

Commerce Committee

Tuesday, March 2, 2021
4:00 PM – 6:00 PM
Morris Hall (17 HOB)

Meeting Packet

Chris Sprowls
Speaker

Blaise Ingoglia
Chair

The Florida House of Representatives

Commerce Committee

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Meeting Agenda

Tuesday, March 2, 2021
4:00 PM – 6:00 PM
Morris Hall (17 HOB)

I. Call to Order

II. Roll Call

III. Welcome and Opening Remarks

IV. Consideration of the following bill(s):

- CS/HB 137 Fire Sprinklers by Regulatory Reform Subcommittee, Harding
- HB 353 Bicycle Operation Regulations by Hage
- HB 369 Construction Contracting Regulation Exemption by Rodriguez, Fernandez-Barquin
- HB 467 Insurance Adjuster Examination Requirements by DuBose

Consideration of the following proposed committee bill(s):

- PCB COM 21-01 -- Technology Transparency
- PCB COM 21-02 -- Public Records

V. Closing Remarks

VI. Adjournment

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 137 Fire Sprinklers
SPONSOR(S): Regulatory Reform Subcommittee, Harding and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 286

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Regulatory Reform Subcommittee	14 Y, 0 N, As CS	Brackett	Anstead
2) Commerce Committee		Brackett	Hamon

SUMMARY ANALYSIS

Florida's fire prevention and control law, ch. 633, F.S., designates the state's Chief Financial Officer as the State Fire Marshal, and requires the State Fire Marshal to adopt the Florida Fire Prevention Code (Fire Code). The Fire Code sets forth fire safety standards (including certain national codes) for buildings and structures, and is enforced by local fire officials within each county, municipality, and special fire districts in the state.

The State Fire Marshal is also responsible for licensing and regulating fire system protection contractors in the state. A "fire protection system" is a system designed to protect buildings, structures, and special hazards from fires. In order to engage in the business of laying out, fabricating, installing, inspecting, altering, repairing, or servicing a fire protection system in Florida, a person must be certified as a fire protection system contractor.

Fire protection system contractors are divided into five categories, and their ability to practice is limited to the category or categories that the contractor has obtained certification in. The five categories are:

● Contractor I ● Contractor II ● Contractor III ● Contractor IV ● Contractor V

Fire protection systems are designed by licensed engineers and architects. A fire protection systems contractor may not design a fire protection system unless specifically authorized by current law. Currently, Contractors I, II, and IV may design fire protection systems of 49 or fewer sprinklers, design the alteration of an existing fire sprinkler system that consists of the relocation, addition, or deletion of 49 sprinklers or fewer, and design fire protection systems for one and two family dwellings regardless of size.

The bill:

- Allows a Contractor V to **inspect** underground piping for a water-based fire protection system, as long as, the Contractor V is under the direction of a Contractor I or II.
    - The bill does not change a Contractor V's ability to install, fabricate, alter, repair, and service underground piping for a fire protection system.
- Provides that a Contractor I or II may **design** the alteration of an existing fire sprinkler system if the alteration consists of the relocation or deletion of 249 or fewer sprinklers, as long as:
    - There is no change of occupancy of the affected areas;
    - There is no change in the water demand; and
    - The occupancy hazard classification of the affected areas is not increased.
- Clarifies that a Contractor I, II, and IV may install tanks supplying fuel or water to a fire sprinkler system, including the piping for such tanks.
- Clarifies that a Contractor I, II, or IV may design the alteration of an existing fire sprinkler system for one- and two- family dwellings and manufactured homes.

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

The bill provides for an effective date of July 1, 2021.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

State Fire Prevention – State Fire Marshal

Florida's fire prevention and control law, ch. 633, F.S., designates the state's Chief Financial Officer as the State Fire Marshal. The State Fire Marshal, through the Division of State Fire Marshal (Division within the Department of Financial Services (DFS), is charged with enforcing the provisions of ch. 633, F.S., and all other applicable laws relating to fire safety, and has the responsibility to minimize the loss of life and property in this state due to fire.[1] Pursuant to this authority, the State Fire Marshal regulates, trains, and certifies fire service personnel and fire safety inspectors; investigates the causes of fires; enforces arson laws; regulates the installation of fire equipment; conducts fire safety inspections of state property; and operates the Florida State Fire College.

The Division consists of two bureaus: the Bureau of Fire Standards and Training and the Bureau of Fire Prevention. The Bureau of Firefighter Standards and Training approves firefighter training curricula, offers fire service training at the Florida State Fire College, and certifies that fire service members meet industry-based standards. The Bureau of Fire Prevention conducts fire/life safety inspections and construction plans review on all state-owned buildings; regulates the fireworks and the fire sprinkler industries, inspects and licenses boilers, and certifies fire suppression industry workers.[2]

The Regulatory Licensing Section within the Bureau of Fire Prevention is responsible for enforcing all laws relating to the licensing and regulation of the following industries: Fire Equipment, Engineered Fire Protection Systems, Explosives and Sparklers.[3]

The State Fire Marshal also adopts by rule the Florida Fire Prevention Code (Fire Code), which contains all fire safety laws and rules that pertain to the design, construction, erection, alteration, modification, repair, and demolition of public and private buildings, structures, and facilities, and the enforcement of such fire safety laws and rules.[4]

The State Fire Marshall adopts a new edition of the Fire Code every three years. When adopting a new edition of the Fire Code, the State Fire Marshal must adopt the most recent version of the National Fire Protection Association (NFPA) Standard 1, Fire Prevention Code, and the NFPA 101 Life Safety Code.[5]

State law requires all municipalities, counties, and special districts with fire safety responsibilities to enforce the Fire Code as the minimum fire prevention code to operate uniformly among local governments and in conjunction with the Florida Building Code.[6] Each county, municipality, and special district with fire safety enforcement responsibilities must employ or contract with a fire safety inspector (certified by the State Fire Marshal) to conduct all fire safety inspections required by law.[7]

Fire Protection Systems

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[1] S. 633.104, F.S.
[2] Division of State Fire Marshal, *Florida State Fire Marshal*, https://www.myfloridacfo.com/Division/sfm/ (last visited Feb. 3, 2021).
[3] DFS, *Regulatory Licensing*, https://www.myfloridacfo.com/Division/SFM/BFP/RegulatoryLicensing/default.htm (last visited Feb. 6, 2021).
[4] Ss. 633.202(1) and (2), F.S.
[5] *Id*. The NFPA is the National Fire Protection Association. Founded in 1896, the NFPA delivers information and knowledge through no more than 300 consensus codes and standards, research, training, education, outreach and advocacy. NFPA, *About NFPA*, https://www.nfpa.org/about-nfpa (last visited Feb. 4, 2021).
[6] The Florida Building Code is the statewide building code for all construction in the state. Every local government must enforce the Florida Building Code and issue building permits. *See generally* ch. 553, F.S.
[7] S. 633.216(1), F.S.

A "fire protection system" is a system individually designed to protect the interior or exterior of a specific building or buildings, structure, or other special hazard from fire. A fire protection system includes, but is not limited to:[8]

- Water sprinkler systems;
- Water spray systems;
- Foam-water sprinkler systems;
- Foam-water spray systems;
- Carbon dioxide systems;
- Foam extinguishing systems;
- Dry chemical systems; and
- Halon and other chemical systems used for fire protection use.

Fire protection systems also include any tanks and pumps connected to fire sprinkler systems, overhead and underground fire mains, fire hydrants and hydrant mains, standpipes and hoses connected to sprinkler systems, sprinkler tank heaters, air lines, and thermal systems used in connection with fire sprinkler systems.[9]

Fire protection systems must be installed in accordance with the Fire Code and the Florida Building Code. Current law requires local governments to enforce the Fire Code and the Florida Building Code including the permitting, inspecting, and approving the installation of a fire protection system.[10] Owners of fire protection systems are responsible for the maintenance of their fire protection systems, and must contract with a certified fire protection system contractor to regularly inspect such systems.[11]

Fire Protection System Contractors

In order to engage in the business of laying out, fabricating, installing, inspecting, altering, repairing, or servicing a fire protection system in Florida, other than a pre-engineering system, a person must be certified as a fire protection system contractor.[12]

Fire protection system contractors are regulated by ch. 633, F.S., which outlines the law pertaining to fire protection system contractors in the state. The State Fire Marshal is responsible for licensing and regulating fire system protection contractors in the state.[13]

Fire protection system contractors are divided into five categories. A contractor's ability to practice is limited to the category or categories that a contractor has obtained certification. The contractor categories are:[14]

- **Contractor I** - means a person who can lay out, fabricate, install, inspect, alter, repair, and service all types of fire protection systems, excluding pre-engineered systems.

- **Contractor II** - means a person who can 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, excluding pre-engineered systems.

- **Contractor III** - means a person who can fabricate, install, inspect, alter, repair, and service carbon dioxide systems, foam extinguishing systems, dry chemical systems, and Halon and other chemical systems, excluding pre-engineered systems.

[8] S. 633.102(11), F.S.
[9] *Id*.
[10] *See generally* ch. 553 and 633, F.S.; 10.1.2 and 10.1.3 of the 7th edition of the Florida Fire Prevention Code (NFPA Standard 1).
[11] S. 633.312, F.S.; 10.2.7 of the 7th edition of the Florida Fire Prevention Code (NFPA Standard 1).
[12] S. 633.336(1), F.S.
[13] Ss. 633.318 and 633.338, F.S.
[14] S. 633.102(3), F.S.

- **Contractor IV** - means a person who can lay out, fabricate, install, inspect, alter, repair, and service automatic fire sprinkler systems for detached one- and two- family dwellings and mobile homes. This does not include single-family dwellings in multi-dwelling buildings such as apartments, condominiums, assisted living facilities, or buildings connected to other dwellings.
    - A Contractor IV is limited to the scope of practice specified in the NFPA 13D Standard for the Installation of Sprinkler Systems in One- and Two- Family Dwellings and Manufactured Homes.

- **Contractor V** - means a person who can 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 and ending no more than 1 foot above the finished floor. However, a Contractor V may not inspect underground piping that is exposed, which must be done by a Contractor I or II.[15]

A fire protection system contractor must have insurance providing coverage for comprehensive general liability for bodily injury and property damages, products liability, completed operations, and contractual liability. A Contractor I, Contractor II, Contractor III, or Contractor V must have insurance of not less than $500,000, and a Contractor IV must have insurance of not less than $250,000.[16]

In order to obtain certification as a fire protection system contractor, a person must submit a written application to the Division, pay a fee of $300, be at least 18 years of age, be of good moral character, provide proof of insurance, and pass a written exam administered by the Division.[17]

In order to sit for an exam for certification as a contractor, a person must provide evidence of the following experience and/or education depending on the certification sought by the person:[18]

- For certification as a Contractor I, a person must have 4 years of experience in the full time employment with a Contractor I, or a combination of equivalent education and experience in both water-based and chemical fire suppression systems.

- For certification as a Contractor II, a person must have 4 years of verifiable employment experience with a fire protection system as a Contractor I or Contractor II, or a combination of equivalent education and experience in water-based fire suppression systems.

- For certification as a Contractor III, a person must have 4 years of verifiable employment experience with a fire protection system as a Contractor I or Contractor II, or a combination of equivalent education and experience in chemical fire suppression systems.

- For certification as a Contractor IV, a person must be licensed as a certified plumbing contractor and successfully complete a training program of not less than 40 contact hours about the applicable installation standard described in NFPA 13D.

- For certification as a Contractor V, a person must be licensed as a certified underground utility and excavation contractor or certified plumbing contractor, or provide 4 years of verifiable experience in the full time employment of a certified underground utility and excavation contractor or certified plumbing contractor, or a combination of equivalent education and experience.

Fire Protection Systems with Diesel Motors

A vital part of a fire protection system is the fire pump. A fire pump is necessary if a building or structure's water supply is insufficient to provide the proper water pressure for the system to function property. The fire pump pulls water from a dedicated source, such as an underground public water supply or a water storage

[15] S. 633.318(9), F.S.
[16] Ss. 633.318(4), and (7), F.S.
[17] The Division has an exam for each type of fire protection system certification. Ss. 633.318(1), (2), and (4), and 633.132(1)(a), F.S.
[18] S. 633.318(3), F.S.

tank.[19] The most common **driver** for a fire pump is an electric motor or diesel engine. If a building power supply is insufficient to supply an electric motor, a diesel pump will most likely be utilized. A diesel motor requires a separate fuel tank.[20]

Current law provides that fire pump control panels and maintenance of electric and diesel pump drivers require special expertise. However, it is not economically feasible for fire protection system contractors to employ such experts full time. As a result, current law allows fire protection system contractors to subcontract with companies providing advanced technical services for the installation, servicing and maintenance of fire pump control panels and pump drivers, as long as a company is under contract with a fire protection system contractor.[21]

According to industry members, there is a question about whether fire protection system contractors can install the **tanks** providing water or diesel fuel to a fire protection system. According to industry members, some local jurisdictions interpret current law to mean that fire protection system contractors cannot install the tanks and must have a licensed liquid petroleum gas installer[22] or licensed plumber install the tanks, while other local jurisdictions interpret current law to mean that fire protection system contractors may install the tanks.[23]

Design of Fire Protection Systems

The scope of practice for certified contractors does not include designing a fire protection system. In order to design fire protection systems, a person must be licensed as a fire protection engineer[24] or architect with fire protection design experience. A fire protection engineer or architect with fire protection design may design any type of fire protection system and is not limited by type or size of the fire protection system.[25]

Architects in the state are regulated by ch. 481, pt. I, F.S., and by the Board of Architecture and Interior Design with the Department of Business and Professional Regulation (DBPR).

The practice of engineering is regulated by ch. 471, F.S., and by the Florida Board of Professional Engineers (FBPE).[26]

Current law provides that a Contractor I, II, or IV may:[27]

- Design fire protection systems of 49 or fewer sprinklers;
- Design the alteration of an existing fire sprinkler system regardless of size as long as the alteration consists of the relocation, addition, or deletion of no more than 49 sprinklers; and
- Design a fire protection system that complies with NFPA 13D Standard for the Installation of Sprinkler Systems in One- and Two- Family Dwellings and Manufactured Homes.

Effect of the Bill

[19] Tom Divine and Will Semien, *NFPA 20: Changes to the fire pump standard*, Consulting, Specifying Engineer (Nov. 14, 2017) https://www.csemag.com/articles/nfpa-20-changes-to-the-fire-pump-standard/#:~:text=The%20fire%20pump%20is%20a,the%20event%20of%20a%20fire. (last visited Feb. 5, 2017).

[20] Tracey Foster, *NFPA 20: Fire pump design*, Consulting, Specifying Engineer (Nov. 21, 2019) https://www.csemag.com/articles/nfpa-20-fire-pump-design/ (last visited Feb. 6, 2021).

[21] S. 633.336, F.S.

[22] Liquid petroleum gas installers are licensed and regulated by the Department of Agriculture and Consumer Services. Liquid petroleum is any material that is composed predominantly of propane, propylene, butanes (normal butane or isobutane), butylenes, or a mixture of such materials. Diesel fuel falls under the definition of liquid petroleum. Ch. 527, F.S.; U.S. Energy information Administration, Diesel fuel explained, https://www.eia.gov/energyexplained/diesel-fuel/ (last visited Feb. 7, 2021).

[23] Email from Suzanne Saults, Owner of St. Petersburg Fire Protection, Fire Protection Systems definition (Feb. 8, 2021); Email from Bob DiModica, General Manager of Naples Fire Protection, Inc., Fire Sprinkler FS 633.102 (Feb. 9, 2021); Email from Scott Cox, President of Cox Fire Protection, Inc., HB 137 (Feb. 10, 2021); Chris Johnson, President of Piper Fire Protection, Inc., FS 633.102 (Feb. 10, 2021).

[24] There is no fire protection engineer license provided in current law. However, in order to practice engineering in Florida including fire protection engineering, a person must be licensed as a professional engineer. *See* ch. 471, F.S.

[25] S. 633.102(3), F.S.

[26] S. 471.038(3), F.S.

[27] S. 633.102(3), F.S.

The bill allows a Contractor V to **inspect** underground piping for a water-based fire protection system, as long, as the Contractor V is under the direction of a Contractor I or II. A Contractor V may still fabricate, install, alter, repair, and service underground piping for such fire protection system.

The bill provides that a Contractor I or II may **design** the alteration of an existing fire sprinkler system if the alteration consists of the relocation or deletion of 249 or fewer sprinklers, regardless of the size of the sprinkler system, as long as:

- There is no change of occupancy of the affected areas, as defined in the Florida Building Code and the Florida Fire Prevention Code;[28]
- There is no change in the water demand as defined in NFPA 13, "Standard 76 for the Installation of Sprinkler Systems;" and
- The occupancy hazard classification as defined in NFPA 13 is not reduced or remains the same.[29]

The bill clarifies that a Contractor I, II, or IV may **design** the alteration of an existing fire sprinkler system, which complies with NFPA 13D Standard for the Installation of Sprinkler Systems in One- and Two- Family Dwellings and Manufactured Homes.

It also clarifies that a Contractor I, II, or IV may install tanks supplying fuel or water to a fire sprinkler system, including the piping for such tanks.

B. SECTION DIRECTORY:

Section 1. Amending 633.102, F.S., relating to licensure for design, installation, and alteration of fire sprinklers.

Section 2. Providing for an effective date of July 1, 2021.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

[28] Every building must have an occupancy classification, which is the formal designation of the primary purpose of the building. Different classifications of occupancy represent varying levels of hazard and risk to building occupants. A change of occupancy is when a building changes its primary purpose or occupancy classification. Ss. 202 and 302 of the Seventh Edition of the Building Code.

[29] The occupancy hazard classification is a rating system that is used to help determine the minimum water needed to fight a structural fire. No hazard classification is assigned when a building has an automatic sprinkler system installed in accordance with applicable standards. NFPA, *Step 1 How Much Water is Needed?*, https://www.nfpa.org/assets/gallery/firewise/operationWater/step1_3.htm (last visited Feb. 4, 2021).

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may have a positive impact by increasing the number of people who may design the alteration of fire sprinkler systems by allowing Contractors I and II to design the alteration of larger fire sprinkler protection systems.

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 18, 2021, the Regulatory Reform Subcommittee adopted a strike-all amendment and reported the bill favorably as a committee substitute. The committee substitute:

- Allows a Contractor V to continue altering, repairing, or servicing underground piping for a water-based fire protection system without supervision.
- Clarifies that a Contractor I, II, and IV may design the alteration of an existing fire sprinkler system for one- and two- family dwellings and manufactured homes.
- Clarifies that a Contractor III may not install tanks supplying water or fuel to a fire sprinkler system.

A bill to be entitled

An act relating to fire sprinklers; amending s. 633.102, F.S.; revising the definition of the term "Contractor V"; authorizing certain fire protection system contractors to design certain systems; revising the definition of the term "fire protection system"; providing an effective date.

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

Section 1. Subsections (3) and (11) of section 633.102, Florida Statutes, are 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

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

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. A Contractor V may inspect underground piping for a water-based fire protection system under the direction of a Contractor I or Contractor II.

~~The definitions in~~ This subsection may not be construed to include engineers or architects within the defined terms and does ~~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 under this chapter 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 of the affected areas, as defined in the Florida Building Code and the Florida Fire Prevention Code, and there is no change in the

water demand as defined in NFPA 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 a new fire protection system or design the alteration of an existing 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.

(11) "Fire protection system" means a system individually designed to protect the interior or exterior of a specific building or buildings, structure, or other special hazard from fire. Such systems include, but are not limited to, water sprinkler systems, water spray systems, foam-water sprinkler systems, foam-water spray systems, carbon dioxide systems, foam extinguishing systems, dry chemical systems, and Halon and other chemical systems used for fire protection use. Such systems also include any overhead and underground fire mains, fire hydrants and hydrant mains, standpipes and hoses connected to sprinkler systems, sprinkler tank heaters, air lines, thermal systems used in connection with fire sprinkler systems, and tanks providing

water supply or pump fuel, including piping for such tanks, and pumps connected to fire sprinkler systems.

Section 2. This act shall take effect July 1, 2021.

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

HB 353

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 353 Bicycle Operation Regulations
SPONSOR(S): Hage
TIED BILLS: **IDEN./SIM. BILLS:** SB 738

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Tourism, Infrastructure & Energy Subcommittee	18 Y, 0 N	Johnson	Keating
2) Commerce Committee		Johnson	Hamon

SUMMARY ANALYSIS

Florida law requires that a person riding a bicycle must ride upon or astride a permanent and regular seat attached to the bicycle. A violation of this provision is a noncriminal traffic infraction, punishable as a pedestrian violation. However, manufacturers are now offering bicycles designed to be operated without seats, which, under Florida law, are unlawful and subject their riders to pedestrian citations.

The bill authorizes a bicycle to be operated without a seat if it was designed by the manufacturer to be operated without one.

State and local governments may see a reduction in revenues associated with no longer issuing citations for riding a bicycle without a seat.

The bill has an effective date of July 1, 2021.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Florida law defines the term "bicycle" to mean every vehicle propelled solely by human power, having two tandem wheels, and including any device generally recognized as a bicycle though equipped with two front or two rear wheels. The term does not include a scooter or similar device.[1]

Section 316.2065, F.S., provides the state's bicycle regulations. Included in those regulations is a provision prohibiting a person from operating a bicycle other than upon or astride a permanent and regular seat attached to the bicycle.[2] A violation is a noncriminal traffic infraction, punishable as a pedestrian violation as provided in ch. 318, F.S.[3] The base fine is $15;[4] however, with various additional fees the total fine is up to $56.50.[5]

Manufacturers are now offering self-propelled vehicles that meet the definition of a bicycle, but are designed to be operated without a seat. Manufacturers emphasize that these vehicles provide a low impact and full body workout.[6] However, with the statutory requirement that bicycles have a seat, it is unlawful to ride one of these vehicles in Florida, and riders are subject to citations.

Effect of the Bill

The bill amends s. 316.2065, F.S., authorizing a bicycle to be operated without a seat if the bicycle was designed by the manufacturer to be operated without one.

The bill has an effective date of July 1, 2021.

B. SECTION DIRECTORY:

Section 1 Amends s. 316.2065, F.S., relating to bicycle regulations.

Section 2 Provides for an effective date of July 1, 2021.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   To the extent there is a decrease in the number of citations issued for operating bicycles without seats, the state may realize a reduction in revenue. However, the fiscal impact cannot be quantified and is indeterminate.

2. Expenditures:

   None.

[1] S. 316.003(4), F.S.
[2] S. 316.2065(2), F.S.
[3] S. 316.2065(19), F.S.
[4] S. 318.18(1), F.S.
[5] Florida Association of Clerks of Court, *2020 Distribution Schedule,* p. 21. Available at: https://cdn.ymaws.com/www.flclerks.com/resource/resmgr/advisories/advisories_2021/21bull005_Attach_2_2020_Dist.pdf (last visited February 4, 2021).
[6] See for example the Elliptigo, https://www.elliptigo.com/ (last visited February 4, 2021).

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

To the extent there is a decrease in the number of citations issued for operating bicycles without seats, local governments may realize a reduction in revenue. However, the fiscal impact cannot be quantified and is indeterminate.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Bicycle riders will no longer be subject to citations associated with operating bicycles without seats, if the bicycle is designed to be operated without a seat.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not provide a grant of rulemaking, nor does it require rulemaking.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

Not applicable.

A bill to be entitled

An act relating to bicycle operation regulations; amending s. 316.2065, F.S.; providing an exception to the requirement that a person operating a bicycle ride upon or astride a seat attached thereto; providing an effective date.

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

Section 1. Subsection (2) of section 316.2065, Florida Statutes, is amended to read:

316.2065 Bicycle regulations.—

(2) A person operating a bicycle may not ride other than upon or astride a permanent and regular seat attached thereto unless the bicycle was designed by the manufacturer to be ridden without a seat.

Section 2. This act shall take effect July 1, 2021.

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

HB 369

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 369 Construction Contracting Regulation Exemption
SPONSOR(S): Rodriguez
TIED BILLS: **IDEN./SIM. BILLS:** SB 1212

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Regulatory Reform Subcommittee	14 Y, 0 N	Brackett	Anstead
2) Commerce Committee		Brackett	Hamon

SUMMARY ANALYSIS

Construction 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.

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. For example, an unlicensed person may perform contracting work if it is casual, minor, or inconsequential in nature, and the total contract price for all labor and materials is less than $2,500, subject to certain requirements.

“Chickees” are open sided wooden huts constructed with cypress logs and palm thatch leaves that are woven together by vines or thin ropes. Native Americans used chickees for housing during the Seminole wars when Native Americans were pursued by U.S. troops. Chickees are no longer used for actual housing, but chickees are still being built and used in the state. Members of certain Native American Tribes in Florida still build chickees for commercial and private interests.

Current law provides that chickees built by members of the Seminole Tribe of Florida or the Miccosukee Tribe of Indians of Florida are exempt from the requirements of the Florida Building Code. However, current law does not provide an exemption from the contractor licensing requirements for members of the Seminole Tribe and the Miccosukee Tribe of Indians who build chickees. Some local jurisdictions require that a person hold a certain state certified contractor license in order to build a chickee.

The bill creates a contracting licensure exemption by providing that members of the Seminole Tribe of Florida and the Miccosukee Tribe of Indians of Florida are not required to be licensed as a contractor or be an employee of a licensed contractor when constructing chickees.

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

The bill provides for an effective date of July 1, 2021.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Construction Professional Licenses

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]

"Certified specialty contractors" are contractors whose scope of work is limited to a particular phase of construction, such as drywall or demolition. Certified specialty contractor licenses are created by the CILB through rulemaking. Certified specialty contractors are permitted to practice in any jurisdiction in the state.[3]

"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.[4]

In order to perform construction contracting in the state, a person must be certified or registered as a contractor, be an employee[5] of a certified or registered contractor, or fall under an exemption provided in current law.[6]

The CILB licenses the following types of contractors:[7]

[1] S. 489.107, F.S.
[2] S. 489.105, F.S.
[3] *Id.*
[4] Ss. 489.105, & 489.117, F.S.
[5] "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.
[6] Ss. 489.103(2), & 489.113, F.S.
[7] S. 489.105(a)-(q), F.S.; Rule 61G4-15.015-040, F.A.C.

Statutory Licenses	Specialty Licenses
• Air Conditioning- Classes A, B, and C • Building • General • Internal Pollutant Storage Tank Lining Applicator • Mechanical • Plumbing • Pollutant Storage Systems • Pool/Spa- Classes A, B, and C • Precision Tank Tester • Residential • Roofing • Sheet Metal • Solar • Underground Excavation	• Drywall • Demolition • Gas Line • Glass and Glazing • Industrial Facilities • Irrigation • Marine • Residential Pool/Spa Servicing • Solar Water Heating • Structure • Swimming Pool Decking • Swimming Pool Excavation • Swimming Pool Finishes • Swimming Pool Layout • Swimming Pool Piping • Swimming Pool Structural • Swimming Pool Trim • Tower

The CILB is divided into the following two divisions with separate jurisdictions:[8]

- Division I is comprised of the general contractor, building contractor, and residential contractor members of the CILB. Division I has jurisdiction over the regulation of general contractors, building contractors, and residential contractors.
  - General contractors are unlimited as to the type of work they may do, such as contracting to build high-rise buildings, and may perform any work requiring licensure, except as otherwise expressly provided in current law.[9]
  - Building contractors may construct commercial buildings and single-dwelling or multiple-dwelling residential buildings, which do not exceed three stories in height, and remodel, repair, or improve any size building if the services do not affect the structure of the building.[10]
  - Residential Contractors may construct, remodel, repair, or improve one-family, two-family, or three-family residences not exceeding two habitable stories above no more than one uninhabitable story.[11]

- Division II is comprised of the roofing contractor, sheet metal contractor, air-conditioning contractor, mechanical contractor, pool contractor, plumbing contractor, and underground utility and excavation contractor members of the CILB. Division II has jurisdiction over the regulation of roofing contractors, sheet metal contractors, class A, B, and C air-conditioning contractors, mechanical contractors, commercial pool/spa contractors, residential pool/spa contractors, swimming pool/spa servicing contractors, plumbing contractors, underground utility and excavation contractors, solar contractors, and pollutant storage systems contractors.

- A specialty contractor is one whose scope of work and responsibility is limited to a particular phase of construction as detailed in an administrative rule adopted by the CILB. Jurisdiction is

[8]

[9] S. 489.105(3)(a), F.S.
[10] S. 489.105(3)(b), F.S.
[11] S. 489.105(3)(c), F.S.

dependent on the scope of work and whether Division I or Division II has jurisdiction over such work in accordance with the applicable administrative rule.[12]

In order to become a construction contractor, an applicant must meet the following criteria:[13]

- be of good moral character;
- be at least 18 years of age;
- successfully pass the certification examination; and
- meet eligibility requirements according to a combination of education and experience as approved by the board, which generally includes four years of education and/or experience depending on the license with at least one year being experience.

Exceptions to Construction Professional Licensure

An unlicensed person may perform work that falls under the scope of contracting if they fall under an exemption provided in current law. Currently, there are 23 exemptions provided in current law, including:[14]

- a person performing contracting if it is casual, minor, or inconsequential in nature, and the aggregate contract price for all labor and materials is less than $2,500, subject to certain requirements. This is referred to as the handyman exemption;

- an owner building or improving one or two-family residences, farm outbuildings, or improving commercial buildings at a cost that does not exceed $75,000, subject to certain requirements;

- an employee of an apartment community or apartment management company who makes minor repairs to existing electric water heaters, electric heating, ventilating, and air-conditioning systems subject to certain requirements;

- a person who sells or installs any finished products, materials, or articles of merchandise that are not fabricated into and do not become a permanent part of a structure such as awnings; and

- An employee of the United States, the state, or any municipality, county, irrigation district, reclamation district, or political subdivision, except school boards, state university boards of trustees, and community college boards of trustee, subject to certain requirements.

The Florida Building Code

The Florida Building Code (Building Code) is the statewide building code for all construction in the state. The Florida Building Commission (Commission), housed within the DBPR, implements the Building Code. The Commission reviews the International Code Council's I-Codes and the National Electric Code every three years to determine if it needs to update the Building Code.[15]

Part IV of ch. 553, F.S., is known as the "Florida Building Codes Act" (Act), which provides a mechanism for the uniform adoption, updating, interpretation, and enforcement of a single, unified state building code that must be applied, administered, and enforced uniformly and consistently from jurisdiction to jurisdiction.[16] The Building Code is adopted, updated, and interpreted by the Commission, and is enforced by local governments.[17]

[12] For example, specialty swimming pool contractors have limited scopes of work for the construction of pools, spas, hot tub, and decorative or interactive water displays. *See* Fla. Admin. Code Rule 61G4-15.032.
[13] S. 489.111(2)(c), F.S.
[14] S. 489.103, F.S.
[15] S. 553.73(7), F.S.
[16] *See* s. 553.72(1), F.S.
[17] Ss. 553.72, & 553.73, F.S.

The main purpose of the Building Code is to regulate new construction or proposed modifications to existing structures in order to give the occupants the highest level of safety and the least amount of defects.[18]

The Seminole Tribe of Florida and The Miccosukee Tribe of Indians of Florida

Seminole history begins with bands of Creek Indians from Georgia and Alabama who migrated to Florida in the 1700s. Conflicts with Europeans and other tribes caused them to seek new lands to live in peace.[19] Based on their movement to Florida, these Native Americans collectively became known as Seminole, a name meaning "wild people" or "runaway." In addition to Creeks, Seminoles included Yuchis, Yamasses and other tribes that had lived and hunted all over the Florida peninsula for thousands of years. The population also included runaway slaves who found refuge among the Native Americans.[20]

On July 21, 1957, tribal members voted in favor of a Seminole Constitution which established the Seminole Tribe of Florida, and the U.S. government formally recognized them as a Native American Tribe in the same year.[21]

In order to be a member the Seminole Tribe of Florida, a person must meet the following three requirements:[22]

- Have a minimum of one-quarter Florida Seminole blood (one of the person's grandparents must have been a full-blooded Florida Seminole);
- Be able to prove (with written documentation) that he or she is directly related to a Florida Seminole who was listed on the 1957 Tribal Roll, which is the Base Roll of the Seminole Tribe of Florida; and
- Be sponsored for enrollment by someone who is currently a member of the Tribe.

The Miccosukee Tribe of Indians of Florida was originally part of the same group of Native Americans as the Seminoles. However, they separated from the Seminole Tribe and became an independent tribe. The U.S. government formally recognized the Tribe on January 11, 1962.[23]

In order to a member of the Miccosukee Tribe of Indians of Florida, a person must have a Miccosukee mother and not be enrolled in any other Tribe.[24]

Chickees

Current law defines chickees as "an open-sided wooden hut that has a thatched roof of palm or palmetto or other traditional materials, and that does not incorporate any electrical, plumbing, or other nonwood features."[25]

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[18] Florida Building Commission, *Advanced Florida Building Code Principals*, http://www.floridabuilding.org/Upload/Courses_trp/421-2-MATERIAL-Adv%20FL%20Bldg%20Code%20-%20Course%20PDF%20version%207.0.pdf (last visited Feb. 9, 2021).
[19] Florida Department of State, *Seminole History*, https://dos.myflorida.com/florida-facts/florida-history/seminole-history/ (last visited Feb. 9, 2021).
[20] *Id.*; Seminole Tribe of Florida, *Frequently Asked Questions*, https://www.semtribe.com/stof/helpful-linksmain/helpful-links (last visited on Feb. 8, 2021).
[21] *Id.* Seminole Tribe of Florida, *History*, https://www.semtribe.com/stof/history/timeline (last visited Feb. 9, 2021).
[22] Seminole Tribe of Florida, *Frequently Asked Questions*, https://www.semtribe.com/stof/helpful-linksmain/helpful-links (last visited on Feb. 8, 2021).
[23] Florida Department of Transportation, *Miccosukee Tribe of Indians of Florida*, https://www.fdot.gov/environment/na-website-files/miccosukee.shtm (last visited Feb. 8, 2021); Miccosukee Tribe of Indians of Florida, *History*, https://tribe.miccosukee.com/ (last visited Feb. 8, 2021).
[24] *Id.*
[25] S. 553.73(10)(i), F.S.

"Chickee" is the word Seminoles use for "house." The chickee style of architecture - palmetto thatch over a cypress log frame - was born during the Seminole wars (1817-1858) when Native Americans, pursued by U.S. troops, needed fast, disposable shelter while on the run.[26]

Currently, chickees are no longer used for actual housing. Members of the Seminole Tribe of Florida and the Miccosukee Tribe of Indians of Florida still build chickees for commercial and private interests.[27] Generally, members of the Seminole Tribe of Florida who build chickees for commercial and private interests learn how to build chickees from their ancestors.[28]

In the Miccosukee Tribe of Indians of Florida, members are taught to build chickees at a young age by experienced Tribal elders. The Tribe maintains a list of expert builders, which is maintained by the Miccosukee Business Council.[29] Tribal elders decide when a person is ready to be on the list, and the Miccosukee Business Council may add them to the list or determine that they need more instruction.[30]

When members of the public contact the Tribe about building a chickee, they are referred to the members on the list of expert builders.[31]

Currently, chickees can be constructed in a matter of hours instead of days because of improvements in technology and equipment. Nails, chainsaws and four wheelers are now used to haul heavy logs replacing the old method when Native Americans would either use manpower or wait until a thunderstorm would flood the area were logs had been cut down so they could be hauled out to the location of the new camp.[32]

Chickee Exemption from the Florida Building Code

Current law exempts chickees built by members of the Seminole Tribe of Florida or the Miccosukee Tribe of Indians of Florida from the requirements of the Building Code. Chickees that are exempt from these requirements may not have any electrical, plumbing, or other nonwood features. However, such chickees may have nonwood items underneath them such as plastic or aluminum chairs, countertops, or food and beverages.[33]

Contracting Licensure Requirement

Current law does not provide an exemption from the contractor licensing requirements for members of the Seminole Tribe of Florida or the Miccosukee Tribe of Indians of Florida who construct chickees.

In 2013, the CILB issued a declaratory statement stating that members of the Seminole Tribe of Florida and the Miccosukee Tribe of Indians of Florida are not exempt from contractor licensure requirements when building chickees for consumers outside the boundaries of their reservations.[34]

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[26] Seminole Tribe of Florida, Chickee, https://www.semtribe.com/stof/culture/chickee (last visited Feb. 8, 2021).
[27] *Id.*
[28] *Id.*; WGCU Public Media, *Chickees*, (Sep. 29, 2010) https://www.youtube.com/watch?v=ipuIUXK2exQ (last visited Feb. 11, 2021).
[29] The Miccosukee Business Council consists of five elected members.
[30] Jeanine Bennett, In-House General Counsel for the Miccosukee Tribe of Indians of Florida, Miccosukee Chickee Bill (Feb. 10, 2021).
[31] *Id.*
[32] Ernie Tiger, *Chickees Provided Early Housing*, https://www.semtribe.com/stof/culture/chickee (last visited Feb. 9, 2021).
[33] *See* The Petition for Declaratory Statement of Plaza Beach Motel, Inc., Case No. 2018-012 (Fla. Building Comission) (Apr. 20, 2018).
[34] *See* The Petition for Declaratory Statement of City of Port St. Lucie Building Department, Case No. 2013-091(Fla. DBPR) (Dec. 23, 2013).

Some local governments in Florida require the builder of chickee to obtain a permit and comply with all zoning and environmental regulations, local ordinances and regulations, and the Department of Health drainage requirements.[35]

In order to obtain a permit to build a chickee, some local governments are requiring members of the Seminole Tribe of Florida and the Miccosukee Tribe of Indians of Florida to be licensed contractors or employees of a licensed contractor. Some local governments are requiring anyone wishing to build a chickee to be a licensed Division I contractor or an employee of a licensed Division I contractor.[36]

The Bill

The bill creates a contractor licensure exemption by providing that members of the Seminole Tribe of Florida and the Miccosukee Tribe of Indians of Florida are not required to be licensed as a contractor or be an employee of a licensed contractor when constructing chickees.

B. SECTION DIRECTORY:

Section 1. Amends s. 489.103, F.S., creating an exemption

Section 2. Provides an effective date of July 1, 2021.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may have a positive impact on the private sector by allowing members of the Seminole Tribe of Florida and the Miccosukee Tribe of Indians of Florida construct chickees without having to obtain a license or work for a licensed contractor.

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[35] Kathleen Croteau, Building Official, Sarasota County, Important Notice Bulletin #2017-0001 (Feb. 7, 2017) https://www.scgov.net/Home/ShowDocument?id=33926 (last visited Feb. 8, 2021); Charlotte County, Chickee Structures, https://www.charlottecountyfl.gov/departments/community-development/notices/chickee-structures.stml (last visited Feb. 8, 2021); Sara Matthis, *City Addresses Rash of Unpermitted Tiki Huts*, Keys Weekly (Jan. 14, 2019) https://keysweekly.com/42/city-addresses-rash-of-unpermitted-tiki-huts/; Miami-Dade, File Contractor Complaints, https://www.miamidade.gov/building/contractor-complaints.asp (last visited Feb. 8, 2021); Miami-Dade, Permit Exemptions, https://www.miamidade.gov/permits/exemptions.asp (last visited Feb. 8, 2021).

[36] *Id.*

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to a construction contracting regulation exemption; amending s. 489.103, F.S.; exempting from licensure a member of the Miccosukee Tribe of Indians of Florida or the Seminole Tribe of Florida when constructing specified structures; providing an effective date.

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

Section 1. Subsection (24) is added to section 489.103, Florida Statutes, to read:

489.103 Exemptions.—This part does not apply to:

(24) A member of the Miccosukee Tribe of Indians of Florida or the Seminole Tribe of Florida when constructing chickees as described in s. 553.73(10)(i).

Section 2. This act shall take effect July 1, 2021.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 467 Insurance Adjuster Examination Requirements
SPONSOR(S): DuBose
TIED BILLS: **IDEN./SIM. BILLS:** SB 534

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee	17 Y, 0 N	Rowley	Luczynski
2) Commerce Committee		Rowley	Hamon

SUMMARY ANALYSIS

Current law generally requires passage of a written examination as part of the licensing process for insurance adjusters. The examination requirement is waived for all-lines adjuster applicants who have attained certain professional designations.

The bill provides an exemption to the all-lines adjuster licensing examination to individuals who possess an Accredited Insurance Claims Specialist (AICS) designation from Encore Claim Services.

The bill has no fiscal impact on state or local governments.

The bill has an effective date of July 1, 2021.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

The Department of Financial Services, through its Division of Insurance Agent and Agency Services, regulates the licensure of insurance adjusters.[1] An adjuster may be licensed as either an "all-lines adjuster" or a "public adjuster."[2] An all-lines adjuster "is a person who, for money, commission, or any other thing of value, directly or indirectly undertakes on behalf of a public adjuster or an insurer to ascertain and determine the amount of any claim, loss, or damage payable under an insurance contract or undertakes to effect settlement of such claim, loss, or damage." [3] Subject to certain exceptions, a public adjuster is someone who is paid by an insured to prepare and file a claim against an insurer.[4]

Among other requirements, an applicant for licensure as an all-lines adjuster must pass a written examination.[5] The examination requirement is waived for applicants who have attained certain professional designations.[6] Section 626.221(2)(j), F.S., exempts from examination applicants who have the following designations:

- Accredited Claims Adjuster (ACA) from a regionally accredited postsecondary institution in Florida;
- Associate in Claims (AIC) from the Insurance Institute of America;
- Professional Claims Adjuster (PCA) from the Professional Career Institute;
- Professional Property Insurance Adjuster (PPIA) from the HurriClaim Training Academy;
- Certified Adjuster (CA) from ALL LINES Training;
- Certified Claims Adjuster (CCA) from AE21 Incorporated;
- Claims Adjuster Certified Professional (CACP) from WebCE, Inc.; or
- Universal Claims Certification (UCC) from Claims and Litigation Management Alliance (CLM).[7]

Encore Claim Services (Encore) provides training, certification, and continuing education resources for individuals in the insurance industry.[8] Encore offers a 40-hour online course to assist individuals applying for all-lines adjuster licenses.[9]

Effect of the Bill

[1] Division of Insurance Agent and Agency Services, https://myfloridacfo.com/Division/Agents/ (last visited Feb. 25, 2021).
[2] S. 626.864, F.S. An individual may be licensed as either an all-lines adjuster or a public adjuster, but not both. An all-lines adjuster may be appointed as one, but no more than one at a time, of the following: independent adjuster, public adjuster apprentice, or company employee adjuster.
[3] Ss. 626.015(2) and 626.8548, F.S.
[4] S. 626.854, F.S. "A 'public adjuster' is any person, except a duly licensed attorney at law as exempted under s. 626.860, who, for money, commission, or any other thing of value, directly or indirectly prepares, completes, or files an insurance claim for an insured or third-party claimant or who, for money, commission, or any other thing of value, acts on behalf of, or aids an insured or third-party claimant in negotiating for or effecting the settlement of a claim or claims for loss or damage covered by an insurance contract or who advertises for employment as an adjuster of such claims. The term also includes any person who, for money, commission, or any other thing of value, directly or indirectly solicits, investigates, or adjusts such claims on behalf of a public adjuster, an insured, or a third-party claimant. The term does not include a person who photographs or inventories damaged personal property or business personal property or a person performing duties under another professional license, if such person does not otherwise solicit, adjust, investigate, or negotiate for or attempt to effect the settlement of a claim."
[5] S. 626.221, F.S.
[6] *Id*.
[7] *Id*.
[8] Encore Claim Services, https://encoreclaimservices.com/ (last visited Feb. 26, 2021).
[9] *Id*.

The bill adds an exemption from the all-lines adjuster licensure examination for applicants who possess an Accredited Insurance Claims Specialist (AICS) designation from Encore Claim Services.

B. SECTION DIRECTORY:

Section 1. Amends s. 626.221, F.S., relating to examination requirement; exemptions.

Section 2. Reenacts s. 626.8734, F.S., relating to nonresident all-lines adjuster license qualifications.

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

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may reduce licensure fees for some applicants who have the AICS designation by eliminating their need to pay the examination fee.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to insurance adjuster examination requirements; amending s. 626.221, F.S.; exempting certain applicants for licensure as an all-lines adjuster from a required examination; reenacting s. 626.8734(1)(b), F.S., relating to nonresident all-lines adjuster license qualifications, to incorporate the amendment made to s. 626.221, F.S., in a reference thereto; providing an effective date.

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

Section 1. Paragraph (j) of subsection (2) of section 626.221, Florida Statutes, is amended to read:

626.221 Examination requirement; exemptions.—

(2) However, an examination is not necessary for any of the following:

(j) An applicant for license as an all-lines adjuster who has the designation of Accredited Claims Adjuster (ACA) from a regionally accredited postsecondary institution in this state, Associate in Claims (AIC) from the Insurance Institute of America, Professional Claims Adjuster (PCA) from the Professional Career Institute, Professional Property Insurance Adjuster (PPIA) from the HurriClaim Training Academy, Certified Adjuster (CA) from ALL LINES Training, Certified Claims Adjuster

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

(CCA) from AE21 Incorporated, Claims Adjuster Certified Professional (CACP) from WebCE, Inc., Accredited Insurance Claims Specialist (AICS) from Encore Claim Services, or Universal Claims Certification (UCC) from Claims and Litigation Management Alliance (CLM) whose curriculum has been approved by the department and which includes comprehensive analysis of basic property and casualty lines of insurance and testing at least equal to that of standard department testing for the all-lines adjuster license. The department shall adopt rules establishing standards for the approval of curriculum.

Section 2. For the purpose of incorporating the amendment made by this act to section 626.221, Florida Statutes, in a reference thereto, paragraph (b) of subsection (1) of section 626.8734, Florida Statutes, is reenacted to read:

626.8734 Nonresident all-lines adjuster license qualifications.—

(1) The department shall issue a license to an applicant for a nonresident all-lines adjuster license upon determining that the applicant has paid the applicable license fees required under s. 624.501 and:

(b) Has passed to the satisfaction of the department a written Florida all-lines adjuster examination of the scope prescribed in s. 626.241(6); however, the requirement for the examination does not apply to:

1. An applicant who is licensed as an all-lines adjuster

in his or her home state if that state has entered into a reciprocal agreement with the department;

2. An applicant who is licensed as a nonresident all-lines adjuster in a state other than his or her home state and a reciprocal agreement with the appropriate official of the state of licensure has been entered into with the department; or

3. An applicant who holds a certification set forth in s. 626.221(2)(j).

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB COM 21-01 Technology Transparency
SPONSOR(S): Commerce Committee
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Commerce Committee		Wright	Hamon

SUMMARY ANALYSIS

A section of the Federal Communications Decency Act (Section 230) provides immunity from liability for information service providers and social media platforms that, in good faith, remove or restrict from their services information deemed "obscene, lewd, lascivious, filthy, excessively violent, harassing, or otherwise objectionable, whether or not such material is constitutionally protected." While this immunity has fostered the growth of certain parts of the internet, recently, there have been criticisms of the broad federal immunity provision due to actions taken or not taken regarding the censorship of users by internet platforms. Government regulators have recently investigated and initiated cases against certain platforms for antitrust activities.

The bill provides that a social media platform must:

- publish standards used for determining how to censor, deplatform, and shadow ban users, and apply such standards in a consistent manner.
- inform each user about any changes to its user rules, terms, and agreements before implementing the changes and may not make changes more than once every 30 days.
- notify the user within 30 days of censoring or deplatforming.
- provide a user with information relating to the number of other individuals who were provided or shown the user's content or posts upon request by the user.
- provide users with an opt out of post-prioritization and shadow banning algorithms to allow sequential or chronological posts and content.
- ensure that candidates for office in Florida are not deplatformed and that their posts are not shadow banned.
- ensure that journalistic enterprises are not censored, deplatformed, or shadow banned.

A social media platform that fails to comply with these requirements may be found in violation of the Florida Deceptive and Unfair Trade Practices Act by the Department of Legal Affairs (DLA). In addition, a user may bring a private cause of action against a social media platform for failing to consistently apply certain standards and for censoring or deplatforming without proper notice.

The bill prohibits social media platforms from deplatforming statewide candidates and allows the Florida Elections Commission to fine a social media platform $100,000 per day for deplatforming statewide candidates, and $10,000 per day for all other candidates. In addition, if a social media platform provides free advertisements for a candidate, it is an in-kind contribution and the candidate must be notified.

If a social media platform has been convicted of or has been held civilly liable for state or federal antitrust violations, such platform, or an affiliate of such, may be placed on the Antitrust Violator Vendor List by the Department of Management Services and is then prohibited from contracting with public entities. In certain circumstances, DLA may place a social media platform on such list temporarily.

The fiscal impact of the bill is indeterminate.

The bill provides an effective date of July 1, 2021.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Freedom of Speech and Internet Platforms - Current Situation

Section 230

The federal Communications Decency Act (CDA) was passed in 1996 "to protect children from sexually explicit Internet content."[1] 47 U.S. Code § 230 (Section 230) was added as an amendment to the CDA to maintain the robust nature of Internet communication and, accordingly, to keep government interference in the medium to a minimum."[2]

Congress stated in Section 230 that "[i]t is the policy of the United States—(1) to promote the continued development of the Internet and other interactive computer services and other interactive media; [and] (2) to preserve the vibrant and competitive free market that presently exists for the Internet and other interactive computer services, unfettered by Federal or State regulation."[3]

Specifically, Section 230 states that no provider or user of an interactive computer service may be held liable on account of:[4]

- any action voluntarily taken in good faith to restrict access to or availability of material that the provider or user considers to be obscene, lewd, lascivious, filthy, excessively violent, harassing, or otherwise objectionable, whether or not such material is constitutionally protected; or
- any action taken to enable or make available to information content providers or others the technical means to restrict access to material from any person or entity that is responsible for the creation or development of information provided through any interactive computer service.

Section 230 "assuaged Congressional concern regarding the outcome of two inconsistent judicial decisions,[5] both of which "appl[ied] traditional defamation law to internet providers."[6] The first decision held that an interactive computer service provider could not be liable for a third party's defamatory statement ... but the second imposed liability where a service provider filtered content in an effort to block obscene material."[7] To provide clarity, Section 230 provides that "[n]o provider ... of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider.[8] In light of Congress's objectives, the Circuits are in general agreement that the text of Section 230(c)(1) should be construed broadly in favor of immunity.[9]

Section 230 specifically addresses how the federal law affects other laws. Section 230 prohibits all inconsistent causes of action and prohibits liability imposed under any State or local law.[10] Section 230 does not affect federal criminal law, intellectual property law, the Electronic Communications Privacy Act of 1986, or sex trafficking law.

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[1] *Force v. Facebook, Inc.*, 934 F.3d 53, 63 (2d Cir. 2019) (citing *FTC v. LeadClick Media, LLC*, 838 F.3d 158, 173 (2d Cir. 2016) (citing 141 Cong. Rec. S1953 (daily ed. Feb. 1, 1995) (statement of Sen. Exon))).
[2] *Force*, 934 F.3d at 63 (quoting *Ricci v. Teamsters Union Local 456*, 781 F.3d 25, 28 (2d Cir. 2015) (quoting *Zeran v. Am. Online, Inc.*, 129 F.3d 327, 330 (4th Cir. 1997)).
[3] 47 U.S.C. § 230(b)(1)–(2).
[4] 47 U.S.C. § 230(c).
[5] *Cubby, Inc. v. CompuServe, Inc*., 776 F. Supp. 135 (S.D.N.Y. 1991) and *Stratton Oakmont, Inc. v. Prodigy Servs. Co.*, No. 31063/94, 1995 WL 323710 (N.Y. Sup. Ct. May 24, 1995),
[6] *Force*, 934 F.3d at 63 (quoting *LeadClick*, 838 F.3d at 173).
[7] *Force*, 934 F.3d at 63 (quoting *LeadClick*, 838 F.3d at 173 (citing 141 Cong. Rec. H8469-70 (daily ed. Aug. 4, 1995 (statement of Rep. Cox))).
[8] 47 U.S.C. § 230(c)(1).
[9] *Force*, 934 F.3d at 63 (quoting *LeadClick*, 838 F.3d at 173).
[10] 47 U.S.C. § 230(e).

Recently, there have been criticisms of the broad immunity provisions or liability shields which force individuals unhappy with third-party content to sue the user who posted it. While this immunity has fostered the free flow of ideas on the Internet, critics have argued that Section 230 shields publishers from liability for allowing harmful content.[11] Congressional and executive proposals to limit immunity for claims relating to platforms purposefully hosting content from those engaging in child exploitation, terrorism, and cyber-stalking have been introduced.[12] Bills have been filed that would require internet platforms to have clear content moderation policies, submit detailed transparency reports, and remove immunity for platforms that engage in certain behavioral advertising practices.[13] Proposals have also been offered to limit the liability shield for internet providers who restrict speech based on political viewpoints.[14]

Both sides of the political aisle have claimed that internet platforms engage in political censorship and unduly restrict viewpoints.[15]

Internet and Social Media Platforms

There are many ways in which individuals access computer systems and interact with systems and other individuals on the Internet. Examples include:

- Social media sites, which are websites and applications which allow users to communicate informally with others, find people, and share similar interests;[16]
- Internet platforms, which are servers used by an Internet provider to support Internet access by their customers;[17]
- Internet search engines, which are computer software used to search data (such as text or a database) for specified information;[18] and
- Access software providers, which are providers of software or enabling tools for content processing.[19]

Such platforms earn revenue through various modes and models. Examples include:

- Data monetization.[20] This uses data that is gathered and stored on the millions of users that spend time on free content sites, including specific user location, browsing habits, buying behavior, and unique interests. This data can be used to help e-commerce companies tailor their marketing campaigns to a specific set of online consumers. Platforms that use this model are typically free for users to use.[21]

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[11] Zoe Bedell and John Major, *What's Next for Section 230? A Roundup of Proposals* Lawfare, (July 29, 2020) https://www.lawfareblog.com/whats-next-section-230-roundup-proposals (last visited Feb. 25, 2021).
[12] *Id*; United States Department of Justice, Department of Justice's Review of Section 230 of the Communications Decency Act of 1996, https://www.justice.gov/archives/ag/department-justice-s-review-section-230-communications-decency-act-1996 (last visited Feb. 25, 2021); EARN IT Act of 2020, S.3398, 116th Cong. (2020).
[13] Bedell, s*upra* note 11; PACT Act, S.4066, 116th Cong. (2020); BAD ADS Act, S.4337, 116th Cong. (2020).
[14] Bedell, s*upra* note 11; Limiting Section 230 Immunity to Good Samaritans Act, S.3983, 116th Cong. (2020).
[15] For example, on May 28, 2020, an executive order was issued by President Trump suggesting that websites "should properly lose" their "limited liability shield" whenever they "remove or restrict access to content" not in good faith. Bedell, s*upra* note 11; Exec. Order No.13925, 85 Fed. Reg. 34079 (May 28, 2020).
[16] DelValle Institute Learning Center*, Social Media Platforms*, https://delvalle.bphc.org/mod/wiki/view.php?pageid=65 (last visited Feb. 24, 2021).
[17] IGI Global, *Internet Platform*, https://www.igi-global.com/dictionary/internet-platform/15441 (last visited Feb. 24, 2021).
[18] Merriam Webster, *Search Engine*, https://www.merriam-webster.com/dictionary/search%20engine (last visited Feb. 24, 2021).
[19] Cornell Law School, Legal Information Institute, *Access Software Provider,* https://www.law.cornell.edu/definitions/uscode.php?width=840&height=800&iframe=true&def_id=47-USC-629364878-1237841280&term_occur=1&term_src=title:47:chapter:5:subchapter:II:part:I:section:230#:~:text=(4)%20Access%20software%20provider%20The,C)%20transmit%2C%20receive%2C%20display (last visited Feb. 24, 2021).
[20] The Alexander von Humboldt Institute for Internet and Society, *How do digital platforms make their money?*, July 29, 2019, https://www.hiig.de/en/how-do-digital-platforms-make-their-money/ (last visited Feb. 27, 2021).
[21] Investopedia, *How Do Internet Companies Profit with Free Services?*, https://www.investopedia.com/ask/answers/040215/how-do-internet-companies-profit-if-they-give-away-their-services-free.asp#:~:text=Profit%20Through%20Advertising,content%20is%20through%20advertising%20revenue.&text=Each%20of%20these%20users%20represents,and%20services%20via%20the%20Internet. (last visited Feb. 27, 2021).

- Subscription or membership fees. This model requires users pay for a particular or unlimited use of the platform infrastructure.[22]
- Transaction fees. This model allows platforms to benefit from every transaction that is enabled between two or more actors. An example is AirBnB, where users transacting on the site are charged a fee.[23]

The Florida Deceptive and Unfair Trade Practices Act

The Florida Deceptive and Unfair Trade Practices Act (FDUTPA) is a consumer and business protection measure that prohibits unfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in trade or commerce.[24] The FDUTPA is based on federal law.[25]

For example, Florida has determined that the following acts or practices are unfair or deceptive:
- Imposing unconscionable prices for the rental or lease of any dwelling unit or self-storage facility during a period of declared state of emergency.[26]
- Failing to abide by storage requirements for personal information and notice requirements for data breaches of such information,[27] and
- Failing to abide by requirements for weight-loss programs.[28]

The state attorney or the Department of Legal Affairs (DLA) may bring actions when it is in the public interest on behalf of consumers or governmental entities.[29] The Office of the State Attorney (SAO) may enforce violations of the FDUTPA if the violations take place in its jurisdiction. DLA has enforcement authority if the violation is multi-jurisdictional, the state attorney defers in writing, or the state attorney fails to act within 90 days after a written complaint is filed.[30] Consumers may also file suit through private actions.[31]

DLA and the SAO have powers to investigate FDUTPA claims, which include:[32]
- administering oaths and affirmations,
- subpoenaing witnesses or matter, and
- collecting evidence.

DLA and the State Attorney, as enforcing authorities, may seek the following remedies:
- Declaratory judgments;
- Injunctive relief;
- Actual damages on behalf of consumers and businesses;
- Cease and desist orders; and

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[22] HIIG, *supra* note 20.
[23] *Id*.
[24] Chapter 73-124, L.O.F., and s. 501.202, F.S.
[25] D. Matthew Allen, et. al., *The Federal Character of Florida's Deceptive and Unfair Trade Practices Act*, 65 U. MIAMI L. REV. 1083 (Summer 2011).
[26] S. 501.160, F.S.
[27] S. 501.171, F.S.
[28] S. 501.0579, F.S.
[29] s. 501.207(1)(c) and (2), F.S.; *see* s. 501.203(2), F.S. (defining "enforcing authority" and referring to the office of the state attorney if a violation occurs in or affects the judicial circuit under the office's jurisdiction; or the Department of Legal Affairs if the violation occurs in more than one circuit; or if the office of the state attorney defers to the department in writing; or fails to act within a specified period.); *see also* David J. Federbush, *FDUTPA for Civil Antitrust: Additional Conduct, Party, and Geographic Coverage; State Actions for Consumer Restitution*, 76 FLORIDA BAR JOURNAL 52, Dec. 2002 (analyzing the merits of FDUPTA and the potential for deterrence of anticompetitive conduct in Florida), *available at* http://www.floridabar.org/divcom/jn/jnjournal01.nsf/c0d731e03de9828d852574580042ae7a/99aa165b7d8ac8a485256c8300791ec1!OpenDocument&Highlight=0,business,Division* (last visited on Feb, 21, 2021).
[30] s. 501.203(2), F.S.
[31] s. 501.211, F.S.
[32] S. 501.206(1), F.S.

- Civil penalties of up to $10,000 per willful violation.[33]

Freedom of Speech

The First Amendment of the United States Constitution protects the right to freedom of expression from government interference. The First Amendment applies to the entire federal government, and the Supreme Court of the United States (Supreme Court) has interpreted the Due Process Clause of the Fourteenth Amendment as protecting the rights in the First Amendment from interference by state governments.[34]

The most basic component of freedom of expression is the right to freedom of speech. Freedom of speech may be exercised with words or actions. The Supreme Court requires the government to provide substantial justification for the interference with the right of free speech where it attempts to regulate the content of the speech.[35] The Supreme Court has recognized that the First Amendment's robust speech protections fully apply to online speech.[36]

Businesses are afforded some of the same First Amendment rights as individuals.[37] Generally, businesses cannot be compelled to host speech with which it disagrees absent a mandate with a narrowly tailored means of serving a compelling state interest.[38] Also, businesses have a right to unrestricted independent expenditures for political communications and elections as a form of corporate speech.[39]

Supremacy Clause

Article VI, Paragraph 2 of the U.S. Constitution is commonly referred to as the Supremacy Clause. It establishes that the federal constitution, and federal law generally, take precedence over state laws, and even state constitutions. It prohibits states from interfering with the federal government's exercise of its constitutional powers, and from assuming any functions that are exclusively entrusted to the federal government. It does not, however, allow the federal government to review or veto state laws before they take effect.[40]

Freedom of Speech and Internet Platforms - Effect of the Bill

The bill provides the following definitions:

- *Social media platform* means any information service, system, Internet search engine, or access software provider that does business in the state, and provides or enables computer access by multiple users to a computer server, including an Internet platform and/or a social media site. The Internet platform or social media site may be a sole proprietorship, partnership, limited liability company, corporation, association, or other legal entity that is organized or operated for the profit or financial benefit of its shareholders or other owners, that does business in the state, and that satisfies at least one of the following thresholds:
    - Has annual gross revenues in excess of $100 million, as adjusted in January of each odd-numbered year to reflect any increase in the Consumer Price Index.

[33] Ss. 501.207(1), 501.208, and 501.2075, F.S. Civil Penalties are deposited into general revenue. Enforcing authorities may also request attorney fees and costs of investigation or litigation. S. 501.2105, F.S.
[34] Cornell Law School, Legal Information Institute, *First Amendment*, https://www.law.cornell.edu/wex/first_amendment (last visited Feb. 23, 2021); *Santa Clara v. Southern Pacific Railroad Co.*, 118 U.S. 394 (1886).
[35] *Id*.
[36] *Reno v. ACLU*, 521 U.S. 844 (1997); Jason Kelley, *Section 230 is Good, Actually*, Electronic Frontier Foundation (de. 3, 2020) https://www.eff.org/deeplinks/2020/12/section-230-good-actually (last visited Feb. 25, 2021).
[37] *Citizens United v. Federal Election Commission*, 558 U.S. 310 (2010).
[38] *Consolidated Edison Co. v. Public Service Commission*, 447 U.S. 530 (1980); *First National Bank of Boston v. Belliotti*, 438 U.S. (1978); *Miami Herald Publishing Co. v. Tornillo*, 418 U.S. 241 (1974); *Pacific Gas & Electric Co. v. Public Utilities Commission of California*, 475 U.S. 1 (1986).
[39] *Citizens United*, *supra* note 38.
[40] Cornell Law School, Legal Information Institute, *Supremacy Clause*, https://www.law.cornell.edu/wex/supremacy_clause (last visited Feb. 23, 2021).

    - Has at least 100 million monthly individual platform participants globally.
- *User* means a person who resides or is domiciled in the state and who has an account on a social media platform, regardless of whether the person posts or has posted content or material to the social media platform.
- *Algorithm* means a mathematical set of rules that specify how a group of data behaves that will assist in ranking search results and maintaining order or that is used in sorting or ranking content or material based on relevancy or other factors instead of using published time or chronological order of such content or material.
- *Censor* includes any action taken by a social media platform to delete, regulate, restrict, edit, alter, inhibit the publication or republication of, suspend a right to post, remove, or post an addendum to any content or material posted by a user. This term also includes actions to inhibit the ability of a user to be viewable by or to interact with another user of the social media platform.
- *Deplatform* means the action or practice by a social media platform to permanently delete or ban a user or to temporarily delete or ban a user from the social media platform for more than 60 days.
- *Post-prioritization* means action by a social media platform to place, feature, or prioritize certain content or material ahead of, below, or in a more or less prominent position than others in a newsfeed, feed, view, or search results. The term does not include post-prioritization of content and material based on payments by a third party, including other users, to the social media platform.
- *Shadow ban* means action by a social media platform, through any means, whether the action is determined by a natural person or an algorithm, to limit or eliminate the exposure of a user or content or material posted by a user to other users of the social media platform. This term includes acts of shadow banning by a social media platform that are not readily apparent to a user.
- *Journalistic enterprise* means an entity that:
    - Publishes in excess of 100,000 words available online with at least 50,000 paid subscribers or 100,000 monthly active users;
    - Publishes 100 hours of audio or video available online with at least 100 million viewers annually;
    - Operates a cable channel that provides more than 40 hours of content per week to more than 100,000 cable television subscribers; or
    - Operates under a broadcast license issued by the Federal Communications Commission.

The bill requires a social media platform to:

- publish the standards, including detailed definitions, it uses or has used for determining how to censor, deplatform, and shadow ban users, and apply such standards in a consistent manner among users on the platform.
- inform each user about any changes to its user rules, terms, and agreements before implementing the changes and may not make changes more than once every 30 days.
- provide a mechanism that allows a user to request the number of other individual platform participants who were provided or shown the user's content or posts, and provide that information upon request.
- categorize algorithms used for post-prioritization and shadow banning and provide users with an annual notice on the use of algorithms for post-prioritization and shadow banning. Users must be able to opt out of post-prioritization and shadow banning algorithm categories to allow sequential or chronological posts and content, and this opt-out opportunity must be reoffered annually.
- allow a user who has been deplatformed to access or retrieve all of the user's information, content, material, and data for at least 60 days after being deplatformed.

The bill prohibits a social media platform from:

- censoring a user's content or material or deplatforming a user from the social media platform in a way that would otherwise violate FDUTPA, or without notifying the user who posted or attempted to post the content or material. Such notification must:

    - Be in writing;
    - Be delivered via electronic mail or direct electronic notification to the user within 30 days of the censoring action;
    - Include a thorough rationale explaining the reason that the social media platform censored the user; and
    - Include a precise and thorough explanation of how the social media platform became aware of the censored content or material, including a thorough explanation of the algorithms used, if any, to identify or flag the user's content or material as objectionable.
- applying or using post-prioritization or shadow banning algorithms for content and material posted by or about a user who is known by the social media platform to be a candidate for office in Florida, beginning from the date of qualification and ending on the date of the election or the date such candidate for office ceases to be a candidate before the date of election. Post-prioritization of certain content or material from or about a candidate for office based on payments to the social media platform by such candidate for office or a third party is not a violation. Social media platforms must provide users with a method to identify themselves as qualified candidates, and may confirm such qualification by reviewing the website of the Division of Elections of the Department of State.
- taking any action to censor, deplatform, or shadow ban a journalistic enterprise based on the content of its publication or broadcast. Post-prioritization of certain journalistic enterprise content based on payments to the social media platform by such journalistic enterprise is not a violation.

The bill provides that a social media platform is not required to notify a user of a censoring action if the censored content or material is obscene, which means content or material that:

- the average person, applying contemporary community standards, would find, taken as a whole, appeals to the prurient interest;
- depicts or describes, in a patently offensive way, sexual conduct as specifically defined herein; and
- taken as a whole, lacks serious literary, artistic, political, or scientific value.

If a social media platform fails to comply with any of the foregoing requirements, the bill provides that the social media platform commits an unfair or deceptive trade act or practice.

If DLA, by its own inquiry or as a result of a complaint, suspects that a violation is imminent, occurring, or has occurred, DLA may investigate the suspected violation in accordance with FDUTPA. In an investigation by DLA into alleged violations of this section, DLA's investigative powers include, but are not limited to, the ability to subpoena any algorithm used by a social media platform related to any alleged violation.

A user may bring a private cause of action against a social media platform for **failing to**:

- notify such user of an act of censoring or deplatforming, or
- apply censorship, deplatforming, and shadow banning standards in a consistent manner.

The court may award the following damages to the user:

- Up to $100,000 in statutory damages per proven claim;
- Actual damages;
- If aggravating factors are present, punitive damages;
- Other forms of equitable relief; and
- If the user was deplatformed, costs and reasonable attorney fees.

Each failure to comply with each of the individual requirements in the bill are treated as a separate violation, act, or practice by the social media platform.

The bill provides that its provisions may only be enforced to the extent they are not inconsistent with federal law and 47 U.S.C. s. 230(e)(3), and notwithstanding any other provision of state law.

Antitrust Laws, and State Contracts and Incentives - Current Situation

Antitrust Law

Healthy competition in economic markets keeps prices low and quality high for consumers. When one entity becomes too strong, it can stifle competition, leading to higher prices and harm to consumers.

Antitrust law exists to protect competition, but not necessarily individual competitors, in economic markets. It is based on the idea that an unregulated market will lead to the creation of coercive monopolies.[41] Federal antitrust law includes the Sherman Antitrust Act, the Clayton Act, and the Federal Trade Commission Act. These laws are enforced in federal district court[42] by the U.S. Department of Justice (DOJ), the Federal Trade Commission (FTC), state Attorneys General, and private plaintiffs. Antitrust case law is well-developed, and it is often difficult to distinguish aggressive, pro-competitive conduct—which is legal—from predatory, anti-competitive conduct.[43]

The Clayton Act[44] prohibits specific business actions, including mergers and acquisitions, which may substantially lessen competition. To determine whether a merger violates the Clayton Act, a court must decide whether the merger is likely to create an appreciable danger of anticompetitive effects. The plaintiff must establish a prima facie case that a transaction is anticompetitive, such as by showing that an acquisition will significantly increase market concentration and lessen competition.[45] The burden then shifts to the defendant to rebut the prima facie case, such as by introducing evidence casting doubt on the plaintiff's prediction of anticompetitive effects.[46] If the defendant rebuts the prima facie case, the plaintiff has the final burden to demonstrate an antitrust violation.[47] If the plaintiff prevails, the customary remedy is for the court to order divestiture and unwind the merger.[48]

The Sherman Antitrust Act[49] prohibits any attempt to restrain trade or form a monopoly. A monopoly has two elements: (1) monopoly power and (2) willful acquisition or maintenance of that power, as opposed to power naturally resulting from a superior product, acumen, or historic accident. Stated differently, a plaintiff must prove the defendant acquired the monopoly power in a "predatory" manner. Penalties for violating the Sherman Act include up to ten years' imprisonment and a fine up to $100 million for a corporation or $1 million for any other person.[50]

The Florida Antitrust Act of 1980[51] is intended to complement federal antitrust law in order to foster effective competition. Implemented by the Office of the Attorney General (OAG), the Act essentially mirrors the federal Sherman Act, and prohibits:[52]

- Every contract, combination, or conspiracy in restraint of trade or commerce;[53] and
- Monopolization or attempted monopolization of any part of trade or commerce.[54]

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[41] John J. Miles, Antitrust Primer, 20140513 AHLA Seminar Papers 1 (2014) (stating the purpose of antitrust law is to "protect and promote competition as the primary method by which this country allocates scarce resources to maximize the welfare of consumers.").
[42] Steven Fox, Litigation Under Florida's Deceptive and Unfair Trade Practices Act, the Florida Antitrust Act, or Federal Antitrust Statutes, The Florida Bar, Business Litigation in Florida (2017) (federal district courts have exclusive jurisdiction over federal antitrust actions).
[43] Animesh Ballabh, Antitrust Law: An Overview, 88 J. Pat. & Trademark Off. Soc'y 877 (2006); John J. Miles, Antitrust Primer, 20140513 AHLA Seminar Papers 1 (2014).
[44] 15 U.S.C. s. 18.
[45] *Olin Corp. v. FTC*, 986 F.2d 1295, 1305 (9th Cir. 1993) (discussing how plaintiff's establishment of a prima facie case on statistical evidence is first step in analysis); *Chicago Bridge & Iron Co. v. FTC*, 534 F.3d 410, 423 (5th Cir. 2008).
[46] Id.
[47] *Chicago Bridge & Iron*, 534 F.3d at 423.
[48] *St. Alphonsus Med. Ctr. v. St. Luke's Health Sys.*, 778 F.3d 775, 792 (9th Cir. 2015).
[49] 15 U.S.C. ss. 1 et seq.
[50] 15 U.S.C. s. 1.
[51] Ss. 542.15 – 542.36, F.S.
[52] S. 542.16, F.S.
[53] S. 542.18, F.S.
[54] S. 542.19, F.S.

A violation of Florida antitrust law can be penalized with up to three years' imprisonment and fines up to $1 million for a corporation and $100,000 for any other person.[55] There is also a private right of action for any person injured by certain violations.[56]

Florida law does not provide a corollary to the federal Clayton Act, which specifically targets mergers and acquisitions that may lessen competition. However, the Attorney General considers the Florida Antitrust Act of 1980 and the FDUTPA broad enough to encompass those types of violations.[57]

Antitrust Actions Against Internet Platforms

Critics have argued for years that internet platforms like Google, Apple, Facebook and Amazon improperly built empires over commerce, communications and culture, and then abused their power. Recently, federal and state regulators investigated and brought antitrust cases against them.[58] For example, the FTC and over 40 states, including Florida, have brought an action against Facebook for allegedly buying smaller rivals to maintain market dominance.[59] Also, DOJ and 11 states, including Florida, have brought an action against Google for allegedly manipulating search engine results.[60]

Procurement of Commodities and Services

Chapter 287, F.S., regulates state agency[61] procurement of personal property and services. Depending on the cost and characteristics of the needed goods or services, agencies may utilize a variety of procurement methods that include:

- Single source contracts, which are used when an agency determines that only one vendor is available to provide a commodity or service at the time of purchase;
- Invitations to bid, which are used when an agency determines that standard services or goods will meet needs, wide competition is available, and the vendor's experience will not greatly influence the agency's results;
- Requests for proposals, which are used when the procurement requirements allow for consideration of various solutions and the agency believes more than two or three vendors exist who can provide the required goods or services; and
- Invitations to negotiate, which are used when negotiations are determined to be necessary to obtain the best value and involve a request for highly complex, customized, mission-critical services. [62]

For contracts for commodities or services in excess of $35,000, agencies must utilize a competitive solicitation process.[63] However, specified contractual services and commodities are not subject to competitive solicitation requirements.[64]

The Department of Management Services (DMS) is statutorily designated as the central executive agency procurement authority and its responsibilities include overseeing agency implementation of the

[55] S. 542.21, F.S.
[56] Ss. 542.21, 542.22, F.S.
[57] Florida Attorney General, *Antitrust*, http://myfloridalegal.com/antitrust (last visited Feb 23, 2021).
[58] David McCabe, Cecilia Kang, and Daisuke Wakabayashi, *Google's Legal Peril Grows in Face of Third Antitrust Suit*, New York Times (Dec. 17, 2020), https://www.nytimes.com/2020/12/17/technology/google-antitrust-monopoly.html (last visited Feb. 25, 2021).
[59] *Id*; *Federal Trade Commission v. Facebook, Inc*., No. 1:20-cv-03590 (D.C. Cir. 2020).
[60] McCabe, supra note 59; *United States Department of Justice v. Google LLC*, No. 1:20-cv-03010 (D.C. Cir. 2020).
[61] Section 287.012(1), F.S., defines the term "agency" as any of the various state officers, departments, boards, commissions, divisions, bureaus, and councils and any other unit of organization, however designated, of the executive branch of state government. "Agency" does not include the university and college boards of trustees or the state universities and colleges.
[62] *See ss*. 287.012(6) and 287.057(1), F.S.
[63] Section 287.057(1), F.S., requires all projects that exceed the Category Two threshold amount ($35,000) contained in s. 287.017, F.S., to be competitively procured.
[64] *See* s. 287.057(3)(e), F.S.

procurement process,[65] creating uniform agency procurement rules,[66] implementing the online procurement program,[67] and establishing state term contracts.[68] The agency procurement process is partly decentralized in that agencies, except in the case of state term contracts, may procure goods and services themselves in accordance with requirements set forth in statute and rule, rather than placing orders through DMS.

Certain persons and their affiliates are prohibited from contracting with public entities for services and goods, with certain exceptions, if they have been identified by DMS as violating certain restrictions and have been placed on one of the following lists:[69]

- Convicted Vendor List,
- Discriminatory Vendor List,
- Scrutinized Companies with Activities in Sudan List,
- Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, and
- Scrutinized Companies that Boycott Israel List.

Economic Incentives

The Department of Economic Opportunity (DEO) advances Florida's economy by championing the state's economic development vision and by administering state and federal programs and initiatives to help visitors, citizens, businesses, and communities.[70]

Enterprise Florida, Inc. (EFI) is a nonprofit corporation established by the Legislature to serve as the state's main economic development organization.[71] EFI is required to enter into a performance-based contract with DEO.[72]

EFI works with businesses and economic development partners to determine whether projects are eligible for state economic development incentives. A project must be vetted by EFI and EFI must determine that incentives are necessary to secure a deal in order for an incentive package to be developed and sent to DEO for further review. Once the incentive package is finalized, DEO and other appropriate state bodies issue formal approvals.

Florida has a number of incentive programs intended to promote economic development in the state. These programs come in a variety of forms including tax refunds, tax credits, tax exemptions, and cash grants under chapter 288, Florida Statutes.

Businesses interested in expanding or relocating in Florida learn about the state's economic incentive programs through several channels, including EFI, state and local economic development organizations, and private site selection consultants. Businesses can apply for more than one incentive to support their expansion or relocation projects.[73]

Once a company begins the application process, EFI notifies the division so that it may begin the formal due diligence process to determine the business's statutory eligibility and financial standing. When due diligence and the application are complete, EFI determines what incentives and associated amounts may be available to the applicant and makes an approval or disapproval recommendation to DEO's

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[65] *See* ss. 287.032 and 287.042, F.S.
[66] *See* ss. 287.032(2) and 287.042(3), (4), and (12), F.S.
[67] *See* s. 287.057(23), F.S.
[68] *See* ss. 287.042(2), 287.056, and 287.1345, F.S.
[69] Ss. 287.133-135, F.S.
[70] S. 20.60(4)(b)(f), F.S.; Florida Department of Economic Opportunity, About Us, https://floridajobs.org/about-us (last visited Feb. 22, 2021).
[71] S. 288.901, F.S. Chapter 92-277, Laws of Fla., created EFI, while ch. 96-320, Laws of Fla, established EFI as a public-private partnership.
[72] Section. 20.60(1), F.S., requires DEO to "establish annual performance standards for Enterprise Florida, Inc., CareerSource Florida, Inc., the Florida Tourism Industry Marketing Corporation, and Space Florida and report annually on how these performance measures are being met".
[73] OPPAGA, Report No. 16-09, p. 50-51.

executive director. If the business is approved, DEO will develop a contract or agreement with the applicant that specifies the total incentive amount, performance conditions that must be met to receive payment, payment schedule, and sanctions for failure to meet performance conditions.[74]

Antitrust Laws, and State Contracts and Incentives - Effect of the Bill

The bill provides the following definitions:

- *Person* means a natural person or an entity organized under the laws of any state or of the United States **who operates as a social media platform**, with the legal power to enter into a binding contract and which bids or applies to bid on contracts let by a public entity, or which otherwise transacts or applies to transact business with a public entity. The term includes those officers, directors, executives, partners, shareholders, employees, members, and agents who are active in management of an entity.
- *Affiliate* means either
    - a predecessor or successor of a person convicted of or held civilly liable for an antitrust violation; or
    - an entity under the control of any natural person who is active in the management of the entity and who has been convicted of or held civilly liable for an antitrust violation. The term includes those officers, directors, executives, partners, shareholders, employees, members, and agents who are active in the management of an affiliate. The term also includes a person who knowingly enters into a joint venture with a person who has violated an antitrust law during the preceding 36 months.
- *Antitrust violation* means any state or federal antitrust law as determined in a civil or criminal proceeding brought by the Attorney General, a state attorney, a similar body or agency of another state, the Federal Trade Commission, or the United States Department of Justice.
- *Convicted or held civilly liable* means a criminal finding of guilt or conviction, with or without an adjudication of guilt, being held civilly liable, or having a judgment levied for an antitrust violation, in any federal or state trial court of record relating to charges brought by indictment, information, or complaint on or after July 1, 2021, as a result of a jury verdict, nonjury trial, or entry of a plea of guilty or nolo contendere or other order finding liability.
- *Public entity* means the state and any of its departments or agencies.

Antitrust Violator Vendor List

If a person has been convicted of or has been held civilly liable for antitrust violations, the bill allows DMS to place such person, or an affiliate of such person, on the Antitrust Violator Vendor List (list).

If a person or an affiliate is placed on the list, such person or affiliate may not:

- submit a bid, proposal, or reply for any new contract to provide any goods or services to a public entity;
- submit a bid, proposal, or reply for a new contract with a public entity for the construction or repair of a public building or public work;
- submit a bid, proposal, or reply on new leases of real property to a public entity;
- be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a new contract with a public entity; or
- transact new business with a public entity.

The bill prohibits a public entity from accepting a bid, proposal, or reply from, awarding a new contract to, or transacting new business with any person or affiliate on the list unless that person or affiliate has been removed from the list. This prohibition does not apply to contracts that were awarded or business transactions that began before a person or an affiliate was placed on the list, and in no event before July 1, 2021.

DMS must maintain the list with the names and addresses of the people or affiliates who have been disqualified from the public contracting and purchasing process. DMS must publish the initial antitrust

[74] *Id.*

violator vendor list on January 1, 2022, and publish an updated version of the list quarterly thereafter. The revised quarterly list must be electronically posted. A person or affiliate on the list is disqualified as of the date the final order placing them on the list is entered.

DMS must investigate receipt of reasonable information from any source that a person was convicted or held civilly liable for antitrust violations, and determine whether good cause exists to place that person or an affiliate of that person on the list. If good cause exists, DMS must notify the person or affiliate in writing of its intent to place the name of that person or affiliate on the list, and of the person's or affiliate's right to a hearing, the procedure that must be followed, and the applicable time requirements. If the person or affiliate does not request a hearing, DMS must enter a final order placing the name of the person or affiliate on the list. A person or affiliate may not be placed on the list without receiving an individual notice of intent from DMS.

The bill allows a person or affiliate to dispute placement on the list. After receipt of the notice of intent, the person or affiliate may file a petition for a formal hearing under the Administrative Procedures Act to determine whether it is in the public interest for the person or affiliate to be placed on the list. In a formal hearing, DMS must prove that it is in the public interest for the person or affiliate to be placed on the list. Proof that a person was convicted or was held civilly liable for antitrust violations, or that an entity is an affiliate of such a person constitutes a prima facie case that it is in the public interest for the person or affiliate to be put on the list. Status as an affiliate must be proven by clear and convincing evidence. The ownership by one person of shares constituting a controlling interest in another person, or a pooling of equipment or income among persons when not for fair market value under an arm's length agreement, is a prima facie case that one person controls another person.

In determining whether it is in the public interest to place a person or affiliate on the list, the bill indicates that the administrative law judge must consider the following factors:

- Whether the person or affiliate committed an antitrust violation.
- The nature and details of the antitrust violation.
- The degree of culpability of the person or affiliate proposed to be placed on the antitrust violator vendor list.
- Reinstatement or clemency in any jurisdiction in relation to the antitrust violation at issue in the proceeding.
- The needs of public entities for additional competition in the procurement of goods and services in their respective markets.

Upon establishment of a prima facie case that it is in the public interest for the person or affiliate to whom DMS has given notice to be put on the list, the person or affiliate may prove by a preponderance of the evidence that it would not be in the public interest to put them on the list, based upon evidence addressing the factors above.

Temporary List Placement Procedure

The bill allows any person charged or accused of any state or federal antitrust law in a civil or criminal proceeding brought by the OAG, a state attorney, the Federal Trade Commission, or the United States Department of Justice on or after July 1, 2021, to be placed on the list temporarily by the OAG. The OAG may make a finding of probable cause that a person has likely violated the underlying antitrust laws, and temporarily place such person on the antitrust violator vendor list until such proceeding has concluded. Affiliates may not be placed on the list under this temporary procedure.

If probable cause exists, the OAG must notify the person in writing of its intent to temporarily place the name of that person on the antitrust violator vendor list, and of the person's right to a hearing, the procedure that must be followed, and the applicable time requirements. If the person does not request a hearing, the OAG must enter a final order temporarily placing the name of the person on the antitrust violator vendor list. A person may not be placed on the antitrust violator vendor list without receiving an individual notice of intent from the Attorney General.

After receipt of the notice of intent, the person may file a petition for a formal hearing under the Administrative Procedures Act to determine whether it is in the public interest for the person to be temporarily placed on the antitrust violator vendor list.

In determining whether it is in the public interest to temporarily place a person on the antitrust violator vendor, the administrative law judge must consider the following factors:

- The likelihood the person committed the antitrust violation.
- The nature and details of the antitrust violation.
- The degree of culpability of the person proposed to be placed on the list.
- The needs of public entities for additional competition in the procurement of goods and services in their respective markets.

Removal from the List

The bills allows a person or affiliate to petition for removal from the Antitrust Violator Vendor List no sooner than 6 months after the date a final order is entered. If the petition is based upon a reversal of the conviction or liability on appellate review or pardon, then they may petition at any time. The petition must be filed with DMS. A person or affiliate may be removed from the list subject to such terms and conditions as prescribed by the administrative law judge upon a determination that removal is in the public interest. In determining whether removal would be in the public interest, the administrative law judge must consider any relevant factors.

Upon proof that a person was found not guilty or not civilly liable, the antitrust violation case was dismissed, the court entered a finding in the person's favor, the person's conviction or determination of liability has been reversed on appeal, or that the person has been pardoned, the administrative law judge must determine that removal of the person or an affiliate from the list is in the public interest.

If the petition for removal is denied, the person or affiliate may not petition for another hearing on removal for a period of 9 months after the date of denial, unless the petition is based upon a reversal of the conviction on appellate review or a pardon. DMS may petition for removal before the expiration of such period if it determines that removal would be in the public interest.

Economic Incentives and Exceptions

The bill excludes a person or entity who has been placed on the Antitrust Violator Vendor List from being a qualified applicant for economic incentives, and such person or entity is not qualified to receive such economic incentives. Economic incentives means state grants, cash grants, tax exemptions, tax refunds, tax credits, state funds, and other state incentives under chapter 288 or administered by Enterprise Florida, Inc.

The placement on the list does not affect any rights or obligations under any contract, franchise, or other binding agreement which predates such placement on the list.

This exclusion does not apply to any activities regulated by the Public Service Commission or to the purchase of goods or services made by any public entity from the Department of Corrections, from the nonprofit corporation organized to operate correctional work programs, or from any accredited nonprofit workshop designed to assist blind and other severely handicapped individuals to achieve maximum personal independence.

These limitations may only be enforced to the extent not inconsistent with federal law, and notwithstanding any other provision of state law.

Candidates for Office and In-kind Contributions – Current Situation

Violations of Florida Election Law

The Division of Elections (division) under the Florida Department of State ensures compliance with election laws, provides statewide coordination of election administration, and promotes public participation in the electoral process. The division consists of three bureaus - the Bureau of Election Records, the Bureau of Voter Registration Services, and the Bureau of Voting Systems Certification.[75]

The Florida Elections Commission (commission) has the sole civil jurisdiction to investigate and determine violations of the portion of the Florida Election Code in Chapters 104 and 106, Florida Statutes, but only after receiving either a legally sufficient sworn complaint or information from the division. The commission is composed of nine members appointed by the Governor.[76]

The commission determines probable cause based on the investigator's report, the recommendation of counsel for the commission, the complaint, and staff recommendations, as well as any written statements submitted by the respondent and any oral statements made at the hearing.[77] If probable cause has been found by the commission, a respondent may agree to a consent order, elect to have a formal administrative hearing conducted by an administrative law judge in the Division of Administrative Hearings, or to elect to have a formal or informal hearing conducted before the commission.[78]

In order to carry out its responsibilities, the commission may subpoena any person in the state, doing business in the state, or who has filed or is required to have filed any application, document, papers, or other information with an office or agency of this state or a political subdivision thereof, and require the production of any papers, books, or other records relevant to any investigation, including the records and accounts of any bank or trust company doing business in this state.[79]

Civil penalties are generally limited to not more than $1,000 per count or violation.[80] Other penalties include permanent or temporary injunctions, and restraining orders.[81] Any civil penalty or fine assessed is deposited into the General Revenue Fund.[82]

Actions for violation of chapters 104 and 106, Florida Statutes, must be commenced before 2 years have elapsed from the date of the violation.[83]

In-kind Contributions to Candidates

A *candidate* means a person who does any of the following:[84]

- seeks to qualify for nomination or election by means of the petitioning process.
- seeks to qualify for election as a write-in candidate.
- receives contributions or makes expenditures, or consents for any other person to receive contributions or make expenditures, with a view to bring about his or her nomination or election to, or retention in, public office.
- appoints a treasurer and designates a primary depository.
- files qualification papers and subscribes to a candidate's oath as required by law.

Generally, a *political committee* means a combination of two or more individuals, or a person other than an individual, that, in an aggregate amount in excess of $500 during a single calendar year:

- accepts contributions for the purpose of making contributions to any candidate, political committee, affiliated party committee, or political party;

[75] Florida Department of State, Division of Elections, *About Us*, https://dos.myflorida.com/elections/about-us/ (last visited Feb. 21, 2021).
[76] S. 106.25(1), F.S.
[77] S. 106.25(4), F.S.
[78] S. 106.25(5), F.S.
[79] S. 106.26(1), F.S.
[80] S. 106.265(1), F.S.
[81] S. 106.27, F.S.
[82] S. 106.265(4), (5), F.S.
[83] S. 106.28, F.S.
[84] S. 106.011(3), F.S.

- accepts contributions for the purpose of expressly advocating the election or defeat of a candidate or the passage or defeat of an issue;
- makes expenditures that expressly advocate the election or defeat of a candidate or the passage or defeat of an issue; or
- makes contributions to a common fund, other than a joint checking account between spouses, from which contributions are made to any candidate, political committee, affiliated party committee, or political party.

Candidates and political committees must report all contributions, loans, expenditures, distributions, and transfers, regardless of the amount.[85] They must report the full name and address of each person making the contribution or receiving the expenditure and, for contributions over $100, the occupation.[86]

An in-kind contribution[87] is anything of value except money made for the purpose of influencing the results of an election.[88] The valuation of an in-kind contribution is fair market value, and in-kind contributions are subject to the same contribution limitations as money.[89]

Candidates for Office and In-kind Contributions – Effect of the Bill

The bill provides that a social media platform may not knowingly deplatform a candidate. If the commission finds that a social media platform has violated this provision, the social media platform may be fined $100,000 per day for deplatforming a statewide candidate, and $10,000 per day for deplatforming all other candidates.

The bill provides that if a social media platform provides free advertisement to a candidate, it must be reported as an in-kind contribution to the candidate. Free advertising does not include posts, content, material, and comments made on the social media platform that are shown in the same or similar way as those from other users.

The bill provides the following definitions for this provision:
- *Candidate* means a person who files qualification papers and subscribes to a candidate's oath as required by law.
- *Deplatform* and *Social media platform* have the same meaning as in the new provision addressing censorship.

The bill provides that this provision may only be enforced to the extent not inconsistent with federal law and 47 U.S.C. s. 230(e)(3), and notwithstanding any other provision of state law.

The bill has an effective date of July 1, 2021.

B. SECTION DIRECTORY:

Section 1: Provides requirements for candidates and social media platforms related to content restrictions and campaign contributions for candidates.
Section 2: Creates restrictions for contracting with public entities for certain social media platforms who have violated antitrust laws.
Section 3: Creates requirements for social media platforms for how and when they can restrict user content.
Section 4: Provides a cross-reference.
Section 5: Provides an effective date.

[85] Ss. 106.011(5) and 106.07(1), F.S.
[86] S. 106.07(4)(a), F.S.
[87] Examples of in-kind contributions include food provided for a fundraiser free of charge, donated tickets to an event, and certain kinds of free advertisement. DE 04-06 Fla. Op. Dept. of State, Div. of Elections (2004). https://opinions.dos.state.fl.us/searchable/pdf/2004/de0406.pdf.
[88] Florida Department of State, Division of Elections, *Campaign Finance*, https://dos.myflorida.com/elections/candidates-committees/campaign-finance/ (last visited Feb. 21, 2021).
[89] Ss. 106.011(5) and 106.055, F.S.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill may increase revenues in the state related to fines or civil penalties collected related to violations of the bill's provisions. The estimated impact is indeterminate.

2. Expenditures:

The bill may increase expenditures based on costs to implement the bill, including costs to investigate and prosecute violations of the bill provisions. The estimated impact is indeterminate.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill will require social media platforms to implement systems in conformance with the bill that will help protect Florida consumers and businesses online.

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 take 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:

Jurisdiction

For a court to exercise jurisdiction over a respondent, it must have subject matter jurisdiction and personal jurisdiction. State courts have general jurisdiction, and therefore a claim made under a state statute meets the subject matter jurisdiction requirement.[90] Personal jurisdiction is a constitutional requirement that a respondent have minimum contacts with the state in which the court sits so that the court may exercise power over the respondent.[91] A non-resident respondent may have sufficient contacts with Florida if he or she commits acts expressly enumerated in Florida's long-arm statute.[92] Alternately, the non-resident respondent may be subject to a Florida court's personal jurisdiction because he or she has minimum contacts with the state that are otherwise unrelated to matter that brings him or her into court.[93] Examples of sufficient minimum contacts include frequent business travel to the state, owning a company with a Florida office branch, or subjecting oneself to the court's

[90] *Caiazzo v. American Royal Arts Corp.*, 73 So. 3d 245, 250 (Fla. 4th DCA 2011).
[91] *Id*.
[92] *Id*; § 48.193, F.S.
[93] *Caiazzo v. American Royal Arts Corp.*, 73 So. 3d 245, 250 (Fla. 4th DCA 2011).

jurisdiction by presenting oneself in the Florida court.[94] These jurisdictional requirements ensure that a respondent has sufficient notice and due process afforded to him or her under the U.S. Constitution before his or her rights are subjected to the court.[95]

Whether a non-resident internet or social media platform has sufficient minimum contacts with the state is a fact-specific question that would likely need to be addressed on a case-by-case basis by a court.[96]

Freedom of Speech

Businesses are afforded some of the same First Amendment rights as individuals.[97] Generally, businesses cannot be compelled to host speech with which it disagrees absent a mandate that has been narrowly tailored to serve a compelling state interest.[98] Some of the provisions of the bill may implicate First Amendment protections regarding speech by a business.

Also, businesses have a right to unrestricted independent expenditures for political communications and elections as a form of corporate speech.[99] Some of the provisions of the bill may implicate First Amendment protections related to political speech by a business.

Content-neutral regulations are legitimate if they advance important governmental interests that are not related to suppression of free speech, and do not substantially burden more speech than necessary to further those interests.[100] However, a law may be determined to be overbroad if a "substantial number of its applications are unconstitutional, judged in relation to the statute's plainly legitimate sweep."[101]

Supremacy Clause

Article VI, Paragraph 2 of the U.S. Constitution is commonly referred to as the Supremacy Clause. It establishes that the federal constitution, and federal law generally, take precedence over state laws, and even state constitutions. It prohibits states from interfering with the federal government's exercise of its constitutional powers, and from assuming any functions that are exclusively entrusted to the federal government. It does not, however, allow the federal government to review or veto state laws before they take effect.[102] The bill may implicate the Supremacy Clause by attempting to regulate in an area that may be preempted by federal law.[103]

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

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[94] *Id*.
[95] *Id*. at 250-251.
[96] *See Caiazzo v. American Royal Arts Corp.*, 73 So. 3d 245, (Fla. 4th DCA 2011); *Zippo Mfg. Co. v. Zippo Dot Com, Inc.*, 952 F. Supp. 1119, 1124 (W.D. Pa. 1997).
[97] *Citizens United v. Federal Election Commission*, 558 U.S. 310 (2010).
[98] *Consolidated Edison Co. v. Public Service Commission*, 447 U.S. 530 (1980); *First National Bank of Boston v. Belliotti*, 438 U.S. (1978); *Miami Herald Publishing Co. v. Tornillo*, 418 U.S. 241 (1974); *Pacific Gas & Electric Co. v. Public Utilities Commission of California*, 475 U.S. 1 (1986).
[99] *Citizens United*, *supra* note 38.
[100] *Turner Broadcasting System, Inc. v. F.C.C.*, 520 U.S. 180,189 (U.S. 1997).
[101] *U.S. v. Stevens*, 559 U.S. 460 (2010), *quoting*, *Washington State Grange v. Washington State Republican Party*, 552 U.S. 442, 449, n. 6, (2008).
[102] Cornell Law School, Legal Information Institute, *Supremacy Clause*, https://www.law.cornell.edu/wex/supremacy_clause (last visited Feb. 23, 2021).
[103] 47 U.S.C. § 203(e).

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to technology transparency; creating s. 106.072, F.S.; providing definitions; prohibiting a social media platform from knowingly deplatforming a candidate; providing fines for violations; authorizing social media platforms to provide free advertising for candidates under specified conditions; providing enforcement mechanism; creating s. 287.137, F.S.; providing definitions; providing requirements for public contracts and economic incentives related to entities who have been convicted or held civilly liable for antitrust violations; prohibiting a public entity from entering into any type contract with a person or affiliate on the antitrust violator vendor list; providing applicability; requiring certain contract documents to contain a specified statement; requiring the Department of Management Services to maintain a list of people or affiliates disqualified from the public contracting and purchasing process; specifying requirements for publishing such list; providing procedures for placing a person or affiliate on the list; providing procedural and legal rights for a person or affiliate to challenge placement on the list; providing a procedure for placing a person temporarily on an antitrust violator vendor list;

providing procedural and legal rights for a person to challenge temporary placement on the list; authorizing a person, under specified conditions, to retain rights or obligations under existing contracts or binding agreements; prohibiting a person who has been placed on antitrust violator vendor list from receiving certain economic incentives; providing exceptions; providing enforcement methodology; creating s. 501.2041, F.S.; providing definitions; authorizing the Department of Legal Affairs to bring specified actions against social media platforms for failure to comply with specified requirements; specifying requirements that must be contained when notification is given by a social platform for certain purposes; providing an exception to notification requirements; authorizing the department to investigate suspected violations under the Deceptive and Unfair Trade Practices Act; specifying circumstances under which a private cause of action may be brought; specifying how damages are to be calculated; providing construction for violations of certain provisions of this act; specifying powers of the Department of Legal Affairs related to investigations related to acts of shadow banning by social media platforms; granting the department specified subpoena powers; providing

enforcement authority; amending s. 501.212, F.S.; conforming a provision to changes made by the act; providing a severability clause; providing an effective date.

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

Section 1. Section 106.072, Florida Statutes, is created to read:

106.072 Social media deplatforming of political candidates.—

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

(a) "Candidate" has the same meaning as in s. 106.011(3)(e).

(b) "Deplatform" has the same meaning as in s. 501.2041.

(c) "Social media platform" has the same meaning as in s. 501.2041.

(2) A social media platform may not knowingly deplatform a candidate. Upon a finding of a violation of this section by the Elections Commission, in addition to the remedies provided in ss. 106.265 and 106.27, the social media platform may be fined $100,000 per day for statewide candidates and $10,000 per day for other candidates.

(3) A social media platform that knowingly provides free advertising for a candidate must inform the candidate of such

in-kind contribution. Posts, content, material, and comments by candidates that are shown on the platform in the same or similar way as other user's posts, content, material, and comments is not considered free advertising.

(4) This section may only be enforced to the extent not inconsistent with federal law and 47 U.S.C. s. 230(e)(3), and notwithstanding any other provision of state law.

Section 2. Section 287.137, Florida Statutes, is created to read:

287.137 Antitrust violations; denial or revocation of the right to transact business with public entities; denial of economic benefits.—

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

(a) "Affiliate" means:

1. A predecessor or successor of a person convicted of or held civilly liable for an antitrust violation; or

2. An entity under the control of any natural person who is active in the management of the entity and who has been convicted of or held civilly liable for an antitrust violation. The term includes those officers, directors, executives, partners, shareholders, employees, members, and agents who are active in the management of an affiliate. The ownership by one person of shares constituting a controlling interest in another person, or a pooling of equipment or income among persons when not for fair market value under an arm's length agreement, is a

prima facie case that one person controls another person. The term also includes a person who knowingly enters into a joint venture with a person who has violated an antitrust law during the preceding 36 months.

(b) "Antitrust violation" means any state or federal antitrust law as determined in a civil or criminal proceeding brought by the Attorney General, a state attorney, a similar body or agency of another state, the Federal Trade Commission, or the United States Department of Justice.

(c) "Antitrust violator vendor list" means the list required to be kept by the department pursuant to paragraph (3)(b).

(d) "Conviction or being held civilly liable" or "convicted or held civilly liable" means a criminal finding of guilt or conviction, with or without an adjudication of guilt, being held civilly liable, or having a judgment levied for an antitrust violation, in any federal or state trial court of record relating to charges brought by indictment, information, or complaint on or after July 1, 2021, as a result of a jury verdict, nonjury trial, or entry of a plea of guilty or nolo contendere or other order finding of liability.

(e) "Economic incentives" means state grants, cash grants, tax exemptions, tax refunds, tax credits, state funds, and other state incentives under chapter 288 or administered by Enterprise Florida, Inc.

(f) "Person" means a natural person or an entity organized under the laws of any state or of the United States who operates as a social media platform, as defined in s. 501.2041, with the legal power to enter into a binding contract and which bids or applies to bid on contracts let by a public entity, or which otherwise transacts or applies to transact business with a public entity. The term "person" includes those officers, directors, executives, partners, shareholders, employees, members, and agents who are active in management of an entity.

(g) "Public entity" means the state and any of its departments or agencies.

(2)(a) A person or affiliate who has been placed on the antitrust violator vendor list following a conviction or being held civilly liable for an antitrust violation may not submit a bid, proposal, or reply for any new contract to provide any goods or services to a public entity; may not submit a bid, proposal, or reply for a new contract with a public entity for the construction or repair of a public building or public work; may not submit a bid, proposal, or reply on new leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a new contract with a public entity; and may not transact new business with a public entity.

(b) A public entity may not accept a bid, proposal, or reply from, award a new contract to, or transact new business

with any person or affiliate on the antitrust violator vendor list unless that person or affiliate has been removed from the list pursuant to paragraph (3)(e).

(c) This subsection does not apply to contracts that were awarded or business transactions that began before a person or an affiliate was placed on the antitrust violator vendor list, and in no event before July 1, 2021.

(3)(a) Beginning July 1, 2021, all invitations to bid, requests for proposals, and invitations to negotiate, as defined in s. 287.012, and any contract document described in s. 287.058 shall contain a statement informing persons of the provisions of paragraph (2)(a).

(b) The department shall maintain an antitrust violator vendor list of the names and addresses of the people or affiliates who have been disqualified from the public contracting and purchasing process under this section. The department shall publish the initial antitrust violator vendor list on January 1, 2022, and shall publish an updated version of the list quarterly thereafter. The revised quarterly list shall also be electronically posted. Notwithstanding this paragraph, a person or affiliate disqualified from the public contracting and purchasing process pursuant to this section is disqualified as of the date the final order is entered.

(c)1. Upon receiving reasonable information from any source that a person was convicted or held civilly liable, the

department shall investigate the information and determine whether good cause exists to place that person or an affiliate of that person on the antitrust violator vendor list. If good cause exists, the department shall notify the person or affiliate in writing of its intent to place the name of that person or affiliate on the antitrust violator vendor list, and of the person's or affiliate's right to a hearing, the procedure that must be followed, and the applicable time requirements. If the person or affiliate does not request a hearing, the department shall enter a final order placing the name of the person or affiliate on the antitrust violator vendor list. A person or affiliate may not be placed on the antitrust violator vendor list without receiving an individual notice of intent from the department.

2. Within 21 days after receipt of the notice of intent, the person or affiliate may file a petition for a formal hearing under ss. 120.569 and 120.57(1) to determine whether it is in the public interest for the person or affiliate to be placed on the antitrust violator vendor list. A person or affiliate may not file a petition for an informal hearing under s. 120.57(2). The procedures of chapter 120 shall apply to any formal hearing under this paragraph except within 30 days after the formal hearing or receipt of the hearing transcript, whichever is later, the administrative law judge shall enter a final order, which shall consist of findings of fact, conclusions of law,

interpretation of agency rules, and any other information required by law or rule to be contained in the final order. The final order shall direct the department to place or not place the person or affiliate on the antitrust violator vendor list. The final order of the administrative law judge is final agency action for purposes of s. 120.68.

3. In determining whether it is in the public interest to place a person or affiliate on the antitrust violator vendor list under this paragraph, the administrative law judge shall consider the following factors:

a. Whether the person or affiliate committed an antitrust violation.

b. The nature and details of the antitrust violation.

c. The degree of culpability of the person or affiliate proposed to be placed on the antitrust violator vendor list.

d. Reinstatement or clemency in any jurisdiction in relation to the antitrust violation at issue in the proceeding.

e. The needs of public entities for additional competition in the procurement of goods and services in their respective markets.

4. In any proceeding under this paragraph, the department must prove that it is in the public interest for the person or affiliate to whom it has given notice under this paragraph to be placed on the antitrust violator vendor list. Proof that a person was convicted or was held civilly liable, or that an

entity is an affiliate of a person constitutes a prima facie case that it is in the public interest for the person or affiliate to whom the department has given notice to be put on the antitrust violator vendor list. Status as an affiliate must be proven by clear and convincing evidence. If the administrative law judge determines that the person was not convicted or that the person was not civilly liable or is not an affiliate of such person, that person or affiliate shall not be placed on the antitrust violator vendor list.

5. Any person or affiliate who has been notified by the department of its intent to place his or her name on the antitrust violator vendor list may offer evidence on any relevant issue. An affidavit alone does not constitute competent substantial evidence that the person has not been convicted or is not an affiliate of a person so convicted or held civilly liable. Upon establishment of a prima facie case that it is in the public interest for the person or affiliate to whom the department has given notice to be put on the antitrust violator vendor list, the person or affiliate may prove by a preponderance of the evidence that it would not be in the public interest to put him or her on the antitrust violator vendor list, based upon evidence addressing the factors in subparagraph 3.

(d)1. If a person has been charged or accused of any state or federal antitrust law in a civil or criminal proceeding

brought by the Attorney General, a state attorney, the Federal Trade Commission, or the United States Department of Justice on or after July 1, 2021, the Attorney General may, by a finding of probable cause that a person has likely violated the underlying antitrust laws, temporarily place such person on the antitrust violator vendor list until such proceeding has concluded.

2. If probable cause exists, the Attorney General shall notify the person in writing of its intent to temporarily place the name of that person on the antitrust violator vendor list, and of the person's right to a hearing, the procedure that must be followed, and the applicable time requirements. If the person does not request a hearing, the Attorney General shall enter a final order temporarily placing the name of the person on the antitrust violator vendor list. A person may not be placed on the antitrust violator vendor list without receiving an individual notice of intent from the Attorney General.

3. Within 21 days after receipt of the notice of intent, the person may file a petition for a formal hearing pursuant to ss. 120.569 and 120.57(1) to determine whether it is in the public interest for the person to be temporarily placed on the antitrust violator vendor list. A person may not file a petition for an informal hearing under s. 120.57(2). The procedures of chapter 120 shall apply to any formal hearing under this paragraph.

4. In determining whether it is in the public interest to

place a person on the antitrust violator vendor list under this paragraph, the administrative law judge shall consider the following factors:

a. The likelihood the person committed the antitrust violation.

b. The nature and details of the antitrust violation.

c. The degree of culpability of the person proposed to be placed on the antitrust violator vendor list.

d. The needs of public entities for additional competition in the procurement of goods and services in their respective markets.

5. This paragraph does not apply to affiliates.

(e)1. A person or affiliate may be removed from the antitrust violator vendor list subject to such terms and conditions as may be prescribed by the administrative law judge upon a determination that removal is in the public interest. In determining whether removal would be in the public interest, the administrative law judge must consider any relevant factors, including, but not limited to, the factors identified in subparagraph (c)3. Upon proof that a person was found not guilty or not civilly liable, the antitrust violation case was dismissed, the court entered a finding in the person's favor, the person's conviction or determination of liability has been reversed on appeal, or that the person has been pardoned, the administrative law judge shall determine that removal of the

person or an affiliate of that person from the antitrust violator vendor list is in the public interest. A person or affiliate on the antitrust violator vendor list may petition for removal from the list no sooner than 6 months after the date a final order is entered pursuant to this section but may petition for removal at any time if the petition is based upon a reversal of the conviction or liability on appellate review or pardon. The petition must be filed with the department, and the proceeding must be conducted pursuant to the procedures and requirements of this subsection.

2. If the petition for removal is denied, the person or affiliate may not petition for another hearing on removal for a period of 9 months after the date of denial, unless the petition is based upon a reversal of the conviction on appellate review or a pardon. The department may petition for removal before the expiration of such period if, in its discretion, it determines that removal would be in the public interest.

(4) The conviction of a person or a person held civilly liable for an antitrust violation, or placement on the antitrust violator vendor list, does not affect any rights or obligations under any contract, franchise, or other binding agreement which predates such conviction or placement on the antitrust violator vendor list.

(5) A person who has been placed on the antitrust violator vendor list is not a qualified applicant for economic incentives

under chapter 288, and such entity and shall not be qualified to receive such economic incentives.

(6) This section does not apply to any activities regulated by the Public Service Commission or to the purchase of goods or services made by any public entity from the Department of Corrections, from the nonprofit corporation organized under chapter 946, or from any accredited nonprofit workshop certified under ss. 413.032-413.037.

(7) This section may only be enforced to the extent not inconsistent with federal law and notwithstanding any other provision of state law.

Section 3. Section 501.2041, Florida Statutes, is created to read:

501.2041 Unlawful acts and practices by social media platforms.—

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

(a) "Algorithm" means a mathematical set of rules that specify how a group of data behaves that will assist in ranking search results and maintaining order or that is used in sorting or ranking content or material based on relevancy or other factors instead of using published time or chronological order of such content or material.

(b) "Censor" includes any action taken by a social media platform to delete, regulate, restrict, edit, alter, inhibit the publication or republication of, suspend a right to post,

remove, or post an addendum to any content or material posted by a user. This term also includes actions to inhibit the ability of a user to be viewable by or to interact with another user of the social media platform.

(c) "Deplatform" means the action or practice by a social media platform to permanently delete or ban a user or to temporarily delete or ban a user from the social media platform for more than 60 days.

(d) "Journalistic enterprise" means an entity that:

1. Publishes in excess of 100,000 words available online with at least 50,000 paid subscribers or 100,000 monthly active users;

2. Publishes 100 hours of audio or video available online with at least 100 million viewers annually;

3. Operates a cable channel that provides more than 40 hours of content per week to more than 100,000 cable television subscribers; or

4. Operates under a broadcast license issued by the Federal Communications Commission.

(e) "Post-prioritization" means action by a social media platform to place, feature, or prioritize certain content or material ahead of, below, or in a more or less prominent position than others in a newsfeed, feed, view, or search results. The term does not include post-prioritization of content and material based on payments by a third party,

including other users, to the social media platform.

(f) "Shadow ban" means action by a social media platform, through any means, whether the action is determined by a natural person or an algorithm, to limit or eliminate the exposure of a user or content or material posted by a user to other users of the social media platform. This term includes acts of shadow banning by a social media platform that are not readily apparent to a user.

(g) "Social media platform" means any information service, system, Internet search engine, or access software provider that does business in the state, and provides or enables computer access by multiple users to a computer server, including an Internet platform and/or a social media site. The Internet platform or social media site may be a sole proprietorship, partnership, limited liability company, corporation, association, or other legal entity that does business in the state and that satisfies at least one of the following thresholds:

1. Has annual gross revenues in excess of $100 million, as adjusted in January of each odd-numbered year to reflect any increase in the Consumer Price Index.

2. Has at least 100 million monthly individual platform participants globally.

(h) "User" means a person who resides or is domiciled in the state and who has an account on a social media platform,

regardless of whether the person posts or has posted content or material to the social media platform.

(2) A social media platform that fails to comply with any of the provisions of paragraphs (a)-(j) commits an unfair or deceptive act or practice as specified in s. 501.204.

(a) A social media platform must publish the standards, including detailed definitions, it uses or has used for determining how to censor, deplatform, and shadow ban.

(b) A social media platform must apply censorship, deplatforming, and shadow banning standards in a consistent manner among its users on the platform.

(c) A social media platform must inform each user about any changes to its user rules, terms, and agreements before implementing the changes and may not make changes more than once every 30 days.

(d) A social media platform may not censor a user's content or material or deplatform a user from the social media platform:

1. Without notifying the user who posted or attempted to post the content or material; or

2. In a way that violates this part.

(e) A social media platform must:

1. Provide a mechanism that allows a user to request the number of other individual platform participants who were provided or shown the user's content or posts.

2. Provide, upon request, a user with the number of other individual platform participants who were provided or shown content or posts.

(f) A social media platform must:

1. Categorize algorithms used for post-prioritization and shadow banning.

2. Allow a user to opt out of post-prioritization and shadow banning algorithm categories to allow sequential or chronological posts and content.

(g) A social media platform must provide users with an annual notice on the use of algorithms for post-prioritization and shadow banning and reoffer annually the opt-out opportunity in subparagraph (2)(f)2.

(h) A social media company may not apply or use post-prioritization or shadow banning algorithms for content and material posted by or about a user who is known by the social media platform to be a candidate as defined in s. 106.011(3)(e), beginning from the date of qualification and ending on the date of the election or the date such candidate for office ceases to be a candidate before the date of election. Post-prioritization of certain content or material from or about a candidate for office based on payments to the social media platform by such candidate for office or a third party is not a violation of this paragraph. Social media platforms must provide users with a method to identify themselves as qualified candidates, and may

confirm such qualification by reviewing the website of the Division of Elections of the Department of State.

(i) A social media platform must allow a user who has been deplatformed to access or retrieve all of the user's information, content, material, and data for at least 60 days after being deplatformed.

(j) A social media platform may not take any action to censor, deplatform, or shadow ban a journalistic enterprise based on the content of its publication or broadcast. Post-prioritization of certain journalistic enterprise content based on payments to the social media platform by such journalistic enterprise is not a violation of this paragraph.

(3) For purposes of subparagraph (2)(d)1., a notification must:

(a) Be in writing.

(b) Be delivered via electronic mail or direct electronic notification to the user within 30 days of the censoring action.

(c) Include a thorough rationale explaining the reason that the social media platform censored the user.

(d) Include a precise and thorough explanation of how the social media platform became aware of the censored content or material, including a thorough explanation of the algorithms used, if any, to identify or flag the user's content or material as objectionable.

(4) Notwithstanding any other provisions of this section,

a social media platform is not required to notify a user if the censored content or material is obscene as defined in s. 847.001.

(5) If the department, by its own inquiry or as a result of a complaint, suspects that a violation of this section is imminent, occurring, or has occurred, the department may investigate the suspected violation in accordance with this part. Based on its investigation, the department may bring a civil or administrative action under this part.

(6) A user may only bring a private cause of action for violations of paragraph (2)(b) or subparagraph (2)(d)1. In a private cause of action brought under paragraph (2)(b) or subparagraph (2)(d)1., the court may award the following damages to the user:

(a) Up to $100,000 in statutory damages per proven claim.

(b) Actual damages.

(c) If aggravating factors are present, punitive damages.

(d) Other forms of equitable relief.

(e) If the user was deplatformed in violation of paragraph (2)(b), costs and reasonable attorney fees.

(7) For purposes of bringing an action under subsection (2) or subsection (6), each failure to comply with the individual provisions of subsection (2) shall be treated as a separate violation, act, or practice.

(8) In an investigation by the department into alleged

violations of this section, the department's investigative powers include, but are not limited to, the ability to subpoena any algorithm used by a social media platform related to any alleged violation.

(9) This section may only be enforced to the extent not inconsistent with federal law and 47 U.S.C. s. 230(e)(3), and notwithstanding any other provision of state law.

Section 4. Subsection (2) of section 501.212, Florida Statutes, is amended to read:

501.212 Application.—This part does not apply to:

(2) Except as provided in s. 501.2041, a publisher, broadcaster, printer, or other person engaged in the dissemination of information or the reproduction of printed or pictorial matter, insofar as the information or matter has been disseminated or reproduced on behalf of others without actual knowledge that it violated this part.

Section 5. If any provision of this act or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared severable.

Section 6. This act shall take effect July 1, 2021.

PCB COM 21-02

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB COM 21-02 Public Records
SPONSOR(S): Commerce Committee
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Commerce Committee		Wright	Hamon

SUMMARY ANALYSIS

A section of the Federal Communications Decency Act (Section 230) provides immunity from liability for information service providers and social media platforms that, in good faith, remove or restrict from their services information deemed "obscene, lewd, lascivious, filthy, excessively violent, harassing, or otherwise objectionable, whether or not such material is constitutionally protected." While this immunity has fostered the growth of certain parts of the internet, recently, there have been criticisms of the broad federal immunity provision due to actions taken or not taken regarding the censorship of users by internet platforms. Government regulators have recently investigated and initiated cases against certain platforms for antitrust activities.

PCB COM 21-01, to which this bill is linked, requires social media platforms to meet certain requirements when they restrict speech by users. If a social media platform fails to meet such requirements, the Department of Legal Affairs (DLA) may bring an action against the social media platform under the Florida Deceptive and Unfair Trade Practices Act. The bill also allows DLA to determine if a social media platform has likely committed an antitrust violation based on a case brought by a governmental entity. If such a determination is made, the social media platform is prohibited from contracting for services with public entities.

This bill, which is linked to the passage of PCB COM 21-01, provides records exemptions for information collected for DLA investigations into:

- whether a social media platform has committed an antitrust violation based on a case brought by a governmental entity, and
- whether a social media platform has failed to meet certain requirements before restricting speech by users.

Once an investigation is completed, only the following information received by DLA will remain confidential and exempt:

- All information to which another public records exemption applies,
- Personal information,
- A computer forensic report,
- Information that would otherwise reveal weaknesses in a business's data security, and
- Information that would otherwise disclose a business's proprietary information.

Per the Open Government Sunset Review Act, this exemption will be automatically repealed on October 2, 2027, unless reenacted by the Legislature.

The bill will become effective on the same date that PCB COM 21-01 (2021) or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes 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 record or public meeting exemption. The bill expands a public record exemption; thus, it requires a two-thirds vote for final passage.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

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) of the Florida Constitution.[1] The general law must state with specificity the public necessity justifying the exemption[2] and must be no broader than necessary to accomplish its purpose.[3]

Public policy regarding access to government records is addressed further in s. 119.07(1)(a), F.S., which guarantees every person a right to inspect and copy any state, county, or municipal record, unless the record is exempt. Furthermore, the Open Government Sunset Review Act[4] provides that a public record or public meeting exemption may be created or maintained only if it serves an identifiable public purpose. In addition, it may be no broader than necessary to meet one of the following purposes:

- 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.[5]

The Open Government Sunset Review Act requires the automatic repeal of a newly created public record exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.[6]

Technology Transparency

Section 230 of the federal Communications Decency Act provides that internet platforms cannot be held liable on account of any action voluntarily taken in good faith to restrict access to or availability of material that the internet platform considers to be obscene, lewd, lascivious, filthy, excessively violent, harassing, or otherwise objectionable, whether or not such material is constitutionally protected.[7]

Recently, there have been criticisms of the broad federal immunity provisions for internet platforms that restrict the speech of their users. While this immunity has fostered the free flow of ideas on the internet, critics have argued that the immunity provisions shield publishers from liability for harmful content or political censorship.[8]

Antitrust and Internet Platforms

[1] Art. I, s. 24(c), FLA. CONST.
[2] This portion of a public record exemption is commonly referred to as a "public necessity statement."
[3] Art. I. s. 24(c), FLA. CONST.
[4] S. 119.15, F.S.
[5] S. 119.15(6)(b), F.S.
[6] S. 119.15(3), F.S.
[7] 47 U.S.C. § 230(c).
[8] Zoe Bedell and John Major, *What's Next for Section 230? A Roundup of Proposals* Lawfare, (July 29, 2020) https://www.lawfareblog.com/whats-next-section-230-roundup-proposals (last visited Feb. 25, 2021).

Critics have argued for years that internet platforms like Google, Apple, Facebook and Amazon built sprawling empires over commerce, communications and culture, and then abused their growing power. Recently, federal and state regulators have been investigating and bringing antitrust cases against them.[9] For example, the FTC and over 40 states, including Florida, have brought an action against Facebook for allegedly buying smaller rivals to maintain market dominance.[10] Also, DOJ and 11 states, including Florida, have brought an action against Google for allegedly manipulating search engine results.[11]

Procurement of Commodities and Services

Chapter 287, F.S., regulates state agency[12] procurement of personal property and services. The Department of Management Services (DMS) is statutorily designated as the central executive agency procurement authority and its responsibilities include overseeing agency implementation of the procurement process,[13] creating uniform agency procurement rules,[14] implementing the online procurement program,[15] and establishing state term contracts.[16]

Certain persons and their affiliates are prohibited from contracting with public entities for services and goods, with certain exceptions, if they have been identified by DMS as violating certain restrictions and have been placed on one of the following lists:[17]

- Convicted Vendor List,
- Discriminatory Vendor List,
- Scrutinized Companies with Activities in Sudan List,
- Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, and
- Scrutinized Companies that Boycott Israel List.

PCB COM 21-01 (2021)

PCB COM 21-01, to which this bill is linked, requires social media platforms to meet certain requirements when they restrict speech by users. If a social media platform fails to meet such requirements, DLA may bring an action against the social media platform under the Florida Deceptive and Unfair Trade Practices Act.

PCB COM 21-01 also allows DLA to determine if a social media platform has likely committed an antitrust violation based on a case brought by a governmental entity. If such a determination is made, the social media platform is prohibited from contracting for services with public entities and placed on the Antitrust Violator Vendor List.

Effect of the Bill

The public records exemptions in the bill apply to DLA investigations into:

[9] David McCabe, Cecilia Kang, and Daisuke Wakabayashi, *Google's Legal Peril Grows in Face of Third Antitrust Suit*, New York Times (Dec. 17, 2020), https://www.nytimes.com/2020/12/17/technology/google-antitrust-monopoly.html (last visited Feb. 25, 2021).
[10] *Id*; *Federal Trade Commission v. Facebook, Inc*., No. 1:20-cv-03590 (D.C. Cir. 2020).
[11] McCabe, supra note 52; *United States Department of Justice v. Google LLC*, No. 1:20-cv-03010 (D.C. Cir. 2020).
[12] Section 287.012(1), F.S., defines the term "agency" as any of the various state officers, departments, boards, commissions, divisions, bureaus, and councils and any other unit of organization, however designated, of the executive branch of state government. "Agency" does not include the university and college boards of trustees or the state universities and colleges.
[13] *See* ss. 287.032 and 287.042, F.S.
[14] *See* ss. 287.032(2) and 287.042(3), (4), and (12), F.S.
[15] *See* s. 287.057(23), F.S.
[16] *See* ss. 287.042(2), 287.056, and 287.1345, F.S.
[17] Ss. 287.133-135, F.S.

- whether a social media platform has committed an antitrust violation based on a case brought by a governmental entity, and
- whether a social media platform has failed to meet certain requirements or improperly restricted speech by users.

The bill provides that all information received by DLA pursuant to an investigation is confidential and exempt, until such time as the investigation is completed or ceases to be active.

During an active investigation, information made confidential and exempt may be disclosed by the DLA:
- In the performance of its official duties and responsibilities; or
- To another governmental entity in performance of its official duties and responsibilities.

Once an investigation is completed or once an investigation ceases to be active, the following information received by DLA will remain confidential and exempt:
- All information to which another public records exemption applies,
- Personal information,
- A computer forensic report,
- Information that would otherwise reveal weaknesses in a business's data security, and
- Information that would otherwise disclose a business's proprietary information.

The term "proprietary information" means information that:
- Is owned or controlled by the business,
- Is intended to be private and is treated by the business as private because disclosure would harm the business or its business operations,
- Has not been disclosed except as required by law or a private agreement that provides that the information will not be released to the public,
- Is not publicly available or otherwise readily ascertainable through proper means from another source in the same configuration as received by DLA, and
- Includes trade secrets and competitive interests.

The bill's provisions are subject to the Open Government Sunset Review Act and will stand repealed on October 1, 2026, unless reviewed and saved from repeal through reenactment by the Legislature.

The bill will become effective on the same date that PCB COM 21-01 (2021) or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes a law.

B. SECTION DIRECTORY:

Section 1: Creates a public records exemption for investigations related to s. 287.137, F.S.
Section 2: Creates a public records exemption for investigations related to s. 501.2041, F.S.
Section 3: Provides a public necessity statement as required by the Florida Constitution.
Section 4: Provides an effective date of the same date that PCB COM 21-01 (2021) or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The bill may have a fiscal impact on agencies responsible for complying with public records requests and redacting confidential and exempt information prior to releasing a record.

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 take 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 or expanded public record or public meeting exemption. The bill expands a 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 record or public meeting exemption. The bill expands a public record exemption; thus, it includes a public necessity statement.

Breadth of Exemption

Article 1, section 24(c) of the Florida Constitution requires a newly created or expanded public record or public meeting exemption to be no broader than necessary to accomplish the stated purpose of the law. The bill creates a public records exemption for sensitive investigative materials, which does not appear to be broader than necessary to accomplish its purpose.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to public records; amending s. 287.137, F.S; providing a public records exemption for certain investigations by the Attorney General or a law enforcement agency into violations of certain social media actions; providing that confidential and exempt information may be disclosed under specified conditions; requiring certain information to remain confidential and exempt after an investigation is complete or ceases to be active; defining the term "proprietary information"; providing for future legislative review and repeal of the exemptions; amending s. 501.2041, F.S; providing a public records exemption for certain investigations by the Department of Legal Affairs or a law enforcement agency into violations of certain social media actions; providing that confidential and exempt information may be disclosed under specified conditions; requiring certain information to remain confidential and exempt after an investigation is complete or ceases to be active; providing for future legislative review and repeal of the exemptions; defining the term "proprietary information"; providing a statement of public necessity; providing a contingent effective date.

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

Section 1. Subsection (8) is added to section 287.137, Florida Statutes, as created by HB ____,2021 Regular Session, to read:

287.137 Antitrust violations; denial or revocation of the right to transact business with public entities; denial of economic benefits.—

(8)(a) All information received by the Attorney General pursuant to an investigation by the Attorney General or a law enforcement agency, is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution, until such time as the investigation is completed or ceases to be active. This exemption shall be construed in conformity with s. 119.071(2)(c).

(b) During an active investigation, information made confidential and exempt pursuant to paragraph (a) may be disclosed by the Attorney General:

1. In the performance its official duties and responsibilities; or

2. To another governmental entity in performance of its official duties and responsibilities.

(c) Once an investigation is completed or once an investigation ceases to be active, the following information

received by the Attorney General shall remain confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution:

1. All information to which another public records exemption applies.

2. Personal information.

3. A computer forensic report.

4. Information that would otherwise reveal weaknesses in a business's data security.

5. Information that would otherwise disclose a business's proprietary information.

(d) For purposes of this subsection, the term "proprietary information" means information that:

1. Is owned or controlled by the business.

2. Is intended to be private and is treated by the business as private because disclosure would harm the business or its business operations.

3. Has not been disclosed except as required by law or a private agreement that provides that the information will not be released to the public.

4. Is not publicly available or otherwise readily ascertainable through proper means from another source in the same configuration as received by the department.

5. Includes:

a. Trade secrets as defined in s. 688.002.

b. Competitive interests, the disclosure of which would impair the competitive business of the business that is the subject of the information.

(e) This subsection is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 1, 2026, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2. Subsection (8) is added to section 501.2041, Florida Statutes, as created by HB ____, 2021 Regular Session, to read:

501.2041 Unlawful acts and practices by social media platforms.—

(8)(a) All information received by the department pursuant to an investigation by the department or a law enforcement agency, is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution, until such time as the investigation is completed or ceases to be active. This exemption shall be construed in conformity with s. 119.071(2)(c).

(b) During an active investigation, information made confidential and exempt pursuant to paragraph (a) may be disclosed by the department:

1. In the performance of its official duties and responsibilities; or

2. To another governmental entity in performance of its

official duties and responsibilities.

(c) Upon completion of an investigation or once an investigation ceases to be active, the following information received by the department shall remain confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution:

1. All information to which another public records exemption applies.

2. Personal information.

3. A computer forensic report.

4. Information that would otherwise reveal weaknesses in a business's data security.

5. Information that would otherwise disclose a business's proprietary information.

(d) For purposes of this subsection, the term "proprietary information" means information that:

1. Is owned or controlled by the business.

2. Is intended to be private and is treated by the business as private because disclosure would harm the business or its business operations.

3. Has not been disclosed except as required by law or a private agreement that provides that the information will not be released to the public.

4. Is not publicly available or otherwise readily ascertainable through proper means from another source in the

same configuration as received by the department.

5. Includes:

a. Trade secrets as defined in s. 688.002.

b. Competitive interests, the disclosure of which would impair the competitive business of the business that is the subject of the information.

(e) This subsection is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 1, 2026, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 3. The Legislature finds that it is a public necessity that all information received by the Department of Legal Affairs and the Attorney General pursuant to a notification of a violation of ss. 287.137 and 501.2041, Florida Statutes, or received by the Department of Legal Affairs and the Attorney General pursuant to an investigation by the department or a law enforcement agency, be made confidential and exempt from s. 119.07(1), Florida Statutes and s. 24(a), Article I of the State Constitution for the following reasons:

(1) A notification of a violation of s. 501.172, Florida Statutes, may result in an investigation of such violation. The premature release of such information could frustrate or thwart the investigation and impair the ability of the Department of Legal Affairs and the Attorney General to effectively and efficiently administer ss. 287.137 and 501.2041, Florida

Statutes. In addition, release of such information before completion of an active investigation could jeopardize the ongoing investigation.

(2) The Legislature finds that it is a public necessity to continue to protect from public disclosure all information to which another public record exemption applies once an investigation is completed or ceases to be active. Release of such information by the Department of Legal Affairs and the Attorney General would undo the specific statutory exemption protecting that information.

(3) An investigation of social media platform activities is likely to result in the gathering of sensitive personal information, including social security numbers, identification numbers, and personal financial information. Such information could be used for the purpose of identity theft.

(4) Information received by the Department of Legal Affairs and the Attorney General and information may contain proprietary information, including trade secrets, about the security of the breached system. The release of the proprietary information could result in the identification of vulnerabilities. In addition, a trade secret derives independent, economic value, actual or potential, from being generally unknown to, and not readily ascertainable by, other persons who might obtain economic value from its disclosure or use. Allowing public access to proprietary information,

including trade secrets, through a public records request could destroy the value of the proprietary information and cause a financial loss to the business submitting the information. Release of such information could give business competitors an unfair advantage and weaken the position of the entity supplying the proprietary information in the marketplace.

Section 4. This act shall take effect July 1, 2021, if HB ___ or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes a law.