Initiating, effectuating, binding, or otherwise issuing an insurance policy without prior informed consent from the owner of the property being insured; and
- Mailing, transmitting, or otherwise submitting a premium invoice to a mortgagee or escrow agent in order to effectuate an insurance policy without the prior informed consent from the owner of the property being insured. However, collateral protection insurance by a mortgagee or escrow does not constitute sliding.

Foreign Venue Clauses in Property Insurance Policies

Currently, Florida law does not mandate that property claims dispute resolution for policies sold in Florida, whether such resolution occurs through litigation, arbitration, or mediation, occur within Florida.

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[28] *See* s. 626.913, F.S.
[29] S. 626.916(3)(b)3, F.S.
[30] DFS, *supra*, at 3.
[31] S. 626.916(3)(b)3, F.S.
[32] S. 626.9541, F.S.
[33] Insurance Journal, *Michigan Bulletin Warns Insurance Produces Against 'Sliding'*, https://www.insurancejournal.com/news/midwest/2018/05/11/489050.htm (last visited January 26, 2020)
[34] S. 626.9541(1)(z), F.S.
[35] DFS, *supra*, at 3.

The law contains no distinction for the location of dispute resolution regardless of whether a property insurance policy was issued on the admitted or surplus lines markets.[36]

Effect of the Bill

The bill provides that no property insurance policy sold in Florida, insuring property located in Florida, after July 1, 2020, whether issued on the admitted or surplus lines markets, may require that an insured engage in dispute resolution, through litigation, arbitration, or mediation, outside Florida.

Florida Insurance Guaranty Association Deductible

Under federal law, insurance companies cannot file for bankruptcy.[37] Instead, they are either rehabilitated or liquidated by their state of domicile. Florida law establishes the system for the treatment of impaired or insolvent insurers[38] in Florida and sets up guaranty associations where necessary.[39] Florida operates four guaranty associations including the Florida Insurance Guaranty Association (FIGA).[40] FIGA provides a "mechanism for the payment of covered claims under certain insurance policies to avoid excessive delay in payment and to avoid financial loss to claimants or policyholders because of the insolvency of an insurer."[41] It issues guaranty fund payments and provides related services for all lines of property and casualty insurance with certain exceptions.[42] When a Florida property and casualty insurer becomes insolvent, FIGA takes over the claims of that insurer and pays the claims of its policyholders, ensuring that policyholders are not left with unpaid claims. Florida law provides that FIGA is only obligated to pay the portions of claims made to insolvent property and casualty insurers, which are in excess of $100, and less than $300,000.[43] Under current law, therefore, there is a $100 deductible on all property and casualty claims covered by FIGA.

Effect of the Bill

The bill eliminates the $100 deductible on claims paid by FIGA so that such claims will be covered for any amount exceeding $0 and less than $300,000.

Unclaimed Property

Chapter 717, F.S., provides a framework for the rightful owners to obtain unclaimed property that is held by DFS. Currently, licensed claimants' representatives are registered with DFS to gain access to DFS's unclaimed property database and to seek authorizations from claimants to file claims on their behalf for unclaimed property held by DFS.[44] Each registrant who files claims utilizes a unique power of attorney through which claimants provide authorization to registrants.[45] The lack of uniformity in the use of the powers of attorney poses problems for both consumers and for DFS staff.

Additionally, under current law, if a Full Disclosure Statement has been provided to an unclaimed property claimant, fees collected by a claimant's representative for providing services related to the collection of the unclaimed property are unlimited.[46] If the Full Disclosure Statement has not been

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[36] DFS, *supra,* at p.4.
[37] 11 U.S.C. § 109(b)(2).
[38] An "insolvent insurer" means an insurer that was authorized to transact insurance in this state, either at the time the policy was issued or when the insured event occurred, and against which an order of liquidation with a finding of insolvency has been entered by a court of competent jurisdiction if such order has become final by the exhaustion of appellate review. S. 631.904(4), F.S.
[39] Ch. 631, F.S.
[40] Ch. 631, part II, F.S.
[41] S. 631.51, F.S.
[42] S. 631.52, F.S.
[43] S. 631.57(1), F.S.
[44] DFS, *supra*, at 4.
[45] *Id.*
[46] S. 717.135, F.S. The text of the Full Disclosure Statement is located in s. 717.135(3)(a), F.S.

provided to the claimant, then the fees are capped at 20% of the value of the property recovered, and $1,000 per account claimed in the recovery.[47]

Effect of the Bill

The bill changes the unclaimed property claims law to further streamline the process for consumers. It provides that DFS will adopt forms by rule entitled "Florida Uniform Property Recovery Agreement" (Recovery Agreement) and "Florida Uniform Property Purchase Agreement" (Purchase Agreement). These Agreements will be the exclusive means of a claimant's representative engaging a claimant or seller to file an unclaimed property claim with DFS.

The bill significantly amends s. 717.135, F.S., to eliminate the current power of attorney requirements and replace them with requirements for the Recovery Agreement and Purchase Agreement. Pursuant to the bill, the Recovery Agreement and Purchase Agreement must include and disclose:

- The total dollar amount of the unclaimed property accounts claimed or sold;
- Either the total percentage of all authorized fees and costs to be paid to the claimant's representative or the percentage of the value of the property to be paid as net gain to the purchasing registered claimant's representative;
- Either the total dollar amount to be deducted and received from the claimant as fees and costs by the claimant's representative or the total net dollar amount to be received by the purchasing registered claimant's representative;
- The net dollar amount the claimant or seller will receive;
- The unclaimed property account number and name of the owner for each account claimed;
- For the purchase agreement, a statement that the purchase price will be remitted to the seller within 30 days after the seller executes the form;
- The name, contact information, and license number of the registered claimant's representative;
- The manual signature of the claimant or seller and the date signed;
- The social security number or taxpayer identification number of the claimant or seller, if available; and
- A limit of total fees and costs, or the total discount amount in the case of a purchase agreement, to no more than 20 percent of the claimed amount.

The Recovery Agreement and Purchase Agreement may not contain language that makes them irrevocable or that creates an assignment of any unclaimed property held by DFS. For the Purchase Agreement, if DFS does not receive proof that the seller received payment, then the claim is void.

All references to "power of attorney" within the remainder of the unclaimed property claims laws are changed to the Recovery Agreement and Purchase Agreement, as appropriate, so that these forms will be utilized in unclaimed property claims going forward in lieu of powers of attorney. Section 717.1351, F.S., relating to the acquisition of unclaimed property is repealed because it is no longer necessary following the additional changes to the unclaimed property claims laws set forth within the bill.

B. SECTION DIRECTORY:

Section 1. Amends s. 501.0051, F.S., relating to protected consumer report security freeze.

Section 2. Amends s. 624.307, F.S., relating to general powers; duties.

Section 3. Amends s. 626.112, F.S., relating to license and appointment required; agents, customer representatives, adjusters, insurance agencies, service representatives, managing general agents.

Section 4. Amends s. 626.602, F.S., relating to insurance agency names; disapproval.

[47] *Id.*

Section 5. Amends s. 626.621, F.S., relating to grounds for discretionary refusal, suspension, or revocation of agent's, adjuster's, customer representative's, service representative's, or managing general agent's license or appointment.

Section 6. Amends s. 626.782, F.S., relating to the definition of "Industrial class insurer."

Section 7. Amends s. 626.783, F.S., relating to the definition of "Ordinary-combination class insurer."

Section 8. Repeals s. 626.796, F.S., relating to representing another insurer in same industrial debit territory.

Section 9. Amends s. 626.8443, F.S., relating to duration of suspension or revocation.

Section 10. Amends s. 626.854, F.S., relating to "Public adjuster" defined; prohibitions.

Section 11. Amends s. 626.916, F.S., relating to eligibility for export.

Section 12. Amends s. 626.9541, F.S., relating to unfair methods of competition and unfair or deceptive acts or practices defined.

Section 13. Amends s. 626.9741, F.S., relating to use of credit reports and credit scores by insurers.

Section 14. Amends s. 626.9957, F.S., to conform cross-references.

Section 15. Amends s. 627.062, F.S., to conform cross-references.

Section 16. Amends s. 627.421, F.S., relating to delivery of policy.

Section 17. Amends s. 627.502, F.S., relating to "Industrial life insurance" defined; reporting; prohibition on new policies after a certain date.

Section 18. Amends s. 627.70131, F.S., relating to insurer's duty to acknowledge communications regarding claims; investigation.

Section 19. Creates s. 627.7031, relating to foreign venue clauses prohibited.

Section 20. Amends s. 627.7142, F.S., relating to Homeowner Claims Bill of Rights.

Section 21. Amends s. 631.57, F.S., relating to powers and duties of the association.

Section 22. Amends s. 648.30, F.S., relating to licensure and appointment required; prohibited acts; penalties.

Section 23. Amends s. 717.124, F.S., relating to unclaimed property claims.

Section 24. Amends s. 717.12404, F.S., relating to claims on behalf of a business entity or trust.

Section 25. Amends s. 717.1315, F.S., relating to retention of records by claimant's representatives and buyers of unclaimed property.

Section 26. Amends s. 717.1322, F.S., relating to administrative and civil enforcement.

Section 27. Amends s. 717.135, F.S., relating to power of attorney to recover reported property in the custody of the department.

Section 28. Repeals s. 717.1351, F.S., relating to acquisition of unclaimed property.

Section 29. Provides an effective date of upon becoming law, except as otherwise provided.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   The bill has the potential to result in increased revenues in the form of administrative fines collected for violations of ss. 624.307 and 626.112, F.S.

   Proceeds from the sale of unclaimed property are deposited into the Unclaimed Property Trust Fund. DFS retains $15 million to make payments for claims and to administer the program. Remaining funds are deposited by DFS into the State School Trust Fund.[48] Modifications to the unclaimed property claims process may impact the funding available for transfer to the State School Trust Fund. However, the modifications in the bill should not substantially impact revenue deposited into the State School Trust Fund. DFS provided the following statement:

   "There will be no impact on the total amounts paid each year – only a possible and likely shifting of amounts within and among the claimants and various claimant's representatives. The fiscal will not change."[49]

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 have positive economic impacts for consumers. It removes fees charged for the issuance of PIN numbers and eliminates the deductible FIGA charges for claims it covers. Portions of the bill are intended to expedite the handling of property insurance claims. If repairs are made sooner, policyholders will be able to return home and, in some cases, return to work quicker. Businesses may also benefit economically when homeowners, as consumers, are able to recover sooner after catastrophes. Additionally, by streamlining the unclaimed property claim process using new forms and by capping the fees that a claimants' representatives can charge, consumers may be able to keep a greater percentage of the unclaimed property they recover.

The bill has the potential for negative direct economic impacts on the private sector. The inability of a consumer reporting agency to charge a fee for a PIN will result in a loss of revenue for the consumer reporting agencies. The amount of this loss is unknown.

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[48] S. 717.123 F.S.

[49] Email from Meredith Stanfield, Director of Legislative and Cabinet Affairs, Department of Financial Regulation, RE: HB 1137 Unclaimed Property (Jan. 30, 2020).

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:

Article VII, s. 19, Fla. Const., may apply given the nature of the administrative penalty created in Section 3 of the bill.

B. RULE-MAKING AUTHORITY:

The bill requires DFS to promulgate two new forms related to unclaimed property claims (Recovery Agreement and Purchase Agreement) to be adopted pursuant to rule. Because s. 717.138, F.S., provides sufficient rulemaking authority for DFS to adopt rules pursuant under ch. 120, F.S., no additional rulemaking authority is necessary.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 28, 2020, the Insurance & Banking Subcommittee considered the bill, adopted one strike all amendment, and reported the bill favorably as a committee substitute. The strike-all amendment contained the provisions of the original bill and made the following modifications and clarifications:

- Clarified that the documents that a licensee must provide to DFS or OIR in response to a written request are only those documents that are not subject to attorney-client privilege.
- Clarified that consumers must either sign or otherwise acknowledge receipt of the disclosure notifying them of the export of their insurance policies to the surplus lines market and eliminated from that disclosure the statement that coverage on the admitted market may not be cheaper.
- Clarified that collateral protection insurance by a mortgagee does not constitute sliding.
- Eliminated the requirement that personal lines residential property insurers must send the Homeowner Claims Bill of Rights to policyholders each year. It also expanded the period during which insurers must mail hurricane coverage information to policyholders from March 3 through April 1, to March 1 through June 1, and provides that this information will only be provided to policyholders who have email addresses on file with their insurers.
- Eliminated the requirement that an insurer send a copy of a physical inspection report from an adjuster to a policyholder.
- Changed the effective date for certain sections of the bill to January 1, 2021.
- Made various formatting and technical changes to the bill.

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

A bill to be entitled

An act relating to consumer protection; amending s. 501.0051, F.S.; prohibiting consumer reporting agencies from charging to reissue or provide a new unique personal identifier to a consumer for the removal of a security freeze; amending s. 624.307, F.S.; revising a requirement for entities licensed or authorized by the Department of Financial Services or the Office of Insurance Regulation to respond to the department's Division of Consumer Services regarding consumer complaints; revising administrative penalties the division may impose for failure to comply; amending s. 626.112, F.S.; prohibiting unlicensed activity by an adjusting firm; providing an exemption; providing an exemption from licensure for branch firms that meet certain criteria; providing an administrative penalty for failing to apply for certain licensure; providing a criminal penalty for aiding or abetting unlicensed activity; deleting an obsolete provision; amending s. 626.602, F.S.; authorizing the department to disapprove the use of insurance agency names containing the words "Medicare" or "Medicaid"; providing an exception for certain insurance agencies; amending s. 626.621, F.S.; adding grounds on which the department may take certain

actions against a license, appointment, or application of certain insurance representatives; amending ss. 626.782 and 626.783, F.S.; revising the definitions of the terms "industrial class insurer" and "ordinary-combination class insurer," respectively, to conform to changes made by the act; repealing s. 626.796, F.S., relating to the representation of multiple insurers in the same industrial debit territory; amending s. 626.8443, F.S.; increasing the maximum period of suspension of a title insurance agent's or agency's license; amending s. 626.854, F.S.; revising the timeframes in which an insured or claimant may cancel a public adjuster's contract to adjust a claim without penalty or obligation; amending s. 626.916, F.S.; revising the classes of insurance subject to a disclosure requirement before being eligible for export under the Surplus Lines Law; amending s. 626.9541, F.S.; adding certain acts or practices to the definition of sliding; amending s. 626.9741, F.S.; requiring an insurer to include certain additional information when providing an applicant or insured with certain credit report or score information; amending ss. 626.9957 and 627.062, F.S.; conforming cross-references; amending s. 627.421, F.S.; requiring personal lines residential property insurers to

annually deliver a certain notification to certain policyholders within a specified timeframe; amending s. 627.502, F.S.; prohibiting life insurers from writing new policies of industrial life insurance beginning on a certain date; amending s. 627.70131, F.S.; providing that communication made to or by an insurer's representative, rather than to or by an insurer's agent, constitutes communication to or by the insurer; requiring an insurer-assigned licensed adjuster to provide the policyholder with certain information in certain investigations; specifying requirements for insurers in notifying policyholders for certain changes in assigned adjusters; requiring an insurer to establish a process to provide the agent of record access to claim status information for a certain purpose; defining the term "agent of record"; requiring insurers to include specified notices when providing preliminary or partial damage estimates or claim payments; specifying the timeframe in which an insurer must pay or deny property insurance claims under certain circumstances; providing applicability; conforming provisions to changes made by the act; creating s. 627.7031, F.S.; prohibiting foreign venue clauses in property insurance policies; providing applicability; amending s. 627.7142, F.S.; revising

information contained in the Homeowner Claims Bill of Rights; conforming provisions to changes made by the act; amending s. 631.57, F.S.; deleting a deductible on the Florida Insurance Guaranty Association, Incorporated's obligation as to certain covered claims; amending s. 648.30, F.S.; prohibiting the aiding or abetting of unlicensed activity of a bail bond agent or temporary bail bond agent; amending ss. 717.124, 717.12404, 717.1315, and 717.1322, F.S.; conforming provisions to changes made by the act; amending s. 717.135, F.S.; replacing provisions relating to powers of attorney to recover unclaimed property with provisions relating to uniform forms for unclaimed property recovery agreements and purchase agreements; requiring the department to adopt the uniform forms by rule; specifying required information and disclosures in the forms; requiring that, for the purchase agreement form, proof the seller received payment be filed with the department along with the claim; requiring registered claimant's representatives to use the forms as the exclusive means of engaging with a claimant or seller to file claims and prohibiting them from using or distributing other agreements; specifying a limitation on fees and costs owed or paid; prohibiting certain language in the

forms; authorizing the department to pay additional accounts owned by the claimant under certain circumstances; providing construction; repealing s. 717.1351, F.S., relating to the acquisition of unclaimed property; providing effective dates.

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

Section 1. Paragraph (b) of subsection (9) of section 501.0051, Florida Statutes, is amended to read:

501.0051 Protected consumer report security freeze.—

(9)

(b) A consumer reporting agency may not charge to ~~a reasonable fee, not to exceed $10, if the representative fails to retain the original unique personal identifier provided by the consumer reporting agency and the agency must~~ reissue the unique personal identifier or provide a new unique personal identifier to the consumer ~~representative~~.

Section 2. Paragraph (b) of subsection (10) of section 624.307, Florida Statutes, is amended to read:

624.307 General powers; duties.—

(10)

(b) Any entity ~~person~~ licensed or issued a certificate of authority by the department or the office shall respond, in writing, to the division within 20 days after receipt of a

written request for documents and information from the division concerning a consumer complaint. The response must address the issues and allegations raised in the complaint and include any requested documents concerning the consumer complaint not subject to attorney-client privilege. The division may impose an administrative penalty for failure to comply with this paragraph of up to $2,500 per violation upon any entity licensed by the department or the office ~~and $250 for the first violation, $500 for the second violation, and up to $1,000 for the third or subsequent violation upon any individual licensed by the department or the office~~.

Section 3. Present subsection (9) of section 626.112, Florida Statutes, is redesignated as subsection (10), a new subsection (9) is added to that section, and paragraph (d) of subsection (7) and present subsection (9) of that section are amended, to read:

626.112 License and appointment required; agents, customer representatives, adjusters, insurance agencies, service representatives, managing general agents, insurance adjusting firms.—

(7)

~~(d) Effective October 1, 2015, the department must automatically convert the registration of an approved registered insurance agency to an insurance agency license.~~

(9)(a) An individual, firm, partnership, corporation,

association, or other entity may not act in its own name or under a trade name, directly or indirectly, as an adjusting firm unless it complies with s. 626.8696 with respect to possessing an adjusting firm license for each place of business at which it engages in an activity that may be performed only by a licensed insurance adjuster. However, an adjusting firm that is owned and operated by a single licensed adjuster conducting business in his or her individual name and not employing or otherwise using the services of or appointing other licensees is exempt from the adjusting firm licensing requirements of this subsection.

(b) A branch place of business that is established by a licensed adjusting firm is considered a branch firm and is not required to be licensed if:

1. It transacts business under the same name and federal tax identification number as the licensed adjusting firm;

2. It has designated with the department a primary adjuster operating the location as required by s. 626.8695; and

3. The address and telephone number of the branch location have been submitted to the department for inclusion in the licensing record of the licensed adjusting firm within 30 days after insurance transactions begin at the branch location.

(c) If an adjusting firm is required to be licensed, but fails to file an application for licensure in accordance with this section, the department shall impose on the firm an administrative penalty of up to $10,000.

(10)~~(9)~~ Any person who knowingly transacts insurance or otherwise engages in insurance activities in this state without a license in violation of this section or who knowingly aids or abets an unlicensed person in transacting insurance or otherwise engaging in insurance activities in this state without a license commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 4. Subsection (4) is added to section 626.602, Florida Statutes, to read:

626.602 Insurance agency names; disapproval.—The department may disapprove the use of any true or fictitious name, other than the bona fide natural name of an individual, by any insurance agency on any of the following grounds:

(4) The name contains the word "Medicare" or "Medicaid." An insurance agency whose name contains the word "Medicare" or "Medicaid" but which is licensed as of July 1, 2020, may continue to use that name as long as the agency's license is valid. If the agency's license expires or is suspended or revoked, the agency may not be relicensed using that name.

Section 5. Subsections (16) and (17) are added to section 626.621, Florida Statutes, to read:

626.621 Grounds for discretionary refusal, suspension, or revocation of agent's, adjuster's, customer representative's, service representative's, or managing general agent's license or appointment.—The department may, in its discretion, deny an

application for, suspend, revoke, or refuse to renew or continue the license or appointment of any applicant, agent, adjuster, customer representative, service representative, or managing general agent, and it may suspend or revoke the eligibility to hold a license or appointment of any such person, if it finds that as to the applicant, licensee, or appointee any one or more of the following applicable grounds exist under circumstances for which such denial, suspension, revocation, or refusal is not mandatory under s. 626.611:

(16) Allowing the personal financial or medical information of a consumer or customer to be made available or accessible to the general public, regardless of the format in which the record is stored.

(17) Initiating in-person or telephone solicitation after 9 p.m. or before 8 a.m. local time of the prospective customer unless requested by the prospective customer.

Section 6. Section 626.782, Florida Statutes, is amended to read:

626.782 "Industrial class insurer" defined.—An "industrial class insurer" is an insurer collecting premiums on policies of ~~writing~~ industrial life insurance, as defined in s. 627.502, written before July 1, 2020, and as to such insurance, operates under a system of collecting a debit by its agent.

Section 7. Section 626.783, Florida Statutes, is amended to read:

626.783 "Ordinary-combination class insurer" defined.—An "ordinary-combination class insurer" is an insurer writing ~~both~~ ordinary class insurance and collecting premiums on existing industrial life ~~class~~ insurance under s. 626.782.

Section 8. Section 626.796, Florida Statutes, is repealed.

Section 9. Subsection (1) of section 626.8443, Florida Statutes, is amended to read:

626.8443 Duration of suspension or revocation.—

(1) The department shall, in its order suspending a title insurance agent's or agency's license or appointment or in its order suspending the eligibility of a person to hold or apply for such license or appointment, specify the period during which the suspension is to be in effect, but such period shall not exceed 2 years ~~1 year~~. The license, ~~or~~ appointment, or eligibility shall remain suspended during the period so specified, subject, however, to any rescission or modification of the order by the department, or modification or reversal thereof by the court, prior to expiration of the suspension period. A license, appointment, or eligibility that ~~which~~ has been suspended may not be reinstated except upon request for such reinstatement, but the department shall not grant such reinstatement if it finds that the circumstance or circumstances for which the license, appointment, and eligibility was suspended still exist or are likely to recur.

Section 10. Subsection (6) of section 626.854, Florida

Statutes, is amended to read:

626.854 "Public adjuster" defined; prohibitions.—The Legislature finds that it is necessary for the protection of the public to regulate public insurance adjusters and to prevent the unauthorized practice of law.

(6) Except during a state of emergency declared by the Governor and except during the 1-year period after the date of loss, an insured or claimant may cancel a public adjuster's contract to adjust a claim without penalty or obligation within 7 calendar ~~3 business~~ days after the date on which the contract is executed or within 7 calendar ~~3 business~~ days after the date on which the insured or claimant has notified the insurer of the claim, whichever is later. During a state of emergency declared by the Governor or during the 1-year period after the date of loss, an insured or claimant may cancel a public adjuster's contract to adjust a claim without penalty or obligation within 21 calendar days after the date on which the contract is executed or within 21 calendar days after the date on which the insured or claimant has notified the insurer of the claim, whichever is later. The public adjuster's contract must disclose to the insured or claimant his or her right to cancel the contract and advise the insured or claimant that notice of cancellation must be submitted in writing and sent by certified mail, return receipt requested, or other form of mailing that provides proof thereof, to the public adjuster at the address

specified in the contract~~; provided, during any state of emergency as declared by the Governor and for 1 year after the date of loss, the insured or claimant has 5 business days after the date on which the contract is executed to cancel a public adjuster's contract~~.

Section 11. Effective January 1, 2021, subsection (3) of section 626.916, Florida Statutes, is amended, and paragraph (f) is added to subsection (1) of that section, to read:

626.916 Eligibility for export.—

(1) No insurance coverage shall be eligible for export unless it meets all of the following conditions:

(f) The insured has signed or otherwise provided documented acknowledgement of a disclosure in substantially the following form: "You are agreeing to place coverage in the surplus lines market. Coverage may be available in the admitted market. Persons insured by surplus lines carriers are not protected under the Florida Insurance Guaranty Act with respect to any right of recovery for the obligation of an insolvent unlicensed insurer."

(3)(a) Subsection (1) does not apply to wet marine and transportation or aviation risks that ~~which~~ are subject to s. 626.917.

(b) Paragraphs (1)(a)-(d) do not apply to classes of insurance which are subject to s. 627.062(3)(d)1. These classes may be exportable under the following conditions:

1. The insurance must be placed only by or through a surplus lines agent licensed in this state;

2. The insurer must be made eligible under s. 626.918; and

3. The insured has complied with paragraph (1)(f) ~~must sign a disclosure that substantially provides the following: "You are agreeing to place coverage in the surplus lines market. Superior coverage may be available in the admitted market and at a lesser cost. Persons insured by surplus lines carriers are not protected under the Florida Insurance Guaranty Act with respect to any right of recovery for the obligation of an insolvent unlicensed insurer."~~ If the disclosure ~~notice~~ is signed by the insured, the insured is presumed to have been informed and to know that other coverage may be available, and, with respect to the diligent-effort requirement under subsection (1), there is no liability on the part of, and no cause of action arises against, the retail agent presenting the form.

Section 12. Paragraph (z) of subsection (1) of section 626.9541, Florida Statutes, is amended to read:

626.9541 Unfair methods of competition and unfair or deceptive acts or practices defined.—

(1) UNFAIR METHODS OF COMPETITION AND UNFAIR OR DECEPTIVE ACTS.—The following are defined as unfair methods of competition and unfair or deceptive acts or practices:

(z) *Sliding.*—Sliding is the act or practice of any of the following:

1. Representing to the applicant that a specific ancillary coverage or product is required by law in conjunction with the purchase of insurance when such coverage or product is not required.~~,~~

2. Representing to the applicant that a specific ancillary coverage or product is included in the policy applied for without an additional charge when such charge is required.~~; or~~

3. Charging an applicant for a specific ancillary coverage or product, in addition to the cost of the insurance coverage applied for, without the informed consent of the applicant.

4. Initiating, effectuating, binding, or otherwise issuing a policy of insurance without the prior informed consent of the owner of the property to be insured.

5. Mailing, transmitting, or otherwise submitting by any means an invoice for premium payment to a mortgagee or escrow agent, for the purpose of effectuating an insurance policy, without the prior informed consent of the owner of the property to be insured. However, this subparagraph does not apply in cases where the mortgagee or escrow is renewing insurance or issuing collateral protection insurance as defined in s. 624.6085, F.S., pursuant to the mortgage or other pertinent loan documents or communications regarding the property.

Section 13. Effective January 1, 2021, subsection (3) of section 626.9741, Florida Statutes, is amended to read:

626.9741 Use of credit reports and credit scores by

insurers.—

(3) An insurer must inform an applicant or insured, in the same medium as the application is taken, that a credit report or score is being requested for underwriting or rating purposes. The notification to the consumer must include the following language: "The Department of Financial Services offers free financial literacy programs to assist you in understanding how credit scores are calculated, what factors are considered, and how credit works. The Department's toll-free Insurance Consumer Helpline is available to assist you with insurance-related questions and inquiries. To learn more about the free financial literacy programs or for help with insurance, call 1-877-693-5236 or visit www.MyFloridaCFO.com." An insurer that makes an adverse decision based, in whole or in part, upon a credit report must provide at no charge~~,~~ a copy of the credit report to the applicant or insured or provide the applicant or insured with the name, address, and telephone number of the consumer reporting agency from which the insured or applicant may obtain the credit report. The insurer must provide notification to the consumer explaining the reasons for the adverse decision. The reasons must be provided in sufficiently clear and specific language so that a person can identify the basis for the insurer's adverse decision. Such notification shall include a description of the four primary reasons, or such fewer number as existed, which were the primary influences of the adverse

decision. The use of generalized terms such as "poor credit history," "poor credit rating," or "poor insurance score" does not meet the explanation requirements of this subsection. A credit score may not be used in underwriting or rating insurance unless the scoring process produces information in sufficient detail to permit compliance with the requirements of this subsection. It shall not be deemed an adverse decision if, due to the insured's credit report or credit score, the insured continues to receive a less favorable rate or placement in a less favorable tier or company at the time of renewal except for renewals or reunderwriting required by this section.

Section 14. Subsection (1) of section 626.9957, Florida Statutes, is amended to read:

626.9957 Conduct prohibited; denial, revocation, or suspension of registration.—

(1) As provided in s. 626.112, only a person licensed as an insurance agent or customer representative may engage in the solicitation of insurance. A person who engages in the solicitation of insurance as described in s. 626.112(1) without such license is subject to the penalties provided under s. 626.112(10) ~~s. 626.112(9)~~.

Section 15. Subsection (10) of section 627.062, Florida Statutes, is amended to read:

627.062 Rate standards.—

(10) Any interest paid pursuant to s. 627.70131(7) ~~s.~~

~~627.70131(5)~~ may not be included in the insurer's rate base and may not be used to justify a rate or rate change.

Section 16. Effective January 1, 2021, subsection (6) is added to section 627.421, Florida Statutes, to read:

627.421 Delivery of policy.—

(6) For personal lines residential property insurance policies, the insurer shall, between March 1 and June 1 of each year, inclusive, deliver an outline of the hurricane coverage included in the policy, including the hurricane deductible and the coverages and exclusions, to all policyholders. This requirement applies only for those insureds that have provided the insurer with a valid e-mail address. This information must be delivered directly to the policyholder via e-mail or by an e-mail notice of information being posted to a secure web-based policy information page.

Section 17. Section 627.502, Florida Statutes, is amended to read:

627.502 "Industrial life insurance" defined; reporting; prohibition on new policies after a certain date.—

(1) For the purposes of this code, "industrial life insurance" is that form of life insurance written under policies under which premiums are payable monthly or more often, bearing the words "industrial policy" or "weekly premium policy" or words of similar import imprinted upon the policies as part of the descriptive matter, and issued by an insurer that ~~which~~, as

to such industrial life insurance, is operating under a system of collecting a debit by its agent.

(2) Every life insurer servicing existing ~~transacting~~ industrial life insurance shall report to the office all annual statement data regarding the exhibit of life insurance, including relevant information for industrial life insurance.

(3) Beginning July 1, 2020, a life insurer may not write a new policy of industrial life insurance.

Section 18. Effective January 1, 2021, section 627.70131, Florida Statutes, is amended to read:

627.70131 Insurer's duty to acknowledge communications regarding claims; investigation.—

(1)(a) Upon an insurer's receiving a communication with respect to a claim, the insurer shall, within 14 calendar days, review and acknowledge receipt of such communication unless payment is made within that period of time or unless the failure to acknowledge is caused by factors beyond the control of the insurer which reasonably prevent such acknowledgment. If the acknowledgment is not in writing, a notification indicating acknowledgment shall be made in the insurer's claim file and dated. A communication made to or by a representative ~~an agent~~ of an insurer with respect to a claim shall constitute communication to or by the insurer.

(b) As used in this subsection, the term "representative" ~~"agent"~~ means any person to whom an insurer has granted

authority or responsibility to receive or make such communications with respect to claims on behalf of the insurer.

(c) This subsection shall not apply to claimants represented by counsel beyond those communications necessary to provide forms and instructions.

(2) Such acknowledgment shall be responsive to the communication. If the communication constitutes a notification of a claim, unless the acknowledgment reasonably advises the claimant that the claim appears not to be covered by the insurer, the acknowledgment shall provide necessary claim forms, and instructions, including an appropriate telephone number.

(3)(a) Unless otherwise provided by the policy of insurance or by law, within 10 business ~~working~~ days after an insurer receives proof of loss statements, the insurer shall begin such investigation as is reasonably necessary unless the failure to begin such investigation is caused by factors beyond the control of the insurer which reasonably prevent the commencement of such investigation.

(b) If such investigation involves a physical inspection of the property, the licensed adjuster assigned by the insurer must provide the policyholder with his or her name, license number, and contact information.

(c) If an insurer assigns the claim to a different licensed adjuster from the adjuster who performed the physical inspection, the insurer must, within 7 days after changing the

licensed insurance adjuster assigned to a claim, provide the name, license number, and contact information of the new adjuster to the policyholder. The notification may be sent electronically or via mail. If the notification is a physical letter, it must be postmarked within 7 days after the change in adjuster. The policyholder must be provided notice of any subsequent change to the assigned adjuster as set forth by this paragraph.

(4) An insurer shall establish a process by which an agent of record for an insurance policy receives the same notice as the policyholder as provided in paragraphs (3)(b) and (c) in order to assist the agent of record in answering the policyholder's questions regarding claims. As used in this subsection, the term "agent of record" means the agent named on the declarations page of the insurance policy.

(5) For purposes of this section, the term "insurer" means any residential property insurer.

(6)(a) When providing a preliminary or partial estimate of damage regarding a claim, an insurer shall include with the estimate the following statement printed in at least 12-point bold, uppercase type: THIS ESTIMATE REPRESENTS OUR CURRENT EVALUATION OF THE LOSS TO YOUR INSURED PROPERTY AND MAY BE REVISED AS WE CONTINUE TO EVALUATE YOUR CLAIM. IF YOU HAVE QUESTIONS, CONCERNS, OR ADDITIONAL INFORMATION REGARDING YOUR CLAIM, WE ENCOURAGE YOU TO CONTACT US.

(b) When providing a preliminary or partial payment on a claim, an insurer shall include with the payment the following statement printed in at least 12-point bold, uppercase type: WE ARE CONTINUING TO EVALUATE YOUR CLAIM INVOLVING YOUR INSURED PROPERTY AND MAY ISSUE ADDITIONAL PAYMENTS. IF YOU HAVE QUESTIONS, CONCERNS, OR ADDITIONAL INFORMATION REGARDING YOUR CLAIM, WE ENCOURAGE YOU TO CONTACT US.

(7)~~(5)~~(a) Within 90 calendar days after an insurer receives notice of an initial, reopened, or supplemental property insurance claim from a policyholder, the insurer shall pay or deny such claim or a portion of the claim unless the failure to pay is caused by factors beyond the control of the insurer which reasonably prevent such payment. Any payment of an initial or supplemental claim or portion of such claim made 90 calendar days after the insurer receives notice of the claim, or made more than 15 days after there are no longer factors beyond the control of the insurer which reasonably prevented such payment, whichever is later, bears interest at the rate set forth in s. 55.03. Interest begins to accrue from the date the insurer receives notice of the claim. The provisions of this subsection may not be waived, voided, or nullified by the terms of the insurance policy. If there is a right to prejudgment interest, the insured shall select whether to receive prejudgment interest or interest under this subsection. Interest is payable when the claim or portion of the claim is paid.

Failure to comply with this subsection constitutes a violation of this code. However, failure to comply with this subsection does not form the sole basis for a private cause of action.

(b) Notwithstanding subsection (5) ~~(4)~~, for purposes of this subsection, the term "claim" means any of the following:

1. A claim under an insurance policy providing residential coverage as defined in s. 627.4025(1);

2. A claim for structural or contents coverage under a commercial property insurance policy if the insured structure is 10,000 square feet or less; or

3. A claim for contents coverage under a commercial tenant policy if the insured premises is 10,000 square feet or less.

(c) This subsection does ~~shall~~ not apply to claims under an insurance policy covering nonresidential commercial structures or contents in more than one state.

(8) This section applies to surplus lines insurers and surplus lines insurance authorized under ss. 626.913-626.937.

Section 19. Section 627.7031, Florida Statutes, is created to read:

627.7031 Foreign venue clauses prohibited.—After July 1, 2020, a personal residential property insurance policy sold in this state insuring real property located in this state may not require an insured to pursue dispute resolution through litigation, arbitration, or mediation outside this state. This section applies to surplus lines insurers and surplus lines

insurance authorized under ss. 626.913-626.937.

Section 20. Effective January 1, 2021, section 627.7142, Florida Statutes, is amended to read:

627.7142 Homeowner Claims Bill of Rights.—An insurer issuing a personal lines residential property insurance policy in this state must provide a Homeowner Claims Bill of Rights to a policyholder within 14 days after receiving an initial communication with respect to a claim~~, unless the claim follows an event that is the subject of a declaration of a state of emergency by the Governor~~. The purpose of the bill of rights is to summarize, in simple, nontechnical terms, existing Florida law regarding the rights of a personal lines residential property insurance policyholder who files a claim of loss. The Homeowner Claims Bill of Rights is specific to the claims process and does not represent all of a policyholder's rights under Florida law regarding the insurance policy. The Homeowner Claims Bill of Rights does not create a civil cause of action by any individual policyholder or class of policyholders against an insurer or insurers. The failure of an insurer to properly deliver the Homeowner Claims Bill of Rights is subject to administrative enforcement by the office but is not admissible as evidence in a civil action against an insurer. The Homeowner Claims Bill of Rights does not enlarge, modify, or contravene statutory requirements, including, but not limited to, ss. 626.854, 626.9541, 627.70131, 627.7015, and 627.7074, and does

not prohibit an insurer from exercising its right to repair damaged property in compliance with the terms of an applicable policy or ss. 627.7011(5)(e) and 627.702(7). The Homeowner Claims Bill of Rights must state:

HOMEOWNER CLAIMS
BILL OF RIGHTS

This Bill of Rights is specific to the claims process and does not represent all of your rights under Florida law regarding your policy. There are also exceptions to the stated timelines when conditions are beyond your insurance company's control. This document does not create a civil cause of action by an individual policyholder, or a class of policyholders, against an insurer or insurers and does not prohibit an insurer from exercising its right to repair damaged property in compliance with the terms of an applicable policy.

YOU HAVE THE RIGHT TO:

1. Receive from your insurance company an acknowledgment of your reported claim within 14 calendar days after the time you communicated the claim.

2. Upon written request, receive from your insurance

company within 30 days after you have submitted a complete proof-of-loss statement to your insurance company, confirmation that your claim is covered in full, partially covered, or denied, or receive a written statement that your claim is being investigated.

3. Within 7 calendar days, receive notification from your insurance company if there has been a change in the company adjuster who is assigned to your claim. The notification must include the assigned adjuster's contact information.

4. Within 90 calendar days, subject to any dual interest noted in the policy, receive full settlement payment for your claim or payment of the undisputed portion of your claim, or your insurance company's denial of your claim.

5. Receive payment of interest as provided in section 627.7031, Florida Statutes, from your insurance company, which begins accruing from the date your claim is filed if your insurance company does not pay full settlement of your claim or the undisputed portion of your claim or does not deny your claim within 90 calendar days after your claim is filed. The interest, if applicable, must be paid when your claim or undisputed portion of your claim is paid.

6.~~4.~~ Free mediation of your disputed claim by the Florida Department of Financial Services, Division of Consumer Services, under most circumstances and subject to certain restrictions.

7.~~5.~~ Neutral evaluation of your disputed claim, if your claim is for damage caused by a sinkhole and is covered by your policy.

8.~~6.~~ Contact the Florida Department of Financial Services, Division of Consumer Services' toll-free helpline for assistance with any insurance claim or questions pertaining to the handling of your claim. You can reach the Helpline by phone at...(toll-free phone number)..., or you can seek assistance online at the Florida Department of Financial Services, Division of Consumer Services' website at...(website address)....

YOU ARE ADVISED TO:

1. Contact your insurance company before entering into any contract for repairs to confirm any managed repair policy provisions or optional preferred vendors.

2. Make and document emergency repairs that are necessary to prevent further damage. Keep the damaged property, if feasible, keep all receipts, and take

photographs or video of damage before and after any repairs.

3. Carefully read any contract that requires you to pay out-of-pocket expenses or a fee that is based on a percentage of the insurance proceeds that you will receive for repairing or replacing your property.

4. Confirm that the contractor you choose is licensed to do business in Florida. You can verify a contractor's license and check to see if there are any complaints against him or her by calling the Florida Department of Business and Professional Regulation. You should also ask the contractor for references from previous work.

5. Require all contractors to provide proof of insurance before beginning repairs.

6. Take precautions if the damage requires you to leave your home, including securing your property and turning off your gas, water, and electricity, and contacting your insurance company and provide a phone number where you can be reached.

Section 21. Paragraph (a) of subsection (1) and subsection (6) of section 631.57, Florida Statutes, are amended to read:

631.57 Powers and duties of the association.—

(1) The association shall:

(a)1. Be obligated to the extent of the covered claims existing:

a. Prior to adjudication of insolvency and arising within 30 days after the determination of insolvency;

b. Before the policy expiration date if less than 30 days after the determination; or

c. Before the insured replaces the policy or causes its cancellation, if she or he does so within 30 days of the determination.

2. The obligation under subparagraph 1. includes ~~only~~ the amount of each covered claim which is ~~in excess of $100 and is~~ less than $300,000, except that policies providing coverage for homeowner's insurance shall provide for an additional $200,000 for the portion of a covered claim which relates only to the damage to the structure and contents.

3.a. Notwithstanding subparagraph 2., the obligation under subparagraph 1. for policies covering condominium associations or homeowners' associations, which associations have a responsibility to provide insurance coverage on residential units within the association, shall include that amount of each covered property insurance claim which is less than $100,000 multiplied by the number of condominium units or other residential units; however, as to homeowners' associations, this sub-subparagraph applies only to claims for damage or loss to residential units and structures attached to residential units.

b. Notwithstanding sub-subparagraph a., the association has no obligation to pay covered claims that are to be paid from

the proceeds of bonds issued under s. 631.695. However, the association shall assign and pledge the first available moneys from all or part of the assessments to be made under paragraph (3)(a) to or on behalf of the issuer of such bonds for the benefit of the holders of such bonds. The association shall administer any such covered claims and present valid covered claims for payment in accordance with the provisions of the assistance program in connection with which such bonds have been issued.

4. In no event shall the association be obligated to a policyholder or claimant in an amount in excess of the obligation of the insolvent insurer under the policy from which the claim arises.

(6) The association may extend the time limits specified in paragraph (1)(a) by up to an additional 60 days ~~or waive the applicability of the $100 deductible specified in paragraph (1)(a)~~ if the board determines that either or both such actions are necessary to facilitate the bulk assumption of obligations.

Section 22. Section 648.30, Florida Statutes, is amended to read:

648.30 Licensure and appointment required; prohibited acts; penalties.—

(1) A person may not act in the capacity of a bail bond agent or temporary bail bond agent or perform any of the functions, duties, or powers prescribed for bail bond agents or

temporary bail bond agents under this chapter unless that person is qualified, licensed, and appointed as provided in this chapter.

(2) A person may not represent himself or herself to be a bail enforcement agent, bounty hunter, or other similar title in this state.

(3) A person, other than a certified law enforcement officer, may not apprehend, detain, or arrest a principal on a bond, wherever issued, unless that person is qualified, licensed, and appointed as provided in this chapter or licensed as a bail bond agent or bail bond enforcement agent, or holds an equivalent license by the state where the bond was written.

(4) Any person who violates this section commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(5) Any licensee under this chapter who knowingly aids or abets an unlicensed person in violating this section commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 23. Paragraphs (b) and (c) of subsection (4) and subsections (1) and (10) of section 717.124, Florida Statutes, are amended to read:

717.124 Unclaimed property claims.—

(1) Any person, excluding another state, claiming an interest in any property paid or delivered to the department

under this chapter may file with the department a claim on a form prescribed by the department and verified by the claimant or the claimant's representative. The claimant's representative must be an attorney licensed to practice law in this state, a licensed Florida-certified public accountant, or a private investigator licensed under chapter 493. The claimant's representative must be registered with the department under this chapter. The claimant, or the claimant's representative, shall provide the department with a legible copy of a valid driver license of the claimant at the time the original claim form is filed. If the claimant has not been issued a valid driver license at the time the original claim form is filed, the department shall be provided with a legible copy of a photographic identification of the claimant issued by the United States, a state or territory of the United States, a foreign nation, or a political subdivision or agency thereof or other evidence deemed acceptable by the department by rule. In lieu of photographic identification, a notarized sworn statement by the claimant may be provided which affirms the claimant's identity and states the claimant's full name and address. The claimant must produce to the notary photographic identification of the claimant issued by the United States, a state or territory of the United States, a foreign nation, or a political subdivision or agency thereof or other evidence deemed acceptable by the department by rule. The notary shall indicate the notary's full

address on the notarized sworn statement. Any claim filed without the required identification or the sworn statement with the original claim form and the original Florida Uniform Unclaimed Property Recovery Agreement or Florida Uniform Property Purchase Agreement ~~power of attorney or purchase agreement~~, if applicable, is void.

(a) Within 90 days after receipt of a claim, the department may return any claim that provides for the receipt of fees and costs greater than that permitted under this chapter or that contains any apparent errors or omissions. The department may also request that the claimant or the claimant's representative provide additional information. The department shall retain a copy or electronic image of the claim.

(b) A claimant or the claimant's representative shall be deemed to have withdrawn a claim if no response to the department's request for additional information is received by the department within 60 days after the notification of any apparent errors or omissions.

(c) Within 90 days after receipt of the claim, or the response of the claimant or the claimant's representative to the department's request for additional information, whichever is later, the department shall determine each claim. Such determination shall contain a notice of rights provided by ss. 120.569 and 120.57. The 90-day period shall be extended by 60 days if the department has good cause to need additional time or

if the unclaimed property:

1. Is owned by a person who has been a debtor in bankruptcy;

2. Was reported with an address outside of the United States;

3. Is being claimed by a person outside of the United States; or

4. Contains documents filed in support of the claim that are not in the English language and have not been accompanied by an English language translation.

(d) The department shall deny any claim under which the claimant's representative has refused to authorize the department to reduce the fees and costs to the maximum permitted under this chapter.

(4)

(b) If an owner authorizes an attorney licensed to practice law in this state, Florida-certified public accountant, or private investigator licensed under chapter 493, and registered with the department under this chapter, to claim the unclaimed property on the owner's behalf, the department is authorized to make distribution of the property or money in accordance with the Florida Uniform Unclaimed Property Recovery Agreement or Florida Uniform Property Purchase Agreement under s. 717.135 ~~such power of attorney~~. The original Florida Uniform Unclaimed Property Recovery Agreement or Florida Uniform

Property Purchase Agreement ~~power of attorney~~ must be executed by the claimant or seller ~~owner~~ and must be filed with the department.

(c)1. Payments of approved claims for unclaimed cash accounts shall be made to the owner after deducting any fees and costs authorized pursuant to a Florida Uniform Unclaimed Property Recovery Agreement ~~written power of attorney~~. The contents of a safe-deposit box shall be delivered directly to the claimant ~~notwithstanding any power of attorney or agreement to the contrary~~.

2. Payments of fees and costs authorized pursuant to a Florida Uniform Unclaimed Property Recovery Agreement ~~written power of attorney~~ for approved claims must ~~shall~~ be made or issued to the law firm of the designated attorney licensed to practice law in this state, the public accountancy firm of the licensed Florida-certified public accountant, or the designated employing private investigative agency licensed by this state. Such payments shall be made by electronic funds transfer and may be made on such periodic schedule as the department may define by rule, provided the payment intervals do not exceed 31 days. Payment made to an attorney licensed in this state, a Florida-certified public accountant, or a private investigator licensed under chapter 493, operating individually or as a sole practitioner, shall be to the attorney, certified public accountant, or private investigator.

(10) Notwithstanding any other provision of this chapter, the department may develop a process by which a registered claimant's representative or a buyer of unclaimed property may electronically submit to the department an electronic image of a completed claim and claims-related documents pursuant to this chapter, including a Florida Uniform Unclaimed Property Recovery Agreement or Florida Uniform Property Purchase Agreement ~~a limited power of attorney or purchase agreement~~ that has been manually signed and dated by a claimant or seller pursuant to s. 717.135 ~~or s. 717.1351~~, after the claimant's representative or the buyer of unclaimed property receives the original documents provided by the claimant or the seller for any claim. Each claim filed by a registered claimant's representative or a buyer of unclaimed property must include a statement by the claimant's representative or the buyer of unclaimed property attesting that all documents are true copies of the original documents and that all original documents are physically in the possession of the claimant's representative or the buyer of unclaimed property. All original documents must be kept in the original form, by claim number, under the secure control of the claimant's representative or the buyer of unclaimed property and must be available for inspection by the department in accordance with s. 717.1315. The department may adopt rules to implement this subsection.

Section 24. Subsection (2) of section 717.12404, Florida

Statutes, is amended to read:

717.12404 Claims on behalf of a business entity or trust.—

(2) Claims on behalf of a dissolved corporation, a business entity other than an active corporation, or a trust must include a legible copy of a valid driver license of the person acting on behalf of the dissolved corporation, business entity other than an active corporation, or trust. If the person has not been issued a valid driver license, the department shall be provided with a legible copy of a photographic identification of the person issued by the United States, a foreign nation, or a political subdivision or agency thereof. In lieu of photographic identification, a notarized sworn statement by the person may be provided which affirms the person's identity and states the person's full name and address. The person must produce his or her photographic identification issued by the United States, a state or territory of the United States, a foreign nation, or a political subdivision or agency thereof or other evidence deemed acceptable by the department by rule. The notary shall indicate the notary's full address on the notarized sworn statement. Any claim filed without the required identification or the sworn statement with the original claim form and the original Florida Uniform Unclaimed Property Recovery Agreement or Florida Uniform Property Purchase Agreement ~~power of attorney~~, if applicable, is void.

Section 25. Subsection (1) of section 717.1315, Florida

Statutes, is amended to read:

717.1315 Retention of records by claimant's representatives and buyers of unclaimed property.—

(1) Every claimant's representative and buyer of unclaimed property shall keep and use in his or her business such books, accounts, and records of the business conducted under this chapter to enable the department to determine whether such person is complying with this chapter and the rules adopted by the department under this chapter. Every claimant's representative and buyer of unclaimed property shall preserve such books, accounts, and records, including every Florida Uniform Unclaimed Property Recovery Agreement or Florida Uniform Property Purchase Agreement ~~power of attorney or agreement~~ between the owner and such claimant's representative or buyer, for at least 3 years after the date of the initial ~~power of attorney or~~ agreement.

Section 26. Paragraph (j) of subsection (1) of section 717.1322, Florida Statutes, is amended to read:

717.1322 Administrative and civil enforcement.—

(1) The following acts are violations of this chapter and constitute grounds for an administrative enforcement action by the department in accordance with the requirements of chapter 120 and for civil enforcement by the department in a court of competent jurisdiction:

(j) Requesting or receiving compensation for notifying a

person of his or her unclaimed property or assisting another person in filing a claim for unclaimed property, unless the person is an attorney licensed to practice law in this state, a Florida-certified public accountant, or a private investigator licensed under chapter 493, or entering into, or making a solicitation to enter into, an agreement ~~a power of attorney~~ to file a claim for unclaimed property owned by another, or a contract or agreement to purchase unclaimed property, unless such person is registered with the department pursuant to this chapter and an attorney licensed to practice law in this state in the regular practice of her or his profession, a Florida-certified public accountant who is acting within the scope of the practice of public accounting as defined in chapter 473, or a private investigator licensed under chapter 493. This subsection does not apply to a person who has been granted a durable power of attorney to convey and receive all of the real and personal property of the owner, is the court-appointed guardian of the owner, has been employed as an attorney or qualified representative to contest the department's denial of a claim, or has been employed as an attorney to probate the estate of the owner or an heir or legatee of the owner.

Section 27. Section 717.135, Florida Statutes, is amended to read:

(Substantial rewording of section. See s. 717.135, F.S., for present text.)

717.135 Recovery agreements and purchase agreements for claims filed by claimant's representative; fees and costs.—

(1) In order to protect the interests of owners of unclaimed property, the department shall adopt by rule a form entitled "Florida Uniform Unclaimed Property Recovery Agreement" and a form entitled "Florida Uniform Property Purchase Agreement."

(2) The Florida Uniform Unclaimed Property Recovery Agreement form and the Florida Uniform Property Purchase Agreement form must include and disclose:

(a) The total dollar amount of unclaimed property accounts claimed or sold.

(b) Either the total percentage of all authorized fees and costs to be paid to the claimant's representative or the percentage of the value of the property to be paid as net gain to the purchasing registered claimant's representative.

(c) Either the total dollar amount to be deducted and received from the claimant as fees and costs by the claimant's representative or the total net dollar amount to be received by the purchasing registered claimant's representative.

(d) The net dollar amount to be received by the claimant or seller.

(e) For each account claimed, the unclaimed property account number and name of the apparent owner, as listed on the department's database.

(f) For the Florida Uniform Property Purchase Agreement, a statement that the purchase price will be remitted to the seller within 30 days after the execution of the form by the seller.

(g) The name, address, e-mail address, phone number, and license number of the registered claimant's representative.

(h) The manual signature of the claimant or seller and the date signed.

(i) The social security number or taxpayer identification number of the claimant or seller, if available. A number is available if one has been issued to the claimant or seller.

(j) A limit of total fees and costs, or the total discount amount in the case of a purchase agreement, to no more than 20 percent of the claimed amount.

(3) For a Florida Uniform Property Purchase Agreement form, proof that the seller has received payment must be filed with the department along with the claim. If proof of payment is not provided, the claim is void.

(4) A registered claimant's representative shall use the Florida Uniform Unclaimed Property Recovery Agreement form or the Florida Uniform Property Purchase Agreement form as the exclusive means of engaging with a claimant or seller to file a claim with the department.

(5) Fees and costs may be owed or paid to a registered claimant's representative only pursuant to the forms authorized by this section and upon approval of the claim filed thereby.

(6) A claimant's representative may not use or distribute any other agreement of any type with respect to the claimant or seller which relates to unclaimed property accounts held by the department or the Chief Financial Officer other than the agreements authorized by this section. Any agreement that is not authorized by this section is null and void.

(7) The forms under subsection (1):

(a) May not contain language that makes the agreement irrevocable; and

(b) May not contain language that creates an assignment of any unclaimed property held by the department.

(8) This section does not supersede the conflicting claims provisions of s. 717.1241.

(9) At the time a claim is approved, the department may pay any additional account that is owned by the claimant but has not been claimed at the time of approval, provided that no subsequent claim has been filed and is pending for the claimant at the time of approval.

Section 28. Section 717.1351, Florida Statutes, is repealed.

Section 29. Except as otherwise provided, this act shall take effect upon becoming a law.

COMMERCE COMMITTEE

HB 1137 by Rep. Clemons
Consumer Protection

AMENDMENT SUMMARY
February 13, 2020

Amendment 1 by Rep. Clemons (strike-all): The strike-all amendment contains the current provisions of the bill and makes the following modifications and clarifications:

- Adds a section amending the electronic signature requirements for salvage certificates of title.
- Clarifies that an insurer need not produce work-product privileged documents in response to information requests from the Department of Financial Services or the Office of Insurance Regulation.
- Changes the number of days that a policyholder has to cancel a contract with a public adjuster from 21 days during a state of emergency, and for one year thereafter, to 14 days.
- Changes the requirements regarding the estimate that a public adjuster must provide to a policyholder so that the estimate includes itemized details about the cost of repairs, and provides the policyholder an opportunity to cancel the contract if the public adjuster does not provide the estimate within 45 days from the date of the execution of the contract.
- Amends the definition of company employee adjuster.
- Specifies that a property insurer will send a copy of a policyholder's declarations page along with the outline of hurricane coverage each year.
- Changes the number of days that a property insurer has to notify an insured of a change in adjuster from seven to 14 days.
- Expands the prohibition on foreign venue clauses in property insurance policies covering real property located in Florida so that it applies to all personal and commercial property insurance policies.
- Increases the amount of fees that a claimant's representative can charge for the recovery of unclaimed property if the apparent owner of the unclaimed property is deceased with an estate that is required to be probated.
- Makes various formatting and technical changes.

Amendment to Amendment 1 by Rep. Jenne (Line 167 of strike all): The amendment changes the number of days that a policyholder has to cancel a contract with a public adjuster to seven days regardless of whether the contract was executed during a declared emergency or for one year thereafter.

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 Clemons offered the following:

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

Section 1. Paragraph (d) of subsection (3) of section 319.30, Florida Statutes, is amended to read:

319.30 Definitions; dismantling, destruction, change of identity of motor vehicle or mobile home; salvage.—

(3)

(d) An electronic signature that is consistent with chapter 668 satisfies any signature required under this subsection, except that an electronic signature on an odometer disclosure submitted through an insurance company must be executed using an electronic signature, as defined in s. 668.003(4), that uses a system providing an Identity Assurance

Level, Authenticator Assurance Level, and Federation Assurance Level, as described in the National Institute of Standards and Technology Special Publication 800-63-3, as of December 1, 2017, that are equivalent to or greater than~~:~~

~~1.~~ Level 2, for each level, for a certificate of destruction or~~.~~

~~2. Level 3, for each level,~~ for a salvage certificate of title.

Section 2. Paragraph (b) of subsection (9) of section 501.0051, Florida Statutes, is amended to read:

501.0051 Protected consumer report security freeze.—

(9)

(b) A consumer reporting agency may not charge to ~~a reasonable fee, not to exceed $10, if the representative fails to retain the original unique personal identifier provided by the consumer reporting agency and the agency must~~ reissue the unique personal identifier or provide a new unique personal identifier to the consumer ~~representative~~.

Section 3. Paragraph (b) of subsection (10) of section 624.307, Florida Statutes, is amended to read:

624.307 General powers; duties.—

(10)

(b) Any entity ~~person~~ licensed or issued a certificate of authority by the department or the office shall respond, in writing, to the division within 20 days after receipt of a

written request for documents and information from the division concerning a consumer complaint. The response must address the issues and allegations raised in the complaint and include any requested documents and information concerning the consumer complaint not subject to attorney-client or work-product privilege. The division may impose an administrative penalty for failure to comply with this paragraph of up to $2,500 per violation upon any entity licensed by the department or the office ~~and $250 for the first violation, $500 for the second violation, and up to $1,000 for the third or subsequent violation upon any individual licensed by the department or the office~~.

Section 4. Present subsection (9) of section 626.112, Florida Statutes, is redesignated as subsection (10), a new subsection (9) is added to that section, and paragraph (d) of subsection (7) and present subsection (9) of that section are amended, to read:

626.112 License and appointment required; agents, customer representatives, adjusters, insurance agencies, service representatives, managing general agents, insurance adjusting firms.—

(7)

~~(d) Effective October 1, 2015, the department must automatically convert the registration of an approved registered insurance agency to an insurance agency license.~~

(9)(a) An individual, firm, partnership, corporation, association, or other entity may not act in its own name or under a trade name, directly or indirectly, as an adjusting firm unless it complies with s. 626.8696 with respect to possessing an adjusting firm license for each place of business at which it engages in an activity that may be performed only by a licensed insurance adjuster. However, an adjusting firm that is owned and operated by a single licensed adjuster conducting business in his or her individual name and not employing or otherwise using the services of or appointing other licensees is exempt from the adjusting firm licensing requirements of this subsection.

(b) A branch place of business that is established by a licensed adjusting firm is considered a branch firm and is not required to be licensed if:

1. It transacts business under the same name and federal tax identification number as the licensed adjusting firm;

2. It has designated with the department a primary adjuster operating the location as required by s. 626.8695; and

3. The address and telephone number of the branch location have been submitted to the department for inclusion in the licensing record of the licensed adjusting firm within 30 days after insurance transactions begin at the branch location.

(c) If an adjusting firm is required to be licensed, but fails to file an application for licensure in accordance with this section, the department shall impose on the firm an

administrative penalty of up to $10,000.

(10)~~(9)~~ Any person who knowingly transacts insurance or otherwise engages in insurance activities in this state without a license in violation of this section or who knowingly aids or abets an unlicensed person in transacting insurance or otherwise engaging in insurance activities in this state without a license commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 5. Subsection (4) is added to section 626.602, Florida Statutes, to read:

626.602 Insurance agency names; disapproval.—The department may disapprove the use of any true or fictitious name, other than the bona fide natural name of an individual, by any insurance agency on any of the following grounds:

(4) The name contains the word "Medicare" or "Medicaid." An insurance agency whose name contains the word "Medicare" or "Medicaid" but which is licensed as of July 1, 2020, may continue to use that name as long as the agency's license is valid. If the agency's license expires or is suspended or revoked, the agency may not be relicensed using that name.

Section 6. Subsections (16) and (17) are added to section 626.621, Florida Statutes, to read:

626.621 Grounds for discretionary refusal, suspension, or revocation of agent's, adjuster's, customer representative's, service representative's, or managing general agent's license or

appointment.—The department may, in its discretion, deny an application for, suspend, revoke, or refuse to renew or continue the license or appointment of any applicant, agent, adjuster, customer representative, service representative, or managing general agent, and it may suspend or revoke the eligibility to hold a license or appointment of any such person, if it finds that as to the applicant, licensee, or appointee any one or more of the following applicable grounds exist under circumstances for which such denial, suspension, revocation, or refusal is not mandatory under s. 626.611:

(16) Taking action that allows the personal financial or medical information of a consumer or customer to be made available or accessible to the general public, regardless of the format in which the record is stored.

(17) Initiating in-person or telephone solicitation after 9 p.m. or before 8 a.m. local time of the prospective customer unless requested by the prospective customer.

Section 7. Section 626.782, Florida Statutes, is amended to read:

626.782 "Industrial class insurer" defined.—An "industrial class insurer" is an insurer collecting premiums on policies of ~~writing~~ industrial life insurance, as defined in s. 627.502, written before July 1, 2020, and as to such insurance, operates under a system of collecting a debit by its agent.

Section 8. Section 626.783, Florida Statutes, is amended

to read:

626.783 "Ordinary-combination class insurer" defined.—An "ordinary-combination class insurer" is an insurer writing ~~both~~ ordinary class insurance and collecting premiums on existing industrial life ~~class~~ insurance under s. 626.782.

Section 9. Section 626.796, Florida Statutes, is repealed.

Section 10. Subsection (1) of section 626.8443, Florida Statutes, is amended to read:

626.8443 Duration of suspension or revocation.—

(1) The department shall, in its order suspending a title insurance agent's or agency's license or appointment or in its order suspending the eligibility of a person to hold or apply for such license or appointment, specify the period during which the suspension is to be in effect, but such period shall not exceed 2 years ~~1 year~~. The license, ~~or~~ appointment, or eligibility shall remain suspended during the period so specified, subject, however, to any rescission or modification of the order by the department, or modification or reversal thereof by the court, prior to expiration of the suspension period. A license, appointment, or eligibility that ~~which~~ has been suspended may not be reinstated except upon request for such reinstatement, but the department shall not grant such reinstatement if it finds that the circumstance or circumstances for which the license, appointment, and eligibility was suspended still exist or are likely to recur.

Section 11. Subsections (6) and (11) of section 626.854, Florida Statutes, are amended to read:

626.854 "Public adjuster" defined; prohibitions.—The Legislature finds that it is necessary for the protection of the public to regulate public insurance adjusters and to prevent the unauthorized practice of law.

(6) Except during a state of emergency declared by the Governor and except during the 1-year period after the date of loss, an insured or claimant may cancel a public adjuster's contract to adjust a claim without penalty or obligation within 7 calendar ~~3 business~~ days after the date on which the contract is executed or within 7 calendar ~~3 business~~ days after the date on which the insured or claimant has notified the insurer of the claim, whichever is later. During a state of emergency declared by the Governor or during the 1-year period after the date of loss, an insured or claimant may cancel a public adjuster's contract to adjust a claim without penalty or obligation within 14 calendar days after the date on which the contract is executed or within 14 calendar days after the date on which the insured or claimant has notified the insurer of the claim, whichever is later. The public adjuster's contract must disclose to the insured or claimant his or her right to cancel the contract and advise the insured or claimant that notice of cancellation must be submitted in writing and sent by certified mail, return receipt requested, or other form of mailing that

provides proof thereof, to the public adjuster at the address specified in the contract~~; provided, during any state of emergency as declared by the Governor and for 1 year after the date of loss, the insured or claimant has 5 business days after the date on which the contract is executed to cancel a public adjuster's contract~~.

(11) Each public adjuster must provide to the claimant or insured a written estimate of the loss to assist in the submission of a proof of loss or any other claim for payment of insurance proceeds. The written estimate shall include a written itemization per unit estimate of the repairs, including itemized information on equipment, materials, labor, and supplies, in accordance with accepted industry standards. The public adjuster shall retain such written estimate for at least 5 years and shall make the estimate available to the claimant or insured, the insurer, and the department upon request. Failure to provide the required estimate within 45 calendar days after the date on which the contract is executed shall restore the insured's right to cancel the public adjuster's contract without penalty or obligation. The insured retains such right until such time as the public adjuster submits the required estimate or the contract becomes void. If the public adjuster fails to submit the required estimate within 50 calendar days after the date on which the contract is executed, the contract is deemed void.

Section 12. Section 626.856, Florida Statutes, is amended to read:

626.856 "Company employee adjuster" defined.—A "company employee adjuster" means a person licensed as an all-lines adjuster who is appointed and employed on an insurer's staff of adjusters or an affiliate or a wholly owned subsidiary of the insurer, and who undertakes on behalf of such insurer or other insurers under common control or ownership to ascertain and determine the amount of any claim, loss, or damage payable under a contract of insurance, or undertakes to effect settlement of such claim, loss, or damage.

Section 13. Effective January 1, 2021, subsection (3) of section 626.916, Florida Statutes, is amended, and paragraph (f) is added to subsection (1) of that section, to read:

626.916 Eligibility for export.—

(1) No insurance coverage shall be eligible for export unless it meets all of the following conditions:

(f) The insured has signed or otherwise provided documented acknowledgement of a disclosure in substantially the following form: "You are agreeing to place coverage in the surplus lines market. Coverage may be available in the admitted market. Persons insured by surplus lines carriers are not protected under the Florida Insurance Guaranty Act with respect to any right of recovery for the obligation of an insolvent unlicensed insurer."

(3)(a) Subsection (1) does not apply to wet marine and transportation or aviation risks that ~~which~~ are subject to s. 626.917.

(b) Paragraphs (1)(a)-(d) do not apply to classes of insurance which are subject to s. 627.062(3)(d)1. These classes may be exportable under the following conditions:

1. The insurance must be placed only by or through a surplus lines agent licensed in this state;

2. The insurer must be made eligible under s. 626.918; and

3. The insured has complied with paragraph (1)(f) ~~must sign a disclosure that substantially provides the following: "You are agreeing to place coverage in the surplus lines market. Superior coverage may be available in the admitted market and at a lesser cost. Persons insured by surplus lines carriers are not protected under the Florida Insurance Guaranty Act with respect to any right of recovery for the obligation of an insolvent unlicensed insurer."~~ If the disclosure ~~notice~~ is signed by the insured, the insured is presumed to have been informed and to know that other coverage may be available, and, with respect to the diligent-effort requirement under subsection (1), there is no liability on the part of, and no cause of action arises against, the retail agent presenting the form.

Section 14. Paragraph (z) of subsection (1) of section 626.9541, Florida Statutes, is amended to read:

626.9541 Unfair methods of competition and unfair or

deceptive acts or practices defined.—

(1) UNFAIR METHODS OF COMPETITION AND UNFAIR OR DECEPTIVE ACTS.—The following are defined as unfair methods of competition and unfair or deceptive acts or practices:

(z) *Sliding.*—Sliding is the act or practice of any of the following:

1. Representing to the applicant that a specific ancillary coverage or product is required by law in conjunction with the purchase of insurance when such coverage or product is not required.~~;~~

2. Representing to the applicant that a specific ancillary coverage or product is included in the policy applied for without an additional charge when such charge is required.~~; or~~

3. Charging an applicant for a specific ancillary coverage or product, in addition to the cost of the insurance coverage applied for, without the informed consent of the applicant.

4. Initiating, effectuating, binding, or otherwise issuing a policy of insurance without the prior informed consent of the owner of the property to be insured.

5. Mailing, transmitting, or otherwise submitting by any means an invoice for premium payment to a mortgagee or escrow agent for the purpose of effectuating an insurance policy without the prior informed consent of the owner of the property to be insured. However, this subparagraph does not apply in cases where the mortgagee or escrow agent is renewing insurance

or issuing collateral protection insurance as defined in s. 624.6085 pursuant to the mortgage or other pertinent loan documents or communications regarding the property.

Section 15. Effective January 1, 2021, subsection (3) of section 626.9741, Florida Statutes, is amended to read:

626.9741 Use of credit reports and credit scores by insurers.—

(3) An insurer must inform an applicant or insured, in the same medium as the application is taken, that a credit report or score is being requested for underwriting or rating purposes. The notification to the consumer must include the following language: "The Department of Financial Services offers free financial literacy programs to assist you with insurance-related questions, including how credit works and how credit scores are calculated. To learn more, call 1-877-693-5236 or visit www.MyFloridaCFO.com." An insurer that makes an adverse decision based, in whole or in part, upon a credit report must provide at no charge~~,~~ a copy of the credit report to the applicant or insured or provide the applicant or insured with the name, address, and telephone number of the consumer reporting agency from which the insured or applicant may obtain the credit report. The insurer must provide notification to the consumer explaining the reasons for the adverse decision. The reasons must be provided in sufficiently clear and specific language so that a person can identify the basis for the insurer's adverse

decision. Such notification shall include a description of the four primary reasons, or such fewer number as existed, which were the primary influences of the adverse decision. The use of generalized terms such as "poor credit history," "poor credit rating," or "poor insurance score" does not meet the explanation requirements of this subsection. A credit score may not be used in underwriting or rating insurance unless the scoring process produces information in sufficient detail to permit compliance with the requirements of this subsection. It shall not be deemed an adverse decision if, due to the insured's credit report or credit score, the insured continues to receive a less favorable rate or placement in a less favorable tier or company at the time of renewal except for renewals or reunderwriting required by this section.

Section 16. Subsection (1) of section 626.9957, Florida Statutes, is amended to read:

626.9957 Conduct prohibited; denial, revocation, or suspension of registration.—

(1) As provided in s. 626.112, only a person licensed as an insurance agent or customer representative may engage in the solicitation of insurance. A person who engages in the solicitation of insurance as described in s. 626.112(1) without such license is subject to the penalties provided under s. 626.112(10) ~~s. 626.112(9)~~.

Section 17. Subsection (10) of section 627.062, Florida

Statutes, is amended to read:

627.062 Rate standards.—

(10) Any interest paid pursuant to s. 627.70131(7) ~~s. 627.70131(5)~~ may not be included in the insurer's rate base and may not be used to justify a rate or rate change.

Section 18. Effective January 1, 2021, subsection (6) is added to section 627.421, Florida Statutes, to read:

627.421 Delivery of policy.—

(6) For personal lines residential property insurance policies, the insurer shall, between March 1 and June 1 of each year, inclusive, deliver an outline of the hurricane coverage as specified in s. 627.4143(3), along with a current policy declarations page. This requirement applies only for those insureds that have provided the insurer with a valid e-mail address. This information must be delivered directly to the policyholder via e-mail or by an e-mail notice of information being posted to a secure web-based policy information page.

Section 19. Section 627.502, Florida Statutes, is amended to read:

627.502 "Industrial life insurance" defined; reporting; prohibition on new policies after a certain date.—

(1) For the purposes of this code, "industrial life insurance" is that form of life insurance written under policies under which premiums are payable monthly or more often, bearing the words "industrial policy" or "weekly premium policy" or

words of similar import imprinted upon the policies as part of the descriptive matter, and issued by an insurer that ~~which~~, as to such industrial life insurance, is operating under a system of collecting a debit by its agent.

(2) Every life insurer servicing existing ~~transacting~~ industrial life insurance shall report to the office all annual statement data regarding the exhibit of life insurance, including relevant information for industrial life insurance.

(3) Beginning July 1, 2020, a life insurer may not write a new policy of industrial life insurance.

Section 20. Effective January 1, 2021, section 627.70131, Florida Statutes, is amended to read:

627.70131 Insurer's duty to acknowledge communications regarding claims; investigation.—

(1)(a) Upon an insurer's receiving a communication with respect to a claim, the insurer shall, within 14 calendar days, review and acknowledge receipt of such communication unless payment is made within that period of time or unless the failure to acknowledge is caused by factors beyond the control of the insurer which reasonably prevent such acknowledgment. If the acknowledgment is not in writing, a notification indicating acknowledgment shall be made in the insurer's claim file and dated. A communication made to or by a representative ~~an agent~~ of an insurer with respect to a claim shall constitute communication to or by the insurer.

(b) As used in this subsection, the term "representative" ~~"agent"~~ means any person to whom an insurer has granted authority or responsibility to receive or make such communications with respect to claims on behalf of the insurer.

(c) This subsection shall not apply to claimants represented by counsel beyond those communications necessary to provide forms and instructions.

(2) Such acknowledgment shall be responsive to the communication. If the communication constitutes a notification of a claim, unless the acknowledgment reasonably advises the claimant that the claim appears not to be covered by the insurer, the acknowledgment shall provide necessary claim forms, and instructions, including an appropriate telephone number.

(3)(a) Unless otherwise provided by the policy of insurance or by law, within 10 business ~~working~~ days after an insurer receives proof of loss statements, the insurer shall begin such investigation as is reasonably necessary unless the failure to begin such investigation is caused by factors beyond the control of the insurer which reasonably prevent the commencement of such investigation.

(b) If such investigation involves a physical inspection of the property, the licensed adjuster assigned by the insurer must provide the policyholder with his or her name, license number, and contact information.

(c) If an insurer assigns the claim to a different

licensed adjuster from the adjuster who performed the physical inspection, the insurer must, within 14 days after changing the licensed insurance adjuster assigned to a claim, provide the name, license number, and contact information of the new adjuster to the policyholder. The notification may be made electronically or via mail. If the notification is a physical letter, it must be postmarked within 14 days after the date of the change in adjuster. The policyholder must be provided notice of any subsequent change to the assigned adjuster as set forth by this paragraph.

(4) An insurer shall establish a process by which an agent of record for an insurance policy receives the same notice as the policyholder as provided in paragraphs (3)(b) and (c) in order to assist the agent of record in answering the policyholder's questions regarding claims. As used in this subsection, the term "agent of record" means the agent named on the declarations page of the insurance policy or, if there is no agent of record, another designated point of contact.

(5) For purposes of this section, the term "insurer" means any residential property insurer.

(6)(a) When providing a preliminary or partial estimate of damage regarding a claim, an insurer shall include with the estimate the following statement printed in at least 12-point bold, uppercase type: THIS ESTIMATE REPRESENTS OUR CURRENT EVALUATION OF THE COVERED DAMAGES TO YOUR INSURED PROPERTY AND

MAY BE REVISED AS WE CONTINUE TO EVALUATE YOUR CLAIM. IF YOU HAVE QUESTIONS, CONCERNS, OR ADDITIONAL INFORMATION REGARDING YOUR CLAIM, WE ENCOURAGE YOU TO CONTACT US.

(b) When providing a payment on a claim that is not the full and final payment for the claim, an insurer shall include with the payment the following statement printed in at least 12-point bold, uppercase type: WE ARE CONTINUING TO EVALUATE YOUR CLAIM INVOLVING YOUR INSURED PROPERTY AND MAY ISSUE ADDITIONAL PAYMENTS. IF YOU HAVE QUESTIONS, CONCERNS, OR ADDITIONAL INFORMATION REGARDING YOUR CLAIM, WE ENCOURAGE YOU TO CONTACT US. IF THE PAYMENT IS MADE BY ELECTRONIC FUNDS TRANSFER, A SIMILAR NOTICE MAY BE DELIVERED DIRECTLY TO THE POLICYHOLDER VIA EMAIL OR BY AN E-MAIL NOTICE OF INFORMATION BEING POSTED TO A SECURE WEB-BASED POLICY INFORMATION PAGE.

(7) ~~(5)~~ (a) Within 90 calendar days after an insurer receives notice of an initial, reopened, or supplemental property insurance claim from a policyholder, the insurer shall pay or deny such claim or a portion of the claim unless the failure to pay is caused by factors beyond the control of the insurer which reasonably prevent such payment. Any payment of an initial or supplemental claim or portion of such claim made 90 calendar days after the insurer receives notice of the claim, or made more than 15 calendar days after there are no longer factors beyond the control of the insurer which reasonably prevented such payment, whichever is later, bears interest at

the rate set forth in s. 55.03. Interest begins to accrue from the date the insurer receives notice of the claim. The provisions of this subsection may not be waived, voided, or nullified by the terms of the insurance policy. If there is a right to prejudgment interest, the insured shall select whether to receive prejudgment interest or interest under this subsection. Interest is payable when the claim or portion of the claim is paid. Failure to comply with this subsection constitutes a violation of this code. However, failure to comply with this subsection does not form the sole basis for a private cause of action.

(b) Notwithstanding subsection (5) ~~(4)~~, for purposes of this subsection, the term "claim" means any of the following:

1. A claim under an insurance policy providing residential coverage as defined in s. 627.4025(1);

2. A claim for structural or contents coverage under a commercial property insurance policy if the insured structure is 10,000 square feet or less; or

3. A claim for contents coverage under a commercial tenant policy if the insured premises is 10,000 square feet or less.

(c) This subsection does ~~shall~~ not apply to claims under an insurance policy covering nonresidential commercial structures or contents in more than one state.

(8) This section also applies to surplus lines insurers and surplus lines insurance authorized under ss. 626.913-626.937

providing residential coverage.

Section 21. Section 627.7031, Florida Statutes, is created to read:

627.7031 Foreign venue clauses prohibited.—After July 1, 2020, a property insurance policy sold in this state insuring real property located only in this state may not require an insured to pursue dispute resolution through litigation, arbitration, or mediation outside this state. This section also applies to surplus lines insurers and surplus lines insurance authorized under ss. 626.913-626.937.

Section 22. Effective January 1, 2021, section 627.7142, Florida Statutes, is amended to read:

627.7142 Homeowner Claims Bill of Rights.—An insurer issuing a personal lines residential property insurance policy in this state must provide a Homeowner Claims Bill of Rights to a policyholder within 14 calendar days after receiving an initial communication with respect to a claim~~, unless the claim follows an event that is the subject of a declaration of a state of emergency by the Governor~~. The purpose of the bill of rights is to summarize, in simple, nontechnical terms, existing Florida law regarding the rights of a personal lines residential property insurance policyholder who files a claim of loss. The Homeowner Claims Bill of Rights is specific to the claims process and does not represent all of a policyholder's rights under Florida law regarding the insurance policy. The Homeowner

Claims Bill of Rights does not create a civil cause of action by any individual policyholder or class of policyholders against an insurer or insurers. The failure of an insurer to properly deliver the Homeowner Claims Bill of Rights is subject to administrative enforcement by the office but is not admissible as evidence in a civil action against an insurer. The Homeowner Claims Bill of Rights does not enlarge, modify, or contravene statutory requirements, including, but not limited to, ss. 626.854, 626.9541, 627.70131, 627.7015, and 627.7074, and does not prohibit an insurer from exercising its right to repair damaged property in compliance with the terms of an applicable policy or ss. 627.7011(5)(e) and 627.702(7). The Homeowner Claims Bill of Rights must state:

HOMEOWNER CLAIMS
BILL OF RIGHTS

This Bill of Rights is specific to the claims process and does not represent all of your rights under Florida law regarding your policy. There are also exceptions to the stated timelines when conditions are beyond your insurance company's control. This document does not create a civil cause of action by an individual policyholder, or a class of policyholders, against an insurer or insurers and does not prohibit an insurer from exercising its right to repair damaged

property in compliance with the terms of an applicable policy.

YOU HAVE THE RIGHT TO:

1. Receive from your insurance company an acknowledgment of your reported claim within 14 calendar days after the time you communicated the claim.

2. Upon written request, receive from your insurance company within 30 days after you have submitted a complete proof-of-loss statement to your insurance company, confirmation that your claim is covered in full, partially covered, or denied, or receive a written statement that your claim is being investigated.

3. Within 14 calendar days, receive notification from your insurance company if there has been a change in the company adjuster who is assigned to your claim. The notification must include the assigned adjuster's contact information.

4. Within 90 calendar days, subject to any dual interest noted in the policy, receive full settlement payment for your claim or payment of the undisputed portion of your claim, or your insurance company's denial of your claim.

5. Receive payment of interest as provided in section 627.7031, Florida Statutes, from your insurance company, which begins accruing from the date your initial, reopened, or supplemental claim is filed if your insurance company does not pay full settlement of your claim or the undisputed portion of your claim or does not deny your claim within 90 calendar days after your claim is filed. The interest, if applicable, must be paid when your claim or undisputed portion of your claim is paid.

6.~~4.~~ Free mediation of your disputed claim by the Florida Department of Financial Services, Division of Consumer Services, under most circumstances and subject to certain restrictions.

7.~~5.~~ Neutral evaluation of your disputed claim, if your claim is for damage caused by a sinkhole and is covered by your policy.

8.~~6.~~ Contact the Florida Department of Financial Services, Division of Consumer Services' toll-free helpline for assistance with any insurance claim or questions pertaining to the handling of your claim. You can reach the Helpline by phone at...(toll-free phone number)..., or you can seek assistance online at the Florida Department of Financial Services, Division of Consumer Services' website at...(website

address)....

YOU ARE ADVISED TO:

1. Contact your insurance company before entering into any contract for repairs to confirm any managed repair policy provisions or optional preferred vendors.

2. Make and document emergency repairs that are necessary to prevent further damage. Keep the damaged property, if feasible, keep all receipts, and take photographs or video of damage before and after any repairs to provide to your insurer.

3. Carefully read any contract that requires you to pay out-of-pocket expenses or a fee that is based on a percentage of the insurance proceeds that you will receive for repairing or replacing your property.

4. Confirm that the contractor you choose is licensed to do business in Florida. You can verify a contractor's license and check to see if there are any complaints against him or her by calling the Florida Department of Business and Professional Regulation. You should also ask the contractor for references from previous work.

5. Require all contractors to provide proof of insurance before beginning repairs.

6. Take precautions if the damage requires you to leave your home, including securing your property and turning off your gas, water, and electricity, and contacting your insurance company and provide a phone number where you can be reached.

Section 23. Notwithstanding the expiration of subsection (4) of section 627.715, Florida Statutes, which occurred on July 1, 2019, that subsection is revived, reenacted, and amended to read:

627.715 Flood insurance.—An authorized insurer may issue an insurance policy, contract, or endorsement providing personal lines residential coverage for the peril of flood or excess coverage for the peril of flood on any structure or the contents of personal property contained therein, subject to this section. This section does not apply to commercial lines residential or commercial lines nonresidential coverage for the peril of flood. An insurer may issue flood insurance policies, contracts, endorsements, or excess coverage on a standard, preferred, customized, flexible, or supplemental basis.

(4) A surplus lines agent may export a contract or endorsement providing flood coverage to an eligible surplus lines insurer without making a diligent effort to seek such coverage from three or more authorized insurers under s. 626.916(1)(a). This subsection expires July 1, 2025 ~~2019~~, or on the date on which the Commissioner of Insurance Regulation determines in writing that there is an adequate admitted market

to provide coverage for the peril of flood consistent with this section, whichever date occurs first. If there are fewer than three admitted insurers on the date this subsection expires, the number of declinations necessary to meet the diligent-effort requirement shall be no fewer than the number of authorized insurers providing flood coverage.

Section 24. Paragraph (a) of subsection (1) and subsection (6) of section 631.57, Florida Statutes, are amended to read:

631.57 Powers and duties of the association.—

(1) The association shall:

(a)1. Be obligated to the extent of the covered claims existing:

a. Prior to adjudication of insolvency and arising within 30 days after the determination of insolvency;

b. Before the policy expiration date if less than 30 days after the determination; or

c. Before the insured replaces the policy or causes its cancellation, if she or he does so within 30 days of the determination.

2. The obligation under subparagraph 1. includes ~~only~~ the amount of each covered claim which is ~~in excess of $100 and is~~ less than $300,000, except that policies providing coverage for homeowner's insurance shall provide for an additional $200,000 for the portion of a covered claim which relates only to the damage to the structure and contents.

3.a. Notwithstanding subparagraph 2., the obligation under subparagraph 1. for policies covering condominium associations or homeowners' associations, which associations have a responsibility to provide insurance coverage on residential units within the association, shall include that amount of each covered property insurance claim which is less than $100,000 multiplied by the number of condominium units or other residential units; however, as to homeowners' associations, this sub-subparagraph applies only to claims for damage or loss to residential units and structures attached to residential units.

b. Notwithstanding sub-subparagraph a., the association has no obligation to pay covered claims that are to be paid from the proceeds of bonds issued under s. 631.695. However, the association shall assign and pledge the first available moneys from all or part of the assessments to be made under paragraph (3)(a) to or on behalf of the issuer of such bonds for the benefit of the holders of such bonds. The association shall administer any such covered claims and present valid covered claims for payment in accordance with the provisions of the assistance program in connection with which such bonds have been issued.

4. In no event shall the association be obligated to a policyholder or claimant in an amount in excess of the obligation of the insolvent insurer under the policy from which the claim arises.

(6) The association may extend the time limits specified in paragraph (1)(a) by up to an additional 60 days ~~or waive the applicability of the $100 deductible specified in paragraph (1)(a)~~ if the board determines that either or both such actions are necessary to facilitate the bulk assumption of obligations.

Section 25. Section 648.30, Florida Statutes, is amended to read:

648.30 Licensure and appointment required; prohibited acts; penalties.—

(1) A person may not act in the capacity of a bail bond agent or temporary bail bond agent or perform any of the functions, duties, or powers prescribed for bail bond agents or temporary bail bond agents under this chapter unless that person is qualified, licensed, and appointed as provided in this chapter.

(2) A person may not represent himself or herself to be a bail enforcement agent, bounty hunter, or other similar title in this state.

(3) A person, other than a certified law enforcement officer, may not apprehend, detain, or arrest a principal on a bond, wherever issued, unless that person is qualified, licensed, and appointed as provided in this chapter or licensed as a bail bond agent or bail bond enforcement agent, or holds an equivalent license by the state where the bond was written.

(4) Any person who violates this section commits a felony

of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(5) Any licensee under this chapter who knowingly aids or abets an unlicensed person in violating this section commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 26. Paragraphs (b) and (c) of subsection (4) and subsections (1) and (10) of section 717.124, Florida Statutes, are amended to read:

717.124 Unclaimed property claims.—

(1) Any person, excluding another state, claiming an interest in any property paid or delivered to the department under this chapter may file with the department a claim on a form prescribed by the department and verified by the claimant or the claimant's representative. The claimant's representative must be an attorney licensed to practice law in this state, a licensed Florida-certified public accountant, or a private investigator licensed under chapter 493. The claimant's representative must be registered with the department under this chapter. The claimant, or the claimant's representative, shall provide the department with a legible copy of a valid driver license of the claimant at the time the original claim form is filed. If the claimant has not been issued a valid driver license at the time the original claim form is filed, the department shall be provided with a legible copy of a

photographic identification of the claimant issued by the United States, a state or territory of the United States, a foreign nation, or a political subdivision or agency thereof or other evidence deemed acceptable by the department by rule. In lieu of photographic identification, a notarized sworn statement by the claimant may be provided which affirms the claimant's identity and states the claimant's full name and address. The claimant must produce to the notary photographic identification of the claimant issued by the United States, a state or territory of the United States, a foreign nation, or a political subdivision or agency thereof or other evidence deemed acceptable by the department by rule. The notary shall indicate the notary's full address on the notarized sworn statement. Any claim filed without the required identification or the sworn statement with the original claim form and the original Uniform Unclaimed Property Recovery Agreement or Uniform Unclaimed Property Purchase Agreement ~~power of attorney or purchase agreement~~, if applicable, is void.

(a) Within 90 days after receipt of a claim, the department may return any claim that provides for the receipt of fees and costs greater than that permitted under this chapter or that contains any apparent errors or omissions. The department may also request that the claimant or the claimant's representative provide additional information. The department shall retain a copy or electronic image of the claim.

(b) A claimant or the claimant's representative shall be deemed to have withdrawn a claim if no response to the department's request for additional information is received by the department within 60 days after the notification of any apparent errors or omissions.

(c) Within 90 days after receipt of the claim, or the response of the claimant or the claimant's representative to the department's request for additional information, whichever is later, the department shall determine each claim. Such determination shall contain a notice of rights provided by ss. 120.569 and 120.57. The 90-day period shall be extended by 60 days if the department has good cause to need additional time or if the unclaimed property:

1. Is owned by a person who has been a debtor in bankruptcy;

2. Was reported with an address outside of the United States;

3. Is being claimed by a person outside of the United States; or

4. Contains documents filed in support of the claim that are not in the English language and have not been accompanied by an English language translation.

(d) The department shall deny any claim under which the claimant's representative has refused to authorize the department to reduce the fees and costs to the maximum permitted

under this chapter.

(4)

(b) If an owner authorizes an attorney licensed to practice law in this state, Florida-certified public accountant, or private investigator licensed under chapter 493, and registered with the department under this chapter, to claim the unclaimed property on the owner's behalf, the department is authorized to make distribution of the property or money in accordance with the Uniform Unclaimed Property Recovery Agreement or Uniform Unclaimed Property Purchase Agreement under s. 717.135 ~~such power of attorney~~. The original Uniform Unclaimed Property Recovery Agreement or Uniform Unclaimed Property Purchase Agreement ~~power of attorney~~ must be executed by the claimant or seller ~~owner~~ and must be filed with the department.

(c)1. Payments of approved claims for unclaimed cash accounts shall be made to the owner after deducting any fees and costs authorized pursuant to a Uniform Unclaimed Property Recovery Agreement ~~written power of attorney~~. The contents of a safe-deposit box shall be delivered directly to the claimant ~~notwithstanding any power of attorney or agreement to the contrary~~.

2. Payments of fees and costs authorized pursuant to a Uniform Unclaimed Property Recovery Agreement ~~written power of attorney~~ for approved claims must ~~shall~~ be made or issued to the

law firm of the designated attorney licensed to practice law in this state, the public accountancy firm of the licensed Florida-certified public accountant, or the designated employing private investigative agency licensed by this state. Such payments shall be made by electronic funds transfer and may be made on such periodic schedule as the department may define by rule, provided the payment intervals do not exceed 31 days. Payment made to an attorney licensed in this state, a Florida-certified public accountant, or a private investigator licensed under chapter 493, operating individually or as a sole practitioner, shall be to the attorney, certified public accountant, or private investigator.

(10) Notwithstanding any other provision of this chapter, the department may develop a process by which a registered claimant's representative or a buyer of unclaimed property may electronically submit to the department an electronic image of a completed claim and claims-related documents pursuant to this chapter, including a Uniform Unclaimed Property Recovery Agreement or Uniform Unclaimed Property Purchase Agreement ~~a limited power of attorney or purchase agreement~~ that has been manually signed and dated by a claimant or seller pursuant to s. 717.135 ~~or s. 717.1351~~, after the claimant's representative or the buyer of unclaimed property receives the original documents provided by the claimant or the seller for any claim. Each claim filed by a registered claimant's representative or a buyer of

unclaimed property must include a statement by the claimant's representative or the buyer of unclaimed property attesting that all documents are true copies of the original documents and that all original documents are physically in the possession of the claimant's representative or the buyer of unclaimed property. All original documents must be kept in the original form, by claim number, under the secure control of the claimant's representative or the buyer of unclaimed property and must be available for inspection by the department in accordance with s. 717.1315. The department may adopt rules to implement this subsection.

Section 27. Subsection (2) of section 717.12404, Florida Statutes, is amended to read:

717.12404 Claims on behalf of a business entity or trust.—

(2) Claims on behalf of a dissolved corporation, a business entity other than an active corporation, or a trust must include a legible copy of a valid driver license of the person acting on behalf of the dissolved corporation, business entity other than an active corporation, or trust. If the person has not been issued a valid driver license, the department shall be provided with a legible copy of a photographic identification of the person issued by the United States, a foreign nation, or a political subdivision or agency thereof. In lieu of photographic identification, a notarized sworn statement by the person may be provided which affirms the person's identity and

states the person's full name and address. The person must produce his or her photographic identification issued by the United States, a state or territory of the United States, a foreign nation, or a political subdivision or agency thereof or other evidence deemed acceptable by the department by rule. The notary shall indicate the notary's full address on the notarized sworn statement. Any claim filed without the required identification or the sworn statement with the original claim form and the original Uniform Unclaimed Property Recovery Agreement or Uniform Unclaimed Property Purchase Agreement ~~power of attorney~~, if applicable, is void.

Section 28. Subsection (1) of section 717.1315, Florida Statutes, is amended to read:

717.1315 Retention of records by claimant's representatives and buyers of unclaimed property.—

(1) Every claimant's representative and buyer of unclaimed property shall keep and use in his or her business such books, accounts, and records of the business conducted under this chapter to enable the department to determine whether such person is complying with this chapter and the rules adopted by the department under this chapter. Every claimant's representative and buyer of unclaimed property shall preserve such books, accounts, and records, including every Uniform Unclaimed Property Recovery Agreement or Uniform Unclaimed Property Purchase Agreement ~~power of attorney or agreement~~

between the owner and such claimant's representative or buyer, for at least 3 years after the date of the initial ~~power of attorney or~~ agreement.

Section 29. Paragraph (j) of subsection (1) of section 717.1322, Florida Statutes, is amended to read:

717.1322 Administrative and civil enforcement.—

(1) The following acts are violations of this chapter and constitute grounds for an administrative enforcement action by the department in accordance with the requirements of chapter 120 and for civil enforcement by the department in a court of competent jurisdiction:

(j) Requesting or receiving compensation for notifying a person of his or her unclaimed property or assisting another person in filing a claim for unclaimed property, unless the person is an attorney licensed to practice law in this state, a Florida-certified public accountant, or a private investigator licensed under chapter 493, or entering into, or making a solicitation to enter into, an agreement ~~a power of attorney~~ to file a claim for unclaimed property owned by another, or a contract or agreement to purchase unclaimed property, unless such person is registered with the department pursuant to this chapter and an attorney licensed to practice law in this state in the regular practice of her or his profession, a Florida-certified public accountant who is acting within the scope of the practice of public accounting as defined in chapter 473, or

a private investigator licensed under chapter 493. This subsection does not apply to a person who has been granted a durable power of attorney to convey and receive all of the real and personal property of the owner, is the court-appointed guardian of the owner, has been employed as an attorney or qualified representative to contest the department's denial of a claim, or has been employed as an attorney to probate the estate of the owner or an heir or legatee of the owner.

Section 30. Section 717.135, Florida Statutes, is amended to read:

(Substantial rewording of section. See s. 717.135, F.S., for present text.)

717.135 Recovery agreements and purchase agreements for claims filed by claimant's representative; fees and costs.—

(1) In order to protect the interests of owners of unclaimed property, the department shall adopt by rule a form entitled "Uniform Unclaimed Property Recovery Agreement" and a form entitled "Uniform Unclaimed Property Purchase Agreement."

(2) The Uniform Unclaimed Property Recovery Agreement form and the Uniform Unclaimed Property Purchase Agreement form must include and disclose:

(a) The total dollar amount of unclaimed property accounts claimed or sold.

(b) Either the total percentage of all authorized fees and costs to be paid to the claimant's representative or the

percentage of the value of the property to be paid as net gain to the purchasing registered claimant's representative.

(c) Either the total dollar amount to be deducted and received from the claimant as fees and costs by the claimant's representative or the total net dollar amount to be received by the purchasing registered claimant's representative.

(d) The net dollar amount to be received by the claimant or seller.

(e) For each account claimed, the unclaimed property account number and name of the apparent owner, as listed on the department's database.

(f) For the Uniform Unclaimed Property Purchase Agreement, a statement that the purchase price will be remitted to the seller within 30 days after the execution of the form by the seller.

(g) The name, address, e-mail address, telephone number, and license number of the registered claimant's representative.

(h) The manual signature of the claimant or seller and the date signed.

(i) The social security number or taxpayer identification number of the claimant or seller, if available. A social security number or taxpayer identification number is considered available if such number has been issued to the claimant or seller.

(j) A limit of total fees and costs, or the total discount

amount in the case of a purchase agreement, of no more than 20 percent of the claimed amount.

1. Up to the following additional maximum total dollar amounts may be added to and included in the total amounts disclosed to and approved by the claimant under paragraph (b) or paragraph (c) if the apparent owner is deceased with an estate that is required to be probated.

a. For total dollar amounts of property having a value of $40,000 or less: $1,500.

b. For total dollar amounts of property having a value of at least $40,000 but less than $70,000: $2,250.

c. For total dollar amounts of property having a value of at least $70,000 but less than $100,000: $3,000.

d. For total dollar amounts of property having a value of $100,000 or greater: $3,750.

2. If probate is required and if the required probate is performed at the expense of the claimant's representative, the amounts in subparagraph 1. may be added to and shall become the total amounts disclosed to and approved by the claimant under paragraph (b) or paragraph (c). Copies of all related court filings and documentation, along with proof that the claimant's representative incurred the fees and costs, must be filed with the original claim when it is submitted to the department.

a. The amounts in subparagraph 1. may be added to and included in the total amounts in paragraph (b) or paragraph (c)

only one time for any deceased owner.

b. If an estate affidavit pursuant to s. 717.1243 is used in a claim, the amounts in subparagraph 1. may not be added to or included in the total amounts in paragraph (b) or paragraph (c) for the claim.

(k) The additional maximum total dollar amounts in subparagraph (j)1. may also be added to and included in the total amounts disclosed to and approved by the claimant under paragraph (b) or paragraph (c) if the claimant resides in, and has a mailing or delivery address in, a foreign nation outside of the United States or its territories.

(3) For a Uniform Unclaimed Property Purchase Agreement form, proof that the seller has received payment must be filed with the department along with the claim. If proof of payment is not provided, the claim is void.

(4) A registered claimant's representative shall use the Uniform Unclaimed Property Recovery Agreement form or the Uniform Unclaimed Property Purchase Agreement form as the exclusive means of engaging with a claimant or seller to file a claim with the department.

(5) Fees and costs may be owed or paid to a registered claimant's representative only pursuant to the forms authorized by this section and upon approval of the claim filed thereby.

(6) A claimant's representative may not use or distribute any other agreement of any type with respect to the claimant or

seller which relates to unclaimed property accounts held by the department or the Chief Financial Officer other than the agreements authorized by this section. Any agreement that is not authorized by this section is null and void.

(7) The forms under subsection (1):

(a) May not contain language that makes the agreement irrevocable; and

(b) May not contain language that creates an assignment of any unclaimed property held by the department.

(8) This section does not supersede the conflicting claims provisions of s. 717.1241.

(9) At the time a claim is approved, the department may pay any additional account that is owned by the claimant but has not been claimed at the time of approval, provided that no subsequent claim has been filed and is pending for the claimant at the time of approval.

Section 31. Section 717.1351, Florida Statutes, is repealed.

Section 32. Except as otherwise provided in this act, this act shall take effect upon becoming a law.

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

Remove everything before the enacting clause and insert:

A bill to be entitled

An act relating to consumer protection; amending s. 319.30, F.S.; revising provisions for systems used to execute electronic signatures for salvage certificates of title; amending s. 501.0051, F.S.; prohibiting consumer reporting agencies from charging to reissue or provide a new unique personal identifier to a consumer for the removal of a security freeze; amending s. 624.307, F.S.; revising a requirement for entities licensed or authorized by the Department of Financial Services or the Office of Insurance Regulation to respond to the department's Division of Consumer Services regarding consumer complaints; revising administrative penalties the division may impose for failure to comply; amending s. 626.112, F.S.; prohibiting unlicensed activity by an adjusting firm; providing an exemption; providing an exemption from licensure for branch firms that meet certain criteria; providing an administrative penalty for failing to apply for certain licensure; providing a criminal penalty for aiding or abetting unlicensed activity; deleting an obsolete provision; amending s. 626.602, F.S.; authorizing the department to disapprove the use of insurance agency names containing the words "Medicare" or "Medicaid"; providing an exception for certain insurance agencies;

amending s. 626.621, F.S.; adding grounds on which the department may take certain actions against a license, appointment, or application of certain insurance representatives; amending ss. 626.782 and 626.783, F.S.; revising the definitions of the terms "industrial class insurer" and "ordinary-combination class insurer," respectively, to conform to changes made by the act; repealing s. 626.796, F.S., relating to the representation of multiple insurers in the same industrial debit territory; amending s. 626.8443, F.S.; increasing the maximum period of suspension of a title insurance agent's or agency's license; amending s. 626.854, F.S.; revising the timeframes in which an insured or claimant may cancel a public adjuster's contract to adjust a claim without penalty or obligation; requiring public adjusters to include itemized information in loss estimates; providing that failure by the public adjuster to provide such information restores the insured's right to cancel the contract without penalty or obligation; amending s. 626.856, F.S.; revising definition of company employee adjuster; amending s. 626.916, F.S.; revising the classes of insurance subject to a disclosure requirement before being eligible for export under the Surplus Lines Law; amending s. 626.9541, F.S.; adding

certain acts or practices to the definition of the term "sliding"; amending s. 626.9741, F.S.; requiring an insurer to include certain additional information when providing an applicant or insured with certain credit report or score information; amending ss. 626.9957 and 627.062, F.S.; conforming cross-references; amending s. 627.421, F.S.; requiring personal lines residential property insurers to annually deliver certain notifications to certain policyholders within a specified timeframe; amending s. 627.502, F.S.; prohibiting life insurers from writing new policies of industrial life insurance beginning on a certain date; amending s. 627.70131, F.S.; providing that communication made to or by an insurer's representative, rather than to or by an insurer's agent, constitutes communication to or by the insurer; requiring an insurer-assigned licensed adjuster to provide the policyholder with certain information in certain investigations; specifying requirements for insurers in notifying policyholders of certain changes in assigned adjusters; requiring an insurer to establish a process to provide the agent of record access to claim status information for a certain purpose; defining the term "agent of record"; requiring insurers to include specified notices when

providing preliminary or partial damage estimates or certain claim payments; specifying the timeframe in which an insurer must pay or deny property insurance claims under certain circumstances; providing applicability; conforming provisions to changes made by the act; creating s. 627.7031, F.S.; prohibiting foreign venue clauses in certain property insurance policies; providing applicability; amending s. 627.7142, F.S.; revising information contained in the Homeowner Claims Bill of Rights; conforming provisions to changes made by the act; reviving, reenacting, and amending s. 627.715, F.S.; extending the expiration date for provisions authorizing surplus lines agents to export flood coverage contracts or endorsements to insurers without seeking such coverage from specified entities; amending s. 631.57, F.S.; deleting a deductible on the Florida Insurance Guaranty Association's obligation relating to certain covered claims; amending s. 648.30, F.S.; prohibiting the aiding or abetting of unlicensed activity of a bail bond agent or temporary bail bond agent; amending ss. 717.124, 717.12404, 717.1315, and 717.1322, F.S.; conforming provisions to changes made by the act; amending s. 717.135, F.S.; replacing provisions relating to powers of attorney to recover unclaimed

property with provisions relating to uniform forms for unclaimed property recovery agreements and purchase agreements; requiring the department to adopt the uniform forms by rule; specifying required information and disclosures in the forms; requiring that, for the purchase agreement form, proof the seller received payment be filed with the department along with the claim; requiring registered claimant's representatives to use the forms as the exclusive means of engaging with a claimant or seller to file claims and prohibiting them from using or distributing other agreements; specifying a limitation on fees and costs owed or paid; authorizing additional maximum total dollar fee and cost amounts for probated estate claimants; prohibiting certain language in the forms; authorizing the department to pay additional accounts owned by the claimant under certain circumstances; providing construction; repealing s. 717.1351, F.S., relating to the acquisition of unclaimed property; providing effective dates.

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 Jenne offered the following:

Amendment to Amendment (738959) by Representative Clemons (with title amendment)

Remove lines 167-215 of the amendment and insert:

Section 11. Subsection (6) of section 626.854, Florida Statutes, is amended to read:

626.854 "Public adjuster" defined; prohibitions.—The Legislature finds that it is necessary for the protection of the public to regulate public insurance adjusters and to prevent the unauthorized practice of law.

(6)(a) An insured or claimant may cancel a public adjuster's contract to adjust a claim without penalty or obligation within 5 calendar ~~3 business~~ days after the date on which the contract is executed ~~or within 3 business days after~~

~~the date on which the insured or claimant has notified the insurer of the claim, whichever is later~~. The public adjuster's contract must disclose to the insured or claimant his or her right to cancel the contract and advise the insured or claimant that notice of cancellation must be submitted in writing and sent by certified mail, return receipt requested, or other form of mailing that provides proof thereof, to the public adjuster at the address specified in the contract~~; provided, during any state of emergency as declared by the Governor and for 1 year after the date of loss, the insured or claimant has 5 business days after the date on which the contract is executed to cancel a public adjuster's contract~~.

(b) During a state of emergency declared by the Governor or during the 1-year period after the date of loss associated with a state of emergency declared by the Governor, an insured or claimant may cancel a public adjuster's contract to adjust a claim pursuant to the following:

1. An insured or claimant may cancel a public adjuster's contract without penalty or obligation for any reason whatsoever for 7 calendar days after the date on which the contract is executed.

2. If a public adjuster has failed to submit to the insurance company or the authorized representative of the insurance company a documented initial claim submission within 45 days after the date of the execution of the contract between

the public adjuster and the insured or claimant, the insured or claimant may cancel the contract without penalty or obligation, unless the failure to submit such initial claim submission is caused by factors beyond the control of the public adjuster which reasonably prevented the submission of such claim. A documented initial claim submission for dwelling damage must include a detailed written estimate of services, including, itemized information on equipment, materials, and supplies, in accordance with accepted industry standards.

3. If a public adjuster submits a documented initial claim to the insurance company or the authorized representative of the insurance company after the 45 day period specified in subparagraph 2. but before the rescission of the contract by the insured or claimant, the failure to submit the documented initial claim shall be deemed to be cured, and the right to rescind such contract without penalty or obligation shall end.

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

Remove line 1085 of the amendment and insert:
contract without penalty or obligation; specifying requirements for such cancellation during a state of emergency declared by the Governor; amending s.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1169 Specialty Contracting
SPONSOR(S): Business & Professions Subcommittee, McClure
TIED BILLS: **IDEN./SIM. BILLS:** SB 1102

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Business & Professions Subcommittee	11 Y, 1 N, As CS	Brackett	Anstead
2) Commerce Committee		Brackett OB	Hamon K.W.H.

SUMMARY ANALYSIS

Construction Contractors, including pool/spa contractors, are certified by or registered with the Construction Industry Licensing Board (CILB) housed within the Department of Business and Professional Regulation. Certified contractors can practice statewide and are licensed and regulated by the CILB. Registered contractors are licensed and regulated by a local jurisdiction and may practice within that locality. Registered contractors are required to register their license with the CILB.

Specialty contractors are contractors whose scope of work is limited to a particular phase of construction that is a subset of a certified contractor's scope of work, such as drywall or demolition. Specialty contractor licenses are created by the CILB through rulemaking. Specialty contractors certified by the CILB are permitted to practice in any jurisdiction in the state. The CILB has created eight types of pool/spa specialty contractors.

In order to perform contracting in the state, a person must be certified or registered (licensed) as a contractor, be an employee of a licensed contractor, or fall under an exemption provided in current law.

One exemption allows an unlicensed person to perform contracting if the person is under the supervision of licensed general, building, or residential contractor, and the work does not require licensure as a subcontractor such as roofing or plumbing. The work must be within the scope of the supervising contractor's license, the supervising contractor must be responsible for the work, and the unlicensed person must have a direct contract with the contractor. However, this is an exemption from state licensure requirements and it does not affect the ability of local governments to impose licensing requirements on unlicensed persons.

Another exemption allows unlicensed persons to perform contracting for the construction, remodeling, repair, or improvement of single-family residences and townhouses without obtaining a local license. The unlicensed person must be under the supervision of licensed general, building, or residential contractor, and the work cannot require licensure as a subcontractor. The supervision does not require a direct contract between the general, building, or residential contractor and the unlicensed person performing the contracting.

The bill creates an exemption to licensure requirements by allowing unlicensed persons to perform the work of specialty contractors for the construction, remodeling, repair, or improvement of commercial or residential swimming pools, hot tubs, and spas without obtaining a specialty contractor license or local license. The person must be under the supervision of a licensed pool/spa contractor, the work must be within the scope of the supervising pool/spa contractor's license, the licensed pool/spa contractor must be responsible for the work, and the work cannot require licensure as a subcontractor. The bill does not require a direct contract between the supervising pool/spa contractor and the unlicensed person, or require the unlicensed person to be an employee of the pool/spa contactor.

The bill does not have a fiscal impact on state and 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

Contractors are regulated by ch. 489, F.S., which outlines the law pertaining to contractors in the state of Florida. Part I of ch. 489, F.S., covers construction contracting regulated by the Construction Industry Licensing Board (CILB) and pt. II of ch. 489, F.S., covers electrical/alarm system contracting regulated by the Electrical Contractors' Licensing Board. Both boards are housed in the Department of Business and Professional Regulation (DBPR).

Construction contractors are either certified or registered by the CILB. The CILB consists of 18 members who are appointed by the Governor and confirmed by the Senate. The CILB meets to approve or deny applications for licensure, review disciplinary cases, and conduct informal hearings relating to discipline.[1]

"Certified contractors" are individuals who pass the state competency examination and obtain a certificate of competency issued by DBPR. Certified contractors are able to obtain a certificate of competency for a specific license category and are permitted to practice in that category in any jurisdiction in the state.[2]

"Registered contractors" are individuals that have taken and passed a local competency examination and can practice the specific category of contracting for which he or she is approved, only in the local jurisdiction for which the license is issued. Registered contractors must register their license with the CILB after obtaining a local license.[3]

In order to perform construction contracting in the state, a person must be certified or registered as a contractor, be an employee[4] of a certified or registered contractor, or fall under an exemption provided in current law.[5]

Swimming Pool/Spa Contractors

"Commercial pool/spa contractors" are individuals who are certified or registered to construct, repair, and service any public or private swimming pool, hot tub, or spa including:[6]

- Installing, repairing, or replacing existing equipment;
- Cleaning or equipment sanitizing that requires at least a partial disassembling, excluding filter changes;
- Installing new pool/spa equipment, interior finishes, package pool heaters, and perimeter piping and filter piping;
- Constructing equipment rooms or housing for pool/spa equipment; and
- The scope of work of a swimming pool/spa servicing contractor.

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[1] S. 489.107, F.S.
[2] S. 489.105, F.S.
[3] Ss. 489.105, & 489.117, F.S.
[4] "Employee" means a person who receives compensation from and is under the supervision and control of an employer who regularly deducts the F.I.C.A. and withholding tax and provides workers' compensation, all as prescribed by law. S. 489.103(2)(b), F.S.
[5] Ss. 489.103(2), & 489.113, F.S.
[6] S. 489.105(3)(j), F.S.

"Residential pool/spa contractors" are individuals who are certified or registered to construct repair, and service any residential swimming pool, hot tub, or spa. The scope of work is identical to the scope of work for commercial pool/spa contractors; however, residential pool/spa contractors may only work on residential swimming pools, hot tubs, and spas.[7]

"Swimming pool/spa servicing contractors" are individuals who are certified or registered to repair and service any public or private swimming pool, hot tub, or spa including:[8]

- Repairing or replacing existing equipment;
- Cleaning or equipment sanitizing that requires at least a partial disassembling, excluding filter changes;
- Installing new pool/spa equipment and interior refinishing;
- Reinstalling or adding pool heaters;
- Repairing or replacing perimeter piping and filter piping;
- Repairing equipment rooms or housing for pool/spa equipment; and
- Substantially or completing draining a swimming pool, or hot tub or spa, for the purpose of repair or renovation.

The scope of work for all three types of swimming pool/spa contractors does not include direct connections to a sanitary sewer system or to potable water lines.[9]

Water treatment or cleaning a pool or spa does not require a license unless the structural integrity of the pool or spa is affected, or equipment attached to the pool or spa must be substantially or completely disassembled or replaced in order to treat the water or clean the pool. Installing an aboveground pool also does not require a license.[10]

A contractor, including pool/spa contractors, must subcontract all electrical, mechanical, plumbing, roofing, sheet metal, and air-conditioning work, to a contractor certified or registered in the respective category, unless the pool/spa contractor also holds a state certificate or registration in the respective category.[11]

In order to obtain certification as one of the swimming pool/spa contractors, a person must:[12]

- Apply to DBPR in writing;
- Be 18 years of age;
- Be of good moral character;
- Pass the examination for the certification sought; and
- Have one of the following:
    - A bachelor degree from a four year college in the appropriate field of engineering, architecture, or building construction, and one year of proven experience;
    - Four years of experience as a foreman or a skilled worker with at least one year as a foreman;
    - A combination of college and experience as a foreman or skilled worker that equals four years with at least one of the years as a foreman; or
    - One year of experience and 60 hours of instruction courses approved by the CILB; however, this only applies to swimming pool/spa servicing contractors.

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[7] S. 489.105(3)(k), F.S.
[8] S. 489.105(3)(l), F.S.
[9] S. 489.105, F.S.
[10] Ss. 489.103(6), & 489.105, F.S.; DBPR, *Trust but Verify*, http://www.myfloridalicense.com/dbpr/reg/documents/trustbutverify_000.pdf?x40199 (last visited Jan. 29, 2020).
[11] S. 489.113(3), F.S.
[12] Ss. 489.111, & 489.113, F.S.

Pool/Spa Specialty Contractors

"Certified specialty contractors" are contractors whose scope of work is limited to a particular phase of construction that is a subset of a certified contractor's scope of work, such as a drywall specialty license or a demolition specialty license. Certified specialty contractor licenses are created by the CILB through rulemaking. Certified specialty contractors are permitted to practice in any jurisdiction in the state.[13]

The CILB has created eight types of pool/spa specialty contractor certifications. Pool/spa specialty contractors, except residential swimming pool/spa servicing specialty contractors, must work under contract with and under the supervision of a licensed swimming pool/spa contractor. However, they are not required to be employees of a licensed pool/spa contractor.[14]

The CILB has created the following eight types of pool/spa specialty contractors:[15]

- Swimming Pool Layout Specialty Contractor-
  - The scope of work is limited to the layout, shaping, steel installation, and rough piping of pools, spas, and hot tub shells.
- Swimming Pool Structural Specialty Contractor-
  - The scope of work is limited to the shaping and shooting of gunite, shotcrete, concrete, or similar product mix used in the construction of swimming pools and spas, and the installation of fiberglass shells and vinyl liners.
- Swimming Pool Excavation Specialty Contractors –
  - The scope of work is limited to the excavation and earthmoving for the installation of pools, spas, and hot tub shells;
- Swimming Pool Trim Specialty Contractor –
  - The scope of work is limited to the installation of tile and coping for pools, spas, hot tub shells, and decorative or interactive water displays;
- Swimming Pool Decking Specialty Contractor-
  - The scope of work is limited to the construction and installation of concrete flatwork, pavers and bricks, retaining walls, and footings associated with the construction of pools, spas, and hot tub shells.
- Swimming Pool Piping Specialty Contractor-
  - The scope of work is limited to the installation of piping or the installation of circulating, filtering, disinfecting, controlling, or monitoring equipment and devices used in the construction of pools, spas, hot tubs, and decorative or interactive water displays or areas.
- Swimming Pool Finishes Specialty Contractor-
  - The scope of work is limited to the coating or plastering of the interior surfaces of pools, spas, or hot tub shells.
- Residential swimming pool/spa servicing specialty contractor-
  - The scope of work is identical to the scope of work for swimming pool/spa servicing contractors; however, they may only work on residential swimming pools, hot tubs, and spas.

In order to obtain one of the certified specialty pool/spa contractor a person must:[16]

- Submit a written application to the CILB;
- Be at least 18 years of age;
- Be of good moral character;
- Pass a written examination for the specialty pool/spa contractor category sought; and
- Demonstrate four years of experience in the specialty pool/spa contractor category sought, or one year of experience and 60 hours of instruction courses approved by the CILB; however, the one year of experience only applies to residential swimming pool/spa servicing contractors.

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[13] S. 489.105(3)(q), F.S.
[14] Rule 61G4-15.032, F.A.C.; Rule 61G4-15.040, F.A.C.
[15] *Id.*
[16] Rule 61G4-15.032, F.A.C.

Exemptions

A current exemption allows an unlicensed person to perform contracting if the person is under the supervision of licensed general, building, or residential contractor, and the work does not require licensure as a roofing, sheet metal, air-conditioning, mechanical, pool/spa, plumbing, solar, or underground utility and excavation contractor. The work must be within the scope of the supervising contractor's license, and the supervising contractor must also be responsible for the work. The unlicensed person must have a direct contract with the contractor. However, this is an exemption from state licensure requirements and it does not affect the ability of local governments to impose licensing requirements on unlicensed persons.[17]

In 1993, the Legislature passed the "Jim Walter" exemption that allows unlicensed persons to perform contracting for the construction, remodeling, repair, or improvement of single-family residences and townhouses[18] without obtaining a **local license**. The person must be under the supervision of licensed general, building, or residential contractor, and the work may not be work that requires licensure as a roofing, sheet metal, air-conditioning, mechanical, pool/spa, plumbing, solar, or underground utility and excavation contractor.[19]

Such supervision does not require a direct contract between the licensed general, building, or residential contractor and the unlicensed person performing the contracting.[20] A legal challenge to the applicability of this exemption to local license requirements in St. Johns County was not successful.[21]

Effect of the Bill

The bill provides that unlicensed persons may perform the work of specialty contractors for the construction, remodeling, repair, or improvement of commercial or residential swimming pools, hot tubs, and spas without obtaining a specialty contractor license or local license. The person must be under the supervision of a licensed commercial or residential pool/spa contractor or swimming pool/spa servicing contractor, the work must be within the scope of the supervising contractor's license, the supervising contractor must be responsible for the work, and the work may not require licensure as a roofing, sheet metal, air-conditioning, mechanical, plumbing, solar, underground utility and excavation contractor, or electrical contractor.

The bill does not require a direct contract between the commercial or residential pool/spa contractor or swimming pool/spa servicing contractor and the unlicensed person performing the specialty contracting services, or require the unlicensed person to be an employee of the supervising pool/spa contractor.

B. SECTION DIRECTORY:

Section 1. Amends s. 489.117, F.S., creating an exemption.

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.

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[17] S. 489.113(2), F.S.; *Florida Home Builders Association v. St. Johns County*, 914 So. 2d 1035 (Fla. 5th DCA 2005).
[18] "Townhouses" was added to the exemption in 2003. Ch. 03-257, Laws of Fla.
[19] Ch. 93-154, Laws of Fla.; S. 489.117, F.S.; *Florida Home Builders Association* 914 So. 2d at 1037.
[20] *Id.*
[21] *Florida Home Builders Association 914 So. 2d at 1035.*

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 have a positive impact on the private sector by allowing persons, who are under the supervision of licensed pool/spa contractors, to perform work on pools, spas, hot tubs, and interactive water features without having to obtain a license.

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

On February 4, 2020, the Business & Professions Subcommittee adopted a strike-all amendment and reported the bill favorably as a committee substitute. The committee substitute:

- Provides that the supervising pool/spa contractor must be responsible for the work performed by the unlicensed person;
- Clarifies that the unlicensed person may not be performing any work that requires an electrical contractor's license;
- Clarifies that the unlicensed person does not have to be an employee of the supervising pool/spa contractor;
- Clarifies that the bill does not limit any other exemptions to construction contractor licensure requirements in current law such as the handyman exemption; and
- Removes the term "interactive water feature" since this term is not used anywhere in the construction contractor practice act.

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 specialty contracting; amending s. 489.117, F.S.; authorizing the performance of certain specialty contracting for commercial and residential swimming pools, hot tubs, and spas by certain persons under the supervision of specified licensed contractors; providing that such supervision does not require a direct contract between specified persons or for a person to be an employee of a specified contractor; providing applicability; providing an effective date.

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

Section 1. Paragraph (e) is added to subsection (4) of section 489.117, Florida Statutes, to read:

489.117 Registration; specialty contractors.—

(4)

(e) A person who is not certified or registered may perform the work of a specialty contractor whose scope of practice is limited to the type of work specified under s. 489.105(3)(j)-(l) for the construction, remodeling, repair, or improvement of commercial and residential swimming pools, hot tubs, and spas without obtaining a local license or certification as a specialty contractor, provided the person is

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

supervised by a contractor certified or registered under s. 489.105(3)(j)-(l), the work is within the scope of the supervising contractor's license, the supervising contractor is responsible for the work, and the work does not require certification or registration under s. 489.105(3)(d)-(i), (m)-(o), or s. 489.505. Such supervision does not require a direct contract between the contractor certified or registered under s. 489.105(3)(j)-(l) and the person performing the work, or for the person performing the work to be an employee of the contractor certified or registered under s. 489.105(3)(j)-(l). This subsection does not limit the exemptions provided in s. 489.103.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1275 Amusement Rides
SPONSOR(S): Agriculture & Natural Resources Appropriations Subcommittee, Pritchett
TIED BILLS: **IDEN./SIM. BILLS:** SB 1228

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Business & Professions Subcommittee	11 Y, 0 N	Thompson	Anstead
2) Agriculture & Natural Resources Appropriations Subcommittee	8 Y, 0 N, As CS	White	Pigott
3) Commerce Committee		Thompson	Hamon

SUMMARY ANALYSIS

The Department of Agriculture and Consumer Services (DACS) is required to inspect all amusement rides in Florida, except those at large parks with more than 1,000 employees and inspectors on staff. All temporary amusement rides are inspected each time they are moved or set up at a new location, and permanent rides are inspected semiannually. All amusement rides are required to be permitted annually, required to undergo nondestructive testing for structural integrity, and must have an annual inspection by a professional engineer or qualified inspector. DACS can investigate accidents, impose sanctions for violations, and close and impound amusement rides that are a danger to the public.

The bill:

- Includes amusement ride managers as a responsible party for ensuring compliance with state regulations;
- Exempts permanent rides from DACS inspection when inspected by an accredited trade organization;
- Separates the permitting process for permanent and temporary amusement rides, and streamlines the application process;
- Authorizes DACS to revise the 6-month inspection interval at permanent facilities;
- Requires ride documents to be submitted to DACS in electronic format;
- Broadens DACS rulemaking authority related to establishing certain exemptions;
- Removes an exemption for museums and other exhibition related institutions;
- Conforms state standards for testing, materials, electric, and fire protection to national standards;
- Requires signage containing DACS contact information to be displayed at ride events;
- Requires certification to DACS before a modified ride is placed back in operation;
- Grants subpoena powers to DACS;
- Criminalizes the refusal or failure to testify pursuant to a DACS subpoena;
- Increases the limit for administrative fines from "not to exceed $2,500" to "not to exceed $10,000" per violation; and
- Allows DACS to impose an additional $10,000 fine for violations resulting in serious injury or death.

The bill will have an insignificant fiscal impact on state government and the private sector. The bill is not expected to have a fiscal impact on local governments.

The effective date of the bill is July 1, 2020.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

The Department of Agriculture and Consumer Services (DACS) is required to inspect all amusement rides in Florida, except those at large parks with more than 1,000 employees and an inspector on staff. The Bureau of Fair Rides Inspection within DACS is required to inspect, investigate, and enforce the regulations related to amusement rides.[1]

Amusement rides regulated in the state of Florida fall into two categories:

- Temporary rides are those that are regularly relocated with or without assembly; and
- Permanent rides are those that are not regularly relocated.[2]

All temporary amusement rides are inspected each time they are moved or set up at a new location, and permanent rides are inspected semiannually. All amusement rides are required to be permitted annually, required to undergo nondestructive testing for structural integrity, and must have an annual inspection by a professional engineer or qualified inspector.[3]

DACS also inspects go-kart tracks, water-related amusement rides and zipline courses operating in the state.[4]

In addition, DACS investigates accidents involving amusement rides and has the authority to impose sanctions on amusement ride owners for violation of the law. DACS can close and impound amusement rides that pose an immediate serious danger to public health, safety and welfare.[5]

Adoption of Standards

DACS is required to adopt by rule standards for amusement rides which are the same as or similar to the following national standards:

- American Society for Testing and Materials (ASTM) Committee F-24 Standards on Amusement Rides and Devices.
- National Electric Code Handbook, Article 525.
- National Fire Protection Code 101 (chapters 8-4.6 and 9-4.6).
- ASTM Standards: E543 Practice for Determining the Qualification of Nondestructive Testing Agencies.
- American Society for Nondestructive Testing (ASNT) Document Recommended Practice for Nondestructive Testing Personnel Qualification and Certification (SNT-TC-1A).[6]

DACS is authorized to adopt rules necessary to effectuate its statutory duties in the interest of public health, safety, and welfare and to promote patron safety in the design, construction, assembly, disassembly, maintenance, and operation of amusement rides in this state.[7]

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[1] S. 616.242, F.S.
[2] *Id.*
[3] Florida Department of Agriculture and Consumer Services, Fair Rids Inspection, https://www.fdacs.gov/Business-Services/Fairs/Fair-Rides-Inspection (last visited Jan. 22, 2020).
[4] *Id.*
[5] *Id.*
[6] S. 616.242(4), F.S.
[7] *Id.*

There are no mandatory national safety standards for U.S. amusement rides, but the amusement ride industry has developed safety standards through the ASTM F-24 committee. The ASTM F-24 committee is responsible for standards related to amusement rides and devices. This includes waterslides, inflatables, go-karts, ziplines and challenge courses, trampoline courts, and a growing list of commercially-operated amusement experiences.[8]

According to DACS:

- The organization formerly known as American Society for Testing and Materials changed their name to ASTM International and the standard was incorrectly notated in statute as F-24. The proper notation is F24.
- Multiple National Electric Code Handbook Articles have requirements that pertain to amusement rides in addition to Article 525.
- There are fire codes located in other National Fire Protection Association documents that cover current amusement rides.
- ASTM E543 and ASNT SNT-TC-1a are not standards for amusements rides as indicated in the statute. These standards are qualifications for the qualification of personnel and agencies performing non-destructive testing.[9]

Annual Permits

Amusement rides may not operate without an annual permit. To apply, an owner must submit to DACS a written application on a form prescribed by DACS rule, and include:

- The legal name, address, and primary place of business of the owner.
- A description, manufacturer's name, serial number, model number and, if previously assigned, the United States Amusement Identification Number of the amusement ride.
- A valid certificate of insurance for each amusement ride.
- An affidavit of compliance (AOC) that the amusement ride was inspected and in general conformance with the law and applicable rules.
    - The AOC must be executed by a professional engineer or a qualified inspector no earlier than 60 days before, but not later than, the date of filing of the application with DACS.
    - The owner is required to request inspection and permitting of the amusement ride within 60 days of the date of filing the application with DACS.
    - DACS is required to inspect and permit the amusement ride within 60 days after the filing of the application with DACS.
- If required, an affidavit of nondestructive testing dated and executed no earlier than 60 days before, but not later than, the date of the filing of the application with DACS.
    - The owner is required to request inspection and permitting of the amusement ride within 60 days of the date of filing the application with DACS.
    - DACS is required to inspect and permit the amusement ride within 60 days after the filing of the application with DACS.
- A request for inspection.[10]

Upon request, the owner must, at no cost to DACS, provide DACS with a copy of the manufacturer's current recommended operating instructions in the possession of the owner, the owner's operating fact sheet, and any written bulletins in the possession of the owner concerning the safety, operation, or maintenance of the amusement ride.[11]

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[8] ASTM International, *Committee F24 on Amusement Rides and Devices*, https://www.astm.org/COMMITTEE/F24.htm (last visited Jan. 23, 2020).

[9] Email from Richard Kimsey, Assistant Director, Division of Consumer Services, Department of Agriculture and Consumer Services, RE: Amusement Ride Standards Acronyms (Jan. 30, 2020).

[10] S. 616.242(5), F.S.

[11] *Id.*

An annual permit must be issued to the owner when a completed application has been received, the amusement ride has passed DACS inspection, and all applicable fees, as set by DACS rule,[12] have been paid.[13]

The annual permit:
- Is valid for 1 year from the date of issuance;
- Is not transferable; and
- Must be displayed on the amusement ride in a place that is visible to patrons.[14]

According to DACS, as of fiscal year 2018-2019, it had issued approximately 1,700 permits.[15]

Nondestructive Testing

In order to operate an amusement ride the owner must at all times have a current affidavit of nondestructive testing from a professional engineer or qualified inspector. The affidavit provides that the amusement ride has undergone nondestructive testing for metal fatigue at least annually.[16] Nondestructive testings must be performed by a technician who meets the national standards for amusement rides provided in DACS rule.[17]

Nondestructive testing for metal fatigue must include visual and nonvisual testing, and can be conducted more often than annually, if required by any rule adopted under this section, the manufacturer of the amusement ride, or the professional engineer or qualified inspector executing the affidavit of nondestructive testing.[18]

An affidavit of nondestructive testing must provide:
- That the amusement ride was inspected in person by the affiant.
- That all nondestructive testing requirements are current.
- That the nondestructive testing was performed by a qualified nondestructive testing technician.
- The components of the amusement ride for which the manufacturer has recommended or required nondestructive testing.
- The type of nondestructive testing required or recommended by the manufacturer.
- The frequency of the nondestructive testing required or recommended by the manufacturer.
- The components of the amusement ride for which the affiant has recommended or required nondestructive testing.
- The type of nondestructive testing required or recommended by the affiant.
- The frequency of the nondestructive testing as required or recommended by the affiant.
- That visual nondestructive testing is adequate for the amusement ride to be in general conformance with the requirements of this section, and all applicable rules, if only visual nondestructive testing is required or recommended by either the manufacturer or the affiant.[19]

Nondestructive testing is not required for:
- Fun houses;
- Houses of mirrors;
- Haunted houses;
- Mazes;
- Wave pools;

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[12] R. 5J-18.012, F.A.C.
[13] S. 616.242(5), F.S.
[14] *Id.*
[15] Email from Richard Kimsey, Assistant Director, Division of Consumer Services, Department of Agriculture and Consumer Services, Re: Amusement Rides Permitting and Inspection Process (Jan. 24, 2020).
[16] S. 616.242(6), F.S.
[17] *Id.*
[18] *Id.*
[19] *Id.*

- Wave-making devices;
- Kiddie pools;
- Slides that are fully supported by an earthen mound;
- Nonmotorized playground equipment that requires a manager; or
- Lazy-river-type nonmotorized floating carriers propelled by water.[20]

Inspections

In order to obtain an annual permit, amusement rides must be inspected by DACS and receive an inspection certificate. In addition, the following requirements must be met:

- Permanent amusement rides must be inspected semiannually and receive an inspection certificate; and
- Temporary amusement rides must be inspected and receive an inspection certificate each time the ride is set up or moved to a new location in this state unless the ride is:
  - Used at a private event;
  - A simulator, the capacity of which does not exceed 16 persons; or
  - A kiddie ride used at a public event, provided that there are no more than three amusement rides at the event, none of the kiddie rides at the event exceeds a capacity of 12 persons, and the ride has an inspection certificate that was issued within the preceding 6 months.[21]

To obtain a DACS inspection, the owner must submit a written request to DACS, on a DACS prescribed form, and provide the following information:

- The legal name, address, and primary place of business of the owner.
- A description, manufacturer's name, serial number, model number, and the United States Amusement Identification Number, if previously assigned, of the amusement ride.
- For a temporary amusement ride, for each time the amusement ride is set up or moved to a new location, the date of first intended use at the new location and the address or a description of the new location.[22]

For permanent amusement rides, a request for inspection must be received by DACS at least 15 days before the:

- Owner's planned opening date; or
- Expiration of the prior inspection certificate.[23]

For temporary amusement rides, the request for inspection must be received by DACS each time the amusement ride is set up or moved to a new location at least 14 days before the date of first intended use at the new location.[24]

In both cases, if the request for inspection is received late, DACS is authorized to inspect the amusement ride and charge a late fee. In addition, if the owner fails to timely cancel a Request for Inspection, requests holiday or weekend inspections, or is required to have a replacement United States Amusement ID Program (USAID) plate issued by DACS, the owner may be charged an appropriate fee.[25]

Inspections are assigned on a first come, first served basis, and overflow requests will be scheduled on the closest date to the date for which the inspection was requested. Upon failure of an amusement ride to pass an inspection, the owner may request in writing a reinspection. DACS is required to reinspect the ride as soon as practical following receipt of the:

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[20] *Id.*
[21] S. 616.242(7), F.S.
[22] *Id.*
[23] *Id.*
[24] *Id.*
[25] *Id.*

- Written request; and
- Applicable reinspection fees.[26]

Upon passage of inspection and payment of the applicable fee, DACS must issue an inspection certificate containing the following information:

- Date of inspection;
- Site of the inspection; and
- Name of the inspector.[27]

Inspection certificates are valid only for the site stated on the certificate, for a period of not more than 6 months from the date of issuance, are not transferable, and must be displayed on the amusement ride at a place readily visible to patrons.[28]

According to DACS, during fiscal year 2018-2019, it inspected 8,689 amusement rides, and identified 19,249 deficiencies.[29]

Fees

DACS is required by rule to establish fees to cover the costs and expenditures associated with the fair rides inspection program, including all direct and indirect costs. If there is not sufficient general revenue appropriated by the Legislature, the industry is required to pay for the remaining cost of the program.[30]

Fees must be deposited in the General Inspection Trust Fund. Any owner of an amusement ride who has not paid all the fees required under this section or who has any unpaid fine outstanding under this section are prohibited from operating any amusement ride in this state until the fees and fines have been paid to DACS.[31]

DACS has adopted the following fees:[32]

Annual permit for any amusement ride	$500.00
Annual permit for any bungy jump	$500.00
Inspection fee for each inspection of a kiddie amusement ride	$45.00
Inspection fee for each inspection of a non-kiddie amusement ride	$90.00
Inspection fee for each inspection of a super amusement ride	$175.00
Inspection fee per go kart, in addition to the track inspection fee	$10.00
Reinspection fee (return to site)	$500.00
Reinspection fee (return on-site)	$100.00
Fee to replace a lost U.S. Amusement Identification (USAID) plate	$100.00
Fee per amusement ride for late inspection request	$100.00
Fee per amusement ride for failure to cancel inspection request	$100.00
Additional fee per amusement ride for inspection on weekend or state holiday	$75.00

Insurance

In order to obtain a permit to operate an amusement ride in Florida, the ride owner must obtain injury liability insurance in the following amounts:

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[26] *Id.*
[27] *Id.*
[28] *Id.*
[29] The Florida Department of Agriculture and Consumer Services, *Bureau of Fair Rides Inspection Statistical Data*, Inspection/Deficiency Statistics.
[30] S. 616.242(8), F.S.
[31] *Id.*
[32] R. 5J-18.012, F.A.C.

- One million dollars minimum per occurrence; and
- One million dollars in the aggregate.[33]

The policies must be procured from an insurer that is:
- Licensed to transact business in this state; or
- Approved as a surplus lines insurer.[34]

The insurance requirements do not apply to a governmental entity that is covered by the provisions of s. 768.28(16), F.S., which authorizes the state and its agencies and subdivisions to be:
- Self-insured,
- Enter into risk management programs,
- Purchase liability insurance for whatever coverage they may choose, or
- Have any combination thereof.[35]

Exemptions

The regulations related to amusement rides do not apply to the following:
- Permanent facilities that employ at least 1,000 full-time employees and that maintain full-time, in-house safety inspectors;
- Any playground operated by a school, local government, or business licensed under chapter 509, F.S., if the playground is an incidental amenity and the operating entity is not primarily engaged in providing amusement, pleasure, thrills, or excitement;
- Museums or other institutions principally devoted to the exhibition of products of agriculture, industry, education, science, religion, or the arts;
- Conventions or trade shows for the sale or exhibit of amusement rides if there are a minimum of 15 amusement rides on display or exhibition, and if any operation of such amusement rides is limited to the registered attendees of the convention or trade show;
- Skating rinks, arcades, laser or paint ball war games, bowling alleys, miniature golf courses, mechanical bulls, inflatable rides, trampolines, ball crawls, exercise equipment, jet skis, paddle boats, airboats, helicopters, airplanes, parasails, hot air or helium balloons whether tethered or untethered, theatres, batting cages, stationary spring-mounted fixtures, rider-propelled merry-go-rounds, games, side shows, live animal rides, or live animal shows;
- Go-karts operated in competitive sporting events if participation is not open to the public;
- Nonmotorized playground equipment that is not required to have a manager;
- Coin-actuated amusement rides designed to be operated by depositing coins, tokens, credit cards, debit cards, bills, or other cash money and which are not required to have a manager, and which have a capacity of six persons or less;
- Motorsports facilities described in s. 549.09(1)(a), F.S., when such facilities are operating cars, trucks, or motorcycles only;
- Battery-powered cars or other vehicles that are designed to be operated by children seven years of age or under and that cannot exceed a speed of four miles per hour;
- Mechanically driven vehicles that pull train cars, carts, wagons, or other similar vehicles, that are not confined to a metal track or confined to an area but are steered by an operator and do not exceed a speed of 4 miles per hour;
- Water-related amusement rides operated by a business licensed under chapter 509, F.S., if the water-related amusement ride is an incidental amenity and the operating business is not primarily engaged in providing amusement, pleasure, thrills, or excitement and does not offer day rates;

[33] S. 616.242(8), F.S.
[34] *Id.*
[35] *Id.*

- Amusement rides at a private, membership-only facility if the amusement ride is an incidental amenity and the facility is not open to the general public; is not primarily engaged in providing amusement, pleasure, thrills, or excitement; and does not offer day rates; and
- Nonprofit permanent facilities registered under chapter 496, F.S., which are not open to the general public.[36]

DACS is authorized to establish by rule exemptions from the regulations on amusement rides for "nonmotorized or human-powered amusement rides or coin-actuated amusement rides."[37]

Inspection Standards

Amusement rides are required to adhere to the following inspection standards:
- All mechanical, structural, and electrical components that affect patron safety must be in good working order.
- All control devices, speed-limiting devices, brakes, and safety equipment designated by the manufacturer must be in good working order.
- Parts must be properly aligned, and not be bent, distorted, cut, or otherwise injured to force a fit.
- Parts requiring lubrication must be lubricated in the course of assembly. Fastening and locking devices must be installed where required for safe operation.
- Before being used by the public, an amusement ride must be placed or secured with blocking, cribbing, outriggers, guys, or other means so as to be stable under all operating conditions.
- Areas in which patrons may be endangered by the operation of an amusement ride must be fenced, barricaded, or otherwise effectively guarded against inadvertent contact.
- Machinery used in or with an amusement ride must be enclosed, barricaded, or otherwise effectively guarded against inadvertent contact.
- An amusement ride powered so as to be capable of exceeding its maximum safe operating speed must be provided with a maximum-speed-limiting device.
- The interior and exterior parts of all patron-carrying amusement rides with which a patron may come in contact must be smooth and rounded and free from sharp, rough, or splintered edges and corners, with no projecting studs, bolts, screws, or other projections which might cause injury.
- Signs that advise or warn patrons of age restrictions, size restrictions, health restrictions, weight limitations, or any other special consideration or use restrictions required or recommended for the amusement ride by the manufacturer must be prominently displayed at the patron entrance of each amusement ride.
- All amusement rides must comply with the section of law governing amusement rides and related rules.[38]

Major Modifications

After an amusement ride has undergone a major modification, and prior to the time it is placed in operation, a Florida Licensed professional engineer must certify that the amusement ride is in compliance with the entire section of law governing amusement ride safety, and all related rules.[39]

Entry for Inspections

Authorized DACS employees may enter unannounced and inspect amusement rides at any time in a reasonable manner. Such employees are authorized to:
- Question any owner or manager;

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[36] S. 616.242(10), F.S.
[37] *Id.*
[38] S. 616.242(11), F.S.
[39] S. 616.242(12), F.S.

- Inspect, investigate, photograph, and sample all pertinent places, areas, and devices; and
- Conduct all appropriate tests including nondestructive testing.[40]

DACS is authorized to impose fees for unannounced inspections and recover the cost of related tests.[41]

Reporting and Investigating Accidents and Defects

Accidents that the owner or manager have knowledge or, through the exercise of reasonable diligence should have knowledge, and for which a patron is transported to a hospital, as defined in chapter 395, F.S., must be reported by the owner or manager to DACS. Such reporting must be conducted by telephone within four hours after the accident, and followed up by a written report to DACS within 24 hours after the accident.

Any mechanical, structural, or electrical defects affecting patron safety for which an amusement ride is closed to patron use for more than four hours must be reported by the owner or manager to DACS by telephone or facsimile within eight hours after the closing of the ride. A written report of the closing must be filed by the owner or manager with DACS within 24 hours after the ride closes.

In addition, DACS is authorized to impound amusement rides that have:
- Been involved in an accident for which a patron is transported to a hospital as defined in chapter 395, F.S.;
- A mechanical, structural, or electrical defect affecting patron safety.

In cases of impoundment, DACS is authorized to impound any other amusement ride of a similar make and model, and perform all necessary tests to determine the cause of the accident, defect, or safety of the ride and any other ride of a similar make and model. The ride owners are responsible for the cost of impoundment and relating testing.[42]

According to DACS, in fiscal year 2018-2019, there were 191 amusement ride accidents reported.[43]

Owner/Manager Inspections

Prior to opening each day of operation, and before any inspection by DACS, the owner or manager of an amusement ride is required to inspect and test the ride to ensure compliance with all requirements of the law governing amusement rides. Each inspection must be recorded on a form prescribed by DACS rule and signed by the person who conducted the inspection. [44]

In lieu of using the DACS form, an owner or manager may request approval of an alternative form, which must include at least the information required on the DACS form. Inspection records of the last 14 daily inspections must be:
- Kept on site by the owner or manager; and
- Made immediately available to DACS upon request.[45]

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[40] S. 616.242(13), F.S.
[41] *Id.*
[42] S. 616.242(14), F.S.
[43] The Florida Department of Agriculture and Consumer Services, *Bureau of Fair Rides Inspection Statistical Data*, Inspection/Deficiency Statistics.
[44] S. 616.242(15), F.S.
[45] *Id.*

Employee Training

Owners or managers of amusement rides are required to:

- Maintain a record of employee training for each employee who is authorized to operate, assemble, disassemble, transport, or conduct maintenance on an amusement ride; and
- Certify that each employee is trained on the amusement ride for which the employee is responsible.[46]

The training record must be kept on site by the owner or manager and made immediately available to DACS upon request. In lieu of using the DACS form, the owner or manager may request approval of an alternative form.[47]

Training is prohibited when an amusement ride is open to the public, unless the training is conducted under the supervision of an employee who is trained in the operation of that ride.[48]

Enforcement and Penalties

DACS has the authority to deny, suspend for up to one year, or revoke, any permit or inspection certificate. In addition, DACS may impose an administrative fine pursuant to s. 570.971, F.S., not to exceed $2,500 per violation, for each day the violation exists, against the owner of the amusement ride if DACS finds that:

- An amusement ride has operated or is operating:
    - With a mechanical, structural, or electrical defect that affects patron safety, of which the owner or manager has knowledge, or, through the exercise of reasonable diligence, should have knowledge;
    - In a manner or circumstance that presents a risk of serious injury to patrons;
    - At a speed in excess of its maximum safe operating speed;
    - In violation of DACS rules or state law; or
    - In violation of an order of DACS or any court; or
- A manager in the course of his or her duties is under the influence of drugs or alcohol.[49]

DACS is required, in its order suspending a permit or inspection certificate, to specify the period during which the suspension is effective, which may not exceed 1 year. The permit or inspection certificate must remain suspended during the period, subject to any rescission or modification of the order by DACS, or modification or reversal by the court, prior to expiration of the suspension period.[50]

The owner of an amusement ride, whose permit or inspection certificate has been revoked by DACS, may not apply for another permit or inspection certificate for the amusement ride within 2 years after the date of the revocation. If judicial review is sought and a stay of the revocation is obtained, the owner may not apply for another permit or inspection certificate within two years after the final order of the court sustaining the revocation.[51]

During the period of suspension or revocation, the owner may not engage in or attempt to engage in any operation of the amusement ride for which a permit or inspection certificate is required.[52]

When a DACS imposed suspension period has expired, the owner may reapply for a new permit or inspection certificate by submitting a complete application to DACS.[53]

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[46] S. 616.242(16), F.S.
[47] *Id.*
[48] *Id.*
[49] S. 616.242(19), F.S.
[50] *Id.*
[51] *Id.*
[52] *Id.*

In addition, and notwithstanding the existence of any adequate remedy at law, DACS is authorized to bring an action to enjoin the violation of any provision, or rules adopted, under this section, in the circuit court of the county in which the violation occurs or is about to occur. Upon competent and substantial evidence presented by DACS, the court is required to immediately issue the temporary or permanent injunction sought by DACS without bond.[54]

In addition to the penalties, DACS is authorized to issue a letter of warning to the owner of the ride specifying the violation and requiring immediate corrective action.[55]

Any person who knowingly violates any of the provisions of the regulations governing amusement rides commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083, F.S.[56]

According to DACS, during fiscal year 2018-2019, it issued 169 stop operation orders, and 801 out-of-service tags.[57]

Consumer Product Safety Commission

The Consumer Product Safety Commission (Commission) is charged with protecting the public from unreasonable risks of injury or death associated with the use of the thousands of types of consumer products under the agency's jurisdiction. The Consumer Product Safety Act (Act)[58] authorizes the Commission to investigate serious accidents involving portable carnival rides, inflatables, and go-karts. Amusement rides operated at permanent parks ("permanently fixed to a site") are exempt from compliance with the Act.[59]

Ride manufacturers or owner/operators are required to notify the Commission if they obtain information which reasonably supports the conclusion that a portable amusement ride, inflatable device, go-kart or other non-exempt amusement device:

- Fails to comply with a consumer product safety standard or banning regulation established by the omission or a voluntary consumer product safety standard upon which the Commission has relied under section 9 of the Act;
- Contains a defect which could create a substantial product hazard described in section 15(a)(2) of the Act; or
- Creates an unreasonable risk of serious injury or death.[60]

The Commission does not provide for an inspection program.

Other States

According to a consumer safety organization, Safeparks.org, the research of amusement ride laws in 50 states found the following:[61]

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[53] *Id.*
[54] *Id.*
[55] *Id.*
[56] *Id.*
[57] The Florida Department of Agriculture and Consumer Services, *Bureau of Fair Rides Inspection Statistical Data*, Inspection/Deficiency Statistics.
[58] 15 U.S.C. ch. 47 § 2051 et seq.
[59] Safeparks, *United States Consumer Product Safety Commission*, https://saferparks.org/agency/united-states-consumer-product-safety-commission (last visited Jan. 22, 2020).
[60] *Id.*
[61] Safeparks, *U.S. Federal and State Amusement Ride Regulation*, https://saferparks.org/regulation/agencies (last visited Jan. 22, 2020).

Degree of Oversight	Number of States
Comprehensive Government Oversight	20 states (including Florida)
Partial Government Oversight	12 states
Private Sector Oversight	9 states
No State Agency with Jurisdiction	8 states
Electrical Inspections Only	1 state

Proposed Changes

The bill makes several changes to the framework of regulations that govern the safety standards for amusement rides in the state.

Managers

The bill includes amusement ride "managers" as a responsible party for ensuring compliance with state law governing safety standards for amusement rides.

Inspection and Permitting Process

The bill streamlines the permitting application and issuance process, removes the requirement for an inspection certificate, and sets deadlines for inspections by DACS prior to the issuance of a permit for operation. Additionally, the bill adds an exemption from DACS inspection for permanent rides that prove they were inspected and certified by an accredited trade organization.

The bill separates the permitting process for permanent amusement rides from temporary amusement rides, and distinguishes the two by:

- Establishing that a permanent ride permit is valid for 1 year, and a temporary ride permit is valid for 6 months, or until the temporary ride is moved; and
- Requiring permanent ride and temporary ride applications for permit to be submitted 15 and 14 days prior to their opening dates, respectively.

The bill defines an "amusement ride event" as an event where an amusement ride is operated at a specific location and date as listed on an annual permit application or on a temporary amusement ride permit application.

The bill defines a "temporary amusement ride permit" as the United States Amusement Identification Number and the decal issued by DACS, which signify that the temporary amusement ride has been permitted by DACS.

In order to align inspection dates at permanent facilities, the bill authorizes DACS to shorten or extend the 6-month inspection interval. Fees for rides with shortened inspection intervals must be prorated, and extensions of inspection intervals may not exceed two months.

The bill requires a ride's operating instructions, fact sheet, and any bulletins concerning the ride to be submitted to DACS in electronic format as part of the permitting process.

Fees

The bill clarifies DACS authority to establish by rule fees to cover the costs and expenditures associated with the fair rides inspection program, and the requirement that the industry pay the remaining cost of the program if there is not sufficient general revenue appropriated by the Legislature.

Exemptions

The bill broadens DACS's rulemaking authority to establish exemptions for types of rides from the amusement ride regulations by deleting the restriction that such exemptions only apply to nonmotorized or human-powered amusement rides or coin-actuated amusement rides.

The bill removes a blanket exemption from the amusement ride regulations for museums or other institutions principally devoted to the exhibition of products of agriculture, industry, education, science, religion, or the arts. As a result, these institutions would be required to comply with applicable licensing and permitting requirements, including being subject to fees and fines.

Adoption of Standards

The bill conforms state standards that DACS is required to adopt by rule for testing and materials, electric code, and fire protection, to recently revised national standards.

Inspection Standards

The bill clarifies inspection standards and revises the requirement that an amusement ride be inspected by DACS in accordance with the statutory standards, and instead provides that rides presented for inspection as ready for operation must comply with the standards.

Operating Requirements

The bill requires ride owners and operators to display DACS's contact information for ride patrons' benefit. Specifically, a sign containing the DACS toll-free number and informing for patrons to contact DACS with complaints or concerns regarding the operation of amusement rides must be posted in a manner conspicuous to the public at each entrance of a nonpermanent amusement facility, unless such facility or event is exempt. The bill requires DACS to prescribe by rule specifications for such signs.

After an amusement ride has undergone a major modification and before it is placed in operation, the bill requires upon request, the owner or manager of the amusement ride to provide to DACS a copy of the required certification and all evidence used by the professional engineer to prepare the certification.

The bill removes the four-hour threshold after which the owner or manager must report a mechanical, structural, or electrical defect, and includes "failures" to the types of electrical deficiencies that can trigger a reporting requirement.

In addition, the bill requires the affected ride to remain closed until repairs are reviewed and the ride is released for operation by DACS.

Enforcement

The bill increases the limit for administrative fines from "not to exceed $2,500" to "not to exceed $10,000" per violation. The bill adds as a violation the presentment of a ride for inspection by DACS that has a defect that is known, or should be known. The bill adds an additional administrative fine of $10,000, or more, for any violation resulting in serious injury or death to a patron.

Additionally, the bill provides DACS with certain investigative and subpoena powers for application in its investigations performed under the amusement ride law. A person's refusal or failure to testify pursuant to such subpoena is guilty of a second-degree misdemeanor, punishable as provided in s. 775.083, F.S.

Specifically, in any examination or investigation conducted by DACS or a DACS appointed examiner, DACS is authorized to:

- Administer oaths,
- Examine and cross-examine witnesses,
- Receive oral and documentary evidence,
- Subpoena witnesses,
- Compel witness attendance and testimony, and
- Require by subpoena the production of documents or other evidence that it deems relevant to the inquiry.

If any person refuses to comply with the subpoena or to testify as to any relevant matter, the Circuit Court of Leon County, or the circuit court of the county in which such examination or investigation is being conducted or the county in which such person resides pursuant to an application filed with DACS, is authorized to issue an order requiring such person to comply with the subpoena and to testify. Failure to obey an order may be punished by the court as contempt.

Subpoenas must be served, and proof of such service must be made, in the same manner as if issued by a circuit court. Witness fees and mileage, if claimed, must be allowed as they are for testimony in a circuit court. Any person willfully testifying falsely under oath as to any matter material to any such examination, investigation, or hearing commits perjury will be punished accordingly.

Any person who asks to be excused from attending or testifying or from producing any documents or other evidence in connection with any examination, hearing, or investigation on the ground that the testimony or evidence required may tend to incriminate him or her or subject him or her to a penalty or forfeiture and who, nevertheless, is directed by DACS and the Department of Legal Affairs to give such testimony or produce such evidence must comply with that directive. The person may not thereafter be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he or she may have testified or produced evidence, and no testimony given or evidence produced may be received against him or her in any criminal action, investigation, or proceeding.

However, a person testifying is not exempt from prosecution or punishment for any perjury committed by him or her in such testimony, and the testimony or evidence given or produced is admissible against him or her in any criminal action, investigation, or proceeding concerning such perjury; and the person is not exempt from the refusal, suspension, or revocation of any license, permission, or authority conferred or to be conferred pursuant to this chapter.

Any such individual may execute, acknowledge, and file with DACS a statement expressly waiving such immunity or privilege with respect to any transaction, matter, or thing specified in such statement; and upon such filing, the testimony of such individual or such evidence in relation to such transaction, matter, or thing may be received or produced before any judge or justice, court, tribunal, grand jury, or otherwise; and, if so received or produced, such individual is not entitled to any immunity or privileges on account of any testimony he or she may so give or evidence so produced.

B. SECTION DIRECTORY:

Section 1. Amends s. 616.242, F.S., relating to amusement rides.

Section 2. Provides an effective date of July 1, 2020.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

According to DACS, it will receive revenue from approximately 21 facilities that will lose their exemption for inspections in a total amount of approximately $14,280.[62] However, the increase in new exemptions for inspections will decrease revenue collections and may be off set.

2. Expenditures:

According to DACS, it will incur expenditures based on the cost of the safety signage at each event, including 1,622 events times three signs per event times $0.25 per sign, which would be a total cost to DACS of approximately $1,220.[63] The bill has an indeterminate fiscal impact on DACS for the increased cost to inspect facilities that lose exemptions.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

There may be a negative fiscal impact on the businesses that will no longer be exempt from the regulations.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill revises the following provision relating to DACS rulemaking:

- Revises national standards that must be adopted by DACS;
- Creates a separate application and permitting process for permanent and temporary amusement ride permits;
- Requires DACS to adopt rules detailing signage to be posted at each amusement ride event;
- Requires DACS to adopt rules specifying acceptable trade organizations that may inspect certain permanent amusement rides;

[62] Florida Department of Agriculture and Consumer Services, agency Analysis of 2020 House Bill 1275, p. 2 (Jan. 17, 2020).
[63] *Id.*

- Deletes the inspection certificate process and all related rulemaking authority; and
- Broadens rulemaking authority to establish exemptions for types of rides from the amusement ride regulation.

There is sufficient rulemaking authority in the bill and current law.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On February 3, 2020, the Agriculture & Natural Resources Appropriations Subcommittee adopted an amendment and reported the bill favorably as a committee substitute. The amendment clarified that a sign containing the toll-free number of the department and informing patrons that they may contact the department with complaints or concerns regarding the operation of amusement rides must be posted in a manner conspicuous to the public at each entrance of a nonpermanent amusement facility.

This analysis is drafted to the committee substitute as approved by the Agriculture & Natural Resources Appropriations Subcommittee.

A bill to be entitled

An act relating to amusement rides; amending s. 616.242, F.S.; requiring amusement ride managers to meet certain requirements; defining and redefining terms; revising standards for rules adopted by the Department of Agriculture and Consumer Services relating to amusement rides; revising provisions for permanent amusement ride annual permits; providing for temporary amusement ride permits; revising provisions for nondestructive testing and department testing of amusement rides; removing the exemption from safety standards for certain museums and institutions; removing the limitation on the authority of the department to establish exemptions from safety standards; revising inspection standards for amusement rides; directing the department to prescribe by rule specified signage to be posted at nonpermanent amusement facilities; revising requirements for compliance certifications after major modifications to amusement rides; revising requirements for amusement ride inspections by owners and managers; providing procedures for the introduction and examination of witnesses and evidence in examinations and investigations conducted by the department; revising civil penalties; providing an effective date.

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

Section 1. Section 616.242, Florida Statutes, is amended to read:

616.242 Safety standards for amusement rides.—

(1) OWNER AND MANAGER RESPONSIBILITIES ~~RESPONSIBILITY~~.—The owner and the manager of an amusement ride, and each amusement ride, must meet at all times the requirements of this section and any rules adopted hereunder ~~thereunder~~.

(2) SCOPE.—This section applies to all amusement rides within this state unless exempt under subsection (11) ~~(10)~~.

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

(a) "Amusement ride" means any building, structure, or mechanical device or combination thereof through which a patron moves, walks, or is carried or conveyed on, along, around, over, or through a fixed or restricted course or within a defined area for the purpose of giving its patrons amusement, pleasure, thrills, or excitement.

(b) "Amusement ride event" means an event where an amusement ride is operated at a specific location and date as listed on an annual permit application or on a temporary amusement ride permit application.

(c) ~~(b)~~ "Annual permit" means the United States Amusement Identification Number and the ~~numbered and dated~~ decal issued by

the department, which signify that the permanent amusement ride has been permitted by the department.

(d) ~~(c)~~ "Bungy operation" means an amusement ride that uses ~~which utilizes~~ as a component a bungy cord, which is an elastic rope made of rubber, latex, or other elastic-type ~~elastic type~~ materials, whether natural or synthetic.

(e) ~~(d)~~ "Go-kart" means an amusement ride vehicle controlled or driven by patrons and specifically designed for and run on a fixed course.

~~(e) "Inspection certificate" means the document issued by the department, which indicates that the amusement ride has undergone a recurring inspection by the department as required by this section.~~

(f) "Kiddie ride" means an amusement ride designed primarily for use by patrons up to 12 years of age.

(g) "Kiddie train" means a train designed as a kiddie ride which is operated on a flat surface or flat track, carries no more than 14 patrons, and does not exceed a speed of 3 miles per hour.

(h) "Major modification" means any change in ~~either~~ the structural or operational characteristics of an ~~the~~ amusement ride which will alter its performance from that specified in the manufacturer's design criteria.

(i) "Manager" means a person having possession, custody, or managerial control of an amusement ride, whether as owner,

lessee, agent, operator, attendant, or otherwise.

(j) "Nondestructive testing" is the development and application of technical methods, including, but not limited to, radiographic, magnetic particle, ultrasonic, liquid penetrant, electromagnetic, neutron radiographic, acoustic emission, visual, and leak testing, to examine materials or components in ways that do not impair their future usefulness and serviceability in order to detect, locate, measure, and evaluate discontinuities, defects, and other imperfections; to assess integrity, properties, and composition; and to measure geometrical characters.

(k) "Owner" means the person exercising ultimate dominion and control over an amusement ride.

(l) "Patron" means any person who is in the immediate vicinity of an amusement ride, getting on or off, or entering or exiting an amusement ride, or using an amusement ride. The term does not include employees, agents, or servants of the owner while they are engaged in the duties of their employment.

(m) "Permanent amusement ride" means an amusement ride that is not regularly relocated.

(n) "Permanent facility" means a location or place from which amusement rides are not regularly relocated and at which such rides operate as a lasting part of the premises.

(o) "Private event" means an event that is not open to the general public and for which ~~where no~~ admission is not charged.

(p) "Professional engineer" means a person who holds a valid license as a professional engineer issued by the Department of Business and Professional Regulation or by an equivalent licensing body in another state.

(q) "Qualified inspector" means an employee or agent of an insurance underwriter of an amusement ride who documents to the department in a manner established by department rule ~~of the department~~ the following qualifications:

1. A minimum of 5 years' ~~years~~ experience in the amusement ride field, at least 2 years of which were involved in actual amusement ride inspection with a manufacturer, government agency, park, carnival, or insurance underwriter;

2. The completion of 32 hours per year of continuing education at a school approved by department rule ~~of the department~~, which includes inservice industry or manufacturer updates and seminars; and

3. At least 80 hours of formal education during the past 5 years from a school approved by department rule ~~of the department~~ for amusement ride safety. Nondestructive-testing training, as determined by department rule ~~of the department~~, may be substituted for up to one-half of the 80 hours of education.

(r) "Simulator" means any amusement ride that is a self-contained unit requiring little or no assembly and that uses a motion picture simulation, along with a mechanical movement, to

simulate activities that provide amusement or excitement for the patron.

(s) "Temporary amusement ride" means an amusement ride that is regularly relocated, with or without disassembly.

(t) "Temporary amusement ride permit" means the United States Amusement Identification Number and the decal issued by the department, which signify that the temporary amusement ride has been permitted by the department.

(u) ~~(t)~~ "Water park" means a permanent facility with one or more amusement rides that totally or partially immerse a patron in water.

(4) ADOPTION OF STANDARDS; RULES.—

(a) The department shall adopt by rule standards for amusement rides which are the same as or similar to the following national standards:

1. ASTM International ~~American Society for Testing and Materials~~ Committee F24 ~~F-24~~ Standards on Amusement Rides and Devices.

2. The National Electric Code Handbook~~, Article 525~~.

3. National Fire Protection Association standards ~~Code 101 (chapters 8-4.6 and 9-4.6)~~.

~~4. ASTM Standards: E543 Practice for Determining the Qualification of Nondestructive Testing Agencies.~~

~~5. ASNT Document Recommended Practice SNT-TC-1A Personnel Qualification and Certification in Nondestructive Testing.~~

(b) The department may adopt rules necessary to effectuate the statutory duties of the department in the interest of the public health, safety, and welfare and to promote patron safety in the design, construction, assembly, disassembly, maintenance, and operation of amusement rides in this state.

(c) The Legislature finds that go-karts, amusement rides at water parks, and bungy operations are amusement rides that, because of their unique nature, pose safety risks to patrons distinct from other amusement rides. Therefore, the department shall adopt rules regulating their safe use and operation and establish safety standards and inspection requirements in addition to those required by this section or other department rule ~~of the department~~.

(d) The Legislature finds that, as a result of accidents or other unforeseen events, circumstances may arise requiring additional safety standards for the protection of patrons of amusement rides.~~, and~~ Therefore, the department may adopt rules to address the circumstances that may arise following an accident or unforeseen event.

(5) PERMANENT AMUSEMENT RIDE ANNUAL PERMIT.—

(a) A permanent ~~An~~ amusement ride may not be operated without a current annual permit.

(b) To apply for an annual permit, an owner or manager must submit to the department a written application on a form prescribed by department rule ~~of the department~~, which must

include the following:

1. The legal name, address, and primary place of business of the owner or manager, as applicable.

2. A description, manufacturer's name, serial number, model number and, if previously assigned, the United States Amusement Identification Number of the amusement ride.

3. A valid certificate of insurance for each amusement ride.

4. If required under subsection (7), an annual affidavit of compliance and nondestructive testing certifying that the amusement ride was inspected in person by the affiant and that the amusement ride is in general conformance with the requirements of this section and all applicable department rules ~~adopted by the department~~. The affidavit must have been ~~be~~ executed by a professional engineer or a qualified inspector within the last calendar year ~~no earlier than 60 days before, but not later than, the date of the filing of the application with the department. The owner shall request inspection and permitting of the amusement ride within 60 days of the date of filing the application with the department. The department shall inspect and permit the amusement ride within 60 days after filing the application with the department~~.

~~5. If required by subsection (6), an affidavit of nondestructive testing dated and executed no earlier than 60 days before, but not later than, the date of the filing of the~~

~~application with the department. The owner shall request inspection and permitting of the amusement ride within 60 days of the date of filing the application with the department. The department shall inspect and permit the amusement ride within 60 days after filing the application with the department.~~

~~6. A request for inspection.~~

5.~~7.~~ ~~Upon request,~~ The owner or manager shall, at no cost to the department, provide the department an electronic ~~a~~ copy of the manufacturer's current recommended operating instructions ~~in the possession of the owner~~, the owner's operating fact sheet, and any written bulletins ~~in the possession of the owner~~ concerning the safety, operation, or maintenance of the amusement ride.

(c) An annual permit application must be received by the department at least 15 days before the planned opening date. If an application is received less than 15 days before the planned opening date or less than 15 days before the expiration of the previous permit, the department may inspect the amusement ride and charge a penalty as established by department rule.

(d)~~(c)~~ An annual permit must be issued by the department to the owner or manager of an amusement ride when a completed application has been received, the amusement ride has passed the department's inspection, and all applicable fees, as set by department rule ~~of the department~~, have been paid.

(e)~~(d)~~ The annual permit is valid for 1 year after ~~from~~

the date of issue and is not transferable.

(f) ~~(e)~~ The annual permit must be displayed in an accessible location on the amusement ride ~~in a place visible to patrons of the amusement ride~~.

(g) ~~(f)~~ Each go-kart track at the same permanent facility is considered a separate amusement ride.

(h) ~~(g)~~ Amusement rides at water parks which operate from the same deck or level are considered one amusement ride.

(6) TEMPORARY AMUSEMENT RIDE PERMIT.—

(a) A temporary amusement ride may not be operated without a current permit.

(b) To apply for a permit, an owner or manager must submit to the department a written application on a form prescribed by department rule, which must include the following:

1. The legal name, address, and primary place of business of the owner or manager, as applicable.

2. A description, manufacturer's name, serial number, model number and, if previously assigned, the United States Amusement Identification Number of the amusement ride.

3. A valid certificate of insurance for each amusement ride.

4. If required under subsection (7), an affidavit of compliance and nondestructive testing certifying that the amusement ride was inspected in person by the affiant and that the amusement ride is in general conformance with the

requirements of this section and all applicable department rules. The affidavit must be executed by a professional engineer or a qualified inspector.

5. The owner or manager shall, at no cost to the department, provide the department an electronic copy of the manufacturer's current recommended operating instructions, the operating fact sheet, and any written bulletins concerning the safety, operation, or maintenance of the amusement ride.

(c) A temporary amusement ride permit application must be received by the department each time the amusement ride is relocated, with or without disassembly, at least 14 days before the date of the ride's first intended use at the new location. If the permit application is received less than 14 days before the date of the ride's first intended use at the new location, the department may inspect the amusement ride and charge a penalty, as set by department rule.

(d) The department must issue a permit to the owner or manager of an amusement ride when a completed application has been received, the amusement ride has passed the department's inspection, and all applicable fees, as set by department rule, have been paid.

(e) The permit is valid for 6 months after the date of issue or until the ride is relocated, with or without disassembly, and is not transferable.

(f) The permit must be displayed in an accessible location

on the amusement ride.

(7)~~(6)~~ NONDESTRUCTIVE TESTING; ANNUAL AFFIDAVIT; EXEMPTIONS.—

(a) Except as provided in paragraph (d), an owner or manager may not operate an amusement ride unless the owner or manager ~~has~~ at all times has a current affidavit of nondestructive testing from a professional engineer or qualified inspector that the amusement ride has undergone nondestructive testing for metal fatigue at least annually. The nondestructive testing for metal fatigue must be conducted more often than annually~~,~~ if required by any rule adopted under this section, by the manufacturer of the amusement ride, or by the professional engineer or qualified inspector executing the affidavit of nondestructive testing. The nondestructive testing for metal fatigue must consist at least of visual nondestructive testing, as well as~~; in addition,~~ nonvisual nondestructive testing for metal fatigue, which must be conducted on the components of the amusement ride as required by any rule adopted under this section, by the manufacturer of the amusement ride, or by the professional engineer or qualified inspector executing the affidavit of nondestructive testing.

(b) Nondestructive testings must be performed by a technician who meets the requirements prescribed by department rule ~~of subparagraphs (4)(a)4. and 5~~.

(c) An affidavit of nondestructive testing must state:

1. That the amusement ride was inspected in person by the affiant.

2. That all nondestructive testing requirements are current.

3. That the nondestructive testing was performed by a qualified nondestructive testing technician.

4. The components of the amusement ride for which the manufacturer has recommended or required nondestructive testing.

5. The type of nondestructive testing required or recommended by the manufacturer.

6. The frequency of the nondestructive testing required or recommended by the manufacturer.

7. The components of the amusement ride for which the affiant has recommended or required nondestructive testing.

8. The type of nondestructive testing required or recommended by the affiant.

9. The frequency of the nondestructive testing as required or recommended by the affiant.

10. That visual nondestructive testing is adequate for the amusement ride to be in general conformance with the requirements of this section~~,~~ and all applicable rules, only~~,~~ if ~~only~~ visual nondestructive testing is required or recommended by ~~either~~ the manufacturer or the affiant.

(d) Nondestructive testing is not required for fun houses, houses of mirrors, haunted houses, mazes, wave pools, wave-

making devices, kiddie pools, slides that are fully supported by an earthen mound, nonmotorized playground equipment that requires a manager, or lazy-river-type nonmotorized floating carriers propelled by water.

(8) ~~(7)~~ DEPARTMENT INSPECTIONS.—

(a) Except as provided in subparagraphs 1. and 2., in order to obtain an annual or a temporary amusement ride permit, an amusement ride must be inspected by the department.

1. A ~~in accordance with subsection (11) and receive an inspection certificate. In addition, each permanent amusement ride must be inspected semiannually by the department in accordance with subsection (11) and receive an inspection certificate, and each temporary amusement ride must be inspected by the department in accordance with subsection (11), and must receive an inspection certificate each time the ride is set up or moved to a new location in this state unless the~~ temporary amusement ride is exempt from the required inspection if it is:

a. ~~1.~~ Used at a private event;

b. ~~2.~~ A simulator, the capacity of which does not exceed 16 persons; or

c. ~~3.~~ A kiddie ride used at a public event, provided that not ~~there are no~~ more than three amusement rides are at the event, ~~none of~~ the kiddie rides at the event do not exceed ~~exceeds~~ a capacity of 12 persons, and the kiddie ride passed a department inspection and was issued a permit ~~has an inspection~~

~~certificate that was issued~~ within the preceding 6 months. The capacity of a kiddie ride shall be determined by department rule ~~of the department~~, unless the capacity of the ride has been determined and specified by the manufacturer. Any owner or manager of a kiddie ride operating under this exemption is responsible for ensuring that not ~~no~~ more than three amusement rides are operated at the event.

2.~~(b)~~ The required inspection may be waived for a permanent amusement ride if it was inspected and certified by an accredited trade organization as defined by department rule ~~To obtain a department inspection for an amusement ride, the owner must submit to the department on a form prescribed by rule of the department a written Request for Inspection~~. ~~The owner must provide the following information to the department:~~

~~1. The legal name, address, and primary place of business of the owner.~~

~~2. A description, manufacturer's name, serial number, model number, and the United States Amusement Identification Number, if previously assigned, of the amusement ride.~~

~~3. For a temporary amusement ride, for each time the amusement ride is set up or moved to a new location, the date of first intended use at the new location and the address or a description of the new location.~~

~~(c) For permanent amusement rides, the request for inspection must be received by the department at least 15 days~~

~~before the owner's planned opening date or at least 15 days before the expiration of the prior inspection certificate. If the request for inspection is received less than 15 days before the owner's planned opening date or less than 15 days before the expiration of the prior inspection certificate, the department may nevertheless inspect the amusement ride and charge a late fee, as set by rule of the department.~~

~~(d) For temporary amusement rides, the request for inspection must be received by the department for each time the amusement ride is set up or moved to a new location at least 14 days before the date of first intended use at the new location. If the request for inspection is received less than 14 days before the date of first intended use at the new location, the department may nevertheless inspect the amusement ride and charge a late fee, as set by rule of the department.~~

(b) ~~(e)~~ Inspections must ~~will~~ be assigned on a first-come, first-served ~~first come, first served~~ basis, and overflow requests must ~~will~~ be scheduled on the closest date to the date for which the inspection was requested.

(c) ~~(f)~~ Upon failure of an amusement ride to pass any department inspection, the owner or manager may request reinspection, which must ~~shall~~ be submitted in writing to the department on a form prescribed by department rule ~~of the department~~. The department shall reinspect the amusement ride as soon as practicable after ~~practical following~~ receipt of the

written request for reinspection and any applicable reinspection fees set by department rule ~~of the department~~. Inspections must ~~will~~ be assigned on a first-come, first-served ~~first come, first served~~ basis, and the overflow requests must ~~will~~ be scheduled on the closest date to the date for which the inspection was requested.

~~(g) If the amusement ride passes inspection and the owner pays the applicable fee set by rule of the department, the department shall issue an inspection certificate on a form prescribed by rule of the department.~~

~~(h) The inspection certificate must contain the date of inspection, the site of the inspection, and the name of the inspector.~~

~~(i) The inspection certificate is valid only for the site stated on the inspection certificate. The inspection certificate is valid for a period of not more than 6 months from the date of issuance, and is not transferable.~~

~~(j) The inspection certificate must be displayed on the amusement ride at a place readily visible to patrons of the amusement ride.~~

(d) ~~(k)~~ If the owner or manager fails to timely cancel a scheduled ~~Request for~~ inspection, requests holiday or weekend inspections, or is required to have a replacement USAID plate issued by the department, the owner or manager may be charged an appropriate fee to be set by department rule ~~of the department~~.

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

(e) In order to align inspection dates at permanent facilities, the department may shorten or extend the 6-month inspection interval. Fees for rides with shortened inspection intervals must be prorated. Extensions of inspection intervals may not exceed 2 months.

(9) ~~(8)~~ FEES.—

(a) The department shall ~~by rule~~ establish by rule fees to cover the costs and expenditures associated with the fair rides inspection program, including all direct and indirect costs. If the Legislature does not appropriate ~~there is not sufficient~~ general revenue sufficient to cover such costs and expenditures ~~appropriated by the Legislature~~, the industry shall pay ~~for~~ the remainder ~~remaining cost of the program~~. The fees must be deposited in the General Inspection Trust Fund.

(b) An ~~Any~~ owner or manager of an amusement ride who has not paid ~~all~~ the fees required under this section or who has any unpaid fine outstanding under this section may not operate any amusement ride in this state until the fees or ~~and~~ fines have been paid to the department.

(10) ~~(9)~~ INSURANCE REQUIREMENTS.—

(a) An owner or manager may not operate an amusement ride unless the owner or manager has in effect at all times of operation an insurance policy in an amount of at least $1 million per occurrence, $1 million in the aggregate, which insures the owner or manager of the amusement ride against

liability for injury to persons arising out of the use of the amusement ride.

(b) The policy must be procured from an insurer that is licensed to transact business in this state or that is approved as a surplus lines insurer.

(c) ~~The insurance requirements imposed under~~ This subsection does ~~do~~ not apply to a governmental entity that is covered under ~~by the provisions of~~ s. 768.28(16).

(11) ~~(10)~~ EXEMPTIONS.—

(a) This section does not apply to:

1. Permanent facilities that employ at least 1,000 full-time employees and that maintain full-time, in-house safety inspectors. However ~~Furthermore~~, the permanent facilities must file an affidavit of the annual inspection with the department~~,~~ on a form prescribed by department rule ~~of the department~~. ~~Additionally,~~ The department ~~of Agriculture and Consumer Services~~ may consult annually with the permanent facilities regarding industry safety programs.

2. Any playground operated by a school, a local government, or a business licensed under chapter 509, if the playground is an incidental amenity and the operating entity is not primarily engaged in providing amusement, pleasure, thrills, or excitement.

~~3. Museums or other institutions principally devoted to the exhibition of products of agriculture, industry, education,~~

~~science, religion, or the arts.~~

3.~~4.~~ Conventions or trade shows for the sale or exhibit of amusement rides, if there are a minimum of 15 amusement rides on display or exhibition~~,~~ and if any operation of such amusement rides is limited to the registered attendees of the convention or trade show.

4.~~5.~~ Skating rinks~~;~~ arcades~~;~~ laser or paint ball war games~~;~~ bowling alleys~~;~~ miniature golf courses~~;~~ mechanical bulls~~;~~ inflatable rides~~;~~ trampolines~~;~~ ball crawls~~;~~ exercise equipment~~;~~ jet skis~~;~~ paddle boats~~;~~ airboats~~;~~ helicopters~~;~~ airplanes~~;~~ parasails~~;~~ hot air or helium balloons, whether tethered or untethered~~;~~ theatres~~;~~ batting cages~~;~~ stationary spring-mounted fixtures~~;~~ rider-propelled merry-go-rounds~~;~~ games~~;~~ side shows~~;~~ live animal rides~~;~~ or live animal shows.

5.~~6.~~ Go-karts operated in competitive sporting events if participation is not open to the public.

6.~~7.~~ Nonmotorized playground equipment that is not required to have a manager.

7.~~8.~~ Coin-actuated amusement rides designed to be operated by depositing coins, tokens, credit cards, debit cards, bills, or other cash money and which are not required to have a manager, and which have a capacity of six persons or less.

8.~~9.~~ Facilities described in s. 549.09(1)(a), when such facilities are operating only cars, trucks, or motorcycles ~~only~~.

9.~~10.~~ Battery-powered cars or other vehicles that are

designed to be operated by children 7 years of age or younger ~~under~~ and that cannot exceed a speed of 4 miles per hour.

10.~~11.~~ Mechanically driven vehicles that pull train cars, carts, wagons, or other similar vehicles;~~,~~ that are not confined to a metal track or confined to an area but are steered by an operator; and that cannot ~~do not~~ exceed a speed of 4 miles per hour.

11.~~12.~~ A water-related amusement ride operated by a business licensed under chapter 509, if the water-related amusement ride is an incidental amenity and the operating business is not primarily engaged in providing amusement, pleasure, thrills, or excitement and does not offer day rates.

12.~~13.~~ An amusement ride at a private, membership-only facility if the amusement ride is an incidental amenity, and the facility is not open to the general public; is not primarily engaged in providing amusement, pleasure, thrills, or excitement; and does not offer day rates.

13.~~14.~~ A nonprofit permanent facility registered under chapter 496 which is not open to the general public.

(b) The department may~~, by rule,~~ establish by rule exemptions from this section ~~for nonmotorized or human-powered amusement rides or coin-actuated amusement rides~~.

(12)~~(11)~~ INSPECTION STANDARDS.—An amusement ride must conform to ~~and must be inspected by the department in accordance with~~ the following standards:

(a) All mechanical, structural, and electrical components that affect patron safety must be in good working order.

(b) All control devices, speed-limiting devices, brakes, and safety equipment ~~designated by the manufacturer~~ must be in good working order.

(c) Parts must be properly aligned~~,~~ and ~~they~~ may not be bent, distorted, cut, or otherwise injured to force a fit. Parts requiring lubrication must be lubricated in the course of assembly. Fastening and locking devices must be installed when ~~where~~ required for safe operation.

(d) ~~Before being used by the public,~~ An amusement ride must be placed or secured with blocking, cribbing, outriggers, guys, or other means so as to be stable under all operating conditions.

(e) Areas in which patrons may be endangered by the operation of an amusement ride must be fenced, barricaded, or otherwise effectively guarded against inadvertent contact.

(f) Machinery used in or with an amusement ride must be enclosed, barricaded, or otherwise effectively guarded against inadvertent contact.

(g) An amusement ride powered so as to be capable of exceeding its maximum safe operating speed must be provided with a maximum-speed-limiting device.

(h) The interior and exterior parts of all patron-carrying amusement rides with which a patron may come in contact must be

smooth and rounded and free from sharp, rough, or splintered edges and corners, and from ~~with no~~ projecting studs, bolts, and screws~~,~~ or other projections that ~~which~~ might cause injury.

(i) Signs that advise or warn patrons of age restrictions, size restrictions, health restrictions, weight limitations, or any other special consideration or use restrictions required or recommended for the amusement ride by the manufacturer must ~~shall~~ be prominently displayed at the patron entrance of each amusement ride.

(j) All amusement rides presented for inspection as ready for operation or in operation must comply with this section and department rule ~~the rules adopted hereunder~~.

(k) A sign containing the toll-free number of the department and informing patrons that they may contact the department with complaints or concerns regarding the operation of amusement rides must be posted in a manner conspicuous to the public at each entrance of a nonpermanent amusement facility. The department shall prescribe by rule specifications for such signs.

(13) ~~(12)~~ MAJOR MODIFICATION.—After an amusement ride has undergone a major modification, and before ~~prior to~~ the time it is placed in operation, a professional engineer licensed by the state in which the certification is performed must certify that the amusement ride is in compliance with this section and department rule ~~all rules adopted pursuant thereto~~. Upon

request, the owner or manager of the amusement ride shall provide to the department a copy of the required certification and all evidence used by the professional engineer to prepare the certification.

(14) ~~(13)~~ ENTRY FOR INSPECTION OR INVESTIGATION.—Upon presentation of identification, an authorized employee of the department may enter unannounced and inspect amusement rides at any time and in a reasonable manner and has the right to question any owner or manager; to inspect, investigate, photograph, and sample all pertinent places, areas, and devices; and to conduct or have conducted all appropriate tests including nondestructive testing. The department may impose fees for unannounced inspections and recover the cost of tests authorized by this subsection.

(15) ~~(14)~~ REPORTING AND INVESTIGATION OF ACCIDENTS AND DEFECTS; IMPOUNDMENTS.—

(a) Any accident of which the owner or manager has knowledge or, through the exercise of reasonable diligence should have knowledge, and for which a patron is transported to a hospital, as defined in chapter 395, must be reported by the owner or manager to the department by telephone within 4 hours after the occurrence of the accident and must be followed up by a written report to the department within 24 hours after the occurrence of the accident.

(b) Any mechanical, structural, or electrical defects or

failures affecting patron safety for which an amusement ride is closed to patron use ~~for more than 4 hours~~ must be reported by the owner or manager to the department by telephone or facsimile within 8 hours after the closing of the ride. A written report of the closing of the ride, on a form prescribed by department rule ~~of the department~~, must be filed by the owner or manager with the department within 24 hours after the closing of the amusement ride. The affected ride must remain closed until repairs are reviewed and the ride is released for operation by the department.

(c) The department may impound an amusement ride involved in an accident for which a patron is transported to a hospital as defined in chapter 395 or which has a mechanical, structural, or electrical defect affecting patron safety;~~, and~~ may impound any other amusement ride of a similar make and model;~~,~~ and may perform all necessary tests to determine the cause of the accident or the mechanical, structural, or electrical defect~~,~~ or to determine the safety of the amusement ride and any other amusement ride of a similar make and model. The cost of impounding the amusement ride and performing the necessary tests must be borne by the owner of the amusement ride.

(16)~~(15)~~ INSPECTION BY OWNER OR MANAGER.—Before opening on each day of operation and before any inspection by the department, the owner or manager of an amusement ride must inspect and test each ~~the~~ amusement ride to ensure compliance

with ~~all requirements of~~ this section. Each inspection must be recorded on a form prescribed by department rule ~~of the department~~ and signed by the person who conducted the inspection. In lieu of the form prescribed by department rule ~~of the department~~, the owner or manager may request approval of an alternative form that ~~if the alternative form~~ includes, at a minimum, the information required on the form prescribed by department rule ~~of the department~~. Inspection records of the last 14 daily inspections must be kept on site by the owner or manager and made immediately available to the department upon request.

(17) ~~(16)~~ TRAINING OF EMPLOYEES.—The owner or manager of an amusement ride shall maintain a record of employee training for each employee authorized to operate, assemble, disassemble, transport, or conduct maintenance on an amusement ride on a form prescribed by department rule ~~of the department~~. In lieu of the form prescribed by department rule ~~of the department~~, the owner or manager may request approval of an alternative form that ~~if the alternative form~~ includes, at a minimum, the information required on the form prescribed by department rule ~~of the department~~. The training record must be kept on site by the owner or manager and made immediately available to the department upon request. Training may not be conducted when an amusement ride is open to the public unless the training is conducted under the supervision of an employee who is trained in

the operation of that ride. The owner or manager shall certify that each employee is trained, as required by this section and any rules adopted thereunder, on the amusement ride for which the employee is responsible.

(18) ~~(17)~~ PROHIBITIONS RELATED TO BUNGY OPERATIONS.—The following bungy operations are prohibited:

(a) A bungy operation conducted with balloons, blimps, helicopters, or other aircraft.

(b) Sand bagging, which is the practice of holding onto any object, including another person, while bungy jumping, for the purpose of exerting more force on the bungy cord to stretch it further, and then releasing the object during the jump causing the jumper to rebound with more force than could be created by the jumper's weight alone.

(c) Tandem or multiple bungy jumping.

(d) Bungy jumping from any bridge, overpass, or any other structure not specifically designed as an amusement ride.

(e) The practice of bungy catapulting or reverse bungy jumping.

(19) ~~(18)~~ IMMEDIATE FINAL ORDERS.—

(a) An amusement ride that fails to meet the requirements of this section or pass the inspections required by this section; ~~, or an amusement ride~~ that is involved in an accident for which a patron is transported to a hospital as defined in chapter 395; ~~,~~ or ~~an amusement ride~~ that has a mechanical,

structural, or electrical defect that affects patron safety may be considered an immediate serious danger to the public health, safety, and welfare and, upon issuance of an immediate final order prohibiting patron use of the ride, may not be operated for patron use until it has passed a subsequent inspection by or at the direction of the department.

(b) An amusement ride of a similar make and model to an amusement ride described in paragraph (a) may be considered an immediate serious danger to the public health, safety, and welfare and, upon issuance of an immediate final order prohibiting patron use of the ride, may not be operated for patron use until it has passed a subsequent inspection by or at the direction of the department.

(20) WITNESSES AND EVIDENCE.—

(a) In any examination or investigation conducted by the department or by an examiner appointed by the department, the department may administer oaths, examine and cross-examine witnesses, receive oral and documentary evidence, subpoena witnesses, compel witness attendance and testimony, and require by subpoena the production of documents or other evidence that it deems relevant to the inquiry.

(b) If any person refuses to comply with such subpoena or to testify as to any relevant matter, the Circuit Court of Leon County, or the circuit court of the county in which such examination or investigation is being conducted or the county in

which such person resides pursuant to an application filed with the department, may issue an order requiring such person to comply with the subpoena and to testify. Any failure to obey such an order of the court may be punished by the court as a contempt thereof.

(c) Subpoenas must be served, and proof of such service must be made, in the same manner as if issued by a circuit court. Witness fees and mileage, if claimed, must be allowed as they are for testimony in a circuit court.

(d) Any person willfully testifying falsely under oath as to any matter material to any such examination, investigation, or hearing commits perjury and shall be punished accordingly.

(e) Any person who asks to be excused from attending or testifying or from producing any documents or other evidence in connection with any examination, hearing, or investigation on the ground that the testimony or evidence required may tend to incriminate him or her or subject him or her to a penalty or forfeiture and who, nevertheless, is directed by the department and the Department of Legal Affairs to give such testimony or produce such evidence shall comply with that directive. The person may not thereafter be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he or she may have testified or produced evidence, and no testimony given or evidence produced may be received against him or her in any criminal

action, investigation, or proceeding. However, a person so testifying is not exempt from prosecution or punishment for any perjury committed by him or her in such testimony, and the testimony or evidence given or produced is admissible against him or her in any criminal action, investigation, or proceeding concerning such perjury; and the person is not exempt from the refusal, suspension, or revocation of any license, permission, or authority conferred or to be conferred pursuant to this chapter.

(f) Any such individual may execute, acknowledge, and file with the department a statement expressly waiving such immunity or privilege with respect to any transaction, matter, or thing specified in such statement; and upon such filing, the testimony of such individual or such evidence in relation to such transaction, matter, or thing may be received or produced before any judge or justice, court, tribunal, grand jury, or otherwise; and, if so received or produced, such individual is not entitled to any immunity or privileges on account of any testimony he or she may so give or evidence so produced.

(g) Any person who refuses or fails without lawful cause to testify relative to the affairs of any person, when subpoenaed and requested by the department to so testify, commits a misdemeanor of the second degree, punishable as provided in s. 775.083.

(21) ~~(19)~~ ENFORCEMENT AND PENALTIES.—

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

(a) The department may deny, suspend for a period not to exceed 1 year, or revoke any permit ~~or inspection certificate~~. In addition to denial, suspension, or revocation, the department may impose an administrative fine in the Class III ~~Class II~~ category pursuant to s. 570.971 not to exceed $10,000 ~~$2,500~~ for each violation, for each day the violation exists, against the owner or manager of the amusement ride if it finds that:

1. An amusement ride has operated or is operating:

a. With a mechanical, structural, or electrical defect that affects patron safety, of which the owner or manager has knowledge, or, through the exercise of reasonable diligence, should have knowledge;

b. In a manner or circumstance that presents a risk of serious injury to patrons;

c. At a speed in excess of its maximum safe operating speed;

d. In violation of this section or department ~~any~~ rule ~~adopted under this section~~; or

e. In violation of an order of the department or order of any court; ~~or~~

2. An owner, a manager, or an operator in the course of his or her duties is under the influence of drugs or alcohol; or

3. An amusement ride was presented for inspection as ready for operation with a mechanical, structural, or electrical defect that affects patron safety, of which the owner or manager

has knowledge or, through the exercise of reasonable diligence, should have knowledge.

(b) In addition to the administrative fine provided in paragraph (a), the department may impose an additional administrative fine in the Class IV category pursuant to s. 570.971 of $10,000 or more against the owner or manager if a violation resulted in serious injury or death to a patron.

(c) ~~(b) The department shall,~~ In its order suspending a permit ~~or inspection certificate~~, the department shall specify the period during which the suspension is effective, which~~; but such period~~ may not exceed 1 year. The permit must ~~or inspection certificate shall~~ remain suspended during the period so specified, subject, however, to any rescission or modification of the order by the department, or modification or reversal thereof by the court, before ~~prior to~~ expiration of the suspension period.

(d) ~~(c) The owner of an amusement ride,~~ If the permit ~~or inspection certificate~~ for the amusement ride has been revoked by the department, the owner or manager of such ride may not apply for another permit ~~or inspection certificate~~ for the amusement ride within 2 years after the date of such revocation. If judicial review is sought and a stay of the revocation is obtained, the owner or manager may not apply for another permit ~~or inspection certificate~~ within 2 years after the final order of the court sustaining the revocation.

(e) ~~(d)~~ During the period of suspension or revocation of a permit ~~or inspection certificate~~, the owner or manager may not engage in or attempt to engage in any operation of the amusement ride for which a permit ~~or inspection certificate~~ is required under this section.

(f) ~~(e)~~ When a suspension period imposed by the department has expired, an owner or manager whose ~~annual~~ permit ~~or inspection certificate~~ has expired may reapply for a new permit ~~or inspection certificate~~ by submitting a complete application to the department.

(g) ~~(f)~~ In addition to the remedies provided in this section, and notwithstanding the existence of any adequate remedy at law, the department may bring an action to enjoin the violation ~~of any provision~~ of this section, or rules adopted under this section, in the circuit court of the county in which the violation occurs or is about to occur. Upon presentation ~~competent and substantial evidence presented~~ by the department to the court of competent and substantial evidence of the violation or threatened violation, the court must immediately issue the temporary or permanent injunction sought by the department. The injunction must be issued without bond.

(h) ~~(g)~~ In addition to the penalties authorized ~~to be imposed~~ for any violation of this section or any rule adopted under this section, the department may issue a letter of warning to the owner or manager of the amusement ride specifying the

violation and directing the owner or manager to immediately correct the violation.

(i) ~~(h)~~ Any person who knowingly violates ~~any provision of~~ this section commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1369 Sports Franchises and Facilities
SPONSOR(S): Pigman
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Workforce Development & Tourism Subcommittee	12 Y, 1 N	Willson	Barry
2) Ways & Means Committee	14 Y, 1 N	Berg	Langston
3) Commerce Committee		Willson MW	Hamon K.W.H.

SUMMARY ANALYSIS

Florida is home to many professional and semi-professional sports franchises. Generally, the facilities where these franchises play are financed through local government-issued bonds, which are repaid using a combination of state and local tax revenues and related incentive programs. The facilities are generally located on land leased or purchased from local government.

The bill repeals the following sections of law:
- Section 288.1162, F.S., relating to Professional Sports Franchises,
- Section 288.11621, F.S., relating to Spring Training Baseball Franchises,
- Section 288.11625, F.S., relating to Sports Development,
- Section 288.11631, F.S., relating to Retention of MLB Spring Training Baseball Franchises, and
- Section 288.1171, F.S., relating to Motorsports Entertainment Complexes.

The bill prohibits the use of Tourist Development Tax or Convention Development Tax revenues to finance or construct any aspect of a facility that is or will be used by a sports franchise after July 1, 2020.

The bill amends subsections 218.64(2) & (3), F.S., removing the authority for local governments to spend the half-cent sales tax on a motorsport entertainment complex or for reimbursements under the sports development program.

The bill creates s. 288.11633, F.S., providing for certain conditions relating to sports franchise facilities and public land. Specifically, the bill:
- Prohibits a sports franchise from constructing or improving a facility on land that is leased from the state or local government.
- Requires that the lease or sale of public land to a sports franchise for a sports facility must be at fair market value.
- Specifies that a facility that is owned, operated or leased by a sports franchise is not tax exempt.
- Provides that any new or amended contract include a provision requiring the sports franchise to pay off any outstanding governmental debt in the event that the sports franchise stops using the facility.

The bill deletes subparagraph 125.35(1)(b)3., F.S., relating to the lease of professional sports franchise facilities, including commercial property that is related to the facilities, that are financed by certain tax revenues.

The bill specifies that lawful contracts entered into before July 1, 2020, will not be affected and that the provisions of the bill will not be construed to impair existing contracts without the consent of the parties.

The bill may have an indeterminate fiscal impact on both the state and local governments.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

State Incentives for Professional Sports Franchise Facilities

Professional Sports Franchise Program (s. 288.1162, F.S.)

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.[1] Local governments, non-profit entities, 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.[2] No more than eight facilities can be certified under this program at one time.[3]

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 Payment Final Payment	Lease Expiration Date	Total payments as of Jan. 2020
Hard Rock Stadium (formerly Sun Life, Land Shark, Dolphin, Pro Player, Joe Robbie)	Miami, S. FL. Stadium Corp., May 1993	Miami Marlins[4]	06/1994 06/2023	99 yr., issued 1987	$53,166,773
TIAA Field (previously EverBank Field)	Jacksonville, City of Jacksonville, April 1994	Jacksonville Jaguars	06/1994 05/2024	2030	$51,333,436
Tropicana Field	St. Petersburg, City of St. Petersburg, May 1995	Tampa Bay Rays	07/1995 06/2025	2027	$49,166,765
Amelie Arena (previously Tampa Bay Times Forum)	Tampa, Tampa Bay Sports Auth., July 1995	Tampa Bay Lightning	09/1995 08/2025	2025	$48,833,431
BB&T Center	Sunrise, Broward County, June 1996	Florida Panthers	08/1996 07/2026	2028	$47,000,094
Raymond James Stadium	Tampa, Hillsborough County, November 1996	Tampa Bay Buccaneers	01/1997 12/2026	2028	$46,166,759
American Airlines Arena	Miami, BPL, LTD, February 1998	Miami Heat	03/1998 03/2028	2030	$43,666,754
Amway Center	Orlando, City of Orlando, November 2007	Orlando Magic	02/2008 01/2038	2036	$24,000,048
(Information from the Department of Revenue[5] and OPPAGA[6])				**TOTAL:**	**$363,334,060**

[1] S. 288.1162, F.S.
[2] S. 212.20(6)(d)6.b., F.S.
[3] S. 288.1162(6), F.S.
[4] The Marlins franchise relocated from Sun Life Stadium to Marlins Park in 2012.
[5] Email from Lynne Moeller, Office of Legislative & Cabinet Services, Department of Revenue, Pro Sports summary by fiscal year as of 1-31-20 (Jan. 24, 2020).
[6] OPPAGA, *Report No. 17-13, Florida Economic Development Program Evaluations-Year 5*, p. 56 (Dec. 28, 2017).

Spring Training Baseball Franchises Program (s. 288.11621, F.S.)

The Spring Training Baseball Franchise incentive is the state's funding mechanism to attract and retain facilities for Major League Baseball (MLB) spring training in Florida. Qualified applicants are eligible for up to $500,000 annually for up to 30 years. These dollars are typically pledged with designated Tourist Development Tax revenue and other local government resources to secure bonds to fund the acquisition, construction, reconstruction or renovation of spring training facilities.

In 1991, the law establishing incentives to attract professional franchises to the state was significantly revised and expanded to include an incentive for spring training baseball franchises. Certification criteria for the spring training franchise incentive included a commitment by the franchise to use the facility for fifteen years, projections for paid attendance (at least 50,000 annually), demonstration of the financial capability to provide more than one-half of the costs incurred or related to the improvement or development of the facility, proof that the facility was located within 20 miles of an interstate or other limited-access highway system, and a requirement that the county levy a four-percent Tourist Development Tax, with 87.5% of the proceeds dedicated for the construction of the complex.[7] This law also limited the total number of awards for both the professional sports franchises and new spring training franchises to six, and prohibited facilities from receiving more than one award.

In 1999, the Legislature extended the use of the Professional Sports and Additional Professional Sports Tourist Development Taxes to fund debt service on spring training franchise facilities.[8] At that point, no local governments had applied for the incentive. In 2000, the law was amended to limit the incentive to "retained" rather than "new" spring training franchises; delete the requirement that the facility be located within 20 miles of an interstate or other limited-access highway system; establish ranking criteria for awards;[9] and limit the awards to publicly-owned facilities, authorized for in-state relocations.[10]

In 2006, the number of authorized awards for spring training facilities was expanded to ten, with the imposition of additional certification criteria. Counties were authorized to use up to $2 million of their local option half-cent sales tax revenues annually to fund facilities for new or retained professional sports franchises and facilities for retained spring training franchises.[11] Finally, the scope of the incentive was expanded in 2010, to include any spring training franchise rather than only "retained" spring training franchises,[12] and by August 2012, ten facilities were certified for the incentive.[13]

Currently, under s. 218.64(3), F.S., counties may use up to $3 million annually of the local government half-cent sales tax allocated to that county for a number of purposes, including, as specified in s. 218.64(3)(a), F.S., "funding a certified applicant as a facility for a new or retained professional sports franchise under s. 288.1162, F.S., or a certified applicant as defined in s. 288.11621, F.S., for a facility for a spring training franchise."[14]

Before certifying an applicant to receive state funding for a facility for a spring training franchise, the Department of Economic Opportunity (DEO) must verify that[15]:

- The applicant is responsible for the acquisition, construction, management, or operation of the facility for a spring training franchise or holds title to the property on which the facility for a spring training franchise is located.

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[7] Ch. 91-274, Laws of Fla.
[8] Ch. 99-287, Laws of Fla.
[9] EDR, *Return on Investment for the Florida Sports Foundation Grants and Related Programs*, p. 21. (January 2015).
[10] Ch. 2000-186, Laws of Fla.
[11] Ch. 2006-262, Laws of Fla.
[12] Ch. 2010-140, Laws of Fla. (with provisions relating to the spring training incentive were transferred from s. 288.1162 to newly created s. 288.11621, F.S.)
[13] EDR, *Return on Investment for the Florida Sports Foundation Grants and Related Programs*, p. 21.
[14] S. 218.64(3), F.S.
[15] S. 288.11621(2)(a), F.S.

- The applicant has a certified copy of a signed agreement with a spring training franchise for the use of the facility for a term of at least 20 years. The agreement also must require the franchise to reimburse the state for state funds expended by an applicant under this section if the franchise relocates before the agreement expires. The agreement may be contingent on an award of funds under this section and other pre-conditions.
- The applicant has made a financial commitment to provide 50 percent or more of the funds required by an agreement for the acquisition, construction, or renovation of the facility for a spring training franchise. The commitment may be contingent upon an award of funds under this section and other pre-conditions.
- The applicant demonstrates that the facility for a spring training franchise will attract a paid attendance of at least 50,000 annually to the spring training games.
- The facility for a spring training franchise is located in a county that levies a tourist development tax under s. 125.0104, F.S.

Each applicant certified since July 1, 2010, enters into an agreement that:[16]
- Specifies the amount of the state incentive funding to be distributed.
- States the criteria that the certified applicant must meet in order to remain certified.
- States that the certified applicant is subject to decertification if the certified applicant fails to comply with this section or the agreement.
- States that DEO may recover state incentive funds if the certified applicant is decertified.
- Specifies information that the certified applicant must report to DEO.
- Includes any provision deemed prudent by DEO.

A certified applicant may use funds provided under s. 212.20(6)(d)6.b., F.S., to:[17]
- Serve the public purpose of acquiring, constructing, reconstructing, or renovating a facility for a spring training franchise.
- Pay or pledge for the payment of debt service on, or to fund debt service reserve funds, arbitrage rebate obligations, or other amounts payable with respect thereto, bonds issued for the acquisition, construction, reconstruction, or renovation of such facility, or for the reimbursement of such costs or the refinancing of bonds issued for such purposes.
- Assist in the relocation of a spring training franchise from one unit of local government to another only if the governing board of the current host local government by a majority vote agrees to relocation.

Additionally, state funds awarded to a certified applicant for a facility for a spring training franchise may not be used to subsidize facilities that are privately owned, maintained, and used only by a spring training franchise.[18] The expenditure of state funds distributed to a certified applicant, must begin within 48 months after the initial receipt of the state funds, with the additional requirement of the construction of, or capital improvements to, a spring training facility being completed within 24 months after the project's commencement.[19]

Retention of MLB Spring Training Baseball Franchises Program (s. 288.11631, F.S.)

Section 288.11631, F.S., authorizes local governments that partner with a spring training baseball franchise to apply for certification from DEO to receive state distributions for the purpose of renovating or constructing a spring training baseball facility.[20]

Certified applicants receive a distribution from state sales tax revenue of up to $83,333 per month for 20 years for a facility used by a single spring training baseball franchise or up to $166,667 per month

[16] S. 288.11621(2)(c), F.S.
[17] S. 288.11621(3)(a), F.S.
[18] S. 288.11621(3)(b), F.S.
[19] S. 288.11621(3)(d)(3), F.S.
[20] S. 288.11631(1)–(2), F.S.

for 25 years for a facility used by more than one spring baseball training franchise.[21] The amount of state incentive funding per certified applicant may not exceed $20 million if the applicant's facility is used by one franchise or $50 million if the applicant's facility is used by more than one franchise.[22]

Section 288.11631, F.S., which became law in 2013, mostly mirrors the provisions of s. 288.11621, F.S. The differences between the sections include:

- The agreement must be for a minimum of the length of the term of the bonds issued for the construction or renovation of the facility, or if no such bonds are issued, at least 20 years.
- A new agreement may not be signed unless the previous agreement, if any, is within 4 years of expiring.
- There is no limit to the number of applicants which may be certified.
- The net increase in recreational areas represented by the facility is not considered in the evaluation process.
- The amount of state funding provided in the agreement between the applicant and DEO may not exceed $20 million or, if the applicant hosts 2 or more franchises, $50 million.
- Funds provided as a result of certification under this section may not be used to acquire or reconstruct a facility, or to assist a franchise in moving from one local government to another.

Spring Training Facilities for Major League Baseball Franchises:

Team	Facility	Location, Certified Entity, Certification Date, Statute	Monthly Distribution, # Years Bonded, Total State Funds	First Payment Final Payment	Team's Lease Expires	Total Payments as of Jan. 2020
Detroit Tigers	Joker Marchant Stadium	Lakeland Lakeland January 2001 s. 288.1162, F.S.	$38,889 15 years $7 million	March 2001 February 2016	2016	$7,000,020
Houston Astros[24]	Osceola County Stadium	Kissimmee Osceola County January 2001 s. 288.1162, F.S.	$41,667 15 years $7.5 million	March 2001 February 2016	2016	$7,500,060
Los Angeles Dodgers[23]	Holman Stadium (now Dodgertown)	Vero Beach Indian River County January 2001 s. 288.1162, F.S.	$41,667 30 years $15 million	March 2001 February 2031	No lease	$9,458,409
Philadelphia Phillies	Spectrum Field (formerly Bright House Field	Clearwater Clearwater December 2006 s. 288.1162, F.S.	$41,667 30 years $15 million	March 2001 February 2031	2023	$9,458,409
Toronto Blue Jays	Florida Auto Exchange Stadium	Dunedin Dunedin January 2001 s. 288.1162, F.S.	$41,667 20 years $10 million	March 2001 February 2023	2017	$9,458,409
Baltimore Orioles	Ed Smith Stadium	Sarasota Sarasota January 2006 s. 288.1162, F.S.	$41,667 30 years $15 million	March 2007 March 2037	2039	$6,458,385

[21] S. 212.20(6)(d)(6)(e), F.S.

[22] S. 288.11631(2)(c), F.S.

[23] This facility, now known as Historic Dodgertown, was previously occupied by the Los Angeles Dodgers until the Dodgers moved their spring training facility to Arizona in 2008. The facility hosts local sports events that bring in amateur, high school, collegiate, and international sports teams. There is not currently a Major League Baseball team based at the facility, and it is privately owned.

New York Mets	Tradition Field	Port St. Lucie St. Lucie County December 2006 s. 288.1162, F.S.	$21,985 30 years $7.9 million	March 2007 March 2017	2016	$2,660,241
Pittsburgh Pirates	McKechnie Field	Bradenton Bradenton December 2006 s. 288.1162, F.S.	$41,667 30 years $15 million	March 2007 March 2037	2037	$6,458,385
Tampa Bay Rays	Charlotte Sports Park	Port Charlotte Charlotte County December 2006 s. 288.1162, F.S.	$41,667 30 years $15 million	March 2007 March 2037	2028	$6,458,385
Minnesota Twins	Hammond Stadium	Ft. Myers Lee County August 2012 s. 288.11621, F.S.	$41,667 30 years $15 million	July 2013 June 2043	2045	$3,291,693
Houston Astros[24] (Recertification)	Ballpark of the Palm Beaches	West Palm Beach Palm Beach County October 2015 s. 288.11631, F.S.	$166,667 25 years $50 million	October 2016 September 2041	2048	$6,666,680
Washington Nationals[24]	*See above*	*See above*	*See above*	*See above*	*See above*	*See above*
Detroit Tigers (Recertification)	Joker Marchant Stadium	Lakeland Lakeland December 2015 s. 288.11631, F.S.	$83,333 20 years $20 million	November 2016 October 2036	2036	$3,249,987
New York Yankees	George M. Steinbrenner Field	Tampa Tampa Sports Authority December 2016 s. 288.11631, F.S.	$83,333 20 years $20 million	January 2017 December 2036	2046	$3,083,321
New York Mets (Recertification)	First Data Field (formerly Tradition Field)	Port St. Lucie St. Lucie County March 2017 s. 288.11631, F.S.	$83,333 20 years $20 million	June 2017 May 2037	2042	$2,666,656
Atlanta Braves	CoolToday Park	City of North Port US Bank, as Trustee November 2017 s. 288.11631, F.S.	$83,333 20 years $20 million	January 2018 December 2037	*unknown*	$2,083,325
Toronto Blue Jays	Florida Auto Exchange Stadium	Dunedin US Bank Corp. Trust July 2018 s. 288.11631, F.S.	$83,333 20 years $20 million	September 2018 August 2038	*unknown*	$1,416,661
(Information from the Department of Revenue[25] and OPPAGA[26])					**TOTAL:**	**$87,369,026**

Sports Development Program (s. 288.11625, F.S.)

The Sports Development 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 DEO. In order to receive funding under the program, DEO must first recommend the

[24] The Houston Astros moved their spring training operations from Osceola County to Palm Beach County in 2015. They share the newly certified facility with the Washington Nationals.

[25] Email from Lynne Moeller, Office of Legislative & Cabinet Services, Department of Revenue, Pro Sports summary by fiscal year as of 1-31-20 (Jan. 24, 2020).

[26] OPPAGA, *Report No. 17-13, Florida Economic Development Program Evaluations-Year 5*, p. 54-55 (Dec. 28, 2017).

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.

Eligible professional sport franchises 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.[27]

Motorsports Entertainment Complex Certification (s. 288.1171, F.S.)

Section 288.1171, F.S., provides the procedure by which a local government may receive certification for a motorsport entertainment complex in order to use $2 million of Local Government Half-cent Sales Tax Program funds to pay for certain costs associated with the complex. A motorsport entertainment complex is defined as a closed-course racing facility. As of January 2020, no local government has ever been certified for the motorsport entertainment complex program.[28]

DEO is responsible for screening and certifying applicants to allow them to use program funds for these purposes. An applicant must be a unit of local government that either owns a motorsport entertainment complex or owns the land on which a complex is located.

Before certifying an applicant as a motorsport entertainment complex, the DEO must first verify that:

- The local government holds title to the land on which the complex is located or holds title to the complex; and
- The local government in which the complex is located has certified by resolution after a public hearing that the application for certification serves a public purpose.

DEO determines an applicant meets eligibility requirements, it must notify the applicant and the Department of Revenue (DOR) of the applicant's certification through an official letter. If an applicant does not meet the requirements, the DEO must notify the applicant within 10 days of such determination. An applicant may not receive more than one certification. There are no limitations on the number of applicants that may be certified.

An applicant certified as a motorsport entertainment complex may only use funds provided from the Local Government Half-cent Sales Tax Program for the public purposes of paying for the construction, reconstruction, expansion, or renovation of a motorsport entertainment complex, including related transportation and other infrastructure improvements; paying debt service reserve funds, arbitrage rebate obligations, or other amounts payable with respect to bonds issued for such activities; or refinancing the bonds. Additional eligible uses include paying for advertising and promotional activities related to the motorsport entertainment complex or the municipality or county in which the complex is located, if such activities are designed to increase tourism or promote economic development of the municipality or county.

[27] Email from Karis Lockhart, Deputy Director of Legislative Affairs, DEO, RE: Sports Development Program (Jan. 21, 2020).
[28] *Id.*

Effect of the Bill

The bill repeals s. 288.1162, F.S., relating to Professional Sports Franchises, s. 288.11621, F.S., relating to Spring Training Baseball Franchises, s. 288.11625, F.S., relating to Sports Development, s. 288.11631, F.S., relating to Retention of MLB Spring Training Baseball Franchises, and s. 288.1171, F.S., relating to Motorsports Entertainment Complexes.

Public Financing and Sports Facilities[29]

Many stadiums and sports facilities are financed with tax-exempt bonds, which are issued through state and local governments or other public entities such as regional sports authorities. Tax-exempt bonds allow issuers to take on debt at a lower interest rate relative to taxable bonds. In turn, the underwriter is able to get a better return on their investment because their earnings are exempt from federal income tax. The maturity structure for tax-exempt bonds is typically 20 to 30 years. Tax-exempt bonds are secured by pledged revenues which are usually generated from a tax or fee. The most commonly pledged revenues for sports facilities bonds are tourist development taxes, ad valorem taxes, and sales taxes, including local option sales taxes. Annual sales tax distributions for sports facilities financing are also used to secure tax-exempt bonds. In a few instances, the bonds have been issued as general obligation debt, which means that all revenues of the issuer, regardless of the source, may be used to pay debt service, if needed. Rarely, proceeds from land sales or other non-ad-valorem revenues are also used.

The issuance of bonds provides a large amount of cash up-front that can be used for capital investment. However, most of the bonds are issued with 30-year maturity structures, which mean that a large portion of the state funding is actually used to pay the interest cost of the debt. For example, a certified professional sports facility in Florida that receives $2 million a year for 30 years pledges this $60 million to pay debt service on $30 million of bonds issued. So, the state's $60 million investment results in $30 million of up-front cash that can be used to construct or renovate a facility. The state's investment for spring training facilities is significantly less. In most cases, certified spring training facilities receive $0.5 million each year for 30 years, which typically results in about $7.5 million of cash available for the state's $15 million investment. In both programs, the amount of cash available varies up or down slightly by facility, depending on what interest rates were at the time bonds were issued.

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 for the professional sports franchise facility incentive programs.

Effect of the Bill

The bill amends s. 212.20, F.S., to specify that applicants who were not certified as a sports facility under the spring training franchises or the new or retained professional sports franchise programs before July 1, 2020, may not receive monthly distributions from DOR. The bill also deletes the provision authorizing distributions under the sports development program.

Tourist Development Taxes (s. 125.0104, F.S.)

Section 125.0104, F.S., authorizes the levy of five separate local option taxes on rental charges subject to the transient rentals tax under s. 212.03, F.S., to be used in various ways to promote tourism within the county. Generally, the revenues from these levies may be used for capital construction of tourist-

[29] EDR, *Return on Investment for the Florida Sports Foundation Grants and Related Programs*, p.28 (January 1, 2018).

related facilities, tourist promotion, and beach and shoreline maintenance; however, the authorized uses vary according to the particular levy. There is a prohibition against any county levying a convention development tax from levying tourist development taxes at a rate of more than 2 percent; however, this prohibition does not apply to a county's levy of the Professional Sports Franchise Facility Tax and Duval County's levy of the Additional Professional Sports Franchise Facility Tax.

During the 2019-20 state fiscal year, 63 of the eligible 67 counties currently levying one or more of the tourist development taxes will realize an estimated $1 billion in revenue.[30]

Professional Sports Franchise Facility TDT (s. 125.0104(3)(l), F.S.)

In addition to any other tourist development tax imposed, a county may levy up to an additional 1 percent tax on the total consideration charged for transient rental transactions. The tax is levied pursuant to an ordinance adopted by a majority vote of the county's governing body. The tax proceeds are used to pay the debt service on bonds issued to finance professional sports franchise facilities, retained spring training franchise facilities, and convention centers. In addition, these proceeds can be used to promote tourism in the State of Florida, nationally and internationally.

The provisions in s. 125.0104(4)(a)–(d), F.S., regarding the preparation of the county tourist development plan, are not applicable to this tax. In addition, the provision in s. 125.0104(3)(b), F.S., that prohibits any county authorized to levy a convention development tax from levying more than the 2 percent tourist development tax is not applicable to this tax.

During the 2019-20 state fiscal year, 44 of the eligible 67 counties currently levying this tax will realize an estimated $183 million in revenue.[31]

Additional Professional Sports Franchise Facility TDT (s. 125.0104(3)(n), F.S.)

The Additional Professional Sports Franchise Facility Tax may be levied at a rate up to 1 percent by a majority plus one vote of the governing board of the county. The tax can only be levied in counties that have imposed the Professional Sports Franchise Facility Tourist Development Tax. Generally, the proceeds can be used to pay debt service on bonds for the construction or renovation of professional sports franchise facilities, spring training facilities of professional sports franchises, and to promote and advertise tourism.

During the 2019-20 state fiscal year, 30 of the eligible 65 counties currently levying this tax will realize an estimated $147 million in revenue.[32]

Effect of the Bill

The bill amends paragraphs 125.0104(3)(l) & (n), F.S., to disallow a county from using the additional 1-percent taxes on certain costs related to the planning, design, or financing of a professional sports franchise facility or a retained spring training franchise facility.

The bill creates paragraph 125.0104(5)(f), F.S., to provide that Tourist Development Tax revenues may not be used to finance or construct any aspect of a facility that is or will be used by a sports franchise after July 1, 2020. The bill clarifies that lawful contracts entered into before this date are not affected.

[30] EDR, *2019 Local Government Financial Information Handbook*, p. 256.
[31] *Id. at* 267.
[32] *Id. at* 273.

Convention Development Taxes (s. 212.0305, F.S.)[33]

Certain counties or sub-parts of counties are authorized to levy convention development taxes on transient rental transactions. Duval County (as a county consolidated with a municipality), Miami-Dade County (as a charter county), and parts of Volusia County currently levy a convention development tax. Three of the five available levies are applicable to separate taxing districts in Volusia County. The levies may be authorized pursuant to an ordinance enacted by the county's governing body, and the tax rates are either two or three percent depending on the particular levy. Generally, the revenues may be used for construction of convention centers and other tourist-related facilities as well as tourist promotion; however, the authorized uses vary by levy.

In fiscal year 2019-2020, the three counties levying a convention development tax will realize an estimated $68.5 million in revenue.[34]

Effect of the Bill

The bill creates s. 212.0305(6), F.S., to provide that Convention Development Tax revenues may not be used to finance or construct any aspect of a facility that is or will be used by a sports franchise after July 1, 2020. The bill clarifies that lawful contracts entered into before this date are not affected.

Local Government Half-cent Sales Tax (s. 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.[35] 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.[36]

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.

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.

Effect of the Bill

The bill amends subsections 218.64(2) & (3), F.S., removing the authority for local governments to spend the half-cent sales tax on a motorsport entertainment complex or for reimbursements under the

[33] *Id. at* 119-120.
[34] *Id. at 121.*
[35] Ch. 82-154, Laws of Fla.
[36] EDR, *2019 Local Government Financial Information Handbook*, p. 57.

sports development program. The bill also specifies that a county can only use the half-cent sales tax on a new or retained professional sports franchise or spring training franchise facility that is certified prior to July 1, 2020.

Use of Government Land

Tax-exempt Status for Certain Infrastructure

Section 196.199, F.S., generally exempts all property of the state that is used for governmental purposes from ad valorem taxation. Additionally, property that is owned by the government but leased to a nongovernmental lessee is exempt from ad valorem taxation and the intangible tax when the lessee serves or performs a governmental, municipal, or public purpose or function, including:

> . . . The use by a lessee, licensee, or management company of real property or a portion thereof as a convention center, visitor center, sports facility with permanent seating, concert hall, arena, stadium, park, or beach is deemed a use that serves a governmental, municipal, or public purpose or function when access to the property is open to the general public with or without a charge for admission . . .[37]

Local Government Authority to Sell and Lease Land

Florida law provides broad authority to cities and counties to conduct governmental functions and render governmental services, except when expressly prohibited by law.[38] Such authority includes, but is not limited to, certain statutorily enumerated powers and all implied authority necessary to effectively exercise those express powers, including the authority to contract and to purchase, lease, sell, and exchange real or personal property.[39]

Counties and municipalities may also offer private entities below-market rate leases or deeds for real property for economic development purposes.

County Authority to Lease a Professional Sports Franchise

Section 125.35, F.S., authorizes the board of county commissioners to sell or lease real property belonging to the county under certain circumstances. Furthermore, counties are expressly authorized to:

> Lease a professional sports franchise facility financed by revenues received pursuant to s. 125.0104 or s. 212.20 which may include commercial development that is ancillary to the sports facility if the ancillary development property is part of or contiguous to the professional sports franchise facility. The board's authority to lease the above described ancillary commercial development in conjunction with a professional sports franchise facility lease applies only if at the time the board leases the ancillary commercial development, the professional sports franchise facility lease has been in effect for at least 10 years and such lease has at least an additional 10 years remaining in the lease term.

Alternatively, counties are authorized to adopt an ordinance prescribing the disposition standards and procedures for the county to use when selling or leasing property owned by the county.[40] At a minimum, such standards and procedures must provide for:

- Establishment of competition and qualification standards upon which disposition will be determined.

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[37] S. 196.012(6), F.S.
[38] *See* ss. 125.01 and 166.021, F.S.
[39] Ss. 125.01(3)(a) and 166.021(1), F.S. *See also* Art. VIII, s. 2, FLA. CONST.
[40] S. 125.35(3), F.S.

- Reasonable public notice of the intent to consider disposition of county property and the availability of copies of the standards. Reasonableness of the notice is to be determined by the efficacy and efficiency of the means of communication used.
- Identification of the form and manner by which an interested person may acquire county property.
- Types of negotiation procedures applicable to the selection of a person to whom county properties may be disposed.
- The manner in which interested persons will be notified of the board's intent to consider final action at a regular meeting of the board on the disposition of a property and the time and manner for making objections.
- Adherence in the disposition of real property to the governing comprehensive plan and zoning ordinances.

Effect of the Bill

The bill defines the following terms:

"Facility" means a stadium, arena, or other structure used by a sports franchise to host games or events, or any directly related property or structure, including practice facilities, offices, restaurants, concessions, retail or lodging facilities, onsite and offsite parking lots, garages, and other properties.

"Fair market value" means a negotiated price of at least the average of the values contained in two independent appraisals, performed by appraisers that meet certain minimum qualifications.

"Sports franchise" means a person or persons, sole proprietorship, corporation, limited liability company, partnership, or association that has been granted the contractual right to own or operate a professional sports team, or host a professional sporting event, in a specified location.

The bill creates s. 288.1163, F.S., providing for certain conditions relating to sports franchise facilities and public land. Specifically, the bill:

- Prohibits a sports franchise from constructing or improving a facility on land that is leased from the state or local government.
- Requires that the lease or sale of public land to a sports franchise for a sports facility must be at fair market value.
- Specifies that a facility that is owned, operated or leased by a sports franchise is not tax exempt.
- Provides that any new or amended contract include a provision requiring the sports franchise to pay off any outstanding governmental debt in the event that the sports franchise stops using the facility.
- Specifies that these provisions will not apply retroactively to existing contracts.

The bill deletes subparagraph 125.35(1)(b)3., F.S., authorizing counties to lease professional sports franchise facilities that are financed by revenues pursuant to ss. 125.0104 or s. 212.20, F.S.

The bill provides that any applications for certification under ss. 288.1162, 288.11621, 288.11625, 288.11631, or 288.1171, F.S., will be rescinded when the bill takes effect on July 1, 2020. Applicants that were certified before this date are not affected by the bill, and their contracts remain in full force and effect.

B. SECTION DIRECTORY:

Section 1 Amends s. 125.0104, F.S.; deleting provisions authorizing a county to impose a specified tax for debt service on bonds relating to sports franchise facilities and

professional sports franchises; prohibiting revenues generated by specified county taxes to be used for sports franchises after a certain date.

Section 2 Amends s. 125.35, F.S.; prohibiting a county from leasing specified professional sports franchise facilities; prohibiting revenues generated by convention development taxes to be used for sports franchises after a certain date.

Section 3 Amends s. 212.0305, F.S.; prohibiting revenues collected after a specified date to be used for sports franchise activities.

Section 4 Amends s. 212.205, F.S.; conforming a cross-reference.

Section 5 Amends s. 212.20, F.S.; conforming provisions to changes made by the act; removing a provision that distributes specified sales tax revenues to certain applicants.

Section 6 Amends s. 218.64, F.S.; conforming provisions to changes made by the act.

Section 7 Amends s. 288.0001, F.S.; deleting a provision requiring the Office of Economic and Demographic Research and the Office of Program Policy Analysis and Government Accountability to provide an analysis regarding a sports development program.

Section 8 Repeals ss. 288.1162, 288.11621, 288.11625, 288.11631, and 288.1171, F.S., relating to professional sports franchises and their duties, spring training baseball franchises, sports development, and the retention of Major League Baseball spring training baseball franchises, respectively.

Section 9 Creates s. 288.11633, F.S.; prohibiting the lease of public lands for certain purposes related to sports franchises and their facilities; requiring the lease of a facility on public lands for certain purposes to be at fair market value; requiring a sports franchise to repay specified debt incurred by a local government related to construction of facilities; defining the terms "facility," "fair market value," and "sports franchise".

Section 10 Provides applicability.

Section 11 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:

   See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   See Fiscal Comments.

2. Expenditures:

See Fiscal Comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill constrains state and local government funding mechanisms for certain private sector sports franchises and facilities.

D. FISCAL COMMENTS:

There is an indeterminate impact to state and local government expenditures because the bill constrains state and local government funding mechanisms for certain private sector sports franchises and facilities which reduce such expenditures in the future. Additionally, restriction of uses of certain local option taxes may result in fewer future levies of those taxes.

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 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 state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to sports franchises and facilities; amending s. 125.0104, F.S.; deleting provisions authorizing a county to impose a specified tax for debt service on bonds relating to sports franchise facilities and professional sports franchises; prohibiting revenues generated by specified county taxes to be used for sports franchises after a certain date; amending s. 125.35, F.S.; prohibiting a county from leasing specified professional sports franchise facilities; prohibiting revenues generated by convention development taxes to be used for sports franchises after a certain date; s. 212.0305, F.S.; prohibiting revenues collected after a specified date to be used for sports franchise activities; amending s. 212.205, F.S.; conforming a cross-reference; amending s. 212.20, F.S.; conforming provisions to changes made by the act; removing a provision that distributes specified sales tax revenues to certain applicants; amending s. 218.64, F.S.; conforming provisions to changes made by the act; amending s. 288.0001, F.S.; deleting a provision requiring the Office of Economic and Demographic Research and the Office of Program Policy Analysis and Government Accountability to provide an analysis regarding a

sports development program; repealing ss. 288.1162, 288.11621, 288.11625, 288.11631, and 288.1171, F.S., relating to professional sports franchises and their duties, spring training baseball franchises, sports development, and the retention of Major League Baseball spring training baseball franchises, respectively; creating s. 288.11633, F.S.; prohibiting the lease of public lands for certain purposes related to sports franchises and their facilities; requiring the lease of a facility on public lands for certain purposes to be at fair market value; requiring a sports franchise to repay specified debt incurred by a local government related to construction of facilities; defining the terms "facility," "fair market value," and "sports franchise"; providing applicability; providing an effective date.

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

Section 1. Paragraphs (l) and (n) of subsection (3) of section 125.0104, Florida Statutes, are amended, and a new paragraph (f) is added to subsection (5) of that section, to read:

125.0104 Tourist development tax; procedure for levying; authorized uses; referendum; enforcement.—

(3) TAXABLE PRIVILEGES; EXEMPTIONS; LEVY; RATE.—

(1) In addition to any other tax which is imposed pursuant to this section, a county may impose up to an additional 1-percent tax on the exercise of the privilege described in paragraph (a) by majority vote of the governing board of the county in order to:

~~1. Pay the debt service on bonds issued to finance the construction, reconstruction, or renovation of a professional sports franchise facility, or the acquisition, construction, reconstruction, or renovation of a retained spring training franchise facility, either publicly owned and operated, or publicly owned and operated by the owner of a professional sports franchise or other lessee with sufficient expertise or financial capability to operate such facility, and to pay the planning and design costs incurred prior to the issuance of such bonds.~~

1.~~2.~~ Pay the debt service on bonds issued to finance the construction, reconstruction, or renovation of a convention center, and to pay the planning and design costs incurred prior to the issuance of such bonds.

2.~~3.~~ Pay the operation and maintenance costs of a convention center for a period of up to 10 years. Only counties that have elected to levy the tax for the purposes authorized in subparagraph 1. ~~subparagraph 2.~~ may use the tax for the purposes enumerated in this subparagraph. Any county that elects to levy

the tax for the purposes authorized in subparagraph 1. ~~subparagraph 2.~~ after July 1, 2000, may use the proceeds of the tax to pay the operation and maintenance costs of a convention center for the life of the bonds.

3.~~4.~~ Promote and advertise tourism in the State of Florida and nationally and internationally; however, if tax revenues are expended for an activity, service, venue, or event, the activity, service, venue, or event shall have as one of its main purposes the attraction of tourists as evidenced by the promotion of the activity, service, venue, or event to tourists.

The provision of paragraph (b) which prohibits any county authorized to levy a convention development tax pursuant to s. 212.0305 from levying more than the 2-percent tax authorized by this section, and the provisions of paragraphs (4)(a)-(d), shall not apply to the additional tax authorized in this paragraph. The effective date of the levy and imposition of the tax authorized under this paragraph shall be the first day of the second month following approval of the ordinance by the governing board or the first day of any subsequent month as may be specified in the ordinance. A certified copy of such ordinance shall be furnished by the county to the Department of Revenue within 10 days after approval of such ordinance.

(n) In addition to any other tax that is imposed under this section, a county that has imposed the tax under paragraph

(l) may impose an additional tax that is no greater than 1 percent on the exercise of the privilege described in paragraph (a) by a majority plus one vote of the membership of the board of county commissioners in order to~~:~~

~~1. Pay the debt service on bonds issued to finance:~~

~~a. The construction, reconstruction, or renovation of a facility either publicly owned and operated, or publicly owned and operated by the owner of a professional sports franchise or other lessee with sufficient expertise or financial capability to operate such facility, and to pay the planning and design costs incurred prior to the issuance of such bonds for a new professional sports franchise as defined in s. 288.1162.~~

~~b. The acquisition, construction, reconstruction, or renovation of a facility either publicly owned and operated, or publicly owned and operated by the owner of a professional sports franchise or other lessee with sufficient expertise or financial capability to operate such facility, and to pay the planning and design costs incurred prior to the issuance of such bonds for a retained spring training franchise.~~

~~2.~~ promote and advertise tourism in the State of Florida and nationally and internationally; however, if tax revenues are expended for an activity, service, venue, or event, the activity, service, venue, or event shall have as one of its main purposes the attraction of tourists as evidenced by the promotion of the activity, service, venue, or event to tourists.

~~A county that imposes the tax authorized in this paragraph may not expend any ad valorem tax revenues for the acquisition, construction, reconstruction, or renovation of a facility for which tax revenues are used pursuant to subparagraph 1.~~ The provision of paragraph (b) which prohibits any county authorized to levy a convention development tax pursuant to s. 212.0305 from levying more than the 2-percent tax authorized by this section shall not apply to the additional tax authorized by this paragraph in counties which levy convention development taxes pursuant to s. 212.0305(4)(a). Subsection (4) does not apply to the adoption of the additional tax authorized in this paragraph. The effective date of the levy and imposition of the tax authorized under this paragraph is the first day of the second month following approval of the ordinance by the board of county commissioners or the first day of any subsequent month specified in the ordinance. A certified copy of such ordinance shall be furnished by the county to the Department of Revenue within 10 days after approval of the ordinance.

(5) AUTHORIZED USES OF REVENUE.—

(f) Beginning July 1, 2020, revenues collected pursuant to this section may not be used to acquire, construct, extend, enlarge, remodel, repair, improve, maintain, operate, finance, refinance, make debt service payments for, or be used as collateral, pledge, or capital contribution for any project or

business arrangement involving a facility that is or will be used by a sports franchise as defined in s. 288.11633. Nothing in this paragraph impairs or affects the obligations or terms of any lawful contract entered into before July 1, 2020.

Section 2. Paragraph (b) of subsection (1) of section 125.35, Florida Statutes, is amended to read:

125.35 County authorized to sell real and personal property and to lease real property.—

(1)

(b) Notwithstanding paragraph (a), under terms and conditions negotiated by the board, the board of county commissioners may:

1. Negotiate the lease of an airport or seaport facility; or

2. Modify or extend an existing lease of real property for an additional term not to exceed 25 years, where the improved value of the lease has an appraised value in excess of $20 million.~~; or~~

~~3. Lease a professional sports franchise facility financed by revenues received pursuant to s. 125.0104 or s. 212.20 which may include commercial development that is ancillary to the sports facility if the ancillary development property is part of or contiguous to the professional sports franchise facility. The board's authority to lease the above described ancillary commercial development in conjunction with a professional sports~~

~~franchise facility lease applies only if at the time the board leases the ancillary commercial development, the professional sports franchise facility lease has been in effect for at least 10 years and such lease has at least an additional 10 years remaining in the lease term.~~

Section 3. Subsection (6) is added to section 212.0305, Florida Statutes, to read:

212.0305 Convention development taxes; intent; administration; authorization; use of proceeds.—

(6) Beginning July 1, 2020, revenues collected pursuant to this section may not be used to acquire, construct, extend, enlarge, remodel, repair, improve, maintain, operate, finance, refinance, make debt service payments for, or be used as collateral, pledge, or capital contribution for any project or business arrangement involving a facility that is or will be used by a sports franchise as defined in s. 288.11633. Nothing in this subsection impairs or affects the obligations or terms of any lawful contract entered into before July 1, 2020.

Section 4. Section 212.205, Florida Statutes, is amended to read:

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 5. 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 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 before July 1, 2020, as a facility for a new or retained professional sports franchise pursuant to s. 288.1162, Florida Statutes 2019. Up to $41,667 shall be distributed monthly by the department to each applicant that was certified before July 1, 2020, as a certified applicant as defined in s. 288.11621, Florida Statutes 2019 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, Florida Statutes 2019. 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), Florida Statutes 2019.

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 applicant that was certified before July 1, 2020, as a certified applicant as defined in s. 288.11631, Florida Statutes 2019 for a facility used by a single spring training franchise, or up to $166,667 monthly to each applicant that was certified before July 1, 2020, as a certified applicant as defined in s. 288.11631, Florida Statutes 2019 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 applicant that was certified before July 1, 2020, as a certified applicant

as defined in s. 288.11631, Florida Statutes 2019 for a facility used by a single spring training franchise or not more than 25 years to each applicant that was certified before July 1, 2020, as a certified applicant as defined in s. 288.11631, Florida Statutes 2019 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), Florida Statutes 2019.

~~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 6. Subsections (2) and (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 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 if the money provides funds for ~~any of the following purposes:~~

~~(a) Funding~~ an ~~a certified~~ applicant that was certified before July 1, 2020, as a facility for a new or retained professional sports franchise under s. 288.1162, Florida Statutes 2019 or an applicant that was certified before July 1,

2020, as a certified applicant as defined in s. 288.11621, Florida Statutes 2019 for a facility for a spring training franchise. It is the Legislature's intent that the provisions of s. 288.1162, Florida Statutes 2019, including, but not limited to, the evaluation process by the Department of Economic Opportunity except for the limitation on the number of certified applicants or facilities as provided in that section and the restrictions set forth in s. 288.1162(8), Florida Statutes 2019, shall apply to an application that was submitted for a facility before July 1, 2020, ~~applicant's facility~~ to be funded by local government as provided in this subsection.

~~(b) Funding a certified applicant as a "motorsport entertainment complex," as provided for in s. 288.1171. Funding for each franchise or motorsport complex shall begin 60 days after certification and shall continue for not more than 30 years.~~

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

Section 7. Paragraphs (b) and (e) of subsection (2) of section 288.0001, Florida Statutes, are 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:

(b) By January 1, 2015, and every 3 years thereafter, an analysis of the following:

1. The entertainment industry financial incentive program established under s. 288.1254.

2. The entertainment industry sales tax exemption program established under s. 288.1258.

3. VISIT Florida and its programs established or funded under ss. 288.122, 288.1226, 288.12265, and 288.124.

4. The Florida Sports Foundation and related programs established under ss. ~~288.1162, 288.11621,~~ 288.1166, 288.1167, 288.1168, 288.1169, and under former ss. 288.1162 and 288.11621 ~~and 288.1171~~.

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

Section 8. Sections 288.1162, 288.11621, 288.11625, 288.11631, and 288.1171, Florida Statutes, are repealed.

Section 9. Section 288.11633, Florida Statutes, is created to read:

288.11633 Sports franchise facilities; lease or sale of public land.—

(1) Notwithstanding any other provision of law:

(a) A sports franchise may not construct, reconstruct, renovate, or improve a facility on land leased from the state or a political subdivision thereof.

(b) A lease of a facility on public land owned by the state or a political subdivision to a sports franchise must be at fair market value.

(c) A sale of public land owned by the state or a political subdivision for a sports franchise to construct, reconstruct, renovate, or improve a facility on such land must be at fair market value.

(d) A facility that is owned, operated, or leased by a sports franchise does not serve a tax-exempt purpose and is not exempt from taxation.

(2) On or after July 1, 2020, a contract or agreement, or a renewal of or an amendment to an existing contract or agreement, entered into between the state or a political subdivision and a sports franchise to fund the construction, reconstruction, renovation, or improvement of a facility must include a provision that requires the sports franchise to pay any outstanding debt incurred by the state or political subdivision to fund such construction, reconstruction, renovation, or improvement if the sports franchise permanently discontinues use of the facility.

(3) For purposes of this section, the term:

(a) "Facility" means a stadium, arena, or other structure used by a sports franchise to host games or events, or any directly related property or structure, including practice facilities, offices, restaurants, concessions, retail or lodging facilities, onsite and offsite parking lots, garages, and other properties.

(b) "Fair market value" means a negotiated price of at least the average of the values contained in two independent appraisals, performed by appraisers approved pursuant to s. 253.025(8).

(c) "Sports franchise" means a person or persons, sole proprietorship, corporation, limited liability company, partnership, or association that has been granted the contractual right to own or operate a professional sports team, or host a professional sporting event, in a specified location.

(4) Nothing in this section impairs any lawful contract entered into before July 1, 2020, without the consent of the parties.

Section 10. All applications for certification pending pursuant to s. 288.1162, s. 288.11621, s. 288.11625, s. 288.11631, or 288.1171, Florida Statutes, on July 1, 2020, are rescinded. Applicants or projects that were certified before July 1, 2020, and that continue to meet the criteria in effect before July 1, 2020, remain in full force and effect. In addition, any existing contracts or agreements authorized under

any of these programs continue in full force and effect in accordance with the statutory requirements in effect when the contract or agreement was executed or last modified. However, no further modifications, extensions, or waivers may be made or granted relating to such contracts or agreements except computations by the Department of Revenue of the income generated by or arising out of any qualifying project.

Section 11. This act shall take effect July 1, 2020.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1409 Pub. Rec./Records of Insurers/Department of Financial Services
SPONSOR(S): Oversight, Transparency & Public Management Subcommittee, Grant, M.
TIED BILLS: **IDEN./SIM. BILLS:** SB 1188

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee	13 Y, 0 N	Salter	Cooper
2) Oversight, Transparency & Public Management Subcommittee	14 Y, 0 N, As CS	Toliver	Smith
3) Commerce Committee		Salter AS	Hamon K.W.H.

SUMMARY ANALYSIS

The Florida Constitution provides every person the right to inspect or copy any public record made or received in connection with the official business of the legislative, executive, or judicial branches of government. However, the Legislature may provide by general law for the exemption of records from the constitutional requirements.

Florida law provides for guaranty associations to ensure that policyholders of insolvent insurers are protected with respect to insurance premiums paid and settlements of outstanding claims. Insurers are required to participate in the guaranty associations as a condition to transacting insurance business in Florida. Currently, personal financial and health information of a consumer, all underwriting files of a type customarily maintained by an insurer transacting lines of insurance similar to lines transacted by the insurer, all personnel and payroll records of the insurer, and consumer claim files are protected from disclosure when held by insurers or insurance company. However, when insurance companies become insolvent, this information is no longer protected and can be disclosed.

The bill provides that the following records held by the Department of Financial Services (DFS) are confidential and exempt from public records requirements:

- All personal financial and health information of a consumer, including a family member or dependent;
- Underwriting files of a type customarily maintained by an insurer transacting lines of insurance similar to lines transacted by the insurer;
- Personnel and payroll records of the insurer;
- Consumer claim files;
- A U.S. Own Risk and Solvency Assessment (ORSA) summary report, a substantially similar ORSA summary report, and any supporting documents submitted to the Office of Insurance Regulation (OIR);
- A corporate governance annual disclosure and any supporting documents submitted to (OIR); and
- Information received from the National Association of Insurance Commissioners, a governmental entity of any state, the Federal Government, or a government of another nation which is confidential and is held by Department of Financial Services for use relating to insurer solvency.

The bill provides specified circumstances under which the confidential and exempt information may be released.

The exemptions in the bill are subject to the Open Government Sunset Review Act and will be repealed on October 2, 2025 unless reviewed and reenacted by the Legislature.

The bill has no fiscal impact on state or local government revenue or expenditures.

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

Article I, s. 24(c) of the Florida Constitution, requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public record or public meeting exemption. The bill creates a public record exemption for certain information related to insurer solvency; thus, it requires a two-thirds vote for final passage.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Public Records

The Florida Constitution provides every person the right to inspect or copy any public record made or received in connection with the official business of the legislative, executive, or judicial branches of government.[1] The Legislature, however, may provide by general law for the exemption of records from the constitutional requirements.[2] An exemption must state with specificity the public necessity justifying the exemption and may be no broader than necessary to accomplish the stated purpose of the law.[3] A bill enacting an exemption must pass by a two-thirds vote of the members present and voting.[4]

The Open Government Sunset Review Act (the Act) prescribes a legislative review process for newly-created or substantially-amended public records or open meetings exemptions.[5] A public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose. An identifiable public purpose is served, if the exemption:

- Allows the state or its political subdivisions to effectively and efficiently administer a government program, which administration would be significantly impaired without the exemption;
- Protects personal identifying information that, if released, would be defamatory or would jeopardize an individual's safety; or
- Protects trade or business secrets.[6]

The Act requires the automatic repeal of an exemption on October 2 of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.

Guaranty Associations

Under federal law, insurance companies cannot file for bankruptcy.[7] Instead, they are either rehabilitated or liquidated by their state of domicile. Florida law establishes the system for the treatment of impaired or insolvent insurers[8] and sets up guaranty payments where necessary.[9] Florida law provides for guaranty associations to ensure that policyholders of insolvent insurers are protected with respect to insurance premiums paid and settlement of outstanding claims, up to limits provided by law.[10] A guaranty association is a not-for-profit corporation created by law and directed to protect policyholders from financial losses and delays in claim payments and settlements due to the insolvency of an insurer.[11] Insurers are required to participate in the guaranty associations as a condition of transacting insurance business in Florida. Florida operates four guaranty associations, including Florida

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[1] FLA. CONST., art. I, s. 24(a).
[2] FLA. CONST., art. I, s. 24(c).
[3] *Id.*
[4] *Id.*
[5] S. 119.15, F.S.
[6] S. 119.15(6)(b), F.S.
[7] 11 U.S.C. § 109(b)(2).
[8] An "insolvent insurer" means an insurer that was authorized to transact insurance in this state, either at the time the policy was issued or when the insured event occurred, and against which an order of liquidation with a finding of insolvency has been entered by a court of competent jurisdiction if such order has become final by the exhaustion of appellate review. S. 631.904 (4), F.S.
[9] Ch. 631, F.S.
[10] *Id.*
[11] *See e.g.*, ss. 631.51 and 631.902, F.S.

Insurance Guaranty Association,[12] Florida Life and Health Insurance Guaranty Association,[13] Florida Health Maintenance Organization Consumer Assistance Plan,[14] and Florida Workers' Compensation Insurance Guaranty Association.[15]

Insurer Solvency Records

Insurance companies must keep records of policyholders and claimants during the normal course of business. As long as an insurer remains solvent, these records are not freely available to any person who requests such information, unless there is a valid reason for the request. DFS's current ability to withhold information regarding a consumer who is covered by an insolvent insurer is limited to the exemptions outlined in s. 119.071, F.S. Such information includes social security numbers of agency personnel,[16] as well as home addresses, telephone numbers, dates of birth, and photographs of various personnel.[17] When an insurer becomes insolvent, current law does not provide a public record exemption for a consumer or family member's medical and health history, private financial information, or insurance coverage. In such cases, policyholders and claimants no longer receive the same protections and anyone can request access to their information.

Regulation by OIR: Solvency Regulation and NAIC Accreditation

The regulatory oversight of insurance companies is generally reserved to the states. In Florida, the Office of Insurance Regulation (OIR) is responsible for all activities concerning insurers and other risk bearing entities, including licensing, rates, policy forms, market conduct, claims, issuance of certificates of authority, solvency, viatical settlements, and premium financing. Solvency regulation is designed to protect policyholders against the risk that insurers will not be able to meet their financial responsibilities, namely, the payment of claims. Solvency regulations include the initial and maintenance requirements for an insurer's authority to transact insurance in this state, monitoring the financial condition of insurers through examinations, audits, and procedures for the rehabilitation, or liquidation of an insurance company if found to be in an unsound financial condition or insolvent.[18]

The National Association of Insurance Commissioners (NAIC) is the U.S. standard-setting and regulatory support organization created and governed by the chief insurance departments that regulate the conduct and solvency of insurers in their respective states or territories. Through the NAIC, state insurance regulators establish standards and best practices, conduct peer reviews, and coordinate their regulatory oversight.[19] As a member of the NAIC, the OIR is required to participate in the organization's Financial Regulation Standards and Accreditation Program.[20] NAIC accreditation is a certification that legal, regulatory, and organizational oversight standards and practices are being fulfilled by a state insurance department to promote sound insurer financial solvency regulation.

Insurer Regulatory Reporting

The NAIC has adopted two insurance model acts that give state insurance regulators like the OIR new solvency regulatory tools – the Own Risk and Solvency Assessment (ORSA) and the Corporate Governance Annual Disclosure (CGAD).[21]

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[12] Ch. 631, part II, F.S.
[13] Ch. 631, part III, F.S.
[14] Ch. 631, part IV, F.S.
[15] Ch. 631, part V, F.S.
[16] S. 119.071(4)(a)1., F.S.
[17] These exemptions include, but are not limited to, the records of current or past law enforcement personnel, firefighters, court justices, state attorneys, probation officers, investigators, and child advocacy employees. ss. 119.071(4)(d)2.a.–119.071(4)(d)2.t., F.S.
[18] *See* ch. 631, F.S.
[19] NAIC, *About the NAIC*, http://www.naic.org/index_about.htm (last visited Jan. 31, 2020).
[20] NAIC, *Financial Regulation Standards and Accreditation Program,* https://www.naic.org/documents/cmte_f_frsa_pamphlet.pdf (last visited Jan. 30, 2020).
[21] S. 628.8015, F.S.

ORSA

In 2011, as part of the NAIC's Solvency Modernization Initiative, the NAIC adopted the ORSA as a new insurance regulatory tool. The ORSA[22] requires insurance companies to issue their own assessment of their current and future risk through an internal risk self-assessment process, allowing regulators to form an enhanced view of an insurer's ability to withstand financial stress.[23] In conducting an ORSA, an insurer or insurance group references highly sensitive and strategic financial information. Each insurer must submit an ORSA summary report[24] to OIR every year.[25]

CGAD

Insurers must submit a CGAD[26] to OIR each year.[27] In the CGAD, insurers must document highly confidential information about their corporate governance framework, including the structure and policies of their boards of directors and key committees, the frequency of their meetings, and procedure for the oversight of critical risk areas and appointment practices, among other things. Insurers must also disclose the policies and practices used by their board of directors for directing senior management on critical areas, including a description of codes of business conduct and ethics, and processes for performance evaluation, compensation practices, corrective action, succession planning and suitability standards. The disclosure must be as descriptive as possible,[28] and include material and relevant information sufficient to enable OIR to understand the corporate governance structure, policies, and practices used by the insurer or insurance group.[29]

Effect of the Bill

The bill provides that the following records held by DFS before, on, or after July 1, 2020, are confidential and exempt[30] from public records requirements:

- All personal financial and health information of a consumer, including a family member or dependent;
- Underwriting files of a type customarily maintained by an insurer transacting lines of insurance similar to lines transacted by the insurer;
- Personnel and payroll records of the insurer; and
- Consumer claim files.

The bill defines personal financial and health information as:

- A consumer's personal health condition, disease or injury;
- A history of a consumer's personal medical diagnosis or treatment;

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[22] The term "own-risk and solvency assessment" means an internal assessment, appropriate to the nature, scale, and complexity of an insurer or insurance group, conducted by that insurer or insurance group, of the material and relevant risks associated with the business plan of an insurer or insurance group and the sufficiency of capital resources to support those risks. S. 628.8015, F.S.

[23] NAIC, *Own Risk and Solvency Assessment*, http://www.naic.org/cipr_topics/topic_own_risk_solvency_assessment.htm (last visited Jan. 31, 2020).

[24] The term "ORSA summary report" means a high-level ORSA summary of an insurer or insurance group, consisting of a single report or combination of reports. S. 628.8015(1)(f), F.S.

[25] S. 628.8015(2)(c)1.a.(I), F.S.

[26] *See* s. 628.8015(1)(a), F.S.

[27] S. 628.8015(3)(b)1.a., F.S.

[28] S. 628.8015 (3)(c)2., F.S.

[29] S. 628.8015 (3)(c)3., F.S.

[30] There is a difference between records the Legislature designates exempt from public record requirements and those the Legislature deems confidential and exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances. *See WFTV, Inc. v. Sch. Bd. of Seminole*, 874 So. 2d 48, 53 (Fla. 5th DCA 2004), *review denied* 892 So.2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 1994); *Williams v. City of Minneola*, 575 So.2d 683, 687 (Fla. 5th DCA 1991). If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released, by the custodian of public records, to anyone other than the persons or entities specifically designated in statute. *See* Op. Att'y Gen. Fla. 85-62 (1985).

- The existence, nature, source, or amount of a consumer's personal income or expenses;
- Records of, or relating to, a consumer's personal financial transactions of any kind;
- The existence, identification, nature, or value of a consumer's assets, liabilities, or net worth;
- The existence or content of, or any individual coverage or status under a consumer's beneficial interest in, any insurance policy or annuity contract; or
- The existence, identification, nature, or value of a consumer's interest in any insurance policy, annuity contract, or trust.

The bill provides public records exemptions for several internal documents required by OIR and held by DFS before, on, or after July 1, 2020. The following records are confidential and exempt from public records requirements:

- An ORSA summary report, a substantially similar ORSA summary report, and any supporting documents submitted to OIR;[31]
- A CGAD and any supporting documents submitted to OIR;[32] and
- Information received from the NAIC, a governmental entity of any state, the Federal Government, or a government of another nation which is confidential and is held by DFS for use relating to insurer solvency.

Records or portions of records made confidential and exempt by this bill may be released under the following circumstances:

- To any state or federal agency, upon written request, if disclosure is necessary for the agency's performance of its duties and responsibilities. The receiving agency must maintain the confidential and exempt status of the records.
- To comply with a properly authorized civil, criminal, or regulatory investigation or a subpoena or summons by a federal, state, or local authority.
- To the NAIC, or its affiliates and subsidiaries, if the recipient agrees in writing to maintain the confidential and exempt status of the records.
- To the guaranty associations and funds of the various states which are receiving, adjudicating, and paying claims of an insolvent insurer subject to delinquency proceedings. The receiving association must maintain the confidential and exempt status of the records.
- To persons identified as employees whose responsibilities include the investigation and disposition of claims relating to suspected fraudulent insurance acts[33] upon written request.
- Records containing personal financial and health information of a consumer may be released upon written request of the consumer or the consumer's legally authorized representative.

The listed exemptions are applicable even when an insurer or insurance company becomes insolvent.

The public records exemptions are subject to the Open Government Sunset Review Act and will be repealed on October 2, 2025, unless reviewed and saved through reenactment by the Legislature.

B. SECTION DIRECTORY:

Section 1: Creates s. 631.195, F.S., related to records of insurers; public records exemptions.

Section 2: Provides a public necessity statement as required by the Florida Constitution.

Sections 3: Provides an effective date.

[31] *See* s. 628.8015, F.S.
[32] *Id.*
[33] *See* s. 626.989(4)(d), F.S.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   Not applicable. This bill does not appear to require counties or municipalities to spend or take 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 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

On February 4, 2020, the Oversight, Transparency & Public Management Subcommittee adopted an amendment and reported the bill favorably as a committee substitute. The amendment combined subsections (2) and (3) of the bill, placing all information exempted in the bill under the confidential and exempt standard.

The analysis is drafted to the committee substitute as approved by the Oversight, Transparency & Public Management Subcommittee.

A bill to be entitled

An act relating to public records; creating s. 631.195, F.S.; defining the terms "consumer" and "personal financial and health information"; exempting from public records requirements certain records made or received by the Department of Financial Services acting as receiver pursuant to specified provisions; providing that such records comprise consumer personal financial and health information, certain underwriting files, insurer personnel and payroll records, consumer claim files, certain reports and documents held by the department relating to insurer own-risk, solvency assessments, corporate governance annual disclosures, and certain information received from the National Association of Insurance Commissioners or governments; providing retroactive applicability; providing that exempted records may be released under specified circumstances; providing for future legislative review and repeal of the exemptions; providing statements of public necessity; providing an effective date.

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

Section 1. Section 631.195, Florida Statutes, is created to read:

631.195 Records of insurers; public records exemptions.—

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

(a) "Consumer" means a prospective purchaser of, a purchaser of, a beneficiary of, or an applicant for any insurance product or service. The term also includes a family member or dependent of such person.

(b) "Personal financial and health information" means:

1. A consumer's personal health condition, disease, or injury;

2. A history of a consumer's personal medical diagnosis or treatment;

3. The existence, nature, source, or amount of a consumer's personal income or expenses;

4. Records of, or relating to, a consumer's personal financial transactions of any kind;

5. The existence, identification, nature, or value of a consumer's assets, liabilities, or net worth;

6. The existence or content of, or any individual coverage or status under a consumer's beneficial interest in, any insurance policy or annuity contract; or

7. The existence, identification, nature, or value of a consumer's interest in any insurance policy, annuity contract, or trust.

(2) The following records, in whatever form, of an insurer which are made or received by the department, acting as receiver

pursuant to this chapter, are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution:

(a) All personal financial and health information of a consumer.

(b) Underwriting files of a type customarily maintained by an insurer transacting lines of insurance similar to those lines transacted by the insurer.

(c) Personnel and payroll records of the insurer.

(d) Consumer claim files.

(e) An own-risk and solvency assessment (ORSA) summary report, a substantially similar ORSA summary report, and supporting documents submitted to the office pursuant to s. 628.8015.

(f) A corporate governance annual disclosure and supporting documents submitted to the office pursuant to s. 628.8015.

(g) Information received from the National Association of Insurance Commissioners, a governmental entity in this or another state, the Federal Government, or a government of another nation which is confidential or exempt if held by that entity and which is held by the department for use in the performance of its duties relating to insurer solvency.

(3) The exemptions in subsection (2) apply to records held by the department before, on, and after July 1, 2020.

(4) Records or portions of records made confidential and

exempt by this section may be released under any of the following circumstances:

(a) To any state or federal agency, upon written request, if disclosure is necessary for the receiving entity to perform its duties and responsibilities. The receiving agency shall maintain the confidential and exempt status of such record or portion of such record.

(b) To comply with a properly authorized civil, criminal, or regulatory investigation or a subpoena or summons by a federal, state, or local authority.

(c) To the National Association of Insurance Commissioners and its affiliates and subsidiaries, if the recipient agrees in writing to maintain the confidential and exempt status of the records.

(d) To the guaranty associations and funds of the various states which are receiving, adjudicating, and paying claims of the insolvent insurer subject to delinquency proceedings pursuant to this chapter. The receiving guaranty association shall maintain the confidential and exempt status of such record or portion of such record.

(e) Upon written request, to persons identified as designated employees as described in s. 626.989(4)(d), whose responsibilities include the investigation and disposition of claims relating to suspected fraudulent insurance acts.

(f) In the case of personal financial and health

information of a consumer, upon written request of the consumer or the consumer's legally authorized representative.

(5) This section is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2025, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2. (1) The Legislature finds it is a public necessity to make confidential and exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution:

(a) All personal financial and health information of a consumer;

(b) Underwriting files of a type customarily maintained by an insurer transacting lines of insurance similar to those lines transacted by the insurer;

(c) Personnel and payroll records of an insurer;

(d) Consumer claim files;

(e) An own-risk and solvency assessment (ORSA) summary report, a substantially similar ORSA summary report, and supporting documents submitted to the Office of Insurance Regulation pursuant to s. 628.8015, Florida Statutes;

(f) A corporate governance annual disclosure and supporting documents submitted to the office pursuant to s. 628.8015, Florida Statutes; and

(g) Information received from the National Association of

Insurance Commissioners, a governmental entity in this or another state, the Federal Government, or a government of another nation which is confidential or exempt if held by that entity and which is held by the Department of Financial Services for use in the performance of its duties relating to insurer solvency.

(2)(a) Disclosure of financial, health, underwriting, personnel, payroll, or consumer claim information would create the opportunity for theft or fraud, thereby jeopardizing the financial security of a person. Limiting disclosure of such information held by the department is also necessary in order to protect the financial interests of the persons to whom that information pertains. Such information could be used for fraudulent or other illegal purposes, including identity theft, and could result in substantial financial harm. Furthermore, every person has an expectation of and a right to privacy in all matters concerning his or her financial interests. Additionally, matters of personal health are traditionally private and confidential concerns between the patient and his or her health care provider. The private and confidential nature of personal health matters pervades both the public and private health care sectors. Public disclosure of health information could have a negative effect upon a person's business and personal relationships and could also have detrimental financial consequences.

(b) In conducting an ORSA, an insurer or insurance group identifies and evaluates the material and relevant risks to the insurer or insurance group and the adequacy of capital resources to support these risks. The ORSA summary report, substantially similar ORSA report, and supporting documents contain highly sensitive and strategic financial information about an insurer or insurer group. Having a comprehensive and unbiased assessment provides the office with an effective early warning mechanism for preventing insolvencies and protecting policyholders and promotes a stable insurance market. Divulging the ORSA summary report, substantially similar ORSA summary report, and supporting documents will injure the insurer or insurance group by providing competitors with detailed insight into their financial position, risk management strategies, business plans, pricing and marketing strategies, management systems, and operational protocols.

(c) The corporate governance annual disclosure describes an insurer's governance structure and the internal practices and procedures used in conducting the business affairs of the company, making strategic operational decisions affecting its competitive position, and managing its financial condition. Release of the corporate governance annual disclosure and supporting documents will injure the insurer or insurance group in the marketplace by providing competitors with the insurer's or the insurance group's confidential business information.

Broad disclosure will give state regulators a thorough understanding of the corporate governance structure and internal policies and practices used by insurers and promote market integrity. Effective governance mechanisms will enable insurers to take any necessary corrective actions and achieve strategic goals while allowing the office to perform its regulatory duties effectively and efficiently.

(d) Divulgence of confidential or exempt information received from the National Association of Insurance Commissioners or governments could impede the exchange of information and communication among regulators across multiple agencies and jurisdictions and jeopardize the ability of regulators to effectively supervise insurers and groups operating in multiple jurisdictions and engaged in significant cross-border activities.

(3) The Legislature finds that the harm that may result from the release of such information outweighs any public benefit that may be derived from the disclosure of the information.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1439 Bank Property of Deceased Account Holders
SPONSOR(S): Insurance & Banking Subcommittee, Yarborough
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee	15 Y, 0 N, As CS	Hinshelwood	Cooper
2) Commerce Committee		Hinshelwood	Hamon

SUMMARY ANALYSIS

Probate is a court-supervised process that ensures a deceased person's (decedent's) debts are paid in an orderly fashion and that the rightful beneficiaries, whether determined according to a will or by default rules of succession, receive the property to which they are entitled. Assets subject to probate are those that were owned in the decedent's sole name at death or that were owned by the decedent and one or more co-owners but lacked a provision for automatic succession of ownership at death. Florida has two types of probate administration: formal administration for estates of any size and summary administration for estates generally under $75,000. Additionally, Florida has an abbreviated process for distributing small estates that consist of only personal property, such as money.

Under the Florida Disposition of Unclaimed Property Act, checking or savings accounts or certificates of deposit that remain dormant for five years are presumed unclaimed and must be turned over to the Department of Financial Services (DFS), which maintains a website at which members of the public can search for unclaimed property to which they may be entitled. A deceased owner's beneficiaries may claim the property by filing an affidavit with the DFS (no court order required) if all of the unclaimed property held by the DFS on behalf of the owner has an aggregate value of $10,000 or less and no probate proceeding is pending.

The bill authorizes certain family members of a decedent to present a sworn affidavit and certified death certificate to a financial institution in Florida and receive up to $1,000 from "qualified accounts" (depository accounts or certificates of deposit held in the sole name of the decedent without a pay-on-death or any other survivor designation) if the total amount of the combined funds in all qualified accounts at that financial institution is less than $1,000 and if at least six months have passed since the decedent's death. No court proceeding is needed. The affiant (a person who swears to an affidavit) must attest that a personal representative has not been appointed to administer the decedent's estate, that no formal or summary probate proceedings has been commenced, and that the affiant has no knowledge of the existence of any will or other document relating to the distribution of the decedent's estate. The financial institution is not required to determine whether the contents of the sworn affidavit are truthful, and it is fully released and discharged from further liability for the amount paid.

The bill creates a process by which a beneficiary of an intestate decedent (a person who died without a will) may file an affidavit with the court to request distribution of certain assets of the decedent. This process is available if the intestate decedent left only personal property that is exempt from probate proceedings, personal property that is constitutionally protected from creditors' claims, and nonexempt personal property valued at less than the sum of $10,000 and certain funeral and medical expenses. The decedent must have died more than one year prior, and no Florida probate proceeding may be pending or have been previously granted.

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

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Regulation of Depository Financial Institutions

The U.S. dual banking system allows commercial banks to become chartered (organized) under either federal or state law:

- National banks are chartered under federal law, i.e., the National Bank Act.[1] Their primary federal regulator is the Office of the Comptroller of the Currency, an independent agency within the U.S. Department of the Treasury.
- State-chartered banks are chartered under the laws of the state in which the bank is headquartered. The primary federal regulator for state banks that are members of the Federal Reserve System is the Board of Governors of the Federal Reserve System. The primary federal regulator for non-members is the Federal Deposit Insurance Corporation (FDIC).[2]

In addition to having a federal regulator, state-chartered banks are regulated by their chartering state. In Florida, the state regulatory agency for financial institutions is the Office of Financial Regulation (OFR).[3] The OFR's Division of Financial Institutions charters, licenses, and regulates various entities that engage in financial institution business in Florida, in accordance with the financial institutions codes (FI Codes) and the rules promulgated thereunder.[4] The OFR also ensures that Florida-chartered financial institutions comply with state and applicable federal requirements for safety and soundness.[5] The OFR does not regulate federally chartered financial institutions or financial institutions chartered by other states.

Like banks, credit unions accept deposits and make loans, and can be state-chartered or federally-chartered:

- State-chartered credit unions may be formed under the Florida Credit Union Act (FCUA), which became law in 1980.[6] The FCUA provides that "[a] credit union is a cooperative, nonprofit association, organized . . . for the purposes of encouraging thrift among its members, creating sources of credit at fair and reasonable rates of interest, and providing an opportunity for its members to use and control their resources on a democratic basis in order to improve their economic and social condition."[7] State-chartered credit unions have both a state regulator, the OFR, and a federal regulator, the National Credit Union Association (NCUA).
- Federally-chartered credit unions are chartered under the Federal Credit Union Act of 1934[8] and are regulated by the NCUA.

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[1]The National Bank Act of 1964 (12 U.S.C. § 24 Seventh) gives enumerated powers and "all such incidental powers as shall be necessary to carry on the business of banking" to nationally chartered banks. To prevent inconsistent or intrusive state regulation from impairing the national system, Congress provided: "No national bank shall be subject to any visitorial powers except as authorized by Federal law." *Id.* at § 484(a).

[2]12 U.S.C. § 1813(q).

[3]s. 20.121(3)(a)2., F.S.

[4]Chs. 655, 657, 658, 660, 662, 663, 665, and 667, F.S.; chs. 69U-100 through 69U-162, F.A.C.

[5]While the FI Codes do not specifically define "safety and soundness," the FI Codes define "unsafe and unsound practice" as "any practice or conduct found by the office to be contrary to generally accepted standards applicable to a financial institution, or a violation of any prior agreement in writing or order of a state or federal regulatory agency, which practice, conduct, or violation creates the likelihood of loss, insolvency, or dissipation of assets or otherwise prejudices the interest of the financial institution or its depositors or members. In making this determination, the office must consider the size and condition of the financial institution, the gravity of the violation, and the prior conduct of the person or institution involved." *See* s. 655.005(1)(y), F.S. For a discussion of the FDIC's approach to unsafe or unsound practices, see FDIC's Risk Management Manual of Examination Policies, Section 15.1, at: https://www.fdic.gov/regulations/safety/manual/section15-1.pdf (last visited Jan. 24, 2020).

[6] Ch. 80-258, Laws of Fla.; codified at ch. 657, F.S.

[7] s. 657.003, F.S.

[8] Public Law 73-467, codified at 12 U.S.C. § 1751 *et seq.*

The FI Codes currently provide that "[t]he books and records pertaining to . . . the deposit accounts . . . of depositors . . . [and] members . . . of any financial institution shall be kept confidential by the financial institution and its directors, officers, and employees and may not be released except upon express authorization of the account holder as to her or his own accounts . . . ."[9] The FI Codes provide limited exceptions to the confidential protection given such information.[10] One such exception states that a financial institution is not prohibited from disclosing financial information as authorized by the Gramm-Leach-Bliley Act,[11] as set forth in 15 U.S.C. s. 6802 relating to obligations with respect to disclosures of personal information.[12]

Probate Process in Florida

Probate is a court-supervised process for identifying and gathering the assets of a deceased person (decedent), paying the decedent's debts, and distributing the decedent's assets to his or her beneficiaries.[13] Probate proceedings are governed by The Florida Probate Code found in chs. 731 – 735, F.S., and the Florida Probate Rules of court.[14] The probate process ensures that the decedent's debts are paid in an orderly fashion and that the rightful beneficiaries, whether determined according to a will or by default rules of succession, receive the property to which they are entitled.

Assets subject to probate are those that were owned in the decedent's sole name at death or that were owned by the decedent and one or more co-owners but lacked a provision for automatic succession of ownership at death.[15] The following are examples to illustrate common probate and non-probate assets:[16]

- A bank account or investment account in the sole name of a decedent is a probate asset; but a bank account or investment account owned by the decedent and payable on death or transferable on death to another, or held jointly with rights of survivorship with another, is not a probate asset.
- A life insurance policy, annuity contract or individual retirement account that is payable to a specific beneficiary is not a probate asset; but a life insurance policy, annuity contract, or individual retirement account payable to the decedent's estate is a probate asset.
- Real estate titled in the sole name of the decedent, or in the name of the decedent and another person as tenants in common, is a probate asset (unless it is homestead property); but real estate titled in the name of the decedent and one or more other persons as joint tenants with rights of survivorship is not a probate asset.
- Property owned by spouses as tenants by the entirety is not a probate asset on the death of the first spouse to die; it goes automatically to the surviving spouse.

There are two types of probate administration in Florida: formal administration and summary administration.

Formal Administration

Any interested person[17] may petition the court to begin administration of the decedent's estate.[18] Venue

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[9] S. 655.059(2)(b), F.S.
[10] *Id.*
[11] Pub. L. 106-102.
[12] S. 655.059(2)(b)1., F.S.
[13] The Florida Bar, *Consumer Pamphlet: Probate in Florida*, https://www.floridabar.org/public/consumer/pamphlet026/ (last visited Jan. 24, 2020).
[14] Available at https://www-media.floridabar.org/uploads/2020/01/Probate-Rules-01-01-20.pdf (last visited Jan. 24, 2020).
[15] The Florida Bar, *supra* note 13.
[16] *Id.*
[17] "Interested person" is defined as "any person who may reasonably be expected to be affected by the outcome of the particular proceeding involved. In any proceeding affecting the estate or the rights of a beneficiary in the estate, the personal representative of the estate shall be deemed to be an interested person. In any proceeding affecting the expenses of the administration and obligations of a decedent's estate, or any claims described in s. 733.702(1), the trustee of a trust described in s. 733.707(3) is an interested person in the administration of the grantor's estate. The term does not include a beneficiary who has received complete distribution. The

is proper in the county where the decedent was domiciled.[19] If the decedent left a will, the custodian of the will must deposit the original copy of the will with the clerk of the court having venue of the decedent's estate within 10 days of receiving information that the decedent died.[20]

The probate proceedings are presided over by a circuit court judge. The judge will determine whether the decedent's will, if any, is valid. If the decedent had no will or the will is invalid, the decedent is said to have died intestate. The estate will be administered by a personal representative who is a fiduciary appointed by the court.[21] If the decedent had a valid will that named a person to serve as the personal representative, the court will appoint the named person so long as that person is qualified to serve as such.[22] If the decedent did not leave a will, the surviving spouse is given first preference to serve as the personal representative.[23]

The judge will issue letters of administration in order to grant authority to the personal representative to act on behalf of the decedent's estate.[24] It is recommended that a personal representative engage a qualified attorney to assist in the administration of the decedent's probate estate.[25] Many legal issues arise, even in the simplest probate estate administration, and most of these issues will be novel and unfamiliar to non-attorneys.[26] The attorney for the personal representative advises the personal representative on the rights and duties under the law, and represents the personal representative in probate estate proceedings.[27] The attorney for the personal representative is not the attorney for any of the beneficiaries of the decedent's probate estate.[28]

The personal representative must:[29]

- Identify, gather, value, and safeguard the decedent's probate assets.
- Publish a notice to creditors in a local newspaper in order to give notice to potential claimants to file claims in the manner required by law.
- Serve a notice of administration to provide information about the probate estate administration and notice of the procedures required to be followed by those having any objection to the administration of the decedent's probate estate.
- Conduct a diligent search to locate known or reasonably ascertainable creditors, and notify these creditors of the time by which their claims must be filed.
- Object to improper claims and defend suits brought on such claims.
- Pay valid claims.
- File tax returns and pay any taxes properly due.
- Employ professionals to assist in the administration of the probate estate; for example, attorneys, certified public accountants, appraisers, and investment advisers.
- Pay expenses of administering the probate estate.
- Pay statutorily required amounts to the decedent's surviving spouse or family.
- Distribute probate assets to beneficiaries.
- Close the probate estate.

The Florida Probate Code provides the order and priority of distributions from the decedent's estate. In general, the decedent's assets are used first to pay the cost of the probate proceeding; then assets are

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meaning, as it relates to particular persons, may vary from time to time and must be determined according to the particular purpose of, and matter involved in, any proceedings." S. 731.201(23), F.S.

[18] S. 733.202, F.S.

[19] S. 733.101(1), F.S.

[20] S. 732.901(1), F.S.

[21] Ss. 731.201(28) and 733.602, F.S.

[22] *See* ch. 733, part III, F.S., for qualifications and disqualifications.

[23] S. 733.301(1)(b), F.S.

[24] S. 731.201(24), F.S.

[25] The Florida Bar, *supra* note 13.

[26] *Id.*

[27] *Id.*

[28] *Id.*

[29] *Id.*; ch. 733, parts VI-IX, F.S.

used to pay the decedent's funeral expenses, followed by payment of the decedent's outstanding debts, and the remainder is distributed to the decedent's beneficiaries.[30]

As previously noted, the personal representative must use diligent efforts to give actual notice of the probate proceeding to known or reasonably ascertainable creditors, and the personal representative must publish a notice to creditors in a local newspaper in order to give notice to other potential claimants. Creditors' claims are barred unless filed in the probate proceeding within the later of three months after the time of the first publication of the notice to creditors or, as to any creditor required to be served with a copy of the notice to creditors, 30 days after the date of service on the creditor.[31] The decedent's estate, personal representative, and beneficiaries are no longer liable for any claim or cause of action against the decedent two years after the decedent's death, regardless of whether letters of administration have been issued.[32] This is often referred to as the "non-claim statute".

The judge presiding over the probate proceeding will consider evidence to confirm the identities of beneficiaries who are entitled to receive property from the decedent's probate estate. A Florida resident does have the right to entirely disinherit anyone.[33] However, the decedent's surviving spouse and children may be entitled to receive assets from the decedent's probate estate, even if the decedent's will gives them nothing.[34] Florida law protects the decedent's surviving spouse and certain surviving children from total disinheritance.[35] For example:[36]

- Homestead protection: A surviving spouse may have rights in the decedent's homestead real property.[37]
- Elective share: A surviving spouse may have the right to claim an "elective share" from the decedent's probate estate. The elective share is, generally speaking, 30 percent of all of the decedent's assets, including any assets that are non-probate assets.[38]
- Family allowance: A surviving spouse or the decedent's children may have the right to a family allowance to provide them with funds (up to $18,000) before final distribution of the estate assets.[39]
- Pretermitted spouse or children: If the decedent married, or had children, after the date of the decedent's last will, and if the decedent neglected to provide for the new spouse or children, an omitted family member may nevertheless be entitled to a share of the decedent's probate estate.[40]

If a decedent left no will or if any part of the decedent's estate is not effectively disposed of by will, the decedent's property will pass to the decedent's heirs as prescribed by default rules of intestate succession.[41]

The intestate share of the surviving spouse is as follows:[42]

- If there is no surviving descendant of the decedent, the entire intestate estate.
- If the decedent is survived by one or more descendants, all of whom are also descendants of the surviving spouse, and the surviving spouse has no other descendant, the entire intestate estate.
- If there are one or more surviving descendants of the decedent who are not lineal descendants of the surviving spouse, one-half of the intestate estate.

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[30] The Florida Bar, *supra* note 13.
[31] S. 733.702(1), F.S.
[32] S. 733.710, F.S.
[33] The Florida Bar, *supra* note 13.
[34] *Id.*
[35] *Id.*
[36] *Id.*
[37] Art. X, s. 4, Fla. Const.; ss. 732.401 and 732.4015, F.S.
[38] Ch. 732, part II, F.S.
[39] Ss. 732.403 and 733.707(1)(e), F.S.
[40] Ss. 732.301 and 732.302, F.S.
[41] S. 732.101, F.S.; ch. 732, part I, F.S.
[42] S. 732.102, F.S.

- If there are one or more surviving descendants of the decedent, all of whom are also descendants of the surviving spouse, and the surviving spouse has one or more descendants who are not descendants of the decedent, one-half of the intestate estate.

The part of the intestate estate not passing to the surviving spouse as described above, or the entire intestate estate if there is no surviving spouse, descends as follows:[43]

- To the descendants of the decedent.
- If there is no descendant, to the decedent's father and mother equally, or to the survivor of them.
- If there is none of the foregoing, to the decedent's brothers and sisters and the descendants of deceased brothers and sisters.
- If there is none of the foregoing, the estate must be divided: one-half to the decedent's paternal, and the other half to the decedent's maternal, kindred in the following order:
    - To the grandfather and grandmother equally, or to the survivor of them.
    - If there is no grandfather or grandmother, to uncles and aunts and descendants of deceased uncles and aunts of the decedent.
    - If there is either no paternal kindred or no maternal kindred, the estate must go to the other kindred who survive, in the order stated above.
- If there is no kindred of either part, the whole of the property must go to the kindred of the last deceased spouse of the decedent as if the deceased spouse had survived the decedent and then died intestate entitled to the estate.

Descent of inheritance under the above intestate succession statutes must be per stirpes.[44] If property descends to the decedent's collateral kin and part of the collateral kin are of the whole blood to the decedent and the other part of the half blood, the half-blooded kin inherit only half as much as the whole-blooded kin.[45] Heirs of the decedent conceived before his or her death, but born thereafter, inherit intestate property as if they had been born in the decedent's lifetime.[46] With some exceptions, an adopted person is a descendant of the adopting parent, is one of the natural kindred of all members of the adopting parent's family, is not a descendant of his or her natural parents, and is not one of the kindred of any member of the natural parent's family or any prior adoptive parent's family.[47] A person born out of wedlock is a descendant of his or her father and is one of the natural kindred of all members of the father's family if the natural parents eventually married or if paternity has otherwise been established.[48] A natural or adoptive parent is barred from inheriting from or through a child if the natural or adoptive parent's parental rights were terminated prior to the death of the child, and the natural or adoptive parent must be treated as if the parent predeceased the child.[49]

Summary Probate Administration

Summary administration is an alternative to the formal administration process that is generally faster and less costly than formal administration. For example, a personal representative is not appointed and, therefore, no fee need be paid to such a person. Additionally, the shorter process can result in lower attorney's fees. Summary administration is available only if the decedent has been dead for more than two years or if the value of the estate subject to administration in Florida (less the value of property

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[43] S. 732.103, F.S.

[44] Distribution per stirpes means that the inherited property is "[p]roportionately divided between beneficiaries according to their deceased ancestor's share." BLACK'S LAW DICTIONARY 1181 (8th ed. 2004). In other words, if an estate is distributed per stirpes, individuals within each generation of the family receive an equal distribution of the estate. Distribution per stirpes differs from distribution per capita in which individuals within the same class (for example, all living descendants of the decedent) inherit equally. Distribution per capita can result in individuals within the same generation inheriting differing amounts if other members in that generation had children but predeceased the decedent.

[45] S. 732.105, F.S.

[46] S. 732.106, F.S.

[47] S. 732.108, F.S.

[48] *Id.*

[49] S. 732.1081, F.S.

which is exempt from the claims of creditors[50]) is less than $75,000.[51] Summary administration is not available if a decedent's will specifically directs formal administration.[52]

A petition for summary administration may be filed by any beneficiary or person nominated as personal representative in the decedent's will.[53] The petition must be signed and verified by any surviving spouse and any beneficiaries who will not receive a full distributive share under the proposed distribution.[54] However, any other beneficiary must be served with formal notice of the petition.[55] Once the court receives the petition for summary administration and is satisfied that the estate qualifies, the court issues an order of summary administration allowing immediate distribution of assets to the persons entitled to them.[56]

If the decedent passed away more than two years before the filing of the petition for summary administration, creditors' claims do not need to be addressed in the summary administration proceeding because Florida's non-claim statute effectively bars any creditors' claims that are not brought within two years of the decedent's death.[57] If the decedent passed away less than two years before the filing of the petition for summary judgment, the petitioner is required to make a diligent search and reasonable inquiry for any known or reasonably ascertainable creditors, serve a copy of the petition on those creditors, and make provision for payment for those creditors to the extent that assets are available.[58] As for those creditors who are not known or reasonably ascertainable, if proof of publication of a specified notice to creditors has been filed with the court, all claims and demands of such creditors are forever barred unless their claims are filed within three months after the first publication of the notice.[59]

Those who receive a distribution of estate assets generally remain liable for claims against the decedent for two years after the date of death.[60] The following parties are entitled to receive reasonable attorney's fees and costs if they prevail in an action to enforce their claim:

- Any known or reasonably ascertainable creditor who did not receive notice and for whom provision for payment was not made.[61]
- Any heir or devisee[62] of the decedent who was lawfully entitled to share in the estate but who was not included in the order of summary administration and distribution.[63]

If the decedent owned a homestead in Florida, the heirs may not automatically have clear title such that the property can later be sold. The heirs may be required to get a court to issue an order determining homestead, which is a process that can be accomplished alongside or as part of a summary administration proceeding.[64] If the Florida homestead is the only asset in the decedent's probate estate, it will qualify for summary administration regardless of the value of the homestead because the value of Florida homestead property is not counted for purposes of determining whether the estate meets the $75,000 limitation for summary administration.

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[50] For example, homestead property that is protected from creditors' claims by Art. X, s. 4, Fla. Const.
[51] S. 735.201(1), F.S.
[52] *Id.*
[53] S. 735.203(1), F.S.
[54] *Id.*
[55] *Id.*
[56] S. 735.206(3), F.S.
[57] S. 733.710, F.S.
[58] S. 735.206(2), F.S.
[59] S. 735.2063, F.S.
[60] S. 735.206(4)(d)-(f), F.S.
[61] S. 735.206(4)(d), F.S.
[62] "Devisee" means "[a] recipient of property by will." BLACK'S LAW DICTIONARY 484 (8th ed. 2004).
[63] S. 735.206(4)(g), F.S.
[64] The value of homestead property is not counted for purposes of determining whether the decedent's probate estate falls within the cap of $75,000 for summary administration.

Disposition of Personal Property Without Administration

Disposition of personal property without administration is yet another alternative to the formal administration process and is a more abbreviated process than summary administration.[65] It is available only if the decedent's probate estate consists solely of the following:[66]

- Personal property classified as exempt under the provisions of s. 732.402, F.S., such as household furnishings up to a net value of $20,000 and two vehicles;
- Personal property exempt from the claims of creditors under the Florida Constitution, such as personal property valued at $1,000 or less;[67] and
- Non-exempt personal property valued at less than the sum of:
    - The amount of preferred funeral expenses, and
    - The amount of reasonable and necessary medical and hospital expenses incurred in the last 60 days of the decedent's final illness.

Personal property is anything that is movable (e.g., money and jewelry) or intangible (e.g., stocks and bonds).[68]

To initiate this abbreviated process, any interested party may file an informal application by affidavit, letter, or otherwise with the court.[69] If the court is satisfied that the decedent's assets meet the criteria for this abbreviated process, the court may, by letter or other writing under the seal of the court, authorize the payment, transfer, or disposition of the personal property, tangible or intangible, belonging to the decedent to those persons entitled.[70] Any person, firm, or corporation paying, delivering, or transferring property under the court's authorization is forever discharged from liability thereon.[71]

Escheated and Unclaimed Property

When a person dies leaving an estate without being survived by any person entitled to a part of it, that part reverts to the state.[72] Such property is said to "escheat to the state".[73] Property that escheats must be sold as provided in the Florida Probate Rules and the proceeds paid to Florida's Chief Financial Officer, who heads the Department of Financial Services (DFS), and deposited in the State School Fund.[74] A person claiming to be entitled to the proceeds may, within 10 years after the payment to the Chief Financial Officer, petition the court to assert entitlement to the proceeds.[75] If no claim is timely asserted, the state's right to the proceeds becomes absolute.[76]

Similarly, abandoned and unclaimed property must be turned over to the DFS under the Florida Disposition of Unclaimed Property Act (Act). Under the Act, the Division of Unclaimed Property, a division within the DFS, is responsible for receiving abandoned property, attempting to locate the rightful owner, and returning the property or proceeds to the owner. The Act protects the interests of missing owners of property while the state derives a benefit from the unclaimed and abandoned property until the property is claimed, if ever. There is no statute of limitations in the Act for an owner's claim; the owner may claim his or her property at any time and at no cost.

Generally, all intangible property, including any income thereon less any lawful charges, which is held in the ordinary course of the holder's business, is presumed to be unclaimed when the owner fails to

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[65] S. 735.301, F.S.
[66] S. 735.301(1), F.S.
[67] Art. X, s. 4(a)(2), Fla. Const.
[68] BLACK'S LAW DICTIONARY 1254 (8th ed. 2004).
[69] S. 735.301(2), F.S.
[70] *Id.*
[71] *Id.*
[72] S. 732.107, F.S.
[73] *Id.*
[74] *Id.*; s. 20.121(1), F.S.; s. 733.816, F.S.
[75] S. 732.107, F.S.; s. 733.816, F.S.
[76] *Id.*

claim the property for more than five years after the property becomes payable or distributable, unless otherwise provided in the Act.[77] For particular kinds of property, the Act provides varying time periods to trigger a finding that such property is presumed unclaimed and must be turned over to the DFS. For example, the presumption of unclaimed property arises for:

- *Traveler's checks* 15 years after its issuance if, within that time, the owner has not communicated in writing with the issuer concerning it or otherwise indicated an interest in it.[78]
- *Money orders* 7 years after its issuance if, within that time, the owner has not communicated in writing with the issuer concerning it or otherwise indicated an interest in it.[79]
- *Sums payable on a check, draft, or similar instrument on which a banking or financial organization is directly liable* 5 years after it was payable, or after its issuance if payable on demand, if, within that time, the owner has not communicated in writing with the banking or financial organization concerning it or otherwise indicated an interest in it.[80]
- *Checking or savings deposits or a certificate of deposit, including interest or dividends thereon, held by a banking or financial organization* 5 years after the owner last:
    - Increased or decreased the amount of the deposit;
    - Increased or decreased the amount of another deposit with the banking or financial organization so long as the banking or financial organization communicates in writing, at the address to which communications regarding the other deposit are regularly sent, with the owner with regard to the deposit that would otherwise be presumed unclaimed;
    - Communicated with the banking or financial organization concerning the property;
    - Otherwise indicated an interest in the property;
    - Communicated in writing with the banking or financial organization concerning another relationship with such banking or financial organization; or
    - Otherwise indicated an interest concerning another relationship with such banking or financial organization so long as the banking or financial organization communicates in writing, at the address to which communications regarding the other relationship are regularly sent, with the owner with regard to the property that would otherwise be presumed unclaimed.[81]
- *Intangible property held by fiduciaries* 5 years after it has become payable or distributable if, within that time, the owner has not increased or decreased the principal, accepted payment of principal or income, communicated concerning the property, or otherwise indicated an interest in it.[82]
- *Intangible property held by fiduciaries under trust instruments* 2 years after it has become payable or distributable if, within that time, the owner has not increased or decreased the principal, accepted payment of principal or income, communicated concerning the property, or otherwise indicated an interest in it.[83]
- *Tangible and intangible property held by a banking or financial organization in a safe-deposit box* 3 years after the lease or rental period on the box has expired.[84]

Holders of unclaimed property are required to file an annual report of unclaimed property with the DFS, and must transmit the unclaimed property with the report, between January 1 and May 1 of each year.[85] The report and transmittal must include all property considered unclaimed in the previous calendar year.[86] Holders of inactive accounts having a value of $50 or more are required to use due diligence to locate and notify the apparent owners at least 60 days but not more than 120 days prior to filing the report of unclaimed property with the DFS.[87] The report of unclaimed property must contain certain

[77] S. 717.102(1), F.S.
[78] S. 717104(1), F.S.
[79] S. 717.104(2), F.S.
[80] S. 717.105, F.S.
[81] S. 717.106, F.S.
[82] S. 717.112(1), F.S.
[83] S. 717.1125, F.S.
[84] S. 717.116, F.S.
[85] Ss. 717.117(3) and 717.119, F.S.
[86] *Id.*
[87] S. 717.117(4), F.S.

identifying information, such as the apparent owner's name, social security number or federal employer identification number, and last known address.[88]

Upon the payment or delivery of unclaimed property to the DFS, the state assumes custody and responsibility for the safekeeping of the property.[89] Any person who pays or delivers property to the DFS in good faith is relieved of all liability to the extent of the value of the property paid or delivered for any claim then existing or which thereafter may arise or be made in respect to the property.[90] The original property owner retains the right to recover the proceeds of the property, and any person claiming an interest in the property delivered to the DFS may file a claim for the property, subject to certain requirements.[91] Claims for recovery of unclaimed property may be filed by or on behalf of any person with an interest in the property.[92] The DFS maintains a website at which members of the public can search for unclaimed property to which they may be entitled.[93]

The Act provides a process for a deceased owner's beneficiaries to claim the property without an order of a probate court if all of the unclaimed property held by the DFS on behalf of the owner has an aggregate value of $10,000 or less and no probate proceeding is pending.[94] To do so, the claimant must file with the DFS an affidavit, signed by all beneficiaries, stating that all the beneficiaries have amicably agreed among themselves upon a division of the estate and that all funeral expenses, expenses of the last illness, and any other lawful claims have been paid.[95] The claimant must provide any additional information reasonably necessary to make a determination of entitlement.[96] If the owner died testate,[97] the claim must be accompanied by a copy of the will.[98] Each person receiving property under this process is personally liable for all lawful claims against the estate of the owner, but only to the extent of the value of the property received by such person under this process, exclusive of the property exempt from claims of creditors under the constitution and laws of Florida.[99] Any heir or devisee of the owner, who was lawfully entitled to share in the property but did not receive his or her share of the property, may enforce his or her rights in appropriate proceedings against those who received the property and will be awarded costs and attorney's fees.[100]

The DFS is required to make a determination on a claim within 90 days.[101] If a claim is determined in favor of the claimant, the DFS must deliver or pay over to the claimant the property or the amount the DFS actually received or the proceeds, if it has been sold by the DFS.[102] All proceeds from unclaimed property are deposited by the DFS into the Unclaimed Property Trust Fund.[103] The DFS is allowed to retain up to $15 million to make prompt payment on verified claims and to cover costs incurred by the DFS in administering and enforcing the Act.[104] All remaining funds must be deposited into the State School Fund to be used for public education.[105]

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[88] S. 717.117(1), F.S.
[89] S. 717.1201, F.S.
[90] *Id.*
[91] S. 717.117 and 717.124, F.S.
[92] S. 717.124, F.S.
[93] FLTreasureHunt.gov, https://www.fltreasurehunt.gov/ (last visited Jan. 24, 2020).
[94] S. 717.1243, F.S.
[95] *Id.*
[96] *Id.*
[97] "Testate" means "[h]aving left a will at death." BLACK'S LAW DICTIONARY 1514 (8th ed. 2004).
[98] S. 717.1243, F.S.
[99] *Id.*
[100] S. 717.1243, F.S.
[101] S. 717.124(1), F.S.
[102] S. 717.124, F.S.
[103] S. 717.123, F.S.
[104] *Id.*
[105] *Id.*

Filing and Disclosure of Death Certificates in Florida

The Florida Vital Statistics Act directs the Department of Health (DOH), to establish the Bureau of Vital Statistics (Bureau)[106] under the direction of a state registrar for the uniform and efficient registration, compilation, storage, and preservation of all vital records[107] in this state.[108] The DOH is also responsible for establishing registration districts throughout the state and appointing a local registrar of vital statistics for each registration district.

A certificate for each death or fetal death that occurs in Florida must be filed within 5 days after such death and prior to the final disposition of the dead body or fetus.[109] Final disposition means the burial, interment, cremation, removal from the state, or other authorized disposition of a dead body or fetus.[110] The registration of the death certificate may be submitted via the DOH's electronic death registration system to the Bureau on a form prescribed by the DOH, or to the local registrar of the district in which the death occurred.

The DOH must provide a certified copy of all or part of a death or fetal death certificate, excluding any portions that are confidential and exempt from public disclosure, to any person requesting it upon receipt of a request and payment of the prescribed fee.[111] All information relating to cause of death in all death and fetal death records is confidential and exempt from public disclosure.[112] Additionally, social security numbers are confidential and exempt from public disclosure.[113] However, 50 years after the date of death, the portions of a certificate of death which were exempt from public disclosure lose such protection, though the social security number information remains confidential and exempt.[114] A certification of the death or fetal death certificate which includes the confidential portions, such as cause of death and social security number, may be issued only:[115]

- To the decedent's spouse or parent;
- To the decedent's child, grandchild, or sibling, if of legal age;
- To any person who provides an executed will, insurance policy, or other document that demonstrates his or her interest in the estate of the decedent;
- To any person who provides documentation that he or she is acting on behalf of any of the above-named persons;
- To any agency of the state or local government or the United States for official purposes upon approval of the DOH; or
- Upon order of any court of competent jurisdiction.

Effect of the Bill

Confidentiality of books and records

The bill amends s. 655.059, F.S., to correct the citation to the Gramm-Leach-Bliley Act and to provide another exception to the general rule that a financial institution's books and records relating to deposit accounts must be kept confidential by the financial institution. The new exception states that a financial institution is not prohibited from disclosing the existence of and amounts on deposit in any qualified account of a decedent pursuant to s. 735.303, F.S., and from providing a copy of any affidavit delivered to the financial institution pursuant thereto, to a person authorized to receive such information under s. 735.303, F.S.

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[106] Although the statute refers to an Office of Vital Statistics, it has been established as the Bureau of Vital Statistics within DOH.
[107] A vital record is defined as certificates or reports of birth, death, fetal death, marriage, dissolution of marriage, certain name changes, and data related thereto. S. 382.001(17), F.S.
[108] S. 382.003, F.S.
[109] S. 382.008, F.S.
[110] S. 382.002(9), F.S.
[111] S. 382.025(2)(a), F.S.
[112] S. 382.008(6), F.S.
[113] S. 119.071(5)(a)5., F.S.
[114] *Id.*; s. 382.025(2)(b), F.S.
[115] S. 382.025(2)(a), F.S.

Sworn affidavit provided to a financial institution in order to receive up to $1,000 in qualified accounts

The bill creates s. 735.303, F.S., to authorize certain family members of a decedent to present a sworn affidavit to a financial institution in this state and receive up to $1,000 from "qualified accounts", defined as depository account or certificate of deposit held by a financial institution in the sole name of the decedent without a pay-on-death or any other survivor designation. The bill does not require a court proceeding, order, or judgment in order for the family member to receive the funds. Family members authorized to present the sworn affidavit to the financial institution are as follows:

- The surviving spouse of the decedent;
- An adult child of the decedent if the decedent left no surviving spouse;
- An adult descendant of the decedent if the decedent left no surviving spouse and no surviving adult child; or
- A parent of the decedent if the decedent left no surviving spouse, no surviving adult child, and no surviving adult descendant.

The financial institution may pay the funds to the authorized family member if the total amount of the combined funds in all qualified accounts at that financial institution do not exceed an aggregate of $1,000 and if at least six months have passed since the decedent's death.

In order to receive the funds, the authorized family member must provide to the financial institution a certified copy of the decedent's death certificate and a sworn affidavit that includes all of the following:

- A statement attesting that the affiant is the surviving spouse, adult child, adult descendant, or parent of the decedent.
    - If the affiant is an adult child of the decedent, the affidavit must attest that the decedent left no surviving spouse.
    - If the affiant is an adult descendant of the decedent, the affidavit must attest that the decedent left no surviving spouse and no surviving adult child.
    - If the affiant is a parent of the decedent, the affidavit must attest that the decedent left no surviving spouse, no surviving adult child, and no surviving adult descendant.
- The date of death and the address of the decedent's last residence.
- A statement attesting that the total amount in all qualified accounts held by the decedent in all financial institutions known to the affiant does not exceed an aggregate total of $1,000.
- A statement acknowledging that a personal representative has not been appointed to administer the decedent's estate and attesting that no probate proceeding or summary administration procedure has been commenced with respect to the estate.
- A statement acknowledging that the affiant has no knowledge of the existence of any last will and testament or other document or agreement relating to the distribution of the decedent's estate.
- A statement acknowledging that the payment of the funds constitutes a full release and discharge of the financial institution's obligation regarding the amount paid.
- A statement acknowledging that the affiant understands that he or she is personally liable to the creditors of the decedent and other persons rightfully entitled to the funds under the Florida Probate Code, to the extent the amount paid exceeds the amount properly attributable to the affiant's share.
- A statement acknowledging that the affiant understands that making a false statement in the affidavit may be punishable as a criminal offense.

The bill provides the substance of the sworn affidavit that would satisfy the bill's requirements. The financial institution must maintain a copy or an image of the affidavit in accordance with its customary retention policies. If a surviving spouse or descendent of the decedent requests a copy of the affidavit during such time, the financial institution may provide a copy of the affidavit to the requesting surviving spouse or descendent of the decedent.

The financial institution is not required to determine whether the contents of the sworn affidavit are truthful. The payment of the funds by the financial institution to the affiant constitutes the financial institution's full release and discharge regarding the amount paid. A person does not have a right or cause of action against the financial institution for taking an action, or for failing to take an action, in connection with the affidavit or the payment of the funds.

The authorized family member who withdraws the funds is personally liable to the creditors of the decedent and any other person rightfully entitled to the funds under the Florida Probate Code, to the extent the amount paid exceeds the amount properly attributable to the authorized family member's share.

In addition to any other penalty provided by law, a person who knowingly makes a false statement in a sworn affidavit given to a financial institution to receive a decedent's funds under this section commits theft, punishable as provided in s. 812.014.

Distribution of intestate property in small estates by filing a sworn affidavit with a court

The bill creates s. 735.304, F.S.., to provide another form of disposition of personal property without administration for intestate property in small estates. It allows a beneficiary of an intestate decedent to file an affidavit with the court to request distribution of certain assets of the decedent. It is available only if the decedent's probate estate consists solely of the following:

- Personal property classified as exempt under the provisions of s. 732.402, F.S., such as household furnishings up to a net value of $20,000 and two vehicles;
- Personal property exempt from the claims of creditors under the Florida Constitution, such as personal property valued at $1,000 or less; and
- Non-exempt personal property valued at less than the sum of:
    - $10,000,
    - The amount of preferred funeral expenses, and
    - The amount of reasonable and necessary medical and hospital expenses incurred in the last 60 days of the decedent's final illness.

The decedent must have died more than one year prior to the filing of the affidavit, and no Florida probate proceeding may be pending or have been previously granted.

To initiate this process, any of the decedent's heirs at law entitled to a share of the intestate estate may file the affidavit with the court. The affidavit must be signed and verified by the surviving spouse, if any, and any heirs at law, except that joinder in the affidavit is not required of an heir who will receive a full intestate share under the proposed distribution of the personal property. Before the filing of the affidavit, the affiant must make a diligent search and reasonable inquiry for any known or reasonably ascertainable creditors, and the proposed distribution must make provision for payment of those creditors to the extent that assets are available or the creditors must consent to the proposed distribution. The affidavit must be served in the manner of formal notice upon all heirs at law who have not joined in the affidavit; upon all known or reasonably ascertainable creditors of the decedent; and, if the decedent at the time of death was over the age of 55 years of age, upon the Agency for Health Care Administration.

If the court is satisfied that the decedent's estate and the affidavit filed by the heir at law meet the necessary requirements, the court, by letter or other writing under the seal of the court, may authorize the payment, transfer, disposition, delivery, or assignment of the tangible or intangible personal property to those persons entitled.

Any person paying, transferring, delivering, or assigning personal property under the authorization is forever discharged from liability thereon. Bona fide purchasers for value[116] from those to whom

[116] Persons who in good faith provide something of value in exchange for property received.

personal property of the decedent has been paid, transferred, delivered, or assigned take the property free of all claims of creditors of the decedent and all rights of the surviving spouse and all other beneficiaries or heirs at law of the decedent.

Personal property of the decedent that is not exempt from claims of creditors and that remains in the possession of those to whom it has been paid, delivered, transferred, or assigned will continue to be liable for claims against the decedent until barred as provided in the Florida Probate Code. Any known or reasonably ascertainable creditor who did not consent to the proposed distribution and for whom provision for payment was not made may enforce the claim and, if the creditor prevails, will be awarded costs, including reasonable attorney fees, against those who joined in the affidavit.

Recipients of the decedent's personal property will be personally liable for a pro rata share of all lawful claims against the estate of the decedent, but only to the extent of the value on the date of distribution of the personal property actually received by each recipient, exclusive of the property exempt from claims of creditors under the constitution and statutes of Florida.

With some exception, after two years from the death of the decedent, neither the decedent's estate nor those to whom it may be distributed will be liable for any claim against the decedent, unless within that time proceedings have been taken for the enforcement of the claim.

Any heir or devisee of the decedent who was lawfully entitled to share in the estate but who was not included in the distribution may enforce all rights in appropriate proceedings against those who signed the affidavit or received distribution of personal property and, if successful, will be awarded costs including reasonable attorney fees as in chancery actions.

The bill takes effect July 1, 2020.

B. SECTION DIRECTORY:

Section 1. Amends s. 655.059, F.S., relating to access to books and records; confidentiality; penalty for disclosure.

Section 2. Creates s. 735.303, F.S., relating to payment to successor without court proceedings.

Section 3. Creates s. 735.304, F.S., relating to disposition without administration of intestate property in small estates.

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:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

Clerks of court may charge filing fees for the process created in the bill for disposition of personal property without administration for intestate property in small estates.

2. Expenditures:

   There may be additional expenditures for courts to administer the process created in the bill for disposition of personal property without administration for intestate property in small estates.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The impact on the private sector is indeterminate. The portion of the bill providing a process for receiving up to $1,000 in qualified accounts from a financial institution may prevent families from incurring court costs and attorney fees to probate the decedent's estate in order to obtain the funds prior to the funds being given to the state as unclaimed property after five years. However, the authorized family member who withdraws the funds is personally liable to any person rightfully entitled to the funds under the Florida Probate Code, to the extent the amount paid exceeds the amount properly attributable to the authorized family member's share. A decedent's family may still incur court costs and attorney fees following the withdrawal of funds if there is subsequent disagreement or confusion as to how much each family member is owed or if the person who withdrew funds does not remit money to those rightfully entitled to the funds. Additionally, unlike in the summary administration process or the unclaimed property process, an heir or devisee rightfully owed money that he or she did not receive after funds were withdrawn from the financial institution will not be awarded attorney's fees and costs in an action to enforce the claim.[117]

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.

C. DRAFTING ISSUES OR OTHER COMMENTS:

In the portion of the bill providing a process for receiving up to $1,000 in qualified accounts from a financial institution, there is no attestation that the value of the decedent's entire estate is under $1,000. Therefore, it is possible that the funds which a financial institution can release pursuant to that process may be part of a larger probate estate that is otherwise subject to formal or summary administration proceedings under the Florida Probate Code.

[117] Any heir or devisee of the decedent who was lawfully entitled to share in the estate but who was not included in an order of summary administration and distribution is entitled to receive reasonable attorney's fees and costs if they prevail in an action to enforce their claim. S. 735.206(4)(g), F.S. Similarly, the process for a beneficiary to receive up to $10,000 by filing an unclaimed property affidavit provides that any heir or devisee of the owner, who was lawfully entitled to share in the property but did not receive his or her share of the property, may enforce his or her rights in appropriate proceedings against those who received the property and will be awarded costs and attorney's fees. S. 717.1243, F.S.

The bill's prioritization of individuals defined as a "family member" who can receive the decedent's funds directly from a financial institution does not track the prioritization of the decedent's heirs as prescribed by the rules of intestate succession found in part I of ch. 732, F.S.
Unlike in the summary administration process or the unclaimed property process, an heir or devisee rightfully owed money that he or she did not receive after funds were withdrawn from qualified accounts at a financial institution will not be awarded attorney's fees and costs in an action to enforce the claim.[118]

The exception to the confidentiality of books and records provided in the bill only creates an exception for the process by which $1,000 can be received directly from the financial institution. There is no similar exception related to formal probate proceedings, summary probate proceedings, the process for disposition of personal property without administration, or the process created in the bill for disposition of personal property without administration for intestate property in small estates.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 28, 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:

- Amends the process by which a family member of a decedent who died intestate may provide an affidavit to a financial institution in Florida and receive funds from the decedent's qualified accounts at the financial institution. Specifically, the committee substitute makes the following changes:
  - Moves the statute from the financial institutions codes to the Florida Probate Code.
  - Lowers from $10,000 to $1,000 the aggregate amount of qualified accounts that may be withdrawn from the financial institution.
  - Allows the financial institution to pay the funds to the affiant after six months rather than two years.
  - Removes the requirement that the affiant provide notarized letters of other family members consenting to the affiant's withdrawal of funds.
  - Adds that the affiant is personally liable to creditors and other persons rightfully entitled to the funds.
  - Requires the financial institution to retain a copy of the affidavit in accordance with its customary retention policies rather than seven years.
- Creates a process by which a beneficiary of an intestate decedent may file an affidavit with the court to request distribution of certain assets of the decedent. This process is available if the intestate decedent left only personal property that is exempt from probate proceedings, personal property that is constitutionally protected from creditors' claims, and nonexempt personal property valued at less than the sum of $10,000 and certain funeral and medical expenses. The decedent must have died more than one year prior to the filing of the affidavit, and no Florida probate proceeding may be pending or have been previously granted.
- Makes other technical changes.

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

[118] See *supra* note 116.

A bill to be entitled

An act relating to bank property of deceased account holders; amending s. 655.059, F.S.; specifying that a financial institution is not prohibited from disclosing specified information and providing copies of specified affidavits to certain persons relating to deceased account holders; creating s. 735.303, F.S.; providing definitions; authorizing a financial institution to pay funds on deposit in certain accounts to a specified family member of a decedent without any court proceeding, order, or judgment under certain circumstances; requiring the family member to provide the financial institution a certified copy of the decedent's death certificate and a specified affidavit in order to receive the funds; providing an affidavit form that the family member may use; providing that the financial institution has no duty to make certain determinations; specifying that a person does not have a right or cause of action against a financial institution for taking certain actions or for failing to take certain actions; providing liability for the family member who withdraws funds; requiring a financial institution to maintain a copy or image of the affidavit for a specified time; authorizing the financial institution

to provide copies of the affidavit to certain persons; providing penalties; creating s. 735.304, F.S.; providing that specified types of personal property are not subject to probate administration or formal proceedings under certain circumstances; providing that specified persons may request distribution of a decedent's assets by affidavit through an informal application under certain circumstances; providing requirements for such affidavits; requiring certain actions relating to the decedent's creditors; providing requirements for service of the affidavit on specified persons; authorizing the court to approve the payment, transfer, disposition, delivery, or assignment of personal property under certain circumstances; providing discharge from liability for certain individuals and entities under certain circumstances; providing certain bona fide purchasers protection from specified claims of creditors and from rights of spouses, beneficiaries, and heirs of decedents; providing for liability against certain personal property for a specified time; authorizing specified creditors to enforce claims and to be awarded costs under certain circumstances; providing liability of recipients of the decedent's personal property under certain circumstances; providing a

limitation on liability of the decedent's estate and recipients of the estate under certain circumstances; providing an exception; authorizing specified heirs or devisees of a decedent to enforce all rights in proceedings under certain circumstances; providing for the award of costs and reasonable attorney fees under certain circumstances; providing an effective date.

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

Section 1. Paragraph (b) of subsection (2) of section 655.059, Florida Statutes, is amended to read:

655.059 Access to books and records; confidentiality; penalty for disclosure.—

(2)

(b) The books and records pertaining to trust accounts and the deposit accounts and loans of depositors, borrowers, members, and stockholders of any financial institution shall be kept confidential by the financial institution and its directors, officers, and employees and may not be released except upon express authorization of the account holder as to her or his own accounts, loans, or voting rights. However, information relating to any loan made by a financial institution may be released without the borrower's authorization in a manner prescribed by the board of directors for the purpose of meeting

the needs of commerce and for fair and accurate credit information. Information may also be released, without the authorization of a member or depositor but in a manner prescribed by the board of directors, to verify or corroborate the existence or amount of a customer's or member's account when such information is reasonably provided to meet the needs of commerce and to ensure accurate credit information. In addition, a financial institution, affiliate, and its subsidiaries, and any holding company of the financial institution or subsidiary of such holding company, may furnish to one another information relating to their customers or members, subject to the requirement that each corporation receiving information that is confidential maintain the confidentiality of such information and not provide or disclose such information to any unaffiliated person or entity. Notwithstanding this paragraph, this subsection does not prohibit:

1. A financial institution from disclosing financial information as referenced in this subsection as authorized ~~by Pub. L. No. 106-102 (1999), as set forth~~ in 15 U.S.C. s. 6802 (2010) ~~U.S.C.A. s. 6802, as amended~~.

2. The Florida office of the international banking corporation or international trust entity from sharing books and records under this subsection with the home-country supervisor in accordance with subsection (1).

3. A financial institution from disclosing the existence

of and amounts on deposit in any qualified account of a decedent pursuant to s. 735.303, and from providing a copy of any affidavit delivered to the financial institution pursuant thereto, to a person authorized to receive such information under s. 735.303.

Section 2. Section 735.303, Florida Statutes, is created to read:

735.303 Payment to successor without court proceedings.—

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

(a) "Family member" means:

1. The surviving spouse of the decedent;

2. An adult child of the decedent if the decedent left no surviving spouse;

3. An adult descendant of the decedent if the decedent left no surviving spouse and no surviving adult child; or

4. A parent of the decedent if the decedent left no surviving spouse, no surviving adult child, and no surviving adult descendant.

(b) "Qualified account" means a depository account or certificate of deposit held by a financial institution in the sole name of the decedent without a pay-on-death or any other survivor designation.

(2) A financial institution in this state may pay to the family member of a decedent, without any court proceeding, order, or judgment, the funds on deposit in all qualified

accounts of the decedent at the financial institution if the total amount of the combined funds in the qualified accounts at the financial institution do not exceed an aggregate total of $1,000. The financial institution may not make such payment earlier than 6 months after the date of the decedent's death.

(3) In order to receive the funds described in subsection (2), the family member must provide to the financial institution a certified copy of the decedent's death certificate and a sworn affidavit that includes all of the following:

(a) A statement attesting that the affiant is the surviving spouse, adult child, adult descendant, or parent of the decedent.

1. If the affiant is an adult child of the decedent, the affidavit must attest that the decedent left no surviving spouse.

2. If the affiant is an adult descendant of the decedent, the affidavit must attest that the decedent left no surviving spouse and no surviving adult child.

3. If the affiant is a parent of the decedent, the affidavit must attest that the decedent left no surviving spouse, no surviving adult child, and no surviving adult descendant.

(b) The date of death and the address of the decedent's last residence.

(c) A statement attesting that the total amount in all

qualified accounts held by the decedent in all financial institutions known to the affiant does not exceed an aggregate total of $1,000.

(d) A statement acknowledging that a personal representative has not been appointed to administer the decedent's estate and attesting that no probate proceeding or summary administration procedure has been commenced with respect to the estate.

(e) A statement acknowledging that the affiant has no knowledge of the existence of any last will and testament or other document or agreement relating to the distribution of the decedent's estate.

(f) A statement acknowledging that the payment of the funds constitutes a full release and discharge of the financial institution's obligation regarding the amount paid.

(g) A statement acknowledging that the affiant understands that he or she is personally liable to the creditors of the decedent and other persons rightfully entitled to the funds under the Florida Probate Code, to the extent the amount paid exceeds the amount properly attributable to the affiant's share.

(h) A statement acknowledging that the affiant understands that making a false statement in the affidavit may be punishable as a criminal offense.

(4) The family member may use an affidavit in substantially the following form to fulfill the requirements of

subsection (3):

AFFIDAVIT UNDER SECTION 735.303, FLORIDA STATUTES, TO OBTAIN BANK PROPERTY OF DECEASED ACCOUNT HOLDER: ...(Name of decedent)...

State of ....

County of ....

Before the undersigned authority personally appeared ...(name of affiant)..., of ...(residential address of affiant)..., who has been sworn and says the following statements are true:

(a) The affiant is (initial one of the following responses):

.... The surviving spouse of the decedent.

.... A surviving adult child of the decedent, and the decedent left no surviving spouse.

.... A surviving adult descendant of the decedent, and the decedent left no surviving spouse and no surviving adult child.

.... A surviving parent of the decedent, and the decedent left no surviving spouse, no surviving adult child, and no surviving adult descendant.

(b) As shown in the certified death certificate, the date of death of the decedent was ...(date of death)..., and the address of the decedent's last residence was ...(address of last residence)....

(c) The affiant is entitled to payment of the funds in the decedent's depository accounts and certificates of deposit held by the financial institution ...(name of financial institution).... The total amount in all qualified accounts held by the decedent in all financial institutions known to the affiant does not exceed an aggregate total of $1,000. The affiant requests full payment from the financial institution.

(d) A personal representative has not been appointed to administer the decedent's estate, and no probate proceeding or summary administration procedure has been commenced with respect to the estate.

(e) The affiant has no knowledge of any last will and testament or other document or agreement relating to the distribution of the decedent's estate.

(f) The payment of the funds constitutes a full release and discharge of the financial institution regarding the amount paid.

(g) The affiant understands that he or she is personally liable to the creditors of the decedent and other persons rightfully entitled to the funds under the Florida Probate Code, to the extent the amount paid exceeds the amount properly attributable to the affiant's share.

(h) The affiant understands that making a false statement in this affidavit may be punishable as a criminal offense.

By ...(signature of Affiant)...

Sworn to and subscribed before me this .... day of .... by ...(name of Affiant)..., who is personally known to me or produced .... as identification, and did take an oath.

...(Signature of Notary Public - State of Florida)...

...(Print, Type, or Stamp Commissioned Name of Notary Public)...

My commission expires: ...(date of expiration of commission)...

(5) The financial institution is not required to determine whether the contents of the sworn affidavit are truthful. The payment of the funds by the financial institution to the affiant constitutes the financial institution's full release and discharge regarding the amount paid. A person does not have a right or cause of action against the financial institution for taking an action, or for failing to take an action, in connection with the affidavit or the payment of the funds.

(6) The family member who withdraws the funds under this section is personally liable to the creditors of the decedent and any other person rightfully entitled to the funds under the Florida Probate Code, to the extent the amount paid exceeds the amount properly attributable to the family member's share.

(7) The financial institution shall maintain a copy or an image of the affidavit in accordance with its customary retention policies. If a surviving spouse or descendant of the decedent requests a copy of the affidavit during such time, the financial institution may provide a copy of the affidavit to the requesting surviving spouse or descendant of the decedent.

(8) In addition to any other penalty provided by law, a person who knowingly makes a false statement in a sworn affidavit given to a financial institution to receive a decedent's funds under this section commits theft, punishable as provided in s. 812.014.

Section 3. Section 735.304, Florida Statutes, is created to read:

735.304 Disposition without administration of intestate property in small estates.—

(1) No administration shall be required or formal proceedings instituted upon the estate of a decedent who has died intestate leaving only personal property exempt under the provisions of s. 732.402, personal property exempt from the claims of creditors under the Florida Constitution, and nonexempt personal property the value of which does not exceed the sum of $10,000 and the amount of preferred funeral expenses and reasonable and necessary medical and hospital expenses of the last 60 days of the last illness, provided the decedent has been deceased for more than 1 year and no administration of the

decedent's estate is pending in this state or has been previously granted.

(2) Any heir at law of the decedent entitled to a share of the intestate estate pursuant to s. 732.102 or s. 732.103 may by affidavit request distribution of assets of the decedent through informal application under this section. The affidavit must be signed and verified by the surviving spouse, if any, and any heirs at law, except that joinder in the affidavit is not required of an heir who will receive a full intestate share under the proposed distribution of the personal property. Before the filing of the affidavit, the affiant must make a diligent search and reasonable inquiry for any known or reasonably ascertainable creditors, and the proposed distribution must make provision for payment of those creditors to the extent that assets are available or the creditors must consent to the proposed distribution. The affidavit must be served in the manner of formal notice upon all heirs at law who have not joined in the affidavit; upon all known or reasonably ascertainable creditors of the decedent; and, if the decedent at the time of death was over the age of 55 years of age, upon the Agency for Health Care Administration.

(3) If the court is satisfied that subsection (1) is applicable and the affidavit filed by the heir at law meets the requirements of subsection (2), the court, by letter or other writing under the seal of the court, may authorize the payment,

transfer, disposition, delivery, or assignment of the tangible or intangible personal property to those persons entitled.

(a) Any individual, corporation, or other person paying, transferring, delivering, or assigning personal property under the authorization shall be forever discharged from liability thereon.

(b) Bona fide purchasers for value from those to whom personal property of the decedent has been paid, transferred, delivered, or assigned shall take the property free of all claims of creditors of the decedent and all rights of the surviving spouse and all other beneficiaries or heirs at law of the decedent.

(c) Personal property of the decedent that is not exempt from claims of creditors and that remains in the possession of those to whom it has been paid, delivered, transferred, or assigned shall continue to be liable for claims against the decedent until barred as provided in the Florida Probate Code. Any known or reasonably ascertainable creditor who did not consent to the proposed distribution and for whom provision for payment was not made may enforce the claim and, if the creditor prevails, shall be awarded costs, including reasonable attorney fees, against those who joined in the affidavit.

(d) Recipients of the decedent's personal property under this section shall be personally liable for a pro rata share of all lawful claims against the estate of the decedent, but only

to the extent of the value on the date of distribution of the personal property actually received by each recipient, exclusive of the property exempt from claims of creditors under the constitution and statutes of Florida.

(e) Except as otherwise provided in s. 733.710, after 2 years from the death of the decedent, neither the decedent's estate nor those to whom it may be distributed shall be liable for any claim against the decedent, unless within that time proceedings have been taken for the enforcement of the claim.

(f) Any heir or devisee of the decedent who was lawfully entitled to share in the estate but who was not included in the distribution under this section may enforce all rights in appropriate proceedings against those who signed the affidavit or received distribution of personal property and, if successful, shall be awarded costs including reasonable attorney fees as in chancery actions.

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

COMMERCE COMMITTEE

HB 1439 by Rep. Yarborough
Bank Property of Deceased Account Holders

AMENDMENT SUMMARY
February 13, 2020

Amendment 1 by Rep. Yarborough (line 106): The amendment:

- Permits a financial institution to disclose the existence of and amounts on deposit in an individual account of a decedent when the decedent's assets are the subject of a summary probate proceeding, a proceeding related to a nonresident decedent's testate estate, or an affidavit seeking court approval for disposition of the assets without a probate proceeding.
- Removes language that was intended to prohibit use of the "disposition without administration of intestate property in small estates" process if administration had been previously granted.

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 Yarborough offered the following:

Amendment

Remove lines 106-277 and insert:

4. A financial institution from disclosing the existence of and amounts on deposit in any individual account of a decedent to a petitioner that filed with the court a petition pursuant to s. 734.1025 or s. 735.203, or to an affiant that filed with the court an affidavit for disposition without administration pursuant to s. 735.301 or s. 735.304.

Section 2. Section 735.303, Florida Statutes, is created to read:

735.303 Payment to successor without court proceedings.—

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

(a) "Family member" means:

1. The surviving spouse of the decedent;

2. An adult child of the decedent if the decedent left no surviving spouse;

3. An adult descendant of the decedent if the decedent left no surviving spouse and no surviving adult child; or

4. A parent of the decedent if the decedent left no surviving spouse, no surviving adult child, and no surviving adult descendant.

(b) "Qualified account" means a depository account or certificate of deposit held by a financial institution in the sole name of the decedent without a pay-on-death or any other survivor designation.

(2) A financial institution in this state may pay to the family member of a decedent, without any court proceeding, order, or judgment, the funds on deposit in all qualified accounts of the decedent at the financial institution if the total amount of the combined funds in the qualified accounts at the financial institution do not exceed an aggregate total of $1,000. The financial institution may not make such payment earlier than 6 months after the date of the decedent's death.

(3) In order to receive the funds described in subsection (2), the family member must provide to the financial institution a certified copy of the decedent's death certificate and a sworn affidavit that includes all of the following:

(a) A statement attesting that the affiant is the surviving spouse, adult child, adult descendant, or parent of the decedent.

1. If the affiant is an adult child of the decedent, the affidavit must attest that the decedent left no surviving spouse.

2. If the affiant is an adult descendant of the decedent, the affidavit must attest that the decedent left no surviving spouse and no surviving adult child.

3. If the affiant is a parent of the decedent, the affidavit must attest that the decedent left no surviving spouse, no surviving adult child, and no surviving adult descendant.

(b) The date of death and the address of the decedent's last residence.

(c) A statement attesting that the total amount in all qualified accounts held by the decedent in all financial institutions known to the affiant does not exceed an aggregate total of $1,000.

(d) A statement acknowledging that a personal representative has not been appointed to administer the decedent's estate and attesting that no probate proceeding or summary administration procedure has been commenced with respect to the estate.

(e) A statement acknowledging that the affiant has no knowledge of the existence of any last will and testament or other document or agreement relating to the distribution of the decedent's estate.

(f) A statement acknowledging that the payment of the funds constitutes a full release and discharge of the financial institution's obligation regarding the amount paid.

(g) A statement acknowledging that the affiant understands that he or she is personally liable to the creditors of the decedent and other persons rightfully entitled to the funds under the Florida Probate Code, to the extent the amount paid exceeds the amount properly attributable to the affiant's share.

(h) A statement acknowledging that the affiant understands that making a false statement in the affidavit may be punishable as a criminal offense.

(4) The family member may use an affidavit in substantially the following form to fulfill the requirements of subsection (3):

AFFIDAVIT UNDER SECTION 735.303, FLORIDA STATUTES, TO OBTAIN BANK PROPERTY OF DECEASED ACCOUNT HOLDER: ...(Name of decedent)...
State of ....
County of ....

Before the undersigned authority personally appeared ...(name of affiant)..., of ...(residential address of affiant)..., who has been sworn and says the following statements are true:

(a) The affiant is (initial one of the following responses):

.... The surviving spouse of the decedent.

.... A surviving adult child of the decedent, and the decedent left no surviving spouse.

.... A surviving adult descendant of the decedent, and the decedent left no surviving spouse and no surviving adult child.

.... A surviving parent of the decedent, and the decedent left no surviving spouse, no surviving adult child, and no surviving adult descendant.

(b) As shown in the certified death certificate, the date of death of the decedent was ...(date of death)..., and the address of the decedent's last residence was ...(address of last residence)....

(c) The affiant is entitled to payment of the funds in the decedent's depository accounts and certificates of deposit held by the financial institution ...(name of financial institution).... The total amount in all qualified accounts held by the decedent in all financial institutions known to the affiant does not exceed an aggregate total of $1,000. The affiant requests full payment from the financial institution.

(d) A personal representative has not been appointed to administer the decedent's estate, and no probate proceeding or summary administration procedure has been commenced with respect to the estate.

(e) The affiant has no knowledge of any last will and testament or other document or agreement relating to the distribution of the decedent's estate.

(f) The payment of the funds constitutes a full release and discharge of the financial institution regarding the amount paid.

(g) The affiant understands that he or she is personally liable to the creditors of the decedent and other persons rightfully entitled to the funds under the Florida Probate Code, to the extent the amount paid exceeds the amount properly attributable to the affiant's share.

(h) The affiant understands that making a false statement in this affidavit may be punishable as a criminal offense.

By ...(signature of Affiant)...

Sworn to and subscribed before me this .... day of .... by ...(name of Affiant)..., who is personally known to me or produced .... as identification, and did take an oath.

...(Signature of Notary Public - State of Florida)...

...(Print, Type, or Stamp Commissioned Name of Notary Public)...

My commission expires: ...(date of expiration of commission)...

(5) The financial institution is not required to determine whether the contents of the sworn affidavit are truthful. The payment of the funds by the financial institution to the affiant constitutes the financial institution's full release and discharge regarding the amount paid. A person does not have a right or cause of action against the financial institution for taking an action, or for failing to take an action, in connection with the affidavit or the payment of the funds.

(6) The family member who withdraws the funds under this section is personally liable to the creditors of the decedent and any other person rightfully entitled to the funds under the Florida Probate Code, to the extent the amount paid exceeds the amount properly attributable to the family member's share.

(7) The financial institution shall maintain a copy or an image of the affidavit in accordance with its customary retention policies. If a surviving spouse or descendant of the decedent requests a copy of the affidavit during such time, the financial institution may provide a copy of the affidavit to the requesting surviving spouse or descendant of the decedent.

(8) In addition to any other penalty provided by law, a person who knowingly makes a false statement in a sworn

affidavit given to a financial institution to receive a decedent's funds under this section commits theft, punishable as provided in s. 812.014.

Section 3. Section 735.304, Florida Statutes, is created to read:

735.304 Disposition without administration of intestate property in small estates.—

(1) No administration shall be required or formal proceedings instituted upon the estate of a decedent who has died intestate leaving only personal property exempt under the provisions of s. 732.402, personal property exempt from the claims of creditors under the Florida Constitution, and nonexempt personal property the value of which does not exceed the sum of $10,000 and the amount of preferred funeral expenses and reasonable and necessary medical and hospital expenses of the last 60 days of the last illness, provided the decedent has been deceased for more than 1 year and no administration of the decedent's estate is pending in this state.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7071 PCB JDC 20-03 Contingency Risk Multipliers
SPONSOR(S): Judiciary Committee, Beltran and others
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 914

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Judiciary Committee	13 Y, 5 N	Jones	Luczynski
1) Commerce Committee		Fortenberry	Hamon

SUMMARY ANALYSIS

In certain situations after the resolution of a court case, the court may require one party to pay the opposing party's attorney fees. Several Florida and federal statutes, known as "fee-shifting statutes," entitle the prevailing party to a "reasonable" attorney fee as a matter of right. When a fee-shifting statute applies, the court must determine what constitutes a "reasonable" attorney fee.

Florida courts calculate reasonable attorney fees under the "lodestar approach." This approach requires the court to determine the number of hours reasonably expended on the case and multiply that number by the reasonable hourly rate, which produces the "lodestar amount."

In certain cases, courts further increase the lodestar amount by applying a "contingency risk multiplier" ("contingency fee multiplier") a concept that arose from judicial interpretations of fee-shifting statutes. In Florida courts, the size of the contingency risk multiplier varies from 1.0 to 2.5 based on the likelihood of success at the outset of the case, as follows:

- 1.0 to 1.5, if the trial court determines that success was more likely than not at the outset
- 1.5 to 2.0, if the trial court determines that the likelihood of success was approximately even at the outset
- 2.0 to 2.5, if the trial court determines that success was unlikely at the outset

In 1992, federal courts began to restrict the use of contingency risk multipliers, in most, if not all, circumstances. While there has been a shift away from that standard as of 2010, federal case law provides that a contingency risk multiplier may only be used in rare circumstances, and that the multiplier is completely unavailable under certain federal statutes. The Florida Supreme Court has taken a different approach, holding in 2017 that the contingency risk multiplier in Florida courts is not subject to a "rare and exceptional circumstances" requirement. Accordingly, currently Florida and federal law differ with respect to this issue.

The bill creates a strong presumption that the lodestar amount awarded by a court in a property insurance policy dispute is sufficient and reasonable. This presumption can only be overcome in rare and exceptional circumstances, with evidence that the plaintiff could not have reasonably retained competent counsel to take his or her case.

The bill appears to have no fiscal impact on state or local governments. The bill may have a positive direct economic impact on the private sector in the form of decreases in property insurance rates if litigation costs, which are a contributing factor to those rates, are reduced.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

In certain situations, a court may require one party to pay the opposing party's attorney fees. The traditional English Rule entitled a prevailing party to attorney fees as a matter of right. Florida, however, with a majority of other U.S. jurisdictions, adopted the American Rule, under which each party is responsible for its own attorney fees unless a statute provides an entitlement to fees.

Contingency Fees

A contingency fee is an attorney fee that is charged only if the lawsuit is successful or favorably settled out of court.[1] In turn, an attorney and a client may enter into a contingency fee contract, agreeing that the client will pay the attorney a fee only if the attorney successfully recovers for the client.

The Florida Supreme Court, through its Rules Regulating the Florida Bar, allows contingency fee contracts but restricts their use.[2] Rule 4-1.5(f) prohibits contingency fees in criminal defense and certain family law proceedings.[3] The rule also requires a contingency fee agreement to:

- Be in writing.
- State the method by which the fee is to be determined.
- State whether expenses are to be deducted before or after the contingency fee is calculated.
- In certain types of cases, include other provisions ensuring the client is aware of the agreement's terms.[4]

Upon conclusion of a contingency fee case, the attorney must provide the client a written statement stating the outcome of the case, the amount remitted to the client, and how the attorney calculated the amount.[5]

Statutorily Provided Attorney Fees

Several Florida and federal statutes state that a prevailing party in court proceedings is entitled to attorney fees as a matter of right.[6] These statutes are known as "fee-shifting statutes" and often entitle the prevailing party to a reasonable attorney fee.[7] When a fee-shifting statute applies, the court must determine and calculate what constitutes a reasonable attorney fee.

Lodestar Approach

In 1985, the Florida Supreme Court held that courts should calculate the amount of statutorily-authorized attorney fees under the "lodestar approach."[8] Under this approach, the first step is for the court to determine the number of hours reasonably expended on the case. The second step requires the court to determine a reasonable hourly rate. The number of hours reasonably expended

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[1] *See* Black's Law Dictionary 338 (8th ed. 2004).
[2] R. Regulating Fla. Bar 4-1.5(f).
[3] R. Regulating Fla. Bar 4-1.5(f)(3).
[4] R. Regulating Fla. Bar 4-1.5(f)(1) and (4).
[5] R. Regulating Fla. Bar 4-1.5(f)(1).
[6] *See, e.g.*, s. 627.428, F.S. (providing that an insured who prevails against an insurer is entitled to "a reasonable sum" of attorney fees); s. 501.2105, F.S. (providing that the prevailing party in an action under the Florida Deceptive and Unfair Trade Practices Act (FDUTPA) is entitled to "a reasonable legal fee"); 42 U.S.C. s. 1988(b) (providing that a prevailing party seeking to enforce specified civil rights statutes may recover "a reasonable attorney's fee").
[7] *See* s. 627.428, F.S., which is sometimes referred to as the "one-way attorney fees statute."
[8] *Fla. Patient's Comp. Fund v. Rowe*, 472 So. 2d 1145 (Fla. 1985).

(determined in the first step), multiplied by the reasonable hourly rate (determined in the second step), produces the "lodestar amount," which is considered an objective basis for what the attorney fee amount should be.

Contingency Risk Multiplier

In certain cases, the court increases the lodestar amount by applying a contingency risk multiplier.[9] The concept of the contingency risk multiplier arose from judicial interpretations of statutory authorization of attorney fees in particular cases,[10] but the Legislature may also expressly provide for use of a contingency risk multiplier in certain cases.[11] In a 1990 case, the Florida Supreme Court discussed three different types of cases and whether a contingency risk multiplier should be applied in each case, as follows:

- *Public policy enforcement cases.* These cases may involve discrimination, environmental issues, and consumer protection issues. In these cases, a contingency risk multiplier is usually inappropriate.
- *Family law, eminent domain, estate, and trust cases.* In these cases, a contingency risk multiplier is usually inappropriate.
- *Tort and contract claims, including insurance cases.* In these cases, a contingency risk multiplier may be applied if the plaintiff can demonstrate the following factors show a need for the multiplier:
    - Whether the relevant market requires a contingency risk multiplier to obtain counsel;
    - Whether the attorney can mitigate the risk of nonpayment; and
    - Whether any other factors established in *Rowe*[12] support the use of the multiplier.[13]

Further, in the same decision, the Court noted that the size of the contingency risk multiplier varies from 1.0 to 2.5 based on the likelihood of success at the outset of the case, as follows:

- 1.0 to 1.5, if the trial court determines that success was more likely than not at the outset
- 1.5 to 2.0, if the trial court determines that the likelihood of success was approximately even at the outset
- 2.0 to 2.5, if the trial court determines that success was unlikely at the outset.[14]

Therefore, under current law, an attorney is more likely to receive a higher contingency risk multiplier—and thus a higher attorney risk award—if he or she takes a case that at the outset seems unlikely to succeed.

Federal Court Treatment of the Contingency Risk Multiplier

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[9] The Court may also adjust the amount based on the results obtained by the attorney. *Standard Guar. Ins. Co. v. Quanstrom*, 555 So. 2d 828, 830-31 (Fla. 1990). Contingency risk multipliers are also referred to as contingency fee multipliers.

[10] The rationale for using a contingency risk multiplier to increase an attorney fee award is that plaintiffs and plaintiffs' attorneys generally do not recover any money unless they prevail. The attorney fee multiplier induces attorneys to take a risk on cases they might not otherwise take, allowing would-be plaintiffs to find attorneys willing to represent them.

[11] *See* s. 790.33(3)(f)1, F.S. (explicitly authorizing a contingency fee multiplier in certain cases relating to the preemption of firearm and ammunition regulation).

[12] The *Rowe* factors were based upon Disciplinary Rule 2-106(b) of the Florida Bar (which is now Rule of Professional Conduct 4-1.5), and were as follows:

- Time and labor required, novelty and difficulty of the question involved, and the skill and requisite to perform the legal service properly.
- Likelihood, if apparent to the client, that the acceptance of employment would preclude other employment by the lawyer.
- Fee customarily charged in the locality for similar legal services.
- Amount involved and results obtained.
- Time limitations imposed by the client and circumstances.
- Nature and length of the professional relationship with the client.
- Experience, reputation, and ability of the lawyer(s) providing services.
- Whether the fee is a fixed or contingency fee.

Rowe, 472 So. 2d at 1150–1151.

[13] *Quanstrom*, 555 So. 2d at 833-35.

[14] *Id.* at 834.

Part of the Florida Supreme Court's rationale for adopting the contingency risk multiplier framework in 1985 was that, at the time, it was being applied in federal courts.[15] However, in 1992, the U.S. Supreme Court decided *Burlington v. Dague*, in which it rejected the use of a contingency risk multiplier under certain federal risk-shifting statutes. *Dague* essentially signaled that the Supreme Court was closing the door on the contingency risk multiplier's use in most, if not all, federal cases.[16]

In 2010, in the case of *Perdue v. Kenny A. ex. rel. Winn,* a case involving a class action lawsuit filed on behalf of 3,000 children in the Georgia foster care system, the U.S. Supreme Court again addressed the contingency risk multiplier issue.[17] The plaintiffs argued in the underlying case that the foster care system in two counties was constitutionally deficient. The case went to mediation, and the parties entered a consent decree resolving all issues. Subsequently, the plaintiffs' attorneys sought attorney risks under 42 U.S.C. s. 1988.[18]

The federal district court calculated the fees using the lodestar approach, arriving at a $6 million figure, and then applied a 1.75 contingency risk multiplier, for a total attorney fee of $10.5 million. The district court justified the contingency risk multiplier by finding that the attorneys had:

- Advanced $1.7 million with no ongoing reimbursement.
- Worked on a contingency basis, and therefore were not guaranteed payment.
- Displayed a high degree of skill, commitment, dedication, and professionalism.
- Achieved extraordinary results.[19]

On review, the U.S. Supreme Court reversed the district court's calculation of attorney fees, remanding the case because the district court did not provide adequate justification for the 75 percent increase. The Court reiterated that "there is a strong presumption that the lodestar figure is reasonable," but that such presumption "may be overcome in those *rare circumstances* in which the lodestar does not adequately take into account a factor that may properly be considered in determining a reasonable fee."[20] The Court also determined that a contingency risk multiplier may be applicable in "exceptional" circumstances.[21]

Thus, the *Perdue* Court determined that the application of contingency risk multipliers may sometimes be appropriate, while also issuing several warnings about contingency risk multipliers, as follows:

- When a trial court fails to give detailed explanations for why it applies a contingency risk multiplier, "widely disparate awards may be made, and awards may be influenced . . . by a judge's subjective opinion regarding particular attorneys or the importance of the case."[22]
- "[U]njustified enhancements that serve only to enrich attorneys are not consistent" with the aims of a statute that seek to compensate plaintiffs.[23]
- In many cases, attorney fees "are not paid by the individuals responsible for the constitutional or statutory violations on which the judgment is based . . . . Instead, the fees are paid . . . by state and local taxpayers," resulting in a diversion of funds from other government programs.[24]

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[15] *See Rowe*, 472 So. 2d at 1146 ("[W]e . . . adopt the federal lodestar approach for computing reasonable attorney fees").
[16] *See City of Burlington v. Dague*, 112 S. Ct. 2638 (1992) ("Thus, enhancement for the contingency risk posed by each case would encourage meritorious claims to be brought, but only at the social cost of indiscriminately encouraging nonmeritorious claims to be brought as well . . . [W]e hold that enhancement for contingency is not permitted under the fee-shifting statutes at issue").
[17] *Perdue v. Kenny A. ex rel. Winn*, 130 S. Ct. 1662 (2010).
[18] 42 U.S.C. s. 1988(b) allows the court to award attorney fees to the prevailing party in certain civil rights actions.
[19] *Perdue*, 130 S. Ct. at 1670.
[20] *Id.* at 1673 (emphasis added).
[21] *Id.*
[22] *See id.* at 1676.
[23] *See id.*
[24] *See id.* at 1677.

Recent Florida Supreme Court Treatment of the Contingency Risk Multiplier

In 2017, the Florida Supreme Court rejected the U.S. Supreme Court's *Dague* decision, instead holding that the contingency risk multiplier in Florida courts is not subject to the "rare and exceptional circumstances" requirement.[25] The Court acknowledged that, based upon its decision to maintain the applicability of the contingency risk multiplier without the restrictions implemented by the *Dague* decision, Florida "separat[ed] from federal precedent in this area."[26]

Attorney Fees Applicable to Property Insurance Litigation

Current Florida law provides that when a court issues a judgment against an insurer, and in favor of an insured who is represented by an attorney, the court shall order that the insurer pay a reasonable amount of attorney fees to an insured's attorney.[27] This provision regarding attorney fees is applicable to various insurance claim disputes, including property insurance claim disputes.[28]

Effect of Proposed Changes

For property insurance litigation, the bill applies a standard for awarding a contingency risk multiplier that is similar to the standard applied in federal courts, in that it allows for the multiplier only in "rare and exceptional" circumstances.[29] The bill provides that the award of attorney fees creates a strong presumption that the lodestar amount awarded by a court in a property insurance policy case is sufficient and reasonable, and thus that the court should not ordinarily apply a contingency risk multiplier. The plaintiff can overcome this presumption only in a rare and exceptional circumstance, and only if he or she can demonstrate that he or she could not have otherwise reasonably retained competent counsel.

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

B. SECTION DIRECTORY:

Section 1: Amends s. 627.428, F.S., relating to attorney fees.
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:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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[25] *See Joyce v. Federated Nat'l Ins. Co.*, 228 So. 3d 1122 (Fla. 2017) ("[W]ith all due deference to the United States Supreme Court, we do not accept the *Dague* majority's rationale for rejecting contingency fee multipliers").
[26] *Id. at*, 1132
[27] *Id.*
[28] Of note, the Florida legislature has expressly prohibited the use of contingency risk multipliers for personal injury protection cases. *See* s. 627.736(8)(c), F.S.
[29] In essence, the bill shifts the standard for the use of a contingency risk multiplier in property insurance cases away from that of the *Joyce* case.

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill's creation of a strong presumption in favor of a "lodestar" fee, only to be overcome in a "rare and exceptional circumstance" may reduce the amount of fees some attorneys recover if contingency risk multipliers are applied in fewer cases. Property insurance rates are based upon multiple factors, including litigation costs. To the extent the bill reduces litigation costs for property insurance cases, it may cause property insurance rates to decrease. The bill may also result in a reduced incentive for attorneys to litigate property insurance cases. This may cause fewer property insurance cases to be litigated, which might further reduce property insurance rates. However, this could have the unintended consequence of making it more difficult to obtain an attorney for a property insurance case, resulting in the applicability of the contingency risk multiplier when a case is litigated.

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:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 30, 2020, the Judiciary Committee considered the bill as a PCB, adopted a strike-all amendment and reported the PCB favorably, as amended. The amendment:

- Limited the PCB's application to claims arising under a property insurance policy.
- Removed the prohibition of a contingency risk multiplier, instead creating a strong presumption that a contingency risk multiplier is inappropriate to enhance a lodestar calculation for attorney fees.
- Clarified that the presumption can be overcome only in a rare and exceptional circumstance.

This analysis is drafted to the bill, which was the PCB as amended by the Judiciary Committee.

A bill to be entitled

An act relating to contingency risk multipliers; amending s. 627.428, F.S.; providing that, for certain attorney fees awarded for claims arising under property insurance policies, a strong presumption is created that a lodestar fee is sufficient and reasonable; providing that such presumption may be rebutted only under certain circumstances; providing an effective date.

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

Section 1. Subsection (4) is added to section 627.428, Florida Statutes, to read:

627.428 Attorney fees.—

(4) In an award of attorney fees under this section for a claim arising under a property insurance policy, a strong presumption is created that a lodestar fee is sufficient and reasonable. Such presumption may be rebutted only in a rare and exceptional circumstance with evidence that competent counsel could not be retained in a reasonable manner.

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

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCS for CS/HB 203 Growth Management
SPONSOR(S): Commerce Committee
TIED BILLS: **IDEN./SIM. BILLS:** SB 410

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Commerce Committee		Wright	Hamon

SUMMARY ANALYSIS

Local governments are required to adopt county or municipal comprehensive plans to manage future growth in their communities. Local comprehensive plans are required to have nine specific elements, which does not include a specific property rights element. Plans must be renewed every seven years. Municipal plans **adopted** after January 1, 2019, must incorporate development orders existing before the plan's effective date.

Local governments and developers are authorized to enter into development agreements, which are contracts that provide the developer with vested rights by freezing the applicable existing zoning regulations in exchange for public benefits. A development agreement may be amended or canceled by mutual consent of the parties to the agreement or by their successors in interest.

Procedures for municipal annexation of unincorporated territory and exercise of extra-territorial powers by municipalities are provided by general or special law. Before local annexation procedures may begin, the municipal government must prepare a report certifying, among other requirements, that no part of the area to be annexed falls within the boundary of another incorporated municipality. The Interlocal Service Boundary Agreement Act authorizes an alternative to these procedures through interlocal agreements, which may provide an annexation process by securing the consent of residents within the area to be annexed.

Approved developments of regional impact (DRIs) are developments that, because of their character, magnitude or location, substantially affect the health, safety, or welfare of the citizens of more than one county. Statutorily required state reviews of DRI agreements were eliminated in 2018, and the responsibility for overseeing existing DRI agreements was transferred to local governments. The provision related to amending land uses for essentially built out DRI agreements was also eliminated.

The bill:

- requires a local comprehensive plan to have a property rights element which requires the local government to consider certain private property rights in its decision-making process. Local governments must adopt this element during their next plan amendment process, or by July 1, 2023.
- provides that all municipal comprehensive plans **effective** after January 1, 2019, must incorporate development orders existing before the plan's effective date.
- provides that a developer and the local government are authorized to amend or cancel a development agreement without securing the consent of other parcel owners of property, unless such amendment or cancellation directly modifies the uses or entitlements of an owner's property.
- prohibits a municipality from annexing area within another municipality's jurisdiction without the other municipality's consent, unless an interlocal agreement to the contrary is in effect.
- allows existing DRI agreements that are classified as essentially built out and were valid on or before April 6, 2018, to exchange land uses under certain circumstances.

The bill does not have a fiscal impact on state government and may have an insignificant fiscal impact on local governments.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Local Comprehensive Plans

Private Property Rights

The "Bert Harris Jr., Private Property Rights Protection Act" (Harris Act) entitles private property owners to relief when a specific action of a governmental entity inordinately burdens the owner's existing use, or a vested right to a specific use, of real property.[1] The Harris Act recognizes that the inordinate burden, restriction, or limitation on private property rights as applied may fall short of a taking under the State Constitution or the U.S. Constitution and establishes a separate and distinct cause of action for relief, or payment of compensation, when a new law, rule, or ordinance of the state or a political entity in the state, unfairly affects real property.[2] The Harris Act applies generally to state and local governments but not to the U.S. government, federal agencies, or state or local government entities exercising formally delegated U.S. or federal agency powers.[3]

In addition to action inordinately burdening a property right, an owner may seek relief when a state or local governmental entity imposes a condition on the proposed use of the real property that amounts to a prohibited exaction.[4] A prohibited exaction occurs when an imposed condition lacks an essential nexus to a legitimate public purpose and is not roughly proportionate to the impacts of the proposed use that the governmental entity seeks to avoid, minimize, or mitigate.[5]

The "Florida Land Use and Environmental Dispute Resolution Act" (Land Use Act) allows a landowner to request relief from a government entity's development order or enforcement action when the order or action is unreasonable or unfairly burdens the use of the owner's real property.[6] Parties in pending judicial proceedings may also use the dispute resolution process outlined in the Land Use Act if all parties agree and the court approves.[7]

State and Local Comprehensive Plans

Laws protecting private property rights are balanced against the state's need to effectively and efficiently plan, coordinate, and deliver government services amid the state's continued growth and development.[8] The State Comprehensive Plan provides long-range policy guidance for the orderly social, economic, and physical growth of the state,[9] which must be consistent with the protection of private property rights.[10] Local governments are required to adopt local comprehensive plans to manage the future growth of their communities under the Community Planning Act.[11]

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.[12] The Community Planning Act governs how local governments create and

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[1] S. 70.001(2), F.S.
[2] S. 70.001(1), F.S.
[3] S. 70.001(3)(c), F.S.
[4] S. 70.45(2), F.S.
[5] S. 70.45(1)(c), F.S.
[6] S. 70.51(3), F.S.
[7] S. 70.51(29), F.S.
[8] *See* s. 186.002(1)(b), F.S.
[9] S. 187.101(1), F.S.
[10] S. 187.101(3), F.S. The plan's goals and policies must also be reasonably applied where they are economically and environmentally feasible and not contrary to the public interest.

[12] *See* ch. 2011-139, s. 17, L.O.F.

adopt their local comprehensive plans. The Legislature intended for all governmental entities in the state to recognize and respect judicially acknowledged or constitutionally protected private property rights.[13] Authority under the Community Planning Act must be exercised with sensitivity for private property rights, without undue restriction, and leave property owners free from actions by others that would harm their property or constitute an inordinate burden on property rights under the Harris Act.[14]

Local Comprehensive Plan Elements

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.[15] Plans also are required to identify procedures for monitoring, evaluating, and appraising implementation of the plan.[16] Plans may include optional elements,[17] but must include the following nine elements:

- Capital improvements;[18]
- Future land use plan;[19]
- Intergovernmental coordination;[20]
- Conservation;[21]
- Transportation;[22]
- Sanitary sewer, solid waste, drainage, potable water, and aquifer recharge;[23]
- Recreation and open space;[24]
- Housing;[25] and
- Coastal management (for coastal local governments).[26]

Counties and municipalities may employ individual comprehensive plans or joint plans if both entities agree. Counties and municipalities may also coordinate plans in any combined manner that aligns with their common interests.[27] A county plan controls in a municipality until a municipal comprehensive plan is adopted. New municipalities must adopt a comprehensive plan within three years after the date of incorporation.[28]

Amendments to a Local Comprehensive Plan

Local governments must review and amend their comprehensive plans every seven years to reflect any changes in state requirements.[29] Within a year of any such amendments, local governments must adopt or amend local land use regulations consistent with the amended plan.[30] A local government is not required to review its comprehensive plan before its regular review period unless the law specifically requires otherwise.[31]

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[13] S. 163.3161(10), F.S.
[14] S. 163.3161(10), F.S.
[15] S. 163.3177(1), F.S.
[16] S. 163.3177(1)(d), F.S.
[17] S. 163.3177(1)(a), F.S.
[18] S. 163.3177(3)(a), F.S. The capital improvements element must be reviewed by the local government on an annual basis.
[19] S. 163.3177(6)(a), F.S.
[20] S. 163.3177(6)(h), F.S.
[21] S. 163.3177(6)(d), F.S.
[22] S. 163.3177(6)(b), F.S.
[23] S. 163.3177(6)(c), F.S.
[24] S. 163.3177(6)(e), F.S.
[25] S. 163.3177(6)(f), F.S.
[26] S. 163.3177(6)(g), F.S.
[27] S. 163.3167(1), F.S.
[28] S. 163.3167(3), F.S.
[29] S. 163.3191, F.S.
[30] S. 163.3203, F.S.
[31] S. 163.3161(12), F.S.

Generally, a local government amending its comprehensive plan must follow an expedited state review process.[32] Certain plan amendments, including amendments required to reflect a change in state requirements, must follow the state coordinated review process for the adoption of comprehensive plans.[33] Under the state process, the state land planning agency is responsible for plan review, coordination, and preparing and transmitting comments to the local government.[34] The Department of Economic Opportunity (DEO) is designated as the state land planning agency.[35]

Under the state coordinated review process, local governments must hold a properly noticed public hearing[36] about the proposed amendment before sending it for comment from several reviewing agencies, including DEO, the Department of Environmental Protection, the appropriate regional planning council, and the Department of State.[37] Local governments or government agencies within the state filing a written request with the governing body are also entitled to copies of the amendment.[38] Comments on the amendment must be received within 30 days after DEO receives the proposed plan amendment.[39]

DEO must provide a written report within 60 days of receipt of the proposed amendment if it elects to review the amendment.[40] The report must state the agency's objections, recommendations, and comments with certain specificity, and must be based on written, not oral, comments.[41] Within 180 days of receiving the report from DEO, the local government must review the report and any written comments and hold a second properly noticed public hearing on the adoption of the amendment.[42] Adopted plan amendments must be sent to DEO and any agency or government that provided timely comments within 10 working days after the hearing.[43]

Once DEO receives the adopted amendment and determines it is complete, it has 45 days to determine if the adopted plan amendment complies with the law[44] and to issue on its website a notice of intent finding whether or not the amendment is compliant.[45] A compliance review is limited to the findings identified in DEO's original report unless the adopted amendment is substantially different from the reviewed amendment.[46] Unless the local comprehensive plan amendment is challenged, it takes effect pursuant to the notice of intent.[47] If there is a timely-filed challenge, then the plan amendment will not take effect until DEO or the Administration Commission enters a final order determining the adopted amendment is in compliance with the law.[48]

Requirements for Local Land Development Regulations and Comprehensive Plans

Section 163.3202(2), F.S., outlines the minimum provisions that counties and municipalities should include in their local government land development regulations. These provisions include:

- Regulating the subdivision of land;

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[32] S. 163.3184(3)(a), F.S.
[33] S. 163.3184(2)(c), F.S.
[34] S. 163.3184(4)(a), F.S.
[35] S. 163.3164(44), F.S.
[36] S. 163.3184(4)(b) and (11)(b)1., F.S.
[37] S. 163.3184(4)(b) and (c), F.S.
[38] S. 163.3184(4)(b), F.S.
[39] S. 163.3184(4)(c), F.S.
[40] S. 163.3184(4)(d)1., F.S.
[41] S. 163.3184(4)(d)1., F.S. All written communication the agency received or generated regarding a proposed amendment must be identified with enough information to allow for copies of documents to be requested. S. 163.3184(4)(d)2., F.S.
[42] S. 163.3184(4)(e)1. and (11)(b)2., F.S. If the hearing is not held within 180 days of receipt of the report, the amendment is deemed withdrawn absent an agreement and notice to DEO and all affected persons that provided comments. S. 163.3184(4)(e)1., F.S.
[43] S. 163.3184(4)(e)2., F.S.
[44] S. 163.3184(4)(e)3. and 4., F.S.
[45] S. 163.3184(4)(e)4., F.S.
[46] *Id.*
[47] S. 163.3184(4)(e)5., F.S.
[48] *Id.*

- Regulating the use of land and water;
- Providing for protection of potable water wellfields;
- Regulating areas subject to seasonal and periodic flooding and provide for drainage and stormwater management;
- Ensuring the protection of environmentally sensitive lands designated in the comprehensive plan;
- Regulating signage;
- Addressing concurrency;
- Ensuring safe and convenient onsite traffic flow; and
- Maintaining the existing density of residential properties or recreational vehicle parks.

Local comprehensive plans **adopted** after January 1, 2019, and all land development regulations adopted to implement the plan, must incorporate a development order existing before the comprehensive plan's effective date. The plan may not impair a party's ability to complete development in accordance with the development order and must vest the density[49] and intensity[50] approved by the development order without any limitations or modifications. Land development regulations must incorporate preexisting development orders.[51]

Effect of Proposed Changes

The bill requires local governments to include a property rights element in their comprehensive plans at their next proposed plan amendment or by July 1, 2023, whichever comes first. The bill provides that a local government may develop its own property rights language if such language does not conflict with the model statement of rights. The model statement of rights requires the local government to consider the following 4 elements in local decision-making:

1. Physical possession and control of the property owner's interests in the property, including easements, leases, or mineral rights;
2. Use, maintenance, development, and improvement of the property for personal use or the use of any other person, subject to state law and local ordinances;
3. Privacy and exclusion of others from the property to protect the owner's possessions and property; and
4. Disposal of the property owner's property through sale or gift.

The bill provides that all local comprehensive plans **effective** after January 1, 2019, instead of **adopted** after January 1, 2019, and all land development regulations adopted to implement the plan, must incorporate development orders existing before the plan's effective date.

Local Government Development Agreements

Background

Under the Florida Local Government Development Agreement Act,[52] local governments are authorized to enter into development agreements with developers.[53] A "development agreement" is a "contract between a local government and a property owner/developer, which provides the developer with vested

[49] S. 163.3164(12), F.S., defines "density" as an objective measure of the number of people or residential units allowed per unit of land, such as residents or employees per acre.
[50] S. 163.3164(22), F.S., defines "intensity" as an objective measurement of the extent to which land may be developed or used, including the consumption or use of the space above, on, or below the ground; the measurement of the use of or demand on natural resources; and the measurement of the use of or demand on facilities and services.
[51] Ss. 163.3167(3) and 163.3203, F.S.
[52] Ss. 163.3220- 163.3243, F.S.
[53] S. 163.3220(4), F.S.

rights by freezing the existing zoning regulations applicable to a property in exchange for public benefits."[54]

Any local government may, by ordinance, establish procedures and requirements, as provided in the Act, to consider and enter into a development agreement with any person having a legal or equitable interest in real property located within its jurisdiction.[55]

A development agreement must include the following:[56]

- a legal description of the land subject to the agreement, and the names of its legal and equitable owners;
- the duration of the agreement;
- the development uses permitted on the land, including population densities, and building intensities and height;
- a description of public facilities that will service the development, including who shall provide such facilities; the date any new facilities, if needed, will be constructed; and a schedule to assure public facilities are available concurrent with the impacts of the development;
- a description of any reservation or dedication of land for public purposes;
- a description of all local development permits approved or needed to be approved for the development of the land;
- a finding that the development permitted or proposed is consistent with the local government's comprehensive plan and land development regulations;
- a description of any conditions, terms, restrictions, or other requirements determined to be necessary by the local government for the public health, safety, or welfare of its citizens; and
- a statement indicating that the failure of the agreement to address a particular permit, condition, term, or restriction shall not relieve the developer of the necessity of complying with the law governing said permitting requirements, conditions, term, or restriction.

A development agreement may also provide that the entire development or any phase thereof be commenced or completed within a specific period of time.[57] Within 14 days after a local government enters into a development agreement, the local government must record the agreement with the clerk of the circuit court in the county where the local government is located. A development agreement will not be effective until it is properly recorded in the public records of the county.[58]

The burdens of the development agreement are binding upon and the benefits of the agreement inure to all successors in interest to the parties to the agreement.[59]

A development agreement may be amended or canceled by mutual consent of the parties to the agreement or by their successors in interest.[60]

Effect of Proposed Changes

The bill provides that a party or its designated successor in interest to a development agreement and the local government are authorized to amend or cancel a development agreement without securing the consent of other parcel owners of property that were originally subject to the development agreement unless the amendment, modification or termination directly modifies the allowable uses or entitlements of an owner's property.

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[54] *Morgran Co., Inc. v. Orange County*, 818 So. 2d 640 (Fla. 5th DCA 2002); 7 Fla. Jur 2d Building, Zoning, and Land Controls § 168 (2019).
[55] S. 163.3223, F.S; 7 Fla. Jur 2d Building, Zoning, and Land Controls § 168 (2019).
[56] S. 163.3227(1), F.S.
[57] S. 163.3227(2), F.S; 7 Fla. Jur 2d Building, Zoning, and Land Controls § 168 (2019).
[58] S. 163.3239, F.S; 7 Fla. Jur 2d Building, Zoning, and Land Controls § 168 (2019).
[59] S. 163.3239, F.S.
[60] S. 163.3237, F.S.

Municipal Annexation

Background

Section 2(c), Art. VIII of the Florida Constitution provides that municipal annexation of unincorporated territory, merger of municipalities, and exercise of extra-territorial powers by municipalities must be as provided by general or special law. This provision authorizes the Legislature to annex unincorporated property into a municipality by special act. It also authorizes the Legislature to establish procedures in general law for the annexation of property.

The Legislature established local annexation procedures by general law in 1974, with the enactment of ch. 171, F.S., the "Municipal Annexation or Contraction Act."[61] This act describes the way in which property may be annexed or de-annexed by cities without legislative action. The purpose of the act is to set forth procedures for adjusting the boundaries of municipalities through annexations or contractions of corporate limits, and criteria for determining when annexations or contractions may take place so as to:

- ensure sound urban development and accommodation to growth;
- establish uniform legislative standards for the adjustment of municipal boundaries;
- ensure efficient provision of urban services to areas that become urban in character; and
- ensure areas are not annexed unless municipal services can be provided to those areas.[62]

Pursuant to s. 171.042, F.S., before local annexation procedures may begin, the governing body of the municipality must prepare a report containing plans for providing urban services to any area to be annexed. A copy of the report must be filed with the board of county commissioners where the municipality is located. This report must include appropriate maps, plans for extending municipal services, timetables, and financing methodologies. It must certify that the area proposed to be annexed is appropriate for annexation because it meets the following standards and requirements described by s. 171.043, F.S.:

- The area to be annexed must be an unincorporated area that is contiguous to the boundary of the annexing municipality.[63]
- The area to be annexed must be reasonably compact.[64]
- No part of the area to be annexed may fall within the boundary of another incorporated municipality.
- Part or all of the land to be annexed must be developed for urban purposes.[65]
- Alternatively, if the proposed area is not developed for urban purposes, it can either border at least 60 percent of a developed area, or provide a necessary bridge between two urban areas for the extension of municipal services.

The Interlocal Service Boundary Agreement Act (Interlocal Boundary Act)[66] authorizes an alternative to these statutory procedures. Intended to encourage intergovernmental coordination in planning, delivery of services, and boundary adjustments, the primary purpose of the Interlocal Boundary Act is to promote establishing boundaries that reduce the costs of local governments, prevent duplication of

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[61] Ch. 74-190, s. 1, Laws of Fla.
[62] S. 171.021, F.S.
[63] This means that a substantial part of the boundary of the area to be annexed has a common boundary with the municipality. There are specified exceptions for cases in which an area is separated from the city's boundary by a publicly owned county park, right-of-way or body of water.
[64] S. 171.031(12), F.S., defines "compactness" as concentration of a piece of property in a single area and precludes any action which would create enclaves, pockets, or finger areas in serpentine patterns. Any annexation proceeding in any county in the state is required to be designed in such a manner as to ensure that the area will be reasonably compact.
[65] An area developed for urban purposes is defined as an area which meets any one of the following standards: (a) a total resident population equal to at least two persons per acre; (b) a total resident population equal to at least one person per acre, with at least 60 percent of subdivided lots one acre or less; or (c) at least 60 percent of the total lots used for urban purposes, with at least 60 percent of the total urban residential acreage divided into lots of five acres or less.
[66] Ch. 171, Part II, F.S. *See* s. 171.20, F.S.

services, increase local government transparency and accountability, and reduce intergovernmental conflicts.[67]

An interlocal agreement may provide an annexation procedure with a flexible process for securing the consent of those within the area to be annexed, while continuing the requirement for approval of the proposed annexation by a majority of the registered voters, the land owners, or both, within the proposed annexation area. The alternate process also must provide for certain disclosures pertaining to a privately owned solid waste disposal facility included within the proposed annexation area, including whether the owner of the facility objects to the proposed annexation.[68]

Effect of Proposed Changes

The bill amends s. 171.042, F.S., prohibiting a municipality from annexing an area within another municipality's jurisdiction without the other municipality's consent.

The bill provides an exception to these annexation requirements when an interlocal agreement is in effect for property annexed by a municipality.

Developments of Regional Impact

Background

Developments of Regional Impact (DRIs) are defined as "any development which, because of its character, magnitude, or location, would have a substantial effect on the health, safety, or welfare of citizens of more than one county."[69]

The DRI program was initially created in 1972 as an interim program intended to be replaced by comprehensive planning and permitting programs.[70] The program provided a process to identify regional impacts stemming from large developments and appropriate provisions to mitigate impacts on state and regional resources.

In 2015,[71] the Legislature amended the laws related to DRI's to provide that new DRI-sized developments proposed after July 1, 2015, must be approved by a comprehensive plan amendment in lieu of the state review process provided for in s. 380.06, F.S. The Legislature also amended the laws related to comprehensive plans to require that plan amendments be reviewed under the state coordinated review process.[72] Additional changes were made in 2016 requiring DRI reviews to follow the state coordinated review process if the development, or an amendment to the development, required an amendment to the comprehensive plan.[73]

However, state and regional reviews of existing DRIs were eliminated in 2018.[74] The responsibility for implementation of, and amendments to, existing DRI agreements and development orders was transferred to the local governments where the developments are located.[75]

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[67] S. 171.201, F.S.
[68] S. 171.205, F.S.
[69] s. 380.06(1), F.S.
[70] The Florida Senate, Committee on Community Affairs, Interim Report 2012-114, September 2011, citing: Thomas G. Pelham, *A Historical Perspective for Evaluating Florida's Evolving Growth Management Process*, in Growth Management in Florida: Planning for Paradise, 8 (Timothy S. Chapin, Charles E. Connerly, and Harrison T. Higgins eds. 2005).
[71] Ch. 2015-30, Laws of Fla.
[72] s. 163.3184(2)(c), F.S.
[73] Ch. 2016-148, Laws of Fla.
[74] Ch. 2018-158, Laws of Fla.
[75] S. 380.06(4)(a), (7), F.S.

Currently, an amendment to a development order for an approved DRI may not amend to an earlier date until the local government agrees that the approved DRI will not be subject to downzoning, unit density reduction, or intensity reduction, unless:[76]

- the local government can demonstrate that substantial changes in the conditions underlying the approval of the development order have occurred,
- the development order was based on substantially inaccurate information provided by the developer, or
- the change is clearly established by local government to be essential to the public health, safety, or welfare.

Any proposed change to a previously approved DRI must be reviewed by the local government based on the standards and procedures in its adopted local comprehensive plan and adopted local land development regulations, including, but not limited to, procedures for notice to the applicant and the public regarding the issuance of development orders.[77]

However, a change to a DRI that has the effect of reducing the originally approved height, density, or intensity of the development must be reviewed by the local government based on the standards in the local comprehensive plan at the time the development was originally approved. If the proposed change would have been consistent with the comprehensive plan in effect when the development was originally approved, the local government may approve the change.[78]

DRI agreements that were classified as essentially built out and valid on or before April 6, 2018, were preserved, but the provisions that allowed such agreements to be amended to exchange approved land uses was eliminated.[79]

For such agreements, a DRI is essentially built out if:[80]

- all the mitigation requirements in the development order were satisfied, all developers were in compliance with all applicable terms and conditions of the development order except the buildout date, and the amount of proposed development that remained to be built was less than 40 percent of any applicable development-of-regional-impact threshold; or
- the project was determined to be an essentially built-out development of regional impact through an agreement executed by the developer, the state land planning agency, and the local government.

Effect of Proposed Changes

The bill allows any DRI agreement previously classified as or officially determined to be essentially built out, and entered into on or before April 6, 2018, to be amended to authorize the developer to exchange approved land uses.

Such amendments may only be made subject to the developer demonstrating that the exchange will not increase impacts to public facilities.

Any such amendments must be made pursuant to the processes adopted by the local government for amending development orders.

B. SECTION DIRECTORY:

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[76] S. 380.06(4)(a), F.S.
[77] S. 380.06(7)(a), F.S.
[78] *Id.*
[79] Ch. 2018-158, Laws of Fla.
[80] S. 380.06(15)(g)3., 4., F.S. (2017).

Section 1. Amends s. 163.3167, F.S., requiring comprehensive plans initially effective after a certain date to incorporate development orders preexisting the plan.

Section 2. Amends s. 163.3177, F.S., requiring a comprehensive plan to include a private property rights element.

Section 3. Amends s. 163.3237, F.S., relating to development agreement amendments and cancelations.

Section 4. Amends s. 172.042, F.S., relating to municipal annexation requirements.

Section 5. Amends s. 380.06, F.S., allowing certain agreements relating to an approved development of regional impact to be amended under certain circumstances.

Section 6. 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:

   The bill may have an insignificant fiscal impact on local governments not scheduled to review their plans before 2024 due to the requirement to amend their comprehensive plans by July 1, 2023, to include a property rights element.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   The county/municipality mandates provision of Art. VII, s. 18 of the Florida Constitution may apply because this bill requires counties and municipalities that are not scheduled to amend their comprehensive plans before 2024 to amend their plans by July 1, 2023 to include the statement on property rights; and for counties and municipalities to amend their comprehensive plans to include development orders existing before the comprehensive plan's effective date if it does not already do

so. However, an exemption may apply given that laws having an insignificant fiscal impact are exempt from the requirements of Art. VII, s. 18 of the Florida Constitution.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill neither provides authority for nor requires rulemaking by executive branch agencies.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to growth management; amending s. 163.3167, F.S.; providing requirements for a comprehensive plan initially effective after a certain date and related land development regulations; amending s. 163.3177, F.S.; requiring the comprehensive plan to include a property rights element; providing a statement of rights that a local government may use; requiring local government to adopt a property rights element by a specified date; providing that a local government's property rights element may not conflict with the statutorily provided statement of rights; amending s. 163.3237, F.S.; providing that certain property owners are not required to consent to development agreement changes under certain circumstances; amending s. 171.042, F.S.; prohibiting a municipality from annexing specified areas under certain circumstances; amending s. 380.06, F.S.; allowing certain developments of regional impact agreements to be amended under certain circumstances; providing an effective date.

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

Section 1. Subsection (3) of section 163.3167, Florida

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

Statutes, is amended to read:

163.3167 Scope of act.—

(3) A municipality established after the effective date of this act shall, within 1 year after incorporation, establish a local planning agency, pursuant to s. 163.3174, and prepare and adopt a comprehensive plan of the type and in the manner set out in this act within 3 years after the date of such incorporation. A county comprehensive plan is controlling until the municipality adopts a comprehensive plan in accordance with this act. A comprehensive plan effective ~~adopted~~ after January 1, 2019, and all land development regulations adopted to implement the comprehensive plan must incorporate each development order existing before the comprehensive plan's effective date, may not impair the completion of a development in accordance with such existing development order, and must vest the density and intensity approved by such development order existing on the effective date of the comprehensive plan without limitation or modification.

Section 2. Paragraph (i) is added to subsection (6) of section 163.3177, Florida Statutes, to read:

163.3177 Required and optional elements of comprehensive plan; studies and surveys.—

(6) In addition to the requirements of subsections (1)-(5), the comprehensive plan shall include the following elements:

(i) 1. In accordance with the legislative intent expressed in ss. 163.3161(10) and 187.101(3) that governmental entities respect judicially acknowledged and constitutionally protected private property rights, each local government shall include in its comprehensive plan a property rights element to ensure that private property rights are considered in local decisionmaking. A local government may adopt its own property rights element or use the following statement of rights:

The following rights shall be considered in local decisionmaking:

1. The right of a property owner to physically possess and control his or her interests in the property, including easements, leases, or mineral rights.

2. The right of a property owner to use, maintain, develop, and improve his or her property for personal use or the use of any other person, subject to state law and local ordinances.

3. The right of the property owner to privacy and to exclude others from the property to protect the owner's possessions and property.

4. The right of a property owner to dispose of his or her property through sale or gift.

2. Each local government must adopt a property rights element in its comprehensive plan by the earlier of its next proposed plan amendment or July 1, 2023. If a local government adopts its own property rights element, the element may not conflict with the statement of rights provided in subparagraph 1.

Section 3. Section 163.3237, Florida Statutes, is amended to read:

163.3237 Amendment or cancellation of a development agreement.—A development agreement may be amended or canceled by mutual consent of the parties to the agreement or by their successors in interest. A party or its designated successor in interest to a development agreement and a local government are authorized to amend or cancel a development agreement without securing the consent of other parcel owners whose property was originally subject to the development agreement, unless the amendment or cancellation directly modifies the allowable uses or entitlements of such owner's property.

Section 4. Subsection (4) is added to section 171.042, Florida Statutes, to read:

171.042 Prerequisites to annexation.—

(4) Except as otherwise provided in s. 171.205, a

municipality may not annex an area within another municipal jurisdiction without the other municipality's consent.

Section 5. Paragraph (d) of subsection (4) of section 380.06, Florida Statutes, is amended to read:

380.06 Developments of regional impact.—

(4) LOCAL GOVERNMENT DEVELOPMENT ORDER.—

(d) Any agreement entered into by the state land planning agency, the developer, and the local government with respect to an approved development of regional impact previously classified as essentially built out, or any other official determination that an approved development of regional impact is essentially built out, remains valid unless it expired on or before April 6, 2018 and may be amended pursuant to the processes adopted by the local government for amending development orders. These agreements may authorize the developer to exchange approved land uses subject to demonstrating that the exchange will not increase impacts to public facilities. This paragraph applies to all such adopted agreements and amendments thereto effective on or after April 6, 2018.

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

COMMERCE COMMITTEE

PCS for CS/HB 203 by Rep. McClain
GROWTH MANAGEMENT

AMENDMENT SUMMARY
February 13, 2020

Amendment 1 by Rep. McClain (Line 43):

- Requires the Department of Economic Opportunity to give preference to counties and municipalities with populations less than 200,000 when selecting applications for funding for technical assistance related to certain determinations that need to be made when developing or amending a local government's comprehensive plan.

Amendment 2 by Rep. Stone (Line 102):

- Provides that a municipality may not extend its water or sewer service into the unincorporated area of a county, without consent of the county, if the county already provides the same service within the county.
- Applies only to extensions of service on or after July 1, 2020.

Amendment 3 by Rep. Fischer (Line 102):

- Provides that all utility permit applications for use of the public right-of-way must be processed within the timeframe that currently applies only to permit applications submitted by communications services providers.

Amendment 4 by Rep. Sabatini (Line 24):

- Allows the prevailing party in a claim brought under part II of Chapter 163, F.S., relating to local growth policy and land development regulation, to seek attorney fees and costs.

Amendment 5 by Rep. Santiago (Line 24):

- Provides that certain entities may acquire title to any water or wastewater plant utility facilities, other facilities, or property which was acquired by the use of eminent domain, if 10 or more years have elapsed since the date of the acquisition by eminent domain.

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 McClain offered the following:

Amendment (with title amendment)

Between lines 43 and 44, insert:

Section 2. Present subsection (4) of section 163.3168, Florida Statutes, is redesignated as subsection (5), and a new subsection (4) is added to that section, to read:

163.3168 Planning innovations and technical assistance.—

(4) When selecting applications for funding for technical assistance, the state land planning agency shall give a preference to a county that has a population of 200,000 or less, and to a municipality located within such a county, for assistance in determining whether the area in and around a proposed multiuse corridor interchange as described in s. 338.2278 contains appropriate land uses and natural resource

protections and for aid in developing or amending a local government's comprehensive plan to provide for such uses, protections, and intended benefits as provided in s. 338.2278.

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

Between lines 5 and 6, insert:

amending s. 163.3168, F.S.; requiring the Department of Economic Opportunity to give a preference to certain counties and municipalities when selecting applications for funding for technical assistance;

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 Stone offered the following:

Amendment (with title amendment)

Between lines 102 and 103, insert:

Section 5. Subsection (2) of section 180.02, Florida Statutes, is amended to read:

Section 180.02 Powers of municipalities.-

(2) Any municipality may extend and execute all of its corporate powers applicable for the accomplishment of the purposes of this chapter outside of its corporate limits, as hereinafter provided and as may be desirable or necessary for the promotion of the public health, safety and welfare or for the accomplishment of the purposes of this chapter; provided, however, that said corporate powers shall not extend or apply within the corporate limits of another municipality. Further, a

municipality may not extend or execute its corporate powers for the purpose of providing water service or sewage collection and disposal service within the unincorporated area of a county that has exercised its authority under s. 153.03 to provide the same service or services within the county without the express consent of a majority of the commissioners at a duly noticed meeting of the board of county commissioners of that county. A municipality, without such consent, may continue to provide water service or sewage collection and disposal service within an unincorporated area in which the municipality provided such service or services prior to July 1, 2020.

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

Remove line 18 and insert:
specified areas under certain circumstances; amending s. 180.02, F.S.; providing conditions under which a municipality may exercise certain powers within the unincorporated area of a county; amending

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 Fischer offered the following:

Amendment (with title amendment)

Between lines 102 and 103, insert:

Section 5. Subsection (2) of section 337.401, Florida Statutes, is amended to read:

337.401 Use of right-of-way for utilities subject to regulation; permit; fees.-

(2) The authority may grant to any person who is a resident of this state, or to any corporation which is organized under the laws of this state or licensed to do business within this state, the use of a right-of-way for the utility in accordance with such rules or regulations as the authority may adopt. No utility shall be installed, located, or relocated unless authorized by a written permit issued by the authority.

However, for public roads or publicly owned rail corridors under the jurisdiction of the department, a utility relocation schedule and relocation agreement may be executed in lieu of a written permit. The permit shall require the permitholder to be responsible for any damage resulting from the issuance of such permit. The authority may initiate injunctive proceedings as provided in s. 120.69 to enforce provisions of this subsection or any rule or order issued or entered into pursuant thereto. A permit application required by an authority under this section must be processed and acted upon consistent with the timeframes provided in subparagraphs (7)(d)7., 8., and 9.

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

Remove line 18 and insert:
specified areas under certain circumstances; amending s. 337.401, F.S.; providing a timeframe for processing permit applications for use of right-of-way by utilities; amending

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 Sabatini offered the following:

Amendment (with title amendment)

Between lines 24 and 25, insert:

Section 1. Subsection (5) of section 57.112, Florida Statutes, is amended to read:

57.112 Attorney fees and costs and damages; preempted local actions.—

(5) This section does not apply to local ordinances adopted pursuant to ~~part II of chapter 163,~~ s. 553.73~~,~~ or s. 633.202.

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

Between lines 2 and 3, insert:

57.112, F.S.; deleting a provision that prohibits specified attorney fees and costs from applying to local ordinances adopted pursuant to the growth policy act; amending s.

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 Santiago offered the following:

Amendment (with title amendment)

Between lines 24 and 25, insert:

Section 1. Paragraph (g) of subsection (7) of section 163.01, Florida Statutes, is amended to read:

163.01 Florida Interlocal Cooperation Act of 1969.—

(7)

(g)1. Notwithstanding any other provisions of this section, any separate legal entity created under this section, the membership of which is limited to municipalities and counties of the state, and which may include a special district in addition to a municipality or county or both, may acquire, own, construct, improve, operate, and manage public facilities, or finance facilities on behalf of any person, relating to a

governmental function or purpose, including, but not limited to, wastewater facilities, water or alternative water supply facilities, and water reuse facilities, which may serve populations within or outside of the members of the entity. Notwithstanding s. 367.171(7), any separate legal entity created under this paragraph is not subject to Public Service Commission jurisdiction. The separate legal entity may not provide utility services within the service area of an existing utility system unless it has received the consent of the utility.

2. For purposes of this paragraph, the term:

a. "Host government" means the governing body of the county, if the largest number of equivalent residential connections currently served by a system of the utility is located in the unincorporated area, or the governing body of a municipality, if the largest number of equivalent residential connections currently served by a system of the utility is located within that municipality's boundaries.

b. "Separate legal entity" means any entity created by interlocal agreement the membership of which is limited to two or more special districts, municipalities, or counties of the state, but which entity is legally separate and apart from any of its member governments.

c. "System" means a water or wastewater facility or group of such facilities owned by one entity or affiliate entities.

d. "Utility" means a water or wastewater utility and includes every person, separate legal entity, lessee, trustee, or receiver owning, operating, managing, or controlling a system, or proposing construction of a system, who is providing, or proposes to provide, water or wastewater service to the public for compensation.

3. A separate legal entity that seeks to acquire any utility shall notify the host government in writing by certified mail about the contemplated acquisition not less than 30 days before any proposed transfer of ownership, use, or possession of any utility assets by such separate legal entity. The potential acquisition notice shall be provided to the legislative head of the governing body of the host government and to its chief administrative officer and shall provide the name and address of a contact person for the separate legal entity and information identified in s. 367.071(4)(a) concerning the contemplated acquisition.

4.a. Within 30 days following receipt of the notice, the host government may adopt a resolution to become a member of the separate legal entity, adopt a resolution to approve the utility acquisition, or adopt a resolution to prohibit the utility acquisition by the separate legal entity if the host government determines that the proposed acquisition is not in the public interest. A resolution adopted by the host government which

prohibits the acquisition may include conditions that would make the proposal acceptable to the host government.

b. If a host government adopts a membership resolution, the separate legal entity shall accept the host government as a member on the same basis as its existing members before any transfer of ownership, use, or possession of the utility or the utility facilities. If a host government adopts a resolution to approve the utility acquisition, the separate legal entity may complete the acquisition. If a host government adopts a prohibition resolution, the separate legal entity may not acquire the utility within that host government's territory without the specific consent of the host government by future resolution. If a host government does not adopt a prohibition resolution or an approval resolution, the separate legal entity may proceed to acquire the utility after the 30-day notice period without further notice.

5. After the acquisition or construction of any utility systems by a separate legal entity created under this paragraph, revenues or any other income may not be transferred or paid to a member of a separate legal entity, or to any other special district, county, or municipality, from user fees or other charges or revenues generated from customers that are not physically located within the jurisdictional or service delivery boundaries of the member, special district, county, or municipality receiving the transfer or payment. Any transfer or

payment to a member, special district, or other local government must be solely from user fees or other charges or revenues generated from customers that are physically located within the jurisdictional or service delivery boundaries of the member, special district, or local government receiving the transfer of payment.

6. This section is an alternative provision otherwise provided by law as authorized in s. 4, Art. VIII of the State Constitution for any transfer of power as a result of an acquisition of a utility by a separate legal entity from a municipality, county, or special district.

7. The entity may finance or refinance the acquisition, construction, expansion, and improvement of such facilities relating to a governmental function or purpose through the issuance of its bonds, notes, or other obligations under this section or as otherwise authorized by law. The entity has all the powers provided by the interlocal agreement under which it is created or which are necessary to finance, own, operate, or manage the public facility, including, without limitation, the power to establish rates, charges, and fees for products or services provided by it, the power to levy special assessments, the power to sell or finance all or a portion of such facility, and the power to contract with a public or private entity to manage and operate such facilities or to provide or receive facilities, services, or products. Except as may be limited by

the interlocal agreement under which the entity is created, all of the privileges, benefits, powers, and terms of s. 125.01, relating to counties, and s. 166.021, relating to municipalities, are fully applicable to the entity. However, neither the entity nor any of its members on behalf of the entity may exercise the power of eminent domain over the facilities or property of any existing water or wastewater plant utility system, nor may the entity acquire title to any water or wastewater plant utility facilities, other facilities, or property which was acquired by the use of eminent domain after the effective date of this act unless 10 or more years have elapsed since the date of the acquisition by eminent domain. Bonds, notes, and other obligations issued by the entity are issued on behalf of the public agencies that are members of the entity.

8. Any entity created under this section may also issue bond anticipation notes in connection with the authorization, issuance, and sale of bonds. The bonds may be issued as serial bonds or as term bonds or both. Any entity may issue capital appreciation bonds or variable rate bonds. Any bonds, notes, or other obligations must be authorized by resolution of the governing body of the entity and bear the date or dates; mature at the time or times, not exceeding 40 years from their respective dates; bear interest at the rate or rates; be payable at the time or times; be in the denomination; be in the form;

carry the registration privileges; be executed in the manner; be payable from the sources and in the medium or payment and at the place; and be subject to the terms of redemption, including redemption prior to maturity, as the resolution may provide. If any officer whose signature, or a facsimile of whose signature, appears on any bonds, notes, or other obligations ceases to be an officer before the delivery of the bonds, notes, or other obligations, the signature or facsimile is valid and sufficient for all purposes as if he or she had remained in office until the delivery. The bonds, notes, or other obligations may be sold at public or private sale for such price as the governing body of the entity shall determine. Pending preparation of the definitive bonds, the entity may issue interim certificates, which shall be exchanged for the definitive bonds. The bonds may be secured by a form of credit enhancement, if any, as the entity deems appropriate. The bonds may be secured by an indenture of trust or trust agreement. In addition, the governing body of the legal entity may delegate, to an officer, official, or agent of the legal entity as the governing body of the legal entity may select, the power to determine the time; manner of sale, public or private; maturities; rate of interest, which may be fixed or may vary at the time and in accordance with a specified formula or method of determination; and other terms and conditions as may be deemed appropriate by the officer, official, or agent so designated by the governing body

of the legal entity. However, the amount and maturity of the bonds, notes, or other obligations and the interest rate of the bonds, notes, or other obligations must be within the limits prescribed by the governing body of the legal entity and its resolution delegating to an officer, official, or agent the power to authorize the issuance and sale of the bonds, notes, or other obligations.

9. Bonds, notes, or other obligations issued under this paragraph may be validated as provided in chapter 75. The complaint in any action to validate the bonds, notes, or other obligations must be filed only in the Circuit Court for Leon County. The notice required to be published by s. 75.06 must be published in Leon County and in each county that is a member of the entity issuing the bonds, notes, or other obligations, or in which a member of the entity is located, and the complaint and order of the circuit court must be served only on the State Attorney of the Second Judicial Circuit and on the state attorney of each circuit in each county that is a member of the entity issuing the bonds, notes, or other obligations or in which a member of the entity is located. Section 75.04(2) does not apply to a complaint for validation brought by the legal entity.

10. The accomplishment of the authorized purposes of a legal entity created under this paragraph is in all respects for the benefit of the people of the state, for the increase of

their commerce and prosperity, and for the improvement of their health and living conditions. Since the legal entity will perform essential governmental functions for the public health, safety, and welfare in accomplishing its purposes, the legal entity is not required to pay any taxes or assessments of any kind whatsoever upon any property acquired or used by it for such purposes or upon any revenues at any time received by it, whether the property is within or outside the jurisdiction of members of the entity. The exemption provided in this paragraph applies regardless of whether the separate legal entity enters into agreements with private firms or entities to manage, operate, or improve the utilities owned by the separate legal entity. The bonds, notes, and other obligations of an entity, their transfer, and the income therefrom, including any profits made on the sale thereof, are at all times free from taxation of any kind by the state or by any political subdivision or other agency or instrumentality thereof. The exemption granted in this subparagraph is not applicable to any tax imposed by chapter 220 on interest, income, or profits on debt obligations owned by corporations.

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

Between lines 2 and 3, insert:

163.01, F.S.; providing a condition under which certain entities may acquire title to any water or wastewater plant utility facilities, other facilities, or property, that were previously acquired by eminent domain;