Commerce Committee

Tuesday, April 6, 2021
12:30 PM – 2:30 PM
Webster Hall (212 Knott)

Meeting Packet

Chris Sprowls
Speaker

Blaise Ingoglia
Chair

The Florida House of Representatives

Commerce Committee

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Meeting Agenda

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12:30 PM – 2:30 PM
Webster Hall (212 Knott)

I. Call to Order

II. Roll Call

III. Welcome and Opening Remarks

IV. Consideration of the following bill(s):

- CS/HB 339 Business Organizations by Regulatory Reform Subcommittee, Robinson, W.
- CS/HB 415 Fire Department Communications by Insurance & Banking Subcommittee, Botana
- HB 483 Electronic Legal Documents by Altman
- HB 535 Electronic Dissemination of Commercial Recordings and Audiovisual Works by Busatta Cabrera
- CS/HB 539 Renewable Energy by Environment, Agriculture & Flooding Subcommittee, Byrd, Roth
- CS/HB 615 Community Association Assessment Notices by Regulatory Reform Subcommittee, Rodriguez
- CS/HB 1051 Environmental Compliance Costs by Tourism, Infrastructure & Energy Subcommittee, Fernandez-Barquin

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

- CS/HB 1151 Department of Highway Safety and Motor Vehicles by Tourism, Infrastructure & Energy Subcommittee, Brannan

- HB 1359 Pub. Rec./Department of Highway Safety and Motor Vehicles by Brannan

- CS/HB 1431 Swimming Pool Specialty Contracting Services by Regulatory Reform Subcommittee, McClure

- HB 1539 Pub. Rec./Department of Agriculture and Consumer Services by Jenne

- HB 6059 Composition of the Multi-use Corridors of Regional Economic Significance Program by Shoaf

- HB 7049 OGSR/Office of Insurance Regulation by Government Operations Subcommittee, Shoaf

V. Closing Remarks

VI. Adjournment

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 339 Business Organizations
SPONSOR(S): Regulatory Reform Subcommittee, Robinson, W.
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 602

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Regulatory Reform Subcommittee	15 Y, 1 N, As CS	Wright	Anstead
2) Civil Justice & Property Rights Subcommittee	15 Y, 1 N	Mawn	Jones
3) Commerce Committee		Wright	Hamon

SUMMARY ANALYSIS

As of October 2020, Florida has approximately 2,500,212 active business entities in the state, regulated under the Florida Business Corporation Act, The Florida Revised Limited Liability Company Act, corporations not for profit laws, and limited partnership laws.

In 2014, the Corporations, Securities, and Financial Services Committee of the Florida Bar Business Law Section organized a drafting task force to recommend revisions to Florida business entity laws. The task force's effort resulted in the Legislature passing a comprehensive revision to Florida's entity statutes. However, the task force subsequently identified issues that needed clarification, in addition to several errors in the enrolled bill, including grammar, punctuation, and cross reference errors, and statutory inconsistencies. Some issues were fixed in the 2020 Session, but additional issues have since been identified.

The bill clarifies issues related to the process by which certain shareholders may dissent to corporate or majority shareholder action by asserting their appraisal rights, which requires a corporation to buy the shareholders' stock at its "fair value."

The bill also:

- Amends several provisions related to appraisal rights for minority shareholders and beneficial owners;
- Allows prepayment in appraisal actions;
- Makes correcting and conforming changes to corporation provisions; and
- Makes correcting changes to not for profit corporation and limited liability company provisions.

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

The bill is effective upon becoming law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

In 1950, the American Bar Association (ABA) promulgated the Model Business Corporations Act (MBCA), a body of laws designed to uniformly regulate United States corporations.[1] However, individual states may promulgate laws relating to the creation, organization, operation, and dissolution of corporations and other entities in their respective jurisdictions.[2]

Generally, Florida regulates the following entities:[3]

- Business corporations;
- Nonprofit corporation;
- General partnerships, including limited liability partnerships;
- Limited partnerships, including limited liability limited partnerships;
- Limited liability companies;
- Declarations of trust; and
- Foreign entities.

As of October 2020, Florida had approximately 2,500,212 active business entities in the state,[4] regulated under the Florida Business Corporation Act (FBCA),[5] The Florida Revised Limited Liability Company Act (FRLLCA),[6] corporations not for profit laws,[7] and limited partnership laws,[8] which are now largely modeled after the MBCA.[9] In 2014, the Corporations, Securities, and Financial Services Committee of the Florida Bar Business Law Section (FBBLS) organized a drafting task force to recommend revisions to Florida business entity laws, last overhauled in 1989, as the ABA was in the process of revising and modernizing the MBCA.[10] The task force's mission statement included a full FBCA study and the proposal of revisions to:

- Bring the laws in line with MBCA revisions;
- Maintain Florida's competitiveness with other jurisdictions;
- Fix issues in existing law; and
- Encourage the formation and use of Florida corporations.[11]

The task force's effort resulted in the Legislature passing a comprehensive revision to Florida's entity statutes[12] signed into law on June 7, 2019, with a January 1, 2020 effective date.[13] However, the task force subsequently identified issues that needed clarification, in addition to several errors in the enrolled bill, including grammar, punctuation, cross reference errors, and statutory inconsistencies.[14] Some issues were fixed in the 2020 Session,[15] but additional issues have since been identified.[16]

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[1] William H. Clark, Jr., *The Relationship of the Model Business Corporation Act to Other Entity Laws*, Law and Contemporary Problems Vol. 74, No. 57, https://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=1609&context=lcp (last visited Mar. 26, 2021).
[2] *Id.*
[3] S. 605.0102(23), F.S; Title XXXVI, F.S.
[4] The Florida Department of State, Division of Corporations, *Yearly Statistics*, https://dos.myflorida.com/sunbiz/about-us/yearly-statistics/ (last visited Mar. 26, 2021).
[5] Ch. 607, F.S.
[6] Ch. 605, F.S.
[7] Ch. 617, F.S.
[8] Ch. 620, F.S.
[9] The Florida Bar Business Law Section, *Proposed Modifications to Chapter 607 (Florida Business Corporation Act)*, (Jan. 24, 2019).
[10] *Id.*
[11] *Id.*
[12] These included the Florida Revised Limited Liability Company Act of ch. 605, F.S., and the Florida Not for Profit Corporation Act of ch. 617, F.S.
[13] Ch. 2019-90, L.O.F., in CS/CS/HB 1009 (2019).
[14] The Florida Bar Business Law Section (FBBLS), *White Paper for S.B. [838] & H.B. [495]: "An Act Relating to Business Organizations*," (Oct. 21, 2019).
[15] Ch. 2020-32, L.O.F., in CS/SB 838 (2020).
[16] Florida Bar Business Law Section (FBBLS), Chapter 607 Drafting Subcommittee, *White Paper for S.B. 602 & H.B. 339: An Act Relating to Corporations and Other Entities*, 1-2 (Feb. 2021).

Appraisal Rights for Corporation Shareholders

Triggers of Appraisal Rights for Minority Shareholders – Current Situation

Minority shareholders may dissent to corporate or majority shareholder action by asserting their appraisal rights, pursuant to ss. 607.1301-607.1340, F.S., which requires a corporation to buy the minority shareholders' stock at its "fair value."[17] This remedy is one of the few protections against actions that "… fundamentally change the nature of the shareholders' investments without the check and balance of informed shareholder approval, and [provide] the opportunity for dissenters to withdraw from the corporation."[18] The appraisal process is effectuated through a judicial hearing, where a court appraises the fair value of the shareholder's interests and assesses the corporation for payment of both the fair value and any accrued interest, calculated according to s. 55.03, F.S.

A minority shareholder may assert his or her appraisal rights only in specific instances where a fundamental corporate change occurs, including (and subject to substantial restrictions and limits) the domestication or conversion to another type of business entity, a merger or share exchange, a disposition of all or substantially all of the corporation's assets, an amendment to the corporation's articles of incorporation that creates fractional shares, and in other cases involving a corporation's articles of incorporation, bylaws, or a resolution of its board of directors.[19, 20] For example, in s. 607.1302(1)(g), F.S., shareholders may assert appraisal rights where an amendment to the articles of incorporation or bylaws adversely alters or abolishes the shareholder's voting rights or other rights.[21] Also, in s. 607.1302(1)(h), F.S., a shareholder of a class of shares prescribed in an articles of incorporation prior to October 1, 2003, including any shares within that class subsequently authorized by amendment, is entitled to appraisal rights if there is amendment of the articles of incorporation on which the shareholder is entitled to vote and such amendment would adversely affect such shareholder by certain actions to reduce shares, value of the shares, and voting rights.[22]

Triggers for Appraisal Rights for Minority Shareholders – Effect of the Bill

The bill narrows the instances that trigger a minority shareholder's appraisal rights by deleting the provision allowing shareholders to assert appraisal rights where an amendment to the articles of incorporation or bylaws adversely alters or abolishes the shareholder's voting or other rights. However, the bill allows shareholders in a corporation with 100 or fewer shareholders, whose shares were authorized on, or after October 1, 2003, the same appraisal rights as granted in s. 607.1302(1)(h), F.S. Minority shareholders may still assert their appraisal rights under several other bases enumerated in s. 607.1302(1), F.S.

Market Out Exception to Appraisal Rights – Current Situation

What is commonly called the "market out exception" means that appraisal rights are unavailable for certain shareholders in certain situations and the shareholders must either accept the adverse corporate action or sell their shares in an organized market.[23] The theory behind the "market out" exception is that the shareholder, if dissatisfied with the proposed corporate action, can choose to sell the shares into an organized market that is liquid and where the value of the shares is reasonably calculated to arrive at a price reflective of an arm's length transaction.[24]

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[17] S. 607.1302(1), F.S.; S. 607.1301(5), F.S., defines "fair value" as the value of the corporation's shares immediately before the effectiveness of the corporate action in question, using commonly-used valuation concepts and techniques, without discounting for lack of marketability or minority status of the shares.
[18] Gregory Yadley and Christina Nethero, *Florida Corporate Practice: Appraisal Rights* s. 11:1 (2020); *see also*, *South End Improvement Group, Inc. by & through Bank of New York v. Mulliken*, 602 So. 2d 1327, 1332 (Fla. 4th DCA 1992).
[19] Section 607.1302(1), F.S.
[20] Gregory Yadley and Christina Nethero, *Florida Corporate Practice: Appraisal Rights* s. 11:2.C (2020).
[21] S. 607.1302(1)(g), F.S.
[22] S. 607.1302(1)(h), F.S.
[23] FBBLS, *supra* note 16, at 4.
[24] *Id*.

Thirty-eight states, including Florida, operate under the market out exception, which restricts the appraisal rights available to shareholders of stock in large or publicly traded corporations. "[P]ublic shareholders presumptively have an available market. [W]hen a public market exists…, public shareholders must employ market price instead of court-appraisal as the measure of their interests."[25]

In Florida, the market out exception excludes shareholders from asserting appraisal rights if:[26]

- Their triggering action is:
  - Consummation of a domestication or a conversion of such corporation, if shareholder approval is required for the domestication or the conversion;
  - Consummation of a merger to which such corporation is a party, in certain situations;
  - Consummation of a share exchange to which the corporation is a party as the corporation whose shares will be acquired, except any shareholder of the corporation with respect to any class or series of shares that is not acquired in the share exchange;
  - Consummation of a disposition of assets if the shareholder is entitled to vote on the disposition, including a sale in dissolution, in certain situations; or
  - An amendment of the articles of incorporation with respect to a class or series of shares which reduces the number of shares of a class or series owned by the shareholder to a fraction of a share if the corporation has the obligation or the right to repurchase such fractional share; and
- Their shares are:
  - A covered security;
  - Not a covered security, but are traded in an organized market; or
  - Issued by an open end management investment company that is registered with the Securities and Exchange Commission.

Whether the market out exception applies is determined as of:

- The record date fixed to determine the shareholders entitled to receive notice of the meeting of shareholders to act upon the corporate action requiring appraisal rights, or the date of offer for a merger or share exchange; or
- If there will be no meeting of shareholders and no offer of a merger or share exchange is made, the close of business on the day before the consummation of the corporate action or the effective date of the amendment of the articles, as applicable.

"Record date" means the date fixed for determining the identity of the corporation's shareholders and their share holdings. Unless another time is specified when the record date is fixed, the determination is made as of the close of business at the principal office of the corporation on the date so fixed.[27]

Market Out Exception to Appraisal Rights – Effect of the Bill

The bill broadens the market out exception by prohibiting appraisal actions asserted in connection with a corporation's merger, share exchange, or disposition of corporate assets (as permitted by the corporation's articles of incorporation or bylaws), or those that adversely affect a shareholder of a closely held corporation or a shareholder who holds shares issued prior to October 1, 2003.

The bill also provides that the market out exception applies where the shares held are not a covered security, but traded in an organized market or subject to a "comparable trading process." The bill defines a "comparable trading process" as one where the:

- Share's market price is determined at least quarterly based on an independent valuation and by following a formalized process that is designed to determine a value for the corporation's shares that is comparable to the value of a comparable publicly traded companies; and
- Corporation repurchases the shares at pricing set by its board of directors based on the independent valuation and subject to established terms and conditions that have been provided to the shareholders.

[25] Gil Matthews, *The "Market Exception" in Appraisal Statutes*, (Mar. 30, 2020), https://corpgov.law.harvard.edu/2020/03/30/the-market-exception-in-appraisal-statues/ (last visited Mar. 26, 2021).
[26] S. 607.1302(2), F.S.
[27] S. 607.01401(63), F.S.

The bill clarifies that, in cases in which the triggering corporate action must be approved by shareholders' written consent, the applicability of the market share exception must be decided at the point at which the record date was fixed to determine which shareholders are entitled to sign the consent.

Assertion of Appraisal Rights by Nominees and Beneficial Owners - Current Situation

"Record shareholder" means the person:[28]

- In whose name shares are registered in the records of the corporation; or
- Identified as a beneficial owner of shares in the beneficial ownership certificate on file with the corporation to the extent of the rights granted by such certificate.

"Beneficial shareholder" means a person who owns the beneficial interest in shares. Such person may be a record shareholder or a person on whose behalf shares are registered in the name of an intermediary or nominee.[29] Generally, an intermediary or a nominee holds legal ownership of a security, including shares, while beneficial ownership is held by someone else who receives all dividends and other benefits of ownership.[30]

A record shareholder may assert appraisal rights as to fewer than all the shares registered in the record shareholder's name but owned by a beneficial shareholder or a voting trust beneficial owner only if the record shareholder:[31]

- Objects with respect to all shares of the class or series owned by the beneficial shareholder or the voting trust beneficial owner; and
- Notifies the corporation in writing of the name and address of each beneficial shareholder or voting trust beneficial owner on whose behalf appraisal rights are being asserted.

The rights of a record shareholder who asserts appraisal rights for only part of the shares held in the record shareholder's name under this subsection are determined as if the shares as to which the record shareholder objects and the record shareholder's other shares were registered in the names of different record shareholders.[32]

A beneficial shareholder and a voting trust beneficial owner may assert appraisal rights as to shares of any class or series held on behalf of the shareholder only if such shareholder:[33]

- Submits to the corporation the record shareholder's written consent to the assertion of such rights no later than the date referred to in s. 607.1322(2)(b)2; and
- Does so with respect to all shares of the class or series that are beneficially owned by the beneficial shareholder or the voting trust beneficial owner.

Currently, a shareholder who wishes to demand an appraisal rights payment from the corporation must take certain actions before the triggering corporate action is effectuated.[34] There is no specific requirement for when shares must have been beneficially owned to be able to demand payment. FBBLS has identified perceived abuses associated with appraisal rights being simultaneously bought and sold (arbitrage), stemming from most simultaneous buyers and sellers of appraisal rights (arbitrageurs) not being historical shareholders of the corporation, but rather those who purchase their shares after the announcement date of, or record date for, the meeting at which the corporate action is to be voted upon, or the effective date of the written consent approving such corporate action.[35]

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[28] S. 607.01401(64), F.S.
[29] S. 607.01401(7), F.S.
[30] The Free Dictionary by Farlex, The Financial Dictionary, *Nominee*, https://financial-dictionary.thefreedictionary.com/nominee (last visited Mar. 26, 2021).
[31] S. 607.1303(1), F.S.
[32] *Id*.
[33] S. 607.1303(2), F.S.
[34] S. 607.1321
[35] FBBLS, *supra* note 16, at 8.

Assertion of Appraisal Rights by Nominees and Beneficial Owners – Effect of the Bill

The bill requires a beneficial shareholder who wishes to assert his or her appraisal rights and demand payment to have a beneficial ownership in their shares in the corporation by the record date established for the triggering corporate action.

The bill provides that a record shareholder asserting appraisal rights as to fewer than all the shares registered in the record shareholder's name but owned by a beneficial shareholder or a voting trust beneficial owner may only do so if the beneficial shareholder or voting trust beneficial owner acquired all of their shares before the record date for the triggering corporate action.

Award of Accrued Interest in an Appraisal Action – Current Situation

Currently, "accrued interest" as it applies to interest on payments made pursuant to an assertion of one's appraisal rights is calculated at the statutory judgment interest rate as described in s. 55.03, F.S.[36] The interest rate, set by the Chief Financial Officer on December 1, March 1, June 1, and September 1 of each year, is payable on judgments for the calendar quarter beginning January 1, and adjusted quarterly on April 1, July 1, and October 1 by averaging the discount rate of the Federal Reserve Bank of New York for the preceding 12 months, then adding 400 basis points.[37]

Award of Accrued Interest in an Appraisal Action – Effect of the Bill

The bill amends the definition of "accrued interest" to require the parties in an appraisal action either to agree to an interest rate between themselves, or to accept a rate determined by a court to be equitable. The court's rate may not exceed the statutory judgment rate described in s. 55.03, F.S. Additionally, the bill allows a court to prohibit the payment of interest where it finds that the shareholder who asserted his or her appraisal rights acted arbitrarily or not in good faith.

The bill also makes conforming changes to reflect both that the rate of interest is variable and that a court may choose not to award accrued interest pursuant to the amended definition of the term.

Prepayment in an Appraisal Action – Current Situation

Currently, there is no provision allowing prepayment of the fair value of shares that are the subject of a shareholder's appraisal action to a shareholder. FBBLS argues that allowing such prepayment would shorten the amount of time during which interest can accrue, and therefore mitigates risk to the corporation.[38]

Prepayment in an Appraisal Action – Effect of the Bill

The bill gives corporations the option to prepay the fair value of the shares that are the subject of a shareholder's appraisal action, and requires such shareholder to accept such prepayment. Specifically, the bill allows the corporation to prepay all, or any part of the amount, that it determines is due to the shareholder. If the corporation makes the prepayment within 90 days after the appraisal notice, then the corporation may only be liable for the accrued interest on any amount above what it prepaid to the shareholder. If the corporation makes a payment after the 90-day period, but before a judicial determination of the interest due, then the corporation must prepay interest at the statutory judgment rate provided for in s. 55.03, F.S., and may be liable for additional interest on any excess payment due, calculated from the date the corporate action became effective.

The bill makes conforming changes to acknowledge the prepayment options provided in the bill.

Name of a Dissolved Entity – Current Situation

[36] S. 607.1301(1), F.S.
[37] S. 55.03(1), F.S.
[38] FBBLS, *supra* note 16, at 8.

Currently, the name of a dissolved corporation is not available for use by another corporation for one year after the effective date of dissolution, unless the dissolved corporation gives certain consent.[39] Previous to 2019, the time period was 120 days.[40] FBBLS indicates that the change was inadvertent and should go back to the 120 day time period previously authorized.[41]

Name of a Dissolved Entity – Effect of the Bill

The bill reverts to the 120-day period, and makes a non-substantive conforming change.

Property Associations and Not-For-Profit Corporations

Committee Requirements – Current Situation

Section 617.0825, F.S., outlines requirements for not for profit corporation board and advisory committees. Such requirements do not apply to board or advisory committees established under:

- Chapter 718, F.S., relating to condominium associations, to perform functions under s. 718.303(3), relating to levying fines for violating the declaration, bylaws, or rules;
- Chapter 719, F.S., relating to cooperative associations, to perform the functions under s. 719.303(3), relating to levying fines for violating the documents or rules; or
- Chapter 720, F.S., relating to homeowners' associations, to perform functions under s. 720.303(2), relating to board meetings, or s. 720.3035(1), relating to architectural and construction improvements.

Committee Requirements – Effect of the Bill

The bill revises the property association activity committees which are exempt from the not for profit corporation advisory committee requirements. The bill removes homeowners' association committees related to board meetings, and adds homeowners' association committees related to levying fines for violating the declaration, bylaws, or rules and reviving covenants.

Quorum Requirements – Current Situation

Currently, an amendment to the articles of incorporation or the bylaws of any not for profit corporation which adds, changes, or deletes a quorum or voting requirement must meet the same quorum or voting requirement and be adopted by the same vote and voting groups required to take action under the quorum and voting requirements then in effect or proposed to be adopted, whichever is greater.[42]

[39] S. 607.1405, F.S.
[40] Ch. 2019-90, L.O.F.
[41] FBBLS, *supra* note 16, at 9.
[42] S. 617.0725, F.S.

Quorum Requirements – Effect of the Bill

The bill exempts not for profit corporations that are condominium, cooperative, or homeowners' associations from not for profit corporation requirements for amending articles of incorporation or bylaws for a not for profit corporation in a way that changes quorum or voting requirements.

Application of Not For Profit Corporations Chapter to Community Associations – Current Situation

Currently, in the event of any conflict between the provisions of chapter 617, F.S., for not for profit corporations, and chapters regarding community associations (chapter 718, F.S., regarding condominiums, chapter 719, F.S., regarding cooperatives, chapter 720, F.S., regarding homeowners' associations, chapter 721, F.S., regarding timeshares, or chapter 723, F.S., regarding mobile home owners' associations), the provisions of the applicable community association chapter applies where an exception is carved out.[43]

Application of Not For Profit Corporations Chapter to Community Associations – Effect of the Bill

The bill clarifies that chapter 617, F.S., applies to such community associations, except where there is a conflict, and then the chapters for community associations apply.

Access to Records for Limited Liability Companies – Current Situation

Currently, during regular business hours and at a reasonable location specified by the company, a member may inspect and copy:[44]

- The company records; and
- Full information regarding the activities, affairs, financial condition, and other circumstances of the company as is just and reasonable if the member:
    - Seeks the information for a purpose reasonably related to the member's interest as a member; or
    - Makes a demand in a record received by the company, describing with reasonable particularity the information sought and the purpose for seeking the information, and if the information sought is directly connected to the member's purpose.

Access to Records for Limited Liability Companies – Effect of the Bill

The bill clarifies that in order for a member to access full information regarding the activities, affairs, financial condition, and other circumstances of the company, such member must both:

- Seek the information for a purpose reasonably related to the member's interest as a member; and
- Make a demand in a record received by the company, describing with reasonable particularity the information sought and the purpose for seeking the information, and if the information sought is directly connected to the member's purpose.

The bill updates cross-references to correct scrivener's errors.

The bill takes effect upon becoming law.

B. SECTION DIRECTORY:

Section 1: Amends s. 605.0410, F.S., relating to inspection rights of certain company records.
Section 2: Amends s. 607.1301, F.S., relating to appraisal rights; definition of "accrued interest."
Section 3: Amends s. 607.1302, F.S., relating to shareholder appraisal rights.
Section 4: Amends s. 607.1303, F.S., relating to assertion of rights by nominees and beneficial owners.
Section 5: Amends s. 607.1321, F.S., relating to notice of intent to demand payment.

[43] S. 617.1703, F.S.
[44] S. 605.0410(3), F.S.

Section 6: Amends s. 607.1322, F.S., relating to appraisal notice and form.
Section 7: Amends s. 607.1326, F.S., relating to prepayments to a shareholder.
Section 8: Amends s. 607.1330, F.S., relating to proceedings for demands for payment.
Section 9: Amends s. 607.1405, F.S., relating to effect of dissolution.
Section 10: Amends s. 617.0825, F.S., relating to certain property association committees.
Section 11: Amends s. 617.1703, F.S., relating to application of chapter to property associations.
Section 12: Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 8, 2021, the Regulatory Reform Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The committee substitute provides that requirements to amend articles of

incorporation or bylaws for a not for profit corporation in a way that changes quorum or voting requirements are not applicable to corporations that are condominium, cooperative, or homeowners' associations.

This analysis is drafted to the committee substitute as passed by the Regulatory Reform Subcommittee.

A bill to be entitled

An act relating to business organizations; amending s. 605.0410, F.S.; revising requirements relating to inspecting certain records of limited liability companies; amending s. 607.1301, F.S.; revising the definition of the term "accrued interest"; amending s. 607.1302, F.S.; revising the circumstances under which shareholders are entitled to appraisal rights and certain payments; revising limitations relating to such rights and payments; revising applicability; amending s. 607.1303, F.S.; revising the circumstances in which certain shareholders may assert specified appraisal rights; amending s. 607.1321, F.S.; revising requirements for shareholders who wish to assert appraisal rights relating to specified corporate actions; amending s. 607.1322, F.S.; making a technical change; amending s. 607.1326, F.S.; entitling corporations to prepay a shareholder if the shareholder makes a demand for payment; specifying when interest is applicable to such prepayments; making technical changes; amending s. 607.1330, F.S.; revising requirements for proceedings relating to unsettled demands for payment; revising the eligibility requirements for shareholders entitled to the fair value of shares during court proceedings;

making technical and conforming changes; amending s. 607.1405, F.S.; revising the requirements for eligible entities to use the name of a dissolved corporation; amending s. 617.0725, F.S.; providing applicability; amending ss. 617.0825 and 617.1703, F.S.; revising applicability; providing an effective date.

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

Section 1. Paragraph (b) of subsection (3) of section 605.0410, Florida Statutes, is amended to read:

605.0410 Records to be kept; rights of member, manager, and person dissociated to information.—

(3) In a manager-managed limited liability company, the following rules apply:

(b) During regular business hours and at a reasonable location specified by the company, a member may inspect and copy:

1. The records described in subsection (1); and

2. Full information regarding the activities, affairs, financial condition, and other circumstances of the company as is just and reasonable if:

a. The member seeks the information for a purpose reasonably related to the member's interest as a member; and ~~or~~

b. The member makes a demand in a record received by the

company, describing with reasonable particularity the information sought and the purpose for seeking the information, and if the information sought is directly connected to the member's purpose.

Section 2. Subsection (1) of section 607.1301, Florida Statutes, is amended to read:

607.1301 Appraisal rights; definitions.—The following definitions apply to ss. 607.1301-607.1340:

(1) "Accrued interest" means interest ~~from the date the corporate action becomes effective until the date of payment,~~ at the rate agreed to by the corporation and the shareholder asserting appraisal rights, or at the rate determined by the court to be equitable, which rate may not be greater than the rate of interest ~~of interest~~ determined for judgments pursuant to s. 55.03; however, if the court finds that the shareholder asserting appraisal rights acted arbitrarily or otherwise not in good faith, no interest shall be allowed by the court~~, determined as of the effective date of the corporate action~~.

Section 3. Subsections (1) and (2) of section 607.1302, Florida Statutes, are amended to read:

607.1302 Right of shareholders to appraisal.—

(1) A shareholder of a domestic corporation is entitled to appraisal rights, and to obtain payment of the fair value of that shareholder's shares, in the event of any of the following corporate actions:

(a) Consummation of a domestication or a conversion of such corporation pursuant to s. 607.11921 or s. 607.11932, as applicable, if shareholder approval is required for the domestication or the conversion;

(b) Consummation of a merger to which such corporation is a party:

1. If shareholder approval is required for the merger under s. 607.1103 or would be required but for s. 607.11035, except that appraisal rights shall not be available to any shareholder of the corporation with respect to shares of any class or series that remains outstanding after consummation of the merger where the terms of such class or series have not been materially altered; or

2. If such corporation is a subsidiary and the merger is governed by s. 607.1104;

(c) Consummation of a share exchange to which the corporation is a party as the corporation whose shares will be acquired, except that appraisal rights shall not be ~~are not~~ available to any shareholder of the corporation with respect to any class or series of shares of the corporation that is not acquired in the share exchange;

(d) Consummation of a disposition of assets pursuant to s. 607.1202 if the shareholder is entitled to vote on the disposition, ~~including a sale in dissolution,~~ except that appraisal rights shall not be available to any shareholder of

the corporation with respect to shares or any class or series if:

1. Under the terms of the corporate action approved by the shareholders there is to be distributed to shareholders in cash the corporation's net assets, in excess of a reasonable amount reserved to meet claims of the type described in ss. 607.1406 and 607.1407, within 1 year after the shareholders' approval of the action and in accordance with their respective interests determined at the time of distribution; and

2. The disposition of assets is not an interested transaction;

(e) An amendment of the articles of incorporation with respect to a class or series of shares which reduces the number of shares of a class or series owned by the shareholder to a fraction of a share if the corporation has the obligation or the right to repurchase the fractional share so created;

(f) Any other merger, share exchange, disposition of assets, or amendment to the articles of incorporation, in each case to the extent provided as of the record date by the articles of incorporation, bylaws, or a resolution of the board of directors providing for appraisal rights, except that no bylaw or board resolution providing for appraisal rights may be amended or otherwise altered except by shareholder approval;

(g) ~~An amendment to the articles of incorporation or bylaws of the corporation, the effect of which is to alter or~~

~~abolish voting or other rights with respect to such interest in a manner that is adverse to the interest of such shareholder, except as the right may be affected by the voting or other rights of new shares then being authorized of a new class or series of shares;~~

~~(h)~~ An amendment to the articles of incorporation or bylaws of a corporation, the effect of which is to adversely affect the interest of the shareholder by altering or abolishing appraisal rights under this section;

(h) ~~(i)~~ With regard to a class of shares prescribed in the articles of incorporation in any corporation as to which that particular class of shares was in existence prior to October 1, 2003, including any shares within that class subsequently authorized by amendment, and for classes of shares authorized on or after October 1, 2003, in any corporation with 100 or fewer shareholders ~~prior to October 1, 2003, including any shares within that class subsequently authorized by amendment~~, any amendment of the articles of incorporation if the shareholder is entitled to vote on the amendment and if such amendment would adversely affect such shareholder by:

1. Altering or abolishing any preemptive rights attached to any of his, her, or its shares;

2. Altering or abolishing the voting rights pertaining to any of his, her, or its shares, except as such rights may be affected by the voting rights of new shares then being

authorized of any existing or new class or series of shares;

3. Effecting an exchange, cancellation, or reclassification of any of his, her, or its shares, when such exchange, cancellation, or reclassification would alter or abolish the shareholder's voting rights or alter his, her, or its percentage of equity in the corporation, or effecting a reduction or cancellation of accrued dividends or other arrearages in respect to such shares;

4. Reducing the stated redemption price of any of the shareholder's redeemable shares, altering or abolishing any provision relating to any sinking fund for the redemption or purchase of any of his, her, or its shares, or making any of his, her, or its shares subject to redemption when they are not otherwise redeemable;

5. Making noncumulative, in whole or in part, dividends of any of the shareholder's preferred shares which had theretofore been cumulative;

6. Reducing the stated dividend preference of any of the shareholder's preferred shares; or

7. Reducing any stated preferential amount payable on any of the shareholder's preferred shares upon voluntary or involuntary liquidation;

(i) ~~(j)~~ An amendment of the articles of incorporation of a social purpose corporation to which s. 607.504 or s. 607.505 applies;

(j) ~~(k)~~ An amendment of the articles of incorporation of a benefit corporation to which s. 607.604 or s. 607.605 applies;

(k) ~~(l)~~ A merger, domestication, conversion, or share exchange of a social purpose corporation to which s. 607.504 applies; or

(l) ~~(m)~~ A merger, domestication, conversion, or share exchange of a benefit corporation to which s. 607.604 applies.

(2) Notwithstanding subsection (1), the availability of appraisal rights under paragraphs (1)(a), (b), (c), (d), ~~and~~ (e), (f), and (h) shall be limited in accordance with the following provisions:

(a) Appraisal rights shall not be available for the holders of shares of any class or series of shares which is:

1. A covered security under s. 18(b)(1)(A) or (B) of the Securities Act of 1933;

2. Not a covered security, but traded in an organized market (or subject to a comparable trading process) and has at least 2,000 shareholders and the outstanding shares of such class or series have a market value of at least $20 million, exclusive of the value of outstanding shares held by the corporation's subsidiaries, by the corporation's senior executives, by the corporation's directors, and by the corporation's beneficial shareholders and voting trust beneficial owners owning more than 10 percent of the outstanding shares; or

3. Issued by an open end management investment company registered with the Securities and Exchange Commission under the Investment Company Act of 1940 and which may be redeemed at the option of the holder at net asset value.

(b) The applicability of paragraph (a) shall be determined as of:

1. The record date fixed to determine the shareholders entitled to receive notice of the meeting of shareholders to act upon the corporate action requiring appraisal rights, the record date fixed to determine the shareholders entitled to sign a written consent approving the corporate action requiring appraisal rights, or, in the case of an offer made pursuant to s. 607.11035, the date of such offer; or

2. If there will be no meeting of shareholders, no written consent approving the corporate action, and no offer ~~is~~ made pursuant to s. 607.11035, the close of business on the day before the consummation of the corporate action or the effective date of the amendment of the articles, as applicable.

(c) Paragraph (a) is not applicable and appraisal rights shall be available pursuant to subsection (1) for the holders of any class or series of shares where the corporate action is an interested transaction.

(d) For the purposes of subparagraph (a)2., a comparable trading process exists if:

1. The market price of the corporation's shares is

determined at least quarterly based on an independent valuation and by following a formalized process that is designed to determine a value for the corporation's shares that is comparable to the value of comparable publicly traded companies; and

2. The corporation repurchases the shares at the price set by its board of directors based upon the independent valuation and subject to certain terms and conditions established by the corporation and provides the corporation's shareholders with a trading market comparable to that typically available had the corporation's shares been traded in an organized market.

Section 4. Subsection (1) of section 607.1303, Florida Statutes, is amended, and paragraph (c) is added to subsection (2) of that section, to read:

607.1303 Assertion of rights by nominees and beneficial owners.—

(1) A record shareholder may assert appraisal rights as to fewer than all the shares registered in the record shareholder's name but owned by a beneficial shareholder or a voting trust beneficial owner only if:

(a) The record shareholder objects with respect to all shares of the class or series owned by the beneficial shareholder or the voting trust beneficial owner;

(b) The particular beneficial shareholder or voting trust beneficial owner acquired all such shares before the record date

established under s. 607.1321 in connection with the applicable corporate action; and

(c) The record shareholder ~~and~~ notifies the corporation in writing of its ~~the~~ name and address (if the record shareholder beneficially owns the shares as to which appraisal rights are being asserted) or notifies the corporation in writing of the name and address of the particular ~~of each~~ beneficial shareholder or voting trust beneficial owner on whose behalf appraisal rights are being asserted.

The rights of a record shareholder who asserts appraisal rights for only part of the shares held of record in the record shareholder's name under this subsection shall be determined as if the shares as to which the record shareholder objects and the record shareholder's other shares were registered in the names of different record shareholders.

(2) A beneficial shareholder and a voting trust beneficial owner may assert appraisal rights as to shares of any class or series held on behalf of the shareholder only if such shareholder:

(c) Acquired all shares of the class or series before the record date established under s. 607.1321 in connection with the applicable corporate action.

Section 5. Subsections (1), (2), and (3) of section 607.1321, Florida Statutes, are amended to read:

607.1321 Notice of intent to demand payment.—

(1) If a proposed corporate action requiring appraisal rights under s. 607.1302 is submitted to a vote at a shareholders' meeting, a shareholder who wishes to assert appraisal rights with respect to any class or series of shares:

(a) Must have beneficially owned the shares of such class or series as of the record date for the shareholders' meeting at which the proposed corporate action is to be submitted to a vote;

(b) Must deliver to the corporation before the vote is taken written notice of the shareholder's intent, if the proposed corporate action is effectuated, to demand payment for all shares of such class or series beneficially owned by the shareholder as of the record date for the shareholders' meeting at which the proposed corporate action is to be submitted to a vote ~~if the proposed corporate action is effectuated~~; and

(c) ~~(b)~~ Must not vote, or cause or permit to be voted, any shares of such class or series in favor of the proposed corporate action.

(2) If a proposed corporate action requiring appraisal rights under s. 607.1302 is to be approved by written consent, a shareholder who wishes to assert appraisal rights with respect to any class or series of shares:

(a) Must have beneficially owned the shares of such class or series as of the record date established for determining who

is entitled to sign a written consent;

(b) Must assert such appraisal rights for all shares of such class or series beneficially owned by the shareholder as of the record date for determining who is entitled to sign the written consent; and

(c) Must not sign a consent in favor of the proposed corporate action with respect to that class or series of shares.

(3) If a proposed corporate action specified in s. 607.1302(1) does not require shareholder approval pursuant to s. 607.11035, a shareholder who wishes to assert appraisal rights with respect to any class or series of shares:

(a) Must have beneficially owned the shares of such class or series as of the date the offer to purchase is made pursuant to s. 607.11035;

(b) Must deliver to the corporation before the shares are purchased pursuant to the offer a written notice of the shareholder's intent to demand payment if the proposed corporate action is effected for all shares of such class or series beneficially owned by the shareholder as of the date the offer to purchase is made pursuant to s. 607.11035; and

(c) ~~(b)~~ Must not tender, or cause or permit to be tendered, any shares of such class or series in response to such offer.

Section 6. Paragraph (a) of subsection (2) of section 607.1322, Florida Statutes, is amended to read:

607.1322 Appraisal notice and form.—

(2) The appraisal notice must be delivered no earlier than the date the corporate action became effective, and no later than 10 days after such date, and must:

(a) Supply a form that specifies the date that the corporate action became effective and that provides for the shareholder to state:

1. The shareholder's name and address.

2. The number, classes, and series of shares as to which the shareholder asserts appraisal rights.

3. That the shareholder did not vote for or consent to the transaction.

4. Whether the shareholder accepts the corporation's offer as stated in subparagraph (b)4.

5. If the offer is not accepted, the shareholder's estimated fair value of the shares and a demand for payment of the shareholder's estimated value plus accrued interest, if and to the extent applicable.

Section 7. Section 607.1326, Florida Statutes, is amended to read:

607.1326 Procedure if shareholder is dissatisfied with offer.—

(1) A shareholder who is dissatisfied with the corporation's offer as set forth pursuant to s. 607.1322(2)(b)4. must notify the corporation on the form provided pursuant to s. 607.1322(1) of that shareholder's estimate of the fair value of

the shares and demand payment of that estimate plus accrued interest, if and to the extent applicable.

(2) A shareholder who fails to notify the corporation in writing of that shareholder's demand to be paid the shareholder's stated estimate of the fair value plus accrued interest, if and to the extent applicable, under subsection (1) within the timeframe set forth in s. 607.1322(2)(b)2. waives the right to demand payment under this section and shall be entitled only to the payment offered by the corporation pursuant to s. 607.1322(2)(b)4.

(3) With respect to a shareholder who properly makes demand for payment pursuant to subsection (1), at any time after the shareholder makes such demand, including during a court proceeding under s. 607.1330, the corporation shall have the right to prepay to the shareholder all or any portion of the amount that the corporation determines to be due under s. 607.1322(2)(b)3. and the shareholder shall be obligated to accept such prepayment.

(a) If such prepayment is made within 90 days after the earlier of the date on which the appraisal notice is provided by the corporation under s. 607.1322(1) or the deadline date by which the appraisal notice is required to be provided by the corporation under s. 607.1322(2), accrued interest will be payable, if at all, to the shareholder entitled to appraisal rights, calculated and accrued from the date on which the

corporate action became effective and only on amounts that are determined to be due to the shareholder and are above the amount so prepaid. Accrued interest will not be payable to the shareholder entitled to appraisal rights on the prepayment previously made to the shareholder by the corporation pursuant to this paragraph.

(b) If such prepayment is made more than 90 days after the earlier of the date on which the appraisal notice is provided by the corporation under s. 607.1322(1) or the deadline date by which the appraisal notice is required to be provided by the corporation under s. 607.1322(2), the prepayment must include accrued interest on the amount of the prepayment, calculated at the rate of interest determined for judgments pursuant to s. 55.03 and calculated and accrued from the date that the corporate action became effective through the date of the prepayment previously made to the shareholder by the corporation pursuant to this paragraph. In addition, accrued interest will be payable to the shareholder entitled to appraisal rights on such amounts, if any, determined to be due to the shareholder in excess of the prepaid amount, calculated and accrued from the date on which the corporate action became effective.

Section 8. Subsections (1) and (5) of section 607.1330, Florida Statutes, are amended to read:

607.1330 Court action.—

(1) If a shareholder makes demand for payment under s.

607.1326 which remains unsettled, the corporation shall commence a proceeding within 60 days after receiving the payment demand and petition the court to determine the fair value of the shares and accrued interest, if and to the extent applicable, calculated and accrued from the date the corporate action became effective and taking into account the amount of any prepayment previously made to the shareholder by the corporation pursuant to s. 607.1326(3) ~~from the date of the corporate action~~. If the corporation does not commence the proceeding within the 60-day period, any shareholder who has made a demand pursuant to s. 607.1326 may commence the proceeding in the name of the corporation.

(5) Each shareholder entitled to appraisal rights who is made a party to the proceeding is entitled to judgment for the amount of the fair value of such shareholder's shares as found by the court, plus accrued interest, if and to the extent applicable and as found by the court, taking into account the amount of any prepayment previously made to the shareholder by the corporation pursuant to s. 607.1326(3).

Section 9. Subsection (5) of section 607.1405, Florida Statutes, is amended to read:

607.1405 Effect of dissolution.—

(5) Except as provided in s. 607.1422(4), the name of a dissolved corporation is not available for assumption or use by another eligible entity until 120 days ~~1 year~~ after the

effective date of dissolution unless the dissolved corporation provides the department with a record, signed as required by s. 607.0120, permitting the immediate assumption or use of the name by another eligible entity.

Section 10. Section 617.0725, Florida Statutes, is amended to read:

617.0725 Quorum.—An amendment to the articles of incorporation or the bylaws which adds, changes, or deletes a greater or lesser quorum or voting requirement must meet the same quorum or voting requirement and be adopted by the same vote and voting groups required to take action under the quorum and voting requirements then in effect or proposed to be adopted, whichever is greater. This section does not apply to any corporation that is an association, as defined in s. 720.301, or a corporation regulated under chapter 718 or chapter 719.

Section 11. Subsection (9) of section 617.0825, Florida Statutes, is amended to read:

617.0825 Board committees and advisory committees.—

(9) This section does not apply to a committee established under chapter 718, chapter 719, or chapter 720 to perform the functions set forth in s. 718.303(3), s. 719.303(3), s. 720.305(2), ~~s. 720.303(2), or~~ s. 720.3035(1), or s. 720.405, respectively.

Section 12. Section 617.1703, Florida Statutes, is amended

to read:

617.1703 Application of chapter.—

(1)(a) This chapter is applicable to a corporation that is an association as defined in and regulated by any of chapter 718 regarding condominiums, chapter 719 regarding cooperatives, chapter 720 regarding homeowners' associations, chapter 721 regarding timeshares, or chapter 723 regarding mobile homeowners' associations, except:

1. For ~~In the event of~~ any conflict between the provisions of this chapter and chapter 718 ~~regarding condominiums~~, chapter 719 ~~regarding cooperatives~~, chapter 720 ~~regarding homeowners' associations~~, chapter 721 ~~regarding timeshares~~, or chapter 723; or

2. As otherwise provided for in chapter 718, chapter 719, chapter 720, chapter 721, or chapter 723.

(b) If subparagraph (a)1. or subparagraph (a)2. applies ~~regarding mobile home owners' associations~~, the applicable provisions of such other respective chapters shall apply.

(2) The provisions of ss. 617.0605-617.0608 do not apply to corporations regulated by any of the foregoing chapters or to any other corporation where membership in the corporation is required pursuant to a document recorded in the county property records.

Section 13. This act shall take effect upon becoming a law.

CS/HB 415

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 415 Fire Department Communications
SPONSOR(S): Insurance & Banking Subcommittee, Botana
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 360

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

SUMMARY ANALYSIS

Chapter 633, F.S., Fire Prevention and Control, designates the Chief Financial Officer (CFO) as the State Fire Marshal. The State Fire Marshal, through the Department of Financial Service's Division of State Fire Marshal, is charged with enforcing the provisions of ch. 633, F.S., and all other applicable laws relating to fire safety.

The Florida Fire Prevention Code (FFPC) is adopted by the State Fire Marshal and enforced by the local fire official within each county, municipality, and special fire district. The State Fire Marshal adopts a new edition of the FFPC every three years. The FFPC requires that all new and existing buildings maintain minimum radio signal strength at a level determined by the authority having jurisdiction (local fire authorities). In addition, current law provides that local fire authorities shall determine minimum radio signal strength for fire department communications in all new and existing high-rise buildings.

The bill extends the deadline for existing high-rise buildings to comply with a local authority's minimum radio signal strength requirements by five years to January 1, 2027. The deadline for existing, non-compliant high-rise buildings to apply for permits to install required devices to meet the standards is extended by five years to December 31, 2024. For high-rise apartment buildings, the deadline to comply with a local authority's minimum radio signal strength requirements is extended by five years to January 1, 2030. The deadline for existing, non-compliant high-rise apartment buildings to apply for permits to install required devices to meet the standards is extended by five years to December 31, 2027.

The bill also provides that two-way radio communication enhancement systems may be used to comply with a local authority's minimum radio signal strength requirements, except that two-way radio communication enhancement systems and similar systems are not required in apartments or buildings that are four stories or less in height. The bill clarifies that installation of a two-way radio communication enhancement system to meet the minimum radio signal strength requirements is not an unlawful act under s. 843.16, F.S.

The bill does not appear to have a fiscal impact on state or local government. It may have positive fiscal impacts on the private sector.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

State Fire Prevention – State Fire Marshal

Chapter 633, F.S., Fire Prevention and Control, designates the Chief Financial Officer (CFO) as the State Fire Marshal. The State Fire Marshal, through the Division of State Fire Marshal 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 firesafety inspectors; investigates the causes of fires; enforces arson laws; regulates the installation of fire equipment; conducts firesafety inspections of state property; and operates the Florida State Fire College.

In addition to these duties, the State Fire Marshal adopts by rule the Florida Fire Prevention Code (FFPC), 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, at ch. 69A-60, F.A.C. The State Fire Marshal adopts a new edition of the FFPC every three years.[2] The 7th edition of the FFPC took effect on December 31, 2020.[3] The FFPC is largely based on the *National Fire Protection Association's (NFPA) Standard 1, Fire Prevention Code*, along with the current edition of the *NFPA's Life Safety Code, NFPA 101*.[4]

The FFPC is the minimum fire prevention code deemed adopted by each municipality, county, and special district with firesafety responsibilities, and applies to every building and structure throughout the state with few exceptions.[5] Municipalities, counties, and special districts with firesafety responsibilities may supplement the FFPC with more stringent standards adopted in accordance with s. 633.208, F.S.[6] Local fire authorities set standards for radio signal strength throughout buildings within their jurisdiction in order to ensure consistent fire and rescue communication capabilities.

Radio Signal Strength for Fire Department Communications

The life safety of firefighters and citizens depends on reliable, functional communication tools that work in the harshest and most hostile of environments.[7] All firefighters, professional and volunteer, operate in extreme environments that are markedly different from those of any other radio users.[8] The radio is the lifeline that connects the firefighters to command and outside assistance when in the most desperate of situations.[9]

Modern focus on radio signal strength stems from difficulties experienced by firefighters attempting rescue operations on September 11, 2001, in the World Trade Towers, who found that in certain areas of the building their radio signal degraded, making live communication difficult or impossible.[10]

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[1] S. 633.104, F.S.
[2] S. 633.202, F.S.
[3] Florida Fire Prevention Code (7th ed. 2020), https://www.nfpa.org/codes-and-standards/all-codes-and-standards/codes-and-standards/free-access?mode=view (last visited Mar. 11, 2021).
[4] S. 633.202(2), F.S.
[5] S. 633.208, F.S., and 69A-60.002(1), F.A.C.
[6] S. 633.208(3), F.S., and 69A-60.002(2), F.A.C.
[7] U.S. Fire Administration, *Voice Radio Communications Guide for the Fire Service* (June 2016), https://www.usfa.fema.gov/downloads/pdf/publications/Voice_Radio_Communications_Guide_for_the_Fire_Service.pdf (last visited Mar. 11, 2021).
[8] *Id*.
[9] *Id*.
[10] *See* National Fire Protection Association, *Assessment of Total Evacuation Systems for Tall Buildings: Literature Review,* https://www.nfpa.org/-/media/Files/News-and-Research/Fire-statistics-and-reports/Executive-

Two-way radio communication enhancement systems are devices installed after a building is constructed that accept and then amplify radio signals used by first responders. A radio frequency site survey may be conducted in a building to determine areas where radio signal strength drops due to materials used in construction, such as thick walls, metal construction, underground structures, and low-emissivity glass windows. The generally desired effect is that radio signal strength at ground level, where a fire rescue operation might be based, is equal to the radio signal strength in all locations throughout the building, to ensure consistent communication. Several devices are available to boost signal strength to meet required radio signal strength. These include bi-directional amplifiers and networks of indoor antennae, referred to collectively as a distributed antenna system.[11]

Florida Fire Code Minimum Radio Signal Strength

Amendments to the FFPC, effective January 1, 2018, provided that all new and existing buildings must maintain minimum radio signal strength at a level determined by the authority having jurisdiction (local fire authorities).[12] Where required by a local fire authority, two-way radio communication enhancement systems must comply with federal standards for installation and upkeep.[13] Additionally, if a two-way radio communication enhancement system would have a negative impact on the operations of a facility, the local fire authority may accept an automatically activated emergency responder radio coverage system in the alternative.[14]

Minimum Radio Signal Strength for High-Rise Buildings

Section 633.202(18), F.S., enacted in 2016,[15] provides that local fire authorities shall determine minimum radio signal strength for fire department communications in all new and existing high-rise buildings. A high-rise building is defined in the FFPC as a building where the floor of an occupiable story is greater than 75 feet above the lowest level of fire department vehicle access.[16] Existing high-rise buildings are not required to comply with a local authority's minimum radio strength requirements until January 1, 2022. However, an existing high-rise building must have applied for the appropriate permit for installation of equipment meeting the local authority's standards by December 31, 2019. Existing high-rise apartment buildings are not required to comply until January 1, 2025, and must apply for permits to reach compliance by December 31, 2022.

A 2018 declaratory statement from the Department of Financial Services clarified that the compliance timeframes provided in s. 633.202(18), F.S., apply only to high-rise buildings and do not apply to buildings less than 75 feet in height.[17] Thus, compliance with minimum radio signal strength requirements for non-high-rise buildings is controlled by s. 11.10 of the FFPC, which provides no grace periods for compliance.

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[11] *See* City of Treasure Island, Florida, *Two-Way Radio Communication Enhancement System Requirements* (Apr. 20, 2019), https://www.mytreasureisland.org/residents/departments/fire_dept/local_high-rise_public_safety_system_integrators.php, (last visited Mar. 12, 2021); *see also* East Lake Tarpon Special Fire Control District, *Information Bulletin: Two-Way Radio Communication Enhancement System Requirements,* https://www.elfr.org/files/e2eae3cb2/Bulletin+East+Lake+Two+Way+Communications.pdf (last visited Mar. 12, 2021).

[12] Florida Fire Prevention Code (7th ed. 2020) s. 11.10.1, https://www.nfpa.org/codes-and-standards/all-codes-and-standards/codes-and-standards/free-access?mode=view (last visited Mar. 11, 2021).

[13] Florida Fire Prevention Code (7th ed. 2020) s. 11.10.2, https://www.nfpa.org/codes-and-standards/all-codes-and-standards/codes-and-standards/free-access?mode=view (last visited Mar. 11, 2021).

[14] Florida Fire Prevention Code (7th ed. 2020) s. 11.10.3, https://www.nfpa.org/codes-and-standards/all-codes-and-standards/codes-and-standards/free-access?mode=view (last visited Mar. 11, 2021).

[15] Ch. 2016-129, s. 27, Laws of Fla.

[16] Florida Fire Prevention Code (7th ed. 2020) s. 3.3.29.6, https://www.nfpa.org/codes-and-standards/all-codes-and-standards/codes-and-standards/free-access?mode=view (last visited Mar. 11, 2021).

[17] Department of Financial Services Declaratory Statement, *In the Matter of Charles B. Parks, Chief Florida Fire Code Official of Broward County* (Apr. 18, 2018), https://www.doah.state.fl.us/FLAID/DFS/2018/DFS_217787-17-DS_12042019_013047.pdf (last visited Mar. 12, 2021).

Radio Equipment Receiving Law Enforcement Frequencies

Section 843.16, F.S. makes it unlawful to install or transport, except in an emergency vehicle, crime watch vehicle, or certain specified places, any frequency modulation radio receiving equipment so adjusted or tuned as to receive messages or signals on frequencies assigned by the Federal Communications Commission to law enforcement or fire rescue personnel.

Effect of the Bill

The bill extends the deadline for existing high-rise buildings to comply with a local authority's minimum radio signal strength requirements by five years to January 1, 2027. The deadline for existing, non-compliant high-rise buildings to apply for permits to install required devices to meet the standards is extended by five years to December 31, 2024. For high-rise apartment buildings, the deadline to comply with a local authority's minimum radio signal strength requirements is extended by five years to January 1, 2030. The deadline for existing, non-compliant high-rise apartment buildings to apply for permits to install required devices to meet the standards is extended by five years to December 31, 2027.

The bill also provides that two-way radio communication enhancement systems may be used to comply with a local authority's minimum radio signal strength requirements, except that two-way radio communication enhancement systems and similar systems are not required in apartments or buildings that are four stories or less in height. The bill clarifies that installation of a two-way radio communication enhancement system to meet the minimum radio signal strength requirements is not an unlawful act under s. 843.16, F.S.

B. SECTION DIRECTORY:

Section 1. Amends s. 633.202, F.S., relating to Florida Fire Prevention Code.

Section 2. Amends s. 843.16, F.S., relating to unlawful to install or transport radio equipment using assigned frequency of state or law enforcement officers; definitions; exceptions; penalties.

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 positively impact building owners by extending the deadlines for compliance.

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 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:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 17, 2021, the Insurance & Banking Subcommittee considered the bill, adopted one amendment, and reported the bill favorably as a committee substitute. The amendment restores the term “high-rise” in s. 633.202(18), F.S., maintaining the requirement that local fire authorities determine minimum radio signal strength for fire department communications for all new and existing high-rise buildings. The amendment also provides that two-way radio communication enhancement systems and similar systems shall not be required in buildings that are four stories or less in height.

The analysis is drafted to the committee substitute as passed by the Insurance & Banking Subcommittee.

A bill to be entitled

An act relating to fire department communications; amending s. 633.202, F.S.; authorizing the use of radio communication enhancement systems to comply with minimum radio signal strength requirements; prohibiting the authority having jurisdiction from requiring certain radio communication enhancement systems or similar systems in apartments or buildings of a certain height; revising the transitory period for compliance; revising the date by which existing apartment buildings that are not in compliance must initiate an application for an appropriate permit; amending s. 843.16, F.S.; providing an exception to the prohibition against installing or transporting certain radio equipment using law enforcement or fire rescue frequencies; providing an effective date.

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

Section 1. Subsection (18) of section 633.202, Florida Statutes, is amended to read:

633.202 Florida Fire Prevention Code.—

(18) The authority having jurisdiction shall determine the minimum radio signal strength for fire department communications in all new high-rise and existing high-rise buildings. Two-way

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

radio communication enhancement systems may be used to comply with minimum radio signal strength requirements. However, two-way radio communication enhancement systems and similar systems shall not be required in apartments or buildings that are four stories or less in height. Existing buildings are not required to comply with minimum radio strength for fire department communications and two-way radio system enhancement communications as required by the Florida Fire Prevention Code until January 1, 2027 ~~2022~~. However, by December 31, 2024 ~~2019~~, an existing building that is not in compliance with the requirements for minimum radio strength for fire department communications must apply for an appropriate permit for the required installation with the local government agency having jurisdiction and must demonstrate that the building will become compliant by January 1, 2027 ~~2022~~. Existing apartment buildings are not required to comply until January 1, 2030 ~~2025~~. However, existing apartment buildings are required to apply for the appropriate permit for the required communications installation by December 31, 2027 ~~2022~~.

Section 2. Paragraph (f) is added to subsection (3) of section 843.16, Florida Statutes, to read:

843.16 Unlawful to install or transport radio equipment using assigned frequency of state or law enforcement officers; definitions; exceptions; penalties.—

(3) This section does not apply to the following:

(f) The installation of a two-way radio communication enhancement system to comply with the requirements of s. 633.202(18).

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

COMMERCE COMMITTEE

CS/HB 415 by Rep. Botana
Relating to Fire Department Communications

AMENDMENT SUMMARY
April 6, 2021

Amendment 1 by Rep. Botana (lines 20-44):

The amendment shortens the extension of the deadline for existing high-rise buildings to comply with a local authority's minimum radio signal strength requirements by two years to January 1, 2025.

COMMITTEE/SUBCOMMITTEE ACTION

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

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

Amendment

Remove lines 20-44 and insert:

Section 1. Subsection (18) of section 633.202, Florida Statutes, is amended to read:

633.202 Florida Fire Prevention Code.—

(18) The authority having jurisdiction shall determine the minimum radio signal strength for fire department communications in all new high-rise and existing high-rise buildings. Two-way radio communication enhancement systems may be used to comply with minimum radio signal strength requirements. However, two-way radio communication enhancement systems and similar systems shall not be required in apartments or buildings that are four stories or less in height. Existing buildings are not required

to comply with minimum radio strength for fire department communications and two-way radio system enhancement communications as required by the Florida Fire Prevention Code until January 1, 2025 ~~2022~~. However, by December 31, 2024 ~~2019~~, an existing building that is not in compliance with the requirements for minimum radio strength for fire department communications must apply for an appropriate permit for the required installation with the local government agency having jurisdiction and must demonstrate that the building will become compliant by January 1, 2027 ~~2022~~. Existing apartment buildings are not required to comply until January 1, 2030 ~~2025~~. However, existing apartment buildings are required to apply for the appropriate permit for the required communications installation by December 31, 2027 ~~2022~~.

HB 483

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 483 Electronic Legal Documents
SPONSOR(S): Altman
TIED BILLS: **IDEN./SIM. BILLS:** SB 848

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice & Property Rights Subcommittee	16 Y, 0 N	Brascomb	Jones
2) Commerce Committee		Wright	Hamon
3) Judiciary Committee			

SUMMARY ANALYSIS

Florida law considers many documents to be of such importance that they must be signed before a notary public. A notary public's function is to authenticate signatures and administer oaths on these documents, thereby preventing fraud. A notary public is responsible for determining that the person signing is who he or she claims to be. A notary public is authorized to perform the following six duties:

- Administer oaths and affirmations;
- Take acknowledgments;
- Attest to photocopies of certain documents;
- Solemnize marriage;
- Verify vehicle identification numbers; and
- Certify the contents of a safe-deposit box.

Current law allows a notary public to perform notarial acts using electronic means in which the principal appears using audio-video communication technology as long as certain procedures, standards, and minimum technology requirements are met.

A will is a legal document used to designate the distribution of a person's assets upon death. To be valid, a will must follow certain formalities with respect to its creation, execution, preservation, revocation, and filing. An electronic will is executed, modified, and revoked in a similar manner as a paper will.

HB 483 makes several changes relating to online notarization and electronic wills to clarify that:

- Online notarization procedures still apply in circumstances where an electronic document requires witnesses but not notarization.
- An online notary public's supervision of an electronic record's witnessing is a notarial act.
- The requirements for supervising of witnessing of electronic records in s. 117.285(5), F.S., are:
  - Applicable only when fewer than two witnesses are in the physical presence of the principal who is executing one of the enumerated electronic estate planning documents;
  - Not limited to "a waiver of spousal rights;"
  - Applicable to agreements or waivers of rights under s. 732.701, F.S.; and
  - Applicable only to the testamentary aspects of a revocable trust.

The bill also amends the definition of "online notarization" to include the appearance of witnesses by audio-video communication technology. The bill requires an online notary public to verify the principal's identity when an online notary public is supervising the execution and witnessing of an electronic record.

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

The bill is effective upon becoming law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Notary Public

The law considers many documents to be of such importance that they must be signed in the presence of a notary public. The notary's function is to authenticate signatures and administer oaths on these documents, thereby preventing fraud. A notary public is responsible for determining that the person signing is who he or she claims to be.[1] A notary is authorized to perform the following six duties:

- Administer oaths and affirmations;
- Take acknowledgments;
- Attest to photocopies of certain documents;
- Solemnize marriage;
- Verify vehicle identification numbers; and
- Certify the contents of a safe-deposit box.[2]

A notary must be at least 18 years old, maintain legal residence in Florida, and possess the ability to read, write, and understand English. The notary public application must be signed and sworn by the applicant and accompanied by the fee and proof of a bond[3] required by law. The application for appointment must include a $25 fee, a $10 commission fee,[4] and a $4 surcharge which is used for notary education and assistance.[5] The bond must be for at least $7,500, payable to any individual harmed as a result of a breach of duty by the notary.[6]

A notary applicant must also take an oath following the application process. As part of the oath, the applicant must swear that he or she has read the statutes relating to notaries public and knows a notary public's responsibilities, limitations, and powers.[7] Once appointed, a notary may serve for four years. No person may be automatically reappointed as a notary; the application process must be completed regardless of whether an applicant has previously served as a notary.[8]

When notarizing a signature, a notary public must complete a notarial certificate for an oath, affirmation, or an acknowledgment.[9] Current law provides notaries with a form certificate to use in substantially the same form.[10] The certificate of acknowledgement must contain the following items:

- The venue stating the location of the notarization;
- The type of notarial act performed;
- A statement that the signer personally appeared physically before the notary public or by online notarization at the time of the notarization;
- The exact date of the notarial act;
- The name of the person whose signature is being notarized;

[1] National Notary Association, Inc., *What is a Notary Public?* https://www.nationalnotary.org/knowledge-center/about-notaries/what-is-a-notary-public (last visited Mar. 30, 2021).
[2] Florida Governor's Office, *Duties of a Notary Public* (Dec. 13, 2016), https://www.flgov.com/wp-content/uploads/Notary_Reference_Manual_12.13.16.pdf (last visited Mar. 30, 2021).
[3] A notary bond is a three-party obligation. A bonding company guarantees to the Florida Department State that it will pay, on behalf of a commissioned Florida notary, any losses incurred by the public up to $7,500 during the notary's commission term. The bonding company will then demand reimbursement from the notary in the event of such paid losses. American Association of Notaries, *Florida Notary Bond,* *https://www.floridanotaries.com/florida-notary-bond#:~:text=A%20notary%20bond%20is%20a,during%20the%20notary's%20commission%20term* (last visited Mar. 30, 2021).
[4] A $10 fee is prescribed for each Governor issued commission of an elected officer or a notary public. S. 113.01, F.S.
[5] S. 117.01, F.S.
[6] *Id*.
[7] *Id*.
[8] *Id*.
[9] S. 117.05(4), F.S.
[10] S. 117.05(12), F.S.

- The type of identification the notary public is relying upon;
- The notary's official signature;
- The notary's name, typed, printed, or stamped below the signature; and
- The notary's official seal[11] affixed below or to either side of the notary's signature.[12]

Electronic Notarization and Electronic Records

Any document requiring notarization may be notarized electronically. When notarizing a document electronically, a notary public must use an electronic signature that is:

- Unique to the notary public;
- Capable of independent verification;
- Retained under the notary public's sole control; and
- Attached to or logically associated with the electronic document so that any subsequent alteration to the electronic document displays alteration evidence.[13]

When a signature is required to be accompanied by a notary public seal, the requirement is satisfied when the electronic signature of the notary public contains the minimum information specified.[14] An electronic signature is any letters, characters, or symbols, manifested by electronic means, executed or adopted by a party with an intent to authenticate a writing. A writing is electronically signed if an electronic signature is logically associated with such writing.

If a law requires a signature or record to be notarized, acknowledged, verified, or made under oath, the requirement is satisfied if the electronic signature of the person authorized to perform those acts, together with all other information required to be included, is attached to or logically associated with the signature or record.[15] In performing an electronic notarial act, a notary must reasonably ensure the security, reliability, and uniformity of electronic notarizations. To this end, the notary may use an authentication procedure such as a password, token, card, or biometric to protect access to the notary's electronic signature or the means for affixing the signature.[16]

Remote Notarization

A notary public may complete a registration as an online notary public with the Florida Department of State (DOS) if he or she:

- Holds a current:
  - Commission as a notary public;
  - Appointment as a civil-law notary;[17] or
  - Appointment as a commissioner of deeds;[18]
- Submits a copy of such commission or proof of such appointment with the registration;
- Certifies that the notary public, civil-law notary, or commissioner of deeds registering as an online notary public has completed a course covering the online notary public duties, obligations, and technology requirements;
- Pays a notary public registration fee;[19]

[11] The notary seal must be a rubber stamp and include the words "Notary Public—State of Florida"; it must also include the name of the notary public, the date of expiration of the notary's commission, and the commission number.
[12] S. 117.05(12), F.S.
[13] S. 117.021, F.S.
[14] *Id*.
[15] S. 668.50(11)(a), F.S.
[16] *Id*.
[17] A civil-law notary is a person who is a member in good standing of The Florida Bar, who has practiced law for at least 5 years, and who is appointed by the Secretary of State as a civil-law notary. S. 118.10, F.S.
[18] A commissioner of deeds is a person appointed by the Governor to take acknowledgments, proofs of execution, or oaths in any foreign country, in international waters, or in any territory of the United States outside the 50 states. S. 721.97, F.S.
[19] S 113.01, F.S.

- Identifies the Remote Online Notary (RON) service provider[20] whose audio-video communication and identity proofing technologies the registrant intends to use for online notarizations, and confirms that such technology and processes satisfy statutory requirements;
- Provides evidence that the registrant has obtained a $25,000 bond, payable to any individual harmed as a result of the registrant's breach of duty as an online notary public; and
- Provides evidence that the registrant acting in his or her capacity as an online notary public is covered by a minimum $25,000 errors and omissions insurance policy.[21]

An online notary public may perform any function as an online notarization authorized under ch. 117, F.S., excluding solemnizing matrimony rites.[22] If a notarization requires a principal[23] to appear before the online notary public, the principal may appear by audio-video communication technology.

An online notary public can perform an online notarization, regardless of the physical location of the principal at the time of the notarial act, as long as the notary public is physically located in Florida while performing the online notarization.[24]

An online notary public is subject to both the general notary and electronic notary provisions of law.[25] An online notary may charge up to $25 for notarizing a document online, in addition to fees allowable for in-person notarial acts.[26]

Technology Standards for Online Notarization

Florida law establishes minimum requirements for online notarization technology standards:

- *Identity proofing*:[27] The security characteristics, at a minimum, must present the principal with five or more questions with a minimum of five possible answer choices per question. Each question must be:
  - Drawn from a third-party provider of public and proprietary data sources;
  - Identifiable to the principal; and
  - Subjected to a two-minute time constraint, with the principal answering at least 80 percent correct.[28]
- *Credential analysis*:[29] An online notary must use commercially available credential analysis automated software or a hardware process that:
  - Is consistent with sound commercial practices;
  - Aids the notary public in verifying the authenticity of the credential to ensure it is not fraudulent or inappropriately modified; and
  - Uses information held by the issuing or authoritative agency to confirm the validity of credential details.[30]
- *Audio-video communication technology*:[31] The technology must:
  - Be secure from interception or access by anyone other than the participants communicating; and

[20] A RON service provider is a person that provides audio-video communication technology and related processes, services, software, data storage, or other services to online notaries public for the purpose of directly facilitating their performance of online notarizations.
[21] S. 117.225, F.S.
[22] S. 117.209, F.S.
[23] A principal is an individual whose electronic signature is acknowledged, witnessed, or attested to in an online notarization or who takes an oath or affirmation from the online notary public.
[24] S. 117.209, F.S.
[25] S. 117.235, F.S.
[26] S. 117.275, F.S.
[27] Identity proofing is a process by which a third party confirms the identity of an individual through use of public or proprietary data sources, which may include knowledge-based authentication or biometric verification. S. 117.201, F.S.
[28] S. 117.295, F.S.
[29] Credential analysis is a process by which a third party aids a public notary in affirming the validity of a government-issued identification credential and data thereon through review of public or proprietary data sources. S. 117.201, F.S.
[30] S. 117.295, F.S.
[31] Audio-video communication technology is technology in compliance with applicable law which enables real-time, two-way communication using electronic means in which participants are able to see, hear, and communicate with one another. S. 117.201, F.S.

- Provide sufficient audio clarity and video resolution to enable the notary to communicate with the principal and to confirm the identity of the principal.[32]

With respect to electronic notarization, a notary is required to include access protection to a signature through use of passwords or codes under the notary's control. The notary may not allow another person to use the notary's electronic journal, seal, or signature. Notaries must also reasonably ensure that any device used to create their electronic signature is current and secure.[33]

Online Notarization Procedures

In performing an online notarization, an online notary public must verify the identity of a principal at the time the signature is taken by using audio-video communication technology. The notary must record the entire audio-video conference session between the notary public and the principal and any subscribing witnesses. A principal may not serve as a witness for an online notarization.[34]

In performing an online notarization for a principal not located in the state, an online notary must confirm that the principal desires for the notarial act to be performed by a Florida notary public and under Florida law. An online notary public must confirm the identity of the principal and any witness by personal knowledge, or by:

- Remote presentation of a government-issued identification credential by each individual;
- Credential analysis of each government-issued identification credential; and
- The identity proofing of each individual, in the form of knowledge-based authentication or another legal method of identity proofing.[35]

If an online notary fails to comply with the online notarization procedures, such failure does not automatically impair the validity of the notarial act or the electronic record. However, such failure may be introduced as evidence to establish violations of ch. 117, F.S., or as an indication of possible fraud, forgery, or impersonation or for other evidentiary purposes.[36]

Electronic Journal and Electronic Records

An online notary must keep a secure electronic journal of electronic records he or she has notarized.[37] For each online notarization, the electronic journal entry must contain the:

- Date and time of the notarization;
- Type of notarial act;
- Type, title, or description of the electronic record or proceeding;
- Identity evidence for each principal involved in the transaction or proceeding;
- Indication that the principal passed the identity proofing;
- Indication that the government-issued identity credential satisfied the credential analysis; and
- Fee charged for the online notarization.[38]

Identity evidence for each principal may be a:

- Statement that the person is personally known to the online notary public; or
- Notation of the type of identification document provided to the online notary public.[39]

An online notary public must retain an unedited and uninterrupted recording of a remote notarization audio-video communication, which must include:

- Appearance by the principal and each witness before the online notary public;
- Identity confirmation of the principal and each witness;

[32] S. 117.295, F.S.
[33] Ss. 117.021 and 117.225, F.S.
[34] S. 117.265, F.S.
[35] *Id*.
[36] *Id*.
[37] S. 117.245, F.S.
[38] *Id*.
[39] *Id.*

- A general description of the records to be signed;
- A principal's declaration that his or her signature is knowingly and voluntarily made; and
- All of the actions and spoken words of the principal, notary public, and each required witness during the entire online notarization.[40]

The notary must attach or logically associate the electronic signature and seal to the electronic notarial certificate of an electronic record in a manner capable of independent verification using tamper-evident technology.[41] The electronic journal and backup record of such must be maintained for at least 10 years after the date of the notarial act. A notary must immediately notify an appropriate law enforcement agency and DOS of the electronic journal, electronic signature, or electronic seal's unauthorized use.[42]

Electronic Wills

A will, very generally, is a legal document that a person (a testator) may use to determine who gets his or her property upon death. Wills do not dispose of all of a testator's property, but only the "estate," or those assets that are subject to probate administration.[43] Probate is a court-supervised process for identifying and gathering the assets of a deceased person (decedent), paying the decedent's debts, and distributing the decedent's assets to his or her beneficiaries. Other assets are disposed of outside of probate.

Without a will, a decedent's estate is distributed pursuant to intestacy statutes, which devise a decedent's estate according to default rules. With a will, however, a testator may devise the estate to a person of his or her choosing. Also, with a will, a testator may designate a person known as a personal representative to carry out the terms of the will. Otherwise, a court will choose the personal representative.

Executing a Will

A will must be in writing and signed by either the testator or by someone else on behalf of the testator. If someone else signs on behalf of the testator, the person must do so in the testator's presence and at the testator's direction.[44] At least two persons must witness the testator sign the will or must witness the testator's acknowledgement that he or she previously signed the will or that another person subscribed the testator's name to the will.[45] If the testator fails to comply with these requirements, the will is not valid.[46]

The requirement that a document be signed may be satisfied by an electronic signature.[47] Unless the testator is a vulnerable adult,[48] the witnessing of a will execution can be done remotely if:

- The individuals are supervised by a notary public;
- The individuals are authenticated and signing as part of an online notarization session in accordance with s. 117.265, F.S.;
- The witness hears the signer make a statement acknowledging that the signer has signed the electronic record; and
- In the case of an electronic will, the testator provides, to the satisfaction of the online notary public, verbal answers to the following questions:

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[40] *Id*.
[41] S. 117.255, F.S.
[42] *Id*.
[43] s. 731.201(14), F.S.
[44] S. 732.502(1)(a), F.S.
[45] S. 732.502(1)(b), F.S.
[46] A will executed in another state is valid in Florida if the will is executed in accordance with the laws of this state, the laws of the state in which it was executed, or both. This does not apply to nuncupative wills (oral wills) or holographic wills (wills written in the hand of the testator, but not properly executed as set forth in section 732.502(1), F.S.), which are not valid in Florida regardless of whether they were executed according to the laws of the state in which they were executed. S. 732.502(2), F.S.
[47] S. 732.522, F.S.
[48] A vulnerable adult is a person 18 years of age or older whose ability to perform the normal activities of daily living or to provide for his or her own care or protection is impaired due to a mental, emotional, sensory, long-term physical, or developmental disability or dysfunction, or brain damage, or the infirmities of aging. S. 415.102, F.S.

- Are you 18 years of age or older?
- Are you of sound mind?
- Are you signing this will voluntarily?
- Are you under the influence of any drugs or alcohol that impairs your ability to make decisions?
- Has anyone forced or influenced you to include anything in this will which you do not wish to include?
- Did anyone assist you in accessing this video conference? If so, who?
- Where are you? Name everyone you know in the room with you.[49]

Self-Proved Wills

The estate is not required to procure an attesting witness as part of the estate administration process, before a will can be admitted to probate, when the will is "self-proved". A will which is self-proved in accordance with the Code may be admitted to probate without further proof.[50] In a will contest, when the proponent initially has the burden of proving that the will was validly executed, a self-proving affidavit is admissible to meet and satisfy this burden. The affidavit must be evidenced by a certificate attached to or following the will.[51]

The will may be self-proved either at the time of its execution or at a subsequent date. When the will or codicil is self-proved at a subsequent date, the testator is required to acknowledge it.[52]

An attested electronic will is self-proved if all of the following requirements are met:
- The will is executed in conformity with Florida law;
- The acknowledgement of the electronic will by the testator and the affidavits of the witnesses are made in accordance with s. 732.503, F.S.;
- The acknowledgement and affidavits are made a part of, or are attached to or logically associated with, the electronic record; and
- The electronic will designates a qualified custodian, who at all times is in control of the electronic will and executes a certification that meets the requirements set forth in statute.[53]

A qualified custodian of an electronic will is a person who:
- Is domiciled in and a resident of Florida or is incorporated or organized in Florida;
- Consistently employs a system for maintaining custody of electronic records and stores electronic records containing electronic wills under the system; and
- Furnishes for a court hearing involving an electronic will that is currently or was previously stored by the qualified custodian any information requested by the court pertaining to the qualified custodian's policies and procedures.[54]

A qualified custodian must maintain an audio-video recording of an electronic will online notarization.[55] A qualified custodian is liable for the negligent loss or destruction of an electronic record and may not limit his or her liability for doing so. A qualified custodian may not suspend or terminate a testator's access to electronic records and must keep a testator's information confidential.[56]

Effect of Proposed Changes

[49] *Id*.
[50] S. 733.201(1), F.S.
[51] The officer's certificate must be substantially in the form set forth at s. 732.503, F.S. The form requires that the witnesses state that they witnessed the testator *sign* the will. However, the statutory requirements for executing a will do not require witnesses to witness the testator sign the will. Section 732.502, F.S., provides that the witnesses may either witness the testator sign, or witness the testator acknowledge his or her prior signature.
[52] S. 732.503(1), F.S.,
[53] S. 732.523, F.S.
[54] S.732.524, F.S.
[55] *Id*.
[56] *Id*.

HB 483 makes several changes relating to online notarization and electronic wills. Specifically, the bill clarifies that:

- Online notarization procedures[57] still apply in circumstances where an electronic document requires witnesses but not notarization.
- An online notary public's supervision of an electronic record's witnessing is a notarial act.
- The requirements for supervision of witnessing of electronic records in s. 117.285(5), F.S., are:
  - Applicable only when fewer than two witnesses are in the physical presence of the principal who is executing one of the enumerated electronic estate planning documents;
  - Not limited to "a waiver of spousal rights;" and
  - Applicable to agreements or waivers of rights under s. 732.701, F.S.[58]

The bill provides that the requirements related to supervising the witnessing of electronic records for an online notary public in s. 117.285(5), F.S., are applicable only to the testamentary aspects of revocable trusts.[59] In other words, failure to comply with the applicable requirements may invalidate the testamentary aspects of a Florida resident's revocable trust, but will not invalidate the non-testamentary aspects of that revocable trust.

The bill also amends the definition of "online notarization" to add the appearance of witnesses by audio-video communication technology. The bill requires an online notary public to verify the principal's identity when an online notary public is supervising the execution and witnessing of an electronic record.

The bill corrects erroneous cross-references contained in statute.

Lastly, the bill revises statutory forms so that the jurats or notarial certificates in those forms comply with the requirements of s. 117.05(4)(c), F.S., which became effective January 1, 2020.

The bill is effective upon becoming law.

B. SECTION DIRECTORY:

Section 1: Amends s. 117.201, F.S., relating to definitions.
Section 2: Amends s. 117.285, F.S., relating to supervising the witnessing of electronic records.
Section 3: Amends s. 709.2119, F.S., relating to acceptance of and reliance upon power of attorney.
Section 4: Amends s. 732.401, F.S., relating to descent of homestead.
Section 5: Amends s. 732.503, F.S., relating to self-proof of will.
Section 6: Amends s. 732.521, F.S., relating to definitions.
Section 7: Amends s. 732.703, F.S., relating to effect of divorce, dissolution, or invalidity of marriage on disposition of certain assets at death.
Section 8: Amends s. 747.051, F.S., relating to summary procedure.
Section 9: Creates an unnumbered section providing for retroactive application.
Section 10: Provides an effective date of upon becoming a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

[57] Online notarization procedures include verifying the identity of the principal, requiring the notary to maintain a record of the witnessing in the notary's electronic journal, and requiring the notary to maintain the audio-video recording of the execution and witnessing.
[58] Agreements or waivers under s. 732701, F.S., include agreements to make a will, to give a devise, not to revoke a will, not to revoke a devise, not to make a will, or not to make a devise.
[59] "Testamentary aspects" are those provisions of a trust instrument that dispose of the trust property on or after the death of the settlor other than to the settlor's estate.

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to electronic legal documents; amending s. 117.201, F.S.; revising the definition of the term "online notarization"; amending s. 117.285, F.S.; clarifying that supervising the witnessing of an electronic record by an online notary public is a notarial act; specifying applicability of online notarization procedures to supervision of the witnessing of an electronic record; modifying witnessing procedures; revising applicability; amending s. 709.2119, F.S.; revising the statutory form for an affidavit for acceptance of and reliance upon a power of attorney to reflect means of notarization; amending s. 732.401, F.S.; revising the statutory form for the notice of election relating to the descent of homestead property to reflect means of notarization; amending s. 732.503, F.S.; revising the statutory form for the self-proof of a will or codicil to reflect means of notarization; amending s. 732.521, F.S.; conforming a cross-reference; amending s. 732.703, F.S.; revising statutory forms relating to the disposition of certain assets at death to reflect means of notarization; amending s. 747.051, F.S.; revising the form for a petition of summary relief for the sale or transfer of certain property owned by an

absentee to reflect means of notarization; providing for construction and retroactive application; providing an effective date.

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

Section 1. Subsection (9) of section 117.201, Florida Statutes, is amended to read:

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

(9) "Online notarization" means the performance of a notarial act using electronic means in which the principal or any witness appears before the notary public by means of audio-video communication technology.

Section 2. Section 117.285, Florida Statutes, is amended to read:

117.285 Supervising the witnessing of electronic records.—Supervising the witnessing of an electronic record by an online notary public in accordance with this section is a notarial act. An online notary public may supervise the witnessing of electronic records by complying with the online notarization procedures of this part and using the same audio-video communication technology used for online notarization by a principal, as follows:

(1) The witness may be in the physical presence of the principal or remote from the principal provided the witness and

principal are using audio-video communication technology.

(2) If the witness is remote from the principal and viewing and communicating with the principal by means of audio-video communication technology, the principal's and witness's identities ~~identity~~ must be verified in accordance with the procedures for identifying a principal as set forth in s. 117.265(4). If the witness is in the physical presence of the principal, the witness must confirm his or her identity by stating his or her name and current address on the audio-video recording as part of the act of witnessing.

(3) The act of witnessing an electronic signature means the witness is either in the physical presence of the principal or present through audio-video communication technology at the time the principal affixes the electronic signature and the witness hears the principal make a statement to the effect that the principal has signed the electronic record.

(4) A witness remote from the principal and appearing through audio-video communication technology must verbally confirm that he or she is a resident of and physically located within the United States or a territory of the United States at the time of witnessing.

(5) Notwithstanding subsections (2) and (3), if an electronic record to be signed is a will under chapter 732, a revocable trust with testamentary aspects as described in s. 736.0403(2)(b) ~~under chapter 736~~, a health care advance

directive, an agreement concerning succession or a waiver of spousal rights under s. 732.701 or s. 732.702, respectively, or a power of attorney authorizing any of the transactions enumerated in s. 709.2208, all of the following apply when fewer than two witnesses are in the physical presence of the principal ~~shall apply~~:

(a) Prior to facilitating witnessing of an instrument by means of audio-video communication technology, a RON service provider shall require the principal to answer the following questions in substantially the following form:

1. Are you under the influence of any drug or alcohol today that impairs your ability to make decisions?

2. Do you have any physical or mental condition or long-term disability that impairs your ability to perform the normal activities of daily living?

3. Do you require assistance with daily care?

(b) If any question required under paragraph (a) is answered in the affirmative, the principal's signature on the instrument may only be validly witnessed by witnesses in the physical presence of the principal at the time of signing.

(c) Subsequent to submission of the answers required under paragraph (a), the RON service provider shall give the principal written notice in substantially the following form:

NOTICE: If you are a vulnerable adult as defined in s. 415.102,

Florida Statutes, the documents you are about to sign are not valid if witnessed by means of audio-video communication technology. If you suspect you may be a vulnerable adult, you should have witnesses physically present with you before signing.

(d) The act of witnessing an electronic signature through the witness's presence by audio-video communication technology is valid only if, during the audio-video communication, the principal provides verbal answers to all of the following questions, each of which must be asked by the online notary public in substantially the following form:

1. Are you currently married? If so, name your spouse.

2. Please state the names of anyone who assisted you in accessing this video conference today.

3. Please state the names of anyone who assisted you in preparing the documents you are signing today.

4. Where are you currently located?

5. Who is in the room with you?

(e) An online notary public shall consider the responses to the questions specified in paragraph (d) in carrying out of the duties of a notary public as set forth in s. 117.107(5).

(f) A principal's responses to the questions in paragraphs (a) and (d) may be offered as evidence regarding the validity of the instrument, but an incorrect answer may not serve as the

sole basis to invalidate an instrument.

(g) The presence of a witness with the principal at the time of signing by means of audio-video communication technology is not effective for witnessing the signature of a principal who is a vulnerable adult as defined in s. 415.102. The contestant of an electronic record has the burden of proving that the principal was a vulnerable adult at the time of executing the electronic record.

(h) Nothing in this subsection shall:

1. Preclude a power of attorney, which includes banking or investment powers enumerated in s. 709.2208, from being effective with respect to any other authority granted therein or with respect to the agent's authority in connection with a real property, commercial, or consumer transaction or loan, to exercise any power specified therein or to execute and deliver instruments obligating the principal or to draw upon the proceeds of such transaction or loan; or

2. Affect the nontestamentary aspects of a revocable trust under chapter 736.

(i) The electronic record containing an instrument signed by witnesses who were present with the principal by means of audio-video communication technology shall contain a perceptible indication of their presence by such means.

(j) ~~Nothing in~~ This subsection does not ~~shall~~ affect the application of s. 709.2119.

(k) The requirements of this subsection do not apply if there are at least two witnesses in the physical presence of the principal at the time of the notarial act.

(6) Pursuant to subpoena, court order, an authorized law enforcement inquiry, or other lawful request, a RON service provider or online notary public shall provide:

(a) The last known address of each witness who witnessed the signing of an electronic record using audio-video communication technology under this section.

(b) A principal's responses to the questions in paragraph (5)(a) or paragraph (5)(d) ~~(5)(b)~~, as applicable.

(c) An uninterrupted and unedited copy of the recording of the audio-video communication in which an online notarization is performed.

(7) Except as set forth in s. 709.2202, an act of witnessing performed pursuant to this section satisfies any requirement that the witness must be a subscribing or attesting witness or must be in the presence of the principal at the time of signing.

(8) The law of this state governs the validity of witnessing supervised by an online notary public pursuant to this section, regardless of the physical location of the witness at the time of witnessing. State and federal courts in this state have subject matter jurisdiction over any dispute arising out of an act of witnessing pursuant to this section, and may

issue subpoenas for records or to require the appearance of witnesses in relation thereto in accordance with applicable law.

Section 3. Paragraph (c) of subsection (2) of section 709.2119, Florida Statutes, is amended to read:

709.2119 Acceptance of and reliance upon power of attorney.—

(2) A third person may require:

(c) A written affidavit executed by the agent under this subsection which may, but need not, be in the following form:

STATE OF.....
COUNTY OF.....

Before me, the undersigned authority, personally appeared ...(agent)... ("Affiant") by the means specified herein, who swore or affirmed that:

1. Affiant is the agent named in the Power of Attorney executed by ...(principal)... ("Principal") on ...(date)....

2. This Power of Attorney is currently exercisable by Affiant. The principal is domiciled in ...(insert name of state, territory, or foreign country)....

3. To the best of Affiant's knowledge after diligent search and inquiry:

a. The Principal is not deceased;

b. Affiant's authority has not been suspended by

initiation of proceedings to determine incapacity or to appoint a guardian or a guardian advocate;

c. Affiant's authority has not been terminated by the filing of an action for dissolution or annulment of Affiant's marriage to the principal, or their legal separation; and

d. There has been no revocation, or partial or complete termination, of the power of attorney or of Affiant's authority.

4. Affiant is acting within the scope of authority granted in the power of attorney.

5. Affiant is the successor to ...(insert name of predecessor agent)..., who has resigned, died, become incapacitated, is no longer qualified to serve, has declined to serve as agent, or is otherwise unable to act, if applicable.

6. Affiant agrees not to exercise any powers granted by the Power of Attorney if Affiant attains knowledge that the power of attorney has been revoked, has been partially or completely terminated or suspended, or is no longer valid because of the death or adjudication of incapacity of the Principal.

.....

...(Affiant)...

Sworn to (or affirmed) and subscribed before me by means of ☐ physical presence or ☐ online notarization this .... day of

...(month)..., ...(year)..., by ...(name of person making statement)...

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

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

Personally Known OR Produced Identification

...(Type of Identification Produced)...

Section 4. Paragraph (e) of subsection (2) of section 732.401, Florida Statutes, is amended to read:

732.401 Descent of homestead.—

(2) In lieu of a life estate under subsection (1), the surviving spouse may elect to take an undivided one-half interest in the homestead as a tenant in common, with the remaining undivided one-half interest vesting in the decedent's descendants in being at the time of the decedent's death, per stirpes.

(e) The election must ~~shall~~ be made by filing a notice of election containing the legal description of the homestead property for recording in the official record books of the county or counties where the homestead property is located. The notice must be in substantially the following form:

ELECTION OF SURVIVING SPOUSE
TO TAKE A ONE-HALF INTEREST OF
DECEDENT'S INTEREST IN
HOMESTEAD PROPERTY

STATE OF.....
COUNTY OF.....

1. The decedent, ..., died on .....
On the date of the decedent's death, the decedent was married to
....., who survived the decedent.

2. At the time of the decedent's death, the decedent owned an interest in real property that the affiant believes to be homestead property described in s. 4, Article X of the State Constitution, which real property being in ..... County, Florida, and described as: ...(description of homestead property)....

3. Affiant elects to take one-half of decedent's interest in the homestead as a tenant in common in lieu of a life estate.

4. If affiant is not the surviving spouse, affiant is the surviving spouse's attorney in fact or guardian of the property, and an order has been rendered by a court having jurisdiction of the real property authorizing the undersigned to make this election.

.....

...(Affiant)...

Sworn to (or affirmed) and subscribed before me by means of ☐ physical presence or ☐ online notarization this .... day of ...(month)..., ...(year)..., by ...(affiant)...

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

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

Personally Known OR Produced Identification

...(Type of Identification Produced)...

Section 5. Subsection (1) of section 732.503, Florida Statutes, is amended to read:

732.503 Self-proof of will.—

(1) A will or codicil executed in conformity with s. 732.502 may be made self-proved at the time of its execution or at any subsequent date by the acknowledgment of it by the testator and the affidavits of the witnesses, made before an officer authorized to administer oaths and evidenced by the officer's certificate attached to or following the will, in substantially the following form:

STATE OF..... ~~FLORIDA~~

COUNTY OF ....

I,....., declare to the officer taking my acknowledgment of this instrument, and to the subscribing witnesses, that I signed this instrument as my will.

.....

Testator

We,.....and....., have been sworn by the officer signing below, and declare to that officer on our oaths that the testator declared the instrument to be the testator's will and signed it in our presence and that we each signed the instrument as a witness in the presence of the testator and of each other.

.....

Witness

.....

Witness

Acknowledged and subscribed before me by means of ☐ physical presence or ☐ online notarization by the testator, (type or print testator's name), who ☐ is personally known to me or ☐ ~~who~~ has produced (state type of identification—see s.

117.05(5)(b)2.) as identification, and sworn to and subscribed before me by each of the following witnesses:~~,~~ (type or print name of first witness) who ☐ is personally known to me or ☐ ~~who~~ has produced (state type of identification—see s. 117.05(5)(b)2.) as identification, by means of ☐ physical presence or ☐ online notarization; and (type or print name of second witness) who ☐ is personally known to me or ☐ ~~who~~ has produced (state type of identification—see s. 117.05(5)(b)2.) as identification, by means of ☐ physical presence or ☐ online notarization. ~~and~~ Subscribed by me in the presence of the testator and the subscribing witnesses, by the means specified herein, all on (date).

...(Signature of Officer)...

...(Print, type, or stamp commissioned name and affix official seal)...

Section 6. Subsection (7) of section 732.521, Florida Statutes, is amended to read:

732.521 Definitions.—As used in ss. 732.521-732.525, the term:

(7) "Qualified custodian" means a person who meets the requirements of s. 732.524(1) ~~s. 732.525(1)~~.

Section 7. Paragraph (b) of subsection (5) of section 732.703, Florida Statutes, is amended to read:

732.703 Effect of divorce, dissolution, or invalidity of

marriage on disposition of certain assets at death.—

(5) In the case of an asset described in paragraph (3)(a), paragraph (3)(b), or paragraph (3)(c), unless payment or transfer would violate a court order directed to, and served as required by law on, the payor:

(b) As to any portion of the asset required by the governing instrument to be paid after the decedent's death to a primary beneficiary explicitly designated in the governing instrument as the decedent's spouse:

1. If the death certificate states that the decedent was married at the time of his or her death to that spouse, the payor is not liable for making a payment on account of, or for transferring an interest in, that portion of the asset to such primary beneficiary.

2. If the death certificate states that the decedent was not married at the time of his or her death, or if the death certificate states that the decedent was married to a person other than the spouse designated as the primary beneficiary at the time of his or her death, the payor is not liable for making a payment on account of, or for transferring an interest in, that portion of the asset to a secondary beneficiary under the governing instrument.

3. If the death certificate is silent as to the decedent's marital status at the time of his or her death, the payor is not liable for making a payment on account of, or for transferring

an interest in, that portion of the asset to the primary beneficiary upon delivery to the payor of an affidavit validly executed by the primary beneficiary in substantially the following form:

STATE OF.....

COUNTY OF.....

Before me, the undersigned authority, personally appeared by the means specified herein, ...(type or print Affiant's name)... ("Affiant"), who swore or affirmed that:

1. ...(Type or print name of Decedent)... ("Decedent") died on ...(type or print the date of the Decedent's death)....

2. Affiant is a "primary beneficiary" as that term is defined in Section 732.703, Florida Statutes. Affiant and Decedent were married on ...(type or print the date of marriage)..., and were legally married to one another on the date of the Decedent's death.

...(Affiant)...

Sworn to or affirmed before me by means of ☐ physical presence or ☐ online notarization by the affiant who ☐ is personally known to me or ☐ ~~who~~ has produced ...(state type of identification)... as identification

this .... day of ...(month)..., ...(year)....

...(Signature of Officer)...

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

4. If the death certificate is silent as to the decedent's marital status at the time of his or her death, the payor is not liable for making a payment on account of, or for transferring an interest in, that portion of the asset to the secondary beneficiary upon delivery to the payor of an affidavit validly executed by the secondary beneficiary ~~affidavit~~ in substantially the following form:

STATE OF.....

COUNTY OF.....

Before me, the undersigned authority, personally appeared by the means specified herein, ...(type or print Affiant's name)... ("Affiant"), who swore or affirmed that:

1. ...(Type or print name of Decedent)... ("Decedent") died on ...(type or print the date of the Decedent's death)....

2. Affiant is a "secondary beneficiary" as that term is defined in Section 732.703, Florida Statutes. On

the date of the Decedent's death, the Decedent was not legally married to the spouse designated as the "primary beneficiary" as that term is defined in Section 732.703, Florida Statutes.

...(Affiant)...

Sworn to or affirmed before me by means of ☐ physical presence or ☐ online notarization by the affiant who ☐ is personally known to me or ☐ ~~who~~ has produced ...(state type of identification)... as identification this .... day of ...(month)..., ...(year)....

...(Signature of Officer)...

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

Section 8. Subsection (1) of section 747.051, Florida Statutes, is amended to read:

747.051 Summary procedure.—

(1) If the wife of any person defined as an absentee in s. 747.01(1), or his next of kin if said absentee has no wife, shall wish to sell or transfer any property of the absentee which has a gross value of less than $5,000, or shall require the consent of the absentee in any matter regarding the absentee's children or in any other matter in which the gross value of the subject matter is less than $5,000, she may apply

to the circuit court for an order authorizing said sale, transfer, or consent without opening a full conservatorship proceeding as provided by this chapter. She may make the application without the assistance of an attorney. Said application shall be made by petition on the following form, which form shall be made readily available to the applicant by the clerk of the circuit court:

In the Circuit Court

In re: ...(Absentee)..., case number .....

PETITION FOR SUMMARY RELIEF

Petitioner, ...(Name)..., whose residence is ...(Street & number)..., ...(City or town)..., and ...(County)..., Florida, and who is the ...(Describe relationship to absentee)... of the absentee, ...(Name)..., states that the absentee has been ...(Imprisoned or missing in action)... since ...(Date)... when ...(Describe details).... Petitioner desires to sell/transfer ...(Describe property)... of the value of ...(Value)... because ...(Give reasons).... The terms of sale/transfer are ...(Give reasons).... Petitioner requires the consent of the absentee for the purpose of .....

...(Petitioner)...

State of .... ~~Florida~~
County of....

Sworn to (or affirmed) and subscribed before me by means of ☐ physical presence or ☐ online notarization this .... day of ....., ...(year)..., by ...(name of person making statement)....

...(Signature of Notary Public ~~- State of Florida~~)...
...(Print, Type, or Stamp Commissioned Name of Notary Public)...
Personally Known ..... OR Produced Identification
Type of Identification Produced.....

Section 9. The amendments made by this act are remedial in nature and shall apply retroactively to January 1, 2020.

Section 10. This act shall take effect upon becoming a law.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 535 Electronic Dissemination of Commercial Recordings and Audiovisual Works
SPONSOR(S): Busatta Cabrera
TIED BILLS: **IDEN./SIM. BILLS:** SB 1542

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Regulatory Reform Subcommittee	17 Y, 0 N	Wright	Anstead
2) Civil Justice & Property Rights Subcommittee	16 Y, 0 N	Mathews	Jones
3) Commerce Committee		Wright	Hamon

SUMMARY ANALYSIS

The True Origin of Digital Goods Act (Act) requires owners or operators of websites that electronically disseminate commercial recordings or audiovisual works to Florida consumers to clearly post on the website and make readily accessible to a consumer using or visiting the website the following identifying information:

- The true and correct name of the operator or owner;
- The operator or owner's physical address; and
- The operator or owner's telephone number or e-mail address.

For purposes of the Act, "electronic dissemination" means initiating a transmission of, making available, or otherwise offering a commercial recording or audiovisual work for distribution through the Internet or other digital network, regardless of whether another person has previously electronically disseminated the same commercial recording or audiovisual work.

The Act gives a right to injunctive relief for owners, assignees, authorized agents, or licensees of a commercial recording or audio visual work whose work appears on a website that has not posted identifying information in violation of the Act.

The bill amends the definition of "electronic dissemination" under the Act to include "display" and "performance" to require a person who owns or operates a streaming service dealing in commercial recordings and audiovisual works to post their identifying information on the website.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

True Origin of Digital Goods Act

The True Origin of Digital Goods Act (Act) requires owners or operators of websites that electronically disseminate commercial recordings or audiovisual works to Florida consumers to clearly post on the website and make readily accessible to a consumer using or visiting the website the following identifying information:[1]

- The true and correct name of the operator or owner;
- The operator or owner's physical address; and
- The operator or owner's telephone number or e-mail address.

"Electronic dissemination" under the Act means initiating a transmission of, making available, or otherwise offering a commercial recording or audiovisual work for distribution through the Internet or other digital network, regardless of whether another person has previously electronically disseminated the same commercial recording or audiovisual work.[2]

The Act does not protect copyrighted material, but rather governs "commercial recordings or audiovisual works," defined broadly to include a recording or audiovisual work whose owner, assignee, authorized agent, or licensee has disseminated or intends to disseminate such work for sale, rental, or performance or exhibition to the public, regardless of whether the person seeks commercial advantage or private financial gain from the dissemination. The Act applies to websites that disseminate copyrighted material as well as any disseminated recording or audiovisual work, regardless of the disseminator's intent to seek commercial advantage or financial gain from the work.[3]

The Act gives a right to injunctive relief for owners, assignees, authorized agents, or licensees of a commercial recording or audio visual work whose work appears on a website that has not posted identifying information in violation of the Act. Before initiating the civil action provided for in the Act, the aggrieved party must "make reasonable efforts" to place an individual alleged to be in violation of the section on notice that the owner or operator may be in violation of the Act, and that failure to cure the violation within 14 days may result in civil action. The prevailing party may also recover necessary expenses and reasonable attorney fees. These remedies are available as a supplement to other state and federal criminal and civil law provisions.[4]

The Act authorizes the court to make appropriate orders to compel compliance with the Act upon motion of the party instituting the action.[5]

The Act exempts:

- providers of interactive computer services, communication services, commercial mobile services, information services that provide transmission, storage, or caching of electronic communications or other related telecommunications service, and commercial mobile radio services;[6] and
- commercial recordings and audiovisual works that are video games, depictions of video game play, and streaming of video game activity.[7]

Streaming Services

[1] S. 501.155(4)(a), F.S.
[2] S. 501.155(3)(b), F.S.
[3] S. 501.155(3)(a), F.S.
[4] S. 501.155(5), F.S.
[5] *Id*.
[6] S. 501.155(2)(b), F.S.
[7] S. 501.155(3)(a), F.S.

Generally, a streaming service is an online provider of entertainment, including music and movies, that delivers the content via an Internet connection to a user or subscriber's computer, television, or mobile device.[8]

Effect of the Bill

The bill amends the definition of "electronic dissemination" to read: "initiating a transmission of, making available, or otherwise offering a commercial recording or audiovisual work for distribution, **display, or performance** through the Internet or other digital network, regardless of whether another person has previously electronically disseminated the same commercial recording or audiovisual work."

Therefore, the bill requires a person who owns or operates a streaming service dealing in commercial recordings and audiovisual works, not subject to an exemption, to post their identifying information on the website.

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

B. SECTION DIRECTORY:

Section 1: Amends s. 501.155, F.S.; requiring certain notice requirements on websites that offer certain recordings and work for display or performance.
Section 2: Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may allow more owners, assignees, authorized agents, or licensees of a commercial recording or audio visual work to initiate actions based on improper notice.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

[8] PC Mag Digital Group, *Streaming Service*, https://www.pcmag.com/encyclopedia/term/streaming-service (last visited Mar. 26, 2021).

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

   For a court to exercise jurisdiction over a respondent, it must have subject matter jurisdiction and personal jurisdiction.[9] A non-resident respondent may have sufficient contacts with Florida if he or she commits acts expressly enumerated in Florida's long-arm statute.[10] 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 the matter that brings him or her into court.[11]

   Whether a non-resident Internet company that electronically disseminates commercial recordings or audiovisual works into Florida 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.

   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.[12] 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."[13]

B. RULE-MAKING AUTHORITY:

   None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

   None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

[9] *Caiazzo v. American Royal Arts Corp.*, 73 So. 3d 245, 250 (Fla. 4th DCA 2011).
[10] *Id*; S. 48.193, F.S.
[11] *Caiazzo v. American Royal Arts Corp.*, 73 So. 3d 245, 250 (Fla. 4th DCA 2011).
[12] *Turner Broadcasting System, Inc. v. F.C.C.*, 520 U.S. 180,189 (U.S. 1997).
[13] *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)).

A bill to be entitled

An act relating to electronic dissemination of commercial recordings and audiovisual works; amending s. 501.155, F.S.; revising the definition of the term "electronic dissemination"; providing an effective date.

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

Section 1. Paragraph (b) of subsection (3) of section 501.155, Florida Statutes, is amended to read:

501.155 Electronic dissemination of commercial recordings or audiovisual works; required disclosures; injunctive relief.—

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

(b) "Electronic dissemination" means initiating a transmission of, making available, or otherwise offering a commercial recording or audiovisual work for distribution, display, or performance through the Internet or other digital network, regardless of whether another person has previously electronically disseminated the same commercial recording or audiovisual work.

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 #: CS/HB 539 Renewable Energy
SPONSOR(S): Environment, Agriculture & Flooding Subcommittee, Byrd
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 896

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Tourism, Infrastructure & Energy Subcommittee	17 Y, 0 N	Willson	Keating
2) Environment, Agriculture & Flooding Subcommittee	17 Y, 1 N, As CS	Gawin	Moore
3) Commerce Committee		Willson	Hamon

SUMMARY ANALYSIS

Section 366.91, F.S., defines “renewable energy” as electrical energy produced from a method that uses one or more of the following fuels or energy sources: hydrogen produced from sources other than fossil fuels; biomass; solar energy; geothermal energy; wind energy; ocean energy; and hydroelectric power.

Certain renewable energy projects are eligible for a variety of financing and permitting benefits. Additionally, public utilities and municipal utilities are required to continuously make available standard offer contracts for the purchase of renewable energy, subject to certain price limitations, with the costs of any purchases recoverable from the utility’s ratepayers.

The bill defines "renewable natural gas" as anaerobically-generated biogas, landfill gas, or waste-water treatment gas refined to a methane content of 90 percent or greater which is capable of being used as transportation fuel, for electric power generation, or is of a quality capable of being injected into a natural gas pipeline. The bill defines “biogas” as a mixture of carbon dioxide and hydrocarbons, primarily methane gas, which is released from the biological decomposition of organic materials. The bill further specifies that hydrogen resulting from certain sources is considered renewable energy.

The bill authorizes the Florida Public Service Commission (PSC) to approve cost recovery by a gas public utility for contracts for the purchase of renewable natural gas in which the pricing provisions exceed the current market price of natural gas, but are otherwise deemed reasonable and prudent by the PSC.

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

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Renewable Energy

Florida Renewable Energy Policy

Section 366.92, F.S. declares that it is the intent of the Legislature to:

- promote the development of renewable energy;
- protect the economic viability of Florida's existing renewable energy facilities;
- diversify the types of fuel used to generate electricity in Florida;
- lessen Florida's dependence on natural gas and fuel oil for the production of electricity;
- minimize the volatility of fuel costs;
- encourage investment within the state;
- improve environmental conditions; and
- minimize the costs of power supply to electric utilities and their customers.

Section 366.91, F.S., defines "renewable energy" as electrical energy produced from a method that uses one or more of the following fuels or energy sources:

- hydrogen produced from sources other than fossil fuels;
- biomass;[1]
- solar energy;
- geothermal energy;
- wind energy;
- ocean energy; and
- hydroelectric power.

Renewable energy also includes the alternative energy resource, waste heat, from sulfuric acid manufacturing operations and electrical energy produced using pipeline-quality synthetic gas produced from waste petroleum coke with carbon capture and sequestration.

Contracts for the Purchase of Renewable Energy

Since 2005, public utilities[2] have been required to continuously make available standard offer contracts for the purchase of renewable energy, with the costs of any purchases recoverable from the utility's ratepayers.[3] The law limits the price paid by a utility for renewable energy to the utility's full avoided costs, which are defined in s. 366.051, F.S., as the costs the utility would have incurred to produce the energy or capacity itself or purchase it from another source if not for the purchase of the renewable energy.[4] Capacity payments are not required if, due to the operational characteristics of the renewable energy generator or the anticipated peak and off-peak availability and capacity factor of the utility's

[1] Section 366.91(2)(a), F.S., defines "biomass" as "a power source that is comprised of, but not limited to, combustible residues or gases from forest products manufacturing, waste, byproducts, or products from agricultural and orchard crops, waste or coproducts from livestock and poultry operations, waste or byproducts from food processing, urban wood waste, municipal solid waste, municipal liquid waste treatment operations, and landfill gas."

[2] Section 366.02(1), F.S., defines a "public utility" as "every person, corporation, partnership, association, or other legal entity and their lessees, trustees, or receivers supplying electricity or gas (natural, manufactured, or similar gaseous substance) to or for the public within this state." The term "public utility" does not include rural electric cooperatives, municipal electric utilities, special natural gas districts, natural gas transmission pipeline companies, natural gas marketers, or propane suppliers.

[3] S. 366.91(3), F.S. Each contract must provide a contract term of at least ten years.

[4] This pricing scheme reflects limits established by federal law, which have been in place since adoption of the Public Utilities Regulatory Policy Act in 1978.

avoided unit, the renewable energy producer is unlikely to provide any capacity value to the utility or the electric grid during the contract term.[5] Prudent and reasonable costs associated with the contract must be recovered from the ratepayers of the contracting utility, without differentiation among customer classes, through the appropriate cost-recovery mechanism administered by the Florida Public Service Commission (PSC).[6]

Similarly, each municipal electric utility[7] and rural electric cooperative[8] whose annual sales, as of July 1, 1993, to retail customers were greater than 2,000 gigawatt hours must continuously offer a purchase contract with a minimum term of 10 years to producers of renewable energy. These contracts must include payment provisions for energy and capacity which are based upon the utility's or cooperative's full avoided costs, as determined by the governing body of the municipal utility or cooperative.[9]

A contracting producer of renewable energy must pay the actual costs of its interconnection with the transmission grid or distribution system.[10]

Effect of the Bill

The bill defines "renewable natural gas" as anaerobically-generated biogas, landfill gas, or waste-water treatment gas refined to a methane content of 90 percent or greater which is capable of being used as transportation fuel, for electric power generation, or is of a quality capable of being injected into a natural gas pipeline.

The bill defines "biogas" as a mixture of carbon dioxide and hydrocarbons, primarily methane gas, which is released from the biological decomposition of organic materials.

The bill expands the definition of "renewable energy" to include hydrogen "resulting" from certain sources.

The bill authorizes the PSC to approve cost recovery by a gas public utility for contracts for the purchase of renewable natural gas in which the pricing provisions exceed the current market price of natural gas, but are otherwise deemed reasonable and prudent by the PSC.

B. SECTION DIRECTORY:

Section 1 Amends s. 366.91, F.S.; defining the terms "biogas" and "renewable natural gas"; revising the definition of the term "renewable energy" to include hydrogen resulting from certain sources.

Section 2 Amends s. 366.92, F.S.; revising the definition of "renewable energy."

Section 3 Amends s. 373.236, F.S.; conforming a cross-reference.

Section 4 Amends s. 403.973, F.S.; conforming a cross-references.

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[5] S. 366.91(3), F.S.
[6] *Id.*
[7] There are 33 municipal electric (public power) utilities in the state, which serve approximately 3 million people or 14 percent of Florida's population. Municipal utilities are not-for-profit and governed by an elected city commission, or an appointed or elected utility board. They raise capital through operating revenues or the sale of tax-exempt bonds. *See* Florida Municipal Electric Association, *Florida Municipal Utility Map*, https://www.publicpower.com/florida-municipal-utility-map (last visited Mar. 5, 2021).
[8] Rural electric cooperatives are cooperative, nonprofit membership corporations organized under ch. 425, F.S., for the purpose of supplying electric energy and promoting and extending the use thereof in rural areas. Florida has 16 distribution cooperatives and 2 generation and transmission cooperatives that supply electricity to more than 2.7 million Floridians in 57 of Florida's 67 counties. Cooperatives are owned by the members they serve and provide at-cost electric service to their consumer-members. *See* Florida Electric Cooperatives Association, *About*, https://feca.com/about/ (last visited Mar. 5, 2021).
[9] S. 366.91(4), F.S.
[10] S. 366.91(8), F.S.

Section 5 Reenacts s. 288.9606(7), F.S.; relating to the issuance of revenue bonds, to incorporate the amendments made by the bill.

Section 6 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 economic impact on the producers of renewable natural gas if the PSC approves cost recovery for a gas public utility's contract for renewable natural gas.

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 March 23, 2021, the Environment, Agriculture & Flooding Subcommittee adopted an amendment and reported the bill favorably as a committee substitute. The amendment revised the definition of “renewable energy” and authorized the PSC to approve cost recovery by a public gas utility for contracts for certain purchases.

This analysis is drafted to the committee substitute as approved by the Environment, Agriculture & Flooding Subcommittee.

A bill to be entitled

An act relating to renewable energy; amending s. 366.91, F.S.; defining the terms "biogas" and "renewable natural gas"; revising the definition of the term "renewable energy"; authorizing the Public Service Commission to approve cost recovery by gas public utilities for contracts for the purchase of renewable natural gas if specified conditions are met; amending s. 366.92, F.S.; revising the definition of the term "renewable energy" to include renewable natural gas; amending ss. 373.236, and 403.973, F.S.; conforming cross-references; reenacting s. 288.9606(7), F.S., relating to the issuance of revenue bonds, to incorporate the amendments made by the act; providing an effective date.

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

Section 1. Present paragraphs (a) through (d) of subsection (2) of section 366.91, Florida Statutes, are redesignated as paragraphs (b) through (e), respectively, a new paragraph (a) and paragraph (f) are added to that subsection, present paragraph (d) of that subsection is amended, and subsection (9) is added to that section to read:

366.91 Renewable energy.—

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

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

(a) "Biogas" means a mixture of carbon dioxide and hydrocarbons, primarily methane gas, which is released from the biological decomposition of organic materials.

(e) ~~(d)~~ "Renewable energy" means electrical energy produced from a method that uses one or more of the following fuels or energy sources: hydrogen produced or resulting from sources other than fossil fuels, biomass, solar energy, geothermal energy, wind energy, ocean energy, and hydroelectric power. The term includes the alternative energy resource, waste heat, from sulfuric acid manufacturing operations and electrical energy produced using pipeline-quality synthetic gas produced from waste petroleum coke with carbon capture and sequestration.

(f) "Renewable natural gas" means anaerobically-generated biogas, landfill gas, or waste-water treatment gas refined to a methane content of 90 percent or greater which is capable of being used as transportation fuel, for electric power generation, or is of a quality capable of being injected into a natural gas pipeline.

(9) The commission may approve cost recovery by a gas public utility for contracts for the purchase of renewable natural gas in which the pricing provisions exceed the current market price of natural gas, but which are otherwise deemed reasonable and prudent by the commission.

Section 2. Paragraph (b) of subsection (2) of section

366.92, Florida Statutes, is amended to read:

366.92 Florida renewable energy policy.—

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

(b) "Renewable energy" means renewable energy and renewable natural gas as those terms are ~~as~~ defined in s. 366.91(2) ~~s. 366.91(2)(d)~~.

Section 3. Subsection (7) of section 373.236, Florida Statutes, is amended to read:

373.236 Duration of permits; compliance reports.—

(7) A permit approved for a renewable energy generating facility or the cultivation of agricultural products on lands consisting of 1,000 acres or more for use in the production of renewable energy, as defined in s. 366.91(2) ~~s. 366.91(2)(d)~~, shall be granted for a term of at least 25 years at the applicant's request based on the anticipated life of the facility if there is sufficient data to provide reasonable assurance that the conditions for permit issuance will be met for the duration of the permit; otherwise, a permit may be issued for a shorter duration that reflects the longest period for which such reasonable assurances are provided. Such a permit is subject to compliance reports under subsection (4).

Section 4. Paragraph (f) of subsection (3) and paragraph (b) of subsection (19) of section 403.973, Florida Statutes, are amended to read:

403.973 Expedited permitting; amendments to comprehensive

plans.—

(3)

(f) Projects resulting in the production of biofuels cultivated on lands that are 1,000 acres or more or in the construction of a biofuel or biodiesel processing facility or a facility generating renewable energy, as defined in s. 366.91(2) ~~s. 366.91(2)(d)~~, are eligible for the expedited permitting process.

(19) The following projects are ineligible for review under this part:

(b) A project, the primary purpose of which is to:

1. Effect the final disposal of solid waste, biomedical waste, or hazardous waste in this state.

2. Produce electrical power, unless the production of electricity is incidental and not the primary function of the project or the electrical power is derived from a fuel source for renewable energy as defined in s. 366.91(2) ~~s. 366.91(2)(d)~~.

3. Extract natural resources.

4. Produce oil.

5. Construct, maintain, or operate an oil, petroleum, or sewage pipeline.

Section 5. For the purpose of incorporating the amendment made by this act to section 366.91, Florida Statutes, in a reference thereto, subsection (7) of section 288.9606, Florida Statutes, is reenacted to read:

288.9606 Issue of revenue bonds.—

(7) Notwithstanding any provision of this section, the corporation in its corporate capacity may, without authorization from a public agency under s. 163.01(7), issue revenue bonds or other evidence of indebtedness under this section to:

(a) Finance the undertaking of any project within the state that promotes renewable energy as defined in s. 366.91 or s. 377.803;

(b) Finance the undertaking of any project within the state that is a project contemplated or allowed under s. 406 of the American Recovery and Reinvestment Act of 2009; or

(c) If permitted by federal law, finance qualifying improvement projects within the state under s. 163.08.

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

COMMERCE COMMITTEE

CS/HB 539 by Rep. Byrd
Renewable Energy

AMENDMENT SUMMARY
April 6, 2021

Amendment 1 by Rep. Byrd (line 32):
The amendment restores the current definition of renewable energy for certain purposes.

COMMITTEE/SUBCOMMITTEE ACTION

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

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

Amendment (with title amendment)

Remove line 32 and insert:
energy sources: hydrogen produced from sources

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

Remove lines 4-5 and insert:
"renewable natural gas"; authorizing the Public

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 615 Community Association Assessment Notices
SPONSOR(S): Regulatory Reform Subcommittee, Rodriguez
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 56

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Regulatory Reform Subcommittee	16 Y, 0 N, As CS	Brackett	Anstead
2) Civil Justice & Property Rights Subcommittee	16 Y, 0 N	Mawn	Jones
3) Commerce Committee		Brackett	Hamon

SUMMARY ANALYSIS

A condominium is a form of ownership of real property comprised of units which may be owned by one or more persons along with an undivided right of access to common elements. A cooperative is real property owned by the cooperative association, with individual units leased to the residents who own shares in the cooperative association. A homeowners' association ("HOA") is an association that is authorized to impose assessments, responsible for the operation of a community in which voting membership is made up of unit or parcel owners and membership is a mandatory condition of unit or parcel ownership. Condominium associations, cooperative associations, and HOAs are collectively referred to as "associations."

The bill relates to an association's collection of assessments and notices to owners relating to such assessments, it requires:

- Associations that send account statements or invoices to owners to send them by first-class mail or by email.
- Associations to deliver written notice to every owner at least 30 days before changing their method of delivering account statements.
- Owners to affirmatively acknowledge that they understand the association has changed its method of delivering account statements before a community association may change its method of delivery.
- Associations to maintain the owners' affirmative acknowledgments as an official record.

The bill prohibits associations from collecting attorney fees related to delinquent assessments without first delivering a written notice of the delinquent assessments to the unit or parcel owner.

- An association must deliver the written notice at least 30 days before the association takes further action against the owner's unit or parcel.
- The written notice must specify the amount owed and provide the unit or parcel owner an opportunity to pay the delinquent assessments without paying attorney fees.
- There is a rebuttable presumption that an association mailed a notice of delinquent assessment if a board member, officer, agent of the association, or a licensed community association manager provides a sworn affidavit attesting to such mailing.

The bill also aligns condominium and cooperative law to HOA law by increasing the period of time a condominium or cooperative unit owner has to pay a delinquent assessment after receiving an association's notice of intent to record a lien or foreclose on a lien from 30 days to 45 days.

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

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

The Florida Division of Condominiums, Timeshares and Mobile Homes (Division), within the Department of Business and Professional Regulation (DBPR), provides consumer protection for Florida residents living in regulated communities through education, complaint resolution, mediation and arbitration, and developer disclosure. The Division has regulatory authority over the following business entities and individuals:

- Condominium associations;
- Cooperative associations;
- Florida mobile home parks and related associations;
- Vacation units and timeshares;
- Yacht and ship brokers and related business entities; and
- Homeowners' associations (limited to arbitration of election and recall disputes).

Condominiums

A condominium is a form of ownership of real property created pursuant to ch. 718, F.S., comprised of units which may be owned by one or more persons along with an undivided right of access to common elements.[1] A condominium is created by recording a declaration of condominium in the public records of the county where the condominium is located.[2] A declaration governs the relationships among condominium unit owners and the condominium association. All unit owners are members of the condominium association, an entity responsible for the operation and maintenance of the common elements owned by the unit owners. The condominium association is overseen by an elected board of directors, commonly referred to as a “board of administration.” The board enacts bylaws which govern the administration of the association.

Cooperatives

A cooperative is a form of property ownership created pursuant to ch. 719, F.S. The real property is owned by the cooperative association, and individual units are leased to the residents who own shares in the cooperative association.[3] The lease payment amount is the pro-rata share of the operational expenses of the cooperative. Cooperatives operate similarly to condominiums and the laws regulating cooperatives are in many instances nearly identical to those regulating condominiums.

Homeowners’ Associations

A homeowners’ association (HOA) is an association of residential property owners in which voting membership is made up of parcel owners, in which membership is a mandatory condition of parcel ownership, and which is authorized to impose assessments that, if unpaid, may become a lien on the parcel.[4] Only HOAs whose covenants and restrictions include mandatory assessments are regulated by ch. 720, F.S. Like a condominium or cooperative, an HOA is administered by an elected board of directors. The powers and duties of an HOA includes the powers and duties provided in ch. 720, F.S., and in the governing documents of the association, which include the recorded covenants and restrictions, together with the bylaws, articles of incorporation, and duly adopted amendments to those documents. No state agency has direct oversight of HOAs. However, Florida law provides procedures

[1] S. 718.103(11), F.S.
[2] S. 718.104(2), F.S.
[3] Ss. 719.103(2) and (26), F.S.
[4] S. 720.301(9), F.S.

and minimum requirements for HOA operation and provides for a mandatory binding arbitration program, administered by the Division, only for certain election disputes.

Official Records

Condominiums, cooperatives, and HOAs (associations) are required to maintain official records for at least 7 years. The official records must include:[5]

- A copy of the articles of incorporation, declaration, bylaws, and rules of the association;
- Meeting minutes;
- A roster of all owners or members, including the electronic mailing addresses and fax numbers of unit owners consenting to receive notice by electronic transmission;
- A copy of any contracts to which the association is a party or under which the association or the unit owners or members have an obligation;
- Accounting records for the association, which includes:
    - Accurate, itemized, and detailed records of all receipts and expenditures.
    - A current account and a periodic statement of the account for each unit or parcel designating the name of the owner, the due date and amount of each assessment, the amount paid on the account, and the balance due.
    - All audits, reviews, accounting statements, and financial reports of the association or condominium.
    - All contracts for work to be performed. Bids for work to be performed are also considered official records and must be maintained by the association.
- All contracts for work to be performed, including bids for work, materials, and equipment. Cooperatives and HOAs are only required to maintain bids for one year;
- A copy of the plans, permits, warranties, and other items provided by the developer; and
- All other written records which are related to the operation of the association.

An association must maintain its official records within the state of Florida and make them available for inspection within 45 miles of the association or within the county where the association is located.[6]

Unit owners may request to inspect and make copies of an association's official records. An association must make the records available for inspection within 10 business days of receiving a written request. Failure to provide an owner or renter the requested records within 10 business days of receiving a request creates a rebuttable presumption that the association willfully failed to provide the records. An owner who is denied access to the records is entitled to damages and costs.[7]

An association may adopt reasonable rules regarding the frequency, time, location, notice, and manner of record inspections. An association also has the option to make the official records available electronically via the Internet or in an electronic format viewable on a computer screen.[8] Additionally, condominium associations with 150 or more units must maintain a website with digital copies of certain official records such as meeting notices, a copy of the articles of incorporation, declaration, bylaws, and rules of the association.[9]

However, the following records are not available for inspection by owners:[10]

- Records protected by the lawyer-client privilege;
- Information obtained by an association in connection with the transfer of a unit or parcel;
- Personnel records of association or management company employees;
- Unit owner medical records;

[5] Ss. 718.111(12)(a), 719.104(2), and 720.303(4)-(5), F.S.
[6] Ss. 718.111(12)(b)-(c), 719.104(2)(b)-(c), and 720.303(5), F.S.
[7] *Id.*
[8] *Id.*
[9] Ss. 718.111(12)(b), and (g), F.S.
[10] Ss. 718.111(12)(c), 719.104(2)(c), and 720.303(5), F.S.

- Personnel identifying information such as social security numbers, driver license numbers, and credit card numbers;
- Electronic security measures that are used to safeguard data; and
- The software and operating system used by the association which allow the manipulation of data.

Statements of the Account

A statement of the account[11] is an account statement that details the outstanding amount that a unit or parcel owner owes to the association. Associations must maintain a current account and a periodic[12] statement of the account for each unit or parcel, which designates the name of the owner, the due date and amount of each assessment, the amount paid on the account, and the balance due.[13]

Statements of the account for each unit or parcel owner are part of the official records, which are available for inspection.[14] Associations may also deliver statements of the account or invoices for assessment to the unit or parcel owners. However, current law does not specify how an association must deliver statements of the account to owners or invoices for assessment, e.g., by regular mail or email. Current law also does not provide a process to notify unit or parcel owners, if an association alters its method of delivering statements of the account.

Assessments

Current law gives associations the ability to levy and collect assessments from unit or parcel owners. This allows the association to carry out its responsibility for the association's management, operation, and maintenance.[15] In addition to levying assessments, associations also have the power to establish the time when each assessment is due, including when an assessment becomes delinquent.[16]

The most common assessments are those required to fund an association's common expenses identified in an association's annual budget. The amount to fund the common expenses and the assessments required to meet that amount are determined when an association's budget is adopted.[17] In contrast, a special assessment is an assessment levied against unit or parcel owners for unexpected expenses that are over and above those anticipated by the annual budget.[18]

When the amount of an assessment has been determined, the association must establish a payment schedule for the owners in accordance with the association's bylaws. For condominium and cooperative associations, payments must be made in advance and they must be paid at least quarterly. The payments must be sufficient to provide the funds necessary to pay all the anticipated operating expenses and all unpaid expenses previously incurred.[19]

A unit or parcel owner may not avoid paying assessments by waiving the use of common elements or services in the association. No unit or parcel owner may be relieved from liability for all or part of an assessment.[20] Boards must keep account of the assessments levied against every unit or parcel owner

[11] A statement of the account is different from an estoppel certificate. An estoppel certificate issued by an association certifies the total debt owed to the association for unpaid financial obligations by a parcel owner or unit owner as of a specified date. An association is legally bound by the amount stated in the estoppel certificate. A unit or parcel purchaser or a mortgage holder who relies on an estoppel certificate is protected from any assessments or other monies owed to the association that are not in the certificate. Ss. 718.116(8), 719.108(6), and 720.30851, F.S.
[12] Condominium and cooperative associations must maintain a monthly, bimonthly, or quarterly statement of the account. Ss. 718.111(12)(a), and 719.104(2), F.S.
[13] Ss. 718.111(12)(a), 719.104(2), and 720.303(4)-(5), F.S.
[14] *Id.*
[15] S. 718.111(4), 719.104(5), 720.301(1), and 720.308(1), F.S.
[16] *See generally*, ch. 718, 719, and 720, F.S.
[17] Ss. 718.103(1), 718.112(2)(f), 719.103(9), and 719.106(1)(j), and 720.303(6)(a), F.S.
[18] Ss. 718.103(24), 718.116(10), 719.103(23), 719.108(9), and 720.303(6), F.S.
[19] Ss. 718.112(2)(g), 719.106(1)(g), and 720.30851(1), F.S.
[20] Ss. 718.111(4), and 718.116(1)(a), 719.108(1), and 720.3085(2)(a), F.S.

and the assessments paid by every owner. These records are part of the association's official records.[21]

Liability for Assessments

A unit or parcel owner is liable for all assessments coming due while he or she owns the unit or parcel. The unit or parcel serves as security for the payment of all assessments owed by an owner.[22]

If a unit or parcel is sold, the buyer becomes jointly and severally liable with the seller for all unpaid assessments due prior to the time of the sale. The buyer may attempt to recover the unpaid assessments from the seller, but the association may look to both the seller and the buyer for the unpaid assessments.[23]

Assessments that are not paid on time bear interest at a rate provided in the declaration, which may not be higher than the highest rate allowed by law, or at a rate of 18 percent per year if no rate is provided. Interest begins accruing the date a payment becomes delinquent. Additionally, an association may levy a late fee for any delinquent payment. The amount of the late fee may not exceed $25 or five percent of the payment, whichever is greater. Associations are entitled to recover any attorney fees and costs incurred in collecting delinquent payments.[24]

If an association receives a payment for a delinquent assessment, the payment must first be applied to any accrued interest, then to any late fee, then to any attorney's fees or costs, and finally to the principle balance of the assessment.[25]

Currently, associations are not required to send a delinquent assessment notice prior to charging late fees, interest, or attorney fees. According to news reports, this can result in unit or parcel owners being charged attorney fees that exceed the delinquent assessment.[26] According to industry blogs, allowing associations to collect attorney fees ensures associations are not left holding the bill when they take legal action.[27] However, industry blogs also state that sending a delinquent assessment notice before taking any action against a unit or parcel owner can help remind owners of their payment obligation and the majority of owners make a payment upon receiving such notice.[28]

Claim of Lien

An association has a lien for all unpaid assessments, but not for unpaid fines[29]. An association may file a claim of lien for a delinquent assessment with the Clerk of Court in the county where the association is located. The claim of lien must state the legal description of the unit or parcel, the owner of the unit or parcel, the association's name and address, and the assessment amount owed and the due date. An officer or agent of the association must sign the claim of lien. A filed claim of lien is valid for one year.[30]

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[21] Ss. 718.111(12)(a), 719.104(2), and 720.303(4)-(5), F.S.
[22] Ss. 718.111(4), and 718.116(1)(a), 719.108(1), and 720.3085(2)(a), F.S.
[23] *Id.*; *Karpay v. Las Brisas Condominium Association, Inc.*, 517 So. 2d 756, 757 (Fla. 2nd DCA 1987).
[24] Ss. 718.116(3), 719.108(3), and 720.3085(3), F.S.
[25] *Id.*
[26] Fox 13 Tampa Bay, *FOX 13 Investigates: HOA attorney fees a homeowner's nightmare*, Fox 13 Tampa Bay (Jan. 20, 2016) https://www.fox13news.com/news/fox-13-investigates-hoa-attorney-fees-a-homeowners-nightmare (last visited Mar. 26, 2021); Todd Ulrich, *'They put me through hell': Homeowner battles HOA, gets thousands in settlement*, WFTV (Feb. 16, 2021) https://www.wftv.com/news/action9/they-put-me-through-hell-homeowner-battles-hoa-gets-thousands-settlement/YD26MECEZVBTTMX7E3HOS7JT2I/ (last visited Mar. 26 2021).
[27] Jimerson Birr, *Condominium Association Recovery of Attorneys' Fees in Florida*, Jimerson Birr, (Dec. 29, 2015) https://www.jimersonfirm.com/blog/2015/12/condominium-association-recovery-of-attorneys-fees-in-florida/ (last visited Mar. 26, 2021).
[28] Jimerson Birr, *Five Steps for Collecting Assessment Revenue Through a Condominium Assessment Lien*, Jimerson Birr, (Aug. 9, 2018) https://www.jimersonfirm.com/blog/2018/08/florida-condominium-assessment-lien/ (last visited Mar. 26, 2021); Christopher R. Moore, Step-By-Step Guide To The HOA Assessment Collections Process, Homeowners Protection Bureau, LLC, https://www.hopb.co/blog/guide-to-hoa-assessment-collections-process#notice-of-delinquency (last visited Mar. 26, 2021).
[29] An HOA has a lien on a parcel for a fine that is $1,000 or more. S. 720.305(2), F.S.
[30] Ss. 718.116(5), and 718.303(3), 719.108(4), 720.301(1), and (11), 720.305(2), and 720.3085(1), F.S.F.S.

Prior to filing a claim of lien, an association must give a unit or parcel owner the opportunity to pay a delinquent assessment. At least **30 days** before filing a claim of lien, a condominium or cooperative association must provide written notice of the association's intent to file a lien to the unit owner. However, an HOA must provide a parcel owner the written notice at least **45 days** before filing the claim of lien. The notice must include the following information:[31]

- The amount owed on the owner's account;
- The interest rate for the amounts owed;
- A statement that the owner has 30 or 45 days to pay the amount owed or the association will file a claim of lien against the unit or parcel; and
- A breakdown of the amount owed including:
    - Maintenance costs due;
    - Late fee;
    - Interest; and
    - Total amount owed.

The notice must be sent by first class and certified mail to the owner's address listed in the official records.[32] If the address is different than the unit or parcel address, the notice must also be sent to the unit or parcel. If the address is different than the unit or parcel address and the address is outside the United States, the association may send the notice by first class mail, instead of first class and certified mail. Service is deemed delivered upon mailing the notice for condominium and cooperative associations.[33]

A unit or parcel owner may challenge a claim of lien by filing a notice of contest of lien with the Clerk of Court. After a unit owner files a notice of contest, an association has 90 days to commence enforcement of the lien. The grounds for which a unit owner may not pay an assessment are limited, such as when the assessment is discriminatory or has been improperly levied by the board.[34]

An association may bring an action to foreclose on a unit or parcel for unpaid assessments in circuit court in the same way that a mortgage on real estate is foreclosed. The homestead protections provided by Florida's Constitution do not prevent the foreclosure and sale of a unit or parcel. In addition to an action of foreclosure, an association may also bring a civil action to recover a money judgment for the unpaid assessments without waiving any claim of lien.[35]

Prior to foreclosing on a lien, a condominium association or an HOA must provide written notice to the owner of its intent to foreclose on the lien. A condominium association must provide the notice at least **30 days** before foreclosing on the lien. However, an HOA must give a parcel owner the written notice at least **45 days** before foreclosing on the lien. The notice must include the following information:[36]

- A claim of lien has been filed against the owner's property for failing to pay an assessment(s);
- The association intends to foreclose on the lien in 30 or 45 days;
- The total amount owed;
- The interest rate and the interest owed; and
- The contact information for the association's attorney or representative.

A condominium association must deliver the notice to the unit owner or mail the notice by certified mail to the unit owner's last known address. Service is deemed delivered upon mailing the notice.[37] The

[31] S. 718.121(4) and 718.108(4), 719.108(4), and 720.3085(4), F.S.
[32] A cooperative association is only required to send the written notice by certified mail. S. 719.108(4).
[33] *Id.*
[34] Ss. 718.116(5), 719.108(4), and 720.3085(1), F.S.; *Coral Way Condominium Investments, Inc. v. 21/22 Condominium Ass'n, Inc.*, 66 So. 3d 1038, 1041 (Fla. 3rd DCA 2011).
[35] S. 718.116(6)(a), 719.108(5), and 720.3085(1) F.S. *Bessemer v. Gersten* , 381 So. 2d 1344, 1347 (Fla. 1980).
[36] Ss. 718.116(6)(a) and 720.3085(5), F.S.
[37] *Id.*

notice must be sent by first class and certified mail to the owner's address listed in the official records. If the address is different than the unit or parcel address, the notice must also be delivered to the unit or parcel. If the address is different than the unit or parcel address and the address is outside the United States, the association may send the notice by first class mail.

Effect of the Bill

The bill provides that if associations send statements of the account or invoices for assessments to their unit or parcel owners, they must send them by first class mail or email to the owner's email address in the association's official records.

The bill also provides that, before an association changes the method of delivering the statement of the account or an invoice for assessments, the association must deliver written notice of such change to every unit or parcel owner and a unit or parcel owner must acknowledge the association is changing its method of delivery. An owner may make the acknowledgement in writing or electronically. The written notice must be:

- Delivered to the owner at least 30 days before the association uses the new delivery method to send the statement of the account; and
- Sent by first class mail to an owner's address listed in the official records. If the address is different than the unit or parcel address, the notice must also be delivered to the unit or parcel owner by first class mail.
    - Service is deemed delivered upon mailing the notice.

The bill provides that a unit or parcel owner's written acknowledgment becomes part of an association's official records. However, the written acknowledgments are not available for inspection by the members of the association.

The bill mirrors condominium and cooperative law to HOA law by increasing the period of time a:

- Condominium or cooperative association has to wait before filing a lien from **30 days** after delivering the written notice of intent to file a lien to **45 days** after delivering the notice; and
- Condominium has to wait before foreclosing on a lien from **30** days after delivering the written notice of intent to foreclose to **45** days after delivering the notice.

The bill also provides that a condominium association must send the notice of intent to file a lien by certified and first class mail to the unit owner's address regardless of whether the unit owner's address is outside the United States.

The bill provides that before an association can require payment of attorney fees related to a delinquent assessment, the association must deliver written notice of the delinquent assessment to the unit or parcel owner. If the owner pays the delinquent assessment within 30 days, the association may not assess attorney fees. The written notice must include the following information:

- The amount owed on the owner's account;
- The interest rate for the amounts owed;
- A statement that the owner has 30 days to pay the amount owed or the association will take further collection action against the owner's property in 30 days;
- A breakdown of the amount owed including:
    - Maintenance costs due;
    - Late fee;
    - Interest; and
    - Total amount owed.

The bill requires that the written notice must be sent by first class mail to an owner's address listed in the official records. If the address is different than the unit or parcel address, the notice must also be mailed to the unit or parcel by first class mail. Service is deemed delivered upon mailing the notice.

The bill creates a rebuttable presumption that an association mailed the notice of a delinquent assessment if a board member, officer, agent of the association, or a licensed community association manager[38] provides a sworn affidavit attesting to such mailing.

B. SECTION DIRECTORY:

Section 1. Amends s. 718.111, F.S., adding documents that are a part of a condominium association's official records.

Section 2. Amends s. 718.116, F.S., extending the time a condominium association must wait until it forecloses on a lien.

Section 3. Amends s. 718.121, F.S., relating to payments for assessments and lien claims.

Section 4. Amends s. 719.104, F.S., adding documents that are a part of a cooperative association's official records.

Section 5. Amends 719.108, F.S., relating to payments for assessments and lien claims.

Section 6. Amends s. 720.303, F.S., adding documents that are a part of a HOA's official records.

Section 7. Amends s. 720.3085, F.S., relating to payments for assessments and lien claims.

Section 8. 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 additional notice requirements, restrictions on collecting attorney fees, and increased notice period for a claim of lien may provide a net positive fiscal impact for association residents.

D. FISCAL COMMENTS:

None.

[38] Management companies and managers of residential condominiums with more than ten units or having an annual budget in excess of $100,000 are required to have a community association manager license from DBPR. The Community Association Management Practice Act governs the licensure and regulation of community association managers. *See* part VIII of ch. 468, F.S.

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 March 8, 2021, the Regulatory Reform Subcommittee adopted a strike-all amendment and reported the bill favorably as a committee substitute. The committee substitute:

- Specifies that if associations provide account statements to their unit or parcel owners, they must comply with the delivery requirements in the bill.
- Creates a rebuttable presumption that an association mailed a notice of a delinquent assessment if a board member, officer, agent of the association, or a licensed community association manager provides a sworn affidavit attesting to such mailing.

The analysis is drafted to the committee substitute as passed by the Regulatory Reform Subcommittee.

A bill to be entitled

An act relating to community association assessment notices; amending s. 718.111, F.S.; requiring condominium associations to maintain specified affirmative acknowledgments as official records of the association; specifying that such acknowledgments are not accessible to unit owners; amending s. 718.116, F.S.; revising timeframes for foreclosure judgments; conforming provisions to changes made by the act; amending s. 718.121, F.S.; requiring condominium associations to deliver certain invoices for assessments or statements of account to unit owners in a specified manner; requiring condominium associations to give notice to unit owners before changing the method of delivery for invoices for assessments or statements of account; providing requirements for the notice; requiring unit owners to affirmatively acknowledge the changes in delivery methods; prohibiting condominium associations from requiring the payment of attorney fees relating to past due assessments without first providing a specified notice to unit owners; establishing a rebuttable presumption relating to the mailing of such notice; providing requirements for the notice; revising the timeframe for condominium associations to file liens against

condominium units; conforming provisions to changes made by the act; amending s. 719.104, F.S.; requiring cooperative associations to maintain specified affirmative acknowledgments as official records of the association; specifying that such acknowledgments are not accessible to unit owners; amending s. 719.108, F.S.; requiring cooperative associations to deliver certain invoices for assessments or statements of account to unit owners in a specified manner; requiring cooperative associations to give notice to unit owners before changing the method of delivery for invoices for assessments or statements of account; providing requirements for the notice; requiring unit owners to affirmatively acknowledge the changes in delivery methods; prohibiting cooperative associations from requiring the payment of attorney fees relating to past due assessments without first providing specified notice to unit owners; establishing a rebuttable presumption relating to the mailing of such notice; providing requirements for the notice; revising the timeframe for cooperative associations to file liens against cooperative parcels; conforming provisions to changes made by the act; amending s. 720.303, F.S.; requiring homeowners' associations to maintain specified affirmative acknowledgments as

official records of the association; specifying that such acknowledgments are not accessible to parcel owners; amending s. 720.3085, F.S.; requiring homeowners' associations to deliver certain invoices for assessments or statements of account to parcel owners in a specified manner; requiring homeowners' associations to give notice to parcel owners before changing the method of delivery for invoices for assessments or statements of account; providing requirements for the notice; requiring parcel owners to affirmatively acknowledge the changes in delivery methods; prohibiting homeowners' associations from requiring the payment of attorney fees relating to past due assessments without first providing specified notice to parcel owners; establishing a rebuttable presumption relating to the mailing of such notice; providing requirements for the notice; providing an effective date.

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

Section 1. Paragraphs (a) and (c) of subsection (12) of section 718.111, Florida Statutes, are amended to read:

718.111 The association.—

(12) OFFICIAL RECORDS.—

(a) From the inception of the association, the association shall maintain each of the following items, if applicable, which constitutes the official records of the association:

1. A copy of the plans, permits, warranties, and other items provided by the developer pursuant to s. 718.301(4).

2. A photocopy of the recorded declaration of condominium of each condominium operated by the association and each amendment to each declaration.

3. A photocopy of the recorded bylaws of the association and each amendment to the bylaws.

4. A certified copy of the articles of incorporation of the association, or other documents creating the association, and each amendment thereto.

5. A copy of the current rules of the association.

6. A book or books that contain the minutes of all meetings of the association, the board of administration, and the unit owners.

7. A current roster of all unit owners and their mailing addresses, unit identifications, voting certifications, and, if known, telephone numbers. The association shall also maintain the e-mail addresses and facsimile numbers of unit owners consenting to receive notice by electronic transmission. The e-mail addresses and facsimile numbers are not accessible to unit owners if consent to receive notice by electronic transmission is not provided in accordance with sub-subparagraph (c)3.e.

However, the association is not liable for an inadvertent disclosure of the e-mail address or facsimile number for receiving electronic transmission of notices.

8. All current insurance policies of the association and condominiums operated by the association.

9. A current copy of any management agreement, lease, or other contract to which the association is a party or under which the association or the unit owners have an obligation or responsibility.

10. Bills of sale or transfer for all property owned by the association.

11. Accounting records for the association and separate accounting records for each condominium that the association operates. Any person who knowingly or intentionally defaces or destroys such records, or who knowingly or intentionally fails to create or maintain such records, with the intent of causing harm to the association or one or more of its members, is personally subject to a civil penalty pursuant to s. 718.501(1)(d). The accounting records must include, but are not limited to:

a. Accurate, itemized, and detailed records of all receipts and expenditures.

b. A current account and a monthly, bimonthly, or quarterly statement of the account for each unit designating the name of the unit owner, the due date and amount of each

assessment, the amount paid on the account, and the balance due.

c. All audits, reviews, accounting statements, and financial reports of the association or condominium.

d. All contracts for work to be performed. Bids for work to be performed are also considered official records and must be maintained by the association.

12. Ballots, sign-in sheets, voting proxies, and all other papers and electronic records relating to voting by unit owners, which must be maintained for 1 year from the date of the election, vote, or meeting to which the document relates, notwithstanding paragraph (b).

13. All rental records if the association is acting as agent for the rental of condominium units.

14. A copy of the current question and answer sheet as described in s. 718.504.

~~15. All other written records of the association not specifically included in the foregoing which are related to the operation of the association.~~

15.~~16.~~ A copy of the inspection report as described in s. 718.301(4)(p).

16.~~17.~~ Bids for materials, equipment, or services.

17. All affirmative acknowledgments made pursuant to s. 718.121(4)(c).

18. All other written records of the association not specifically included in the foregoing which are related to the

operation of the association.

(c)1. The official records of the association are open to inspection by any association member or the authorized representative of such member at all reasonable times. The right to inspect the records includes the right to make or obtain copies, at the reasonable expense, if any, of the member or authorized representative of such member. A renter of a unit has a right to inspect and copy the association's bylaws and rules. The association may adopt reasonable rules regarding the frequency, time, location, notice, and manner of record inspections and copying. The failure of an association to provide the records within 10 working days after receipt of a written request creates a rebuttable presumption that the association willfully failed to comply with this paragraph. A unit owner who is denied access to official records is entitled to the actual damages or minimum damages for the association's willful failure to comply. Minimum damages are $50 per calendar day for up to 10 days, beginning on the 11th working day after receipt of the written request. The failure to permit inspection entitles any person prevailing in an enforcement action to recover reasonable attorney fees from the person in control of the records who, directly or indirectly, knowingly denied access to the records.

2. Any person who knowingly or intentionally defaces or destroys accounting records that are required by this chapter to

be maintained during the period for which such records are required to be maintained, or who knowingly or intentionally fails to create or maintain accounting records that are required to be created or maintained, with the intent of causing harm to the association or one or more of its members, is personally subject to a civil penalty pursuant to s. 718.501(1)(d).

3. The association shall maintain an adequate number of copies of the declaration, articles of incorporation, bylaws, and rules, and all amendments to each of the foregoing, as well as the question and answer sheet as described in s. 718.504 and year-end financial information required under this section, on the condominium property to ensure their availability to unit owners and prospective purchasers, and may charge its actual costs for preparing and furnishing these documents to those requesting the documents. An association shall allow a member or his or her authorized representative to use a portable device, including a smartphone, tablet, portable scanner, or any other technology capable of scanning or taking photographs, to make an electronic copy of the official records in lieu of the association's providing the member or his or her authorized representative with a copy of such records. The association may not charge a member or his or her authorized representative for the use of a portable device. Notwithstanding this paragraph, the following records are not accessible to unit owners:

a. Any record protected by the lawyer-client privilege as

described in s. 90.502 and any record protected by the work-product privilege, including a record prepared by an association attorney or prepared at the attorney's express direction, which reflects a mental impression, conclusion, litigation strategy, or legal theory of the attorney or the association, and which was prepared exclusively for civil or criminal litigation or for adversarial administrative proceedings, or which was prepared in anticipation of such litigation or proceedings until the conclusion of the litigation or proceedings.

b. Information obtained by an association in connection with the approval of the lease, sale, or other transfer of a unit.

c. Personnel records of association or management company employees, including, but not limited to, disciplinary, payroll, health, and insurance records. For purposes of this sub-subparagraph, the term "personnel records" does not include written employment agreements with an association employee or management company, or budgetary or financial records that indicate the compensation paid to an association employee.

d. Medical records of unit owners.

e. Social security numbers, driver license numbers, credit card numbers, e-mail addresses, telephone numbers, facsimile numbers, emergency contact information, addresses of a unit owner other than as provided to fulfill the association's notice requirements, and other personal identifying information of any

person, excluding the person's name, unit designation, mailing address, property address, and any address, e-mail address, or facsimile number provided to the association to fulfill the association's notice requirements. Notwithstanding the restrictions in this sub-subparagraph, an association may print and distribute to parcel owners a directory containing the name, parcel address, and all telephone numbers of each parcel owner. However, an owner may exclude his or her telephone numbers from the directory by so requesting in writing to the association. An owner may consent in writing to the disclosure of other contact information described in this sub-subparagraph. The association is not liable for the inadvertent disclosure of information that is protected under this sub-subparagraph if the information is included in an official record of the association and is voluntarily provided by an owner and not requested by the association.

f. Electronic security measures that are used by the association to safeguard data, including passwords.

g. The software and operating system used by the association which allow the manipulation of data, even if the owner owns a copy of the same software used by the association. The data is part of the official records of the association.

h. All affirmative acknowledgments made pursuant to s. 718.121(4)(c).

Section 2. Paragraph (b) of subsection (6) of section

718.116, Florida Statutes, is amended to read:

718.116 Assessments; liability; lien and priority; interest; collection.—

(6)

(b) No foreclosure judgment may be entered until at least 45 ~~30~~ days after the association gives written notice to the unit owner of its intention to foreclose its lien to collect the unpaid assessments. The notice must be in substantially the following form:

DELINQUENT ASSESSMENT

This letter is to inform you a Claim of Lien has been filed against your property because you have not paid the ...(type of assessment)... assessment to ...(name of association).... The association intends to foreclose the lien and collect the unpaid amount within 45 ~~30~~ days of this letter being provided to you.

You owe the interest accruing from ...(month/year)... to the present. As of the date of this letter, the total amount due with interest is $..... All costs of any action and interest from this day forward will also be charged to your account.

Any questions concerning this matter should be directed to ...(insert name, addresses, and telephone numbers of association representative)....

If this notice is not given at least 45 ~~30~~ days before the foreclosure action is filed, and if the unpaid assessments, including those coming due after the claim of lien is recorded, are paid before the entry of a final judgment of foreclosure, the association shall not recover attorney ~~attorney's~~ fees or costs. The notice must be given by delivery of a copy of it to the unit owner or by certified or registered mail, return receipt requested, addressed to the unit owner at his or her last known address; and, upon such mailing, the notice shall be deemed to have been given, and the court shall proceed with the foreclosure action and may award attorney ~~attorney's~~ fees and costs as permitted by law. The notice requirements of this subsection are satisfied if the unit owner records a notice of contest of lien as provided in subsection (5). The notice requirements of this subsection do not apply if an action to foreclose a mortgage on the condominium unit is pending before any court; if the rights of the association would be affected by such foreclosure; and if actual, constructive, or substitute service of process has been made on the unit owner.

Section 3. Subsection (4) of section 718.121, Florida

Statutes, is amended, and subsections (5) and (6) are added to that section, to read:

718.121 Liens.—

(4)(a) If an association sends an invoice for assessments or a unit's statement of the account described in s. 718.111(12)(a)11.b., the invoice for assessments or the unit's statement of account must be delivered to the unit owner by first-class United States mail or by electronic transmission to the unit owner's e-mail address maintained in the association's official records.

(b) Before changing the method of delivery for an invoice for assessments or the statement of the account, the association must deliver a written notice of such change to each unit owner. The written notice must be delivered to the unit owner at least 30 days before the association sends an invoice for assessments or the statement of the account by the new delivery method. The notice must be sent by first-class United States mail to the unit owner at his or her last address as reflected in the association's records and, if such address is not the unit address, must be sent by first-class United States mail to the unit address. Notice is deemed to have been delivered upon mailing as required by this paragraph.

(c) A unit owner must affirmatively acknowledge his or her understanding that the association will change its method of delivery of an invoice for assessments or the unit's statement

of the account before the association may change the method of delivering an invoice for assessments or the statement of the account. The unit owner may make the affirmative acknowledgment electronically or in writing.

(5) An association may not require payment of attorney fees related to a past due assessment without first delivering a written notice of late assessment to the unit owner which specifies the amount owed the association and provides the unit owner an opportunity to pay the amount owed without the assessment of attorney fees. The notice of late assessment must be sent by first-class United States mail to the unit owner at his or her last address as reflected in the association's records and, if such address is not the unit address, must also be sent by first-class United States mail to the unit address. Notice is deemed to have been delivered upon mailing as required by this subsection. A rebuttable presumption that an association mailed a notice in accordance with this subsection is established if a board member, officer, or agent of the association, or a manager licensed under part VIII of chapter 468, provides a sworn affidavit attesting to such mailing. The notice must be in substantially the following form:

NOTICE OF LATE ASSESSMENT

RE: Unit .... of ...(name of association)...

The following amounts are currently due on your account to ...(name of association)..., and must be paid within 30 days of the date of this letter. This letter shall serve as the association's notice of its intent to proceed with further collection action against your property no sooner than 30 days of the date of this letter, unless you pay in full the amounts set forth below:

Maintenance due ...(dates)...	$.....
Late fee, if applicable	$.....
Interest through ...(dates)...*	$.....
TOTAL OUTSTANDING	$.....

*Interest accrues at the rate of .... percent per annum.

(6) Except as otherwise provided in this chapter, no lien may be filed by the association against a condominium unit until 45 ~~30~~ days after the date on which a notice of intent to file a lien has been delivered to the owner by registered or certified mail, return receipt requested, ~~and~~ by first-class United States mail to the owner at his or her last address as reflected in the association's records and, if such address is not the unit address, by first-class United States mail to the unit address ~~of the association, if the address is within the United States,~~

~~and delivered to the owner at the address of the unit if the owner's address as reflected in the records of the association is not the unit address. If the address reflected in the records is outside the United States, sending the notice to that address and to the unit address by first-class United States mail is sufficient~~. Delivery of the notice shall be deemed given upon mailing as required by this subsection. The notice must be in substantially the following form:

NOTICE OF INTENT
TO RECORD A CLAIM OF LIEN

RE: Unit .... of ...(name of association)...

The following amounts are currently due on your account to ...(name of association)..., and must be paid within 45 ~~30~~ days after your receipt of this letter. This letter shall serve as the association's notice of intent to record a Claim of Lien against your property no sooner than 45 ~~30~~ days after your receipt of this letter, unless you pay in full the amounts set forth below:

Maintenance due ...(dates)...	$.....
Late fee, if applicable	$.....

Interest through ...(dates)...* $.....
Certified mail charges $.....
Other costs $.....
TOTAL OUTSTANDING $.....

*Interest accrues at the rate of .... percent per annum.

Section 4. Paragraphs (a) and (c) of subsection (2) of section 719.104, Florida Statutes, are amended to read:

719.104 Cooperatives; access to units; records; financial reports; assessments; purchase of leases.—

(2) OFFICIAL RECORDS.—

(a) From the inception of the association, the association shall maintain a copy of each of the following, where applicable, which shall constitute the official records of the association:

1. The plans, permits, warranties, and other items provided by the developer pursuant to s. 719.301(4).

2. A photocopy of the cooperative documents.

3. A copy of the current rules of the association.

4. A book or books containing the minutes of all meetings of the association, of the board of directors, and of the unit owners.

5. A current roster of all unit owners and their mailing addresses, unit identifications, voting certifications, and, if

known, telephone numbers. The association shall also maintain the e-mail addresses and the numbers designated by unit owners for receiving notice sent by electronic transmission of those unit owners consenting to receive notice by electronic transmission. The e-mail addresses and numbers provided by unit owners to receive notice by electronic transmission shall be removed from association records when consent to receive notice by electronic transmission is revoked. However, the association is not liable for an erroneous disclosure of the e-mail address or the number for receiving electronic transmission of notices.

6. All current insurance policies of the association.

7. A current copy of any management agreement, lease, or other contract to which the association is a party or under which the association or the unit owners have an obligation or responsibility.

8. Bills of sale or transfer for all property owned by the association.

9. Accounting records for the association and separate accounting records for each unit it operates, according to good accounting practices. The accounting records shall include, but not be limited to:

a. Accurate, itemized, and detailed records of all receipts and expenditures.

b. A current account and a monthly, bimonthly, or quarterly statement of the account for each unit designating the

name of the unit owner, the due date and amount of each assessment, the amount paid upon the account, and the balance due.

c. All audits, reviews, accounting statements, and financial reports of the association.

d. All contracts for work to be performed. Bids for work to be performed shall also be considered official records and shall be maintained for a period of 1 year.

10. Ballots, sign-in sheets, voting proxies, and all other papers and electronic records relating to voting by unit owners, which shall be maintained for a period of 1 year after the date of the election, vote, or meeting to which the document relates.

11. All rental records where the association is acting as agent for the rental of units.

12. A copy of the current question and answer sheet as described in s. 719.504.

13. All affirmative acknowledgments made pursuant to s. 719.108(3)(b)3.

14. All other written records of the association not specifically included in the foregoing which are related to the operation of the association.

(c) The official records of the association are open to inspection by any association member or the authorized representative of such member at all reasonable times. The right to inspect the records includes the right to make or obtain

copies, at the reasonable expense, if any, of the association member. The association may adopt reasonable rules regarding the frequency, time, location, notice, and manner of record inspections and copying. The failure of an association to provide the records within 10 working days after receipt of a written request creates a rebuttable presumption that the association willfully failed to comply with this paragraph. A unit owner who is denied access to official records is entitled to the actual damages or minimum damages for the association's willful failure to comply. The minimum damages are $50 per calendar day for up to 10 days, beginning on the 11th working day after receipt of the written request. The failure to permit inspection entitles any person prevailing in an enforcement action to recover reasonable attorney fees from the person in control of the records who, directly or indirectly, knowingly denied access to the records. Any person who knowingly or intentionally defaces or destroys accounting records that are required by this chapter to be maintained during the period for which such records are required to be maintained, or who knowingly or intentionally fails to create or maintain accounting records that are required to be created or maintained, with the intent of causing harm to the association or one or more of its members, is personally subject to a civil penalty pursuant to s. 719.501(1)(d). The association shall maintain an adequate number of copies of the declaration,

articles of incorporation, bylaws, and rules, and all amendments to each of the foregoing, as well as the question and answer sheet as described in s. 719.504 and year-end financial information required by the department, on the cooperative property to ensure their availability to unit owners and prospective purchasers, and may charge its actual costs for preparing and furnishing these documents to those requesting the same. An association shall allow a member or his or her authorized representative to use a portable device, including a smartphone, tablet, portable scanner, or any other technology capable of scanning or taking photographs, to make an electronic copy of the official records in lieu of the association providing the member or his or her authorized representative with a copy of such records. The association may not charge a member or his or her authorized representative for the use of a portable device. Notwithstanding this paragraph, the following records shall not be accessible to unit owners:

1. Any record protected by the lawyer-client privilege as described in s. 90.502 and any record protected by the work-product privilege, including any record prepared by an association attorney or prepared at the attorney's express direction which reflects a mental impression, conclusion, litigation strategy, or legal theory of the attorney or the association, and which was prepared exclusively for civil or criminal litigation or for adversarial administrative

proceedings, or which was prepared in anticipation of such litigation or proceedings until the conclusion of the litigation or proceedings.

2. Information obtained by an association in connection with the approval of the lease, sale, or other transfer of a unit.

3. Personnel records of association or management company employees, including, but not limited to, disciplinary, payroll, health, and insurance records. For purposes of this subparagraph, the term "personnel records" does not include written employment agreements with an association employee or management company, or budgetary or financial records that indicate the compensation paid to an association employee.

4. Medical records of unit owners.

5. Social security numbers, driver license numbers, credit card numbers, e-mail addresses, telephone numbers, facsimile numbers, emergency contact information, addresses of a unit owner other than as provided to fulfill the association's notice requirements, and other personal identifying information of any person, excluding the person's name, unit designation, mailing address, property address, and any address, e-mail address, or facsimile number provided to the association to fulfill the association's notice requirements. Notwithstanding the restrictions in this subparagraph, an association may print and distribute to unit ~~parcel~~ owners a directory containing the

name, unit ~~parcel~~ address, and all telephone numbers of each unit ~~parcel~~ owner. However, an owner may exclude his or her telephone numbers from the directory by so requesting in writing to the association. An owner may consent in writing to the disclosure of other contact information described in this subparagraph. The association is not liable for the inadvertent disclosure of information that is protected under this subparagraph if the information is included in an official record of the association and is voluntarily provided by an owner and not requested by the association.

6. Electronic security measures that are used by the association to safeguard data, including passwords.

7. The software and operating system used by the association which allow the manipulation of data, even if the owner owns a copy of the same software used by the association. The data is part of the official records of the association.

8. All affirmative acknowledgments made pursuant to s. 719.108(3)(b)3.

Section 5. Subsections (3) and (4) of section 719.108, Florida Statutes, are amended to read:

719.108 Rents and assessments; liability; lien and priority; interest; collection; cooperative ownership.—

(3)(a) Rents and assessments, and installments on them, not paid when due bear interest at the rate provided in the cooperative documents from the date due until paid. This rate

may not exceed the rate allowed by law and, if a rate is not provided in the cooperative documents, accrues at 18 percent per annum. If the cooperative documents or bylaws so provide, the association may charge an administrative late fee in addition to such interest, not to exceed the greater of $25 or 5 percent of each installment of the assessment for each delinquent installment that the payment is late. Any payment received by an association must be applied first to any interest accrued by the association, then to any administrative late fee, then to any costs and reasonable attorney fees incurred in collection, and then to the delinquent assessment. The foregoing applies notwithstanding s. 673.3111, any purported accord and satisfaction, or any restrictive endorsement, designation, or instruction placed on or accompanying a payment. The preceding sentence is intended to clarify existing law. A late fee is not subject to chapter 687 or s. 719.303(4).

(b)1. If an association sends an invoice for assessments or a unit's statement of the account described in s. 719.104(2)(a)9.b., the invoice for assessments or the unit's statement of account must be delivered to the unit owner by first-class United States mail or by electronic transmission to the unit owner's e-mail address maintained in the association's official records.

2. Before changing the method of delivery for an invoice for assessments or the statement of the account, the association

must deliver a written notice of such change to each unit owner. The written notice must be delivered to the unit owner at least 30 days before the association sends the invoice for assessments or statement of the account by the new delivery method. The notice must be sent by first-class United States mail to the unit owner at his or her last address as reflected in the association's records and, if such address is not the unit address, must be sent by first-class United States mail to the unit address. Notice is deemed to have been delivered upon mailing as required by this subparagraph.

3. A unit owner must affirmatively acknowledge his or her understanding that the association will change its method of delivery of an invoice for assessments or the statement of the account before the association may change the method of delivering an invoice for assessments or the statement of the account. The unit owner may make the affirmative acknowledgment electronically or in writing.

(c) An association may not require payment of attorney fees related to a past due assessment without first delivering a written notice of late assessment to the owner which specifies the amount owed the association and provides the unit owner an opportunity to pay the amount owed without the assessment of attorney fees. The notice of late assessment must be sent by first-class United States mail to the unit owner at his or her last address as reflected in the association's records and, if

such address is not the unit address, must also be sent by first-class United States mail to the unit address. Notice is deemed to have been delivered upon mailing as required by this paragraph. A rebuttable presumption that an association mailed a notice in accordance with this paragraph is established if a board member, officer, or agent of the association, or a manager licensed under part VIII of chapter 468, provides a sworn affidavit attesting to such mailing. The notice must be in substantially the following form:

NOTICE OF LATE ASSESSMENT

RE: Unit .... of ...(name of association)...

The following amounts are currently due on your account to ...(name of association)..., and must be paid within 30 days of the date of this letter. This letter shall serve as the association's notice to proceed with further collection action against your property no sooner than 30 days of the date of this letter, unless you pay in full the amounts set forth below:

Maintenance due ...(dates)... $.....
Late fee, if applicable $.....

Interest through ...(dates)...* $.....

TOTAL OUTSTANDING $.....

*Interest accrues at the rate of .... percent per annum.

(4) The association has a lien on each cooperative parcel for any unpaid rents and assessments, plus interest, and any administrative late fees. If authorized by the cooperative documents, the lien also secures reasonable attorney fees incurred by the association incident to the collection of the rents and assessments or enforcement of such lien. The lien is effective from and after recording a claim of lien in the public records in the county in which the cooperative parcel is located which states the description of the cooperative parcel, the name of the unit owner, the amount due, and the due dates. Except as otherwise provided in this chapter, a lien may not be filed by the association against a cooperative parcel until 45 ~~30~~ days after the date on which a notice of intent to file a lien has been delivered to the owner.

(a) The notice must be sent to the unit owner at the address of the unit by first-class United States mail, and the notice must be in substantially the following form:

NOTICE OF INTENT

TO RECORD A CLAIM OF LIEN

RE: Unit ...(unit number)... of ...(name of cooperative)...

The following amounts are currently due on your account to ...(name of association)..., and must be paid within 45 ~~30~~ days after your receipt of this letter. This letter shall serve as the association's notice of intent to record a Claim of Lien against your property no sooner than 45 ~~30~~ days after your receipt of this letter, unless you pay in full the amounts set forth below:

Maintenance due ...(dates)...	$.....
Late fee, if applicable	$.....
Interest through ...(dates)...*	$.....
Certified mail charges	$.....
Other costs	$.....
TOTAL OUTSTANDING	$.....

*Interest accrues at the rate of .... percent per annum.

1. If the most recent address of the unit owner on the records of the association is the address of the unit, the notice must be sent by certified mail, return receipt requested, to the unit owner at the address of the unit.

2. If the most recent address of the unit owner on the records of the association is in the United States, but is not the address of the unit, the notice must be sent by certified mail, return receipt requested, to the unit owner at his or her most recent address.

3. If the most recent address of the unit owner on the records of the association is not in the United States, the notice must be sent by first-class United States mail to the unit owner at his or her most recent address.

(b) A notice that is sent pursuant to this subsection is deemed delivered upon mailing. A claim of lien must be executed and acknowledged by an officer or authorized agent of the association. The lien is not effective 1 year after the claim of lien was recorded unless, within that time, an action to enforce the lien is commenced. The 1-year period is automatically extended for any length of time during which the association is prevented from filing a foreclosure action by an automatic stay resulting from a bankruptcy petition filed by the parcel owner or any other person claiming an interest in the parcel. The claim of lien secures all unpaid rents and assessments that are due and that may accrue after the claim of lien is recorded and through the entry of a final judgment, as well as interest and all reasonable costs and attorney fees incurred by the association incident to the collection process. Upon payment in full, the person making the payment is entitled to a

satisfaction of the lien.

(c) By recording a notice in substantially the following form, a unit owner or the unit owner's agent or attorney may require the association to enforce a recorded claim of lien against his or her cooperative parcel:

NOTICE OF CONTEST OF LIEN

TO: ...(Name and address of association)...:

You are notified that the undersigned contests the claim of lien filed by you on ...., ...(year)..., and recorded in Official Records Book .... at Page ...., of the public records of .... County, Florida, and that the time within which you may file suit to enforce your lien is limited to 90 days from the date of service of this notice. Executed this .... day of ...., ...(year)....

Signed: ...(Owner or Attorney)...

After notice of contest of lien has been recorded, the clerk of the circuit court shall mail a copy of the recorded notice to the association by certified mail, return receipt requested, at the address shown in the claim of lien or most recent amendment to it and shall certify to the service on the face of the

notice. Service is complete upon mailing. After service, the association has 90 days in which to file an action to enforce the lien. If the action is not filed within the 90-day period, the lien is void. However, the 90-day period shall be extended for any length of time during which the association is prevented from filing its action because of an automatic stay resulting from the filing of a bankruptcy petition by the unit owner or by any other person claiming an interest in the parcel.

(d) A release of lien must be in substantially the following form:

RELEASE OF LIEN

The undersigned lienor, in consideration of the final payment in the amount of $...., hereby waives and releases its lien and right to claim a lien for unpaid assessments through ...., ...(year)..., recorded in the Official Records Book .... at Page ...., of the public records of .... County, Florida, for the following described real property:

THAT COOPERATIVE PARCEL WHICH INCLUDES UNIT NO. .... OF ...(NAME OF COOPERATIVE)..., A COOPERATIVE AS SET FORTH IN THE COOPERATIVE DOCUMENTS AND THE EXHIBITS ANNEXED THERETO AND FORMING A PART THEREOF, RECORDED IN OFFICIAL RECORDS BOOK ...., PAGE ...., OF THE

PUBLIC RECORDS OF .... COUNTY, FLORIDA.

...(Signature of Authorized Agent)... ...(Signature of Witness)...

...(Print Name)... ...(Print Name)...

...(Signature of Witness)...

...(Print Name)...

Sworn to (or affirmed) and subscribed before me this .... day of ...., ...(year)..., by ...(name of person making statement)....

...(Signature of Notary Public)...

...(Print, type, or stamp commissioned name of Notary Public)...

Personally Known .... OR Produced .... as identification.

Section 6. Present paragraph (l) of subsection (4) of section 720.303, Florida Statutes, is redesignated as paragraph (m), a new paragraph (l) is added to that subsection, and paragraph (c) of subsection (5) of that section is amended, to read:

720.303 Association powers and duties; meetings of board; official records; budgets; financial reporting; association funds; recalls.—

(4) OFFICIAL RECORDS.—The association shall maintain each of the following items, when applicable, which constitute the official records of the association:

(l) All affirmative acknowledgments made pursuant to s. 720.3085(3)(c)3.

(5) INSPECTION AND COPYING OF RECORDS.—The official records shall be maintained within the state for at least 7 years and shall be made available to a parcel owner for inspection or photocopying within 45 miles of the community or within the county in which the association is located within 10 business days after receipt by the board or its designee of a written request. This subsection may be complied with by having a copy of the official records available for inspection or copying in the community or, at the option of the association, by making the records available to a parcel owner electronically via the Internet or by allowing the records to be viewed in electronic format on a computer screen and printed upon request. If the association has a photocopy machine available where the records are maintained, it must provide parcel owners with copies on request during the inspection if the entire request is limited to no more than 25 pages. An association shall allow a member or his or her authorized representative to use a portable device, including a smartphone, tablet, portable scanner, or any other technology capable of scanning or taking photographs, to make an electronic copy of the official records in lieu of the association's providing the member or his or her authorized representative with a copy of such records. The association may not charge a fee to a member or his or her authorized

representative for the use of a portable device.

(c) The association may adopt reasonable written rules governing the frequency, time, location, notice, records to be inspected, and manner of inspections, but may not require a parcel owner to demonstrate any proper purpose for the inspection, state any reason for the inspection, or limit a parcel owner's right to inspect records to less than one 8-hour business day per month. The association may impose fees to cover the costs of providing copies of the official records, including the costs of copying and the costs required for personnel to retrieve and copy the records if the time spent retrieving and copying the records exceeds one-half hour and if the personnel costs do not exceed $20 per hour. Personnel costs may not be charged for records requests that result in the copying of 25 or fewer pages. The association may charge up to 25 cents per page for copies made on the association's photocopier. If the association does not have a photocopy machine available where the records are kept, or if the records requested to be copied exceed 25 pages in length, the association may have copies made by an outside duplicating service and may charge the actual cost of copying, as supported by the vendor invoice. The association shall maintain an adequate number of copies of the recorded governing documents, to ensure their availability to members and prospective members. Notwithstanding this paragraph, the following records are not accessible to members or parcel

owners:

1. Any record protected by the lawyer-client privilege as described in s. 90.502 and any record protected by the work-product privilege, including, but not limited to, a record prepared by an association attorney or prepared at the attorney's express direction which reflects a mental impression, conclusion, litigation strategy, or legal theory of the attorney or the association and which was prepared exclusively for civil or criminal litigation or for adversarial administrative proceedings or which was prepared in anticipation of such litigation or proceedings until the conclusion of the litigation or proceedings.

2. Information obtained by an association in connection with the approval of the lease, sale, or other transfer of a parcel.

3. Personnel records of association or management company employees, including, but not limited to, disciplinary, payroll, health, and insurance records. For purposes of this subparagraph, the term "personnel records" does not include written employment agreements with an association or management company employee or budgetary or financial records that indicate the compensation paid to an association or management company employee.

4. Medical records of parcel owners or community residents.

5. Social security numbers, driver license numbers, credit card numbers, electronic mailing addresses, telephone numbers, facsimile numbers, emergency contact information, any addresses for a parcel owner other than as provided for association notice requirements, and other personal identifying information of any person, excluding the person's name, parcel designation, mailing address, and property address. Notwithstanding the restrictions in this subparagraph, an association may print and distribute to parcel owners a directory containing the name, parcel address, and all telephone numbers of each parcel owner. However, an owner may exclude his or her telephone numbers from the directory by so requesting in writing to the association. An owner may consent in writing to the disclosure of other contact information described in this subparagraph. The association is not liable for the disclosure of information that is protected under this subparagraph if the information is included in an official record of the association and is voluntarily provided by an owner and not requested by the association.

6. Any electronic security measure that is used by the association to safeguard data, including passwords.

7. The software and operating system used by the association which allows the manipulation of data, even if the owner owns a copy of the same software used by the association. The data is part of the official records of the association.

8. All affirmative acknowledgments made pursuant to s.

720.3085(3)(c)3.

Section 7. Paragraphs (c) and (d) are added to subsection (3) of section 720.3085, Florida Statutes, to read:

720.3085 Payment for assessments; lien claims.—

(3) Assessments and installments on assessments that are not paid when due bear interest from the due date until paid at the rate provided in the declaration of covenants or the bylaws of the association, which rate may not exceed the rate allowed by law. If no rate is provided in the declaration or bylaws, interest accrues at the rate of 18 percent per year.

(c)1. If an association sends an invoice for assessments or a parcel's statement of the account described in s. 720.303(4)(j)2., the invoice for assessments or the parcel's statement of account must be delivered to the parcel owner by first-class United States mail or by electronic transmission to the parcel owner's e-mail address maintained in the association's official records.

2. Before changing the method of delivery for an invoice for assessments or the statement of the account, the association must deliver a written notice such change to each parcel owner. The written notice must be delivered to the parcel owner at least 30 days before the association sends an invoice for assessments or the statement of the account by the new delivery method. The notice must be sent by first-class United States mail to the owner at his or her last address as reflected in the

association's records and, if such address is not the parcel address, must be sent by first-class United States mail to the parcel address. Notice is deemed to have been delivered upon mailing as required by this subparagraph.

3. A parcel owner must affirmatively acknowledge his or her understanding that the association will change its method of delivery of an invoice for assessments or the statement of the account before the association may change the method of delivering an invoice for assessments or the statement of the account. The parcel owner may make the affirmative acknowledgment electronically or in writing.

(d) An association may not require payment of attorney fees related to a past due assessment without first delivering a written notice of late assessment to the parcel owner which specifies the amount owed the association and provides the parcel owner an opportunity to pay the amount owed without the assessment of attorney fees. The notice of late assessment must be sent by first-class United States mail to the owner at his or her last address as reflected in the association's records and, if such address is not the parcel address, must also be sent by first-class United States mail to the parcel address. Notice is deemed to have been delivered upon mailing as required by this paragraph. A rebuttable presumption that an association mailed a notice in accordance with this paragraph is established if a board member, officer, or agent of the association, or a manager

licensed under part VIII of chapter 468, provides a sworn affidavit attesting to such mailing. The notice must be in substantially the following form:

NOTICE OF LATE ASSESSMENT

RE: Parcel .... of ...(name of association)...

The following amounts are currently due on your account to ...(name of association)..., and must be paid within 30 days after the date of this letter. This letter shall serve as the association's notice to proceed with further collection action against your property no sooner than 30 days after the date of this letter, unless you pay in full the amounts set forth below:

Maintenance due ...(dates)...	$.....
Late fee, if applicable	$.....
Interest through ...(dates)...*	$.....
TOTAL OUTSTANDING	$.....

*Interest accrues at the rate of .... percent per annum.

Section 8. This act shall take effect July 1, 2021.

CS/HB 1051

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1051 Environmental Compliance Costs
SPONSOR(S): Tourism, Infrastructure & Energy Subcommittee, Fernandez-Barquin and others
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 964

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Tourism, Infrastructure & Energy Subcommittee	15 Y, 0 N, As CS	Johnson	Keating
2) Environment, Agriculture & Flooding Subcommittee	17 Y, 0 N	Gawin	Moore
3) Commerce Committee		Johnson	Hamon

SUMMARY ANALYSIS

Under current law, investor-owned electric utilities may recover certain costs, such as fuel-related expenses and environmental compliance costs, outside of base rates through separate cost recovery charges approved by the Public Service Commission (PSC). Environmental compliance costs are recovered through a statutorily created mechanism known as the Environmental Cost Recovery Clause (ECRC), which provides cash flow for the specific operations and maintenance activities and large equipment modifications necessary to comply with environmental laws and regulations.

The bill expands the definition of "environmental compliance costs" for purposes of the ECRC to include costs or expenses prudently incurred by an electric utility after July 1, 2021, pursuant to an agreement between the electric utility and a governmental wastewater utility for the exclusive purpose of the electric utility constructing and operating a wastewater reuse system where operation of the system will serve to further compliance with environmental laws or regulations applicable to the electric utility and where the system fully or partially satisfies a local government's statutory reclaimed water reuse requirements. The bill also requires at least 50 percent of the reclaimed water the reuse system produces to be used in conjunction with the water requirements of an electrical generating facility or facilities owned by the electric utility to offset all or part of the electric utility's water use authorized by permit.

The bill does not appear to have a fiscal impact on state or local governments, but may result in changes to electric rates paid by private and public entities. *See* Fiscal Analysis for details.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Ratemaking for Investor-Owned Electric Utilities

The Public Service Commission (PSC) has broad jurisdiction over the rates and service of investor-owned electric utilities (IOUs) in Florida.[1] Under this broad grant of authority, and through more specific grants of authority in ch. 366, F.S., the PSC sets rates for each IOU through five primary components, each of which is established in a separate administrative proceeding:

- Base rates
  - Designed to recover most operations and maintenance expenses, capital investments, and a return on capital investment.
- Fuel and purchased power cost recovery charges
  - Designed to recover the costs of fuel and the energy component of wholesale power purchases.
  - By PSC order, may include recovery of capital investments, including a return on investment, in limited circumstances.
- Capacity cost recovery charges
  - Designed to recover costs of the capacity component of wholesale power purchases.
  - By statute, may include recovery of certain costs related to development of new nuclear power plants, including a return, provided that the costs will be moved into base rates when the new plant becomes operational.[2]
- Environmental cost recovery charges
  - Designed to recover costs to comply with government-mandated environmental standards.
  - By statute, may include recovery of certain capital investments, including a return on investment, provided that these costs may be moved into base rates at the IOU's next rate case.[3]
- Energy conservation and efficiency cost recovery charges
  - Designed to recover costs of implementing PSC-approved energy conservation and efficiency programs.

In each base rate proceeding, the PSC sets a reasonable rate of return on equity for the IOU. After rates are set, the actual rate of return on equity earned by an IOU fluctuates over time as utility revenues and expenses fluctuate.

Environmental Cost Recovery Charges

Separate from base rates, environmental cost recovery charges are set annually, and revenue collected through the Environmental Cost Recovery Clause (ECRC) provides cash flow for the specific operations and maintenance activities and large equipment modifications necessary to comply with environmental laws and regulations.[4]

The ECRC was established by the Legislature in 1993. To implement this law, the PSC established three criteria for approval of recovery through the ECRC:

- The electric utility's costs were prudently incurred after April 13, 1993.

[1] *See, e.g.,* ss. 366.01, 366.04(1), 366.041, 366.05(1), and 366.06, F.S. There are five public electric utilities in Florida: Florida Power & Light Company, Duke Energy Florida, Tampa Electric Company, Gulf Power Company, and Florida Public Utilities Company. Florida Power & Light Company and Gulf Power Company operate under the same parent company, NextEra Energy, Inc.
[2] S. 366.93, F.S.
[3] S. 366.8255, F.S.
[4] Public Service Commission, Agency Analysis of 2021 House Bill 1051 p. 1 (Mar. 3, 2021).

- The activity is legally required to comply with a governmentally imposed environmental regulation that was enacted, that became effective, or whose effect was triggered after the electric utility's last test year upon which rates are based.
- The electric utility's costs are not recovered through some other cost recovery mechanism or through base rates.[5]

Environmental compliance costs are defined in Florida law as all costs or expenses incurred by an electric utility in complying with environmental laws or regulations.[6] Environmental compliance costs include, but are not limited to:

- Inservice capital investments, including the electric utility's last authorized rate of return on equity;
- Operation and maintenance expenses;
- Fuel procurement costs;
- Purchased power costs;
- Emission allowance costs;
- Direct taxes on environmental equipment;
- Costs or expenses prudently incurred by an electric utility pursuant to an agreement entered into between the electric utility and the Department of Environmental Protection (DEP) or the United States Environmental Protection Agency (EPA) for the exclusive purpose of ensuring compliance with ozone ambient air quality standards by an electrical generating facility owned by the electric utility; and
- Costs or expenses prudently incurred for scientific research and geological assessments of carbon capture and storage conducted in the state for the purpose of reducing an electric utility's greenhouse gas emissions when such costs or expenses are incurred in joint research projects with Florida state government agencies and universities.[7]

Reuse of Reclaimed Water

Water conservation and the promotion of reuse of reclaimed water have been established by the Legislature as formal state objectives.[8] Reuse is defined as the deliberate application of reclaimed water for a beneficial purpose.[9] Reclaimed water is defined as water from a domestic wastewater[10] treatment facility that has received at least secondary treatment[11] and basic disinfection[12] for reuse.[13]

Reclaimed water is reused for various purposes, such as irrigation, industrial uses, groundwater recharge, and prevention of saltwater intrusion in coastal groundwater aquifers.[14] Industrial uses of reclaimed water include plant wash-down, and processing and cooling water purposes.[15] Several power plants throughout the state use reclaimed water for cooling purposes.[16]

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[5] *See* PSC Order No. PSC-94-0044-FOF-EI, issued January 12, 1994, in Docket No. 930613-EI, In re: Petition to establish an environmental cost recovery clause pursuant to Section 366.0825, Florida Statutes by Gulf Power Company. Section 120.80(13), F.S., exempts cost recovery clause proceedings from rulemaking requirements.

[6] S. 366.8255(1)(d), F.S. Environmental laws or regulations are defined as "all federal, state, or local statutes, administrative regulations, orders, ordinances, resolutions, or other requirements that apply to electric utilities and are designed to protect the environment."

[7] S. 366.8255(1)(d), F.S.

[8] Ss. 403.064(1) and 373.250(1), F.S.

[9] R. 62-610.200(52), F.A.C.

[10] Section 367.021(5), F.S., defines the term "domestic wastewater" to mean wastewater principally from dwellings, business buildings, institutions, and sanitary wastewater or sewage treatment plants.

[11] Rule 62-610.200(54), F.A.C. defines the term "secondary treatment" to mean "wastewater treatment to a level that will achieve the effluent limitations specified in paragraph 62-600.420(1)(a), F.A.C."

[12] Rule 62-600.440(5), F.A.C., provides the requirements for basic disinfection.

[13] Section 373.019(17), F.S.; R. 62-610.200(48), F.A.C.

[14] Martinez, Christopher J. and Clark, Mark W., *Reclaimed Water and Florida's Water Reuse Program*, UF/IFAS Agricultural and Biological Engineering Department (rev. 07/2012), *available at* https://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.590.5063&rep=rep1&type=pdf.

[15] Department of Environmental Protection (DEP), *Uses of Reclaimed Water*, https://floridadep.gov/water/domestic-wastewater/content/uses-reclaimed-water (last visited Mar. 5, 2021).

[16] DEP, *Industrial Uses of Reclaimed Water*, https://floridadep.gov/water/domestic-wastewater/content/industrial-uses-reclaimed-water (last visited Mar. 5, 2021).

Local governments are authorized and encouraged under Florida law to implement programs for the reuse of reclaimed water and are authorized to allocate the costs of such programs in a reasonable manner.[17]

Ocean Outfalls

An ocean outfall occurs when a wastewater treatment facility or other facility discharges treated effluent into coastal or ocean waters.[18] State law prohibits construction of new ocean outfalls and requires that all six ocean outfalls in Florida cease discharging wastewater by December 31, 2025.[19] In addition, wastewater facilities that discharged wastewater through an ocean outfall on July 1, 2008, are required to install a reuse system no later than December 31, 2025.[20] Existing discharges through ocean outfalls were required to meet advanced wastewater treatment requirements[21] by December 31, 2018.[22]

Effect of the Bill

The bill amends s. 366.8255(1)(d), F.S., by expanding the definition of environmental compliance costs to include the costs or expenses prudently incurred by an electric utility, after July 1, 2021, pursuant to an agreement between the electric utility and a governmental wastewater utility for the exclusive purpose of the electric utility constructing and operating a wastewater reuse system where operation of the system will serve to further compliance with environmental laws or regulations that apply to the electric utility and where operation of the system will serve to fully or partially satisfy a local government's reclaimed water reuse requirements under s. 403.064, F.S.,[23] or s. 403.086, F.S.[24] The bill further requires that at least 50 percent of the produced reclaimed water is used in conjunction with the water requirements of one or more of the utility's electrical generating facilities in order to offset all or part of the electric utility's water use authorized by permit.

Under the bill, an electric utility that constructs a new wastewater reuse system that satisfies the expanded definition of environmental compliance costs may begin to seek recovery of all its prudently incurred costs and expenses through the ECRC. The electric utility's level of cost recovery through the ECRC may include depreciation of the capital investments in the wastewater reuse system, the associated direct operating and maintenance expenses, and associated indirect expenses such as taxes and a return on its capital investments.

B. SECTION DIRECTORY:

Section 1 Amends s. 366.8255, F.S., relating to environmental cost recovery.

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:

[17] Section 403.064(9)-(10), F.S.
[18] DEP, *Ocean Outfall Study Final Report* ES-1 (Apr. 18, 2006), *available at* https://floridadep.gov/sites/default/files/OceanOutfallStudy_0.pdf.
[19] S. 403.086(10), F.S.; Ch. 2008-232, Laws of Fla.
[20] S. 403.086(10)(c), F.S.
[21] S. 403.086(4), F.S.
[22] S. 403.086(10)(b), F.S.
[23] Section 403.064, F.S., relates to the use of reclaimed water.
[24] Section 403.086, F.S., relates to sewage disposal facilities.

None. Any increased workload associated with the PSC's review of the ECRC petition is expected to be handled within existing PSC resources.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

The bill may result in higher electric rates for local governments if an electric utility's costs increase due to agreements with wastewater utilities for wastewater reuse systems.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may result in higher electric rates if an electric utility's costs increase due to agreements with wastewater utilities for wastewater reuse 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 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:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Due to economies of scale, it is possible that a joint-use wastewater reuse system will result in lower total costs to the electric utility and wastewater utility when compared with two independent actions by these parties. While it is possible that the agreement between the parties could apportion cost and liability responsibilities, the bill does not require the agreement to address these matters. Therefore, the bill may be interpreted to create an incentive or an expectation that local governments shift cost and liability responsibilities from wastewater utilities to electric utilities.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 9, 2021, the Tourism, Infrastructure & Energy Subcommittee adopted a strike-all amendment and reported the bill favorably as a committee substitute. The committee substitute:

- Specifies that an electric utility's water reuse project, to be eligible for cost recovery as an environmental compliance cost under the bill, must:
  - Be incurred pursuant to an agreement between the electric utility and a governmental wastewater utility; and
  - Serve to further compliance with environmental laws or regulations that apply to the electric utility.

- Provides that at least 50 percent of the reclaimed water produced by an eligible project must be used in conjunction with the water requirements of an electric generating facility.

This analysis is drafted to the committee substitute as approved by the Tourism, Infrastructure & Energy Subcommittee.

A bill to be entitled

An act relating to environmental compliance costs; amending s. 366.8255, F.S.; redefining the term "environmental compliance costs" to include costs or expenses prudently incurred by an electric utility in complying with specified reclaimed water reuse requirements; providing an effective date.

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

Section 1. Paragraph (d) of subsection (1) of section 366.8255, Florida Statutes, is amended to read:

366.8255 Environmental cost recovery.—

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

(d) "Environmental compliance costs" includes all costs or expenses incurred by an electric utility in complying with environmental laws or regulations, including, but not limited to:

1. Inservice capital investments, including the electric utility's last authorized rate of return on equity thereon.

2. Operation and maintenance expenses.

3. Fuel procurement costs.

4. Purchased power costs.

5. Emission allowance costs.

6. Direct taxes on environmental equipment.

7. Costs or expenses prudently incurred by an electric utility pursuant to an agreement entered into on or after the effective date of this act and prior to October 1, 2002, between the electric utility and the Florida Department of Environmental Protection or the United States Environmental Protection Agency for the exclusive purpose of ensuring compliance with ozone ambient air quality standards by an electrical generating facility owned by the electric utility.

8. Costs or expenses prudently incurred for scientific research and geological assessments of carbon capture and storage conducted in this state for the purpose of reducing an electric utility's greenhouse gas emissions when such costs or expenses are incurred in joint research projects with Florida state government agencies and Florida state universities.

9. Costs or expenses prudently incurred by an electric utility after July 1, 2021, pursuant to an agreement between the electric utility and a governmental wastewater utility for the exclusive purpose of the electric utility constructing and operating a wastewater reuse system where operation of the system will serve to further compliance with environmental laws or regulations that apply to the electric utility and where the system fully or partially satisfies a local government's reclaimed water reuse requirements under s. 403.064 or s. 403.086. At least 50 percent of the reclaimed water the system produces must be used in conjunction with the water requirements

of an electrical generating facility or facilities owned by the electric utility to offset all or part of the electric utility's water use authorized by permit.

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 #: CS/HB 1151 Department of Highway Safety and Motor Vehicles
SPONSOR(S): Tourism, Infrastructure & Energy Subcommittee, Brannan
TIED BILLS: **IDEN./SIM. BILLS:** SB 1134

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Tourism, Infrastructure & Energy Subcommittee	15 Y, 0 N, As CS	Johnson	Keating
2) Commerce Committee		Johnson	Hamon

SUMMARY ANALYSIS

The bill is a comprehensive bill relating to the Department of Highway Safety and Motor Vehicles (DHSMV). In summary, the bill:

- Adopts Federal Motor Carrier Safety Administration (FMCSA) regulations for commercial motor vehicles (CMV) as such regulations exist on December 31, 2020, and provides an additional day for CMV drivers to provide written notice that certain violations were corrected.
- Clarifies that safety belt usage requirements apply to a motor vehicle that is operated and stationary on the public highways of this state.
- Transfers the authority to conduct compliance reviews on non-public sector buses from the Department of Transportation (DOT) to DHSMV to conform to the previous transfer of CMV enforcement from DOT to DHSMV and makes clarifying and conforming changes.
- Conforms Florida's odometer disclosure requirements to federal regulations.
- Requires motor carriers whose registration has been suspended to return their license plates.
- Requires DHSMV to deny registrations under the International Registration Plan for motor carriers meeting specified requirements.
- Permanently disqualifies anyone convicted of human trafficking through the use of a CMV from obtaining a commercial driver license.
- Adds texting while driving and using a hand-held mobile telephone while driving as serious disqualifying offenses on a commercial driver license.
- Provides DHSMV with subpoena authority to investigate complaints of violation of various statutes under its purview.

The bill does not appear to impact state or local government revenues or expenditures. *See* Fiscal Comments.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Adoption of Federal Commercial Motor Vehicle Regulations

Current Situation

Florida law provides that all owners and drivers of commercial motor vehicles[1] (CMVs) operating on the public highways in interstate commerce are subject to the following Federal Motor Carrier Safety Administration (FMCSA)[2] regulations:[3]

49 CFR Part	Heading
382	Controlled Substance and Alcohol Use Testing
383	Commercial Driver's License Standards; Requirements and Testing
385	Safety Fitness Procedures
390	Federal Motor Carrier Safety Regulations; General
391	Qualifications of Drivers and Longer Combination Vehicle Driver Instructors
392	Driving of Commercial Motor Vehicles
393	Parts and Accessories Necessary for Safe Operation
395	Hours of Service for Drivers
396	Inspection, Repair, and Maintenance
397	Transportation of Hazardous Materials; Driving and Parking Rules

However, Florida law provides that CMV drivers *or* owners engaged in *intrastate* commerce are only subject to FMCSA regulations as they existed in December 31, 2018.[4]

Since 2018, the FMCSA has adopted final rules on controlled substance testing and hours of service regulations.

Beginning January 1, 2020, the minimum rate for random controlled substance testing for drivers of CMVs requiring a commercial driver license (CDL) was increased from 25 percent to 50 percent per year. Since all owners and drivers of CMVs engaged in intrastate commerce are subject to the rules as they existed on December 31, 2018, the random controlled substances testing rate remains at 25 percent for intrastate drivers.[5]

Beginning September 29, 2020, FMCSA revised its hours-of-service regulations providing greater flexibility to CMV drivers subject to those rules, including revisions to the rules on required breaks/rest periods, additional exceptions during adverse conditions, and modifications to exceptions for short-haul trips.[6]

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[1] Section 316.003(13), F.S., defines the term "commercial motor vehicle" as any self-propelled or towed vehicle used on the public highways in commerce to transport passengers or cargo, if such vehicle has a gross vehicle weight rating of 10,000 pounds or more; is designed to transport more than 15 passengers, including the driver; or is used in the transportation of materials found to be hazardous for the purposes of the Hazardous Materials Transportation Act, as amended.

[2] The Federal Motor Carrier Safety Administration's (FMCSA) mission is to prevent commercial motor vehicle-related fatalities and injuries. Activities of FMCSA contribute to ensuring safety in motor carrier operations through strong enforcement of safety regulations, targeting high-risk carriers and commercial motor vehicle drivers; improving safety information systems and commercial motor vehicle technologies; strengthening commercial motor vehicle equipment and operating standards; and increasing safety awareness. https://www.federalregister.gov/agencies/federal-motor-carrier-safety-administration (last visited January 25, 2021).

[3] Ss. 316.302(1)(a) and (b), F.S..

[4] S. 316.302(1)(b), F.S.

[5] Department of Highway Safety and Motor Vehicles 2021 Agency Legislative Proposals, p.5.

[6] *Id*.

For the purpose of enforcing Florida law relating to CMVs, any law enforcement officer of DSHMV or duly appointed agent who holds a current safety inspector certification from the Commercial Vehicle Safety Alliance[7] may require the driver of any CMV operated on the state's highways to stop and submit to an inspection of the vehicle or the driver's records. If the vehicle or driver is found to be operating in an unsafe condition, or if any required part or equipment is not present or is not in proper repair or adjustment, and the continued operation would present an unduly hazardous operating condition, the officer may require the vehicle or the driver to be removed from service[8] until corrected. However, if continuous operation would not present an unduly hazardous operating condition, the officer may give written notice requiring correction of the condition within 14 days.[9] The 14 day requirement is inconsistent with federal requirements requiring carriers to provide written notice within 15 days.[10]

Effect of the Bill

The bill provides that all CMV drivers *and* owners are subject to federal CMV rules contained in 49 C.F.R. parts 382, 383, 385, 386, 390-397 as they exist on December 31, 2020.

The bill increases the length of time for CMV operators to correct non-hazardous deficiencies from 14 days to 15 days, consistent with federal requirements.

Safety Belt Usage

Current Situation

Under the Florida Safety Belt Law, with some exceptions, it is unlawful for any person:

- To operate a motor vehicle or an autocycle[11] unless each passenger and the operator of the vehicle or autocycle under the age of 18 years are restrained by a safety belt or by a child restraint device; or
- To operate a motor vehicle or an autocycle unless the person is restrained by a safety belt.[12]

For the purpose of this law, the term "motor vehicle" means a motor vehicle as defined in s. 316.003, F.S.,[13] which is operated on the roadways, streets, and highways of this state. The term does not include a school bus, a bus used for the transportation of persons for compensation. a farm tractor or implement of husbandry, a truck having a gross vehicle weight rating of more than 26,000 pounds, a motorcycle, a moped, a bicycle, or an electric bicycle.[14]

Additionally, it is unlawful for any person 18 years of age or older to be a passenger in the front seat of a motor vehicle or an autocycle unless such person is restrained by a safety belt when the vehicle or

[7] The Commercial Vehicle Safety Alliance (CVSA) is a nonprofit association comprised of local, state, provincial, territorial and federal commercial motor vehicle safety officials and industry representatives. The Alliance aims to achieve uniformity, compatibility and reciprocity of commercial motor vehicle inspections and enforcement by certified inspectors dedicated to driver and vehicle safety. https://www.cvsa.org/about-cvsa/ (Last visited January 25, 2021).

[8] This is pursuant to the North American Standard Out-of-Service Criteria.

[9] S. 316.302(9), F.S.

[10] Department of Highway Safety and Motor Vehicles, Agency Analysis of 2021 House Bill 1151, p. 2.

[11] Section 316.003(2), F.S., defines the term "autocycle" as a three-wheeled motorcycle that has two wheels in the front and one wheel in the back; is equipped with a roll cage or roll hoops, a seat belt for each occupant, antilock brakes, a steering wheel, and seating that does not require the operator to straddle or sit astride it; and is manufactured in accordance with the applicable federal motorcycle safety standards in 49 C.F.R. part 571 by a manufacturer registered with the National Highway Traffic Safety Administration.

[12] S. 316.614(3), F.S.

[13] Section 316.003(44), F.S., defines the term "motor vehicle" as a self-propelled vehicle not operated upon rails or guideway, but not including any bicycle, electric bicycle, motorized scooter, electric personal assistive mobility device, mobile carrier, personal delivery device, swamp buggy, or moped.

[14] S. 316.641(3)(a), F.S.

autocycle is *in motion*.[15] The statutory base fine of a nonmoving violation is $30;[16] however, with various fees and surcharges, the total fine up to is $108.[17]

Court cases have interpreted the Florida Safety Belt Law to apply only when the vehicle is in motion.[18]

Effect of the Bill
The bill amends the definition of the term "motor vehicle" for purposes of the Florida Safety Belt Law to provide that it includes a motor vehicle which is operated and stationary on the public highways of this state, for example a motor vehicle stopped at a traffic signal.

Nonpublic Sector Buses

Current Situation
In 2011, DOT's Office of Motor Carrier Compliance was transferred to the Florida Highway Patrol (FHP) within DHSMV.[19] However, at that time, Florida law relating to nonpublic sector buses[20] was not amended to correspond to other statutory changes. Therefore, Florida law still requires DOT to revise standards for the safe operation of nonpublic sector buses. These standards must be directed toward ensuring that:

- Nonpublic sector buses are safely maintained, equipped, and operated.
- Nonpublic sector buses are carrying the insurance required by law and carrying liability insurance on the checked baggage of passengers.
- Florida license tags are purchased for nonpublic sector buses.
- The driving records of drivers of nonpublic sector buses are checked by their employers at least once each year to ascertain whether the driver has a suspended or revoked driver license.[21]

The statute currently provides that DOT personnel may conduct compliance reviews for determining compliance with these requirements. A civil penalty not to exceed $5,000 in the aggregate may be assessed against any person who violates any provision of this section or who violates any DOT rule or order. A civil penalty not to exceed $25,000 in the aggregate may be assessed for violations found in a follow-up compliance review conducted within a 24-month period. A civil penalty not to exceed $25,000 in the aggregate may be assessed and the motor carrier may be enjoined pursuant to s. 316.3026, F.S., if violations are found after a second follow-up compliance review within 12 months after the first follow-up compliance review.[22]

Effect of the Bill
The bill transfers from DOT to DHSMV the authority to conduct compliance reviews on nonpublic sector buses. This conforms the statute to the 2011 transfer of CMV enforcement from DOT to DHSMV.

The bill provides that all owners and drivers of nonpublic sector buses operated on highways in Florida are subject to applicable portions of the Code of Federal Regulations, removes duplicative standards for nonpublic sector buses, and removes the time periods for follow-up compliance investigations. While the bill removes penalty language, the bill references existing statutory language that provides for identical penalties.

[15] S. 316.614(5), F.S.
[16] S. 318.18(2), F.S.
[17] Florida Association Clerk of Courts, 2020 Distribution Schedule, p. 21. https://cdn.ymaws.com/www.flclerks.com/resource/resmgr/advisories/advisories_2021/21bull005_Attach_2_2020_Dist.pdf (last visited January 22, 2021).
[18] Department of Highway Safety and Motor Vehicles, Agency Analysis of 2021 House Bill 1151, p. 3.
[19] Ch. 2011-66, L.O.F.
[20] Section 316.003(47), F.S., defines the term "nonpublic sector bus" as any bus which is used for the transportation of persons for compensation and which is not owned, leased, operated, or controlled by a municipal, county, or state government or a governmentally owned or managed nonprofit corporation.
[21] S. 316.70(1), F.S.
[22] S. 316.70(2), F.S.

The bill also authorizes a law enforcement officer of the DHSMV or a duly appointed agent of DHSMV with a current safety inspector certification from the Commercial Vehicle Safety Alliance to inspect nonpublic sector buses and remove them from service if continued operation would present an unduly hazardous operating condition. However, if continuous operation would not be unduly hazardous, the officer or agent may give written notice requiring correction of the condition within 15 days after the inspection.

Odometer Disclosure Requirements

Current Situation

Odometer fraud is a federal offense, and the National Highway Traffic Safety Administration (NHTSA) requires sellers to disclose and declare vehicle odometer readings at the time of sale. According to NHTSA, due to an increase in the current average vehicle age to almost 12 years from the previous average of eight years, an increasingly large number of vehicles are subject to a heightened risk of odometer fraud. In order to combat the increased number of motor vehicles subject to a risk of odometer fraud, NHTSA recently amended the federal rule regarding the exemption from odometer disclosure. The exemption, which previously applied to vehicles 10 years old or older, now applies to vehicles 20 years old or older, beginning with model year 2011 or newer in calendar year 2021.[23]

Florida law is inconsistent with the current federal rules and, with limited exceptions, only requires certain odometer disclosures for vehicles 10 years old or newer.

Effect of the Bill

The bill conforms Florida law to NHTSA's recently adopted odometer disclosure requirements by providing that a vehicle with a model year of 2011 or later is exempt from odometer disclosure after 20 years and a vehicle with a model year of 2010 or earlier is exempt after 10 years.

Performance and Registration Information Systems Management (PRISM)

Current Situation

Federal Regulations

FMSCA's Performance and Registration Information Systems Management (PRISM) program is a component of its mission to reduce the number of CMV crashes, injuries, and fatalities. PRISM provides a safety mechanism to identify and immobilize motor carriers[24] with serious safety deficiencies[25] and hold them accountable using registration and law enforcement sanctions. PRISM requires motor carriers to correct their safety deficiencies to continue operating or face progressively stringent sanctions.[26]

Full participation in PRISM is mandatory for all states as a requirement of the Motor Carrier Safety Assistance Program. Florida is at the full participation level of PRISM.[27]

FMCSA defines "enhanced participation" in regard to PRISM as when a state has the authority to deny vehicle registration to a motor carrier and its vehicles when the motor carrier is attempting to avoid FMCSA enforcement sanctions by "reincarnating" with a new United States Department of Transportation (USDOT) number and company name while maintaining the same officers and

[23] Department of Highway Safety and Motor Vehicles, Agency Analysis of 2021 House Bill 1151, p. 3

[24] The term "motor carrier" means a for-hire motor carrier or a private motor carrier. The term includes a motor carrier's agents, officers and representatives as well as employees responsible for hiring, supervising, training, assigning, or dispatching of drivers and employees concerned with the installation, inspection, and maintenance of motor vehicle equipment and/or accessories. 49 C.F.R. s. 390.5.

[25] FMCSA defines the term "motor carrier with serious safety deficiencies" as a motor carrier that is prohibited from operating by FMCSA through the issuance of a federal out-of-service ("OOS") order.

[26] Department of Highway Safety and Motor Vehicles, Agency Analysis of 2021 House Bill 1151 p. 3 (March 10, 2021).

[27] *Id.*

directors, business address, telephone number, and email of the out-of-service carrier. Currently, DHSMV does not have this authority.[28]

While FMCSA has the ability to sanction motor carriers for safety deficiencies, vehicle registrations are solely within state jurisdiction. The enhanced participation level of PRISM requires states to suspend, revoke, or deny vehicle registration of a motor carrier's vehicles when the motor carrier is prohibited from operating by FMCSA. Companies that operate commercial vehicles transporting passengers or hauling cargo in interstate commerce must be registered with FMCSA, have a USDOT number, and comply with federal safety regulations in order to have their vehicles registered under the International Registration Plan.[29] When a company fails to meet FMCSA safety requirements, it may be placed out-of-service.[30]

In Florida, attempts to register as a reincarnated carrier occur on a regular basis. Because DSHMV does not have the authority to deny registration, there is currently no way to track how many Florida-based carriers who reincarnate are circumventing FMCSA sanctions.[31]

An effectiveness evaluation report released in February 2016 by FMCSA's Strategic Planning and Program Evaluation Division determined that, between 2008 and 2013, states that fully participated in PRISM compared to non-fully participating states have

- A 20.4 percent observable reduction in all CMV crashes,
- A 9.8 percent observable reduction in fatalities involving all CMV crashes, and
- A 6.9 percent reduction in state registered CMVs being placed out-of-service roadside for operating while under a federal out-of-service order.[32]

Effect of the Bill

The bill requires motor carriers or vehicle owners to return suspended plates to DHSMV or surrender them to law enforcement.

The bill authorizes DHSMV to deny registration if an applicant fails to disclose material information required on the application, or if the applicant attempts to hide the disclosure of the real party in interest who has been issued a federal out-of-service order, or if the applicant's business is operated, managed, or otherwise controlled or affiliated with a person who is ineligible for registration, including the applicant entity, a relative, family member, corporate officer, or shareholder.

Human Trafficking

Current Situation

Florida's criminal laws define the term "human trafficking" as transporting, soliciting, recruiting, harboring, providing, enticing, maintaining, or obtaining another person for the purpose of exploitation of that person. [33]

Federal law defines the term "severe forms of trafficking in persons" as:

- Sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age; or
- The recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.[34]

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[28] *Id.*

[29] The International Registration Plan (Plan) is a reciprocity agreement among states of the US, the District of Columbia and provinces of Canada which recognizes the registration of commercial motor vehicles registered by other jurisdictions. It provides for payment of apportioned licensing fees based on the total distance operated in all member jurisdictions. https://www.irponline.org/ (last visited March 18, 2021).

[30] Department of Highway Safety and Motor Vehicles, Agency Analysis of 2021 House Bill 1151 p. 4 (March 10, 2021).

[31] *Id.* at 4.

[32] *Id.* at 4.

[33] S. 787.06(2)(d), F.S.

[34] 22 U.S.C. 7012 (11)

On January 8, 2019, the federal "No Human Trafficking on Our Roads Act" was signed into law. This legislation directs the USDOT to disqualify for life any individual who uses a CMV in committing a felony involving a severe form of trafficking in persons. On September 23, 2019, an FMCSA rule went into effect that permanently bans drivers convicted of human trafficking from operating a CMV for which a CDL or a commercial learner's permit is required.[35]

Currently, Florida does not have specific statutory authority to take action against a CDL when an individual commits a felony involving human trafficking.[36]

Effect of the Bill
The bill defines the term "human trafficking" for purposes of the driver license law as having same meaning as provided in Florida's criminal laws.

The bill provides that DHSMV may not issue a driver license to any person, as a CMV operator, who has been convicted of, or has entered a plea of guilty or nolo contendere, regardless of whether adjudication was withheld, to any felony involving human trafficking under state or federal law involving the use of a CMV.

The bill requires each clerk of court to promptly report to DHSMV each conviction, regardless of whether adjudication was withheld, for human trafficking which involves the use of a CMV.

The bill requires the court to permanently revoke the CDL of a person who has been convicted of, or has entered a plea of guilty or nolo contendere, regardless of whether adjudication is withheld to any felony involving human trafficking under state or federal law involving the use of a commercial motor vehicle. If the court has not permanently revoked such driver license or driving privilege within 30 days after imposing a sentence, DHSMV must permanently revoke the driver license or driving privilege.

The bill provides that any person who uses a CMV involving human trafficking under state or federal law must, be permanently disqualified from operating a commercial motor vehicle upon conviction of, or plea of guilty or nolo contendere to, regardless of whether adjudication is withheld, such felony. This is in addition to any other applicable penalty.

CDL Eight Year Requirement

Current Situation
Pursuant to s. 322.18, F.S., DHSMV issues an original CDL that expires eight years from the date of the driver's next birthday. This allows an original CDL holder to have a license that is valid for more than eight years from the issue date. However, under federal regulations[37] a CDL cannot be valid for more than eight years from the date of issuance. This issue has been pointed out as a deficiency in an FMCSA compliance audit.[38]

Effect of the Bill
The bill provides that a CDL expires at midnight eight years after the licensee's last birthday. This change will not impact current CDL holders.[39]

CMV-Serious Disqualifying Offense

Current Situation
In 2013, the Legislature codified a federal prohibition on drivers of CMVs using handheld devices while driving. However, at that time, the law was not amended to add this infraction to the list of serious disqualifying offenses.

[35] Department of Highway Safety and Motor Vehicles, Agency Analysis of 2021 House Bill 1151, p. 4. (March 5, 2021).
[36] *Id.*
[37] 49 C.F.R. s. 383.73
[38] Department of Highway Safety and Motor Vehicles, Agency Analysis of 2021 House Bill 1151, p. 5. (March 5, 2021).
[39] *Id.* at 7.

Under current law, a person who, for offenses occurring within a three-year period, is convicted of two serious traffic violations arising in separate incidents committed in a CMV must, in addition to any other applicable penalties, be disqualified from operating a CMV for a period of 60 days. A holder of a CDL or commercial learner's permit who, for offenses occurring within a 3-year period, is convicted of two serious traffic violations, or any combination thereof, arising in separate incidents committed in a noncommercial motor vehicle must, in addition to any other applicable penalties, be disqualified from operating a CMV for a period of 60 days if such convictions result in the suspension, revocation, or cancellation of the license holder's driving privilege. Current serious disqualifying offenses include, but are not limited to, reckless driving, driving a CMV without a CMV license, improper lane change, and following too close.[40]

When these violations occur in other states, DHSMV places these violations on the driver record as "not applicable to Florida Statutes" and does not evaluate them to determine if a disqualification should be imposed on the driver. This situation was addressed in a recent FMCSA compliance audit.[41]

Effect of the Bill

The bill provides that texting while driving a commercial motor vehicle or using a hand-held mobile telephone while driving a commercial motor vehicle as provided by federal regulations are serious disqualifying offenses for a CDL. This will give DHSMV the statutory authority to comply with the deficiency in the FMCSA compliance audit.

Subpoena Authority

Current Situation

Under current law, DHSMV has limited authority to issue investigatory subpoenas. Specifically, s. 320.67 and s. 320.861, F.S., authorize DHSMV to issue a subpoena for the attendance of witnesses and production of documents when DHSMV receives a written complaint against a motor vehicle dealer or manufacturer. The two statutes are largely redundant, with the only material difference being that s. 320.67, F.S., additionally provides that any information obtained may not be used against the dealer or manufacturer as the basis for a criminal prosecution.[42]

DHSMV has implemented a pilot program in Miami-Dade County in which it regulates private rebuilt inspection providers,[43] who inspect rebuilt motor vehicles as a prerequisite to issuance of a rebuilt certificate of title. This inspection process is designed to prevent the use of stolen parts and vehicles in the rebuilding process and assists law enforcement with the investigation of theft and related fraud. This inspection process was privatized in Miami-Dade County as part of a pilot program which was later extended in 2019. Pursuant to s. 319.141, F.S., DHSMV has entered into memoranda of understanding (MOU) with private rebuilt inspection providers to provide these services in Miami-Dade County.[44]

Currently, DHSMV does not have the statutory authority to open an investigation of a private rebuilt inspection provider, issue subpoenas, or take testimony from witnesses in determining whether the provider has violated ch. 319, F.S., or the MOU between DHSMV and the provider. In certain instances, it may be necessary to investigate a private rebuilt inspection provider when the entity may be colluding with a chop shop to disguise the identity of a stolen motor vehicle and obtain a clean title to the vehicle. DHSMV currently lacks authority to issue subpoenas to third parties that may aid in determining whether the private rebuilt inspection provider has violated ch. 319, F.S., or a contract term in the MOU.[45]

[40] Section 322.61(1), F.S.
[41] Department of Highway Safety and Motor Vehicles, Agency Analysis of 2021 House Bill 1151, p. 4. (March 5, 2021).
[42] Email from Kevin Jacobs, Legislative Affairs Director, Department of Highway Safety and Motor Vehicles, RE: Investigative Authority. (March 18, 2021).
[43] The pilot program is conducted pursuant to s. 319.141, F.S.,
[44] *Supra* note 42.
[45] *Id.*

Additionally, DHSMV lacks authority to issue investigatory subpoenas and take testimony as part of an investigation of a person for violating provisions of ch. 319, F.S., relating to title certificates; ch. 320, F.S., relating to motor vehicle manufacturers and dealers; or ch. 322, F.S., relating to driver licenses. According to DHSMV, this prevents it from obtaining critical testimony and documents from third-party entities which may demonstrate violations of these chapters sufficient to warrant appropriate regulatory action by DHSMV and/or referral to another entity for further action.[46]

Examples of issues that DHSMV may use subpoena authority to investigate include odometer rollback, fraudulent repair and storage title transactions, and driver license fraud.[47]

Effect of the Bill

The bill authorizes DHSMV to issue investigatory subpoenas, take depositions, and compel the production of documents as it relates to the following:

- Potential violations related to authorized private rebuilt inspection providers;
- Potential violations of ch. 319, F.S., such as unlawful issuances of certificates of title;
- Potential violations of ch. 320, F.S., by motor vehicle dealers and manufacturers; and
- Potential violations of ch. 322, F.S., such as unlawful issuances of driver licenses and identification cards.

In addition to the expanded authority to conduct such investigations, the bill establishes a procedure for enforcing subpoenas in the event of noncompliance. The bill provides DHSMV with the authority to enforce the subpoena in circuit court and subject the person subpoenaed to a contempt of court order in the event of continued noncompliance. DHSMV may designate agents to serve subpoenas and adopt rules to administer these sections.

HB 1359 (2021) to which this bill is linked, creates a public records exemption from disclosure for all information received by DHSMV as a result of an investigation. The exemption would cease when the investigation is closed or when administrative action taken by DHSMV has either concluded or resulted in the information having been made a part of any hearing or court proceeding. HB 1359 further clarifies that DHSMV may release information that is made confidential and exempt in the furtherance of its official duties and responsibilities or the duties and responsibilities of another governmental agency entitled to receive such information.

Effective Date

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

B. SECTION DIRECTORY:

Section 1 Amends s. 316.302, F.S., relating to commercial motor vehicles.

Section 2 Amends s. 316.614, F.S., relating to safety belt usage.

Section 3 Amends s. 316.70, F.S., relating to nonpublic sector buses.

Section 4 Amends s. 319.225, F.S., relating to transfer and reassignment forms and odometer disclosure statements.

Section 5 Amends s. 320.0715, F.S., relating to the International Registration Plan.

Section 6 Amends s. 322.01, F.S., providing definitions.

Section 7 Amends s. 322.05, F.S., relating to persons not to be licensed.

[46] *Id.*

[47] Attachment to E-mail from Kevin Jacobs, Legislative Affairs Director, Department of Highway Safety and Motor Vehicles, RE: Subpoena Authority Examples. (March 12, 2021).

Section 8 Amends s. 322.18, F.S., relating to original applications, licenses, and renewals.

Section 9 Amends s. 322.25, F.S., relating to when a court must forward license to DHSMV and report convictions.

Section 10 Amends s. 322.28, F.S., relating to period of suspension or revocation.

Section 11 Amends s. 322.61, F.S., relating to disqualification from operating a commercial motor vehicle.

Section 12 Creates s. 319.1414, F.S., relating to investigations; examinations; subpoenas; hearings; witnesses.

Section 13 Amends s. 319.25, F.S., relating to cancellation of certificates; investigations; subpoenas and other process; oaths; rules.

Section 14 Amends s. 320.861, F.S., relating to investigations, subpoenas, and other process; oaths, rules.

Section 15 Creates s. 322.71, F.S., relating to investigations, subpoenas and other process; oaths, rules.

Section 16 Amends s. 322.34, F.S., conforming a cross reference.

Section 17 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:

None.

D. FISCAL COMMENTS:

While the bill does not have a direct impact on state government revenues, state noncompliance with certain federal regulations related to human trafficking using a CMV, serious disqualifying offenses for CMV drivers, and failing to achieve compatibility with FMCSA regulations within three years of the

effective date of the federal regulation could impact the state's receipt of federal funds.[48] The bill appears to achieve state compliance with these regulations.

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 of 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

On March 22, 2021, the Tourism, Infrastructure & Energy Subcommittee adopted two amendments and reported the bill favorably as a committee substitute. The committee substitute:

- Revises provisions regarding non-public sector buses:
  - Replaces language regarding penalties for violations by non-public sector buses with references to existing law related to commercial motor vehicle penalties. The penalties do not change.
  - Addresses commercial motor vehicle violations that do not create hazards and provides 15 days for operators to provide notice that certain violations were corrected.
- Provides DHSMV with investigative and subpoena power and the ability to administer oaths or affirmations, examine witnesses, require affidavits, take depositions, and compel the attendance of witnesses and the production of documents, records, and other evidence for use in conducting investigations or examinations into:
  - Authorized private rebuilt inspection providers;
  - Persons suspected of violating violated ch. 319, F.S., relating to motor vehicle title certificates;
  - Persons suspected of violating violated ch. 320, F.S., relating to motor vehicles manufacturers and distributors; and
  - Persons suspected of violating violated ch. 322, F.S., relating to driver licenses.

This analysis is drafted to the committee substitute as approved by the Tourism, Infrastructure & Energy Subcommittee.

[48] E-mail from Kevin Jacobs, Legislative Affairs Director, Department of Highway Safety and Motor Vehicles, RE: DHSMV Package questions. (February 24, 2021).

A bill to be entitled

An act relating to the Department of Highway Safety and Motor Vehicles; amending s. 316.302, F.S.; revising regulations applicable to owners and drivers of commercial motor vehicles; revising the length of time within which an officer is authorized to give written notice requiring correction of an unduly hazardous operating condition; amending s. 316.614, F.S.; revising the definition of the term "motor vehicle"; amending s. 316.70, F.S.; providing that owners and drivers of nonpublic sector buses operated on public highways of this state are subject to specified provisions of law; authorizing the Department of Highway Safety and Motor Vehicles to conduct compliance reviews for a specified purpose; revising civil penalties; authorizing certain law enforcement officers and appointed agents to require drivers of nonpublic sector buses to submit to an inspection of the bus and the driver's records; authorizing such officers and agents to require the bus and driver to be removed from service under specified conditions; authorizing such officers and agents to give written notice; conforming provisions to changes made by the act; amending s. 319.225, F.S.; revising applicability; providing that vehicles that

meet certain conditions are exempt from odometer disclosure after specified periods of time; amending s. 320.0715, F.S.; requiring motor carriers and vehicle owners whose registrations have been suspended to return their license plates to the department or surrender their license plates to law enforcement; requiring the department to deny registration of a motor vehicle trip permit under certain conditions; amending s. 322.01, F.S.; defining the term "human trafficking"; amending s. 322.05, F.S.; prohibiting the department from issuing a license to any person as a commercial motor vehicle operator under specified conditions; amending s. 322.18, F.S.; providing that commercial driver licenses expire at midnight 8 years after the licensee's birthday; amending s. 322.25, F.S.; requiring clerks of court to promptly report to the department each conviction for human trafficking, regardless of whether adjudication is withheld; amending s. 322.28, F.S.; requiring the court to permanently revoke the commercial driver license of a person under specified conditions; requiring the department to permanently revoke the driver license or driving privilege of the person if the court has not revoked such driver license or driving privilege within a specified timeframe; amending s. 322.61,

F.S.; revising provisions for disqualification from operating a commercial motor vehicle; providing a penalty for any person who uses a commercial motor vehicle in the commission of a felony involving human trafficking; creating s. 319.1414, F.S.; authorizing the department to conduct investigations and examinations of department-authorized private rebuilt inspection providers; authorizing the department to exercise certain powers when conducting such investigations and examinations; authorizing the department to petition a court if a person refuses to testify, produce materials, or obey a subpoena or subpoena duces tecum; requiring the court to issue an order; requiring such person to obey the subpoena or show cause for failing to obey the subpoena; providing a penalty for a person who fails to comply with the court's order; authorizing the department to designate agents for specified purposes; providing that subpoenaed witnesses are entitled to witness fees; providing exceptions; authorizing the department to adopt rules; amending s. 319.25, F.S.; authorizing the department to conduct investigations and examinations relating to violations of provisions relating to title certificates; authorizing the department to exercise certain powers when conducting such investigations and

examinations; authorizing the department to petition a court if a person refuses to testify, produce materials, or obey a subpoena or subpoena duces tecum; requiring the court to issue an order; requiring such person to obey the subpoena or show cause for failing to obey the subpoena; providing a penalty for a person who fails to comply with the court's order; authorizing the department to designate agents for specified purposes; providing that subpoenaed witnesses are entitled to witness fees; providing exceptions; authorizing the department to adopt rules; amending s. 320.861, F.S.; authorizing the department to conduct investigations and examinations relating to violations of certain laws, rules, or orders relating to motor vehicle licenses; revising the powers of the department relating to conducting such investigations and examinations; authorizing the department to petition a court if a person refuses to testify, produce materials, or obey a subpoena or subpoena duces tecum; requiring the court to issue an order; requiring such person to obey the subpoena or show cause for failing to obey the subpoena; providing a penalty for a person who fails to comply with the court's order; authorizing the department to designate agents for specified purposes; providing that

subpoenaed witnesses are entitled to witness fees; providing exceptions; authorizing the department to adopt rules; creating s. 322.71, F.S.; authorizing the department to conduct investigations and examinations relating to violations of certain laws, rules, or orders relating to driver licenses; authorizing the department to exercise certain powers when conducting such investigations and examinations; authorizing the department to petition a court if a person refuses to testify, produce materials, or obey a subpoena or subpoena duces tecum; requiring the court to issue an order; requiring such person to obey the subpoena or show cause for failing to obey the subpoena; providing a penalty for a person who fails to comply with the court's order; authorizing the department to designate agents for specified purposes; providing that subpoenaed witnesses are entitled to witness fees; providing exceptions; authorizing the department to adopt rules; amending s. 322.34, F.S.; conforming a cross-reference; providing an effective date.

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

Section 1. Paragraph (b) of subsection (1) and subsection (9) of section 316.302, Florida Statutes, are amended to read:

316.302 Commercial motor vehicles; safety regulations; transporters and shippers of hazardous materials; enforcement.—

(1)

(b) Except as otherwise provided in this section, all owners and ~~or~~ drivers of commercial motor vehicles that are engaged in intrastate commerce are subject to the rules and regulations contained in 49 C.F.R. parts 382, 383, 385, 386, and 390-397, as such rules and regulations existed on December 31, 2020 ~~2018~~.

(9) For the purpose of enforcing this section, any law enforcement officer of the Department of Highway Safety and Motor Vehicles or duly appointed agent who holds a current safety inspector certification from the Commercial Vehicle Safety Alliance may require the driver of any commercial vehicle operated on the highways of this state to stop and submit to an inspection of the vehicle or the driver's records. If the vehicle or driver is found to be operating in an unsafe condition, or if any required part or equipment is not present or is not in proper repair or adjustment, and the continued operation would present an unduly hazardous operating condition, the officer may require the vehicle or the driver to be removed from service pursuant to the North American Standard Out-of-Service Criteria, until corrected. However, if continuous operation would not present an unduly hazardous operating condition, the officer may give written notice requiring

correction of the condition within 15 ~~14~~ days.

(a) Any member of the Florida Highway Patrol or any law enforcement officer employed by a sheriff's office or municipal police department authorized to enforce the traffic laws of this state pursuant to s. 316.640 who has reason to believe that a vehicle or driver is operating in an unsafe condition may, as provided in subsection (11), enforce the provisions of this section.

(b) Any person who fails to comply with an officer's request to submit to an inspection under this subsection commits a violation of s. 843.02 if the person resists the officer without violence or a violation of s. 843.01 if the person resists the officer with violence.

Section 2. Paragraph (a) of subsection (3) of section 316.614, Florida Statutes, is amended to read:

316.614 Safety belt usage.—

(3) As used in this section:

(a) "Motor vehicle" means a motor vehicle as defined in s. 316.003 which is operated on the roadways, streets, and highways of this state or when stationary at a traffic control device. The term does not include:

1. A school bus.

2. A bus used for the transportation of persons for compensation.

3. A farm tractor or implement of husbandry.

4. A truck having a gross vehicle weight rating of more than 26,000 pounds.

5. A motorcycle, a moped, a bicycle, or an electric bicycle.

Section 3. Section 316.70, Florida Statutes, is amended to read:

316.70 Nonpublic sector buses; safety rules.—

(1) All owners and drivers of nonpublic sector buses operated on the public highways of this state are subject to the rules and regulations ~~The Department of Transportation shall establish and revise standards to ensure the safe operation of nonpublic sector buses, which standards shall be those~~ contained in 49 C.F.R. parts 382, 385, and 390-397 to ensure ~~and which shall be directed toward ensuring~~ that:

(a) Nonpublic sector buses are safely maintained, equipped, and operated.

(b) Nonpublic sector buses are carrying the insurance required by law and carrying liability insurance on the checked baggage of passengers not to exceed the standard adopted by the United States Department of Transportation.

(c) Florida license tags are purchased for nonpublic sector buses pursuant to s. 320.38.

~~(d) The driving records of drivers of nonpublic sector buses are checked by their employers at least once each year to ascertain whether the driver has a suspended or revoked driver~~

~~license.~~

(2) Department of Highway Safety and Motor Vehicles ~~Transportation~~ personnel may conduct compliance reviews for the purpose of determining compliance with this section. A civil penalty ~~not to exceed $5,000 in the aggregate~~ may be assessed against any person who violates any provision of this section or who violates any rule or order of the department found during a compliance review as provided in s. 316.3025. A ~~of Transportation. A civil penalty not to exceed $25,000 in the aggregate may be assessed for violations found in a followup compliance review conducted within a 24-month period. A civil penalty not to exceed $25,000 in the aggregate may be assessed and the~~ motor carrier may be enjoined from operation pursuant to s. 316.3026 for ~~if~~ violations found during a ~~are found after a second followup~~ compliance review ~~within 12 months after the first followup compliance review~~. Motor carriers found to be operating without insurance coverage required by s. 627.742 or 49 C.F.R. part 387 may be enjoined as provided in s. 316.3026.

(3) For the purpose of enforcing this section, any law enforcement officer of the Department of Highway Safety and Motor Vehicles or a duly appointed agent of the department who holds a current safety inspector certification from the Commercial Vehicle Safety Alliance may require the driver of any nonpublic sector bus operated on the highways of this state to stop and submit to an inspection of the vehicle or the driver's

records. If the vehicle is being operated or the driver is operating the vehicle in an unsafe condition, or if any required part or equipment is not present or is not in proper repair or adjustment, and the continued operation would be unduly hazardous, the officer or agent may require the vehicle or the driver to be removed from service pursuant to the North American Standard Out-of-Service Criteria until all safety concerns are corrected. However, if continuous operation would not be unduly hazardous, the officer or agent may give written notice requiring correction of the condition within 15 days after the inspection.

(4) ~~(3)~~ School buses subject to ~~the provisions of~~ chapter 1006 or s. 316.615 are exempt from ~~the provisions of~~ this section.

Section 4. Subsection (4) of section 319.225, Florida Statutes, is amended to read:

319.225 Transfer and reassignment forms; odometer disclosure statements.—

(4) Upon transfer or reassignment of a certificate of title to a used motor vehicle, the transferor shall complete the odometer disclosure statement provided for by this section and the transferee shall acknowledge the disclosure by signing and printing his or her name in the spaces provided. This subsection does not apply to a vehicle that has a gross vehicle rating of more than 16,000 pounds, a vehicle that is not self-propelled,

or a vehicle that is exempt from odometer disclosure. A vehicle with a model year of 2011 or newer is exempt from odometer disclosure after 20 years, and a vehicle with a model year of 2010 or older is exempt from odometer disclosure after 10 years ~~old or older~~. A lessor who transfers title to his or her vehicle without obtaining possession of the vehicle shall make odometer disclosure as provided by 49 C.F.R. s. 580.7. Any person who fails to complete or acknowledge a disclosure statement as required by this subsection is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083. The department may not issue a certificate of title unless this subsection has been complied with.

Section 5. Subsections (6) and (7) are added to section 320.0715, Florida Statutes, to read:

320.0715 International Registration Plan; motor carrier services; permits; retention of records.—

(6) A motor carrier or vehicle owner whose registration has been suspended shall return his or her license plate to the department or surrender his or her license plates to law enforcement.

(7) The department shall deny registration if:

(a) The applicant fails to disclose material information required on the application;

(b) The applicant has applied in an attempt to hide the disclosure of the real party in interest who has been issued a

federal out-of-service order; or

(c) The applicant's business is operated, managed, or otherwise controlled by or affiliated with a person who is ineligible for registration, including the applicant entity, a relative, a family member, a corporate officer, or a shareholder.

Section 6. Present subsections (25) through (47) of section 322.01, Florida Statutes, are redesignated as subsections (26) through (48), respectively, and a new subsection (25) is added to that section, to read:

322.01 Definitions.—As used in this chapter:

(25) "Human trafficking" has the same meaning as provided in s. 787.06(2)(d).

Section 7. Subsection (12) is added to section 322.05, Florida Statutes, to read:

322.05 Persons not to be licensed.—The department may not issue a license:

(12) To any person, as a commercial motor vehicle operator, who has been convicted of, or has entered a plea of guilty or nolo contendere to, regardless of whether adjudication was withheld, any felony involving human trafficking under state or federal law involving the use of a commercial motor vehicle.

Section 8. Paragraph (f) is added to subsection (2) of section 322.18, Florida Statutes, to read:

322.18 Original applications, licenses, and renewals;

expiration of licenses; delinquent licenses.—

(2) Each applicant who is entitled to the issuance of a driver license, as provided in this section, shall be issued a driver license, as follows:

(f) Notwithstanding any other provision of this chapter, an applicant applying for an original issuance of a commercial driver license as defined in s. 322.01(7) shall be issued a driver license that expires at midnight 8 years after the licensee's last birthday.

Section 9. Subsection (7) is added to section 322.25, Florida Statutes, to read:

322.25 When court to forward license to department and report convictions.—

(7) Each clerk of court shall promptly report to the department each conviction, regardless of whether adjudication was withheld, for human trafficking which involves the use of a commercial motor vehicle.

Section 10. Subsection (8) is added to section 322.28, Florida Statutes, to read:

322.28 Period of suspension or revocation.—

(8) The court shall permanently revoke the commercial driver license of a person who is convicted of, or has entered a plea of guilty or nolo contendere to, regardless of whether adjudication is withheld, any felony involving human trafficking under state or federal law which involves the use of a

commercial motor vehicle. If the court has not permanently revoked such driver license or driving privilege within 30 days after imposing a sentence, the department must permanently revoke the driver license or driving privilege pursuant to this section.

Section 11. Section 322.61, Florida Statutes, is amended to read:

322.61 Disqualification from operating a commercial motor vehicle.—

(1) A person who, for offenses occurring within a 3-year period, is convicted of two of the following serious traffic violations or any combination thereof, arising in separate incidents committed in a commercial motor vehicle shall, in addition to any other applicable penalties, be disqualified from operating a commercial motor vehicle for a period of 60 days. A holder of a commercial driver license or commercial learner's permit who, for offenses occurring within a 3-year period, is convicted of two of the following serious traffic violations, or any combination thereof, arising in separate incidents committed in a noncommercial motor vehicle shall, in addition to any other applicable penalties, be disqualified from operating a commercial motor vehicle for a period of 60 days if such convictions result in the suspension, revocation, or cancellation of the licenseholder's driving privilege:

(a) A violation of any state or local law relating to

motor vehicle traffic control, other than a parking violation, arising in connection with a crash resulting in death;

(b) Reckless driving, as defined in s. 316.192;

(c) Unlawful speed of 15 miles per hour or more above the posted speed limit;

(d) Improper lane change, as defined in s. 316.085;

(e) Following too closely, as defined in s. 316.0895;

(f) Driving a commercial vehicle without obtaining a commercial driver license;

(g) Driving a commercial vehicle without the proper class of commercial driver license or commercial learner's permit or without the proper endorsement; ~~or~~

(h) Driving a commercial vehicle without a commercial driver license or commercial learner's permit in possession, as required by s. 322.03; ~~.~~

(i) Texting while driving; or

(j) Using a handheld mobile telephone while driving.

(2)(a) Any person who, for offenses occurring within a 3-year period, is convicted of three serious traffic violations specified in subsection (1) or any combination thereof, arising in separate incidents committed in a commercial motor vehicle shall, in addition to any other applicable penalties, including but not limited to the penalty provided in subsection (1), be disqualified from operating a commercial motor vehicle for a period of 120 days.

(b) A holder of a commercial driver license or commercial learner's permit who, for offenses occurring within a 3-year period, is convicted of three serious traffic violations specified in subsection (1) or any combination thereof arising in separate incidents committed in a noncommercial motor vehicle shall, in addition to any other applicable penalties, including, but not limited to, the penalty provided in subsection (1), be disqualified from operating a commercial motor vehicle for a period of 120 days if such convictions result in the suspension, revocation, or cancellation of the licenseholder's driving privilege.

(3)(a) Except as provided in subsection (4), any person who is convicted of one of the offenses listed in paragraph (b) while operating a commercial motor vehicle shall, in addition to any other applicable penalties, be disqualified from operating a commercial motor vehicle for a period of 1 year.

(b) Except as provided in subsection (4), any holder of a commercial driver license or commercial learner's permit who is convicted of one of the offenses listed in this paragraph while operating a noncommercial motor vehicle shall, in addition to any other applicable penalties, be disqualified from operating a commercial motor vehicle for a period of 1 year:

1. Driving a motor vehicle while he or she is under the influence of alcohol or a controlled substance;

2. Driving a commercial motor vehicle while the alcohol

concentration of his or her blood, breath, or urine is .04 percent or higher;

3. Leaving the scene of a crash involving a motor vehicle driven by such person;

4. Using a motor vehicle in the commission of a felony;

5. Refusing to submit to a test to determine his or her alcohol concentration while driving a motor vehicle;

6. Driving a commercial motor vehicle when, as a result of prior violations committed operating a commercial motor vehicle, his or her commercial driver license or commercial learner's permit is revoked, suspended, or canceled, or he or she is disqualified from operating a commercial motor vehicle; or

7. Causing a fatality through the negligent operation of a commercial motor vehicle.

(4) Any person who is transporting hazardous materials as defined in s. 322.01(24) shall, upon conviction of an offense specified in subsection (3), be disqualified from operating a commercial motor vehicle for a period of 3 years. The penalty provided in this subsection shall be in addition to any other applicable penalty.

(5) A person who is convicted of two violations specified in subsection (3) which were committed while operating a commercial motor vehicle, or any combination thereof, arising in separate incidents shall be permanently disqualified from operating a commercial motor vehicle. A holder of a commercial

driver license or commercial learner's permit who is convicted of two violations specified in subsection (3) which were committed while operating any motor vehicle arising in separate incidents shall be permanently disqualified from operating a commercial motor vehicle. The penalty provided in this subsection is in addition to any other applicable penalty.

(6) Notwithstanding subsections (3), (4), and (5), any person who uses a commercial motor vehicle in the commission of any felony involving the manufacture, distribution, or dispensing of a controlled substance, including possession with intent to manufacture, distribute, or dispense a controlled substance, shall, upon conviction of such felony, be permanently disqualified from operating a commercial motor vehicle. Notwithstanding subsections (3), (4), and (5), any holder of a commercial driver license or commercial learner's permit who uses a noncommercial motor vehicle in the commission of any felony involving the manufacture, distribution, or dispensing of a controlled substance, including possession with intent to manufacture, distribute, or dispense a controlled substance, shall, upon conviction of such felony, be permanently disqualified from operating a commercial motor vehicle. The penalty provided in this subsection is in addition to any other applicable penalty.

(7) Any person who uses a commercial motor vehicle in the commission of any felony involving human trafficking under state

or federal law shall, upon conviction of, or plea of guilty or nolo contendere to, regardless of whether adjudication is withheld, such felony, be permanently disqualified from operating a commercial motor vehicle. The penalty provided in this subsection is in addition to any other applicable penalty.

(8) ~~(7)~~ A person whose privilege to operate a commercial motor vehicle is disqualified under this section may, if otherwise qualified, be issued a Class E driver license, pursuant to s. 322.251.

(9) ~~(8)~~ A driver who is convicted of or otherwise found to have committed a violation of an out-of-service order while driving a commercial motor vehicle is disqualified as follows:

(a) At least 180 days but not more than 1 year if the driver is convicted of or otherwise found to have committed a first violation of an out-of-service order.

(b) At least 2 years but not more than 5 years if, for offenses occurring during any 10-year period, the driver is convicted of or otherwise found to have committed two violations of out-of-service orders in separate incidents.

(c) At least 3 years but not more than 5 years if, for offenses occurring during any 10-year period, the driver is convicted of or otherwise found to have committed three or more violations of out-of-service orders in separate incidents.

(d) At least 180 days but not more than 2 years if the driver is convicted of or otherwise found to have committed a

first violation of an out-of-service order while transporting hazardous materials required to be placarded under the Hazardous Materials Transportation Act, 49 U.S.C. ss. 5101 et seq., or while operating motor vehicles designed to transport more than 15 passengers, including the driver. A driver is disqualified for a period of at least 3 years but not more than 5 years if, for offenses occurring during any 10-year period, the driver is convicted of or otherwise found to have committed any subsequent violations of out-of-service orders, in separate incidents, while transporting hazardous materials required to be placarded under the Hazardous Materials Transportation Act, 49 U.S.C. ss. 5101 et seq., or while operating motor vehicles designed to transport more than 15 passengers, including the driver.

(10) ~~(9)~~ A driver who is convicted of or otherwise found to have committed an offense of operating a commercial motor vehicle in violation of federal, state, or local law or regulation pertaining to one of the following six offenses at a railroad-highway grade crossing must be disqualified for the period of time specified in subsection (11) ~~(10)~~:

(a) For drivers who are not always required to stop, failing to slow down and check that the tracks are clear of approaching trains.

(b) For drivers who are not always required to stop, failing to stop before reaching the crossing if the tracks are not clear.

(c) For drivers who are always required to stop, failing to stop before driving onto the crossing.

(d) For all drivers, failing to have sufficient space to drive completely through the crossing without stopping.

(e) For all drivers, failing to obey a traffic control device or all directions of an enforcement official at the crossing.

(f) For all drivers, failing to negotiate a crossing because of insufficient undercarriage clearance.

(11)(a) ~~(10)(a)~~ A driver must be disqualified for at least 60 days if the driver is convicted of or otherwise found to have committed a first violation of a railroad-highway grade crossing violation.

(b) A driver must be disqualified for at least 120 days if, for offenses occurring during any 3-year period, the driver is convicted of or otherwise found to have committed a second railroad-highway grade crossing violation in separate incidents.

(c) A driver must be disqualified for at least 1 year if, for offenses occurring during any 3-year period, the driver is convicted of or otherwise found to have committed a third or subsequent railroad-highway grade crossing violation in separate incidents.

Section 12. Section 319.1414, Florida Statutes, is created to read:

319.1414 Investigations; examinations; subpoenas;

hearings; witnesses.—

(1) The department may conduct investigations and examinations of department-authorized private rebuilt inspection providers as it deems necessary to determine whether a person is violating or has violated this chapter or a contract entered into pursuant to this chapter or to assist with the enforcement of this chapter.

(2) For purposes of any investigation or examination conducted pursuant to this section, the department may exercise the power of subpoena and the powers to administer oaths or affirmations, to examine witnesses, to require affidavits, to take depositions, and to compel the attendance of witnesses and the production of books, papers, documents, records, and other evidence. A designated agent of the department may serve a subpoena relating to an investigation or examination.

(3) If a person refuses to testify; produce books, papers, documents, or records; or otherwise obey a subpoena or subpoena duces tecum issued under subsection (2), the department may petition a court of competent jurisdiction in the county where the person's residence or principal place of business is located, upon which the court must issue an order requiring such person to obey the subpoena or show cause for failing to obey the subpoena. Unless the person shows sufficient cause for failing to obey the subpoena, the court shall direct the person to obey the subpoena. Failure to comply with such order is

contempt of court.

(4) For the purpose of any investigation, examination, or proceeding initiated by the department under this chapter, the department may designate agents to serve subpoenas and other process and to administer oaths or affirmations.

(5) Witnesses subpoenaed under this section are entitled to witness fees at the same rate established by s. 92.142 for witnesses in a civil case, except that witness fees are not payable for appearance at the witness's place of business during regular business hours or at the witness's residence.

(6) The department may adopt rules to administer this section.

Section 13. Section 319.25, Florida Statutes, is amended to read:

319.25 Cancellation of certificates; investigations; subpoenas and other process; oaths; rules.—

(1) If it appears that a certificate of title has been improperly issued, the department shall cancel the certificate. Upon cancellation of any certificate of title, the department shall notify the person to whom the certificate of title was issued, as well as any lienholders appearing thereon, of the cancellation and shall demand the surrender of the certificate of title, but the cancellation shall not affect the validity of any lien noted thereon. The holder of the certificate of title shall return it to the department forthwith. If a certificate of

registration has been issued to the holder of a certificate of title so canceled, the department shall immediately cancel the certificate of registration and demand the return of such certificate of registration and license plate or mobile home sticker; and the holder of such certificate of registration and license plate or sticker shall return them to the department forthwith.

(2) The department is authorized, upon application of any person and payment of the proper fees, to prepare and furnish lists containing title information in such form as the department may authorize, to search the records of the department and make reports thereof, and to make photographic copies of the department records and attestations thereof, except as provided in chapter 119.

(3) The department may conduct investigations and examinations of any person suspected of violating or of having violated this chapter or any rule adopted or order issued under this chapter.

(4) For purposes of any investigation or examination conducted pursuant to this section, the department may exercise the power of subpoena and the powers to administer oaths or affirmations, to examine witnesses, to require affidavits, to take depositions, and to compel the attendance of witnesses and the production of books, papers, documents, records, and other evidence. An authorized representative of the department may

serve a subpoena relating to an investigation or examination.

(5) If a person refuses to testify; produce books, papers, documents, or records; or otherwise obey the subpoena or subpoena duces tecum issued under subsection (4), the department may petition a court of competent jurisdiction in the county where the person's residence or principal place of business is located, upon which the court must issue an order requiring such person to obey the subpoena or show cause for failing to obey the subpoena. Unless the person shows sufficient cause for failing to obey the subpoena, the court must direct the person to obey the subpoena. Failure to comply with such order is contempt of court.

(6) For the purpose of any investigation, examination, or proceeding initiated by the department under this chapter, the department may designate agents to serve subpoenas and other process and to administer oaths or affirmations.

(7) Witnesses subpoenaed under this section are entitled to witness fees at the same rate established by s. 92.142 for witnesses in a civil case, except that witness fees are not payable for appearance at the witness's place of business during regular business hours or at the witness's residence.

(8) The department may adopt rules to administer this section.

Section 14. Section 320.861, Florida Statutes, is amended to read:

320.861 Investigations; subpoenas and other process; oaths; rules ~~Inspection of records; production of evidence; subpoena power~~.—

(1) The department may conduct investigations and examinations of any person suspected of violating or of having violated this chapter or any rule adopted or order issued under this chapter ~~inspect the pertinent books, records, letters, and contracts of any licensee, whether dealer or manufacturer, relating to any written complaint made to it against such licensee~~.

(2) For purposes of any investigation or examination conducted pursuant to this section, the department may ~~is granted and authorized to~~ exercise the power of subpoena and the powers to administer oaths or affirmations, to examine witnesses, to require affidavits, to take depositions, and to compel the attendance of witnesses and the production of books, papers, documents, records, and other evidence. A designated agent of the department may serve a subpoena relating to an investigation or examination ~~for the attendance of witnesses and the production of any documentary evidence necessary to the disposition by it of any written complaint against any licensee, whether dealer or manufacturer~~.

(3) If a person refuses to testify; to produce books, papers, documents, or records; or to otherwise obey the subpoena or subpoena duces tecum issued under subsection (2), the

department may petition a court of competent jurisdiction in the county where the person's residence or principal place of business is located, upon which the court must issue an order requiring such person to obey the subpoena or show cause for failing to obey the subpoena. Unless the person shows sufficient cause for failing to obey the subpoena, the court must direct the person to obey the subpoena. Failure to comply with such order constitutes contempt of court.

(4) For the purpose of any investigation, examination, or proceeding initiated by the department under this chapter, the department may designate agents to serve subpoenas and other process and to administer oaths or affirmations. The department shall exercise this power on its own initiative in accordance with ss. 320.615 and 320.71.

(5) Witnesses subpoenaed under this section are entitled to witness fees at the same rate established by s. 92.142 for witnesses in a civil case, except that witness fees are not payable for appearance at the witness's place of business during regular business hours or at the witness's residence.

(6) The department may adopt rules to administer this section.

Section 15. Section 322.71, Florida Statutes, is created to read:

322.71 Investigations; subpoenas and other process; oaths; rules.—

(1) The department may conduct investigations and examinations of any person suspected of violating or of having violated any provision of this chapter or any rule adopted or order issued under this chapter.

(2) For purposes of any investigation or examination conducted pursuant to this section, the department may exercise the power of subpoena and the powers to administer oaths or affirmations, to examine witnesses, to require affidavits, to take depositions, and to compel the attendance of witnesses and the production of books, papers, documents, records, and other evidence. Such subpoenas may be served by an authorized representative of the department.

(3) If a person refuses to testify; to produce books, papers, documents, or records; or to otherwise obey the subpoena or subpoena duces tecum issued under subsection (2), the department may petition a court of competent jurisdiction in the county where the person's residence or principal place of business is located, upon which the court must issue an order requiring such person to obey the subpoena or show cause for failing to obey the subpoena. Unless the person shows sufficient cause for failing to obey the subpoena, the court must direct the person to obey the subpoena. Failure to comply with such order constitutes contempt of court.

(4) For the purpose of any investigation, examination, or proceeding initiated by the department under this chapter, the

department may designate agents to serve subpoenas and other process and to administer oaths or affirmations.

(5) Witnesses subpoenaed under this section are entitled to witness fees at the same rate established by s. 92.142 for witnesses in a civil case, except that witness fees are not payable for appearance at the witness's place of business during regular business hours or at the witness's residence.

(6) The department may adopt rules to administer this section.

Section 16. Subsection (2) of section 322.34, Florida Statutes, is amended to read:

322.34 Driving while license suspended, revoked, canceled, or disqualified.—

(2) Any person whose driver license or driving privilege has been canceled, suspended, or revoked as provided by law, or who does not have a driver license or driving privilege but is under suspension or revocation equivalent status as defined in s. 322.01(42) ~~s. 322.01(41)~~, except persons defined in s. 322.264, who, knowing of such cancellation, suspension, revocation, or suspension or revocation equivalent status, drives any motor vehicle upon the highways of this state while such license or privilege is canceled, suspended, or revoked, or while under suspension or revocation equivalent status, commits:

(a) A misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(b)1. A misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083, upon a second or subsequent conviction, except as provided in paragraph (c).

2. A person convicted of a third or subsequent conviction, except as provided in paragraph (c), must serve a minimum of 10 days in jail.

(c) A felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, upon a third or subsequent conviction if the current violation of this section or the most recent prior violation of the section is related to driving while license canceled, suspended, revoked, or suspension or revocation equivalent status resulting from a violation of:

1. Driving under the influence;

2. Refusal to submit to a urine, breath-alcohol, or blood alcohol test;

3. A traffic offense causing death or serious bodily injury; or

4. Fleeing or eluding.

The element of knowledge is satisfied if the person has been previously cited as provided in subsection (1); or the person admits to knowledge of the cancellation, suspension, or revocation, or suspension or revocation equivalent status; or the person received notice as provided in subsection (4). There

shall be a rebuttable presumption that the knowledge requirement is satisfied if a judgment or order as provided in subsection (4) appears in the department's records for any case except for one involving a suspension by the department for failure to pay a traffic fine or for a financial responsibility violation.

Section 17. This act shall take effect July 1, 2021.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1359 Pub. Rec./Department of Highway Safety and Motor Vehicles
SPONSOR(S): Brannan
TIED BILLS: CS/HB 1151 **IDEN./SIM. BILLS:** CS/SB 1502

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Tourism, Infrastructure & Energy Subcommittee	15 Y, 0 N	Johnson	Keating
2) Government Operations Subcommittee	17 Y, 0 N	Roth	Smith
3) Commerce Committee		Johnson	Hamon

SUMMARY ANALYSIS

CS/HB 1151, to which this bill is linked, provides the Department of Highway Safety and Motor Vehicles (DHSMV) with investigative and subpoena power and the ability to administer oaths or affirmations, examine witnesses, require affidavits, take depositions, and compel the attendance of witnesses and the production of documents, records, and other evidence for use in conducting investigations or examinations.

This bill, which is linked to the passage of HB 1151, creates four public records exemptions, each making confidential and exempt from public disclosure information received by DHSMV as part of its investigations or examinations of:

- Suspected violations by private rebuilt inspection providers, or any contract entered into thereunder by such a provider;
- Suspected violations of ch. 319, F.S., relating to motor vehicle titles, or any rule or order thereunder;
- Suspected violations of ch. 320, F.S., relating to motor vehicle registrations and motor vehicle dealer and manufacturer licensing, or any rule or order thereunder; and
- Suspected violations of ch. 322, F.S., relating to driver licenses and identification cards, or any rule or order thereunder.

The above exemptions shield investigative records until the investigation ceases to be active or administrative action taken by DHSMV has concluded or been made part of any hearing or court proceeding, after which the investigative records are no longer confidential and exempt.

The bill provides that the public record exemption is subject to the Open Government Sunset Review Act and will repeal on October 2, 2026, unless the Legislature reviews and reenacts the exemption by that date. The bill provides a statement of public necessity as required by the Florida Constitution.

The bill may have a minimal fiscal impact on state government.

The bill is effective upon the same date that CS/HB 1151 or similar legislation takes effect, if such legislation is adopted in the same legislative session or extension thereof and becomes a 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 creates new public record exemptions; thus, it requires a two-thirds vote for final passage.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Public Records

Article I, section 24(a) of the Florida Constitution sets forth the state's public policy regarding access to government records. This section guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government. The Legislature, however, may provide by general law for the exemption of records from the requirements of article I, section 24(a) 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]

DHSMV Investigative Authority

DHSMV has jurisdiction to administer multiple chapters of the Florida Statutes with various degrees of investigative authority. For example, DHSMV is required to cancel improperly issued certificates of title,[7] but does not appear to have the authority to investigate and examine violations related to motor vehicle titles.

While DHSMV has the authority to inspect books and records of motor vehicle manufacturers and dealers,[8] it does not appear to have the authority to investigate other violations of ch. 320, F.S., relating to motor vehicle dealers.

DHSMV also does not appear to have statutory authority to investigate persons suspected of violating ch. 322, F.S., relating to driver licenses.

CS/HB 1151, to which this bill is linked, provides DHSMV with investigative and subpoena power and the ability to administer oaths or affirmations, examine witnesses, require affidavits, take depositions,

[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] S. 319.25(1), F.S.
[8] S. 320.861, F.S.

and compel the attendance of witnesses and the production of documents, records, and other evidence for use in conducting investigations or examinations into:

- Authorized private rebuilt inspection providers;
- Persons suspected of violating or of having violated ch. 319, F.S., relating to motor vehicle title certificates;
- Persons suspected of violating or of having violated ch. 320, F.S., relating to motor vehicles manufacturers and distributors; and
- Persons suspected of violating or of having violated ch. 322, F.S., relating to driver licenses.

Effect of the Bill

The bill creates public record exemptions for investigatory and examination information received by DHSMV as a result of an investigation or examination of:

- Suspected violations by private rebuilt inspection providers, or any contract entered into thereunder by such a provider;
- Suspected violations of ch. 319, F.S., relating to motor vehicle titles, or any rule or order thereunder;
- Suspected violations of ch. 320, F.S., relating to motor vehicle registrations and motor vehicle dealer and manufacturer licensing, or any rule or order thereunder; and
- Suspected violations of ch. 322, F.S., relating to driver licenses and identification cards, or any rule or order thereunder.

The bill provides that the investigatory and examination information is confidential and exempt[9] from public record requirements until the investigation or examination ceases to be active or administrative action taken by DHSMV has concluded or been made part of any hearing or court proceeding.

The bill authorizes DHSMV to release investigative records in furtherance of DHSMV's official duties and responsibilities or, if released to another governmental agency, in furtherance of that agency's official duties and responsibilities.

The bill contains a statement of public necessity, as required by article I, section 24(c) of the Florida Constitution. The public necessity statement provides that the release of information received by DHSMV as a result of an investigation or examination of certain violations could obstruct or jeopardize the integrity of the investigation or examination and impair the ability of DHSMV to perform its official duties and carry out its responsibilities under these statutory provisions, thus it is a public necessity to make such information confidential and exempt from public records requirements.

The bill provides that the public record exemptions are subject to the Open Government Sunset Review Act and will repeal on October 2, 2026, unless the Legislature reviews and reenacts the exemptions by that date.

The bill provides that it will become effective upon the same date that CS/HB 1151 or similar legislation takes effect, if such legislation is adopted in the same legislative session or extension thereof and becomes a law.

B. SECTION DIRECTORY:

Section 1 Amends s. 319.1414, F.S., relating to investigations; subpoenas and other process; oaths; rules.

[9] There is a difference between records the Legislature designates exempt from public record requirements and those the Legislature deems confidential and exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances. *See WFTV, Inc. v. Sch. Bd. of Seminole*, 874 So.2d 48, 53 (Fla. 5th DCA 2004), *review denied* 892 So.2d 1015 (Fla. 2004); *City of Rivera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 1994); *Williams v. City of Minneola*, 575 So.2d 683, 687 (Fla. 5th DCA 1991). If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released by the custodian of public records, to anyone other than the persons or entities specifically designated in statute. *See* Op. Att'y Gen. Fla. 85-62 (1985).

Section 2 Amends s. 319.25, F.S., relating to cancellation of certificates; investigations; subpoenas and other process; oaths; rules.

Section 3 Amends s. 320.861, F.S., relating to investigations, subpoenas and other process; oaths; rules.

Section 4 Amends s. 322.71, F.S., relating to investigations; subpoenas and other process; oaths; rules.

Section 5 Provides a statement of public necessity.

Section 6 Provides a contingent effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   The bill may have an insignificant fiscal impact on DHSMV to comply with public records requests and redact exempt information prior to releasing a record. Such costs, however, would be absorbed as part of the day-to-day responsibilities of the agency.

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 impact county or municipal governments.

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 creates new public record exemptions; 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 creates new public record exemptions and includes the required 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 public record exemptions for certain investigative or examination information, which does not appear to be broader than necessary to accomplish its purpose.

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

A bill to be entitled

An act relating to public records; amending ss. 319.1414, 319.25, 320.861, and 322.71, F.S.; providing an exemption from public records requirements for information received by the Department of Highway Safety and Motor Vehicles as a result of an investigation or examination conducted pursuant to certain provisions; authorizing the department to release such information under certain circumstances; providing for future legislative review and repeal of the exemption; 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 (6) of section 319.1414, Florida Statutes, as created by CS/HB 1151, 2021 Regular Session, is renumbered as subsection (7), and a new subsection (6) is added to that section to read:

319.1414 Investigations; subpoenas and other process; oaths; rules.—

(6) Information received by the department as a result of an investigation or examination conducted pursuant to this section is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution until the investigation

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

or examination ceases to be active or administrative action taken by the department has concluded or been made part of a hearing or court proceeding. The department may release information that is made confidential and exempt under this subsection in furtherance of its official duties and responsibilities or, if released to another governmental agency, in the furtherance of that agency's official duties and responsibilities. This subsection is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2026, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2. Subsection (8) of section 319.25, Florida Statutes, as created by CS/HB 1151, 2021 Regular Session, is renumbered as subsection (9), and a new subsection (8) is added to that section to read:

319.25 Cancellation of certificates; investigations; subpoenas and other process; oaths; rules.—

(8) Information received by the department as a result of an investigation or examination conducted pursuant to this section is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution until the investigation or examination ceases to be active or administrative action taken by the department has concluded or been made part of a hearing or court proceeding. The department may release information that is made confidential and exempt under this

subsection in furtherance of its official duties and responsibilities or, if released to another governmental agency, in the furtherance of that agency's official duties and responsibilities. This subsection is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2026, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 3. Subsection (6) of section 320.861, Florida Statutes, as created by CS/HB 1151, 2021 Regular Session, is renumbered as subsection (7), and a new subsection (6) is added to that section to read:

320.861 Investigations; subpoenas and other process; oaths; rules.—

(6) Information received by the department as a result of an investigation or examination conducted pursuant to this section is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution until the investigation or examination ceases to be active or administrative action taken by the department has concluded or been made part of a hearing or court proceeding. The department may release information that is made confidential and exempt under this subsection in furtherance of its official duties and responsibilities or, if released to another governmental agency, in the furtherance of that agency's official duties and responsibilities. This subsection is subject to the Open

Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2026, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 4. Subsection (6) of section 322.71, Florida Statutes, as created by CS/HB 1151, 2021 Regular Session, is renumbered as subsection (7), and a new subsection (6) is added to that section to read:

322.71 Investigations; subpoenas and other process; oaths; rules.—

(6) Information received by the department as a result of an investigation or examination conducted pursuant to this section is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution until the investigation or examination ceases to be active or administrative action taken by the department has concluded or been made part of a hearing or court proceeding. The department may release information that is made confidential and exempt under this subsection in furtherance of its official duties and responsibilities or, if released to another governmental agency, in the furtherance of that agency's official duties and responsibilities. This subsection is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2026, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 5. The Legislature finds that it is a public

necessity that information received by the Department of Highway Safety and Motor Vehicles as a result of an investigation or examination conducted pursuant to s. 319.1414, s. 319.25, chapter 320 as provided in s. 320.861, and chapter 322 as provided in s. 322.71, Florida Statutes, be made confidential and exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution until the investigation or examination ceases to be active or administrative action taken by the department has concluded or been made part of a hearing or court proceeding. The release of such information about a pending investigation or examination of violations of s. 319.1414, s. 319.25, chapter 320, and chapter 322, Florida Statutes, could obstruct or jeopardize the integrity of the investigation or examination and impair the ability of the Department of Highway Safety and Motor Vehicles in the performance of its official duties and responsibilities under s. 319.1414, s. 319.25, chapter 320, and chapter 322, Florida Statutes. Therefore, the Legislature finds that it is a public necessity to make such information confidential and exempt from public records requirements.

Section 6. This act shall take effect on the same date that CS/HB 1151 or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes a law.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1431 Swimming Pool Specialty Contracting Services
SPONSOR(S): Regulatory Reform Subcommittee, McClure
TIED BILLS: **IDEN./SIM. BILLS:** SB 338

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Regulatory Reform Subcommittee	13 Y, 0 N, As CS	Brackett	Anstead
2) Commerce Committee		Brackett	Hamon

SUMMARY ANALYSIS

Construction Contractors, including pool/spa contractors, are certified by or registered with the Construction Industry Licensing Board (CILB) housed within the Department of Business and Professional Regulation. Certified contractors can practice statewide and are licensed and regulated by the CILB. Registered contractors are licensed and regulated by a local jurisdiction and may practice within that locality. Registered contractors are required to register their license with the CILB.

Specialty contractors are contractors whose scope of work is limited to a particular phase of construction that is a subset of a certified contractor's scope of work, such as drywall or demolition. Specialty contractor licenses are created by the CILB through rulemaking. Specialty contractors certified by the CILB are permitted to practice in any jurisdiction in the state. The CILB has created eight types of pool/spa specialty contractors.

In order to perform contracting in the state, a person must be certified or registered (licensed) as a contractor, be an employee of a licensed contractor, or fall under an exemption provided in current law.

The bill creates a new exemption to licensure requirements by allowing unlicensed persons to perform the work of specialty contractors for the construction, remodeling, repair, or improvement of commercial or residential swimming pools, interactive water features, hot tubs, and spas without obtaining a specialty contractor license or local license.

The bill only allows the unlicensed person to perform the work if:

- the unlicensed person is under the supervision of a licensed commercial or residential pool/spa contractor or swimming pool/spa servicing contractor;
- the work is within the scope of the supervising contractor's license;
- the supervising contractor is responsible for the work; and
- the work does not require licensure as a roofing, sheet metal, air-conditioning, mechanical, plumbing, solar, underground utility and excavation contractor, or electrical contractor.

The bill does not require a direct contract between the commercial or residential pool/spa contractor or swimming pool/spa servicing contractor and the unlicensed person, or require the unlicensed person to be an employee of the supervising pool/spa contractor.

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

Contractors

Contractors are regulated by ch. 489, F.S., which outlines the law pertaining to contractors in the state of Florida. Part I of ch. 489, F.S., covers construction contracting regulated by the Construction Industry Licensing Board (CILB) and pt. II of ch. 489, F.S., covers electrical/alarm system contracting regulated by the Electrical Contractors' Licensing Board. Both boards are housed in the Department of Business and Professional Regulation (DBPR).

Construction contractors are either certified or registered by the CILB. The CILB consists of 18 members who are appointed by the Governor and confirmed by the Senate. The CILB meets to approve or deny applications for licensure, review disciplinary cases, and conduct informal hearings relating to discipline.[1]

"Certified contractors" are individuals who pass the state competency examination and obtain a certificate of competency issued by DBPR. Certified contractors are able to obtain a certificate of competency for a specific license category and are permitted to practice in that category in any jurisdiction in the state.[2]

"Registered contractors" are individuals that have taken and passed a local competency examination and can practice the specific category of contracting for which he or she is approved, only in the local jurisdiction for which the license is issued. Registered contractors must register their license with the CILB after obtaining a local license.[3]

In order to perform construction contracting in the state, a person must be certified or registered as a contractor, be an employee[4] of a certified or registered contractor, or fall under an exemption provided in current law.[5]

Swimming Pool/Spa Contractors

"Commercial pool/spa contractors" are individuals who are certified or registered to construct, repair, and service any public or private swimming pool, hot tub, or spa including:[6]

- Installing, repairing, or replacing existing equipment;
- Cleaning or equipment sanitizing that requires at least a partial disassembling, excluding filter changes;
- Installing new pool/spa equipment, interior finishes, package pool heaters, and perimeter piping and filter piping;
- Constructing equipment rooms or housing for pool/spa equipment; and
- The scope of work of a swimming pool/spa servicing contractor.

"Residential pool/spa contractors" are individuals who are certified or registered to construct repair, and service any residential swimming pool, hot tub, or spa. The scope of work is identical to the scope of

[1] S. 489.107, F.S.
[2] S. 489.105, F.S.
[3] Ss. 489.105, and 489.117, F.S.
[4] "Employee" means a person who receives compensation from and is under the supervision and control of an employer who regularly deducts the F.I.C.A. and withholding tax and provides workers' compensation, all as prescribed by law. S. 489.103(2)(b), F.S.
[5] Ss. 489.103(2), and 489.113, F.S.
[6] S. 489.105(3)(j), F.S.

work for commercial pool/spa contractors; however, residential pool/spa contractors may only work on residential swimming pools, hot tubs, and spas.[7]

"Swimming pool/spa servicing contractors" are individuals who are certified or registered to repair and service any public or private swimming pool, hot tub, or spa including:[8]

- Repairing or replacing existing equipment;
- Cleaning or equipment sanitizing that requires at least a partial disassembling, excluding filter changes;
- Installing new pool/spa equipment and interior refinishing;
- Reinstalling or adding pool heaters;
- Repairing or replacing perimeter piping and filter piping;
- Repairing equipment rooms or housing for pool/spa equipment; and
- Substantially or completing draining a swimming pool, or hot tub or spa, for the purpose of repair or renovation.

The scope of work for all three types of swimming pool/spa contractors does not include direct connections to a sanitary sewer system or to potable water lines.[9]

Water treatment or cleaning a pool or spa does not require a license unless the structural integrity of the pool or spa is affected, or equipment attached to the pool or spa must be substantially or completely disassembled or replaced in order to treat the water or clean the pool. Installing an aboveground pool also does not require a license.[10]

A contractor, including pool/spa contractors, must subcontract all electrical, mechanical, plumbing, roofing, sheet metal, and air-conditioning work, to a contractor certified or registered in the respective category, unless the pool/spa contractor also holds a state certificate or registration in the respective category.[11]

In order to obtain certification as one of the swimming pool/spa contractors, a person must:[12]

- Apply to DBPR in writing;
- Be 18 years of age;
- Be of good moral character;
- Pass the examination for the certification sought; and
- Have one of the following:
    - A bachelor degree from a four year college in the appropriate field of engineering, architecture, or building construction, and one year of proven experience;
    - Four years of experience as a foreman or a skilled worker with at least one year as a foreman;
    - A combination of college and experience as a foreman or skilled worker that equals four years with at least one of the years as a foreman; or
    - One year of experience and 60 hours of instruction courses approved by the CILB; however, this only applies to swimming pool/spa servicing contractors.

Swimming Pool/Spa Specialty Contractors

"Certified specialty contractors" are contractors whose scope of work is limited to a particular phase of construction that is a subset of a certified contractor's scope of work, such as a drywall specialty

[7] S. 489.105(3)(k), F.S.
[8] S. 489.105(3)(l), F.S.
[9] S. 489.105, F.S.
[10] Ss. 489.103(6), and 489.105, F.S.; DBPR, *Trust but Verify*, http://www.myfloridalicense.com/dbpr/reg/documents/trustbutverify_000.pdf?x40199 (last visited Mar. 19, 2021).
[11] S. 489.113(3), F.S.
[12] Ss. 489.111, & 489.113, F.S.

license or a demolition specialty license. Certified specialty contractor licenses are created by the CILB through rulemaking. Certified specialty contractors are permitted to practice in any jurisdiction in the state.[13]

The CILB has created eight types of pool/spa specialty contractor certifications. Pool/spa specialty contractors, except residential swimming pool/spa servicing specialty contractors, must work under contract with and under the supervision of a licensed swimming pool/spa contractor. However, they are not required to be employees of a licensed pool/spa contractor.[14]

The CILB has created the following eight types of pool/spa specialty contractors:[15]

- Swimming Pool Layout Specialty Contractor-
  - The scope of work is limited to the layout, shaping, steel installation, and rough piping of pools, spas, and hot tub shells.
- Swimming Pool Structural Specialty Contractor-
  - The scope of work is limited to the shaping and shooting of gunite, shotcrete, concrete, or similar product mix used in the construction of swimming pools and spas, and the installation of fiberglass shells and vinyl liners.
- Swimming Pool Excavation Specialty Contractors –
  - The scope of work is limited to the excavation and earthmoving for the installation of pools, spas, and hot tub shells;
- Swimming Pool Trim Specialty Contractor –
  - The scope of work is limited to the installation of tile and coping for pools, spas, hot tub shells, and decorative or interactive water displays;
- Swimming Pool Decking Specialty Contractor-
  - The scope of work is limited to the construction and installation of concrete flatwork, pavers and bricks, retaining walls, and footings associated with the construction of pools, spas, and hot tub shells.
- Swimming Pool Piping Specialty Contractor-
  - The scope of work is limited to the installation of piping or the installation of circulating, filtering, disinfecting, controlling, or monitoring equipment and devices used in the construction of pools, spas, hot tubs, and decorative or interactive water displays or areas.
- Swimming Pool Finishes Specialty Contractor-
  - The scope of work is limited to the coating or plastering of the interior surfaces of pools, spas, or hot tub shells.
- Residential swimming pool/spa servicing specialty contractor-
  - The scope of work is identical to the scope of work for swimming pool/spa servicing contractors; however, they may only work on residential swimming pools, hot tubs, and spas.

In order to obtain one of the certified specialty pool/spa contractor a person must:[16]

- Submit a written application to the CILB;
- Be at least 18 years of age;
- Be of good moral character;
- Pass a written examination for the specialty pool/spa contractor category sought; and
- Demonstrate four years of experience in the specialty pool/spa contractor category sought, or one year of experience and 60 hours of instruction courses approved by the CILB; however, the one year of experience only applies to residential swimming pool/spa servicing contractors.

[13] S. 489.105(3)(q), F.S.
[14] Rule 61G4-15.032, F.A.C.; Rule 61G4-15.040, F.A.C.
[15] *Id.*
[16] Rule 61G4-15.032, F.A.C.; Email from Colton Madill, Deputy Legislative Affairs Director, DBPR, RE: Pool Contractor Information, (Jan. 31, 2020).

Exemptions from 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:[17]

- 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.

Another exemption allows an unlicensed person to perform contracting if the person is under the supervision of licensed general, building, or residential contractor, and the work does not require licensure as a roofing, sheet metal, air-conditioning, mechanical, pool/spa, plumbing, solar, or underground utility and excavation contractor.

The work must be within the scope of the supervising contractor's license, and the supervising contractor must also be responsible for the work. The unlicensed person must have a direct contract with the contractor. However, this is an exemption from state licensure requirements and it does not affect the ability of local governments to impose licensing requirements on unlicensed persons.[18]

Effect of the Bill

The bill creates an additional exemption to contractor licensure. The bill provides that unlicensed persons may perform the work of specialty contractors for the construction, remodeling, repair, or improvement of commercial or residential swimming pools, interactive water features,[19] hot tubs, and spas without obtaining a specialty contractor license or local license.

The bill only allows the unlicensed person to perform the work if:

- the unlicensed person is under the supervision of a licensed commercial or residential pool/spa contractor or swimming pool/spa servicing contractor;
- the work is within the scope of the supervising contractor's license;
- the supervising contractor is responsible for the work; and
- the work does not require licensure as a roofing, sheet metal, air-conditioning, mechanical, plumbing, solar, underground utility and excavation contractor, or electrical contractor.

[17] S. 489.103, F.S.
[18] S. 489.113(2), F.S.; *Florida Home Builders Association v. St. Johns County*, 914 So. 2d 1035 (Fla. 5th DCA 2005).
[19] The Florida Building Code defines "interactive water features" as structure designed to allow for recreational activities with recirculated, filtered, and treated water; but having minimal standing water. Water from the interactive fountain type features is collected by gravity below grade in a collector tank or sump. The water is filtered, disinfected and then pumped to the feature spray discharge heads. The collector tank and water filtration features required make this structure a type of public swimming pool. Section 454 of the Seventh edition of the Florida Building Code (Building).

The bill does not require a direct contract between the commercial or residential pool/spa contractor or swimming pool/spa servicing contractor and the unlicensed person performing the specialty contracting services, or require the unlicensed person to be an employee of the supervising pool/spa contractor.

B. SECTION DIRECTORY:

Section 1. Amends s. 489.117, F.S., creating an exemption to licensure requirements.

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 persons, who are under the supervision of licensed pool/spa contractors, to perform work on pools, spas, hot tubs, and interactive water features without having to obtain a license. This may also result in certain projects being completed in less time and at a lower cost to consumers.

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:

No.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 24, 2021, the Regulatory Reform Subcommittee adopted a proposed committee substitute and reported the bill favorably as a committee substitute. The PCS differed from HB 1431 in the following ways:

- Removes the provision expanding a current exemption, which would allow an unlicensed person to perform contracting for the construction, remodeling, repair, or improvement of clubhouses and recreation buildings in certain circumstances.
- Adds additional requirements for an unlicensed person to perform specialty contracting for the construction, remodeling, repair, or improvement of commercial or residential swimming pools, interactive water features, hot tubs, and spas. The additional requirements include:
    - the supervising contractor is responsible for the work; and
    - the work does not require licensure as an electrical contractor.

The staff analysis is drafted to the committee substitute as passed by the Regulatory Reform Subcommittee.

A bill to be entitled

An act relating to swimming pool specialty contracting services; amending s. 489.117, F.S.; authorizing certain persons under the supervision of specified licensed contractors to perform certain specialty contracting services for commercial or residential swimming pools, interactive water features, hot tubs, or spas; providing that such supervision does not require a direct contract between those persons; providing applicability; providing an effective date.

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

Section 1. Paragraph (e) is added to subsection (4) of section 489.117, Florida Statutes, to read:

489.117 Registration; specialty contractors.—

(4)

(e) Any person who is not certified or registered may perform the work of a specialty contractor, whose scope of practice is limited to the type of work specified under s. 489.105(3)(j)-(l) for the construction, remodeling, repair, or improvement of commercial or residential swimming pools, interactive water features as defined in the Florida Building Code, hot tubs, and spas, without obtaining a local license or certification as a specialty contractor, provided such person is

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

supervised by a contractor who is certified or registered under s. 489.105(3)(j)-(l), the work is within the scope of the supervising contractor's license, the supervising contractor is responsible for the work, and the work does not require certification or registration under s. 489.105(3)(d)-(i), (m)-(o), or s. 489.505. Such supervision does not require a direct contract between the contractor certified or registered under s. 489.105(3)(j)-(l) and the person performing the work, or for the person performing the work to be an employee of the contractor certified or registered under s. 489.105(3)(j)-(l). This subsection does not limit the exemptions provided in s. 489.103.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1539 Pub. Rec./Department of Agriculture and Consumer Services
SPONSOR(S): Jenne
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 1594

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Government Operations Subcommittee	14 Y, 0 N	Roth	Smith
2) Commerce Committee		Thompson	Hamon
3) State Affairs Committee			

SUMMARY ANALYSIS

The Department of Agriculture and Consumer Services (DACS) is tasked with safeguarding the public and supporting Florida's agricultural economy by ensuring the safety and wholesomeness of food and other consumer products through inspection and testing programs. DACS employs inspectors to enforce the state laws and rules.

The bill creates a public record exemption for the home address, telephone numbers, dates of birth, and photographs of current or former DACS inspectors, as well as, the names, home address, telephone numbers, dates of birth, and places of employment of their spouses, and children. Additionally, the bill exempts the names and locations of schools and day care facilities attended by the children of current or former DACS inspectors.

The bill provides that the exemption is subject to the Open Government Sunset Review Act and will repeal on October 2, 2026, unless the Legislature reviews and reenacts the exemption by that date. The bill provides a statement of public necessity as required by the Florida Constitution.

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

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Public Records

Article I, s. 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 more broad 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. 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 is 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 exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.[6]

Department of Agriculture and Consumer Services

The Department of Agriculture and Consumer Services (DACS) is tasked with safeguarding the public and supporting Florida's agricultural economy by ensuring the safety and wholesomeness of food and other consumer products through inspection and testing programs.[7]

DACS employs inspectors to enforce the state laws and rules relating to:

- Fruit and vegetable inspection and grading;
- Pesticide spray, residue inspection, and removal;
- Registration, labeling, inspection, sale, use, composition, formulation, wholesale and retail distribution, and analysis of commercial stock feeds and registration, labeling, inspection, and analysis of commercial fertilizers;
- Classification, inspection, and sale of poultry and eggs;
- Registration, inspection, and analysis of gasolines and oils;
- Registration, labeling, inspection, and analysis of pesticides;
- Registration, labeling, inspection, germination testing, and sale of seeds, both common and certified;
- Foods, as set forth in the Florida Food Safety Act;

[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] Section 119.15, F.S.
[5] Section 119.15(6)(b), F.S.
[6] Section 119.15(3), F.S.
[7] Chapter 570, F.S.

- Inspection and certification of honey;
- Recordation and inspection of marks and brands of livestock;[8] and
- Inspection of apiaries[9] for diseases inimical to bees and beekeeping.[10]

According to DACS, 397 inspectors are currently employed and qualify under the provisions set forth within this bill.[11] The areas in which these inspectors preside are classified as: Animal Industry (36 inspectors), Consumer Services (98 inspectors), Fruit and Vegetable (155 inspectors), Plant Industry (24 inspectors), and Food and Safety (84 inspectors).[12]

Effect of the Bill

The bill creates a public records exemption for the home address, telephone numbers, dates of birth, and photographs of current or former inspectors of DACS, as well as, the names, home address, telephone numbers, dates of birth, and places of employment of the spouses and children of current or former inspectors. Additionally, the bill exempts the names and locations of schools and day care facilities attended by the children of current or former inspectors.

The bill provides that the exemption is subject to the Open Government Sunset Review Act and will repeal on October 2, 2026, unless the Legislature reviews and reenacts the exemption by that date.

The bill includes a statement of public necessity as required by the Florida Constitution, stating that the exemption is necessary to protect DACS inspectors and their immediate family members from physical and emotional harm from disgruntled individuals whose business or professional practices have come under the scrutiny of DACS.

B. SECTION DIRECTORY:

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

Section 2: Provides a statement of public necessity.

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:

   See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

[8] Section 570.07(16)(a)-(n), F.S.
[9] An apiary is a collection of beehives.
[10] Section 570.07(14), F.S.
[11] E-mail from Carlos J. Nathan, Deputy Legislative Affairs Director, Florida Department of Agriculture and Consumer Services, Office of the Commissioner, to Katherine Becker, Staff Director, The Florida Senate Committee on Agriculture (March 8, 2021) (on file with the Senate Committee on Agriculture).
[12] *Id.*

2. Expenditures:

See Fiscal Comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The bill may have a minimal fiscal impact on agencies because agency staff responsible for complying with public records requests may require training related to the creation of the public record exemption. Agencies could incur costs associated with redacting the exempt information prior to releasing a record. The costs, however, would be absorbed by existing resources, as they are part of the day-to-day responsibilities of agencies.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

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

Public Necessity Statement
Article I, s. 24(c) of the Florida Constitution requires a public necessity statement for a newly created or expanded public record exemption. The bill creates a public record exemption; therefore, it includes a public necessity statement.

Breadth of Exemption
Article I, section 24(c) of the Florida Constitution requires a newly created public record or public meeting exemption to be no broader than necessary to accomplish the stated purpose of the law. This bill creates a public record exemption for certain personal information of current or former DACS inspectors, their spouses, and children. The purpose of the exemption is to protect current or former DACS inspectors, their spouses, and children from disgruntled individuals whose business or professional practices have come under the scrutiny of DACS.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

A bill to be entitled

An act relating to public records; amending s. 119.071, F.S.; exempting personal identifying and location information of certain current and former inspectors of the Department of Agriculture and Consumer Services and their spouses and children from public records requirements; providing for future legislative review and repeal of the exemption; providing a statement of public necessity; providing an effective date.

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

Section 1. Paragraph (d) of subsection (4) of section 119.071, Florida Statutes, is amended to read:

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

(4) AGENCY PERSONNEL INFORMATION.—

(d)1. For purposes of this paragraph, the term:

a. "Home addresses" means the dwelling location at which an individual resides and includes the physical address, mailing address, street address, parcel identification number, plot identification number, legal property description, neighborhood name and lot number, GPS coordinates, and any other descriptive property information that may reveal the home address.

b. "Telephone numbers" includes home telephone numbers, personal cellular telephone numbers, personal pager telephone numbers, and telephone numbers associated with personal communications devices.

2.a. The home addresses, telephone numbers, dates of birth, and photographs of active or former sworn law enforcement personnel or of active or former civilian personnel employed by a law enforcement agency, including correctional and correctional probation officers, personnel of the Department of Children and Families whose duties include the investigation of abuse, neglect, exploitation, fraud, theft, or other criminal activities, personnel of the Department of Health whose duties are to support the investigation of child abuse or neglect, and personnel of the Department of Revenue or local governments whose responsibilities include revenue collection and enforcement or child support enforcement; the names, home addresses, telephone numbers, photographs, dates of birth, and places of employment of the spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children of such personnel are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

b. The home addresses, telephone numbers, dates of birth, and photographs of current or former nonsworn investigative personnel of the Department of Financial Services whose duties

include the investigation of fraud, theft, workers' compensation coverage requirements and compliance, other related criminal activities, or state regulatory requirement violations; the names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children of such personnel are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

c. The home addresses, telephone numbers, dates of birth, and photographs of current or former nonsworn investigative personnel of the Office of Financial Regulation's Bureau of Financial Investigations whose duties include the investigation of fraud, theft, other related criminal activities, or state regulatory requirement violations; the names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children of such personnel are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

d. The home addresses, telephone numbers, dates of birth, and photographs of current or former firefighters certified in compliance with s. 633.408; the names, home addresses, telephone numbers, photographs, dates of birth, and places of employment of the spouses and children of such firefighters; and the names

and locations of schools and day care facilities attended by the children of such firefighters are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

e. The home addresses, dates of birth, and telephone numbers of current or former justices of the Supreme Court, district court of appeal judges, circuit court judges, and county court judges; the names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of current or former justices and judges; and the names and locations of schools and day care facilities attended by the children of current or former justices and judges are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

f. The home addresses, telephone numbers, dates of birth, and photographs of current or former state attorneys, assistant state attorneys, statewide prosecutors, or assistant statewide prosecutors; the names, home addresses, telephone numbers, photographs, dates of birth, and places of employment of the spouses and children of current or former state attorneys, assistant state attorneys, statewide prosecutors, or assistant statewide prosecutors; and the names and locations of schools and day care facilities attended by the children of current or former state attorneys, assistant state attorneys, statewide prosecutors, or assistant statewide prosecutors are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

g. The home addresses, dates of birth, and telephone numbers of general magistrates, special magistrates, judges of compensation claims, administrative law judges of the Division of Administrative Hearings, and child support enforcement hearing officers; the names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of general magistrates, special magistrates, judges of compensation claims, administrative law judges of the Division of Administrative Hearings, and child support enforcement hearing officers; and the names and locations of schools and day care facilities attended by the children of general magistrates, special magistrates, judges of compensation claims, administrative law judges of the Division of Administrative Hearings, and child support enforcement hearing officers are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

h. The home addresses, telephone numbers, dates of birth, and photographs of current or former human resource, labor relations, or employee relations directors, assistant directors, managers, or assistant managers of any local government agency or water management district whose duties include hiring and firing employees, labor contract negotiation, administration, or other personnel-related duties; the names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such personnel; and the names and

locations of schools and day care facilities attended by the children of such personnel are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

i. The home addresses, telephone numbers, dates of birth, and photographs of current or former code enforcement officers; the names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children of such personnel are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

j. The home addresses, telephone numbers, places of employment, dates of birth, and photographs of current or former guardians ad litem, as defined in s. 39.820; the names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such persons; and the names and locations of schools and day care facilities attended by the children of such persons are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

k. The home addresses, telephone numbers, dates of birth, and photographs of current or former juvenile probation officers, juvenile probation supervisors, detention superintendents, assistant detention superintendents, juvenile justice detention officers I and II, juvenile justice detention officer supervisors, juvenile justice residential officers,

juvenile justice residential officer supervisors I and II, juvenile justice counselors, juvenile justice counselor supervisors, human services counselor administrators, senior human services counselor administrators, rehabilitation therapists, and social services counselors of the Department of Juvenile Justice; the names, home addresses, telephone numbers, dates of birth, and places of employment of spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children of such personnel are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

1. The home addresses, telephone numbers, dates of birth, and photographs of current or former public defenders, assistant public defenders, criminal conflict and civil regional counsel, and assistant criminal conflict and civil regional counsel; the names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of current or former public defenders, assistant public defenders, criminal conflict and civil regional counsel, and assistant criminal conflict and civil regional counsel; and the names and locations of schools and day care facilities attended by the children of current or former public defenders, assistant public defenders, criminal conflict and civil regional counsel, and assistant criminal conflict and civil regional counsel are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

m. The home addresses, telephone numbers, dates of birth, and photographs of current or former investigators or inspectors of the Department of Business and Professional Regulation; the names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such current or former investigators and inspectors; and the names and locations of schools and day care facilities attended by the children of such current or former investigators and inspectors are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

n. The home addresses, telephone numbers, and dates of birth of county tax collectors; the names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such tax collectors; and the names and locations of schools and day care facilities attended by the children of such tax collectors are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

o. The home addresses, telephone numbers, dates of birth, and photographs of current or former personnel of the Department of Health whose duties include, or result in, the determination or adjudication of eligibility for social security disability benefits, the investigation or prosecution of complaints filed against health care practitioners, or the inspection of health care practitioners or health care facilities licensed by the Department of Health; the names, home addresses, telephone

numbers, dates of birth, and places of employment of the spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children of such personnel are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

p. The home addresses, telephone numbers, dates of birth, and photographs of current or former impaired practitioner consultants who are retained by an agency or current or former employees of an impaired practitioner consultant whose duties result in a determination of a person's skill and safety to practice a licensed profession; the names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such consultants or their employees; and the names and locations of schools and day care facilities attended by the children of such consultants or employees are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

q. The home addresses, telephone numbers, dates of birth, and photographs of current or former emergency medical technicians or paramedics certified under chapter 401; the names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such emergency medical technicians or paramedics; and the names and locations of schools and day care facilities attended by the children of such emergency medical technicians or paramedics are

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

r. The home addresses, telephone numbers, dates of birth, and photographs of current or former personnel employed in an agency's office of inspector general or internal audit department whose duties include auditing or investigating waste, fraud, abuse, theft, exploitation, or other activities that could lead to criminal prosecution or administrative discipline; the names, home addresses, telephone numbers, dates of birth, and places of employment of spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children of such personnel are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

s. The home addresses, telephone numbers, dates of birth, and photographs of current or former directors, managers, supervisors, nurses, and clinical employees of an addiction treatment facility; the home addresses, telephone numbers, photographs, dates of birth, and places of employment of the spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children of such personnel are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. For purposes of this sub-subparagraph, the term "addiction treatment facility" means a county government, or agency thereof, that is licensed

pursuant to s. 397.401 and provides substance abuse prevention, intervention, or clinical treatment, including any licensed service component described in s. 397.311(26).

t. The home addresses, telephone numbers, dates of birth, and photographs of current or former directors, managers, supervisors, and clinical employees of a child advocacy center that meets the standards of s. 39.3035(1) and fulfills the screening requirement of s. 39.3035(2), and the members of a Child Protection Team as described in s. 39.303 whose duties include supporting the investigation of child abuse or sexual abuse, child abandonment, child neglect, and child exploitation or to provide services as part of a multidisciplinary case review team; the names, home addresses, telephone numbers, photographs, dates of birth, and places of employment of the spouses and children of such personnel and members; and the names and locations of schools and day care facilities attended by the children of such personnel and members are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

u. The home addresses, telephone numbers, dates of birth, and photographs of current or former inspectors of the Department of Agriculture and Consumer Services; the names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such current or former inspectors; and the names and locations of schools and day care facilities attended by the children of such current or former

inspectors are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. This sub-subparagraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2026, unless reviewed and saved from repeal through reenactment by the Legislature.

3. An agency that is the custodian of the information specified in subparagraph 2. and that is not the employer of the officer, employee, justice, judge, or other person specified in subparagraph 2. shall maintain the exempt status of that information only if the officer, employee, justice, judge, other person, or employing agency of the designated employee submits a written request for maintenance of the exemption to the custodial agency.

4. An officer, an employee, a justice, a judge, or other person specified in subparagraph 2. may submit a written request for the release of his or her exempt information to the custodial agency. The written request must be notarized and must specify the information to be released and the party that is authorized to receive the information. Upon receipt of the written request, the custodial agency shall release the specified information to the party authorized to receive such information.

5. The exemptions in this paragraph apply to information held by an agency before, on, or after the effective date of the exemption.

6. Except for sub-subparagraph u., this paragraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2024, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2. The Legislature finds that it is a public necessity that the home addresses, telephone numbers, dates of birth, and photographs of current or former inspectors of the Department of Agriculture and Consumer Services; the names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such current or former inspectors; and the names and locations of schools and day care facilities attended by the children of such current or former inspectors be made exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. The release of such identifying and location information may place current or former inspectors of the Department of Agriculture and Consumer Services and their family members in danger of physical and emotional harm from disgruntled individuals whose business or professional practices have come under the scrutiny of the Department of Agriculture and Consumer Services. Inspectors inspect places of business and frequently take adverse actions when violations are found, which creates unpleasant and tenuous situations. The Legislature further finds that the harm that may result from the release of such personal identifying and location information outweighs any

public benefit that may be derived from the disclosure of the information.

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

HB 6059

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 6059 Composition of the Multi-use Corridors of Regional Economic Significance Program
SPONSOR(S): Shoaf
TIED BILLS: **IDEN./SIM. BILLS:** SB 1590

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

In 2019, the Legislature created the Multi-use Corridors of Regional Economic Significance (M-CORES) program within the Department of Transportation. The purpose of the program is to revitalize rural communities, encourage job creation, and provide regional connectivity while leveraging technology, enhancing quality of life and public safety, and protecting the environment and natural resources. M-CORES is composed of the following corridors:

- Southwest-Central Florida Connector, extending from Collier County to Polk County.
- Suncoast Connector, extending from Citrus County to Jefferson County.
- Northern Turnpike Connector, extending from the northern terminus of the Florida Turnpike northwest to the Suncoast Parkway.

The bill removes the words “to Jefferson County” from the description of the Suncoast Connector, thus providing that the Suncoast Connector extends from Citrus County without a specified terminus.

The bill does not appear to have a 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:

Current Situation

In 2019, the Legislature passed CS/SB 7068, creating the Multi-use Corridors of Regional Economic Significance (M-CORES) program within the Department of Transportation (DOT).[1] The purpose of the program is to revitalize rural communities, encourage job creation, and provide regional connectivity while leveraging technology, enhancing quality of life and public safety, and protecting the environment and natural resources. The objective of the program is to advance the construction of regional corridors that are intended to accommodate multiple modes of transportation and multiple types of infrastructure. The intended benefits of the program include, but are not limited to, addressing issues such as:

- Hurricane evacuation.
- Congestion mitigation.
- Trade and logistics.
- Broadband, water, and sewer connectivity.
- Energy distribution.
- Autonomous, connected, shared, and electric vehicle technology.
- Other transportation modes.
- Mobility as a service.
- Availability of a trained workforce skilled in traditional and emerging technologies.
- Protection or enhancement of wildlife corridors or environmentally sensitive areas.
- Protection or enhancement of primary springs protection zones and farmland preservation areas.[2]

M-CORES is composed of the following corridors:

- Southwest-Central Florida Connector, extending from Collier County to Polk County.
- Suncoast Connector, extending from Citrus County to Jefferson County.
- Northern Turnpike Connector, extending from the northern terminus of the Florida Turnpike northwest to the Suncoast Parkway.[3]

The M-CORES program required DOT to establish task forces for each of the above corridors to serve as a consensus building mechanism regarding each of the corridors. The Final Task Force Reports for each corridor were released in November 2020.[4] Each report identified a series of potential high-level needs for DOT's future evaluation and developed recommendations for how DOT should assess the need for each corridor.[5]

Effect of the Bill

The bill removes the words "to Jefferson County" from the description of the Suncoast Connector in s. 338.2278(2)(b), F.S.; thus, providing that the Suncoast Connector extends from Citrus County without a specified terminus.

B. SECTION DIRECTORY:

Section 1 Amends s. 338.2278, F.S., relating to Multi-use Corridors of Regional Economic Significance Program.

[1] Ch. 2019-43, Laws of Fla.
[2] S. 338.2278(1), F.S.
[3] S. 338.2278(2), F.S.
[4] Copies of all three task force reports are available at: https://floridamcores.com/ (last visited Feb. 24, 2021)
[5] M-CORES Suncoast Connector Task Force Report, p. 6. https://floridamcores.com/wp-content/uploads/2020/11/M-CORES_SCC_FinalTaskForceReport.pdf (last visited Feb. 24, 2020)

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

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   The bill does not appear to impact state government revenues.

2. Expenditures:

   The bill does not appear to impact state government expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   The bill does not appear to impact local government revenues.

2. Expenditures:

   The bill does not appear to impact local government expenditures.

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 impact county or municipal governments.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

By removing the terminus for the Suncoast Connector, the bill creates ambiguity as to the desired direction and purpose of that corridor.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to the composition of the Multi-use Corridors of Regional Economic Significance Program; amending s. 338.2278, F.S.; removing a certain regional corridor terminus from the program; providing an effective date.

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

Section 1. Paragraph (b) of subsection (2) of section 338.2278, Florida Statutes, is amended to read:

338.2278 Multi-use Corridors of Regional Economic Significance Program.—

(2) The program is composed of all of the following corridors:

(b) Suncoast Connector, extending from Citrus County ~~to Jefferson County~~.

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

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

HB 7049

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7049 PCB GOS 21-06 OGSR/Office of Insurance Regulation
SPONSOR(S): Government Operations Subcommittee, Shoaf
TIED BILLS: **IDEN./SIM. BILLS:** SB 7014

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Government Operations Subcommittee	15 Y, 0 N	Toliver	Smith
1) Commerce Committee		Fortenberry	Hamon
2) State Affairs Committee			

SUMMARY ANALYSIS

The Open Government Sunset Review Act requires the Legislature to review each public record and each public meeting exemption five years after enactment. If the Legislature does not reenact the exemption, it automatically repeals on October 2nd of the fifth year after enactment.

States are the primary regulators of insurance companies. In Florida, the Office of Insurance Regulation (OIR) is primarily responsible for licensing insurance companies, monitoring the solvency of regulated insurers, examining insurers to determine compliance with applicable laws, and taking administrative action, if necessary. OIR is a member of the National Association of Insurance Commissioners (NAIC), an organization consisting of state insurance regulators. As a member of the NAIC, the OIR is required to participate in the organization's accreditation program.

The NAIC created two model acts that each member must enact to stay accredited: the Own Risk Solvency Assessment (ORSA) Model Act and the Corporate Governance Annual Disclosure (CGAD) Model Act. An ORSA is an internal assessment of all reasonably foreseeable and relevant material risks that is designed to provide OIR with a comprehensive view of the ability of an insurer to withstand financial stress. Each ORSA report must also contain a high-level summary of its contents, termed an ORSA summary report. A CGAD requires disclosures of the insurer's corporate governance structure as well as the policies and practices of its Board of Directors and Senior Management.

In 2016, the Florida Legislature passed CS/CS/SB 1422 that enacted solvency regulation measures designed to protect policyholders against the risk that insurers will not be able to meet their financial responsibilities. Among other requirements, the bill enacted portions of the ORSA model act and the CGAD model act, requiring insurers to submit an ORSA and a CGAD to OIR each year.

Current law makes certain proprietary business information held by OIR confidential and exempt from public record requirements. This includes proprietary business information and supporting documents contained in documents, such as the actuarial opinion summary, principle-based valuation report, enterprise risk report, and insurance holding company registration.

To protect certain sensitive and strategic financial information, the Legislature in 2016 created a public record exemption for ORSA summary reports, substantially similar ORSA reports, CGAD reports, and supporting documents held by OIR. The documents are confidential and exempt from public records requirements. Information otherwise available for public inspection is specifically excluded from the exemption.

The bill saves from repeal these public record exemptions, which will repeal on October 2, 2021, if this bill does not become law.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Open Government Sunset Review Act

The Open Government Sunset Review Act (Act)[1] sets forth a legislative review process for newly created or substantially amended public record or public meeting exemptions. It requires an automatic repeal of the exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.[2]

The Act 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 is 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.[3]

If, and only if, in reenacting an exemption that will repeal, the exemption is expanded (essentially creating a new exemption), then a public necessity statement and a two-thirds vote for passage are required.[4] If the exemption is reenacted with grammatical or stylistic changes that do not expand the exemption, if the exemption is narrowed, or if an exception to the exemption is created then a public necessity statement and a two-thirds vote for passage are not required.

Regulation of Insurance in Florida

States are the primary regulators of insurance companies. In Florida, the Office of Insurance Regulation (OIR)[5] is primarily responsible for licensing insurance companies, monitoring the solvency of regulated insurers, examining insurers to determine compliance with applicable laws, and taking administrative action, if necessary.

National Association of Insurance Commissioners Accreditation

OIR is a member of the National Association of Insurance Commissioners (NAIC), an organization consisting of state insurance regulators.[6] As a member of the NAIC, the OIR is required to participate in the organization's accreditation program.[7] NAIC accreditation is a certification that a state insurance department is fulfilling legal, regulatory, and organizational oversight standards and practices. Once accredited, a member state is subject to a full accreditation review every five years. The NAIC also periodically reviews its solvency standards as set forth in its model acts, and revises accreditation requirements to adapt to evolving industry standards.

Own Risk and Solvency Assessment (ORSA)

An ORSA is an "internal assessment, appropriate to the nature, scale, and complexity of an insurer or insurance group, conducted by that insurer or insurance group, of the material and relevant risks associated with the business plan of an insurer or insurance group and the sufficiency of capital

[1] Section 119.15, F.S.
[2] Section 119.15(3), F.S.
[3] Section 119.15(6)(b), F.S.
[4] Section 24(c), Art. I, FLA. CONST.
[5] Section 20.121(3)(a)1., F.S.
[6] *About*, NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS, https://content.naic.org/index_about.htm (last visited Feb. 2, 2021).
[7] *Accreditation*, NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS, https://content.naic.org/cipr_topics/topic_accreditation.htm (last visited Feb. 2, 2021).

resources to support those risks."[8] The NAIC created the ORSA model act that would require each insurer to submit an ORSA report to the regulatory entity of the state. The NAIC made it an accreditation requirement that member states adopt the ORSA Model Act by 2018. In 2016, the Legislature passed CS/CS/SB 1422 (2016), which adopted major components of the ORSA model act. The bill required insurers to:

- Conduct an ORSA at least annually (and whenever there have been significant changes to the risk profile of the insurer or the insurance group);
- Maintain a risk management framework for identifying, assessing, monitoring, managing, and reporting on its material, relevant risks;
- File an ORSA summary report, based on the NAIC ORSA Guidance Manual, with OIR that must:
    - Be submitted once every calendar year;
    - Include a brief description of material changes and updates from the prior year's report;
    - Be signed by the chief risk officer or chief executive officer responsible for overseeing the enterprise risk management process; provide a copy to the board of directors or the appropriate board committee; and
    - Be prepared in accordance with NAIC's ORSA guidance manual and the insurer must maintain and make available for OIR examination documentation and supporting information.

Corporate Governance Annual Disclosure (CGAD)

The NAIC also created the Corporate Governance Model Act to provide insurance regulators with sufficient information on insurer governance structures, practices, and processes through an annual disclosure, the CGAD.[9] In 2016, the Legislature mandated that insurers submit CGADs to OIR by June 1 of each year. The CGAD must describe the:

- Corporate governance framework and structure of the insurer or insurance group;
- Policies and practices of the most senior governing entity and significant committees;
- Policies and practices for directing senior management; and
- Processes by which the board, its committees, and senior management ensure an appropriate amount of oversight to the critical risk areas that have an impact on the insurer's business activities.[10]

The Chief Executive Officer or Corporate Secretary of the insurer or insurance group must sign the CGAD attesting that, to the best of his or her knowledge and belief, the insurer has implemented the corporate governance practices and provided a copy of the disclosure to the board of directors or the appropriate board committee.[11]

Public Record Exemption under Review

[8] Section 628.8015(d), F.S.
[9] Section 628.8015(1)(a), F.S., defines CGAD to mean "a report filed by an insurer or insurance group in accordance with [section 628.8015, F.S.]"
[10] Section 628.8015(3)(b)4., F.S.
[11] Section 628.8015(3)(b)2., F.S.

Section 624.4212, F.S., makes certain proprietary business information[12] held by OIR confidential and exempt[13] from s. 119.07(1), F. S., and Art. I, s. 24(a) of the State Constitution.[14] This includes proprietary business information and supporting documents contained in documents, such as the actuarial opinion summary, principle-based valuation report, enterprise risk report, and insurance holding company registration.[15]

In 2016, the Legislature created a public record exemption for the following information held by OIR:

- ORSA summary report, a substantially similar ORSA report, and supporting documents.
- CGAD and supporting documents.[16]

The information is confidential and exempt from public record requirements. Information obtained by OIR that is otherwise available for public inspection is specifically excluded from the exemption.[17]

The 2016 public necessity statement[18] for the ORSA portion of the exemption provides:

> The ORSA summary report, substantially similar ORSA report, and supporting documents contain highly sensitive and strategic financial information about an insurer or insurer group. … Divulging the ORSA [documents] will injure the insurer or insurance group by providing competitors with detailed insight into their financial position, risk management strategies, business plans, pricing and marketing strategies, management systems and operation protocols.[19]

The public necessity statement for the CGAD portion of the exemption provides:

> The [CGAD] describes an insurer's governance and the internal practices and procedures used in conducting the business affairs of the company, making strategic operational decisions affecting its competitive position, and managing its financial condition. Release of the [CGAD] and supporting documents will injure

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[12] The term "proprietary business information" means information, regardless of form or characteristics, which is owned or controlled by an insurer, or a person or an affiliated person who seeks acquisition of controlling stock in a domestic stock insurer or controlling company, and which:

- Is intended to be and is treated by the insurer or the person as private in that the disclosure of the information would cause harm to the insurer, the person, or the company's business operations and that the information has not been disclosed unless disclosed pursuant to a statutory requirement, an order of a court or administrative body, or a private agreement that provides that the information will not be released to the public;
- Is not otherwise readily ascertainable or publicly available by proper means by other persons from another source in the same configuration as requested by the office; and
- Includes trade secrets; information relating to competitive interests, the disclosure of which would impair the competitive business of the provider of the information; the source, nature, and amount of the consideration used or to be used in carrying out a merger or other acquisition of control in the ordinary course of business, including the identity of the lender, if the person filing a statement regarding consideration so requests; information relating to bids or other contractual data, the disclosure of which would impair the efforts of the insurer or its affiliates to contract for goods or services on favorable terms; and internal auditing controls and reports of internal auditors. Section 624.4212(1), F.S.

[13] There is a difference between records the Legislature designates exempt from public record requirements and those the Legislature deems confidential and exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances. *See WFTV, Inc. v. Sch. Bd. of Seminole*, 874 So.2d 48, 53 (Fla. 5th DCA 2004), *review denied* 892 So.2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 1994); *Williams v. City of Minneola*, 575 So.2d 683, 687 (Fla. 5th DCA 1991). If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released, by the custodian of public records, to anyone other than the persons or entities specifically designated in statute. *See* Attorney General Opinion 85-62 (Aug. 1, 1985).

[14] Chapter 2014-100, Laws of Fla.

[15] Section 624.4212(2), F.S.

[16] Section 624.4212(3), F.S.

[17] *Id.*

[18] Article I, s. 24(c), FLA. CONST., requires each public record exemption "state with specificity the public necessity justifying the exemption."

[19] Chapter 2016-205, L.O.F.

the insurer or insurance group in the marketplace by providing competitors with the insurer's or the insurance group's confidential business information.[20]

Pursuant to the Open Government Sunset Review Act, the exemption will repeal on October 2, 2021, unless reenacted by the Legislature.[21] Additionally, the 2016, law creating ORSA and CGAD submission requirements provided that those substantive provisions will also repeal if the exemption is allowed to repeal.[22]

During the 2020 interim, subcommittee staff met with OIR staff to discuss the exemption. OIR staff stated that the agency had not had trouble implementing or interpreting the exemption. While OIR responded that the agency had received many broad public record requests which would include the ORSA and CGAD reports, they were unable to identify any requests asking for those documents specifically. OIR staff has indicated they were unaware of any litigation concerning the exemption. OIR emphasized the importance of the exemption, and the importance of the substantive ORSA and CGAD provisions linked to the exemption, in maintaining the confidentiality of insurers' proprietary business information and in continuing to meet NAIC accreditation standards. OIR recommended that the exemption be reenacted as is.

Effect of the Bill

The bill removes the scheduled repeal date of the public record exemptions, thereby maintaining the public record exemption for certain proprietary business information, an ORSA summary report, a substantially similar ORSA report, and supporting documents, as well as for a CGAD and supporting documents.

By removing the scheduled repeal date of the public record exemptions, the bill also saves from repeal the substantive ORSA and CGAD provisions linked to the exemptions.

B. SECTION DIRECTORY:

Section 1 amends s. 624.4212, F.S., to remove the scheduled repeal date of the public record exemption.

Section 2 provides an effective date of October 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.

[20] *Id.*
[21] Section 624.4212(6), F.S.
[22] Chapter 2016-206, L.O.F.

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. 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

None.

A bill to be entitled

An act relating to a review under the Open Government Sunset Review Act; amending s. 624.4212, F.S., which provides an exemption from public records requirements for certain proprietary business information, certain solvency reports and disclosures, and information that is confidential and held by the Office of Insurance Regulation; removing the scheduled repeal of the exemption; providing an effective date.

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

Section 1. Subsection (6) of section 624.4212, Florida Statutes, is amended to read:

624.4212 Confidentiality of proprietary business and other information.—

~~(6) This section is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and is repealed on October 2, 2021, unless reviewed and saved from repeal through reenactment by the Legislature.~~

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

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