

Commerce Committee

Wednesday, April 14, 2021
9:00 AM – 1:00 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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9:00 AM – 1:00 PM
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I. Call to Order

II. Roll Call

III. Welcome and Opening Remarks

IV. Consideration of the following bill(s):

- CS/HB 139 Motor Vehicle and Vessel Registration Data by Tourism, Infrastructure & Energy Subcommittee, Fernandez-Barquin
- CS/HB 401 Florida Building Code by Regulatory Reform Subcommittee, Fetterhoff, Overdorf
- CS/HB 491 Florida Real Estate Appraisal Board by Regulatory Reform Subcommittee, Melo
- CS/HB 585 Payment for Construction Services by Regulatory Reform Subcommittee, DiCeglie
- CS/CS/HB 667 Building Inspections by Local Administration & Veterans Affairs Subcommittee, Regulatory Reform Subcommittee, Mooney
- CS/CS/HB 839 Express Preemption of Fuel Retailers and Related Transportation Infrastructure by Local Administration & Veterans Affairs Subcommittee, Tourism, Infrastructure & Energy Subcommittee, Fabricio

- CS/HB 917 Documentary Stamp Tax Exemption by Insurance & Banking Subcommittee, McClain

- CS/HB 919 Preemption Over Restriction of Utility Services by Tourism, Infrastructure & Energy Subcommittee, Tomkow

- CS/CS/HB 969 Consumer Data Privacy by Civil Justice & Property Rights Subcommittee, Regulatory Reform Subcommittee, McFarland

- CS/HB 971 Pub. Rec./Consumer Data Privacy by Government Operations Subcommittee, McFarland

- HB 1113 Traffic and Pedestrian Safety by Fine

- CS/CS/HB 1209 Department of Financial Services by State Administration & Technology Appropriations Subcommittee, Insurance & Banking Subcommittee, Fetterhoff

- CS/HB 1289 Autonomous Vehicles by Tourism, Infrastructure & Energy Subcommittee, McFarland

- HB 1313 Digital Driver Licenses and Identification Cards by LaMarca

- CS/HB 1315 Pub. Rec./Department of Highway Safety and Motor Vehicles by Government Operations Subcommittee, LaMarca

- CS/HB 1329 Transportation Facility Designations Honoring Fallen Law Enforcement Officers by Tourism, Infrastructure & Energy Subcommittee, Latvala

- HB 1385 Department of Transportation by LaMarca

- CS/HB 1463 Department of Economic Opportunity by Tourism, Infrastructure & Energy Subcommittee, LaMarca

- CS/CS/HB 1517 Department of Business and Professional Regulation by State Administration & Technology Appropriations Subcommittee, Regulatory Reform Subcommittee, Duggan

- CS/HB 1629 Transportation Facility Designations by Tourism, Infrastructure & Energy Subcommittee, Williamson

Consideration of the following proposed committee substitute(s):

- PCS for HB 991 -- Petroleum Fuel Measuring Devices
- PCS for HB 1311 -- Public Records and Public Meetings/Public Service Commission

Consideration of the following proposed committee bill(s):

- PCB COM 21-03 -- Gaming Enforcement
- PCB COM 21-04 -- Public Records and Public Meetings Exemptions/Florida Gaming Control Commission
- PCB COM 21-05 -- Requirements for Pari-mutuel Permitholders to Conduct Racing or Games

V. Closing Remarks

VI. Adjournment

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 139 Motor Vehicle and Vessel Registration Data
SPONSOR(S): Tourism, Infrastructure & Energy Subcommittee, Fernandez-Barquin
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 754

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Tourism, Infrastructure & Energy Subcommittee	15 Y, 0 N, As CS	Johnson	Keating
2) Infrastructure & Tourism Appropriations Subcommittee	13 Y, 0 N	Hicks	Davis
3) Commerce Committee		Johnson	Hamon

SUMMARY ANALYSIS

County tax collectors, as authorized agents of the Department of Highway Safety and Motor Vehicles (DHSMV), issue motor vehicle and vessel registration certificates, motor vehicle registration license plates and validation stickers, and vessel numbers and decals to applicants.

The bill requires each third party that has contracted with a tax collector and has online computer access to DHSMV's system to enter into a memorandum of understanding with DHSMV.

The bill requires DHSMV to administer funds collected through an existing fee assessed on motor vehicle and vessel registrations in a manner that ensures that all ancillary technology and other tax collection systems used by tax collectors protect customer privacy and data.

The bill authorizes DHSMV, upon a tax collector's request, to provide ancillary technology to integrate other tax collection systems used by tax collectors in order to provide tax collectors with uniform interface functionalities for registration renewal transactions performed at a tax collector's office or online via a tax collector's website and provides certain technological requirements. Such data and functionality may only be used for specified purposes.

The bill will have an indeterminate negative, but likely insignificant, fiscal impact to state government expenditures, but does not appear to impact state government revenues. The bill does not appear to impact local government revenues or expenditures. *See* Fiscal Analysis section for details.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Tax Collectors

County tax collectors are authorized agents of the Department of Highway Safety and Motor Vehicles (DHSMV) that issue motor vehicle and vessel registration certificates, motor vehicle registration license plates and validation stickers, mobile home stickers, and vessel numbers and decals to applicants.[1] The law specifies the service fees tax collectors are authorized to collect in exchange for providing these registration services.[2] Each tax collector must keep a full and complete record and account of all validation stickers, mobile home stickers, vessel decals, or other properties received by him or her from DHSMV.[3]

Currently, 65 counties have elected tax collectors who are constitutional officers. Broward and Miami-Dade Counties have appointed tax collectors under each county's charter government.[4] Sixteen counties have, or have until recently had, contracts with privately operated license plate agents (LPAs) to perform registration services for motor vehicles, mobile homes, trailers, and vessels.[5]

Many tax collectors hire vendors to assist with mailing, cashiering, deploying kiosks, providing online services, and performing other duties. When requested by a tax collector, DSHMV routinely provides access to data, both in real-time and through batch processes, to the tax collector's vendors for the purpose of providing support to the requesting tax collector. Some of the data provided contains personal information[6] which is confidential pursuant to the federal Driver's Privacy Protection Act (DPPA) of 1994.[7] Such information may be released only as authorized by the DPPA.

To ensure compliance with DPPA, DSHMV practices data minimization, so that personal information from driver license records is provided to agents and vendors only when it is directly related to a specified task deemed necessary by DSHMV or the Legislature. Once the specified purpose has been completed, this practice requires that shared data be securely destroyed or otherwise rendered unreadable. Data minimization also decreases risks of data loss and breaches.[8]

DHSMV Information Systems

DHSMV's Florida Real Time Vehicle Information System (FRVIS) is the database application used to title and register all motor vehicles, mobile homes, trailers, and vessels in Florida. It provides real-time access to extensive transactional information[9] on every motor vehicle, mobile home, trailer, and vessel titled or registered in the state to include owner residential and electronic mail addresses.[10]

Florida law[11] requires that FRVIS be installed in every tax collector's and LPA's office according to a schedule established by DHSMV in consultation with the tax collectors and contingent upon funds being made available for the system. DSHMV administers FRVIS in consultation with the Florida Tax Collectors, Inc., to ensure that each county tax collector's office is technologically equipped and functional for the operation of FRVIS. Only DHSMV, tax collectors, and LPAs have access to FRVIS.

[1] Ss. 320.03(1) and 328.73(1), F.S.
[2] *See* s. 320.04.
[3] Ss. 320.03(3) and 328.73(2), F.S.
[4] Pursuant to s. 1(d), Art. VIII of the State Constitution, Broward and Miami Dade counties will have elected tax collectors effective January 7, 2025.
[5] Department of Highway Safety and Motor Vehicles, Agency Analysis of 2021 House Bill 139, p.3.
[6] See 18 U.S.C. s. 2725
[7] See 18 U.S.C. ss. 2721 et seq.
[8] Department of Highway Safety and Motor Vehicles, Agency Analysis of 2021 House Bill 139, p.3.
[9] Transactional information refers to information used, accessed, or collected for purpose of a customer transaction.
[10] Department of Highway Safety and Motor Vehicles, Agency Analysis of 2021 House Bill 139, p.3.
[11] S. 320.03(4)(b), F.S.

This access is governed by individual memoranda of understanding (MOUs) between DSHMV and each tax collector and, if a tax collector has an LPA, by an additional MOU between DHSMV, each such tax collector, and the LPA contracted with the tax collector. Sections 320.03(5) and 328.73(3), F.S., impose a 50 cent fee on each motor vehicle, mobile home, and vessel registration to cover the operation of FRVIS. That fee is deposited into the Highway Safety Operating Trust Fund.[12]

Access to DSHMV systems and data is governed by various MOUs between DHSMV, tax collectors, and other third-party entities. The MOUs document how the data will be used and protected, ensuring compliance with various state and federal laws, including the Driver Privacy Protection Act (DPPA).[13]

Any tax collector or LPA opening a new office or expanding existing offices initially purchases the equipment needed for title and registration services. DHSMV periodically refreshes outdated equipment and pays the cost of the new equipment[14] for both tax collector's and LPA's offices. LPAs reimburse DSHMV for recurring costs, such as internet access, for each location, unless the LPA office is collocated with a tax collector's office and the costs are shared.

Motorist Modernization

Phase II of DHSMV's Motorist Modernization program will redevelop all systems and processes supporting motor vehicle, mobile home, trailer, and vessel titling and registration. Phase II will be implemented in two separate releases. The program will first focus on replacing the legacy FRVIS system with the new "ORION" system for field-office issuances. The program will next focus on replacing FRVIS functions performed by administrative staff and adding additional motor vehicle functionality to MyDMVPortal. Phase II is expected to be completed in late 2023 or early 2024.[15]

Effect of the Bill

The bill requires each third party that has contracted with a tax collector and has online computer access to DHSMV's system to enter into a memorandum of understanding with DHSMV.

The bill requires DHSMV to administer funds collected through an existing fee assessed on motor vehicle and vessel registrations in a manner that ensures that all ancillary technology and other tax collection systems used by tax collectors protect customer privacy and data.

With respect to motor vehicle and vessel registrations, the bill authorizes DHSMV, upon a tax collector's request, to provide ancillary technology to integrate other tax collection systems used by tax collectors in order to provide tax collectors with data access and uniform interface functionalities for registration renewal transactions performed at a tax collector's office or online via a tax collector's website.

The bill also provides that DHSMV must prescribe the best manner of delivering the data access and uniform interface functionalities to tax collectors for the purpose of processing registration renewal transactions and must provide the ability to record and process renewal transactions[16] in the state system in real time and bulk data reporting for vehicle registrations, including each applicants e-mail address.[17]

Such data and functionality may be used only for purposes of fulfilling the tax collector's statutory duties pursuant to chapter 319, F.S., (motor vehicle titling); chapter 320, F.S., (motor vehicle registrations); chapter 322, F.S., (driver licenses); and chapter 328, F.S., (vessel registration and titling) and may not

[12] Department of Highway Safety and Motor Vehicles, Agency Analysis of 2021 House Bill 139, p.3.
[13] *Id.* at 4.
[14] This is contingent on appropriated funds.
[15] Department of Highway Safety and Motor Vehicles, Agency Analysis of 2021 House Bill 139, p.4.
[16] The bill defines the term "registration renewal transactions" as the issuance of motor vehicle, mobile home, and trailer registration certificates, registration license plates, motor vehicle registration validation stickers, vessel registration certificates, vessel numbers and vessel decals.
[17] E-mail addresses are collected pursuant to ss. 320.95 and 328.30, F.S.

be resold or used for any other purpose. This data access and functionality must be developed no later than July 1, 2023.

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

B. SECTION DIRECTORY:

Section 1 Amends s. 320.03, F.S., relating to the registration duties of tax collectors.

Section 2 Amends s. 328.73, F.S., relating to the registration duties of tax collectors.

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:

   DHSMV is responsible for refreshing outdated technology equipment for both tax collector and LPA offices providing motor vehicle and vessel registrations. According to DHSMV, there will be programming costs associated with connecting ancillary technology and other tax collection systems used by tax collectors with FRVIS for purposes of fulfilling tax collectors' statutory duties. This cost is indeterminate, but likely insignificant, because it is unknown how many connectivity requests would be received from tax collectors.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may facilitate additional contracts between the county tax collectors and vendors providing technology services to tax collectors.

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 of counties or municipalities to raise revenues in the aggregate; or reduce the percentage sales 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 a proposed committee substitute and reported the bill favorably as a committee substitute. From the original bill, the committee stubstitute removed all provisions relating to motor vehicle titling, provisions regarding electronic signatures, and provisions authorizing tax collectors to collect e-mail address.

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 motor vehicle and vessel registration data; amending s. 320.03, F.S.; requiring tax collectors, third parties contracted with tax collectors, and license tag agents to enter into a memorandum of understanding with the Department of Highway Safety and Motor Vehicles and make certain determinations regarding registration applicants; requiring the department to ensure that certain technology used by tax collectors protects customer privacy and data; authorizing the department to provide certain technology to tax collectors upon request in order to provide data access and uniform interface functionalities for registration renewal transactions; providing requirements; authorizing use of such data and functionality for certain purposes; requiring development of data access and uniform interface functionalities by a certain date; defining the term "registration renewal transactions"; amending s. 328.73, F.S.; authorizing the department to provide certain technology to tax collectors upon request in order to provide data access and uniform interface functionalities for registration renewal transactions; providing requirements; authorizing use of such data and functionality for certain purposes; requiring

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

development of data access and uniform interface functionalities by a certain date; defining the term "registration renewal transactions"; providing an effective date.

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

Section 1. Paragraph (a) of subsection (4) and subsection (5) of section 320.03, Florida Statutes, are amended to read:

320.03 Registration; duties of tax collectors; International Registration Plan.—

(4)(a) Each tax collector, third party contracted with a tax collector, or license tag agent who has online computer access to the department's systems or ~~department~~ data ~~center or other reasonable access thereto~~ shall enter into a memorandum of understanding with the department and shall, except when the department has issued a registration renewal notice, upon receipt of an application for the registration of any motor vehicle, determine from the driver file of the applicant whether the applicant's driver license has been canceled, suspended, or revoked and, if so, whether the applicant has surrendered his or her license to the department as required by s. 322.251. If the applicant has not surrendered his or her license in accordance with ~~the provisions of~~ that section, the tax collector shall refuse to register the vehicle until such time as the applicant

surrenders his or her driver license to the department.

(5)(a) In addition to the fees required under s. 320.08, a fee of 50 cents shall be charged on every license registration sold to cover the costs of the Florida Real Time Vehicle Information System. The fees collected shall be deposited into the Highway Safety Operating Trust Fund to be used exclusively to fund the system. The fee may only be used to fund the system equipment, software, personnel associated with the maintenance and programming of the system, and networks used in the offices of the county tax collectors as agents of the department and the ancillary technology necessary to integrate the system with other tax collection systems. The department shall administer this program upon consultation with the Florida Tax Collectors, Inc., to ensure that each county tax collector's office is technologically equipped and functional for the operation of the Florida Real Time Vehicle Information System and to ensure that all ancillary technology and other tax collection systems used by tax collectors protect customer privacy and data. Any designated revenue collected to support functions of the county tax collectors and not used in a given year must remain exclusively in the trust fund as a carryover to the following year.

(b) Upon a tax collector's request, the department may provide ancillary technology to integrate other tax collection systems used by tax collectors in order to provide tax

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

collectors with data access and uniform interface functionalities for registration renewal transactions performed at a tax collector's office or online via a tax collector's website. The department shall prescribe the best manner of delivering the data access and uniform interface functionalities to tax collectors for the purpose of processing registration renewal transactions and shall provide the ability to record and process registration renewal transactions in the state system in real time and bulk data reporting for vehicle registrations, including each applicant's electronic mail address collected pursuant to s. 320.95. Such data and functionality may be used only for purposes of fulfilling the tax collector's statutory duties pursuant to this chapter, chapter 319, chapter 322, or chapter 328 and may not be resold or used for any other purpose. Such data access and uniform interface functionalities shall be developed no later than July 1, 2023. For the purposes of this paragraph, the term "registration renewal transactions" means issuance of motor vehicle, mobile home, and trailer registration certificates, registration license plates, and validation stickers.

Section 2. Subsection (1) of section 328.73, Florida Statutes, is amended to read:

328.73 Registration; duties of tax collectors.—

(1)(a) The tax collectors in the counties of the state, as authorized agents of the department, shall issue registration

certificates and vessel numbers and decals to applicants, subject to the requirements of law and in accordance with rules of the department.

(b) Upon a tax collector's request, the department may provide ancillary technology to integrate other tax collection systems used by tax collectors in order to provide tax collectors with data access and uniform interface functionalities for registration renewal transactions performed at a tax collector's office or online via a tax collector's website. The department shall prescribe the best manner of delivering the data access and uniform interface functionalities to tax collectors for the purpose of processing registration renewal transactions and shall provide the ability to record and process registration renewal transactions in the state system in real time and bulk data reporting for vessel registrations, including each applicant's electronic mail address collected pursuant to s. 328.30. Such data and functionality may be used only for purposes of fulfilling the tax collector's statutory duties pursuant to this chapter, chapter 319, chapter 320, or chapter 322 and may not be resold or used for any other purpose. Such data access and uniform interface functionalities shall be developed no later than July 1, 2023. For the purposes of this paragraph, the term "registration renewal transactions" means vessel registration certificates, vessel numbers, and decals.

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

CS/HB 401

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 401 Florida Building Code
SPONSOR(S): Regulatory Reform Subcommittee, Fetterhoff, Overdorf and others
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Regulatory Reform Subcommittee	18 Y, 0 N, As CS	Brackett	Anstead
2) Local Administration & Veterans Affairs Subcommittee	14 Y, 0 N	Renner	Miller
3) Commerce Committee		Brackett	Hamon

SUMMARY ANALYSIS

The Florida Building Commission (Commission), located within the Department of Business and Professional Regulation (DBPR), implements and adopts the Florida Building Code. The Building Code is the statewide building code for all construction in the state. Every local government must enforce the Building Code and issue building permits. The Commission adopts a new edition of the Building Code every three years.

The Commission and local governments may adopt amendments to the Building Code provided they follow the requirements in current law. Local amendments to the Building Code expire when the newest edition of the Building Code takes effect. Current law also requires the Commission to develop and implement an approval of products for statewide use.

The bill:

- Allows a substantially affected person to petition the Commission for a non-binding advisory opinion on whether a local government regulation is an improper amendment to the Building Code, and establishes a process for such petitions;
- Allows the Commission to issue an "errata to the code" to correct demonstrated errors in provisions contained within the Building Code;
- Requires the Commission to adopt rules for approving product evaluation entities in addition to the ones already listed and approved in current law; and
- Prohibits a local government from requiring a contract between a builder and an owner as a condition to apply for or obtain a building permit.

The bill may have an insignificant negative fiscal impact on DBPR and an indeterminate fiscal impact on local governments. *See Fiscal Comments.*

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

The Florida Building Code and Florida Building Commission – Current Situation

In 1974, Florida adopted legislation requiring all local governments to adopt and enforce a minimum building code ensuring Florida's minimum building standards were met. Local governments could choose from four separate model codes. The state's role was limited to adopting all or relevant parts of new editions of the four model codes. Local governments could amend and enforce their local codes as they desired.[1]

In 1992, Hurricane Andrew demonstrated that Florida's system of local codes did not work. Hurricane Andrew easily destroyed those structures that were built allegedly according to the strongest code. The Governor eventually appointed a study commission to review the system of local codes and make recommendations for modernizing the system. The 1998 Legislature adopted the study commission's recommendations for a single state building code and enhanced the oversight role of the state over local code enforcement. The 2000 Legislature authorized implementation of the Florida Building Code (Building Code), and that first edition replaced all local codes on March 1, 2002.[2] The current edition of the Building Code is the seventh edition, which is referred to as the 2020 Florida Building Code.[3]

Ch. 553, part IV, F.S., is known as the "Florida Building Codes Act" (Act). The purpose and intent of the Act is to provide a mechanism for the uniform adoption, updating, interpretation, and enforcement of a single, unified state building code. The Building Code must be applied, administered, and enforced uniformly and consistently from jurisdiction to jurisdiction.[4]

The main purpose of the Building Code is to regulate new construction or proposed modifications to existing structures in order to give the occupants the highest level of safety and the least amount of defects.[5]

The Florida Building Commission

The Florida Building Commission (Commission) was statutorily created to implement the Building Code. The Commission, which is housed within the Department of Business and Professional Regulation (DBPR), is a 19-member technical body made up of design professionals, contractors, and government experts in various disciplines covered by the Building Code.[6]

The Commission reviews several International Codes published by the International Code Council, the National Electric Code, and other nationally adopted model codes to determine if the Building Code needs to be updated and adopts an updated Building Code every three years.[7]

The Commission has 11 Technical Advisory Committees (TAC) ranging from the building structural TAC to the swimming pool TAC.[8] TACs are made up of Commission members and other parties who advise the Commission on declaratory statements, proposed amendments, and any other areas of interest of the Commission.[9]

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[1] The Florida Building Commission Report to the 2006 Legislature, *Florida Department of Community Affairs,* p. 4, http://www.floridabuilding.org/fbc/publications/2006_Legislature_Rpt_rev2.pdf (last visited Feb. 15, 2021).
[2] *Id.*; DBPR, *Building Code Information System*, https://floridabuilding.org/c/default.aspx# (last visited on Feb. 15, 2021).
[3] Florida Building Commission Homepage, https://floridabuilding.org/c/default.aspx (last visited Feb. 26, 2021).
[4] *See* s. 553.72(1), F.S.
[5] Florida Building Commission, *Advanced Florida Building Code Principals*, http://www.floridabuilding.org/Upload/Courses_trp/421-2-MATERIAL-Adv%20FL%20Bldg%20Code%20-%20Course%20PDF%20version%207.0.pdf (last visited Feb. 26, 2021).
[6] Ss. 553.73, and 553.74, F.S.
[7] *Id.*
[8] DBPR, *Florida Building Code Online*, https://www.floridabuilding.org/c/c_commission.aspx (last visited Feb. 26, 2021).
[9] S. 553.73(3), F.S.; Rule 61G20-2.001, F.A.C.

Local Enforcement of the Florida Building Code

The Legislature has authorized local governments to inspect all buildings, structures, and facilities within their jurisdictions to protect the public's health, safety, and welfare.[10]

Every local government must enforce the Building Code and issue building permits.[11] It is unlawful for a person, firm, or corporation to construct, erect, alter, repair, secure, or demolish any building without first obtaining a permit from the local government enforcing agency or from such persons as may, by resolution or regulation, be directed to issue such permit, upon the payment of reasonable fees as set forth in a schedule of fees adopted by the enforcing agency.[12]

A building permit is an official document or certificate issued by the local building official that authorizes performance of a specific activity.[13] A building official is a local government employee or a person contracted by a local government who supervises Building Code activities, including plan review, enforcement, and inspection to ensure work complies with the Building Code.[14]

Amendments to the Building Code

The Commission and local governments may adopt technical and administrative amendments to the Building Code. A technical amendment to the Building Code is an alteration to the prescriptive requirements or reference standards for construction. An administrative amendment is an addition or alteration of the code enforcement requirements of the Building Code.[15] All amendments adopted by the Commission require a 75 percent supermajority vote of approval.[16]

The Commission may approve technical amendments to the Building Code once each year for statewide or regional application upon a finding that the amendment:[17]

- Is needed in order to accommodate the specific needs of the state;
- Has a reasonable and substantial connection with the health, safety, and welfare of the general public;
- Strengthens or improves the Building Code, or in the case of innovation or new technology, will provide equivalent or better products or methods or systems of construction;
- Does not discriminate against materials, products, methods, or systems of construction of demonstrated capabilities; and
- Does not degrade the effectiveness of the Building Code.

In order to adopt a technical amendment to the Building Code the Commission must meet the following requirements:[18]

- The proposed amendment has been published on the Commission's website for a minimum of 45 days and all the associated documentation has been made available to any interested party before any consideration by a TAC;
- The proposed amendment includes a fiscal impact statement that documents the costs and benefits of the proposed amendment.
- In order for a TAC to make a favorable recommendation to the Commission, the proposal must receive a three-fourths vote of the members present at the TAC meeting and at least half of the regular members must be present in order to conduct a meeting;

[10] S. 553.72, F.S.
[11] Ss. 125.01(1)(bb), 125.56(1), and 553.80(1), F.S.
[12] *See* ss. 125.56(4)(a) and 553.79(1), F.S.
[13] S. 202 of the Building Code (Building), Sixth Edition.
[14] S. 468.603(2), F.S.
[15] S. 553.73, F.S.; Rule 61G20-2.002, F.A.C.
[16] Rule 61G20-2.002(13), F.A.C.
[17] S. 553.73(9), F.S.
[18] Ss. 553.73(3) and (9), F.S.

- After a TAC consideration and recommendation for approval of any proposed amendment, the proposal must be published on the Commission's website for at least 45 days before any consideration by the Commission; and
- A proposal may be modified by the Commission based on public testimony and evidence from a public hearing held in accordance with ch. 120, F.S.

Adopted amendments to the foundation codes must be clearly marked in printed versions of the Building Code to make readily apparent the fact that the provisions are Florida-specific amendments.[19]

However, the Commission may adopt certain amendments at any time and only has to follow the rule adoption procedures in the Administrative Procedure Code.[20] The Commission may adopt amendments using the rule adoption procedure to address the following:[21]

- Conflicts within the updated code;
- Conflicts between the updated code and the Florida Fire Prevention Code;
- Unintended results from the integration of previously adopted Florida-specific amendments with the model code;
- Equivalency of standards;
- Changes to or inconsistencies with federal or state law;
- Adoption of an updated edition of the NEC if the Commission finds that delay of implementing the updated edition causes undue hardship to stakeholders or otherwise threatens the public health, safety, and welfare; or
- Enhancement of the construction requirements relating to wind resistance or the prevention of water intrusion.

Local Amendments to the Building Code

Local governments may adopt amendments to the Building Code that are more stringent than the Building Code, which are limited to the local government's jurisdiction. Amendments by local governments expire upon the adoption of the newest edition of the Building Code, and, thus, the local government must go through the amendment process every three years in order to maintain a local amendment to the Building Code.[22]

Current law allows local governments to adopt technical amendments to the Building Code every six months if:[23]

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

[19] s. 553.73(7), F.S.
[20] Ch. 120, F.S.
[21] *See* ss. 120.536, 120.54, 120.541, and 553.73(8), F.S.; Rule 61G20-2.002(2), F.A.C.
[22] S. 553.73(4), F.S.
[23] *Id.*

A technical amendment adopted by a local government takes effect 30 days after the Commission receives the amendment and publishes the amendment on its website.[24]

The Commission may review local amendments and issue nonbinding recommendations to local governments about whether the local government complied with the requirements to adopt an amendment. If the Commission decides to review a local amendment it must send the amendment to the applicable TAC for review.[25] The TAC must make a recommendation to the Commission about whether the local amendment complies with the requirements of current law. The Commission must provide the nonbinding recommendation to the local government within 30 days of adopting the recommendation.[26]

Each county and municipality that adopts technical amendments to the Building Code must establish a countywide compliance review board by interlocal agreement. The compliance review board reviews any amendment adopted by a local government in its county that is challenged by a substantially affected party in order to determine if the amendment has been adopted in accordance with the requirements of current law.[27]

A local government or the substantially affected party may appeal the compliance review board's decision to the Commission within 14 days of the board's decision. The Commission must refer the appeal to the Division of Administrative Hearings for a hearing by an administrative law judge. The administrative law judge must hold a hearing within 30 days of being assigned the appeal, and must enter a recommended order within 30 days of the conclusion of the hearing.[28]

The Commission must enter a final order within 30 days after the administrative law judge issues a recommended order. In proceedings before a compliance review board or the Commission, the local government has the burden to prove an amendment has been adopted in accordance with the requirements of current law.[29]

Interpretations of the Building Code

The Commission may issue declaratory statements regarding interpretations of the Building Code, review local building officials' interpretation of the Building Code, and give binding interpretations of the Building Code.[30]

A substantially affected person, state agency, or a local government may petition the Commission in writing for a declaratory statement relating to interpretations of the Building Code, or the enforcement or administration of the Building Code by local governments. The Commission must issue a declaratory statement or deny a petition within 90 days of receiving the petition. Declaratory statements are binding upon all jurisdictions and are subject to judicial review by a district court of appeal.[31]

A substantially affected person may also petition the Commission to review a local building official's interpretation of the Building Code. A substantially affected person includes an owner or builder subject to a decision of the local building official or an association of owners or builders having members who are subject to a decision of the local building official.[32]

A substantially affected person may petition the Commission to review a local building official's interpretation of the Building Code if:[33]

[24] 553.73(4), F.S.; Rule-61G20-2.003, F.A.C.
[25] *Id.*
[26] *Id.*
[27] S. 553.73(4), F.S.
[28] *See* ss. 120.569, 120.57, 553.73(4), F.S.; ch. 28-106, F.A.C.
[29] *Id.*
[30] S. 553.775, F.S.
[31] Ss. 553.775(3), 120.565, and 120.68, F.S.
[32] S. 553.775(3), F.S.
[33] *Id.*

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

Upon receiving a written petition to review a local building official's interpretation of the Building Code, the Commission must provide copies to a panel, publish the petition and the local building official's response on the Commission's website, and allow for interested parties to post comments. The panel must have seven members made up of five building officials, an architect, and an engineer. The Commission must coordinate with the Building Officials Association of Florida[34] to designate the panel.[35]

The panel must conduct proceedings as necessary to issue a determination and must consider the written petition, the local building official's response, and any comments posted on the Commission's website. The panel must issue a determination within 21 days of the petition being filed with the Commission. The determination is binding upon all parties and all jurisdictions in Florida.[36] The determination must be published on the Commission's website and the Florida Administrative Register.[37]

A party may appeal the panel's determination by filing an appeal with the Commission within 30 days of the panel's determination. The Commission must conduct a hearing in accordance with the Administrative Procedure Act. The burden of proof in the hearing is on the party appealing the panel's determination. The Commission's ruling is subject to judicial review by a district court of appeal.[38]

The Florida Building Code and Florida Building Commission – Effect of the Bill

Errata to the Code

The bill provides that the Commission may issue an "errata to the code" to correct demonstrated errors in provisions contained with the Building Code. An "errata to the code" means a list of errors on current and previous editions of the Building Code.

The determination of such errors and the issuance of an "errata to the code" must be approved by a 75 percent supermajority vote of the Commission.

Petition for Advisory Opinion Relating to Technical Amendments to the Building Code

The bill also provides that a substantially affected person may petition the Commission for a non-binding advisory opinion on any local government regulation, law, ordinance, policy, amendment, or

[34] The Building Officials Association of Florida is the largest community of building officials, building inspectors, plans examiners, and building code compliance professionals in the state. Its goal is to ensure the health, safety, and welfare of the public through safe building practices by equipping building professions through education, advocacy, leadership, and code development. Building Officials Association of Florida, *About BOAF*, https://boaf.net/page/About (last visited Jan. 8, 2020).
[35] S. 553.775(3), F.S.
[36] S. 553.775(3)(c)5., F.S.
[37] *Id.*; The Florida Administrative Register is a daily publication which gives the public current information about the status of proposed rules, notice of agency public meetings, workshops and hearings, and anything else required by law. Florida Administrative Code & Florida Administrative Register, *FL Rules FAQ*, https://www.flrules.org/Help/newHelp.asp#FAW (last visited Jan. 15, 2020).
[38] Ss. 553.775(3), and 120.68, F.S.

land use or zoning provision (regulation) that the person believes is a technical amendment to the Building Code and was not adopted in accordance with the process for adopting local amendments to the Building Code.

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

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

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

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

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

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

Product Evaluation and Approval – Current Situation

Current law requires the Commission to develop and implement an approval of products for statewide use. The Commission has created an approval methodology for products and systems comprising the building envelope and structural frame of a building.[39] The Commission approves the products in the following categories for statewide use:[40]

- Panel Walls;
- Exterior Doors;
- Roofing Products;
- Skylights;
- Windows;
- Shutters;
- Structural Components; and
- Impact Protective Systems.

[39] S. 553.842(1), F.S.; Rule 61G20-3.001, F.A.C.
[40] Rule 61G20-3.001, F.A.C.

To obtain state approval, a manufacturer must demonstrate a product complies with the applicable standards and provisions of the Building Code by submitting one of the following reports:

- A certification mark or listing of an approved certification agency;
- A test report from an approved testing laboratory;
- A product evaluation report developed, signed and sealed by a Florida licensed engineer or architect; or
- A product evaluation report from one of the following evaluation entities:
    - The National Evaluation Service;
    - The International Association of Plumbing and Mechanical Officials Evaluation Service;
    - The International Code Council Evaluation Services;
    - Underwriters Laboratories, LLC;
    - The International Conference of Building Officials;
    - SBCCI Public Safety Testing and Evaluation Services, Inc.;
    - Intertek Testing Services NA, Inc.; or
    - The Miami-Dade County Building Code Compliance Office Product Control Division.[41]

Currently, the Commission has authority to approve an entity as an approved testing laboratory or a certification agency if it meets the Commission's rules.[42] The Commission also has authority to assess an application and renewal fee for entities applying for approval or renewal as a testing laboratory, certification agencies, evaluation entities, and validation entities.[43] However, the Commission does not have authority to approve an entity as an evaluation entity. In order to be approved as an evaluation entity, the entity must be added to the list of approved evaluation entities in current law by the Legislature.

The Commission also has the authority to revoke product approvals as well as the approvals for product evaluation entities, testing laboratories, quality assurance entities, certification agencies, and validation entities.[44] The Commission has adopted a rule providing criteria for revoking or suspending product approvals, testing laboratories, quality assurance entities, certification agencies, and validation entities, but not product evaluation entities. According to DBPR, this is because the current list of product evaluation entities are listed in statute and the Commission does not believe it has authority to discipline them.[45]

Product Evaluation and Approval – Effect of the Bill

The bill requires the Commission to adopt rules for approving evaluation entities in addition to the ones already approved and listed in current law.

Required Information in Building Permit Application – Current Situation

To obtain a permit, an applicant must complete an application for the proposed work on a form furnished by the government entity. The form must include the following information:[46]

- The name and address of the owner of the property;
- The name and address of the contractor;
- A description sufficient to identify the property to be improved, including the property's address and legal description;
- The name and address of the bonding company, if any;
- The name and address of the architect/engineer, if any;
- The name and address of the mortgage company, if any; and
- The number or identifying symbol assigned to the building permit by the issuing authority.

[41] S. 553.842, F.S.; DBPR, Product Evaluation Entity List, https://www.floridabuilding.org/pr/pr_org_lst.aspx (last visited Mar. 18, 2021).
[42] Rule 61G20-3.008, F.A.C.
[43] S. 553.842(1), F.S.; Rule 6120-3.007(2), F.A.C.
[44] S. 553.842(14), F.S.
[45] Rule 61G20-3.013, F.A.C.; Department of Business and Professional Regulation, Agency Analysis of 2021 HB 401, p. 7 (Mar. 3, 2021).
[46] Ss. 713.135(5) and (6), F.S.

In addition to the information that must be in the application, a government entity may require any additional information be included in the application.[47]

Some local governments are requiring contractors to include their contracts with private owners in an application for a building permit. The industry believes that local governments use such contracts to determine construction costs and construction value.[48] These contracts may contain private proprietary information, and after local governments request and obtain such documents, they may become public records available for anyone to obtain upon request.[49]

Required Information in Building Permit Application – Effect of the Bill

The bill prohibits a local government from requiring a contract between a builder and an owner as a condition to apply for or obtain a building permit.

B. SECTION DIRECTORY:

Section 1. Amending s. 553.73, F.S., allowing the Florida Building Commission to issue advisory opinions and an "errata to the code" in certain situations.

Section 2. Amending s. 553.79, F.S., prohibiting local governments from requiring contracts in certain applications for building permits.

Section 3. Amending s. 553.842, F.S., requiring the Commission to adopt criteria for approving certain entities.

Section 4. Amending s. 125.01, F.S., conforming a cross-reference.

Section 5. Amending s. 125.56, F.S., conforming a cross-reference.

Section 6. Providing an effective date of July 1, 2021.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

According to DBPR, applicants for certification as product evaluation entities will be required to pay an initial application fee and renewals fees. DBPR estimates no more than 75 new entities will apply for certification and estimates receiving no more than $45,000 in new application fees and $15,000 annually in renewal fees for such applicants.[50]

2. Expenditures:

The Commission may see an increased workload related to establishing a process for accepting petitions from affected persons and issuing non-binding advisory opinions. According to DBPR, the technology contractor for the Florida Building Commission estimates updating the Building Code

[47] *Id.*
[48] *See* The Florida Channel, *1/27/ 2021 House Regulatory Reform Subcommittee*, https://thefloridachannel.org/videos/1-27-21-house-regulatory-reform-subcommittee/ (last visited Feb. 19, 2021). (According to testimony offered during the January 27, 2021, meeting of the Florida House of Representatives Regulatory Reform Subcommittee, many local governments use the cost of construction as a factor for determining the amount of a fee for a building permit.)
[49] 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 made or received in connection with official business of any public body, including counties, municipalities, and districts. Current law does not contain an exemption from Florida's public records laws for proprietary business information included in a building permit application. *See generally*, ch. 119. F.S.
[50] Department of Business and Professional Regulation, *supra* note 45, at 5.

information system to implement the nonbinding advisory opinion process will cost approximately $60,000.[51]

The provision allowing the Commission to adopt an "errata to the code" is not anticipated to have a significant impact on the Commission's processes.[52]

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

Indeterminate. Local governments could see increased costs to address requests for nonbinding advisory opinions.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Prohibiting local governments from requiring contracts between owners and builders as a condition to apply or obtain a building permit may have a positive impact by preventing certain proprietary information from becoming public.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The county/municipality mandates provision of Art. VII, s. 18 of the Florida Constitution may apply because local governments could see increased costs to address requests for nonbinding advisory opinions. However, an exemption may apply because any costs to respond to requests for a nonbinding advisory opinion are likely to be insignificant.

2. Other:

Article VII, s. 19 of the Florida Constitution requires the imposition, authorization, or raising of a state tax or fee be contained in a separate bill that contains no other subject and be approved by two-thirds of the membership of each house of the Legislature. As such, Art, VII, s. 19 of the Florida Constitution may apply if the product evaluation entity approval provisions in the bill are interpreted to be a new or increased fee.

B. RULE-MAKING AUTHORITY:

The bill requires the Commission to adopt the form for the petition to request a nonbinding advisory opinion and directions for filing the form, adopt criteria for approving evaluation entities, and adopt "errata to the code." It appears that sufficient rulemaking authority exists in sections 553.76(1) and (4), and 553.842(1), F.S.

C. DRAFTING ISSUES OR OTHER COMMENTS:

According to DBPR,[53]

[51] *Id.*
[52] Email from Conner Mann, Legislative Affairs Coordinator, Department of Business and Professional Regulation, HB 401 Provision, (Feb. 8, 2021).
[53] Department of Business and Professional Regulation, *supra* note 45, at 7.

> "Since the current list of product evaluation entities is determined by statute, the Commission exempts these entities from revocation or suspension of their status in its rules, as there does not appear to be statutory authority for the Commission to take such disciplinary action. The proposed legislation would create an additional administrative avenue for the approval of product evaluation entities; these entities would presumably be subject to the same disciplinary measures as other entities in the product approval program. The existence of two classes of otherwise similarly-situated product evaluation entities, one of which is subject to administrative discipline and one of which is not, may raise equal protection issues."

The sponsor may want to clarify that the Commission may discipline any product evaluation entity including those listed in statute.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 2, 2021, the Regulatory Reform Subcommittee adopted two amendments and reported the bill favorably as a committee substitute. The committee substitute:

- Removes the provision prohibiting DOH from requiring assisted living facilities to comply with rules relating to swimming pool lifeguards.
- Removes a cross-reference.

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

A bill to be entitled

An act relating to the Florida Building Code; amending s. 553.73, F.S.; authorizing a substantially affected person to file a petition with the Florida Building Commission to review certain local government regulations, laws, ordinances, policies, amendments, or land use or zoning provisions; defining the term "local government"; providing requirements for the petition and commission; requiring the commission to issue a nonbinding advisory opinion within a specified timeframe; authorizing the commission to issue errata to the code; providing a definition for the term "errata to the code"; making technical changes; amending s. 553.79, F.S.; prohibiting a local government from requiring certain contracts for the issuance of a building permit; amending s. 553.842, F.S.; requiring evaluation entities that meet certain criteria to comply with certain standards; amending ss. 125.01 and 125.56, F.S.; conforming cross-references to changes made by the act; making technical changes; providing an effective date.

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

Section 1. Subsections (4) and (8) of section 553.73,

Florida Statutes, are amended to read:

553.73 Florida Building Code.—

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

(b) Local governments may, subject to the limitations in ~~of~~ this section and not more than once every 6 months, adopt amendments to the technical provisions of the Florida Building Code that ~~which~~ apply solely within the jurisdiction of such government and that ~~which~~ provide for more stringent requirements than those specified in the Florida Building Code~~,~~

~~not more than once every 6 months~~. A local government may adopt technical amendments that address local needs if:

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

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

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

(c) ~~4.~~ The enforcing agency shall make readily available, in a usable format, all amendments adopted under ~~pursuant to~~ this section.

(d) ~~5.~~ Any amendment to the Florida Building Code shall be transmitted within 30 days after adoption by the ~~adopting~~ local

government to the commission. The commission shall maintain copies of all such amendments in a format that is usable and obtainable by the public. Local technical amendments are ~~shall~~ not ~~become~~ effective until 30 days after the amendment has been received and published by the commission.

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

(f)~~7.~~ Each county and municipality desiring to make local technical amendments to the Florida Building Code shall ~~by interlocal agreement~~ establish by interlocal agreement a countywide compliance review board to review any amendment to the Florida Building Code that is~~,~~ adopted by a local government within the county under ~~pursuant to~~ this subsection and ~~paragraph,~~ that is challenged by a ~~any~~ substantially affected party for purposes of determining the amendment's compliance

with this subsection ~~paragraph~~. If challenged, the local technical amendments are ~~shall~~ not ~~become~~ effective until the time for filing an appeal under paragraph (g) ~~pursuant to subparagraph 8.~~ has expired or, if there is an appeal, until the commission issues its final order determining if the adopted amendment is in compliance with this subsection.

(g)~~8.~~ If the compliance review board determines such amendment is not in compliance with this subsection ~~paragraph~~, the compliance review board shall notify such local government of the noncompliance and that the amendment is invalid and unenforceable until the local government corrects the amendment to bring it into compliance. The local government may appeal the decision of the compliance review board to the commission. If the compliance review board determines that such amendment is ~~to be~~ in compliance with this subsection ~~paragraph~~, any substantially affected party may appeal such determination to the commission. Any such appeal must ~~shall~~ be filed with the commission within 14 days after ~~of~~ the board's written determination. The commission shall promptly refer the appeal to the Division of Administrative Hearings by electronic means through the division's website for the assignment of an administrative law judge. The administrative law judge shall conduct the required hearing within 30 days after being assigned to the appeal, and shall enter a recommended order within 30 days after ~~of~~ the conclusion of such hearing. The commission

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

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

(i) ~~10.~~ In addition to paragraphs (f) and (g) ~~subparagraphs 7. and 9.~~, the commission may review any amendments adopted under ~~pursuant to~~ this subsection and make nonbinding recommendations related to compliance of such amendments with this subsection.

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

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

(l) If a local government adopts a regulation, law, ordinance, policy, amendment, or land use or zoning provision without using the process established in this subsection, and a substantially affected person considers such regulation, law, ordinance, policy, amendment, or land use or zoning provision to be a technical amendment to the Florida Building Code, then the substantially affected person may submit a petition to the commission for a nonbinding advisory opinion. If a substantially

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

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

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

a. The name of the local government that enacted the regulation, law, ordinance, policy, amendment, or land use or zoning provision.

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

counsel or administrator.

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

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

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

4. Upon receipt of a petition that meets the requirements of this paragraph, the commission shall publish the petition, including any response submitted by the local government, on the

Building Code Information System in a manner that allows interested persons to address the issues by posting comments.

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

(8) Notwithstanding subsection (3) or subsection (7), the commission may address issues identified in this subsection by amending the code under ~~pursuant to~~ the rule adoption procedures in chapter 120. Updates to the Florida Building Code, including provisions contained in referenced standards and criteria which relate to wind resistance or the prevention of water intrusion, may not be amended under ~~pursuant to~~ this subsection to diminish

those standards; however, the commission may amend the Florida Building Code to enhance such standards. Following the approval of any amendments to the Florida Building Code by the commission and publication of the amendments on the commission's website, authorities having jurisdiction to enforce the Florida Building Code may enforce the amendments.

(a) The commission may approve amendments that are needed to address:

1.~~(a)~~ Conflicts within the updated code;

2.~~(b)~~ Conflicts between the updated code and the Florida Fire Prevention Code adopted under ~~pursuant to~~ chapter 633;

3.~~(c)~~ Unintended results from the integration of previously adopted amendments with the model code;

4.~~(d)~~ Equivalency of standards;

5.~~(e)~~ Changes to or inconsistencies with federal or state law; or

6.~~(f)~~ Adoption of an updated edition of the National Electrical Code if the commission finds that delay of implementing the updated edition causes undue hardship to stakeholders or otherwise threatens the public health, safety, and welfare.

(b) The commission may issue errata to the code to correct demonstrated errors in provisions contained within the Florida Building Code. The determination of such errors and the issuance of errata to the code must be approved by a 75 percent

supermajority vote of the commission. For purposes of this paragraph, "errata to the code" means a list of errors on current and previous editions of the Florida Building Code.

Section 2. Paragraph (d) is added to subsection (1) of section 553.79, Florida Statutes, to read:

553.79 Permits; applications; issuance; inspections.—

(1)

(d) A local government may not require a contract between a builder and an owner for the issuance of a building permit or as a requirement for the submission of a building permit application.

Section 3. Paragraph (a) of subsection (8) of section 553.842, Florida Statutes, is amended to read:

553.842 Product evaluation and approval.—

(8) The commission may adopt rules to approve the following types of entities that produce information on which product approvals are based. All of the following entities, including engineers and architects, must comply with a nationally recognized standard demonstrating independence or no conflict of interest:

(a) Evaluation entities approved under ~~pursuant to~~ this paragraph or that meet the criteria for approval adopted by the commission by rule. The commission shall specifically approve the National Evaluation Service, the International Association of Plumbing and Mechanical Officials Evaluation Service, the

International Code Council Evaluation Services, Underwriters Laboratories, LLC, Intertek Testing Services NA, Inc., and the Miami-Dade County Building Code Compliance Office Product Control Division. Architects and engineers licensed in this state are also approved to conduct product evaluations as provided in subsection (5).

Section 4. Paragraph (bb) of subsection (1) of section 125.01, Florida Statutes, is amended to read:

125.01 Powers and duties.—

(1) The legislative and governing body of a county shall have the power to carry on county government. To the extent not inconsistent with general or special law, this power includes, but is not restricted to, the power to:

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

Section 5. Subsection (1) of section 125.56, Florida Statutes, is amended to read:

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

(1) The board of county commissioners of each of the several counties of the state may enforce the Florida Building Code and the Florida Fire Prevention Code~~,~~ as provided in ss.

553.80, 633.206, and 633.208~~,~~ and, at its discretion, adopt local technical amendments to the Florida Building Code as provided in s. 553.73(4)~~, pursuant to s. 553.73(4)(b) and (c)~~ and local technical amendments to the Florida Fire Prevention Code as provided in~~, pursuant to~~ s. 633.202~~,~~ to provide for the safe construction, erection, alteration, repair, securing, and demolition of any building within its territory outside the corporate limits of any municipality. Upon a determination to consider amending the Florida Building Code or the Florida Fire Prevention Code by a majority of the members of the board of county commissioners of such county, the board shall call a public hearing and comply with the public notice requirements of s. 125.66(2). The board shall hear all interested parties at the public hearing and may then amend the building code or the fire code consistent with the terms and purposes of this act. Upon adoption, an amendment to the code shall be in full force and effect throughout the unincorporated area of such county until otherwise notified by the Florida Building Commission under ~~pursuant to~~ s. 553.73 or the State Fire Marshal under ~~pursuant to~~ s. 633.202. This subsection does not ~~Nothing herein contained shall be construed to~~ prevent the board of county commissioners from repealing such amendment to the building code or the fire code at any regular meeting of such board.

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

COMMERCE COMMITTEE

HB 401 by Rep. Fetterhoff
Florida Building Code

AMENDMENT SUMMARY
April 14, 2021

Amendment 1 by Rep. Fetterhoff (line 272):

- Clarifies that the Florida Building Commission may adopt an errata to the Building Code to list errors in the Building Code.
- Clarifies that local government entities may elect to use private providers for their own construction projects.
- Clarifies that the Florida Building Commission may suspend a product evaluation entity for failing to follow the Commission's procedures for submitting evaluation reports for construction materials.

Amendment 2 by Rep. Drake (line 286):

- Provides that a local government may use excess funds generated by Building Code enforcement for the construction of a building or structure that houses the local government's building code enforcement agency or provides training programs for building officials, inspectors, or plans examiners.
- Provides that excess funds used to construct such a building or structure must be designated for such purpose by the local government and may not be carried forward for more than four years.

COMMITTEE/SUBCOMMITTEE ACTION

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

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

Amendment (with title amendment)

Remove lines 272-306 and insert:

(b) The commission may issue errata to the code pursuant to the rule adoption procedures in chapter 120 to list demonstrated errors in provisions contained within the Florida Building Code. The determination of such errors and the issuance of errata to the code must be approved by a 75 percent supermajority vote of the commission. For purposes of this paragraph, "errata to the code" means a list of errors on current and previous editions of the Florida Building Code.

Section 2. Paragraph (d) is added to subsection (1) of section 553.79, Florida Statutes, to read:

553.79 Permits; applications; issuance; inspections.—

(1)

(d) A local government may not require a contract between a builder and an owner for the issuance of a building permit or as a requirement for the submission of a building permit application.

Section 3. Subsection (20) is added to section 553.791, Florida Statutes, to read:

553.791 Alternative plans review and inspection.—

(20) Notwithstanding any other law, a county, a municipality, a school district, or an independent special district may elect to use a private provider to provide building code inspection services for a public works project, an improvement, a building, or any other structure that is owned by the county, municipality, school district, or independent special district.

Section 4. Paragraph (a) of subsection (8) and subsection (14) of section 553.842, Florida Statutes, are amended to read:

553.842 Product evaluation and approval.—

(8) The commission may adopt rules to approve the following types of entities that produce information on which product approvals are based. All of the following entities, including engineers and architects, must comply with a nationally recognized standard demonstrating independence or no conflict of interest:

(a) Evaluation entities approved under ~~pursuant to~~ this

paragraph or that meet the criteria for approval adopted by the commission by rule. The commission shall specifically approve the National Evaluation Service, the International Association of Plumbing and Mechanical Officials Evaluation Service, the International Code Council Evaluation Services, Underwriters Laboratories, LLC, Intertek Testing Services NA, Inc., and the Miami-Dade County Building Code Compliance Office Product Control Division. Architects and engineers licensed in this state are also approved to conduct product evaluations as provided in subsection (5).

(14) The commission shall by rule establish criteria for revocation of product approvals as well as suspension ~~revocation~~ of approvals of product evaluation entities, including those approved pursuant to paragraph (8)(a), and suspension or revocation of approvals of testing laboratories, quality assurance entities, certification agencies, and validation entities. Suspension and revocation is governed by s. 120.60 and the uniform rules of procedure.

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

Remove lines 14-18 and insert:
amending s. 553.79, F.S.; prohibiting a local government from requiring certain contracts for the issuance of a building permit; amending s. 553.791,

F.S.; authorizing certain local entities to use a private provider in certain circumstances; amending s. 553.842, F.S.; requiring evaluation entities that meet certain criteria to comply with certain standards; authorizing the commission to suspend or revoke certain approvals under certain circumstances; amending

COMMITTEE/SUBCOMMITTEE ACTION

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

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

Amendment (with title amendment)

Between lines 286 and 287, insert:

Section 3. Paragraph (a) of subsection (7) of section 553.80, Florida Statutes, is amended to read:

553.80 Enforcement.—

(7)(a) The governing bodies of local governments may provide a schedule of reasonable fees, as authorized by s. 125.56(2) or s. 166.222 and this section, for enforcing this part. These fees, and any fines or investment earnings related to the fees, shall be used solely for carrying out the local government's responsibilities in enforcing the Florida Building Code. When providing a schedule of reasonable fees, the total estimated annual revenue derived from fees, and the fines and

investment earnings related to the fees, may not exceed the total estimated annual costs of allowable activities. Any unexpended balances shall be carried forward to future years for allowable activities or shall be refunded at the discretion of the local government. A local government may not carry forward an amount exceeding the average of its operating budget for enforcing the Florida Building Code for the previous 4 fiscal years. For purposes of this subsection, the term "operating budget" does not include reserve amounts. Any amount exceeding this limit must be used as authorized in subparagraph 2. However, a local government which established, as of January 1, 2019, a Building Inspections Fund Advisory Board consisting of five members from the construction stakeholder community and carries an unexpended balance in excess of the average of its operating budget for the previous 4 fiscal years may continue to carry such excess funds forward upon the recommendation of the advisory board. The basis for a fee structure for allowable activities shall relate to the level of service provided by the local government and shall include consideration for refunding fees due to reduced services based on services provided as prescribed by s. 553.791, but not provided by the local government. Fees charged shall be consistently applied.

1. As used in this subsection, the phrase "enforcing the Florida Building Code" includes the direct costs and reasonable indirect costs associated with review of building plans,

building inspections, reinspections, and building permit processing; building code enforcement; and fire inspections associated with new construction. The phrase may also include training costs associated with the enforcement of the Florida Building Code and enforcement action pertaining to unlicensed contractor activity to the extent not funded by other user fees.

2. A local government must use any excess funds that it is prohibited from carrying forward to rebate and reduce fees, or pay for the construction of a building or structure that houses a local government's building code enforcement agency or provides training programs for building officials, inspectors, or plans examiners associated with the enforcement of the Florida Building Code. Excess funds used to construct such a building or structure must be designated for such purpose by the local government and may not be carried forward for more than 4 consecutive years.

3. The following activities may not be funded with fees adopted for enforcing the Florida Building Code:

a. Planning and zoning or other general government activities.

b. Inspections of public buildings for a reduced fee or no fee.

c. Public information requests, community functions, boards, and any program not directly related to enforcement of the Florida Building Code.

d. Enforcement and implementation of any other local ordinance, excluding validly adopted local amendments to the Florida Building Code and excluding any local ordinance directly related to enforcing the Florida Building Code as defined in subparagraph 1.

4. A local government shall use recognized management, accounting, and oversight practices to ensure that fees, fines, and investment earnings generated under this subsection are maintained and allocated or used solely for the purposes described in subparagraph 1.

5. The local enforcement agency, independent district, or special district may not require at any time, including at the time of application for a permit, the payment of any additional fees, charges, or expenses associated with:

a. Providing proof of licensure pursuant to chapter 489;

b. Recording or filing a license issued pursuant to this chapter;

c. Providing, recording, or filing evidence of workers' compensation insurance coverage as required by chapter 440; or

d. Charging surcharges or other similar fees not directly related to enforcing the Florida Building Code.

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

Remove line 16 and insert:

issuance of a building permit; amending s. 553.80, F.S.; revising requirements for the expenditure of certain unexpended revenue; amending s. 553.842,

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 491 Florida Real Estate Appraisal Board
SPONSOR(S): Regulatory Reform Subcommittee, Melo and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 346

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Regulatory Reform Subcommittee	15 Y, 0 N, As CS	Thompson	Anstead
2) Commerce Committee		Thompson	Hamon

SUMMARY ANALYSIS

The Florida Real Estate Appraisal Board (Board) within the Department of Business and Professional Regulation (DBPR) regulates real estate appraisers under of ch. 475, part II, F.S. The Board, through its rules, is authorized to:

- Regulate the issuance of licenses, certifications, registrations, and permits;
- Discipline appraisers;
- Establish qualifications for licenses, certifications, registrations, and permits;
- Regulate approved courses;
- Establish standards for real estate appraisals; and
- Establish standards for and regulate supervisory appraisers.

The Board consists of nine members, each appointed by the Governor and subject to confirmation by the Senate. The Governor may remove any Board member for cause. The membership includes:

- Four members who are real estate appraisers who have been engaged in the general practice of appraising real property in this state for at least 5 years immediately preceding appointment;
- Two members who represent the appraisal management industry;
- One member who represents organizations that use appraisals for the purpose of eminent domain proceedings, financial transactions, or mortgage insurance; and
- Two members who represent the general public and are not connected in any way with the practice of real estate appraisal.

The bill revises the membership of the Board as follows:

- Decreases the number of Board members who represent the appraisal management industry from two members to one.
- Increases the number of Board members who represent the general public from two members to three.

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

The effective date of the PCS is November 1, 2021.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

The Florida Real Estate Appraisal Board (Board)[1] within the Department of Business and Professional Regulation (DBPR) regulates real estate appraisers under of ch. 475, part II, F.S. The Board, through its rules, is authorized to:

- Regulate the issuance of licenses, certifications, registrations, and permits;
- Discipline appraisers;
- Establish qualifications for licenses, certifications, registrations, and permits;
- Regulate approved courses;
- Establish standards for real estate appraisals; and
- Establish standards for and regulate supervisory appraisers.[2]

According to the most recent data, there are 6,655 active certified real estate appraisers,[3] and 219 active real estate appraisal management companies, in the state.[4]

The Board consists of nine members, each appointed by the Governor and subject to confirmation by the Senate. The Governor may remove any Board member for cause. The membership includes:

- Four members who are real estate appraisers who have been engaged in the general practice of appraising real property in this state for at least 5 years immediately preceding appointment;
- Two members who represent the appraisal management industry;
- One member who represents organizations that use appraisals for the purpose of eminent domain proceedings, financial transactions, or mortgage insurance; and
- Two members who represent the general public and are not connected in any way with the practice of real estate appraisal.[5]

Members of the Board are appointed for four-year terms, and may not be appointed for more than two consecutive terms. The headquarters of the Board is in Orlando, Florida. The Board must meet at least once each calendar quarter to conduct its business. Members must elect a chairperson at the first meeting each year.[6] Each member of the Board is entitled to per diem and travel expenses as set by legislative appropriation for each day that the member engages in the business of the Board.[7]

There is currently one vacancy on the Board.[8] There are two members with current appointments expiring October 31, 2021 and six continue to hold office through the expiration of their term, including both public members and both appraisal management industry representatives.[9]

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[1] The Florida Real Estate Commission regulates real estate agents, associates, and schools, has 293,012 active licensees, and consists of seven members.
[2] S. 475.613(2), F.S.
[3] Department of Business and Professional Regulation, *Annual Report, Divisions of Professions, Certified Public Accounting, Real Estate, and Regulation, Fiscal Year 2018-2019,* http://www.myfloridalicense.com/DBPR/os/documents/DivisionAnnualReport_FY1819.pdf , at page 19 (last visited Mar. 17, 2021).
[4] Email from Colton Madill, Deputy Legislative Affairs Director, Department of Business and Professional Regulation, RE: Real Estate Appraisal Management Companies, (Mar. 22, 2021).
[5] S. 475.613(1), F.S.
[6] *Id.*
[7] *Id.*
[8] Department of Business and Professional Regulation, *REAL ESTATE APPRAISAL – BOARD INFORMATION* http://www.myfloridalicense.com/DBPR/real-estate-appraisal-board/board-information/#1509044906969-7080e654-a662 (last visited March 8, 2021).
[9] *Id.*

In 2010, the membership of the Board was increased from seven members to nine members with the addition of two members representing the appraisal management industry, based on the state's adoption of the policy to include the licensing and regulation of appraisal management companies with real estate appraisers. Appraisal management companies are business entities that administer networks of independent appraisers to fulfill real estate appraisal assignments on behalf of lenders and were not regulated in Florida before 2010.[10]

Proposed Changes

The bill revises the membership of the Board as follows:

- Decreases the number of Board members who represent the appraisal management industry from two members to one.
- Increases the number of Board members who represent the general public from two members to three.

B. SECTION DIRECTORY:

Section 1: Amends s. 475.613, F.S., relating to the Florida Real Estate Appraisal Board.

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:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

[10] Chapter 2010-84, Laws of Fla.

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:

   None

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

   None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 24, 2021, the Regulatory Reform Subcommittee adopted a proposed committee substitute (PCS) and reported the bill favorably as a committee substitute. The PCS differed from HB 491 in the following ways:

- Increased the number of Board members who are members of the general public from two members to three.
- Decreased the number of Board members who represent the appraisal management industry from two members to one.

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

A bill to be entitled

An act relating to the Florida Real Estate Appraisal Board; amending s. 475.613, F.S.; revising the composition of the board; providing an effective date.

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

Section 1. Subsection (1) of section 475.613, Florida Statutes, is amended to read:

475.613 Florida Real Estate Appraisal Board.—

(1) There is created the Florida Real Estate Appraisal Board, which shall consist of nine members appointed by the Governor, subject to confirmation by the Senate. Four members of the board must be real estate appraisers who have been engaged in the general practice of appraising real property in this state for at least 5 years immediately preceding appointment. In appointing real estate appraisers to the board, while not excluding other appraisers, the Governor shall give preference to real estate appraisers who are not primarily engaged in real estate brokerage or mortgage lending activities. One member ~~Two members~~ of the board must represent the appraisal management industry. One member of the board must represent organizations that use appraisals for the purpose of eminent domain proceedings, financial transactions, or mortgage insurance. Three ~~Two~~ members of the board must represent ~~shall be~~

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

~~representatives of~~ the general public and may ~~shall~~ not be connected in any way with the practice of real estate appraisal. The appraiser members shall be as representative of the entire industry as possible, and membership in a nationally recognized or state-recognized appraisal organization may ~~shall~~ not be a prerequisite to membership on the board. To the extent possible, no more than two members of the board shall be primarily affiliated with any one particular national or state appraisal association. Two of the members must be licensed or certified residential real estate appraisers and two of the members must be certified general real estate appraisers at the time of their appointment.

(a) Members of the board shall be appointed for 4-year terms. Any vacancy occurring in the membership of the board shall be filled by appointment by the Governor for the unexpired term. Upon expiration of her or his term, a member of the board shall continue to hold office until the appointment and qualification of the member's successor. A member may not be appointed for more than two consecutive terms. The Governor may remove any member for cause.

(b) The headquarters for the board shall be in Orlando.

(c) The board shall meet at least once each calendar quarter to conduct its business.

(d) The members of the board shall elect a chairperson at the first meeting each year.

(e) Each member of the board is entitled to per diem and travel expenses as set by legislative appropriation for each day that the member engages in the business of the board.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 585 Payment for Construction Services
SPONSOR(S): Regulatory Reform Subcommittee, DiCeglie
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 378

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Regulatory Reform Subcommittee	17 Y, 0 N, As CS	Brackett	Anstead
2) Civil Justice & Property Rights Subcommittee	14 Y, 0 N	Mawn	Jones
3) State Administration & Technology Appropriations Subcommittee	12 Y, 0 N	Helpling	Topp
4) Commerce Committee		Brackett	Hamon

SUMMARY ANALYSIS

Current law requires prompt payments to parties for construction services, and requires interest to accrue on amounts owed for construction services if the state, a local government, or a private party fails to timely make payments for such services. The calculation of interest is set by statute or determined by the contract. Interest also accrues on amounts owed if a contractor receives payment for labor, services, or materials and fails to make timely payments under the contract obligations for such labor, services, or materials.

If a person receives payment for labor, services, or materials for construction work on private real property and knowingly and intentionally fails to make undisputed payments under the contract obligations for labor, services, or materials, the person commits misapplication of construction funds. Misapplication of construction funds is a felony, the degree of which is determined by the amount of unpaid funds.

Construction contractors are certified by or registered with the Construction Industry Licensing Board (CILB) housed within the Department of Business and Professional Regulation. Certified contractors can practice statewide and are licensed and regulated by the CILB. Registered contractors are licensed and regulated by a local jurisdiction and may practice within that locality.

The bill:

- Increases the interest rate from **1 percent** per month to **1.5 percent** per month for untimely payments for construction services by the state or local governments;
- Increases the interest rate for untimely payments for private construction services from the interest rate payable on judgments to the interest rate payable on judgments **plus 1 percent per annum**;
- Provides that a party who receives payment from the state, any local government, or public authority for a public works construction project that knowingly and intentionally fails to pay the undisputed contract obligations to another party commits misapplication of construction funds;
- Clarifies that the CILB may discipline a contractor for committing misapplication of construction funds; and
- Requires the CILB to suspend a contractor's licenses for a minimum of one year if the CILB determines the contractor committed misapplication of construction funds.

The bill applies to contracts executed on or after July 1, 2021.

The bill may have an indeterminate negative fiscal impact on state and local governments. *See* Fiscal Comments.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Prompt Payment Act for Local Governments – Current Situation

Part VII of ch. 218, F.S., is known as the "Local Government Prompt Payment Act" ("Act"). The purpose of the Act is to provide for prompt payments by local governments, apply interest on late payments made by local governments, and establish a dispute resolution process for contested payments.[1] The Act defines "local government entity," as a county or municipal government, school board, school district, authority, special taxing district, other political subdivision, or any office, board, bureau, commission, department, branch, division, or institution thereof.[2]

Current law provides that when a local government entity enters into a contract for construction services[3] with a contractor,[4] the local government entity must identify the agent,[5] employee, facility, or office who is to receive the contractor's payment request or invoices.[6] Every local government entity must establish procedures so that every payment request or invoice received by the local government entity is marked as received on the date on which it is delivered to an agent or employee of the local government entity, or a facility or office of the local governmental entity.[7]

When a contractor submits a payment request or invoice, the local government entity must make the payment within:[8]

- 25 business days after the date on which the payment request or invoice is stamped, if an agent must approve the invoice before it is submitted to the entity for payment;
- 20 business days after the date the payment request or invoice is stamped, if an agent is not required to approve the invoice.

If payment is not received by the due date, the contractor may send an overdue notice to the local government entity. Four business days after overdue notice delivery, if the invoice is not rejected, the invoice will be considered undisputed, except for any amounts that are fraudulent or misleading.[9]

If the payment request or invoice does not meet the contract requirements, the local government entity must provide the contractor with a written rejection specifying the deficiency and any action needed to rectify it, within 20 business days of receipt of the payment request or invoice.[10]

If a contractor submits a corrected payment request or invoice, the local government entity must pay or dispute the request within:[11]

- Ten business days after the date the corrected payment request or invoice is stamped as received; or

[1] *Id.*
[2] S. 218.72(5), F.S.
[3] "Construction services" is defined as all labor, services, and materials provided in connection with the construction, alteration, repair, demolition, reconstruction, or other improvements to real property. S. 218.72(2), F.S.
[4] "Contractor" means the person who contracts directly with a local governmental entity to provide construction services." S. 218.72(3), F.S.
[5] "Agent" means the project architect, project engineer, or other agency or person acting on behalf of the local governmental entity. S. 218.72, F.S.
[6] S. 218.735(1), F.S.
[7] S. 218.74(1), F.S.
[8] S. 218.72(1), F.S.
[9] S. 218.735(1), F.S.
[10] S. 218.735(2), F.S.
[11] S. 218.735(3), F.S.

- The first business day after the local government entity's next regularly scheduled meeting, if the local governmental entity is required by ordinance, charter, or other law to approve or reject the corrected payment request or invoice.

If a local government entity cannot resolve a dispute with the contractor, the dispute must be resolved by the dispute resolution procedure established in the contract or by the local government entity.[12]

When payment is received by a contractor from a local government entity for labor, services, or materials furnished by subcontractors or suppliers, the payment is due to those subcontractors and suppliers within 10 days of the contractor receiving the payment from the local government entity.[13]

If a subcontractor utilizes sub-subcontractors or suppliers, payment to those parties is due within 7 days of the subcontractor receiving payment.[14] Contractors and subcontractors may dispute a party's invoice as long as the contractor or subcontractor notifies the party in writing of the amount in dispute and the actions required to resolve the dispute. However, any undisputed amounts must be paid within the required time periods.[15]

Any payment for construction services that is not made within the required time period accrues interest at a rate of **1 percent per month**, or the rate specified by contract, whichever is greater. A local government entity may not prohibit late interest charges in a contract with a vendor or provider of construction services.[16] In an action to recover amounts due for construction services purchased by a local government entity, a court must award court costs and reasonable attorney fees to the prevailing party.[17]

Prompt Payment Act for Local Governments – Effect of the Bill

The bill increases the interest rate for untimely payments for local government construction services to **1.5 percent per month**, or the rate specified by contract, whichever is greater.

Prompt Payment Act for State Construction Projects – Current Situation

Sections 255.0705 - 255.078, F.S., are known as the Florida Prompt Payment Act. The act governs the timely payment for construction services[18] by a public entity, except construction services for the Department of Transportation.[19] Public entity means the state, or any office, board, bureau, commission, department, branch, division, or institution thereof.[20]

Every public entity must establish procedures so that every payment request or invoice from a contractor,[21] which is received by the public entity, is marked as received on the date on which it is delivered to an agent,[22]employee, facility, or office of the local governmental entity.[23]

[12] S. 218.735(4), F.S.
[13] S. 218.735(6), F.S.
[14] *Id.*
[15] *Id.*
[16] Ss. 218.735(9), and 218.75, F.S.
[17] S. 218.76(3), F.S.
[18] "Construction Services" means all labor, services, and materials provided in connection with the construction, alteration, repair, demolition, reconstruction, or any other improvements to real property. The term "construction services" does not include contracts or work performed for the Department of Transportation. S. 255.072(2), F.S.
[19] S. 255.072(2), F.S.
[20] S. 255.072(5), F.S.
[21] "Contractor" means any person who contracts directly with a public entity to provide construction services. S. 255.072(3), F.S.
[22] "Agent" means project architect, project engineer, or any other agency or person acting on behalf of a public entity. S. 255.072(1), F.S.
[23] S. 255.074(1), F.S.

Upon receipt of a contractor's invoice or payment, a public entity must maintain the date of:[24]

- Receipt of the invoice or payment;
- Receipt of the provided goods and services; and
- Inspection and approval of the goods and services.

Approval and inspection of goods or services may take no longer than 5 working days unless the bid specifications, purchase order, or contract specifies otherwise. The latter of these days is the "prompt pay start date."[25]

The public entity must submit the contractor's invoice or payment request, the entity's receipt of the goods and services, and its inspection and approval of the goods or services to the Chief Financial Officer (CFO). The CFO is a member of the Cabinet and serves as the chief fiscal officer of the state and agency head of the Department of Financial Services (DFS).[26] The public entity must submit this information within 20 days of the prompt pay start date.[27]

Upon receipt of the contractor's invoice or payment, DFS must approve or deny the payment application within 10 days, unless exceptional circumstances require a longer period. If the 10-day period contains fewer than 6 business day, DFS may approve or deny the payment within 6 business days.[28] If payment is not issued within 40 days of the prompt payment start date, interest begins to accrue.[29]

A public entity may dispute any payment but must pay any undisputed amounts. Disputes must be resolved in accordance with rules developed and adopted by the Chief Justice for the judicial branch, and rules adopted by the Department of Financial Services or in a formal administrative proceeding before an administrative law judge of the Division of Administrative Hearings for state agencies.[30]

When payment is received by a contractor from a public entity for labor, services, or materials furnished by subcontractors or suppliers, the payment is due to those subcontractors and suppliers within 10 days of the contractor receiving the payment from the local government entity.[31] If a subcontractor utilizes sub-subcontractors or suppliers, payment to those parties is due within 7 days of the subcontractor receiving payment.[32] Contractors and subcontractors may dispute a party's invoice as long as the contractor or subcontractor notifies the party in writing of the amount in dispute and the actions required to resolve the dispute. The actions required to rectify the dispute must be included in the rejection. However, any undisputed amounts are required to be paid within the outlined time limits.[33]

In an action to recover amounts due for construction services purchased by a public entity, a court must award court costs and reasonable attorney fees, if the court finds that the nonprevailing party withheld any portion of the payment that is the subject of the action without any reasonable basis in law or fact to dispute the prevailing party's claim to those amounts.[34]

Any payment for construction services that is not made within the required time period accrues interest at a rate of **1 percent per month**.[35] A public entity may not prohibit late interest charges in a contract with a vendor or provider of construction services.[36]

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[24] Ss. 215.422(1) and (3), F.S.; Chief Financial Officer, Payment Processing October 2013, https://www.myfloridacfo.com/Division/aa/documents/2013-PaymentProcessOverviewFinal.pdf (last visited Mar. 23, 2021).
[25] *Id.*
[26] Art. IV, s. 4, Fla. Const.; Ch. 17, F.S.
[27] S. 215.422(1), F.S.
[28] Ss. 215.422(1) and (2), F.S.
[29] S. 215.422(3), F.S.
[30] Ss. 215.422(3), and 255.073(2), F.S.
[31] S. 255.073(3), F.S.
[32] *Id.*
[33] S. 255.073(3), F.S.
[34] S. 255.076, F.S.
[35] S. 255.073(4), F.S.
[36] S. 255.075, F.S.

Prompt Payment Act for State Construction Projects – Effect of the Bill

The bill increases the interest rate for untimely payments for state construction services to **1.5 percent per month**.

Prompt Payment Law for Private Construction Projects – Current Situation

Section 715.12, F.S., is the Construction Contract Prompt Payment Law. It defines an "obligor" as an owner, contractor, subcontractor, or sub-subcontractor who has an obligation to make payments under a written construction contract. It defines an "obligee" as a contractor, subcontractor, sub-subcontractor, or materialman who is entitled to receive payments under a written construction contract.[37]

An obligee is entitled to payment for his or her construction services, labor, or materials when all of the following have occurred:[38]

- The obligee is entitled to payment at the time and under the terms specified in the contract between the obligor and the obligee;
- The obligee has furnished the obligor with a written request for payment;
- The obligor, except an owner, has been paid for the obligee's labor, services, or materials described in the obligee's request for payment by the person immediately above the obligor in the chain of contracts; and
- The obligee has furnished the obligor with all affidavits or waivers required for the owner to make proper payments under the construction lien law.[39]

Beginning 14 days after a payment is due, any payment, except payments withheld pursuant to a good faith dispute or retained in accordance with the contract, bears interest at the rate of interest payable on judgments or the rate specified in the contract, whichever is greater.[40] An obligee may not waive the right to receive interest before a payment is due under a contract subject to this section. However, an obligee may waive the interest due on any late payment on or after the date the payment is due.[41]

The CFO sets the rate of interest on judgments. The CFO adjusts the rate quarterly beginning January 1 and 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 to the averaged federal discount rate.[42] The current interest rate is 4.81% per annum or .0131781% per day.[43]

Prompt Payment Law for Private Construction Projects – Effect of the Bill

The bill increases the interest rate for untimely payments for private construction services to the interest rate payable on judgments **plus 1 percent per annum**, or the rate specified by contract, whichever is greater.

Misapplication of Construction Funds – Current Situation

[37] Ss. 715.12(1) and (3), F.S.
[38] S. 715.12(4), F.S.
[39] The construction lien law requires various notices, demands, and requests to be provided in writing to the homeowner, contractor, subcontractor, lender, and building officials. Florida law requires that some notices, demands, and requests be in the statutory form provided in statute, while others do not have to be in the statutory form. The following notices are required by the act: Notice of Commencement, Notice to Owner, Claim of Lien, Notice of Termination, Waiver or Release of Lien, Notice of Contest of Lien, Contractor's Final Payment Affidavit, and Demands of Written Statement of Account. *See* Ch. 713, part I, F.S.
[40] Ss. 715.12(5) and (6)(a), F.S.
[41] S. 715.125(6)(d), F.S.
[42] S. 55.03(1), F.S.
[43] Chief Financial Officer, *Current Judgment Interest Rates*, https://www.myfloridacfo.com/division/aa/localgovernments/current.htm (last visited Mar. 23, 2021).

Current law requires any person who receives payment for performing construction work to pay any amounts for labor, services, or materials provided for the construction work in accordance with the contract for such labor, services, or materials, unless there is a bona fide dispute regarding the amount due or the terms of the contract allow for retention of such funds.[44]

Any person who receives a payment for construction work to private or public real property must pay, in accordance with the contract terms, the undisputed contract obligations for labor, services, or materials provided for such construction work. If a person fails to do so within 30 days, any unpaid person providing labor, services, or materials for improvements to real property under the contract may file a civil complaint. Remedies for such a complaint include:[45]

- An accounting of the use of any such payment from the person who received such payment;
- A temporary injunction against the person who received the payment, subject to certain bond requirements;
- Prejudgment attachment against the person who received the payment; and
- Such other legal or equitable remedies as may be appropriate.

Misapplication of construction funds is a crime committed by a person who receives payment for performing construction work on private property and knowingly and intentionally fails to pay any amounts owed for labor, services, or materials, in accordance with the contract terms, unless there is a bona fide dispute regarding the amount due. Misapplication of construction funds is punishable as a:[46]

- First degree felony if the amount of misapplied payments has an aggregate value of $100,000 or more;
- Second degree felony if the amount of misapplied payments has an aggregate value of $1,000 or more; or
- Third degree felony if the amount of misapplied payments has an aggregate value of less than $1,000.

There is a permissive inference that a person knowingly and intentionally misapplied construction funds when:[47]

- A valid lien has been recorded against the property for labor, services, or materials;
- The person who ordered the labor, services, or materials has received sufficient funds to pay for such labor, services, or materials; and
- The person has failed, for a period of at least 45 days from receipt of the funds, to remit sufficient funds to pay for such labor, services, or materials, except for funds withheld pursuant to a bona fide dispute regarding the amount due or the terms of the contract allow for retention of such funds.

If a state attorney or statewide prosecutor files an indictment or information charging a licensed contractor with misapplication of construction funds, the state attorney or statewide prosecutor must provide a copy of the indictment or information to the Department of Business and Professional Regulation (DBPR).[48]

DBPR must promptly open an investigation into the matter and, if probable cause is found, furnish a copy of any investigative report to the state attorney or statewide prosecutor who provided the indictment or information and to the owner of the property, which is the subject of the investigation.[49]

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[44] Ss. 255.071(1), and 713.346(1), F.S.
[45] Ss. 255.071(4), and 713.346(4), F.S.
[46] S. 713.345(1), F.S.
[47] *Id.*
[48] *Id.*
[49] *Id.* DBPR has authority, for the professions under its jurisdiction, to investigate any legally sufficient complaint that is in writing. When DBPR completes its investigation, it must prepare and submit an investigative report to the probable cause panel for the appropriate board. If probable cause is found, DBPR must file an administrative complaint against the licensee. *See* 455.225, F.S.

Contractors

The Legislature has determined that it is "necessary in the interest of the public health, safety, and welfare" to regulate the construction industry.[50]

Construction contractors are either certified by or registered with the Construction Industry Licensing Board (CILB). The CILB is housed in DBPR, and consists of 18 members who are appointed by the Governor and confirmed by the Senate. The CILB is responsible for licensing, regulating, and disciplining certified construction contractors.[51]

"Certified contractors" are individuals who pass the state competency examination and obtain a certificate of competency issued by DBPR. Certified contractors may practice in any jurisdiction in the state.[52]

"Registered contractors" are individuals that have taken and passed a local competency examination and can practice contracting only in the local jurisdiction for which the license is issued.[53] Local jurisdictions may approve or deny applications for licensure as a registered contractor, review disciplinary cases, and conduct informal hearings relating to discipline of registered contractors licensed in their jurisdiction. Registered contractors must register with DBPR after obtaining a local license and comply with local and state statutory obligations.[54]

The CILB may take action[55] against a certified or registered contractor if they find the contractor is guilty of violating the contractor's practice act. Violations include:[56]

- Abandoning a construction project;
- Committing financial mismanagement that causes financial harm to a customer;
- Failing to perform any statutory or legal obligation placed upon a licensee;
- Falsely indicating that payment has been made for all subcontracted work, labor, and materials which results in a financial loss to the owner, purchaser, or contractor;
- Being convicted or found guilty of, or entering a plea of nolo contendere to, regardless of adjudication, a crime in any jurisdiction which directly relates to the practice of contracting or the ability to practice contracting; or
- Proceeding on a job without obtaining applicable local building department permits and inspections.

The CILB must adopt disciplinary guidelines for each disciplinary action, which they may impose. The disciplinary guidelines must specify a meaningful range of designated penalties based upon the severity and repetition of specific offenses, it being the Legislature's intent that minor violations be distinguished from those which endanger the public health, safety, or welfare.[57]

Misapplication of construction funds is not expressly enumerated in the list of practice act violations for construction contractors. However, according to DBPR, misapplication of construction funds may fall under the following violations:[58]

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[50] s. 489.101, F.S.
[51] *See generally* Ch. 489, Part I, F.S.
[52] S. 489.105, F.S.
[53] S. 489.103, F.S.
[54] Ss. 489.117, and 489.131, F.S.
[55] The CILB may place a contractor on probation, reprimand him or her, revoke or suspend the contractor's certificate or registration, or deny the issuance of a renewal certificate or registration. The CILB may also require financial restitution to a consumer for financial harm directly related to a violation, require continuing education, or assess costs associated with investigation and prosecution. S. 489.129(1), F.S.
[56] Ss. 455.227(1)(k), and 489.129(1)(o), F.S.
[57] S. 455.2273(1), F.S.
[58] Email from Vicky Summerhill, Department of Business and Professional Regulation, FW: HB 585 Construction Services, (Feb. 22, 2021).

- Committing financial mismanagement that causes financial harm to a customer;
- Failing to perform any statutory or legal obligation placed upon a licensee; or
- Falsely indicating that payment has been made for all subcontracted work, labor, and materials which results in a financial loss to the owner, purchaser, or contractor.

According to DBPR, if a contractor is convicted of misapplication of construction funds, the CILB would most likely be able to take action against them for being convicted or found guilty of, or entering a plea of nolo contendere to, regardless of adjudication, a crime in any jurisdiction which directly relates to the practice of contracting or the ability to practice contracting.[59]

Misapplication of Construction Funds – Effect of the Bill

The bill provides that a party who receives payment from the state, any county, city, or political subdivision, or other public authority for a public works construction project and who knowingly and intentionally fails to pay the undisputed contract obligations to another party for labor, services, or materials, commits misapplication of construction funds.

The bill clarifies that the CILB may discipline a contractor for committing misapplication of construction funds. The bill also provides that if the CILB finds a contractor guilty of misapplication of construction funds, the CILB must suspend all of the person's construction contractor licenses for a minimum of one year from the date of conviction. However, this does not prohibit the CILB from imposing additional penalties.

The bill also specifies that a person subject to a civil action for failing to pay undisputed contract obligations commits misapplication of construction funds.

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

The bill provides that it applies to contracts executed on or after July 1, 2021.

B. SECTION DIRECTORY:

Section 1. Amends s. 218.735, F.S., relating to timely payment for construction services for local government entities.

Section 2. Amends s. 255.071, F.S., relating to payment of subcontractors, sub-subcontractors, materialmen, and suppliers on construction projects for public projects.

Section 3. Amends s. 255.073, F.S., relating to timely payment for purchases of construction services for the state.

Section 4. Amends s. 489.129, F.S., relating to discipline for licensed contractors.

Section 5. Amends s. 713.345, F.S., relating to misapplication of construction funds.

Section 6. Amends s. 713.346, F.S., relating to payment on construction contracts for private property.

Section 7. Amends s. 715.12, F.S., relating to timely payments for construction services for private parties.

Section 8. Reenacting s. 218.76, F.S., relating to improper payment requests or invoices for construction services for local government entities.

[59] *Id.*

Section 9. Reenacting s. 255.075, F.S., relating to mandatory interest for construction services for the state.

Section 10. Providing that the bill applies to contracts executed on or after July 1, 2021.

Section 11. Providing 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.

2. Expenditures:

See Fiscal Comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may decrease the amount of untimely payments to contractors, subcontractors, sub-subcontractors, and material suppliers.

D. FISCAL COMMENTS:

Increasing the interest amount for late payments from 1 percent to 1.5 percent may have a negative fiscal impact on the state and local governments. However, the impact will vary depending on the amount that is outstanding and the duration of the outstanding payments. Any fiscal impact will only apply to payments not paid on time, as required by statute.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The county/municipality mandates provision of Art. VII, s. 18 of the Florida Constitution may apply because this bill increases the amount of interest local governments have to pay for untimely payments for construction services. This may result in additional expenditures to comply with the statute. However, an exemption may apply because the fiscal impact is likely to be insignificant since local governments already have to pay interest for untimely payments for construction services.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 2, 2021, the Regulatory Reform Subcommittee adopted a strike-all amendment and reported the bill favorably as a committee substitute. The committee substitute:

- Increases the interest rate from 1 percent per month to 1.5 percent per month, for untimely payments for construction services by the state or local governments, instead of the original bill's provision increasing the interest rate to 2 percent per month.
- Clarifies that the bill's provision increasing the interest rate for untimely payments for private construction services from the interest rate payable on judgments to the interest rate payable on judgments plus 1 percent, means 1 percent per year.

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

A bill to be entitled

An act relating to payment for construction services; amending s. 218.735, F.S.; increasing the interest rate for certain payments for purchases of construction services; amending s. 255.071, F.S.; specifying that a person, firm, or corporation who fails to make certain payments relating to public projects commits a misapplication of construction funds and is subject to criminal penalties; amending s. 255.073, F.S.; increasing the interest rate for overdue payments for the purchase of construction services; amending s. 489.129, F.S.; expanding the list of actions for which a licensee may be disciplined by the Construction Industry Licensing Board; requiring the board to suspend certain licenses for a minimum period of time under certain circumstances; providing construction; amending s. 713.345, F.S.; specifying that a contractor, subcontractor, sub-subcontractor, or other person licensed under ch. 489, F.S., is subject to certain discipline if convicted of misapplication of construction funds; amending s. 713.346, F.S.; specifying that a person, firm, or corporation who fails to make certain payments relating to construction contracts commits a misapplication of

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

construction funds and is subject to criminal penalties; amending s. 715.12, F.S.; increasing the interest rate for certain payments due under the Construction Contract Prompt Payment Law; conforming a provision to changes made by the act; reenacting s. 218.76(2)(b), F.S., relating to improper payment requests or invoices, to incorporate the amendment made by this act to s. 218.735, F.S., in a reference thereto; reenacting s. 255.075, F.S., relating to mandatory interest, to incorporate the amendment made by this act to s. 255.073, F.S., in a reference thereto; providing applicability; providing an effective date.

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

Section 1. Subsection (9) of section 218.735, Florida Statutes, is amended to read:

218.735 Timely payment for purchases of construction services.—

(9) All payments due under this section and not made within the time periods specified by this section shall bear interest at the rate of 1.5 ~~1~~ percent per month, or the rate specified by contract, whichever is greater.

Section 2. Subsection (1) of section 255.071, Florida

Statutes, is amended to read:

255.071 Payment of subcontractors, sub-subcontractors, materialmen, and suppliers on construction contracts for public projects.—

(1) Any person, firm, or corporation who receives a payment from the state or any county, city, or political subdivision of the state, or other public authority, for the construction of a public building, for the prosecution and completion of a public work, or for repairs upon a public building or public work shall pay, in accordance with the contract terms, the undisputed contract obligations for labor, services, or materials provided on account of such improvements. A person, firm, or corporation who knowingly and intentionally fails to make the payment required under this subsection commits a misapplication of construction funds, punishable as provided in s. 713.345.

Section 3. Subsection (4) of section 255.073, Florida Statutes, is amended to read:

255.073 Timely payment for purchases of construction services.—

(4) All payments due for the purchase of construction services and not made within the applicable time limits shall bear interest at the rate of 1.5 ~~specified in s. 215.422. After July 1, 2006, such payments shall bear interest at the rate of 1 percent per month, to the extent that the Chief Financial~~

~~Officer's replacement project for the state's accounting and cash management systems is operational for the particular affected public entity. After January 1, 2007, all such payments due from public entity shall bear interest at the rate of 1~~ percent per month.

Section 4. Paragraph (r) is added to subsection (1) of section 489.129, Florida Statutes, to read:

489.129 Disciplinary proceedings.—

(1) The board may take any of the following actions against any certificateholder or registrant: place on probation or reprimand the licensee, revoke, suspend, or deny the issuance or renewal of the certificate or registration, require financial restitution to a consumer for financial harm directly related to a violation of a provision of this part, impose an administrative fine not to exceed $10,000 per violation, require continuing education, or assess costs associated with investigation and prosecution, if the contractor, financially responsible officer, or business organization for which the contractor is a primary qualifying agent, a financially responsible officer, or a secondary qualifying agent responsible under s. 489.1195 is found guilty of any of the following acts:

(r) Committing misapplication of construction funds in violation of s. 713.345. If a contractor, subcontractor, sub-subcontractor, or other person licensed by the board under this chapter is convicted of misapplication of construction funds,

the board must suspend all licenses issued to such licensee under this part for a minimum of 1 year from the date of conviction. The suspension required under this paragraph is not exclusive, and the board may impose any additional penalties set forth in this subsection.

For the purposes of this subsection, construction is considered to be commenced when the contract is executed and the contractor has accepted funds from the customer or lender. A contractor does not commit a violation of this subsection when the contractor relies on a building code interpretation rendered by a building official or person authorized by s. 553.80 to enforce the building code, absent a finding of fraud or deceit in the practice of contracting, or gross negligence, repeated negligence, or negligence resulting in a significant danger to life or property on the part of the building official, in a proceeding under chapter 120.

Section 5. Paragraph (e) is added to subsection (1) of section 713.345, Florida Statutes, to read:

713.345 Moneys received for real property improvements; penalty for misapplication.—

(1)

(e) If a contractor, subcontractor, sub-subcontractor, or other person who is licensed under chapter 489 is convicted of misapplication of construction funds under this section, the

licensee is subject to discipline under s. 489.129(1)(r).

Section 6. Subsection (1) of section 713.346, Florida Statutes, is amended to read:

713.346 Payment on construction contracts.—

(1) Any person who receives a payment for constructing or altering permanent improvements to real property shall pay, in accordance with the contract terms, the undisputed contract obligations for labor, services, or materials provided on account of such improvements. A person, firm, or corporation who knowingly and intentionally fails to make the payment required under this subsection commits a misapplication of construction funds, punishable as provided in s. 713.345.

Section 7. Paragraph (a) of subsection (5) and paragraph (a) of subsection (6) of section 715.12, Florida Statutes, are amended, and subsections (4) and (7) of that section are republished, to read:

715.12 Construction Contract Prompt Payment Law.—

(4) An obligor must pay an obligee with whom the obligor has a contract when all of the following events have occurred:

(a) The obligee is entitled to a payment at the time and under the terms specified in the contract between the obligor and the obligee, and the obligee has furnished the obligor with a written request for payment; and

(b) The obligor, except an owner, has been paid for the obligee's labor, services, or materials described in the

obligee's request for payment by the person immediately above the obligor in the chain of contracts; and

(c) The obligee has furnished the obligor with all affidavits or waivers required for the owner to make proper payments under s. 713.06.

(5)(a) Any payment due under the provisions of subsection (4), excluding any amounts withheld pursuant to subsection (7), shall bear interest at the rate specified in s. 55.03 plus 1 percent per annum, computed beginning on the 14th day after payment is due pursuant to subsection (4).

(6)(a) The right to receive interest on a payment under this section is not an exclusive remedy. This section does not modify the remedies available to any person under the terms of a contract or under any other statute. This section does not modify the rights of any person to recover prejudgment interest awarded to the prevailing party in any civil action or arbitration case. During the period that interest accrues under this section, the interest rate shall be the rate specified in s. 55.03 plus 1 percent per annum or the rate specified in the contract, whichever is greater. A person shall not be entitled to receive both the contract interest and the statutory interest specified in this section.

(7)(a) An owner and a contractor may agree to a provision that allows the owner to withhold a portion of each progress payment until substantial completion of the entire project. The

owner shall pay the contractor the balance of the contract price, including the amounts withheld from the progress payments, within 14 days after any of the following events occur.

1. Pursuant to the terms of the contract, an architect or engineer certifies that the project is substantially complete and, within the time provided in the contract between the owner and the contractor, the owner submits a written punchlist to the contractor and the contractor substantially completes all of the items on the punchlist.

2. The issuance of a certificate of occupancy for the project, and within the time provided in the contract between the owner and the contractor, the owner submits a written punchlist to the contractor and the contractor substantially completes all of the items on the punchlist.

3. The owner or a tenant of the owner takes possession of the construction project and, within the time provided in the contract between the owner and the contractor, the owner submits a written punchlist to the contractor and the contractor substantially completes all of the items on the punchlist.

Any funds retained by the owner beyond the time period specified in this subsection shall accrue interest at the rate specified in subsection (5), computed from the date the payment is due to the date the payment is received by the contractor. If the

contract between the owner and the contractor does not provide a time period for the owner to submit a written punchlist to the contractor, the time period shall be 15 days from the issuance of the certificate of substantial completion, the issuance of the certificate of occupancy, or the date the owner or the owner's tenant takes possession of the project, whichever first occurs. If no written punchlist is given to the contractor within the time provided in this subsection, interest begins to accrue 14 days after the issuance of the certificate of substantial completion, the issuance of the certificate of occupancy, or the date the owner or the owner's tenant takes possession of the project, whichever first occurs. For construction projects that are to be built in phases, this subsection applies to each phase of the total project. The contract between the owner and the contractor may specify a shorter time period for disbursing all or any portion of the final payment and the retainage.

(b) Except as provided in paragraph (a), an obligor and obligee may agree to a provision that allows the obligor to withhold a portion of each progress payment until completion of the entire project. The amounts withheld shall bear interest 14 days after payment of such amounts are due under the terms of the contract between the obligor and obligee and the other requirements of subsection (4) have been satisfied.

(c) An obligee may, from time to time, withdraw all or any

portion of the amount retained from progress payments upon depositing with the obligor:

1. United States Treasury bonds, United States Treasury notes, United States Treasury certificates of indebtedness, or United States Treasury bills;

2. Bonds or notes of the State of Florida; or

3. Certificates of deposit, within the insured limits, from a state or national bank or state or federal savings and loan association authorized to do business in this state.

Amounts may not be withdrawn in excess of the market value of the securities listed in subparagraphs 1., 2., and 3. at the time of such withdrawal or in excess of the par value of such securities, whichever is less. The obligee shall execute and deliver all documents reasonably required to allow the obligor to document the transfer and the obligee shall pay any recording or registration costs incurred by the obligor in connection with the transfer. The obligor shall pay the obligee any interest or income earned on the securities so deposited within 30 days after the date such interest or income is received by the obligor. If the deposit is in the form of coupon bonds, the obligor shall deliver each coupon to the obligee within 30 days after the date the coupon matures. An obligee may withdraw funds retained from progress payments only to the extent the obligor has withdrawn such funds for the obligee's labor, services, or

materials from the person immediately above the obligor in the chain of contracts.

Section 8. For the purpose of incorporating the amendment made by this act to section 218.735, Florida Statutes, in a reference thereto, paragraph (b) of subsection (2) of section 218.76, Florida Statutes, is reenacted to read:

218.76 Improper payment request or invoice; resolution of disputes.—

(2)

(b) If the local governmental entity does not commence the dispute resolution procedure within the time required, a contractor may give written notice to the local governmental entity of the failure to timely commence its dispute resolution procedure. If the local governmental entity fails to commence the dispute resolution procedure within 4 business days after such notice, any amounts resolved in the contractor's favor shall bear mandatory interest, as set forth in s. 218.735(9), from the date the payment request or invoice containing the disputed amounts was submitted to the local governmental entity. If the dispute resolution procedure is not commenced within 4 business days after the notice, the objection to the payment request or invoice shall be deemed waived. The waiver of an objection pursuant to this paragraph does not relieve a contractor of its contractual obligations.

Section 9. For the purpose of incorporating the amendment

made by this act to section 255.073, Florida Statutes, in a reference thereto, section 255.075, Florida Statutes, is reenacted to read:

255.075 Mandatory interest.—A contract between a public entity and a contractor may not prohibit the collection of late payment interest charges authorized under s. 255.073(4).

Section 10. This act applies to contracts executed on or after July 1, 2021.

Section 11. This act shall take effect July 1, 2021.

COMMERCE COMMITTEE

HB 585 by Rep. DiCeglie
Payment for Construction Services

AMENDMENT SUMMARY
April 14, 2021

Amendment 1 by Rep. DiCeglie (line 100):

- Corrects a drafting error.

Amendment 2 by Rep. DiCeglie (line 124):

- Corrects a drafting error.

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

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

Committee/Subcommittee hearing bill: Commerce Committee

Representative DiCeglie offered the following:

Amendment

Remove line 100 and insert:

part is convicted of misapplication of construction funds,

Amendment No. 2

COMMITTEE/SUBCOMMITTEE ACTION

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

Committee/Subcommittee hearing bill: Commerce Committee

Representative DiCeglie offered the following:

Amendment

Remove line 124 and insert:

other person who is licensed under part I of chapter 489 is convicted of

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 667 Building Inspections
SPONSOR(S): Local Administration & Veterans Affairs Subcommittee, Regulatory Reform Subcommittee, Mooney and others
TIED BILLS: **IDEN./SIM. BILLS:** CS/CS/SB 1382

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Regulatory Reform Subcommittee	17 Y, 0 N, As CS	Brackett	Anstead
2) Local Administration & Veterans Affairs Subcommittee	17 Y, 0 N, As CS	Renner	Miller
3) Commerce Committee		Brackett	Hamon

SUMMARY ANALYSIS

The Florida Building Codes Act provides a mechanism for the uniform adoption, updating, interpretation, and enforcement of a single, unified state building code. The Florida Building Code (Building Code) must be applied, administered, and enforced uniformly and consistently from jurisdiction to jurisdiction.

Current law requires local governments to enforce the Building Code and issue building permits. Current law also requires state agencies, state universities, Florida College System institutions, and public school districts to enforce the Building Code in certain situations. It is unlawful for a person or corporation to construct, alter, repair, or demolish a building without obtaining a permit from the enforcing agency. Construction work that requires a building permit also requires inspections to ensure the work complies with the Building Code.

The bill requires local enforcement agencies to allow requests for inspections to be submitted electronically. Accepted methods of electronic submission include, but are not limited to:

- E-mail;
- An electronic fill-in form available on the building department's website or a third-party submission management software; or
- An application that can be downloaded on a mobile device.

The bill provides that a local enforcement agency must refund 10 percent of the permit and inspection fees if:

- The inspector or building official determines the work, which requires the permit, fails an inspection; and
- The inspector or building official fails to provide a reason that is based on compliance with the Building Code, the Florida Fire Prevention Code, or local ordinance, indicating why the work failed the inspection within 5 business days.

If any permit and inspection fees must be refunded, the surcharges for funding the Building Commission, the Florida Building Code Administrators and Inspectors Board, and the Florida Homeowners' Recovery Fund must be recalculated based on the amount of the permit and inspection fees after the refund.

The bill clarifies that any government entity with authority to enforce the Building Code may perform virtual inspections at the discretion of the government entity. However, a government entity may not perform a virtual inspection for structural inspections on threshold buildings.

The bill defines "virtual inspection" as an inspection that uses visual or electronic aids to allow a building official or inspector to perform an inspection without having to be physically present at the job site during the inspection.

The bill may have an indeterminate fiscal impact on state and local government. *See* Fiscal Comments.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

In 1974, Florida adopted legislation requiring all local governments to adopt and enforce a minimum building code that would ensure that Florida's minimum standards were met. Local governments could choose from four separate model codes. The state's role was limited to adopting all or relevant parts of new editions of the four model codes. Local governments could amend and enforce their local codes as they desired.[1]

In 1992, Hurricane Andrew demonstrated that Florida's system of local codes did not work. Hurricane Andrew easily destroyed those structures that were allegedly built according to the strongest code. The Governor eventually appointed a study commission to review the system of local codes and make recommendations for modernizing the system. The 1998 Legislature adopted the study commission's recommendations for a single state building code and enhanced the oversight role of the state over local code enforcement. The 2000 Legislature authorized implementation of the Florida Building Code (Building Code), and that first edition replaced all local codes on March 1, 2002.[2] The current edition of the Building Code is the seventh edition, which is referred to as the 2020 Florida Building Code.[3]

Ch. 553, part IV, F.S., is known as the "Florida Building Codes Act" (Act). The purpose and intent of the Act is to provide a mechanism for the uniform adoption, updating, interpretation, and enforcement of a single, unified state building code. The Building Code must be applied, administered, and enforced uniformly and consistently from jurisdiction to jurisdiction.[4]

The Florida Building Commission (Commission) was statutorily created to implement the Building Code. The Commission, which is housed within the Department of Business and Professional Regulation (DBPR), is a 19-member technical body made up of design professionals, contractors, and government experts in various disciplines covered by the Building Code. The Commission reviews several International Codes published by the International Code Council, the National Electric Code, and other nationally adopted model codes to determine if the Building Code needs to be updated and adopts an updated Building Code every three years.[5]

Building Code Administrators, Inspectors, and Plans Examiners

Building code administrators, inspectors, and plans examiners are regulated by the Building Code Administrators and Inspectors Board (BCAIB) within DBPR. The BCAIB consists of nine members appointed by the Governor and subjected to confirmation by the Senate. The BCAIB meets to approve or deny applications for licensure, review disciplinary cases, and conduct informal hearings relating to discipline.[6]

A building code administrator, otherwise known as a building official, is a local government employee or a person contracted by a local government who supervises building code activities, including plans review, enforcement, and inspection.[7]

A building code inspector (inspector) is a local government employee or a person contracted by a local government who inspects construction that requires permits to determine compliance with building

[1] The Florida Building Commission Report to the 2006 Legislature, *Florida Department of Community Affairs*, p. 4, http://www.floridabuilding.org/fbc/publications/2006_Legislature_Rpt_rev2.pdf (last visited Feb. 15, 2021).
[2] *Id*.; DBPR, *Building Code Information System*, https://floridabuilding.org/c/default.aspx# (last visited on Feb. 15, 2021).
[3] Florida Building Commission Homepage, https://floridabuilding.org/c/default.aspx (last visited Feb. 26, 2021).
[4] *See* s. 553.72(1), F.S.
[5] Ss. 553.73, and 553.74, F.S.
[6] *See* Ss. 120.569, 120.57(1)-(2), 468.605, 468.606, and 468.621, F.S.
[7] S. 468.603(2), F.S.

codes and state accessibility laws. Inspectors are divided into several different categories. An inspector's ability to practice is limited to the category or categories for which the inspector has been licensed. The inspector categories are:[8]

- Building inspector;
- Coastal construction inspector;
- Commercial electrical inspector;
- Residential electrical inspector;
- Mechanical inspector;
- Plumbing inspector;
- Residential inspector; and
- Electrical inspector.

A plans examiner reviews plans submitted for building permits to determine design compliance with the Building Code. The term includes a residential plans examiner who is qualified to determine that plans submitted for building permits comply with the applicable residential building, plumbing, mechanical, electrical, gas, energy, accessibility, and other applicable construction codes. A plans examiner's ability to practice is limited to the category or categories for which the examiner is licensed. The plans examiner categories are:[9]

- Building plans examiner;
- Plumbing plans examiner;
- Mechanical plans examiner; and
- Electrical plans examiner.

Enforcement of the Florida Building Code

It is the intent of the Legislature that local governments have the power to inspect all buildings, structures, and facilities within their jurisdiction in protection of the public's health, safety, and welfare.[10]

Every local government must enforce the Building Code and issue building permits.[11] A building permit is an official document or certificate issued by the local building official that authorizes performance of a specific activity.[12]

Current law also provides that state agencies may enforce the Building Code if specifically authorized to do so by law, unless they delegate that responsibility to another public entity.[13] Current law provides that:[14]

- The Department of Corrections and the Department of Juvenile Justice together with the Department of Management Services (DMS), enforce the construction regulations relating to correctional facilities under their jurisdiction.
- DMS enforces the construction regulations for the Governor's Mansion and its grounds, the Capitol, and the Capitol complex.
- DBPR enforces the construction regulations relating to elevator equipment under its jurisdiction.
- The Turnpike Enterprise, which is part of the Department of Transportation, enforces the construction regulations for toll collection facilities under its jurisdiction.
- The Department of Children and Families (DCF) in conjunction with the Agency for Health Care Administration (ACHA) enforces construction regulations relating to secure mental health treatment facilities under DCF's jurisdiction.

[8] Ss. 468.603(4) and (5), F.S.
[9] S. 468.603(8), F.S.
[10] S. 553.72, F.S.
[11] Ss. 125.01(1)(bb), 125.56(1), and 553.80(1), F.S.
[12] S. 468.603(2), F.S; S. 202 of the Seventh edition of the Florida Building Code (Building).
[13] Ss. 255.31(1), and 553.80(1), F.S.
[14] *Id.*

- AHCA also reviews plans and surveys for construction of hospitals, nursing homes, ambulatory surgical centers, and Intermediate Care Facilities for the Developmentally Disabled.

Current law also requires state universities, Florida College System institutions, and public school districts to enforce the Building Code for their building projects, including conducting plans review and inspections. State universities, Florida College System institutions, and public school districts must use or contract with licensed building officials, inspectors, and plans examiners, and may elect to use a local government's building department to review plans and perform inspections.[15]

It is unlawful for a person, firm, or corporation to construct, erect, alter, repair, secure, or demolish any building without first obtaining a permit from the local government or from such persons as may be directed, by resolution or regulation, to issue such permit, upon the payment of reasonable fees as set forth in a schedule of fees adopted by the enforcing agency.[16]

To obtain a permit an applicant must complete an application for the proposed work on the form furnished by the government entity.[17] A local enforcement agency that issues building permits must post each type of building permit application on its website. A local enforcement agency must allow applicants to submit permit applications electronically to the local enforcement agency, which must provide accepted methods of electronic submission. Such methods include, but are not limited to:[18]

- E-mail submission of applications in PDF format;
- Submission of applications through an electronic fill-in form available on the building department's website; or
- Through a third-party submission management software.

A local enforcement agency is an agency of local government, a local school board, a community college board of trustees, or a university board of trustees in the State University System with jurisdiction to make inspections of buildings and to enforce the Building Code.[19]

Payments, attachments, or drawings required as part of the permit application may be submitted in person in a nonelectronic format, at the discretion of the building official.[20]

If a building official or plans reviewer denies a permit application or revokes a building permit, the building official or plans reviewer must give the permit applicant a reason for denying or revoking the permit. The reason must be based on compliance with the Building Code or a local ordinance. Failing to provide a reason for denying or revoking a building permit, which is based on compliance with the Building Code or a local ordinance, is grounds for discipline against the building official or plans reviewer's license.[21]

Building Inspections

Any construction work that requires a building permit also requires plans and inspections to ensure the work complies with the Building Code. The Building Code requires certain building, electrical, plumbing, mechanical, and gas inspections.[22] Construction work may not be done beyond a certain point until it

[15] S. 553.80(6), F.S.
[16] *See* Ss. 125.56(4)(a) and 553.79(1), F.S.
[17] Ss. 713.135(5) and (6), F.S.
[18] Ss. 125.56(4)(b) and 553.79(1)(b), F.S.
[19] S. 553.71(5), F.S.
[20] Ss. 125.56(4)(b) and 553.79(1)(b), F.S.
[21] *Id.*
[22] S. 110 Seventh edition of the Florida Building Code (Building).

passes an inspection. Generally speaking, a permit for construction work that passes the required inspections is considered completed or closed.[23]

The Building Code requires the following inspections depending on the scope of the construction work:[24]

- Building, including;
  - Foundation.
  - Framing.
  - Sheathing.
  - Exterior wall coverings.
  - Roofing.
  - Swimming pool.
  - Demolition.
  - Manufactured building.
  - Impact-resistant coverings.
  - Final inspection.
- Electrical;
- Plumbing;
- Mechanical;
- Gas;
- Lath, gypsum board, and gypsum panel product;
- Weather-exposed balcony and walking surface waterproofing;
- Fire- and smoke-resistant penetrations;
- Energy efficiency;
- Termites;
- Shoring; and
- Threshold.

In addition to the inspections required by the Building Code, a building official may require other inspections of any construction work to ascertain compliance with the provisions of the Building Code and other laws that are enforced by the government entity.[25]

Local Government Fees & Permits

Each government entity may provide a schedule of reasonable fees in order to defer the costs of inspection and enforcement of the Building Code. The basis for a local government's fee structure must relate to the level of service provided by the local government. Fees charged must be consistently applied. Each local government must post its permit and inspection fee schedule on its website.[26]

A local government's permit and inspection fees must be used solely for carrying out that local government entity's responsibilities in enforcing the Building Code. This includes:[27]

- The direct costs and reasonable indirect costs associated with review of building plans, building inspections, reinspections, and building permit processing;
- Building code enforcement;
- Fire inspections associated with new construction; and
- Training costs associated with the enforcement of the Building Code and enforcement action pertaining to unlicensed contractor activity to the extent not funded by other user fees.

DBPR Surcharges

[23] Doug Wise, *Closing Inactive & Excluded Building Permits*, Palm Beach County Planning, Zoning & Building Department, Building Division, http://discover.pbcgov.org/pzb/building/BuildingCodes/PBO-126%20%E2%80%93%20Closing%20Inactive%20and%20Excluded%20Building%20Permits.pdf (last visited Mar. 15, 2021).
[24] S. 110, Seventh Edition of the Florida Building Code (Building).
[25] S. 110.3.10, Seventh Edition of the Florida Building Code (Building).
[26] Ss. 125.56(2), 166.222, 553.79(1), and 553.80(7), F.S.
[27] S. 553.80(7), F.S.

Current law requires that all local governments assess and collect a 1.0 percent surcharge on any building permit issued by their enforcement agency for the purpose of enforcing the Building Code. The local jurisdictions collect the assessment and remit the surcharge fees to DBPR to fund the activities of the Florida Building Commission, DBPR's Building Code Compliance and Mitigation Program, and the Florida Fire Prevention Code informal interpretations.[28]

Current law also requires that all local governments assess and collect a separate 1.5 percent surcharge on any building permit issued by their enforcement agency for the purpose of enforcing the Building Code. The local governments collect the assessment and remit the surcharge fees to DBPR, where the money is divided equally to fund the activities of the BCAIB and the Florida Homeowners' Construction Recovery Fund.[29]

Local government building departments are permitted to retain 10 percent of the amount of the surcharges they collect to fund participation of their agencies in the national and state building code adoption processes and to provide education related to enforcement of the Florida Building Code.[30]

Electronic Request for Inspections

Current law requires all local enforcement agencies to allow contractors to apply for permits electronically. However, there is no provision requiring local enforcement agencies to allow contractors to request inspections electronically.

Multiple building departments in Florida already allow permit holders to electronically request inspections,[31] while others do not. Instead, they require permit holders to call the building department during its business hours, which limits the time when a permit holder can request an inspection, or use an interactive voice response system.[32]

Proponents argue that allowing permit holders to electronically request inspections can provide inspectors a real-time schedule, including cancellation, location, and contact information for their scheduled inspections. Building departments note that there is an initial cost for the transition to electronic requests.[33]

Virtual Building Inspections

As a result of COVID-19, many building departments in Florida began performing virtual inspections in order to prevent a shut down and to protect building department staff, contractors, and property owners. Virtual inspections allow a building official or inspector to perform an inspection without having to be physically present at the jobsite. They also allow building departments to continue operating during the COVID-19 epidemic, which allows contractors to keep working.[34]

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[28] S. 553.721, F.S.

[29] S. 468.631, F.S.; The Florida Homeowners' Construction Recovery Fund is used to compensate homeowners who have suffered a covered financial loss at the hands of state-licensed general, building and residential contractors. Claims are filed with the DBPR, who reviews for completeness and statutory eligibility. The DBPR then presents the claim to the Construction Industry Licensing Board for review. S. 489.1401(2), F.S.

[30] Ss. 468.631, and 553.721, F.S.

[31] Orange County Government Florida, *Division of Building Safety*, https://www.orangecountyfl.net/PermitsLicenses/DivisionOfBuildingSafety.aspx#inspections (last visited Feb. 12, 2021); Brevard County, *Brevard County Building Inspection Request*, https://www.brevardfl.gov/PlanningDev/BuildingPermits/InspectionRequest (last visited Feb. 12, 2021); Town of Davie Florida, *Online Self Service*, https://www.davie-fl.gov/213/Online-Self-Service (last visited Feb. 12, 2021).

[32] Fort Myers Community Development, *Building, Permitting & Inspections (BPI)*, https://cityftmyers.com/1293/Building-Permitting-Inspections (last visited Feb. 12, 2021); Monroe County, Building and Permitting Quick Links, https://www.monroecounty-fl.gov/149/Building-and-Permitting (last visited Feb. 12, 2021).

[33] National Institute of Building Sciences, Washington, D.C., *Electronic Permitting Systems and How to Implement Them*, (April 2002) https://www.huduser.gov/publications/pdf/permitting_all_4_12_02.pdf (last visited Feb. 23, 2021).

[34] Monica Casey, *Tallahassee creates virtual building inspections to save jobs and keep social distancing*, WCTV.tv (Apr. 8, 2020) https://www.wctv.tv/content/news/Tallahassee-creates-virtual-building-inspections-to-save-jobs-and-keep-social-distancing-

Virtual inspections can range from roofing inspections, windows and doors inspections, to air conditioning change outs depending on the jurisdiction. Virtual inspections can be more efficient than in-person inspections by reducing jobsite travel time, by allowing contractors to immediately request an inspection once they finish work, and by allowing the contractor to remain on the jobsite.[35]

Virtual inspections are usually done by having the contractor or owner at the jobsite with a mobile phone or tablet with a camera. The building official or inspector calls the contractor or owner via video chat, and the building official or inspector directs the contractor or owner to allow him or her to view specific work.[36]

Some building departments have indicated that they plan to continue using virtual inspections once the COVID-19 emergency is over.[37]

Current law neither specifically prohibits nor allows virtual inspections by building departments.

Reasons for Failing an Inspection

Current law requires a building official or plans reviewer, who denies or revokes a building permit, to provide the permit applicant or permit holder a reason for the denial or revocation. The reason must be based on compliance with the Building Code or a local ordinance. If a building official or plans reviewer fails to provide a reason for denying or revoking a building permit based on compliance with the Building Code or a local ordinance, the building official or plans reviewer's license may be disciplined.[38]

The Building Code requires an inspector to notify the permit holder or his or her agent if there are any violations that need to be corrected in order to comply with the Building Code.[39] However, current law does not require a building official or inspector to provide the permit holder a specific reason for failing the inspection.

According to industry members, some local government inspectors do not provide a reason for failing an inspection that is based on compliance with the Building Code or a local ordinance. This results in a permit holder having to speculate why the work did not pass the inspection, and causes delays until the permit holder can speak with the inspector.[40]

Effect of the Bill

The bill requires local enforcement agencies to allow requests for inspections to be submitted electronically. Accepted methods of electronic submission include, but are not limited to:

- E-mail;

569485561.html (last visited Feb. 23, 2021); Orange County, *Orange County Division of Building Safety Launches Remote Inspections*, (Jul. 22, 2020) https://newsroom.ocfl.net/2020/07/orange-county-division-of-building-safety-launches-remote-inspections/ (last visited Feb. 23, 2021) Marsha Lidskin, *Palm Coast building inspections for occupied homes go virtual for COVID-19 safety*, PalmCoastObserver.com (Aug. 27, 2020) https://www.palmcoastobserver.com/article/palm-coast-building-inspections-for-occupied-homes-go-virtual-for-covid-19-safety (last visited Feb. 23, 2021).

[35] Miami Beach, *Modified Procedures for Building Code Inspections During COVID-19 Emergency Period*, https://www.miamibeachfl.gov/wp-content/uploads/2020/05/Virtual-inspections-procedures-2.pdf (last visited Feb. 23, 2021); Boca Raton, *Virtual Inspections*, https://myboca.us/1846/Virtual-Inspections (last visited Feb. 23, 2021); Orange County, *supra* at note 34.

[36] *Id.*

[37] Kim Slowey, *Building officials turn to video inspections to mitigate COVID-19 risk*, Construction Dive (Apr. 15, 2020) https://www.constructiondive.com/news/covid-19-forces-building-officials-to-explore-remote-video-inspections/576072/ (last visited Feb. 23, 2021).

[38] S. 553.79(1)(a), F.S.

[39] S. 110.3, Seventh Edition of the Florida Building Code (Building).

[40] Email from Brian Hastings, President of 4 Seasons Air Conditioning & Heating, Florida building inspectors, code section reference for failed inspections (Feb. 23, 2021); Email from Rick Sims, President of Johnson's Air Conditioning, HVAC; Requiring Code Citation References (Feb. 22, 2021); Email from David Shepard, Director of Service Operations of Cortez Heating & Air Conditioning, Inspectors Citing Specific Codes (Feb. 23, 2021).

- An electronic fill-in form available on the building department's website;
- A third-party submission management software; or
- An application that can be downloaded on a mobile device.

The bill provides that requests for inspections may be submitted in a non-electronic format at the discretion of the building official.

The bill clarifies that any government entity with authority to enforce the Building Code and inspections may perform virtual inspections at its discretion.

The bill defines "virtual inspection" as a form of visual inspection that uses visual or electronic aids to allow a building official, inspector, or team of inspectors to perform an inspection without having to be physically present at the job site during the inspection.

The bill prohibits a government entity from performing a virtual inspection for structural inspections on threshold buildings.[41]

The bill requires a local enforcement agency to refund 10 percent of permit and inspection fees to a permit holder if:

- The inspector or building official determines that the work, which requires the permit, fails an inspection; and
- The inspector or building official fails to provide a reason, which is based on compliance with the Building Code, the Florida Fire Prevention Code, or local ordinance, for why the work failed the inspection within 5 business days after the inspection.

If any permit and inspection fees are refunded because a building official or inspector fails to provide a reason for failing an inspection, the DBPR surcharges for funding the Building Commission, the BCAIB, and the Florida Homeowners' Recovery Fund must be recalculated based on the amount of the permit and inspection fees after the refund.

B. SECTION DIRECTORY:

Section 1. Amends s. 125.56, F.S., requiring counties to allow electronic requests for inspections.

Section 2. Amends s. 553.79, F.S., requiring local enforcement agencies to allow electronic inspections, allowing virtual inspections, and requiring local enforcement agencies to reduce certain fees.

Section 3. Amends s. 440.103, F.S., conforming a cross-reference.

Section 4. Amends s. 553.80, F.S., conforming a cross-reference.

Section 5. Providing an effective date of July 1, 2021.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

[41] A threshold building is a building that is greater than three stories or 50 feet in height, exceeds 5,000 square feet, has an occupancy of greater than 500 persons, and is for the gathering of persons for purposes such as civic, social or religious functions, recreation, food or drink consumption, or awaiting transportation. A special inspector, who is licensed as an architect or engineer, must perform structural inspections on threshold buildings. S. 553.71(12), F.S.

See Fiscal Comments.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

See Fiscal Comments.

2. Expenditures:

Indeterminate. Local governments that do not currently allow electronic submission of inspections may have to expend funds to meet the requirements in the bill.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may have a positive impact by allowing permit holders to electronically request inspections and clarifying that government entities may perform virtual inspections at their discretion, which may reduce the time to complete a construction project.

The bill may also have a positive impact by requiring inspectors to provide a reason for failing an inspection, which may decrease the time to complete a construction project.

D. FISCAL COMMENTS:

The amount of permit and inspection fees that are refunded by local governments for failing to provide a reason for failing an inspection is indeterminate. However, any amount will likely be minimal. It is unclear if refunding a percentage of permit fees will have an impact on the surcharges received by DBPR. However, any impact will likely be insignificant.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The county/municipality mandates provision of Art. VII, s. 18 of the Florida Constitution may apply because this bill requires local governments to allow permit holders to request inspections electronically. This may result in additional expenditures to comply with the statute. However, an exemption may apply because the fiscal impact is likely to be insignificant since local governments currently are required to allow building permit applicants to electronically submit building permit applications.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill neither authorizes nor requires administrative rulemaking by executive branch agencies.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 2, 2021, the Regulatory Reform Subcommittee adopted a strike-all amendment and reported the bill favorably as a committee substitute. The committee substitute:

- Clarifies that a person may still request building inspections telephonically; and
- Clarifies that a building inspector must provide a reason for failing an inspection within 3 business days of the inspection, instead of 3 days.

On April 1, 2021, the Local Administration & Veterans Affairs Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment clarifies that a building inspector must provide a reason for failing an inspection within 5 business days of the inspection, instead of 3 business days.

This analysis is drafted to the committee substitute as approved by the Local Administration & Veterans Affairs Subcommittee.

A bill to be entitled

An act relating to building inspections; amending s. 125.56, F.S.; requiring that certain counties allow requests for inspections to be submitted electronically; providing acceptable methods of electronic submission; amending s. 553.79, F.S.; requiring that local enforcement agencies allow requests for inspections to be submitted electronically; providing acceptable methods of electronic submission; authorizing enforcement agencies to perform virtual inspections; providing an exception; providing a definition; requiring a refund of certain fees in certain circumstances; requiring certain surcharges be recalculated under certain conditions; amending ss. 440.103 and 553.80, F.S.; conforming a cross-reference; providing an effective date.

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

Section 1. Paragraph (f) is added to subsection (4) of section 125.56, Florida Statutes, to read:

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

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

(4)

(f) A county that issues building permits must allow requests for inspections to be submitted electronically to the county building department. Acceptable methods of electronic submission include, but are not limited to, e-mail or fill-in form available on the website of the building department or through a third-party submission management software or application that can be downloaded on a mobile device. Requests for inspections may be submitted in a nonelectronic format, at the discretion of the building official.

Section 2. Subsections (6) through (22) of section 553.79, Florida Statutes, are renumbered as subsections (8) through (24), respectively, subsection (2) of that section is amended, paragraph (d) is added to subsection (1) and subsections (6) and (7) are added to that section, to read:

553.79 Permits; applications; issuance; inspections.—

(1)

(d) A local enforcement agency must allow requests for inspections to be submitted electronically to the local enforcement agency's appropriate building department. Acceptable methods of electronic submission include, but are not limited to, e-mail or fill-in form available on the website of the building department or through a third-party submission management software or application that can be downloaded on a mobile device. Requests for inspections may be submitted in a

nonelectronic format, at the discretion of the building official.

(2) Except as provided in subsection (8) ~~subsection (6)~~, an enforcing agency may not issue any permit for construction, erection, alteration, modification, repair, or demolition of any building or structure until the local building code administrator or inspector has reviewed the plans and specifications required by the Florida Building Code, or local amendment thereto, for such proposal and found the plans to be in compliance with the Florida Building Code. If the local building code administrator or inspector finds that the plans are not in compliance with the Florida Building Code, the local building code administrator or inspector shall identify the specific plan features that do not comply with the applicable codes, identify the specific code chapters and sections upon which the finding is based, and provide this information to the local enforcing agency. The local enforcing agency shall provide this information to the permit applicant. In addition, an enforcing agency may not issue any permit for construction, erection, alteration, modification, repair, or demolition of any building until the appropriate firesafety inspector certified pursuant to s. 633.216 has reviewed the plans and specifications required by the Florida Building Code, or local amendment thereto, for such proposal and found that the plans comply with the Florida Fire Prevention Code and the Life Safety Code. Any

building or structure which is not subject to a firesafety code shall not be required to have its plans reviewed by the firesafety inspector. Any building or structure that is exempt from the local building permit process may not be required to have its plans reviewed by the local building code administrator. Industrial construction on sites where design, construction, and firesafety are supervised by appropriate design and inspection professionals and which contain adequate in-house fire departments and rescue squads is exempt, subject to local government option, from review of plans and inspections, providing owners certify that applicable codes and standards have been met and supply appropriate approved drawings to local building and firesafety inspectors. The enforcing agency shall issue a permit to construct, erect, alter, modify, repair, or demolish any building or structure when the plans and specifications for such proposal comply with the Florida Building Code and the Florida Fire Prevention Code and the Life Safety Code as determined by the local authority in accordance with this chapter and chapter 633.

(6) A state or local enforcement agency may perform virtual inspections at the discretion of the enforcement agency. However, a state or local enforcement agency may not perform virtual inspections for structural inspections on a threshold building. For purposes of this subsection, the term "virtual inspection" means a form of visual inspection which uses visual

or electronic aids to allow a building code administrator or an inspector, or team of inspectors, to perform an inspection without having to be physically present at the job site during the inspection.

(7)(a) A local enforcement agency must refund 10 percent of the permit and inspection fees to a permit holder if:

1. The inspector or building code administrator determines that the work, which requires the permit, fails an inspection; and

2. The inspector or building code administrator fails to provide, within 5 business days after the inspection, the permit holder or his or her agent with a reason, based on compliance with the Florida Building Code, Florida Fire Prevention Code, or local ordinance, for why the work failed the inspection.

(b) If any permit and inspection fees are refunded under paragraph (a), the surcharges provided in s. 553.721 or s. 468.631 must be recalculated based on the amount of the permit and inspection fees after the refund.

Section 3. Section 440.103, Florida Statutes, is amended to read:

440.103 Building permits; identification of minimum premium policy.—Every employer shall, as a condition to applying for and receiving a building permit, show proof and certify to the permit issuer that it has secured compensation for its employees under this chapter as provided in ss. 440.10 and

440.38. Such proof of compensation must be evidenced by a certificate of coverage issued by the carrier, a valid exemption certificate approved by the department, or a copy of the employer's authority to self-insure and shall be presented, electronically or physically, each time the employer applies for a building permit. As provided in s. 553.79(23) ~~s. 553.79(21)~~, for the purpose of inspection and record retention, site plans or building permits may be maintained at the worksite in the original form or in the form of an electronic copy. These plans and permits must be open to inspection by the building official or a duly authorized representative, as required by the Florida Building Code. As provided in s. 627.413(5), each certificate of coverage must show, on its face, whether or not coverage is secured under the minimum premium provisions of rules adopted by rating organizations licensed pursuant to s. 627.221. The words "minimum premium policy" or equivalent language shall be typed, printed, stamped, or legibly handwritten.

Section 4. Subsection (1) of section 553.80, Florida Statutes, is amended to read:

553.80 Enforcement.—

(1) Except as provided in paragraphs (a)-(g), each local government and each legally constituted enforcement district with statutory authority shall regulate building construction and, where authorized in the state agency's enabling legislation, each state agency shall enforce the Florida

Building Code required by this part on all public or private buildings, structures, and facilities, unless such responsibility has been delegated to another unit of government under s. 553.79(11) ~~pursuant to s. 553.79(9)~~.

(a) Construction regulations relating to correctional facilities under the jurisdiction of the Department of Corrections and the Department of Juvenile Justice are to be enforced exclusively by those departments.

(b) Construction regulations relating to elevator equipment under the jurisdiction of the Bureau of Elevators of the Department of Business and Professional Regulation shall be enforced exclusively by that department.

(c) In addition to the requirements of s. 553.79 and this section, facilities subject to the provisions of chapter 395 and parts II and VIII of chapter 400 shall have facility plans reviewed and construction surveyed by the state agency authorized to do so under the requirements of chapter 395 and parts II and VIII of chapter 400 and the certification requirements of the Federal Government. Facilities subject to the provisions of part IV of chapter 400 may have facility plans reviewed and shall have construction surveyed by the state agency authorized to do so under the requirements of part IV of chapter 400 and the certification requirements of the Federal Government.

(d) Building plans approved under s. 553.77(3) and state-

approved manufactured buildings, including buildings manufactured and assembled offsite and not intended for habitation, such as lawn storage buildings and storage sheds, are exempt from local code enforcing agency plan reviews except for provisions of the code relating to erection, assembly, or construction at the site. Erection, assembly, and construction at the site are subject to local permitting and inspections. Lawn storage buildings and storage sheds bearing the insignia of approval of the department are not subject to s. 553.842. Such buildings that do not exceed 400 square feet may be delivered and installed without need of a contractor's or specialty license.

(e) Construction regulations governing public schools, state universities, and Florida College System institutions shall be enforced as provided in subsection (6).

(f) The Florida Building Code as it pertains to toll collection facilities under the jurisdiction of the turnpike enterprise of the Department of Transportation shall be enforced exclusively by the turnpike enterprise.

(g) Construction regulations relating to secure mental health treatment facilities under the jurisdiction of the Department of Children and Families shall be enforced exclusively by the department in conjunction with the Agency for Health Care Administration's review authority under paragraph (c).

The governing bodies of local governments may provide a schedule of fees, as authorized by s. 125.56(2) or s. 166.222 and this section, for the enforcement of the provisions of this part. Such fees shall be used solely for carrying out the local government's responsibilities in enforcing the Florida Building Code. The authority of state enforcing agencies to set fees for enforcement shall be derived from authority existing on July 1, 1998. However, nothing contained in this subsection shall operate to limit such agencies from adjusting their fee schedule in conformance with existing authority.

Section 5. This act shall take effect July 1, 2021.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 839 Express Preemption of Fuel Retailers and Related Transportation Infrastructure
SPONSOR(S): Local Administration & Veterans Affairs Subcommittee; Tourism, Infrastructure & Energy Subcommittee; Fabricio
TIED BILLS: **IDEN./SIM. BILLS:** CS/CS/SB 856

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Tourism, Infrastructure & Energy Subcommittee	12 Y, 6 N, As CS	Willson	Keating
2) Local Administration & Veterans Affairs Subcommittee	15 Y, 0 N, As CS	Renner	Miller
3) Commerce Committee		Willson	Hamon

SUMMARY ANALYSIS

The Florida Constitution grants county and municipal governments broad home rule authority. Specifically, non-charter county governments may exercise those powers of self-government that are provided by general or special law. Those counties operating under a county charter have all powers of self-government not inconsistent with general law or special law approved by vote of the electors. Likewise, municipalities have those governmental, corporate, and proprietary powers enabling them to conduct municipal government, perform their functions and provide services, and exercise any power for municipal purposes, except as otherwise provided by law. In contrast, special districts have only those powers expressly authorized by general or special law. County and municipal governments have broad authority to legislate on any matter that is not inconsistent with federal or state law. A local government enactment may be inconsistent with state law if (1) the Legislature has preempted a particular subject area or (2) the local enactment conflicts with a state statute. Where state preemption applies it precludes a local government from exercising authority in that particular area.

The bill expressly preempts a municipality, county, special district, or political subdivision from prohibiting the siting, development, or redevelopment of a fuel retailer or the necessary related transportation infrastructure within that specific local government's entire jurisdiction. The bill further preempts any action by a municipality, county, special district, or political subdivision resulting in a *de facto* jurisdiction-wide prohibition against a fuel retailer or the necessary related transportation infrastructure. The bill preempts mandating any required infrastructure on a fuel retailer, including electric vehicle charging stations. The bill does not preempt a municipality, county, special district, or political subdivision from adopting and implementing ordinances, regulations, policies, or resolutions on the siting, development, or redevelopment of fuel retailers or necessary related transportation infrastructure that are consistent with other allowable uses and general law.

The bill defines the term "fuel retailer" as a fuel station or retail site selling fuel to power vehicles. "Related transportation energy infrastructure" is defined as "storage tanks, pipelines, or any related equipment that is necessary to deliver fuel to a fuel retailer or dispense fuel at a fuel retailer."

The fiscal impact of the bill is indeterminate. See *Fiscal Comments* Section.

The bill takes effect upon becoming law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Local Government Authority

The Florida Constitution grants county and municipal governments broad home rule authority. Specifically, counties operating under a county charter have all powers of self-government not inconsistent with general law or special law approved by vote of the electors.[1] Non-charter county governments may exercise those powers of self-government that are provided by general or special law.[2] Likewise, municipalities[3] have those governmental, corporate, and proprietary powers enabling them to conduct municipal government, perform their functions and provide services, and exercise any power for municipal purposes, except as otherwise provided by law.[4]

A "special district" is a unit of local government created for a particular purpose, with jurisdiction to operate within a limited geographic boundary.[5] Special districts are created by general law, special act, local ordinance, or by rule of the Governor and Cabinet.[6] A special district has only those powers expressly provided by, or reasonably implied from, the authority provided in the district's charter. Special districts provide specific municipal services in addition to, or in place of, those provided by a municipality or county.[7]

As of March 23, 2021, there are 627 active dependent[8] special districts and 1,163 active independent special districts in Florida.[9] Community development districts are the most frequently created form of independent special district. Other common special districts in Florida include water control districts, fire control districts, and community redevelopment agencies.[10] Currently, one special electric district and four special natural gas districts exist in Florida.[11]

State Energy Policy

The comprehensive energy policy of the state includes a range of factors for statewide decisions, including the statewide promotion of effective energy use, inclusion of energy considerations in all state, regional, and local planning, considering the energy needs of all sectors of Florida's economy, and considering the social, economic, and environmental impacts of energy-related activities.[12] The further intent of the Legislature includes promoting efficient, effective, and economical management of

[1] Art. VIII, s. 1(g), Fla. Const.
[2] Art. VIII, s. 1(f), Fla. Const.
[3] A municipality is a local government entity created to perform functions and provide services for the particular benefit of the population within the municipality, in addition to those provided by the county. The term "municipality" may be used interchangeably with the terms "town," "city," and "village."
[4] Art. VIII, s. 2(b), Fla. Const. *See also* s. 166.021(1), F.S.
[5] *See Halifax Hospital Medical Center v. State of Fla., et al.*, 278 So. 3d 545, 547 (Fla. 2019).
[6] *See* ss. 189.02(1), 189.031(3), and 190.005(1), F.S. *See*, generally, s. 189.012(6), F.S.
[7] *2020-2022 Local Gov't Formation Manual,* p. 62, https://myfloridahouse.gov/Sections/Documents/loaddoc.aspx?PublicationType=Committees&CommitteeId=3117&Session=2021&DocumentType=General+Publications&FileName=2021-2022+Local+Government+Formation+Manual.pdf (last visited Mar. 15, 2021).
[8] Dependent special districts are under some control by a single county or municipality. S. 189.012(2), F.S. An independent special district is any district that is not a dependent district. S. 189.012(3), F.S. A special district that includes more than one county is independent unless it lies wholly within the boundaries of a single municipality.
[9] Florida Department of Economic Opportunity, Division of Community Development, Special District Accountability Program, Official List of Special Districts Online, *State Totals*, http://dca.deo.myflorida.com/fhcd/sdip/OfficialListdeo/report.cfm (last visited Mar. 23, 2021).
[10] Florida Department of Economic Opportunity, Division of Community Development, Special District Accountability Program, Official List of Special Districts Online, *Special District Function Totals* at http://www.floridajobs.org/community-planning-and-development/assistance-for-governments-and-organizations/special-district-accountability-program (last visited Feb. 28, 2021).
[11] *See* PSC, Facts & Figures of the Florida Utility Industry http://www.psc.state.fl.us/Files/PDF/Publications/Reports/General/Factsandfigures/April%202020.pdf (last visited Feb. 28, 2021).
[12] S. 377.601(2), F.S.

energy issues and centralizing energy coordination responsibilities.[13] Under this general law, local governments participate in the development and implementation of statewide energy policy.

Authority Related to Energy Infrastructure

As provided in general law, certain local governments may:

- Prepare and enforce comprehensive plans for the development of the county.[14]
- Establish, coordinate, and enforce zoning and such business regulations as are necessary for the protection of the public.[15]
- Provide and regulate roads, rights-of-way, and related transportation facilities.[16]
- Enforce the Florida Building Code and adopt and enforce local technical amendments thereto.[17]
- Adopt, revise, and amend, from time to time, appropriate ordinances, rules, and regulations reasonably necessary to maintain air quality standards established pursuant to state and federal law, including the federal Clean Air Act.[18]
- Issue development permits and orders.[19]
- Code enforcement.[20]

Florida Department of Agriculture and Consumer Services

The Florida Department of Agriculture and Consumer Services (FDACS) is responsible for the administration of a number of programs relating to energy infrastructure, including the Renewable Energy and Energy-Efficient Technologies Grants Program,[21] the Energy Efficiency and Conservation Clearinghouse,[22] the Florida Green Government Grants Act,[23] the Natural Gas Fuel Fleet Vehicle Rebate Program,[24] as well as statutory authorization to allocate federal energy conservation bonds[25] and to post information on its website relating to alternative fueling stations or electric vehicle charging stations that are available for public use.[26]

Preemption

Local governments have broad authority to legislate on any matter that is not inconsistent with federal or state law. A local government enactment may be inconsistent with state law if (1) the Legislature "has preempted a particular subject area" or (2) the local enactment conflicts with a state statute. State preemption precludes a local government from exercising authority in that particular area.[27]

[13] S. 377.703(1), F.S.
[14] S. 125.01(1)(g), F.S.
[15] S. 125.01(1)(h), F.S.
[16] S. 125.01(1)(m), F.S.
[17] Ss. 125.01(1)(bb), 166.0415, 553.80, F.S.
[18] S. 125.275, F.S.
[19] Ss. 125.022 and 166.033, F.S.
[20] S. 166.0415, F.S.
[21] Section 377.804, F.S., is established within FDACS "to provide renewable energy matching grants for demonstration, commercialization, research, and development projects relating to renewable energy technologies and innovative technologies that significantly increase energy efficiency for vehicles and commercial buildings."
[22] Section 377.805, F.S., states that "The Office of Energy within the Department of Agriculture and Consumer Services, in consultation with the Public Service Commission, the Florida Building Commission, and the Florida Energy Systems Consortium, shall develop a clearinghouse of information regarding cost savings associated with various energy efficiency and conservation measures."
[23] Section 377.808, F.S., directs FDACS to "use funds specifically appropriated to award grants under this section to assist local governments, including municipalities, counties, and school districts, in the development and implementation of programs that achieve green standards. Green standards shall be determined by the department and shall provide for cost-efficient solutions, reducing greenhouse gas emissions, improving quality of life, and strengthening the state's economy."
[24] Section 377.810, F.S., establishes the program within FDACS "to help reduce transportation costs in this state and encourage freight mobility investments that contribute to the economic growth of the state."
[25] S. 377.816, F.S.
[26] S. 377.815, F.S.
[27] Wolf, *The Effectiveness of Home Rule: A Preemptions and Conflict Analysis*, 83 Fla. B.J. 92 (June 2009), https://www.floridabar.org/the-florida-bar-journal/the-effectiveness-of-home-rule-a-preemption-and-conflict-analysis/ (last visited Mar. 16, 2021).

Florida law recognizes two types of preemption: express and implied. Express preemption requires a specific legislative statement; it cannot be implied or inferred.[28] Express preemption of a field by the Legislature must be accomplished by clear language stating that intent.[29] In cases where the Legislature expressly or specifically preempts an area, there is no problem with ascertaining what the Legislature intended.[30] In cases determining the validity of ordinances enacted in the face of state preemption, the effect has been to find such ordinances null and void.[31]

Effect of the Bill

The bill creates s. 377.707, F.S., expressly preempting to the state specific aspects of regulating fuel retailers and related transportation infrastructure.

The bill defines the term “fuel retailer” as a fuel station or retail site selling fuel to power vehicles. "Related transportation energy infrastructure" is defined as “storage tanks, pipelines, or any related equipment that is necessary to deliver fuel to a fuel retailer or dispense fuel at a fuel retailer.”

Except as authorized by general law, the bill prohibits a municipality, county, special district, or political subdivision from prohibiting the redevelopment of a fuel retailer or the necessary related transportation infrastructure within that specific local government’s entire jurisdiction. The bill further preempts any action by resulting in a *de facto* jurisdiction-wide prohibition against a fuel retailer or the necessary related transportation infrastructure. The bill preempts mandating any required infrastructure on a fuel retailer, including electric vehicle charging stations. The bill does not preempt a municipality, county, special district, or political subdivision from adopting and implementing ordinances, regulations, policies, or resolutions on the siting, development, or redevelopment of fuel retailers or necessary related transportation infrastructure that are consistent with other allowable uses and general law.

B. SECTION DIRECTORY:

Section 1 Creates s. 377.707, F.S.; providing a definition; preempting regulation of fuel retailers and related transportation infrastructure to the state; prohibiting a local government from regulating fuel retailers and related transportation infrastructure; providing an exception; providing construction.

Section 2 Provides for an effective date upon becoming law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   Indeterminate. *See Fiscal Comments.*

2. Expenditures:

   Indeterminate. *See Fiscal Comments.*

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   Indeterminate. *See Fiscal Comments.*

2. Expenditures:

[28] *See City of Hollywood v. Mulligan*, 934 So. 2d 1238, 1243 (Fla. 2006); *Phantom of Clearwater, Inc. v. Pinellas County*, 894 So. 2d 1011, 1018 (Fla. 2d DCA 2005), approved in *Phantom of Brevard, Inc. v. Brevard County*, 3 So. 3d 309 (Fla. 2008).
[29] *Mulligan*, 934 So. 2d at 1243.
[30] *Sarasota Alliance for Fair Elections, Inc. v. Browning*, 28 So. 3d 880, 886 (Fla. 2010).
[31] *See, e.g., Nat’l Rifle Ass’n of Am., Inc. v. City of S. Miami,* 812 So.2d 504 (Fla. 3d DCA 2002).

Indeterminate. *See Fiscal Comments.*

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Indeterminate. *See Fiscal Comments*.

D. FISCAL COMMENTS:

Due to the breadth of the bill's preemption provisions, the potential fiscal impacts to government and the direct economic impact on the private sector cannot be determined.

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:

Article I, section 10 of the Florida Constitution prohibits the passage of any law which impairs the obligation of contracts. The Florida Supreme Court has held as a general rule, relating to the interpretation of substantive changes to statutory law, that in the absence of clear legislative intent to the contrary, a law affecting substantive rights, liabilities, and duties is presumed to apply prospectively but not retroactively.[32] The Supreme Court also has held that "even where the Legislature has expressly stated that a statute will have retroactive application, this Court will reject such an application if the statute impairs a vested right, creates a new obligation, or imposes a new penalty."[33]

Current law authorizes local governments to provide and contract for certain services related to transportation energy infrastructure. To the extent the bill would retroactively abrogate such authority and impair a local government's vested rights or contractual obligations, the bill might impair a local government's ability to satisfy a contractual obligation.

B. RULE-MAKING AUTHORITY:

The bill neither authorizes nor requires administrative rulemaking by executive branch agencies.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill prohibits local regulations that "results in the de facto prohibition of a fuel retailer or the related transportation infrastructure that is necessary to provide fuel to a fuel retailer …" This language could have the effect of rendering void a wide array of local regulations that only incidentally affect or are incidentally related to fuel retailers or related transportation infrastructure. Due to the breadth of this language and the variation in local government regulations, these impacts cannot be determined.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 5, 2021, the Tourism, Infrastructure & Energy Subcommittee adopted a proposed committee substitute (PCS) and reported the bill favorably as a committee substitute. The committee substitute differs from HB 839 in the following ways:

[32] *Smiley v. State*, 966 So. 2d 330, 336 (Fla. 2007). *See also* Eric Glazer and Louis Goetz, *Florida Community Association Law: Contracts Clause Application In An Ever-Changing Legislative Landscape*, Florida Bar Journal, Vol. 89, No. 8 (Sept./Oct. 2015). "In Florida, all laws are presumed to apply prospectively, unless they are remedial in nature, or designed to clarify law already in effect, and the legislature clearly expresses its intention that the law is to apply retroactively."

[33] *Menendez v. Progressive Exp. Ins. Co., Inc.,* 35 So.3d 873 (Fla. 2010).

- Preempts the regulation of transportation energy infrastructure;
- Revises the definition of “transportation energy infrastructure” to include certain fuels used for transportation;
- Provides the preemption does not apply to local ordinances regulating underground petroleum storage system construction, operation, and maintenance;
- Preempts local government comprehensive plans, land use maps, zoning districts, or other land development regulations that would conflict with an existing transportation energy infrastructure classification as a permitted and allowable use under certain circumstances;
- Preempts local governments from imposing transportation energy infrastructure requirements that are more stringent than state law or department rule;
- Provides an exception for a local government to adopt, implement, modify, and enforce applicable federal and state requirements for transportation energy infrastructure including safety and building standards, provided it does not conflict with federal or state safety and security requirements for transportation energy infrastructure.

On April 1, 2021, the Local Administration & Veterans Affairs Subcommittee adopted a proposed committee substitute (PCS) and one amendment to the PCS and reported the bill favorably as a committee substitute. The committee substitute differs from CS/HB 839 in the following ways:

- Expressly preempts the regulation of fuel retailers and related transportation infrastructure;
- Provides definitions for “fuel retailer” and “related transportation infrastructure”;
- Prohibits a municipality, county, special district, or political subdivision from prohibiting the redevelopment of a fuel retailer or the necessary related transportation infrastructure within that specific local government’s entire jurisdiction;
- Preempts any action resulting in a *de facto* jurisdiction-wide prohibition against a fuel retailer or related and necessary transportation infrastructure;
- Preempts mandating any required infrastructure on a fuel retailer, including electric vehicle charging stations;
- Specifies that a municipality, county, special district, or political subdivision is not prohibited from adopting and implementing ordinances, regulations, policies, or resolutions on the siting, development, or redevelopment of fuel retailers or necessary related transportation infrastructure that are consistent with other allowable uses and general law.
- Makes a technical change.

This analysis is drafted to the committee substitute as approved by the Local Administration & Veterans Affairs Subcommittee.

A bill to be entitled

An act relating to the express preemption of fuel retailers and related transportation infrastructure; creating s. 377.707, F.S.; defining terms; prohibiting a municipality, county, special district, or political subdivision from taking certain actions to prohibit the siting, development, or redevelopment of fuel retailers and the related transportation infrastructure and from requiring fuel retailers to install or invest in a particular kind of fueling infrastructure; providing construction; providing an effective date.

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

Section 1. Section 377.707, Florida Statutes, is created to read:

377.707 Express preemption of fuel retailers and related transportation infrastructure.—

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

(a) "Fuel retailer" means a fuel station or retail establishment that sells fuel to provide power to vehicles.

(b) "Related transportation infrastructure" means storage tanks, pipelines, or any related equipment that is necessary to deliver fuel to a fuel retailer or dispense fuel at a fuel

retailer.

(2) A municipality, county, special district, or political subdivision may not do any of the following:

(a) Adopt a law, an ordinance, a regulation, a policy, or a resolution that prohibits the siting, development, or redevelopment of a fuel retailer or the related transportation infrastructure that is necessary to provide fuel to a fuel retailer within the entirety of the jurisdictional boundary of the municipality, county, special district, or political subdivision.

(b) Adopt or apply a law, an ordinance, a regulation, a policy, or a resolution that results in the de facto prohibition of a fuel retailer or the related transportation infrastructure that is necessary to provide fuel to a fuel retailer within the entirety of the jurisdictional boundary of a municipality, county, special district, or political subdivision.

(c) Require a fuel retailer to install or invest in a particular kind of fueling infrastructure, including, but not limited to, electric vehicle charging stations.

This section does not preempt a municipality, county, special district, or political subdivision from adopting and implementing a law, an ordinance, a regulation, a policy, or a resolution that is not otherwise inconsistent with general law relating to the siting, development, or redevelopment of fuel

retailers or related transportation infrastructure necessary for them to provide fuel, if such law, ordinance, regulation, policy, or resolution does not result in a de facto prohibition of fuel retailers or related transportation infrastructure necessary to provide fuel to fuel retailers from being sited, developed, or redeveloped within zoning or land use classifications where such infrastructure is consistent with other allowable uses.

Section 2. This act shall take effect upon becoming a law.

CS/HB 917

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 917 Documentary Stamp Tax Exemption
SPONSOR(S): Insurance & Banking Subcommittee, McClain
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 1334

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee	18 Y, 0 N, As CS	Haas	Luczynski
2) Ways & Means Committee	15 Y, 0 N	Curry	Aldridge
3) Commerce Committee		Hinshelwood	Hamon

SUMMARY ANALYSIS

Since 1986, the London Interbank Offered Rate (LIBOR) has been the primary reference rate used in setting interest rates for such loans as adjustable rate mortgages, asset-backed securities, municipal bonds, and other types of debt. It is estimated that $200 trillion in financial contracts reference the U.S. Dollar LIBOR. However, the LIBOR has come under increasing scrutiny from regulators and financial markets. The entity that regulates the LIBOR, the Financial Conduct Authority (FCA) of the United Kingdom, states that the LIBOR will cease after the end of 2021, though some U.S. Dollar LIBOR panels have been extended to the end of June 2023. Accordingly, the FCA is recommending transitions to alternative rates before these dates. In the United States, the Alternative Reference Rates Committee (ARRC) has identified the Secured Overnight Financing Rate (SOFR) as its recommended alternative to the U.S. Dollar LIBOR.

Some financial contracts that reference the LIBOR include robust fallback language that contemplates a replacement interest rate index or replacement interest rate calculation in the event that the rate referenced in the contract is discontinued. However, the ARCC has reported that most contracts referencing the LIBOR may not have robust fallback language. Financial institutions and other market participants are in the process of assessing their exposure to the discontinuation of the LIBOR. For contracts based on the LIBOR that do not contain sufficient fallback language, such contracts may need to be modified in order to provide a substantially similar interest rate.

Florida law currently levies a documentary stamp tax on promissory notes, mortgages, other written obligations to pay money, and renewals of those documents. The tax is 35 cents on each $100 or fraction thereof of indebtedness or obligation. For certain documents, the tax is capped at $2,450. The modification of an original document which changes the terms of the indebtedness by adding one or more obligors, increasing the principal balance, or changing the interest rate, maturity date, or payment terms is a taxable renewal.

The bill provides that a modification of an original document which changes only the interest rate and is made as the result of the discontinuation of an index to which the original interest rate is referenced is not a renewal and is not subject to the documentary stamp tax.

The Revenue Estimating Conference estimated that the bill will have an indeterminate negative impact on General Revenue and on state trust fund revenues, but will not have an impact on local government revenues.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Florida's Documentary Stamp Tax on Notes and Mortgages

Florida law currently levies a documentary stamp tax, capped at $2,450, on promissory notes, nonnegotiable notes, written obligations to pay money, or assignments of salaries made, executed, delivered, sold, transferred, or assigned in the state, and for each renewal of the same.[1] Florida law also levies a documentary stamp tax, with no cap, on mortgage, trust deeds, security agreements, or other evidence of indebtedness filed or recorded in this state, and for renewal of the same.[2] The documents are all taxed at 35 cents on each $100 or fraction thereof of the indebtedness or obligation.[3]

For purposes of taxing renewals of the documents described above, a renewal only includes the modifications of an original document which changes the terms of the indebtedness by adding one or more obligors, increasing the principal balance, or changing the interest rate, maturity date, or payment terms.[4] Modifications to documents that do not modify the terms of the indebtedness are not renewals and are not subject to the documentary stamp tax. Such non-taxable modifications include:[5]

- Modifications given or recorded to correct error;
- Modification of covenants, conditions, or terms unrelated to the debt;
- Severing of a lien into separate liens;
- Providing for additional, substitute, or further security for the indebtedness;
- Consolidating indebtedness or collateral;
- Adding, changing, or deleting guarantors; or
- Substituting a new mortgagee or payee.

When renewal of a promissory note only extends or continues the identical contractual obligations of the original promissory note and evidences part or all of the original indebtedness, not including any accumulated interest thereon and without enlargement in any way of the original contract and obligation, such renewal note is not subject to the documentary stamp tax, so long as the renewal note has attached to it the original promissory note with other specified notation thereon.[6]

London Interbank Offered Rate (LIBOR)

When two parties enter into a financial contract in which interest payments are to be exchanged, those payments are frequently based on the LIBOR, which provides the benchmark rate for the resulting interest rate.[7] Since 1986, the LIBOR has been the primary reference rate used in setting interest rates for adjustable rate mortgages, asset-backed securities, municipal bonds, credit default swaps, private student loans, and other types of debt.[8]

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[1] S. 201.08(1)(a), F.S.
[2] S. 201.08(1)(b), F.S.
[3] S. 201.08(1)(a) and (b), F.S.
[4] S. 201.08(5), F.S.
[5] *Id.*
[6] S. 201.09(1), F.S.
[7] Consumer Finance Protection Bureau, *You Might Have Heard That LIBOR is Going Away. Here's What You Need to Know About LIBOR and Adjustable-Rate Loans* (Oct. 17, 2019), https://www.consumerfinance.gov/about-us/blog/libor-going-away-heres-what-you-need-know-about-libor-and-adjustable-rate-loans/ (last visited Mar. 5, 2021).
[8] Forbes, *What Is LiborAnd Why Is It Being Abandoned?* (Dec. 16, 2020), https://www.forbes.com/advisor/investing/what-is-libor/ (last visited Mar. 5, 2021).

The LIBOR is calculated daily by the Intercontinental Exchange (ICE) Benchmark Administration.[9] Eighteen international banks submit rates that each bank believes it would pay, not what it actually pays, if it had to borrow money from another bank on the interbank lending market in London.[10] After removing the four highest and four lowest submissions, the ICE Benchmark Administration calculates the rate in five currencies: UK Pound Sterling, the Swiss Franc, the Euro, Japanese Yen, and the U.S. Dollar.[11]

It is estimated that $200 trillion in financial contracts reference the U.S. Dollar LIBOR.[12] Although the derivatives market accounts for 95 percent of the outstanding value of all financial products referencing the U.S. Dollar LIBOR, the LIBOR is also referenced in several trillion dollars of corporate loans, floating-rate mortgages, floating-rate notes, and securitized products.[13] As of 2019, $1.2 trillion worth of residential mortgage loans and $1.3 trillion of consumer loans referenced the LIBOR.[14]

The LIBOR has come under increasing scrutiny from regulators and financial markets alike following documented patterns of attempted manipulation by participating banks and a sustained decline in unsecured interbank borrowing.[15] Others have noted the declining correlations between the LIBOR and actual bank funding costs.[16]

In 2014, the Federal Reserve Board and the Federal Reserve Bank of New York convened the Alternative Reference Rates Committee (ARRC) to identify an alternative reference rate for use primarily in derivatives contracts.[17] The ARCC was reconstituted in 2018 with an expanded membership in an effort to push a wider segment of market participants to focus on their exposure to the LIBOR.[18]

In 2017, the ARRC identified the Secured Overnight Financing Rate (SOFR) as its recommended alternative to the U.S. Dollar LIBOR.[19] SOFR is fully-transaction based and is a broad measure of the cost of borrowing cash overnight collateralized by U.S. Treasury securities.[20] SOFR is based on transaction data from three segments of the Treasury repurchase agreement market: (1) tri-party repurchase agreements, (2) General Collateral Finance repurchase agreements; and (3) bilateral repurchase agreement transactions cleared through the Fixed Income Clearing Corporation.[21] The Federal Reserve Bank of New York publishes SOFR data daily, as well as SOFR Averages and a SOFR Index.[22]

The entity that regulates the LIBOR, the Financial Conduct Authority (FCA) of the United Kingdom, states that the LIBOR will cease after the end of 2021, though some U.S. Dollar LIBOR panels have been extended to the end of June 2023.[23] Accordingly, the FCA is recommending transitions to alternative rates before these dates.[24]

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[9] *Id.*
[10] *Id.*
[11] *Id.*
[12] Alternative Reference Rates Committee, *Frequently Asked Questions* (Dec. 18, 2020), https://www.newyorkfed.org/medialibrary/Microsites/arrc/files/ARRC-faq.pdf (last visited Mar. 5, 2021).
[13] *Id.*
[14] Forbes, *supra* note 8.
[15] *Id*.
[16] Bowman et al*., How Correlated is LIBOR with Bank Funding Costs?* (June 29, 2020), https://www.federalreserve.gov/econres/notes/feds-notes/how-correlated-is-libor-with-bank-funding-costs-20200629.htm (last visited Mar. 5, 2021).
[17] Alternative Reference Rates Committee, *supra* note 12.
[18] *Id*.
[19] *Id.*
[20] *Id*.
[21] *Id*.
[22] *Id.*
[23] New York Federal Reserve, *Transition From LIBOR*, https://www.newyorkfed.org/arrc/sofr-transition (last visited Mar. 5, 2021); Financial Conduct Authority, *Transition From LIBOR* (Jan. 19, 2021). https://www.fca.org.uk/markets/libor (last visited Mar. 5, 2021).
[24] Financial Conduct Authority, *supra* note 23.

Some financial contracts that reference the LIBOR include robust fallback language[25] that contemplates a replacement interest rate index or replacement interest rate calculation in the event that the rate referenced in the contract is discontinued. However, the ARCC has reported that most contracts referencing the LIBOR may not have robust fallback language.[26] Financial institutions and other market participants are in the process of assessing their exposure to the discontinuation of the LIBOR.[27] For contracts based on the LIBOR that do not contain sufficient fallback language, such contracts may need to be modified in order to provide a substantially similar interest rate.

Effect of the Bill

The bill provides that a modification of an original document which changes only the interest rate and is made as the result of the discontinuation of an index to which the original interest rate is referenced is not a renewal and is not subject to the documentary stamp tax.

The bill takes effect July 1, 2021.

B. SECTION DIRECTORY:

Section 1. Amends s. 201.08, F.S., relating to tax on promissory or nonnegotiable notes, written obligations to pay money, or assignments of wages or other compensation; exception.

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 Revenue Estimating Conference (REC) estimated that the bill will have an indeterminate negative impact on General Revenue and state trust fund revenues.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   The REC estimated that the will not have an impact on local government revenues.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

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[25] Fallback language should consist of contractual provisions that specify the trigger events for a transition to a replacement rate, the replacement rate, and the spread adjustment to align the replacement rate with the benchmark being replaced—in this case U.S. Dollar LIBOR. Alternative Reference Rates Committee, *Summary of ARRC's LIBOR Fallback Language* (Nov. 2019), https://www.newyorkfed.org/medialibrary/Microsites/arrc/files/2019/LIBOR_Fallback_Language_Summary.pdf (last visited Mar. 5, 2021).

[26] *Id.*

[27] *See, e.g.*, U.S. Securities and Exchange Commission Office of Compliance Inspections and Examinations, *Risk Alert* (June 18, 2020), https://www.sec.gov/files/Risk%20Alert%20-%20OCIE%20LIBOR%20Initiative_1.pdf (last visited Mar. 5, 2021); Board of Governors of the Federal Reserve System et al., *Statement on LIBOR Transition* (Nov. 30, 2020), https://www.federalreserve.gov/newsevents/pressreleases/files/bcreg20201130a1.pdf (last visited Mar. 5, 2021).

It is possible that lenders and borrowers could encounter liability for paying documentary stamp taxes when modifying, supplementing, or amending their contracts to reference the SOFR reference rate instead of the LIBOR reference rate. The bill will resolve any uncertainty in favor of preventing liability for documentary stamp tax due to the discontinuation of the LIBOR. The overall economic impact on the private sector, while likely positive, is indeterminate.

D. FISCAL COMMENTS:

On March 19, 2021, the REC considered the impact of the committee substitute bill.[28] A potential impact remains for out of state notes subsequently renewed in Florida. An out of state note in which Florida documentary stamp tax was not initially applicable could be renewed in Florida under the parameters of the bill language without incurring tax. The Department of Revenue currently holds that the renewal of a note in the state that was initially executed and delivered outside of the state is subject to tax.

As such, the bill language could result in exemptions for notes that meet the parameter of the bill language that otherwise would not be exempt (i.e., renewals of notes executed or delivered in the state that were originally executed and delivered outside the state). It is estimated that the potential impact of such exemptions will have a negative but indeterminate impact on state revenues.

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 10, 2021, the Insurance & Banking Subcommittee considered one amendment, which was adopted, and reported the bill favorably as a committee substitute. The committee substitute makes the following changes to the bill:

- Adds the word “only” to limit the documentary stamp tax exemption to instances where a document modification changes *only* the interest rate due to the discontinuation of the index to which the interest rate is referenced.
- Makes other technical changes.

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

[28] Revenue Estimating Conference, March 19, 2021, Revenue Impact Results, http://edr.state.fl.us/Content/conferences/revenueimpact/archives/2021/_pdf/page55-56.pdf, (last visited Apr. 4, 2021).

A bill to be entitled

An act relating to documentary stamp tax exemption; amending s. 201.08, F.S.; exempting from assessment of documentary stamp taxes the modification of certain documents which change only the interest rate under specified conditions; providing an effective date.

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

Section 1. Subsection (5) of section 201.08, Florida Statutes, is amended to read:

201.08 Tax on promissory or nonnegotiable notes, written obligations to pay money, or assignments of wages or other compensation; exception.—

(5) For purposes of this section, a renewal shall only include modifications of an original document which change the terms of the indebtedness evidenced by the original document by adding one or more obligors, increasing the principal balance, or changing the interest rate, maturity date, or payment terms. Modifications to documents which do not modify the terms of the indebtedness evidenced such as those given or recorded to correct error; modify covenants, conditions, or terms unrelated to the debt; sever a lien into separate liens; provide for additional, substitute, or further security for the indebtedness; consolidate indebtedness or collateral; add,

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

change, or delete guarantors; or which substitute a new mortgagee or payee are not renewals and are not subject to tax pursuant to this section. A modification of an original document which changes only the interest rate and is made as the result of the discontinuation of an index to which the original interest rate is referenced is not a renewal and is not subject to the tax pursuant to this section. If the taxable amount of a mortgage is limited by language contained in the mortgage or by the application of rules limiting the tax base when there is collateral in more than one state, then a modification which changes such limitation or tax base shall be taxable only to the extent of any increase in the limitation or tax base attributable to such modification. This subsection shall not be interpreted to exempt from taxation an original mortgage that would otherwise be subject to tax pursuant to paragraph (1)(b).

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 919 Preemption Over Restriction of Utility Services
SPONSOR(S): Tourism, Infrastructure & Energy Subcommittee; Tomkow
TIED BILLS: **IDEN./SIM. BILLS:** CS/CS/SB 1128

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Tourism, Infrastructure & Energy Subcommittee	16 Y, 1 N, As CS	Keating	Keating
2) Local Administration & Veterans Affairs Subcommittee	14 Y, 4 N	Renner	Miller
3) Commerce Committee		Keating	Hamon

SUMMARY ANALYSIS

The Florida Constitution grants county and municipal governments broad home rule authority. Specifically, non-charter county governments may exercise those powers of self-government that are provided by general or special law. Those counties operating under a county charter have all powers of self-government not inconsistent with general law or special law approved by vote of the electors. Likewise, municipalities have those governmental, corporate, and proprietary powers enabling them to conduct municipal government, perform their functions and provide services, and exercise any power for municipal purposes, except as otherwise provided by law. In contrast, special districts have only those powers expressly authorized by general or special law. County and municipal governments have broad authority to legislate on any matter that is not inconsistent with federal or state law.

A local government enactment may be inconsistent with state law if (1) the Legislature has preempted a particular subject area or (2) the local enactment conflicts with a state statute. Where state preemption applies it precludes a local government from exercising authority in that particular area.

The bill prohibits a municipality, county, special district, or other political subdivision of the state from enacting or enforcing a resolution, ordinance, rule, code, or policy, or take any other action that restricts or prohibits, or has the effect of restricting or prohibiting, the types or fuel sources of energy production which may be used, delivered, converted, or supplied by the following entities to customers that these entities are authorized to serve:

- Investor-owned electric utilities;
- Municipal electric utilities;
- Rural electric cooperatives;
- Entities formed by interlocal agreement to generate, sell, and transmit electrical energy;
- Investor-owned gas utilities;
- Gas districts;
- Municipal natural gas utilities;
- Natural gas transmission companies; and
- Certain propane dealers, dispensers, and gas cylinder exchange operators.

The bill provides that any municipal, county, special district, or political subdivision charter, resolution, ordinance, rule, code, policy, or action preempted by the bill that existed before or on July 1, 2021, is void.

The bill provides that it does not expand or alter the jurisdiction of the Public Service Commission.

The bill appears to have no fiscal impact on state government. The fiscal impact of the bill on local governments is indeterminate. *See* Fiscal Comments section.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Local Government Authority

The Florida Constitution grants county and municipal governments broad home rule authority. Specifically, non-charter county governments may exercise those powers of self-government that are provided by general or special law.[1] Those counties operating under a county charter have all powers of self-government not inconsistent with general law or special law approved by vote of the electors.[2] Likewise, municipalities[3] have those governmental, corporate, and proprietary powers enabling them to conduct municipal government, perform their functions and provide services, and exercise any power for municipal purposes, except as otherwise provided by law.[4]

A "special district" is a unit of local government created for a particular purpose, with jurisdiction to operate within a limited geographic boundary.[5] Special districts are created by general law,[6] special act,[7] local ordinance,[8] or by rule of the Governor and Cabinet.[9] A special district has only those powers expressly provided by, or reasonably implied from, the authority provided in the district's charter. Special districts provide specific municipal services in addition to, or in place of, those provided by a municipality or county.[10]

As of March 17, 2021, there are 627 active dependent[11] special districts and 1,163 active independent special districts in Florida.[12] Community development districts are the most frequently created form of independent special district. Other common special districts in Florida include water control districts, fire control districts, and community redevelopment agencies.[13] Currently, one special electric district and four special natural gas districts exist in Florida.[14]

Intergovernmental Utility Authorities

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[1] Art. VIII, s. 1(f), Fla. Const.
[2] Art. VIII, s. 1(g), Fla. Const.
[3] A municipality is a local government entity created to perform functions and provide services for the particular benefit of the population within the municipality, in addition to those provided by the county. The term "municipality" may be used interchangeably with the terms "town," "city," and "village."
[4] Art. VIII, s. 2(b), Fla. Const. *See also* s. 166.021(1), F.S.
[5] *See Halifax Hospital Medical Center v. State of Fla., et al.*, 278 So. 3d 545, 547 (Fla. 2019).
[6] S. 189.031(3), F.S.
[7] *Id.*
[8] S. 189.02(1), F.S.
[9] S. 190.005(1), F.S. *See*, generally, s. 189.012(6), F.S.
[10] *2020-2022 Local Gov't Formation Manual,* p. 62, https://myfloridahouse.gov/Sections/Documents/loaddoc.aspx?PublicationType=Committees&CommitteeId=3117&Session=2021&DocumentType=General+Publications&FileName=2021-2022+Local+Government+Formation+Manual.pdf (last visited March 15, 2021).
[11] Dependent special districts are under some control by a single county or municipality. S. 189.012(2), F.S. An independent special district is any district that is not a dependent district. S. 189.012(3), F.S. A special district that includes more than one county is independent unless it lies wholly within the boundaries of a single municipality.
[12] Florida Department of Economic Opportunity, Division of Community Development, Special District Accountability Program, Official List of Special Districts Online, *State Totals*, http://dca.deo.myflorida.com/fhcd/sdip/OfficialListdeo/report.cfm (last visited March 17, 2021).
[13] Florida Department of Economic Opportunity, Division of Community Development, Special District Accountability Program, Official List of Special Districts Online, *Special District Function Totals* at http://www.floridajobs.org/community-planning-and-development/assistance-for-governments-and-organizations/special-district-accountability-program (last visited Feb. 28, 2021).
[14] *See* PSC, Facts & Figures of the Florida Utility Industry http://www.psc.state.fl.us/Files/PDF/Publications/Reports/General/Factsandfigures/April%202020.pdf (last visited Feb. 28, 2021).

The Florida Interlocal Cooperation Act of 1969 (Act) allows local governmental units to make the most efficient use of their powers by enabling them to cooperate with other localities on a basis of mutual advantage.[15] The Act provides that local governmental entities may jointly exercise their powers by entering into a contract in the form of an interlocal agreement.[16] Under such an agreement, the local governmental units may create a separate legal or administrative entity "to provide services and facilities in a manner and pursuant to forms of governmental organization that will accord best with geographic, economic, population, and other factors influencing the needs and development of local communities."[17]

In 1978, the Florida Municipal Power Agency (FMPA) was created through a series of interlocal agreements under s. 163.01, F.S., to provide wholesale power supply to municipal electric utilities. FMPA is currently owned by 31 municipalities.[18] Through various joint power supply projects[19], it supplies all of the electrical power needs of 13 member utilities (referred to as "All-Requirements Project" or "ARP" members) and some of the power needs for seven other member utilities. Through these projects, FMPA members maintain ownership interests in various electrical power plants throughout Florida. FMPA manages the transmission of electrical power over facilities owned by FMPA or its ARP members. FMPA also manages a "power pool" that includes the generating resources of its All-Requirements Project, Lakeland Electric, and Orlando Utilities Commission.[20]

Local Government Authority over Matters Related to Utility and Energy Services

Many of the powers granted to local governments by general law relate, directly or indirectly, to the provision of utility or other energy services to property owners or utility customers in general or to the authority of local governments to provide these services themselves. These powers include, but may not be limited to, the authority to:

- Prepare and enforce comprehensive plans for development.[21]
- Issue development permits and orders.[22]
- Establish, coordinate, and enforce zoning and such business regulations as are necessary for the protection of the public.[23]
- Enforce the Florida Building Code and adopt and enforce local technical amendments thereto.[24]
- Enter into contracts with utility companies or others for the supply of water, electricity, or telephone service to or in connection with any project.[25]
- Construct, operate, and maintain gas plants and distribution systems for domestic, municipal, and industrial uses,[26] construct such other buildings and facilities as may be required to properly

[15] S. 163.01(2), F.S.
[16] S. 163.01(5), F.S.
[17] S. 163.01(2), F.S.
[18] Currently, FMPA serves the following municipalities: Alachua, Bartow, Blountstown, Bushnell, Chattahoochee, Clewiston, Fort Meade, Fort Pierce, Gainesville, Green Cove Springs, Havana, Homestead, Jacksonville Beach, Key West, Kissimmee, Lake Worth, Lakeland, Leesburg, Moore Haven, Mount Dora, New Smyrna Beach, Newberry, Ocala, Orlando, Quincy, St. Cloud, Starke, Vero Beach, Wauchula, Williston, and Winter Park. FLORIDA MUNICIPAL POWER AGENCY, *Members*, http://fmpa.com/about/members/ (last visited Feb. 28, 2021).
[19] S. 361.12, F.S., authorizes any electric utility, or any organization, association, or separate legal entity whose membership consists only of electric utilities, to join with any other such entity to finance, acquire, construct, manage, operate, or own an electric power supply project for the joint generation or transmission of electrical energy, or both. Further, section 361.13, F.S., authorizes any such entity to purchase capacity or energy, or both, in an agreed upon quantity from any project in which the purchaser has an ownership interest.
[20] FLORIDA MUNICIPAL POWER AGENCY. For a list of the projects and the cities participating in each project, see FLORIDA MUNICIPAL POWER AGENCY, *Projects*, https://fmpa.com/power-supply-projects/ (last visited Feb. 28, 2021).
[21] S. 125.01(1)(g), F.S.
[22] Ss. 125.022, F.S. and 166.033, F.S.
[23] S. 125.01(1)(h), F.S.
[24] S. 125.01(1)(bb), F.S.
[25] S. 125.012(19), F.S.
[26] S. 180.06(8), F.S.

and economically operate and maintain such works,[27] and make all necessary rules or regulations governing the use, control and operation of such works;[28]

- Contract with private companies for the right to construct, operate, and maintain gas plants and distribution systems for domestic, municipal, and industrial uses, including the privilege or franchise of exercising its corporate powers for such terms of years and upon such conditions and limitations as may be deemed expedient and for the best interest of the municipality, for up to 30 years, provided that the rates or charges to be made by the private company to the individual users of the utility are fixed by the municipality.[29]
- Provide and regulate roads, rights-of-way, and related transportation facilities.[30]
- License the use of gas and power lines in rights-of-way.[31]
- Adopt, revise, and amend, from time to time, appropriate ordinances, rules, and regulations reasonably necessary to maintain air quality standards established pursuant to state and federal law, including the federal Clean Air Act.[32]

Further, general law provides a role for local governments in state proceedings related to the siting of certain new electrical power plants, transmission lines, and natural gas pipelines. Specifically, part II of ch. 403, F.S., requires local governments to provide a report to the Department of Environmental Protection (DEP) as to the consistency of proposed electrical power plants, transmission lines, and natural gas pipelines with all applicable local ordinances, regulations, standards, or criteria that apply to the proposed facility, including local comprehensive plans, zoning regulations, land development regulations, and any applicable local environmental regulations.[33]

Municipalities are authorized to levy a public service tax on the purchase of electricity, natural gas liquefied petroleum gas, and manufactured gas.[34]

As noted above, many municipalities own and operate electric utilities and natural gas utilities and govern the operation of those utilities through ordinance, code, or policies. Some special districts provide these services under policies adopted by each special district.

State Preemption

Local governments have broad authority to legislate on any matter that is not inconsistent with federal or state law. A local government enactment may be inconsistent with state law if (1) the Legislature "has preempted a particular subject area" or (2) the local enactment conflicts with a state statute. State preemption precludes a local government from exercising authority in that particular area.[35]

Florida law recognizes two types of preemption: express and implied. Express preemption requires a specific legislative statement; it cannot be implied or inferred.[36] Express preemption of a field by the Legislature must be accomplished by clear language stating that intent.[37] In cases where the Legislature expressly or specifically preempts an area, there is no problem with ascertaining what the

[27] S. 180.06(9), F.S.
[28] S. 180.13, F.S.
[29] S. 180.14, F.S.
[30] S. 125.01(1)(m), F.S.
[31] S. 125.42, F.S.
[32] S. 125.275, F.S.
[33] Ss. 403.507(2)(a)3., 403.526(2)(a)5., and 403.941, F.S.
[34] S. 166.231, F.S.
[35] Wolf, *The Effectiveness of Home Rule: A Preemptions and Conflict Analysis*, 83 Fla. B.J. 92 (June 2009), https://www.floridabar.org/the-florida-bar-journal/the-effectiveness-of-home-rule-a-preemption-and-conflict-analysis/ (last visited March 16, 2021).
[36] *See City of Hollywood v. Mulligan*, 934 So. 2d 1238, 1243 (Fla. 2006); *Phantom of Clearwater, Inc. v. Pinellas County*, 894 So. 2d 1011, 1018 (Fla. 2d DCA 2005), approved in *Phantom of Brevard, Inc. v. Brevard County*, 3 So. 3d 309 (Fla. 2008).
[37] *Mulligan*, 934 So. 2d at 1243.

Legislature intended.[38] In cases determining the validity of ordinances enacted in the face of state preemption, the effect has been to find such ordinances null and void.[39]

Effect of the Bill

The bill prohibits a municipality, county, special district, or other political subdivision of the state from enacting or enforcing a resolution, ordinance, rule, code, or policy, or take any other action that restricts or prohibits, or has the effect of restricting or prohibiting, the types or fuel sources of energy production which may be used, delivered, converted, or supplied by the following entities to customers that these entities are authorized to serve:

- Investor-owned electric utilities;
- Municipal electric utilities;
- Rural electric cooperatives;
- Entities formed by interlocal agreement to generate, sell, and transmit electrical energy;
- Investor-owned gas utilities;
- Gas districts;
- Municipal natural gas utilities;
- Natural gas transmission companies; and
- Certain propane dealers, dispensers, and gas cylinder exchange operators.

The bill provides that it does not expand or alter the jurisdiction of the Public Service Commission.

The bill provides that any municipality, county, special district, or political subdivision charter, resolution, ordinance, rule, code, policy, or action that is preempted by this act that existed before or on July 1, 2021, is void.

B. SECTION DIRECTORY:

Section 1 Creates s. 366.032, F.S.; prohibiting specified governmental entities from taking actions related to the types or fuel sources of energy production used by specified utilities and energy service providers.

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.

[38] *Sarasota Alliance for Fair Elections, Inc. v. Browning*, 28 So. 3d 880, 886 (Fla. 2010).
[39] *See, e.g., Nat'l Rifle Ass'n of Am., Inc. v. City of S. Miami*, 812 So.2d 504 (Fla. 3d DCA 2002).

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

Indeterminate. *See* Fiscal Comments.

2. Expenditures:

Indeterminate. *See* Fiscal Comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Indeterminate. *See* Fiscal Comments.

D. FISCAL COMMENTS:

The bill preempts any action of a municipality, county, special district, or other political subdivision that restricts or prohibits or has the effect of restricting or prohibiting the type or fuel sources of energy production used by specified utilities and energy service providers. The extent to which this preemption may impact the exercise of powers granted to these governmental entities under general law, as well as the operation of existing utilities and energy services owned and operated by these entities, is not clear. Thus, the fiscal impact of the bill on local governments is indeterminate.

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:

The bill does not authorize or require rulemaking.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill preempts any action of a municipality, county, special district, or other political subdivision that "restricts or prohibits or *has the effect of restricting* or prohibiting" the type or fuel sources of energy production used by specified utilities and energy service providers. (Emphasis added.) The extent to which this preemption may impact the exercise of powers granted to these governmental entities under general law is not clear.

As drafted, the bill may prohibit a municipality or special district from choosing how to operate an electric or natural gas utility or an LP gas service that it owns and operates.

The bill preempts any action of a municipality, county, special district, or other political subdivision that restricts or prohibits or has the effect of restricting or prohibiting the type or fuel sources of energy production which may be "used, delivered, converted, or supplied" by specified utilities and LP gas service providers "to customers." However, no utility or LP gas service provider "uses" or "converts" fuels "to" customers. Instead, for example, electric utilities use or convert various fuels to produce electricity, and that electricity is then delivered or supplied to customers. If the intent of the bill is to capture the types or fuel sources of energy production used or converted by utilities or LP gas service

providers to produce another form of energy that is then delivered or supplied to customers, the bill could be amended to clarify this intent.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 11, 2021, the Tourism, Infrastructure & Energy Subcommittee adopted one amendment to the bill and reported the bill favorably as a committee substitute. The amendment:

- Modified the prohibition in the bill to address actions that restrict or prohibit or have the effect of restricting or prohibiting the types or fuel sources of energy production which may be used, delivered, converted, or supplied by certain energy providers to customers that those providers are authorized to serve.
- Provided that the bill does not expand or alter current Public Service Commission jurisdiction.
- Removed an exception for levying public services taxes.
- Removed a definition for the term “utility service provider” and removed references to that term.

This analysis reflects the committee substitute adopted by the Tourism, Infrastructure & Energy Subcommittee.

A bill to be entitled

An act relating to preemption over restriction of utility services; creating s. 366.032, F.S.; prohibiting municipalities, counties, special districts, or other political subdivisions from restricting or prohibiting the types or fuel sources of energy production used, delivered, converted, or supplied by certain entities to customers; providing construction; voiding existing specified documents and policies that are preempted by this act; providing an effective date.

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

Section 1. Section 366.032, Florida Statutes, is created to read:

366.032 Preemption over utility service restrictions.-

(1) A municipality, county, special district, or other political subdivision of the state may not enact or enforce a resolution, ordinance, rule, code, policy, or take any action that restricts or prohibits or has the effect of restricting or prohibiting the types or fuel sources of energy production which may be used, delivered, converted, or supplied by the following entities to customers that such entities are authorized to serve:

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

(a) A public utility or an electric utility as defined in this chapter;

(b) An entity formed under s. 163.01 that generates, sells, or transmits electrical energy;

(c) A natural gas utility as defined in s. 366.04(3)(c);

(d) A natural gas transmission company as defined in s. 368.103; or

(e) A Category I liquefied petroleum gas dealer or Category II liquefied petroleum gas dispenser or Category III liquefied petroleum gas cylinder exchange operator as defined in s. 527.01.

(2) This section does not expand or alter the jurisdiction of the commission over public utilities or electric utilities.

Section 2. Any municipality, county, special district, or political subdivision charter, resolution, ordinance, rule, code, policy, or action that is preempted by this act that existed before or on July 1, 2021, is void.

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

COMMERCE COMMITTEE

CS/HB 919 by Rep. Tomkow
PREEMPTION OVER RESTRICTION OF UTILITY SERVICES

AMENDMENT SUMMARY
APRIL 14, 2021

Amendment 1 by Rep. Tomkow (Line 36):

- Provides that the bill does not prohibit the board of a municipality or governmental entity from adopting rules, regulations, and policies governing an electric or natural gas utility that it owns or operates and directly controls.

Amendment 2 by Rep. Tomkow (Line 24)

- Clarifies that the bill applies to actions that impact the types or fuel sources of energy production which may be used, delivered, converted, or supplied by certain entities “to serve” their customers.

Amendment 3 by Rep. Daley (Line 21):

- Removes the preemption of local government actions that have “the effect of restricting or prohibiting” the types or fuel sources of energy production which may be used, delivered, converted, or supplied by certain entities to serve their customers.

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

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

Committee/Subcommittee hearing bill: Commerce Committee

Representative Tomkow offered the following:

Amendment

Between lines 36 and 37, insert:

(2) Notwithstanding the restrictions of this section, nothing herein shall be interpreted to prevent the board of a municipality or governmental entity, which owns or operates, and directly controls an electric or natural gas utility, from passing rules or regulations, or policies governing such utility.

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 Tomkow offered the following:

Amendment (with title amendment)

Remove line 24 and insert:

entities to serve customers that such entities are authorized to

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

Remove line 8 and insert:

supplied by certain entities to serve customers; providing

Amendment No. 3

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 Daley offered the following:

Amendment

Remove lines 21-22 and insert:

that restricts or prohibits the types or fuel sources of energy production which

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 969 Consumer Data Privacy
SPONSOR(S): Civil Justice & Property Rights Subcommittee, Regulatory Reform Subcommittee, McFarland, and others
TIED BILLS: CS/HB 971 **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Regulatory Reform Subcommittee	18 Y, 0 N, As CS	Wright	Anstead
2) Civil Justice & Property Rights Subcommittee	17 Y, 0 N, As CS	Mathews	Jones
3) Commerce Committee		Wright	Hamon

SUMMARY ANALYSIS

Florida, like most states, has laws requiring businesses to disclose to consumers when a breach of security occurs that affects a consumer's personal information. In 2014, Florida passed the Florida Information Protection Act (FIPA) that requires commercial and government entities which store or maintain a Floridian's personal information to take reasonable measures to protect such information and report data breaches.

The bill adds "biometric data" to the definition of "personal information" in FIPA. Thus, entities in possession of fingerprints, DNA, and other biological or physiological identifying information must take reasonable measures to protect the biometric data and report data breaches.

Due to the growth in the Internet and specifically the growth in companies whose entire business model is the collection of personal information for the purpose of selling targeted advertising, many countries and states have adopted or updated their laws relating to the collection and use of personal information. Specifically, the European Union, and states like California, Virginia and Illinois, have enacted data privacy regulations to protect personal information and give consumers more control over how their information is used.

The bill requires certain businesses to publish a privacy policy for personal information.

The bill defines "personal information" as information that identifies, relates to, or describes a particular consumer or household, or is reasonably capable of being directly or indirectly associated or linked with, a particular consumer or household. The term does not include public information that is readily available to the public from government records or deidentified or aggregate consumer information.

The bill gives consumers certain rights related to personal information collected by a business, including:

- The right to access personal information collected,
- The right to delete or correct personal information, and
- The right to opt-out of the sale or sharing of personal information.

The bill requires businesses to comply with certain consumer requests and make certain information available on the business's website.

The bill allows the Department of Legal Affairs to bring an action against, and collect civil penalties from, a business who violates these requirements. Consumers whose personal information has been breached, sold, or shared after opting-out, or retained after a request to delete or correct may also bring a cause of action against the business in certain limited circumstances.

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

The bill has an effective date of January 1, 2022.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Florida Information Protection Act – Current Situation

In 2014, Florida passed the Florida Information Protection Act (FIPA).[1] FIPA requires commercial covered entities[2] and government entities which hold personal information to take reasonable measures to protect such information and report data breaches to affected consumers.[3]

FIPA defines "personal information" as:

- online account information, such as security questions and answers, email addresses and passwords;
- an individual's first name or first initial and last name in combination with any one or more of the following:
  - A social security number;
  - A driver license or similar identity verification number issued on a government document;
  - A financial account number or credit or debit card number, in combination with any required security code, access code, or password that is necessary to permit access to an individual's financial account;
  - Any medical history information; or
  - An individual's health insurance identification numbers.[4]

Personal information does not include information:

- about an individual that has been made publicly available by a federal, state, or local governmental entity; or
- that is encrypted, secured, or modified to remove elements that personally identify an individual or that otherwise renders the information unusable.[5]

If a breach of personal information occurs, notice must be given to each individual in this state whose personal information was accessed as a result of the breach. If the breach affected 500 or more individuals in this state, the covered entity must also provide notice to the Department of Legal Affairs (DLA). If the breach affected more than 1,000 individuals at a single time, credit reporting agencies must be notified of such breach, with certain exceptions.[6]

FIPA expressly does not provide a private cause of action, but does authorize enforcement actions by DLA under Florida's Unfair and Deceptive Trade Practices Act (FDUTPA) against covered entities for any statutory violations.[7]

In addition to the remedies provided for under FDUTPA, a covered entity that fails to notify DLA, or an individual whose personal information was accessed, of the data breach is liable for a civil penalty not to exceed $500,000:

- In the amount of $1,000 for each day up to the first 30 days following any violation, thereafter, $50,000 for each subsequent 30-day period or portion thereof for up to 180 days.
- If the violation continues for more than 180 days, in an amount not to exceed $500,000.

[1] S. 501.171, F.S.; Fla. SB 1524 (2014) (FIPA expanded and updated Florida's data breach disclosure laws contained in s. 817.5681, F.S. (2013), which was adopted in 2005 and repealed in 2014.)
[2] "Covered entity" means a sole proprietorship, partnership, corporation, trust, estate, cooperative, association, or other commercial entity that acquires, maintains, stores, or uses personal information. S. 501.171(1)(b), F.S.
[3] Florida Office of the Attorney General, *How to Protect Yourself: Data Security*, http://myfloridalegal.com/pages.nsf/Main/53D4216591361BCD85257F77004BE16C (last visited Mar. 24, 2021).
[4] *Id*.; S. 501.171(1)(g)1., F.S.
[5] S. 501.171(1)(g)2., F.S.
[6] S. 501.171(3)-(6), F.S.
[7] S. 501.171(9), (10), F.S.; OAG *supra* note 3.

The civil penalties for failure to notify apply per breach and not per individual affected by the breach.

Florida Deceptive and Unfair Trade Practices Act

FDUTPA is a consumer and business protection measure that prohibits unfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in trade or commerce.[8] FDUTPA is based on federal law.[9]

DLA or the Office of the State Attorney (SAO) may bring actions when it is in the public interest on behalf of consumers or governmental entities.[10] SAO may enforce violations of the FDUTPA if the violations take place in its jurisdiction. DLA has enforcement authority if the violation is multi-jurisdictional, the state attorney defers in writing, or the state attorney fails to act within 90 days after a written complaint is filed.[11] In certain circumstances, consumers may also file suit through private actions.[12]

DLA and the SAO have powers to investigate FDUTPA claims, which include:[13]

- administering oaths and affirmations,
- subpoenaing witnesses or matter, and
- collecting evidence.

DLA and the State Attorney, as enforcing authorities, may seek the following remedies:

- declaratory judgments,
- injunctive relief,
- actual damages on behalf of consumers and businesses,
- cease and desist orders, and
- civil penalties of up to $10,000 per willful violation.[14]

Florida Information Protection Act – Effect of the Bill

The bill adds "biometric data" to the definition of "personal information."

"Biometric data" is defined as an individual's physiological, biological, or behavioral characteristics, including an individual's deoxyribonucleic acid (DNA), that can be used, singly or in combination with each other or with other identifying data, to establish individual identity. The term includes, but is not limited to, imagery of the iris, retina, fingerprint, face, hand, palm, vein patterns, and voice recordings, from which an identifier template, such as a faceprint, a minutiae template, or a voiceprint, can be extracted, and keystroke patterns or rhythms, gait patterns or rhythms, and sleep, health, or exercise data that contain identifying information.

The bill includes biometric data in FIPA's definition of "personal information" so that covered entities are required to notify the affected individual, the DLA, and credit reporting agencies of a breach of such

[8] Ch. 73-124, L.O.F., and s. 501.202, F.S.
[9] D. Matthew Allen, et. al., *The Federal Character of Florida's Deceptive and Unfair Trade Practices Act*, 65 U. MIAMI L. REV. 1083 (Summer 2011).
[10] S. 501.207(1)(c) and (2), F.S.; *see* s. 501.203(2), F.S. (defining "enforcing authority" and referring to the office of the state attorney if a violation occurs in or affects the judicial circuit under the office's jurisdiction; or the Department of Legal Affairs if the violation occurs in more than one circuit; or if the office of the state attorney defers to the department in writing; or fails to act within a specified period.); *see also* David J. Federbush, *FDUTPA for Civil Antitrust: Additional Conduct, Party, and Geographic Coverage; State Actions for Consumer Restitution*, 76 FLORIDA BAR JOURNAL 52, Dec. 2002 (analyzing the merits of FDUPTA and the potential for deterrence of anticompetitive conduct in Florida), *available at* http://www.floridabar.org/divcom/jn/jnjournal01.nsf/c0d731e03de9828d852574580042ae7a/99aa165b7d8ac8a485256c8300791ec1!OpenDocument&Highlight=0,business,Division* (last visited on Mar. 24, 2021).
[11] S. 501.203(2), F.S.
[12] S. 501.211, F.S.
[13] S. 501.206(1), F.S.
[14] Ss. 501.207(1), 501.208, and 501.2075, F.S. Civil Penalties are deposited into general revenue. Enforcing authorities may also request attorney fees and costs of investigation or litigation. S. 501.2105, F.S.

information. The bill also provides that DLA may bring a FDUTPA action against a covered entity which fails to notify DLA of or an individual affected by a breach of biometric information.

Consumer Data Privacy – Current Situation

Consumer Data

As technologies that capture and analyze data proliferate, so, too, do businesses' abilities to contextualize consumer data. Businesses use it for a range of purposes, including better understanding of day-to-day operations, making more informed business decisions and learning about their customers.[15]

From consumer behavior to predictive analytics, companies regularly capture, store, and analyze large amounts of quantitative and qualitative data on their consumer base every day. Some companies have built an entire business model around consumer data, whether the companies are selling personal information to a third party or creating targeted ads.[16]

Generally, the types of consumer data that businesses collect are:[17]

- Personal data, which includes personally identifiable information, such as Social Security numbers and gender, as well as identifiable information, including IP address, web browser cookies, and device IDs;
- Engagement data, which details how consumers interact with a business's website, mobile apps, social media pages, emails, paid ads and customer service routes;
- Behavioral data, which includes transactional details such as purchase histories, product usage information, and qualitative data; and
- Attitudinal data. This data type encompasses metrics on consumer satisfaction, purchase criteria, product desirability and more.

General Data Protection Regulation (European Union)

In 2016, The European Union passed a broad data privacy law that addressed several areas of consumer rights and data protection called the General Data Protection Regulation (GDPR).[18] The law became effective in 2018 and unified the regulatory approach to data privacy across the European Union. The GDPR has since become a model for other data privacy laws in other countries, including Chile, Japan, Brazil, South Korea, Argentina, and Kenya.[19]

Under the GDPR, personal data is anything that allows a person to be identified. Under GDPR, individuals, organizations, and companies that are either 'controllers' or 'processors' of personal data are covered by the law. Controllers exercise overall control over the purposes and means of processing personal data. Processors act on behalf of, and only on the instructions of, the relevant controller.[20]

Before processing or collecting any personal data, any business must ask for explicit permission from the subject or person. The request must use clear language.

The provisions of the GDPR specifically ban the use of long documents filled with legalese - hiding permissions within Terms and Conditions or a Privacy Policy will not meet the requirements. Consent

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[15] Max Freedman, How Businesses Are Collecting Data (And What They're Doing With It), Business News Daily (Jun. 17, 2020) https://www.businessnewsdaily.com/10625-businesses-collecting-data.html (last visited Mar. 24, 2021).
[16] *Id*.
[17] *Id*.
[18] European Data Protection Supervisor, The History of the General Data Protection Regulation, https://edps.europa.eu/data-protection/data-protection/legislation/history-general-data-protection-regulation_en (last visited Mar. 24, 2021).
[19] *Id*.
[20] Wired, What is the GDPR? The summary guide to GDPR compliance in the UK, https://www.wired.co.uk/article/what-is-gdpr-uk-eu-legislation-compliance-summary-fines-2018 (last visited Mar. 24, 2021).

must be given for a specific purpose and must be requested separately from other documents and policy statements. [21]

The GDPR requires companies to provide, at the data subject's request, confirmation as to whether personal data pertaining to them is being processed, where it is being processed, and for what purpose. Companies must also be able to provide, free of charge, a copy of the personal data being processed in an electronic format.[22]

Under the GDPR, companies must erase all personal data when asked to do so by the data subject. At that point, the company must cease further dissemination of the data, and halt all processing. Valid conditions for erasure include situations where the data is no longer relevant, or the original purpose has been satisfied, or merely a data subject's subsequent withdrawal of consent.[23]

The GDPR requires companies to provide mechanisms for a data subject to receive any previously provided personal data in a commonly used and machine-readable format.[24]

California Consumer Privacy Act (CCPA) and California Privacy Rights Act (CPRA)

The California Consumer Privacy Act of 2018 (CCPA) was passed to give consumers more control over the personal information that businesses collect. This landmark law in the United States granted new privacy rights for California consumers, including:[25]

- The right to know about the personal information a business collects, specifically about the consumer, and how it is used and shared;
- The right to delete personal information collected with some exceptions;
- The right to opt-out of the sale of personal information; and
- The right to non-discrimination for exercising the CCPA rights.

The CCPA applies to for-profit businesses that do business in California that also meet any of the following:[26]

- Have a gross annual revenue of over $25 million;
- Buy, receive, or sell the personal information of 50,000 or more California residents, households, or devices; or
- Derive 50 percent or more of their annual revenue from selling California residents' personal information.

Businesses are required to give consumers certain notices explaining their privacy practices and provide certain mechanisms to allow consumers to exercise their rights.[27]

The law is largely enforced by the Attorney General, and businesses are subject to fines for violating the law. Consumers may only bring a cause of action against a business if certain categories of personal information tied to their name have been stolen in a nonencrypted and nonredacted form.[28] As of July 2020, approximately 50 suits had been filed pursuant to this provision.[29]

The California Privacy Rights Act (CPRA) passed in 2020 as a statewide proposition, though it is not effective until January 1, 2023. The CPRA amends and expands the CCPA. Specifically dealing with

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[21] TechRepublic, GDPR: A cheat sheet, https://www.techrepublic.com/article/the-eu-general-data-protection-regulation-gdpr-the-smart-persons-guide/ (last visited Mar. 24, 2021).
[22] *Id*.
[23] *Id*.
[24] *Id*.
[25] State of California Department of Justice, Office of the Attorney General, California Consumer Privacy Act (CCPA), https://oag.ca.gov/privacy/ccpa (last visited Mar. 24, 2021).
[26] Cal. Civ. Code § 1798.140.
[27] Cal. Civ. Code §§ 1798.130, 1798.135.
[28] Cal. Civ. Code §§ 1798.150, 1798.155.
[29] Holland & Knight LLP, Litigating the CCPA in Court, https://www.hklaw.com/en/insights/publications/2020/07/litigating-the-ccpa-in-court (last visited Mar. 24, 2021).

certain areas of concern with the CCPA and it also created a new agency to handle complaints and enforcement. The CPRA changes the CCPA in the following ways:[30]

- Allowing consumers to:
  - prevent businesses from **sharing** personal information;
  - correct inaccurate personal information; and
  - limit businesses' use of "sensitive personal information"—including precise geolocation; race; ethnicity; religion; genetic data; private communications; sexual orientation; and specified health information;
- Establishing California Privacy Protection Agency to additionally enforce and implement consumer privacy laws and impose fines;
- Changing criteria for which businesses must comply with laws by:
  - Doubling the CCPA's threshold number of consumers or households from 50,000 to 100,000, resulting in reduced applicability of the law to small and midsize businesses;
  - Expanding applicability to businesses that generate most of their revenue from sharing personal information, not just selling it; and
  - Extending the definition to joint ventures or partnerships composed of businesses that each have at least a 40 percent interest.
- Prohibiting businesses' retention of personal information for longer than reasonably necessary;
- Tripling maximum penalties for violations concerning consumers under age 16; and
- Authorizing civil penalties for theft of consumer login information.

Virginia Consumer Data Protection Act

On March 2, 2021, the Virginia Consumer Data Protection Act (VCDPA) was signed into law.[31] The VCDPA, which will not become effective until January 1, 2023, borrows heavily from CCPA and GDPR.[32] Because Virginia was able to benefit from the experience of businesses that have spent the better part of the last five years implementing GDPR or CCPA, the Virginia law is less prescriptive and more straightforward than its predecessors, and potentially may be a lighter implementation task for companies.[33]

Generally, with regard to personal data, the VCDPA grants consumers the right to:

- access,
- correct,
- delete,
- obtain a copy of, and
- to opt-out of the processing of personal data for the purposes of targeted advertising.

VCDPA contains exceptions for certain types of data and information governed by federal law. It provides that the Attorney General has exclusive authority to enforce violations of the law, and does not provide a private cause of action to consumers. VCDPA applies to persons conducting business in the state that either:

- control or process personal data of at least 100,000 consumers or
- derive over 50 percent of gross revenue from the sale of personal data and control or process personal data of at least 25,000 consumers.[34]

Comparison of The GDPR, CCPA as amended by the CPRA, and VCDPA

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[30] Ballotpedia, *California Proposition 24, Consumer Personal Information Law and Agency Initiative (2020)*, https://ballotpedia.org/California_Proposition_24,_Consumer_Personal_Information_Law_and_Agency_Initiative_(2020) (last visited Mar. 24, 2021).
[31] JDSupra, *Virginia's Consumer Data Protection Act Has assed: What's in It?*, https://www.jdsupra.com/legalnews/virginia-s-consumer-data-protection-act-1577777/ (last visited Mar. 24, 2021).
[32] Sidley Austin LLP, East Coast Meet West Coast: Enter the Virginia Consumer Data Privacy Protection Act, https://www.sidley.com/en/insights/newsupdates/2021/03/east-coast-meets-west-coast-enter-the-virginia-consumer-data-protection-act (last visited Mar. 24, 2021).
[33] *Id*.
[34] Virginia's Legislative Information System, Bill Summary for SB 1392, https://lis.virginia.gov/cgi-bin/legp604.exe?211+sum+SB1392S (last visited Mar. 24, 2021).

	VCDPA	CCPA, as amended by the CPRA	GDPR
Right to opt-out of sale	✓	✓	✗
Opt-in or opt-out for processing of sensitive information	Opt-in	Opt-out	Opt-in
Statutory cure period for violations	✓	✓	✗
Right to appeal denials of requests	✓	✗	✗
Express obligations regarding de-identified data	✓	✗	✗
Requirement to perform data protection impact assessments	✓	✓	✓
Private right of action	✗	✓	✓
Governmental enforcement entities	Attorney General	CPPA, Attorney General	DPAs
Penalties	Up to $7,500 per violation	Up to $2,500 per violation and up to $7,500 per intentional violation or violation involving minors	Up to €10 million, or 2% of worldwide annual revenue from the preceding financial year, whichever amount is higher, in the case of less severe violations. Up to €20 million, or 4% of worldwide annual revenue from the preceding financial year, whichever amount is higher, in the case of more serious violations.
Operative date	January 1, 2023	January 1, 2023	May 25, 2018

[35]

Illinois Biometric Information Privacy Act

In 2008, Illinois adopted the Biometric Information Privacy Act (BIPA), which puts in place safeguards and procedures relating to the retention, collection, disclosure, and destruction of biometric information and specifically protects the biometric information of those in the state. It was the first state law in the U.S. to specifically regulate biometrics.

Under BIPA, a private entity:[36]

- in possession of biometric data (defined as retina or iris scan, fingerprint, voiceprint, or scan of hand or face geometry) must have a written policy establishing a retention schedule and guidelines for permanently destroying such data;
- may not collect, capture, purchase, receive through trade, or otherwise obtain biometric data unless it informs the subject that the data is being stored and the manner of storage, and receives a written release from the subject;
- may not profit from a person's biometric data;
- may not disseminate a person's biometric data unless the subject consents, is authorized by the subject, or is required by law or a valid warrant or subpoena; and
- must store, transmit, and protect biometric data with a reasonable standard of care and in a manner as or more protective as other confidential and sensitive information.

BIPA provides a private cause of action, with relief including:[37]

- liquidated damages of $1,000 or actual damages, whichever is greater, against a private entity that negligently violates BIPA;
- liquidated damages of $5,000 or actual damages, whichever is greater, against a private entity that intentionally or recklessly violates BIPA;

[35] JDSupra, *Virginia Is For Lovers…Of Data Privacy*, https://www.jdsupra.com/legalnews/virginia-is-for-lovers-of-data-privacy-3879845/ (last visited Mar. 24, 2021).
[36] 740 Ill. Comp. Stat. 14/10, 14/15 (2008).
[37] 740 Ill. Comp. Stat. 14/20 (2008).

- reasonable attorneys' fees and costs; and
- other relief, including an injunction, as the court deems appropriate.

Because Illinois granted a private cause of action for violations of BIPA, there have been several lawsuits claiming damages for privacy and use violations, and Illinois courts have upheld the law. On January 25, 2019, the Illinois Supreme Court found that an individual does not need to allege an actual injury or adverse effect, beyond violation of their rights under BIPA, to qualify as an aggrieved party. Therefore, anyone whose biometric data is affected by a violation of BIPA may seek liquidated damages or injunctive relief under the Act.[38] Court documents also tend to support the notion that an individual in Illinois has a valid cause of action if their biometric data is taken without consent by a private entity, including out-of-state entities, but it is subject to a finding of fact.[39]

Federal Laws Addressing Data Privacy

While there is no broad federal law addressing data privacy, there are several laws that address the need to keep certain data private or protected in various industries.

Health Insurance Portability and Accountability Act

The Health Insurance Portability and Accountability Act of 1996 (HIPAA)[40] is a federal law that required the creation of national standards to protect sensitive patient health information from being disclosed without the patient's consent or knowledge. The U.S. Department of Health and Human Services (HHS) issued the HIPAA Privacy Rule[41] to implement the requirements of HIPAA. The HIPAA Security Rule protects a subset of information covered by the Privacy Rule.[42]

HIPAA's Privacy Rule protects all "individually identifiable health information" held or transmitted by a covered entity or its business associate, in any form or media, whether electronic, paper, or oral. The Privacy Rule calls this information "protected health information (PHI)" from being disclosed without the patient's consent or knowledge.[43]

"Individually identifiable health information" is information, including demographic data, that relates to:[44]
- the individual's past, present or future physical or mental health or condition,
- the provision of health care to the individual, or
- the past, present, or future payment for the provision of health care to the individual.

The Privacy Rule excludes from protected health information employment records that a covered entity maintains in its capacity as an employer and education and certain other records subject to, or defined in, the Family Educational Rights and Privacy Act.[45] 20 U.S.C. §1232g.

The Security Rule applies to the subset of identifiable health information a covered entity creates, receives, maintains, or transmits in electronic form, and is called "electronic protected health information" (e-PHI). The Security Rule does not apply to PHI transmitted orally or in writing. To comply with the Security Rule, all covered entities must do the following:[46]
- Ensure the confidentiality, integrity, and availability of all electronic protected health information,
- Detect and safeguard against anticipated threats to the security of the information,
- Protect against anticipated impermissible uses or disclosures, and
- Certify compliance by their workforce.

[38] *Rosenbach v. Six Flags Entertainment Corporation*, 2019 IL 123186.
[39] *Rivera v. Google, Inc.*, 238 F.Supp.3d 1088 (N.D. Ill. 2017).; *In re Facebook Biometric Information Privacy Litigation*, 185 F.Supp.3d 1155 (N.D. Cal. (2016).; *Norberg v. Shutterfly, Inc.*, 152 F.Supp.3d 1103 (N.D. Ill. 2015).
[40] 42 U.S.C. § 1320.
[41] 45 C.F.R. §§ 160 and 164.
[42] Centers for Disease Control and Prevention, Health Insurance Portability and Accountability Act of 1996 (HIPAA), https://www.cdc.gov/phlp/publications/topic/hipaa.html (last visited Mar. 24, 2021).
[43] *Id*.
[44] 45 C.F.R. § 160.103.
[45] 20 U.S.C. § 1232(g).
[46] CDC, supra note 42.

"Covered entities" who must abide by the Privacy Rule and the Security Rule are:[47]

- health plans,
- healthcare providers,
- healthcare clearinghouses, and
- business associates.

Federal Policy for the Protection of Human Subjects

The Federal Policy for the Protection of Human Subjects, or the "Common Rule," is a rule promulgated by the U.S. Food and Drug Administration (FDA).[48] The Common Rule governs the ethical conduct of research involving human subjects. Fifteen federal agencies and departments are party to this rule, which first came into effect in 1981. The Common Rule has not been substantively updated since 1991.[49] Among other requirements, the Common Rule mandates that researchers protect the privacy of subjects and maintain confidentiality of human subject data.[50]

The FDA is a member of the International Council for Harmonisation of Technical Requirements for Pharmaceuticals for Human Use, which brings together the regulatory authorities and pharmaceutical industry to develop guidelines for pharmaceutical trials.[51]

The Fair Credit Reporting Act

The Fair Credit Reporting Act[52] (FCRA) protects information collected by consumer reporting agencies such as credit bureaus, medical information companies and tenant screening services. Information in a consumer report cannot be provided to anyone who does not have a purpose specified in the FCRA. Companies that provide information to consumer reporting agencies also have specific legal obligations, including the duty to investigate disputed information. In addition, users of the information for credit, insurance, or employment purposes must notify the consumer when an adverse action is taken on the basis of such reports.[53]

The Gramm-Leach-Bliley Act

The Gramm-Leach-Bliley Act[54] requires financial institutions, such as companies that offer consumers financial products or services like loans, financial or investment advice, mortgages, or insurance, to explain their information-sharing practices to their customers and to safeguard sensitive data.[55]

The law requires that financial institutions protect information collected about individuals; it does not apply to information collected in business or commercial activities.

In certain situations, consumers of a financial institution have opt-out rights from having their nonpublic personal information shared with third parties.[56]

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[47] 45 C.F.R. §§ 160.102, 160.103.
[48] 21 C.F.R. §§ 50, 60.
[49] Association of Public and Land-Grant Universities, The "Common Rule" Federal Policy for the Protection of Human Subjects, https://www.aplu.org/projects-and-initiatives/research-science-and-technology/common-rule/#:~:text=The%20Federal%20Policy%20for%20the,been%20substantively%20updated%20since%201991. (last visited Mar. 24, 2021).
[50] The University of Chicago, *University Data Usage Guide, Sensitive Identifiable Human Subject Research Data*, https://dataguide.uchicago.edu/sensitive-identifiable-human-subject-research-data (last visited Mar. 24, 2021).
[51] International Council for Harmonisation, Welcome to the ICH Official Website, https://www.ich.org/ (last visited Mar. 24, 2021).
[52] 15 U.S.C. § 1681.
[53] The Federal Trade Commission, Fair Credit Reporting Act, https://www.ftc.gov/enforcement/statutes/fair-credit-reporting-act (last visited Mar. 24, 2021).
[54] 15 U.S.C. § 6801.
[55] The Federal Trade Commission, Gramm-Leach-Bliley Act, https://www.ftc.gov/tips-advice/business-center/privacy-and-security/gramm-leach-bliley-act (last visited Mar. 24, 2021).
[56] International Association of Privacy Processionals, *In Brief: The Financial Privacy Requirements of the Gramm-Leach-Bliley Act*, https://iapp.org/media/pdf/knowledge_center/brief_requirements_GLBA.pdf (last visited Mar. 24, 2021).

Driver's Privacy Protection Act

The Driver's Privacy Protection Act of 1994 (DPPA)[57] protects the privacy of personal information assembled by state departments of motor vehicles (DMVs).

The DPPA prohibits the release or use by any state DMV (or any officer, employee, or contractor thereof) of personal information about an individual obtained by the DMV in connection with a motor vehicle record, subject to certain exceptions, such as for legitimate government needs. It sets penalties for violations and makes violators liable on a civil action to the individual to whom the released information pertains.[58]

DPPA also requires states to get permission from individuals before their personal motor vehicle record may be sold or released to third-party marketers.[59]

Family Educational Rights and Privacy Act

The Family Educational Rights and Privacy Act (FERPA)[60] protects the privacy of student education records. The law applies to all schools that receive funds under an applicable program of the U.S. Department of Education. FERPA gives parents certain rights with respect to their children's education records. These rights transfer to the student when they reaches the age of 18 or attends a school beyond the high school level.

Schools may disclose, without consent, "directory" information such as a student's name, address, telephone number, date and place of birth, honors and awards, and dates of attendance. However, schools must tell parents and eligible students about directory information and allow parents and eligible students a reasonable amount of time to request that the school not disclose directory information about them. Schools must notify parents and eligible students annually of their rights under FERPA.[61]

Consumer Data Privacy – Effect of the Bill

Overview

The bill creates certain consumer rights related to personal information, including:

- The right to access personal information collected specific to the individual consumer by a business,
- The right to delete or correct personal information, and
- The right to opt-out of the sale of sharing of personal information to third parties.

The bill defines "personal information" as information that identifies, relates to, or describes a particular consumer or household, or is reasonably capable of being directly or indirectly associated or linked with, a particular consumer or household. The term does not include public information from government records; or deidentified or aggregate consumer information.

A business that receives a verifiable consumer request to access, delete, correct, or opt-out must comply with such consumer request, with certain exceptions.

Businesses may share personal information with a service provider, even if a consumer has "opted-out," if the service provider processes information on behalf of a business for a defined business purpose pursuant to a written contract which limits how the service provider uses such information.

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[57] 18 U.S.C. § 2721.
[58] Electronic Privacy Information Center, The Drivers Privacy Protection Act (DPPA) and the Privacy of Your State Motor Vehicle Record, https://epic.org/privacy/drivers/ (last visited Mar. 24, 2021).
[59] *Id*.
[60] 20 U.S.C. § 1232(g); 34 C.F.R. § 99.
[61] United States Department Of Education, Family Educational Rights and Privacy Act (FERPA), https://www2.ed.gov/policy/gen/guid/fpco/ferpa/index.html (last visited Mar. 24, 2021).

DLA may bring an action against a business who violates the provisions of the bill, and such business may be subject to certain civil penalties. A consumer may bring a private cause of action only in the instance of a breach of personal data.

Definitions

The bill includes the following definitions:

- "Aggregate consumer information".
- "Biometric information".
- "Business", which means
    - A sole proprietorship, partnership, limited liability company, corporation, association, or legal entity that meets the following requirements:
        - Is organized or operated for the profit or financial benefit of its shareholders or owners;
        - Does business in this state;
        - Collects personal information about consumers, or is the entity on behalf of which such information is collected;
        - Determines the purposes and means of processing personal information about consumers alone or jointly with others; and
        - Satisfies one or more of the following thresholds:
            - Has global annual gross revenues in excess of $25 million, as adjusted in January of every odd-numbered year to reflect any increase in the Consumer Price Index.
            - Annually buys, receives for the business's commercial purposes, sells, or shares for commercial purposes, the personal information of 50,000 or more consumers, households, or devices.
            - Derives 50 percent or more of its global annual revenues from selling or sharing personal information about consumers.
    - Any entity that controls or is controlled by a business and that shares common branding with the business. As used in this definition, the term:
        - "Control" means:
            - Ownership of, or the power to vote, more than 50 percent of the outstanding shares of any class of voting security of a business;
            - Control in any manner over the election of a majority of the directors, or of individuals exercising similar functions; or
            - The power to exercise a controlling influence over the management of a company.
        - "Common branding" means a shared name, servicemark, or trademark.
- "Business purpose", which means the use of personal information for the operational purpose of a business or service provider, or other notified purposes.
- "Collect".
- "Commercial purposes".
- "Consumer" means a natural person who resides in or is domiciled in this state, however identified, including by any unique identifier.
- "Deidentified".
- "Personal information", which means information that identifies, relates to, or describes a particular consumer or household, or is reasonably capable of being directly or indirectly associated or linked with, a particular consumer or household. The term does not include consumer information that is:
    - Publicly and lawfully made available.
    - Deidentified or aggregate consumer information.
- "Probabilistic identifier".
- "Sell", which means to sell, rent, release, disclose, disseminate, make available, transfer, or otherwise communicate orally, in writing, or by electronic or other means, a consumer's personal information by a business to another business or a third party for monetary or other valuable consideration.

- "Service provider", which means a sole proprietorship, partnership, limited liability company, corporation, association, or other legal entity that is organized or operated for the profit or financial benefit of its shareholders or other owners, that processes information on behalf of a business and to which the business discloses a consumer's personal information for a business purpose pursuant to a written contract.
- "Share", which means to share, rent, release, disclose, disseminate, make available, transfer, or access a consumer's personal information for advertising. The term includes:
    - Allowing a third party to use or advertise to a consumer based on a consumer's personal information without disclosure of the personal information to the third party.
    - Monetary transactions, nonmonetary transactions, and transactions for other valuable consideration between a business and a third party for advertising for the benefit of a business.
- "Third party".
- "Unique identifier".
- "Verifiable consumer request".

Business Privacy Policies

The bill requires a business that collects personal information about consumers to maintain an online privacy policy, make such policy available on its Internet website, and update the information at least once every 12 months unless the privacy policy has not changed and an update is not reasonably required. The online privacy policy must include the following information:

- Any Florida-specific consumer privacy rights.
- A list of the categories of personal information the business collects or has collected about consumers.
- Of the identified categories, a list that identifies which categories of personal information the business sells or shares or has sold or shared about consumers. If the business does not sell or share personal information, the business must disclose that fact.
- Of the identified categories, a list that identifies which categories of personal information the business discloses or shares or has disclosed or shared about consumers for a business purpose. If the business does not disclose or share personal information for a business purpose, the business must disclose that fact.
- The right to opt-out of the sale or sharing to third parties and the ability to request deletion or correction of certain personal information.

A consumer has the right to request that a business that collects personal information disclose to the consumer the categories and specific pieces of personal information the business collects from or about consumers.

A business that collects personal information must, at or before the point of collection, inform consumers of the categories of personal information to be collected and the purposes for which the categories of personal information will be used. A business may not collect additional categories of personal information or use personal information collected for additional purposes without providing the consumer with notice.

A business that collects a consumer’s personal information must implement and maintain reasonable security procedures and practices appropriate to the nature of the personal information to protect the personal information from unauthorized or illegal access, destruction, use, modification, or disclosure.

A business must provide and follow a retention schedule that prohibits the use and retention of personal information after satisfaction of the initial purpose for collecting or obtaining such information, or after the duration of a contract, or 1 year after the consumer's last interaction with the business, whichever occurs first. This paragraph does not apply to biometric information used for ticketing purposes and does not apply if such information is only kept for the time related to the duration of the ticketed event.

Consumer Right to Request Personal Information Collected

The bills provides that a consumer has the right to request that a business that collects personal information about the consumer disclose the personal information that has been collected by the business.

The bill requires a business that receives a verifiable consumer request from a consumer to access personal information to promptly take steps to disclose and deliver, free of charge to the consumer, the personal information requested. The information may be delivered by mail or electronically, and if provided electronically, the information must be in a portable and, to the extent technically feasible, readily useable format that allows the consumer to transmit this information to another entity without hindrance. A business may provide personal information to a consumer at any time, but may not be required to provide personal information to a consumer more than twice in a 12-month period.

Specifically, the bill requires a business to disclose the following to the consumer:

- The specific pieces of personal information it has collected about the consumer.
- The categories and sources from which it collected the consumer's personal information.
- The business or commercial purpose for collecting or selling the consumer's personal information.
- The categories of third parties which the business shares the consumer's personal information.

The bill does not require a business to do the following:

- Retain any personal information about a consumer collected for a single one-time transaction if, in the ordinary course of business, that information about the consumer is not retained.
- Reidentify or otherwise link any data that, in the ordinary course of business, is not maintained in a manner that would be considered personal information.

Consumer Right to Correct or Delete Personal Information

The bill provides that consumer has the right to request that a business delete any personal information about the consumer which the business has collected from the consumer.

The bill requires a business that receives a verifiable consumer request from a consumer to delete the consumer's personal information to delete the consumer's personal information from its records and direct any service providers to delete the consumer's personal information from their records, unless it is reasonably necessary for the business or service provider to maintain the consumer's personal information to do any of the following:

- Complete the transaction for which the personal information was collected.
- Fulfill the terms of a written warranty or product recall conducted in accordance with federal law.
- Provide a good or service requested by the consumer, or reasonably anticipated within the context of a business' ongoing business relationship with the consumer, or otherwise perform a contract between the business and the consumer.
- Detect security incidents, protect against malicious, deceptive, fraudulent, or illegal activity; or prosecute those responsible for that activity.
- Debug to identify and repair errors that impair existing intended functionality.
- Engage in public or peer-reviewed scientific, historical, or statistical research in the public interest that adheres to all other applicable ethics and privacy laws when the business' deletion of the information is likely to render impossible or seriously impair the achievement of such research, if the consumer has provided informed consent.
- Enable solely internal uses that are reasonably aligned with the expectations of the consumer based on the consumer's relationship with the business.
- Comply with a legal obligation.
- As reasonably needed to protect the business’ interests against existing legal disputes, legal action, or governmental investigations.
- Otherwise internally use the consumer's personal information in a lawful manner that is compatible with the context in which the consumer provided the information.

The bill provides that a consumer has the right to request a business that maintains inaccurate personal information about the consumer to correct the inaccurate personal information, taking into account the nature of the personal information and the purposes of the processing of the personal information. A business that receives a verifiable consumer request to correct inaccurate personal information must use commercially reasonable efforts to correct the inaccurate personal information as directed by the consumer. If a business maintains a self-service mechanism to allow a consumer to correct certain personal information, the business may require the consumer to correct their own personal information through such mechanism.

Consumer Right to Request Personal Information Sold or Shared

The bill provides that a consumer has the right to request that a business that sells or shares personal information about the consumer, or discloses such information for a business purpose, to disclose to the consumer upon receipt of a verifiable consumer request:

- The categories of personal information about the consumer the business sold or shared.
- The categories of third parties to which the personal information about the consumer was sold or shared by category of personal information for each category of third parties to which the personal information was sold or shared.
- The categories of personal information about the consumer that the business disclosed for a business purpose.

The bill provides that a third party may not sell or share personal information about a consumer that has been sold or shared to the third party by a business unless the consumer has received explicit notice and is provided an opportunity to opt-out.

Consumer Right to Opt-Out of the Sale or Sharing of Personal Information to Third Parties

The bill provides that a consumer has the right at any time to direct a business that sells or shares personal information about the consumer to third parties to not sell or share the consumer's personal information. This right may be referred to as the right to opt-out.

The bill requires that a business that sells or shares personal information to third parties to provide notice to consumers that this information may be sold and shared and that consumers have the right to opt-out of the sale or sharing of their personal information.

The bill provides that a business may not sell or share the personal information of a consumer if the business has actual knowledge that the consumer is not 16 years of age or older, unless the consumer, in the case of consumers between 13 and 15 years of age, or the consumer's parent or guardian, in the case of consumers who are 12 years of age or younger, has affirmatively authorized the sale or sharing of the consumer's personal information. A business that willfully disregards the consumer's age is deemed to have had actual knowledge of the consumer's age.

The bill provides that a business that has received direction from a consumer prohibiting the sale or sharing of the consumer's personal information or that has not received consent to sell or share a minor consumer's personal information is prohibited from selling or sharing the consumer's personal information after its receipt of the consumer's direction, unless the consumer subsequently provides express authorization for the sale or sharing of the consumer's personal information.

The bill provides that a business does not sell personal information when:

- A consumer uses or directs the business to intentionally disclose personal information or uses the business to intentionally interact with a third party. An intentional interaction occurs when the consumer intends to interact with the third party, via one or more deliberate interactions. Hovering over, muting, pausing, or closing a given piece of content does not constitute a consumer's intent to interact with a third party.

- The business uses or shares an identifier for a consumer who has opted-out of the sale or sharing of the consumer's personal information for the purposes of alerting third parties that the consumer has opted-out of the sale or sharing of the consumer's personal information.
- The business uses or shares with a service provider personal information of a consumer that is necessary to perform a business purpose if both of the following conditions are met:
    - The business has provided notice that the personal information of the consumer is being used or shared in its terms and conditions.
    - The service provider does not further collect, sell, share, or use the personal information of the consumer except as necessary to perform the business purpose.
- The business transfers to a third party the personal information of a consumer as an asset that is part of a merger, acquisition, bankruptcy, or other transaction in which the third party assumes control of all or part of the business. If a third party materially alters how it uses or shares the personal information of a consumer in a manner that is materially inconsistent with the promises made at the time of collection, it must provide prior notice of the new or changed practice to the consumer. The notice must be sufficiently prominent and robust to ensure that existing consumers can easily exercise their choices consistently with the bill.

The bill provides that a business does not share personal information when:

- A consumer uses or directs the business to intentionally disclose personal information or intentionally interact with one or more third parties.
- The business uses or shares an identifier for a consumer who has opted-out of sharing the consumer's personal information for the purposes of alerting persons that the consumer has opted-out of sharing the consumer's personal information.

Discrimination Against Consumers Who Exercise Their Rights

The bill provides that a business may not discriminate against a consumer who exercised any of the consumer's rights provided for in the bill. Discrimination includes, but is not limited to:

- Denying goods or services to the consumer.
- Charging different prices or rates for goods or services, including through the use of discounts or other benefits or imposing penalties.
- Providing a different level or quality of goods or services to the consumer.
- Suggesting that the consumer will receive a different price or rate for goods or services or a different level or quality of goods or services.

The bill does not prohibit a business from charging a consumer a different price or rate, or from providing a different level or quality of goods or services to the consumer, if that difference is reasonably related to the value provided to the business by the consumer's data.

The bill provides that a business may:

- offer financial incentives, including payments to consumers as compensation, for the collection, sale, or deletion of personal information; and
- offer a different price, rate, level, or quality of goods or services to the consumer if the price or difference is directly related to the value provided to the business by the consumer's personal information.

A business that offers any financial incentives must notify consumers of the financial incentives and may enter a consumer into a financial incentive program only if the consumer gives the business prior consent that clearly describes the material terms of the financial incentive program. The consent may be revoked by the consumer at any time.

The bill provides that a business may not use financial incentive practices that are unjust, unreasonable, coercive, or usurious in nature.

Requests for Personal Information

The bill requires businesses to, in a form that is reasonably accessible to consumers, make available two or more methods for submitting verifiable consumer requests, including, but not limited to, a toll-free number and, if the business maintains an Internet website, a link on the homepage of the website. The business may not require the consumer to create an account with the business in order to make a verifiable consumer request.

The bill requires the business to deliver the information required or to act on the request to a consumer free of charge within 45 days after receiving a verifiable consumer request. The response period may be extended once by 30 additional days when reasonably necessary, taking into account the complexity of the consumer's requests, provided the business informs the consumer of any such extension within the initial 45-day response period along with the reason for the extension. The information must be delivered in a readily usable format that allows the consumer to transmit the information from one entity to another entity without hindrance.

The bill provides that if a third party assumes control of all or part of a business and acquires a consumer's personal information as part of the transfer, and the third party materially alters how it uses a consumer's personal information or shares the information in a manner that is materially inconsistent with the promises made at the time of collection, the third party must provide prior notice of the new or changed practice to the customer. The notice must be sufficiently prominent and robust to ensure that existing consumers can easily exercise their choices.

The bill requires that any contract between a business and a service provider must prohibit the service provider from:

- Selling or sharing the personal information;
- Retaining, using, or disclosing the personal information for any purpose other than for the business purposes specified in the contract for the business, including retaining, using, or disclosing the personal information for a commercial purpose other than the business purposes specified in the contract with the business; or
- Combining the personal information that the service provider receives from or on behalf of the business with personal information that it receives from or on behalf of another person or entity or that the service provider collects from its own interaction with the consumer, provided that the service provider may combine personal information to perform any business purpose.

The bill requires that a third party that receives personal information is prohibited from:

- Selling or sharing the personal information; or
- Retaining, using, or disclosing the information outside of the direct business relationship between the person and the business.

A third party or a service provider must require any subcontractor to meet the same obligations of such third party or service provider with respect to personal information.

The bill provides that a third party or service provider or any subcontractor thereof who violates any of the restrictions is liable for any violations. A business that discloses personal information to a third party or service provider in compliance with certain provisions is not liable if the person receiving the personal information uses it in violation of the restrictions, provided that at the time of disclosing the personal information, the business does not have actual knowledge or reason to believe that the person intends to commit such a violation.

Form to Opt-Out of the Sale or Sharing of Personal Information

The bill requires a business to, in a form that is reasonably accessible to consumers:

- Provide a clear and conspicuous link on the business's Internet homepage, entitled "Do Not Sell or Share My Personal Information," to an Internet webpage that enables a consumer, or a person authorized by the consumer, to opt-out of the sale or sharing of the consumer's personal information. A business may not require a consumer to create an account in order to direct the business not to sell the consumer's personal information.

- Include a description of a consumer's rights along with a separate link to the "Do Not Sell or Share My Personal Information" Internet webpage in:
    - Its online privacy policy or policies, and
    - Any Florida-specific consumer privacy rights.
- Ensure that all individuals responsible for handling consumer inquiries about the business's privacy practices or the business's compliance with certain provisions are informed of all requirements and how to direct consumers to exercise certain rights.
- For consumers who opt-out of the sale or sharing of their personal information, refrain from selling or sharing personal information collected by the business about the consumer.
- For consumers who opted-out of the sale or sharing of their personal information, respect the consumer's decision to opt-out for at least 12 months before requesting that the consumer authorize the sale of the consumer's personal information.
- Use any personal information collected from the consumer in connection with the submission of the consumer's opt-out request solely for the purposes of complying with the opt-out request.

The bill does not require a business to include the required links and text on the homepage that the business makes available to the public generally, if the business maintains a separate and additional homepage that is dedicated to Florida consumers, and the business takes reasonable steps to ensure that Florida consumers are directed to the homepage for Florida consumers.

The bill allows a consumer to authorize another person to opt-out of the sale or sharing of the consumer's personal information on the consumer's behalf, and a business must comply with an opt-out request received from a person authorized by the consumer to act on the consumer's behalf, pursuant to rules adopted by DLA.

Exceptions

The bill does not restrict any business's or third party's ability to do any of the following:

- Collect and transmit personal information that is necessary for the sole purpose of sharing such personal information with a financial service provider to facilitate short term, transactional payment processing for the purchase of products or services.
- Comply with federal, state, or local laws.
- Comply with a civil, criminal, or regulatory inquiry, investigation, subpoena, or summons by federal, state, or local authorities.
- Cooperate with law enforcement agencies concerning conduct or activity that the business, service provider, or third party reasonably and in good faith believes may violate federal, state, or local law.
- Exercise legal rights or privileges.
- Collect, use, retain, sell, or disclose deidentified personal information or aggregate consumer information. If a business uses deidentified information, the business must:
    - Implement technical safeguards that prohibit reidentification of the consumer to whom the information may pertain;
    - Implement business processes that specifically prohibit reidentification of the information;
    - Implement business processes to prevent inadvertent release of deidentified information; and
    - Not attempt to reidentify the information.

This bill does not apply to:

- Personal information used by a business or service provider to advertise or market products or services that are produced or offered directly by the business or service provider as long as personal information is not sold, shared, or disclosed to another party outside the consumer’s direct interaction with the business or service provider.
- A business that collects or discloses its employees', applicants’, interns’ or volunteers’ personal information, so long as the business is collecting or disclosing such information within the scope of its role as an employer.

- Protected health information for purposes of HIPAA and related regulations, and patient identifying information for purposes of 42 C.F.R. Part 2, established pursuant to 42 U.S.C. s. 290dd-2.
- A covered entity or business associate governed by the privacy, security, and breach notification rules issued by the U.S. Department of Health and Human Services in 45 C.F.R. parts 160 and 164, or a program or a qualified service program defined in 42 C.F.R. part 2, to the extent the covered entity, business associate, or program maintains personal information in the same manner as medical information or protected health information.
- Identifiable private information collected for purposes of research as defined in 45 C.F.R. s. 164.501, conducted in accordance with the Federal Policy for the Protection of Human Subjects for purposes of 45 C.F.R. part 46, the good clinical practice guidelines issued by the International Council for Harmonisation of Technical Requirements for Pharmaceuticals for Human Use, the Protection for Human Subjects for purposes of 21 C.F.R. Parts 50 and 56; or personal information used or shared in research conducted in accordance with one or more of these standards.
- Information and documents created for purposes of the federal Health Care Quality Improvement Act of 1986 and related regulations, or patient safety work product for purposes of 42 C.F.R. part 3, established pursuant to 42 U.S.C. s. 299b-21 through 299b-26.
- Information that is deidentified in accordance with 45 C.F.R. part 164 and that is derived from individually identifiable health information, as described in HIPAA, or identifiable personal information, consistent with the Federal Policy for the Protection of Human Subjects or the human subject protection requirements of the FDA.
- Information used only for public health activities and purposes as described in 45 C.F.R. s. 164.512.
- Sale or sharing of personal information to or from a consumer reporting agency if that information is to be reported in or used to generate a consumer report as defined by 15 U.S.C. s. 1681(a), or sale or sharing of personal information to procure, provide, or disclose a consumer report if use of that information is limited pursuant to the Fair Credit Reporting Act, 15 U.S.C. s. 1681.
- Personal information collected, processed, sold, or disclosed pursuant to the Gramm-Leach-Bliley Act, 15 U.S.C. s. 6801 et seq. and implementing regulations.
- Personal information collected, processed, sold, or disclosed pursuant to the federal Driver's Privacy Protection Act of 1994, 18 U.S.C. s. 2721 et. seq.
- Education information covered by the Family Educational Rights and Privacy Act, 20 U.S.C. s. 1232(g) and 34 C.F.R. part 99.
- Information collected as part of public or peer-reviewed scientific or statistical research in the public interest.

"Research" means scientific, systematic study and observation, including, but not limited to, basic research or applied research that is in the public interest and that adheres to all other applicable ethics and privacy laws or studies conducted in the public interest in the area of public health. Research with personal information that may have been collected from a consumer in the course of the consumer's interactions with a business's service or device for other purposes must be:

- Compatible with the business purpose for which the personal information was collected.
- Subsequently pseudonymized and deidentified, or deidentified and in the aggregate, such that the information does not reasonably identify, relate to, or describe, or is not capable of being directly or indirectly associated or linked with, a particular consumer.
- Made subject to technical safeguards that prohibit reidentification of the consumer to whom the information may pertain.
- Subject to business processes that specifically prohibit reidentification of the information.
- Made subject to business processes to prevent inadvertent release of deidentified information.
- Protected from any reidentification attempts.
- Used solely for research purposes that are compatible with the context in which the personal information was collected and not used for any commercial purpose.

- Subjected by the business conducting the research to additional security controls that limit access to the research data to only those individuals in a business necessary to carry out the research purpose.

"Pseudonymize" means the processing of personal information in a manner that renders the personal information no longer attributable to a specific consumer without the use of additional information, provided that the additional information is kept separately and is subject to technical and organizational measures to ensure that the personal information is not attributed to an identified or identifiable consumer.

Applicability to Contracts

The bill provides that any provision of a contract or agreement of any kind that waives or limits in any way a consumer's rights under the bill, including, but not limited to, any right to a remedy or means of enforcement, is deemed contrary to public policy and is void and unenforceable. This provision of the bill does not prevent a consumer from declining to request information from a business, declining to opt-out of a business's sale or sharing of the consumer's personal information, or authorizing a business to sell or share the consumer's personal information after previously opting-out. These provisions only apply to contracts entered into after January 1, 2022.

Private Causes of Action

The bill allows any consumer to bring a civil action against a business for the following:
- Failure to protect a consumer's nonencrypted and nonredacted personal information or e-mail address, in combination with a password or security question and answer that would allow access to the account, and is subject to an unauthorized access and exfiltration, theft, or disclosure as a result of a business's violation of the duty to implement and maintain reasonable security procedures and practices;
- Failure to delete or correct a consumer's personal information after receiving a verifiable consumer request, unless the business qualifies for an exception to requirements to delete or correct; or
- Continuing to sell or share a consumer's personal information after the consumer chooses to opt-out.

The bill allows a court to grant the following relief to a consumer:
- Damages in an amount not less than $100 and not greater than $750 per consumer per incident, or actual damages, whichever is greater.
- Injunctive or declaratory relief.
- Upon prevailing in a civil action, the consumer shall recover reasonable attorney's fees and costs.

Enforcement and Implementation

The bill provides that upon belief that any business, service provider, or other person or entity is in violation and that proceedings would be in the public interest, DLA may bring an action against such business, service provider, or other person or entity and may seek a civil penalty of not more than $2,500 for each unintentional violation or $7,500 for each intentional violation. Such fines may be tripled if the violation involves a consumer who is 16 years of age or younger.

After the DLA has notified a business in writing of an alleged violation, the DLA may, in its discretion, grant the business a 30-day period to cure the alleged violation. The DLA may consider the number of violations, the substantial likelihood of injury to the public, or the safety of persons or property when determining whether to grant 30 days to cure. If the business cures the alleged violation to the satisfaction of the DLA and provides proof to the DLA, the DLA may issue a letter of guidance to the business that indicates that the business will not be offered a 30-day cure period for any future violations. If the business fails to cure the violation to the satisfaction of the DLA within 30 days, the

DLA may bring an action against the business for the alleged violation. This does not affect any private rights of action.

DLA may adopt rules to implement certain provisions of the bill.

The bill provides an effective date of January 1, 2022.

B. SECTION DIRECTORY:

Section 1: Amends s. 501.171, F.S.; relating to FIPA and what kind of breached information triggers notification requirements.
Section 2: Creates s. 501.173, F.S., relating to consumer data privacy rights and requirements for businesses who collect personal information.
Section 3: Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

There may be an increase from civil penalties collected by DLA.

2. Expenditures:

There may be an increase of regulatory costs to DLA from implementing and enforcing the bill.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill will require certain businesses in possession of personal information to implement mechanisms to effectuate the requirements of the bill, and such implementation will have a fiscal impact on such businesses. However, many of the businesses subject to the bill's requirements have already implemented similar privacy practices based on protections required in other states and countries.

It may increase protections provided for personal information that may save consumers the expense of dealing with stolen personal information used to commit financial crimes. Some 15 million consumers are victims of identity theft or fraud a year. Identity theft and fraud costs consumers more than $15 billion a year.

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:

DLA is given rulemaking authority in the bill to implement the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 10, 2021, the Regulatory Reform Subcommittee adopted five amendments and reported the bill favorably as a committee substitute. The committee substitute:

- Clarifies the definition of "third party,"
- Clarifies the definition for "unique identifier" by including "linked to a consumer or family" used elsewhere in the bill,
- Allows consumers to self-correct information if the business provides a mechanism,
- Clarifies that business records may be retained for an existing legal dispute,
- Provides that businesses and service providers are not required to delete personal information under certain circumstances,
- Clarifies that certain intentional actions do not qualify as selling personal information,
- Removes requirements that certain provisions be included in a third party contract,
- Removes duplicate provisions,
- Clarifies the time period for complying with a consumer request,
- Adds the words "business associate" to conform to another provision in the bill, and
- Adds applicants, interns, and volunteers to the list of types of employees under the employer exception.

On March 23, 2021, the Civil Justice & Property Rights Subcommittee adopted seven amendments and reported the bill favorably as a committee substitute. The committee substitute:

- Removes duplicative language related to business purposes;
- Broadens the definition of "publicly and lawfully available;"
- Clarifies that a business does not need to annually update their privacy policy if there have not been any changes;
- Requires a business that collects a consumer's personal information to implement and maintain reasonable security procedures and practices;
- Clarifies the exceptions for medical information;
- Clarifies the exception for information related to consumer report;
- Adds an exception for transactional uses of information for payment purposes;
- Adds an exception for first party advertising;
- Allows a consumer to bring a civil action against and receive relief from a business for:
    - Continuing to sell or share personal information after opting-out; and
    - Failing to delete or correct information under certain circumstances; and
- Allows the Attorney General to grant a discretionary 30-day period to cure for minor violations.

This analysis is drafted to the committee substitute as passed by the Civil Justice and Property Rights Subcommittee.

A bill to be entitled

An act relating to consumer data privacy; amending s. 501.171, F.S.; revising the definition of "personal information" to include additional specified information to data breach reporting requirements; creating s. 501.173, F.S.; providing definitions; requiring businesses that collect a consumer's personal data to disclose certain information regarding data collection and selling practices; to the consumer at or before the point of collection; specifying that such information may be provided through a general privacy policy or through a notice informing the consumer that additional specific information will be provided upon a certain request; prohibiting businesses from collecting additional categories of personal information or using personal information for additional purposes without notifying the consumer; requiring businesses that collect personal information to implement reasonable security procedures and practices to protect the information; authorizing consumers to request businesses to disclose the specific personal information the business has collected about the consumer; requiring businesses to make available two or more methods for consumers to request their personal information;

requiring businesses to provide such information free of charge within a certain timeframe and in a certain format upon receiving a verifiable consumer request; specifying requirements for third parties with respect to consumer information acquired or used; providing construction; authorizing consumers to request businesses to delete or correct personal information the businesses have collected about the consumers; providing exceptions; specifying requirements for businesses to comply with deletion or correction requests; authorizing consumers to opt out of third-party disclosure of personal information collected by a business; prohibiting businesses from selling or disclosing the personal information of consumers younger than a certain age, except under certain circumstances; prohibiting businesses from selling or sharing a consumer's information if the consumer has opted out of such disclosure; prohibiting businesses from taking certain actions to retaliate against consumers who exercise certain rights; providing exceptions; providing applicability; providing that a contract or agreement that waives or limits certain consumer rights is void and unenforceable; providing for civil actions and a private right of action for consumers under certain circumstances; providing civil

remedies; authorizing the Department of Legal Affairs to bring a civil action for intentional or unintentional violations and to adopt rules; providing that businesses must have a specified timeframe to cure any violations; providing an effective date.

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

Section 1. Paragraph (g) of subsection (1) of section 501.171, Florida Statutes, is amended to read:

501.171 Security of confidential personal information.—

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

(g)1. "Personal information" means either of the following:

a. An individual's first name or first initial and last name in combination with any one or more of the following data elements for that individual:

(I) A social security number;

(II) A driver license or identification card number, passport number, military identification number, or other similar number issued on a government document used to verify identity;

(III) A financial account number or credit or debit card number, in combination with any required security code, access code, or password that is necessary to permit access to an

individual's financial account;

(IV) Any information regarding an individual's medical history, mental or physical condition, or medical treatment or diagnosis by a health care professional; or

(V) An individual's health insurance policy number or subscriber identification number and any unique identifier used by a health insurer to identify the individual.

b. A user name or e-mail address, in combination with a password or security question and answer that would permit access to an online account.

c. An individual's biometric information as defined in s. 501.173(1).

2. The term does not include information about an individual that has been made publicly available by a federal, state, or local governmental entity. The term also does not include information that is encrypted, secured, or modified by any other method or technology that removes elements that personally identify an individual or that otherwise renders the information unusable.

Section 2. Section 501.173, Florida Statutes, is created to read:

501.173 Consumer data privacy.—

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

(a) "Aggregate consumer information" means information that relates to a group or category of consumers, from which the

identity of an individual consumer has been removed and is not reasonably capable of being directly or indirectly associated or linked with, any consumer or household, including via a device. The term does not include one or more individual consumer records that have been deidentified.

(b) "Biometric information" means an individual's physiological, biological, or behavioral characteristics, including an individual's deoxyribonucleic acid (DNA), that can be used, singly or in combination with each other or with other identifying data, to establish individual identity. The term includes, but is not limited to, imagery of the iris, retina, fingerprint, face, hand, palm, vein patterns, and voice recordings, from which an identifier template, such as a faceprint, a minutiae template, or a voiceprint, can be extracted, and keystroke patterns or rhythms, gait patterns or rhythms, and sleep, health, or exercise data that contain identifying information.

(c) "Business" means:

1. A sole proprietorship, partnership, limited liability company, corporation, association, or legal entity that meets the following requirements:

a. Is organized or operated for the profit or financial benefit of its shareholders or owners;

b. Does business in this state;

c. Collects personal information about consumers, or is

the entity on behalf of which such information is collected;

d. Determines the purposes and means of processing personal information about consumers alone or jointly with others; and

e. Satisfies one or more of the following thresholds:

(I) Has global annual gross revenues in excess of $25 million, as adjusted in January of every odd-numbered year to reflect any increase in the Consumer Price Index.

(II) Annually buys, receives for the business's commercial purposes, sells, or shares for commercial purposes, the personal information of 50,000 or more consumers, households, or devices.

(III) Derives 50 percent or more of its global annual revenues from selling or sharing personal information about consumers.

2. Any entity that controls or is controlled by a business and that shares common branding with the business. As used in this subparagraph, the term:

a. "Control" means:

(I) Ownership of, or the power to vote, more than 50 percent of the outstanding shares of any class of voting security of a business;

(II) Control in any manner over the election of a majority of the directors, or of individuals exercising similar functions; or

(III) The power to exercise a controlling influence over

the management of a company.

b. "Common branding" means a shared name, servicemark, or trademark.

(d) "Business purpose" means the use of personal information for the operational purpose of a business or service provider, or other notified purposes, provided that the use of personal information is reasonably necessary and proportionate to achieve the operational purpose for which the personal information was collected or processed or for another operational purpose that is compatible with the context in which the personal information was collected. The term includes:

1. Auditing relating to a current interaction with a consumer and concurrent transactions, including, but not limited to, counting ad impressions to unique visitors, verifying positioning and quality of ad impressions, and auditing compliance with this specification and other standards.

2. Detecting security incidents; protecting against malicious, deceptive, fraudulent, or illegal activity; and prosecuting those responsible for that activity.

3. Debugging to identify and repair errors that impair existing intended functionality.

4. Performing services on behalf of the business or service provider, including maintaining or servicing accounts, providing customer service, processing or fulfilling orders and transactions, verifying customer information, processing

payments, providing financing, providing analytic services, or providing similar services on behalf of the business or service provider.

5. Undertaking internal research for technological development and demonstration.

6. Undertaking activities to verify or maintain the quality or safety of a service or device that is owned, manufactured, manufactured for, or controlled by the business, and to improve, upgrade, or enhance the service or device that is owned, manufactured, manufactured for, or controlled by the business.

(e) "Collect" means to buy, rent, gather, obtain, receive, or access any personal information pertaining to a consumer by any means. The term includes, but is not limited to, actively or passively receiving information from the consumer or by observing the consumer's behavior.

(f) "Commercial purposes" means to advance the commercial or economic interests of a person, such as inducing another person to buy, rent, lease, join, subscribe to, provide, or exchange products, goods, property, information, or services, or directly or indirectly enabling or effecting a commercial transaction.

(g) "Consumer" means a natural person who resides in or is domiciled in this state, however identified, including by any unique identifier, and who is:

1. In this state for other than a temporary or transitory purpose; or

2. Domiciled in this state but resides outside this state for a temporary or transitory purpose.

(h) "Deidentified" means information that does not reasonably identify, relate to, or describe a particular consumer, or is not reasonably capable of being directly or indirectly associated or linked with a particular consumer, provided that a business that uses deidentified information:

1. Implements technical safeguards that prohibit reidentification of the consumer to whom the information may pertain.

2. Implements business processes that specifically prohibit reidentification of the information.

3. Implements business processes to prevent inadvertent release of deidentified information.

4. Does not attempt to reidentify the information.

(i) "Department" means the Department of Legal Affairs.

(j) "Health insurance information" means a consumer's insurance policy number or subscriber identification number, or any unique identifier used by a health insurer to identify the consumer, or any information in the consumer's application and claims history, including any appeals records, if the information is reasonably capable of being directly or indirectly associated or linked with a consumer or household,

including via a device, by a business or service provider.

(k) "Homepage" means the introductory page of an Internet website and any Internet webpage where personal information is collected. In the case of a mobile application, the homepage is the application's platform page or download page, a link within the application, such as the "About" or "Information" application configurations, or settings page, and any other location that allows consumers to review the notice required by subsection (9), including, but not limited to, before downloading the application.

(l) "Person" means an individual, proprietorship, firm, partnership, joint venture, syndicate, business trust, company, corporation, limited liability company, association, committee, and any other organization or group of persons acting in concert.

(m) "Personal information" means information that identifies, relates to, or describes a particular consumer or household, or is reasonably capable of being directly or indirectly associated or linked with, a particular consumer or household.

1. The term includes, but is not limited to, the following:

a. Identifiers such as a real name, alias, postal address, unique identifier, online identifier, internet protocol address, email address, account name, social security number, driver

license number, passport number, or other similar identifiers.

b. Information that identifies, relates to, or describes, or could be associated with, a particular individual, including, but not limited to, a name, signature, social security number, physical characteristics or description, address, telephone number, passport number, driver license or state identification card number, insurance policy number, education, employment, employment history, bank account number, credit card number, debit card number, or any other financial information, medical information, or health insurance information.

c. Characteristics of protected classifications under state or federal law.

d. Commercial information, including records of personal property, products or services purchased, obtained, or considered, or other purchasing or consuming histories or tendencies.

e. Biometric information.

f. Internet or other electronic network activity information, including, but not limited to, browsing history, search history, and information regarding a consumer's interaction with an Internet website, application, or advertisement.

g. Geolocation data.

h. Audio, electronic, visual, thermal, olfactory, or similar information.

i. Professional or employment-related information.

j. Education information that is not publicly available, personally identifiable information as defined in the Family Educational Rights and Privacy Act, 20 U.S.C. s. 1232(g) and 34 C.F.R. part 99.

k. Inferences drawn from any of the information identified in this paragraph to create a profile about a consumer reflecting the consumer's preferences, characteristics, psychological trends, predispositions, behavior, attitudes, intelligence, abilities, and aptitudes.

2. The term does not include consumer information that is:

a. Publicly and lawfully available.

b. Deidentified or aggregate consumer information.

(n) "Probabilistic identifier" means the identification of a consumer or a device to a degree of certainty of more probable than not based on any categories of personal information included in, or similar to, the categories listed under paragraph (m).

(o) "Processing" means any operation or set of operations that are performed on personal data or on sets of personal data, whether or not by automated means.

(p) "Pseudonymize" means the processing of personal information in a manner that renders the personal information no longer attributable to a specific consumer without the use of additional information, provided that the additional information

is kept separately and is subject to technical and organizational measures to ensure that the personal information is not attributed to an identified or identifiable consumer.

(q) "Publicly and lawfully available" means information reasonably believed to be made available to the public in a lawful manner and without legal restrictions:

1. From federal, state, or local government records.

2. By a widely distributed media source.

3. By the consumer or by someone to whom the consumer disclosed the information unless the consumer has purposely and effectively restricted the information to a certain audience on a private account.

The term does not include biometric information collected by a business about a consumer without the consumer's consent.

(r) "Research" means scientific, systematic study and observation, including, but not limited to, basic research or applied research that is in the public interest and that adheres to all other applicable ethics and privacy laws or studies conducted in the public interest in the area of public health. Research with personal information that may have been collected from a consumer in the course of the consumer's interactions with a business's service or device for other purposes must be:

1. Compatible with the business purpose for which the personal information was collected.

2. Subsequently pseudonymized and deidentified, or deidentified and in the aggregate, such that the information does not reasonably identify, relate to, or describe, or is not capable of being directly or indirectly associated or linked with, a particular consumer.

3. Made subject to technical safeguards that prohibit reidentification of the consumer to whom the information may pertain.

4. Subject to business processes that specifically prohibit reidentification of the information.

5. Made subject to business processes to prevent inadvertent release of deidentified information.

6. Protected from any reidentification attempts.

7. Used solely for research purposes that are compatible with the context in which the personal information was collected and not used for any commercial purpose.

8. Subjected by the business conducting the research to additional security controls that limit access to the research data to only those individuals in a business necessary to carry out the research purpose.

(s) "Sell" means to sell, rent, release, disclose, disseminate, make available, transfer, or otherwise communicate orally, in writing, or by electronic or other means, a consumer's personal information by a business to another business or a third party for monetary or other valuable

consideration.

(t) "Service" means work or labor furnished in connection with the sale or repair of goods.

(u) "Service provider" means a sole proprietorship, partnership, limited liability company, corporation, association, or other legal entity that is organized or operated for the profit or financial benefit of its shareholders or other owners, that processes information on behalf of a business and to which the business discloses a consumer's personal information for a business purpose pursuant to a written contract, provided that the contract prohibits the entity receiving the information from retaining, using, or disclosing the personal information for any purpose other than for the specific purpose of performing the services specified in the contract for the business, or as otherwise permitted by this section, including retaining, using, or disclosing the personal information for a commercial purpose other than providing the services specified in the contract with the business.

(v) "Share" means to share, rent, release, disclose, disseminate, make available, transfer, or access a consumer's personal information for advertising. The term includes:

1. Allowing a third party to use or advertise to a consumer based on a consumer's personal information without disclosure of the personal information to the third party.

2. Monetary transactions, nonmonetary transactions, and

transactions for other valuable consideration between a business and a third party for advertising for the benefit of a business.

(w) "Third party" means a person who is not any of the following:

1. The business that collects personal information from consumers under this section.

2. A service provider to whom the business discloses personal information about consumers for a business purpose pursuant to a written contract.

(x) "Unique identifier" means a persistent identifier that can be used to recognize a consumer, a family, or a device that is linked to a consumer or family, over time and across different services, including, but not limited to, a device identifier; an Internet Protocol address; cookies, beacons, pixel tags, mobile ad identifiers, or similar technology; customer number, unique pseudonym, or user alias; telephone numbers, or other forms of persistent or probabilistic identifiers that can be used to identify a particular consumer, family, or device that is linked to a consumer or family. As used in this paragraph, the term "family" means a custodial parent or guardian and any minor children of whom the parent or guardian has custody, or a household.

(y) "Verifiable consumer request" means a request that is made by a consumer, by a consumer on behalf of the consumer's minor child, or by a natural person or a person authorized by

the consumer to act on the consumer's behalf, and that the business can reasonably verify pursuant to rules adopted by the department to be the consumer about whom the business has collected personal information. A business is not obligated to provide information to the consumer if the business cannot verify that the consumer making the request is the consumer about whom the business has collected information or is a person authorized by the consumer to act on the consumer's behalf.

(2) PRIVACY POLICY FOR PERSONAL INFORMATION.—

(a) A business that collects personal information about consumers shall maintain an online privacy policy, make such policy available on its Internet website, and update the information at least once every 12 months unless the privacy policy has not changed and an update is not reasonably required. The online privacy policy must include the following information:

1. Any Florida-specific consumer privacy rights.

2. A list of the categories of personal information the business collects or has collected about consumers.

3. Of the categories identified in subparagraph 2., a list that identifies which categories of personal information the business sells or shares or has sold or shared about consumers. If the business does not sell or share personal information, the business shall disclose that fact.

4. Of the categories identified in subparagraph 2., a list

that identifies which categories of personal information the business discloses or shares or has disclosed or shared about consumers for a business purpose. If the business does not disclose or share personal information for a business purpose, the business shall disclose that fact.

5. The right to opt-out of the sale or sharing to third parties and the ability to request deletion or correction of certain personal information.

(b) A consumer has the right to request that a business that collects personal information disclose to the consumer the categories and specific pieces of personal information the business collects from or about consumers.

(c) A business that collects personal information shall, at or before the point of collection, inform consumers of the categories of personal information to be collected and the purposes for which the categories of personal information will be used.

(d) A business may not collect additional categories of personal information or use personal information collected for additional purposes without providing the consumer with notice consistent with this section.

(e) A business that collects a consumer's personal information shall implement and maintain reasonable security procedures and practices appropriate to the nature of the personal information to protect the personal information from

unauthorized or illegal access, destruction, use, modification, or disclosure.

(f) A business shall provide the information specified in paragraph (b) to a consumer only upon receipt of a verifiable consumer request.

(g) A business shall provide and follow a retention schedule that prohibits the use and retention of personal information after satisfaction of the initial purpose for collecting or obtaining such information, or after the duration of a contract, or 1 year after the consumer's last interaction with the business, whichever occurs first. This paragraph does not apply to biometric information used for ticketing purposes and does not apply if such information is only kept for the time related to the duration of the ticketed event.

(3) CONSUMER RIGHT TO REQUEST COPY OF PERSONAL DATA COLLECTED.—

(a) A consumer has the right to request that a business that collects personal information about the consumer disclose the personal information that has been collected by the business.

(b) A business that receives a verifiable consumer request from a consumer to access personal information shall promptly take steps to disclose and deliver, free of charge to the consumer, the personal information required by this section. The information may be delivered by mail or electronically, and if

provided electronically, the information must be in a portable and, to the extent technically feasible, readily useable format that allows the consumer to transmit this information to another entity without hindrance. A business may provide personal information to a consumer at any time, but may not be required to provide personal information to a consumer more than twice in a 12-month period.

(c) A business shall disclose the following to the consumer:

1. The specific pieces of personal information it has collected about the consumer.

2. The categories and sources from which it collected the consumer's personal information.

3. The business or commercial purpose for collecting or selling the consumer's personal information.

4. The categories of third parties which the business shares the consumer's personal information.

(d) A business that collects personal information about a consumer shall disclose the information specified in paragraph (a) to the consumer upon receipt of a verifiable consumer request from the consumer.

(e) This subsection does not require a business to do the following:

1. Retain any personal information about a consumer collected for a single one-time transaction if, in the ordinary

course of business, that information about the consumer is not retained.

2. Reidentify or otherwise link any data that, in the ordinary course of business, is not maintained in a manner that would be considered personal information.

(4) RIGHT TO HAVE PERSONAL INFORMATION DELETED OR CORRECTED.—

(a) A consumer has the right to request that a business delete any personal information about the consumer which the business has collected from the consumer.

(b) A business that receives a verifiable consumer request from a consumer to delete the consumer's personal information shall delete the consumer's personal information from its records and direct any service providers to delete the consumer's personal information from their records.

(c) A business or a service provider acting pursuant to its contract with the business or another service provider may not be required to comply with a consumer's request to delete the consumer's personal information if it is reasonably necessary for the business or service provider to maintain the consumer's personal information to do any of the following:

1. Complete the transaction for which the personal information was collected.

2. Fulfill the terms of a written warranty or product recall conducted in accordance with federal law.

3. Provide a good or service requested by the consumer, or reasonably anticipated within the context of a business' ongoing business relationship with the consumer, or otherwise perform a contract between the business and the consumer.

4. Detect security incidents, protect against malicious, deceptive, fraudulent, or illegal activity; or prosecute those responsible for that activity.

5. Debug to identify and repair errors that impair existing intended functionality.

6. Engage in public or peer-reviewed scientific, historical, or statistical research in the public interest that adheres to all other applicable ethics and privacy laws when the business' deletion of the information is likely to render impossible or seriously impair the achievement of such research, if the consumer has provided informed consent.

7. Enable solely internal uses that are reasonably aligned with the expectations of the consumer based on the consumer's relationship with the business.

8. Comply with a legal obligation.

9. As reasonably needed to protect the business's interests against existing disputes, legal action, or governmental investigations.

10. Otherwise internally use the consumer's personal information in a lawful manner that is compatible with the context in which the consumer provided the information.

(d) A consumer has the right to make a request to correct inaccurate personal information to a business that maintains inaccurate personal information about the consumer, while taking into account the nature of the personal information and the purposes of the processing of the personal information. A business that receives a verifiable consumer request to correct inaccurate personal information shall use commercially reasonable efforts to correct the inaccurate personal information as directed by the consumer. If a business maintains a self-service mechanism to allow a consumer to correct certain personal information, the business may require the consumer to correct their own personal information through such mechanism.

(5) RIGHT TO REQUEST PERSONAL DATA SOLD OR SHARED.—

(a) A consumer has the right to request that a business that sells or shares personal information about the consumer, or discloses such information for a business purpose, to disclose to the consumer:

1. The categories of personal information about the consumer the business sold or shared.

2. The categories of third parties to which the personal information about the consumer was sold or shared by category of personal information for each category of third parties to which the personal information was sold or shared.

3. The categories of personal information about the consumer that the business disclosed for a business purpose.

(b) A business that sells or shares personal information about consumers or discloses such information for a business purpose shall disclose the information specified in paragraph (a) to the consumer upon receipt of a verifiable consumer request from the consumer.

(c) A third party may not sell or share personal information about a consumer that has been sold or shared to the third party by a business unless the consumer has received explicit notice and is provided an opportunity to opt-out.

(6) RIGHT TO OPT-OUT OF THE SALE OR SHARING OF PERSONAL INFORMATION TO THIRD PARTIES.—

(a) A consumer has the right at any time to direct a business that sells or shares personal information about the consumer to third parties to not sell or share the consumer's personal information. This right may be referred to as the right to opt-out.

(b) A business that sells or shares personal information to third parties shall provide notice to consumers that this information may be sold and shared and that consumers have the right to opt-out of the sale or sharing of their personal information.

(c) Notwithstanding paragraph (a), a business may not sell or share the personal information of a consumer if the business has actual knowledge that the consumer is not 16 years of age or older, unless the consumer, in the case of consumers between 13

and 15 years of age, or the consumer's parent or guardian, in the case of consumers who are 12 years of age or younger, has affirmatively authorized the sale or sharing of the consumer's personal information. A business that willfully disregards the consumer's age is deemed to have had actual knowledge of the consumer's age. This right may be referred to as the right to opt-in.

(d) A business that has received direction from a consumer prohibiting the sale or sharing of the consumer's personal information or that has not received consent to sell or share a minor consumer's personal information is prohibited from selling or sharing the consumer's personal information after its receipt of the consumer's direction, unless the consumer subsequently provides express authorization for the sale or sharing of the consumer's personal information.

(e) A business does not sell personal information when:

1. A consumer uses or directs the business to intentionally disclose personal information or uses the business to intentionally interact with a third party. An intentional interaction occurs when the consumer intends to interact with the third party, via one or more deliberate interactions. Hovering over, muting, pausing, or closing a given piece of content does not constitute a consumer's intent to interact with a third party.

2. The business uses or shares an identifier for a

consumer who has opted out of the sale or sharing of the consumer's personal information for the purposes of alerting third parties that the consumer has opted out of the sale or sharing of the consumer's personal information.

3. The business uses or shares with a service provider personal information of a consumer that is necessary to perform a business purpose if both of the following conditions are met:

a. The business has provided notice that the personal information of the consumer is being used or shared in its terms and conditions consistent with subsection (9).

b. The service provider does not further collect, sell, share, or use the personal information of the consumer except as necessary to perform the business purpose.

4. The business transfers to a third party the personal information of a consumer as an asset that is part of a merger, acquisition, bankruptcy, or other transaction in which the third party assumes control of all or part of the business, provided that information is used or shared consistently with subsections (3) and (5). If a third party materially alters how it uses or shares the personal information of a consumer in a manner that is materially inconsistent with the promises made at the time of collection, it shall provide prior notice of the new or changed practice to the consumer. The notice must be sufficiently prominent and robust to ensure that existing consumers can easily exercise their choices consistently with this subsection.

(f) A business does not share personal information when:

1. A consumer uses or directs the business to intentionally disclose personal information or intentionally interact with one or more third parties.

2. The business uses or shares an identifier for a consumer who has opted-out of sharing the consumer's personal information for the purposes of alerting persons that the consumer has opted-out of sharing the consumer's personal information.

(7) DISCRIMINATION AGAINST CONSUMERS WHO EXERCISE THEIR RIGHTS.—

(a)1. A business may not discriminate against a consumer who exercised any of the consumer's rights under this section. Discrimination under this subparagraph includes, but is not limited to:

a. Denying goods or services to the consumer.

b. Charging different prices or rates for goods or services, including through the use of discounts or other benefits or imposing penalties.

c. Providing a different level or quality of goods or services to the consumer.

d. Suggesting that the consumer will receive a different price or rate for goods or services or a different level or quality of goods or services.

2. This paragraph does not prohibit a business from

charging a consumer a different price or rate, or from providing a different level or quality of goods or services to the consumer, if that difference is reasonably related to the value provided to the business by the consumer's data.

(b)1. A business may offer financial incentives, including payments to consumers as compensation, for the collection, sale, or deletion of personal information.

2. A business may offer a different price, rate, level, or quality of goods or services to the consumer if the price or difference is directly related to the value provided to the business by the consumer's personal information.

3. A business that offers any financial incentives shall notify consumers of the financial incentives.

4. A business may enter a consumer into a financial incentive program only if the consumer gives the business prior consent that clearly describes the material terms of the financial incentive program. The consent may be revoked by the consumer at any time.

5. A business may not use financial incentive practices that are unjust, unreasonable, coercive, or usurious in nature.

(8) REQUESTS FOR PERSONAL INFORMATION.—

(a) To comply with this subsection, a business shall, in a form that is reasonably accessible to consumers, make available two or more methods for submitting verifiable consumer requests, including, but not limited to, a toll-free number and, if the

business maintains an Internet website, a link on the homepage of the website. The business may not require the consumer to create an account with the business in order to make a verifiable consumer request.

(b) The business shall deliver the information required or act on the request in subsections (3) through (5) to a consumer free of charge within 45 days after receiving a verifiable consumer request. The response period may be extended once by 30 additional days when reasonably necessary, while taking into account the complexity of the consumer's requests, provided the business informs the consumer of any such extension within the initial 45-day response period along with the reason for the extension. The information must be delivered in a readily usable format that allows the consumer to transmit the information from one entity to another entity without hindrance.

(c) If a third party assumes control of all or part of a business, acquires a consumer's personal information as part of the transfer, and the third party materially alters how it uses a consumer's personal information or shares the information in a manner that is materially inconsistent with the promises made at the time of collection, the third party must provide prior notice of the new or changed practice to the consumer. The notice must be sufficiently prominent and robust to ensure that existing consumers can easily exercise their rights under subsections (3) through (6).

(d) Any contract between a business and a service provider must prohibit the service provider from:

1. Selling or sharing the personal information;

2. Retaining, using, or disclosing the personal information for any purpose, commercial or otherwise, other than for the business purposes specified in the contract with the business; or

3. Combining the personal information that the service provider receives from or on behalf of the business with personal information that it receives from or on behalf of another person or entity or that the service provider collects from its own interaction with the consumer, provided that the service provider may combine personal information to perform any business purpose.

(e) A third party that receives a consumer's personal information is prohibited from:

1. Selling or sharing the personal information.

2. Retaining, using, or disclosing the information outside of the direct business relationship between the person and the business.

(f) A third party or a service provider must require any subcontractor to meet the same obligations of such third party or service provider with respect to personal information.

(g) A third party or service provider or any subcontractor thereof who violates any of the restrictions imposed upon it

under this section is liable for any violations. A business that discloses personal information to a third party or service provider in compliance with this section is not liable if the person receiving the personal information uses it in violation of the restrictions under this section, provided that at the time of disclosing the personal information, the business does not have actual knowledge or reason to believe that the person intends to commit such a violation.

(9) FORM TO OPT-OUT OF SALE OR SHARING OF PERSONAL INFORMATION.—

(a) A business shall, in a form that is reasonably accessible to consumers:

1. Provide a clear and conspicuous link on the business's Internet homepage, entitled "Do Not Sell or Share My Personal Information," to an Internet webpage that enables a consumer, or a person authorized by the consumer, to opt-out of the sale or sharing of the consumer's personal information. A business may not require a consumer to create an account in order to direct the business not to sell the consumer's personal information.

2. Include a description of a consumer's rights along with a separate link to the "Do Not Sell or Share My Personal Information" Internet webpage in:

a. Its online privacy policy or policies.

b. Any Florida-specific consumer privacy rights.

3. Ensure that all individuals responsible for handling

consumer inquiries about the business's privacy practices or the business's compliance with this section are informed of all requirements in subsection (6) and this subsection and how to direct consumers to exercise their rights subsection (6) and this subsection.

4. For consumers who opt-out of the sale or sharing of their personal information, refrain from selling or sharing personal information collected by the business about the consumer.

5. For consumers who opted-out of the sale or sharing of their personal information, respect the consumer's decision to opt-out for at least 12 months before requesting that the consumer authorize the sale of the consumer's personal information.

6. Use any personal information collected from the consumer in connection with the submission of the consumer's opt-out request solely for the purposes of complying with the opt-out request.

(b) This subsection does not require a business to include the required links and text on the homepage that the business makes available to the public generally, if the business maintains a separate and additional homepage that is dedicated to Florida consumers and that includes the required links and text, and the business takes reasonable steps to ensure that Florida consumers are directed to the homepage for Florida

consumers and not the homepage made available to the public generally.

(c) A consumer may authorize another person to opt-out of the sale or sharing of the consumer's personal information on the consumer's behalf, and a business shall comply with an opt-out request received from a person authorized by the consumer to act on the consumer's behalf, pursuant to rules adopted by the department.

(10) EXCEPTIONS.—

(a) This section does not restrict the ability of any business, service provider, or third party to do any of the following:

1. Collect and transmit personal information that is necessary for the sole purpose of sharing such personal information with a financial service provider to facilitate short term, transactional payment processing for the purchase of products or services.

2. Comply with federal, state, or local laws.

3. Comply with a civil, criminal, or regulatory inquiry, investigation, subpoena, or summons by federal, state, or local authorities.

4. Cooperate with law enforcement agencies concerning conduct or activity that the business, service provider, or third party reasonably and in good faith believes may violate federal, state, or local law.

5. Exercise legal rights or privileges.

6. Collect, use, retain, sell, share, or disclose deidentified personal information or aggregate consumer information. If a business uses, sells, or shares deidentified information, the business shall:

a. Implement technical safeguards that prohibit reidentification of the consumer to whom the information may pertain;

b. Implement business processes that specifically prohibit reidentification of the information;

c. Implement business processes to prevent inadvertent release of deidentified information; and

d. Not attempt to reidentify the information.

(b) This section does not apply to:

1. Personal information used by a business or service provider to advertise or market products or services that are produced or offered directly by the business or service provider, as long as personal information is not sold, shared, or disclosed to another party outside the consumer's direct interaction with the business or service provider.

2. A business that collects or discloses the personal information of its employees, applicants, interns, or volunteers, so long as the business is collecting or disclosing such information within the scope of its role as an employer.

3. Protected health information for purposes of the

federal Health Insurance Portability and Accountability Act of 1996 and related regulations, and patient identifying information for purposes of 42 C.F.R. Part 2, established pursuant to 42 U.S.C. s. 290dd-2.

4. A covered entity or business associate governed by the privacy, security, and breach notification rules issued by the United States Department of Health and Human Services in 45 C.F.R. parts 160 and 164, or a program or a qualified service program as defined in 42 C.F.R. part 2, to the extent the covered entity, business associate, or program maintains personal information in the same manner as medical information or protected health information as described in subparagraph 3.

5. Identifiable private information collected for purposes of research as defined in 45 C.F.R. s. 164.501 conducted in accordance with the Federal Policy for the Protection of Human Subjects for purposes of 45 C.F.R. part 46, the good clinical practice guidelines issued by the International Council for Harmonisation of Technical Requirements for Pharmaceuticals for Human Use, or the Protection for Human Subjects for purposes of 21 C.F.R. Parts 50 and 56, or personal information that is used or shared in research conducted in accordance with one or more of these standards.

6. Information and documents created for purposes of the federal Health Care Quality Improvement Act of 1986 and related regulations, or patient safety work product for purposes of 42

C.F.R. part 3, established pursuant to 42 U.S.C. s. 299b-21 through 299b-26.

7. Information that is deidentified in accordance with 45 C.F.R. part 164 and derived from individually identifiable health information as described in the Health Insurance Portability and Accountability Act of 1996, or identifiable personal information, consistent with the Federal Policy for the Protection of Human Subjects or the human subject protection requirements of the United States Food and Drug Administration.

8. Information used only for public health activities and purposes as described in 45 C.F.R. s. 164.512.

9. Sale or sharing of personal information to or from a consumer reporting agency if that information is to be reported in or used to generate a consumer report as defined by 15 U.S.C. s. 1681(a), or sale or sharing of personal information to procure, provide, or disclose a consumer report if use of that information is limited pursuant to the federal Fair Credit Reporting Act, 15 U.S.C. s. 1681.

10. Personal information collected, processed, sold, or disclosed pursuant to the Gramm-Leach-Bliley Act, 15 U.S.C. s. 6801 et seq. and implementing regulations.

11. Personal information collected, processed, sold, or disclosed pursuant to the federal Driver's Privacy Protection Act of 1994, 18 U.S.C. s. 2721 et. seq.

12. Education information covered by the Family

Educational Rights and Privacy Act, 20 U.S.C. s. 1232(g) and 34 C.F.R. part 99.

13. Information collected as part of public or peer-reviewed scientific or statistical research in the public interest.

(11) CONTRACTS.—Any provision of a contract or agreement of any kind that waives or limits in any way a consumer's rights under this section, including, but not limited to, any right to a remedy or means of enforcement, is deemed contrary to public policy and is void and unenforceable. This section does not prevent a consumer from declining to request information from a business, declining to opt-out of a business's sale or sharing of the consumer's personal information, or authorizing a business to sell or share the consumer's personal information after previously opting out. This subsection only applies to contracts entered into after January 1, 2022.

(12) CIVIL ACTIONS; PRIVATE RIGHT OF ACTION.—

(a) A consumer may bring a civil action against a business for any of the following:

1. Failure to protect a consumer's nonencrypted and nonredacted personal information or e-mail address, in combination with a password or security question and answer that would allow access to the account, and is subject to an unauthorized access and exfiltration, theft, or disclosure as a result of a business' violation of the duty to implement and

maintain reasonable security procedures and practices.

2. Failure to delete or correct a consumer's personal information pursuant to this section after receiving a verifiable consumer request unless the business qualifies for an exception to requirements to delete or correct under this section.

3. Continuing to sell or share a consumer's personal information after the consumer chooses to opt-out pursuant to this section.

(b) A court may grant the following relief to a consumer:

1. Damages in an amount not less than $100 and not greater than $750 per consumer per incident or actual damages, whichever is greater.

2. Injunctive or declaratory relief.

(c) Upon prevailing, the consumer shall recover reasonable attorney fees and costs.

(13) ENFORCEMENT AND IMPLEMENTATION.—

(a) If the department has reason to believe that any business, service provider, or other person or entity is in violation of this section and that proceedings would be in the public interest, the department may bring an action against such business, service provider, or other person or entity and may seek a civil penalty of not more than $2,500 for each unintentional violation or $7,500 for each intentional violation. Such fines may be tripled if the violation involves a

consumer who is 16 years of age or younger.

(b) The department may adopt rules to implement this section.

(c) After the department has notified a business in writing of an alleged violation, the department may in its discretion grant the business a 30-day period to cure the alleged violation. The department may consider the number of violations, the substantial likelihood of injury to the public, or the safety of persons or property when determining whether to grant 30 days to cure. If the business cures the alleged violation to the satisfaction of the department and provides proof to the department, the department may issue a letter of guidance to the business that indicates that the business will not be offered a 30-day cure period for any future violations. If the business fails to cure the violation within 30 days, the department may bring an action against the business for the alleged violation.

(d) This subsection does not affect the private right of action provided in subsection (12).

Section 3. This act shall take effect January 1, 2022.

COMMERCE COMMITTEE

HB 969 by Rep. McFarland
Consumer Data Privacy

AMENDMENT SUMMARY
April 14, 2021

Amendment 1 by Rep. McFarland (strike):

- Changes the effective date to July 1, 2022
- Changes terminology of “business” to “controller”, and “service provider” to “processor”
- Requires controllers to meet two thresholds, instead of one, to qualify as a controller
- Increases the controller revenue threshold to $50 million gross revenues annually, from $25 million
- Relates the controller dealings threshold to 50,000 or more consumers’ personal information that is used for targeted advertising in conjunction with third parties or that is not covered by an exception
- Removes the definitions of “business purpose” and “commercial purpose”
- Clarifies the roles and contract requirements between a controller and processor
- Clarifies who may bring a private cause of action
- Clarifies the jurisdiction to bring claims in Florida courts
- Clarifies the exceptions for financial institutions, healthcare entities, and personal information related to the Fair Credit Reporting Act
- Clarifies that enforcement by the Department of Legal Affairs is under the Florida Unfair or Deceptive Trade Practices Act
- Provides that the definition of “consumer” to exclude a person in an employment context, and “personal information” to exclude employment contact information
- Makes several clarifying changes to structure, format, grammar, and intent

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 McFarland offered the following:

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

Section 1. Paragraph (g) of subsection (1) of section 501.171, Florida Statutes, is amended to read:

501.171 Security of confidential personal information.—

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

(g)1. "Personal information" means either of the following:

a. An individual's first name or first initial and last name in combination with any one or more of the following data elements for that individual:

(I) A social security number;

(II) A driver license or identification card number, passport number, military identification number, or other similar number issued on a government document used to verify identity;

(III) A financial account number or credit or debit card number, in combination with any required security code, access code, or password that is necessary to permit access to an individual's financial account;

(IV) Any information regarding an individual's medical history, mental or physical condition, or medical treatment or diagnosis by a health care professional; or

(V) An individual's health insurance policy number or subscriber identification number and any unique identifier used by a health insurer to identify the individual.

b. A user name or e-mail address, in combination with a password or security question and answer that would permit access to an online account.

c. An individual's biometric information as defined in s. 501.173(1).

2. The term does not include information about an individual that has been made publicly available by a federal, state, or local governmental entity. The term also does not include information that is encrypted, secured, or modified by any other method or technology that removes elements that

personally identify an individual or that otherwise renders the information unusable.

Section 2. Section 501.173, Florida Statutes, is created to read:

501.173 Consumer data privacy.—

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

(a) "Aggregate consumer information" means information that relates to a group or category of consumers, from which the identity of an individual consumer has been removed and is not reasonably capable of being directly or indirectly associated or linked with, any consumer, household, or device. The term does not include personal information that has been deidentified.

(b) "Biometric information" means an individual's physiological, biological, or behavioral characteristics, including an individual's deoxyribonucleic acid (DNA), that can be used, singly or in combination with each other or with other identifying data, to establish individual identity. The term includes, but is not limited to, imagery of the iris, retina, fingerprint, face, hand, palm, vein patterns, and voice recordings, from which an identifier template, such as a faceprint, a minutiae template, or a voiceprint, can be extracted, and keystroke patterns or rhythms, gait patterns or rhythms, and sleep, health, or exercise data that contain identifying information.

(c) "Collect" means to buy, rent, gather, obtain, receive, or access any personal information pertaining to a consumer by any means. The term includes, but is not limited to, actively or passively receiving information from the consumer or by observing the consumer's behavior.

(d) "Consumer" means a natural person who resides in or is domiciled in this state, however identified, including by any unique identifier, who is acting in a personal capacity or household context. The term does not include a natural person acting on behalf of a legal entity in a commercial or employment context.

(e) "Controller" means:

1. A sole proprietorship, partnership, limited liability company, corporation, association, or legal entity that meets the following requirements:

a. Is organized or operated for the profit or financial benefit of its shareholders or owners;

b. Does business in this state;

c. Collects personal information about consumers, or is the entity on behalf of which such information is collected;

d. Determines the purposes and means of processing personal information about consumers alone or jointly with others; and

e. Satisfies at least two of the following thresholds:

(I) Has global annual gross revenues in excess of $50 million, as adjusted in January of every odd-numbered year to reflect any increase in the Consumer Price Index.

(II) Annually buys, receives, sells, or shares the personal information of 50,000 or more consumers, households, or devices for targeted advertising in conjunction with third parties or that is not covered by an exception under this section.

(III) Derives 50 percent or more of its global annual revenues from selling or sharing personal information about consumers.

2. Any entity that controls or is controlled by a controller. As used in this subparagraph, the term "control" means:

a. Ownership of, or the power to vote, more than 50 percent of the outstanding shares of any class of voting security of a controller;

b. Control in any manner over the election of a majority of the directors, or of individuals exercising similar functions; or

c. The power to exercise a controlling influence over the management of a company.

(f) "Deidentified" means information that cannot reasonably be used to infer information about, or otherwise be

linked to, a particular consumer, provided that the controller that possesses the information:

1. Takes reasonable measures to ensure that the information cannot be associated with a specific consumer;

2. Publicly commits to maintain and use the information in deidentified form and not to attempt to reidentify the information, except that the business may attempt to reidentify the information solely for the purpose of determining whether its deidentification processes satisfy the requirements of this paragraph; and

3. Contractually obligates any recipients of the information to comply with all the provisions of this paragraph to avoid reidentifying such information.

4. Implements business processes to prevent inadvertent release of deidentfied information.

(g) "Department" means the Department of Legal Affairs.

(h) "Device" means a physical object associated with a consumer or household capable of directly or indirectly connecting to the Internet.

(i) "Homepage" means the introductory page of an Internet website and any Internet webpage where personal information is collected. In the case of a mobile application, the homepage is the application's platform page or download page, a link within the application, such as the "About" or "Information" application configurations, or settings page, and any other

location that allows consumers to review the notice required by subsection (7), including, but not limited to, before downloading the application.

(j) "Household" means a natural person or a group of people in this state who reside at the same address, share a common device or the same service provided by a controller, and are identified by a controller as sharing the same group account or unique identifier.

(k) "Person" means an individual, proprietorship, firm, partnership, joint venture, syndicate, business trust, company, corporation, limited liability company, association, committee, legal entity, and any other organization or group of persons acting in concert.

(l) "Personal information" means information that identifies, relates to, or describes a consumer or household, or is reasonably capable of being directly or indirectly associated or linked with, a consumer or household.

1. The term includes, but is not limited to, the following:

a. Identifiers such as a real name, alias, postal address, unique identifier, online identifier, internet protocol address, email address, account name, social security number, driver license number, passport number, or other similar identifiers.

b. Information that identifies, relates to, or describes, or could be associated with, a particular individual, including,

but not limited to, a name, signature, social security number, physical characteristics or description, address, telephone number, passport number, driver license or state identification card number, insurance policy number, education, employment, employment history, bank account number, credit card number, debit card number, or any other financial information, medical information, or health insurance information.

c. Characteristics of protected classifications under state or federal law.

d. Commercial information, including records of personal property, products or services purchased, obtained, or considered, or other purchasing or consuming histories or tendencies.

e. Biometric information.

f. Internet or other electronic network activity information, including, but not limited to, browsing history, search history, and information regarding a consumer's interaction with an Internet website, application, or advertisement.

g. Geolocation data.

h. Audio, electronic, visual, thermal, olfactory, or similar information.

i. Inferences drawn from any of the information identified in this paragraph to create a profile about a consumer reflecting the consumer's preferences, characteristics,

psychological trends, predispositions, behavior, attitudes, intelligence, abilities, and aptitudes.

2. The term does not include consumer information that is:

a. Consumer employment contact information, which includes a position name or title, employment qualifications, emergency contact information, business telephone number, business address, business electronic mail address, business facsimile number, employee benefit information, and similar information used solely in an employment context.

b. Deidentified or aggregate consumer information.

c. Publicly and lawfully available information reasonably believed to be made available to the public in a lawful manner and without legal restrictions:

(I) From federal, state, or local government records.

(II) By a widely distributed media source.

(III) By the consumer or by someone to whom the consumer disclosed the information unless the consumer has purposely and effectively restricted the information to a certain audience on a private account.

Subparagraph c. does not include biometric information collected by a controller about a consumer without the consumer's consent.

(m) "Probabilistic identifier" means the identification of a consumer or a device to a degree of certainty of more probable than not based on any categories of personal information

included in, or similar to, the categories listed under paragraph (l).

(n) "Processing" means any operation or set of operations that are performed on personal information or on sets of personal information, whether or not by automated means.

(o) "Processor" means a sole proprietorship, partnership, limited liability company, corporation, association, or other legal entity that is organized or operated for the profit or financial benefit of its shareholders or other owners, that processes information on behalf of a controller and to which the controller discloses a consumer's personal information pursuant to a written contract, provided that the contract prohibits the entity receiving the information from retaining, using, or disclosing the personal information for any purpose other than for the specific purpose of performing the services specified in the contract for the controller, or as otherwise permitted by this section.

(p) "Pseudonymize" means the processing of personal information in a manner that renders the personal information no longer attributable to a specific consumer without the use of additional information, provided that the additional information is kept separately and is subject to technical and organizational measures to ensure that the personal information is not attributed to an identified or identifiable consumer.

(q) "Research" means scientific, systematic study and observation, including, but not limited to, basic research or applied research that is in the public interest and that adheres to all other applicable ethics and privacy laws or studies conducted in the public interest in the area of public health. Research with personal information that may have been collected from a consumer in the course of the consumer's interactions with a controller's service or device for other purposes must be:

1. Subsequently pseudonymized and deidentified, or deidentified and in the aggregate, such that the information does not reasonably identify, relate to, or describe, or is not capable of being directly or indirectly associated or linked with, a particular consumer.

2. Made subject to technical safeguards that prohibit reidentification of the consumer to whom the information may pertain.

3. Subject to business processes that specifically prohibit reidentification of the information.

4. Made subject to business processes to prevent inadvertent release of deidentified information.

5. Protected from any reidentification attempts.

6. Used solely for research purposes that are compatible with the context in which the personal information was collected and not used for any commercial purpose.

7. Subjected by the controller conducting the research to additional security controls that limit access to the research data to only those individuals necessary to carry out the research purpose.

(r) "Sell" means to sell, rent, release, disclose, disseminate, make available, transfer, or otherwise communicate orally, in writing, or by electronic or other means, a consumer's personal information by a controller to another controller or a third party for monetary or other valuable consideration.

(s) "Share" means to share, rent, release, disclose, disseminate, make available, transfer, or access a consumer's personal information for advertising or marketing. The term includes:

1. Allowing a third party to use or advertise or market to a consumer based on a consumer's personal information without disclosure of the personal information to the third party.

2. Monetary transactions, nonmonetary transactions, and transactions for other valuable consideration between a controller and a third party for advertising or marketing for the benefit of a controller.

(t) "Targeted advertising" means marketing to a consumer or displaying an advertisement to a consumer when the advertisement is selected based on personal information used to predict such consumer's preferences or interests.

(u) "Third party" means a person who is not a controller or processor.

(v) "Unique identifier" means a persistent identifier that can be used to recognize a consumer, a family, or a device that is linked to a consumer or family, over time and across different services, including, but not limited to, a device identifier; an Internet Protocol address; cookies, beacons, pixel tags, mobile ad identifiers, or similar technology; customer number, unique pseudonym, or user alias; telephone numbers, or other forms of persistent or probabilistic identifiers that can be used to identify a particular consumer, family, or device that is linked to a consumer or family. As used in this paragraph, the term "family" means a custodial parent or guardian and any minor children of whom the parent or guardian has custody, or a household.

(w) "Verifiable consumer request" means a request that is made by a consumer, by a parent or guardian on behalf of a consumer that is a minor child, or by a natural person or a person authorized by the consumer to act on the consumer's behalf, that the controller can reasonably verify pursuant to rules adopted by the department to be the consumer entitled to exercise certain rights with respect to personal information collected by the controller. A controller is not obligated to provide information to the consumer if the consumer or a person authorized to act on the consumer’s behalf does not provide

verification of identity or verification of authorization to act with the permission of the consumer. A verifiable consumer request is made when requested through an established account using the controller's established security features to access the account through communication features offered to consumers.

(2) EXCEPTIONS.—

(a) This section does not restrict the ability of any controller, processor, or third party to do any of the following:

1. Collect and transmit personal information that is necessary for the sole purpose of sharing such personal information with a financial service provider to facilitate short term, transactional payment processing for the purchase of products or services.

2. Comply with federal, state, or local laws.

3. Comply with a civil, criminal, or regulatory inquiry, investigation, subpoena, or summons by federal, state, or local authorities.

4. Cooperate with law enforcement agencies concerning conduct or activity that the controller, processor, or third party reasonably and in good faith believes may violate federal, state, or local law.

5. Exercise legal rights or privileges.

6. Collect, use, retain, sell, share, or disclose deidentified personal information or aggregate consumer information.

(b) This section does not apply to:

1. Personal information used or collected by a controller or processor pursuant to a written contract between the controller and processor that complies with the requirements of this section. Such information cannot be sold, shared, or disclosed to another person unless otherwise permitted under this section.

2. Personal information used by a controller or processor to advertise or market products or services that are produced or offered directly by the controller or processor. Such information may not be sold, shared, or disclosed to another person unless otherwise permitted under this section.

3. Personal information collected by a controller of a natural person acting in the role of a job applicant, employee, owner, director, officer, contractor, volunteer, or intern of the controller, to the extent the personal information is collected and used solely within the context of the person's role or former role with the controller. For purposes of this subparagraph, personal information includes employee benefit information.

4. Protected health information for purposes of the federal Health Insurance Portability and Accountability Act of

1996 and related regulations, and patient identifying information for purposes of 42 C.F.R. Part 2, established pursuant to 42 U.S.C. s. 290dd-2.

5. A covered entity or business associate governed by the privacy, security, and breach notification rules issued by the United States Department of Health and Human Services in 45 C.F.R. parts 160 and 164, or a program or a qualified service program as defined in 42 C.F.R. part 2, to the extent the covered entity, business associate, or program maintains personal information in the same manner as medical information or protected health information as described in subparagraph 4. and as long as the covered entity, business associate, or program does not use personal information for targeted advertising in conjunction with third parties and does not sell or share personal information to a third party unless such sale or sharing is covered by an exception under this section.

6. Identifiable private information collected for purposes of research as defined in 45 C.F.R. s. 164.501 conducted in accordance with the Federal Policy for the Protection of Human Subjects for purposes of 45 C.F.R. part 46, the good clinical practice guidelines issued by the International Council for Harmonisation of Technical Requirements for Pharmaceuticals for Human Use, or the Protection for Human Subjects for purposes of 21 C.F.R. Parts 50 and 56, or personal information that is used

or shared in research conducted in accordance with one or more of these standards.

7. Information and documents created for purposes of the federal Health Care Quality Improvement Act of 1986 and related regulations, or patient safety work product for purposes of 42 C.F.R. part 3, established pursuant to 42 U.S.C. s. 299b-21 through 299b-26.

8. Information that is deidentified in accordance with 45 C.F.R. part 164 and derived from individually identifiable health information as described in the Health Insurance Portability and Accountability Act of 1996, or identifiable personal information, consistent with the Federal Policy for the Protection of Human Subjects or the human subject protection requirements of the United States Food and Drug Administration.

9. Information used only for public health activities and purposes as described in 45 C.F.R. s. 164.512.

10. Personal information collected, processed, sold, or disclosed pursuant to the federal Fair Credit Reporting Act, 15 U.S.C. s. 1681 and implementing regulations.

11. Nonpublic personal information collected, processed, sold, or disclosed pursuant to the Gramm-Leach-Bliley Act, 15 U.S.C. s. 6801 et seq. and implementing regulations.

12. A financial institution as defined in the Gramm-Leach-Bliley Act, 15 U.S.C. s. 6801 et seq. to the extent the financial institution maintains personal information in the same

manner as nonpublic personal information as described in subparagraph 11., and as long as such financial institution does not use personal information for targeted advertising in conjunction with third parties and does not sell or share personal information to a third party unless such sale or sharing is covered by an exception under this section.

13. Personal information collected, processed, sold, or disclosed pursuant to the federal Driver's Privacy Protection Act of 1994, 18 U.S.C. s. 2721 et. seq.

14. Education information covered by the Family Educational Rights and Privacy Act, 20 U.S.C. s. 1232(g) and 34 C.F.R. part 99.

15. Information collected as part of public or peer-reviewed scientific or statistical research in the public interest.

(3) PRIVACY POLICY FOR PERSONAL INFORMATION.—

(a) A controller that collects personal information about consumers shall maintain an online privacy policy, make such policy available from its homepage, and update the information at least once every 12 months unless the privacy policy has not changed and an update is not reasonably required. The online privacy policy must include the following information:

1. Any Florida-specific consumer privacy rights.

2. A list of the categories of personal information the controller collects or has collected about consumers.

3. Of the categories identified in subparagraph 2., a list that identifies which categories of personal information the controller sells or shares or has sold or shared about consumers. If the controller does not sell or share personal information, the controller shall disclose that fact.

4. The right to request deletion or correction of certain personal information.

5. The right to opt-out of the sale or sharing to third parties.

(b) A consumer has the right to request that a controller disclose to the consumer the categories of personal information the controller collects from or about consumers, and such request does not need to be a verified consumer request.

(c) A controller that collects personal information shall, at or before the point of collection, inform consumers of the categories of personal information to be collected and the purposes for which the categories of personal information will be used. A controller that does not collect personal information directly from the consumer does not need to provide a notice at collection to the consumer if it does not sell or share the consumer's personal information.

(d) A controller may not collect additional categories of personal information or use personal information collected for additional purposes without providing the consumer with notice consistent with this section.

(e) A controller that collects a consumer's personal information shall implement and maintain reasonable security procedures and practices appropriate to the nature of the personal information to protect the personal information from unauthorized or illegal access, destruction, use, modification, or disclosure. A controller must require any processors to implement and maintain the same or similar security procedures and practices for personal information.

(f) A controller shall adopt and implement a retention schedule that prohibits the use or retention of personal information by the controller or processor: after the satisfaction of the initial purpose for which such information was collected or obtained; after the expiration or termination of the contract pursuant to which the information was collected or obtained; or 2 years after the consumer's last interaction with the controller. This paragraph does not apply to personal information used or retained for the following purposes:

1. Detection of security threats or incidents; protection against malicious, deceptive, fraudulent, unauthorized, or illegal activity or access; or prosecution of those responsible for such activity or access.

2. Compliance with a legal obligation, including any federal retention laws.

3. As reasonably needed for the protection of the controller's interests related to existing disputes, legal action, or governmental investigations.

4. Assuring the physical security of persons or property.

(4) CONSUMER RIGHT TO REQUEST COPY OF PERSONAL DATA COLLECTED, SOLD, OR SHARED.—

(a) A consumer has the right to request that a controller that collects personal information about the consumer disclose the personal information that has been collected, sold, or shared by or on behalf of the controller.

(b) A consumer has the right to request that a controller that collects personal information about the consumer to disclose the following to the consumer:

1. The specific pieces of personal information that have been collected about the consumer.

2. The categories of sources from which it collected the consumer's personal information.

3. The purpose for collecting, selling, or sharing the consumer's personal information.

4. The categories of third parties which the controller shares the consumer's personal information.

(c) A controller that collects personal information about a consumer shall disclose the information specified in paragraph (b) to the consumer upon receipt of a verifiable consumer request.

(d) A consumer has the right to request that a controller that sells or shares personal information about the consumer to disclose to the consumer:

1. The categories of personal information about the consumer the controller sold or shared.

2. The categories of third parties to which the personal information about the consumer was sold or shared.

3. The categories of personal information about the consumer that the business disclosed to a processor.

(e) A controller that sells or shares personal information about consumers shall disclose the information specified in paragraph (d) to the consumer upon receipt of a verifiable consumer request.

(f) This subsection does not require a controller to do the following:

1. Retain any personal information about a consumer collected for a single one-time transaction if, in the ordinary course of business, that information about the consumer is not retained.

2. Reidentify or otherwise link any data that, in the ordinary course of business, is not maintained in a manner that would be considered personal information.

(g) To comply with this subsection, a controller shall, in a form that is reasonably accessible to consumers, make available two or more methods for submitting verifiable consumer

requests, including, but not limited to, a toll-free number and, if the controller maintains an Internet website, a link on the homepage of the website. The controller may not require the consumer to create an account with the controller in order to make a verifiable consumer request.

(h) The controller shall deliver the information required or act on the request in this subsection to a consumer free of charge within 45 days after receiving a verifiable consumer request. The response period may be extended once by 45 additional days when reasonably necessary, while taking into account the complexity of the consumer's requests, provided the controller informs the consumer of any such extension within the initial 45-day response period along with the reason for the extension. The information must be delivered in a readily usable format that allows the consumer to transmit the information from one person to another person without hindrance.

(i) A controller may provide personal information to a consumer at any time, but may not be required to provide personal information to a consumer more than twice in a 12-month period.

(j) This subsection does not apply to personal information relating solely to households.

(5) RIGHT TO HAVE PERSONAL INFORMATION DELETED OR CORRECTED.—

(a) A consumer has the right to request that a controller delete any personal information about the consumer which the controller has collected from the consumer.

(b) A controller that receives a verifiable consumer request to delete the consumer's personal information shall delete the consumer's personal information from its records and direct any processors to delete such information.

(c) A controller, or a processor acting pursuant to its contract with the controller, may not be required to comply with a consumer's request to delete the consumer's personal information if it is reasonably necessary for the controller or processor to maintain the consumer's personal information to do any of the following:

1. Complete the transaction for which the personal information was collected.

2. Fulfill the terms of a written warranty or product recall conducted in accordance with federal law.

3. Provide a good or service requested by the consumer, or reasonably anticipated to be requested within the context of a controller's ongoing business relationship with the consumer, or otherwise perform a contract between the controller and the consumer.

4. Detect security incidents, protect against malicious, deceptive, fraudulent, or illegal activity; or prosecute those responsible for that activity.

5. Debug to identify and repair errors that impair existing intended functionality.

6. Engage in public or peer-reviewed scientific, historical, or statistical research in the public interest that adheres to all other applicable ethics and privacy laws when the controller's deletion of the information is likely to render impossible or seriously impair the achievement of such research, if the consumer has provided informed consent.

7. Enable solely internal uses that are reasonably aligned with the expectations of the consumer based on the consumer's relationship with the controller.

8. Comply with a legal obligation.

9. As reasonably needed to protect the controller's interests against existing disputes, legal action, or governmental investigations.

10. Otherwise internally use the consumer's personal information in a lawful manner that is compatible with the context in which the consumer provided the information.

(d) A consumer has the right to make a request to correct inaccurate personal information to a controller that maintains inaccurate personal information about the consumer, while taking into account the nature of the personal information and the purposes of the processing of the personal information. A controller that receives a verifiable consumer request to correct inaccurate personal information shall use commercially

reasonable efforts to correct the inaccurate personal information as directed by the consumer and direct any processors to correct such information. If a controller maintains a self-service mechanism to allow a consumer to correct certain personal information, the controller may require the consumer to correct their own personal information through such mechanism.

(6) RIGHT TO OPT-OUT OF THE SALE OR SHARING OF PERSONAL INFORMATION.—

(a) A consumer has the right at any time to direct a controller not to sell or share the consumer's personal information to a third party. This right may be referred to as the right to opt-out.

(b) A controller that sells or shares personal information to third parties shall provide notice to consumers that this information may be sold and shared and that consumers have the right to opt-out of the sale or sharing of their personal information.

(c) Notwithstanding paragraph (a), a controller may not sell or share the personal information of a minor consumer if the controller has actual knowledge that the consumer is not 16 years of age or older. However, if the consumer who is between 13 and 16 years of age, or if the parent or guardian of a consumer who is 12 years of age or younger, has affirmatively authorized the sale or sharing of such consumer's personal

information, then a controller may sell or share such information in accordance with this section. A controller that willfully disregards the consumer's age is deemed to have actual knowledge of the consumer's age. This right may be referred to as the right to opt-in. A controller that complies with the verifiable parental consent requirements of the Children's Online Privacy Protection Act, 15 U.S.C. s. 6501 et seq., shall be deemed compliant with any obligation to obtain parental consent.

(d) A controller that has received direction prohibiting the sale or sharing of the consumer's personal information or that has not received consent to sell or share a minor consumer's personal information is prohibited from selling or sharing the consumer's personal information immediately after its receipt of such direction, unless the consumer subsequently provides express authorization for the sale or sharing of the consumer's personal information.

(e) A controller does not sell or share personal information when:

1. The business discloses personal information to another controller, a processor, or a government entity for the purpose of responding to an alert of a present risk of harm to a person or property, detecting security incidents, proecting against malicious, deceptive, fraudulent, or illegal activity, or prosecuting those responsible for that activity.

2. A consumer uses or directs the controller to intentionally disclose personal information or uses the controller to intentionally interact with a third party. An intentional interaction occurs when the consumer intends to interact with the third party, via one or more deliberate interactions. Hovering over, muting, pausing, or closing a given piece of content does not constitute a consumer's intent to interact with a third party.

3. The controller uses or shares an identifier for a consumer who has opted out of the sale or sharing of the consumer's personal information for the purposes of alerting third parties that the consumer has opted out of the sale or sharing of the consumer's personal information.

4. The controller uses or shares with a processor personal information of a consumer that is necessary to perform a contracted purpose if both of the following conditions are met:

a. The controller has provided notice that the personal information of the consumer is being used or shared in its privacy policy.

b. The processor does not further collect, sell, share, or use the personal information of the consumer except as necessary to perform the contracted purpose.

5. The controller transfers to a third party the personal information of a consumer as an asset that is part of a merger, acquisition, bankruptcy, or other transaction in which the third

party assumes control of all or part of the controller, provided that information is used or shared consistently with this section. If a third party materially alters how it uses or shares the personal information of a consumer in a manner that is materially inconsistent with the promises made at the time of collection, it shall provide prior notice of the new or changed practice to the consumer. The notice must be sufficiently prominent and robust to ensure that consumers can easily exercise choices consistent with this section.

(7) FORM TO OPT-OUT OF SALE OR SHARING OF PERSONAL INFORMATION.—

(a) A controller shall:

1. In a form that is reasonably accessible to consumers, provide a clear and conspicuous link on the controller's Internet homepage, entitled "Do Not Sell or Share My Personal Information," to an Internet webpage that enables a consumer, or a person authorized by the consumer, to opt-out of the sale or sharing of the consumer's personal information. A controller may not require a consumer to create an account in order to direct the controller not to sell the consumer's personal information.

2. In a form that is reasonably accessible to consumers, include a description of a consumer's rights along with a separate link to the "Do Not Sell or Share My Personal Information" Internet webpage in:

a. Its online privacy policy or policies.

b. Any Florida-specific consumer privacy rights.

3. Ensure that all individuals responsible for handling consumer inquiries about the controller's privacy practices or the controller's compliance with this section are informed of all requirements in subsection (3) and this subsection and how to direct consumers to exercise such rights.

4. For consumers who opt-out of the sale or sharing of their personal information, refrain from selling or sharing personal information collected by the controller about the consumer.

5. For consumers who opted-out of the sale or sharing of their personal information, respect the consumer's decision to opt-out for at least 12 months before requesting that the consumer authorize the sale of the consumer's personal information.

6. Use any personal information collected from the consumer in connection with the submission of the consumer's opt-out request solely for the purposes of complying with the opt-out request.

(b) This subsection does not require a controller to include the required links and text on the homepage that the controller makes available to the public generally, if the controller maintains a separate and additional homepage that is dedicated to Florida consumers and that includes the required

links and text, and the controller takes reasonable steps to ensure that Florida consumers are directed to such homepage.

(c) A consumer may authorize another person to opt-out of the sale or sharing of the consumer's personal information on the consumer's behalf, and a controller shall comply with an opt-out request received from a person authorized by the consumer to act on the consumer's behalf, pursuant to rules adopted by the department.

(8) DISCRIMINATION AGAINST CONSUMERS WHO EXERCISE PRIVACY RIGHTS.—

(a)1. A controller may not discriminate against a consumer who exercised any of the consumer's rights under this section. Discrimination under this subparagraph includes, but is not limited to:

a. Denying goods or services to the consumer.

b. Charging different prices or rates for goods or services, including through the use of discounts or other benefits or imposing penalties.

c. Providing a different level or quality of goods or services to the consumer.

d. Suggesting that the consumer will receive a different price or rate for goods or services or a different level or quality of goods or services.

2. This paragraph does not prohibit a controller from charging a consumer a different price or rate, or from providing

a different level or quality of goods or services to the consumer, if that difference is reasonably related to the value provided to the controller by the consumer's data or is related to a consumer’s voluntary participation in a bona fide loyalty, rewards, premium features, discounts, or club card program.

(b)1. A controller may offer financial incentives, including payments to consumers as compensation, for the collection, sale, share, or deletion of personal information.

2. A controller may offer a different price, rate, level, or quality of goods or services to the consumer if the price or difference is directly related to the value provided to the controller by the consumer's personal information or is related to a consumer’s voluntary participation in a bona fide loyalty, rewards, premium features, discounts, or club card program.

3. A controller that offers any financial incentives shall notify consumers of the financial incentives.

4. A controller may enter a consumer into a financial incentive program only if the consumer gives the controller prior consent that clearly describes the material terms of the financial incentive program. The consent may be revoked by the consumer at any time.

5. A controller may not use financial incentive practices that are unjust, unreasonable, coercive, or usurious in nature.

(c) A controller may offer, and a consumer may voluntarily participate in, a bona fide loyalty, rewards, premium features, discounts, or club card program.

(9) CONTRACTS AND ROLES.—

(a) Any contract between a controller and a processor must:

1. Prohibit the processor from selling or sharing the personal information;

2. Prohibit the processor from retaining, using, or disclosing the personal information other than for the purposes specified in the contract with the controller;

3. Prohibit the processor from combining the personal information that the processor receives from or on behalf of the controller with personal information that it receives from or on behalf of another person or that the processor collects from its own interaction with the consumer, provided that the processor may combine personal information to perform any purpose specified in the contract and such combination is reported to the controller;

4. Govern the processor's personal information processing procedures with respect to processing performed on behalf of the controller, including processing instructions, the nature and purpose of processing, the type of information subject to processing, the duration of processing, and the rights and obligations of both the controller and processor;

5. Require the processor to return or delete all personal information under the contract to the controller as requested by the controller at the end of the provision of services, unless retention of the information is required by law; and

6. Upon request of the controller, require the processor to make available to the controller all information in its possession under the contract to demonstrate compliance with this section.

(b) Determining whether a person is acting as a controller or processor with respect to a specific processing of data is a fact-based determination that depends upon the context in which personal information is to be processed. The contract between a controller and processor must reflect their respective roles and relationships related to handling personal information. Irrespective of the terms of the arrangement or contract, the consumer may exercise his or her rights against a controller or a processor that does not act in accordance with the terms of the contract with the controller. A processor that continues to adhere to a controller's instructions with respect to a specific processing of personal information remains a processor.

(c) A third party may not sell or share personal information about a consumer that has been sold or shared to the third party by a controller unless the consumer has received explicit notice from the third party and is provided an opportunity to opt-out by the third party.

(d) A third party or a processor must require any subcontractor to meet the same obligations of such third party or processor with respect to personal information.

(e) A third party or processor or any subcontractor thereof who violates any of the restrictions imposed upon it under this section is liable or responsible for any failure to comply with this section. A controller that discloses personal information to a third party or processor in compliance with this section is not liable or responsible if the person receiving the personal information uses it without complying with the restrictions under this section, provided that at the time of disclosing the personal information, the controller does not have actual knowledge or reason to believe that the person intends to not comply with this section.

(f) Any provision of a contract or agreement of any kind that waives or limits in any way a consumer's rights under this section, including, but not limited to, any right to a remedy or means of enforcement, is deemed contrary to public policy and is void and unenforceable. This section does not prevent a consumer from declining to request information from a controller, declining to opt-out of a controller's sale or sharing of the consumer's personal information, or authorizing a controller to sell or share the consumer's personal information after previously opting out.

(10) CIVIL ACTIONS; PRIVATE RIGHT OF ACTION.—

(a) A Florida consumer may bring a civil action against a controller, processor or person pursuant to this section only for the following:

1. Failure to protect a consumer's nonencrypted and nonredacted personal information or e-mail address, in combination with a password or security question and answer that would allow access to the consumer’s account, and is subject to an unauthorized access and exfiltration, theft, or disclosure as a result of a violation of the duty to implement and maintain reasonable security procedures and practices.

2. Failure to delete or correct a consumer's personal information pursuant to this section after receiving a verifiable consumer request or directions to delete or correct from a controller unless the controller, processor or person qualifies for an exception to the requirements to delete or correct under this section.

3. Continuing to sell or share a consumer's personal information after the consumer chooses to opt-out pursuant to this section, or selling or sharing the personal information of a consumer age 16 or younger without obtaining consent as required by this section.

(b) A court may grant the following relief to a consumer:

1. Damages in an amount not less than $100 and not greater than $750 per consumer per incident or actual damages, whichever is greater.

2. Injunctive or declaratory relief.

(c) Upon prevailing, the consumer shall recover reasonable attorney fees and costs.

(d) Any action under this subsection may be brought only by or on behalf of a Florida consumer.

(e) Except as authorized under this subsection and subsection (13), liability for a tort, contract claim or consumer protection claim which inures to the benefit of a consumer does not arise from the failure of a controller, processor or person to comply with this section and evidence of such may only be used to prove a cause of action under this subsection or subsection (11).

(11) ENFORCEMENT AND IMPLEMENTATION.—

(a) A violation of this section is an unfair and deceptive trade practice actionable under part II of chapter 501 solely by the department. If the department has reason to believe that any controller, processor, or person is in violation of this section, the department may bring an action against such controller, processor, or person for an unfair or deceptive act or practice. For the purpose of bringing an action pursuant to this section, s. 501.211 and s. 501.212(4) do not apply. Civil penalties may be tripled if the violation involves a consumer who the controller, processor or person has actual knowledge is 16 years of age or younger.

(b) After the department has notified a controller, processor or person in writing of an alleged violation, the department may in its discretion grant a 45-day period to cure the alleged violation. The department may consider the number of violations, the substantial likelihood of injury to the public, or the safety of persons or property when determining whether to grant 45 days to cure. If the violation is cured to the satisfaction of the department and proof is provided to the department, the department may issue a letter of guidance that indicates that the controller, processor or person will not be offered a 45-day cure period for any future violations. If the controller, processor or person fails to cure the violation within 45 days, the department may bring an action against the controller, processor or person for the alleged violation.

(c) This subsection does not affect the private right of action provided in subsection (10).

(d) The department may adopt rules to implement this section.

(12) JURISDICTION.—

(1) For purposes of bringing an action in accordance with subsection (10) and (11), any person that meets the definition of controller, as defined in this section, that collects, sells, or shares the personal information of Florida consumers, is conclusively presumed to be both engaged in substantial and not isolated activities within this state and operating, conducting,

engaging in, or carrying on a business, and doing business in this state, and is therefore subject to the jurisdiction of the courts of this state.

Section 3. This act shall take effect July 1, 2022.

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

Remove everything before the enacting clause and insert: An act relating to consumer data privacy; amending s. 501.171, F.S.; revising the definition of "personal information" to include additional specified information to data breach reporting requirements; creating s. 501.173, F.S.; providing definitions; providing exceptions; requiring controllers that collect a consumer's personal data to disclose certain information regarding data collection and selling practices; to the consumer at or before the point of collection; specifying that such information may be provided through a general privacy policy or through a notice informing the consumer that additional specific information will be provided upon a certain request; prohibiting controllers from collecting additional categories of personal information or using personal information for additional purposes without notifying the consumer; requiring controllers that collect personal information to implement reasonable security procedures and practices to protect the information; authorizing consumers to request

controllers to disclose the specific personal information the controller has collected about the consumer; requiring controllers to make available two or more methods for consumers to request their personal information; requiring controllers to provide such information free of charge within a certain timeframe and in a certain format upon receiving a verifiable consumer request; specifying requirements for third parties with respect to consumer information acquired or used; providing construction; authorizing consumers to request controllers to delete or correct personal information the controller has collected about the consumers; providing exceptions; specifying requirements for controllers to comply with deletion or correction requests; authorizing consumers to opt out of third-party disclosure of personal information collected by a controller; prohibiting controllers from selling or disclosing the personal information of consumers younger than a certain age, except under certain circumstances; prohibiting controllers from selling or sharing a consumer's information if the consumer has opted out of such disclosure; prohibiting controllers from taking certain actions to retaliate against consumers who exercise certain rights; providing applicability; providing that a contract or agreement that waives or limits certain consumer rights is void and unenforceable; providing for civil actions and a private right of action for consumers under certain circumstances; providing civil remedies; authorizing the

Department of Legal Affairs to bring an action under the Florida Unfair or Deceptive Trade Practices Act and to adopt rules; providing that controllers must have a specified timeframe to cure any violations; providing an effective date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 971 Pub. Rec./Consumer Data Privacy
SPONSOR(S): Government Operations Subcommittee, McFarland
TIED BILLS: CS/CS/HB 969 **IDEN./SIM. BILLS:** SB 7064

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Regulatory Reform Subcommittee	16 Y, 0 N	Wright	Anstead
2) Government Operations Subcommittee	17 Y, 0 N, As CS	Villa	Smith
3) Commerce Committee		Wright	Hamon

SUMMARY ANALYSIS

As technologies that capture and analyze data proliferate, so, too, do businesses' abilities to contextualize consumer data. Businesses use it for a range of purposes. The European Union, California, and a few other states have enacted data privacy regulations to protect such data and give consumers more control over how their information is used.

HB 969, to which this bill is linked, gives certain consumer rights related to personal information, including:

- The right to access personal information collected on them by a business,
- The right to delete or correct their personal information, and
- The right to opt-out of the sale or sharing of their personal information to third parties.

The Department of Legal Affairs (DLA), upon belief that any business, service provider, or other person or entity is in violation of the consumer data requirement provisions, and that proceedings would be in the public interest, may bring an action against a business, service provider, or other person or entity. DLA may seek a civil penalty of not more than $2,500 for each unintentional violation or $7,500 for each intentional violation, and triple the amount if the violation involves a consumer who is 16 years of age or younger.

This bill, which is linked to the passage of HB 969, provides that all information received by DLA pursuant to a notification or investigation by DLA or a law enforcement agency of a violation of certain statutory requirements is confidential and exempt from public record requirements. The bill provides that the information may be released during an active investigation:

- In the furtherance of official duties and responsibilities;
- For print, publication, or broadcast to notify the public of a data breach; or
- To another governmental entity in the furtherance of its official duties and responsibilities.

Once an investigation is completed, the following information will remain confidential and exempt:

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

The bill provides that the public record exemption is subject to the Open Government Sunset Review Act and will repeal on October 2, 2027, unless the Legislature reviews and reenacts the exemption by that date.

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:

Public Records

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

Public policy regarding access to government records is addressed further in the Florida Statutes. Section 119.07(1), F.S., 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 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]

Consumer Data Privacy

As technologies that capture and analyze data proliferate, so, too, do businesses' abilities to contextualize consumer data. Businesses use it for a range of purposes, including better understanding day-to-day operations, making more informed business decisions and learning about their customers.[7]

The European Union, several other countries, California, and a few other states have enacted data privacy regulations to protect such data and give consumers more control over how their information is used. Florida does not have a broad data privacy law, but there is a law which governs what actions must be taken by certain government and business entities in the event of a data breach of personal information.[8]

Department of Legal Affairs

The Office of the Attorney General, also known as the Department of Legal Affairs (DLA), provides a wide variety of legal services, including defending the state in civil litigation cases, representing the

[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] Max Freedman, How Businesses Are Collecting Data (And What They're Doing With It), Business News Daily (Jun. 17, 2020) https://www.businessnewsdaily.com/10625-businesses-collecting-data.html.
[8] S. 501.171, F.S.

people of Florida in criminal appeals in state and federal courts, protecting rights of children, consumers, and victims through its various protection programs, and investigating and litigating against businesses that seek to limit competition and defraud taxpayers.[9]

HB 969

HB 969, to which this bill is linked, gives certain consumer rights related to personal information, including:

- The right to access personal information collected on them by a business,
- The right to delete or correct their personal information, and
- The right to opt-out of the sale or sharing of their personal information to third parties.

A "business" is a for profit entity that does business in Florida, collects and controls personal information, and satisfies one or more of the following thresholds:

- Has global annual gross revenues in excess of $25 million, as adjusted in January of every odd-numbered year to reflect any increase in the Consumer Price Index.
- Annually buys, receives for the business's commercial purposes, sells, or shares for commercial purposes, the personal information of 50,000 or more consumers, households, or devices.
- Derives 50 percent or more of its global annual revenues from selling or sharing personal information about consumers.

Under the bill, personal information is information that identifies, relates to, or describes a particular consumer or household, or is reasonably capable of being directly or indirectly associated or linked with, a particular consumer or household. The term does not include public information from government records; or deidentified or aggregate consumer information.

The bill proscribes certain operational requirements on businesses with respect to collecting, selling, or sharing personal information with service providers or third parties.

DLA, upon belief that any business, service provider, or other person or entity is in violation and that proceedings would be in the public interest, may bring an action against a business, service provider, or other person or entity. DLA may seek a civil penalty of not more than $2,500 for each unintentional violation or $7,500 for each intentional violation, and triple the amount if the violation involves a consumer who is 16 years of age or younger.

Effect of the Bill

The bill creates a public record exemption for all information received by DLA pursuant to a notification or investigation by DLA or a law enforcement agency of a violation of certain statutory requirements. Such information is made confidential and exempt[10] from public record requirements.

During an active investigation, information made confidential and exempt may be disclosed by DLA:

- In the furtherance of its official duties and responsibilities;
- For print, publication, or broadcast if DLA determines that such release would assist in notifying the public or locating or identifying a person that DLA believes to be a victim of a data breach or improper use or disposal of customer records, except that information made confidential and exempt after an investigation may not be released in this manner; or
- To another governmental entity in the furtherance of its official duties and responsibilities.

[9] OPPAGA, Office of the Attorney General (Department of Legal Affairs), https://oppaga.fl.gov/ProgramSummary/ProgramDetail?programNumber=1026 (last visited Mar. 7, 2021).

[10] 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. (1985).

Once an investigation is completed or once an investigation ceases to be active, the following information received by DLA will remain confidential and exempt:

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

The term "proprietary information" means information that:

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

The bill provides a public necessity statement as required by article I, section 24(c) of the Florida Constitution. The public necessity statement provides that, if released, information received by DLA pursuant to an investigation by DLA or a law enforcement agency could:

- Frustrate or thwart the investigation and impair the ability of DLA to perform assigned functions,
- Undo a specific statutory exemption protecting the information,
- Be used for the purpose of identity theft,
- Result in the identification of vulnerabilities, and
- Result in economic harm.

The bill provides that the public record exemption is subject to the Open Government Sunset Review Act and will repeal on October 2, 2027, unless the Legislature reviews and reenacts the exemption by that date.

The bill will become effective on the same date that HB 969 or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes a law.

B. SECTION DIRECTORY:

Section 1: Creates a public records exemption for investigations related to s. 501.173, F.S.
Section 2: Provides a public necessity statement as required by the Florida Constitution.
Section 3: Provides an effective date of the same date that HB 969 or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The bill may have a minimal fiscal impact on DLA because agency staff responsible for complying with public records requests may require training related to the creation of the public records exemption. DLA 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, 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 a public record exemption; thus, it requires a two-thirds vote for final passage.

Public Necessity Statement

Article I, section 24(c) of the Florida Constitution requires a public necessity statement for a newly created or expanded public record or public meeting exemption. The bill creates a public record exemption; thus, it includes a public necessity statement.

Breadth of Exemption

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

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 30, 2021, the Government Operations Subcommittee adopted a strike-all amendment and reported the bill favorably as a committee substitute. The strike-all amendment removed a security breach notification from the public record exemption created by the bill, and revised the public necessity statement to align with the information exempted by the bill.

This analysis is drafted to the committee substitute as adopted by the Government Operations Subcommittee.

A bill to be entitled

An act relating to public records; amending s. 501.173, F.S.; providing an exemption from public records requirements for information relating to investigations by the Department of Legal Affairs and law enforcement agencies of certain data privacy violations; 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 (14) is added to section 501.173, Florida Statutes, as created by HB 969, 2021 Regular Session, to read:

501.173 Consumer data privacy.—

(14) PUBLIC RECORDS EXEMPTION.—

(a) All information received by the department pursuant to a notification of a violation under this section, or received by the department pursuant to an investigation by the department or a law enforcement agency of a violation of this section, is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution, until such time as the investigation

is completed or ceases to be active. This exemption shall be construed in conformity with s. 119.071(2)(c).

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

1. In the furtherance of its official duties and responsibilities;

2. For print, publication, or broadcast if the department determines that such release would assist in notifying the public or locating or identifying a person that the department believes to be a victim of a data breach or improper use or disposal of customer records, except that information made confidential and exempt by paragraph (c) may not be released pursuant to this subparagraph; or

3. To another governmental entity in the furtherance of its official duties and responsibilities.

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

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

2. Personal information.

3. A computer forensic report.

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

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

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

1. Is owned or controlled by the business.

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

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

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

5. Includes:

a. Trade secrets as defined in s. 688.002.

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

(e) This subsection is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2027, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2. The Legislature finds that it is a public necessity that all information received by the Department of Legal Affairs pursuant to a notification of a violation of s. 501.173, Florida Statutes, or received by the department pursuant to an investigation by the department or a law enforcement agency of a violation of s. 501.173, Florida Statutes, be made confidential and exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution for the following reasons:

(1) A notification of a violation of s. 501.173, Florida Statutes, may result in an investigation of such violation. The premature release of such information could frustrate or thwart the investigation and impair the ability of the department to effectively and efficiently administer s. 501.173, Florida Statutes. In addition, release of such information before completion of an active investigation could jeopardize the ongoing investigation.

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

(3) An investigation of a violation of s. 501.173, Florida Statutes, is likely to result in the gathering of sensitive

personal information, including identification numbers, unique identifiers, professional or employment-related information, and personal financial information. Such information could be used for the purpose of identity theft. The release of such information could subject possible victims of data privacy violations to further harm.

(4) Notices received by the department and information received during an investigation of a violation of s. 501.173, Florida Statutes, are likely to contain proprietary information. Such information, including trade secrets, derives independent, economic value, actual, or potential, from being generally unknown to, and not readily ascertainable by, other persons who might obtain economic value from its disclosure or use. Allowing public access to proprietary information, including a trade secret, through a public records request could destroy the value of the proprietary information and cause a financial loss to the business submitting the information. Release of such information could give business competitors an unfair advantage and weaken the position of the entity supplying the proprietary information in the marketplace.

(5) Information received by the department may contain a computer forensic report or information that could reveal weaknesses in a business's data security. The release of this information could result in the identification of

vulnerabilities in the business's cybersecurity system and be used to harm the business and the business's clients.

(6) The Legislature finds that the harm that may result from the release of information received by the department pursuant to a notification or investigation by the department or a law enforcement agency of a violation of s. 501.173, Florida Statutes, could impair the effective and efficient administration of the investigation and thus, outweighs the public benefit that may be derived from the disclosure of the information.

Section 3. This act shall take effect on the same date that HB 969 or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes a law.

COMMERCE COMMITTEE

HB 971 by Rep. McFarland
Public Records/Consumer Data Privacy

AMENDMENT SUMMARY
April 14, 2021

Amendment 1 by Rep. McFarland (strike):

The amendment makes technical changes to conform with the linked bill, HB 969.

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 McFarland offered the following:

Amendment

Remove everything after the enacting clause and insert:

Section 1. Subsection (13) is added to section 501.173, Florida Statutes, as created by HB 969, 2021 Regular Session, to read:

501.173 Consumer data privacy.—

(13) PUBLIC RECORDS EXEMPTION.—

(a) All information received by the department pursuant to a notification of a violation under this section, or received by the department pursuant to an investigation by the department or a law enforcement agency of a violation of this section, is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution, until such time as the investigation

is completed or ceases to be active. This exemption shall be construed in conformity with s. 119.071(2)(c).

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

1. In the furtherance of its official duties and responsibilities;

2. For print, publication, or broadcast if the department determines that such release would assist in notifying the public or locating or identifying a person that the department believes to be a victim of a data breach or improper use or disposal of customer records, except that information made confidential and exempt by paragraph (c) may not be released pursuant to this subparagraph; or

3. To another governmental entity in the furtherance of its official duties and responsibilities.

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

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

2. Personal information.

3. A computer forensic report.

4. Information that would otherwise reveal weaknesses in a controller's, processor's, or person's data security.

5. Information that would disclose a controller's, processor's, or person's proprietary information.

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

1. Is owned or controlled by the controller, processor, or person.

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

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

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

5. Includes:

a. Trade secrets as defined in s. 688.002.

b. Competitive interests, the disclosure of which would impair the competitive advantage of the controller, processor, or person who is the subject of the information.

(e) This subsection is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand

repealed on October 2, 2027, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2. The Legislature finds that it is a public necessity that all information received by the Department of Legal Affairs pursuant to a notification of a violation of s. 501.173, Florida Statutes, or received by the department pursuant to an investigation by the department or a law enforcement agency of a violation of s. 501.173, Florida Statutes, be made confidential and exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution for the following reasons:

(1) A notification of a violation of s. 501.173, Florida Statutes, may result in an investigation of such violation. The premature release of such information could frustrate or thwart the investigation and impair the ability of the department to effectively and efficiently administer s. 501.173, Florida Statutes. In addition, release of such information before completion of an active investigation could jeopardize the ongoing investigation.

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

(3) An investigation of a violation of s. 501.173, Florida Statutes, is likely to result in the gathering of sensitive personal information, including identification numbers, unique identifiers, professional or employment-related information, and personal financial information. Such information could be used for the purpose of identity theft. The release of such information could subject possible victims of data privacy violations to further harm.

(4) Notices received by the department and information received during an investigation of a violation of s. 501.173, Florida Statutes, are likely to contain proprietary information. Such information, including trade secrets, derives independent, economic value, actual, or potential, from being generally unknown to, and not readily ascertainable by, other persons who might obtain economic value from its disclosure or use. Allowing public access to proprietary information, including a trade secret, through a public records request could destroy the value of the proprietary information and cause a financial loss to the controller, processor, or person submitting the information. Release of such information could give business competitors an unfair advantage and weaken the position of the entity supplying the proprietary information in the marketplace.

(5) Information received by the department may contain a computer forensic report or information that could reveal weaknesses in a controller's, processor’s, or person’s data

security. The release of this information could result in the identification of vulnerabilities in the controller's, processor's, or person's cybersecurity system and be used to harm the controller, processor, or person and clients.

(6) The Legislature finds that the harm that may result from the release of information received by the department pursuant to a notification or investigation by the department or a law enforcement agency of a violation of s. 501.173, Florida Statutes, could impair the effective and efficient administration of the investigation and thus, outweighs the public benefit that may be derived from the disclosure of the information.

Section 3. This act shall take effect on the same date that HB 969 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 #: HB 1113 Traffic and Pedestrian Safety
SPONSOR(S): Fine
TIED BILLS: **IDEN./SIM. BILLS:** SB 1412

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Tourism, Infrastructure & Energy Subcommittee	15 Y, 2 N	Johnson	Keating
2) Infrastructure & Tourism Appropriations Subcommittee	10 Y, 1 N	Hicks	Davis
3) Commerce Committee		Johnson	Hamon

SUMMARY ANALYSIS

Florida law provides that the driver of a vehicle must stop for a pedestrian who is walking in a crosswalk in accordance with a traffic control signal or where signage indicates the driver must stop. If there are no traffic control signals or signage in place at a crosswalk, the driver of a vehicle must yield to a pedestrian who is on the half of the roadway on which the vehicle is traveling. If traffic control signals are in operation, pedestrians may not cross at any place except in a marked crosswalk. If there is no crosswalk, pedestrians crossing a roadway must yield to vehicles.

The Department of Transportation (DOT) and local governments utilize various types of equipment or signals to indicate when pedestrians may safely cross at midblock crosswalks (crosswalks that are not at an intersection). One type of signal commonly used is a rectangular rapid flash beacon (RRFB). The RRFB consists of two rapidly and alternately flashing yellow rectangular LED lights that function as a warning beacon to drivers. Pedestrians press the call button to activate the yellow flashing lights, but should wait for motorists to stop before they cross.

The bill creates the “Sophia Nelson Pedestrian Safety Act.”

The bill requires a traffic engineering study conducted by a Florida licensed professional engineer prior to installing a new mid-block crosswalk (MBC). MBCs installed on public roads must conform to certain provisions of the latest Manual on Uniform Traffic Control Devices (MUTCD) and other applicable DOT standards, manuals, and specifications, and must include a pedestrian-facing sign containing language stating duties applicable to a pedestrian.

The bill requires, by October 1, 2024, that the entity with jurisdiction over a public highway, street, or road with a MBC must ensure that such crosswalk is controlled by the required coordinated traffic control signal devices and pedestrian control signals. Alternatively, the entity may remove the crosswalk.

Additionally, by October 1, 2022, the bill requires DOT to seek approval from the federal government to allow the use of red RRFBs in place of yellow RRFBs. If approved, all entities with jurisdiction over MBCs must replace existing yellow RRFBs with red RRFBs within 12 months of federal authorization. If the request is denied, all entities with jurisdiction over MBCs must remove all yellow RRFBs or retrofit MBCs with legally acceptable equipment as required in the bill.

The bill provides legislative findings that this bill fulfills an important state interest.

The bill will likely have a significant, negative fiscal impact to state and local governments. *See* Fiscal Analysis for details.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Unless otherwise directed by a law enforcement officer, pedestrians are required to obey the instructions of official traffic control devices that are specifically applicable to pedestrians.[1] If a sidewalk is provided, and no circumstances prevent a pedestrian's use of the sidewalk, a pedestrian is prohibited from walking on a roadway that is paved for vehicular traffic.[2] If a sidewalk is not provided, a pedestrian, when practicable, must walk only on the shoulder on the left side of the roadway in relation to the pedestrian's direction of travel, facing traffic that may approach from the opposite direction.[3]

The driver of a vehicle must stop for a pedestrian who is walking in a crosswalk at in accordance with a traffic control signal or where signage indicates the driver to stop. If there are no traffic control signals or signage in place at a crosswalk, the driver of a vehicle must yield to a pedestrian who is on the half of the roadway on which the vehicle is traveling.[4] If traffic control signals are in operation, pedestrians cannot cross at any place except in a marked crosswalk.[5] If there are no crosswalks, pedestrians crossing a roadway must yield to vehicles.[6]

When pedestrian traffic control signals or signage is installed, such indicators must conform to the requirements of the most recent Manual on Uniform Traffic Control Devices (MUTCD).[7] The MUTCD defines the standards used by road managers nationwide to install and maintain traffic control devices on all public streets, highways, bikeways, and private roads open to public travel. The Federal Highway Administration (FHWA) maintains the MUTCD.[8]

The Department of Transportation (DOT) and local governments utilize various types of MUTCD approved signals to indicate when pedestrians may safely cross midblock crosswalks (MBCs).[9] Two types of signals commonly used by DOT and local governments are a rectangular rapid flash beacon (RRFB) and a pedestrian hybrid beacon.[10] The RRFB consists of two rapidly and alternately flashing yellow rectangular LED lights that function as a warning beacon to drivers.[11] Pedestrians press the call button to activate the flashing lights, but should wait for motorists to stop before they cross.[12] The pedestrian hybrid beacon consists of three signal sections with a circular yellow signal indication centered below two horizontally aligned circular red signal indications.[13] The pedestrian hybrid beacon is not illuminated until a pedestrian activates it and triggers the warning flashing yellow lens facing the street.[14] After a set amount of time, the indication changes to a solid yellow light to inform drivers to prepare to stop.[15] The beacon then displays a dual solid red light to drivers on the street and a walking person symbol to pedestrians on the crosswalk.[16] At the conclusion of the walk phase, the beacon

[1] S. 316.130(1), F.S.
[2] S. 316.130(3), F.S.
[3] S. 316.130(4), F.S.
[4] S. 316.130(7), F.S.
[5] S. 316.130(11), F.S.
[6] S. 316.130(10), F.S.
[7] S 316.0755, F.S.
[8] U.S. Department of Transportation, *Manual on Uniform Traffic Control Devices for Streets and Highways (MUTCD)*, (updated February 2, 2021), https://mutcd.fhwa.dot.gov/ (last visited Mar. 2, 2021).
[9] DOT, *Pedestrian Facilities*, https://www.fdot.gov/roadway/bikeped/default.shtm (last visited Mar, 2, 2021). For purposes of this bill analysis, a MBC is defined as a crosswalk which is at least 100 feet from an intersection.
[10] *Id.*
[11] *Id.*
[12] *Id.*
[13] U.S. Department of Transportation, *Safety Effectiveness of the HAWK Pedestrian Crossing Treatment* (July 2010), https://www.fhwa.dot.gov/publications/research/safety/10045/index.cfm (last visited Mar. 2, 2021).
[14] *Id.*
[15] *Id.*
[16] *Id.*

displays an alternating flashing red light, and pedestrians are shown an upraised hand symbol with a countdown display informing them of the time remaining to cross the street.[17]

In July 2008, the MUTCD was updated via a memorandum[18] to provide interim approval of RRFBs for optional use in limited circumstances. The interim approval allows for the usage of RRFBs as a warning beacon to supplement standard pedestrian crossing warning signs and markings at either a pedestrian or school crossing.[19] The cost is approximately $10,000 to $15,000 for purchase and installation of two RRFB units (one on either side of a street).[20] FHWA will grant interim approval for the optional use of an RRFB as a warning beacon in addition to standard pedestrian crossing or school crossing signs at crosswalks by any jurisdiction that submits a written request to FHWA's Office of Transportation Operations.[21] A state may request interim approval for all jurisdictions in that state.[22]

MBCs on the state highway system, both controlled and uncontrolled, are typically justified and installed as a result of a traffic engineering or safety study. To meet and conform to the requirements of the MUTCD and DOT's standards, a fully signalized MBC must serve a minimum of 133 pedestrians in the peak hour.[23]

The current estimated quantity of MBCs on the state highway system include:

Controlled MBCs[24]
- Total MBCs with Traffic Signals = 7
- Total MBCs with Pedestrian Hybrid Beacon = 15

Uncontrolled MBCs[25]
- Total MBCs with warning signs and pavement markings only = 83
- Total MBCs with Yellow Circular Flashing Beacons = 5
- Total MBCs with Yellow RRFBs = 231[26]

Effect of Proposed Changes

The bill creates the "Sophia Nelson Pedestrian Safety Act."

The bill provides that before the installation of a pedestrian crosswalk after October 1, 2021, on a public highway, street, or road which is located at any point other than an intersection with another public highway, street, or road, a traffic engineering study must be conducted by a Florida licensed professional engineer which recommends installation of such crosswalk.

The bill also provides that, notwithstanding any other provision of law to the contrary:
- A pedestrian crosswalk on a public highway, street, or road that has a posted speed limit of 30 miles per hour or more, which is located at any point other than an intersection with another public highway, street, or road, must conform to the requirements of chapter 4D and 4E[27] of the most recent MUTCD and other applicable DOT standards, manuals, and specifications and

[17] *Id.*
[18] *See Memorandum of Interim Approval for Optional Use of Rectangular Rapid Flashing Beacons (IA-11)* (July 16, 2008), https://mutcd.fhwa.dot.gov/resources/interim_approval/ia11/fhwamemo.htm (last visited Mar. 2, 2021).
[19] U.S. Department of Transportation, *Rectangular Rapid Flash Beacon (RRFB)*, https://safety.fhwa.dot.gov/intersection/conventional/unsignalized/tech_sum/fhwasa09009/ (last visited Mar. 2, 2021).
[20] *Id.*
[21] *See Memorandum of Interim Approval for Optional Use of Rectangular Rapid Flashing Beacons (IA-11)* (July 16, 2008), https://mutcd.fhwa.dot.gov/resources/interim_approval/ia11/fhwamemo.htm (last visited March 2, 2021).
[22] *Id.*
[23] Department of Transportation, Agency Analysis of 2021 House Bill 1113 (Version 2), p. 6. Mar. 11, 2021.
[24] Controlled MBCs contain either a traffic signal or pedestrian hybrid beacon.
[25] Uncontrolled MBCs contain devices such as pedestrian activated flashing beacons, RRFBs, street signs and/or pavement markings only.
[26] Department of Transportation, Agency Analysis of 2021 House Bill 1113 (Version 2), pp. 4-5. Mar. 11, 2021.
[27] Chapter 4D relates to traffic control signal features including designs for certain traffic control devices. Chapter 4E relates to pedestrian control features. Chapter 4F relates to pedestrian hybrid beacons. https://mutcd.fhwa.dot.gov/pdfs/2009r1r2/part4.pdf (last visited Mar. 16, 2021).

must include a pedestrian-facing sign containing language stating duties applicable to a pedestrian.
- A pedestrian crosswalk on a public highway, street, or road that has a posted speed limit of 29 miles per hour or less which is located at any point other than an intersection with another public highway, street, or road, must include a pedestrian-facing sign containing language stating duties applicable to a pedestrian.

The bill requires traffic control signal devices and pedestrian control signals at MBCs with posted speed limits of 30 miles per hour or more to be coordinated with traffic control signal devices at intersections adjacent to the crosswalk. The traffic control signal devices at intersections adjacent to the crosswalk must be taken into consideration as provided in the most recent MUTCD and other applicable DOT specifications.

The bill requires, by October 1, 2024, that the entity with jurisdiction over a public highway, street, or road with a MBC must ensure that such crosswalk is controlled by the required coordinated traffic control signal devices and pedestrian control signals. Alternatively, the entity may remove the crosswalk.

The bill requires DOT, by October 1, 2022, to submit to the federal government a request for authorization to allow existing yellow RRFB traffic control devices to be replaced by red RRFB traffic control devices. If the federal government grants the request, the entity with jurisdiction over the MBC must replace all yellow RRFBs with red RRFBs within 12 months after the date of federal authorization.

If the federal government denies the request, the applicable entity must remove all yellow RRFBs at MBC by October 1, 2025. The entity with jurisdiction over the crosswalk may retrofit the crosswalk with legally acceptable equipment.

The bill provides that the Legislature finds and declares that this act fulfills an important state interest.

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

B. SECTION DIRECTORY:

Section 1: Provides a short title.

Section 2: Creates s. 316.0756, F.S., relating to traffic control devices at crosswalks.

Section 3: Provides a declaration of important state interest.

Section 4: 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:

   DOT has identified 319 uncontrolled and 22 controlled MBCs located on the state highway system that would be impacted by the provisions of this bill. DOT derived its total estimated cost of $14.9 million in capital costs and $159,000 in recurring annual maintenance for additional traffic signals by using the following per location costs:

   - Replacing/retrofitting an uncontrolled MBC with a coordinated traffic signal - $300,000
   - Retrofit pedestrian hybrid beacons to a full coordinated traffic signal - $18,000

- Retiming an uncoordinated MBC traffic signal to coordinate with adjacent traffic signals - $5,525
- Removal of an uncontrolled MBC - $7,000
- Maintaining a traffic signal - $5,139
- Signal warrant/traffic engineering study - $10,000

The costs to install pedestrian-facing signs containing language stating duties applicable to a pedestrian is negligible ($130 per install). DOT estimates that the total retiming cost associated with coordinating traffic control signal devices and pedestrian control signals at MBCs with posted speed limits of 30 miles per hour or more with traffic control signal devices at intersections adjacent to the crosswalk would be $38,675. If it was determined, based upon the most recent MUTCD and other applicable DOT standards, manuals, and specifications, that a MBC could not be retrofitted to be controlled by coordinated traffic control signal devices and pedestrian control signals, the crosswalk must be removed. The cost to remove unwarranted MBC's is estimated to be $1,974,000.

Should the federal government grant the state's request to allow yellow RRFB traffic control devices to be replaced by red RRFB traffic control devices, the fiscal impact is indeterminate. Because red RRFB traffic control devices do not currently exist, certain required design and operational elements are not developed at this time. [28] If the federal government does not grant the request, the department assumes 10 percent of the uncontrolled MBCs would meet the requirements for the installation of a traffic signal resulting in an upgrade of 31 crosswalks. The remaining 90 percent (282 MBCs) would not meet the requirements, and therefore, would be removed altogether. The construction costs associated with retrofitting MBCs to coordinated traffic signals or removing the crosswalk altogether are estimated to be $9,300,000 and $1,974,000, respectively. DOT also assumes that all 15 of the MBCs controlled by a Pedestrian Hybrid Beacon would meet the requirements for the installation of pedestrian traffic signals and the cost to retrofit these locations would be $270,000.

The costs associated with performance of a traffic engineering study by a Florida licensed professional engineer can be absorbed within existing resources as this is already a part of DOT's process. The cost for a Florida licensed professional engineer to conduct the traffic engineering study is $10,000 per location.

The total fiscal impact of the bill is contained within the confines of DOT's Work Program. Due to the fluid and dynamic nature of the Work Program, the fiscal impact may be partially mitigated by normal changes which may occur with projects throughout the year. The bill specifies a full implementation date of October 1, 2024, for the installation of pedestrian-facing signs and coordinated traffic control signal devices and pedestrian control signals. This would effectively spread the fiscal impact over three years before required compliance. However, if the federal government does not approve DOT's request to allow yellow RRFB traffic control devices to be replaced by red RRFBs traffic control devices, all yellow RRFB traffic control devices must be removed by October 1, 2025.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   The bill appears to have an indeterminate, but likely significant, negative fiscal impact on counties and municipalities associated with studying and retrofitting or removing MBCs.[29]

[28] Email from John Kotyk, Deputy Legislative Affairs Director, Florida Department of Transportation, RE: Analysis Language, (Mar. 23, 2021).
[29] Department of Transportation, Agency Analysis of 2021 House Bill 1113, p. 7. Mar. 9, 2021

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

DOT's efforts would be limited to MBCs on the state highway system. Its 5-year work program is built and its transportation funding sources have been planned for use. Moving DOT's resources to comply with the bill may result in DOT deferring or deleting other priority projects.[30]

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The county/municipality mandates provision of Art. VII, s. 18 of the Florida Constitution may apply because this bill requires counties and municipalities to spend funds relating to specified traffic and pedestrian signals; however, an exception may apply because similarly situated persons are all required to comply; and the bill includes a legislative determination that it fulfills an important state interest.

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:

According to DOT, with the removal of MBCs, there would be significantly fewer locations for pedestrians to cross state roads, since they would only be able to legally cross at intersections. There may also be pedestrian delay associated with the required coordination with traffic signals. Additionally, removing MBCs may increase traffic crashes involving pedestrians in those areas, but these crashes may decrease in places where uncontrolled MBCs are replaced with a traffic signal.[31]

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

[30] *Id.*

[31] Department of Transportation, Agency Analysis of 2021 House Bill 1113 (Version 2), p. 6. Mar, 11, 2021.

A bill to be entitled

An act relating to traffic and pedestrian safety; providing a short title; creating s. 316.0756, F.S.; requiring a traffic engineering study to be conducted which recommends installation of a specified pedestrian crosswalk before such installation occurs; requiring a pedestrian crosswalk on a public highway, street, or road which is located at any point other than at an intersection with another public highway, street, or road to conform to specified requirements; providing coordination requirements for certain devices and signals; requiring that traffic control signal devices at adjacent intersections be taken into consideration; requiring, by a specified date, the entity with jurisdiction over a public highway, street, or road with a certain pedestrian crosswalk to ensure that the crosswalk conforms to specified requirements; authorizing such entity, alternatively, to remove any such crosswalk; requiring, by a specified date, the Department of Transportation to submit a certain request for authorization to the Federal Government; requiring applicable entities to replace or remove specified traffic control devices within a specified timeframe after the date of federal authorization or denial, as applicable; authorizing

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

retrofitting of crosswalks with legally acceptable equipment; providing a declaration of important state interest; providing an effective date.

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

Section 1. This act may be cited as the "Sophia Nelson Pedestrian Safety Act."

Section 2. Section 316.0756, Florida Statutes, is created to read:

316.0756 Traffic control signal devices and pedestrian control signals at crosswalks other than at intersections.—

(1)(a) Before the installation of a pedestrian crosswalk after October 1, 2021, on a public highway, street, or road which is located at any point other than at an intersection with another public highway, street, or road, a traffic engineering study must be conducted by a Florida licensed professional engineer which recommends the installation of such crosswalk.

(b) Notwithstanding any law to the contrary:

1. A pedestrian crosswalk on a public highway, street, or road that has a posted speed limit of 30 miles per hour or more which is located at any point other than at an intersection with another public highway, street, or road must conform to the requirements of chapters 4D and 4E of the most recent Manual on Uniform Traffic Control Devices and other applicable Department

of Transportation standards, manuals, and specifications and must include a pedestrian-facing sign containing language stating duties applicable to a pedestrian, as provided in this chapter.

2. A pedestrian crosswalk on a public highway, street, or road that has a posted speed limit of 29 miles per hour or less which is located at any point other than at an intersection with another public highway, street, or road must include a pedestrian-facing sign containing language stating duties applicable to a pedestrian, as provided in this chapter.

(c) Traffic control signal devices and pedestrian control signals at crosswalk locations described in subparagraph (b)1. must be coordinated with traffic control signal devices at intersections adjacent to the crosswalk, and such traffic control signal devices at intersections adjacent to the crosswalk must be taken into consideration as provided in the most recent Manual on Uniform Traffic Control Devices and other applicable Department of Transportation specifications.

(2) By October 1, 2024, the entity with jurisdiction over a public highway, street, or road with a crosswalk described in subsection (1) which is in existence on October 1, 2021, shall ensure that such crosswalk is controlled by coordinated traffic control signal devices and pedestrian control signals as required under subsection (1). Alternatively, the entity with jurisdiction may remove any such existing crosswalk.

(3) By October 1, 2022, the Department of Transportation shall submit to the Federal Government a request for authorization to allow yellow rectangular rapid flashing beacon traffic control devices to be replaced by red rectangular rapid flashing beacon traffic control devices. If the Federal Government grants the request, the applicable entity must replace all yellow rectangular rapid flashing beacon traffic control devices at each crosswalk described in subsection (1) or subsection (2) with red rectangular rapid flashing beacon traffic control devices within 12 months after the date of federal authorization. If the Federal Government denies the request, the applicable entity must remove all yellow rectangular rapid flashing beacon traffic control devices from each crosswalk described in subsection (1) or subsection (2) by October 1, 2025. The entity with jurisdiction over such crosswalk may retrofit the crosswalk with legally acceptable equipment.

Section 3. The Legislature finds and declares that this act fulfills an important state interest.

Section 4. This act shall take effect October 1, 2021.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 1209 Department of Financial Services
SPONSOR(S): State Administration & Technology Appropriations Subcommittee, Insurance & Banking Subcommittee, Fetterhoff
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee	17 Y, 0 N, As CS	Haas	Luczynski
2) State Administration & Technology Appropriations Subcommittee	14 Y, 0 N, As CS	Lee	Topp
3) Commerce Committee		Hinshelwood	Hamon

SUMMARY ANALYSIS

The bill modifies several areas regulated by the Department of Financial Services (DFS), including:

- **Division of Public Assistance Fraud (DPAF)**: Establishes DPAF as a criminal justice agency.
- **Firefighter Cancer Benefits under State Risk Management Trust Fund (SRMTF)**: Benefits payable for a state firefighter's cancer diagnosis will be paid from the SRMTF rather than the employing state agency.
- **Sexual Harassment Victims under State Risk Management**: Prohibits employees covered by the SRMTF from engaging in retaliatory conduct against a sexual harassment victim. Criminalizes knowingly disseminating personal identifying information of a sexual harassment victim.
- **Funeral, Cemetery, and Consumer Services (FCCS)**: Modifies composition of and procedures for filling Board vacancies. Allows virtual meetings. Increases the criminal penalty for unlicensed funeral activity. Allows funeral director interns and combination funeral director and embalmer interns who meet specified requirements to continue acting as such while an application for full licensure is pending. Clarifies that if a preneed contract has been fulfilled, then certain deposit requirements related the proceeds received on contracts do not apply.
- **Explosives**: Changes the definition of a two-component explosive.
- **Fire Alarm Permit:** Allows a contractor to begin work repairing existing fire alarm systems before approval but after filing of a Uniform Fire Alarm Permit Application.
- **Insurance Field Representatives and Operations:** Modifies the continuing education requirements of insurance licensees except title insurance agents. Modifies requirements related to renewal appointments. Adds a designation that will qualify a person for licensure as an insurance agent's customer representative. Increases the maximum length of suspension of title insurance agents from 1 year to 2 years.
- **Protecting Proprietary Business Information:** Prohibits a person from requiring an insurance agent or agency to provide the replacement cost estimator or other proprietary underwriting information as a condition to extending credit secured by real property, nor may an insurance agent or agency provide this information.
- **Surplus Lines:** Removes a notice requirement before exporting policies. Allows an agent to export a flood insurance policy to an eligible surplus insurer without seeking coverage from 3 or more authorized insurers.
- **Fire Prevention and Control:** Modifies requirements for design and alteration of fire sprinkler systems. Replaces "protection agencies" with "service providers". Aligns membership of two fire related councils. Extends deadlines to comply with minimum radio strength for fire department communications and requires radio strength assessments for high-rise buildings. Prohibits anyone from influencing a firesafety inspector. Prohibits firesafety inspectors from accepting compensation to induce a violation of the Florida Fire Prevention Code. Modifies a qualification for a license or permit to install and maintain fire suppression equipment. Allows a volunteer firefighter to function in the same capacity while transitioning to a career firefighter.
- **Bail Bond Agents:** Criminalizes an agent's aiding or abetting of unlicensed activity.
- **False Personation**: Criminalizes false personation of Division of Investigative and Forensic Services personnel.

The fiscal impact of the bill is indeterminate; however, the cost can likely be absorbed within existing resources. The Criminal Justice Impact Conference determined the bill has a positive insignificant impact on the prison population.

Except as otherwise expressly provided, the bill has an effective date of July 1, 2021.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Department of Financial Services Organization

The Chief Financial Officer (CFO) is an elected member of the Cabinet, serves as the state's chief fiscal officer,[1] and is designated as the State Fire Marshal. The CFO is the head of the Department of Financial Services (DFS). Effective January 2003, the Department of Insurance, Treasury, State Fire Marshal, and the Department of Banking and Finance merged into DFS. DFS consists of 13 divisions and several specialized offices.[2] DFS is composed of the following divisions and independent office:

- Accounting and Auditing;
- Consumer Services;
- Funeral, Cemetery, and Consumer Services;
- Insurance Agent and Agency Services;
- Investigative and Forensic Services;[3]
- Public Assistance Fraud;
- Rehabilitation and Liquidation;
- Risk Management;
- State Fire Marshal;
- Treasury;
- Unclaimed Property;
- Workers' Compensation;
- Administration; and the
- Office of Insurance Consumer Advocate.

Division of Public Assistance Fraud

The Division of Public Assistance Fraud (DPAF) was not established as a criminal justice agency when it was transferred from the Florida Department of Law Enforcement (FDLE) to DFS effective January 2011.[4] A "criminal justice agency" is defined as: a court[5], FDLE[6], the Department of Juvenile Justice[7], the protective investigations component of the Department of Children and Families, which investigates the crimes of abuse and neglect[8], and any other governmental agency or subunit thereof that performs the administration of criminal justice pursuant to a statute or rule of court and that allocates a substantial part of its annual budget to the administration of criminal justice.[9] DPAF currently operates by protecting Florida taxpayers from public assistance fraud and the impact of those crimes by enforcing state laws regarding program eligibility and proper use of public assistance benefits.[10]

Effect of the Bill

The bill establishes DPAF as a criminal justice agency. The designation allows DPAF to access criminal justice information contained in Florida Crime Information Center and National Crime

[1] Art. IV, s. 4, Fla. Const.
[2] S. 20.121, F.S.
[3] This division includes the Bureau of Forensic Services; Bureau of Fire, Arson, and Explosives Investigations; Office of Fiscal Integrity; Bureau of Insurance Fraud; and Bureau of Workers' Compensation Fraud.
[4] Ch. 2010-144, Laws of Fla.
[5] S. 943.045 (11)(a), F.S.
[6] S. 943.045 (11)(b), F.S.
[7] S. 943.045 (11)(c), F.S.
[8] S. 943.045 (11)(d), F.S.
[9] S. 943.045 (11)(e), F.S.
[10] Public Assistance Fraud, https://www.myfloridacfo.com/division/paf/ (last visited Mar. 10, 2021).

Information Center and additional information that will improve the division's criminal investigation and law enforcement capabilities.[11] The bill includes DPAF in the definition of "criminal justice agency".

Firefighter Cancer Benefits Under the State Risk Management Trust Fund

The State Risk Management Trust Fund (SRMTF) is a self-insurance fund, created and administered by DFS.[12] The SRMTF covers, unless specifically excluded, all departments of the State of Florida and its employees, agents, and volunteers.[13] The SRMTF provides insurance for workers' compensation, general liability, fleet automotive liability, federal civil rights actions under 42 U.S.C. s. 1983 or similar federal statutes, and court-awarded attorney's fees in other proceedings against the state except for such awards in eminent domain or for inverse condemnation or for awards by the Public Employees Relations Commission.[14]

DFS must keep separate accounts within the SRMTF for workers' compensation, general liability, fleet automotive liability, federal civil rights actions under 42 U.S.C. s. 1983 or similar federal statutes, and court-awarded attorney's fees in other proceedings against the state except for such awards in eminent domain or for inverse condemnation or for awards by the Public Employees Relations Commission.[15]

Effective July 1, 2019,[16] a firefighter who has been diagnosed with certain types of cancer and have been employed by his or her employer for at least 5 continuous years, has not used tobacco products for at least the preceding 5 years, and has not been employed in any other position in the preceding 5 years which is proven to create a higher risk for any cancer is entitled to the following benefits in lieu of pursuing workers' compensation benefits under ch. 440, F.S.:

- Cancer treatment covered within an employer-sponsored health plan or through a group health insurance trust fund. The employer must timely reimburse for any out-of-pocket deductible, copayment, or coinsurance costs incurred due to the treatment of cancer.[17]
- A one-time cash payout of $25,000, upon the firefighter's initial diagnosis of cancer.[18]

The benefits remain available to the firefighter for 10 years following the date on which the firefighter terminates employment if the firefighter elects to continue coverage in the employer-sponsored health plan or group health insurance trust fund.[19] Currently, the employing agency is responsible for providing these benefits.[20]

Effect of the Bill

The bill transfers the responsibility for the benefits payable under s. 112.1816(2), F.S., for a state agency firefighter's cancer diagnosis to the SRMTF. The bill also requires a separate account in the SRMTF for benefits payable to firefighters diagnosed with cancer. The bill requires the Department of Management Services (DMS) to validate and approve the eligibility of claims before benefits are paid from the fund.

The state currently has a total of 616 positions classified as firefighters that would potentially be eligible for cancer-related coverage and benefits payable from the SRMTF.[21] The Division of Risk Management estimates the total annual benefits paid from the SRMTF in the first few years will be less

[11] Department of Financial Services (DFS), Agency Analysis of CS/House Bill 1209 (Mar. 19, 2021).
[12] S. 284.30, F.S.
[13] S. 284.31, F.S.
[14] S. 284.30, F.S.
[15] S. 284.31, F.S.
[16] Ch. 2019-21, Laws of Fla.
[17] S. 112.1816(2)(a), F.S.
[18] S. 112.1816(2)(b), F.S.
[19] *Id.*
[20] S. 112.1816, F.S.
[21] The number of state firefighters is based on data obtained from the Department of Management Services from the state personnel system (People First) on March 26, 2021.

than $100,000 if the average number of claims is two per year.[22] The cost of the firefighter cancer coverage would likely be passed on to the employing state agency the following year as a part of their respective risk management premiums.

State Agency/Department	Firefighters
Agriculture and Consumer Services	525
Department of Financial Services	26
Department of Military Affairs	25
Agency for Health Care Administration	23
Department of Children and Families	16
Florida School for the Deaf & Blind	1
Total	**616**

Sexual Harassment Victims under the SRMTF

The personal identifying information of an alleged victim in an allegation of sexual harassment is confidential and exempt from the public records requirements specified in s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution.[23]

Effect of the Bill

The bill provides that any individual working for an entity covered by the SRMTF[24] may not engage in any retaliatory conduct against a sexual harassment victim. The bill defines a "sexual harassment victim" as individual employed, or being considered for employment, with an entity participating in the SRMTF who becomes a victim of workplace sexual harassment through the course of employment, or while being considered for employment, with the entity.

The bill creates a first-degree misdemeanor, punishable, as provided by s. 775.082, F.S., for willfully and knowingly disseminating personal identifying information of a sexual harassment victim to any party other than a governmental entity in furtherance of its official duties or pursuant to a court order.

Funeral, Cemetery, and Consumer Services (FCCS)

The Board of Funeral, Cemetery, and Consumer Services

Section 20.121(4), F.S., creates the Board of Funeral, Cemetery, and Consumer Services (Board) within DFS's Division of Funeral, Cemetery, and Consumer Services.

The Board currently consists of 10 members pursuant to the following structure:

- The State Health Officer or his or her designee[25]
- Two funeral directors who are:
  - Licensed under part III of ch. 497, F.S., as funeral directors, and
  - Associated with a funeral establishment[26]
- One funeral director who is:
  - Licensed under part III of ch. 497, F.S., as a funeral director
  - Associated with a funeral establishment licensed under part III of ch. 497, F.S., that has a valid preneed license issued pursuant to ch. 497, F.S., and
  - Owns or operates a cinerator facility that is approved under ch. 403, F.S., and licensed under part IV of ch. 497, F.S.[27]

[22] DFS, *supra* note 11, at 11.
[23] S. 119.071(2)(n), F.S.
[24] The SRMTF covers, unless specifically excluded, all departments of the State of Florida and their employees, agents, and volunteers. S. 284.31, F.S.
[25] S. 497.101(1), F.S.
[26] S. 497.101(2), F.S
[27] *Id.*

- Two persons whose:
  - Primary occupation is associated with a cemetery company licensed under ch. 497, F.S.[28]
- Three consumers who:
  - Are Florida residents
  - Have never been licensed as funeral directors or embalmers
  - Are not connected with a cemetery or cemetery company licensed pursuant to ch. 497, F.S.
  - Are not connected with the death care industry or the practice of embalming, funeral directing, or direct disposition
  - At least one of which is at least 60 years old
  - At least one of which is a licensed certified public accountant[29]
- One member who shall be:
  - A principal of a monument establishment licensed under ch. 497, F.S., as a monument builder.[30]

There shall not be two or more Board members who are principals or employees of the same company or partnership or group of companies or partnerships under common control.[31]

Nine of the 10 Board members, save only the State Health Officer, are appointed by the Governor from nominations made by the CFO and confirmed by the Senate.[32] Currently the CFO must nominate three persons for each vacancy.[33] If the Governor objects to each of the three nominations for a vacancy, the CFO must submit an additional three nominations until the vacancy is filled.[34] DFS reports that they often to not receive three or more applications for qualified applicants to the Board.[35] In fact, DFS reports that the CPA position has remained vacant since September 2017 for this reason.[36]

Board members, other than the State Health Officer,[37] are appointed for 4 year terms.[38] The CFO was directed to stagger the terms of members after the terms of the initial members expired[39] and this has already occurred at the initiation of the Board.[40]

The Board acts as the licensing and rulemaking authority under ch. 497, F.S., for a vast array of matters within the death care industry.[41] A quorum is necessary to conduct the business of the Board.[42] A quorum consists of six members of the Board.[43] DFS indicates that it can be difficult to obtain this number due to Board vacancies, absenteeism, and necessary recusal.[44]

Effect of the Bill

The bill reduces the number of nominations that the CFO must make per Board vacancy from three to one. This should alleviate some challenges DFS is facing with filling Board vacancies due to a lack of applications while still maintaining the provision that allows the Governor to reject the nomination(s).

The bill also adjusts the Board composition by:

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[28] *Id.*
[29] *Id.*
[30] *Id.*
[31] *Id.*
[32] S. 497.101(1), F.S.
[33] *Id.*
[34] *Id.*
[35] DFS, Agency Analysis of 2021 House Bill 1209 (Mar. 9, 2021).
[36] *Id.*
[37] The State Health Officer serves as long as he or she holds that office. S. 497.101(3), F.S.
[38] S. 497.101(3), F.S.
[39] *Id.*
[40] DFS, *supra* note 35.
[41] S. 497.103(1)(a)-(cc), F.S.
[42] S. 497.101(6), F.S.
[43] *Id.*
[44] DFS, *supra* note 35.

- Reducing from three to two the number of positions on the Board that must be held by consumers who are Florida residents, have never been licensed funeral directors or embalmers, are not connected with a cemetery or licensed cemetery company, and are not connected to the death care industry or the practice of embalming, funeral directing, or direct disposition; and
- Clarifying the requirement of the CPA consumer member by stating that he or she must: be a Florida resident, be licensed as a certified public accountant under ch. 473, F.S., have never been licensed as a funeral director or an embalmer, and must not be a principal or an employee of any licensee licensed under this chapter; and must not otherwise have control, as defined in s. 497.005, F.S., over any licensee licensed under this chapter.

The bill removes the outdated provision involving the staggering of the Board from its initial Board members. Because the Board has been in place since 2003, provisions dealing with its initial Board members are irrelevant.

The bill changes the quorum requirements of the Board by allowing participation in meetings through communications media technology. The bill defines "communications media technology" as the electronic transmission of printed matter, audio, full-motion video, freeze-frame video, compressed video, and digital video by any method available.

Violations by Unlicensed Persons

Chapter 497, F.S., requires a license for specific death care industry practices and provides a penalty of a second-degree misdemeanor for individuals who engage in activity requiring licensure without possessing a license,[45] though it does not include specific examples of what is considered unlicensed practice.

Effect of the Bill

The bill specifies that a person may not be, act as, or advertise himself or herself to be a funeral director, embalmer, or direct disposer unless he or she is licensed by DFS. The bill also specifies that a person may not be, act as, or advertise himself or herself as a preneed sales agent[46] unless currently licensed by DFS and is appointed by a preneed main licensee, for whom they are executing preneed contracts.

The bill increases the penalty for unlicensed activity from a second-degree misdemeanor to a third-degree felony, punishable as provided in ss. 775.082, 775.083, or 775.084, F.S.

Funeral Director Interns

Funeral director intern licenses expire after 1 year.[47] Currently, these licenses may not be renewed except:[48]

- For an additional 1-year period if the funeral director in charge of the funeral director intern training agency certifies to the licensing authority that the intern has completed at least one-half of the course of study in mortuary science or funeral service arts; or
- By the licensing authority which may adopt rules that allow a funeral director intern to renew her or his funeral director intern license for an additional 1-year period if the funeral director intern demonstrates her or his failure to complete the internship before expiration of the license due to illness, personal injury, or other substantial hardship beyond her or his reasonable control or demonstrates that she or he has completed the requirements for licensure as a funeral director but is awaiting the results of a licensure examination.

[45] S. 497.159(6), F.S.
[46] Preneed contract means "any arrangement or method, of which the provider of funeral merchandise or services has actual knowledge, whereby any person agrees to furnish funeral merchandise or service in the future." S. 497.005 (61), F.S.
[47] S. 497.375(4)(a), F.S.
[48] S. 497.375(4)(b) and (c), F.S.

Combination funeral director and embalmer intern licenses expire after 1 year.[49] Currently, these licenses may not be renewed except by the licensing authority which may adopt rules that allow a combination funeral director and embalmer intern to renew her or his combination funeral director and embalmer intern license for an additional 1 year if the combination funeral director and embalmer intern demonstrates her or his failure to complete the internship before expiration of the license due to illness, personal injury, or other substantial hardship beyond her or his reasonable control or demonstrates that she or he has completed the requirements for licensure as a combination funeral director and embalmer but is awaiting the results of a licensure examination.[50]

Effect of the Bill

The bill allows for a funeral director intern to continue to perform the tasks, functions, and duties related to funeral directing after the expiration of his or her intern license and until a funeral director license is issued or denied, or for a period of 90 days, whichever occurs sooner, if he or she has completed the educational credentials required for a license as a funeral director and has applied for licensure.

The bill also allows for a combination funeral director and embalmer intern to continue to perform the tasks, functions, and duties related to funeral directing and embalming after the expiration of his or her intern license and until a combination funeral director and embalmer license is issued or denied, or for a period of 90 days, whichever occurs sooner, if he or she has completed the educational credentials required for a combination license as both a funeral director and embalmer and has applied for licensure.

Preneed Contracts

A "preneed contract" is any arrangement or method, of which the provider of funeral merchandise or service has actual knowledge, whereby any person agrees to sell funeral merchandise or service in advance.[51] Examples of burial or funeral merchandise are caskets, outer burial containers, urns, monuments, floral arrangements, and register books, and "burial service" includes any service offered or provided in connection with the final disposition, memorialization, interment, entombment, inurnment, or other disposition of human remains or cremated remains.[52]

Any person who is paid, collects, or receives funds under a preneed contract for funeral services or merchandise or burial services or merchandise shall deposit an amount at least equal to the sum of 70 percent of the purchase price collected for all services sold and facilities rented; 100 percent of the purchase price collected for all cash advance items sold; and 30 percent of the purchase price collected or 110 percent of the wholesale cost, whichever is greater, for each item of merchandise sold.[53]

Currently, such deposits must be made within 30 days after the end of the calendar month in which payment is received, under the terms of a revocable trust instrument entered into with a trust company, with a national or state bank holding trust powers, or with a federal or state savings and loan association holding trust powers.[54]

Effect of the Bill

The bill adds language to clarify that if a preneed contract has been fulfilled, the provision requiring deposits to be made within 30 days after the end of the calendar month in which payment is received, under the terms of a revocable trust instrument entered into with a trust company, with a national or state bank holding trust powers, or with a federal or state savings and loan association holding trust powers does not apply.

[49] S. 497.377(2)(d)(1), F.S.
[50] S. 497.377(2)(d)(2), F.S.
[51] S. 497.005(61), F.S.
[52] S. 497.005(7) and (9), F.S.
[53] S. 497.458(1)(a), F.S.
[54] S. 497.458(1)(c), F.S.

Explosives

Chapter 552, F.S., addresses the manufacture, distribution, and use of explosives, which are regulated by the State Fire Marshal. The current definition of a two-component explosive requires detonation to be triggered by a No. 6 blasting cap.[55] DFS asserts that No. 6 blasting caps went out of production several years ago, and current blasting caps no longer use the same rating system.[56]

Effect of the Bill

The bill removes the No. 6 blasting cap specification and broadens the application to encompass any detonator. The amendment to this subsection brings the language in line with current practices.

Fire Alarm Permit

All fire alarm system equipment in Florida is installed in accordance with the applicable standards of the National Fire Protection Association and procedures approved by a nationally recognized testing laboratory.[57] All fire alarm systems required by the State Fire Marshal's rules shall be installed, serviced, tested, repaired, inspected, and improved in compliance with the provisions of the applicable standards of the National Fire Protection Association.[58]

Currently, contractors can only repair a fire alarm system that was previously permitted by the local enforcement agency after filing a Uniform Fire Alarm Permit application and receiving the permit.[59]

Effect of the Bill

The bill allows for contractors to begin repairing fire alarm systems that were previously permitted by the local enforcement agency after filing a Uniform Fire Alarm Permit application but *before* receiving the permit. The bill provides that a fire alarm repaired under this new subsection will not be considered compliant until the permit is issued and the local enforcement agency approves the repair.

Insurance Field Representatives and Operations

Continuing Education Requirements

Individuals licensed to engage in the sale of insurance or adjustment of insurance claims in this state are required to fulfill continuing education requirements, pursuant to s. 626.2815, F.S. Some of the current continuing education requirements are as follows:

- Licensees, except title insurance agents, are required to complete a 5-hour update course every 2 years which is specific to the license held by the licensee;[60]
- All licensees must also complete 19 hours of elective continuing education every 2 years;[61]
- If a licensee has been licensed for 6 years or more, the above elective continuing education drops to 15 hours every 2 years;[62]
- A licensee who has been licensed for 25 years or more and is a CLU or a CPCU or has a Bachelor of Science degree in risk management or insurance with evidence of 18 or more semester hours in insurance-related courses must also complete a minimum of 5 hours of elective continuing education courses every 2 years;[63]

[55] S. 552.081(13), F.S.
[56] DFS, *supra* note 35.
[57] S. 633.348(1)-(2), F.S.
[58] S. 633.348(5), F.S.
[59] S. 553.7921(1)(b), F.S.
[60] S. 626.2815(3), F.S.
[61] S. 626.2815(3)(a), F.S.
[62] S. 626.2815(3)(b), F.S.
[63] S. 626.2815(3)(c), F.S.

- An individual who holds a license as a customer representative and who is not a licensed life or health agent must also complete a minimum of 5 hours of continuing education courses every 2 years;[64]
- An individual subject to ch. 648, F.S., relating to bail bond agents, is required to complete a 5-hour update course and a minimum of 9 hours of elective continuing education courses every 2 years.[65]

If an individual fails to certify their continuing education requirements, DFS may immediately terminate or refuse to renew the appointment of an agent or adjuster after notice.[66]

Effect of the Bill

The bill adjusts the continuing education requirements to state the following:

- Licensees, except title insurance agents, are required to complete a 4-hour update course every 2 years which is specific to the license held by the licensee;
- All licensees must also complete 20 hours of elective continuing education every 2 years
- If a licensee has been licensed for 6 years or more, the above elective continuing education drops to 16 hours every two years;
- A licensee who has been licensed for 25 years or more and is a CLU or a CPCU or has a Bachelor of Science degree in risk management or insurance with evidence of 18 or more semester hours in insurance-related courses must also complete a minimum of 6 hours of elective continuing education courses every 2 years;
- An individual who holds a license as a customer representative and who is not a licensed life or health agent must also complete a minimum of 6 hours of continuing education courses every 2 years;
- An individual subject to ch. 648, F.S., relating to bail bond agents, is required to complete a 4-hour update course and a minimum of 10 hours of elective continuing education courses every 2 years.

Therefore, the bill lowers the requirement for update courses by 1 hour and increases the requirement for elective continuing education by 1 hour. The total continuing education hourly requirement remains the same.

Payment of Fees

No person may be, act as, or advertise or hold himself or herself out to be an insurance agent, insurance adjuster, or customer representative unless he or she is currently licensed by the department and appointed by an appropriate appointing entity or person.[67]

Currently, all initial appointments shall be submitted to DFS on a monthly basis no later than 45 days after the date of appointment and become effective on the date requested on the appointment form.[68] If a DFS investigation into the application and qualification for an initial or renewal appointment of an individual uncovers that the individual is improperly appointed to represent an insurer or employer due to an inadvertent error by the insurer or employer represented, DFS may still issue the appointment subject to a condition that all fees and taxes pursuant to ch. 624.501, F.S.,[69] have been paid.[70]

Effect of the Bill

[64] S. 626.2815(3)(d), F.S.
[65] S. 626.2815(3)(e), F.S.
[66] S. 626.2815(9), F.S.
[67] S. 626.112(1)(a), F.S.
[68] S. 626.371(1), F.S.
[69] Appointment and renewal fees and taxes range from $60 for most agents to $150 for surplus lines agents.
[70] S. 626.371(2), F.S.

The bill adds that all appointments, including renewal appointments, shall be submitted to DFS on a monthly basis no later than 45 days after the date of appointment. The bill specifies that if DFS determines that an individual was improperly appointed due to an inadvertent error, DFS will notify the insurer or employer of its finding and obligation to pay all fees and taxes within 21 days. If the insurer or employer does not pay the fees and taxes within 21 days after notice, DFS shall suspend the insurer's or employer's authority to appoint licensees until the fees have been paid.

After the individual is properly appointed and has paid all fees and taxes, DFS may no longer consider the inadvertent failure to appoint to be a violation of the Florida Insurance Code. The bill clarifies other language in this subsection.

Qualifications for Customer Representative's License

DFS shall not grant or issue a license as customer representative to any individual found by it to be untrustworthy or incompetent, or who does not meet each of a list of qualifications.[71]

One of the qualifications provides that within 4 years preceding the date that the application for license was filed with the department, the applicant must earn one of the following designations:[72]

- Accredited Advisor in Insurance (AAI), Associate in General Insurance (AINS), or Accredited Customer Service Representative (ACSR) from the Insurance Institute of America;
- Certified Insurance Counselor (CIC) from the Society of Certified Insurance Service Counselors;
- Certified Professional Service Representative (CPSR) from the National Foundation for CPSR;
- Certified Insurance Service Representative (CISR) from the Society of Certified Insurance Service Representatives;
- Certified Insurance Representative (CIR) from All-Lines Training;
- Professional Customer Service Representative (PCSR) from the Professional Career Institute;
- Registered Customer Service Representative (RCSR) from a regionally accredited postsecondary institution in the state whose curriculum is approved by DFS and includes comprehensive analysis of basic property and casualty lines of insurance and testing which demonstrates mastery of the subject; or a degree from an accredited institution of higher learning approved by DFS when the degree includes a minimum of 9 credit hours of insurance instruction, including specific instruction in the areas of property, casualty, and inland marine insurance.

Effect of the Bill

The bill adds the designation of "Insurance Customer Service Representative (ICSR) from Statewide Insurance Associates LLC" to the list of designations that will qualify a person for licensure as an insurance agent's customer representative.

Suspension of Title Insurance Agents

DFS may currently suspend a title insurance agent's or agency's license or appointment for a period not to exceed 1 year.[73] Under Florida's Insurance Code, DFS may suspend most other insurance agent licensees for a period not to exceed 2 years.[74]

Effect of the Bill

[71] S. 626.7351, F.S.
[72] S. 626.7351(3), F.S.
[73] S. 626.8443(1), F.S.
[74] S. 626.641(1), F.S.

The bill extends the maximum length of suspension for title insurance agents to 2 years. This change matches the treatment of other insurance agents under Florida's Insurance Code. DFS asserts that the longer suspension period is important to protect consumers from bad actors.[75]

Surplus Lines

Eligibility for Export to Surplus Lines Insurance

Surplus lines insurance is an alternative type of insurance coverage for consumers who cannot get coverage in the standard/admitted market due to unusual or high risks.[76] Exporting an insurance policy means to place a policy with a surplus lines insurer who is not part of the standard/admitted insurance market.[77]

Currently, for personal residential property risks to be exported to the surplus lines marketplace, the retail or producing agent must advise the insured by notice in writing that they may obtain less expensive coverage from Citizens Property Insurance Corporation (Citizens).[78] The notice must include other information that states that assessments by Citizens are higher and the coverage provided by Citizens may be less than the property's existing coverage.[79] If the notice is signed by the insured, it is presumed that the insured has been informed and knows that policies from Citizens may be less expensive, may provide less coverage, and will be accompanied by higher assessments.[80]

Effect of the Bill

The bill removes the provision requiring retail or producing agents to advise insureds by notice that they may obtain less expensive coverage from Citizens prior to exporting coverage to the surplus lines market. The bill also removes the notice requirements and the insured's informed presumption.

Exporting Flood Insurance Coverage

As a condition for exporting insurance coverage to the surplus lines marketplace, the full amount of insurance required must not be procurable, after a diligent effort has been made by the producing agent to do so, from among the insurers authorized to transact and actually writing that kind and class of insurance in this state, and the amount of insurance exported shall be only the excess over the amount so procurable from authorized insurers.[81]

In 2014, the Legislature created s. 627.715, F.S., which provided a regulatory framework for admitted insurers to write personal lines residential flood coverage. The bill also allowed a surplus lines agent to export a contract or endorsement providing flood coverage to an eligible surplus lines insurer without making a diligent effort to seek coverage from three or more authorized insurers.[82] The bill provided that the exemption to the diligent effort requirement expired on July 1, 2017. In 2017, the Legislature extended the exemption until July 1, 2019, or earlier if the Office of Insurance Regulation determined there was an adequate flood insurance market among admitted insurers.[83] The exemption expired on July 1, 2019.

Effect of the Bill

[75] DFS, *supra* note 35.
[76] Department of Financial Services, Florida Surplus Lines Office, *Understanding Florida's Excess and Surplus Market*, https://www.myfloridacfo.com/division/consumers/understandingcoverage/guides/documents/SurplusLinesConsumerBrochure.pdf (last visited Mar. 12, 2021).
[77] *Id.*; s. 626.914(3), F.S.
[78] S. 626.916(1)(e), F.S.
[79] *Id.*
[80] *Id.*
[81] S. 626.916(1)(a), F.S.
[82] Ch. 2014-80, Laws of Fla.
[83] Ch. 2017-142, Laws of Fla.

The bill reinstates the exemption to provide that a surplus lines agent is able to export a contract or an endorsement providing flood coverage to an eligible surplus lines insurer without making a diligent effort to seek coverage from three or more authorized insurers. The bill does not include an expiration date for the exemption.

Protecting Proprietary Business Information

The replacement cost value for a home is the cost to rebuild the home or repair damages using materials of a like kind and quality; it is different from the home's market value, which includes the price of land and depends on the real estate market.[84] In order to calculate the replacement cost value of a home, insurers use a replacement cost estimator. Such estimators range in sophistication from considering only a few questions about the home and then providing a bare-bones estimate to a more in-depth approach that considers various components the way a contractor builds a home, from the ground up, taking into account all the individual characteristics of each unique home.[85]

DFS asserts that many lenders require the replacement cost estimator or other proprietary business information belonging to the insurer underwriting the insurance policy as a condition precedent or condition subsequent to the lending of money or extension of credit to be secured by the real property.[86] DFS also asserts that this has caused issues between the insurance, lending, and real estate industries where the proprietary business information of the insurers is used by lenders for reasons outside the scope of the insurance policy.[87]

Effect of the Bill

The bill prohibits a person from requiring an insurance agent or agency to provide the replacement cost estimator or other proprietary underwriting information of an insurer as a condition precedent or condition subsequent to lending money or extending credit secured by real property, nor may an insurance agent or agency provide this information.

Fire Prevention and Control

The CFO is designated as the State Fire Marshal.[88] The State Fire Marshal has authority to adopt rules which must be in substantial conformity with generally accepted standards of firesafety; must take into consideration the direct supervision of children in nonresidential child care facilities; and must balance and temper the need of the State Fire Marshal to protect all Floridians from fire hazards with the social and economic inconveniences that may be caused or created by the rules.[89]

The State Fire Marshal shall enforce all laws of ch. 633, F.S. and any rules relating to:[90]

- The prevention of fire and explosion through the regulation of conditions which could cause fire or explosion, the spread of fire, and panic resulting therefrom;
- Installation and maintenance of fire alarm systems and fire protection systems, including fire suppression systems, fire-extinguishing equipment, and fire sprinkler systems;
- Servicing, repairing, recharging, testing, marking, inspecting, installing, maintaining, and tagging of fire extinguishers, preengineered systems, and individually designed fire protection systems;

[84] National Association of Insurance Coverage, *A Shopping Tool for Homeowners Insurance*, https://www.naic.org/documents/committees_c_trans_read_wg_related_shopping_tool_singles.pdf (last visited Apr. 12, 2021).
[85] International Risk Management Institute, Personal Lines Insurance Coverage Gaps: Analysis and Resolution, https://www.irmi.com/docs/default-source/authoritative-reports/insights/personal-lines-insurance-coverage-gaps.pdf?sfvrsn=10 (last visited Apr. 12, 2021).
[86] DFS, *supra* note 35.
[87] *Id.*
[88] S. 633.104(1), F.S.
[89] *Id.*
[90] S. 633.104(2), F.S.

- The training and licensing of persons engaged in the business of servicing, repairing, recharging, testing, marking, inspecting, installing, maintaining, and tagging fire extinguishers, preengineered systems, and individually designed fire protection systems;
- The maintenance of fire cause and loss records; and
- The suppression of arson and the investigation of the cause, origin, and circumstances of fire.

The Division of State Fire Marshal (Division) is comprised of the Bureau of Fire Prevention and the Bureau of Fire Standards and Training. Among other duties, the Division shall establish by rule, uniform minimum standards for the training of firefighters and volunteer firefighters.[91]

Fire Sprinkler Systems

Chapter 633, F.S., defines five different classifications of contractors for purposes of fire prevention and control:

- "Contractor I" means a contractor whose business includes the execution of contracts requiring the ability to lay out, fabricate, install, inspect, alter, repair, and service all types of fire protection systems, excluding preengineered systems.[92]
- "Contractor II" means a contractor whose business is limited to the execution of contracts requiring the ability to lay out, fabricate, install, inspect, alter, repair, and service water sprinkler systems, water spray systems, foam-water sprinkler systems, foam-water spray systems, standpipes, combination standpipes and sprinkler risers, all piping that is an integral part of the system beginning at the point of service as defined in this section, sprinkler tank heaters, air lines, thermal systems used in connection with sprinklers, and tanks and pumps connected thereto, excluding preengineered systems.[93]
- "Contractor III" means a contractor whose business is limited to the execution of contracts requiring the ability to fabricate, install, inspect, alter, repair, and service carbon dioxide systems, foam extinguishing systems, dry chemical systems, and Halon and other chemical systems, excluding preengineered systems.[94]
- "Contractor IV" means a contractor whose business is limited to the execution of contracts requiring the ability to lay out, fabricate, install, inspect, alter, repair, and service automatic fire sprinkler systems for detached one-family dwellings, detached two-family dwellings, and mobile homes, excluding preengineered systems and excluding single-family homes in cluster units, such as apartments, condominiums, and assisted living facilities or any building that is connected to other dwellings. A Contractor IV is limited to the scope of practice specified in NFPA 13D.[95]
- "Contractor V" means a contractor whose business is limited to the execution of contracts requiring the ability to fabricate, install, inspect, alter, repair, and service the underground piping for a fire protection system using water as the extinguishing agent beginning at the point of service as defined in this act and ending no more than 1 foot above the finished floor.[96]

Currently, a person certified as a Contractor I, Contractor II, or Contractor IV may design fire protection systems of 49 or fewer sprinklers and may design the alteration of an existing fire sprinkler system if the alteration consists of the relocation, addition, or deletion of not more than 49 sprinklers, notwithstanding the size of the existing fire sprinkler system.[97]

Currently, a person certified as a Contractor I, Contractor II, or Contractor IV may only design a fire protection system, the scope of which complies with NFPA 13D, "Standard for the Installation of

[91] S. 633.128(1)(a), F.S.
[92] S. 633.102(3)(a), F.S.
[93] S. 633.102(3)(b), F.S.
[94] S. 633.102(3)(c), F.S.
[95] S. 633.102(3)(d), F.S.
[96] S. 633.102(3)(e), F.S.
[97] S. 633.102, F.S.

Sprinkler Systems in One- and Two-Family Dwellings and Manufactured Homes," as adopted by the State Fire Marshal, notwithstanding the number of fire sprinklers.[98]

Effect of the Bill

The bill removes Contractor IV from being able to design fire protection systems of 49 or fewer sprinklers and from being able to design the alteration of an existing fire sprinkler system if the alteration consists of the relocation, addition, or deletion of not more than 49 sprinklers, notwithstanding the size of the existing fire sprinkler system.

The bill adds that a person certified as a Contractor I, Contractor II may also design the alteration of an existing fire sprinkler system if the alteration consists of the relocation or deletion of 249 or fewer sprinklers, notwithstanding the size of the existing fire sprinkler system, if:

- there is no change of occupancy, as defined in the Florida Building Code and the Florida Fire Prevention Code, of the affected areas,
- there is no change in the water demand as defined in NFPA 13, "Standard for the Installation of Sprinkler Systems," and
- the occupancy hazard classification as defined in NFPA 13 is reduced or remains the same as a result of the alteration.

The bill provides that any conflicts between the Florida Building Code and the Florida Fire Prevention Code shall be resolved by agreement between the Florida Building Commission and the State Fire Marshal in favor of the requirement that offers the greatest degree of lifesafety or alternatives that would provide an equivalent degree of lifesafety and an equivalent method of construction.[99] If the commission and State Fire Marshal are unable to agree on a resolution, the question shall be referred to a mediator, mutually agreeable to both parties, to resolve the conflict in favor of the provision that offers the greatest lifesafety, or alternatives that would provide an equivalent degree of lifesafety and an equivalent method of construction.[100]

The bill also adds that a person certified as a Contractor I, Contractor II, or Contractor IV may not only design but adds that they may alter a fire protection system, the scope of which complies with NFPA 13D, "Standard for the Installation of Sprinkler Systems in One- and Two-Family Dwellings and Manufactured Homes," as adopted by the State Fire Marshal, notwithstanding the number of fire sprinklers.

The Fire and Emergency Incident Information Reporting Program

In 2005, the Florida Legislature created s. 633.115, F.S.[101] to establish the Fire and Emergency Incident Information Reporting Program (FEIIRP).[102] The new statutory language also created the Fire and Emergency Incident Information Technical Advisory Panel (Panel).[103] This section also included codifying language for the Florida Fire Incident Reporting System (FFIRS) which is and has been the Florida coordinating officer for the National Fire Incident Reporting Section (NFIRS).[104] FFIRS is a means for fire departments to report and maintain computerized records of fires and other fire department incidents in a uniform manner.[105]

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[98] *Id.*
[99] S. 553.73(1)(d), F.S.
[100] *Id.*
[101] S. 633.115, F.S., was transferred and renumbered as s. 633.136, F.S., in 2013. Ch. 2013-183, Laws of Fla.
[102] Ch. 2005-117, Laws of Fla.; *see also* Department of Financial Services, Division of State Fire Marshal, Florida Fire and Incident Reporting System, https://www.myfloridacfo.com/Division/SFM/FFIRS/ (last visited Mar. 12, 2021).
[103] *Id.*; S. 633.136(2), F.S.
[104] *Id.*
[105] *Id.*

The Panel is tasked with advising, reviewing, and making recommendations to the State Fire Marshal with respect to the requirements of s. 633.136.[106] The Panel currently consists of 15 members:[107]

- The 13 members of Firefighters Employment, Standards, and Training Council (Council);
- One member from the Florida Forest Service of the Department of Agriculture and Consumer Services; and
- One member from the Department of Health, appointed by the State Surgeon General.

The Firefighters Employment, Standards, and Training Council is currently composed of the following 14 members:[108]

- Two fire chiefs appointed by the Florida Fire Chiefs Association;
- Two firefighters, who are not officers, appointed by the Florida Professional Firefighters Association;
- Two firefighter officers, who are not fire chiefs, appointed by the State Fire Marshal;
- One individual appointed by the Florida League of Cities;
- One individual appointed by the Florida Association of Counties;
- One individual appointed by the Florida Association of Special Districts;
- One individual appointed by the Florida Fire Marshals' and Inspectors' Association;
- One employee of the Florida Forest Service of the Department of Agriculture and Consumer Services appointed by the director of the Florida Forest Service;
- One individual appointed by the State Fire Marshal;
- One director or instructor of a state-certified firefighting training facility appointed by the State Fire Marshal; and
- The remaining member, who shall be appointed by the State Fire Marshal, may not be a member or representative of the firefighting profession or of any local government.

The Panel and the Council have nearly the same membership and meet at the same time and place.[109]

Effect of the Bill

The bill replaces the term “fire protection agencies” with “fire service providers” to match the definition in s. 633.102, F.S. “Fire service provider” is defined as a municipality or county, the state, the Division, or any political subdivision of the state, including authorities and special districts, that employs firefighters or uses volunteer firefighters to provide fire extinguishment or fire prevention services for the protection of life and property. The term includes any organization under contract or other agreement with such entity to provide such services.

The bill adds one member to the Council, an individual from the Department of Health, appointed by the Surgeon General. The bill also reduces the composition of the Panel from two members from the Florida Fire Service to one member, thus making the membership of the Panel and the Council identical.

The Panel references to one member from the Florida Forest Service and one member from the Department of Health are deleted, leaving the Panel membership to include only the newly revised 15 member Council.

[106] S. 633.136(2), F.S.
[107] *Id.*
[108] S. 633.402(1)(a), F.S.
[109] DFS, *supra* note 35.

Florida Fire Prevention Code

The Florida Fire Prevention Code (FFPC) is administered by the State Fire Marshal under DFS.[110] FFPC is the minimum fire prevention code deemed adopted by each municipality, county, and special district with firesafety responsibilities.[111] State law requires each municipality, county, and special district with firesafety responsibilities to adopt the FFPC.[112]

The authority having jurisdiction (local fire authorities) shall determine the minimum radio signal strength for fire department communications in all new high-rise and existing high-rise buildings.[113]

Currently, existing high-rise buildings are not required to comply with minimum radio strength for fire department communications and two-way radio system enhancement communications as required by the Florida Fire Prevention Code until January 1, 2022.[114] By December 31, 2019, an existing high-rise building that was not in compliance with the requirements for minimum radio strength for fire department communications must have applied for an appropriate permit for the required installation with the local government agency having jurisdiction and must have demonstrated that the building will have become compliant by January 1, 2022.[115] Existing apartment buildings are required to apply for the appropriate permit for the required communications installation by December 31, 2022.[116]

Effect of the Bill

The bill extends the deadline by which existing high-rise buildings are 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, 2023.

The bill also reinstates the expired provision and modifies it so that by January 1, 2022, an existing high-rise building that is not in compliance with the requirements for minimum radio strength for fire department communications must have completed a minimum radio strength assessment for the required installation with the local government agency having jurisdiction and must demonstrate that the building will become compliant by January 1, 2023.

The bill also modifies the provision for existing apartment buildings in the same way so that rather than being required to simply apply for the appropriate permit by December 31, 2022, they must have completed a minimum radio strength assessment.

Influencing a Firesafety Inspector

Each county, municipality, and special district that has firesafety enforcement responsibilities is required to employ or contract with a firesafety inspector.[117] However, the State Fire Marshal (SFM) shall assume the duties of a firesafety inspector in any county, municipality, or special district that does not employ or appoint a firesafety inspector.[118] Subject to certain exceptions, the firesafety inspector is responsible for conducting all firesafety inspections required by law.[119] Some of the responsibilities of the firesafety inspector include conducting firesafety inspections of buildings and facilities on a recurring or regular basis on behalf of the state or any county, municipality, or special district with fire safety responsibilities.[120]

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[110] R. 69A, F.A.C.
[111] R. 69A-60.002(1), F.A.C.
[112] S. 633.208, F.S.
[113] S. 633.202(18), F.S.
[114] *Id.*
[115] *Id.*
[116] *Id.*
[117] S. 633.216(1), F.S.
[118] S. 633.104(7), F.S.
[119] *Id.*
[120] S. 633.102(12), F.S.

Current law provides that a person who violates any provision of ch. 633, F.S., any order or rule of the SFM, or any order to cease and desist or to correct conditions issued under this chapter commits a misdemeanor of the second degree.[121] However, ch. 633, F.S., does not have any provision prohibiting a person from influencing a firesafety inspector to violate any provision of the Florida Fire Prevention Code nor from a firesafety inspector accepting such influence.

Effect of the Bill

The bill creates a new section of law that prohibits any person from influencing a firesafety inspector by threatening, coercing, tricking, or attempting to threaten, coerce, or trick a firesafety inspector into violating the Florida Fire Prevention Code, rules adopted by the SFM, or any provision of ch. 633, F.S. It also prohibits any person from offering compensation to a firesafety inspector related to committing such violations.

Additionally, the bill prohibits a firesafety inspector from knowingly and intentionally requesting, soliciting, accepting, or agreeing to accept compensation to induce the inspector to violate the Florida Fire Prevention Code adopted by the SFM.

A violation by a firesafety inspector of this new provision allows the SFM to deny, refuse to renew, suspend, or revoke a firesafety inspector's certificate.[122] Moreover, any person who violates the bill's new provisions commits a misdemeanor of the second degree.[123]

Fire Equipment Dealers

It is unlawful for any organization or individual to engage in the business of servicing, repairing, recharging, testing, marking, inspecting, installing, or hydrotesting any fire extinguisher or preengineered system in this state except in conformity with ch. 633, F.S.[124] Each organization or individual that engages in such activity must possess a valid and subsisting license issued by the Division.[125]

Currently, a license of any class may not be issued or renewed by the Division and a license of any class does not remain operative unless the applicant successfully completes a prescribed training course offered by the State Fire College or an equivalent course approved by the State Fire Marshal.[126]

Effect of the Bill

The bill provides that the prescribed training course must include both written and practical training approved by the State Fire Marshal. This adds specificity to the type of course that the applicant must complete. The State Fire College may offer, but is not required to offer, such training courses.

Volunteer Firefighter Service

The National Fire Prevention Association estimates that there were 1,115,000 career and volunteer firefighters in the United States in 2018.[127] Of the total number of firefighters, 370,000 (33%) were career firefighters and 745,000 (67%) were volunteer firefighters.[128]

[121] S. 633.124(1), F.S
[122] S. 633.216(6)(b), F.S.
[123] S. 633.124(1), F.S.
[124] S. 633.304(1), F.S.
[125] *Id.*
[126] S. 633.304(4)(d)(4), F.S.
[127] National Fire Prevention Association, *US Fire Department Profile 2018*, https://www.nfpa.org/-/media/Files/News-and-Research/Fire-statistics-and-reports/Emergency-responders/osfdprofile.pdf (last visited Mar. 12, 2021).
[128] *Id.*

Florida has 465 registered fire departments.[129] Approximately 46 percent of Florida firefighters are identified as volunteer or mostly volunteer, while the remainder are identified as career or mostly career.[130]

Volunteer firefighters are required to obtain a Firefighter Certificate of Completion through training.[131] With this certificate, they may enter into immediately dangerous to life and health (IDLH) environments along with career firefighters. Volunteer firefighters may become career firefighters if they complete a Certificate of Compliance.[132] Currently, if a volunteer firefighter chooses to become a career firefighter, he or she is no longer able to enter an IDLH environment while completing the Certificate of Compliance.

Effect of the Bill

The bill allows volunteer firefighters who are in transition to become career firefighters to function in the same capacity in which they acted as volunteer firefighters. The period for which they remain volunteers cannot extend beyond 1 year, collectively or consecutively.

A volunteer firefighter in transition must hold a Certificate of Completion with a fire service provider and subsequently be employed as a regular or permanent firefighter. The volunteer firefighter in transition must be under the direct supervision of an individual holding a valid firefighter Certificate of Compliance.

DFS asserts that this change would improve rural and small agency recruitment of firefighters by allowing them to focus on hiring from local candidates who are more inclined to remain in the area instead of hiring candidates from elsewhere in the state who are inclined to return to their home communities once gaining some experience.[133]

Bail Bond Agents

Currently, a person may not act as a bail bond agent or temporary bail bond agent unless qualified, licensed, and appointed.[134] A person may also not represent himself or herself to be a bail enforcement agent, bounty hunter, or other similar title, and a person, other than a certified law enforcement officer, may not apprehend, detain, or arrest a principal on a bond unless qualified, licensed, and appointed.[135]

Any person who acts as a bail bond agent or as otherwise described above, commits a felony of the third degree.[136] The law, however, does not currently provide a penalty for a licensee aiding or abetting an unlicensed person who acts as a bail bond agent or as otherwise described above.

Effect of the Bill

The bill provides that any licensee who knowingly aids or abets an unlicensed person in acting as a bail bond agent or otherwise violating s. 648.30, F.S., commits a third-degree felony.

False Personation

Section 843.08, F.S., provides that a person who falsely assumes or pretends to be any officer identified in a specific list commits a felony of the third degree. A person who falsely personates any

[129] U.S. Fire Administration, *National Fire Department Registry Quick Facts*, https://apps.usfa.fema.gov/registry/summary (last visited Mar. 12, 2021).
[130] *Id.*
[131] S. 633.408, F.S.
[132] S. 633.102(9), F.S.
[133] DFS, *supra* note 35.
[134] S. 648.30(1), F.S.
[135] S. 648.30(2) and (3), F.S.
[136] S. 648.30(4), F.S.

such officer during the course of the commission of a felony commits a felony of the second degree, and if the commission of the felony results in the death or personal injury of another human being, the person commits a felony of the first degree.[137]

Current law prohibits personation of a fire or arson investigator of DFS and any officer of DFS but does not prohibit personation of other DFS investigators or personnel.

Effect of the Bill

The bill removes the provision related to personating a DFS fire or arson investigator and makes it a felony offense for falsely assuming or pretending to be any personnel or representative of the Division of Investigative and Forensic Services.

B. SECTION DIRECTORY:

Section 1: Amends s. 20.121, F.S., relating to the Department of Financial Services.

Section 2: Amends s. 284.30, F.S., relating to State Risk Management Trust Fund; coverages to be provided.

Section 3: Amends s. 284.31, F.S., relating to scope and types of coverage; separate accounts.

Section 4: Amends s. 284.385, F.S., relating to reporting and handling of claims.

Section 5: Creates s. 284.45, F.S., relating to sexual harassment victims.

Section 6: Amends s. 497.101, F.S., relating to Board of Funeral, Cemetery, and Consumer Services; membership; appointment; terms.

Section 7: Amends s. 497.157, F.S., relating to unlicensed practice; remedies concerning violations by unlicensed persons.

Section 8: Amends s. 497.159, F.S., relating to crimes.

Section 9: Amends s. 497.375, F.S., relating to funeral directing, licensure of a funeral director intern.

Section 10: Amends s. 497.377, F.S., relating to combination funeral directors and embalmers; internships.

Section 11: Amends s. 497.458, F.S. relating to disposition of proceeds received on contracts.

Section 12: Amends s. 552.081, F.S., relating to definitions.

Section 13: Amends s. 553.7921, F.S., relating to fire alarm permit application to local enforcement agency.

Section 14: Amends s. 626.2815, F.S., relating to continuing education requirements.

Section 15: Amends s. 626.371, F.S., relating to payment of fees, taxes for appointment period without appointment.

Section 16: Amends s. 626.7351, F.S., relating to qualifications for customer representative's license.

Section 17: Amends s. 626.8443, F.S., relating to duration of suspension or revocation.

Section 18: Amends s. 626.916, F.S., relating to eligibility for export.

[137] S. 843.08, F.S.

Section 19: Amends s. 626.9551, F.S., relating to favored agent or insurer; coercion of debtors.

Section 20: Amends s. 627.715, F.S., relating to flood insurance.

Section 21: Amends s. 633.102, F.S., relating to definitions.

Section 22: Amends s. 633.136, F.S., relating to the fire and emergency incident information reporting program; duties; fire reports.

Section 23: Amends s. 633.202, F.S., relating to the Florida Fire Prevention Code.

Section 24: Creates 633.217, F.S., relating to influencing a firesafety inspector; prohibited acts.

Section 25: Amends 633.304, F.S., relating to fire suppression equipment; license to install or maintain.

Section 26: Amends s. 633.402, F.S., relating to the Firefighters Employment, Standards, and Training Council; organization; meetings; quorum; compensation; seal; special powers; firefighter training.

Section 27: Amends s. 633.416, F.S., relating to firefighter employment and volunteer firefighter service; saving clause.

Section 28: Amends s. 648.30, F.S., relating to licensure and appointment required.

Section 29: Amends s. 843.08, F.S., relating to false personation.

Section 30: Amends s. 943.045, F.S., relating to definitions, ss. 943.045-943.08, F.S.

Section 31: Provides an effective date of July 1, 2021, except as otherwise provided.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   The changes to s. 284.30, F.S., have an indeterminate fiscal impact on the SRMTF administered by DFS. Cancer-related benefits entitled to state firefighters through their employing agency under s. 112.1816(2), F.S., would be paid from the SRMTF rather than the employing state agency. The Division of Risk Management estimates the total annual cost will not exceed $100,000 if the number of claims averages two per year.[138] Although the number and cost of annual claims is unknown, any fiscal impact on the SRMTF can be absorbed within existing resources. The cost of the firefighter cancer coverage would likely be passed on to the employing state agency the following year as a part of their respective risk management premiums.

   Since the enactment of s. 112.1816, F.S., in 2019, the Department of Agriculture and Consumer Services, which houses the majority of state-employed firefighters, has received two (2) claims for these firefighter cancer benefits.[139] The long-term fiscal impact on the SRMTF is indeterminate until additional claims data is collected.

[138] DFS, *supra* note 11, at 11.
[139] DFS, *supra* note 11, at 6.

Changes in the bill would require the Division of Insurance Agent and Agency Services to make minor modifications to its systems to create a tool for enabling or disabling the ability of a party to appoint licensees. The costs of these changes can be absorbed within existing appropriations.[140]

The Criminal Justice Impact Conference considered the bill on March 24, 2021, and determined the changes related to bail bond agents in section 28 and false personation in section 29 would have a positive insignificant[141] impact on the prison population.[142] Per the Florida Department of Law Enforcement, there were no arrests for providing funeral services without a license in either fiscal year 2018-19 or 2019-20. Per the Department of Corrections, there were no new commitments to prison for unlicensed bail bond agent violations in either fiscal year 2018-19 or 2019-20. There were three new commitments in fiscal year 2018-19 and one new commitment in fiscal year 2019-20 for false personation violations under s. 843.08, F.S.[143]

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, but indeterminable, fiscal impact on the private sector.

D. FISCAL COMMENTS:

DFS indicated that establishing the Division of Public Assistance Fraud (DPAF) as a criminal justice agency has no fiscal impact. All DPAF staff are currently non-sworn positions; the criminal justice agency designation will not affect personnel or staffing.[144] Therefore, this section of the bill has no fiscal impact on DPAF.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

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[140] *Id.*

[141] Positive insignificant impact indicates a potential increase of 10 or fewer prison beds.

[142] Criminal Justice Impact Conference, *CS/HB 1209 – Department of Financial Services*, Mar. 24, 2021, http://edr.state.fl.us/Content/conferences/criminaljusticeimpact/Agenda.pdf last accessed: Apr. 1, 2021.

[143] *Id.*

[144] Email from Meredith Stanfield, Director of Legislative and Cabinet Affairs, Department of Financial Services, RE: CS/HB 1209 (Mar. 25, 2021).

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill modifies the continuing education requirements of individuals licensed to engage in the sale of insurance or adjustment of insurance claims under s. 626.2815(3), F.S., from a 5-hour update course and 19 hours of elective courses every 2 years to a 4-hour update course and 20 hours of elective courses every 2 years. The previous five-hour update course and 19 hours of elective courses requirement remains referenced in s. 626.2815(7)(i), F.S. This reference requires a modification to conform with the new statutory language in the bill.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 17, 2021, the Insurance & Banking Subcommittee considered three amendments and one amendment to an amendment, which were adopted, and reported the bill favorably as a committee substitute. The committee substitute makes the following changes to the bill:

Funeral, Cemetery, and Consumer Services (FCCS)

- Removes language decreasing the number of members required for the Board of Funeral, Cemetery, and Consumer Services (FCCS) to satisfy quorum for conducting business. Restores current law requiring six of the 10 members to satisfy quorum.
- Removes language involving permanent and temporary bars to FCCS licensure based upon an applicant's criminal history.
- Removes language expanding the criminal history disclosure requirements for an applicant for FCCS licensure.
- Allows licensed funeral director interns meeting specified requirements to continue performing as an intern pending licensure approval.
- Allows licensed combination funeral director and embalmer interns meeting specified requirements to continue performing as an intern pending licensure approval.
- Clarifies that if a preneed contract has been fulfilled, then certain deposit requirements related the proceeds received on contracts do not apply.

Insurance Field Representatives and Operations

- Makes technical changes to add the word "taxes" for consistent use in provisions related to an insurer's or employer's payment of all "fees and taxes" for insurance representative appointments.
- Adds the designation of "Insurance Customer Service Representative from Statewide Insurance Associates LLC" to the list of designations that will qualify a person for licensure as an insurance agent's customer representative.

Protecting Proprietary Business Information

- Clarifies language involving the protection of insurer proprietary business information related to the replacement cost estimator or other underwriting information of an insurer underwriting an insurance policy covering real property.

Fire Prevention and Control

- Clarifies language of a new provision prohibiting the influencing of a firesafety inspector.
- Changes a qualification for a license or permit to install and maintain fire suppression equipment by requiring applicants to complete a training course that includes written and practical training and is specifically applicable to the class of license or permit sought. Additionally, the amendment allows training courses that are approved by the State Fire Marshal, regardless of whether such training courses are offered by the State Fire College.

On April 7, 2021, the State Administration & Technology Appropriations Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment clarifies that only firefighters employed by a state agency or department may receive cancer-related benefits payable from the SRMTF.

The staff analysis is drafted to reflect the committee substitute, as adopted by the State Administration & Technology Appropriations Subcommittee.

A bill to be entitled

An act relating to the Department of Financial Services; amending s. 20.121, F.S.; specifying powers and duties of the Division of Public Assistance Fraud; amending s. 284.30, F.S.; requiring the State Risk Management Trust Fund to provide insurance for certain firefighter cancer-related benefits; making technical changes; amending s. 284.31, F.S.; requiring the Insurance Risk Management Trust Fund to provide a separate account for certain firefighter cancer-related benefits; making technical changes; amending s. 284.385, F.S.; specifying conditions that must be met before certain firefighter cancer-related benefits may be paid from the State Risk Management Trust Fund; making technical changes; creating s. 284.45, F.S.; prohibiting individuals working for entities covered by the State Risk Management Trust Fund from engaging in retaliatory conduct against sexual harassment victims; defining the term "sexual harassment victim"; specifying a criminal penalty for the willful and knowing dissemination of a sexual harassment victim's personal identifying information, except under certain circumstances; amending s. 497.101, F.S.; revising membership and terms of the Board of Funeral, Cemetery, and Consumer Services within the Department

of Financial Services; authorizing the use of communications media technology for board member participation; defining the term "communications media technology"; deleting a requirement for the department to adopt certain rules; amending s. 497.157, F.S.; prohibiting unlicensed persons from acting as or advertising themselves as funeral directors, embalmers, direct disposers, or preneed sales agents unless they are so licensed; providing penalties; amending s. 497.159, F.S.; conforming a provision to changes made by the act; amending s. 497.375, F.S.; authorizing licensed funeral director interns to continue performing certain tasks while transitioning to licensed funeral directors; amending s. 497.377, F.S.; authorizing licensed combination funeral director and embalmer interns to continue performing certain tasks while transitioning to licensed combination funeral director and embalmers; amending s. 497.458, F.S.; specifying that certain deposits under preneed contracts for funeral services or merchandise or burial services or merchandise must be made unless the preneed contracts have been fulfilled; amending s. 552.081, F.S.; revising the definition of the term "two-component explosives" for the purpose of regulation by the Division of State Fire Marshal;

amending s. 553.7921, F.S.; authorizing a contractor repairing certain existing fire alarm systems to begin work after filing an application for a required permit but before receiving the permit; providing construction; amending s. 626.2815, F.S.; revising continuing education requirements for certain persons licensed to solicit, sell, or adjust insurance; amending s. 626.371, F.S.; requiring submission of renewal appointments of certain insurance representatives within a certain timeframe; requiring the department to notify certain insurers or employers regarding inadvertent failures to appoint; requiring insurers and employers to pay certain fees and taxes within a certain timeframe; authorizing the department to issue appointments under certain circumstances; prohibiting the department from considering inadvertent failures to appoint to be violations under certain circumstances; requiring the department to suspend an insurer's or employer's authority to appoint licensees under certain circumstances; amending s. 626.7351, F.S.; revising the qualifications for customer representative licenses; amending s. 626.8443, F.S.; increasing the maximum period of suspension of a title insurance agent's or agency's license; making technical changes; amending

s. 626.916, F.S.; deleting a requirement for agents to advise insureds that certain coverage may be available for personal residential property risks to be eligible for export under the Surplus Lines Law; amending s. 626.9551, F.S.; prohibiting requirements for the provision of replacement cost estimators or certain other proprietary business information under certain circumstances; amending s. 627.715, F.S.; providing an exemption from a diligent effort requirement for surplus lines agents exporting contracts or endorsements providing flood coverage; amending s. 633.102, F.S.; revising the authority of certain fire protection system contractors to design or alter certain fire protection systems; providing for resolution of conflicts between the Florida Building Code and the Florida Fire Prevention Code; amending s. 633.136, F.S.; replacing fire protection agencies in the Fire and Emergency Incident Information Reporting Program with fire service providers; revising the composition of the Fire and Emergency Incident Information System Technical Advisory Panel; defining the term "fire service provider"; amending s. 633.202, F.S.; extending a deadline for certain buildings to comply with a minimum radio signal strength requirement under the Florida Fire Prevention Code;

requiring such buildings to meet certain conditions by a specified date; revising a condition that existing apartment buildings must meet by a specified date; making technical changes; creating s. 633.217, F.S.; prohibiting certain acts to influence a firesafety inspector to violate certain laws; prohibiting a firesafety inspector from knowingly and intentionally requesting, soliciting, accepting, or agreeing to accept compensation offered to induce a violation of certain codes, rules, or laws; amending s. 633.304, F.S.; revising the training requirements for licenses and permits to install or maintain fire suppression equipment; amending s. 633.402, F.S.; revising the composition of the Firefighters Employment, Standards, and Training Council; amending s. 633.416, F.S.; providing that certain persons serving as volunteer firefighters may serve as regular or permanent firefighters for a limited period, subject to certain restrictions; amending s. 648.30, F.S.; prohibiting the aiding or abetting of unlicensed activity of a bail bond agent or temporary bail bond agent; providing criminal penalties; amending s. 843.08, F.S.; prohibiting false personation of personnel or representatives of the Division of Investigative and Forensic Services; amending s. 943.045, F.S.; revising

the definition of the term "criminal justice agency" to include the investigations component of the department which investigates certain crimes; providing effective dates.

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

Section 1. Paragraph (f) of subsection (2) of section 20.121, Florida Statutes, is amended to read:

20.121 Department of Financial Services.—There is created a Department of Financial Services.

(2) DIVISIONS.—The Department of Financial Services shall consist of the following divisions and office:

(f) The Division of Public Assistance Fraud, which shall function as a criminal justice agency for purposes of ss. 943.045-943.08. The division shall conduct investigations pursuant to s. 414.411 within or outside of the state as it deems necessary. If, during an investigation, the division has reason to believe that any criminal law of the state has or may have been violated, it shall refer any records supporting such violation to state or federal law enforcement or prosecutorial agencies and shall provide investigative assistance to those agencies as required.

Section 2. Section 284.30, Florida Statutes, is amended to read:

284.30 State Risk Management Trust Fund; coverages to be provided.—A state self-insurance fund, designated as the "State Risk Management Trust Fund," is created to be set up by the Department of Financial Services and administered with a program of risk management, which fund is to provide insurance, as authorized by s. 284.33, for workers' compensation, general liability, fleet automotive liability, federal civil rights actions under 42 U.S.C. s. 1983 or similar federal statutes, benefits payable under s. 112.1816(2), to an employee of a state agency or department covered under s. 284.31, and court-awarded attorney ~~attorney's~~ fees in other proceedings against the state except for such awards in eminent domain or for inverse condemnation or for awards by the Public Employees Relations Commission. A party to a suit in any court, to be entitled to have his or her attorney ~~attorney's~~ fees paid by the state or any of its agencies, must serve a copy of the pleading claiming the fees on the Department of Financial Services; and thereafter the department shall be entitled to participate with the agency in the defense of the suit and any appeal thereof with respect to such fees.

Section 3. Section 284.31, Florida Statutes, is amended to read:

284.31 Scope and types of coverages; separate accounts.—The Insurance Risk Management Trust Fund must ~~shall~~, unless specifically excluded by the Department of Financial Services,

cover all departments of the State of Florida and their employees, agents, and volunteers and must ~~shall~~ provide separate accounts for workers' compensation, general liability, fleet automotive liability, federal civil rights actions under 42 U.S.C. s. 1983 or similar federal statutes, state agency firefighter cancer benefits payable under s. 112.1816(2), and court-awarded attorney ~~attorney's~~ fees in other proceedings against the state except for such awards in eminent domain or for inverse condemnation or for awards by the Public Employees Relations Commission. Unless specifically excluded by the Department of Financial Services, the Insurance Risk Management Trust Fund must ~~shall~~ provide fleet automotive liability coverage to motor vehicles titled to the state, or to any department of the state, when such motor vehicles are used by community transportation coordinators performing, under contract to the appropriate department of the state, services for the transportation disadvantaged under part I of chapter 427. Such fleet automotive liability coverage is ~~shall be~~ primary and is ~~shall be~~ subject to ~~the provisions of~~ s. 768.28 and parts II and III of chapter 284, and applicable rules adopted thereunder, and the terms and conditions of the certificate of coverage issued by the Department of Financial Services.

Section 4. Section 284.385, Florida Statutes, is amended to read:

284.385 Reporting and handling of claims.—

(1) All departments covered by the State Risk Management Trust Fund under this part shall immediately report all known or potential claims to the Department of Financial Services for handling, except employment complaints that ~~which~~ have not been filed with the Florida Human Relations Commission, Equal Employment Opportunity Commission, or any similar agency. When deemed necessary, the Department of Financial Services shall assign or reassign the claim to counsel. The assigned counsel shall report regularly to the Department of Financial Services or to the covered department on the status of any such claims or litigation as required by the Department of Financial Services. ~~No~~ Such claims may not ~~claim shall~~ be compromised or settled for monetary compensation without the prior approval of the Department of Financial Services and prior notification to the covered department. All departments shall cooperate with the Department of Financial Services in its handling of claims. The Department of Financial Services and the Department of Management Services, with the cooperation of the state attorneys and the clerks of the courts, shall develop a system to coordinate the exchange of information concerning claims for and against the state, its agencies, and its subdivisions, to assist in collection of amounts due to them. The covered department is responsible ~~shall have the responsibility~~ for the settlement of any claim for injunctive or affirmative relief under 42 U.S.C. s. 1983 or similar federal or state statutes. The payment of a

settlement or judgment for any claim covered and reported under this part may ~~shall~~ be made only from the State Risk Management Trust Fund.

(2) Benefits provided under s. 112.1816(2) may not be paid from the fund until each request for any out-of-pocket deductible, copayment, or coinsurance costs and one-time cash payout has been validated and approved by the Department of Management Services.

Section 5. Section 284.45, Florida Statutes, is created to read:

284.45 Sexual harassment victims.—

(1) An individual working for an entity covered by the State Risk Management Trust Fund may not engage in retaliatory conduct of any kind against a sexual harassment victim. As used in this section, the term "sexual harassment victim" means an individual employed, or being considered for employment, with an entity participating in the State Risk Management Trust Fund who becomes a victim of workplace sexual harassment through the course of employment, or while being considered for employment, with the entity.

(2) The willful and knowing dissemination of personal identifying information of a sexual harassment victim, which is confidential and exempt pursuant to s. 119.071(2)(n), to any party other than a governmental entity in furtherance of its official duties or pursuant to a court order is a misdemeanor of

the first degree, punishable as provided in s. 775.082.

Section 6. Subsections (1), (2), (3), (6), and (8) of section 497.101, Florida Statutes, are amended to read:

497.101 Board of Funeral, Cemetery, and Consumer Services; membership; appointment; terms.—

(1) The Board of Funeral, Cemetery, and Consumer Services is created within the Department of Financial Services and shall consist of 10 members, 9 of whom shall be appointed by the Governor from nominations made by the Chief Financial Officer and confirmed by the Senate. The Chief Financial Officer shall nominate one to three persons for each of the nine vacancies on the board, and the Governor shall fill each vacancy on the board by appointing one of the ~~three~~ persons nominated by the Chief Financial Officer to fill that vacancy. If the Governor objects to each of the ~~three~~ nominations for a vacancy, she or he shall inform the Chief Financial Officer in writing. Upon notification of an objection by the Governor, the Chief Financial Officer shall submit one to three additional nominations for that vacancy until the vacancy is filled. One member must be the State Health Officer or her or his designee.

(2) Two members of the board must ~~shall~~ be funeral directors licensed under part III of this chapter who are associated with a funeral establishment. One member of the board must ~~shall~~ be a funeral director licensed under part III of this chapter who is associated with a funeral establishment licensed

under part III of this chapter which ~~that~~ has a valid preneed license issued pursuant to this chapter and who owns or operates a cinerator facility approved under chapter 403 and licensed under part VI of this chapter. Two members of the board must ~~shall~~ be persons whose primary occupation is associated with a cemetery company licensed pursuant to this chapter. Two ~~Three~~ members of the board must ~~shall~~ be consumers who are residents of this ~~the~~ state, have never been licensed as funeral directors or embalmers, are not connected with a cemetery or cemetery company licensed pursuant to this chapter, and are not connected with the death care industry or the practice of embalming, funeral directing, or direct disposition. One of the two consumer members must ~~shall~~ be at least 60 years of age~~, and one shall be licensed as a certified public accountant under chapter 473~~. One member of the board must be a consumer who is a resident of this state; is licensed as a certified public accountant under chapter 473; has never been licensed as a funeral director or an embalmer; is not a principal or an employee of any licensee licensed under this chapter; and does not otherwise have control, as defined in s. 497.005, over any licensee licensed under this chapter. One member of the board must ~~shall~~ be a principal of a monument establishment licensed under this chapter as a monument builder. One member must ~~shall~~ be the State Health Officer or her or his designee. There may ~~shall~~ not be two or more board members who are principals or

employees of the same company or partnership or group of companies or partnerships under common control.

(3) Board members shall be appointed for terms of 4 years, and the State Health Officer shall serve as long as that person holds that office. The designee of the State Health Officer shall serve at the pleasure of the Governor. ~~When the terms of the initial board members expire, the Chief Financial Officer shall stagger the terms of the successor members as follows: one funeral director, one cemetery representative, the monument builder, and one consumer member shall be appointed for terms of 2 years, and the remaining members shall be appointed for terms of 4 years. All subsequent terms shall be for 4 years.~~

(6) The board shall maintain its headquarters and records ~~of the board shall be~~ in the Division of Funeral, Cemetery, and Consumer Services of the Department of Financial Services in the City of Tallahassee. The board may be contacted through the Division of Funeral, Cemetery, and Consumer Services of the Department of Financial Services in the City of Tallahassee. The Chief Financial Officer shall annually appoint from among the board members a chair and vice chair of the board. The board shall meet at least every 6 months, and more often as necessary. Special meetings of the board shall be convened upon the direction of the Chief Financial Officer. A quorum is necessary for the conduct of business by the board. The participation by a board member in a meeting conducted through communications media

technology constitutes that individual's presence at such meeting. Board members appearing at a board meeting in person as well as board members appearing through the use of communications media technology shall be counted for the determination of a quorum. As used in this subsection, "communications media technology" means the electronic transmission of printed matter, audio, full-motion video, freeze-frame video, compressed video, and digital video by any method available. Unless otherwise provided by law, six board members shall constitute a quorum for the conduct of the board's business.

~~(8) The department shall adopt rules establishing forms by which persons may apply for membership on the board and procedures for applying for such membership. Such forms shall require disclosure of the existence and nature of all current and past employments by or contracts with, and direct or indirect affiliations or interests in, any entity or business that at any time was licensed by the board or by the former Board of Funeral and Cemetery Services or the former Board of Funeral Directors and Embalmers or that is or was otherwise involved in the death care industry, as specified by department rule.~~

Section 7. Subsections (2) through (5) of section 497.157, Florida Statutes, are renumbered as subsections (4) through (7), respectively, present subsection (3) is amended, and new

subsections (2) and (3) and subsection (8) are added to that section, to read:

497.157 Unlicensed practice; remedies concerning violations by unlicensed persons.—

(2) A person may not be, act as, or advertise or hold himself or herself out to be a funeral director, an embalmer, or a direct disposer unless he or she is currently licensed by the department.

(3) A person may not be, act as, or advertise or hold himself or herself out to be a preneed sales agent unless he or she is currently licensed by the department and appointed by a preneed main licensee for which he or she is executing preneed contracts.

(5)~~(3)~~ Where the department determines that an emergency exists regarding any violation of this chapter by any unlicensed person or entity, the department may issue and serve an immediate final order upon such unlicensed person or entity, in accordance with s. 120.569(2)(n). Such an immediate final order may impose such prohibitions and requirements as are reasonably necessary to protect the public health, safety, and welfare, and is ~~shall be~~ effective when served.

(a) For the purpose of enforcing such an immediate final order, the department may file an emergency or other proceeding in the circuit courts of the state seeking enforcement of the immediate final order by injunctive or other order of the court.

The court shall issue its injunction or other order enforcing the immediate final order pending administrative resolution of the matter under subsection (4) ~~(2)~~, unless the court determines that such action would work a manifest injustice under the circumstances. Venue for judicial actions under this paragraph must ~~shall~~ be, at the election of the department, in the courts of Leon County~~,~~ or in a county where the respondent resides or has a place of business.

(b) After serving an immediate final order to cease and desist upon any person or entity, the department shall within 10 days issue and serve upon the same person or entity an administrative complaint as set forth in subsection (4) ~~(2)~~, except that, absent order of a court to the contrary, the immediate final order will ~~shall~~ be effective throughout the pendency of proceedings under subsection (4) ~~(2)~~.

(8) Any person who is not licensed under this chapter and who engages in activity requiring licensure under this chapter commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 8. Subsection (6) of section 497.159, Florida Statutes, is amended to read:

497.159 Crimes.—

~~(6) Any person who is not licensed under this chapter who engages in activity requiring licensure under this chapter, commits a misdemeanor of the second degree, punishable as~~

~~provided in s. 775.082 or s. 775.083.~~

Section 9. Paragraph (a) of subsection (4) of section 497.375, Florida Statutes, is amended, paragraph (e) is added to subsection (4), and paragraphs (b) and (c) of subsection (4) of that section are republished, to read:

497.375 Funeral directing; licensure of a funeral director intern.—

(4)(a) A funeral director intern license expires 1 year after issuance and, except as provided in paragraph (b), ~~or~~ paragraph (c), or paragraph (e), may not be renewed.

(b) A funeral director intern who is eligible for licensure under subparagraph (1)(b)2. may renew her or his funeral director intern license for an additional 1-year period if the funeral director in charge of the funeral director intern training agency certifies to the licensing authority that the intern has completed at least one-half of the course of study in mortuary science or funeral service arts.

(c) The licensing authority may adopt rules that allow a funeral director intern to renew her or his funeral director intern license for an additional 1-year period if the funeral director intern demonstrates her or his failure to complete the internship before expiration of the license due to illness, personal injury, or other substantial hardship beyond her or his reasonable control or demonstrates that she or he has completed the requirements for licensure as a funeral director but is

awaiting the results of a licensure examination. However, a funeral director intern who renews her or his license under paragraph (b) is not eligible to renew the license under this paragraph.

(e) Upon expiration of a funeral director intern license, any intern that has completed the educational credentials required for a license as a funeral director and has applied for licensure may continue to perform the tasks, functions, and duties related to funeral directing in the manner provided in paragraph (1)(d) until a license is issued or denied, or for a period of 90 days, whichever occurs sooner.

Section 10. Paragraph (d) of subsection (2) of section 497.377, Florida Statutes, is amended, and paragraph (c) of subsection (2) of that subsection is republished, to read:

497.377 Combination funeral director and embalmer internships.—

(2)

(c) A combination funeral director and embalmer intern may perform only the tasks, functions, and duties relating to funeral directing and embalming which are performed under the direct supervision of a licensed funeral director who has an active, valid license under s. 497.373 or s. 497.374(1) and an embalmer who has an active, valid license under s. 497.368 or s. 497.369. However, a combination funeral director and embalmer intern may perform such tasks, functions, and duties under the

general supervision of a licensed funeral director and embalmer upon graduation from a college accredited by ABFSE with a degree as specified in s. 497.373(1)(d) and upon passage of the examination required under s. 497.373(2)(b) if the funeral director in charge of the internship training establishment, after 6 months of direct supervision, certifies to the licensing authority that the intern is competent to complete the internship under general supervision.

(d)1. A combination funeral director and embalmer intern license expires 1 year after issuance and, except as provided in subparagraph 2., may not be renewed; however, upon expiration of a combination funeral director and embalmer intern license, any intern that has completed the educational credentials required for a combination license as both funeral director and embalmer and has applied for licensure may continue to perform the tasks, functions, and duties related to funeral directing and embalming in the manner provided in paragraph (c) until a license is issued or denied, or for a period of 90 days, whichever occurs sooner.

2. The licensing authority may adopt rules that allow a combination funeral director and embalmer intern to renew her or his combination funeral director and embalmer intern license for an additional 1 year if the combination funeral director and embalmer intern demonstrates her or his failure to complete the internship before expiration of the license due to illness,

personal injury, or other substantial hardship beyond her or his reasonable control or demonstrates that she or he has completed the requirements for licensure as a combination funeral director and embalmer but is awaiting the results of a licensure examination.

Section 11. Paragraph (c) of subsection (1) of section 497.458, Florida Statutes, is amended, and paragraph (a) of subsection (1) of that section is republished, to read:

497.458 Disposition of proceeds received on contracts.—

(1)(a) Any person who is paid, collects, or receives funds under a preneed contract for funeral services or merchandise or burial services or merchandise shall deposit an amount at least equal to the sum of 70 percent of the purchase price collected for all services sold and facilities rented; 100 percent of the purchase price collected for all cash advance items sold; and 30 percent of the purchase price collected or 110 percent of the wholesale cost, whichever is greater, for each item of merchandise sold. The board may, by rule, specify criteria for the classification of items sold in a preneed contract as services, cash advances, or merchandise.

(c) Unless the preneed contract has been fulfilled, such deposits shall be made within 30 days after the end of the calendar month in which payment is received, under the terms of a revocable trust instrument entered into with a trust company, with a national or state bank holding trust powers, or with a

federal or state savings and loan association holding trust powers.

Section 12. Subsection (13) of section 552.081, Florida Statutes, is amended to read:

552.081 Definitions.—As used in this chapter:

(13) "Two-component explosives" means any two inert components that ~~which~~, when mixed, become capable of detonation by a detonator ~~a No. 6 blasting cap~~, and shall be classified as a Class "A" explosive when so mixed.

Section 13. Subsection (2) of section 553.7921, Florida Statutes, is renumbered as subsection (3), subsection (1) of that section is amended, and a new subsection (2) is added to that section, to read:

553.7921 Fire alarm permit application to local enforcement agency.—

(1) A contractor must file a Uniform Fire Alarm Permit Application as provided in subsection (3) ~~(2)~~ with the local enforcement agency and must receive the fire alarm permit before~~:~~

~~(a)~~ installing or replacing a fire alarm, if the local enforcement agency requires a plan review for the installation or replacement~~; or~~

~~(b) Repairing an existing alarm system that was previously permitted by the local enforcement agency if the local enforcement agency requires a fire alarm permit for the repair~~.

(2) If the local enforcement agency requires a fire alarm permit to repair an existing alarm system that was previously permitted by the local enforcement agency, a contractor may begin work after filing a Uniform Fire Alarm Permit Application as provided in subsection (3). A fire alarm repaired pursuant to this subsection may not be considered compliant until the required permit is issued and the local enforcement agency approves the repair.

Section 14. Effective January 1, 2022, subsection (3) of section 626.2815, Florida Statutes, is amended to read:

626.2815 Continuing education requirements.—

(3) Each licensee except a title insurance agent must complete a 4-hour ~~5-hour~~ update course every 2 years which is specific to the license held by the licensee. The course must be developed and offered by providers and approved by the department. The content of the course must address all lines of insurance for which examination and licensure are required and include the following subject areas: insurance law updates, ethics for insurance professionals, disciplinary trends and case studies, industry trends, premium discounts, determining suitability of products and services, and other similar insurance-related topics the department determines are relevant to legally and ethically carrying out the responsibilities of the license granted. A licensee who holds multiple insurance licenses must complete an update course that is specific to at

least one of the licenses held. Except as otherwise specified, any remaining required hours of continuing education are elective and may consist of any continuing education course approved by the department under this section.

(a) Except as provided in paragraphs (b), (c), (d), (e), (i), and (j), each licensee must also complete 20 ~~19~~ hours of elective continuing education courses every 2 years.

(b) A licensee who has been licensed for 6 or more years must also complete a minimum of 16 ~~15~~ hours of elective continuing education every 2 years.

(c) A licensee who has been licensed for 25 years or more and is a CLU or a CPCU or has a Bachelor of Science degree in risk management or insurance with evidence of 18 or more semester hours in insurance-related courses must also complete a minimum of 6 ~~5~~ hours of elective continuing education courses every 2 years.

(d) An individual who holds a license as a customer representative and who is not a licensed life or health agent must also complete a minimum of 6 ~~5~~ hours of continuing education courses every 2 years.

(e) An individual subject to chapter 648 must complete the 4-hour ~~5-hour~~ update course and a minimum of 10 ~~9~~ hours of elective continuing education courses every 2 years.

(f) Elective continuing education courses for public adjusters must be specifically designed for public adjusters and

approved by the department. Notwithstanding this subsection, public adjusters for workers' compensation insurance or health insurance are not required to take continuing education courses pursuant to this section.

(g) Excess hours accumulated during any 2-year compliance period may be carried forward to the next compliance period.

(h) An individual teaching an approved course of instruction or lecturing at any approved seminar and attending the entire course or seminar qualifies for the same number of classroom hours as would be granted to a person taking and successfully completing such course or seminar. Credit is limited to the number of hours actually taught unless a person attends the entire course or seminar. An individual who is an official of or employed by a governmental entity in this state and serves as a professor, instructor, or in another position or office, the duties and responsibilities of which are determined by the department to require monitoring and review of insurance laws or insurance regulations and practices, is exempt from this section.

(i) For compliance periods beginning on or after October 1, 2014, any person who holds a license as a title insurance agent must complete a minimum of 10 hours of continuing education credit every 2 years in title insurance and escrow management specific to this state and approved by the department, which must ~~shall~~ include at least 3 hours of

continuing education on the subject matter of ethics, rules, or compliance with state and federal regulations relating specifically to title insurance and closing services.

(j) For a licensee who is an active participant in an association, 2 hours of elective continuing education credit per calendar year may be approved by the department, if properly reported by the association.

Section 15. Subsections (1) and (2) of section 626.371, Florida Statutes, are amended to read:

626.371 Payment of fees, taxes for appointment period without appointment.—

(1) All initial and renewal appointments shall be submitted to the department on a monthly basis no later than 45 days after the date of appointment and become effective on the date requested on the appointment form.

(2)(a) If, upon application and qualification for an initial or renewal appointment and such investigation as the department may make, ~~it appears to~~ the department determines that an individual has not been properly appointed to represent an insurer or employer, that such individual ~~who~~ was formerly licensed or is currently licensed, ~~but not properly appointed to represent an insurer or employer~~ and that such individual ~~who~~ has been actively engaged or is currently actively engaged as such an appointee, ~~but without being appointed as required,~~ the department shall ~~may~~, if it finds that such failure to be

appointed was an inadvertent error on the part of the insurer or employer so represented, notify the insurer or employer of its finding and of the requirement to pay all fees and taxes due pursuant to paragraph (b) within 21 days.

(b) The department may ~~nevertheless~~ issue or authorize the issuance of the appointment upon the insurer's or employer's timely payment to the department of ~~as applied for but subject to the condition that, before the appointment is issued,~~ all fees and taxes that ~~which~~ would have been due had the applicant been properly ~~so~~ appointed during such current and prior periods, including ~~with applicable~~ fees and taxes that would have been due pursuant to s. 624.501 for such current and prior periods of appointment~~, shall be paid to the department~~.

(c) Upon proper appointment of the individual and payment of all fees and taxes due pursuant to paragraph (b), paragraph (3)(a), and s. 624.501 by the insurer or employer, the department may no longer consider the inadvertent failure to appoint to be a violation of this code.

(d) If the insurer or employer does not pay the fees and taxes due pursuant to paragraph (b) within 21 days after notice by the department, the department shall suspend the insurer's or employer's authority to appoint licensees until all outstanding fees and taxes have been paid.

Section 16. Subsection (3) of section 626.7351, Florida Statutes, is amended to read:

626.7351 Qualifications for customer representative's license.—The department shall not grant or issue a license as customer representative to any individual found by it to be untrustworthy or incompetent, or who does not meet each of the following qualifications:

(3) Within 4 years preceding the date that the application for license was filed with the department, the applicant has earned the designation of Accredited Advisor in Insurance (AAI), Associate in General Insurance (AINS), or Accredited Customer Service Representative (ACSR) from the Insurance Institute of America; the designation of Certified Insurance Counselor (CIC) from the Society of Certified Insurance Service Counselors; the designation of Certified Professional Service Representative (CPSR) from the National Foundation for CPSR; the designation of Certified Insurance Service Representative (CISR) from the Society of Certified Insurance Service Representatives; the designation of Certified Insurance Representative (CIR) from All-Lines Training; the designation of Professional Customer Service Representative (PCSR) from the Professional Career Institute; the designation of Insurance Customer Service Representative (ICSR) from Statewide Insurance Associates LLC; the designation of Registered Customer Service Representative (RCSR) from a regionally accredited postsecondary institution in the state whose curriculum is approved by the department and includes comprehensive analysis of basic property and casualty

lines of insurance and testing which demonstrates mastery of the subject; or a degree from an accredited institution of higher learning approved by the department when the degree includes a minimum of 9 credit hours of insurance instruction, including specific instruction in the areas of property, casualty, and inland marine insurance. The department shall adopt rules establishing standards for the approval of curriculum.

Section 17. Subsection (1) of section 626.8443, Florida Statutes, is amended to read:

626.8443 Duration of suspension or revocation.—

(1) The department shall, in its order suspending a title insurance agent's or agency's license or appointment or in its order suspending the eligibility of a person to hold or apply for such license or appointment, specify the period during which the suspension is to be in effect, but such period may ~~shall~~ not exceed 2 years ~~1 year~~. The license, ~~or~~ appointment, or eligibility will ~~shall~~ remain suspended during the period so specified, subject, however, to any rescission or modification of the order by the department, or modification or reversal thereof by the court, prior to expiration of the suspension period. A license, appointment, or eligibility that ~~which~~ has been suspended may not be reinstated except upon request for such reinstatement, but the department may ~~shall~~ not grant such reinstatement if it finds that the circumstance or circumstances for which the license, appointment, and eligibility was

suspended still exist or are likely to recur.

Section 18. Paragraph (e) of subsection (1) of section 626.916, Florida Statutes, is amended to read:

626.916 Eligibility for export.—

(1) No insurance coverage shall be eligible for export unless it meets all of the following conditions:

~~(e) For personal residential property risks, the retail or producing agent must advise the insured in writing that coverage may be available and may be less expensive from Citizens Property Insurance Corporation. The notice must include other information that states that assessments by Citizens Property Insurance Corporation are higher and the coverage provided by Citizens Property Insurance Corporation may be less than the property's existing coverage. If the notice is signed by the insured, it is presumed that the insured has been informed and knows that policies from Citizens Property Insurance Corporation may be less expensive, may provide less coverage, and will be accompanied by higher assessments.~~

Section 19. Paragraph (e) is added to subsection (1) of section 626.9551, Florida Statutes, to read:

626.9551 Favored agent or insurer; coercion of debtors.—

(1) No person may:

(e) Require an insurance agent or agency to directly or indirectly provide the replacement cost estimator or other underwriting information of an insurer underwriting an insurance

policy covering real property, as a condition precedent or condition subsequent to the lending of money or extension of credit to be secured by real property, when such information is the proprietary business information of an insurer, as defined in s. 624.4212(1), nor may an agent or agency provide this information.

Section 20. Subsections (4) through (10) of section 627.715, Florida Statutes, are renumbered as subsections (5) through (11), respectively, and a new subsection (4) is added to that section, to read:

627.715 Flood insurance.—An authorized insurer may issue an insurance policy, contract, or endorsement providing personal lines residential coverage for the peril of flood or excess coverage for the peril of flood on any structure or the contents of personal property contained therein, subject to this section. This section does not apply to commercial lines residential or commercial lines nonresidential coverage for the peril of flood. An insurer may issue flood insurance policies, contracts, endorsements, or excess coverage on a standard, preferred, customized, flexible, or supplemental basis.

(4) An agent may export a contract or an endorsement providing flood coverage to an eligible surplus lines insurer without making a diligent effort to seek such coverage from three or more authorized insurers under s. 626.916(1)(a).

Section 21. Subsection (3) of section 633.102, Florida

Statutes, is amended to read:

633.102 Definitions.—As used in this chapter, the term:

(3)(a) "Contractor I" means a contractor whose business includes the execution of contracts requiring the ability to lay out, fabricate, install, inspect, alter, repair, and service all types of fire protection systems, excluding preengineered systems.

(b) "Contractor II" means a contractor whose business is limited to the execution of contracts requiring the ability to lay out, fabricate, install, inspect, alter, repair, and service water sprinkler systems, water spray systems, foam-water sprinkler systems, foam-water spray systems, standpipes, combination standpipes and sprinkler risers, all piping that is an integral part of the system beginning at the point of service as defined in this section, sprinkler tank heaters, air lines, thermal systems used in connection with sprinklers, and tanks and pumps connected thereto, excluding preengineered systems.

(c) "Contractor III" means a contractor whose business is limited to the execution of contracts requiring the ability to fabricate, install, inspect, alter, repair, and service carbon dioxide systems, foam extinguishing systems, dry chemical systems, and Halon and other chemical systems, excluding preengineered systems.

(d) "Contractor IV" means a contractor whose business is limited to the execution of contracts requiring the ability to

lay out, fabricate, install, inspect, alter, repair, and service automatic fire sprinkler systems for detached one-family dwellings, detached two-family dwellings, and mobile homes, excluding preengineered systems and excluding single-family homes in cluster units, such as apartments, condominiums, and assisted living facilities or any building that is connected to other dwellings. A Contractor IV is limited to the scope of practice specified in NFPA 13D.

(e) "Contractor V" means a contractor whose business is limited to the execution of contracts requiring the ability to fabricate, install, inspect, alter, repair, and service the underground piping for a fire protection system using water as the extinguishing agent beginning at the point of service as defined in this act and ending no more than 1 foot above the finished floor.

~~The definitions in~~ This subsection may not be construed to include engineers or architects within the defined terms and does ~~do~~ not limit or prohibit a licensed fire protection engineer or architect with fire protection design experience from designing any type of fire protection system. A distinction is made between system design concepts prepared by the design professional and system layout as defined in this section and typically prepared by the contractor. However, a person certified as a Contractor I or~~,~~ Contractor II~~, or Contractor IV~~

~~under this chapter~~ may design new fire protection systems of 49 or fewer sprinklers;~~, and~~ may design the alteration of an existing fire sprinkler system if the alteration consists of the relocation, addition, or deletion of ~~not more than~~ 49 or fewer sprinklers, notwithstanding the size of the existing fire sprinkler system; or may design the alteration of an existing fire sprinkler system if the alteration consists of the relocation or deletion of 249 or fewer sprinklers, notwithstanding the size of the existing fire sprinkler system, if there is no change of occupancy, as defined in the Florida Building Code and the Florida Fire Prevention Code, of the affected areas and there is no change in the water demand as defined in NFPA 13, "Standard for the Installation of Sprinkler Systems," and if the occupancy hazard classification as defined in NFPA 13 is reduced or remains the same as a result of the alteration. Conflicts between the Florida Building Code and the Florida Fire Prevention Code shall be resolved pursuant to s. 553.73(1)(d). A person certified as a Contractor I, Contractor II, or Contractor IV may design or alter a fire protection system, the scope of which complies with NFPA 13D, "Standard for the Installation of Sprinkler Systems in One- and Two-Family Dwellings and Manufactured Homes," as adopted by the State Fire Marshal, notwithstanding the number of fire sprinklers. Contractor-developed plans may not be required by any local permitting authority to be sealed by a registered professional

engineer.

Section 22. Section 633.136, Florida Statutes, is amended to read:

633.136 Fire and Emergency Incident Information Reporting Program; duties; fire reports.—

(1)(a) The Fire and Emergency Incident Information Reporting Program is created within the division. The program shall:

1. Establish and maintain an electronic communication system capable of transmitting fire and emergency incident information to and between fire service providers ~~protection agencies~~.

2. Initiate a Fire and Emergency Incident Information Reporting System that is ~~shall be~~ responsible for:

a. Receiving fire and emergency incident information from fire service providers ~~protection agencies~~.

b. Preparing and disseminating annual reports to the Governor, the President of the Senate, the Speaker of the House of Representatives, fire service providers ~~protection agencies~~, and, upon request, the public. Each report must ~~shall~~ include, but not be limited to, the information listed in the National Fire Incident Reporting System.

c. Upon request, providing other states and federal agencies with fire and emergency incident data of this state.

3. Adopt rules to effectively and efficiently implement,

administer, manage, maintain, and use the Fire and Emergency Incident Information Reporting Program. The rules shall be considered minimum requirements and may ~~shall~~ not preclude a fire service provider ~~protection agency~~ from implementing its own requirements that ~~which~~ may not conflict with the rules of the division.

4. By rule, establish procedures and a format for each fire service provider ~~protection agency~~ to voluntarily monitor its records and submit reports to the program.

5. Maintain ~~Establish~~ an electronic information database that is accessible and searchable by fire service providers ~~protection agencies~~.

(b) The division shall consult with the Florida Forest Service of the Department of Agriculture and Consumer Services and the State Surgeon General of the Department of Health to coordinate data, ensure accuracy of the data, and limit duplication of efforts in data collection, analysis, and reporting.

(2) The Fire and Emergency Incident Information System Technical Advisory Panel is created within the division. The panel shall advise, review, and recommend to the State Fire Marshal with respect to the requirements of this section. The membership of the panel consists ~~shall consist~~ of the ~~following~~ 15 members~~:~~

~~(a) The current 13 members~~ of the Firefighters Employment,

Standards, and Training Council as established in s. 633.402.

~~(b) One member from the Florida Forest Service of the Department of Agriculture and Consumer Services, appointed by the director of the Florida Forest Service.~~

~~(c) One member from the Department of Health, appointed by the State Surgeon General.~~

(3) As used in ~~For the purpose of~~ this section, the term "fire service provider" has the same meaning as in s. 633.102 ~~"fire protection agency" shall be defined by rule by the division~~.

Section 23. Subsection (18) of section 633.202, Florida Statutes, is amended to read:

633.202 Florida Fire Prevention Code.—

(18) The authority having jurisdiction shall determine the minimum radio signal strength for fire department communications in all new high-rise and existing high-rise buildings. Existing buildings are not required to comply with minimum radio strength for fire department communications and two-way radio system enhancement communications as required by the Florida Fire Prevention Code until January 1, 2023 ~~2022~~. However, by January 1, 2022 ~~December 31, 2019~~, an existing building that is not in compliance with the requirements for minimum radio strength for fire department communications must have completed a minimum radio strength assessment ~~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, 2023 ~~2022~~. Existing apartment buildings are not required to comply until January 1, 2025. However, existing apartment buildings must have completed a minimum radio strength assessment ~~are required to apply for the appropriate permit~~ for the required communications installation by December 31, 2022.

Section 24. Section 633.217, Florida Statutes, is created to read:

633.217 Influencing a firesafety inspector; prohibited acts.—

(1) A person may not influence a firesafety inspector by:

(a) Threatening, coercing, tricking, or attempting to threaten, coerce, or trick the firesafety inspector into violating any provision of the Florida Fire Prevention Code, any rule adopted by the State Fire Marshal, or any provision of this chapter.

(b) Offering any compensation to the firesafety inspector to induce a violation of the Florida Fire Prevention Code, any rule adopted by the State Fire Marshal, or any provision of this chapter.

(2) A firesafety inspector may not knowingly and intentionally request, solicit, accept, or agree to accept compensation offered as described in paragraph (1)(b).

Section 25. Paragraphs (d), (g), and (h) of subsection (4)

of section 633.304, Florida Statutes, are amended to read:

633.304 Fire suppression equipment; license to install or maintain.—

(4)

(d) A license of any class may not be issued or renewed by the division and a license of any class does not remain operative unless:

1. The applicant has submitted to the State Fire Marshal evidence of registration as a Florida corporation or evidence of compliance with s. 865.09.

2. The State Fire Marshal or his or her designee has by inspection determined that the applicant possesses the equipment required for the class of license sought. The State Fire Marshal shall give an applicant a reasonable opportunity to correct any deficiencies discovered by inspection. To obtain such inspection, an applicant with facilities located outside this state must:

a. Provide a notarized statement from a professional engineer licensed by the applicant's state of domicile certifying that the applicant possesses the equipment required for the class of license sought and that all such equipment is operable; or

b. Allow the State Fire Marshal or her or his designee to inspect the facility. All costs associated with the State Fire Marshal's inspection must be paid by the applicant. The State

Fire Marshal, in accordance with s. 120.54, may adopt rules to establish standards for the calculation and establishment of the amount of costs associated with any inspection conducted by the State Fire Marshal under this section. Such rules must include procedures for invoicing and receiving funds in advance of the inspection.

3. The applicant has submitted to the State Fire Marshal proof of insurance providing coverage for comprehensive general liability for bodily injury and property damage, products liability, completed operations, and contractual liability. The State Fire Marshal shall adopt rules providing for the amounts of such coverage, but such amounts may not be less than $300,000 for Class A or Class D licenses, $200,000 for Class B licenses, and $100,000 for Class C licenses; and the total coverage for any class of license held in conjunction with a Class D license may not be less than $300,000. The State Fire Marshal may, at any time after the issuance of a license or its renewal, require upon demand, and in no event more than 30 days after notice of such demand, the licensee to provide proof of insurance, on the insurer's form, containing confirmation of insurance coverage as required by this chapter. Failure, for any length of time, to provide proof of insurance coverage as required must result in the immediate suspension of the license until proof of proper insurance is provided to the State Fire Marshal. An insurer that provides such coverage shall notify the State Fire Marshal of

any change in coverage or of any termination, cancellation, or nonrenewal of any coverage.

4. The applicant applies to the State Fire Marshal, provides proof of experience, and successfully completes a prescribed training course that includes both written and practical training ~~offered by the State Fire College or an equivalent course~~ approved by the State Fire Marshal as applicable to the class of license being sought. This subparagraph does not apply to any holder of or applicant for a permit under paragraph (g) or to a business organization or a governmental entity seeking initial licensure or renewal of an existing license solely for the purpose of inspecting, servicing, repairing, marking, recharging, and maintaining fire extinguishers used and located on the premises of and owned by such organization or entity.

5. The applicant has a current retestor identification number that is appropriate for the license for which the applicant is applying and that is listed with the United States Department of Transportation.

6. The applicant has passed, with a grade of at least 70 percent, a written examination testing his or her knowledge of the rules and statutes governing the activities authorized by the license and demonstrating his or her knowledge and ability to perform those tasks in a competent, lawful, and safe manner. Such examination must be developed and administered by the State

Fire Marshal, or his or her designee in accordance with policies and procedures of the State Fire Marshal. An applicant shall pay a nonrefundable examination fee of $50 for each examination or reexamination scheduled. A reexamination may not be scheduled sooner than 30 days after any administration of an examination to an applicant. An applicant may not be permitted to take an examination for any level of license more than a total of four times during 1 year, regardless of the number of applications submitted. As a prerequisite to licensure of the applicant, he or she:

a. Must be at least 18 years of age.

b. Must have 4 years of proven experience as a fire equipment permittee at a level equal to or greater than the level of license applied for or have a combination of education and experience determined to be equivalent thereto by the State Fire Marshal. Having held a permit at the appropriate level for the required period constitutes the required experience.

c. Must not have been convicted of a felony or a crime punishable by imprisonment of 1 year or more under the law of the United States or of any state thereof or under the law of any other country. "Convicted" means a finding of guilt or the acceptance of a plea of guilty or nolo contendere in any federal or state court or a court in any other country, without regard to whether a judgment of conviction has been entered by the court having jurisdiction of the case. If an applicant has been

convicted of any such felony, the applicant is excluded from licensure for a period of 4 years after expiration of sentence or final release by the Florida Commission on Offender Review unless the applicant, before the expiration of the 4-year period, has received a full pardon or has had her or his civil rights restored.

This subparagraph does not apply to any holder of or applicant for a permit under paragraph (g) or to a business organization or a governmental entity seeking initial licensure or renewal of an existing license solely for the purpose of inspecting, servicing, repairing, marking, recharging, hydrotesting, and maintaining fire extinguishers used and located on the premises of and owned by such organization or entity.

(g) A permit of any class may not be issued or renewed to a person by the division, and a permit of any class does not remain operative, unless the person has:

1. Submitted a nonrefundable examination fee in the amount of $50.

2. Successfully completed a training course that includes both written and practical training ~~offered by the State Fire College or an equivalent course~~ approved by the State Fire Marshal as applicable to the class of license being sought.

3. Passed, with a grade of at least 70 percent, a written examination testing his or her knowledge of the rules and

statutes governing the activities authorized by the permit and demonstrating his or her knowledge and ability to perform those tasks in a competent, lawful, and safe manner. Such examination must be developed and administered by the State Fire Marshal in accordance with the policies and procedures of the State Fire Marshal. An examination fee must be paid for each examination scheduled. A reexamination may not be scheduled sooner than 30 days after any administration of an examination to an applicant. An applicant may not be permitted to take an examination for any level of permit more than four times during 1 year, regardless of the number of applications submitted. As a prerequisite to taking the permit examination, the applicant must be at least 16 years of age.

(h) An applicant for a license or permit under this section who fails the examination may take it three more times during the 1-year period after he or she originally filed an application for the examination. If the applicant fails the examination within 1 year after the application date and he or she seeks to retake the examination, he or she must file a new application, pay the application and examination fees, and successfully complete a prescribed training course that includes both written and practical training ~~offered by the State Fire College or an equivalent course~~ approved by the State Fire Marshal as applicable to the class of license being sought. The applicant may not submit a new application within 6 months after

the date of his or her fourth reexamination. An applicant who passes the examination but does not meet the remaining qualifications prescribed by law and rule within 1 year after the application date must file a new application, pay the application and examination fee, successfully complete a prescribed training course that includes both written and practical training ~~approved by the State Fire College or an equivalent course~~ approved by the State Fire Marshal as applicable to the class of license being sought, and pass the written examination.

Section 26. Subsection (1) of section 633.402, Florida Statutes, is amended to read:

633.402 Firefighters Employment, Standards, and Training Council; organization; meetings; quorum; compensation; seal; special powers; firefighter training.—

(1) There is created within the department a Firefighters Employment, Standards, and Training Council of 15 ~~14~~ members.

(a) The members shall be appointed as follows:

1. Two fire chiefs appointed by the Florida Fire Chiefs Association.

2. Two firefighters, who are not officers, appointed by the Florida Professional Firefighters Association.

3. Two firefighter officers, who are not fire chiefs, appointed by the State Fire Marshal.

4. One individual appointed by the Florida League of

Cities.

5. One individual appointed by the Florida Association of Counties.

6. One individual appointed by the Florida Association of Special Districts.

7. One individual appointed by the Florida Fire Marshals' and Inspectors' Association.

8. One employee of the Florida Forest Service of the Department of Agriculture and Consumer Services appointed by the director of the Florida Forest Service.

9. One individual appointed by the State Fire Marshal.

10. One director or instructor of a state-certified firefighting training facility appointed by the State Fire Marshal.

11. One individual ~~The remaining member, who shall be~~ appointed by the State Fire Marshal, who may not be a member or representative of the firefighting profession or of any local government.

12. One individual from the Department of Health, appointed by the Surgeon General.

(b) To be eligible for appointment as a member under subparagraph (a)1., subparagraph (a)2., subparagraph (a)3., subparagraph (a)8., or subparagraph (a)10., a person must have had at least 4 years' experience in the firefighting profession. Members shall serve only as long as they continue to meet the

criteria under which they were appointed, or unless a member has failed to appear at three consecutive and properly noticed meetings unless excused by the chair.

Section 27. Subsection (1) of section 633.416, Florida Statutes, is amended to read:

633.416 Firefighter employment and volunteer firefighter service; saving clause.—

(1) A fire service provider may not employ an individual to:

(a) Extinguish fires for the protection of life or property or to supervise individuals who perform such services unless the individual holds a current and valid Firefighter Certificate of Compliance. However, a person who is currently serving as a volunteer firefighter and holds a volunteer firefighter certificate of completion with a fire service provider, who is then employed as a regular or permanent firefighter by such fire service provider, may function, for a period of 1 year under the direct supervision of an individual holding a valid Firefighter Certificate of Compliance, in the same capacity in which he or she acted as a volunteer firefighter, provided that he or she has completed all training required by the volunteer organization. Under no circumstance can this period extend beyond 1 year either collectively or consecutively from the start of employment to obtain a Firefighter Certificate of Compliance; or

(b) Serve as the administrative and command head of a fire service provider for a period in excess of 1 year unless the individual holds a current and valid Firefighter Certificate of Compliance or Special Certificate of Compliance.

Section 28. Section 648.30, Florida Statutes, is amended to read:

648.30 Licensure and appointment required; prohibited acts; penalties.—

(1) A person may not act in the capacity of a bail bond agent or temporary bail bond agent or perform any of the functions, duties, or powers prescribed for bail bond agents or temporary bail bond agents under this chapter unless that person is qualified, licensed, and appointed as provided in this chapter.

(2) A person may not represent himself or herself to be a bail enforcement agent, bounty hunter, or other similar title in this state.

(3) A person, other than a certified law enforcement officer, may not apprehend, detain, or arrest a principal on a bond, wherever issued, unless that person is qualified, licensed, and appointed as provided in this chapter or licensed as a bail bond agent or bail bond enforcement agent, or holds an equivalent license by the state where the bond was written.

(4) Any person who violates this section commits a felony of the third degree, punishable as provided in s. 775.082, s.

775.083, or s. 775.084.

(5) Any licensee under this chapter who knowingly aids or abets an unlicensed person in violating this section commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 29. Section 843.08, Florida Statutes, is amended to read:

843.08 False personation.—A person who falsely assumes or pretends to be a firefighter, a sheriff, an officer of the Florida Highway Patrol, an officer of the Fish and Wildlife Conservation Commission, an officer of the Department of Environmental Protection, ~~a fire or arson investigator of the Department of Financial Services,~~ an officer of the Department of Financial Services, any personnel or representative of the Division of Investigative and Forensic Services, an officer of the Department of Corrections, a correctional probation officer, a deputy sheriff, a state attorney or an assistant state attorney, a statewide prosecutor or an assistant statewide prosecutor, a state attorney investigator, a coroner, a police officer, a lottery special agent or lottery investigator, a beverage enforcement agent, a school guardian as described in s. 30.15(1)(k), a security officer licensed under chapter 493, any member of the Florida Commission on Offender Review or any administrative aide or supervisor employed by the commission, any personnel or representative of the Department of Law

Enforcement, or a federal law enforcement officer as defined in s. 901.1505, and takes upon himself or herself to act as such, or to require any other person to aid or assist him or her in a matter pertaining to the duty of any such officer, commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. However, a person who falsely personates any such officer during the course of the commission of a felony commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. If the commission of the felony results in the death or personal injury of another human being, the person commits a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 30. Paragraph (f) is added to subsection (11) of section 943.045, Florida Statutes, to read:

943.045 Definitions; ss. 943.045-943.08.—The following words and phrases as used in ss. 943.045-943.08 shall have the following meanings:

(11) "Criminal justice agency" means:

(f) The investigations component of the Department of Financial Services which investigates the crimes of fraud and official misconduct in all public assistance given to residents of this state or provided to others by this state.

Section 31. Except as otherwise expressly provided in this act, this act shall take effect July 1, 2021.

COMMERCE COMMITTEE

CS/CS/HB 1209 by Rep. Fetterhoff
Department of Financial Services

AMENDMENT SUMMARY
April 14, 2021

Amendment 1 by Rep. Fetterhoff (line 402): The amendment:

- Clarifies that a cemetery company may sell on cemetery lands, even on lands it does not own, monuments, memorials, markers, burial vaults, urns, flower vases, floral arrangements, and other similar merchandise for use within a cemetery.
- Requires a monument retailer to maintain a full-service place of business that includes an office for the conduct of its business; displays a selection of monuments, markers, and related products for inspection by customers prior to sale; and has its office and display area normally open to the public weekdays during normal business hours.
- Makes monument retailers subject to inspection under ch. 497, F.S.

Amendment 2 by Rep. Fetterhoff (line 534): The amendment:

- Modifies continuing education requirements for licensed insurance agents and adjusters in order to conform to continuing education changes made by the bill.
- Further extends deadlines for high-rise buildings to apply for a permit and comply with minimum radio strength for fire department communications and two-way radio system enhancement communications.
- Restores current law which provides that by specified deadlines high-rise buildings must *apply for an appropriate permit*; the bill currently provides that by such deadlines high-rise buildings must *complete a minimum radio strength assessment*.

Amendment 3 by Rep. Rommel (line 718): The amendment establishes that insurance which provides coverage for deductibles for property insurance may be written on the surplus lines market without first meeting due diligence requirements typically necessary before coverage may be written on that market, as long as the coverage is placed through a licensed surplus lines agent, the insurer issuing the coverage is an eligible surplus lines insurer, and the insured signs a disclosure acknowledging that he or she is receiving coverage on the surplus lines market and has received information regarding the surplus lines market.

COMMITTEE/SUBCOMMITTEE ACTION

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

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

Amendment (with title amendment)

Remove lines 402-502 and insert:

Section 9. Paragraphs (f) and (g) of subsection (1) of section 497.273, Florida Statutes, are redesignated as paragraphs (e) and (f), respectively, subsections (2), (3), and (4) are renumbered as subsections (3), (4), and (5), respectively, paragraph (e) of subsection (1) is amended, and a new subsection (2) is added to that section, to read:

(1) Within the boundaries of the cemetery lands it owns, a cemetery company may perform the following functions:

~~(e) The nonexclusive preneed and at-need sale of monuments, memorials, markers, burial vaults, urns, flower~~

~~vases, floral arrangements, and other similar merchandise for use within the cemetery.~~

(2) A cemetery company may perform the nonexclusive preneed and at-need sale of monuments, memorials, markers, burial vaults, urns, flower vases, floral arrangements, and other similar merchandise for use within a cemetery, regardless of whether the cemetery is within the boundaries of the cemetery lands the company owns.

Section 10. Paragraph (a) of subsection (4) of section 497.375, Florida Statutes, is amended, paragraph (e) is added to subsection (4), and paragraphs (b) and (c) of subsection (4) of that section are republished, to read:

497.375 Funeral directing; licensure of a funeral director intern.—

(4)(a) A funeral director intern license expires 1 year after issuance and, except as provided in paragraph (b), ~~or~~ paragraph (c), or paragraph (e), may not be renewed.

(b) A funeral director intern who is eligible for licensure under subparagraph (1)(b)2. may renew her or his funeral director intern license for an additional 1-year period if the funeral director in charge of the funeral director intern training agency certifies to the licensing authority that the intern has completed at least one-half of the course of study in mortuary science or funeral service arts.

(c) The licensing authority may adopt rules that allow a funeral director intern to renew her or his funeral director intern license for an additional 1-year period if the funeral director intern demonstrates her or his failure to complete the internship before expiration of the license due to illness, personal injury, or other substantial hardship beyond her or his reasonable control or demonstrates that she or he has completed the requirements for licensure as a funeral director but is awaiting the results of a licensure examination. However, a funeral director intern who renews her or his license under paragraph (b) is not eligible to renew the license under this paragraph.

(e) Upon expiration of a funeral director intern license, any intern that has completed the educational credentials required for a license as a funeral director and has applied for licensure may continue to perform the tasks, functions, and duties related to funeral directing in the manner provided in paragraph (1)(d) until a license is issued or denied, or for a period of 90 days, whichever occurs sooner.

Section 11. Paragraph (d) of subsection (2) of section 497.377, Florida Statutes, is amended, and paragraph (c) of subsection (2) of that subsection is republished, to read:

497.377 Combination funeral director and embalmer internships.—

(2)

(c) A combination funeral director and embalmer intern may perform only the tasks, functions, and duties relating to funeral directing and embalming which are performed under the direct supervision of a licensed funeral director who has an active, valid license under s. 497.373 or s. 497.374(1) and an embalmer who has an active, valid license under s. 497.368 or s. 497.369. However, a combination funeral director and embalmer intern may perform such tasks, functions, and duties under the general supervision of a licensed funeral director and embalmer upon graduation from a college accredited by ABFSE with a degree as specified in s. 497.373(1)(d) and upon passage of the examination required under s. 497.373(2)(b) if the funeral director in charge of the internship training establishment, after 6 months of direct supervision, certifies to the licensing authority that the intern is competent to complete the internship under general supervision.

(d)1. A combination funeral director and embalmer intern license expires 1 year after issuance and, except as provided in subparagraph 2., may not be renewed; however, upon expiration of a combination funeral director and embalmer intern license, any intern that has completed the educational credentials required for a combination license as both funeral director and embalmer and has applied for licensure may continue to perform the tasks, functions, and duties related to funeral directing and embalming in the manner provided in paragraph (c) until a license is

issued or denied, or for a period of 90 days, whichever occurs sooner.

2. The licensing authority may adopt rules that allow a combination funeral director and embalmer intern to renew her or his combination funeral director and embalmer intern license for an additional 1 year if the combination funeral director and embalmer intern demonstrates her or his failure to complete the internship before expiration of the license due to illness, personal injury, or other substantial hardship beyond her or his reasonable control or demonstrates that she or he has completed the requirements for licensure as a combination funeral director and embalmer but is awaiting the results of a licensure examination.

Section 12. Paragraph (c) of subsection (1) of section 497.458, Florida Statutes, is amended, and paragraph (a) of subsection (1) of that section is republished, to read:

497.458 Disposition of proceeds received on contracts.—

(1)(a) Any person who is paid, collects, or receives funds under a preneed contract for funeral services or merchandise or burial services or merchandise shall deposit an amount at least equal to the sum of 70 percent of the purchase price collected for all services sold and facilities rented; 100 percent of the purchase price collected for all cash advance items sold; and 30 percent of the purchase price collected or 110 percent of the wholesale cost, whichever is greater, for each item of

merchandise sold. The board may, by rule, specify criteria for the classification of items sold in a preneed contract as services, cash advances, or merchandise.

(c) Unless the preneed contract has been fulfilled, such deposits shall be made within 30 days after the end of the calendar month in which payment is received, under the terms of a revocable trust instrument entered into with a trust company, with a national or state bank holding trust powers, or with a federal or state savings and loan association holding trust powers.

Section 13. Paragraph (d) of subsection (1) of section 497.550, Florida Statutes, is amended to read:

497.550 Licensure of monument establishments required; procedures and criteria.—

(1)

(d) The requirements of this chapter apply to both monument retailers and monument builders, except as provided in this paragraph. Each monument establishment shall be a physical structure that is located at a specific street address, in compliance with zoning regulations of the appropriate local government, and not located on property that is exempt from taxation, but a monument retailer may not otherwise be required to comply with s. 497.552(4) ~~s. 497.552 or be subject to inspection under this chapter~~.

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

Remove lines 36-47 and insert:

changes made by the act; amending s. 497.273, F.S.; authorizing a cemetery company to perform specified services on cemetery lands other than lands the company owns; amending s. 497.375, F.S.; authorizing licensed funeral director interns to continue performing certain tasks while transitioning to licensed funeral directors; amending s. 497.377, F.S.; authorizing licensed combination funeral director and embalmer interns to continue performing certain tasks while transitioning to licensed combination funeral director and embalmers; amending s. 497.458, F.S.; specifying that certain deposits under preneed contracts for funeral services or merchandise or burial services or merchandise must be made unless the preneed contracts have been fulfilled; amending s. 497.550, F.S.; requiring monument retailers to comply with specified requirements relating to place of business and operations; subjecting monument retailers to inspection;

COMMITTEE/SUBCOMMITTEE ACTION

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

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

Amendment (with title amendment)

Remove lines 534-907 and insert:

Section 14. Effective January 1, 2022, subsection (3) and paragraph (i) of subsection (7) of section 626.2815, Florida Statutes, are amended to read:

626.2815 Continuing education requirements.—

(3) Each licensee except a title insurance agent must complete a 4-hour ~~5-hour~~ update course every 2 years which is specific to the license held by the licensee. The course must be developed and offered by providers and approved by the department. The content of the course must address all lines of insurance for which examination and licensure are required and include the following subject areas: insurance law updates,

ethics for insurance professionals, disciplinary trends and case studies, industry trends, premium discounts, determining suitability of products and services, and other similar insurance-related topics the department determines are relevant to legally and ethically carrying out the responsibilities of the license granted. A licensee who holds multiple insurance licenses must complete an update course that is specific to at least one of the licenses held. Except as otherwise specified, any remaining required hours of continuing education are elective and may consist of any continuing education course approved by the department under this section.

(a) Except as provided in paragraphs (b), (c), (d), (e), (i), and (j), each licensee must also complete 20 ~~19~~ hours of elective continuing education courses every 2 years.

(b) A licensee who has been licensed for 6 or more years must also complete a minimum of 16 ~~15~~ hours of elective continuing education every 2 years.

(c) A licensee who has been licensed for 25 years or more and is a CLU or a CPCU or has a Bachelor of Science degree in risk management or insurance with evidence of 18 or more semester hours in insurance-related courses must also complete a minimum of 6 ~~5~~ hours of elective continuing education courses every 2 years.

(d) An individual who holds a license as a customer representative and who is not a licensed life or health agent

must also complete a minimum of 6 ~~5~~ hours of continuing education courses every 2 years.

(e) An individual subject to chapter 648 must complete the 4-hour ~~5-hour~~ update course and a minimum of 10 ~~9~~ hours of elective continuing education courses every 2 years.

(f) Elective continuing education courses for public adjusters must be specifically designed for public adjusters and approved by the department. Notwithstanding this subsection, public adjusters for workers' compensation insurance or health insurance are not required to take continuing education courses pursuant to this section.

(g) Excess hours accumulated during any 2-year compliance period may be carried forward to the next compliance period.

(h) An individual teaching an approved course of instruction or lecturing at any approved seminar and attending the entire course or seminar qualifies for the same number of classroom hours as would be granted to a person taking and successfully completing such course or seminar. Credit is limited to the number of hours actually taught unless a person attends the entire course or seminar. An individual who is an official of or employed by a governmental entity in this state and serves as a professor, instructor, or in another position or office, the duties and responsibilities of which are determined by the department to require monitoring and review of insurance

laws or insurance regulations and practices, is exempt from this section.

(i) For compliance periods beginning on or after October 1, 2014, any person who holds a license as a title insurance agent must complete a minimum of 10 hours of continuing education credit every 2 years in title insurance and escrow management specific to this state and approved by the department, which must ~~shall~~ include at least 3 hours of continuing education on the subject matter of ethics, rules, or compliance with state and federal regulations relating specifically to title insurance and closing services.

(j) For a licensee who is an active participant in an association, 2 hours of elective continuing education credit per calendar year may be approved by the department, if properly reported by the association.

(7) The following courses may be completed in order to meet the elective continuing education course requirements:

(i) Any part of the Claims and Litigation Management Alliance (CLM) Universal Claims Certification (UCC) professional designation: 20 ~~19~~ hours of elective continuing education and 4 ~~5~~ hours of the continuing education required under subsection (3).

Section 15. Subsections (1) and (2) of section 626.371, Florida Statutes, are amended to read:

626.371 Payment of fees, taxes for appointment period without appointment.—

(1) All initial and renewal appointments shall be submitted to the department on a monthly basis no later than 45 days after the date of appointment and become effective on the date requested on the appointment form.

(2)(a) If, upon application and qualification for an initial or renewal appointment and such investigation as the department may make, ~~it appears to~~ the department determines that an individual has not been properly appointed to represent an insurer or employer, that such individual ~~who~~ was formerly licensed or is currently licensed, ~~but not properly appointed to represent an insurer or employer~~ and that such individual ~~who~~ has been actively engaged or is currently actively engaged as such an appointee, ~~but without being appointed as required,~~ the department shall ~~may~~, if it finds that such failure to be appointed was an inadvertent error on the part of the insurer or employer so represented, notify the insurer or employer of its finding and of the requirement to pay all fees and taxes due pursuant to paragraph (b) within 21 days.

(b) The department may ~~nevertheless~~ issue or authorize the issuance of the appointment upon the insurer's or employer's timely payment to the department of ~~as applied for but subject to the condition that, before the appointment is issued,~~ all fees and taxes that ~~which~~ would have been due had the applicant

been properly ~~so~~ appointed during such current and prior periods, including ~~with applicable~~ fees and taxes that would have been due pursuant to s. 624.501 for such current and prior periods of appointment~~, shall be paid to the department~~.

(c) Upon proper appointment of the individual and payment of all fees and taxes due pursuant to paragraph (b), paragraph (3)(a), and s. 624.501 by the insurer or employer, the department may no longer consider the inadvertent failure to appoint to be a violation of this code.

(d) If the insurer or employer does not pay the fees and taxes due pursuant to paragraph (b) within 21 days after notice by the department, the department shall suspend the insurer's or employer's authority to appoint licensees until all outstanding fees and taxes have been paid.

Section 16. Subsection (3) of section 626.7351, Florida Statutes, is amended to read:

626.7351 Qualifications for customer representative's license.—The department shall not grant or issue a license as customer representative to any individual found by it to be untrustworthy or incompetent, or who does not meet each of the following qualifications:

(3) Within 4 years preceding the date that the application for license was filed with the department, the applicant has earned the designation of Accredited Advisor in Insurance (AAI), Associate in General Insurance (AINS), or Accredited Customer

Service Representative (ACSR) from the Insurance Institute of America; the designation of Certified Insurance Counselor (CIC) from the Society of Certified Insurance Service Counselors; the designation of Certified Professional Service Representative (CPSR) from the National Foundation for CPSR; the designation of Certified Insurance Service Representative (CISR) from the Society of Certified Insurance Service Representatives; the designation of Certified Insurance Representative (CIR) from All-Lines Training; the designation of Professional Customer Service Representative (PCSR) from the Professional Career Institute; the designation of Insurance Customer Service Representative (ICSR) from Statewide Insurance Associates LLC; the designation of Registered Customer Service Representative (RCSR) from a regionally accredited postsecondary institution in the state whose curriculum is approved by the department and includes comprehensive analysis of basic property and casualty lines of insurance and testing which demonstrates mastery of the subject; or a degree from an accredited institution of higher learning approved by the department when the degree includes a minimum of 9 credit hours of insurance instruction, including specific instruction in the areas of property, casualty, and inland marine insurance. The department shall adopt rules establishing standards for the approval of curriculum.

Section 17. Subsection (1) of section 626.8443, Florida Statutes, is amended to read:

626.8443 Duration of suspension or revocation.—

(1) The department shall, in its order suspending a title insurance agent's or agency's license or appointment or in its order suspending the eligibility of a person to hold or apply for such license or appointment, specify the period during which the suspension is to be in effect, but such period may ~~shall~~ not exceed 2 years ~~1 year~~. The license, ~~or~~ appointment, or eligibility will ~~shall~~ remain suspended during the period so specified, subject, however, to any rescission or modification of the order by the department, or modification or reversal thereof by the court, prior to expiration of the suspension period. A license, appointment, or eligibility that ~~which~~ has been suspended may not be reinstated except upon request for such reinstatement, but the department may ~~shall~~ not grant such reinstatement if it finds that the circumstance or circumstances for which the license, appointment, and eligibility was suspended still exist or are likely to recur.

Section 18. Paragraph (e) of subsection (1) of section 626.916, Florida Statutes, is amended to read:

626.916 Eligibility for export.—

(1) No insurance coverage shall be eligible for export unless it meets all of the following conditions:

~~(e) For personal residential property risks, the retail or producing agent must advise the insured in writing that coverage may be available and may be less expensive from Citizens~~

~~Property Insurance Corporation. The notice must include other information that states that assessments by Citizens Property Insurance Corporation are higher and the coverage provided by Citizens Property Insurance Corporation may be less than the property's existing coverage. If the notice is signed by the insured, it is presumed that the insured has been informed and knows that policies from Citizens Property Insurance Corporation may be less expensive, may provide less coverage, and will be accompanied by higher assessments.~~

Section 19. Paragraph (e) is added to subsection (1) of section 626.9551, Florida Statutes, to read:

626.9551 Favored agent or insurer; coercion of debtors.—

(1) No person may:

(e) Require an insurance agent or agency to directly or indirectly provide the replacement cost estimator or other underwriting information of an insurer underwriting an insurance policy covering real property, as a condition precedent or condition subsequent to the lending of money or extension of credit to be secured by real property, when such information is the proprietary business information of an insurer, as defined in s. 624.4212(1), nor may an agent or agency provide this information.

Section 20. Subsections (4) through (10) of section 627.715, Florida Statutes, are renumbered as subsections (5)

through (11), respectively, and a new subsection (4) is added to that section, to read:

627.715 Flood insurance.—An authorized insurer may issue an insurance policy, contract, or endorsement providing personal lines residential coverage for the peril of flood or excess coverage for the peril of flood on any structure or the contents of personal property contained therein, subject to this section. This section does not apply to commercial lines residential or commercial lines nonresidential coverage for the peril of flood. An insurer may issue flood insurance policies, contracts, endorsements, or excess coverage on a standard, preferred, customized, flexible, or supplemental basis.

(4) An agent may export a contract or an endorsement providing flood coverage to an eligible surplus lines insurer without making a diligent effort to seek such coverage from three or more authorized insurers under s. 626.916(1)(a).

Section 21. Subsection (3) of section 633.102, Florida Statutes, is amended to read:

633.102 Definitions.—As used in this chapter, the term:

(3)(a) "Contractor I" means a contractor whose business includes the execution of contracts requiring the ability to lay out, fabricate, install, inspect, alter, repair, and service all types of fire protection systems, excluding preengineered systems.

(b) "Contractor II" means a contractor whose business is limited to the execution of contracts requiring the ability to lay out, fabricate, install, inspect, alter, repair, and service water sprinkler systems, water spray systems, foam-water sprinkler systems, foam-water spray systems, standpipes, combination standpipes and sprinkler risers, all piping that is an integral part of the system beginning at the point of service as defined in this section, sprinkler tank heaters, air lines, thermal systems used in connection with sprinklers, and tanks and pumps connected thereto, excluding preengineered systems.

(c) "Contractor III" means a contractor whose business is limited to the execution of contracts requiring the ability to fabricate, install, inspect, alter, repair, and service carbon dioxide systems, foam extinguishing systems, dry chemical systems, and Halon and other chemical systems, excluding preengineered systems.

(d) "Contractor IV" means a contractor whose business is limited to the execution of contracts requiring the ability to lay out, fabricate, install, inspect, alter, repair, and service automatic fire sprinkler systems for detached one-family dwellings, detached two-family dwellings, and mobile homes, excluding preengineered systems and excluding single-family homes in cluster units, such as apartments, condominiums, and assisted living facilities or any building that is connected to

other dwellings. A Contractor IV is limited to the scope of practice specified in NFPA 13D.

(e) "Contractor V" means a contractor whose business is limited to the execution of contracts requiring the ability to fabricate, install, inspect, alter, repair, and service the underground piping for a fire protection system using water as the extinguishing agent beginning at the point of service as defined in this act and ending no more than 1 foot above the finished floor.

~~The definitions in~~ This subsection may not be construed to include engineers or architects within the defined terms and does ~~do~~ not limit or prohibit a licensed fire protection engineer or architect with fire protection design experience from designing any type of fire protection system. A distinction is made between system design concepts prepared by the design professional and system layout as defined in this section and typically prepared by the contractor. However, a person certified as a Contractor I or~~,~~ Contractor II~~, or Contractor IV under this chapter~~ may design new fire protection systems of 49 or fewer sprinklers;~~, and~~ may design the alteration of an existing fire sprinkler system if the alteration consists of the relocation, addition, or deletion of ~~not more than~~ 49 or fewer sprinklers, notwithstanding the size of the existing fire sprinkler system; or may design the alteration of an existing

fire sprinkler system if the alteration consists of the relocation or deletion of 249 or fewer sprinklers, notwithstanding the size of the existing fire sprinkler system, if there is no change of occupancy, as defined in the Florida Building Code and the Florida Fire Prevention Code, of the affected areas and there is no change in the water demand as defined in NFPA 13, "Standard for the Installation of Sprinkler Systems," and if the occupancy hazard classification as defined in NFPA 13 is reduced or remains the same as a result of the alteration. Conflicts between the Florida Building Code and the Florida Fire Prevention Code shall be resolved pursuant to s. 553.73(1)(d). A person certified as a Contractor I, Contractor II, or Contractor IV may design or alter a fire protection system, the scope of which complies with NFPA 13D, "Standard for the Installation of Sprinkler Systems in One- and Two-Family Dwellings and Manufactured Homes," as adopted by the State Fire Marshal, notwithstanding the number of fire sprinklers. Contractor-developed plans may not be required by any local permitting authority to be sealed by a registered professional engineer.

Section 22. Section 633.136, Florida Statutes, is amended to read:

633.136 Fire and Emergency Incident Information Reporting Program; duties; fire reports.—

(1)(a) The Fire and Emergency Incident Information Reporting Program is created within the division. The program shall:

1. Establish and maintain an electronic communication system capable of transmitting fire and emergency incident information to and between fire service providers ~~protection agencies~~.

2. Initiate a Fire and Emergency Incident Information Reporting System that is ~~shall be~~ responsible for:

a. Receiving fire and emergency incident information from fire service providers ~~protection agencies~~.

b. Preparing and disseminating annual reports to the Governor, the President of the Senate, the Speaker of the House of Representatives, fire service providers ~~protection agencies~~, and, upon request, the public. Each report must ~~shall~~ include, but not be limited to, the information listed in the National Fire Incident Reporting System.

c. Upon request, providing other states and federal agencies with fire and emergency incident data of this state.

3. Adopt rules to effectively and efficiently implement, administer, manage, maintain, and use the Fire and Emergency Incident Information Reporting Program. The rules shall be considered minimum requirements and may ~~shall~~ not preclude a fire service provider ~~protection agency~~ from implementing its

own requirements that ~~which~~ may not conflict with the rules of the division.

4. By rule, establish procedures and a format for each fire service provider ~~protection agency~~ to voluntarily monitor its records and submit reports to the program.

5. Maintain ~~Establish~~ an electronic information database that is accessible and searchable by fire service providers ~~protection agencies~~.

(b) The division shall consult with the Florida Forest Service of the Department of Agriculture and Consumer Services and the State Surgeon General of the Department of Health to coordinate data, ensure accuracy of the data, and limit duplication of efforts in data collection, analysis, and reporting.

(2) The Fire and Emergency Incident Information System Technical Advisory Panel is created within the division. The panel shall advise, review, and recommend to the State Fire Marshal with respect to the requirements of this section. The membership of the panel consists ~~shall consist~~ of the ~~following~~ 15 members~~:~~

~~(a) The current 13 members~~ of the Firefighters Employment, Standards, and Training Council as established in s. 633.402.

~~(b) One member from the Florida Forest Service of the Department of Agriculture and Consumer Services, appointed by the director of the Florida Forest Service.~~

~~(c) One member from the Department of Health, appointed by the State Surgeon General.~~

(3) As used in ~~For the purpose of~~ this section, the term "fire service provider" has the same meaning as in s. 633.102 ~~"fire protection agency" shall be defined by rule by the division~~.

Section 23. Subsection (18) of section 633.202, Florida Statutes, is amended to read:

633.202 Florida Fire Prevention Code.—

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

apply for the appropriate permit for the required communications installation by January 1, 2024 ~~December 31, 2022~~.

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

Remove lines 101-104 and insert:
extending a deadline for certain buildings to apply for a specified permit; creating s. 633.217, F.S.;

COMMITTEE/SUBCOMMITTEE ACTION

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

Committee/Subcommittee hearing bill: Commerce Committee

Representative Rommel offered the following:

Amendment (with directory and title amendments)

Between lines 718 and 719, insert:

(3)(a) Subsection (1) does not apply to wet marine and transportation or aviation risks which are subject to s. 626.917.

(b) Paragraphs (1)(a)-(d) do not apply to classes of insurance which are related to indemnity of deductibles for property insurance or are subject to s. 627.062(3)(d)1. These classes may be exportable under the following conditions:

1. The insurance must be placed only by or through a surplus lines agent licensed in this state;

2. The insurer must be made eligible under s. 626.918; and

3. The insured must sign a disclosure that substantially provides the following: "You are agreeing to place coverage in

the surplus lines market. Superior coverage may be available in the admitted market and at a lesser cost. Persons insured by surplus lines carriers are not protected under the Florida Insurance Guaranty Act with respect to any right of recovery for the obligation of an insolvent unlicensed insurer." If the notice is signed by the insured, the insured is presumed to have been informed and to know that other coverage may be available, and, with respect to the diligent-effort requirement under subsection (1), there is no liability on the part of, and no cause of action arises against, the retail agent presenting the form.

D I R E C T O R Y A M E N D M E N T

Remove lines 702-703 and insert:

Section 18. Paragraph (e) of subsection (1) and paragraph (b) of subsection (3) of section 626.916, Florida Statutes, are amended to read:

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

Remove line 79 and insert:

for export under the Surplus Lines Law; establishing conditions under which coverage for indemnity of property insurance deductibles may be exported to surplus lines; amending s.

CS/HB 1289

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1289 Autonomous Vehicles
SPONSOR(S): Tourism, Infrastructure & Energy Subcommittee, McFarland
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 1620

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

SUMMARY ANALYSIS

Current Florida law defines and provides requirements and restrictions applicable to autonomous vehicles and low-speed vehicles. Federal law defines a "low-speed vehicle" as a motor vehicle:

- That is 4-wheeled,
- Whose speed attainable in 1 mile is more than 20 miles per hour and not more than 25 miles per hour on a paved level surface, and
- Whose gross vehicle weight rating is less than 3,000 pounds.

The bill defines the term "low-speed autonomous delivery vehicle" (LSADV) as a fully autonomous vehicle that meets the current federal definition of low-speed vehicle. The bill authorizes LSADVs to operate only on streets or roads with a posted speed limit of 35 miles per hour or less but does not prohibit such vehicles from crossing a road or street at an intersection where the road or street has a posted speed limit of more than 35 miles per hour. An LSADV may operate on a street or road with a posted speed limit of more than 35 miles per hour, but no more than 45 miles per hour, under certain conditions.

The bill provides equipment requirements for LSADVs and provides that these requirements are superseded by any conflicting federal regulations. The bill also provides minimum insurance requirements, which are the same as those currently in law for autonomous vehicles. The bill provides that any motor vehicle equipment laws or regulations relating to or supporting motor vehicle operation by a human driver but not relevant for an automated driving system are inapplicable to fully autonomous vehicles designed to be operated exclusively by the automated driving system for all trips.

The fiscal impact of the bill is indeterminate because the number of LSADVs that will be deployed in Florida is unknown and registration and titling requirements are not clearly provided in the bill. If LSADVs are required to be registered and titled, the state likely will see an insignificant positive fiscal impact.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Florida Autonomous Vehicle Law

Florida law defines the term "autonomous vehicle" as any vehicle equipped with an automated driving system.[1]

Under Florida law, a fully autonomous vehicle may operate regardless of whether a human operator, or any human at all, is physically present in the vehicle. For purposes of state uniform traffic control,[2] the automated driving system, when engaged, is deemed the operator of an autonomous vehicle, regardless of whether a person is physically present in the vehicle while the vehicle is operating with the automated driving system engaged.[3] If the autonomous vehicle is fully autonomous, it must be able to achieve a minimal risk condition[4] if a failure of the automated driving system occurs which renders that system unable to perform the entire dynamic driving task relevant to its intended operational design domain.[5,6]

A driver's license is not required when a fully autonomous vehicle is operated with the automated driving system engaged and without a human operator.[7] In current law, there is no statute specific to the registration of autonomous vehicles; however, autonomous vehicle owners pay the same license tax as owners of other vehicles, generally based on vehicle type and weight.[8] A fully autonomous vehicle with the automated driving system engaged while logged on to an on-demand autonomous vehicle network or engaged in a prearranged ride must be covered by a policy of automobile insurance which provides:

- Primary liability coverage of at least $1 million for death, bodily injury, and property damage.
- Minimum personal injury protection benefits required under current law.
- Uninsured and underinsured vehicle coverage.[9]

An autonomous vehicle or a fully autonomous vehicle equipped with a teleoperation system[10] may operate without a human operator physically present in the vehicle when the teleoperation system is engaged and, if so equipped, is exempt from certain laws applicable to vehicle drivers, such as the duty to provide information and render reasonable assistance in a crash, the duty to give notice of the crash to appropriate law enforcement, and the prohibition against leaving an unattended motor vehicle without first setting the brake.[11]

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[1] S. 316.003(3)(a), F.S. Section 316.003(3), F.S., defines the term "automated driving system" as the hardware and software that are collectively capable of performing the entire dynamic driving task of an autonomous vehicle on a sustained basis, regardless of whether it is limited to a specific operational design domain.
[2] Ch. 316, F.S.
[3] S. 316.85, F.S.
[4] Section 319.145(2), F.S., defines the term "minimal risk condition" as a reasonably safe state, such as bringing the vehicle to a complete stop and activating the vehicle's hazard lamps.
[5] Section 316.003(3)(d), F.S., defines the term "operational design domain" as a description of the specific operating domain in which an automated driving system is designed to properly operate, including, but not limited to, roadway types, speed ranges, environmental conditions such as weather and time of day, and other domain constraints.
[6] S. 319.145, F.S.
[7] S. 322.015, F.S.
[8] *See* s. 320.08, F.S.
[9] S. 627.749(2)(a), F.S.
[10] Section 316.003(90), F.S., defines the term "teleoperation system" as the hardware and software installed in a motor vehicle which allow a remote human operator to supervise or perform aspects of, or the entirety of, the dynamic driving task. The term "remote human operator" means a natural person who is not physically present in a vehicle equipped with an automated driving system who engages or monitors the vehicle from a remote location. A remote human operator may have the ability to perform aspects of, or the entirety of, the dynamic driving task for the vehicle or cause the vehicle to achieve a minimal risk condition as defined in s. 319.145(2), F.S. A remote human operator must be physically present in the United States and be licensed to operate a motor vehicle by a United States jurisdiction.
[11] The exemptions are contained in ss. 316.062(5), 316.063(4), 316.065(5), 316.1975(3), and 316.303(1). F.S.

An autonomous vehicle registered in this state must meet all of the following requirements:

- When required by federal law:
  - Have been certified in accordance with federal regulations in 49 C.F.R. part 567 as being in compliance with applicable federal motor vehicle safety standards.
  - Bear the required certification label or labels including reference to any exemption granted under applicable federal law.
- Be capable of being operated in compliance with the applicable traffic and motor vehicle laws of this state, regardless of whether the vehicle is operating with the automated driving system engaged.[12]

Florida and Federal Low-Speed Vehicle Laws

Federal law defines the term "low-speed vehicle" to mean a motor vehicle:

- That is 4-wheeled,
- Whose speed attainable in 1 mile is more than 20 miles per hour and not more than 25 miles per hour on a paved level surface, and
- Whose gross vehicle weight rating is less than 3,000 pounds.[13]

Federal regulations require each low-speed vehicle to be equipped with certain safety equipment, including various lamps, reflectors, mirrors, a windshield, vehicle identification number, seat belts and an alert sound for pedestrians to detect and recognize the vehicle.[14]

Florida law defines the term "low-speed vehicle," as any four-wheeled vehicle whose top speed is greater than 20 miles per hour but not greater than 25 miles per hour, including, but not limited to, neighborhood electric vehicles. Low-speed vehicles must comply with the safety standards in 49 C.F.R. s. 571.500 and s. 316.2122, F.S.[15]

Florida law authorizes the operation of a low-speed vehicle on any road in this state with the following restrictions:

- A low-speed vehicle may be operated only on streets where the posted speed limit is 35 miles per hour or less but is not prohibited from crossing a road or street at an intersection where the road or street has a posted speed limit of more than 35 miles per hour.
- A low-speed vehicle must be equipped with headlamps, stop lamps, turn signal lamps, taillamps, reflex reflectors, parking brakes, rearview mirrors, windshields, seat belts, and vehicle identification numbers.
- A low-speed vehicle must be registered, insured, and titled.
- Any person operating a low-speed vehicle or mini truck must have in his or her possession a valid driver license.
- The Department of Transportation (DOT), counties, and municipalities, if necessary in the interest of safety, may prohibit the operation of low-speed vehicles on any road under their respective jurisdictions.[16]

For purposes of seasonal delivery personnel,[17] a low-speed vehicle, under certain restrictions for package size and weight, annually from October 15 through January 31 may operate on any public road within a residential area with a posted speed limit of 35 miles per hour or less. The vehicle must be:

- Marked in a conspicuous manner with the name of the delivery service;
- Equipped with, at a minimum, the equipment required under s. 316.212(6), F.S., which includes a reliable steering apparatus, safe tires, a rearview mirror, and red reflectorized warning devices in both the front and rear.

[12] S. 319.145(1), F.S.
[13] 49 C.F.R. s 571.3.
[14] 49 C.F.R. s. 571.500.
[15] S. 320.01(41), F.S.
[16] S. 316.2122, F.S.
[17] Section 316.2126, F.S., defines the term "seasonal delivery personnel" as employees of a licensed commercial delivery service that has at least 10,000 persons employed in this state.

- Equipped with head lamps and tail lamps, in addition to the safety requirements in s. 316.212(6), F.S., if operated after sunset.[18]

The license tax for an electric low-speed vehicle is the same as that prescribed for any other vehicle, generally based on vehicle type and weight.[19] Low-speed vehicles must have a license plate that complies with the requirements for standard motor vehicles of s. 320.06, F.S., relating to, among other things, plate symbols and numbers, and renewal and replacement.

Low-Speed Autonomous Delivery Vehicles

Convenient delivery of goods to households is increasingly popular, particularly so in the current pandemic. New types of vehicles designed specifically for such purposes are emerging. One such vehicle is produced by Nuro, Inc., which is an autonomous delivery vehicle called the R2X.[20] Nuro indicates the vehicle is about half the width and weight of a typical car.[21]

The National Highway Traffic Safety Administration (NHTSA) has granted Nuro temporary exemptions from three of the federal low-speed vehicle equipment requirements.

- The exterior and interior mirror requirements.
- The windshield glazing requirements.
- The rear visibility requirements (relating to backup camera "linger time").[22,23]

The exemption was granted for two years under a number of terms and conditions and authorizes Nuro to produce 2,500 of the exempted R2X vehicles during any 12-month period of the exemption, or a maximum of 5,000 exempted vehicles over the full two-year period of the exemption. The exemption expires on February 10, 2022.[24]

Effect of the Bill

The bill amends s. 316.003, F.S., to define the term "low-speed autonomous delivery vehicle," (LSADV) as a fully autonomous vehicle that meets the federal definition of a low-speed vehicle.

The bill authorizes an LSADV to operate on any road with the following restrictions:

- An LSADV may operate only on streets or roads where the posted speed limit is 35 miles per hour or less, but is not prohibited from crossing a road or street at an intersection where the road or street has a posted speed limit of more than 35 miles per hour.
- An LSADV may operate on a street or road with a posted speed limit of more than 35 miles per hour, but no more than 45 miles per hour, if:
    - The vehicle travels no more than 1 continuous mile on such a street or road, but the vehicle may travel in excess of 1 continuous mile if authorized by the entity with jurisdiction over the street or road;
    - The vehicle operates exclusively in the right lane, other than for the purpose of completing a turn; and
    - On a two-lane street or road where overtaking and passing another vehicle is unsafe because of traffic moving in the opposite direction or because of other unsafe conditions, and five or more vehicles are formed in a line behind the LSADV, the LSADV must exit

[18] S. 316.2126(3), F.S.
[19] Section 320.08, F.S., provides the statutory license tax based on vehicle type and weight.
[20] *See* Nuro, *About,*: https://nuro.ai/about (last visited Mar. 24, 2021).
[21] *See* Nuro, *Delivery Safety: Nuro's Approach,* p. 9, https://static1.squarespace.com/static/57bcb0e02994ca36c2ee746c/t/5b9a00848a922d8eaecf65a2/1536819358607/delivering_safety_nuros_approach.pdf (last visited Mar. 24, 2021).
[22] Back-up camera linger time is how long that the image from the back-up camera must remain on the screen. https://www.cnet.com/roadshow/news/u-s-requiring-back-up-cameras-in-cars-by-2018/#:~:text=For%20linger%20time%2C%20NHTSA%20mandates,a%20trailer%20or%20parallel%20parking. (last visited Mar. 29, 2021).
[23] *See* Federal Register, Volume 85, No. 28, Tuesday, February 11, 2020, available at Federal Register : Nuro, Inc.; Grant of Temporary Exemption for a Low-Speed Vehicle With an Automated Driving System https://www.federalregister.gov/documents/2020/02/11/2020-02668/nuro-inc-grant-of-temporary-exemption-for-a-low-speed-vehicle-with-an-automated-driving-system (last visited Mar. 24, 2021).
[24] *Id.*

the roadway wherever a sufficient area for a safe turn-out exists, to permit the vehicles following to proceed.

An LSADV must be equipped with headlamps, stop lamps, turn signal lamps, taillamps, reflex reflectors, and vehicle identification numbers. This provision conflicts with the federal equipment requirements[25] for low-speed vehicles discussed above. However, the bill provides that federal regulations adopted by NHTSA supersede this provision. Thus, only those LSADVs that comply with the federal equipment requirements or are granted an exemption from the requirements are authorized to operate under the restrictions in the bill.

An LSADV must also be equipped with a seatbelt if it is designed to transport humans.

An LSADV must be covered by a policy of automobile insurance providing the following coverage, which is the same as required for an autonomous vehicle:

- Primary liability coverage of at least $1 million for death, bodily injury, and property damage.
- Minimum personal injury protection benefits required under current law.
- Uninsured and underinsured vehicle coverage.[26]

The above coverage requirements may be satisfied by automobile insurance maintained by the owner of the LSADV, the owner of the teleoperation system, the remote human operator, or a combination thereof.

The bill amends s. 316.215, F.S., making the provisions of any motor vehicle equipment laws or regulations of this state, relating to or supporting motor vehicle operation by a human driver but not relevant for an automated driving system, inapplicable to fully autonomous vehicles designed to be operated exclusively by the automated driving system for all trips.

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

B. SECTION DIRECTORY:

Section 1 Amends s. 316.003, F.S., providing definitions.

Section 2 Amends s. 316.2122, F.S., relating to the operation of a low speed vehicle, mini truck, or low speed autonomous delivery vehicle on certain roadways.

Section 3 Amends s. 316.215, F.S., relating to scope and effect of regulation.

Sections 4-5 Amends ss. 316.306 and 655.960, F.S., to conform cross-references.

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.

[25] 49 C.F.R. s. 571.500.
[26] S. 627.749(2)(a), F.S.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The fiscal impact of the bill is indeterminate because the number of LSADVs that will be deployed in Florida is unknown. The bill is not clear as to whether LSADVs will need to be registered and titled. If LSADVs are required to be registered and titled, the state will likely see an insignificant positive fiscal impact.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

According to DOT, LSADVs meet the definition of "low-speed vehicle" in Florida law.[27] Section 316.2126(3)(f), F.S., places seasonal and package size and weight restrictions on the use of low speed vehicles by seasonal delivery personnel. The bill is not clear as to whether or not these restrictions and other restrictions regarding low-speed vehicles would apply to LSADVs.[28]

The bill is not clear as to whether LSADVs are required to be registered and titled with the Department of Highway Safety and Motor Vehicles and pay the appropriate license tax.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On April 1, 2021, the Tourism, Infrastructure & Energy Subcommittee adopted two amendments and reported the bill favorably as a committee substitute. The first amendment requires seatbelts in LSADVs designed to transport humans. The second amendment provides minimum insurance coverage

[27] Section 320.01(41), F.S., defines the term "low-speed vehicle" as any four-wheeled vehicle whose top speed is greater than 20 miles per hour but not greater than 25 miles per hour, including, but not limited to, neighborhood electric vehicles. Low-speed vehicles must comply with the safety standards in 49 C.F.R. s. 571.500 and s. 316.2122, F.S.
[28] Department of Transportation, Agency Analysis of 2021 House Bill 1289, p. 5. (Feb. 25, 2021).

requirements for LSADVs that are identical to those contained in current law for “autonomous vehicles” and establishes how those requirements can be met.

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 autonomous vehicles; amending s. 316.003, F.S.; defining the term "low-speed autonomous delivery vehicle"; amending s. 316.2122, F.S.; authorizing the operation of a low-speed autonomous delivery vehicle on certain streets and roads; providing construction; authorizing the operation of a low-speed autonomous delivery vehicle on streets or roads with a posted speed limit of up to 45 miles per hour under specified conditions; providing requirements for low-speed autonomous delivery vehicles; amending s. 316.215, F.S.; providing that certain fully autonomous vehicles are not subject to certain provisions of law or regulations; amending ss. 316.306 and 655.960, F.S.; conforming cross-references; providing an effective date.

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

Section 1. Subsections (38) through (105) of section 316.003, Florida Statutes, are renumbered as subsections (39) through (106), respectively, present subsection (62) is amended, and a new subsection (38) is added to that section, to read:

316.003 Definitions.—The following words and phrases, when used in this chapter, shall have the meanings respectively

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

ascribed to them in this section, except where the context otherwise requires:

(38) LOW-SPEED AUTONOMOUS DELIVERY VEHICLE.—A fully autonomous vehicle that meets the definition of a low-speed vehicle in 49 C.F.R. s. 571.3.

(63) ~~(62)~~ PRIVATE ROAD OR DRIVEWAY.—Except as otherwise provided in paragraph (85)(b) ~~(84)(b)~~, any privately owned way or place used for vehicular travel by the owner and those having express or implied permission from the owner, but not by other persons.

Section 2. Section 316.2122, Florida Statutes, is amended to read:

316.2122 Operation of a low-speed vehicle, ~~or~~ mini truck, or low-speed autonomous delivery vehicle on certain roadways.—

(1) The operation of a low-speed vehicle as defined in s. 320.01 or a mini truck as defined in s. 320.01 on any road is authorized with the following restrictions:

(a) ~~(1)~~ A low-speed vehicle or mini truck may be operated only on streets where the posted speed limit is 35 miles per hour or less. This does not prohibit a low-speed vehicle or mini truck from crossing a road or street at an intersection where the road or street has a posted speed limit of more than 35 miles per hour.

(b) ~~(2)~~ A low-speed vehicle must be equipped with headlamps, stop lamps, turn signal lamps, taillamps, reflex

reflectors, parking brakes, rearview mirrors, windshields, seat belts, and vehicle identification numbers.

(c) ~~(3)~~ A low-speed vehicle or mini truck must be registered and insured in accordance with s. 320.02 and titled pursuant to chapter 319.

(d) ~~(4)~~ Any person operating a low-speed vehicle or mini truck must have in his or her possession a valid driver license.

(2) The operation of a low-speed autonomous delivery vehicle on any road is authorized with the following restrictions:

(a) A low-speed autonomous delivery vehicle may operate only on streets or roads where the posted speed limit is 35 miles per hour or less. This paragraph does not prohibit a low-speed autonomous delivery vehicle from crossing a road or street at an intersection where the road or street has a posted speed limit of more than 35 miles per hour.

(b) A low-speed autonomous delivery vehicle may operate on a street or road with a posted speed limit of more than 35 miles per hour, but no more than 45 miles per hour, if:

1. The low-speed autonomous delivery vehicle travels no more than 1 continuous mile on such a street or road, except that the vehicle may travel in excess of 1 continuous mile if authorized by the entity with jurisdiction over the street or road;

2. The low-speed autonomous delivery vehicle operates

exclusively in the right lane, other than for the purpose of completing a turn; and

3. On a two-lane street or road where overtaking and passing another vehicle is unsafe because of traffic moving in the opposite direction or because of other unsafe conditions, and five or more vehicles are formed in a line behind the autonomous delivery vehicle, the low-speed autonomous delivery vehicle exits the roadway wherever a sufficient area for a safe turn-out exists, to permit the vehicles following to proceed.

(c) A low-speed autonomous delivery vehicle must be equipped with headlamps, stop lamps, turn signal lamps, taillamps, reflex reflectors, and vehicle identification numbers.

(d) A low-speed autonomous delivery vehicle must be equipped with seatbelts if such vehicle is designed to transport persons.

(e) Federal regulations adopted by the National Highway Traffic Safety Administration shall supersede this subsection when found to be in conflict with this subsection.

(f) A low-speed autonomous delivery vehicle must be covered by a policy of automobile insurance which provides the coverage required by s. 627.749(2)(a)1., 2., and 3. The coverage requirements of this paragraph may be satisfied by automobile insurance maintained by the owner of a low-speed autonomous delivery vehicle, the owner of the teleoperation system, the

remote human operator, or a combination thereof.

(3) ~~(5)~~ A county or municipality may prohibit the operation of low-speed vehicles or mini trucks on any road under its jurisdiction if the governing body of the county or municipality determines that such prohibition is necessary in the interest of safety.

(4) ~~(6)~~ The Department of Transportation may prohibit the operation of low-speed vehicles or mini trucks on any road under its jurisdiction if it determines that such prohibition is necessary in the interest of safety.

Section 3. Subsection (6) of section 316.215, Florida Statutes, is renumbered as subsection (7), a new subsection (6) is added to that section, and present subsection (6) is republished, to read:

316.215 Scope and effect of regulations.—

(6) The provisions of any motor vehicle equipment laws or regulations of this state which relate to or support motor vehicle operation by a human driver but are not relevant for an automated driving system shall not apply to fully autonomous vehicles that are designed to be operated exclusively by the automated driving system for all trips.

(7) ~~(6)~~ A violation of this section is a noncriminal traffic infraction, punishable as a nonmoving violation as provided in chapter 318.

Section 4. Paragraph (a) of subsection (3) of section

316.306, Florida Statutes, is amended to read:

316.306 School and work zones; prohibition on the use of a wireless communications device in a handheld manner.—

(3)(a)1. A person may not operate a motor vehicle while using a wireless communications device in a handheld manner in a designated school crossing, school zone, or work zone area as defined in s. 316.003(106) ~~s. 316.003(105)~~. This subparagraph shall only be applicable to work zone areas if construction personnel are present or are operating equipment on the road or immediately adjacent to the work zone area. For the purposes of this paragraph, a motor vehicle that is stationary is not being operated and is not subject to the prohibition in this paragraph.

2.a. During the period from October 1, 2019, through December 31, 2019, a law enforcement officer may stop motor vehicles to issue verbal or written warnings to persons who are in violation of subparagraph 1. for the purposes of informing and educating such persons of this section. This sub-subparagraph shall stand repealed on October 1, 2020.

b. Effective January 1, 2020, a law enforcement officer may stop motor vehicles and issue citations to persons who are driving while using a wireless communications device in a handheld manner in violation of subparagraph 1.

Section 5. Subsection (1) of section 655.960, Florida Statutes, is amended to read:

655.960 Definitions; ss. 655.960-655.965.—As used in this section and ss. 655.961-655.965, unless the context otherwise requires:

(1) "Access area" means any paved walkway or sidewalk which is within 50 feet of any automated teller machine. The term does not include any street or highway open to the use of the public, as defined in s. 316.003(85)(a) or (b) ~~s. 316.003(84)(a) or (b)~~, including any adjacent sidewalk, as defined in s. 316.003.

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

COMMERCE COMMITTEE

CS/HB 1289 by Rep. McFarland
AUTONOMOUS VEHICLES

AMENDMENT SUMMARY
APRIL 14, 2021

Amendment 1 by Rep. McFarland (Line 28):

- Provides that a low-speed autonomous delivery vehicle is not designed for, or capable of, human occupancy.
- Removes a provision requiring low-speed autonomous delivery vehicles to be equipped with seatbelts.

Amendment 2 by Rep. McFarland (Line 124)

- Clarifies that low-speed autonomous delivery vehicles are not subject to certain statutory provisions applicable to low-speed vehicles, including provisions related to seasonal deliveries and driver license requirements.

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 McFarland offered the following:

Amendment

Remove lines 28-95 and insert:

(38) LOW-SPEED AUTONOMOUS DELIVERY VEHICLE.—A fully autonomous vehicle that meets the definition of a low-speed vehicle in 49 C.F.R. s. 571.3., and is not designed for, or capable of, human occupancy.

(63) ~~(62)~~ PRIVATE ROAD OR DRIVEWAY.—Except as otherwise provided in paragraph (85)(b) ~~(84)(b)~~, any privately owned way or place used for vehicular travel by the owner and those having express or implied permission from the owner, but not by other persons.

Section 2. Section 316.2122, Florida Statutes, is amended to read:

316.2122 Operation of a low-speed vehicle, ~~or~~ mini truck, or low-speed autonomous delivery vehicle on certain roadways.—

(1) The operation of a low-speed vehicle as defined in s. 320.01 or a mini truck as defined in s. 320.01 on any road is authorized with the following restrictions:

(a) ~~(1)~~ A low-speed vehicle or mini truck may be operated only on streets where the posted speed limit is 35 miles per hour or less. This does not prohibit a low-speed vehicle or mini truck from crossing a road or street at an intersection where the road or street has a posted speed limit of more than 35 miles per hour.

(b) ~~(2)~~ A low-speed vehicle must be equipped with headlamps, stop lamps, turn signal lamps, taillamps, reflex reflectors, parking brakes, rearview mirrors, windshields, seat belts, and vehicle identification numbers.

(c) ~~(3)~~ A low-speed vehicle or mini truck must be registered and insured in accordance with s. 320.02 and titled pursuant to chapter 319.

(d) ~~(4)~~ Any person operating a low-speed vehicle or mini truck must have in his or her possession a valid driver license.

(2) The operation of a low-speed autonomous delivery vehicle on any road is authorized with the following restrictions:

(a) A low-speed autonomous delivery vehicle may operate only on streets or roads where the posted speed limit is 35

miles per hour or less. This paragraph does not prohibit a low-speed autonomous delivery vehicle from crossing a road or street at an intersection where the road or street has a posted speed limit of more than 35 miles per hour.

(b) A low-speed autonomous delivery vehicle may operate on a street or road with a posted speed limit of more than 35 miles per hour, but no more than 45 miles per hour, if:

1. The low-speed autonomous delivery vehicle travels no more than 1 continuous mile on such a street or road, except that the vehicle may travel in excess of 1 continuous mile if authorized by the entity with jurisdiction over the street or road;

2. The low-speed autonomous delivery vehicle operates exclusively in the right lane, other than for the purpose of completing a turn; and

3. On a two-lane street or road where overtaking and passing another vehicle is unsafe because of traffic moving in the opposite direction or because of other unsafe conditions, and five or more vehicles are formed in a line behind the autonomous delivery vehicle, the low-speed autonomous delivery vehicle exits the roadway wherever a sufficient area for a safe turn-out exists, to permit the vehicles following to proceed.

(c) A low-speed autonomous delivery vehicle must be equipped with headlamps, stop lamps, turn signal lamps, taillamps, reflex reflectors, and vehicle identification

numbers.

(d) Federal regulations adopted by the National Highway Traffic Safety Administration shall supersede this subsection when found to be in conflict with this subsection.

(e) A low-speed autonomous delivery vehicle must be

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 McFarland offered the following:

Amendment (with title amendment)

Between lines 124 and 125, insert:

Section 4. Subsection (5) is added to section 316.2126, Florida Statutes, to read:

316.2126 Authorized use of golf carts, low-speed vehicles, and utility vehicles.—

(5) This section does not apply to the use of low-speed autonomous delivery vehicles.

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

Remove line 14 and insert:

certain provisions of law or regulations; amending s. 316.2126, F.S.; providing that statutory provisions regarding the authorized use of golf cars, low-speed vehicles and utility vehicles are not applicable to low-speed autonomous delivery vehicles; amending ss.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1313 Digital Driver Licenses and Identification Cards
SPONSOR(S): LaMarca
TIED BILLS: CS/HB 1315 **IDEN./SIM. BILLS:** SB 1324

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Tourism, Infrastructure & Energy Subcommittee	15 Y, 0 N	Johnson	Keating
2) Infrastructure & Tourism Appropriations Subcommittee	11 Y, 0 N	Evans	Davis
3) Commerce Committee		Johnson	Hamon

SUMMARY ANALYSIS

Since 2014, the Department of Highway Safety and Motor Vehicles (DHSMV) has been required to prepare for the development of a secure and uniform system for issuing an optional digital proof of driver license. To this end, DHSMV is in the process of developing the Florida Smart ID.

The bill requires DHSMV to establish a secure and uniform system for issuing optional digital proofs of driver licenses and identification cards. Under the bill, DHSMV may contract with one or more private entities to develop an electronic credentialing system. The electronic credentialing system may not retain Internet Protocol addresses, geolocation data, or other information that describes the location, computer, computer system, or computer network from which a customer accesses the system.

The bill prohibits a private entity who contracts for data verification through an electronic credentialing system with the DHSMV from storing, selling, or sharing personal information collected by scanning a digital proof of driver license or identification card unless consent has been provided by the individual.

The bill provides that, notwithstanding any law prescribing the design for, or information required to be displayed on, a driver license or identification card, a digital proof of driver license or identification may comprise a limited profile that includes only information necessary to conduct a specific transaction on the electronic credentialing system.

The bill also provides that a person may not be issued a digital proof of driver license or identification card until he or she satisfies all requirements for issuance of the respective driver license or identification card and has been issued a printed driver license or identification card. The bill establishes penalties for a person who manufacturers or possesses a false digital identification card.

The bill does not appear to have an impact on state or local government revenues. The bill may have an indeterminate, but likely insignificant fiscal impact on state and local government expenditures.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Digital Driver License

A digital driver license comes in the form of a smart phone app protected by biometrics or a personal identification number. Instead of handing over a physical license to a police officer or store clerk, an individual could display the relevant information on his or her smart phone or send it electronically.[1]

Since 2012, the American Association of Motor Vehicle Administrators (AAMVA) has worked to develop identity credential standards, cross-jurisdictional use, authentication, data privacy protection, and other uses of digital driver licenses. AAMVA has collaborated with Underwriter Laboratories to establish international guidelines and interoperability for industry leaders to test their digital driver license solutions with one another.[2]

Since 2014, the Department of Highway Safety and Motor Vehicles (DHSMV) has been required to prepare for the development of a secure and uniform system for issuing an optional digital proof of driver license. DHSMV may contract with one or more private entities to develop a digital proof of driver license system.[3] The digital proof of driver license must be in such a format as to allow law enforcement to verify the authenticity of the digital proof of driver license. DSHMV may adopt rules to ensure valid authentication of digital driver licenses by law enforcement.[4]

A person may not be issued a digital proof of driver license in Florida until he or she has satisfied all of the requirements for issuance of a physical driver license as provided in ch. 322, F.S.[5]

A person who:

- Manufactures a false digital proof of driver license commits a felony of the third degree.[6]
- Possesses a false digital proof of driver license commits a misdemeanor of the second degree.[7]

While the statute allows for the creation of a digital proof of driver license, it does not authorize the creation of a digital identification card.

DHSMV's Motorist Modernization Project is a multi-phased program to modernize its legacy applications and processes. The Motorist Modernization Project has committed resources and approved funding to procure a digital driver license solution as part of Phase II. The FY 2020-2021 appropriation for Motorist Modernization Phase II was $9,877,400. Of this amount, $400,000 was allocated for digital driver license development.[8]

The digital driver license that DHSMV is developing includes a digital identification, which is a digital representation of a person's identity; however, the actual digital driver license is a digital representation of a physical credential and driving privileges. The DHSMV has branded this effort as the "Florida Smart ID" (Smart ID). Below is an overview of the Smart ID development timeline:

- Received legislative authority to implement in 2014

[1] Veronica Combs, *Mobile Driver's License Would Replace the Physical Card With a Digital Identity*, Tech Republic, April 15, 2020, https://www.techrepublic.com/article/mobile-drivers-license-would-replace-the-physical-card-with-a-digital-identity/ (last visited March 11, 2021)
[2] Department of Highway Safety and Motor Vehicles, Agency Analysis of 2021 House Bill 1313, (March 5, 2021),
[3] S. 322.032(1), F.S.
[4] S. 322.032(2), F.S.
[5] S. 322.032(3), F.S.
[6] S. 322.032(4)(a), F.S.
[7] S. 322.032(4)(b), F.S.
[8] Department of Highway Safety and Motor Vehicles, Agency Analysis of 2021 House Bill 1313, (March 5, 2021),

- AAMVA standards completed in 2019
- Vendor awarded contract June 2020
- Started work July 2020
- Pilot program slated to start on March 25, 2021, and planned to run for 90 days.[9]

Florida Smart ID

Smart ID involves multiple interactions occurring between various system components, including a Credential Service Provider (CSP),[10] the Smart ID device, and an associated verifier device.

DHSMV has contracted with a vendor to start the development of Smart ID. As of February 2021, the vendor anticipates completion of development and initiation of a pilot program by late March. The pilot program will allow DHSMV to improve and optimize Smart ID and an associated verifier application prior to the statewide launch.[11]

Law enforcement personnel verifying a Smart ID will have access only to driver license information that the user consents to share, and no other information or data from the smart device will be displayed or shared. The Florida Smart ID will display a QR/barcode that will show a law enforcement officer driver license information when scanned by a verifier application. Businesses verifying a Smart ID will have access only to age verification information that a user consents to share. No other information or data from the smart device will be displayed or shared.[12]

DHSMV can remotely update a Smart ID to extend additional privileges (add an endorsement, change classes of driver license), revoke privileges (suspend driver license), or remotely deactivate or wipe a person's credentials. Both the customer and a verifier application will be able to see when the Smart ID was most recently updated.[13]

Effect of the Bill

The bill amends s. 322.032, F.S., to provide for both a digital proof of driver license (DL) and identification card (ID card). The bill defines the terms "digital proof of driver license" and "digital proof of identification card" as an electronic credential viewable on an electronic credentialing system.[14]

The bill directs DHSMV to establish a secure and uniform system for issuing an optional digital proof of DL or ID card and authorizes DHSMV to contract with a vendor for the purpose of developing an electronic credentialing system. As mentioned above, DHSMV has already begun the development of the Florida Smart ID by contracting with a vendor. The bill prohibits the electronic credentialing system from retaining internet protocol addresses, geolocation data, or other information which can reveal the location, computer, computer system, or computer network which is used by a customer to access the system.

The bill requires the digital DL and ID card to be in a format to allow for verification. The digital DL and ID card may only consist of information necessary to conduct specific transactions in the electronic credentialing system. The bill provides that any other law prescribing the design for, or information required to be displayed on a DL or ID card, a digital proof of DL or ID card may comprise a limited

[9] *Id.* at p. 3.
[10] A Credential Service Provider (CSP) is a trusted entity that issues or registers subscriber tokens and issues electronic credentials to subscribers. The CSP may encompass registration authorities and verifiers that it operates. A CSP may be an independent third party, or may issue credentials for its own use. *See* National Information Technology Laboratory, *Computer Security Resource Center*, https://csrc.nist.gov/glossary/term/credential_service_provider (last visited March 4, 2021).
[11] Department of Highway Safety and Motor Vehicles, Agency Analysis of 2021 House Bill 1313, (March 5, 2021),
[12] *Id.*
[13] *Id.*
[14] The bill defines the term "electronic credentialing system" as a computer system accessed using a computer, a cellular telephone, or any other personal device which queries DHSMV's driver license and identification card records, displays or transmits digital proofs of driver license and identification cards, and verifies the authenticity of those electronic credentials.

profile,[15] which includes only information necessary to conduct a specific transaction on the electronic credentialing system.

The bill amends s. 322.14(1)(a), F.S., to require DHSMV to issue a printed DL to every qualified applicant. The bill prohibits DHSMV from issuing a digital DL or ID card if the applicant is not eligible for the issuance of a physical printed DL or ID card. The digital DL or ID card must be capable of displaying current information from a DL record. For example, if a licensee's driving privilege is suspended, revoked, or disqualified, or if his or her DL is otherwise canceled or expired, a digital proof of DL may not be issued. However, a digital proof of ID card may be issued if the licensee is otherwise eligible for an ID card.[16]

The bill authorizes DHSMV to use a telephone number submitted by a licensee or cardholder in connection with a digital DL or ID for purpose of communication regarding the electronic credential or the motor vehicle records. The bill permits DHSMV to enter into a contract with a private entity to conduct online data calls or offline data verification using the electronic credentialing system.

The bill prohibits any vendor contracted with DHSMV from storing, selling, or sharing any personal information collected from scanning[17] a digital DL or ID card. However, the bill allows individuals using an electronic DL or ID card to consent to allow a private entity to collect and store such personal information. The bill also requires the individual to be informed about what information is collected and the purpose or purposes for which the information will be used. A private entity that violates this section is subject to a civil penalty of up to $5,000 per occurrence. However, this provision does not apply to a financial institution.[18]

The bill provides that any person who manufactures a false digital DL or ID card commits a felony of the third degree. The possession of a false digital DL or ID card is a misdemeanor of the second degree.

The bill amends s. 322.15(1), F.S., to require a person to submit his or her physical DL or ID card if a law enforcement officer is unable to verify a digital credential.

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

B. SECTION DIRECTORY:

Section 1 Amends s. 322.032, F.S., relating to digital proof of driver license or identification card.

Section 2 Amends s. 322.14, F.S., relating to licenses issued to drivers.

Section 3 Amends s. 322.15, F.S., relating to license to be carried and exhibited on demand.

Section 4 Reenacts s. 322.121, F.S., relating to periodic examination of all drivers.

Section 5 Provides an effective date of July 1, 2021.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

[15] The bill defines the term "limited profile" as an electronic credential containing some, but not all, of the information displayed on a printed driver license or identification card.
[16] Eligibility for ID cards is provided in s. 322.051, F.S.
[17] The bill defines the term "scanning" as obtaining data from a digital proof of driver license or identification card in an electronic format.
[18] Section 655.005(1)(i), F.S., defines the term "financial institution" as a state or federal savings or thrift association, bank, savings bank, trust company, international bank agency, international banking corporation, international branch, international representative office, international administrative office, international trust entity, international trust company representative office, qualified limited service affiliate, credit union, or an agreement corporation operating pursuant to s. 25 of the Federal Reserve Act, 12 U.S.C. ss. 601 et seq. or Edge Act corporation organized pursuant to s. 25(a) of the Federal Reserve Act, 12 U.S.C. ss. 611 et seq.

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

See Fiscal Comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Indeterminate. Businesses who wish to provide electronic verification of a Smart ID will need the retail reader application installed on a device. Additionally, if the business prefers to integrate the verification process into their point of sale systems it would require application development to be done by the business to integrate a retail reader application into their point of sale systems.[19]

D. FISCAL COMMENTS:

State and local law enforcement agencies will need to train their members and update associated enforcement policies for the Florida Smart ID. This may have an indeterminate, but likely insignificant fiscal impact on state and local government.[20]

DHSMV has already undertaken development of the Florida Smart ID through existing law and therefore already has the resources to continue with the expanded requirements of the bill. Due to this, the fiscal impact on the DHSMV is minimal and can be absorbed within existing resources.[21]

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

[19] Department of Highway Safety and Motor Vehicles, Agency Analysis of 2021 House Bill 1313, p. 7.
[20] *Id. at 6.*
[21] *Id.*

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to digital driver licenses and identification cards; amending s. 322.032, F.S.; defining terms; requiring the Department of Highway Safety and Motor Vehicles to establish a secure and uniform system for issuing optional digital proofs of driver licenses and identification cards; authorizing the department to contract with one or more private entities to develop an electronic credentialing system; prohibiting such electronic credentialing system from retaining certain information; revising requirements for digital proofs of driver licenses and providing requirements for digital proofs of identification cards; revising the department's rulemaking authority; revising requirements for the issuance of digital proofs of driver licenses and identification cards; authorizing the department to use telephone numbers submitted by licensees and cardholders for specified purposes only; authorizing the department to enter into contracts with private entities for a specified purpose; prohibiting such private entities from storing, selling, or sharing personal information collected from scanning the digital proofs of driver licenses and identification cards; providing an exception by authorizing

individuals to consent to allow private entities to collect and store such personal information; requiring that an individual is informed what information is collected in such scans and the purposes for which the information will be used; authorizing private entities to manually collect personal information from individuals under certain circumstances; providing a civil penalty; providing applicability; conforming provisions to changes made by the act; amending s. 322.14, F.S.; conforming a provision to changes made by the act; amending s. 322.15, F.S.; conforming a provision to changes made by the act; requiring a licensee to present or submit his or her printed driver license to a law enforcement officer or an authorized representative of the department under specified circumstances; reenacting s. 322.121(2), F.S., relating to periodic reexamination of all drivers, to incorporate the amendment made to s. 322.15, F.S., in a reference thereto; providing an effective date.

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

Section 1. Section 322.032, Florida Statutes, is amended to read:

322.032 Digital proof of driver license or identification card.—

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

(a) "Digital proof of driver license" means an electronic credential viewable on an electronic credentialing system.

(b) "Digital proof of identification card" means an electronic credential viewable on an electronic credentialing system.

(c) "Electronic credentialing system" means a computer system accessed using a computer, a cellular telephone, or any other personal device which queries the department's driver license and identification card records, displays or transmits digital proofs of driver licenses and identification cards, and verifies the authenticity of those electronic credentials.

(d) "Limited profile" means an electronic credential containing some, but not all, of the information displayed on a printed driver license or identification card.

(e) "Scanning" means obtaining data from a digital proof of driver license or identification card in an electronic format.

(2)(a) The department shall establish ~~begin to review and prepare for the development of~~ a secure and uniform system for issuing an optional digital proof of driver license or identification card. The department may contract with one or more private entities to develop an electronic credentialing ~~a~~

~~digital proof of driver license~~ system.

(b) The electronic credentialing system may not retain Internet protocol addresses, geolocation data, or other information that describes the location, computer, computer system, or computer network from which a customer accesses the system.

(3)(a) ~~(2)~~ The digital proof of driver license or identification card established ~~developed~~ by the department or by an entity contracted by the department must be in such a format as to allow verification of ~~law enforcement to verify~~ the authenticity of the digital proof of driver license or identification card. The department may adopt rules to ensure valid authentication of digital driver licenses and identification cards ~~by law enforcement~~.

(b)1. Notwithstanding ss. 322.14, 322.141, 322.142, and any other law prescribing the design for, or information required to be displayed on, a driver license, a digital proof of driver license may comprise a limited profile that includes only information necessary to conduct a specific transaction on the electronic credentialing system.

2. Notwithstanding ss. 322.051, 322.141, and any other law prescribing the design for, or information required to be displayed on, an identification card, a digital proof of identification card may comprise a limited profile that includes only information necessary to conduct a specific transaction on

the electronic credentialing system.

(4) ~~(3)~~ A person may not be issued a digital proof of driver license or identification card until he or she satisfies all ~~has satisfied all of the~~ requirements of this chapter for issuance of the respective ~~a physical~~ driver license or identification card and has been issued a printed driver license or identification card. The electronic credentialing system must, upon each presentation of a digital driver license or identification card, display or transmit current records for the driver license or identification card. If a licensee's driving privilege is suspended, revoked, or disqualified, or if his or her driver license is otherwise canceled or expired, a digital proof of driver license may not be issued; however, a digital proof of identification card may be issued if the licensee is otherwise eligible for an identification card under s. 322.051 ~~as provided in this chapter~~.

(5) The department may use a telephone number submitted by a licensee or cardholder in connection with a digital driver license or identification card only for purposes of communication regarding the digital proof of driver license or identification card or the motor vehicle records, as defined in s. 119.0712(2)(a), of the licensee or cardholder.

(6) The department may enter into a contract with a private entity which authorizes online data calls or offline data verification through the electronic credentialing system

that queries the department's driver license and identification card records, displays or transmits digital proofs of driver licenses or identification cards, or verifies the authenticity of such electronic credentials.

(7)(a) Except as provided in paragraph (b), a private entity that contracts with the department and that scans a digital proof of driver license or identification card may not store, sell, or share personal information collected from such scanning of the digital proof of driver license or identification card.

(b) An individual may consent to allow a private entity to collect and store personal information obtained by scanning his or her digital proof of driver license or identification card. However, the individual must be informed what information is collected and the purpose or purposes for which the information will be used. If the individual does not want the private entity to scan his or her digital proof of the individual's driver license or identification card, the private entity may manually collect personal information from the individual.

(c) A private entity that violates this subsection is subject to a civil penalty not to exceed $5,000 per occurrence.

(d) This subsection does not apply to a financial institution as defined in s. 655.005(1)(i).

(8)~~(4)~~ A person who:

(a) Manufactures a false digital proof of driver license

or identification card commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(b) Possesses a false digital proof of driver license or identification card commits a misdemeanor of the second degree, punishable as provided in s. 775.082.

Section 2. Paragraph (a) of subsection (1) of section 322.14, Florida Statutes, is amended to read:

322.14 Licenses issued to drivers.—

(1)(a) The department shall, upon successful completion of all required examinations and payment of the required fee, issue to every qualified applicant a printed driver license that must bear a color photograph or digital image of the licensee; the name of the state; a distinguishing number assigned to the licensee; and the licensee's full name, date of birth, and residence address; a brief description of the licensee, including, but not limited to, the licensee's gender and height; and the dates of issuance and expiration of the license. A space shall be provided upon which the licensee shall affix his or her usual signature. A license is invalid until it has been signed by the licensee except that the signature of the licensee is not required if it appears thereon in facsimile or if the licensee is not present within the state at the time of issuance.

Section 3. Subsection (1) of section 322.15, Florida Statutes, is amended to read:

322.15 License to be carried and exhibited on demand;

fingerprint to be imprinted upon a citation.—

(1) Every licensee shall have his or her driver license, which must be fully legible with no portion of such license faded, altered, mutilated, or defaced, in his or her immediate possession at all times when operating a motor vehicle and shall present or submit the same upon the demand of a law enforcement officer or an authorized representative of the department. A licensee may present or submit a digital proof of driver license as provided in s. 322.032 in lieu of his or her printed ~~a physical~~ driver license; however, if the law enforcement officer or authorized representative of the department is unable to immediately verify the digital proof of driver license, upon the demand of the law enforcement officer or authorized representative of the department, the licensee must present or submit his or her printed driver license.

Section 4. For the purpose of incorporating the amendment made by this act to section 322.15, Florida Statutes, in a reference thereto, subsection (2) of section 322.121, Florida Statutes, is reenacted to read:

322.121 Periodic reexamination of all drivers.—

(2) For each licensee whose driving record does not show any revocations, disqualifications, or suspensions for the preceding 7 years or any convictions for the preceding 3 years except for convictions of the following nonmoving violations:

(a) Failure to exhibit a vehicle registration certificate,

rental agreement, or cab card pursuant to s. 320.0605;

(b) Failure to renew a motor vehicle or mobile home registration that has been expired for 6 months or less pursuant to s. 320.07(3)(a);

(c) Operating a motor vehicle with an expired license that has been expired for 6 months or less pursuant to s. 322.065;

(d) Failure to carry or exhibit a license pursuant to s. 322.15(1); or

(e) Failure to notify the department of a change of address or name within 10 days pursuant to s. 322.19,

the department shall cause such licensee's license to be prominently marked with the notation "Safe Driver."

Section 5. This act shall take effect July 1, 2021.

COMMERCE COMMITTEE

HB 1313 by Rep. LaMarca
DIGITAL DRIVER LICENSES and IDENTIFICATION CARDS

AMENDMENT SUMMARY
APRIL 14, 2021

Amendment 1 by Rep. LaMarca (Line 131):
Clarifies that private entities that scan a digital proof of driver license or identification may not store, sell, or share personal information collected from such scanning.

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

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

Committee/Subcommittee hearing bill: Commerce Committee

Representative LaMarca offered the following:

Amendment (with title amendment)

Remove line 131 and insert:

entity that scans a

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

Remove line 21 and insert:

entities for a specified purpose; prohibiting

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1315 Pub. Rec./Department of Highway Safety and Motor Vehicles
SPONSOR(S): Government Operations Subcommittee, LaMarca
TIED BILLS: HB 1313 **IDEN./SIM. BILLS:** CS/SB 1326

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, As CS	Roth	Smith
3) Commerce Committee		Johnson	Hamon

SUMMARY ANALYSIS

The Department of Highway Safety and Motor Vehicles (DHSMV) is in the process of developing optional digital driver licenses and identification cards, known as Florida Smart ID. Customers can use the Smart ID to show proof of identity or age. The application may be downloaded and installed on a smart device. Once downloaded, a secure enrollment process occurs using DHSMV's Virtual Office website. DHSMV will validate identity and eligibility to activate the Smart ID for use on the device.

HB 1313, to which this bill is linked, requires the DHSMV to establish digital driver licenses and identification cards. That bill also creates statutory guidelines regarding the digital driver licenses and identification cards.

This bill, which is linked to the passage of HB 1313, creates a public record exemption for the following information held by DHSMV:

- Secure login credentials held by the DHSMV; and
- Internet protocol addresses, geolocation data, and other information held by the DHSMV which describes the location, computer, computer system, or computer network from which a user accesses a public-facing portal, and the dates and times that a user accesses a public-facing portal.

The bill provides that the exemption is retroactive and applies to records held by the department before, on, or after the effective date of the exemption.

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 public necessity statement as required by the Florida Constitution.

The bill may have a minimal fiscal impact on state government.

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 a new public record exemption; 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]

Digital Driver License

The Department of Highway Safety and Motor Vehicles (DHSMV) is in the process of developing a digital driver license and identification card known as the Florida Smart ID system (Smart ID). Smart ID has multiple interactions occurring between various system components, including a Credential Service Provider (CSP), the Smart ID device, and an associated Verifier device.

Customers can use the Smart ID to show proof of identity or age. The application may be downloaded and installed on a smart device. Once downloaded, a secure enrollment process occurs using DHSMV's Virtual Office website. DHSMV will validate identity and eligibility to activate the Smart ID for use on the device.

HB 1313, to which this bill is linked, requires the DHSMV to establish digital driver licenses and identification cards. That bill also creates statutory guidelines regarding the digital driver licenses and identification cards.

Effect of the Bill

[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.

The bill creates a public record exemption for certain information held by DHSMV. Specifically, the bill provides that the following information is exempt[7] from public record requirements:

- Secure login credentials held by the DHSMV before, on, or after the effective date of the exemption; and
- Internet protocol addresses, geolocation data, and other information held by the DHSMV which describes the location, computer, computer system, or computer network from which a user accesses a public-facing portal, and the dates and times that a user accesses a public-facing portal.

The bill provides that the exemption is retroactive and applies to records held by the department before, on, or after the effective date of the exemption.

The bill defines the term "secure login credentials" as information held by DHSMV for purposes of authenticating a user logging into a user account on a computer, a computer system, a computer network, or an electronic device; an online user account accessible over the Internet, whether through a mobile device, a website, or any other electronic means; or information used for authentication or password recovery.

The bill defines the term "public-facing portal" as a web portal or computer application accessible to the public over the Internet, whether through a mobile device, website, or other electronic means, which is established for administering ch. 319, F.S., (motor vehicle titling); ch. 320, F.S., (motor vehicle licenses); ch. 322, F.S., (driver licenses); ch. 328, F.S., (vessel registration or titling); or any other provision of law conferring duties upon DHSMV.

The bill provides a public necessity statement as required by article I, section 24(c) of the Florida Constitution. The statement includes that:

- Safeguarding the integrity and accuracy of data systems maintained by DHSMV is of paramount public importance, as these systems comprise critical information related to driver licenses, state identification cards, motor vehicles and vessels, and Florida Highway Patrol law enforcement records and also comprise personal information restricted from public disclosure by the federal Driver Privacy Protection Act of 1994;[8]
- Accordingly, unauthorized access to those systems poses a serious threat to the integrity and accuracy of the data contained therein, and the unauthorized disclosure of personal information contained in those systems may subject users to identity theft, financial harm, or other adverse impacts.
- Development of information technology allows DHSMV to make secure transactions more readily available to the public through expanded use of online user accounts accessible over the Internet, including applications such as digital driver licenses, and the public release of secure login credentials, Internet protocol addresses, geolocation data, or other information which describes the location, computer, computer system, or computer network from which a user accesses a public-facing portal, and the dates and times that a user accesses a public-facing portal, would render these data systems vulnerable to unauthorized access.
- To safeguard user accounts from unauthorized access and avert the unauthorized disclosure of personal information, it is a public necessity that secure login credentials, Internet protocol addresses, geolocation data, and other certain information be made exempt from public records requirements and, without the public records exemption, the effective and efficient administration of user accounts would be hindered.

[7] 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).

[8] 18 U.S.C. ss. 2721 et seq., and s. 119.0712(2), F.S.

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.

B. SECTION DIRECTORY:

Section 1 Amends s. 119.0712, F.S., relating to executive branch agency-exemptions from inspection or copying of records.

Section 2 Provides a statement of public necessity.

Section 3 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 a negative fiscal impact to 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 require counties or municipalities to take action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

Vote Requirement
Article I, section 24(c) of the Florida Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public record or public meeting

exemption. The bill 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 a public record exemption 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 a public record exemption for secure login credentials, Internet protocol addresses, and geolocation data held by DHSMV, which does not appear to be broader than necessary to accomplish its purpose.

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 30, 2021, the Government Operations Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment made a technical change to the definition of “secure login credentials” and more closely aligned the public necessity statement with the information that is being exempted.

This analysis is drafted to the committee substitute as approved by the Government Operations Subcommittee.

A bill to be entitled

An act relating to public records; amending s. 119.0712, F.S.; providing exemptions from public records requirements for secure login credentials, Internet protocol addresses, geolocation data, and other certain information held by the Department of Highway Safety and Motor Vehicles; providing retroactive application; defining the terms "secure login credentials" and "public-facing portal"; providing for future legislative review and repeal of the exemptions; providing a statement of public necessity; providing a contingent effective date.

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

Section 1. Paragraph (e) is added to subsection (2) of section 119.0712, Florida Statutes, to read:

119.0712 Executive branch agency-specific exemptions from inspection or copying of public records.—

(2) DEPARTMENT OF HIGHWAY SAFETY AND MOTOR VEHICLES.—

(e)1. Secure login credentials held by the Department of Highway Safety and Motor Vehicles are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. This exemption applies to secure login credentials held by the department before, on, or after the effective date of the exemption. For

purposes of this subparagraph, the term "secure login credentials" means information held by the department for purposes of authenticating a user logging into a user account on a computer, a computer system, a computer network, or an electronic device; an online user account accessible over the Internet, whether through a mobile device, a website, or any other electronic means; or information used for authentication or password recovery.

2. Internet protocol addresses, geolocation data, and other information held by the Department of Highway Safety and Motor Vehicles which describes the location, computer, computer system, or computer network from which a user accesses a public-facing portal, and the dates and times that a user accesses a public-facing portal, are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. This exemption applies to such information held by the department before, on, or after the effective date of the exemption. For purposes of this subparagraph, the term "public-facing portal" means a web portal or computer application accessible by the public over the Internet, whether through a mobile device, website, or other electronic means, which is established for administering chapter 319, chapter 320, chapter 322, chapter 328, or any other provision of law conferring duties upon the department.

3. This paragraph 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. The Legislature finds that it is a public necessity that secure login credentials, Internet protocol addresses, geolocation data, and other information which describes the location, computer, computer system, or computer network from which a user accesses a public-facing portal, and the dates and times that a user accesses a public-facing portal, held by the Department of Highway Safety and Motor Vehicles be made exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution. The Legislature finds that safeguarding the integrity and accuracy of data systems maintained by the Department of Highway Safety and Motor Vehicles is of paramount public importance. Those systems comprise critical information related to driver licenses, state identification cards, motor vehicles and vessels, and Florida Highway Patrol law enforcement records. Those systems also comprise personal information restricted from public disclosure by the federal Driver's Privacy Protection Act of 1994. Accordingly, unauthorized access to those systems poses a serious threat to the integrity and accuracy of the data contained therein. Moreover, the unauthorized disclosure of personal information contained in those systems may subject users to identity theft, financial harm, or other adverse impacts. The Legislature further finds that development in

information technology allows the Department of Highway Safety and Motor Vehicles to make secure transactions more readily available to the public through expanded use of online user accounts accessible over the Internet, including applications such as digital driver licenses. The public release of secure login credentials, Internet protocol addresses, geolocation data, or other information which describes the location, computer, computer system, or computer network from which a user accesses a public-facing portal, and the dates and times that a user accesses a public-facing portal, would render these data systems vulnerable to unauthorized access. The Legislature finds that, to safeguard user accounts from unauthorized access and avert the unauthorized disclosure of personal information, it is a public necessity that secure login credentials, Internet protocol addresses, geolocation data, and other certain information be made exempt from public records requirements and, without the public records exemption, the effective and efficient administration of user accounts would be hindered.

Section 3. This act shall take effect on the same date that HB 1313 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 1329 Transportation Facility Designations Honoring Fallen Law Enforcement Officers
SPONSOR(S): Tourism, Infrastructure & Energy Subcommittee, Latvala and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 1716

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Tourism, Infrastructure & Energy Subcommittee	15 Y, 0 N, As CS	Johnson	Keating
2) Infrastructure & Tourism Appropriations Subcommittee	12 Y, 0 N	Evans	Davis
3) Commerce Committee		Johnson	Hamon

SUMMARY ANALYSIS

State law authorizes legislative designations of transportation facilities for honorary or memorial purposes or to distinguish a particular facility. The legislative designations do not officially change the current names of the facilities, nor does the law require local governments and private entities to change street signs, mailing addresses, or 911 emergency telephone system listings. State law also requires the appropriate city or county commission to pass a resolution supporting the designation prior to the erection of markers indicating the designation.

The bill creates three honorary designations for various transportation facilities across the state honoring fallen law enforcement officers and directs the Department of Transportation (DOT) to erect suitable markers for each designation.

The bill will have an insignificant negative fiscal impact to the State Transportation Trust Fund associated with erecting suitable markers for the above designations. These costs can be absorbed within DOT's existing resources.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Designations
Section 267.062, F.S., provides for the naming of state buildings and other facilities. The statute provides that except as specifically provided by law, state buildings, roads, bridges, parks, recreational complexes, and other similar facilities may not be named for a living person.

Section 334.071, F.S., authorizes legislative designations of transportation facilities for honorary or memorial purposes or to distinguish a particular facility. The legislative designations do not officially change the current names of the facilities nor does the statute require local governments and private entities to change street signs, mailing addresses, or 911 emergency telephone-number system listings.

Road Markers
The Department of Transportation (DOT) must place a marker at each terminus or intersection of an identified road or bridge and erect other markers it deems appropriate for a designated transportation facility. The appropriate city or county commission must pass a resolution in support of a particular designation before road markers are erected. Additionally, if the designated road segment extends through multiple cities or counties, a resolution must be passed by each affected local government.

Effect of the Bill

The bill requires DOT to erect suitable markers for each of the following designations.

Subsection 1 designates that portion of C.R. 611/E. Lake Road between Forelock Road and Keystone Road in Pinellas County as “Deputy Michael J. Magli Memorial Road.”

Deputy Michael J. Magli was a Pinellas County sheriff’s deputy who was killed in the line of duty on February 17, 2021. He had served the Pinellas County Sheriff’s Office for eight years.[1]

Subsection 2 designates that portion of S.R. 60 between I-75 and Phillip Lee Boulevard in Hillsborough County is designated as "Sergeant Brian LaVigne Road."

Sergeant Brian LaVigne was killed on January 11, 2021, when his patrol car was intentionally rammed by another vehicle on West Lumsden Road, near South King's Avenue, in Brandon. He was killed the day before his last scheduled shift before retirement.[2]

Subsection 3 designates that portion of I-275 between E. Sligh Avenue and E. Dr. Martin Luther King Boulevard in Hillsborough County as “Officer Jesse Madsen Memorial Highway.”

Officer Jesse Madsen was killed, on March 9, 2021, when he was responding to reports of a vehicle driving in the wrong direction. He was struck head-on by the wrong-way driver on I-275, near Hillsborough Avenue.[3]

B. SECTION DIRECTORY:

Section 1 Creates honorary transportation facility designations; directs DOT to erect suitable markers.

[1] Florida House of Representatives and Senate File Legislation to Honor Pinellas County Deputy Michael J. Magli, Press Release, Feb. 25, 2021.
[2] Officer Down Memorial Page, https://www.odmp.org/officer/25051-master-corporal-brian-roy-lavigne (last visited Mar. 9, 2021).
[3] Officer Down Memorial Page, https://www.odmp.org/officer/25185-officer-jesse-madsen (last visited Mar. 18, 2021).

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:

   DOT estimates a cost of $1,000 per designation for the appropriate markers, which provides for two signs per designation at $500 per sign.[4] Therefore, the bill has an estimated negative fiscal impact of $3,000 to the State Transportation Trust Fund. This cost can be absorbed within existing DOT resources.

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.

[4] E-mail from Amanda Marsh, Legislative Programs Office, Department of Transportation, RE: Road Designation Fiscal (Jan. 5, 2021).

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 22, 2021, the Tourism, Infrastructure & Energy Subcommittee adopted a proposed committee substitute for HB 1329 and reported the bill favorably as a committee substitute. As originally filed, the bill designated the Michael J. Magli Memorial Road in Pinellas County and directed DOT to erect suitable markers for the designation. The committee substitute designates Sergeant Brian LaVigne Road and Officer Jesse Madsen Memorial Highway in Hillsborough County and directs DOT to erect suitable markers for both designations.

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 transportation facility designations honoring fallen law enforcement officers; providing honorary designations of certain transportation facilities in specified counties; directing the Department of Transportation to erect suitable markers; providing an effective date.

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

Section 1. Transportation facility designations; Department of Transportation to erect suitable markers.—

(1) That portion of C.R. 611/E. Lake Road between Forelock Road and Keystone Road in Pinellas County is designated as "Deputy Michael J. Magli Memorial Road."

(2) That portion of S.R. 60 between I-75 and Philip Lee Boulevard in Hillsborough County is designated as "Sergeant Brian LaVigne Road."

(3) That portion of I-275 between E. Sligh Avenue and E. Dr. Martin Luther King, Jr., Boulevard in Hillsborough County is designated as "Officer Jesse Madsen Memorial Highway."

(4) The Department of Transportation is directed to erect suitable markers designating the transportation facilities as described in this section.

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

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

HB 1385

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1385 Department of Transportation
SPONSOR(S): LaMarca
TIED BILLS: **IDEN./SIM. BILLS:** SB 1126

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Tourism, Infrastructure & Energy Subcommittee	16 Y, 0 N	Johnson	Keating
2) Infrastructure & Tourism Appropriations Subcommittee	14 Y, 0 N	Hicks	Davis
3) Commerce Committee		Johnson	Hamon

SUMMARY ANALYS

The bill addresses several matters related to the Department of Transportation (DOT). DOT's mission is to provide a safe transportation system that ensures the mobility of people and goods, enhances economic prosperity, and preserves the quality of our environment and communities. In summary, the bill:

- Clarifies that the Department of Revenue is responsible for transferring a portion of documentary stamp tax revenues distributed to the General Revenue Fund.
- Removes obsolete references to the general revenue service charge from specified transportation-related state revenues.
- Increases the authorized dollar amount of the alternative debt service cap on Right-of-Way Acquisition and Bridge Construction bonds.
- Amends the Move Over Law to include road and bridge maintenance or construction vehicles displaying warning lights.
- Authorizes persons to appear before the Commercial Motor Vehicle Review Board via communications media technology, including video conference technologies.
- Restores DOT's rulemaking authority relating to airport zoning.
- Clarifies provisions relating to the notice and hearing that DOT is required to provide when a transportation project on the State Highway System modifies an existing access to an abutting property.
- Revises from October 1 to August 1, the date for metropolitan planning organization annual submissions of project priorities to the DOT districts.
- Removes the expiration date for Legislative Budget Commission chair and vice chair authority to approve certain amendments to DOT's work program.

The bill may have an indeterminate, positive impact on state and local government revenues and an insignificant negative impact on state government expenditures. See Fiscal Analysis section for details.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Documentary Stamp Tax/General Revenue Fund Transfer

Current Situation
Chapter 201, F.S., imposes an excise tax on certain documents, known as the documentary stamp tax. The Department of Revenue (DOR) administers ch. 201, F.S.,[1] including the collection of documentary stamp taxes, which are distributed each fiscal year to the General Revenue Fund and various state trust funds.[2]

After certain required payments to the Land Acquisition Trust Fund[3] and the deduction of the General Revenue service charge,[4] the lesser of 24.18442 percent of the remainder or $541.75 million is allocated to the State Transportation Trust Fund (STTF) in each fiscal year. Of such funds, $75 million must be transferred to the General Revenue Fund in each fiscal year. The remaining amount is credited to the STTF and must be used for the following programs: New Starts Transit Program, the Small County Outreach Program, the Strategic Intermodal System, the Transportation Regional Incentive Program, and the Florida Rail Enterprise.[5]

While ch. 201, F.S., specifies that DOR administers the documentary stamp tax, DOR is not expressly identified as the entity responsible for making the $75 million transfer to the General Revenue Fund each fiscal year.

Effect of the Bill
The bill clarifies that DOR is the entity responsible for transferring the $75 million each fiscal year to the General Revenue Fund.

Obsolete General Revenue Surcharge References

Current Situation
Section 215.20(1), F.S., establishes an eight percent service charge to the General Revenue Fund from all revenues deposited into most state trust funds,[6] representing the estimated pro rata share of the cost of general government.

Section 215.211, F.S., eliminates or reduces the general revenue service charge for specified proceeds. Effective July 1, 2002, the service charge for taxes distributed under s. 206.606(1), F.S., relating to the distribution of motor fuel taxes, s. 212.0501(6), F.S., relating to taxes on diesel fuel for business purposes, and s. 319.32(5), F.S., providing for the disposition of fees from certificate of title transactions, were eliminated.[7] Additionally, the service charge was eliminated beginning July 1, 2001, on taxes distributed under s. 206.608, F.S., relating to the State Comprehensive Enhanced Transportation System Tax.[8] While the service charge on the specified taxes was eliminated, obsolete references to the service charge remain in statute.[9]

Effect of the Bill
The bill amends ss. 206.606(1), 206.608, 212.0501(6), and 319.32(5), F.S., to remove obsolete references to the general revenue service charge.

[1] S. 201.11, F.S.
[2] S. 201.15, F.S.
[3] S. 201.15(1) and (2), F.S.
[4] The General Revenue service charge is imposed by s. 215.20(1), F.S.
[5] S. 201.15(4)(a), F.S.
[6] Exceptions are enumerated in s. 215.22, F.S., including trust funds administered by the Department of Transportation.
[7] S. 215.211(1), F.S.
[8] S. 215.211(2), F.S.
[9] DOT 2020 Legislative Proposal, *Remove Obsolete Language Relating to Service Charge.*

Right-of-Way Acquisition and Bridge Construction Bonds-Debt Service Cap

Current Situation

The Department of Transportation (DOT) is authorized to issue Right-of-Way Acquisition and Bridge Construction bonds to finance or refinance the cost of acquiring real property for state roads or the cost of state bridge construction. Except for bonds issued to refinance previously issued bonds, bonds must be authorized by the Legislature and must be issued pursuant to the State Bond Act.[10,11]

Section 206.46, F.S., authorizes DOT to transfer up to seven percent of the revenues deposited into the STTF in each fiscal year to the Right-of-Way Acquisition and Bridge Construction Trust Fund, to meet the requirements of outstanding or proposed bond obligations. Notwithstanding this authorized annual transfer, the annual amount transferred may not exceed an amount necessary to provide the required debt service coverage levels for a maximum debt service of $275 million,[12] which was last set in 2005.[13]

Section 339.139, F.S., requires DOT to manage all levels of debt to ensure that no more than 20 percent of total projected available state and federal revenues from the STTF, together with any local funds committed to DOT projects, are committed to certain obligations in any year. Right-of-Way Acquisition and Bridge Construction Bonds are included in DOT's overall debt assessment.

In 2020, based on DOT's most recent bond sale and Revenue Estimating Conference projections at the time, the limit on debt service based on the seven-percent threshold would have been $287 million in Fiscal Year 2019-2020 (based on revenues of $4.1 billion), growing to $350 million in Fiscal Year 2028-2029 (based on revenues of $5 billion).[14]

Under the current statutory limit, the $275 million cap leaves DOT with about $100 million of available bonding capacity.[15]

Effect of the Bill

The bill amends s. 206.46, F.S., to increase DOT's maximum debt service coverage level from $275 million to $350 million. Under the bill, debt service may not exceed seven percent of the revenues deposited into the STTF or $350 million, whichever is less. The increase of the debt service cap will provide DOT with additional bonding capacity, offering it more flexibility in financing certain projects.

Move Over Law

Current Situation

Under Florida's Move Over Law, if an emergency vehicle, a sanitation vehicle, a utility service vehicle, or a wrecker is working along the side of the road, every other driver must vacate the lane closest to the vehicle when driving on a highway with two or more lanes traveling in the direction of the vehicle. If such movement cannot be safely accomplished, the driver must reduce his or her speed to a speed that is 20 miles per hour less than the posted speed limit when the posted speed limit is 25 miles per hour or greater, or travel at 5 miles per hour when the posted speed limit is 20 miles per hour or less.[16] The purpose of the Move Over Law is to protect workers stopped along the road performing their jobs.[17]

[10] The State Bond Act is codified in ss. 215.57-215.83, F.S.
[11] S. 215.605, F.S.
[12] S. 206.46(2), F.S.
[13] Ch. 2005-290, L.O.F.
[14] DOT 2020 Legislative Proposals, *Change in the Right-of-Way Acquisition and Bridge Construction Bonds Debt Service Cap*.
[15] *Id*.
[16] S. 316.126(1)(b), F.S.
[17] Florida Driver Handbook, 2020, p. 44, available at https://www3.flhsmv.gov/handbooks/englishdriverhandbook.pdf (last visited Feb. 17, 2021).

A violation of the Move Over Law is a noncriminal traffic infraction, punishable as a moving violation.[18] The statutory base fine for a moving violation is $60, but with additional fees assessed by the state and local governments, the total fine increases to up to $158.[19]

According to DOT, for the safety of both workers and the public, temporary traffic control[20] is required for maintenance and construction activities. However, due to the risks associated with setting up temporary traffic controls for short duration work activities, such as fence repair, ditch repair, or tree trimming, such controls may be omitted. This places road and bridge maintenance or construction vehicles in situations similar to vehicles identified in the Move Over Law, where they are working along the road without protection from adjacent traffic.

Section 316.2397, F.S., prohibits certain lights on vehicles and provides certain exceptions. With regard to road and bridge construction or maintenance vehicles, the statute provides that:

- Road or street maintenance equipment, road or street maintenance vehicles, road service vehicles, refuse collection vehicles, petroleum tankers, and mail carrier vehicles may show or display amber lights when in operation or a hazard exists.
- Road maintenance and construction equipment and vehicles may display flashing white lights or flashing white strobe lights when in operation and where a hazard exists.[21]

Effect of the Bill

The bill amends the Move Over Law to include road and bridge maintenance or construction vehicles displaying warning lights consistent with s. 316.2397, F.S., and operating on the roadside without advance signs and channelizing devices (such as traffic cones or barricades). This will require drivers to move over to a different lane or decrease their speed when road and bridge maintenance or construction vehicles are displaying warning lights on the roadside.

Commercial Motor Vehicle Review Board

Current Situation

Section 316.545(7), F.S., creates the Commercial Motor Vehicle Review Board (board) within DOT, consisting of three permanent members who are the Secretary of Transportation, the executive director of the Department of Highway Safety and Motor Vehicles, and the Commissioner of Agriculture, or their authorized representatives, and four additional members appointed by the Governor or the Commissioner of Agriculture representing various industries. The board may review any penalty imposed upon any vehicle or person relating to the weight imposed on the roads by the axles and wheels of motor vehicles, to special fuel and motor fuel tax compliance, or to violations of safety regulations. The board is authorized to hold sessions and conduct proceedings at any place.[22] According to DOT's website, the board meets in Tallahassee.[23]

Any person against whom a penalty is imposed may apply to the board for a modification, cancellation, or revocation of the penalty. A written explanation provided within a letter protesting a penalty is acceptable in lieu of physical attendance by a person requesting a hearing before the board, but attendance "will provide the petitioner the opportunity to respond to board inquiries into subjects that the petitioner may have overlooked when drafting his letter of protest."[24] Appearance by telephone is

[18] S. 316.126(6), F.S.

[19] Florida Court Clerks and Comptrollers Association, *2020 Distribution of Court Related Filing Fees, Service Charges, and Fines,* p. 23, available at https://cdn.ymaws.com/www.flclerks.com/resource/resmgr/advisories/advisories_2021/21bull005_Attach_2_2020_Dist.pdf (last visited Feb. 17, 2021).

[20] Temporary traffic control refers to the devices and personnel that change road conditions for a work zone or following an incident. Email from John Kotyk, Deputy Director Legislative Affairs, Department of Transportation, Questions, January 31, 2020.

[21] Ss. 316.2397(4) and (5), F.S.

[22] S. 316.545(8), F.S.

[23] Commercial Motor Vehicle Review Board, https://www.fdot.gov/traffic/reviewboard.shtm (last visited March 11, 2021)

[24] *See* DOT, Traffic Engineering and Operations Office, *Commercial Motor Vehicle Review Board*, for more details on the Board, as well as its 2021 meeting schedule, available at Commercial Motor Vehicle Review Board https://www.fdot.gov/traffic/reviewboard.shtm (last visited March 11, 2021).

not available, but DOT is required to provide space and video conference capability at each of its seven district offices[25] to enable a person requesting a hearing to appear remotely before the board, provided the requester notifies the board at least 14 calendar days before the hearing date.[26]

By rule of the Administration Commission, agencies are currently authorized to conduct proceedings using communications media technology, *i.e.,* the electronic transmission of printed matter, audio, full-motion video, freeze frame video, compressed video, and digital video by any method available.[27] This definition appears to include commonly available video conferencing programs.

Effect of the Bill
The bill authorizes a person appearing before the board to appear remotely via communications media technology. The bill also removes the requirement that DOT provide space in its district offices for persons to appear via video conference.

Airport Zoning-Rulemaking

Current Situation
In 2016, the Legislature amended[28] chapter 333, F.S., which contains airport zoning provisions relating to the management of airspace and land use at or near airports. In general, the 2016 law:

- Updated statutory definitions and terms in accordance with federal regulations.
- Streamlined the local airport protection zoning process to a simpler permitting model.
- Provided local governments the flexibility to structure and incorporate the airport protection zoning review process into existing local zoning review processes and repealed duplicative requirements for obtaining a variance.

DOT has a long-standing rule[29] "*Airport Licensing, Registration, and Airspace Protection,"* the purpose of which is "to promote safe civil aviation by eliminating hazards; to provide airfield standards for airports; to provide standards for airport marking and lighting; to license and register airports, pursuant to the licensing and registration requirements of chapter 330, F.S., and to promote flight safety by providing for airspace protection, pursuant to the requirements of chapter 333, F.S." However, the 2016 amendments to ch. 333, F.S., eliminated this authority.

Effect of the Bill
The bill creates s. 333.15, F.S., to require DOT to adopt rules to implement ch. 333, F.S., thereby providing specific statutory authority for the rule on Airport Licensing, Registration, and Airspace Protection.

Transportation Projects Modifying Access to Adjacent Property

Current Situation
Whenever DOT proposes any project on the State Highway System which will divide a state highway, erect median barriers modifying currently available vehicle turning movements, or have the effect of closing or modifying an existing access to an abutting property owner, DOT must notify all affected property owners, municipalities, and counties at least 180 days before the design of the project is finalized. DOT's notice must provide a written explanation regarding the need for the project and indicate that all affected parties will be given an opportunity to provide comments to DOT regarding potential impacts of the change.[30]

DOT must also consult with the applicable local government on its final design proposal if the department intends to divide a state highway, erect median barriers, or close or modify existing access

[25] DOT's district offices are located in Bartow, Lake City, Chipley, Ft. Lauderdale, Deland, Miami, and Tampa.
[26] *See* DOT, Traffic Engineering and Operations Office, *Commercial Motor Vehicle Review Board*, https://www.fdot.gov/traffic/reviewboard.shtm (last visited March 29, 2021).
[27] Fla. Admin. Code R. 28-109, F.A.C.
[28] Ch. 2016-239, L.O.F.
[29] R. 14-60, F.A.C.
[30] S. 335.199(1), F.S.

to abutting commercial business properties. The local government may present DOT with alternatives that relieve impacts to such business properties.[31]

DOT must hold at least one public hearing in the jurisdiction where the project is located and receive public input to determine how the project will affect access to businesses and the potential economic impact of the project on the local business community.[32] DOT must review all comments from the public hearing and take the comments and any alternatives presented by a local government into consideration in the final design of the highway project.[33]

Effect of the Bill

The bill clarifies that DOT must provide the required notice at least 180 days before the design *phase* of the project is *completed*, rather than finalized.

The bill revises all occurrences of the word "hearing" to "meeting." The bill also clarifies that DOT must hold at least one public meeting prior to completing the design phase of a project, so that they can review all comments from the public meeting and take the comments and any alternatives presented by a local government into consideration in the final design of the project.

Work Program Submission Deadline

Present Situation

As part of its budgeting process, DOT prepares a tentative work program, based on the district[34] work programs.[35] Each district's work program is developed cooperatively with the state's metropolitan planning organizations (MPOs)[36] and includes, to the maximum extent feasible, the project priorities of MPOs that have been submitted to the district by October 1 of each year.[37] However, DOT and an MPO may agree, in writing, to vary this submittal date.[38]

Prior to submitting the district work program to the central office, each district holds public hearings and makes a presentation to each MPO to determine the necessity of making any changes to the district work program.[39] Following submission of each district's work program to the central office, DOT develops its tentative work program based on the district work programs.[40]

DOT's central office submits a preliminary copy of its tentative work program to the Executive Office of the Governor, the legislative appropriations committees, the Florida Transportation Commission, and the Department of Economic Opportunity at least 14 days prior to the convening of the regular legislative session.[41] Following a public hearing and evaluation by the Florida Transportation Commission, DOT submits the tentative work program to the Executive Office of the Governor and the legislative appropriations committees no later than 14 days after the regular legislative session begins.[42]

According to DOT, because the Legislature begins its annual session in January in even-numbered years, the period for DOT to complete its work program process has accelerated. DOT has requested

[31] S. 335.199(2)(b), F.S.
[32] S. 335.199(3), F.S.
[33] S. 335.199(4), F.S.
[34] DOT is a decentralized agency and most of its project development and operations are done through its seven geographic districts.
[35] Section 339.135(4)(b)1, F.S.
[36] MPOs are federally-required regional transportation planning entities in urbanized areas with populations of 50,000 or more persons.
[37] This is pursuant to s. 339.175(8)(b), F.S.
[38] S. 339.135(4)(c)2., F.S.
[39] S. 339.135(4)(d), F.S.
[40] S. 339.135(4)(e), F.S.
[41] S. 339.135(4)(f), F.S.
[42] S. 339.135(4)(h), F.S.

that MPOs submit their project priorities sooner than October 1 in order for DOT to have ample time to complete its required processes.[43]

Effect of the Bill
The bill changes the deadline by which MPOs must submit their project priorities to DOT from October 1 to August 1. The change will provide DOT with additional time to complete its work program process prior to the beginning of the annual legislative session.

Work Program Amendments

Current Situation
Current law authorizes DOT to amend its adopted work program and provides procedures for such amendments.[44] However, any work program amendment that transfers fixed capital outlay appropriations between categories or increases an appropriation category is subject to approval by the Legislative Budget Commission (LBC).

Prior to 2016, if an LBC meeting could not be held within 30 days after DOT submitted an amendment, the chair and vice chair of the LBC could approve the amendment.[45] In 2016, the Legislature repealed this authorization.[46] In 2019, this authorization was reinstated with an expiration date of July 1, 2020.[47] In 2020, the authorization was reinstated with an expiration date of July 1, 2021.[48]

Effect of the Bill
The bill removes the expiration of authorization for LBC chair and vice chair approval of amendments to DOT's adopted work program, thereby making the provision permanent.

Effective Date

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

B. SECTION DIRECTORY:

Section 1: Amends s. 201.15, F.S., relating to the distribution of taxes collected.

Section 2: Amends s. 206.46, F.S., relating to the State Transportation Trust Fund.

Section 3: Amends s. 206.606, F.S., relating to the distribution of certain proceeds.

Section 4: Amends s. 206.608, F.S., relating to the State Comprehensive Enhanced Transportation System Tax.

Section 5: Amends s. 212.0501, F.S., relating to the tax on diesel fuel for business purposes.

Section 6: Amends s. 316.126, F.S., relating to the operation of vehicles and actions of pedestrians on approach of an authorized emergency, sanitation, or utility service vehicle.

Section 7: Amends s. 316.545, F.S., relating to weight and load unlawful; special fuel and motor fuel tax enforcement; inspection; penalty; review.

Section 8: Amends s. 319.32, F.S., relating to fees; service charges; disposition.

Section 9: Creates s. 333.15, F.S., providing rulemaking authority.

[43] Department of Transportation 2020 Legislative Proposal, *Advance MPO Deadline to Submit Project Priorities*
[44] S. 339.135(7), F.S.
[45] S. 339.135(7)(g), F.S. (2015).
[46] S. 16, Ch. 2016-181, L.O.F.
[47] S. 101, Ch. 2019-116, L.O.F.
[48] S. 93, Ch. 2020-144, L.O.F.

Section 10: Amends s. 335.199, F.S., relating to transportation projects modifying access to adjacent property.

Section 11: Amends s. 339.135, F.S., relating to DOT's work program.

Section 12: Amends s. 339.175, F.S., relating to Metropolitan Planning Organizations.

Section 13: Provides an effective date of July 1, 2021.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   The bill may have an indeterminate, positive impact on state government revenues due to additional penalties associated with adding road and bridge construction and maintenance vehicles to the Move Over Law.

2. Expenditures:

   Costs associated with enforcement and public awareness of the change to the Move Over Law would be insignificant. The Department of Highway Safety and Motor Vehicles already enforces the current law and has an existing awareness campaign.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   The bill may have an indeterminate, positive impact on local government revenues due to additional penalties associated with adding road and bridge construction and maintenance vehicles to the Move Over Law.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Individuals that appear before the Commercial Motor Vehicle Review Board remotely via communications media technology will likely see a savings in expenditures associated with not being required to travel to a DOT district office.

D. FISCAL COMMENTS:

Increasing the $275 million debt cap to $350 million on Right-of-Way and Bridge Construction Bonds will provide DOT with additional flexibility to utilize that program to meet future bridge replacement needs with minimal disruption to capacity projects in DOT's work program.[49]

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

[49] Department of Transportation, 2020 Legislative Proposal, *Change in Right-of-Way Acquisition and Bridge Construction Bond Debt Service Cap.*

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill requires DOT to establish rules regarding airport zoning.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to the Department of Transportation; amending s. 201.15, F.S.; clarifying that the Department of Revenue is responsible for a certain transfer from the State Treasury to the General Revenue Fund of a portion of documentary stamp tax distributions credited to the State Transportation Trust Fund; amending s. 206.46, F.S.; revising a limitation on an annual transfer from the State Transportation Trust Fund to the Right-of-Way Acquisition and Bridge Construction Trust Fund; amending ss. 206.606, 206.608, and 212.0501, F.S.; removing a requirement for the deduction of certain service charges before the distribution of certain moneys; amending s. 316.126, F.S.; requiring vehicle operators to vacate the lane closest to certain road and bridge maintenance or construction vehicles or reduce speed upon approach; amending s. 316.545, F.S.; deleting a requirement that the Department of Transportation provide space and video conference capability at each of the department's district offices as an alternative to physical appearance by a person requesting a hearing before the Commercial Motor Vehicle Review Board within the department; requiring the department to allow a person requesting

a hearing to appear remotely via communications media technology authorized by a specified rule; amending s. 319.32, F.S.; removing a requirement for the deduction of certain service charges before depositing fees for a certificate of title into the State Transportation Trust Fund; creating s. 333.15, F.S.; requiring the department to adopt rules to implement ch. 333, F.S., relating to airport zoning; amending s. 335.199, F.S.; requiring the department, when proposing any project on the State Highway System which will close or modify an existing access to an abutting property owner, to provide notice to affected property owners, municipalities, and counties at least 180 days before the design phase of the project is completed; requiring the department to hold at least one public meeting before completing the design phase of the project; making a technical change; amending s. 339.135, F.S.; revising the date by which a metropolitan planning organization must annually submit project priorities to the appropriate department district for purposes of developing department district work programs; removing the expiration of provisions relating to approval of department work program amendments when a meeting of the Legislative Budget Commission cannot be held

within a specified timeframe; amending s. 339.175, F.S.; revising the date by which a metropolitan planning organization must annually submit a list of project priorities to the appropriate department district for purposes of developing department district work programs and developing metropolitan planning organization transportation improvement programs; amending s. 338.2278, F.S.; conforming cross-references; providing an effective date.

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

Section 1. Paragraph (a) of subsection (4) of section 201.15, Florida Statutes, is amended to read:

201.15 Distribution of taxes collected.—All taxes collected under this chapter are hereby pledged and shall be first made available to make payments when due on bonds issued pursuant to s. 215.618 or s. 215.619, or any other bonds authorized to be issued on a parity basis with such bonds. Such pledge and availability for the payment of these bonds shall have priority over any requirement for the payment of service charges or costs of collection and enforcement under this section. All taxes collected under this chapter, except taxes distributed to the Land Acquisition Trust Fund pursuant to subsections (1) and (2), are subject to the service charge

imposed in s. 215.20(1). Before distribution pursuant to this section, the Department of Revenue shall deduct amounts necessary to pay the costs of the collection and enforcement of the tax levied by this chapter. The costs and service charge may not be levied against any portion of taxes pledged to debt service on bonds to the extent that the costs and service charge are required to pay any amounts relating to the bonds. All of the costs of the collection and enforcement of the tax levied by this chapter and the service charge shall be available and transferred to the extent necessary to pay debt service and any other amounts payable with respect to bonds authorized before January 1, 2017, secured by revenues distributed pursuant to this section. All taxes remaining after deduction of costs shall be distributed as follows:

(4) After the required distributions to the Land Acquisition Trust Fund pursuant to subsections (1) and (2) and deduction of the service charge imposed pursuant to s. 215.20(1), the remainder shall be distributed as follows:

(a) The lesser of 24.18442 percent of the remainder or $541.75 million in each fiscal year shall be paid into the State Treasury to the credit of the State Transportation Trust Fund. Of such funds, $75 million for each fiscal year shall be transferred by the Department of Revenue to the General Revenue Fund. Notwithstanding any other law, the remaining amount credited to the State Transportation Trust Fund shall be used

for:

1. Capital funding for the New Starts Transit Program, authorized by Title 49, U.S.C. s. 5309 and specified in s. 341.051, in the amount of 10 percent of the funds;

2. The Small County Outreach Program specified in s. 339.2818, in the amount of 10 percent of the funds;

3. The Strategic Intermodal System specified in ss. 339.61, 339.62, 339.63, and 339.64, in the amount of 75 percent of the funds after deduction of the payments required pursuant to subparagraphs 1. and 2.; and

4. The Transportation Regional Incentive Program specified in s. 339.2819, in the amount of 25 percent of the funds after deduction of the payments required pursuant to subparagraphs 1. and 2. The first $60 million of the funds allocated pursuant to this subparagraph shall be allocated annually to the Florida Rail Enterprise for the purposes established in s. 341.303(5).

Section 2. Subsection (2) of section 206.46, Florida Statutes, is amended to read:

206.46 State Transportation Trust Fund.—

(2) Notwithstanding any other ~~provisions of~~ law, from the revenues deposited into the State Transportation Trust Fund a maximum of 7 percent in each fiscal year shall be transferred into the Right-of-Way Acquisition and Bridge Construction Trust Fund created in s. 215.605, as needed to meet the requirements of the documents authorizing the bonds issued or proposed to be

issued under ss. 215.605 and 337.276 or at a minimum amount sufficient to pay for the debt service coverage requirements of outstanding bonds. Notwithstanding the 7 percent annual transfer authorized in this subsection, the annual amount transferred under this subsection may ~~shall~~ not exceed an amount necessary to provide the required debt service coverage levels for a maximum debt service not to exceed $350 ~~$275~~ million. Such transfer shall be payable primarily from the motor and diesel fuel taxes transferred to the State Transportation Trust Fund from the Fuel Tax Collection Trust Fund.

Section 3. Subsection (1) of section 206.606, Florida Statues, is amended to read:

206.606 Distribution of certain proceeds.—

(1) Moneys collected pursuant to ss. 206.41(1)(g) and 206.87(1)(e) shall be deposited in the Fuel Tax Collection Trust Fund. Such moneys, after deducting ~~the service charges imposed by s. 215.20,~~ the refunds granted pursuant to s. 206.41~~,~~ and the administrative costs incurred by the department in collecting, administering, enforcing, and distributing the tax, which administrative costs may not exceed 2 percent of collections, shall be distributed monthly to the State Transportation Trust Fund, except that:

(a) $6.30 million shall be transferred to the Fish and Wildlife Conservation Commission in each fiscal year and deposited in the Invasive Plant Control Trust Fund to be used

for aquatic plant management, including nonchemical control of aquatic weeds, research into nonchemical controls, and enforcement activities. The commission shall allocate at least $1 million of such funds to the eradication of melaleuca.

(b) Annually, $2.5 million shall be transferred to the State Game Trust Fund in the Fish and Wildlife Conservation Commission and used for recreational boating activities and freshwater fisheries management and research. The transfers must be made in equal monthly amounts beginning on July 1 of each fiscal year. The commission shall annually determine where unmet needs exist for boating-related activities, and may fund such activities in counties where, due to the number of vessel registrations, sufficient financial resources are unavailable.

1. A minimum of $1.25 million shall be used to fund local projects to provide recreational channel marking and other uniform waterway markers, public boat ramps, lifts, and hoists, marine railways, and other public launching facilities, derelict vessel removal, and other local boating-related activities. In funding the projects, the commission shall give priority consideration to:

a. Unmet needs in counties having populations of 100,000 or <u>less</u> ~~fewer~~.

b. Unmet needs in coastal counties having a high level of boating-related activities from individuals residing in other counties.

2. The remaining $1.25 million may be used for recreational boating activities and freshwater fisheries management and research.

3. The commission may adopt rules to administer a Florida Boating Improvement Program.

The commission shall prepare and make available on its Internet website an annual report outlining the status of its Florida Boating Improvement Program, including the projects funded, and a list of counties whose needs are unmet due to insufficient financial resources from vessel registration fees.

(c) 0.65 percent of moneys collected pursuant to s. 206.41(1)(g) shall be transferred to the Agricultural Emergency Eradication Trust Fund.

(d) $13.4 million in fiscal year 2007-2008 and each fiscal year thereafter of the moneys attributable to the sale of motor and diesel fuel at marinas shall be transferred from the Fuel Tax Collection Trust Fund to the Marine Resources Conservation Trust Fund in the Fish and Wildlife Conservation Commission.

Section 4. Section 206.608, Florida Statutes, is amended to read:

206.608 State Comprehensive Enhanced Transportation System Tax; deposit of proceeds; distribution.—Moneys received pursuant to ss. 206.41(1)(f) and 206.87(1)(d) shall be deposited in the Fuel Tax Collection Trust Fund, and, after deducting ~~the service~~

~~charge imposed in chapter 215 and~~ administrative costs incurred by the department in collecting, administering, enforcing, and distributing the tax, which administrative costs may not exceed 2 percent of collections, shall be distributed as follows:

(1) 0.65 percent of the proceeds of the tax levied pursuant to s. 206.41(1)(f) shall be transferred to the Agricultural Emergency Eradication Trust Fund.

(2) The remaining proceeds of the tax levied pursuant to s. 206.41(1)(f) and all of the proceeds from the tax imposed by s. 206.87(1)(d) shall be transferred into the State Transportation Trust Fund, and may be used only for projects in the adopted work program in the district in which the tax proceeds are collected and, to the maximum extent feasible, such moneys shall be programmed for use in the county where collected. However, no revenue from the taxes imposed pursuant to ss. 206.41(1)(f) and 206.87(1)(d) in a county shall be expended unless the projects funded with such revenues have been included in the work program adopted pursuant to s. 339.135.

Section 5. Subsection (6) of section 212.0501, Florida Statutes, is amended to read:

212.0501 Tax on diesel fuel for business purposes; purchase, storage, and use.—

(6) All taxes required to be paid on fuel used in self-propelled off-road equipment shall be deposited in the Fuel Tax Collection Trust Fund, to be distributed~~, after deduction of the~~

~~general revenue service charge pursuant to s. 215.20,~~ to the State Transportation Trust Fund. The department shall, each month, make a transfer, from general revenue collections, equal to such use tax reported on dealers' sales and use tax returns.

Section 6. Paragraph (b) of subsection (1) of section 316.126, Florida Statutes, is amended to read:

316.126 Operation of vehicles and actions of pedestrians on approach of certain ~~an authorized emergency, sanitation, or utility~~ service vehicles ~~vehicle~~.—

(1)

(b) If an authorized emergency vehicle displaying any visual signals is parked on the roadside, a sanitation vehicle is performing a task related to the provision of sanitation services on the roadside, a utility service vehicle is performing a task related to the provision of utility services on the roadside, ~~or~~ a wrecker displaying amber rotating or flashing lights is performing a recovery or loading on the roadside, or a road and bridge maintenance or construction vehicle displaying warning lights is on the roadside without advance signs and channelizing devices, the driver of every other vehicle, as soon as it is safe:

1. Shall vacate the lane closest to the emergency vehicle, sanitation vehicle, utility service vehicle, ~~or~~ wrecker, or road and bridge maintenance or construction vehicle when driving on an interstate highway or other highway with two or more lanes

traveling in the direction of the emergency vehicle, sanitation vehicle, utility service vehicle, ~~or~~ wrecker, or road and bridge maintenance or construction vehicle, except when otherwise directed by a law enforcement officer. If such movement cannot be safely accomplished, the driver shall reduce speed as provided in subparagraph 2.

2. Shall slow to a speed that is 20 miles per hour less than the posted speed limit when the posted speed limit is 25 miles per hour or greater; or travel at 5 miles per hour when the posted speed limit is 20 miles per hour or less, when driving on a two-lane road, except when otherwise directed by a law enforcement officer.

Section 7. Paragraph (f) of subsection (7) of section 316.545, Florida Statutes, is amended to read:

316.545 Weight and load unlawful; special fuel and motor fuel tax enforcement; inspection; penalty; review.—

(7) There is created within the Department of Transportation the Commercial Motor Vehicle Review Board, consisting of three permanent members who shall be the Secretary of Transportation, the executive director of the Department of Highway Safety and Motor Vehicles, and the Commissioner of Agriculture, or their authorized representatives, and four additional members appointed pursuant to paragraph (b), which may review any penalty imposed upon any vehicle or person under the provisions of this chapter relating to weights imposed on

the highways by the axles and wheels of motor vehicles, to special fuel and motor fuel tax compliance, or to violations of safety regulations.

(f) The review board may hold sessions and conduct proceedings at any place within the state. As an alternative to appearing physically ~~physical appearance, and in addition to any other method of appearance authorized by rule~~, the Department of Transportation shall allow ~~provide space and video conference capability at each district office to enable~~ a person requesting a hearing to appear remotely before the board via communications media technology authorized by chapter 28-109, Florida Administrative Code, regardless of the physical location of the board proceeding.

Section 8. Subsection (5) of section 319.32, Florida Statutes, is amended to read:

319.32 Fees; service charges; disposition.—

(5)(a) Forty-seven dollars of each fee collected, except for fees charged on a certificate of title for a motor vehicle for hire registered under s. 320.08(6), for each applicable original certificate of title and each applicable duplicate copy of a certificate of title~~, after deducting the service charges imposed by s. 215.20,~~ shall be deposited into the State Transportation Trust Fund. Deposits to the State Transportation Trust Fund pursuant to this paragraph may not exceed $200 million in any fiscal year, and any collections in excess of

that amount during the fiscal year shall be paid into the General Revenue Fund.

(b) All fees collected pursuant to subsection (3) shall be paid into the Nongame Wildlife Trust Fund. Twenty-one dollars of each fee, except for fees charged on a certificate of title for a motor vehicle for hire registered under s. 320.08(6), for each applicable original certificate of title and each applicable duplicate copy of a certificate of title~~, after deducting the service charges imposed by s. 215.20,~~ shall be deposited into the State Transportation Trust Fund. All other fees collected by the department under this chapter shall be paid into the General Revenue Fund.

Section 9. Section 333.15, Florida Statutes, is created to read:

333.15 Rulemaking authority.—The department shall adopt rules pursuant to ss. 120.536(1) and 120.54 to implement this chapter.

Section 10. Subsections (1), (3), and (4) of section 335.199, Florida Statutes, are amended to read:

335.199 Transportation projects modifying access to adjacent property.—

(1) Whenever the Department of Transportation proposes any project on the State Highway System which will divide a state highway, erect median barriers modifying currently available vehicle turning movements, or have the effect of closing or

modifying an existing access to an abutting property owner, the department shall notify all affected property owners, municipalities, and counties at least 180 days before the design phase of the project is completed ~~finalized~~. The department's notice shall provide a written explanation regarding the need for the project and indicate that all affected parties will be given an opportunity to provide comments to the department regarding potential impacts of the change.

(3) The department shall hold at least one public meeting before completing the design phase of the project ~~hearing~~ in the jurisdiction where the project is located and receive public input to determine how the project will affect access to businesses and the potential economic impact of the project on the local business community.

(4) The department must review all comments from the public meeting ~~hearing~~ and take the comments and any alternatives presented by a local government under subsection (2) into consideration in the final design of the highway project.

Section 11. Paragraph (c) of subsection (4) and paragraph (g) of subsection (7) of section 339.135, Florida Statutes, are amended to read:

339.135 Work program; legislative budget request; definitions; preparation, adoption, execution, and amendment.—

(4) FUNDING AND DEVELOPING A TENTATIVE WORK PROGRAM.—

(c)1. For purposes of this section, the board of county commissioners shall serve as the metropolitan planning organization in those counties which are not located in a metropolitan planning organization and shall be involved in the development of the district work program to the same extent as a metropolitan planning organization.

2. The district work program shall be developed cooperatively from the outset with the various metropolitan planning organizations of the state and include, to the maximum extent feasible, the project priorities of metropolitan planning organizations which have been submitted to the district by August 1 ~~October 1~~ of each year pursuant to s. 339.175(8)(b); however, the department and a metropolitan planning organization may, in writing, cooperatively agree to vary this submittal date. To assist the metropolitan planning organizations in developing their lists of project priorities, the district shall disclose to each metropolitan planning organization any anticipated changes in the allocation or programming of state and federal funds which may affect the inclusion of metropolitan planning organization project priorities in the district work program.

3. Before ~~Prior to~~ submittal of the district work program to the central office, the district shall provide the affected metropolitan planning organization with written justification for any project proposed to be rescheduled or deleted from the

district work program which project is part of the metropolitan planning organization's transportation improvement program and is contained in the last 4 years of the previous adopted work program. By no later than 14 days after submittal of the district work program to the central office, the affected metropolitan planning organization may file an objection to such rescheduling or deletion. When an objection is filed with the secretary, the rescheduling or deletion may not be included in the district work program unless the inclusion of such rescheduling or deletion is specifically approved by the secretary. The Florida Transportation Commission shall include such objections in its evaluation of the tentative work program only when the secretary has approved the rescheduling or deletion.

(7) AMENDMENT OF THE ADOPTED WORK PROGRAM.—

(g)1. Any work program amendment which also requires the transfer of fixed capital outlay appropriations between categories within the department or the increase of an appropriation category is subject to the approval of the Legislative Budget Commission.

2. If a meeting of the Legislative Budget Commission cannot be held within 30 days after the department submits an amendment to the Legislative Budget Commission, the chair and vice chair of the Legislative Budget Commission may authorize such amendment to be approved pursuant to s. 216.177. ~~This~~

~~subparagraph expires July 1, 2021.~~

Section 12. Paragraph (b) of subsection (8) of section 339.175, Florida Statutes, is amended to read:

339.175 Metropolitan planning organization.—

(8) TRANSPORTATION IMPROVEMENT PROGRAM.—Each M.P.O. shall, in cooperation with the state and affected public transportation operators, develop a transportation improvement program for the area within the jurisdiction of the M.P.O. In the development of the transportation improvement program, each M.P.O. must provide the public, affected public agencies, representatives of transportation agency employees, freight shippers, providers of freight transportation services, private providers of transportation, representatives of users of public transit, and other interested parties with a reasonable opportunity to comment on the proposed transportation improvement program.

(b) Each M.P.O. annually shall prepare a list of project priorities and shall submit the list to the appropriate district of the department by August 1 ~~October 1~~ of each year; however, the department and a metropolitan planning organization may, in writing, agree to vary this submittal date. Where more than one M.P.O. exists in an urbanized area, the M.P.O.'s shall coordinate in the development of regionally significant project priorities. The list of project priorities must be formally reviewed by the technical and citizens' advisory committees, and approved by the M.P.O., before it is transmitted to the

district. The approved list of project priorities must be used by the district in developing the district work program and must be used by the M.P.O. in developing its transportation improvement program. The annual list of project priorities must be based upon project selection criteria that, at a minimum, consider the following:

1. The approved M.P.O. long-range transportation plan;

2. The Strategic Intermodal System Plan developed under s. 339.64.

3. The priorities developed pursuant to s. 339.2819(4).

4. The results of the transportation management systems; and

5. The M.P.O.'s public-involvement procedures.

Section 13. This act shall take effect July 1, 2021.

COMMERCE COMMITTEE

HB 1385 by Rep. LaMarca
DEPARTMENT OF TRANSPORTATION

AMENDMENT SUMMARY
APRIL 14, 2021

Amendment 1 by Rep. LaMarca (Line 229)
Revises the July 1, 2020, expiration date of certain funding for the Intermodal Logistics Center Infrastructure Support Program to July 1, 2025.

Amendment 2 by Rep. LaMarca (Line 438):
Removes the requirement that the South Florida Regional Transportation Authority receive Department of Transportation (DOT) approval prior to entering into, extending, or renewing any contract using DOT funds.

COMMITTEE/SUBCOMMITTEE ACTION

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

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

Amendment (with title amendment)

Remove lines 229-230 and insert:

Section 6. Subsection (7) of section 311.101, Florida Statutes, is amended to read:

311.101 Intermodal Logistics Center Infrastructure Support Program.—

(7) ~~Beginning in fiscal year 2014-2015,~~ At least $5 million per year shall be made available from the State Transportation Trust Fund for the program. The Department of Transportation shall include projects proposed to be funded under this section in the tentative work program developed pursuant to s. 339.135(4). This subsection expires on July 1, 2025 ~~2020~~.

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

Remove line 15 and insert:
moneys; amending s. 311.101, F.S.; extending the expiration date for certain funding for the Intermodal Logistics Center Infrastructure Support Program; amending s. 316.126, F.S.; requiring vehicle

COMMITTEE/SUBCOMMITTEE ACTION

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

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

Amendment (with title amendment)

Between lines 438 and 439, insert:

Section 13. Subsections (4), (5), and (6) of section 343.54, Florida Statutes, are amended to read:

343.54 Powers and duties.—

~~(4) Notwithstanding any other provision of this part, the authority may not enter into, extend, or renew any contract or other agreement that may be funded, in whole or in part, with funds provided by the department without the prior review and written approval by the department of the authority's proposed expenditures.~~

(4)~~(5)~~ The authority shall develop and adopt a plan for the operation, maintenance, and expansion of the transit system.

Such plan shall address the authority's plan for the development of public and private revenue sources, and the service to be provided, including expansions of current service which are consistent, to the maximum extent feasible, with approved local government comprehensive plans. The plan shall be reviewed and updated annually.

(5) ~~(6)~~ The authority, by a resolution of its governing board, may expand its service area into Monroe County. The board shall determine the conditions and terms of the partnership, except as provided herein. However, the authority may not expand its service area without the consent of the board of county commissioners representing the proposed expansion area, and a county may not be added to the service area except in the year that federal reauthorization legislation for transportation funds is enacted. The authority shall not expand into any county other than Monroe County without the department's prior written approval.

Section 14. Paragraph (d) of subsection (2) of section 343.53, Florida Statutes, is amended to read:

343.53 South Florida Regional Transportation Authority.—

(2) The governing board of the authority shall consist of 10 voting members, as follows:

(d) If the authority's service area is expanded pursuant to s. 343.54(5) ~~s. 343.54(6)~~, the county containing the new service area shall have two members appointed to the board as

follows:

1. The county commission of the county shall elect a commissioner as that commission's representative on the board. The commissioner must be a member of the county commission when elected and for the full extent of his or her term.

2. The Governor shall appoint a citizen member to the board who is not a member of the county commission but who is a resident and a qualified elector of that county.

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

Remove lines 58-59 and insert:

programs; amending s. 343.54, F.S.; deleting a requirement that the South Florida Regional Transportation Authority receive prior review and written approval of certain contracts; amending s. 343.53, F.S.; conforming a cross reference; providing an effective date.

CS/HB 1463

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1463 Department of Economic Opportunity
SPONSOR(S): Tourism, Infrastructure & Energy Subcommittee, LaMarca
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 1948

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Tourism, Infrastructure & Energy Subcommittee	18 Y, 0 N, As CS	Willson	Keating
2) Infrastructure & Tourism Appropriations Subcommittee	14 Y, 0 N	Hicks	Davis
3) Commerce Committee		Willson	Hamon

SUMMARY ANALYSIS

The Department of Economic Opportunity (DEO) is tasked with assisting the Governor in working with the Legislature, state agencies, business leaders, and economic development professionals to formulate and implement coherent and consistent policies and strategies designed to promote economic opportunities for all Floridians. DEO must also ensure that the state's goals and policies relating to economic development, workforce development, community planning and development, and affordable housing are fully integrated with appropriate implementation strategies. Currently, the DEO agency head is referred to as the “Executive Director.”

The bill provides that the DEO agency head will be known as “Secretary” instead of “Executive Director” and adds the Secretary to the Board of Directors for Enterprise Florida and CareerSource Florida, respectively. Additionally, the bill establishes an Office of Economic Accountability and Transparency within DEO.

The bill provides flexibility to DEO relating to the administration of the federally funded Florida Small Cities Community Development Block Grant Program and provides for expedited permitting for certain homeowners affected by natural disasters.

The bill makes several changes relating to Florida’s reemployment assistance program in order to modernize, increase efficiency and effectiveness, and provide for additional accountability.

The bill does not appear to impact state revenues, and any actions to modernize the reemployment assistance system during the 2021-22 fiscal year are included in the House proposed General Appropriations Act for FY 2021-2022.

The bill takes effect upon becoming law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Florida's economic development system is multi-faceted and includes public agencies, non-profit corporations, and private entities at the state, regional, and local level. The Legislature created some of these organizations, while others are units of local government or privately formed associations or alliances. Many of the organizations have similar missions (e.g., encouraging economic development and enhancing the state's business climate) and serve the same constituencies (e.g., in- and out-of-state businesses and the state's economic and workforce development communities). The most prominent of these organizations are Enterprise Florida, Inc. and the Department of Economic Opportunity.[1]

Department of Economic Opportunity (DEO)

Current Situation

The Department of Economic Opportunity (DEO) is tasked with assisting the Governor in working with the Legislature, state agencies, business leaders, and economic development professionals to formulate and implement coherent and consistent policies and strategies designed to promote economic opportunities for all Floridians.[2] DEO must also ensure that the state's goals and policies relating to economic development, workforce development, community planning and development, and affordable housing are fully integrated with appropriate implementation strategies.[3]

To achieve these goals, the Legislature established five divisions within DEO:

- Strategic Business Development
- Community Development
- Workforce Services
- Finance and Administration
- Division of Information Technology[4]

These divisions help fulfill DEO's statutorily mandated responsibilities, which include to:

- Facilitate the direct involvement of the Governor and the Lieutenant Governor in economic development and workforce development projects designed to create, expand, and retain businesses in this state, to recruit business from around the world, and to facilitate other job-creating efforts.
- Recruit new businesses to this state and promote the expansion of existing businesses by expediting permitting and location decisions, worker placement and training, and incentive awards.
- Promote viable, sustainable communities by providing technical assistance and guidance on growth and development issues, grants, and other assistance to local communities.
- Ensure that the state's goals and policies relating to economic development, workforce development, community planning and development, and affordable housing are fully integrated with appropriate implementation strategies.
- Manage the activities of public-private partnerships and state agencies in order to avoid duplication and promote coordinated and consistent implementation of programs in areas including, but not limited to, tourism; international trade and investment; business recruitment, creation, retention, and expansion; minority and small business development; rural community development; and the development and promotion of professional and amateur sporting events.

[1] OPPAGA, Report No. 16-09, Agency Review-Enterprise Florida, Inc., and Department of Economic Opportunity, at 6. (Dec. 2016)
[2] S. 20.60(4), F.S.
[3] OPPAGA, *Program Summary: Department of Economic Opportunity*, https://oppaga.fl.gov/ProgramSummary/ProgramDetail?programNumber=6101 (last visited Mar. 11, 2021).
[4] S. 20.60(3), F.S.

- Coordinate with state agencies on the processing of state development approvals or permits to minimize the duplication of information provided by the applicant and the time before approval or disapproval.[5]

Current law refers to the head of DEO as the "executive director."[6] However, Florida law generally provides that the term "secretary" means "an individual who is appointed by the Governor to head a department and who is not otherwise named in the State Constitution" whereas "executive director" means the chief administrative employee or officer of a department headed by a board or by the Governor and the Cabinet.[7]

Currently, DEO does not have an office or program expressly dedicated to overseeing transparency and accountability for the agency.

Effect of the Bill

The bill renames the DEO agency head as the "Secretary" from the "Executive Director," establishes the Office of the Secretary, and allows for the appointment of deputy assistant secretaries. The bill also amends cross references to reflect the change in title concerning the agency head of DEO.

The bill establishes the Office of Economic Accountability and Transparency within DEO, which must:

- Oversee critical objectives and ensure key objectives are clearly communicated to the public.
- Organize resources, expertise, data, and research to focus on and solve the complex economic challenges facing the state.
- Provide leadership for priority issues that require integration of policy, managements, and critical objectives from multiple programs and organizations internal and external to DEO.
- Promote and facilitate key initiatives to address priority economic issues and explore data and identify opportunities for innovative approaches to address such economic issues.
- Promote strategic planning.

Community Development Block Grants

Current Situation

Florida Small Cities Community Development Block Grant Program

In 1981, Congress amended the Housing and Community Development Act of 1974 to give each state the opportunity to administer Community Development Block Grant (CDBG) funds for non-entitlement areas. Non-entitlement[8] areas include local governments which do not receive CDBG funds directly from the U.S. Department of Housing and Urban Development (HUD) as part of the entitlement program (Entitlement Cities and Urban Counties). The purpose of the Act is to assist local governments in carrying out effective community development and project planning/design activities to reverse community decline.[9]

HUD distributes funds to each state through a statutory formula based on population, poverty, incidence of overcrowded housing, and age of housing. Neither HUD nor states distribute funds

[5] S. 20.60(4), F.S.
[6] S. 20.60(2), F.S.
[7] S. 20.03, F.S.
[8] Funding for the Florida Small Cities CDBG Program is competitive and there are no "targeted" areas. The HUD identifies communities as non-entitlement local governments. Communities that do not have an open Commercial Revitalization, Neighborhood Revitalization, or Housing Rehabilitation subgrant are eligible to apply for CDBG funding in one of those categories. For a list of the Florida communities that were eligible to receive CDBG funding during the FFY 2019 funding cycle, *see* DEO, *Small Cities Community Development Block Grant FFY 2019 Eligible Communities,* https://floridajobs.org/docs/default-source/2015-community-development/community-revitalization/cdbg/applicants/ffy2019smallcitieseligiblecommunities.pdf?sfvrsn=11a948b0_2 (last visited Mar. 11, 2021).
[9] *Id*.

directly to citizens or private organizations. State governments, in turn, distribute the funds to local governments.[10]

DEO manages four CDBG Programs:

- Florida Small Cities Community Development Block Grant (CDBG) Program
- CDBG – Coronavirus Relief Funding (CDBG-CV)
- Office of Disaster Recovery
- Neighborhood Stabilization Program

The Community Development Block Grant (CDBG) Program is a federal program that provides funding for housing and community development activities. The program consists of two components:

- Entitlement Program - funds are provided directly to urban communities, and
- State Program - funds are allocated to the states for distribution to eligible non-entitlement communities

DEO administers the State Program in Florida through the Small Cities CDBG Program, which is a competitive grant program that awards funds to units of local government in small urban and rural areas. Florida receives between 18 and 26 million dollars annually from HUD to award subgrants to eligible units of local government. The program provides an opportunity for communities to obtain funds for projects that they cannot otherwise afford. CDBG funds can also provide administrative support for local governments that may not have the staffing resources necessary to administer their projects.

Chapter 290, F.S., provides that the intent of the Florida Small Cities CDBG Program Act (Act) is to provide the necessary means to develop, preserve, redevelop, and revitalize Florida communities exhibiting signs of decline or distress by enabling local governments to undertake necessary community development programs. Mirroring the federal law, the overall objective of the program is to create viable communities by eliminating slum and blight, fortifying communities in urgent need, providing adequate housing and suitable living environments, and expanding economic opportunities, principally for persons of low or moderate income.[11]

An eligible local government may apply up to three times in any one annual funding cycle for an economic development grant, but may not receive more than one such grant per annual funding cycle. Current law further specifies that a local government may have more than one open economic development grant.[12]

The following units of local government are eligible to apply for Small Cities CDBG funds:

- Cities with fewer than 50,000 residents that have not accepted special entitlement status and have not opted to join an entitlement program.
- Counties with fewer than 200,000 residents.
- Cities with more than 50,000 residents that have opted out of the urban entitlement program.

The program focuses on the following four funding categories:

- Commercial Revitalization
- Economic Development
- Housing Rehabilitation
- Neighborhood Revitalization

[10] *Id*.

[11] S. 290.0411, F.S. *See* 42 U.S.C.§ 5302(a)(20). “Persons of low or moderate income” means any person who meets the definition established by the federal Department of Housing and Urban Development. HUD defines “persons of low income” as families and individuals whose incomes do not exceed 50 percent of the median income of a service area, as determined by HUD. “Persons of moderate income” are defined as families and individuals whose incomes exceed 50 percent, but do not exceed 80 percent of the median income of a service area, as determined by HUD.

[12] S. 290.046(2), F.S.

To be eligible for funding, an activity must meet at least one of the following objectives:

- Benefit to Low-and Moderate-Income Persons - At least 51 percent of the beneficiaries must be low- and moderate-income persons (total household income is at or below 80 percent of the area's median income).
- Elimination of Slum and Blight - Eliminate conditions of slum or blight as defined by state law and identified by the unit of local government on a spot or area basis.
- Address an Urgent Need - The activity must alleviate a condition that poses a serious and immediate threat to those living in the area. The condition must have occurred within 18 months of application. The unit of local government must demonstrate that it is unable to finance the activity on its own and that other funding is not available.

Examples of CDBG-funded projects include:

- Water and sewer improvements
- Rehabilitation of substandard housing
- Street and sidewalk improvements
- Economic development activities that create jobs for low-and moderate-income people
- Downtown revitalization, including facade improvements, streetscaping, and underground utilities
- Park facilities and community centers
- Drainage & stormwater improvements

Community Development Block Grant-Disaster Recovery

The Community Development Block Grant-Disaster Recovery Program (CDBG-DR) is a federally funded program administered by HUD. CDBG-DR programs are long-term recovery programs that work to provide safe, sanitary, and decent homes for Florida citizens recovering from the devastating impacts of hurricanes and other natural disasters. The CDBG-DR program repairs or replaces the residential housing of low- and moderate-income individuals and most vulnerable citizens who have been unable to recover from a disaster after exhaustion of all other forms of assistance.

The Office of Long-Term Resiliency within DEO conducts single-family residential housing repair and replacement for Florida residents whose homes still have unrepaired damage from Hurricanes Hermine, Matthew, Irma, and Michael. These projects must comply with the Florida Building Code by applying for and receiving Florida building permits from the applicable local building code enforcement jurisdictions. Applications for and issuance of permitting for these projects is currently given the same priority as any other residential permit application.

Effect of the Bill

Relating to the Florida Small Cities CDBG Program, the bill:

- Amends definitions to align with applicable federal law.
- Removes the requirement that applicants may only participate in one program category.
- Changes the percentage of funds that can be set aside for an emergency or natural disaster that has been declared by an executive order, from 5 percent to 15 percent.
- Allows funds set aside for an emergency or natural disaster to be used for unfunded applications for any funding cycle and not just the most recent funding cycle.
- Removes provisions which limit the number of grant applications a local government may submit during each grant cycle.
- Removes the requirement that unused economic development grant funds be awarded on a first come, first serve basis, and
- Specifies that DEO may prohibit an applicant from receiving a grant or may penalize an applicant in the rating of a current application if the DEO determines that any applicant has failed to substantially accomplish the results it proposed in previously funded applications.

The bill requires that a building permit for a single-family residential dwelling applied for by a contractor on behalf of a homeowner who participates in a CDBG—DR program must be issued within 15 days, unless the application fails to satisfy the Florida Building Code or local government ordinance.

Reemployment Assistance

Current Situation

The federal Unemployment Insurance Program provides unemployment benefits to qualified workers who are unemployed through no fault of their own and who meet the requirements of state law. The program is administered as a partnership of the federal government and the states. The individual states collect unemployment compensation payroll taxes on a quarterly basis, which are used to pay benefits. Subject to the approval of the United States Department of Labor (USDOL), each state also sets tax rates, benefit levels, and trust fund balances based on the state's needs.[13]

Florida's unemployment insurance program was created by the Legislature in 1937[14] and was rebranded as the "Reemployment Assistance Program" in 2012.[15] DEO is responsible for administering the program and determining the calculation and payment of reemployment assistance (RA) benefits to eligible claimants. The Reemployment Assistance Program supports reemployment services through local One-Stop Career Centers located throughout the state.

A qualified worker is one who is able, available, and actively searching for work, who lost their job through no fault of their own, or who had good cause to leave, and who earned at least $3,400 during their base period.[16] The base period is the 12 month period which covers the first four of the last five quarters prior to the date of the claim.[17] Employees who quit their jobs voluntarily may still be eligible for reemployment assistance if they were required to work in an unsafe or hostile environment.[18] Military spouses who voluntarily leave work to relocate as a result of their spouse's military-connected change of station orders, activation orders, or unit deployment orders are also considered to have good cause and are eligible for reemployment assistance.[19] In order to remain eligible for benefits, claimants must actively seek employment by making at least five verifiable job contacts or activities each week.[20] Claimants will lose their eligibility if DEO finds that they have failed to accept suitable work.[21]

Reemployment assistance is funded entirely by employers.[22] Private employers are known as contributory employers and fund the program through a tax on their businesses.[23] Public employers are considered reimbursable employers, meaning they pay the exact amount of benefits received by claimants.[24] A public employer may elect to become a contributory employer.[25] Non-profits are contributory employers by default, but may elect to become reimbursable employers.[26] Employers must

13 USDOL, Employment and Training Administration*, State Unemployment Insurance Benefits,* http://workforcesecurity.doleta.gov/unemploy/uifactsheet.asp (last visited Jan. 28, 2020).
14 Ch. 18402, Laws of Fla.
15 Ch. 2012-30, Laws of Fla.
16 *Id.*
17 S. 443.036(7), F.S.
18 *Spangler v. Unemployment Appeals Com'n,* 632 So. 2d 98, (Fla. 5th DCA 1994). (holding that quitting because employer failed to remedy an unsanitary workplace is good cause); *Rivera v. Florida Unemployment Appeals Com'n,* 99 So. 3d 505, (Fla. 3d DCA 2011). (holding that quitting because of sexual harassment by a co-worker is good cause); *Grossman v. Jewish Community Center of Greater Fort Lauderdale Inc.*, 704 So. 2d 714, (Fla. 4th DCA 1998). (holding that quitting because of verbal abuse by one's employer is good cause).
19 S. 443.101(1)(a)1., F.S.
20 S. 443.091(1)(d), F.S.
21 S. 443.101(2), F.S.
22 DEO, *Claimant FAQs*, http://www.floridajobs.org/Reemployment-Assistance-Service-Center/reemployment-assistance/claimants/claimant-faqs (last visited Jan. 22, 2019).
23 DEO, *Employer Reemployment Assistance FAQ,* http://www.floridajobs.org/frequently-asked-questions-directory/faqs (last visited Jan. 22, 2019).
24 *Id.*
25 S. 443.1313, F.S.
26 S. 443.1312, F.S.

submit quarterly tax and wage reports regardless of employment activity or whether any taxes are due.[27] Employers are taxed on the first $7,000 that they pay to each employee.[28]

Domestic Violence Victims

Current law provides that an individual may not be disqualified from receiving reemployment assistance if he or she voluntarily leaves work and is able to prove that the discontinuation of employment is a direct result of circumstances related to domestic violence.[29] An individual who leaves work as a result of domestic violence must make reasonable efforts to preserve employment unless the individual establishes that such remedies are likely to be futile or increase risk of future incidents of domestic violence. The employee must have a reasonable belief that he or she is likely to be the victim of a future act of domestic violence at, in transit to, or departing from his or her place of employment. An individual who is otherwise eligible for reemployment assistance is ineligible for each week that he or she no longer meets such criteria or refuses a reasonable accommodation offered in good faith by his or her employing unit.

Employer Response to Claims

As part of the RA eligibility review process, employers are sent a notice of claim which is used, in part, to obtain information on the employment separation for the person requesting RA benefits. Employers have 20 days to respond to the notice of claim.[30]

Appeals Referees

Current law requires that a practicing RA appeals referee be admitted to the Florida Bar within eight months after they begin employment with DEO.[31] This requirement does not apply to appeals referees who were appointed before January 1, 2014.

Monetary Reconsideration

As part of the eligibility review process, DEO must determine if the individual filing for RA benefits is monetarily eligible. To be monetarily eligible, the individual must: (1) have at least $3,400 in total wages in the base period; (2) have been paid wages in two or more calendar quarters in the base period; and (3) have total base period wages of at least 1 ½ times the wages in the quarter having the highest earnings. The individual will receive a monetary determination, which will inform them if they are monetarily eligible, and, if they are, it will provide information on their weekly benefit amount. If the individual is monetarily ineligible, the determination will provide the reason why they are ineligible. If the individual disagrees with the determination, they have the right to dispute it.

Current law provides that an individual has 20 days to file an appeal or a written request for reconsideration if they disagree with the monetary determination. Currently, an individual can file both a reconsideration request and an appeal at the same time.[32]

Disqualification for Fraud

Individuals who make false or fraudulent representations to obtain RA benefits are disqualified from receiving benefits. The disqualification begins with the week in which the false or fraudulent representation is made and continues for a period not to exceed one year after the date DEO discovers

[27] Florida Department of Revenue, *Employer's Quarterly Report*, http://floridarevenue.com/Forms_library/current/rt6.pdf (last visited Jan. 25, 2019).
[28] Florida Department of Revenue, *Reemployment Tax Rate Information,* http://floridarevenue.com/taxes/taxesfees/Pages/rt_rate.aspx (last visited Jan. 22, 2019).
[29] S. 443.01, F.S.
[30] S. 443.151(3)(a), F.S.
[31] S. 443.151, F.S.,
[32] S. 443.151(3)(b), F.S.

the false or fraudulent representation and until any overpayment of benefits resulting from the representation has been repaid in full.[33]

Work Search Requirement

Current law provides that for each week of unemployment claimed, the individual must report the name, address, and telephone number of each prospective employer contacted or the date the individual reported to a one-stop career center.[34]

Statute of Limitations for Appeals

A claimant or adverse party may file an appeal to an adverse determination within 20 days after the date a notice is mailed to her or his last known address or, if the notice is not mailed, within 20 days after the date the notice is delivered. An appeal may be filed after the 20-day time limit if the individual can show good cause as to why they failed to appeal the determination timely.[35]

COVID-19 Pandemic and the CONNECT System[36]

Florida's unemployment system is administered by DEO using the CONNECT system, which was deployed in 2013 to provide a modernized, web-based system and to replace a mainframe system.[37] According to ISF, an information technology and strategy firm who completed an assessment of the CONNECT system between November 2020 and February 2021, the CONNECT system was not designed to process the volume of claims received during the COVID-19 pandemic.[38] ISF analyzed ways to improve the delivery of RA benefits, including a phased approach to ensure the DEO can meet current and future demands.[39] ISF's assessment provides an overview of the current state of the CONNECT system, and recommends the modernization of the RA system, which includes cloud migration.[40]

On May 4, 2020, at the request of Governor DeSantis, the Office of the Chief Inspector General (CIG) initiated a review of the CONNECT system.[41] The scope of the CIG's review considered available documentation and testimony about the CONNECT system from the period of 2007 to 2020.[42] The CIG's recommendations in the draft report included the following:

- Document future Information Technology (IT) system capacity requirements and expected utilization in system testing plans and test results;
- Assess the proposed level of maturity of any state transfer or commercial off-the-shelf system relied upon for risk and properly document the risk;
- Monitor what is being provided by the vendor and build in an escape plan and financial penalties for noncompliance;
- Require project management to be flat and agile, which may include considering more modular IT projects to accommodate future and rapid technological changes; and
- Strengthen administrative and physical infrastructure needs, which may include moving the future CONNECT system to the cloud to allow for greater scalability.[43]

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[33] S. 443.101(6), F.S.
[34] S. 443.091, F.S.
[35] S. 443.151(4)(b)3., F.S.
[36] *See* Executive Office of the Governor, Office Of The Chief Inspector General, *Review Of The Department Of Economic Opportunity Florida Connect System* (Mar. 4, 2021) https://www.flgov.com/wp-content/uploads/2021/03/202005040015-Draft-Report-3.4.21_2.05pm.pdf (last visited Mar. 11, 2021).
[37] DEO, *Improved Delivery of Reemployment Assistance Benefits – Final Report* at 1 (Feb. 26, 2021) http://floridajobs.org/docs/default-source/communicationsfiles/2021-improved-delivery-of-reemployment-assistance-benefits-final-report-and-cost-benefit-analysis.pdf (last visited Mar. 16, 2021).
[38] *Id.* at 2.
[39] *Id*.
[40] *Id*.
[41] Office of the Chief Inspector General, *Review of the Department of Economic Opportunity Florida CONNECT System* at iii (Mar. 4, 2021), *available at* https://www.flgov.com/wp-content/uploads/2021/03/202005040015-Draft-Report-3.4.21_2.05pm.pdf (last visited Mar. 16, 2021).
[42] *Id*.
[43] *Id.*

Effect of the Bill

Relating to reemployment assistance, the bill:

- Removes the requirement that RA claimants include a prospective employer's telephone number in their weekly work search report.
- Allows the address of a prospective employer to be provided as a website address, physical address, or email address in their weekly work search report.
- Allows claimants who are, at the time, victims of domestic violence to certify bi-weekly instead of weekly.
- Allows DEO to hold a claimant ineligible from the date in which a fraud occurred, instead of when the claimant advises DEO that the fraud was committed.
- Decreases the amount of time employers may respond to a notice of claim filed, from 20 days to 14 days.
- Requires that a monetary reconsideration be requested, completed, and ruled on prior to an appeal being filed on the monetary determination.
- Removes the requirement that appeals hearing officers must be Florida Bar licensed attorneys.
- Prohibits an appeal from being filed 5 years or more after the determination was delivered.

The bill requires DEO to implement an integrated, modular system hosted in a cloud computing[44] service that provides for rapid provisioning of additional data processing when necessary. The system must support the efficient distribution of benefits and the effective operation and management of the RA program, and must:

- Be accessible through the Internet on both mobile devices and personal computers.
- Process reemployment assistance claims and benefit payments.
- Process and manage overpayments.
- Perform adjudication functions.
- Process appeals and manage hearings.
- Manage and process the charging of employers.
- Enhance online, self-service capabilities to claimant and employer information and federal and state reporting.
- Maintain interoperability with other workforce systems within DEO.

The bill specifies that DEO must perform an annual review of the system and identify enhancements or modernization efforts that improve the delivery of services to claimants and employers and reporting to state and federal entities, including:

- Infrastructure upgrades through cloud services.
- Software improvements.
- Enhanced data analytics and reporting.
- Increased cybersecurity.

The bill requires DEO to seek input on recommended enhancements from certain entities, including but not limited to:

- The Florida Digital Service within the Department of Management Services.
- The General Tax Administration Program Office within the Department of Revenue.
- The Division of Accounting and Auditing within the Department of Financial Services.

Beginning October 1, 2023, the bill requires DEO to annually submit a CONNECT system report to the Governor, the President of the Senate, and the Speaker of the House of Representatives, which includes at a minimum:

- A summary of maintenance, enhancement, and modernization efforts over the last fiscal year.
- A 3-year outlook of recommended enhancements or modernization efforts that includes projected costs and timeframes for completion.

[44] Section 282.0041(5), F.S., provides that "Cloud computing" has the same meaning as provided in Special Publication 800-145 issued by the National Institute of Standards and Technology.

The bill requires DEO to provide monthly project status reports to the chairs of the Senate and House Appropriations Committees, the Office of Policy and Budget in the Executive Office of the Governor, and the Florida Digital Service. Each status report must include ongoing system maintenance activities and progress made to date for each project milestone, deliverable, and task order, planned and actual completion dates, planned and actual costs incurred, and any current project issues and risks.

The bill requires DEO to provide project related data to the Florida Digital Service in support of the Florida Digital Service's project oversight responsibilities.

Additionally, the bill specifies that, for the 2021-2022 fiscal year, DEO must take actions to modernize the CONNECT system as provided in the General Appropriations Act.

Enterprise Florida, Inc. (EFI)

Current Situation

EFI is a nonprofit corporation established by the Legislature to serve as the state's main economic development organization.[45] EFI is required to enter into a performance-based contract with DEO, which includes annual measurements of the performance of EFI.[46] EFI is governed by a board of directors chaired by the Governor.

The board consists of the Governor or his or her designee, as well as the following appointed members (or their designee):

- The Commissioner of Education.
- The Chief Financial Officer.
- The Attorney General.
- The Commissioner of Agriculture.
- The chairperson of CareerSource Florida.
- The Secretary of State.
- Twelve members from the private sector (6 of whom are appointed by the Governor, 3 by the President of the Senate, and 3 by the Speaker of the House of Representatives.)[47]

As a public-private partnership, EFI is expected to obtain private sector support to help pay for its operational costs. According to state law, EFI's legislative appropriations must be matched with private sector support equal to at least 100% of state operational funding.[48] Under state law, private sector support includes:

- Cash given directly to EFI for its operations, including contributions from at-large members of the board of directors;
- Cash donations from organizations assisted by EFI's divisions;
- Cash jointly raised by EFI, private local economic development organizations, a group of such organizations, or a statewide private business organization that supports collaborative projects;
- Cash generated by fees charged for products or services of EFI and its divisions by sponsorship of events, missions, programs, and publications; and
- Copayments, stock, warrants, royalties, or other private resources dedicated to EFI.

The Legislature provides an annual appropriation to EFI for its operations. EFI is required to have divisions related to:

- International Trade and Business Development
- Business Retention and Recruitment

[45] S. 288.901, F.S. Chapter 92-277, Laws of Fla., created EFI, while ch. 96-320, Laws of Fla, established EFI as a public-private partnership.
[46] Section 20.60(1), F.S., requires DEO to "establish annual performance standards for Enterprise Florida, Inc., CareerSource Florida, Inc., the Florida Tourism Industry Marketing Corporation, and Space Florida and report annually on how these performance measures are being met."
[47] S 288.901(5), F.S.
[48] S. 288.904(2)(a), F.S.

- Tourism Marketing
- Minority Business Development
- Sports Industry Development

Florida law directs EFI's board of directors to "integrate its efforts in business recruitment and expansion, job creation, marketing the state for tourism and sports, and promoting economic opportunities for minority-owned businesses and promoting economic opportunities for rural and distressed urban communities with those of the department, to create an aggressive, agile, and collaborative effort to reinvigorate the state's economy."[49]

Effect of the Bill

The bill adds the Secretary of DEO to the Board of Directors of EFI.

CareerSource Florida, Inc.

Current Situation

DEO serves as Florida's lead workforce agency.[50] DEO is responsible for the fiscal and administrative affairs of the workforce development system.[51] DEO receives and distributes federal funds for employment-related programs to local workforce development boards.[52] Additionally, under the direction of CareerSource, DEO must annually meet with each local workforce development board to review the board's performance and to certify that the board is in compliance with applicable state and federal law.[53]

CareerSource Florida, Inc., a not-for-profit corporation, serves as Florida's state-level workforce development board.[54] CareerSource is responsible for the development of a 4-year plan that is consistent with federal requirements[55] and collaborates with DEO, the local workforce development boards, and one-stop service providers to ensure workforce services are consistent with state and local plans.[56] CareerSource also provides state-level policy direction, planning, and performance evaluation of the delivery of workforce services.[57] Florida law requires CareerSource to operate pursuant to an agreement with DEO and at the direction of its state board in consultation with DEO.

Regional Workforce Boards

Twenty-four local workforce development boards deliver Florida's workforce development services through over 100 one-stop service providers.[58] The one-stop service providers give Floridians access to available workforce services, including job placement, career counseling, and skills training.[59] Collectively, the local workforce development boards operate under a charter approved by CareerSource.[60] Each local workforce development board formulates a local budget and oversees the one-stop delivery system within its local area.[61]

DEO and the regional workforce boards entered into agreements in July 2020, which required, among other things, that the regional workforce boards complete background screenings on certain

[49] S. 288.9015(1), F.S.
[50] Primarily through the Division of Workforce Services. *See* s. 20.60, F.S.
[51] S. 445.009(3)(c), F.S.
[52] *See* s. 445.003, F.S.
[53] *See* s. 445.007(3), F.S.
[54] S. 445.004(5)(a), F.S. Prior to 2014, CareerSource was known as Workforce Florida, Inc.
[55] S. 445.003(2), F.S.
[56] *See* s. 445.004, F.S.
[57] *Id*.
[58] DEO, *CareerSource Florida Network Directory*, http://lcd.floridajobs.org/ (last visited Mar. 11, 2021).
[59] *See* s. 445.009, F.S.
[60] *See* s. 445.004, F.S.
[61] S. 445.007(12), F.S.

employees. However, the regional workforce boards do not have statutory authority to require such screenings.[62]

Background Screening

An employer[63] may not hire, select, or otherwise allow an employee to have contact with a vulnerable person[64] that would place the employee in a role that requires a background screening until the screening process is completed and demonstrates the absence of any grounds for the denial or termination of employment.[65] If the screening process shows any grounds for the denial or termination of employment, the employer may not hire, select, or otherwise allow the employee to have contact with any vulnerable person that would place the employee in a role that requires background screening unless the employee is granted an exemption for disqualification by the agency[66] as provided under s. 435.07, F.S.[67]

Sections 435.03 and 435.04, F.S., outline the screening requirements. There are two levels of background screening.

- Level 1 screening includes, at a minimum, employment history checks and statewide criminal correspondence checks through the Florida Department of Law Enforcement (FDLE) and a check of the Dru Sjodin National Sex Offender Public Website,[68] and may include criminal records checks through local law enforcement agencies.[69]
- Level 2 screening includes, but, is not limited to, fingerprinting for statewide criminal history records checks through the FDLE and national criminal history checks through the Federal Bureau of Investigation (FBI), and may include local criminal records checks through local law enforcement agencies.[70]

Effect of the Bill

The bill adds the Secretary of DEO to the Board of Directors of CareerSource Florida.

The bill changes the definition of "specified agency" to include regional workforce boards providing services defined in s. 445.002(3), F.S., which will allow regional workforce development boards to conduct level 2 background screenings.

B. SECTION DIRECTORY:

Section 1 Amends s. 20.60, F.S.; relating to DEO.

Section 2 Amends s. 288.901, F.S.; revising the membership of the board of directors of Enterprise Florida, Inc.

Section 3 Amends s. 290.042, F.S.; revising the definition of the term "administrative costs" relating to the Florida Small Cities Community Development Block Grant Program Act.

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[62] DEO, *Agreement Between [Lwdb] and The Florida Department Of Economic Opportunity,* https://floridajobs.org/docs/default-source/lwdb-resources/deo-lwdb-grantee-subgrantee-agreement/grantee-sub-grantee-agreement---final-draft-(003).pdf?sfvrsn=227647b0_2 (last visited Mar. 11, 2021).

[63] Section 435.02(3), F.S., defines "employer" as any person or entity required by law to conduct screening of employees pursuant to ch. 435, F.S.

[64] Section 415.102(28), F.S., defines "vulnerable adult" as 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.

[65] S. 435.06(2)(a), F.S.

[66] Section 435.02(1), F.S., defines "agency" as any state, county, or municipal agency that grants licenses or registration permitting the operation of an employer, or is itself an employer, or that otherwise facilitates the screening of employees pursuant to ch.435, F.S. If there is no state agency or the municipal or county agency chooses not to conduct employment screening, "agency" means the Department of Children and Families.

[67] S. 435.06(2)(a), F.S.

[68] The Dru Sjodin National Sex Offender Public Website is a U.S. government website that links public state, territorial, and tribal sex offender registries in one national search site, https://www.nsopw.gov/ (last visited Mar. 16, 2021).

[69] S. 435.03(1), F.S.

[70] S. 435.04(1)(a), F.S.

Section 4	Amends s. 290.044, F.S.; revising the application process and funding for the Florida Small Cities Community Development Block Grant Program Fund.
Section 5	Amends s. 290.046, F.S.; revising the application process and funding for development grants awarded by DEO to local governments.
Section 6	Amends s. 331.3081, F.S.; conforming a cross-reference.
Section 7	Amends s. 435.02, F.S.; revising the definition of the term "specified agency" to include certain regional workforce boards for the purposes of labor laws.
Section 8	Amends s. 443.091, F.S.; revising the reporting requirements for reemployment assistance benefit eligibility; defining the term "address".
Section 9	Amends s. 443.101, F.S.; deleting a provision providing that individuals who voluntarily leave work as a direct result of circumstances relating to domestic violence are ineligible for benefits under certain circumstances.
Section 10	Amends s. 443.1113, F.S.; relating to the Reemployment Assistance Claims and Benefits Information System.
Section 11	Amends s. 443.151, F.S.; relating to claims procedures.
Section 12	Amends s. 445.004, F.S.; relating to CareerSource Florida, Inc.
Section 13	Amends s. 553.79, F.S.; requiring specified building permit applications applied for by licensed contractors for property owners under certain programs administered by DEO to be issued within a reduced timeframe.
Sections 14-52	Amends ss. 14.20195, 16.615, 20.04, 213.053, 220.194, 288.005, 288.061, 288.0656, 288.106, 288.1089, 288.1251, 288.8014, 288.955, 288.9604, 288.987, 290.0065, 311.09, 311.105, 334.065, 373.4149, 380.045, 403.0752, 420.0005, 420.0006, 420.101, 420.503, 420.504, 420.506, 420.507, 420.511, 420.602, 420.609, 420.622, 427.012, 443.1116, 446.53, 450.261, 624.5105, and 1004.015, F.S.; conforming provisions to changes made by the act.
Section 53	Requires DEO to take certain actions for a specified fiscal year.
Section 54	Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

Any actions to modernize the CONNECT system during the 2021-22 fiscal year are included in the House proposed General Appropriations Act for FY 2021-2022.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill should allow DEO to administer the RA program more efficiently and effectively, which should have a positive fiscal impact on individuals who seek reemployment assistance.

D. FISCAL COMMENTS:

To the extent the department creates offices within the Office of the Secretary and provides for the Office of Economic Accountability and Transparency, costs can be covered with a realignment of current resources or upon further request from the Legislature during the FY 2022-2023 budget cycle.

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 April 1, 2021, the Tourism, Infrastructure & Energy Subcommittee adopted an amendment and reported the bill favorably as a committee substitute. The committee substitute provided clarifying language and specifies certain reporting requirements relating to the implementation and oversight of the Reemployment Assistance Claims and Benefits Information (CONNECT) system.

The analysis is drafted to the committee substitute as approved by the Tourism, Infrastructure & Energy Subcommittee.

A bill to be entitled

An act relating to the Department of Economic Opportunity; amending s. 20.60, F.S.; renaming the executive director of the Department of Economic Opportunity as the Secretary of Economic Opportunity; authorizing the secretary to appoint deputy and assistant secretaries for a specified purpose; establishing the Office of the Secretary and the Office of Economic Accountability and Transparency; providing duties for the Office of Economic Accountability and Transparency; authorizing the secretary to create offices within the Office of the Secretary and within the divisions; requiring the secretary to appoint division directors; providing duties for the division directors; conforming provisions to changes made by the act; amending s. 288.901, F.S.; revising the membership of the board of directors of Enterprise Florida, Inc.; amending s. 290.042, F.S.; revising the definition of the term "administrative costs" relating to the Florida Small Cities Community Development Block Grant Program Act; amending s. 290.044, F.S.; revising the application process and funding for the Florida Small Cities Community Development Block Grant Program Fund; amending s. 290.046, F.S.; revising the application

process and funding for development grants awarded by the department to local governments; amending s. 331.3081, F.S.; conforming a cross-reference; amending s. 435.02, F.S.; revising the definition of the term "specified agency" to include certain regional workforce boards for the purposes of labor laws; amending s. 443.091, F.S.; revising the reporting requirements for reemployment assistance benefit eligibility; defining the term "address"; amending s. 443.101, F.S.; deleting a provision providing that individuals who voluntarily leave work as a direct result of circumstances relating to domestic violence are ineligible for benefits under certain circumstances; amending s. 443.1113, F.S.; requiring the department to implement an integrated, modular system hosted in a cloud service, rather than an integrated Internet-based system, for the reemployment assistance program; revising the functions and objectives of the Reemployment Assistance Claims and Benefits Information System; revising the duties of the department; providing reporting requirements; deleting obsolete language; deleting provisions relating to duties of the governance structure of the system project; amending s. 443.151, F.S.; revising the timeline for employers' responses to notices of

benefits claims sent by the department; authorizing claimants to request the department to reconsider a monetary determination; providing requirements for such request; providing that monetary determinations and redeterminations are final after a specified period of time; providing exceptions; deleting a requirement that appeals referees be attorneys in good standing with The Florida Bar or be admitted to The Florida Bar within 8 months after the date of employment; prohibiting appeals from being filed after a specified time; amending s. 445.004, F.S.; revising the membership of the state board, which directs CareerSource Florida, Inc.; amending s. 553.79, F.S.; requiring specified building permit applications applied for by licensed contractors for property owners under certain programs administered by the department to be issued within a reduced timeframe; amending ss. 14.20195, 16.615, 20.04, 213.053, 220.194, 288.005, 288.061, 288.0656, 288.106, 288.1089, 288.1251, 288.8014, 288.955, 288.9604, 288.987, 290.0065, 311.09, 311.105, 334.065, 373.4149, 380.045, 403.0752, 420.0005, 420.0006, 420.101, 420.503, 420.504, 420.506, 420.507, 420.511, 420.602, 420.609, 420.622, 427.012, 443.1116, 446.53, 450.261, 624.5105, and 1004.015, F.S.; conforming provisions to

changes made by the act; requiring the department to take certain actions for a specified fiscal year; providing an effective date.

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

Section 1. Subsections (2) and (3), paragraph (a) of subsection (5), paragraph (b) of subsection (6), and subsection (9) of section 20.60, Florida Statutes, are amended, and subsection (1) of that section is republished, to read:

20.60 Department of Economic Opportunity; creation; powers and duties.—

(1) There is created the Department of Economic Opportunity.

(2) The head of the department is the Secretary of Economic Opportunity ~~executive director~~, who shall be appointed by the Governor, subject to confirmation by the Senate. The secretary ~~executive director~~ shall serve at the pleasure of and report to the Governor. The secretary may appoint deputy and assistant secretaries as necessary to aid the secretary in fulfilling his or her statutory obligations.

(3)(a) The following divisions and offices of the Department of Economic Opportunity are established:

1.~~(a)~~ The Division of Strategic Business Development.

2.~~(b)~~ The Division of Community Development.

3. ~~(c)~~ The Division of Workforce Services.

4. ~~(d)~~ The Division of Finance and Administration.

5. ~~(e)~~ The Division of Information Technology.

6. The Office of the Secretary.

7. The Office of Economic Accountability and Transparency, which shall:

a. Oversee the department's critical objectives as determined by the secretary and make sure that the department's key objectives are clearly communicated to the public.

b. Organize department resources, expertise, data, and research to focus on and solve the complex economic challenges facing the state.

c. Provide leadership for the department's priority issues that require integration of policy, management, and critical objectives from multiple programs and organizations internal and external to the department; and organize and manage external communication on such priority issues.

d. Promote and facilitate key department initiatives to address priority economic issues and explore data and identify opportunities for innovative approaches to address such economic issues.

e. Promote strategic planning for the department.

(b) The secretary:

1. May create offices within the Office of the Secretary and within the divisions established in paragraph (a) to promote

efficient and effective operation of the department.

2. Shall appoint a director for each division, who shall directly administer his or her division and be responsible to the secretary.

(5) The divisions within the department have specific responsibilities to achieve the duties, responsibilities, and goals of the department. Specifically:

(a) The Division of Strategic Business Development shall:

1. Analyze and evaluate business prospects identified by the Governor, the secretary ~~executive director of the department~~, and Enterprise Florida, Inc.

2. Administer certain tax refund, tax credit, and grant programs created in law. Notwithstanding any other provision of law, the department may expend interest earned from the investment of program funds deposited in the Grants and Donations Trust Fund to contract for the administration of those programs, or portions of the programs, assigned to the department by law, by the appropriations process, or by the Governor. Such expenditures shall be subject to review under chapter 216.

3. Develop measurement protocols for the state incentive programs and for the contracted entities which will be used to determine their performance and competitive value to the state. Performance measures, benchmarks, and sanctions must be developed in consultation with the legislative appropriations

committees and the appropriate substantive committees, and are subject to the review and approval process provided in s. 216.177. The approved performance measures, standards, and sanctions shall be included and made a part of the strategic plan for contracts entered into for delivery of programs authorized by this section.

4. Develop a 5-year statewide strategic plan. The strategic plan must include, but need not be limited to:

a. Strategies for the promotion of business formation, expansion, recruitment, and retention through aggressive marketing, international development, and export assistance, which lead to more and better jobs and higher wages for all geographic regions, disadvantaged communities, and populations of the state, including rural areas, minority businesses, and urban core areas.

b. The development of realistic policies and programs to further the economic diversity of the state, its regions, and their associated industrial clusters.

c. Specific provisions for the stimulation of economic development and job creation in rural areas and midsize cities and counties of the state, including strategies for rural marketing and the development of infrastructure in rural areas.

d. Provisions for the promotion of the successful long-term economic development of the state with increased emphasis in market research and information.

e. Plans for the generation of foreign investment in the state which create jobs paying above-average wages and which result in reverse investment in the state, including programs that establish viable overseas markets, assist in meeting the financing requirements of export-ready firms, broaden opportunities for international joint venture relationships, use the resources of academic and other institutions, coordinate trade assistance and facilitation services, and facilitate availability of and access to education and training programs that assure requisite skills and competencies necessary to compete successfully in the global marketplace.

f. The identification of business sectors that are of current or future importance to the state's economy and to the state's global business image, and development of specific strategies to promote the development of such sectors.

g. Strategies for talent development necessary in the state to encourage economic development growth, taking into account factors such as the state's talent supply chain, education and training opportunities, and available workforce.

5. Update the strategic plan every 5 years.

6. Involve Enterprise Florida, Inc.; CareerSource Florida, Inc.; local governments; the general public; local and regional economic development organizations; other local, state, and federal economic, international, and workforce development entities; the business community; and educational institutions

to assist with the strategic plan.

(6)

(b) The Department of Economic Opportunity shall serve as the designated agency for purposes of each federal workforce development grant assigned to it for administration. The department shall carry out the duties assigned to it by the Governor, under the terms and conditions of each grant. The department shall have the level of authority and autonomy necessary to be the designated recipient of each federal grant assigned to it and shall disburse such grants pursuant to the plans and policies of the state board as defined in s. 445.002. The secretary ~~executive director~~ may, upon delegation from the Governor and pursuant to agreement with the state board, sign contracts, grants, and other instruments as necessary to execute functions assigned to the department. Notwithstanding other provisions of law, the department shall administer other programs funded by federal or state appropriations, as determined by the Legislature in the General Appropriations Act or other law.

(9) The secretary ~~executive director~~ shall:

(a) Manage all activities and responsibilities of the department.

(b) Serve as the manager for the state with respect to contracts with Enterprise Florida, Inc., and all applicable direct-support organizations. To accomplish the provisions of

this section and applicable provisions of chapter 288, and notwithstanding the provisions of part I of chapter 287, the secretary ~~director~~ shall enter into specific contracts with Enterprise Florida, Inc., and other appropriate direct-support organizations. Such contracts may be for multiyear terms and must include specific performance measures for each year. For purposes of this section, the Florida Tourism Industry Marketing Corporation and the Institute for Commercialization of Florida Technology are not appropriate direct-support organizations.

(c) Serve as a member of the board of directors of the Florida Development Finance Corporation. The secretary ~~executive director~~ may designate an employee of the department to serve in this capacity.

Section 2. Paragraph (a) of subsection (5) of section 288.901, Florida Statutes, is amended to read:

288.901 Enterprise Florida, Inc.—

(5) APPOINTED MEMBERS OF THE BOARD OF DIRECTORS.—

(a) In addition to the Governor or his or her designee, the board of directors shall consist of the following appointed members:

1. The Commissioner of Education or his or her designee.

2. The Chief Financial Officer or his or her designee.

3. The Attorney General or his or her designee.

4. The Commissioner of Agriculture or his or her designee.

5. The chairperson of the state board as defined in s.

445.002.

6. The Secretary of State or his or her designee.

7. The Secretary of Economic Opportunity or his or her designee.

8. Twelve members from the private sector, six of whom shall be appointed by the Governor, three of whom shall be appointed by the President of the Senate, and three of whom shall be appointed by the Speaker of the House of Representatives. Members appointed by the Governor are subject to Senate confirmation.

All board members shall serve without compensation, but are entitled to receive reimbursement for per diem and travel expenses pursuant to s. 112.061. Such expenses must be paid out of funds of Enterprise Florida, Inc.

Section 3. Subsection (2) of section 290.042, Florida Statutes, is amended to read:

290.042 Definitions relating to Florida Small Cities Community Development Block Grant Program Act.—As used in ss. 290.0401-290.048, the term:

(2) "Administrative costs" has the same meaning as defined in the Housing and Community Development Act of 1974, as amended, and applicable federal regulations ~~means the payment of all reasonable costs of management, coordination, monitoring, and evaluation, and similar costs and carrying charges, related~~

~~to the planning and execution of community development activities which are funded in whole or in part under the Florida Small Cities Community Development Block Grant Program. Administrative costs shall include all costs of administration, including general administration, planning and urban design, and project administration costs~~.

Section 4. Subsections (3), (4), and (5) of section 290.044, Florida Statutes, are amended to read:

290.044 Florida Small Cities Community Development Block Grant Program Fund; administration; distribution.—

(3) The department shall require applicants for grants to compete against each other in ~~the following grant program~~ categories that may include one or more of the following:

(a) Housing rehabilitation.

(b) Economic development.

(c) Neighborhood revitalization.

(d) Commercial revitalization.

(e) Any other activity authorized by the Housing and Community Development Act of 1974, as amended, and applicable federal regulations.

(4) The department shall define broad community development objectives to be achieved by the activities in ~~each of~~ the grant program categories with the use of funds from the Florida Small Cities Community Development Block Grant Program Fund. Such objectives shall be designed to meet at least one of

the national objectives provided in the Housing and Community Development Act of 1974.

(5) The department may set aside an amount of up to 15 ~~5~~ percent of the funds annually for use in any eligible local government jurisdiction for which an emergency or natural disaster has been declared by executive order. Such funds may only be provided to a local government to fund eligible emergency-related activities for which no other source of federal, state, or local disaster funds is available. The department may provide for such set-aside by rule. In the last quarter of the state fiscal year, any funds not allocated under the emergency-related set-aside shall be distributed to unfunded applications ~~from the most recent funding cycle~~.

Section 5. Subsection (2), paragraph (b) of subsection (3), and subsection (6) of section 290.046, Florida Statutes, are amended to read:

290.046 Applications for grants; procedures; requirements.—

~~(2)(a) Except for applications for economic development grants as provided in subparagraph (b)1., an eligible local government may submit one application for a grant during each application cycle.~~

~~(b)1. An eligible local government may apply up to three times in any one annual funding cycle for an economic development grant but may not receive more than one such grant~~

~~per annual funding cycle. A local government may have more than one open economic development grant.~~

(2)(a)~~2.~~ The department shall establish minimum criteria pertaining to the number of jobs created for persons of low or moderate income, the degree of private sector financial commitment, and the economic feasibility of the proposed project and shall establish any other criteria the department deems appropriate. Assistance to a private, for-profit business may not be provided from a grant award unless sufficient evidence exists to demonstrate that without such public assistance the creation or retention of such jobs would not occur.

(b)~~(c)1.~~ A local government with an open housing rehabilitation, neighborhood revitalization, or commercial revitalization contract is not eligible to apply for another housing rehabilitation, neighborhood revitalization, or commercial revitalization grant until administrative closeout of its existing contract. The department shall notify a local government of administrative closeout or of any outstanding closeout issues within 45 days after receipt of a closeout package from the local government. A local government with an open housing rehabilitation, neighborhood revitalization, or commercial revitalization community development block grant contract whose activities are on schedule in accordance with the expenditure rates and accomplishments described in the contract may apply for an economic development grant.

(c)~~2.~~ A local government with an open economic development community development block grant contract whose activities are on schedule in accordance with the expenditure rates and accomplishments described in the contract may apply for a housing rehabilitation, neighborhood revitalization, or commercial revitalization community development block grant. A local government with an open economic development contract whose activities are on schedule in accordance with the expenditure rates and accomplishments described in the contract may receive ~~no~~ more than one additional economic development grant in each fiscal year.

(d) The department may not award a grant until it has conducted a site visit to verify the information contained in the local government's application.

(3)

(b) Funds shall be distributed according to the rankings established in each application cycle. If economic development funds remain available after the application cycle closes, the remaining funds shall be awarded to eligible projects ~~on a first-come, first-served basis until such funds are fully obligated~~.

(6) The department shall, before approving an application for a grant, determine that the applicant has the administrative capacity to carry out the proposed activities and has performed satisfactorily in carrying out past activities funded by

community development block grants. The evaluation of past performance shall take into account procedural aspects of previous grants as well as substantive results. If the department determines that any applicant has failed to accomplish substantially the results it proposed in ~~its last~~ previously funded applications ~~application~~, it may prohibit the applicant from receiving a grant or may penalize the applicant in the rating of the current application. An application for grant funds may not be denied solely upon the basis of the past performance of the eligible applicant.

Section 6. Section 331.3081, Florida Statutes, is amended to read:

331.3081 Board of directors.—Space Florida shall be governed by a 13-member independent board of directors that consists of the members appointed to the board of directors of Enterprise Florida, Inc., by the Governor, the President of the Senate, and the Speaker of the House of Representatives pursuant to s. 288.901(5)(a)8. ~~s. 288.901(5)(a)7.~~ and the Governor, who shall serve ex officio, or who may appoint a designee to serve, as the chair and a voting member of the board.

Section 7. Subsection (5) of section 435.02, Florida Statutes, is amended to read:

435.02 Definitions.—For the purposes of this chapter, the term:

(5) "Specified agency" means the Department of Health, the

Department of Children and Families, the Division of Vocational Rehabilitation within the Department of Education, the Agency for Health Care Administration, the Department of Elderly Affairs, the Department of Juvenile Justice, the Agency for Persons with Disabilities, regional workforce boards providing services as defined in s. 445.002(3), and local licensing agencies approved pursuant to s. 402.307, when these agencies are conducting state and national criminal history background screening on persons who work with children or persons who are elderly or disabled.

Section 8. Paragraph (c) of subsection (1) of section 443.091, Florida Statutes, is amended to read:

443.091 Benefit eligibility conditions.—

(1) An unemployed individual is eligible to receive benefits for any week only if the Department of Economic Opportunity finds that:

(c) To make continued claims for benefits, she or he is reporting to the department in accordance with this paragraph and department rules. Department rules may not conflict with s. 443.111(1)(b), which requires that each claimant continue to report regardless of any pending appeal relating to her or his eligibility or disqualification for benefits.

1. For each week of unemployment claimed, each report must, at a minimum, include the name and~~,~~ address~~, and telephone number~~ of each prospective employer contacted, or the date the

claimant reported to a one-stop career center, pursuant to paragraph (d). For the purposes of this subparagraph, the term "address" means a website address, a physical address, or an e-mail address.

2. The department shall offer an online assessment aimed at identifying an individual's skills, abilities, and career aptitude. The skills assessment must be voluntary, and the department shall allow a claimant to choose whether to take the skills assessment. The online assessment shall be made available to any person seeking services from a local workforce development board or a one-stop career center.

a. If the claimant chooses to take the online assessment, the outcome of the assessment shall be made available to the claimant, local workforce development board, and one-stop career center. The department, local workforce development board, or one-stop career center shall use the assessment to develop a plan for referring individuals to training and employment opportunities. Aggregate data on assessment outcomes may be made available to CareerSource Florida, Inc., and Enterprise Florida, Inc., for use in the development of policies related to education and training programs that will ensure that businesses in this state have access to a skilled and competent workforce.

b. Individuals shall be informed of and offered services through the one-stop delivery system, including career counseling, the provision of skill match and job market

information, and skills upgrade and other training opportunities, and shall be encouraged to participate in such services at no cost to the individuals. The department shall coordinate with CareerSource Florida, Inc., the local workforce development boards, and the one-stop career centers to identify, develop, and use best practices for improving the skills of individuals who choose to participate in skills upgrade and other training opportunities. The department may contract with an entity to create the online assessment in accordance with the competitive bidding requirements in s. 287.057. The online assessment must work seamlessly with the Reemployment Assistance Claims and Benefits Information System.

Section 9. Paragraph (a) of subsection (1) and subsection (6) of section 443.101, Florida Statutes, are amended to read:

443.101 Disqualification for benefits.—An individual shall be disqualified for benefits:

(1)(a) For the week in which he or she has voluntarily left work without good cause attributable to his or her employing unit or for the week in which he or she has been discharged by the employing unit for misconduct connected with his or her work, based on a finding by the Department of Economic Opportunity. As used in this paragraph, the term "work" means any work, whether full-time, part-time, or temporary.

1. Disqualification for voluntarily quitting continues for the full period of unemployment next ensuing after the

individual has left his or her full-time, part-time, or temporary work voluntarily without good cause and until the individual has earned income equal to or greater than 17 times his or her weekly benefit amount. As used in this subsection, the term "good cause" includes only that cause attributable to the employing unit which would compel a reasonable employee to cease working or attributable to the individual's illness or disability requiring separation from his or her work. Any other disqualification may not be imposed.

2. An individual is not disqualified under this subsection for:

a. Voluntarily leaving temporary work to return immediately when called to work by the permanent employing unit that temporarily terminated his or her work within the previous 6 calendar months;

b. Voluntarily leaving work to relocate as a result of his or her military-connected spouse's permanent change of station orders, activation orders, or unit deployment orders; or

c. Voluntarily leaving work if he or she proves that his or her discontinued employment is a direct result of circumstances related to domestic violence as defined in s. 741.28. An individual who voluntarily leaves work under this sub-subparagraph must:

(I) Make reasonable efforts to preserve employment, unless the individual establishes that such remedies are likely to be

futile or to increase the risk of future incidents of domestic violence. Such efforts may include seeking a protective injunction, relocating to a secure place, or seeking reasonable accommodation from the employing unit, such as a transfer or change of assignment;

(II) Provide evidence such as an injunction, a protective order, or other documentation authorized by state law which reasonably proves that domestic violence has occurred; and

(III) Reasonably believe that he or she is likely to be the victim of a future act of domestic violence at, in transit to, or departing from his or her place of employment. ~~An individual who is otherwise eligible for benefits under this sub-subparagraph is ineligible for each week that he or she no longer meets such criteria or refuses a reasonable accommodation offered in good faith by his or her employing unit.~~

3. The employment record of an employing unit may not be charged for the payment of benefits to an individual who has voluntarily left work under sub-subparagraph 2.c.

4. Disqualification for being discharged for misconduct connected with his or her work continues for the full period of unemployment next ensuing after having been discharged and until the individual is reemployed and has earned income of at least 17 times his or her weekly benefit amount and for not more than 52 weeks immediately following that week, as determined by the department in each case according to the circumstances or the

seriousness of the misconduct, under the department's rules for determining disqualification for benefits for misconduct.

5. If an individual has provided notification to the employing unit of his or her intent to voluntarily leave work and the employing unit discharges the individual for reasons other than misconduct before the date the voluntary quit was to take effect, the individual, if otherwise entitled, shall receive benefits from the date of the employer's discharge until the effective date of his or her voluntary quit.

6. If an individual is notified by the employing unit of the employer's intent to discharge the individual for reasons other than misconduct and the individual quits without good cause before the date the discharge was to take effect, the claimant is ineligible for benefits pursuant to s. 443.091(1)(d) for failing to be available for work for the week or weeks of unemployment occurring before the effective date of the discharge.

(6) For making any false or fraudulent representation for the purpose of obtaining benefits contrary to this chapter, constituting a violation under s. 443.071. The disqualification imposed under this subsection shall begin with the week for ~~in~~ which the false or fraudulent representation was ~~is~~ made and shall continue for a period not to exceed 1 year after the date the Department of Economic Opportunity discovers the false or fraudulent representation and until any overpayment of benefits

resulting from such representation has been repaid in full. This disqualification may be appealed in the same manner as any other disqualification imposed under this section. A conviction by any court of competent jurisdiction in this state of the offense prohibited or punished by s. 443.071 is conclusive upon the appeals referee and the commission of the making of the false or fraudulent representation for which disqualification is imposed under this section.

Section 10. Section 443.1113, Florida Statutes, is amended to read:

443.1113 Reemployment Assistance Claims and Benefits Information System.—

(1) The Department of Economic Opportunity shall implement an integrated, modular system hosted in a cloud computing service, as defined in s. 282.0041, that provides for rapid provisioning of additional data processing when necessary. The system must support the efficient distribution of benefits and the effective operation and management of the reemployment assistance program. ~~To~~ The ~~extent that funds are appropriated for each phase of the Reemployment Assistance Claims and Benefits Information~~ system may be cited ~~by the Legislature, the Department of Economic Opportunity shall replace and enhance the functionality provided in the following systems with an integrated Internet-based system that is known~~ as the "Reemployment Assistance Claims and Benefits Information System"

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

and must:

(a) Be accessible through the Internet on both mobile devices and personal computers ~~Claims and benefit mainframe system~~.

(b) Process reemployment assistance claims ~~Florida unemployment Internet direct~~.

(c) Process benefit payments ~~Florida continued claim Internet directory~~.

(d) Process and manage overpayments ~~Call center interactive voice response system~~.

(e) Perform adjudication functions ~~Benefit overpayment screening system~~.

(f) Process appeals and manage appeal hearings ~~Internet and Intranet appeals system~~.

(g) Manage and process employer charging.

(2) Wherever cost-effective and operationally feasible, the Reemployment Assistance Claims and Benefits System shall accomplish the following main ~~business~~ objectives:

(a) ~~Wherever cost-effective and operationally feasible,~~ Eliminate or automate existing paper processes and enhance any existing automated workflows in order to expedite customer transactions and eliminate redundancy.

(b) Enable and enhance online, self-service capabilities ~~access~~ to claimant and employer information and federal and state reporting.

(c) Integrate benefit payment control with the adjudication program and collection system in order to improve the detection of fraud.

(d) Comply with all requirements established in federal and state law for reemployment assistance.

(e) Integrate with the Department of Revenue's statewide unified tax system that collects reemployment assistance taxes.

(f) Maintain interoperability with other department workforce systems.

(3) The scope of the Reemployment Assistance Claims and Benefits Information System does not include any of the following functionalities:

(a) Collection of reemployment assistance taxes.

(b) General ledger, financial management, or budgeting capabilities.

(c) Human resource planning or management capabilities.

(4)(a) The Department of Economic Opportunity shall perform an annual review of the system and identify enhancements or modernization efforts that improve the delivery of services to claimants and employers and reporting to state and federal entities. These improvements must include, but need not be limited to:

1. Infrastructure upgrades through cloud services.

2. Software improvements.

3. Enhanced data analytics and reporting.

4. Increased cybersecurity pursuant to s. 282.318.

(b) The department shall seek input on recommended enhancements from, at a minimum, the following entities:

1. The Florida Digital Service within the Department of Management Services.

2. The General Tax Administration Program Office within the Department of Revenue.

3. The Division of Accounting and Auditing within the Department of Financial Services.

(5) By October 1, 2023, and each year thereafter, the Department of Economic Opportunity shall submit a Reemployment Assistance Claims and Benefits Information System report to the Governor, the President of the Senate, and the Speaker of the House of Representatives. The report must, at a minimum, include:

(a) A summary of maintenance, enhancement, and modernization efforts over the last fiscal year.

(b) A 3-year outlook of recommended enhancements or modernization efforts that includes projected costs and timeframes for completion.

(6) The Department of Economic Opportunity shall provide monthly project status reports to the chair of the Senate Appropriations Committee, the chair of the House Appropriations Committee, the Office of Policy and Budget in the Executive Office of the Governor, and the Florida Digital Service. Each

status report must include ongoing system maintenance activities and progress made to date for each project milestone, deliverable, and task order; planned and actual completion dates; planned and actual costs incurred; and any current project issues and risks.

(7) The Department of Economic Opportunity shall provide project-related data to the Florida Digital Service in support of the Florida Digital Service's project oversight responsibilities pursuant to s. 282.0051. ~~The project to implement the Reemployment Assistance Claims and Benefits Information System is comprised of the following phases and corresponding implementation timeframes:~~

~~(a) No later than the end of fiscal year 2009-2010 completion of the business re-engineering analysis and documentation of both the detailed system requirements and the overall system architecture.~~

~~(b) The Reemployment Assistance Claims and Benefits Internet portal that replaces the Florida Unemployment Internet Direct and the Florida Continued Claims Internet Directory systems, the Call Center Interactive Voice Response System, the Benefit Overpayment Screening System, the Internet and Intranet Appeals System, and the Claims and Benefits Mainframe System shall be deployed to full operational status no later than the end of fiscal year 2013-2014.~~

~~(5) The Department of Economic Opportunity shall implement~~

~~the following project governance structure until such time as the project is completed, suspended, or terminated:~~

~~(a) The project sponsor for the Reemployment Assistance Claims and Benefits Information System project is the department.~~

~~(b) The project shall be governed by an executive steering committee composed of the following voting members or their designees:~~

~~1. The executive director of the department.~~

~~2. The executive director of the Department of Revenue.~~

~~3. The director of the Division of Workforce Services within the department.~~

~~4. The program director of the General Tax Administration Program Office within the Department of Revenue.~~

~~5. The chief information officer of the department.~~

~~(c) The executive steering committee has the overall responsibility for ensuring that the project meets its primary objectives and is specifically responsible for:~~

~~1. Providing management direction and support to the project management team.~~

~~2. Assessing the project's alignment with the strategic goals of the department for administering the reemployment assistance program.~~

~~3. Reviewing and approving or disapproving any changes to the project's scope, schedule, and costs.~~

~~4. Reviewing, approving or disapproving, and determining whether to proceed with any major project deliverables.~~

~~5. Recommending suspension or termination of the project to the Governor, the President of the Senate, and the Speaker of the House of Representatives if it determines that the primary objectives cannot be achieved.~~

~~(d) The project management team shall work under the direction of the executive steering committee and shall be minimally comprised of senior managers and stakeholders from the department and the Department of Revenue. The project management team is responsible for:~~

~~1. Providing daily planning, management, and oversight of the project~~.

~~2. Submitting an operational work plan and providing quarterly updates to that plan to the executive steering committee. The plan must specify project milestones, deliverables, and expenditures.~~

~~3. Submitting written monthly project status reports to the executive steering committee which include:~~

~~a. Planned versus actual project costs;~~

~~b. An assessment of the status of major milestones and deliverables;~~

~~c. Identification of any issues requiring resolution, the proposed resolution for these issues, and information regarding the status of the resolution;~~

~~d. Identification of risks that must be managed; and~~

~~e. Identification of and recommendations regarding necessary changes in the project's scope, schedule, or costs. All recommendations must be reviewed by project stakeholders before submission to the executive steering committee in order to ensure that the recommendations meet required acceptance criteria.~~

Section 11. Paragraphs (a) and (b) of subsection (3) and paragraphs (a) and (b) of subsection (4) of section 443.151, Florida Statutes, are amended to read:

443.151 Procedure concerning claims.—

(3) DETERMINATION OF ELIGIBILITY.—

(a) Notices of claim.—The Department of Economic Opportunity shall promptly provide a notice of claim to the claimant's most recent employing unit and all employers whose employment records are liable for benefits under the monetary determination. The employer must respond to the notice of claim within 14 ~~20~~ days after the mailing date of the notice, or in lieu of mailing, within 14 ~~20~~ days after the delivery of the notice. If a contributing employer or its agent fails to timely or adequately respond to the notice of claim or request for information, the employer's account may not be relieved of benefit charges as provided in s. 443.131(3)(a), notwithstanding paragraph (5)(b). The department may adopt rules as necessary to implement the processes described in this paragraph relating to

notices of claim.

(b) Monetary determinations.—In addition to the notice of claim, the department shall also promptly provide an initial monetary determination to the claimant and each base period employer whose account is subject to being charged for its respective share of benefits on the claim. The monetary determination must include a statement of whether and in what amount the claimant is entitled to benefits, and, in the event of a denial, must state the reasons for the denial. A monetary determination for the first week of a benefit year must also include a statement of whether the claimant was paid the wages required under s. 443.091(1)(g) and, if so, the first day of the benefit year, the claimant's weekly benefit amount, and the maximum total amount of benefits payable to the claimant for a benefit year. The claimant may file a request for the department to reconsider a monetary determination within 20 days after the department mails the notice to the claimant's last known address or, in lieu of mailing, within 20 days after the delivery of the notice. A monetary determination is final for a claimant if the claimant does not file a timely request for the department to reconsider the monetary determination. A monetary redetermination is final for a claimant unless within 20 days after the mailing of the notice of monetary redetermination to the claimant's last known address or, in lieu of mailing, within 20 days after the delivery of the notice, the claimant files an

appeal. The monetary determination or monetary redetermination is final for an employer or other party entitled to notice unless within 20 days after the mailing of the respective notice to the employer or party to its last known address or, in lieu of mailing, within 20 days after delivery of the notice, an appeal is filed by the employer or the party ~~The monetary determination is final unless within 20 days after the mailing of the notices to the parties' last known addresses, or in lieu of mailing, within 20 days after the delivery of the notices, an appeal or written request for reconsideration is filed by the claimant or other party entitled to notice~~. The department may adopt rules as necessary to implement the processes described in this paragraph relating to notices of monetary determinations and the appeals or reconsideration requests filed in response to such notices.

(4) APPEALS.—

(a) Appeals referees.—

1. The Department of Economic Opportunity shall appoint one or more impartial salaried appeals referees in accordance with s. 443.171(3) to hear and decide appealed claims.

2. ~~An appeals referee must be an attorney in good standing with The Florida Bar or be successfully admitted to The Florida Bar within 8 months after his or her date of employment. This subparagraph does not apply to an appeals referee appointed before January 1, 2014.~~

~~3.~~ A person may not participate on behalf of the department as an appeals referee in any case in which she or he is an interested party.

3.~~4.~~ The department may designate alternates to serve in the absence or disqualification of any appeals referee on a temporary basis. These alternates must have the same qualifications required of appeals referees.

4.~~5.~~ The department shall provide the commission and the appeals referees with proper facilities and assistance for the execution of their functions.

(b) Filing and hearing.—

1. The claimant or any other party entitled to notice of a determination may appeal an adverse determination to an appeals referee within 20 days after the date of mailing of the notice to her or his last known address or, if the notice is not mailed, within 20 days after the date of delivering the notice.

2. Unless the appeal is untimely or withdrawn or review is initiated by the commission, the appeals referee, after mailing all parties and attorneys of record a notice of hearing at least 10 days before the date of hearing, notwithstanding the 14-day notice requirement in s. 120.569(2)(b), may only affirm, modify, or reverse the determination. An appeal may not be withdrawn without the permission of the appeals referee.

3. ~~However,~~ If an appeal appears to have been filed after the permissible time limit, the Office of Appeals may issue an

order to show cause to the appellant which requires the appellant to show why the appeal should not be dismissed as untimely. If, within 15 days after the mailing date of the order to show cause, the appellant does not provide written evidence of timely filing or good cause for failure to appeal timely, the appeal shall be dismissed. However, an appeal may not be filed more than 5 years after the date of the mailing of the determination or, if the determination is not mailed, more than 5 years after the date of the delivery of the determination.

4. If an appeal involves a question of whether services were performed by a claimant in employment or for an employer, the referee must give special notice of the question and of the pendency of the appeal to the employing unit and to the department, both of which become parties to the proceeding.

5.a. Any part of the evidence may be received in written form, and all testimony of parties and witnesses shall be made under oath.

b. Irrelevant, immaterial, or unduly repetitious evidence shall be excluded, but all other evidence of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs is admissible, whether or not such evidence would be admissible in a trial in state court.

c. Hearsay evidence may be used for the purpose of supplementing or explaining other evidence, or to support a finding if it would be admissible over objection in civil

actions. Notwithstanding s. 120.57(1)(c), hearsay evidence may support a finding of fact if:

(I) The party against whom it is offered has a reasonable opportunity to review such evidence prior to the hearing; and

(II) The appeals referee or special deputy determines, after considering all relevant facts and circumstances, that the evidence is trustworthy and probative and that the interests of justice are best served by its admission into evidence.

6. The parties must be notified promptly of the referee's decision. The referee's decision is final unless further review is initiated under paragraph (c) within 20 days after the date of mailing notice of the decision to the party's last known address or, in lieu of mailing, within 20 days after the delivery of the notice.

Section 12. Paragraph (d) of subsection (3) of section 445.004, Florida Statutes, is amended, and subsections (1) and (2) of that section are republished, to read:

445.004 CareerSource Florida, Inc., and the state board; creation; purpose; membership; duties and powers.—

(1) CareerSource Florida, Inc., is created as a not-for-profit corporation, which shall be registered, incorporated, organized, and operated in compliance with chapter 617 and shall operate at the direction of the state board. CareerSource Florida, Inc., is not a unit or entity of state government and is exempt from chapters 120 and 287. CareerSource Florida, Inc.,

shall apply the procurement and expenditure procedures required by federal law for the expenditure of federal funds. CareerSource Florida, Inc., shall be administratively housed within the department and shall operate under agreement with the department. The Legislature finds that public policy dictates that CareerSource Florida, Inc., operate in the most open and accessible manner consistent with its public purpose. To this end, the Legislature specifically declares that CareerSource Florida, Inc., its board, councils, and any advisory committees or similar groups created by CareerSource Florida, Inc., are subject to the provisions of chapter 119 relating to public records, and those provisions of chapter 286 relating to public meetings.

(2) CareerSource Florida, Inc., provides administrative support for the state board, the principal workforce policy organization for the state. The purpose of the state board is to design and implement strategies that help Floridians enter, remain in, and advance in the workplace, so that they may become more highly skilled and successful, which benefits these Floridians, Florida businesses, and the entire state, and fosters the development of the state's business climate. CareerSource Florida, Inc., shall, consistent with its agreement with the department, implement the policy directives of the state board and administer state workforce development programs as authorized by law.

(3)

(d) The state board must include the Secretary of Economic Opportunity or his or her designee, the vice chairperson of the board of directors of Enterprise Florida, Inc., and one member representing each of the Workforce Innovation and Opportunity Act partners, including the Division of Career and Adult Education, and other entities representing programs identified in the Workforce Innovation and Opportunity Act, as determined necessary.

Section 13. Subsection (14) of section 553.79, Florida Statutes, is amended to read:

553.79 Permits; applications; issuance; inspections.—

(14)(a) Except as provided in paragraph (b), a building permit for a single-family residential dwelling must be issued within 30 working days after receipt of the application ~~therefor~~ unless unusual circumstances require a longer time for processing the application or unless the permit application fails to satisfy the Florida Building Code or the enforcing agency's laws or ordinances.

(b) A building permit for a single-family residential dwelling applied for by a contractor licensed in this state on behalf of a property owner who participates in a Community Development Block Grant-Disaster Recovery program administered by the Department of Economic Opportunity must be issued within 15 working days after receipt of the application unless the

permit application fails to satisfy the Florida Building Code or the enforcing agency's laws or ordinances.

Section 14. Paragraph (b) of subsection (2) of section 14.20195, Florida Statutes, is amended to read:

14.20195 Suicide Prevention Coordinating Council; creation; membership; duties.—There is created within the Statewide Office for Suicide Prevention a Suicide Prevention Coordinating Council. The council shall develop strategies for preventing suicide.

(2) MEMBERSHIP.—The Suicide Prevention Coordinating Council shall consist of 31 voting members and 1 nonvoting member.

(b) The following state officials or their designees shall serve on the coordinating council:

1. The Secretary of Elderly Affairs.

2. The State Surgeon General.

3. The Commissioner of Education.

4. The Secretary of Health Care Administration.

5. The Secretary of Juvenile Justice.

6. The Secretary of Corrections.

7. The executive director of the Department of Law Enforcement.

8. The executive director of the Department of Veterans' Affairs.

9. The Secretary of Children and Families.

10. The Secretary ~~executive director of the Department~~ of Economic Opportunity.

Section 15. Paragraph (j) of subsection (1) of section 16.615, Florida Statutes, is amended to read:

16.615 Council on the Social Status of Black Men and Boys.—

(1) The Council on the Social Status of Black Men and Boys is established within the Department of Legal Affairs and shall consist of 19 members appointed as follows:

(j) The Secretary ~~executive director of the Department~~ of Economic Opportunity or his or her designee.

Section 16. Subsection (3) and paragraph (b) of subsection (7) of section 20.04, Florida Statutes, are amended to read:

20.04 Structure of executive branch.—The executive branch of state government is structured as follows:

(3) For their internal structure, all departments, except for the Department of Financial Services, the Department of Economic Opportunity, the Department of Children and Families, the Department of Corrections, the Department of Management Services, the Department of Revenue, and the Department of Transportation, must adhere to the following standard terms:

(a) The principal unit of the department is the "division." Each division is headed by a "director."

(b) The principal unit of the division is the "bureau." Each bureau is headed by a "chief."

(c) The principal unit of the bureau is the "section." Each section is headed by an "administrator."

(d) If further subdivision is necessary, sections may be divided into "subsections," which are headed by "supervisors."

(7)

(b) Within the limitations of this subsection, the head of the department may recommend the establishment of additional divisions, bureaus, sections, and subsections of the department to promote efficient and effective operation of the department. However, additional divisions, or offices in the Department of Children and Families, the Department of Corrections, the Department of Economic Opportunity, and the Department of Transportation, may be established only by specific statutory enactment. New bureaus, sections, and subsections of departments may be initiated by a department and established as recommended by the Department of Management Services and approved by the Executive Office of the Governor, or may be established by specific statutory enactment.

Section 17. Paragraph (a) of subsection (7) of section 213.053, Florida Statutes, is amended to read:

213.053 Confidentiality and information sharing.—

(7)(a) Any information received by the Department of Revenue in connection with the administration of taxes, including, but not limited to, information contained in returns, reports, accounts, or declarations filed by persons subject to

tax, shall be made available to the following in performance of their official duties:

1. The Auditor General or his or her authorized agent;

2. The director of the Office of Program Policy Analysis and Government Accountability or his or her authorized agent;

3. The Chief Financial Officer or his or her authorized agent;

4. The Director of the Office of Insurance Regulation of the Financial Services Commission or his or her authorized agent;

5. A property appraiser or tax collector or their authorized agents pursuant to s. 195.084(1);

6. Designated employees of the Department of Education solely for determination of each school district's price level index pursuant to s. 1011.62(2);

7. The Secretary ~~executive director of the Department~~ of Economic Opportunity or his or her authorized agent;

8. The taxpayers' rights advocate or his or her authorized agent pursuant to s. 20.21(3); and

9. The coordinator of the Office of Economic and Demographic Research or his or her authorized agent.

Section 18. Paragraph (b) of subsection (5) of section 220.194, Florida Statutes, is amended to read:

220.194 Corporate income tax credits for spaceflight projects.—

(5) APPLICATION AND CERTIFICATION.—

(b) In order to take a tax credit under subparagraph (a)1. or, if applicable, to transfer an approved credit under subparagraph (a)2., a spaceflight business must submit an application for certification to the Department of Economic Opportunity along with a nonrefundable $250 fee.

1. The application must include:

a. The name and physical in-state address of the taxpayer.

b. Documentation demonstrating to the satisfaction of the Department of Economic Opportunity that:

(I) The taxpayer is a spaceflight business.

(II) The business has engaged in a qualifying spaceflight project before taking or transferring a credit under this section.

c. In addition to any requirement specific to a credit, documentation that the business has:

(I) Created 35 new jobs in this state directly associated with spaceflight projects during its immediately preceding 3 taxable years. The business shall be deemed to have created new jobs if the number of full-time jobs located in this state at the time of application for certification is greater than the total number of full-time jobs located in this state at the time of application for approval to earn credits; and

(II) Invested a total of at least $15 million in this state on a spaceflight project during its immediately preceding

3 taxable years.

d. The total amount and types of credits sought.

e. An acknowledgment that a transfer of a tax credit is to be accomplished pursuant to subsection (5).

f. A copy of an audit or audits of the preceding 3 taxable years, prepared by a certified public accountant licensed to practice in this state, which identifies that portion of the business's activities in this state related to spaceflight projects in this state.

g. An acknowledgment that the business must file an annual report on the spaceflight project's progress with the Department of Economic Opportunity.

h. Any other information necessary to demonstrate that the applicant meets the job creation, investment, and other requirements of this section.

2. Within 60 days after receipt of the application for certification, the Department of Economic Opportunity shall evaluate the application and recommend the business for certification or denial. The Secretary ~~executive director of the Department~~ of Economic Opportunity must approve or deny the application within 30 days after receiving the recommendation. If approved, the Department of Economic Opportunity must provide a letter of certification to the applicant consistent with any restrictions imposed. If the Department of Economic Opportunity denies any part of the requested credit, the Department of

Economic Opportunity must inform the applicant of the grounds for the denial. A copy of the certification shall be submitted to the department within 10 days after the secretary's ~~executive director's~~ approval.

Section 19. Subsection (3) of section 288.005, Florida Statutes, is amended to read:

288.005 Definitions.—As used in this chapter, the term:

~~(3) "Executive director" means the executive director of the Department of Economic Opportunity, unless otherwise stated.~~

Section 20. Subsections (1) and (3), paragraph (a) of subsection (5), and subsection (6) of section 288.061, Florida Statutes, are amended to read:

288.061 Economic development incentive application process.—

(1) Upon receiving a submitted economic development incentive application, the Division of Strategic Business Development of the Department of Economic Opportunity and designated staff of Enterprise Florida, Inc., shall review the application to ensure that the application is complete, whether and what type of state and local permits may be necessary for the applicant's project, whether it is possible to waive such permits, and what state incentives and amounts of such incentives may be available to the applicant. The department shall recommend to the Secretary of Economic Opportunity ~~executive director~~ to approve or disapprove an applicant

business. If review of the application demonstrates that the application is incomplete, the secretary ~~executive director~~ shall notify the applicant business within the first 5 business days after receiving the application.

(3) Within 10 business days after the department receives the submitted economic development incentive application, the Secretary of Economic Opportunity ~~executive director~~ shall approve or disapprove the application and issue a letter of certification to the applicant which includes a justification of that decision, unless the business requests an extension of that time.

(a) The contract or agreement with the applicant must specify the total amount of the award, the performance conditions that must be met to obtain the award, the schedule for payment, and sanctions that would apply for failure to meet performance conditions. The department may enter into one agreement or contract covering all of the state incentives that are being provided to the applicant. The contract must provide that release of funds is contingent upon sufficient appropriation of funds by the Legislature.

(b) The release of funds for the incentive or incentives awarded to the applicant depends upon the statutory requirements of the particular incentive program.

(5)(a) The Secretary of Economic Opportunity ~~executive director~~ may not approve an economic development incentive

application unless the application includes a signed written declaration by the applicant which states that the applicant has read the information in the application and that the information is true, correct, and complete to the best of the applicant's knowledge and belief.

(6) Beginning July 1, 2020, the Secretary of Economic Opportunity ~~executive director~~ may not approve an economic development incentive application unless the application includes proof to the department that the applicant business is registered with and uses the E-Verify system, as defined in s. 448.095, to verify the work authorization status of all newly hired employees. If the department determines that an awardee is not complying with this subsection, the department must notify the awardee by certified mail of the department's determination of noncompliance and the awardee's right to appeal the determination. Upon a final determination of noncompliance, the awardee must repay all moneys received as an economic development incentive to the department within 30 days after the final determination.

Section 21. Paragraph (a) of subsection (6) of section 288.0656, Florida Statutes, is amended to read:

288.0656 Rural Economic Development Initiative.—

(6)(a) By August 1 of each year, the head of each of the following agencies and organizations shall designate a deputy secretary or higher-level staff person from within the agency or

organization to serve as the REDI representative for the agency or organization:

1. The Department of Transportation.
2. The Department of Environmental Protection.
3. The Department of Agriculture and Consumer Services.
4. The Department of State.
5. The Department of Health.
6. The Department of Children and Families.
7. The Department of Corrections.
8. The Department of Education.
9. The Department of Juvenile Justice.
10. The Fish and Wildlife Conservation Commission.
11. Each water management district.
12. Enterprise Florida, Inc.
13. CareerSource Florida, Inc.
14. VISIT Florida.
15. The Florida Regional Planning Council Association.
16. The Agency for Health Care Administration.
17. The Institute of Food and Agricultural Sciences (IFAS).

An alternate for each designee shall also be chosen, and the names of the designees and alternates shall be sent to the Secretary of Economic Opportunity ~~executive director of the department~~.

Section 22. Paragraph (c) of subsection (5) and subsection (8) of section 288.106, Florida Statutes, are amended to read:

288.106 Tax refund program for qualified target industry businesses.—

(5) TAX REFUND AGREEMENT.—

(c) The agreement must be signed by the Secretary of Economic Opportunity ~~executive director~~ and by an authorized officer of the qualified target industry business within 120 days after the issuance of the letter of certification under subsection (4), but not before passage and receipt of the resolution of local financial support. The department may grant an extension of this period at the written request of the qualified target industry business.

(8) SPECIAL INCENTIVES.—If the department determines it is in the best interest of the public for reasons of facilitating economic development, growth, or new employment opportunities within a Disproportionally Affected County, the department may, between July 1, 2011, and June 30, 2014, waive any or all wage or local financial support eligibility requirements and allow a qualified target industry business from another state which relocates all or a portion of its business to a Disproportionally Affected County to receive a tax refund payment of up to $6,000 multiplied by the number of jobs specified in the tax refund agreement under subparagraph (5)(a)1. over the term of the agreement. Before ~~Prior to~~

granting such waiver, the Secretary of Economic Opportunity ~~executive director of the department~~ shall file with the Governor a written statement of the conditions and circumstances constituting the reason for the waiver. Such business shall be eligible for the additional tax refund payments specified in subparagraph (3)(b)4. if it meets the criteria. As used in this section, the term "Disproportionally Affected County" means Bay County, Escambia County, Franklin County, Gulf County, Okaloosa County, Santa Rosa County, Walton County, or Wakulla County.

Section 23. Subsection (5) of section 288.1089, Florida Statutes, is amended to read:

288.1089 Innovation Incentive Program.—

(5) The department shall review proposals pursuant to s. 288.061 for all three categories of innovation incentive awards. Before making a recommendation to the Secretary of Economic Opportunity ~~executive director~~, the department shall solicit comments and recommendations from the Department of Agriculture and Consumer Services. For each project, the evaluation and recommendation to the department must include, but need not be limited to:

(a) A description of the project, its required facilities, and the associated product, service, or research and development associated with the project.

(b) The percentage of match provided for the project.

(c) The number of full-time equivalent jobs that will be

created by the project, the total estimated average annual wages of such jobs, and the types of business activities and jobs likely to be stimulated by the project.

(d) The cumulative investment to be dedicated to the project within 5 years and the total investment expected in the project if more than 5 years.

(e) The projected economic and fiscal impacts on the local and state economies relative to investment.

(f) A statement of any special impacts the project is expected to stimulate in a particular business sector in the state or regional economy or in the state's universities and community colleges.

(g) A statement of any anticipated or proposed relationships with state universities.

(h) A statement of the role the incentive is expected to play in the decision of the applicant to locate or expand in this state.

(i) A recommendation and explanation of the amount of the award needed to cause the applicant to expand or locate in this state.

(j) A discussion of the efforts and commitments made by the local community in which the project is to be located to induce the applicant's location or expansion, taking into consideration local resources and abilities.

(k) A recommendation for specific performance criteria the

applicant would be expected to achieve in order to receive payments from the fund and penalties or sanctions for failure to meet or maintain performance conditions.

(l) Additional evaluative criteria for a research and development facility project, including:

1. A description of the extent to which the project has the potential to serve as catalyst for an emerging or evolving cluster.

2. A description of the extent to which the project has or could have a long-term collaborative research and development relationship with one or more universities or community colleges in this state.

3. A description of the existing or projected impact of the project on established clusters or targeted industry sectors.

4. A description of the project's contribution to the diversity and resiliency of the innovation economy of this state.

5. A description of the project's impact on special needs communities, including, but not limited to, rural areas, distressed urban areas, and enterprise zones.

(m) Additional evaluative criteria for alternative and renewable energy proposals, including:

1. The availability of matching funds or other in-kind contributions applied to the total project from an applicant.

The Department of Agriculture and Consumer Services shall give greater preference to projects that provide such matching funds or other in-kind contributions.

2. The degree to which the project stimulates in-state capital investment and economic development in metropolitan and rural areas, including the creation of jobs and the future development of a commercial market for renewable energy technologies.

3. The extent to which the proposed project has been demonstrated to be technically feasible based on pilot project demonstrations, laboratory testing, scientific modeling, or engineering or chemical theory that supports the proposal.

4. The degree to which the project incorporates an innovative new technology or an innovative application of an existing technology.

5. The degree to which a project generates thermal, mechanical, or electrical energy by means of a renewable energy resource that has substantial long-term production potential.

6. The degree to which a project demonstrates efficient use of energy and material resources.

7. The degree to which the project fosters overall understanding and appreciation of renewable energy technologies.

8. The ability to administer a complete project.

9. Project duration and timeline for expenditures.

10. The geographic area in which the project is to be

conducted in relation to other projects.

11. The degree of public visibility and interaction.

Section 24. Paragraph (b) of subsection (1) of section 288.1251, Florida Statutes, is amended to read:

288.1251 Promotion and development of entertainment industry; Office of Film and Entertainment; creation; purpose; powers and duties.—

(1) CREATION.—

(b) The department shall conduct a national search for a qualified person to fill the position of Commissioner of Film and Entertainment when the position is vacant. The Secretary of Economic Opportunity ~~executive director of the department~~ has the responsibility to hire the film commissioner. Qualifications for the film commissioner include, but are not limited to, the following:

1. A working knowledge of the equipment, personnel, financial, and day-to-day production operations of the industries to be served by the Office of Film and Entertainment;

2. Marketing and promotion experience related to the film and entertainment industries to be served;

3. Experience working with a variety of individuals representing large and small entertainment-related businesses, industry associations, local community entertainment industry liaisons, and labor organizations; and

4. Experience working with a variety of state and local

governmental agencies.

Section 25. Subsection (8) of section 288.8014, Florida Statutes, is amended to read:

288.8014 Triumph Gulf Coast, Inc.; organization; board of directors.—

(8) The Secretary ~~executive director of the Department~~ of Economic Opportunity, or his or her designee, the secretary of the Department of Environmental Protection, or his or her designee, and the chair of the Committee of 8 Disproportionally Affected Counties, or his or her designee, shall be available to consult with the board of directors and may be requested to attend meetings of the board of directors. These individuals shall not be permitted to vote on any matter before the board.

Section 26. Paragraph (a) of subsection (4) of section 288.955, Florida Statutes, is amended to read:

288.955 Scripps Florida Funding Corporation.—

(4) BOARD; MEMBERSHIP.—The corporation shall be governed by a board of directors.

(a) The board of directors shall consist of nine voting members, of whom the Governor shall appoint three, the President of the Senate shall appoint three, and the Speaker of the House of Representatives shall appoint three. The Secretary of Economic Opportunity ~~executive director of the department~~ or the secretary's ~~director's~~ designee shall serve as an ex-officio, nonvoting member of the board of directors.

Section 27. Subsection (2) of section 288.9604, Florida Statutes, is amended to read:

288.9604 Creation of the corporation.—

(2) The board of directors of the corporation shall consist of seven directors. The Secretary of Economic Opportunity ~~executive director of the department~~, or his or her designee, shall serve as chair of the board of directors of the corporation. The director of the Division of Bond Finance of the State Board of Administration, or his or her designee, shall serve as a director on the board of directors of the corporation. The Governor, subject to confirmation by the Senate, shall appoint the remaining five directors of the board of directors of the corporation. The terms of office for the appointed directors are for 4 years after the date of their appointment. A vacancy occurring during a term of an appointed director shall be filled for the unexpired term. An appointed director is eligible for reappointment. At least three of the appointed directors of the corporation must have experience in finance, and one of the directors must have experience in economic development.

Section 28. Subsection (5) of section 288.987, Florida Statutes, is amended to read:

288.987 Florida Defense Support Task Force.—

(5) The Secretary ~~executive director of the Department~~ of Economic Opportunity, or his or her designee, shall serve as the

ex officio, nonvoting executive director of the task force.

Section 29. Paragraph (a) of subsection (6) of section 290.0065, Florida Statutes, is amended to read:

290.0065 State designation of enterprise zones.—

(6)(a) The department may develop guidelines necessary for the approval of areas under this section by the Secretary of Economic Opportunity ~~executive director~~.

Section 30. Subsection (1) of section 311.09, Florida Statutes, is amended to read:

311.09 Florida Seaport Transportation and Economic Development Council.—

(1) The Florida Seaport Transportation and Economic Development Council is created within the Department of Transportation. The council consists of the following 17 members: the port director, or the port director's designee, of each of the ports of Jacksonville, Port Canaveral, Port Citrus, Fort Pierce, Palm Beach, Port Everglades, Miami, Port Manatee, St. Petersburg, Tampa, Port St. Joe, Panama City, Pensacola, Key West, and Fernandina; the secretary of the Department of Transportation or his or her designee; and the secretary ~~director~~ of the Department of Economic Opportunity or his or her designee.

Section 31. Paragraph (b) of subsection (1) of section 311.105, Florida Statutes, is amended to read:

311.105 Florida Seaport Environmental Management

Committee; permitting; mitigation.—

(1)

(b) The committee shall consist of the following members: the Secretary of Environmental Protection, or his or her designee, as an ex officio, nonvoting member; a designee from the United States Army Corps of Engineers, as an ex officio, nonvoting member; a designee from the Florida Inland Navigation District, as an ex officio, nonvoting member; the Secretary ~~executive director of the Department~~ of Economic Opportunity, or his or her designee, as an ex officio, nonvoting member; and five or more port directors, as voting members, appointed to the committee by the council chair, who shall also designate one such member as committee chair.

Section 32. Subsection (3) of section 334.065, Florida Statutes, is amended to read:

334.065 Center for Urban Transportation Research.—

(3) An advisory board shall be created to periodically and objectively review and advise the center concerning its research program. Except for projects mandated by law, state-funded base projects shall not be undertaken without approval of the advisory board. The membership of the board shall consist of nine experts in transportation-related areas, including the secretaries of the Department ~~Florida Departments~~ of Transportation, the Department of ~~and~~ Environmental Protection, and ~~the executive director of~~ the Department of Economic

Opportunity, or their designees, and a member of the Florida Transportation Commission. The nomination of the remaining members of the board shall be made to the President of the University of South Florida by the College of Engineering at the University of South Florida, and the appointment of these members must be reviewed and approved by the Florida Transportation Commission and confirmed by the Board of Governors.

Section 33. Subsection (5) of section 373.4149, Florida Statutes, is amended to read:

373.4149 Miami-Dade County Lake Belt Plan.—

(5) The secretary of the Department of Environmental Protection, the secretary ~~executive director~~ of the Department of Economic Opportunity, the secretary of the Department of Transportation, the Commissioner of Agriculture, the executive director of the Fish and Wildlife Conservation Commission, and the executive director of the South Florida Water Management District may enter into agreements with landowners, developers, businesses, industries, individuals, and governmental agencies as necessary to effectuate the Miami-Dade County Lake Belt Plan and the provisions of this section.

Section 34. Subsection (2) of section 380.045, Florida Statutes, is amended to read:

380.045 Resource planning and management committees; objectives; procedures.—

(2) The committee must ~~shall~~ include, but is ~~shall~~ not ~~be~~ limited to, representation from each of the following: elected officials from the local governments within the area under study; the planning office of each of the local governments within the area under study; the state land planning agency; any other state agency under chapter 20 a representative of which the Governor feels is relevant to the compilation of the committee; and a water management district, if appropriate, and regional planning council all or part of whose jurisdiction lies within the area under study. After the appointment of the members, the Governor shall select a chair and vice chair. A staff member of the state land planning agency shall be appointed by the secretary ~~director~~ of such agency to serve as the secretary of the committee. The state land planning agency shall, to the greatest extent possible, provide technical assistance and administrative support to the committee. Meetings will be called as needed by the chair or on the demand of three or more members of the committee. The committee will act on a simple majority of a quorum present and shall make a report within 6 months to the head of the state land planning agency. The committee must ~~shall~~, from the time of appointment, remain in existence for no less than 6 months.

Section 35. Subsection (5) of section 403.0752, Florida Statutes, is amended to read:

403.0752 Ecosystem management agreements.—

(5) The Secretary ~~Executive Director of the Department~~ of Economic Opportunity, the Secretary of Transportation, the Commissioner of Agriculture, the Executive Director of the Fish and Wildlife Conservation Commission, and the executive directors of the water management districts are authorized to participate in the development of ecosystem management agreements with regulated entities and other governmental agencies as necessary to effectuate the provisions of this section. Local governments are encouraged to participate in ecosystem management agreements.

Section 36. Subsection (1) of section 420.0005, Florida Statutes, is amended to read:

420.0005 State Housing Trust Fund; State Housing Fund.—

(1) There is established in the State Treasury a separate trust fund to be named the "State Housing Trust Fund." There shall be deposited in the fund all moneys appropriated by the Legislature, or moneys received from any other source, for the purpose of this chapter, and all proceeds derived from the use of such moneys. The fund shall be administered by the Florida Housing Finance Corporation on behalf of the department, as specified in this chapter. Money deposited to the fund and appropriated by the Legislature must, notwithstanding the provisions of chapter 216 or s. 420.504(3), be transferred quarterly in advance, to the extent available, or, if not so available, as soon as received into the State Housing Trust

Fund, and subject to the provisions of s. 420.5092(6)(a) and (b) by the Chief Financial Officer to the corporation upon certification by the Secretary ~~executive director of the Department~~ of Economic Opportunity that the corporation is in compliance with the requirements of s. 420.0006. The certification made by the secretary ~~executive director~~ shall also include the split of funds among programs administered by the corporation and the department as specified in chapter 92-317, Laws of Florida, as amended. Moneys advanced by the Chief Financial Officer must be deposited by the corporation into a separate fund established with a qualified public depository meeting the requirements of chapter 280 to be named the "State Housing Fund" and used for the purposes of this chapter. Administrative and personnel costs incurred in implementing this chapter may be paid from the State Housing Fund, but such costs may not exceed 5 percent of the moneys deposited into such fund. To the State Housing Fund shall be credited all loan repayments, penalties, and other fees and charges accruing to such fund under this chapter. It is the intent of this chapter that all loan repayments, penalties, and other fees and charges collected be credited in full to the program account from which the loan originated. Moneys in the State Housing Fund which are not currently needed for the purposes of this chapter shall be invested in such manner as is provided for by statute. The interest received on any such investment shall be credited to

the State Housing Fund.

Section 37. Section 420.0006, Florida Statutes, is amended to read:

420.0006 Authority to contract with corporation; contract requirements; nonperformance.—The Secretary ~~executive director~~ of Economic Opportunity ~~the department~~ shall contract, notwithstanding part I of chapter 287, with the Florida Housing Finance Corporation on a multiyear basis to stimulate, provide, and foster affordable housing in the state. The contract must incorporate the performance measures required by s. 420.511 and be consistent with the corporation's strategic business plan prepared in accordance with s. 420.511. The contract must provide that if the corporation fails to comply with a performance measure required by s. 420.511, the secretary ~~executive director~~ shall notify the Governor and refer the nonperformance to the department's inspector general for review and determination as to whether such failure is due to forces beyond the corporation's control or whether such failure is due to inadequate management of the corporation's resources. Advances shall continue to be made pursuant to s. 420.0005 during the pendency of the review. If such failure is due to outside forces, it may not be deemed a violation of the contract. If such failure is due to inadequate management, the department's inspector general shall provide recommendations regarding solutions. The Governor may resolve differences of

opinion with respect to performance under the contract and may request that advances continue in the event of a failure under the contract due to inadequate management. The Chief Financial Officer shall approve the request absent a finding by the Chief Financial Officer that continuing such advances would adversely impact the state; however, the Chief Financial Officer shall provide advances sufficient to meet the debt service requirements of the corporation and sufficient to fund contracts committing funds from the State Housing Trust Fund if such contracts are in accordance with the laws of this state.

Section 38. Paragraph (d) of subsection (1) of section 420.101, Florida Statutes, is amended to read:

420.101 Housing Development Corporation of Florida; creation, membership, and purposes.—

(1) Twenty-five or more persons, a majority of whom shall be residents of this state, who may desire to create a housing development corporation under the provisions of this part for the purpose of promoting and developing housing and advancing the prosperity and economic welfare of the state and, to that end, to exercise the powers and privileges hereinafter provided, may be incorporated by filing in the Department of State, as hereinafter provided, articles of incorporation. The articles of incorporation shall contain:

(d) The names and post office addresses of the members of the first board of directors. The first board of directors shall

be elected by and from the stockholders of the corporation and shall consist of 21 members. However, five of such members shall consist of the following persons, who shall be nonvoting members: the Secretary ~~executive director of the Department~~ of Economic Opportunity or her or his designee; the head of the Department of Financial Services or her or his designee with expertise in banking matters; a designee of the head of the Department of Financial Services with expertise in insurance matters; one state senator appointed by the President of the Senate; and one representative appointed by the Speaker of the House of Representatives.

Section 39. Subsection (8) of section 420.503, Florida Statutes, is amended to read:

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

(8) "Contract" means the contract between the Secretary ~~executive director~~ of Economic Opportunity ~~the department~~ and the corporation for provision of housing services referenced in s. 420.0006.

Section 40. Subsections (1) and (3) of section 420.504, Florida Statutes, are amended to read:

420.504 Public corporation; creation, membership, terms, expenses.—

(1) A public corporation and a public body corporate and politic, to be known as the "Florida Housing Finance Corporation," is created within the Department of Economic

Opportunity. It is declared to be the intent of and constitutional construction by the Legislature that the Florida Housing Finance Corporation constitutes an entrepreneurial public corporation organized to provide and promote the public welfare by administering the governmental function of financing or refinancing housing and related facilities in this state and that the corporation is not a department of the executive branch of state government within the scope and meaning of s. 6, Art. IV of the State Constitution, but is functionally related to the Department of Economic Opportunity in which it is placed. The executive function of state government to be performed by the Secretary ~~executive director of the Department~~ of Economic Opportunity in the conduct of the business of the Florida Housing Finance Corporation must be performed pursuant to a contract to monitor and set performance standards for the implementation of the business plan for the provision of housing approved for the corporation as provided in s. 420.0006. This contract must include performance standards for the provision of affordable housing in this state established in the strategic business plan described in s. 420.511.

(3) The corporation is a separate budget entity and is not subject to control, supervision, or direction by the Department of Economic Opportunity in any manner, including, but not limited to, personnel, purchasing, transactions involving real or personal property, and budgetary matters. The corporation

shall consist of a board of directors composed of the Secretary ~~executive director of the Department~~ of Economic Opportunity as an ex officio and voting member, or a senior-level agency employee designated by the secretary ~~director~~, and eight members appointed by the Governor subject to confirmation by the Senate from the following:

(a) One citizen actively engaged in the residential home building industry.

(b) One citizen actively engaged in the banking or mortgage banking industry.

(c) One citizen who is a representative of those areas of labor engaged in home building.

(d) One citizen with experience in housing development who is an advocate for low-income persons.

(e) One citizen actively engaged in the commercial building industry.

(f) One citizen who is a former local government elected official.

(g) Two citizens of the state who are not principally employed as members or representatives of any of the groups specified in paragraphs (a)-(f).

Section 41. Subsection (1) of section 420.506, Florida Statutes, is amended to read:

420.506 Executive director; agents and employees; inspector general.—

(1) The appointment and removal of an executive director shall be by the Secretary ~~executive director of the Department~~ of Economic Opportunity, with the advice and consent of the corporation's board of directors. The executive director shall employ legal and technical experts and such other agents and employees, permanent and temporary, as the corporation may require, and shall communicate with and provide information to the Legislature with respect to the corporation's activities. Notwithstanding s. 216.262, the board may develop and implement rules regarding the employment of employees of the corporation and service providers, including legal counsel. The board is entitled to establish travel procedures and guidelines for employees of the corporation, subject to s. 112.061(6) and (7). The executive director's office and the corporation's files and records must be located in Leon County.

Section 42. Subsection (30) of section 420.507, Florida Statutes, is amended to read:

420.507 Powers of the corporation.—The corporation shall have all the powers necessary or convenient to carry out and effectuate the purposes and provisions of this part, including the following powers which are in addition to all other powers granted by other provisions of this part:

(30) To prepare and submit to the Secretary ~~executive director~~ of Economic Opportunity ~~the department~~ a budget request for purposes of the corporation, which request shall,

notwithstanding the provisions of chapter 216 and in accordance with s. 216.351, contain a request for operational expenditures and separate requests for other authorized corporation programs. The request need not contain information on the number of employees, salaries, or any classification thereof, and the approved operating budget therefor need not comply with s. 216.181(8)-(10). The secretary ~~executive director~~ may include within the department's budget request the corporation's budget request in the form as authorized by this section.

Section 43. Subsection (2) of section 420.511, Florida Statutes, is amended to read:

420.511 Strategic business plan; long-range program plan; annual report; audited financial statements.—

(2) The corporation, in coordination with the department, shall annually develop a long-range program plan for the provision of affordable housing in this state as required pursuant to chapter 186. In part, the plan must include provisions that maximize the abilities of the corporation to implement the state housing strategy established under s. 420.0003, to respond to federal housing initiatives, and to develop programs in a manner that is more responsive to the needs of public and private partners. The plan shall be developed on a schedule consistent with that established by s. 186.021. For purposes of this section, the Secretary of Economic Opportunity ~~executive director~~ or his or her designee shall

serve as the corporation's representative to achieve a coordinated and integrated planning relationship with the department.

Section 44. Subsection (7) of section 420.602, Florida Statutes, is amended to read:

420.602 Definitions.—As used in this part, the following terms shall have the following meanings, unless the context otherwise requires:

~~(7) "Director" means the executive director of the Department of Economic Opportunity.~~

Section 45. Subsection (5) of section 420.609, Florida Statutes, is amended to read:

420.609 Affordable Housing Study Commission.—Because the Legislature firmly supports affordable housing in Florida for all economic classes:

(5) The commission shall review, evaluate, and make recommendations regarding existing and proposed housing programs and initiatives. The commission shall provide these and any other housing recommendations to the Secretary ~~director~~ of Economic Opportunity ~~the department~~ and the executive director of the corporation.

Section 46. Subsection (2) of section 420.622, Florida Statutes, is amended to read:

420.622 State Office on Homelessness; Council on Homelessness.—

(2) The Council on Homelessness is created to consist of 19 representatives of public and private agencies who shall develop policy and advise the State Office on Homelessness. The council members shall be: the Secretary of Children and Families, or his or her designee; the Secretary ~~executive director of the Department~~ of Economic Opportunity, or his or her designee, who shall advise the council on issues related to rural development; the State Surgeon General, or his or her designee; the Executive Director of Veterans' Affairs, or his or her designee; the Secretary of Corrections, or his or her designee; the Secretary of Health Care Administration, or his or her designee; the Commissioner of Education, or his or her designee; the Executive Director of CareerSource Florida, Inc., or his or her designee; one representative of the Florida Association of Counties; one representative of the Florida League of Cities; one representative of the Florida Supportive Housing Coalition; one representative of the Florida Housing Coalition; the Executive Director of the Florida Housing Finance Corporation, or his or her designee; one representative of the Florida Coalition for the Homeless; the secretary of the Department of Elder Affairs, or his or her designee; and four members appointed by the Governor. The council members shall be nonpaid volunteers and shall be reimbursed only for travel expenses. The appointed members of the council shall be appointed to staggered 2-year terms and are encouraged to have

experience in the administration or provision of resources, services, or housing that addresses the needs of persons experiencing homelessness. The council shall meet at least four times per year. The importance of minority, gender, and geographic representation shall be considered in appointing members to the council.

Section 47. Paragraph (g) of subsection (1) of section 427.012, Florida Statutes, is amended to read:

427.012 The Commission for the Transportation Disadvantaged.—There is created the Commission for the Transportation Disadvantaged in the Department of Transportation.

(1) The commission shall consist of seven members, all of whom shall be appointed by the Governor, in accordance with the requirements of s. 20.052.

(g) The Secretary of Transportation, the Secretary of Children and Families, the Secretary ~~executive director of the Department~~ of Economic Opportunity, the executive director of the Department of Veterans' Affairs, the Secretary of Elderly Affairs, the Secretary of Health Care Administration, the director of the Agency for Persons with Disabilities, and a county manager or administrator who is appointed by the Governor, or a senior management level representative of each, shall serve as ex officio, nonvoting advisors to the commission.

Section 48. Subsections (2), (3), and (4) of section

443.1116, Florida Statutes, are amended to read:

443.1116 Short-time compensation.—

(2) APPROVAL OF SHORT-TIME COMPENSATION PLANS.—An employer wishing to participate in the short-time compensation program must submit a signed, written, short-time plan to the Department of Economic Opportunity for approval. The Secretary of Economic Opportunity ~~director~~ or his or her designee shall approve the plan if:

(a) The plan applies to and identifies each specific affected unit;

(b) The individuals in the affected unit are identified by name and social security number;

(c) The normal weekly hours of work for individuals in the affected unit are reduced by at least 10 percent and by not more than 40 percent;

(d) The plan includes a certified statement by the employer that the aggregate reduction in work hours is in lieu of layoffs that would affect at least 10 percent of the employees in the affected unit and that would have resulted in an equivalent reduction in work hours;

(e) The plan applies to at least 10 percent of the employees in the affected unit;

(f) The plan is approved in writing by the collective bargaining agent for each collective bargaining agreement covering any individual in the affected unit;

(g) The plan does not serve as a subsidy to seasonal employers during the off-season or as a subsidy to employers who traditionally use part-time employees;

(h) The plan certifies that, if the employer provides fringe benefits to any employee whose workweek is reduced under the program, the fringe benefits will continue to be provided to the employee participating in the short-time compensation program under the same terms and conditions as though the workweek of such employee had not been reduced or to the same extent as other employees not participating in the short-time compensation program. As used in this paragraph, the term "fringe benefits" includes, but is not limited to, health insurance, retirement benefits under defined benefit pension plans as defined in subsection 35 of s. 1002 of the Employee Retirement Income Security Act of 1974, 29 U.S.C., contributions under a defined contribution plan as defined in s. 414(i) of the Internal Revenue Code, paid vacation and holidays, and sick leave;

(i) The plan describes the manner in which the requirements of this subsection will be implemented, including a plan for giving notice, if feasible, to an employee whose workweek is to be reduced, together with an estimate of the number of layoffs that would have occurred absent the ability to participate in short-time compensation; and

(j) The terms of the employer's written plan and

implementation are consistent with employer obligations under applicable federal laws and laws of this state.

(3) APPROVAL OR DISAPPROVAL OF THE PLAN.—The Secretary of Economic Opportunity ~~director~~ or his or her designee shall approve or disapprove a short-time compensation plan in writing within 15 days after its receipt. If the plan is denied, the secretary ~~director~~ or his or her designee shall notify the employer of the reasons for disapproval.

(4) BEGINNING AND TERMINATION OF SHORT-TIME COMPENSATION BENEFIT PERIOD.—A plan takes effect on the date of its approval by the Secretary of Economic Opportunity ~~director~~ or his or her designee and expires at the end of the 12th full calendar month after its effective date.

Section 49. Paragraph (d) of subsection (2) of section 446.53, Florida Statutes, is amended to read:

446.53 Concrete masonry education.—

(2)

(d) In addition to the 13 voting members described in paragraph (a), the Secretary ~~executive director of the Department~~ of Economic Opportunity, or his or her designee, shall serve ex officio as a nonvoting member of the board of directors of the council.

Section 50. Section 450.261, Florida Statutes, is amended to read:

450.261 Interstate Migrant Labor Commission; Florida

membership.—In selecting the Florida membership of the Interstate Migrant Labor Commission, the Governor may designate the Secretary ~~executive director of the Department~~ of Economic Opportunity as his or her representative.

Section 51. Paragraph (d) of subsection (1), paragraph (a) of subsection (4), and paragraphs (b), (c), and (d) of subsection (5) of section 624.5105, Florida Statutes, are amended to read:

624.5105 Community contribution tax credit; authorization; limitations; eligibility and application requirements; administration; definitions; expiration.—

(1) AUTHORIZATION TO GRANT TAX CREDITS; LIMITATIONS.—

(d) Each proposal for the granting of such tax credit requires the prior approval of the Secretary of Economic Opportunity ~~director~~.

(4) ADMINISTRATION.—

(a)1. The Department of Economic Opportunity may adopt rules to administer this section, including rules for the approval or disapproval of proposals by insurers.

2. The decision of the Secretary of Economic Opportunity ~~director~~ shall be in writing, and, if approved, the proposal shall state the maximum credit allowable to the insurer. A copy of the decision shall be transmitted to the executive director of the Department of Revenue, who shall apply such credit to the tax liability of the insurer.

3. The Department of Economic Opportunity shall monitor all projects periodically, in a manner consistent with available resources to ensure that resources are utilized in accordance with this section; however, each project shall be reviewed no less frequently than once every 2 years.

4. The Department of Economic Opportunity shall, in consultation with the Florida Housing Finance Corporation and the statewide and regional housing and financial intermediaries, market the availability of the community contribution tax credit program to community-based organizations.

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

~~(b) "Director" means the director of the Department of Economic Opportunity.~~

(b) ~~(c)~~ "Local government" means any county or incorporated municipality in the state.

(c) ~~(d)~~ "Project" means an activity as defined in s. 220.03(1)(t).

Section 52. Paragraph (f) of subsection (2) of section 1004.015, Florida Statutes, is amended to read:

1004.015 Florida Talent Development Council.—

(2) Members of the council shall include:

(f) The Secretary ~~executive director of the Department~~ of Economic Opportunity.

Section 53. For the 2021-2022 fiscal year, the Department of Economic Opportunity shall take actions to modernize the

Reemployment Assistance Claims and Benefits Information System as provided in the General Appropriations Act.

Section 54. This act shall take effect upon becoming a law.

COMMERCE COMMITTEE

CS/HB 1463 by Rep. LaMarca
DEPARTMENT OF ECONOMIC OPPORTUNITY

AMENDMENT SUMMARY
April 14, 2021

Amendment 1 by Rep. LaMarca (line 411):
Amends the definition of “temporary layoff” and authorizes employers to file initial claims on behalf of its employees who are a part of a mass separation from the employer.

COMMITTEE/SUBCOMMITTEE ACTION

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

Committee/Subcommittee hearing bill: Commerce Committee

Representative LaMarca offered the following:

Amendment (with title amendment)

Remove lines 411-732 and insert:

Section 8. Subsection (43) of section 443.036, Florida Statutes, is amended to read:

443.036 Definitions.—As used in this chapter, the term:

(43) "Temporary layoff" means an individual's ~~a~~ job separation due to lack of work which does not exceed 8 consecutive weeks and which has a fixed or approximate return-to-work date; or an individual's employer-initiated furlough that causes a mandatory complete stoppage of work if such furlough is temporary and the individual remains job attached and is expected to return to work with the employer.

Section 9. Paragraph (c) of subsection (1) of section 443.091, Florida Statutes, is amended to read:

443.091 Benefit eligibility conditions.—

(1) An unemployed individual is eligible to receive benefits for any week only if the Department of Economic Opportunity finds that:

(c) To make continued claims for benefits, she or he is reporting to the department in accordance with this paragraph and department rules. Department rules may not conflict with s. 443.111(1)(b), which requires that each claimant continue to report regardless of any pending appeal relating to her or his eligibility or disqualification for benefits.

1. For each week of unemployment claimed, each report must, at a minimum, include the name and~~,~~ address~~, and telephone number~~ of each prospective employer contacted, or the date the claimant reported to a one-stop career center, pursuant to paragraph (d). For the purposes of this subparagraph, the term "address" means a website address, a physical address, or an e-mail address.

2. The department shall offer an online assessment aimed at identifying an individual's skills, abilities, and career aptitude. The skills assessment must be voluntary, and the department shall allow a claimant to choose whether to take the skills assessment. The online assessment shall be made available

to any person seeking services from a local workforce development board or a one-stop career center.

a. If the claimant chooses to take the online assessment, the outcome of the assessment shall be made available to the claimant, local workforce development board, and one-stop career center. The department, local workforce development board, or one-stop career center shall use the assessment to develop a plan for referring individuals to training and employment opportunities. Aggregate data on assessment outcomes may be made available to CareerSource Florida, Inc., and Enterprise Florida, Inc., for use in the development of policies related to education and training programs that will ensure that businesses in this state have access to a skilled and competent workforce.

b. Individuals shall be informed of and offered services through the one-stop delivery system, including career counseling, the provision of skill match and job market information, and skills upgrade and other training opportunities, and shall be encouraged to participate in such services at no cost to the individuals. The department shall coordinate with CareerSource Florida, Inc., the local workforce development boards, and the one-stop career centers to identify, develop, and use best practices for improving the skills of individuals who choose to participate in skills upgrade and other training opportunities. The department may contract with an entity to create the online assessment in accordance with the

competitive bidding requirements in s. 287.057. The online assessment must work seamlessly with the Reemployment Assistance Claims and Benefits Information System.

Section 10. Paragraph (a) of subsection (1) and subsection (6) of section 443.101, Florida Statutes, are amended to read:

443.101 Disqualification for benefits.—An individual shall be disqualified for benefits:

(1)(a) For the week in which he or she has voluntarily left work without good cause attributable to his or her employing unit or for the week in which he or she has been discharged by the employing unit for misconduct connected with his or her work, based on a finding by the Department of Economic Opportunity. As used in this paragraph, the term "work" means any work, whether full-time, part-time, or temporary.

1. Disqualification for voluntarily quitting continues for the full period of unemployment next ensuing after the individual has left his or her full-time, part-time, or temporary work voluntarily without good cause and until the individual has earned income equal to or greater than 17 times his or her weekly benefit amount. As used in this subsection, the term "good cause" includes only that cause attributable to the employing unit which would compel a reasonable employee to cease working or attributable to the individual's illness or disability requiring separation from his or her work. Any other disqualification may not be imposed.

2. An individual is not disqualified under this subsection for:

a. Voluntarily leaving temporary work to return immediately when called to work by the permanent employing unit that temporarily terminated his or her work within the previous 6 calendar months;

b. Voluntarily leaving work to relocate as a result of his or her military-connected spouse's permanent change of station orders, activation orders, or unit deployment orders; or

c. Voluntarily leaving work if he or she proves that his or her discontinued employment is a direct result of circumstances related to domestic violence as defined in s. 741.28. An individual who voluntarily leaves work under this sub-subparagraph must:

(I) Make reasonable efforts to preserve employment, unless the individual establishes that such remedies are likely to be futile or to increase the risk of future incidents of domestic violence. Such efforts may include seeking a protective injunction, relocating to a secure place, or seeking reasonable accommodation from the employing unit, such as a transfer or change of assignment;

(II) Provide evidence such as an injunction, a protective order, or other documentation authorized by state law which reasonably proves that domestic violence has occurred; and

(III) Reasonably believe that he or she is likely to be the victim of a future act of domestic violence at, in transit to, or departing from his or her place of employment. ~~An individual who is otherwise eligible for benefits under this sub-subparagraph is ineligible for each week that he or she no longer meets such criteria or refuses a reasonable accommodation offered in good faith by his or her employing unit.~~

3. The employment record of an employing unit may not be charged for the payment of benefits to an individual who has voluntarily left work under sub-subparagraph 2.c.

4. Disqualification for being discharged for misconduct connected with his or her work continues for the full period of unemployment next ensuing after having been discharged and until the individual is reemployed and has earned income of at least 17 times his or her weekly benefit amount and for not more than 52 weeks immediately following that week, as determined by the department in each case according to the circumstances or the seriousness of the misconduct, under the department's rules for determining disqualification for benefits for misconduct.

5. If an individual has provided notification to the employing unit of his or her intent to voluntarily leave work and the employing unit discharges the individual for reasons other than misconduct before the date the voluntary quit was to take effect, the individual, if otherwise entitled, shall

receive benefits from the date of the employer's discharge until the effective date of his or her voluntary quit.

6. If an individual is notified by the employing unit of the employer's intent to discharge the individual for reasons other than misconduct and the individual quits without good cause before the date the discharge was to take effect, the claimant is ineligible for benefits pursuant to s. 443.091(1)(d) for failing to be available for work for the week or weeks of unemployment occurring before the effective date of the discharge.

(6) For making any false or fraudulent representation for the purpose of obtaining benefits contrary to this chapter, constituting a violation under s. 443.071. The disqualification imposed under this subsection shall begin with the week <u>for</u> ~~in~~ which the false or fraudulent representation <u>was</u> ~~is~~ made and shall continue for a period not to exceed 1 year after the date the Department of Economic Opportunity discovers the false or fraudulent representation and until any overpayment of benefits resulting from such representation has been repaid in full. This disqualification may be appealed in the same manner as any other disqualification imposed under this section. A conviction by any court of competent jurisdiction in this state of the offense prohibited or punished by s. 443.071 is conclusive upon the appeals referee and the commission of the making of the false or

fraudulent representation for which disqualification is imposed under this section.

Section 11. Section 443.1113, Florida Statutes, is amended to read:

443.1113 Reemployment Assistance Claims and Benefits Information System.—

(1) The Department of Economic Opportunity shall implement an integrated, modular system hosted in a cloud computing service, as defined in s. 282.0041, that provides for rapid provisioning of additional data processing when necessary. The system must support the efficient distribution of benefits and the effective operation and management of the reemployment assistance program. ~~To~~ The ~~extent that funds are appropriated for each phase of the Reemployment Assistance Claims and Benefits Information~~ system may be cited ~~by the Legislature, the Department of Economic Opportunity shall replace and enhance the functionality provided in the following systems with an integrated Internet-based system that is known~~ as the "Reemployment Assistance Claims and Benefits Information System" and must:

(a) Be accessible through the Internet on both mobile devices and personal computers ~~Claims and benefit mainframe system~~.

(b) Process reemployment assistance claims ~~Florida unemployment Internet direct~~.

(c) Process benefit payments ~~Florida continued claim Internet directory~~.

(d) Process and manage overpayments ~~Call center interactive voice response system~~.

(e) Perform adjudication functions ~~Benefit overpayment screening system~~.

(f) Process appeals and manage appeal hearings ~~Internet and Intranet appeals system~~.

(g) Manage and process employer charging.

(2) Wherever cost-effective and operationally feasible, the Reemployment Assistance Claims and Benefits System shall accomplish the following main ~~business~~ objectives:

(a) ~~Wherever cost-effective and operationally feasible,~~ Eliminate or automate existing paper processes and enhance any existing automated workflows in order to expedite customer transactions and eliminate redundancy.

(b) Enable and enhance online, self-service capabilities ~~access~~ to claimant and employer information and federal and state reporting.

(c) Integrate benefit payment control with the adjudication program and collection system in order to improve the detection of fraud.

(d) Comply with all requirements established in federal and state law for reemployment assistance.

(e) Integrate with the Department of Revenue's statewide unified tax system that collects reemployment assistance taxes.

(f) Maintain interoperability with other department workforce systems.

(g) Allow for employer-assisted claims.

(3) The scope of the Reemployment Assistance Claims and Benefits Information System does not include any of the following functionalities:

(a) Collection of reemployment assistance taxes.

(b) General ledger, financial management, or budgeting capabilities.

(c) Human resource planning or management capabilities.

(4)(a) The Department of Economic Opportunity shall perform an annual review of the system and identify enhancements or modernization efforts that improve the delivery of services to claimants and employers and reporting to state and federal entities. These improvements must include, but need not be limited to:

1. Infrastructure upgrades through cloud services.

2. Software improvements.

3. Enhanced data analytics and reporting.

4. Increased cybersecurity pursuant to s. 282.318.

(b) The department shall seek input on recommended enhancements from, at a minimum, the following entities:

1. The Florida Digital Service within the Department of Management Services.

2. The General Tax Administration Program Office within the Department of Revenue.

3. The Division of Accounting and Auditing within the Department of Financial Services.

(5) By October 1, 2023, and each year thereafter, the Department of Economic Opportunity shall submit a Reemployment Assistance Claims and Benefits Information System report to the Governor, the President of the Senate, and the Speaker of the House of Representatives. The report must, at a minimum, include:

(a) A summary of maintenance, enhancement, and modernization efforts over the last fiscal year.

(b) A 3-year outlook of recommended enhancements or modernization efforts that includes projected costs and timeframes for completion.

(6) The Department of Economic Opportunity shall provide monthly project status reports to the chair of the Senate Appropriations Committee, the chair of the House Appropriations Committee, the Office of Policy and Budget in the Executive Office of the Governor, and the Florida Digital Service. Each status report must include ongoing system maintenance activities and progress made to date for each project milestone, deliverable, and task order; planned and actual completion

dates; planned and actual costs incurred; and any current project issues and risks.

(7) The Department of Economic Opportunity shall provide project-related data to the Florida Digital Service in support of the Florida Digital Service's project oversight responsibilities pursuant to s. 282.0051. ~~The project to implement the Reemployment Assistance Claims and Benefits Information System is comprised of the following phases and corresponding implementation timeframes:~~

~~(a) No later than the end of fiscal year 2009-2010 completion of the business re-engineering analysis and documentation of both the detailed system requirements and the overall system architecture.~~

~~(b) The Reemployment Assistance Claims and Benefits Internet portal that replaces the Florida Unemployment Internet Direct and the Florida Continued Claims Internet Directory systems, the Call Center Interactive Voice Response System, the Benefit Overpayment Screening System, the Internet and Intranet Appeals System, and the Claims and Benefits Mainframe System shall be deployed to full operational status no later than the end of fiscal year 2013-2014.~~

~~(5) The Department of Economic Opportunity shall implement the following project governance structure until such time as the project is completed, suspended, or terminated:~~

~~(a) The project sponsor for the Reemployment Assistance Claims and Benefits Information System project is the department.~~

~~(b) The project shall be governed by an executive steering committee composed of the following voting members or their designees:~~

~~1. The executive director of the department.~~

~~2. The executive director of the Department of Revenue.~~

~~3. The director of the Division of Workforce Services within the department.~~

~~4. The program director of the General Tax Administration Program Office within the Department of Revenue.~~

~~5. The chief information officer of the department.~~

~~(c) The executive steering committee has the overall responsibility for ensuring that the project meets its primary objectives and is specifically responsible for:~~

~~1. Providing management direction and support to the project management team.~~

~~2. Assessing the project's alignment with the strategic goals of the department for administering the reemployment assistance program.~~

~~3. Reviewing and approving or disapproving any changes to the project's scope, schedule, and costs.~~

~~4. Reviewing, approving or disapproving, and determining whether to proceed with any major project deliverables.~~

~~5. Recommending suspension or termination of the project to the Governor, the President of the Senate, and the Speaker of the House of Representatives if it determines that the primary objectives cannot be achieved.~~

~~(d) The project management team shall work under the direction of the executive steering committee and shall be minimally comprised of senior managers and stakeholders from the department and the Department of Revenue. The project management team is responsible for:~~

~~1. Providing daily planning, management, and oversight of the project~~.

~~2. Submitting an operational work plan and providing quarterly updates to that plan to the executive steering committee. The plan must specify project milestones, deliverables, and expenditures.~~

~~3. Submitting written monthly project status reports to the executive steering committee which include:~~

~~a. Planned versus actual project costs;~~

~~b. An assessment of the status of major milestones and deliverables;~~

~~c. Identification of any issues requiring resolution, the proposed resolution for these issues, and information regarding the status of the resolution;~~

~~d. Identification of risks that must be managed; and~~

~~c. Identification of and recommendations regarding necessary changes in the project's scope, schedule, or costs. All recommendations must be reviewed by project stakeholders before submission to the executive steering committee in order to ensure that the recommendations meet required acceptance criteria.~~

Section 12. Section 443.1118, Florida Statutes, is created to read:

443.1118 Employer-assisted claims.—

(1) For purposes of this section:

(a) "Employer-assisted claim" means an initial claim filed by an employer on behalf of its employees who are a part of a mass separation from the employer.

(b) "Mass separation" means a full, partial, permanent, or temporary separation, including a temporary layoff, of full-time employees from their employer if the separation occurs at or around the same time, the employees are separated for the same reason, and the separation is due to circumstances for which the employees are not at fault. The department shall establish criteria for determining what constitutes a mass separation.

(2)(a) An employer that commences a mass separation may initiate an employer-assisted claim by submitting employee information to the department pursuant to rules adopted by the department.

(b) Due to the sensitive nature of employee information, an employer shall submit employee information through secure means approved by department rule.

(c) For each employer-assisted claim, the employer shall give notice and instructions to the employees regarding the claim and provide an attestation in a form and format required by the department.

(3) The effective date of an employer-assisted claim is the Sunday immediately preceding the date on which the employer-assisted claim was received by the department.

(4) Weeks of benefits paid to a claimant pursuant to an employer-assisted claim count toward the maximum benefits for which the claimant is eligible.

(5) A claimant covered by an employer-assisted claim must file continued biweekly claims pursuant to department rule.

(6) This section does not limit, alter, or amend a claimant's rights under this chapter relating to a hearing if a claimant is denied a claim.

(7) The department shall adopt rules establishing additional procedures for filing an employer-assisted claim and may adopt additional rules to administer this section.

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

Remove lines 32-49 and insert:

382 amending s. 443.036, F.S.; revising the definition of the term
383 "temporary layoff"; amending s. 443.091, F.S.; revising the
384 reporting requirements for reemployment assistance benefit
385 eligibility; defining the term "address"; amending s. 443.101,
386 F.S.; deleting a provision providing that individuals who
387 voluntarily leave work as a direct result of circumstances
388 relating to domestic violence are ineligible for benefits under
389 certain circumstances; amending s. 443.1113, F.S.; requiring the
390 department to implement an integrated, modular system hosted in
391 a cloud service, rather than an integrated Internet-based
392 system, for the reemployment assistance program; revising the
393 functions and objectives of the Reemployment Assistance Claims
394 and Benefits Information System; revising the duties of the
395 department; providing reporting requirements; deleting obsolete
396 language; deleting provisions relating to duties of the
397 governance structure of the system project; creating s.
398 443.1118, F.S.; defining terms; providing requirements for
399 employer-assisted claims relating to mass separations;
400 specifying the effective date of such claims; providing that
401 benefits paid to a claimant pursuant to an employer-assisted
402 claim count toward maximum benefits for which the claimant is
403 eligible; requiring a claimant covered by an employer-assisted
404 claim to file continued biweekly claims; providing construction;
405 requiring and authorizing the department to adopt specified
406 rules; amending s. 443.151, F.S.; revising

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 1517 Department of Business and Professional Regulation
SPONSOR(S): State Administration & Technology Appropriations Subcommittee, Regulatory Reform Subcommittee, Duggan
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 1966

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Regulatory Reform Subcommittee	14 Y, 0 N, As CS	Wright	Anstead
2) State Administration & Technology Appropriations Subcommittee	14 Y, 0 N, As CS	Helpling	Topp
3) Commerce Committee		Wright	Hamon

SUMMARY ANALYSIS

The Department of Business and Professional Regulation (DBPR) is responsible for licensing and regulating various businesses and professions throughout the state, including, but not limited to, tobacco and alcohol sales; drugs, devices, and cosmetics; construction contractors; pugilistic events; condominium associations; and public food and lodging establishments.

Related to tobacco taxation regulations, the bill updates business records and reporting requirements.

Related to contractors, the bill reopens a licensing provision that allows certain local construction contractors to be licensed statewide, and removes certain licensing fees for construction and electrical contractors.

Related to drugs, devices, and cosmetics, the bill:
- excepts certain cosmetics manufacturers from permit requirements,
- provides a temporary permit process to use during a change of ownership, and
- gives authority to DBPR to issue citations for certain violations.

Related to alcohol regulations, the bill:
- updates application and reporting requirements,
- requires that an alcoholic beverage license applicant provide proof of the applicant's right to occupy the entire premises which the applicant seeks a license, and
- changes auditing timeframes for special restaurant licensees.

Related to pugilistic events regulations, the bill:
- renames the Florida State Boxing Commission to the Florida Athletic Commission (FAC), and
- gives full authority to FAC to determine glove requirements, and if gloves are required at all, for matches.

Related to condominium association regulations, the bill:
- requires the proposed annual budget to be provided to members of the association and adopted by the board of directors no later than 30 days before the beginning of the fiscal year,
- provides that a person may not serve on a board if they are delinquent on an assessment payment,
- removes the requirement that the Ombudsman keep his or her principal office in Leon County, and
- allows DBPR to adopt rules on the submission of complaints against condominium associations.

The bill has a negative fiscal impact on state government. The loss of revenue over three fiscal years would be an estimated $374,541, of which $39,324 would be a reduction in transfer to general revenue. *See* Fiscal Impact & Economic Impact Statement.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Department of Business and Professional Regulation

The Florida Department of Business and Professional Regulation (DBPR) regulates and licenses businesses and professionals in Florida through the following divisions:

- The Division of Administration,
- The Division of Alcoholic Beverages and Tobacco,
- The Division of Certified Public Accounting,
- The Division of Drugs, Devices, and Cosmetics,
- The Division of Florida Condominiums, Timeshares, and Mobile Homes,
- The Division of Hotels and Restaurants,
- The Division of Pari-mutuel Wagering,
- The Division of Professions,
- The Division of Real Estate,
- The Division of Regulation,
- The Division of Technology, and
- The Division of Service Operations.[1]

The Division of Regulation is the enforcement authority for the Florida State Boxing Commission, Labor Organizations and Business Agents, Farm Labor Program, Child Labor Program, and any professional boards and programs housed within the Division of Professions.[2] To ensure compliance with applicable laws and rules by those professions and related businesses, The Division of Regulation investigates complaints, utilizes compliance mechanisms, and performs inspections.[3]

The Division of Florida Condominiums, Timeshares, and Mobile Homes (FCTMH) provides consumer protection for Florida residents living in regulated communities through education, complaint resolution, mediation and arbitration, and developer disclosure.[4] FCTMH has limited regulatory authority over the following business entities and individuals:[5]

- 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 (jurisdiction is limited to arbitration of election and recall disputes).

The Division of Hotels and Restaurants (H&R) licenses, inspects and regulates public lodging and food service establishments in Florida. The division also licenses and regulates elevators, escalators and other vertical conveyance devices.[6]

The Division of Alcoholic Beverages and Tobacco (ABT) regulates the manufacture, distribution, sale, and service of alcoholic beverages and tobacco products in Florida, including:

- receipt and processing of license applications;

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[1] s. 20.165, F.S.
[2] Except the Board of Architecture and Interior Design, and the Florida Board of Professional Engineers. Florida Department of Business and Professional Regulation, *Division of Regulation*, http://www.myfloridalicense.com/dbpr/reg/index.html (last visited Mar. 19, 2021).
[3] Florida Department of Business and Professional Regulation, *Division of Regulation*, http://www.myfloridalicense.com/DBPR/division-of-regulation/ (last visited Mar. 19, 2021).
[4] Department of Business and Professional Regulation, *Division of Florida Condominiums, Timeshares, and Mobile Homes*, http://www.myfloridalicense.com/DBPR/condos-timeshares-mobile-homes/, (last visited Mar. 19, 2021).
[5] *Id*.
[6] Florida Department of Business and Professional Regulation, Division of Hotels and Restaurants, http://www.myfloridalicense.com/DBPR/hotels-restaurants/ (last visited Mar. 19, 2021).

- collection and auditing of taxes, surcharges, and fees paid by licensees; and
- enforcement of the laws and regulations governing the sale of alcoholic beverages and tobacco products.[7]

Tobacco

Background

ABT is responsible for the regulation of tobacco products under ch. 210, F.S., which sets out tax requirements specific to cigarettes and tobacco products, and ch. 569, F.S., which sets out requirements for tobacco sales. [8]

"Cigarettes" are defined in s. 210.01(1), F.S., relating to state taxes on cigarettes, as "any roll for smoking, except one of which the tobacco is fully naturally fermented, without regard to the kind of tobacco or other substances used in the inner roll or the nature or composition of the material in which the roll is wrapped, which is made wholly or in part of tobacco irrespective of size or shape and whether such tobacco is flavored, adulterated or mixed with any other ingredient." This definition does not include cigars.

"Tobacco products" are defined in s. 210.25(11), F.S., relating to state taxes on tobacco products other than cigarettes or cigars, as "loose tobacco suitable for smoking; snuff; snuff flour; cavendish; plug and twist tobacco; fine cuts and other chewing tobaccos; shorts; refuse scraps; clippings, cuttings, and sweepings of tobacco, and other kinds and forms of tobacco prepared in such manner as to be suitable for chewing."

Cigars, nicotine products, and nicotine dispensing devices are not included in these definitions, and therefore they are not taxed as a cigarette or tobacco product in Florida.[9]

A person, firm, association, or corporation must obtain a permit from ABT to function as any of the following in Florida:
- retail tobacco products dealer,[10]
- cigarette manufacturer,[11]
- cigarette wholesale dealer,[12]
- cigarette distributing agent,[13]
- cigarette importer,[14]
- cigarette exporter,[15] or
- cigar wholesale dealer,[16] or
- tobacco wholesale dealer/distributor.[17]

ABT collects monthly business records related to cigarettes, which are used to accurately collect and distribute cigarette taxes. Such records must be submitted to ABT by any manufacturer, importer, distributing agent, wholesale dealer, retail dealer, common carrier, or any other person handling,

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[7] Florida Department of Business and Professional Regulation, Division of Alcoholic Beverages and Tobacco, http://www.myfloridalicense.com/DBPR/alcoholic-beverages-and-tobacco/ (last visited Mar. 19, 2021).
[8] S. 561.02, F.S.
[9] Ss. 210.01(1), 210.25(12), F.S. "Nicotine dispensing device" means any product that employs an electronic, chemical, or mechanical means to produce vapor from a nicotine product. "Nicotine products" do not include tobacco products, certain smoking cessation products, and products with incidental nicotine. S. 877.112(1)(a),(b), F.S.
[10] S. 569.003, F.S.
[11] Ss. 210.01(21) and 210.15, F.S.
[12] Ss. 210.01(6) and 210.15(1), F.S.
[13] Ss. 210.01(14) and 210.15(1), F.S.
[14] Ss. 210.01(20) and 210.15(1), F.S.
[15] Ss. 210.01(17) and 210.15(1), F.S.
[16] S. 210.65(2), F.S.
[1717] Ss. 210.25(5) and 210.40, F.S.

transporting, or possessing cigarettes for sale or distribution in Florida. ABT prescribes the manner in which these records are submitted.[18]

ABT also collects monthly returns showing the taxable price of each tobacco product, not including cigarettes or cigars, that is manufactured or brought or caused to be brought into Florida for sale. Such returns must be submitted by every place of business that sells or manufactures such tobacco products in Florida. ABT prescribes the form and content for submitting such returns to ABT. Each return must be accompanied by a remittance for the full tax liability shown.[19]

Effect of the Bill

The bill requires business records related to cigarette and tobacco products to be filed through ABT's electronic data submission system.

The bill allows records related to taxes on cigarettes and tobacco products to be stored electronically.

The bill changes the requirements related to business records for tobacco products that must be submitted to ABT. Instead of submitting a **return** showing the taxable price of each tobacco product for sale or manufacture, tobacco product businesses must electronically submit a more detailed **full and complete report** on each tobacco product for sale or manufacture.

Alcoholic Beverages

Requirements for Licensees and License Applicants – Current Situation

ABT is responsible for enforcing the Beverage Law and supervising the conduct, management, and operation of the manufacturing, packaging, distribution, and sale of all alcoholic beverages in Florida.[20]

Any person, before engaging in the business of manufacturing, bottling, distributing, selling, or in any way dealing in alcoholic beverages, must file a sworn application in the format prescribed by ABT. The applicant must be a legal or business entity, person, or persons and must include all persons, officers, shareholders, and directors of such legal or business entity that have a direct or indirect interest in the business seeking to be licensed under this part. The format and content of the application is determined by ABT.[21]

Before any application is approved, ABT may require such applicant to file a set of fingerprints with ABT on regular United States Department of Justice (USDOJ) forms, and for any person or persons interested directly or indirectly with the applicant in the business for which the license is being sought.[22]

All applications for alcoholic beverage licenses for consumption on the premises shall be accompanied by a certificate from H&R, the Department of Agriculture and Consumer Services, the Department of Health, the Agency for Health Care Administration, or the county health department stating that the place of business wherein the business is to be conducted meets all of the sanitary requirements of the state.[23]

Generally, for premises and manufacturing licenses, ABT requires that applicants must submit sketches of the area and have some dominion and control over the area, but there is not a specific requirement that applicants have a right of occupancy for the entire premises for which a license is sought.[24]

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[18] S. 210.09(2), F.S. Some tax forms are electronically filed with ABT, and some require manual transmission. Department of Business and Professional Regulation, *Alcoholic Beverages and Tobacco- Forms & Publications, Licensing Related Forms, Tax-Related Forms*, http://www.myfloridalicense.com/DBPR/alcoholic-beverages-and-tobacco/forms-and-publications/#1516309637983-6566a2a4-a2f1 (last visited Mar. 20, 2021).
[19] S. 210.55(1), F.S.
[20] S. 561.02, F.S.
[21] S. 561.17(1), F.S.
[22] *Id*.
[23] *Id*.
[24] Ss. 561.01(11), 565.03(2)(c), F.S.; Email from Conner Mann, Office of Legislative Affairs, DBPR, RE: House Inquiry, (Dec. 19, 2019).

There is also not a statutory requirement that licensees or applicants provide and maintain an electronic mail address for communications with ABT.

Each manufacturer, distributor, broker, sales agent, importer, and exporter must keep a complete and accurate record and make reports showing the amount of:[25]

- beverages manufactured or sold within the state and to whom sold;
- beverages imported from beyond the limits of the state and to whom sold; and
- beverages exported beyond the limits of the state, to whom sold, the place where sold, and the address of the person to whom sold.

Each manufacturer, distributor, broker, sales agent, and importer must send this full and complete report to ABT by the 10th day of each month for the previous calendar month. The report must be made out in triplicate: two copies must be sent to ABT, and the third copy must be retained for the licensee's record. Reports must be made on forms prepared and furnished by ABT.[26]

Requirements for Licensees and License Applicants – Effect of the Bill

The bill changes the mechanism through which applicants submit fingerprints to ABT. Instead of using USDOJ forms, applicants will need to either file fingerprints electronically through an approved electronic fingerprinting vendor, or use a form prescribed by the Florida Department of Law Enforcement.

The bill requires that an applicant for any alcoholic beverage license to provide proof of the applicant's right of occupancy for the entire premises for which the applicant is seeking a license.

The bill requires any person licensed or permitted by ABT to provide an electronic mail address to ABT to function as the primary contact for all communication from ABT to the licensee or permittee. Such licensees and permittees are responsible for maintaining accurate contact information with ABT.

The bill removes the requirement that reports on alcoholic beverages sold by a manufacturer, distributor, broker, sales agent, and importer must be made out in triplicate. Instead, the reports will be submitted to ABT through ABT's electronic data submission system.

Cancellation of Quota Beverage Licenses – Current Situation

If there are more applicants for a quota license than the number of available quota licenses, ABT must provide a method of double random selection by public drawing to determine which applicants shall be considered for issuance of licenses. The availability of licenses is determined by:

- an increase in the population of a county,
- a county permitting the sale of intoxicating beverages when such sale had been prohibited, or
- the **revocation** of a quota beverage license.

Currently, the availability of licenses is not determined by the **cancellation** of quota beverage licenses.

Cancellation of Quota Beverage Licenses – Effect of the Bill

The bill provides **cancellation** of quota beverage licenses is a basis to determine availability of quota licenses.

Credit for the Sale of Liquor – Current Situation

[25] S. 561.55(1), F.S.
[26] S. 561.55(2), F.S.

Vendors have up to 10 days after the calendar week when a sale of liquor was made to make a timely payment to a distributor for such liquor. When a vendor does not make a timely payment, the distributor who made such sale must, within 3 days, notify ABT of such in writing.[27]

ABT must then give notice to such vendor that it has received a notice of payment delinquency from a distributor. The vendor has 5 days after receipt of such notice to show cause and demand a hearing. The demand must be delivered to ABT either in person or by due course of mail within those 5 days.[28]

If no such demand for hearing is made, ABT must declare in writing to such vendor and to all manufacturers and distributors in Florida that all further sales to such vendor are prohibited until ABT certifies in writing that such vendor has fully paid for all liquors previously purchased.[29]

Credit for the Sale of Liquor – Effect of the Bill

The bill requires ABT to send a notice of payment delinquency to a vendor via electronic mail, not by written notice or mail. The bill also allows a vendor to send a demand for a hearing to ABT via electronic mail.

Permit Carriers – Current Situation

"Permit carrier" is defined as "a licensee authorized to make deliveries as provided in s. 561.57, F.S."[30]

In 2015, the Legislature passed a law amending s. 561.57, F.S., which allowed a licensed vendor to transport alcoholic beverages from a distributor's place of business to the vendor's licensed premises or off-premises storage permitted by ABT without a vehicle permit. It also removed the requirement for such vendors to possess an invoice or sales ticket during the transportation of alcoholic beverages.[31]

When this law was passed, the definition for "permit carrier," which was the name of the permit that was removed, was erroneously left in statute and is now obsolete.[32]

Permit Carriers – Effect of the Bill

The bill removes the obsolete definition for "permit carrier."

Auditing for Special Licenses – Current Situation

Section 561.20(1), F.S., limits, by county, the number of alcoholic beverage licenses that may be issued for the sale of distilled spirits, to one license per 7,500 residents within the county. These limited alcoholic beverage licenses are known as "quota" licenses. The quota license is the only alcoholic beverage license that is limited in number; all other types of alcoholic beverage licenses are available without limitation, if certain conditions are met.

A "special license" is an exception to the quota licensing scheme, which allows certain entities to serve liquor without a quota license. One such special license is a "special restaurant license," which applies to a food service establishment that has 2,500 square feet, is equipped to serve 150 persons at one time, and derives at least 51 percent of its gross food and beverage revenue from the sale of food and nonalcoholic beverages. Such a food service establishment must be audited by ABT for compliance with the food and nonalcoholic beverage sales percentage requirements during the first 60-day operating period, and each 12-month operating period thereafter. Failure by a sales licensee to satisfy the requirements as to the percentages of food and nonalcoholic beverage sales results in revocation

[27] S. 561.42(3), F.S.
[28] S. 561.42(4), F.S.
[29] *Id*.
[30] S. 561.01(20), F.S.
[31] Ch. 2015-52, Laws of Fla.
[32] *Id*.; S. 561.01, F.S.

of the special license. A licensee whose license is revoked is ineligible to have an interest in a subsequent application for a license for 120 days after the revocation.[33]

Auditing for Special Licenses – Effect of the Bill

The bill changes ABT auditing timeframes for special restaurant licensees. The bill gives ABT more time to complete the initial audit. The first audit must be performed within the first 120 days of operation, instead of within the first 60 days.

Also, instead of a mandatory yearly audit, the timing for subsequent audits will be determined by the following percentages of the licensee's gross food and beverage revenue from the sale of food and non-alcoholic beverages, as established by the licensee's most recent audit:

- level 1 licensees, with 51 to 60 percent, will be audited every year;
- level 2 licensees, with 61 to 75 percent, will be audited every 2 years;
- level 3 licensees, with 76 to 90 percent, will be audited every 3 years; and
- level 4 licensees, with 91 to 100 percent, will be audited every 4 years.

Adulterating Liquors with Grains of Paradise – Current Situation

Section 562.455, F.S., provides that a person who adulterates, for the purpose of sale, any liquor, used or intended for drink, with cocculus indicus, vitriol, grains of paradise, opium, alum, capsicum, copperas, laurel water, logwood, brazil wood, cochineal, sugar of lead, or any other substance which is poisonous or injurious to health, and whoever knowingly sells any liquor so adulterated, is guilty of a third degree felony. This law was enacted in 1868.

Grains of paradise is a spice related to ginger native to West Africa.[34] It is commonly used in alcoholic beverages, food, and medicine.[35] Grains of paradise has been found to be generally regarded as safe by the Food and Drug Administration (FDA).[36]

On January 28, 2020, the United States District Court for the Southern District of Florida held that s. 562.455, F.S., as it relates to prohibiting the use of grains of paradise in liquor, is preempted by federal law.[37] The court found that the Federal Food, Drug, and Cosmetic Act (FFDCA) and FDA regulations conflict with s. 562.455, F.S., because it frustrates the purposes and objectives of the FFDCA and its implementing FDA regulations. Under FFDCA, the FDA has broad regulatory authority to monitor and control the introduction of "food additives" in interstate commerce. The FFDCA's purpose is to advance food technology by allowing the use of safe food additives, and the Florida law prohibits the use of an additive that has been found to be generally regarded as safe by the FDA.[38]

Adulterating Liquors with Grains of Paradise – Effect of the Bill

The bill removes "grains of paradise" from the list of prohibited ingredients in liquor, which will allow the use of grains of paradise by a person without concern that they may be charged with a third degree felony.

Contractors

Background

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[33] S. 561.20(2)(a)4., F.S.
[34] Merriam-Webster Dictionary, *Grains of Paradise*, https://www.merriam-webster.com/dictionary/grains%20of%20paradise (last visited Mar. 19, 2021).
[35] WebMD, *Grains of Paradise*, https://www.webmd.com/vitamins/ai/ingredientmono-670/grains-of-paradise (last visited Mar. 19, 2021); SPICEography, *Grains of Paradise: An African Spice with a European History*, https://www.spiceography.com/grains-of-paradise/ (last visited Mar. 19, 2021).
[36] 21 C.F.R. § 182.10 (2020).
[37] *Marrache v. Bacardi U.S.A., Inc*., No. 19-23856-Civ-Scola, 2020 WL 434928, at *3 (S.D. Florida Jan. 1, 2020).
[38] *Id.* at *2.

The Construction Industry Licensing Board (CILB) under DBPR is responsible for licensing and regulating professionals in the construction industry described in part I of ch. 489, F.S..[39] The CILB approves or denies applications for licensure, reviews disciplinary cases, and conducts informal hearings relating to discipline.[40]

"Certified contractors" are contractors who are licensed by the CILB in a statutory license category and are allowed to practice in any jurisdiction in the state.[41] Applicants for a construction contractor license must meet the following criteria:[42]

- Be at least 18 years of age;
- Submit an application and fee;
- Successfully pass the certification examination;
- Meet eligibility requirements according to a combination of education and experience as approved by the CILB; and
- Provide evidence of:[43]
    - Workers' compensation insurance,
    - Public liability insurance,
    - Property damage insurance, and
    - Financial responsibility.

The CILB licenses the following statutory types of contractors:[44]

- Division I is comprised of the following types of contractors:
    - General,
    - Building, and
    - Residential.
- Division II is comprised of the following types of contractors:
    - Sheet metal,
    - Roofing,
    - Classes A, B, and C air conditioning,
    - Mechanical,
    - Commercial pool and spa,
    - Residential pool and spa,
    - Swimming pool and spa servicing,
    - Plumbing,
    - Underground utility and excavation,
    - Solar, and
    - Pollutant storage systems.

"Registered contractors" are individuals that have taken and passed a local competency examination and can practice the specific category of contracting for which they are approved, only in the local jurisdiction for which the license is issued.[45] Locally registered contractors that are required to hold a contracting license to practice their profession in accordance with state law must register with DBPR after obtaining a local license.[46] Local governments may approve or deny applications for licensure as a registered contractor, review disciplinary cases, and conduct informal hearings relating to discipline of registered contractors licensed in their jurisdiction.[47]

Construction Contractor Grandfathering Provision – Current Situation

Section 489.118, F.S., created a pathway that allowed registered local construction contractors who met certain criteria to have their local registration converted into a certified statewide license by the

[39] S. 489.107, F.S.
[40] *Id*.
[41] S. 489.105, F.S.
[42] Ss. 489.111(2)(c)1.-3., 489.113, F.S.
[43] S. 489.115(5)(a)-(b), F.S.
[44] S. 489.105(a)-(q), F.S.; R. 61G4-15.015-040, F.A.C.
[45] S. 489.103, F.S.
[46] Ss. 489.105, & 489.117(4), F.S.
[47] Ss. 489.117, & 489.131 F.S.

CILB.[48] The provision required applicants to apply by November 1, 2015, and is thus is no longer available for use by local registered contractors. This provision is commonly referred to as the "grandfathering provision."

Any local registered construction contractor wishing to have a license converted into a certified statewide license had to submit a completed application with a fee to the CILB and show evidence of the following criteria:[49]

- Hold a valid registered local license in one of the statutory contractor categories.
- Passed a written examination that the board finds to be substantially similar to the examination required to be licensed as a certified contractor.
- Has at least 5 years of experience as a contractor in that contracting category, or as an inspector or building administrator with oversight over that category.
- Has not had their license revoked at any time, had their license suspended within the last 5 years, or been assessed a fine in excess of $500 within the last 5 years.
- Is in compliance with the insurance and financial responsibility requirements required of a statewide applicant.

Construction Contractor Grandfathering Provision – Effect of the Bill

The bill reopens the grandfathering provision, allowing a registered local construction contractor to obtain a statewide certification through the same process that was previously used if the registered contractor meets such grandfathering requirements. Local contractors may make this conversion at any time and the provision does not expire.

Construction and Electrical Contractor Licensing Fees – Current Situation

The Electrical Contractors' Licensing Board (ECLB) within DBPR is responsible for licensing and regulating electrical contractors and alarm system contractors described in part II of ch. 489, F.S.[50] An electrical contractor engages in business as a contractor or performs electrical or alarm work for compensation.[51]

The CILB and ECLB must establish by rule reasonable fees to be paid by construction and electrical contractors for applications, certification and renewal, registration and renewal, and recordmaking and recordkeeping.[52]

In addition to such fees, all construction and electrical contractors must pay a fee of $4 to DBPR at the time of application or renewal to fund projects relating to the building construction industry or continuing education programs offered to persons engaged in the building construction industry in Florida.[53]

The CILB and ECLB must advise DBPR on the most needed areas of research or continuing education based on:[54]

- Significant changes in the industry's practices,
- Changes in the state building code,
- The most common types of consumer complaints, or
- Problems costing state or local governmental entities substantial waste.

DBPR must ensure the distribution of related research reports and the availability of continuing education programs is made to all related segments of the construction industry. DBPR must report to CILB and ECLB in October of each year, summarizing the allocation of the funds by institution and summarizing the new projects funded and the status of previously funded projects.[55]

[48] S. 489.118, F.S.
[49] *Id*.
[50] S. 489.507, F.S.
[51] S. 489.505(9), F.S.
[52] Ss. 489.109(1) & 489.509(1), F.S.
[53] Ss. 489.109(3) & 489.509(3), F.S.
[54] *Id*.
[55] *Id.*

Construction and Electrical Contractor Licensing Fees - Effect of the Bill

The bill removes the $4 additional application and renewal fee for construction and electrical contractors to fund projects and continuing education programs related to areas of need in the construction industry.

The bill makes a conforming change.

Drugs, Devices, and Cosmetics

Background

The Division of Drugs, Devices, and Cosmetics (DDC) under DBPR protects the health, safety, and welfare of Floridians from adulterated, contaminated, and misbranded drugs, drug ingredients, and cosmetics by enforcing Part I of ch. 499, F.S., the Florida Drug and Cosmetic Act (FDCA).[56] The Act conforms to United Stated Food and Drug Administration (FDA) drug laws and regulations and authorizes DBPR to issue permits to Florida drug manufacturers and wholesale distributors and register drugs manufactured, packaged, repackaged, labeled, or relabeled in Florida.[57]

Florida has 18 distinct permits based on the type of entity and intended activity, and includes permits for entities within the state, out of state, or even outside of the United States.[58] DDC has broad authority to inspect and discipline permittees for violations of state or federal laws and regulations, which can include seizure and condemnation of adulterated or misbranded drugs or suspension or revocation of a permit.[59]

The types of permits issued by DDC are:[60]

- Prescription drug manufacturer,
- Prescription drug repackager,
- Nonresident prescription drug manufacturer,
- Nonresident prescription drug repackager,
- Prescription drug wholesale distributor,
- Out-of-state prescription drug wholesale distributor,
- Retail pharmacy drug wholesale distributor,
- Restricted prescription drug distributor,
- Complimentary drug distributor,
- Freight forwarder,
- Veterinary prescription drug retail establishment,
- Veterinary prescription drug wholesale distributor,
- Limited prescription drug veterinary wholesale distributor,
- Over-the-counter drug manufacturer,
- Device manufacturer,
- Cosmetic manufacturer,
- Third party logistics provider, and
- Health care clinic establishment.

Cosmetic Manufacturer Permits – Current Situation

[56] Florida Department of Business and Professional Regulation, *Division of Drugs, Devices, and Cosmetics,* available at http://www.myfloridalicense.com/DBPR/drugs-devices-and-cosmetics/ (last visited Mar. 19, 2021).
[57] S. 499.01, F.S.
[58] A permit is required for a prescription drug manufacturer; a prescription drug repackager; a nonresident prescription drug manufacturer; a prescription drug wholesale distributor; an out-of-state prescription drug wholesale distributor; a retail pharmacy drug wholesale distributor; a restricted prescription drug distributor; a complimentary drug distributor; a freight forwarder; a veterinary prescription drug retail establishment; a veterinary prescription drug wholesale distributor; a limited prescription drug veterinary wholesale distributor; an over-the-counter drug manufacturer; a device manufacturer; a cosmetic manufacturer; a third party logistics provider; or a health care clinic establishment. S. 499.01(1), F.S.
[59] Ss. 499.051, 499.062, 499.065. 499.066, 499.0661, and 499.067, F.S.
[60] S. 499.01(1), F.S.

The FDCA defines “cosmetic” as an article, with the exception of soap, that is:[61]

- Intended to be rubbed, poured, sprinkled, or sprayed on; introduced into; or otherwise applied to the human body or any part thereof for cleansing, beautifying, promoting attractiveness, or altering the appearance; or
- Intended for use as a component of any such article.

A cosmetic manufacturer permit is required for any person that manufactures or repackages cosmetics in Florida. A person that only labels or changes the labeling of a cosmetic, but does not open the container sealed by the manufacturer of the product, is exempt from obtaining a permit.[62]

Each cosmetics manufacturer must maintain business records that include:[63]

- The name and address of the seller or transferor of the product,
- The address of the location the product was shipped from,
- The date of the sale or distribution of the product,
- The name and quantity of the product involved, and
- The name and address of the person who purchased the product.

Cosmetics manufacturers must establish, maintain, or have the capability to create a current inventory of the cosmetics at an establishment where manufacturing activities are undertaken, and be able to produce such inventory for inspection by DBPR within 2 business days.[64]

Cosmetic Manufacturer Permits – Effect of the Bill

The bill provides that a person who manufactures cosmetics and has annual gross sales of $25,000 or less is not required to obtain a permit. Upon request, an exempt cosmetics manufacturer must provide to DDC written documentation to verify annual gross sales, including all sales of cosmetic products at any location, regardless of the types of products sold or the number of persons involved in the operation.

The bill provides that an exempt cosmetics manufacturer may only:

- Sell prepackaged cosmetics affixed with a label containing information required by the FDA.
- Manufacture and sell cosmetics that are soaps, not otherwise exempt from the definition of cosmetics, lotions, moisturizers, and creams,
- Sell cosmetics that are not adulterated or misbranded, and
- Sell cosmetic products that are stored on the premises of the cosmetic manufacturing operation.

The bill requires each unit of cosmetics manufactured from an exempt manufacturer to contain in contrasting color and not less than 10-point, the following statement: "Made by a manufacturer exempt from Florida's cosmetic manufacturing permit requirements."

The bill allows DDC to investigate any complaint which alleges that an exempt cosmetics manufacturer has violated the FDCA or a related rule. DDC’s authorized officers or employees may enter and inspect the premises of an exempt cosmetic manufacturer to determine compliance with the FDCA and related rules. A refusal to permit entry to the premises or to conduct an inspection is grounds for disciplinary action.

The bill does not exempt any person from any state or federal tax law, rule, regulation, or certificate, or from any county or municipal law or ordinance that applies to cosmetic manufacturing.

Change of Ownership and Location – Current Situation

[61] S. 499.003(12), F.S.
[62] S. 499.01(2)(p), F.S.
[63] S. 499.0121(6)(c), F.S.
[64] S. 499.0121(6)(d), F.S.

A permit issued by the department is nontransferable. Each permit is valid only for the person or governmental unit to which it is issued and is not subject to sale, assignment, or other transfer, voluntarily or involuntarily. A permit is not valid for any establishment other than the establishment for which it was originally issued.[65] A permitee must notify DDC before making a change of address and pay the change of location fee.[66]

An application for a new permit is required when a majority of the ownership or controlling interest of a permitted establishment is transferred or assigned, or when a lessee agrees to undertake or provide services to the extent that legal liability for operation of the establishment will rest with the lessee. The application for the new permit must be made before the date of the sale, transfer, assignment, or lease.[67]

Change of Ownership and Location – Effect of the Bill

The bill allows an establishment that requires a DDC permit that submits an application for a change of ownership or controlling interest or a change of location with the required fees under this subsection, to request a temporary permit granting the establishment authority to operate for no more than 90 calendar days before obtaining a permanent permit. The establishment must submit the request for a temporary permit on a department form and obtain authorization to operate with the temporary permit before operating under the change of ownership or operating at the new location. Upon authorization of a temporary permit, the existing permit at the location for which the temporary permit is submitted is immediately null and void. A temporary permit may not be extended and becomes null and void at 12:01 a.m. on the 91st day after DDC authorized such temporary permit. Upon expiration of the temporary permit, the establishment may not continue to operate under such permit.

Enforcement Actions – Current Situation

Generally, if any person engaged in any activity covered by the FCDA has been found to have violated a provision, rule, or order under the FDCA, DDC may:[68]

- Obtain an injunction;
- Impose an administrative fine, not to exceed $5,000 per violation per day;
- Issue an emergency order immediately suspending or revoking a permit;
- Issue an emergency order to immediately remove from commerce and public access any drug, device, or cosmetic;
- Issue a cease and desist order;[69] and
- Deny, suspend, or revoke a permit, certification, or registration.[70]

DDC does not currently have explicit authority to issue citations.

Enforcement Actions – Effect of the Bill

The bill allows DDC to adopt rules to authorize the issuance of a remedial, nondisciplinary citation. Such a citation may be issued to the person alleged to have committed a violation of the FDCA based on an inspection complaint, and must contain the person's name, address, any applicable license number; a brief factual statement; the sections of the law allegedly violated; and the monetary assessment and or other remedial measures imposed. The bill provides that the person has 30 days after the citation is served to contest the citation by providing supplemental and clarifying information to DDC. The citation must clearly state that the person may choose, in lieu of accepting the citation, to have the department rescind the citation and conduct an investigation of only those alleged violations contained in the citation.

[65] S. 499.012(6), F.S.
[66] S. 499.012(6)(a), F.S.
[67] S. 499.012(6)(b), F.S.
[68] S. 499.066, F.S.
[69] S. 499.0661(1), F.S.
[70] S. 499.067, F.S.

The bill provides that such a citation must be rescinded by DDC if the person remedies or corrects the violations or deficiencies contained in the citation within 30 days after the citation is served. If the person does not successfully contest the citation to the satisfaction of DDC, or complete the remedial action, the citation becomes a final order and does not constitute discipline. The bill provides that DDC is entitled to recover the costs of investigation, in addition to any penalty provided according to department rule, as part of the penalty levied pursuant to such citation. Such a citation must be issued within 6 months after the filing of the complaint that is the basis for the citation. Service of a citation may be made by personal service or certified mail, restricted delivery, to the person at the person's last known address of record with DDC, or to the person's Florida registered agent. The bill allows DDC to adopt rules to designate which violations qualify for a citation and the monetary assessments and or other remedial measures that must be taken for those violations. Violations designated as subject to issuance of a citation must be limited to violations for which there is no substantial threat to the public health, safety, or welfare. DDC has continuous authority to amend its rules adopted pursuant to this section.

Pugilistic Exhibitions

Background

Chapter 548, F.S., governs the Florida State Boxing Commission (FSBC). The function of the FSBC is to license and regulate pugilistic events and matches, including professional boxing, kickboxing, and mixed martial arts. The FSBC ensures that all matches are conducted in accordance with provisions of state laws and rules. The FSBC designates employees to attend the matches, appoints match officials, and ensures the matches are held in a safe and fair manner.[71] Members of the FSBC are appointed by the Governor, and there are five members.[72]

A match participant, manager, trainer, second, timekeeper, referee, judge, announcer, physician,[73] matchmaker, or promoter must be licensed by FSBC before directly or indirectly acting in such capacity in connection with any match. In order to obtain a license, an applicant must:[74]

- Complete an application in a form prescribed by the FSBC,
- Be at least 18 years of age, and
- Pay an application fee.

The FSBC generally establishes by rule any necessary protective devices that participants must wear, and the appropriate weight of gloves to be used in each boxing match. However, by statute, all participants in boxing matches must wear gloves weighing not less than 8 ounces each, and participants in mixed martial arts matches must wear gloves weighing between 4 to 8 ounces each.[75]

The FSBC requires that any glove intended to be used by a boxing or kickboxing participant in a match to be whole, clean, in sanitary condition, and have the thumb attached.[76] When both participants in a match weigh 154 pounds or less, both participants must use 8 ounce gloves, and when one or more of the participants in a match weighs more than 154 pounds, both participants must use 10 ounce gloves.[77]

For mixed martial arts participants, the FSBC requires gloves to be whole, clean, and in sanitary condition.[78] Gloves must weigh no less than 4 ounces and no more than 8 ounces, but both participants must wear the same weight gloves and use the same manufacturer of gloves as provided by the promoter, unless both participants agree to use different manufacturers of gloves.[79]

[71] S. 548.003, F.S.
[72] S. 548.003(1), F.S.
[73] A physician must be licensed pursuant to chapter 458 or chapter 459, must maintain a license in good standing, and must demonstrate satisfactory medical training or experience in boxing. S. 548.017, F.S.
[74] S. 548.021, F.S.
[75] S. 548.043(3), F.S.
[76] R. 61K1-3.030(2)(d), F.A.C.
[77] R. 61K1-3.030(2)(a), (b), F.A.C.
[78] R. 61K1-3.031(2)(b), F.A.C.
[79] R. 61K1-3.031(2)(a), F.A.C.

There is a debate as to whether bare knuckle boxing is safer or more dangerous than competitions with gloves. Data on the topic is limited. Gloves were initially introduced to boxing matches in the 18th century as a way to protect the participants' hands, not heads.[80] Experts opposed to bare knuckle matches argue that gloves help in blocks and other defensive moves, and therefore provide head protection, and that bare knuckle matches generally involve more body shots, which can result in serious internal injuries.[81] However, experts in favor of bare knuckle matches argue that the force behind a bare knuckle punch is generally less than a gloved punch, which can be safer for head strikes, and that a bare knuckle match generally involves less total strikes due to hand injuries resulting from no glove protection, which can lead to less injuries overall.[82]

In 2011, the Yavapai Nation in Arizona oversaw a bare knuckle boxing match on an Indian reservation, that is generally believed to be the first sanctioned bare knuckle boxing match in the United States since 1889.[83] In 2018, Wyoming became the first state to allow bare knuckle boxing matches, and held a championship event.[84] Florida has since hosted events where the participants wore gloves that exposed the knuckles.[85] Currently, Wyoming, Mississippi, Florida, Kansas, and several Tribal Nations allow sanctioned bare knuckle boxing events.[86]

Effect of the Bill

The bill changes the name of the "Florida State Boxing Commission" to the "Florida Athletic Commission."

The bill gives full authority to the FSBC to determine glove requirements and weights for any pugilistic match, without a minimum or maximum weight set by statute. It also gives the FSBC the option of not requiring any gloves for pugilistic matches.

Condominium Associations

Background

FCTMH, a division within DBPR, provides education, complaint resolution, mediation and arbitration, and developer disclosures for condominium associations.[87]

A condominium is a form of ownership of real property created pursuant to ch. 718, F.S., (the Condominium Act) comprised of units which may be owned by one or more persons along with an undivided right of access to common elements.[88] A condominium is created by recording a declaration of condominium in the public records of the county where the condominium is located.[89] All unit owners are members of the condominium association, an entity responsible for the operation and maintenance

[80] Bob Moen, *Bare-knuckle boxing from a bygone era looks for a comeback*, AP News, https://apnews.com/a0926f603f6b4d83a958cc1d0fa9296e (last visited Mar. 19, 2021); Nick Wong, *Why Bare-Knuckle Fighting May Be Safer Than Boxing*, Complex Media, Inc., https://www.complex.com/sports/2015/11/bare-knuckle-boxing (last visited Mar. 19, 2021).
[81] *Id*.
[82] *Id*.
[83] Michael Woods, *Reviving a bygone, bare-knuckle era*, ESPN (Aug. 5, 2011), https://www.espn.com/boxing/story/_/id/6835788/bringing-back-bygone-bare-knuckle-era-boxing (last visited Mar. 19, 2021).
[84] Josh Peter, Bare-knuckle boxing legally held in United States for first time, USA Today (Jun. 3, 2018), https://www.usatoday.com/story/sports/boxing/2018/06/02/bare-knuckle-boxing-official-return/666535002/ (last visited Mar. 19, 2021).
[85] Florida Department of Business and Professional Regulation, *Match Results*, http://www.myfloridalicense.com/dbpr/pro/sbc/documents/BKFC6MatchResults.pdf (last visited Mar. 19, 2021); Combat Sports Law, *Let's Talk Florida and Bare Knuckle Boxing*, https://combatsportslaw.com/2019/05/21/lets-talk-florida-and-bare-knuckle-boxing/ (last visited Mar. 19, 2021); Eric Kowal, BKFC blankets Tampa, Florida with public events ahead of KnuckleMania, https://www.bareknuckle.tv/post/bkfc-blankets-tampa-florida-with-public-events-ahead-of-knucklemania (last visited Mar. 20, 2021).
[86] Combat Sports Law, Documenting Bare Knuckle Boxing Legality, https://combatsportslaw.com/2019/06/23/documenting-bare-knuckle-boxing-legality/ (last visited Mar. 19, 2021).
[87] Department of Business and Professional Regulation, *Division of Florida Condominiums, Timeshares, and Mobile Homes*, http://www.myfloridalicense.com/DBPR/condos-timeshares-mobile-homes/, (last visited Mar. 19, 2021).
[88] S. 718.103(11), F.S.
[89] S. 718.104(2), F.S.

of the common elements owned by the unit owners. The condominium association is overseen by an elected board of directors, which enacts bylaws which govern the administration of the association.

Annual Budget – Current Situation

Every condominium association must have an annual financial budget that sets forth the proposed expenditure of funds for the maintenance, management, and operation of the condominium. The annual budget must include operating expenses for the coming year and reserve accounts for capital expenditures and deferred maintenance.[90]

In order to adopt a proposed annual budget, an association must hold a meeting to adopt the proposed budget. The association must provide notice of the meeting and a copy of the proposed budget to the members of the association at least 14 days before the meeting.[91] The proposed budget must be detailed, and, at a minimum, include the condominium's estimated expenses, the estimated expenses of each unit owner, and a statement that the proposed budget is a good faith estimate and represents an approximation of the future expenses.[92]

Annual Budget – Effect of the Bill

The bill provides that in addition to the current requirements for adopting a proposed annual budget, such budget must be provided to members of the association and adopted by the board of directors no later than 30 days before the beginning of the fiscal year, instead of only being provided to members 14 days before the meeting.

Board Directors – Current Situation

The condominium association is overseen by an elected board of directors. The board is responsible for managing the affairs of the association, has a fiduciary relationship with the unit owners, and has the responsibility to act with the highest degree of good faith and to place the interests of the unit owners above the personal interests of the directors.[93]

There are two ways that a person may become a board member:

- A person may be elected to the board by the members of the association,[94] or
- A person is appointed to the board by the developer if the developer is still entitled to representation, or by the board of directors if a vacancy on the board occurs between meetings.[95]

A condominium association's bylaws will establish the eligibility requirements to serve on the association's board of directors.[96] However, current law also establishes minimum requirements in order to serve on an association's board of directors.[97] In order to serve as a board director a person may not:[98]

- Be a co-owner of a unit with another director unless they own more than one unit or the condominium association is made up of less than ten units;
- Be **delinquent** in the payment of *any* **monetary obligation** to the condominium association;
- Have been previously suspended or removed from a condominium association's board of directors by FCTMH; or
- Have been convicted of a felony, under certain circumstances.[99]

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[90] S. 718.112(2)(f), F.S.
[91] S. 718.112(2)(e), F.S.
[92] Ss. 718.112(2)(f), & 718.504(21), F.S.
[93] Ss. 718.103(4), 718.111, 718.112, F.S.
[94] S. 718.112(2)(d)4., F.S.
[95] Ss. 617.0809, & 718.112(2)(d)9., F.S.
[96] S. 718.112(2)(a), F.S.
[97] S. 718.112(2)(d), F.S.
[98] Ss. 718.112(2)(d), F.S.
[99] S. 718.111(1)(d), F.S.

The term “monetary obligation” is not defined in the Condominium Act, but, according to legal experts, a monetary obligation is considered to be any type of money owed to the association including fines, fees, and assessments.[100]

The Condominium Act also does not define the term “delinquent.” According to DBPR, this can result in confusion for purposes of determining if a person is eligible to serve as a board director, because many associations have grace periods before late fees and interest applies to unpaid monetary obligations. However, it is unclear if these grace periods apply related to board service eligibility.[101]

Board Directors – Effect of the Bill

The bill provides that a person may not serve on a board if he or she is delinquent in the payment of an **assessment** due to the condominium association, instead of any **monetary obligation**. Current law defines “assessment” as an owner’s share of funds that are required for the payment of common expenses.[102]

The bill also provides that a person is delinquent if a payment is not made by the due date identified in the association’s declaration, articles of incorporation, or bylaws. If no due date is specifically identified in the condominium’s declaration, articles of incorporation, or bylaws the due date is the first day of the assessment period.

Condominium Ombudsman – Current Situation

Within FCTMH is housed the Office of the Condominium Ombudsman (Ombudsman). The Ombudsman is an attorney appointed by the Governor and is a neutral resource for unit owners and condominium associations. The Ombudsman is authorized to prepare and issue reports and recommendations to the Governor, FCTMH, and the Legislature on any matter or subject within the jurisdiction of FCTMH. In addition, the Ombudsman may make recommendations to FCTMH for changes in rules and procedures for the filing, investigation, and resolution of complaints.[103]

The Ombudsman also acts as a liaison between FCTMH, unit owners, and condominium associations, and is responsible for developing policies and procedures to help affected parties understand their rights and responsibilities.[104]

The Ombudsman is required to keep his or her principal office in Leon County.[105]

Condominium Ombudsman – Effect of the Bill

The bill removes the requirement that the Ombudsman must keep his or her principal office in Leon County.

Condominium Complaints Received by FCTMH – Current Situation

FCTMH is charged with ensuring that condominium associations comply with the requirements of the Condominium Act and handling complaints alleging violations of the Condominium Act. FCTMH has complete jurisdiction to investigate complaints and enforce compliance with the Condominium Act for

[100] *See* Ch. 718, F.S.; David G. Muller, *Can delinquent owner run for a board*, Naples Daily News, Aug. 17, 2019, https://www.naplesnews.com/story/money/real-estate/2019/08/17/can-delinquent-owner-run-board/1985170001/ (last visited Mar. 19, 2021); Joe Adams, *Term Limits Continue to Cause Confusion*, Florida Condo & HOA Law Blog, Dec. 17, 2018, https://www.floridacondohoalawblog.com/2018/12/17/term-limits-continue-to-cause-confusion/ (last visited Mar. 19, 2021).
[101] *See* Ch. 718, F.S.; Email from Gabe Peters, , Director of Legislative Affairs, Department of Business & Professional Regulation, Condo Language Clarification (Jan. 10, 2020).
[102] S. 718.103(1), F.S.
[103] Ss. 718.5011 & 718.5012, F.S.
[104] *Id*.
[105] S. 718.5014, F.S.

associations that are controlled by a developer, a bulk buyer, or a bulk assignee.[106] Once a developer has turned control of the condominium to the association, FCTMH only has jurisdiction to investigate complaints related to financial issues, elections, and unit owner access to official records.[107]

Within 30 days of receiving a complaint, FCTMH must acknowledge the complaint in writing, and notify the complainant whether the complaint is in its jurisdiction and whether additional information is needed. If the complaint is within FCTMH's jurisdiction, FCTMH must investigate the complaint and take action within 90 days of receiving the complaint or receiving additional information requested by FCTMH.[108]

Current law creates rules and requirements for filing complaints with DBPR against licensed professionals regulated by DBPR. Complaints filed against licensed professionals must be in writing, signed by the complainant, and legally sufficient. A complaint is legally sufficient if it contains ultimate facts that show a violation of the licensed professional's practice act.[109] However, no such rules or requirements exists for filing complaints against condominiums with FCTMH.

FCTMH provides a complaint form for condominium complaints, including a checklist of documents to provide with the complaint, on its website. According to FCTMH, submitting a complaint on the FCTMH's complaint form "may expedite the processing of your complaint."[110]

According to DBPR, establishing rules and requirements for filing complaints against condominium associations would allow FCTMH to be more efficient in resolving complaints.[111]

Condominium Complaints Received by FCTMH – Effect of the Bill

The bill provides that FCTMH may adopt rules regarding the submission of a complaint against a condominium association.

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

B. SECTION DIRECTORY:

Section 1 Amends s. 210.09, F.S., revising reporting requirements for cigarette sales.
Section 2 Amends s. 210.55, F.S., revising reporting requirements for tobacco products sales.
Section 3 Amends s. 210.60, F.S., revising reporting requirements for tobacco products sales
Section 4 Amends s. 489.109, F.S., removing a contractor fee.
Section 5 Amends s. 489.118, F.S., removing a deadline for a contractor licensing provision.
Section 6 Amends s. 489.509, F.S., removing a contractor fee.
Section 7 Amends s. 499.01, F.S, providing a permit exception for certain small manufacturers.
Section 8 Amends s. 499.012, F.S., providing requirements for a temporary permit.
Section 9 Amends s. 499.066, F.S., giving authority to issue citations.
Section 10 Amends s. 548.003, F.S., renaming the Florida State Boxing Commission as the Florida Athletic Commission.
Section 11 Amends s. 548.043, F.S., providing glove requirements for pugilistic events.
Section 12 Amends s. 553.841, F.S., conforming a provision.
Section 13 Amends s. 561.01, F.S., deleting the definition for "permit carrier."

[106] A bulk assignee is a person who buys more than seven units in a single condominium and receives assignment of any of the developer's rights. A bulk buyer is a person who buys more than seven units in a single condominium but does not receive any of the developer's rights. S. 718.703, F.S.
[107] Ss. 718.117, & 718.501, F.S.
[108] S. 718.501(1)(m), F.S.
[109] S. 455.225(1), F.S.
[110] Florida Department of Business & Professional Regulation, *How to File a Complaint*, http://www.myfloridalicense.com/DBPR/condos-timeshares-mobile-homes/complaints/#1572463379489-2bc8adc0-ec6a (last visited Mar. 19, 2021); Florida Department of Business & Professional Regulation, *Instructions for Filing a Condominium/Cooperative Complaint*, http://www.myfloridalicense.com/dbpr/lsc/documents/cccomplaint.pdf (last visited Mar. 19, 2021).
[111] Email from Gabe Peters, Director of Legislative Affairs, Department of Business & Professional Regulation, Condo Clarification (Jan. 10, 2020).

Section 14 Amends s. 561.17, F.S., revising filing requirements for fingerprints for alcohol license applicants, and requiring alcohol licensees to maintain current electronic mail addresses.
Section 15 Amends s. 561.19, F.S., revising when there is availability of quota licenses.
Section 16 Amends s. 561.20, F.S., revising audit requirements for special restaurant licenses.
Section 17 Amends s. 561.42, F.S., allowing certain notices to be given by electronic mail.
Section 18 Amends s. 561.55, F.S., revising requirements for reports related to alcohol licenses.
Section 19 Amends s. 562.455, F.S., revising qualities of adulterating liquors.
Section 20 Amends s. 718.112, F.S., providing eligibility requirements for members of a condominium board of directors.
Section 21 Amends s. 718.501, F.S., allowing FCTMH to adopt rules prescribing the form of condominium complaints.
Section 22 Amends s. 718.5014, F.S., revising primary office location requirements for the office of the condominium ombudsman.
Section 23 Amends s. 455.219, F.S., conforming a provision
Section 24 Amends s. 548.002, F.S., conforming a provision.
Section 25 Amends s. 548.05, F.S., conforming a provision.
Section 26 Amends s. 548.071, F.S., conforming a provision.
Section 27 Amends s. 548.077, F.S., conforming a provision.
Section 28 Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   DBPR expects the following fiscal impact on revenues:[112]

   Division of Alcoholic Beverages and Tobacco: Tax revenue may be maximized by the required electronic submission of tax reports.

   Division of Professions: The bill removes a $4.00 fee that is currently required for CILB applications and renewals which, based on historical data, may result in a revenue reduction of $129,622 in FY 2021-22, $232,297 in FY 2022-23, and $129,622 in FY 2023-24.

   The $4.00 fee collected in the Professional Regulations Trust fund is subject to the GR service charge. The removal of the fee would reduce transfers to GR by $10,370 in FY 2021-22, $18,584 in FY 2022-23, and $10,370 in FY 2023-24. The total loss of revenue over the three fiscal years would be an estimated $374,541, of which $39,324 would be a reduction in transfers to GR. The net loss to the Professional Regulations Trust Fund would be an estimated $335,217 over the next three fiscal years.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

[112] Department of Business and Professional Regulation, Agency Analysis of 2021 SB 1966, p. 9 (Mar. 12, 2021).

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may make it easier for licensees to maintain their licenses due to clarified regulatory schemes and routine auditing. The bill may allow more statewide contractors and cosmetics manufacturers to practice in the state based on easing licensing requirements.

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:

DBPR will need to create and update rules related to regulations on tobacco; alcohol; condominium associations; drugs, devices, and cosmetics; and pugilistic events. DBPR has adequate existing rulemaking authority or new rule making authority in the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 24, 2021, the Regulatory Reform Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The committee substitute removes a $4 additional application and renewal fee for electrical contractors to fund projects and continuing education programs related to areas of need in the building construction industry.

On April 7, 2021, the State Administration and Technology Appropriations Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The committee substitute removes modifications to public lodging establishment and pubic food service establishment licensing, eliminating the fiscal impact to the Hotels and Restaurants Trust Fund.

This analysis is drafted to the committee substitute as passed by the State Administration and Technology Appropriations Subcommittee.

A bill to be entitled

An act relating to the Department of Business and Professional Regulation; amending s. 210.09, F.S.; requiring that certain reports relating to the transportation or possession of cigarettes be filed with the Division of Alcoholic Beverages and Tobacco through the division's electronic data submission system; providing that specified records relating to cigarettes received, sold, or delivered within the state may be kept in an electronic or paper format; amending s. 210.55, F.S.; requiring that certain entities file reports, rather than returns, relating to tobacco products with the division; providing requirements for such reports; amending s. 210.60, F.S.; providing that specified records relating to tobacco products may be kept in an electronic or paper format; amending s. 489.109, F.S.; removing provisions relating to an additional fee for application and renewal, transfer of funds, recommendations by the Construction Industry Licensing Board for use of such funds, distribution of such funds by the department, and required reports of the department, respectively; amending s. 489.118, F.S.; removing an obsolete date; amending s. 489.509, F.S.; removing provisions relating to an additional fee for application and

renewal, transfer of funds, recommendations by the Electrical Contractors' Licensing Board for use of such funds, distribution of such funds by the department, and required reports of the department, respectively; amending s. 499.01, F.S.; exempting certain persons from specified permit requirements under certain circumstances; requiring an exempt cosmetics manufacturer to provide, upon request, to the department specified documentation verifying his or her annual gross sales; authorizing an exempt cosmetics manufacturer to only manufacture and sell specified products; requiring specified labeling for each unit of cosmetics manufactured by an exempt cosmetic manufacturer; authorizing the department to investigate complaints and to enter and inspect the premises of an exempt cosmetics manufacturer; providing disciplinary actions; providing construction; amending s. 499.012, F.S.; authorizing specified establishments to submit a request for a temporary permit; requiring such establishments to submit the request to the department on specified forms; providing that upon authorization by the department for a temporary permit for a certain location, the existing permit for such location is immediately null and void; prohibiting a temporary

permit from being extended; providing for expiration of a temporary permit; prohibiting an establishment from operating under an expired temporary permit; amending s. 499.066, F.S.; authorizing the department to adopt rules to permit the issuance of remedial, nondisciplinary citations; providing requirements for such citations; providing for contest of and the rescinding of a citation; authorizing the department to recover specified costs relating to a citation; providing a timeframe for when a citation may be issued; providing requirements for the service of a citation; authorizing the department to adopt and amend rules, designate violations and monetary assessments, and order remedial measures that must be taken for such violations; amending s. 548.003, F.S.; renaming the Florida State Boxing Commission as the Florida Athletic Commission; amending s. 548.043, F.S.; revising rulemaking requirements for the commission relating to gloves; amending s. 553.841, F.S.; conforming a provision to changes made by the act; amending s. 561.01, F.S.; deleting the definition of the term "permit carrier"; amending s. 561.17, F.S.; revising a requirement related to the filing of fingerprints with the division; requiring that applications be accompanied by certain information

relating to right of occupancy; providing requirements relating to contact information for licensees and permittees; amending s. 561.19, F.S.; revising provisions relating to the availability of beverage licenses to include by reason of the cancellation of a quota beverage license; amending s. 561.20, F.S.; conforming cross-references; revising requirements for issuing special licenses to certain food service establishments; amending s. 561.42, F.S.; requiring the division, and authorizing vendors, to use electronic mail to give certain notice; amending s. 561.55, F.S.; revising requirements for reports relating to alcoholic beverages; amending s. 562.455, F.S.; removing grains of paradise as a form of adulteration of liquor used or intended for drink; amending s. 718.112, F.S.; providing the circumstances under which a person is delinquent in the payment of an assessment in the context of eligibility for membership on certain condominium boards; requiring that an annual budget be proposed to unit owners and adopted by the board before a specified time; amending s. 718.501, F.S.; authorizing the Division of Florida Condominiums, Timeshares, and Mobile Homes to adopt rules regarding the submission of complaints against a condominium association; amending s. 718.5014, F.S.;

revising the location requirements for the principal office of the condominium ombudsman; amending ss. 455.219, 548.002, 548.05, 548.071, and 548.077, F.S.; conforming provisions to changes made by the act; providing an effective date.

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

Section 1. Subsections (2) and (3) of section 210.09, Florida Statutes, are amended to read:

210.09 Records to be kept; reports to be made; examination.—

(2) The division is authorized to prescribe and promulgate by rules and regulations, which shall have the force and effect of the law, such records to be kept and reports to be made to the division by any manufacturer, importer, distributing agent, wholesale dealer, retail dealer, common carrier, or any other person handling, transporting or possessing cigarettes for sale or distribution within the state as may be necessary to collect and properly distribute the taxes imposed by s. 210.02. All reports shall be made on or before the 10th day of the month following the month for which the report is made, unless the division by rule or regulation shall prescribe that reports be made more often. All reports shall be filed with the division through the division's electronic data submission system.

(3) All manufacturers, importers, distributing agents, wholesale dealers, agents, or retail dealers shall maintain and keep for a period of 3 years at the place of business where any transaction takes place, such records of cigarettes received, sold, or delivered within the state as may be required by the division. Such records may be kept in an electronic or paper format. The division or its duly authorized representative is hereby authorized to examine the books, papers, invoices, and other records, the stock of cigarettes in and upon any premises where the same are placed, stored, and sold, and the equipment of any such manufacturers, importers, distributing agents, wholesale dealers, agents, or retail dealers, pertaining to the sale and delivery of cigarettes taxable under this part. To verify the accuracy of the tax imposed and assessed by this part, each person is hereby directed and required to give to the division or its duly authorized representatives the means, facilities, and opportunity for such examinations as are herein provided for and required.

Section 2. Section 210.55, Florida Statutes, is amended to read:

210.55 Distributors; monthly reports ~~returns~~.—

(1) On or before the 10th of each month, every taxpayer with a place of business in this state shall file a full and complete report ~~return~~ with the division showing the taxable price of each tobacco product brought or caused to be brought

into this state for sale, or made, manufactured, or fabricated in this state for sale in this state, during the preceding month. Every taxpayer outside this state shall file a full and complete report with the division through the division's electronic data submission system ~~return~~ showing the quantity and taxable price of each tobacco product shipped or transported to retailers in this state, to be sold by those retailers, during the preceding month. Reports must ~~Returns shall~~ be made upon forms furnished and prescribed by the division and must ~~shall~~ contain any other information that the division requires. Each report must ~~return shall~~ be accompanied by a remittance for the full tax liability shown and be filed with the division through the division's electronic data submission system.

(2) As soon as practicable after any report ~~return~~ is filed, the division shall examine each report ~~return~~ and correct it, if necessary, according to its best judgment and information. If the division finds that any amount of tax is due from the taxpayer and unpaid, it shall notify the taxpayer of the deficiency, stating that it proposes to assess the amount due together with interest and penalties. If a deficiency disclosed by the division's examination cannot be allocated to one or more particular months, the division shall notify the taxpayer of the deficiency, stating its intention to assess the amount due for a given period without allocating it to any particular months.

(3) If, within 60 days after the mailing of notice of the proposed assessment, the taxpayer files a protest to the proposed assessment and requests a hearing on it, the division shall give notice to the taxpayer of the time and place fixed for the hearing, shall hold a hearing on the protest, and shall issue a final assessment to the taxpayer for the amount found to be due as a result of the hearing. If a protest is not filed within 60 days, the division shall issue a final assessment to the taxpayer. In any action or proceeding in respect to the proposed assessment, the taxpayer shall have the burden of establishing the incorrectness or invalidity of any final assessment made by the division.

(4) If any taxpayer required to file any report ~~return~~ fails to do so within the time prescribed, the taxpayer shall, on the written demand of the division, file the report ~~return~~ within 20 days after mailing of the demand and at the same time pay the tax due on its basis. If the taxpayer fails within that time to file the report ~~return~~, the division shall prepare the report ~~return~~ from its own knowledge and from the information that it obtains and on that basis shall assess a tax, which shall be paid within 10 days after the division has mailed to the taxpayer a written notice of the amount and a demand for its payment. In any action or proceeding in respect to the assessment, the taxpayer shall have the burden of establishing the incorrectness or invalidity of any report ~~return~~ or

assessment made by the division because of the failure of the taxpayer to make a report ~~return~~.

(5) All taxes are due not later than the 10th day of the month following the calendar month in which they were incurred, and thereafter shall bear interest at the annual rate of 12 percent. If the amount of tax due for a given period is assessed without allocating it to any particular month, the interest shall begin with the date of the assessment.

(6) In issuing its final assessment, the division shall add to the amount of tax found due and unpaid a penalty of 10 percent, but if it finds that the taxpayer has made a false report ~~return~~ with intent to evade the tax, the penalty shall be 50 percent of the entire tax as shown by the corrected report ~~return~~. In assessing a tax on the basis of a report ~~return~~ made under subsection (4), the division shall add to the amount of tax found due and unpaid a penalty of 25 percent.

(7) For the purpose of compensating the distributor for the keeping of prescribed records and the proper accounting and remitting of taxes imposed under this part, the distributor shall be allowed 1 percent of the amount of the tax due and accounted for and remitted to the division in the form of a deduction in submitting his or her report and paying the amount due; and the division shall allow such deduction of 1 percent of the amount of the tax to the person paying the same for remitting the tax in the manner herein provided, for paying the

amount due to be paid by him or her, and as further compensation to the distributor for the keeping of prescribed records and for collection of taxes and remitting the same.

(a) The collection allowance may not be granted, nor may any deduction be permitted, if the tax is delinquent at the time of payment.

(b) The division may reduce the collection allowance by 10 percent or $50, whichever is less, if a taxpayer files an incomplete report ~~return~~.

1. An "incomplete report ~~return~~" means ~~is~~, for purposes of this section ~~part~~, a report ~~return~~ which is lacking such uniformity, completeness, and arrangement that the physical handling, verification, or review of the report ~~return~~ may not be readily accomplished.

2. The division shall adopt rules requiring such information as it may deem necessary to ensure that the tax levied hereunder is properly collected, reviewed, compiled, and enforced, including, but not limited to: the amount of taxable sales; the amount of tax collected or due; the amount claimed as the collection allowance; the amount of penalty and interest; the amount due with the report ~~return~~; and such other information as the division may specify.

Section 3. Section 210.60, Florida Statutes, is amended to read:

210.60 Books, records, and invoices to be kept and

preserved; inspection by agents of division.—Every distributor shall keep in each licensed place of business complete and accurate records for that place of business, including itemized invoices of tobacco products held, purchased, manufactured, brought in or caused to be brought in from without the state, or shipped or transported to retailers in this state, and of all sales of tobacco products made, except sales to an ultimate consumer. Such records shall show the names and addresses of purchasers and other pertinent papers and documents relating to the purchase, sale, or disposition of tobacco products. When a licensed distributor sells tobacco products exclusively to ultimate consumers at the addresses given in the license, no invoice of those sales shall be required, but itemized invoices shall be made of all tobacco products transferred to other retail outlets owned or controlled by that licensed distributor. All books, records and other papers, and other documents required by this section to be kept shall be preserved for a period of at least 3 years after the date of the documents, as aforesaid, or the date of the entries thereof appearing in the records, unless the division, in writing, authorizes their destruction or disposal at an earlier date. At any time during usual business hours, duly authorized agents or employees of the division may enter any place of business of a distributor and inspect the premises, the records required to be kept under this part, and the tobacco products contained therein to determine

whether all the provisions of this part are being fully complied with. Refusal to permit such inspection by a duly authorized agent or employee of the division shall be grounds for revocation of the license. Every person who sells tobacco products to persons other than an ultimate consumer shall render with each sale an itemized invoice showing the seller's name and address, the purchaser's name and address, the date of sale, and all prices and discounts. The seller shall preserve legible copies of all such invoices for 3 years from the date of sale. Every retailer shall produce itemized invoices of all tobacco products purchased. The invoices shall show the name and address of the seller and the date of purchase. The retailer shall preserve a legible copy of each such invoice for 3 years from the date of purchase. Invoices shall be available for inspection by authorized agents or employees of the division at the retailer's place of business. Any records required by this section may be kept in an electronic or paper format.

Section 4. Subsection (3) of section 489.109, Florida Statutes, is amended to read:

489.109 Fees.—

~~(3) In addition to the fees provided in subsection (1) for application and renewal for certification and registration, all certificateholders and registrants must pay a fee of $4 to the department at the time of application or renewal. The funds must be transferred at the end of each licensing period to the~~

~~department to fund projects relating to the building construction industry or continuing education programs offered to persons engaged in the building construction industry in Florida, to be selected by the Florida Building Commission. The board shall, at the time the funds are transferred, advise the department on the most needed areas of research or continuing education based on significant changes in the industry's practices or on changes in the state building code or on the most common types of consumer complaints or on problems costing the state or local governmental entities substantial waste. The board's advice is not binding on the department. The department shall ensure the distribution of research reports and the availability of continuing education programs to all segments of the building construction industry to which they relate. The department shall report to the board in October of each year, summarizing the allocation of the funds by institution and summarizing the new projects funded and the status of previously funded projects.~~

Section 5. Section 489.118, Florida Statutes, is amended to read:

489.118 Certification of registered contractors; grandfathering provisions.—The board shall, upon receipt of a completed application and appropriate fee, issue a certificate in the appropriate category to any contractor registered under this part who makes application to the board and can show that

he or she meets each of the following requirements:

(1) Currently holds a valid registered local license in one of the contractor categories defined in s. 489.105(3)(a)-(p).

(2) Has, for that category, passed a written examination that the board finds to be substantially similar to the examination required to be licensed as a certified contractor under this part. For purposes of this subsection, a written, proctored examination such as that produced by the National Assessment Institute, Block and Associates, NAI/Block, Experior Assessments, Professional Testing, Inc., or Assessment Systems, Inc., shall be considered to be substantially similar to the examination required to be licensed as a certified contractor. The board may not impose or make any requirements regarding the nature or content of these cited examinations.

(3) Has at least 5 years of experience as a contractor in that contracting category, or as an inspector or building administrator with oversight over that category, at the time of application. For contractors, only time periods in which the contractor license is active and the contractor is not on probation shall count toward the 5 years required by this subsection.

(4) Has not had his or her contractor's license revoked at any time, had his or her contractor's license suspended within the last 5 years, or been assessed a fine in excess of $500

within the last 5 years.

(5) Is in compliance with the insurance and financial responsibility requirements in s. 489.115(5).

~~Applicants wishing to obtain a certificate pursuant to this section must make application by November 1, 2015.~~

Section 6. Subsection (3) of section 489.509, Florida Statutes, is amended to read:

489.509 Fees.—

~~(3) Four dollars of each fee under subsection (1) paid to the department at the time of application or renewal shall be transferred at the end of each licensing period to the department to fund projects relating to the building construction industry or continuing education programs offered to persons engaged in the building construction industry in Florida. The board shall, at the time the funds are transferred, advise the department on the most needed areas of research or continuing education based on significant changes in the industry's practices or on the most common types of consumer complaints or on problems costing the state or local governmental entities substantial waste. The board's advice is not binding on the department. The department shall ensure the distribution of research reports and the availability of continuing education programs to all segments of the building construction industry to which they relate. The department shall~~

~~report to the board in October of each year, summarizing the allocation of the funds by institution and summarizing the new projects funded and the status of previously funded projects.~~

Section 7. Paragraph (p) of subsection (2) of section 499.01, Florida Statutes, is amended to read:

499.01 Permits.—

(2) The following permits are established:

(p) Cosmetic manufacturer permit.—A cosmetic manufacturer permit is required for any person that manufactures or repackages cosmetics in this state. A person that only labels or changes the labeling of a cosmetic but does not open the container sealed by the manufacturer of the product is exempt from obtaining a permit under this paragraph. A person who manufactures cosmetics and has annual gross sales of $25,000 or less is exempt from the permit requirements of this subsection. Upon request, an exempt cosmetics manufacturer must provide to the department written documentation to verify his or her annual gross sales, including all sales of cosmetic products at any location, regardless of the types of products sold or the number of persons involved in the operation.

1. An exempt cosmetics manufacturer may only:

a. Sell prepackaged cosmetics affixed with a label containing information required by the United States Food and Drug Administration.

b. Manufacture and sell cosmetics that are soaps, not

otherwise exempt from the definition of cosmetics, lotions, moisturizers, and creams.

c. Sell cosmetics that are not adulterated or misbranded in accordance with 21 U.S.C. ss. 361 and 362.

d. Sell cosmetic products that are stored on the premises of the cosmetic manufacturing operation.

2. Each unit of cosmetics manufactured under this paragraph must contain in contrasting color and not less than 10-point, the following statement: "Made by a manufacturer exempt from Florida's cosmetic manufacturing permit requirements."

3. The department may investigate any complaint which alleges that an exempt cosmetics manufacturer has violated an applicable provision of this chapter or rule adopted under this chapter. The department's authorized officer or employee may enter and inspect the premises of an exempt cosmetic manufacturer to determine compliance with this chapter and department rules, as applicable. A refusal to permit entry to the premises or to conduct an inspection is grounds for disciplinary action pursuant to s. 499.005.

4. This paragraph does not exempt any person from any state or federal tax law, rule, regulation, or certificate, or from any county or municipal law or ordinance that applies to cosmetic manufacturing.

Section 8. Paragraph (d) is added to subsection (6) of

section 499.012, Florida Statutes, to read:

499.012 Permit application requirements.—

(6) A permit issued by the department is nontransferable. Each permit is valid only for the person or governmental unit to which it is issued and is not subject to sale, assignment, or other transfer, voluntarily or involuntarily; nor is a permit valid for any establishment other than the establishment for which it was originally issued.

(d) When an establishment that requires a permit pursuant to this part submits an application to the department for a change of ownership or controlling interest or a change of location with the required fees under this subsection, the establishment may also submit a request for a temporary permit granting the establishment authority to operate for no more than 90 calendar days. The establishment must submit the request for a temporary permit to the department on a form provided by the department and obtain authorization to operate with the temporary permit before operating under the change of ownership or operating at the new location. Upon authorization of a temporary permit, the existing permit at the location for which the temporary permit is submitted is immediately null and void. A temporary permit may not be extended and shall expire and become null and void by operation of law without further action by the department at 12:01 a.m. on the 91st day after the department authorizes such permit. Upon expiration of the

temporary permit, the establishment may not continue to operate under such permit.

The department may revoke the permit of any person that fails to comply with the requirements of this subsection.

Section 9. Subsection (8) is added to section 499.066, Florida Statutes, to read:

499.066 Penalties; remedies.—In addition to other penalties and other enforcement provisions:

(8)(a) The department shall adopt rules to authorize the issuance of a remedial, nondisciplinary citation. A citation shall be issued to the person alleged to have committed a violation and contain the person's name, address, and license number, if applicable; a brief factual statement; the sections of the law allegedly violated; and the monetary assessment and or other remedial measures imposed. The person shall have 30 days after the citation is served to contest the citation by providing supplemental and clarifying information to the department. The citation must clearly state that the person may choose, in lieu of accepting the citation, to have the department rescind the citation and conduct an investigation pursuant to s. 499.051 of only those alleged violations contained in the citation. The citation shall be rescinded by the department if the person remedies or corrects the violations or deficiencies contained in the citation within 30 days after

the citation is served. If the person does not successfully contest the citation to the satisfaction of the department, or complete remedial action pursuant to this paragraph, the citation becomes a final order and does not constitute discipline.

(b) The department is entitled to recover the costs of investigation, in addition to any penalty provided according to department rule, as part of the penalty levied pursuant to a citation.

(c) A citation must be issued within 6 months after the filing of the complaint that is the basis for the citation.

(d) Service of a citation may be made by personal service or certified mail, restricted delivery, to the person at the person's last known address of record with the department, or to the person's Florida registered agent.

(e) The department may adopt rules to designate those violations for which a person is subject to the issuance of a citation and the monetary assessments and or other remedial measures that must be taken for those violations. Violations designated as subject to issuance of a citation shall include violations for which there is no substantial threat to the public health, safety, or welfare. The department has continuous authority to amend its rules adopted pursuant to this section.

Section 10. Section 548.003, Florida Statutes, is amended to read:

548.003 Florida Athletic ~~State Boxing~~ Commission.—

(1) The Florida Athletic ~~State Boxing~~ Commission is created and is assigned to the Department of Business and Professional Regulation for administrative and fiscal accountability purposes only. The ~~Florida State Boxing~~ commission shall consist of five members appointed by the Governor, subject to confirmation by the Senate. One member must be a physician licensed under ~~pursuant to~~ chapter 458 or chapter 459, who must maintain an unencumbered license in good standing, and who must, at the time of her or his appointment, have practiced medicine for at least 5 years. Upon the expiration of the term of a commissioner, the Governor shall appoint a successor to serve for a 4-year term. A commissioner whose term has expired shall continue to serve on the commission until such time as a replacement is appointed. If a vacancy on the commission occurs before ~~prior to~~ the expiration of the term, it shall be filled for the unexpired portion of the term in the same manner as the original appointment.

(2) The ~~Florida State Boxing~~ commission, as created by subsection (1), shall administer the provisions of this chapter. The commission has authority to adopt rules pursuant to ss. 120.536(1) and 120.54 to implement the provisions of this chapter and to implement each of the duties and responsibilities conferred upon the commission, including, but not limited to:

(a) Development of an ethical code of conduct for

commissioners, commission staff, and commission officials.

(b) Facility and safety requirements relating to the ring, floor plan and apron seating, emergency medical equipment and services, and other equipment and services necessary for the conduct of a program of matches.

(c) Requirements regarding a participant's apparel, bandages, handwraps, gloves, mouthpiece, and appearance during a match.

(d) Requirements relating to a manager's participation, presence, and conduct during a match.

(e) Duties and responsibilities of all licensees under this chapter.

(f) Procedures for hearings and resolution of disputes.

(g) Qualifications for appointment of referees and judges.

(h) Qualifications for and appointment of chief inspectors and inspectors and duties and responsibilities of chief inspectors and inspectors with respect to oversight and coordination of activities for each program of matches regulated under this chapter.

(i) Setting fee and reimbursement schedules for referees and other officials appointed by the commission or the representative of the commission.

(j) Establishment of criteria for approval, disapproval, suspension of approval, and revocation of approval of amateur sanctioning organizations for amateur boxing, kickboxing, and

mixed martial arts held in this state, including, but not limited to, the health and safety standards the organizations use before, during, and after the matches to ensure the health, safety, and well-being of the amateurs participating in the matches, including the qualifications and numbers of health care personnel required to be present, the qualifications required for referees, and other requirements relating to the health, safety, and well-being of the amateurs participating in the matches. The commission may adopt by rule, or incorporate by reference into rule, the health and safety standards of USA Boxing as the minimum health and safety standards for an amateur boxing sanctioning organization, the health and safety standards of the International Sport Kickboxing Association as the minimum health and safety standards for an amateur kickboxing sanctioning organization, and the minimum health and safety standards for an amateur mixed martial arts sanctioning organization. The commission shall review its rules for necessary revision at least every 2 years and may adopt by rule, or incorporate by reference into rule, the then-existing current health and safety standards of USA Boxing and the International Sport Kickboxing Association. The commission may adopt emergency rules to administer this paragraph.

(3) The commission shall maintain an office in Tallahassee. At the first meeting of the commission after June 1 of each year, the commission shall select a chair and a vice

chair from among its membership. Three members shall constitute a quorum and the concurrence of at least three members is necessary for official commission action.

(4) Three consecutive unexcused absences or absences constituting 50 percent or more of the commission's meetings within any 12-month period shall cause the commission membership of the member in question to become void, and the position shall be considered vacant. The commission shall, by rule, define unexcused absences.

(5) Each commission member shall be accountable to the Governor for the proper performance of duties as a member of the commission. The Governor shall cause to be investigated any complaint or unfavorable report received by the Governor or the department concerning an action of the commission or any member and shall take appropriate action thereon. The Governor may remove from office any member for malfeasance, unethical conduct, misfeasance, neglect of duty, incompetence, permanent inability to perform official duties, or pleading guilty or nolo contendere to or being found guilty of a felony.

(6) Each member of the commission shall be compensated at the rate of $50 for each day she or he attends a commission meeting and shall be reimbursed for other expenses as provided in s. 112.061.

(7) The commission shall be authorized to join and participate in the activities of the Association of Boxing

Commissions (ABC).

(8) The department shall provide all legal and investigative services necessary to implement this chapter. The department may adopt rules as provided in ss. 120.536(1) and 120.54 to carry out its duties under this chapter.

Section 11. Subsection (3) of section 548.043, Florida Statutes, is amended to read:

548.043 Weights and classes, limitations; gloves.—

(3) The commission shall establish by rule the need for gloves, if any, and the weight of any such gloves to be used in each pugilistic match ~~the appropriate weight of gloves to be used in each boxing match; however, all participants in boxing matches shall wear gloves weighing not less than 8 ounces each and participants in mixed martial arts matches shall wear gloves weighing 4 to 8 ounces each~~. Participants shall wear such protective devices as the commission deems necessary.

Section 12. Subsection (5) of section 553.841, Florida Statutes, is amended to read:

553.841 Building code compliance and mitigation program.—

~~(5) Each biennium, upon receipt of funds by the Department of Business and Professional Regulation from the Construction Industry Licensing Board and the Electrical Contractors' Licensing Board provided under ss. 489.109(3) and 489.509(3), the department shall determine the amount of funds available for the Florida Building Code Compliance and Mitigation Program.~~

Section 13. Subsection (20) of section 561.01, Florida Statutes, is amended to read:

561.01 Definitions.—As used in the Beverage Law:

~~(20) "Permit carrier" means a licensee authorized to make deliveries as provided in s. 561.57.~~

Section 14. Subsections (1) and (2) of section 561.17, Florida Statutes, are amended, and subsection (5) is added to that section, to read:

561.17 License and registration applications; approved person.—

(1) Any person, before engaging in the business of manufacturing, bottling, distributing, selling, or in any way dealing in alcoholic beverages, shall file, with the district licensing personnel of the district of the division in which the place of business for which a license is sought is located, a sworn application in the format prescribed by the division. The applicant must be a legal or business entity, person, or persons and must include all persons, officers, shareholders, and directors of such legal or business entity that have a direct or indirect interest in the business seeking to be licensed under this part. However, the applicant does not include any person that derives revenue from the license solely through a contractual relationship with the licensee, the substance of which contractual relationship is not related to the control of the sale of alcoholic beverages. Before any application is

approved, the division may require the applicant to file a set of fingerprints electronically through an approved electronic fingerprinting vendor or on ~~regular United States Department of Justice~~ forms prescribed by the Florida Department of Law Enforcement for herself or himself and for any person or persons interested directly or indirectly with the applicant in the business for which the license is being sought, when required by the division. If the applicant or any person who is interested with the applicant either directly or indirectly in the business or who has a security interest in the license being sought or has a right to a percentage payment from the proceeds of the business, either by lease or otherwise, is not qualified, the division shall deny the application. However, any company regularly traded on a national securities exchange and not over the counter; any insurer, as defined in the Florida Insurance Code; or any bank or savings and loan association chartered by this state, another state, or the United States which has an interest, directly or indirectly, in an alcoholic beverage license is not required to obtain the division's approval of its officers, directors, or stockholders or any change of such positions or interests. A shopping center with five or more stores, one or more of which has an alcoholic beverage license and is required under a lease common to all shopping center tenants to pay no more than 10 percent of the gross proceeds of the business holding the license to the shopping center, is not

considered as having an interest, directly or indirectly, in the license. A performing arts center, as defined in s. 561.01, which has an interest, directly or indirectly, in an alcoholic beverage license is not required to obtain division approval of its volunteer officers or directors or of any change in such positions or interests.

(2) All applications for any alcoholic beverage license must be accompanied by proof of the applicant's right of occupancy for the entire premises sought to be licensed. All applications for alcoholic beverage licenses for consumption on the premises shall be accompanied by a certificate of the Division of Hotels and Restaurants of the Department of Business and Professional Regulation, the Department of Agriculture and Consumer Services, the Department of Health, the Agency for Health Care Administration, or the county health department that the place of business wherein the business is to be conducted meets all of the sanitary requirements of the state.

(5) Any person or entity licensed or permitted by the division must provide an electronic mail address to the division to function as the primary contact for all communication by the division to the licensee or permittees. Licensees and permittees are responsible for maintaining accurate contact information on file with the division.

Section 15. Paragraph (a) of subsection (2) of section 561.19, Florida Statutes, is amended to read:

561.19 License issuance upon approval of division.—

(2)(a) When beverage licenses become available by reason of an increase in the population of a county, by reason of a county permitting the sale of intoxicating beverages when such sale had been prohibited, or by reason of the cancellation or revocation of a quota beverage license, the division, if there are more applicants than the number of available licenses, shall provide a method of double random selection by public drawing to determine which applicants shall be considered for issuance of licenses. The double random selection drawing method shall allow each applicant whose application is complete and does not disclose on its face any matter rendering the applicant ineligible an equal opportunity of obtaining an available license. After all applications are filed with the director, the director shall then determine by random selection drawing the order in which each applicant's name shall be matched with a number selected by random drawing, and that number shall determine the order in which the applicant will be considered for a license. This paragraph does not prohibit a person holding a perfected lien or security interest in a quota alcoholic beverage license, in accordance with s. 561.65, from enforcing the lien or security interest against the license within 180 days after a final order of revocation or suspension. A revoked quota alcoholic beverage license encumbered by a lien or security interest, perfected pursuant to s. 561.65, may not be

issued under this subsection until the 180-day period has elapsed or until such enforcement proceeding is final.

Section 16. Paragraph (a) of subsection (2) of section 561.20, Florida Statutes, is amended to read:

561.20 Limitation upon number of licenses issued.—

(2)(a) The limitation of the number of licenses as provided in this section does not prohibit the issuance of a special license to:

1. Any bona fide hotel, motel, or motor court of not fewer than 80 guest rooms in any county having a population of less than 50,000 residents, and of not fewer than 100 guest rooms in any county having a population of 50,000 residents or greater; or any bona fide hotel or motel located in a historic structure, as defined in s. 561.01(20) ~~s. 561.01(21)~~, with fewer than 100 guest rooms which derives at least 51 percent of its gross revenue from the rental of hotel or motel rooms, which is licensed as a public lodging establishment by the Division of Hotels and Restaurants; provided, however, that a bona fide hotel or motel with no fewer than 10 and no more than 25 guest rooms which is a historic structure, as defined in s. 561.01(20) ~~s. 561.01(21)~~, in a municipality that on the effective date of this act has a population, according to the University of Florida's Bureau of Economic and Business Research Estimates of Population for 1998, of no fewer than 25,000 and no more than 35,000 residents and that is within a constitutionally chartered

county may be issued a special license. This special license shall allow the sale and consumption of alcoholic beverages only on the licensed premises of the hotel or motel. In addition, the hotel or motel must derive at least 60 percent of its gross revenue from the rental of hotel or motel rooms and the sale of food and nonalcoholic beverages; provided that this subparagraph shall supersede local laws requiring a greater number of hotel rooms;

2. Any condominium accommodation of which no fewer than 100 condominium units are wholly rentable to transients and which is licensed under chapter 509, except that the license shall be issued only to the person or corporation that operates the hotel or motel operation and not to the association of condominium owners;

3. Any condominium accommodation of which no fewer than 50 condominium units are wholly rentable to transients, which is licensed under chapter 509, and which is located in any county having home rule under s. 10 or s. 11, Art. VIII of the State Constitution of 1885, as amended, and incorporated by reference in s. 6(e), Art. VIII of the State Constitution, except that the license shall be issued only to the person or corporation that operates the hotel or motel operation and not to the association of condominium owners;

4. A food service establishment that has 2,500 square feet of service area, is equipped to serve meals to 150 persons at

one time, and derives at least 51 percent of its gross food and beverage revenue from the sale of food and nonalcoholic beverages during the first 120-day ~~60-day~~ operating period and the first ~~each~~ 12-month operating period thereafter. Subsequent audit timeframes must be based upon the audit percentage established by the most recent audit and conducted on a staggered scale as follows: level 1, 51 percent to 60 percent, every year; level 2, 61 percent to 75 percent, every 2 years; level 3, 76 percent to 90 percent, every 3 years; and level 4, 91 percent to 100 percent, every 4 years. A food service establishment granted a special license on or after January 1, 1958, pursuant to general or special law may not operate as a package store and may not sell intoxicating beverages under such license after the hours of serving or consumption of food have elapsed. Failure by a licensee to meet the required percentage of food and nonalcoholic beverage gross revenues during the covered operating period shall result in revocation of the license or denial of the pending license application. A licensee whose license is revoked or an applicant whose pending application is denied, or any person required to qualify on the special license application, is ineligible to have any interest in a subsequent application for such a license for a period of 120 days after the date of the final denial or revocation;

5. Any caterer, deriving at least 51 percent of its gross food and beverage revenue from the sale of food and nonalcoholic

beverages at each catered event, licensed by the Division of Hotels and Restaurants under chapter 509. This subparagraph does not apply to a culinary education program, as defined in s. 381.0072(2), which is licensed as a public food service establishment by the Division of Hotels and Restaurants and provides catering services. Notwithstanding any law to the contrary, a licensee under this subparagraph shall sell or serve alcoholic beverages only for consumption on the premises of a catered event at which the licensee is also providing prepared food, and shall prominently display its license at any catered event at which the caterer is selling or serving alcoholic beverages. A licensee under this subparagraph shall purchase all alcoholic beverages it sells or serves at a catered event from a vendor licensed under s. 563.02(1), s. 564.02(1), or licensed under s. 565.02(1) subject to the limitation imposed in subsection (1), as appropriate. A licensee under this subparagraph may not store any alcoholic beverages to be sold or served at a catered event. Any alcoholic beverages purchased by a licensee under this subparagraph for a catered event that are not used at that event must remain with the customer; provided that if the vendor accepts unopened alcoholic beverages, the licensee may return such alcoholic beverages to the vendor for a credit or reimbursement. Regardless of the county or counties in which the licensee operates, a licensee under this subparagraph shall pay the annual state license tax set forth in s.

565.02(1)(b). A licensee under this subparagraph must maintain for a period of 3 years all records and receipts for each catered event, including all contracts, customers' names, event locations, event dates, food purchases and sales, alcoholic beverage purchases and sales, nonalcoholic beverage purchases and sales, and any other records required by the department by rule to demonstrate compliance with the requirements of this subparagraph. Notwithstanding any law to the contrary, any vendor licensed under s. 565.02(1) subject to the limitation imposed in subsection (1), may, without any additional licensure under this subparagraph, serve or sell alcoholic beverages for consumption on the premises of a catered event at which prepared food is provided by a caterer licensed under chapter 509. If a licensee under this subparagraph also possesses any other license under the Beverage Law, the license issued under this subparagraph may ~~shall~~ not authorize the holder to conduct activities on the premises to which the other license or licenses apply that would otherwise be prohibited by the terms of that license or the Beverage Law. Nothing in this section shall permit the licensee to conduct activities that are otherwise prohibited by the Beverage Law or local law. The Division of Alcoholic Beverages and Tobacco is hereby authorized to adopt rules to administer the license created in this subparagraph, to include rules governing licensure, recordkeeping, and enforcement. The first $300,000 in fees

collected by the division each fiscal year pursuant to this subparagraph shall be deposited in the Department of Children and Families' Operations and Maintenance Trust Fund to be used only for alcohol and drug abuse education, treatment, and prevention programs. The remainder of the fees collected shall be deposited into the Hotel and Restaurant Trust Fund created pursuant to s. 509.072; or

6. A culinary education program as defined in s. 381.0072(2) which is licensed as a public food service establishment by the Division of Hotels and Restaurants.

a. This special license shall allow the sale and consumption of alcoholic beverages on the licensed premises of the culinary education program. The culinary education program shall specify designated areas in the facility where the alcoholic beverages may be consumed at the time of application. Alcoholic beverages sold for consumption on the premises may be consumed only in areas designated pursuant to s. 561.01(11) and may not be removed from the designated area. Such license shall be applicable only in and for designated areas used by the culinary education program.

b. If the culinary education program provides catering services, this special license shall also allow the sale and consumption of alcoholic beverages on the premises of a catered event at which the licensee is also providing prepared food. A culinary education program that provides catering services is

not required to derive at least 51 percent of its gross revenue from the sale of food and nonalcoholic beverages. Notwithstanding any law to the contrary, a licensee that provides catering services under this sub-subparagraph shall prominently display its beverage license at any catered event at which the caterer is selling or serving alcoholic beverages. Regardless of the county or counties in which the licensee operates, a licensee under this sub-subparagraph shall pay the annual state license tax set forth in s. 565.02(1)(b). A licensee under this sub-subparagraph must maintain for a period of 3 years all records required by the department by rule to demonstrate compliance with the requirements of this sub-subparagraph.

c. If a licensee under this subparagraph also possesses any other license under the Beverage Law, the license issued under this subparagraph does not authorize the holder to conduct activities on the premises to which the other license or licenses apply that would otherwise be prohibited by the terms of that license or the Beverage Law. Nothing in this subparagraph shall permit the licensee to conduct activities that are otherwise prohibited by the Beverage Law or local law. Any culinary education program that holds a license to sell alcoholic beverages shall comply with the age requirements set forth in ss. 562.11(4), 562.111(2), and 562.13.

d. The Division of Alcoholic Beverages and Tobacco may

adopt rules to administer the license created in this subparagraph, to include rules governing licensure, recordkeeping, and enforcement.

e. A license issued pursuant to this subparagraph does not permit the licensee to sell alcoholic beverages by the package for off-premises consumption.

However, any license heretofore issued to any such hotel, motel, motor court, or restaurant or hereafter issued to any such hotel, motel, or motor court, including a condominium accommodation, under the general law shall not be moved to a new location, such license being valid only on the premises of such hotel, motel, motor court, or restaurant. Licenses issued to hotels, motels, motor courts, or restaurants under the general law and held by such hotels, motels, motor courts, or restaurants on May 24, 1947, shall be counted in the quota limitation contained in subsection (1). Any license issued for any hotel, motel, or motor court under this law shall be issued only to the owner of the hotel, motel, or motor court or, in the event the hotel, motel, or motor court is leased, to the lessee of the hotel, motel, or motor court; and the license shall remain in the name of the owner or lessee so long as the license is in existence. Any special license now in existence heretofore issued under this law cannot be renewed except in the name of the owner of the hotel, motel, motor court, or restaurant or, in

the event the hotel, motel, motor court, or restaurant is leased, in the name of the lessee of the hotel, motel, motor court, or restaurant in which the license is located and must remain in the name of the owner or lessee so long as the license is in existence. Any license issued under this section shall be marked "Special," and nothing herein provided shall limit, restrict, or prevent the issuance of a special license for any restaurant or motel which shall hereafter meet the requirements of the law existing immediately prior to the effective date of this act, if construction of such restaurant has commenced prior to the effective date of this act and is completed within 30 days thereafter, or if an application is on file for such special license at the time this act takes effect; and any such licenses issued under this proviso may be annually renewed as now provided by law. Nothing herein prevents an application for transfer of a license to a bona fide purchaser of any hotel, motel, motor court, or restaurant by the purchaser of such facility or the transfer of such license pursuant to law.

Section 17. Subsection (4) of section 561.42, Florida Statutes, is amended to read:

561.42 Tied house evil; financial aid and assistance to vendor by manufacturer, distributor, importer, primary American source of supply, brand owner or registrant, or any broker, sales agent, or sales person thereof, prohibited; procedure for enforcement; exception.—

(4) Before the division shall so declare and prohibit such sales to such vendor, ~~it shall,~~ within 2 days after receipt of such notice~~,~~ the division shall give ~~written~~ notice to such vendor by electronic mail of the receipt by the division of such notification of delinquency and such vendor shall be directed to forthwith make payment thereof or, upon failure to do so, to show cause before the division why further sales to such vendor may ~~shall~~ not be prohibited. Good and sufficient cause to prevent such action by the division may be made by showing payment, failure of consideration, or any other defense which would be considered sufficient in a common-law action. The vendor shall have 5 days after service ~~receipt~~ of such notice via electronic mail within which to show such cause, and he or she may demand a hearing thereon, provided he or she does so in writing within said 5 days, such written demand to be delivered to the division either in person, by electronic mail, or by due course of mail within such 5 days. If no such demand for hearing is made, the division shall thereupon declare in writing to such vendor and to all manufacturers and distributors within the state that all further sales to such vendor are prohibited until such time as the division certifies in writing that such vendor has fully paid for all liquors previously purchased. In the event such prohibition of sales and declaration thereof to the vendor, manufacturers, and distributors is ordered by the division, the vendor may seek review of such decision by the

Department of Business and Professional Regulation within 5 days. In the event application for such review is filed within such time, such prohibition of sales may ~~shall~~ not be made, published, or declared until final disposition of such review by the department.

Section 18. Subsection (2) of section 561.55, Florida Statutes, is amended to read:

561.55 Manufacturers', distributors', brokers', sales agents', importers', vendors', and exporters' records and reports.—

(2) Each manufacturer, distributor, broker, sales agent, and importer shall make a full and complete report by the 10th day of each month for the previous calendar month. The report must be ~~shall be made out in triplicate; two copies shall be sent to the division, and the third copy shall be retained for the manufacturer's, distributor's, broker's, sales agent's, or importer's record. Reports shall be~~ made on forms prepared ~~and furnished~~ by the division and filed with the division through the division's electronic data submission system.

Section 19. Section 562.455, Florida Statutes, is amended to read:

562.455 Adulterating liquor; penalty.—Whoever adulterates, for the purpose of sale, any liquor, used or intended for drink, with cocculus indicus, vitriol, ~~grains of paradise,~~ opium, alum, capsicum, copperas, laurel water, logwood, brazil wood,

cochineal, sugar of lead, or any other substance which is poisonous or injurious to health, and whoever knowingly sells any liquor so adulterated, commits ~~shall be guilty of~~ a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 20. Paragraphs (d) and (f) of subsection (2) of section 718.112, Florida Statutes, are amended to read:

718.112 Bylaws.—

(2) REQUIRED PROVISIONS.—The bylaws shall provide for the following and, if they do not do so, shall be deemed to include the following:

(d) *Unit owner meetings.*—

1. An annual meeting of the unit owners must be held at the location provided in the association bylaws and, if the bylaws are silent as to the location, the meeting must be held within 45 miles of the condominium property. However, such distance requirement does not apply to an association governing a timeshare condominium.

2. Unless the bylaws provide otherwise, a vacancy on the board caused by the expiration of a director's term must be filled by electing a new board member, and the election must be by secret ballot. An election is not required if the number of vacancies equals or exceeds the number of candidates. For purposes of this paragraph, the term "candidate" means an eligible person who has timely submitted the written notice, as

described in sub-subparagraph 4.a., of his or her intention to become a candidate. Except in a timeshare or nonresidential condominium, or if the staggered term of a board member does not expire until a later annual meeting, or if all members' terms would otherwise expire but there are no candidates, the terms of all board members expire at the annual meeting, and such members may stand for reelection unless prohibited by the bylaws. Board members may serve terms longer than 1 year if permitted by the bylaws or articles of incorporation. A board member may not serve more than 8 consecutive years unless approved by an affirmative vote of unit owners representing two-thirds of all votes cast in the election or unless there are not enough eligible candidates to fill the vacancies on the board at the time of the vacancy. If the number of board members whose terms expire at the annual meeting equals or exceeds the number of candidates, the candidates become members of the board effective upon the adjournment of the annual meeting. Unless the bylaws provide otherwise, any remaining vacancies shall be filled by the affirmative vote of the majority of the directors making up the newly constituted board even if the directors constitute less than a quorum or there is only one director. In a residential condominium association of more than 10 units or in a residential condominium association that does not include timeshare units or timeshare interests, co-owners of a unit may not serve as members of the board of directors at the same time

unless they own more than one unit or unless there are not enough eligible candidates to fill the vacancies on the board at the time of the vacancy. A unit owner in a residential condominium desiring to be a candidate for board membership must comply with sub-subparagraph 4.a. and must be eligible to be a candidate to serve on the board of directors at the time of the deadline for submitting a notice of intent to run in order to have his or her name listed as a proper candidate on the ballot or to serve on the board. A person who has been suspended or removed by the division under this chapter, or who is delinquent in the payment of any assessment ~~monetary obligation~~ due to the association, is not eligible to be a candidate for board membership and may not be listed on the ballot. For purposes of this paragraph, a person is delinquent if a payment is not made by the due date as specifically identified in the declaration of condominium, bylaws, or articles of incorporation. If a due date is not specifically identified in the declaration of condominium, bylaws, or articles of incorporation, the due date is the first day of the assessment period. A person who has been convicted of any felony in this state or in a United States District or Territorial Court, or who has been convicted of any offense in another jurisdiction which would be considered a felony if committed in this state, is not eligible for board membership unless such felon's civil rights have been restored for at least 5 years as of the date such person seeks election

to the board. The validity of an action by the board is not affected if it is later determined that a board member is ineligible for board membership due to having been convicted of a felony. This subparagraph does not limit the term of a member of the board of a nonresidential or timeshare condominium.

3. The bylaws must provide the method of calling meetings of unit owners, including annual meetings. Written notice must include an agenda, must be mailed, hand delivered, or electronically transmitted to each unit owner at least 14 days before the annual meeting, and must be posted in a conspicuous place on the condominium property at least 14 continuous days before the annual meeting. Upon notice to the unit owners, the board shall, by duly adopted rule, designate a specific location on the condominium property where all notices of unit owner meetings must be posted. This requirement does not apply if there is no condominium property for posting notices. In lieu of, or in addition to, the physical posting of meeting notices, the association may, by reasonable rule, adopt a procedure for conspicuously posting and repeatedly broadcasting the notice and the agenda on a closed-circuit cable television system serving the condominium association. However, if broadcast notice is used in lieu of a notice posted physically on the condominium property, the notice and agenda must be broadcast at least four times every broadcast hour of each day that a posted notice is otherwise required under this section. If broadcast notice is

provided, the notice and agenda must be broadcast in a manner and for a sufficient continuous length of time so as to allow an average reader to observe the notice and read and comprehend the entire content of the notice and the agenda. In addition to any of the authorized means of providing notice of a meeting of the board, the association may, by rule, adopt a procedure for conspicuously posting the meeting notice and the agenda on a website serving the condominium association for at least the minimum period of time for which a notice of a meeting is also required to be physically posted on the condominium property. Any rule adopted shall, in addition to other matters, include a requirement that the association send an electronic notice in the same manner as a notice for a meeting of the members, which must include a hyperlink to the website where the notice is posted, to unit owners whose e-mail addresses are included in the association's official records. Unless a unit owner waives in writing the right to receive notice of the annual meeting, such notice must be hand delivered, mailed, or electronically transmitted to each unit owner. Notice for meetings and notice for all other purposes must be mailed to each unit owner at the address last furnished to the association by the unit owner, or hand delivered to each unit owner. However, if a unit is owned by more than one person, the association must provide notice to the address that the developer identifies for that purpose and thereafter as one or more of the owners of the unit advise the

association in writing, or if no address is given or the owners of the unit do not agree, to the address provided on the deed of record. An officer of the association, or the manager or other person providing notice of the association meeting, must provide an affidavit or United States Postal Service certificate of mailing, to be included in the official records of the association affirming that the notice was mailed or hand delivered in accordance with this provision.

4. The members of the board of a residential condominium shall be elected by written ballot or voting machine. Proxies may not be used in electing the board in general elections or elections to fill vacancies caused by recall, resignation, or otherwise, unless otherwise provided in this chapter. This subparagraph does not apply to an association governing a timeshare condominium.

a. At least 60 days before a scheduled election, the association shall mail, deliver, or electronically transmit, by separate association mailing or included in another association mailing, delivery, or transmission, including regularly published newsletters, to each unit owner entitled to a vote, a first notice of the date of the election. A unit owner or other eligible person desiring to be a candidate for the board must give written notice of his or her intent to be a candidate to the association at least 40 days before a scheduled election. Together with the written notice and agenda as set forth in

subparagraph 3., the association shall mail, deliver, or electronically transmit a second notice of the election to all unit owners entitled to vote, together with a ballot that lists all candidates. Upon request of a candidate, an information sheet, no larger than 8 1/2 inches by 11 inches, which must be furnished by the candidate at least 35 days before the election, must be included with the mailing, delivery, or transmission of the ballot, with the costs of mailing, delivery, or electronic transmission and copying to be borne by the association. The association is not liable for the contents of the information sheets prepared by the candidates. In order to reduce costs, the association may print or duplicate the information sheets on both sides of the paper. The division shall by rule establish voting procedures consistent with this sub-subparagraph, including rules establishing procedures for giving notice by electronic transmission and rules providing for the secrecy of ballots. Elections shall be decided by a plurality of ballots cast. There is no quorum requirement; however, at least 20 percent of the eligible voters must cast a ballot in order to have a valid election. A unit owner may not authorize any other person to vote his or her ballot, and any ballots improperly cast are invalid. A unit owner who violates this provision may be fined by the association in accordance with s. 718.303. A unit owner who needs assistance in casting the ballot for the reasons stated in s. 101.051 may obtain such assistance. The

regular election must occur on the date of the annual meeting. Notwithstanding this sub-subparagraph, an election is not required unless more candidates file notices of intent to run or are nominated than board vacancies exist.

b. Within 90 days after being elected or appointed to the board of an association of a residential condominium, each newly elected or appointed director shall certify in writing to the secretary of the association that he or she has read the association's declaration of condominium, articles of incorporation, bylaws, and current written policies; that he or she will work to uphold such documents and policies to the best of his or her ability; and that he or she will faithfully discharge his or her fiduciary responsibility to the association's members. In lieu of this written certification, within 90 days after being elected or appointed to the board, the newly elected or appointed director may submit a certificate of having satisfactorily completed the educational curriculum administered by a division-approved condominium education provider within 1 year before or 90 days after the date of election or appointment. The written certification or educational certificate is valid and does not have to be resubmitted as long as the director serves on the board without interruption. A director of an association of a residential condominium who fails to timely file the written certification or educational certificate is suspended from service on the

board until he or she complies with this sub-subparagraph. The board may temporarily fill the vacancy during the period of suspension. The secretary shall cause the association to retain a director's written certification or educational certificate for inspection by the members for 5 years after a director's election or the duration of the director's uninterrupted tenure, whichever is longer. Failure to have such written certification or educational certificate on file does not affect the validity of any board action.

c. Any challenge to the election process must be commenced within 60 days after the election results are announced.

5. Any approval by unit owners called for by this chapter or the applicable declaration or bylaws, including, but not limited to, the approval requirement in s. 718.111(8), must be made at a duly noticed meeting of unit owners and is subject to all requirements of this chapter or the applicable condominium documents relating to unit owner decisionmaking, except that unit owners may take action by written agreement, without meetings, on matters for which action by written agreement without meetings is expressly allowed by the applicable bylaws or declaration or any law that provides for such action.

6. Unit owners may waive notice of specific meetings if allowed by the applicable bylaws or declaration or any law. Notice of meetings of the board of administration, unit owner meetings, except unit owner meetings called to recall board

members under paragraph (j), and committee meetings may be given by electronic transmission to unit owners who consent to receive notice by electronic transmission. A unit owner who consents to receiving notices by electronic transmission is solely responsible for removing or bypassing filters that block receipt of mass emails sent to members on behalf of the association in the course of giving electronic notices.

7. Unit owners have the right to participate in meetings of unit owners with reference to all designated agenda items. However, the association may adopt reasonable rules governing the frequency, duration, and manner of unit owner participation.

8. A unit owner may tape record or videotape a meeting of the unit owners subject to reasonable rules adopted by the division.

9. Unless otherwise provided in the bylaws, any vacancy occurring on the board before the expiration of a term may be filled by the affirmative vote of the majority of the remaining directors, even if the remaining directors constitute less than a quorum, or by the sole remaining director. In the alternative, a board may hold an election to fill the vacancy, in which case the election procedures must conform to sub-subparagraph 4.a. unless the association governs 10 units or fewer and has opted out of the statutory election process, in which case the bylaws of the association control. Unless otherwise provided in the bylaws, a board member appointed or elected under this section

shall fill the vacancy for the unexpired term of the seat being filled. Filling vacancies created by recall is governed by paragraph (j) and rules adopted by the division.

10. This chapter does not limit the use of general or limited proxies, require the use of general or limited proxies, or require the use of a written ballot or voting machine for any agenda item or election at any meeting of a timeshare condominium association or nonresidential condominium association.

Notwithstanding subparagraph (b)2. and sub-subparagraph 4.a., an association of 10 or fewer units may, by affirmative vote of a majority of the total voting interests, provide for different voting and election procedures in its bylaws, which may be by a proxy specifically delineating the different voting and election procedures. The different voting and election procedures may provide for elections to be conducted by limited or general proxy.

(f) *Annual budget.*—

1. The proposed annual budget of estimated revenues and expenses must be detailed and must show the amounts budgeted by accounts and expense classifications, including, at a minimum, any applicable expenses listed in s. 718.504(21). The annual budget must be proposed to unit owners and adopted by the board of directors no later than 30 days before the beginning of the

fiscal year. A multicondominium association shall adopt a separate budget of common expenses for each condominium the association operates and shall adopt a separate budget of common expenses for the association. In addition, if the association maintains limited common elements with the cost to be shared only by those entitled to use the limited common elements as provided for in s. 718.113(1), the budget or a schedule attached to it must show the amount budgeted for this maintenance. If, after turnover of control of the association to the unit owners, any of the expenses listed in s. 718.504(21) are not applicable, they need not be listed.

2.a. In addition to annual operating expenses, the budget must include reserve accounts for capital expenditures and deferred maintenance. These accounts must include, but are not limited to, roof replacement, building painting, and pavement resurfacing, regardless of the amount of deferred maintenance expense or replacement cost, and any other item that has a deferred maintenance expense or replacement cost that exceeds $10,000. The amount to be reserved must be computed using a formula based upon estimated remaining useful life and estimated replacement cost or deferred maintenance expense of each reserve item. The association may adjust replacement reserve assessments annually to take into account any changes in estimates or extension of the useful life of a reserve item caused by deferred maintenance. This subsection does not apply to an

adopted budget in which the members of an association have determined, by a majority vote at a duly called meeting of the association, to provide no reserves or less reserves than required by this subsection.

b. Before turnover of control of an association by a developer to unit owners other than a developer pursuant to s. 718.301, the developer may vote the voting interests allocated to its units to waive the reserves or reduce the funding of reserves through the period expiring at the end of the second fiscal year after the fiscal year in which the certificate of a surveyor and mapper is recorded pursuant to s. 718.104(4)(e) or an instrument that transfers title to a unit in the condominium which is not accompanied by a recorded assignment of developer rights in favor of the grantee of such unit is recorded, whichever occurs first, after which time reserves may be waived or reduced only upon the vote of a majority of all nondeveloper voting interests voting in person or by limited proxy at a duly called meeting of the association. If a meeting of the unit owners has been called to determine whether to waive or reduce the funding of reserves and no such result is achieved or a quorum is not attained, the reserves included in the budget shall go into effect. After the turnover, the developer may vote its voting interest to waive or reduce the funding of reserves.

3. Reserve funds and any interest accruing thereon shall remain in the reserve account or accounts, and may be used only

for authorized reserve expenditures unless their use for other purposes is approved in advance by a majority vote at a duly called meeting of the association. Before turnover of control of an association by a developer to unit owners other than the developer pursuant to s. 718.301, the developer-controlled association may not vote to use reserves for purposes other than those for which they were intended without the approval of a majority of all nondeveloper voting interests, voting in person or by limited proxy at a duly called meeting of the association.

4. The only voting interests that are eligible to vote on questions that involve waiving or reducing the funding of reserves, or using existing reserve funds for purposes other than purposes for which the reserves were intended, are the voting interests of the units subject to assessment to fund the reserves in question. Proxy questions relating to waiving or reducing the funding of reserves or using existing reserve funds for purposes other than purposes for which the reserves were intended must contain the following statement in capitalized, bold letters in a font size larger than any other used on the face of the proxy ballot: WAIVING OF RESERVES, IN WHOLE OR IN PART, OR ALLOWING ALTERNATIVE USES OF EXISTING RESERVES MAY RESULT IN UNIT OWNER LIABILITY FOR PAYMENT OF UNANTICIPATED SPECIAL ASSESSMENTS REGARDING THOSE ITEMS.

Section 21. Paragraph (m) of subsection (1) of section 718.501, Florida Statutes, is amended to read:

718.501 Authority, responsibility, and duties of Division of Florida Condominiums, Timeshares, and Mobile Homes.—

(1) The division may enforce and ensure compliance with the provisions of this chapter and rules relating to the development, construction, sale, lease, ownership, operation, and management of residential condominium units. In performing its duties, the division has complete jurisdiction to investigate complaints and enforce compliance with respect to associations that are still under developer control or the control of a bulk assignee or bulk buyer pursuant to part VII of this chapter and complaints against developers, bulk assignees, or bulk buyers involving improper turnover or failure to turnover, pursuant to s. 718.301. However, after turnover has occurred, the division has jurisdiction to investigate complaints related only to financial issues, elections, and unit owner access to association records pursuant to s. 718.111(12).

(m) If a complaint is made, the division must conduct its inquiry with due regard for the interests of the affected parties. Within 30 days after receipt of a complaint, the division shall acknowledge the complaint in writing and notify the complainant whether the complaint is within the jurisdiction of the division and whether additional information is needed by the division from the complainant. The division shall conduct its investigation and, within 90 days after receipt of the original complaint or of timely requested additional

information, take action upon the complaint. However, the failure to complete the investigation within 90 days does not prevent the division from continuing the investigation, accepting or considering evidence obtained or received after 90 days, or taking administrative action if reasonable cause exists to believe that a violation of this chapter or a rule has occurred. If an investigation is not completed within the time limits established in this paragraph, the division shall, on a monthly basis, notify the complainant in writing of the status of the investigation. When reporting its action to the complainant, the division shall inform the complainant of any right to a hearing pursuant to ss. 120.569 and 120.57. The division may adopt rules regarding the submission of a complaint against an association.

Section 22. Section 718.5014, Florida Statutes, is amended to read:

718.5014 Ombudsman location.—The ombudsman shall maintain his or her principal office at a ~~in Leon County on the premises of the division or, if suitable space cannot be provided there, at another~~ place convenient to the offices of the division which will enable the ombudsman to expeditiously carry out the duties and functions of his or her office. The ombudsman may establish branch offices elsewhere in the state upon the concurrence of the Governor.

Section 23. Subsection (1) of section 455.219, Florida

Statutes, is amended to read:

455.219 Fees; receipts; disposition; periodic management reports.—

(1) Each board within the department shall determine by rule the amount of license fees for its profession, based upon department-prepared long-range estimates of the revenue required to implement all provisions of law relating to the regulation of professions by the department and any board; however, when the department has determined, based on the long-range estimates of such revenue, that a profession's trust fund moneys are in excess of the amount required to cover the necessary functions of the board, or the department when there is no board, the department may adopt rules to implement a waiver of license renewal fees for that profession for a period not to exceed 2 years, as determined by the department. Each board, or the department when there is no board, shall ensure license fees are adequate to cover all anticipated costs and to maintain a reasonable cash balance, as determined by rule of the department, with advice of the applicable board. If sufficient action is not taken by a board within 1 year of notification by the department that license fees are projected to be inadequate, the department shall set license fees on behalf of the applicable board to cover anticipated costs and to maintain the required cash balance. The department shall include recommended fee cap increases in its annual report to the Legislature.

Further, it is legislative intent that no regulated profession operate with a negative cash balance. The department may provide by rule for the advancement of sufficient funds to any profession or the Florida Athletic ~~State Boxing~~ Commission operating with a negative cash balance. Such advancement may be for a period not to exceed 2 consecutive years and shall require interest to be paid by the regulated profession. Interest shall be calculated at the current rate earned on Professional Regulation Trust Fund investments. Interest earned shall be allocated to the various funds in accordance with the allocation of investment earnings during the period of the advance.

Section 24. Subsection (4) of section 548.002, Florida Statutes, is amended to read:

548.002 Definitions.—As used in this chapter, the term:

(4) "Commission" means the Florida Athletic ~~State Boxing~~ Commission.

Section 25. Subsections (3) and (4) of section 548.05, Florida Statutes, are amended to read:

548.05 Control of contracts.—

(3) The commission may require that each contract contain language authorizing the ~~Florida State Boxing~~ commission to withhold any or all of any manager's share of a purse in the event of a contractual dispute as to entitlement to any portion of a purse. The commission may establish rules governing the manner of resolution of such dispute. In addition, if the

commission deems it appropriate, the commission is hereby authorized to implead interested parties over any disputed funds into the appropriate circuit court for resolution of the dispute before ~~prior to~~ release of all or any part of the funds.

(4) Each contract subject to this section shall contain the following clause: "This agreement is subject to the provisions of chapter 548, Florida Statutes, and to the rules of the Florida Athletic ~~State Boxing~~ Commission and to any future amendments of either."

Section 26. Subsection (12) of section 548.071, Florida Statutes, is amended to read:

548.071 Suspension or revocation of license or permit by commission.—The commission may suspend or revoke a license or permit if the commission finds that the licensee or permittee:

(12) Has been disciplined by the ~~Florida State Boxing~~ commission or similar agency or body of any jurisdiction.

Section 27. Section 548.077, Florida Statutes, is amended to read:

548.077 Florida Athletic ~~State Boxing~~ Commission; collection and disposition of moneys.—All fees, fines, forfeitures, and other moneys collected under the provisions of this chapter shall be paid by the commission to the Chief Financial Officer who, after the expenses of the commission are paid, shall deposit them in the Professional Regulation Trust Fund to be used for the administration and operation of the

commission and to enforce the laws and rules under its jurisdiction. In the event the unexpended balance of such moneys collected under the provisions of this chapter exceeds $250,000, any excess of that amount shall be deposited in the General Revenue Fund.

Section 28. This act shall take effect July 1, 2021.

COMMERCE COMMITTEE

HB 1517 by Rep. Duggan
Department of Business and Professional Regulation

AMENDMENT SUMMARY
April 14, 2021

Amendment 1 by Rep. Duggan (line 418):

The amendment clarifies that denying entry or the ability to inspect the premises by the Department of Business and Professional Regulation (DBPR) of an unpermitted cosmetics manufacturer is a violation of the Florida Drug and Cosmetic Act and is grounds for disciplinary action by DBPR.

Amendment 2 by Rep. Duggan (line 1273):

The amendment provides that a condominium association board must adopt the annual budget at least 14 days prior to the start of the association's fiscal year. In the event that the board fails to timely adopt the annual budget a second time:

- it is deemed a minor violation of the Condominium Act, and
- the association's prior year's budget will continue in effect until a new budget is adopted.

Amendment 3 by Rep. Duggan (line 1399):

The amendment provides that a cooperative board of administration must adopt the annual budget at least 14 days prior to the start of the association's fiscal year. In the event that the board fails to timely adopt the annual budget a second time:

- it is deemed a minor violation of the Cooperative Act, and
- the association's prior year's budget will continue in effect until a new budget is adopted.

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 Duggan offered the following:

Amendment

Remove lines 418-420 and insert:

department rules, as applicable. A refusal to permit an authorized officer or employee of the department to enter the premises or to conduct an inspection is a violation of s. 499.005(6) and is grounds for disciplinary action pursuant to s. 499.066.

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 Duggan offered the following:

Amendment

Remove lines 1273-1276 and insert:

any applicable expenses listed in s. 718.504(21). The board shall adopt the annual budget at least 14 days prior to the start of the association's fiscal year. In the event that the board fails to timely adopt the annual budget a second time, it shall be deemed a minor violation and the prior year's budget shall continue in effect until a new budget is adopted. A multicondominium association shall adopt a

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 Duggan offered the following:

Amendment (with title amendment)

Between lines 1399 and 1400, insert:

Section 23. Paragraph (j) of subsection (1) of section 719.106, Florida Statutes, is amended to read:

719.106 Bylaws; cooperative ownership.—

(1) MANDATORY PROVISIONS.—The bylaws or other cooperative documents shall provide for the following, and if they do not, they shall be deemed to include the following:

(j) Annual budget.—

1. The proposed annual budget of common expenses shall be detailed and shall show the amounts budgeted by accounts and expense classifications, including, if applicable, but not limited to, those expenses listed in s. 719.504(20). The board

of administration shall adopt the annual budget at least 14 days prior to the start of the association's fiscal year. In the event that the board fails to timely adopt the annual budget a second time, it shall be deemed a minor violation and the prior year's budget shall continue in effect until a new budget is adopted.

2. In addition to annual operating expenses, the budget shall include reserve accounts for capital expenditures and deferred maintenance. These accounts shall include, but not be limited to, roof replacement, building painting, and pavement resurfacing, regardless of the amount of deferred maintenance expense or replacement cost, and for any other items for which the deferred maintenance expense or replacement cost exceeds $10,000. The amount to be reserved shall be computed by means of a formula which is based upon estimated remaining useful life and estimated replacement cost or deferred maintenance expense of each reserve item. The association may adjust replacement reserve assessments annually to take into account any changes in estimates or extension of the useful life of a reserve item caused by deferred maintenance. This paragraph shall not apply to any budget in which the members of an association have, at a duly called meeting of the association, determined for a fiscal year to provide no reserves or reserves less adequate than required by this subsection. However, prior to turnover of control of an association by a developer to unit owners other

than a developer pursuant to s. 719.301, the developer may vote to waive the reserves or reduce the funding of reserves for the first 2 years of the operation of the association after which time reserves may only be waived or reduced upon the vote of a majority of all nondeveloper voting interests voting in person or by limited proxy at a duly called meeting of the association. If a meeting of the unit owners has been called to determine to provide no reserves, or reserves less adequate than required, and such result is not attained or a quorum is not attained, the reserves as included in the budget shall go into effect.

3. Reserve funds and any interest accruing thereon shall remain in the reserve account or accounts, and shall be used only for authorized reserve expenditures unless their use for other purposes is approved in advance by a vote of the majority of the voting interests, voting in person or by limited proxy at a duly called meeting of the association. Prior to turnover of control of an association by a developer to unit owners other than the developer under s. 719.301, the developer may not vote to use reserves for purposes other than that for which they were intended without the approval of a majority of all nondeveloper voting interests, voting in person or by limited proxy at a duly called meeting of the association.

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

Remove line 102 and insert:

office of the condominium ombudsman; amending s. 719.106, F.S.; requiring that an annual budget be proposed by the board of administration before a specified time; amending ss.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1629 Transportation Facility Designations
SPONSOR(S): Tourism, Infrastructure & Energy Subcommittee, Williamson
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Tourism, Infrastructure & Energy Subcommittee	15 Y, 0 N, As CS	Johnson	Keating
2) Infrastructure & Tourism Appropriations Subcommittee	11 Y, 0 N	Evans	Davis
3) Commerce Committee		Johnson	Hamon

SUMMARY ANALYSIS

State law authorizes legislative designations of transportation facilities for honorary or memorial purposes or to distinguish a particular facility. The legislative designations do not officially change the current names of the facilities, nor does the law require local governments and private entities to change street signs, mailing addresses, or 911 emergency telephone system listings. State law also requires the appropriate city or county commission to pass a resolution supporting the designation prior to the erection of markers indicating the designation.

The bill creates 14 honorary designations for various transportation facilities across the state and directs the Department of Transportation (DOT) to erect suitable markers for each designation.

The bill will have an insignificant negative fiscal impact to the State Transportation Trust Fund associated with erecting suitable markers for the above designations. These costs can be absorbed within DOT's existing resources.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Designations
Section 267.062, F.S., provides for the naming of state buildings and other facilities. The statute provides that except as specifically provided by law, state buildings, roads, bridges, parks, recreational complexes, and other similar facilities may not be named for a living person.

Section 334.071, F.S., authorizes legislative designations of transportation facilities for honorary or memorial purposes or to distinguish a particular facility. The legislative designations do not officially change the current names of the facilities nor does the statute require local governments and private entities to change street signs, mailing addresses, or 911 emergency telephone-number system listings.

Road Markers
The Department of Transportation (DOT) must place a marker at each terminus or intersection of an identified road or bridge and erect other markers it deems appropriate for a designated transportation facility. The appropriate city or county commission must pass a resolution in support of a particular designation before road markers are erected. Additionally, if the designated road segment extends through multiple cities or counties, a resolution must be passed by each affected local government.

Effect of the Bill

The bill requires DOT to erect suitable markers for each of the following designations.

Subsection 1 designates that portion of S.R. 87 between East Bay Boulevard and U.S. 98 in Santa Rosa County as “Ira Mae Bruce Memorial Highway.”

Ira Mae Bruce was Santa Rosa County’s first female commissioner and presided over numerous business and civic organizations. She was also co-broker/owner of Century 21 Island View Realty. Ms. Bruce passed away on November 30, 2020.[1]

Subsection 2 designates that portion of Davie Boulevard between S.W. 34th Avenue and S.W. 36th Avenue in Broward County as "Rubin Stacy Memorial Boulevard."

Rubin Stacy, a black man, died by hanging on July 19, 1935, in Fort Lauderdale, after an unconfirmed accusation by a white woman.[2]

Subsection 3 designates Bridge Number 100850 on S.R. 60/Courtney Campbell Causeway over Old Tampa Bay in Hillsborough County as "Virginia Creighton Bridge."

Virginia (Ginger) Creighton worked in the field of wetland science and was key to developing the Courtney Campbell Causeway – Old Tampa Bay Water Quality Improvement Project that provided environmental credit for other DOT projects in the Tampa Bay Area.[3] Ms. Creighton passed away on May 29, 2020.

[1] https://www.facebook.com/1619922901599897/posts/santa-rosa-countys-first-female-county-commissioner-has-passed-away-it-is-with-i/2817435305181978/ (last visited Mar. 11, 2021).
[2] Bryan, Susannah, *A lynch mob killed a Black man in Fort Lauderdale in 1935. His name was Rubin Stacy.* South Florida Sun Sentinel, September 11, 2020. Available at: https://www.sun-sentinel.com/local/broward/fort-lauderdale/fl-ne-rubin-stacy-lynching-memorial-20200911-u3f6jg26izerllal7vva6nz3wi-story.html (last visited Jan. 5, 2021).
[3] Virginia (Ginger) Creighton Death Notice from the Florida Department of Transportation.

Subsection 4 designates the interchange at the Florida Turnpike and U.S. 192 in Osceola County as "Representative Frank Attkisson Interchange."

Representative Frank Attkisson served on the Kissimmee City Commission from 1990-1992, as the Mayor of Kissimmee from 1996-2000, and in the Florida House of Representatives from 2000-2008. Representative Attkisson passed away on April 6, 2017.[4]

Subsection 5 designates that portion of U.S. 19/S.R. 55 between U.S. 41/S.R. 45/Tamiami Trail and Palm View Road in Manatee County as "Tiffiany Marie Olson Memorial Highway."

On December 7, 2005, Tiffiany Marie Olson was killed in a traffic crash on U.S. 19 in Manatee County. Following her mother not being notified of her death for several hours, her mother was instrumental in getting emergency contact information added to a person's driver license or identification card record.[5]

Subsection 6 designates that portion of the S.R. A1A between Oakland Park Boulevard and Palm Avenue in Broward County as "Pio R. Ieraci Memorial Highway."

Pio R. Ieraci was a civic leader active in the Broward County Community. He served as the President of the Galt Ocean Club Condominium Association for over 20 years. Mr. Ieraci passed away on December 20, 2020.[6]

Subsection 7 designates that portion of S.R. 520/W. King Street between S.R. 501/Clearlake Road and S.R. 519/Fiske Boulevard in Brevard County as "Sgt. George Lee Taylor, Sr., Memorial Highway."

Sgt. George Lee Taylor, Sr., served in the United States Army from 1967 to 1971. After returning from war, Sgt. Taylor founded the National Veterans Homeless Support, which is estimated to have helped reduce the homeless veteran population in Brevard County by 90 percent. Sgt. Taylor passed away on May 17, 2020.[7]

Subsection 8 designates that portion of S.R. 519/Fiske Boulevard between Rosa L. Jones Drive and I-95 in Brevard County as "Dr. Martin Luther King, Jr., Boulevard."

Dr. Martin Luther King, Jr., was a civil rights leader and the youngest man to have received the Nobel Peace Prize. Dr. King was assassinated on April 4, 1968.[8]

Subsection 9 designates that portion of U.S. 23/Kings Road between Spires Avenue and Tyler Street in Duval County as "Professor Dock Jackson Jordan and Mrs. Carrie Thomas Jordan Memorial Highway."

Professor Dock Jackson Jordan served as President of Edward Waters College in Jacksonville from 1895-1897. He later trained black teachers, developed workshops for black educators, and worked for the advancement of black education. Professor Jordan passed away on October 20, 1943.[9]

Mrs. Carrie Thomas Jordan was born in Jacksonville in 1870 and was instrumental in rewriting school curriculum for black students, placing an emphasis on spelling, geography, and nature study. Mrs. Jordan passed away on August 11, 1968.[10]

Subsection 10 The bill designates that portion of S.R. 715/Bacom Point Road between W. Morgan Road and S.W. 14th Street in Palm Beach County as "Deputy Sheriff Donta Manuel and Deputy Sheriff

[4] https://www.myfloridahouse.gov/Sections/Representatives/details.aspx?MemberId=4234 (last visited Mar. 4, 2021).
[5] https://www.flhsmv.gov/driver-licenses-id-cards/emergency-contact-information-history/ (last visited Mar. 10, 2021).
[6] https://www.dignitymemorial.com/obituaries/fort-lauderdale-fl/pio-ieraci-9961464 (last visited Mar. 9, 2021).
[7] https://www.dignitymemorial.com/obituaries/cocoa-fl/george-taylor-9187354 (last visited Mar. 10, 2021).
[8] https://www.nobelprize.org/prizes/peace/1964/king/biographical/ (last visited Mar. 9, 2021).
[9] Biographical information provided to the Transportation & Infrastructure Subcommittee regarding Professor Dock Jackson Jordan and Mrs. Carrie Thomas Jordan.
[10] *Id.*

Jonathan Wallace Highway."

On November 28, 2007, Deputy Sheriff Donta Manuel and Deputy Sheriff Jonathan Wallace were struck and killed by a patrol car while attempting to remove stop sticks on State Road 715 in Palm Beach County.[11]

Subsection 11 designates, upon completion of construction, the interchange at First Coast Expressway/S.R. 23 and Henley Road in Clay County as "Sergeant Eric John Twisdale Memorial Interchange."

Sergeant Eric John Twisdale served as a Deputy, Detective, Dive Team Member, and Sergeant throughout his 22 years with the Clay County Sheriff's Office. He received numerous awards, including the Sheriff's Office Lifesaving Award and Deputy of the Year.[12] Sergeant Twisdale passed away on September 16, 2020, after contracting Covid-19 during a presumed exposure at the Clay County Sheriff's Office.[13]

Subsection 12 designates that portion of E. Main Street/Bayfront Parkway/E. Gregory Street between S. Tarragona Street and the Pensacola Bay Bridge in Escambia County as "Pensacola Police Fallen Heroes Highway."

Pensacola Police Fallen Heroes Highway honors the 16 men who lost their lives in service to the City of Pensacola and will serve as a reminder that their sacrifice has not been forgotten.[14]

Subsection 13 designates Bridge No. 380097 on U.S. 27 over the Fenholloway River in Taylor County as "Private Tillman R. Clark Memorial Bridge."

Private Tillman R. Clark served in the United States Army from February 27, 1941 to September 7, 1945. During his service in Normandy he was captured as a prisoner of war. He was awarded the Purple Heart, American Defense Service Medal, and European and Middle East Theatre of Operations Medal.[15] Private Clark passed away in 1999.[16]

Subsection 14 designates that portion of U.S. 90 between Canal Street and Stewart Street in Santa Rosa County as "Reverend Murray Hamilton, Sr., Highway."

Reverend Murray Hamilton, Sr., served in the United States Navy and worked for Monsanto/Solutia for 37 years. His life's work revolved around building the community and he was influential in developing many programs and organizations in Milton. Reverend Hamilton passed away on January 25, 2021.[17]

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

B. SECTION DIRECTORY:

Section 1 Creates honorary transportation facility designations; directs DOT to erect suitable markers.

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

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

[11] Officer Down Memorial Page, https://www.odmp.org/officer/19071-deputy-sheriff-donta-j-manuel (last visited Feb. 1, 2021).
[12] Clay County Resolution 2020/2021-41 supporting the designation.
[13] Officer Down Memorial Page, https://www.odmp.org/officer/24909-sergeant-eric-john-twisdale (last visited Mar. 18, 2021).
[14] City of Pensacola Resolution No. 2020-38.
[15] Taylor County Resolution, https://cms6.revize.com/revize/taylorcountyfl/TILLMAN%20CLARK%20RESOLUTION.pdf (last visited Mar. 22, 2021).
[16] https://www.legacy.com/obituaries/name/gloria-clark-obituary?pid=177016694 (last visited Mar. 22, 2021).
[17] Reverend Murray Hamilton Sr., Funeral Program.

1. Revenues:

   None.

2. Expenditures:

   DOT estimates a cost of $1,000 per designation for the appropriate markers, which provides for two signs per designation at $500 per sign.[18] Therefore, the bill has an estimated negative fiscal impact of $14,000 to the State Transportation Trust Fund. This cost can be absorbed within existing DOT resources.

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 22, 2021, the Tourism, Infrastructure & Energy Subcommittee adopted a proposed committee substitute for the bill along with three amendments. The bill, as originally filed, designated the Ira Mae Bruce Memorial Highway in Santa Rosa County. The committee substitute:

- Amends the location of the Ira Mae Bruce Memorial Highway; and
- Creates the following additional honorary designations:
  - Rubin Stacy Memorial Boulevard in Broward County;
  - Virginia Creighton Bridge in Hillsborough County;

[18] E-mail from Amanda Marsh, Legislative Programs Office, Department of Transportation, RE: Road Designation Fiscal (Jan. 5, 2021).

    - Representative Frank Attkisson Interchange in Osceola County;
    - Tiffiany Marie Olson Memorial Highway in Manatee County;
    - Pio R. Ieraci Memorial Highway in Broward County;
    - Sgt. George Lee Taylor, Sr., Memorial Highway in Brevard County;
    - Dr. Martin Luther King, Jr., Boulevard in Brevard County;
    - Professor Dock Jackson Jordan and Mrs. Cassie Thomas Jordan Memorial Highway in Duval County;
    - Deputy Sheriff Donta Manuel and Deputy Sheriff Jonathan Wallace Highway in Palm Beach County;
    - Sergeant Eric John Twisdale Memorial Interchange in Clay County;
    - Pensacola Police Fallen Heroes Highway in Escambia County;
    - Private Tillman R. Clark Memorial Bridge in Taylor County; and
    - Reverend Murray Hamilton, Sr., Highway in Santa Rosa County.
- Directs DOT to erect suitable markers for each of the above designations.

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 transportation facility designations; providing honorary designations of certain transportation facilities in specified counties; directing the Department of Transportation to erect suitable markers; providing an effective date.

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

Section 1. Transportation facility designations; Department of Transportation to erect suitable markers.—

(1) That portion of S.R. 87 between E. Bay Boulevard and U.S. 98 in Santa Rosa County is designated as "Ira Mae Bruce Memorial Highway."

(2) That portion of Davie Boulevard between S.W. 34th Avenue and S.W. 36th Avenue in Broward County is designated as "Rubin Stacy Memorial Boulevard."

(3) Bridge number 100850 on S.R. 60/Courtney Campbell Causeway over Old Tampa Bay in Hillsborough County is designated as "Virginia Creighton Bridge."

(4) The interchange at the Florida Turnpike and U.S. 192 in Osceola County is designated as "Representative Frank Attkisson Interchange."

(5) That portion of U.S. 19/S.R. 55 between U.S. 41/S.R.

45/Tamiami Trail and Palm View Road in Manatee County is designated as "Tiffiany Marie Olson Memorial Highway."

(6) That portion of S.R. A1A between Oakland Park Boulevard and Palm Avenue in Broward County is designated as "Pio R. Ieraci Memorial Highway."

(7) That portion of S.R. 520/W. King Street between S.R. 501/Clearlake Road and S.R. 519/Fiske Boulevard in Brevard County is designated as "Sgt. George Lee Taylor, Sr., Memorial Highway."

(8) That portion of S.R. 519/Fiske Boulevard between Rosa L. Jones Drive and I-95 in Brevard County is designated as "Dr. Martin Luther King, Jr., Boulevard."

(9) That portion of U.S. 23/Kings Road between Spires Avenue and Tyler Street in Duval County is designated as "Professor Dock Jackson Jordan and Mrs. Carrie Thomas Jordan Memorial Highway."

(10) That portion of S.R. 715/Bacom Point Road between W. Morgan Road and S.W. 14th Street in Palm Beach County is designated as "Deputy Sheriff Donta Manuel and Deputy Sheriff Jonathan Wallace Highway."

(11) Upon completion of construction, the interchange at First Coast Expressway/S.R. 23 and Henley Road in Clay County is designated as "Sergeant Eric John Twisdale Memorial Interchange."

(12) That portion of E. Main Street/Bayfront Parkway/E.

Gregory Street between S. Tarragona Street and the Pensacola Bay Bridge in Escambia County is designated as "Pensacola Police Fallen Heroes Highway."

(13) Bridge No. 380097 on U.S. 27 over the Fenholloway River in Taylor County is designated as "Private Tillman R. Clark Memorial Bridge."

(14) That portion of U.S. 90 between Canal Street and Stewart Street in Santa Rosa County is designated as "Reverend Murray Hamilton, Sr., Highway."

(15) The Department of Transportation is directed to erect suitable markers designating the transportation facilities as described in this section.

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

COMMERCE COMMITTEE

CS/HB 1629 by Rep. Williamson
TRANSPORTATION FACILITY DESIGNATIONS

AMENDMENT SUMMARY
APRIL 14, 2021

Amendment 1 by Rep. Williamson (Line 37):

- Designates Austin D. Gayne Memorial Highway in Orange County.
- Designates Anthony Reznik Boulevard in Miami-Dade County.
- Corrects a drafting error.

Amendment 2 by Rep. Rodriguez (Line 14)

- Corrects the designation of the Ira Mae Bruce Memorial Highway to be referred to instead as the Ira Mae Wells-Bruce Memorial Highway.
- Designates Gus Barreiro Way in Miami-Dade County.

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 Williamson offered the following:

Amendment

Remove lines 37-60 and insert:

Martin Luther King, Jr., Memorial Highway."

(9) That portion of U.S. 23/Kings Road between Spires Avenue and Tyler Street in Duval County is designated as "Professor Dock Jackson Jordan and Mrs. Carrie Thomas Jordan Memorial Highway."

(10) That portion of S.R. 715/Bacom Point Road between W. Morgan Road and S.W. 14th Street in Palm Beach County is designated as "Deputy Sheriff Donta Manuel and Deputy Sheriff Jonathan Wallace Highway."

(11) Upon completion of construction, the interchange at First Coast Expressway/S.R. 23 and Henley Road in Clay County is

designated as "Sergeant Eric John Twisdale Memorial Interchange."

(12) That portion of E. Main Street/Bayfront Parkway/E. Gregory Street between S. Tarragona Street and the Pensacola Bay Bridge in Escambia County is designated as "Pensacola Police Fallen Heroes Highway."

(13) Bridge No. 380097 on U.S. 27 over the Fenholloway River in Taylor County is designated as "Private Tillman R. Clark Memorial Bridge."

(14) That portion of U.S. 90 between Canal Street and Stewart Street in Santa Rosa County is designated as "Reverend Murray Hamilton, Sr., Highway."

(15) That portion of Westbound S.R. 408/Holland East Expressway between the Mills Avenue Exit and the Rosalind Avenue Exit in Orange County is designated as "Austin D. Gayne Memorial Highway."

(16) That portion of SR 826/Sunny Isles Boulevard between N.E. 35th Avenue and S.R. A1A in Miami-Dade County is designated as "Anthony Reznik Boulevard."

(17) The Department of Transportation is directed to erect

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 Rodriguez offered the following:

Amendment

Remove lines 14-15 and insert:

U.S. 98 in Santa Rosa County is designated as "Ira Mae Wells-Bruce Memorial Highway."

(2) That portion of S.R. 968/S.W. 1st Street between S.W. 12th Avenue and S.W. 17th Avenue in Miami-Dade County is designated as "Gustavo Barreiro Way."

PCS for HB 991

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCS for HB 991 Petroleum Fuel Measuring Devices
SPONSOR(S): Commerce Committee
TIED BILLS: **IDEN./SIM. BILLS:**

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

SUMMARY ANALYSIS

The Department of Agriculture and Consumer Services (DACS) is responsible for monitoring the accuracy of Florida's gas pumps, scales, price scanners, and other commercial weighing and measuring devices. This includes the responsibility of making sure that retail petroleum fuel measuring devices (measuring devices) used in selling petroleum fuel at retail are working safely and properly. DACS has the authority to issue warning letters, impose administrative fines, or revoke or suspend any registration issued by DACS for violations of the chapter of law governing gasoline and oil inspections.

Recently, local governments have been adopting fuel pump security measures that are more restrictive than the rules established by DACS related to reoccurring issues with skimmers at certain convenience stores.

PCS for HB 991:

- Preempts to the state and DACS the regulation of measuring devices.
- Effective January 1, 2022, requires owners of measuring devices to affix or install onto each measuring device at least two security measures, instead of one.
- Adds additional security measures that can be used by owners to comply with security measure requirements, including, security tape unique to the station, a physical locking mechanism with an access key unique to each station, an alarm to alert the owner or operator if there is an unauthorized opening of the measuring device panel, a daily inspection of each measuring device, and a contactless payment method that does not use a magnetic strip scanning device.
- Limits DACS' authority to impose administrative fines and penalties for violations of measuring device requirements, unless the person who owns the measuring device has failed to install or implement a security measure or placed the measuring device back in service before compliance has been restored.
- Prevents DACS from imposing a fine if noncompliance is the result of damage or alteration after repair by the owner of the security measure, and the owner demonstrates or provides sufficient evidence of such repair.
- Requires DACS, upon discovery of a measuring device without a security measure or with an illegal skimming or filtering device or an altered or damaged security measure, to prohibit further use until the security measure is installed, replaced, or repaired.
- Requires an owner of a measuring device that finds an illegal skimming or filtering device or an altered or damaged security measure to report such to DACS within three business days of the discovery on a form prescribed by DACS.
- Removes the 5-day timeframe within which an owner must take corrective action for a security measure violation, and the authority for DACS to immediately take the measuring device out of service for repeat violations found on the same measuring device.

The PCS may have an insignificant fiscal impact on state and local government.

Except as otherwise provided, the effective date of the bill is July 1, 2021.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Petroleum Fuel Measuring Devices

The Division of Consumer Services (Division) within the Department of Agriculture and Consumer Services (DACS) is the state's clearinghouse for consumer complaints, information and protection. The Division regulates various businesses, such as charitable organizations and telemarketers. In addition, the Division protects consumers and businesses from unfair and unsafe business practices across a wide range of industries, including antifreeze, brake fluid, gasoline, liquefied petroleum (LP) gas, pesticides, water vending machines, and weighing and measuring devices.[1]

Chapter 525, F.S., which governs gasoline and oil inspections in the state, makes DACS responsible for monitoring the accuracy of Florida's gas pumps, scales, price scanners, and other commercial weighing and measuring devices to promote a fair and equitable marketplace and protect consumers. This includes the inspection of retail gas stations to ensure that fuel dispensers are working safely and properly.[2]

DACS Inspections

Current law requires DACS to inspect all measuring devices used in selling or distributing petroleum fuel at wholesale and retail, and to affix a sticker to each petroleum measuring device to signify that the device has been inspected and the device owner is responsible for its proper use and maintenance.[3]

Owners or managers of petroleum fuel measuring devices (measuring devices) are responsible for ensuring accurate measurement by the device within certain tolerances defined by the rule. An appropriate security seal must be placed on all measuring devices found to be giving accurate measure within the tolerances defined by DACS so that the metering adjustment cannot be changed without breaking the seal.[4]

A measuring device found to be operating outside the tolerances defined by rule is deemed inaccurate and DACS, at its discretion, must either:

- Give, in writing, the owner or manager of the measuring device a reasonable time to repair the measuring device; or
- Condemn or prohibit further use of the measuring device by using an appropriate security seal to obstruct operation without breaking the seal.[5]

It is unlawful to operate a measuring device that has been condemned or prohibited from further use by DACS, without the written consent from DACS.[6]

It is also unlawful to:

- Install or operate a measuring device in this state which gives short measure.
- Break, cut, or remove any seal applied by DACS to a measuring device or container, unless broken by a DACS registered meter mechanic for repair and adjustment. After repairs and

[1] The Florida Department of Agriculture and Consumer Services, http://www.freshfromflorida.com/Divisions-Offices/Consumer-Services (last visited Jan. 19, 2018).
[2] Department of Agriculture and Consumer Services, Weights and Measures, https://www.fdacs.gov/Business-Services/Weights-and-Measures (last visited Mar. 11, 2021).
[3] S. 525.07(1), F.S.
[4] S. 525.07(3), F.S.
[5] S. 525.07(4), F.S.
[6] S. 525.07(5), F.S.

adjustments are made, the adjusting mechanism must immediately be resealed by the registered meter mechanic with a seal clasp bearing at least the name or initials of the registered mechanic, and the mechanic must immediately notify DACS of this action.[7]

Entities that adjust the accuracy of measuring devices are required to use test measures that have been calibrated with standards traceable to the National Institute of Standards and Technology[8] within one year prior to the date of the adjustment for volumes of less than 500 gallons and within three years before the date of the adjustment for volumes of 500 gallons or more.[9]

Security Measures

Owners or managers of retail measuring devices are required to have affixed or installed onto the device **one** security measure to restrict the unauthorized access of customer payment card[10] information. The security measure must include one or more of the following:

- The placement of pressure-sensitive security tape over the panel opening that leads to the scanning device[11] for the measuring device in a manner that will restrict the unauthorized opening of the panel.
- A device or system that will render the measuring device or the scanning device in the measuring device inoperable if there is an unauthorized opening of the panel.
- A device or system that encrypts the customer payment card information in the scanning device.
- Another security measure approved by DACS.[12]

When a measuring device is found to have no security measure, or with an altered or damaged security measure, DACS is required to send a written notice of noncompliance to the owner or manager. Upon written notice, they are given five calendar days to comply. After the fifth day of noncompliance, DACS is authorized to prohibit further use of the device until a security measure is installed, replaced, or repaired. In addition, DACS is authorized to take the measuring device out of service if repeat violations are found on the same measuring device,[13] and may also seize any skimming device[14] for use as evidence.[15]

DACS is authorized to adopt rules to administer these requirements.[16]

Administrative Fines and Penalties

DACS has the authority to issue warning letters, impose administrative fines, or revoke or suspend any registration issued by the department. In addition to the authority to issue a warning letter, impose an administrative fine in the Class II category, or revoke or suspend any DACS issued registration,

[7] S. 525.07(6) and (7), F.S.
[8] National Institute of Standards and Technology (NIST), *About NIST*, https://www.nist.gov/about-nist (last visited Mar. 1, 2021). The NIST, is a physical sciences laboratory and a non-regulatory agency of the United States Department of Commerce. Its mission is to promote innovation and industrial competitiveness. NIST's activities are organized into laboratory programs that include nanoscale science and technology, engineering, information technology, neutron research, material measurement, and physical measurement. From 1901–1988, the agency was named the National Bureau of Standards.
[9] S. 525.07(9), F.S.
[10] S. 817.625(1)(b), F.S., defines "payment card" as a credit card, charge card, debit card, or any other card that is issued to an authorized card user and that allows the user to obtain, purchase, or receive goods, services, money, or anything else of value from a merchant.
[11] S. 817.625(1)(d), F.S., defines "scanning device" as a scanner, reader, or any other electronic device that may be used to access, read, scan, obtain, memorize, or store, temporarily or permanently, information encoded on the computer chip, magnetic strip or stripe, or other storage mechanism of a payment card or from another device that directly reads the information from a payment card. The term does not include a skimming device.
[12] 525.07(10)(a), F.S.
[13] 525.07(10)(b), F.S.
[14] S. 817.625(1)(b), F.S.
[15] *See* s. 525.07(10), F.S.
[16] R. 5J-21.009, F.A.C.

violations are a first degree misdemeanor. DACS is authorized to submit cases for prosecution to the state attorney, and bring an action in circuit court to enjoin the violation.[17]

According to DACS, in calendar year 2020:

- Forty-seven warning letters were issued to device owners who were found to have skimmers for a second time.
- Fifty-six fines were levied against device owners who had previously received a warning letter, but whose devices were again found to be compromised by skimmers.
- There were no revocations or suspensions.
- There were no civil cases brought seeking injunctions.[18]

The Division of Consumer Services adheres to the following process during skimmer enforcement:

- First skimmer detected – Business is notified that a skimmer was located and offered free training on skimmer detection.
- Second skimmer detected (within one year) – Business receives a warning letter including the dates the skimmers were found, along with notice that if they do not put additional safeguards in place, the finding of additional skimmers could result in a penalty.
- Third and subsequent skimmers detected (within one year) – The business is asked to provide information on the changes to their security or pump-monitoring program aimed at reducing the skimmer risk to consumers. If no additional steps were taken, an administrative complaint is issued for violations of law, which may result in a fine.[19]

Card Skimmers

Current law defines a "skimming device" as a self-contained device that is:

- Designed to read and store in the device's internal memory information encoded on the computer chip, magnetic strip or stripe, or other storage mechanism of a payment card or from another device that directly reads the information from a payment card; and
- Incapable of processing the payment card information for the purpose of obtaining, purchasing, or receiving goods, services, money, or anything else of value from a merchant.[20]

According to DACS, card skimmers are small electronic devices illegally installed inside gas pumps that collect information from the magnetic strip on a credit or debit card when it is used during a transaction. They first began to appear in Florida in 2015 and have grown exponentially since.[21]

Initially these devices were attached to card readers on the outside of the gas pump, but now scammers are installing them inside the pump and often employing Bluetooth technology or integrated cell phone components to transmit card and PIN information.[22]

DACS inspects gas pumps at about 9,000 gas stations, truck stops, and marinas each year, and has removed over 3,400 skimmers since 2015. Skimmers can be undetectable to consumers because of their location inside gas pumps, and have a potential for $1 million in fraudulent charges per skimmer.[23]

Local Regulations

The Florida Constitution grants local governments broad home rule authority. Non-charter county governments may exercise those powers of self-government that are provided by general or special

[17] S. 525.16, F.S.
[18] Blair Bodenmiller, Assistant Director of the Division of Consumer Services, Department of Agriculture and Consumer Services, RE: HB 991 Skimmer Bill, (Mar. 4, 2021).
[19] *Id.*
[20] S. 817.625(1)(b), F.S.
[21] Department of Agriculture and Consumer Services, *Card Skimmers*, https://www.fdacs.gov/Consumer-Resources/Scams-and-Fraud/Card-Skimmers (last visited Mar. 11, 2021).
[22] *Id.*
[23] *Id.*

law.[24] Those counties operating under a county charter have all powers of self-government not inconsistent with general law or special law approved by vote of the electors.[25] Likewise, municipalities[26] have those governmental, corporate, and proprietary powers that enable them to conduct municipal government, perform functions, provide services, and exercise any power for municipal purposes, except as otherwise provided by law.[27]

Currently, some local governments have adopted fuel pump security measures that are more restrictive than the rules established by DACS in response to repeated skimming violations of certain convenience stores. For instance, Lee County requires each fuel pump to be equipped with a visible lock, a system that would render the pump inoperable if it is accessed without a security code, or a device that encrypts customer payment card information.[28] Failure to affix an adequate security measure may result in fines of $250 per gas pump for every day that the appropriate devices are not installed.[29] Collier County,[30] Charlotte County,[31] and the Village of Estero[32] also have local fuel pump ordinances.

State Preemption

State preemption precludes a local government from exercising authority in a particular area and requires consistency with the state constitution or state statute.[33] A local government enactment may be found inconsistent with state law if:

- The Legislature has preempted a particular subject area to the state; or
- The local regulation conflicts with a state statute.[34]

Florida law recognizes two types of preemption: express and implied. Express preemption requires a specific legislative statement; it cannot be implied or inferred.[35] Express preemption of a field by the Legislature must be accomplished by clear language stating that intent.[36] When local ordinances have been enacted in the face of state preemption, the effect has been to find such ordinances null and void.[37]

Implied preemption is a legal doctrine created to address those situations in which the courts may have been concerned by the legislature's failure to expressly preempt areas, which, for all intents and purposes, seemed dominated by the state. Findings of implied preemption are for a very narrow class of areas in which the state has legislated pervasively.[38]

Effect of the Bill

PCS for HB 991 preempts to the state and DACS the regulation of measuring devices.

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[24] Art. VIII, s. 1(f), Fla. Const.
[25] Art. VIII, s. 1(g), Fla. Const.
[26] A municipality is a local government entity created to perform functions and provide services for the particular benefit of the population within the municipality, in addition to those provided by the county. The term "municipality" may be used interchangeably with the terms "town," "city," and "village."
[27] Art. VIII, s. 2(b), Fla. Const. *See also* s. 166.021(1), F.S.
[28] *See* Lee County, Florida Ordinance No. 19-09.
[29] *Id*.
[30] *See* Collier County, Florida Ordinance No. 18-55.
[31] *See* Charlotte County, Florida Ordinance No. 19-026.
[32] *See* Village of Estero, Ordinance No. 18-25.
[33] James R. Wolf and Sarah Harley Bolinder, *The Effectiveness of Home Rule: A Preemption and Conflict Analysis*, 83 Fla. B.J. 92 (June 2009), available at https://www.floridabar.org/the-florida-bar-journal/the-effectiveness-of-home-rule-a-preemption-and-conflict-analysis/.
[34] *Id.*
[35] *See City of Hollywood v. Mulligan*, 934 So. 2d 1238, 1243 (Fla. 2006); *Phantom of Clearwater, Inc. v. Pinellas County*, 894 So. 2d 1011, 1018 (Fla. 2d DCA 2005), approved in *Phantom of Brevard, Inc. v. Brevard County*, 3 So. 3d 309 (Fla. 2008).
[36] *Mulligan*, 934 So. 2d at 1243.
[37] *See, e.g., Nat'l Rifle Ass'n of Am., Inc. v. City of S. Miami,* 812 So.2d 504 (Fla. 3d DCA 2002).
[38] Wolf and Bolinder, *supra* note 17.

The PCS removes DACS' authority to impose administrative fines and penalties for violations of measuring device requirements, unless the person who owns or operates the measuring device has:

- Failed to install or implement a security measure; or
- Placed the measuring device back in service before compliance has been restored.
    - However, if noncompliance is the result of damage or alteration after repair by the owner or operator of the security measure, and the owner or operator demonstrates or provides sufficient evidence of such repair, the owner or operator may not be fined.

The PCS adds the following additional security measures to the current list of security measures:

- The placement and maintenance of pressure-sensitive custom branded security tape unique to the station in more than one location over the panel opening.
- A physical locking mechanism that requires an access key unique to each station to restrict the unauthorized access of customer payment card information.
- A device or system that will sound an alarm to alert the owner or operator if there is an unauthorized opening of the retail petroleum measuring device panel.
- A daily inspection of each measuring device that includes opening the panels, using an anti-skimmer application that detects wireless based skimmers, and documenting such inspections.
- A device or system that permits customers to use a contactless payment method, such as an electronic contact-free system, tap-and-go system, or mobile cryptographic system, for payment that does not use a magnetic strip scanning device.

Effective January 1, 2022, the PCS requires owners or operators of a measuring device to affix or install onto the measuring device at least two security measures, instead of one. The use and maintenance of two security measures on each measuring device by an owner or operator is deemed to be in compliance with security measure requirements.

The PCS removes:

- The requirement that DACS provide written notice to an owner or operator without a security measure or with an altered or damaged security measure.
- The 5-day timeframe within which an owner or operator must take corrective action for a security measure violation.
- The authority for DACS to immediately take the measuring device out of service for repeat violations found on the same measuring device.

The PCS requires DACS, upon discovery of a measuring device without a security measure or with an illegal skimming or filtering device or an altered or damaged security measure, to prohibit further use until the security measure is installed, replaced, or repaired, and authorizes DACS to take a measuring device that is in violation of the security measure requirements out of service until compliance is restored.

The PCS requires an owner or operator of a measuring device that finds an illegal skimming or filtering device or an altered or damaged security measure to report the illegal device or altered or damaged measure to DACS within three business days of the discovery on a form prescribed by DACS.

B. SECTION DIRECTORY:

Section 1: Amends s. 525.07, F.S., relating to powers and duties of department; inspections; unlawful acts.

Section 2: Amends s. 525.16, F.S., relating to administrative fine; penalties; prosecution of cases by state attorney.

Section 3: Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

Limiting the ability of the department to issue fines in certain circumstances may have an insignificant fiscal impact on state government.

2. Expenditures:

Requiring the department to take devices out of service and monitoring whether the devices have been repaired prior to being placed by in service may have an insignificant fiscal impact on state government.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

Preempting local governments from enacting additional requirements for fuel pump security measures and enforcing such requirements will prevent a local government from imposing and collecting fines from owners and operators of gas stations. The fiscal impact is unknown but could be offset by a reduction in enforcement costs.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The PCS may provide a more predictable and uniform regulatory framework to owners and operators of gas stations related to fuel pump security measures. The illegal practice of card skimming may be reduced by the statewide enhancement of security measures required by owners of gas stations on measuring devices.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The county/municipality mandates provision of Art. VII, s. 18 of the Florida Constitution may apply because this bill prohibits local governments from regulating measuring devices and collecting fines from non-compliant owners. This may result in a decrease in fines collected. However, an exemption may apply because the fiscal impact is likely to be insignificant since the costs expended regulating and enforcing such measures will also decrease.

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 petroleum fuel measuring devices; amending s. 525.07, F.S.; revising the types of certain security measures required to be affixed to or installed onto retail petroleum fuel measuring devices; requiring owners or operators of retail petroleum fuel measuring devices to affix to or install onto the measuring devices certain security measures by a specified date; providing that the use of certain measures complies with such requirement; authorizing the Department of Agriculture and Consumer Services to take certain retail petroleum fuel measuring devices out of service until compliance is restored; requiring owners or operators of retail petroleum fuel measuring devices to report certain illegal devices and altered or damaged measures to the department; preempting the regulation of petroleum fuel measuring devices to the state and the Department of Agriculture and Consumer Services; prohibiting the department from enforcing certain provisions for violations of certain rules; amending s. 525.16, F.S.; exempting department petroleum fuel measuring device rules from enforcement under specified provisions; providing an effective date.

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

Section 1. Subsection (10) of section 525.07, Florida Statutes, is amended to read:

525.07 Powers and duties of department; inspections; unlawful acts.—

(10)(a) Each person who owns or operates ~~manages~~ a retail petroleum fuel measuring device shall have affixed to or installed onto the measuring device a security measure to restrict the unauthorized access of customer payment card information. The security measure must include one or more of the following:

1. The placement and maintenance of pressure-sensitive security tape over the panel opening that leads to the scanning device for the retail petroleum fuel measuring device in a manner that will restrict the unauthorized opening of the panel or the placement and maintenance of pressure-sensitive custom branded security tape unique to the station in more than one location over the panel opening.

2. A device or system that will render the retail petroleum fuel measuring device or the scanning device in the measuring device inoperable if there is an unauthorized opening of the panel.

3. A device or system that encrypts the customer payment card information in the scanning device.

4. A physical locking mechanism that requires an access key unique to each station to restrict the unauthorized access of customer payment card information.

5. A device or system that will sound an alarm to alert the owner or operator if there is an unauthorized opening of the retail petroleum measuring device panel.

6. A daily inspection of each measuring device that includes opening the panels, using an anti-skimmer application that detects wireless based skimmers, and documenting such inspections.

7. A device or system that permits customers to use a contactless payment method, such as an electronic contact-free system, tap-and-go system, or mobile cryptographic system, for payment that does not use a magnetic strip scanning device.

8.~~4.~~ Another security measure approved by the department.

(b) Effective January 1, 2022, the owner or operator of a retail petroleum fuel measuring device shall have affixed to or installed onto the measuring device at least two of the security measures under paragraph (a). The use and maintenance of two security measures on each measuring device by an owner or operator is deemed to be in compliance with this subsection.

(c)~~(b)~~ ~~The owner or manager of~~ A retail petroleum fuel measuring device without a security measure or with an illegal skimming or filtering device or an altered or damaged security measure, upon discovery by the department, shall be prohibited

from further use until the security measure is installed, replaced, or repaired. The department may take a retail petroleum fuel measuring device that is in violation of s. 525.07(10) out of service until compliance is restored ~~upon written notice from the department of such noncompliance, shall have 5 calendar days to comply with this subsection. After the fifth day of noncompliance, the department may prohibit further use of the retail petroleum fuel measuring device until a security measure is installed, replaced, or repaired. A repeat violation found on the same retail petroleum fuel measuring device will be cause for the department to immediately take the measuring device out of service~~.

(d) If the owner or operator of a retail petroleum fuel measuring device finds an illegal skimming or filtering device or an altered or damaged security measure, the owner or operator shall report the illegal device or altered or damaged measure to the department within 3 business days of the discovery on a form prescribed by the department.

(e)~~(c)~~ For purposes of this subsection, the terms "scanning device" and "payment card" have the same meanings as defined in s. 817.625.

(f)~~(d)~~ This subsection applies only to retail petroleum fuel measuring devices that have a scanning device.

(g)~~(e)~~ The department may seize without warrant any skimming device, as defined in s. 817.625, for use as evidence.

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

(h)~~(f)~~ The regulation of retail petroleum fuel measuring devices is preempted to the state. The department shall enforce, and may adopt rules to administer, this subsection; however, s. 525.16 may not be used to enforce this section unless the owner or operator of a retail petroleum fuel measuring device has failed to install or implement security measures pursuant to this section or has placed the measuring device back in service before compliance with this section has been restored. However, if noncompliance is the result of damage or alteration after repair by the owner or operator of the security measure, and the owner or operator demonstrates or provides sufficient evidence of such, the department may not use s. 525.16 to enforce this section.

Section 2. Subsection (6) is added to section 525.16, Florida Statutes, to read:

525.16 Administrative fine; penalties; prosecution of cases by state attorney.—

(6) This section may not be used to enforce s. 525.07(10) or rules adopted thereunder unless the owner or operator of a retail petroleum fuel measuring device has failed to install or implement security measures pursuant to s. 525.07(10) or has placed the measuring device back in service before compliance with s. 525.07(10) has been restored. However, if noncompliance is the result of damage or alteration after repair by the owner or operator of the security measure, and the owner or operator

demonstrates or provides sufficient evidence of such, the department may not use this section to enforce 525.07(10).

Section 3. Except as otherwise provided, this act shall take effect July 1, 2021.

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

COMMERCE COMMITTEE

PCS for HB 991 by Rep. Busatta Cabrera
Petroleum Fuel Measuring Devices

AMENDMENT SUMMARY
April 14, 2021

Amendment 1 by Rep. Busatta Cabrera (line 88):
The amendment:

- Removes the requirement that an owner or operator of a retail petroleum fuel measuring device report an illegal skimming device or altered or damaged security measure to the Department of Agriculture and Consumer Services within three business days of discovery.

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 Busatta Cabrera offered the following:

Amendment (with title amendment)

Remove lines 88-93

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

Remove lines 14-17 and insert:

restored; preempting the regulation of petroleum

PCS for HB 1311

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCS for HB 1311 Public Records and Public Meetings/Public Service Commission
SPONSOR(S): Commerce Committee
TIED BILLS: **IDEN./SIM. BILLS:** SB 7066

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

SUMMARY ANALYSIS

Current law provides public record exemptions for proprietary confidential business information provided to and held by the Public Service Commission (PSC). The PSC has established practices and procedures to ensure that this information is protected from disclosure during evidentiary hearings that must be held in compliance with the Sunshine Law. Rarely, however, the PSC may find that a case is so heavily intertwined with confidential information, or the volume of that information so substantial, that its practices and procedures are not sufficient to allow it conduct a public hearing while also protecting the confidential information. In this circumstance, the PSC may forward the matter for a formal administrative hearing before the Division of Administrative Hearings (DOAH), which is authorized to hold a closed hearing.

The bill creates a public meeting exemption for those portions of a hearing held by the PSC in which proprietary confidential business information that is confidential or exempt from disclosure as a public record is discussed. The bill provides that no exempt portion of a hearing may be off the record and that all exempt portions must be recorded and transcribed.

The bill also creates a public record exemption for these recordings and transcriptions. Each such recording or transcription is confidential and exempt from disclosure as a public record unless a court of competent jurisdiction determines that the relevant portion of the hearing was not restricted to the discussion of proprietary confidential business information that is confidential or exempt from disclosure as a public record. If the court makes such a determination, only that portion of the recording and transcript which reveals nonexempt information may be disclosed to a third party.

These exemptions will allow the PSC to close those portions of a hearing in which information that is confidential or exempt from disclosure as a public record is discussed. This may avoid the need for the PSC to send certain cases to DOAH for a closed hearing when those cases are heavily intertwined with or involve a substantial volume of confidential or exempt information.

The bill provides a statement of public necessity as required by the Florida Constitution. The bill provides that this public meeting and public record exemption is subject to the Open Government Sunset Review Act and will stand repealed on October 2, 2026, unless the Legislature reviews and reenacts the exemptions by that date.

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

The bill provides an effective date of upon becoming law.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Public Records

Article I, section 24(a) of the Florida Constitution sets forth the state's public policy regarding access to government records. This section guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government; counties, municipalities, and districts; and each constitutional officer, board, and commission, or entity created pursuant to law or the Florida Constitution. 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]

Public Meetings

The Florida Constitution requires all meetings of any collegial public body of the executive branch of state government or any collegial public body of a county, municipality, school district, or special district, at which official acts are to be taken or at which public business of such body is to be transacted or discussed, be open and noticed to the public.[7] Public policy regarding access to government meetings also is addressed in the Florida Statutes. Section 286.011, F.S., known as the "Government in the Sunshine Law" or "Sunshine Law," further requires all meetings of any board or commission of any state agency or authority, or of any agency or authority of any county, municipality, or political subdivision, at which official acts are to be taken must be open to the public at all times.[8] The board or commission must provide reasonable notice of all public meetings.[9] Public meetings may not be held at any location that discriminates on the basis of sex, age, race, creed, color, origin, or economic status or that operates in a manner that unreasonably restricts the public's access to the facility.[10] Minutes of a public meeting must be promptly recorded and open to public inspection.[11]

[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] Art. 1, s. 24(b), FLA. CONST.
[8] S. 286.011(1), F.S.
[9] S. 286.011(1), F.S.
[10] S. 286.011(6), F.S.
[11] S. 286.011(2), F.S.

Failure to abide by public requirements will invalidate any resolution, rule, or formal action adopted at a meeting.[12] A public officer or member of a governmental entity who violates the Sunshine Law is subject to civil and criminal penalties.[13]

Proceedings before the Public Service Commission

The Public Service Commission (PSC) is an arm of the legislative branch of government.[14] The role of the PSC is to ensure that Florida's consumers receive some of their most essential services – electric, natural gas, telephone, water, and wastewater – in a safe, affordable, and reliable manner. In doing so, the PSC exercises regulatory authority over utilities in one or more of three key areas: rate base/economic regulation; competitive market oversight; and monitoring of safety, reliability, and service issues.[15] The PSC possesses extensive expertise in the unique legal and policy considerations applicable to Florida's regulated utilities and their ratepayers and employs this expertise when it conducts administrative hearings and independently weighs the evidence presented.[16]

Each meeting, workshop, hearing, or other proceeding attended by two or more PSC commissioners, and each proceeding where a decision that concerns the rights or obligations of any person is made, must be streamed live on the Internet.[17] Further, a recorded copy of each such meeting, workshop, hearing, or proceeding must be made available on the commission's website.[18]

Although it is authorized to refer matters to the Division of Administrative Hearings (DOAH) for formal evidentiary hearings and fact finding,[19] the PSC is unique among state agencies in that it conducts most of its own formal evidentiary hearings.[20] In these hearings, commissioners rule on procedural matters, establish evidence of record, weigh the record evidence, and apply the law to the facts of the case. Many of these hearings involve some amount of proprietary confidential business information that is exempted by statute from public disclosure,[21] as described below.

All formal administrative hearings conducted by the PSC are noticed and open to the public, consistent with the Sunshine Law. The PSC has established practices and procedures that allow these hearings to be conducted in a manner that complies with the Sunshine Law and protects proprietary confidential business information from disclosure. In these hearings, confidential material typically plays a minor role in the resolution of any particular issue, and the parties avoid public disclosure of this material by stipulating to certain matters and keeping discussions of confidential matters, which generally occur during cross examination, minimal and without mention of critical details. Recently, however, the PSC has found certain dockets where fact-finding on one or more issues is so intertwined with confidential information, and the volume of that information is so substantial, that it cannot afford the parties a full and fair hearing in the public and also protect the confidential information.[22]

Public Record Exemptions for Proprietary Confidential Business Information held by the PSC

Current law provides that any records received by the PSC which are shown and found by the PSC to be proprietary confidential business information must be kept confidential and are exempt from public disclosure.[23] For these purposes, the law defines proprietary confidential business information as "information, regardless of form or characteristics, which is owned or controlled by the person or company, is intended to be and is treated by the person or company as private in that the disclosure of the information would cause harm to the ratepayers or the person's or company's business operations, and has not been disclosed unless disclosed pursuant to a statutory provision, an order of a court or

[12] S. 286.011(1), F.S.
[13] S. 286.011(3), F.S. Penalties include a fine of up to $500 or a second degree misdemeanor.
[14] S. 350.001, F.S.
[15] Florida Public Service Commission, http://www.psc.state.fl.us/ (last visited March 11, 2021).
[16] Florida Public Service Commission, Agency Analysis of 2021 House Bill 1311, p. 1 (March 4, 2021).
[17] S. 350.01(8), F.S.
[18] *Id.*
[19] Ss. 350.125 and 120.569(2), F.S.
[20] FPSC, *supra* note 16, at 1. These formal evidentiary hearings consist of hearings conducted pursuant to ss. 120.569 and 120.57, F.S.
[21] *Id.*
[22] FPSC, *supra* note 16, at 1.
[23] *See* ss. 366.093, 367.156, and 368.108, F.S. Records obtained under ch. 364 must be kept confidential by the PSC and are exempt from public disclosure upon a claim by the person providing the records. S. 364.183, F.S.

administrative body, or private agreement that provides that the information will not be released to the public." This information includes, but is not limited to:

- Trade secrets.
- Internal auditing controls and reports of internal auditors.
- Security measures, systems, or procedures.
- Information concerning bids or other contractual data, the disclosure of which would impair the efforts of the public utility or its affiliates to contract for goods or services on favorable terms.
- Information relating to competitive interests, the disclosure of which would impair the competitive business of the provider of the information.
- Employee personnel information unrelated to compensation, duties, qualifications, or responsibilities.[24]

Any PSC finding that records contain proprietary confidential business information is effective for a period set by the PSC not to exceed 18 months, unless the PSC finds, for good cause, that the protection from disclosure should be for a specified longer period.[25]

Effect of the Bill

The bill creates a public meeting exemption for those portions of a hearing held by the PSC wherein proprietary confidential business information that is confidential or exempt from disclosure as a public record is discussed. The bill provides that no exempt portion of a hearing may be off the record and that all exempt portions must be recorded and transcribed.

The bill also creates a public record exemption for these recordings and transcriptions. Each such recording or transcription is confidential and exempt from disclosure as a public record unless a court of competent jurisdiction determines that the relevant portion of the hearing was not restricted to the discussion of proprietary confidential business information that is confidential or exempt from disclosure as a public record. If the court makes such a determination, only that portion of the recording and transcript which reveals nonexempt information may be disclosed to a third party.

These exemptions will allow the PSC to close those portions of a hearing in which information that is confidential or exempt from disclosure as a public record is discussed. This may avoid the need for the PSC to send certain cases to DOAH for a closed hearing when those cases are heavily intertwined with or involve a substantial volume of confidential or exempt information.

The bill provides a statement of public necessity as required by the Florida Constitution, which provides the following legislative findings:

- The PSC is charged by statute with establishing just, fair, and compensatory utility rates, and the fact-finding role of the PSC is integral in its decision making, as all PSC decisions must be supported by a record of competent, substantial evidence.
- Under certain circumstances, the PSC must be able to evaluate and discuss proprietary confidential business information in order to make a determination in the public interest, and parties must be able to conduct cross-examination on such information in formal evidentiary proceedings.
- It is a public necessity that those portions of formal administrative hearings before the PSC at which proprietary confidential business information is discussed, and the associated portions of hearing transcripts, be made exempt from the Sunshine Law to allow parties to conduct cross-examination on such information and the PSC to evaluate the information and make a determination in the public interest.

The bill provides that the exemptions are 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.

B. SECTION DIRECTORY:

[24] *See* ss. 364.183, 366.093, 367.156, and 368.108, F.S.
[25] *Id.*

Section 1 Amends s. 350.01, F.S., to create a public record and public meeting exemption.

Section 2 Provides a statement of public necessity.

Section 3 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:
   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:

Vote Requirement

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

Public Necessity Statement

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

Breadth of Exemption

Article I, section 24(c) of the Florida Constitution requires a newly created public meeting or public record exemption to be no broader than necessary to accomplish the stated purpose of the law. The bill creates a public meeting exemption for only those portions of a hearing held by the PSC in which confidential proprietary business information that is confidential or exempt from disclosure under existing public record exemptions in ss. 364.183, 366.093, 367.156, and 368.108, F.S., is discussed. The bill creates a public record exemption for only those portions of the associated hearing recordings and transcripts that reveal such information. As such, these exemptions do not appear to be in conflict with the constitutional requirement that they be no broader than necessary to accomplish their purpose.

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 and public meetings; amending s. 350.01, F.S.; providing an exemption from public meeting requirements for portions of hearings before the Public Service Commission wherein proprietary confidential business information is discussed; requiring recording and transcription of exempt portions of such hearings; providing an exemption from public record requirements for such recordings and transcripts; providing for future legislative review and repeal of the exemptions under the Open Government Sunset Review Act; providing a public necessity statement; providing an effective date.

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

Section 1. Subsection (9) of section 350.01, Florida Statutes, is created to read:

350.01 Florida Public Service Commission; terms of commissioners; vacancies; election and duties of chair; quorum; proceedings; public record and public meeting exemption.—

(8) Each meeting, including each internal affairs meeting, workshop, hearing, or other proceeding attended by two or more commissioners, and each such meeting, workshop, hearing, or

other proceeding where a decision that concerns the rights or obligations of any person is made, shall be streamed live on the Internet, and a recorded copy of the meeting, workshop, hearing, or proceeding shall be made available on the commission's website.

(9) Notwithstanding the provisions of subsection (8), those portions of a hearing conducted by the commission wherein proprietary confidential business information that is confidential or exempt from s. 119.07(1), pursuant to s. 364.183, 366.093, 367.156, or 368.108, is discussed, are exempt from s. 286.011 and s. 24(b), Art. I of the State Constitution. No exempt portion of a hearing may be off the record and all exempt portions shall be recorded and transcribed. Such recordings and transcripts are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution unless a court of competent jurisdiction, after an in camera review, determines that the hearing was not restricted to the discussion of proprietary confidential business information made confidential and exempt pursuant to s. 364.183, 366.093, 367.156, or 368.108. In the event of such judicial determination, only that portion of the recording and transcript which reveals nonexempt information may be disclosed to a third party. 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. The Legislature finds that it is a public necessity that those portions of hearings conducted by the Public Service Commission at which proprietary confidential business information that is confidential or exempt from s. 119.07(1), Florida Statutes, pursuant to s. 364.183, 366.093, 367.156, or 368.108, Florida Statutes, is discussed, is exempt from s. 286.011, Florida Statutes, and s. 24(b), Article I of the State Constitution. Pursuant to its legislative directive under chapters 364, 366, 367, and 368, Florida Statutes, the commission is the tribunal charged with establishing just, fair, and compensatory utility rates. As such, the commission has the authority to adjudicate all matters within its jurisdiction, and its administrative hearings are conducted in compliance with chapter 120, Florida Statutes. The fact-finding role of the commission is integral in its decision-making, and all commission decisions must be supported by record competent, substantial evidence. Accordingly, under certain circumstances, the commission must be able to evaluate and discuss proprietary confidential business information in order to make a determination in the public interest. In addition, parties must be permitted to conduct cross-examination when testimony is taken or documents are made a part of the record under s. 120.569(2)(j), Florida Statutes. For this reason the Legislature finds that the disclosure of proprietary confidential business

information could significantly impair the ability of utilities regulated by the commission to fairly compete within the marketplace by revealing such information. Furthermore, such disclosure could harm the businesses with which such utilities contract by revealing the businesses' proprietary confidential business information and make it less likely for such businesses to do business with regulated utilities in the future. The Legislature further finds that the disclosure of proprietary confidential business information would cause harm to the company's ratepayers or business operations. Given such harms, the disclosure of this information could negatively impact customers of regulated utilities and result in higher utility prices or lower quality of service overall. The Legislature further finds that it is a public necessity that the recordings and transcripts of those portions of hearings wherein proprietary confidential business information is discussed be made confidential and exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution. Failure to exempt such recordings and transcripts would defeat the purpose of the public meeting exemption. Therefore, the Legislature finds that the public and private harm in disclosing proprietary confidential business information outweighs any public benefit derived from the disclosure of such information.

Section 3. This act shall take effect upon becoming a law.

PCB COM 21-03

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB COM 21-03 Gaming Enforcement
SPONSOR(S): Commerce Committee
TIED BILLS: **IDEN./SIM. BILLS:**

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

SUMMARY ANALYSIS

In general, gambling is illegal in Florida. However, certain gaming activities are authorized by law and regulated by the state, including the state lottery, pari-mutuel wagering at licensed greyhound and horse tracks and jai alai frontons, slot machine gaming at certai n licensed pari-mutuel locations in Miami-Dade County and Broward County, cardrooms at certain pari-mutuel facilities, penny-ante games, bingo, charitable drawings, game promotions (sweepstakes), and bowling tournaments.

In Florida, the investigation of illegal gambling is handled by law enforcement officers (as opposed to regulators). In the absence of an overarching state gaming regulatory authority, local or county law enforcement and prosecutors are assigned such matters. For example, the Department of Business and Professional Regulation (DBPR), Division of Pari-Mutuel Wagering (division) does not have authority over illegal gaming, though as in other states it may obtain information on such matters. As a result, the actual prosecution of such matters is normally referred to the county or local prosecuting authority.

The bill creates the Florida Gaming Control Commission (commission) and establishes additional enforcement measures to address violations of gambling laws and the conduct of unauthorized gaming in the state, including granting additional investigatory and prosecutorial authority to the Office of Statewide Prosecution in the Department of Legal Affairs (DLA).

The bill establishes requirements and standards for the commission, commissioners and its employees, including:

- Conflict of interest and ethics requirements.
- Background screenings.
- Annual recertification of pari-mutuel operating licensees.
- Inspection, taxation, and law enforcement authority.
- Authority to seize illegal gaming contraband.
- Subpoena powers.
- Review of the division's licensure and application procedures.
- Prohibition of ex parte communication.

Effective July 1, 2022:

- Provides that the commission is the state compliance agency to carry out the state's oversight responsibilities under the 2010 Compact with the Seminole Tribe.
- Provides for a type two transfer from DBPR to the commission, therefore the commission will become the regulatory agency for pari-mutuel wagering, cardroom, and slot machine licensees.
- Requires DLA to provide administrative support to the commission until the transfer is complete.
- Directs the Division of Law Revision to prepare a reviser's bill to conform the type two transfer.

The bill may have an indeterminate negative fiscal impact on state and local government.

The bill, except as otherwise expressly provided, is effective on the same date that PCB COM 21-05 or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes a law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Background

In general, gambling is illegal in Florida.[1] Chapter 849, F.S., prohibits keeping a gambling house,[2] running a lottery,[3] or the manufacture, sale, lease, play, or possession of slot machines.[4] However, the following gaming activities are authorized by law and regulated by the state:

- Pari-mutuel[5] wagering at licensed greyhound and horse tracks and jai alai frontons;[6]
- Slot machine gaming at certain licensed pari-mutuel locations in Miami-Dade County and Broward County;[7] and
- Cardrooms[8] at certain pari-mutuel facilities.[9]

A license to offer pari-mutuel wagering, slot machine gambling, or a cardroom at a pari-mutuel facility is a privilege granted by the state.[10]

The 1968 State Constitution states that "lotteries, other than the types of pari-mutuel pools authorized by law as of the effective date of this constitution . . ." are prohibited.[11] A constitutional amendment approved by the voters in 1986 authorized state-operated lotteries. Net proceeds of the lottery are deposited to the Educational Enhancement Trust Fund (EETF) and appropriated by the Legislature. Lottery operations are self-supporting and function as an entrepreneurial business enterprise.[12]

Chapter 849, F.S., also authorizes, under specific and limited conditions, the conduct of penny-ante games,[13] bingo,[14] charitable drawings,[15] game promotions (sweepstakes),[16] and bowling

[1] S. 849.08, F.S.
[2] S. 849.01, F.S.
[3] S. 849.09, F.S.
[4] S. 849.16, F.S.
[5] "Pari-mutuel" is defined in Florida law as "a system of betting on races or games in which the winners divide the total amount bet, after deducting management expenses and taxes, in proportion to the sums they have wagered individually and with regard to the odds assigned to particular outcomes. *See* s. 550.002(22), F.S.
[6] *See* ch. 550, F.S., relating to the regulation of pari-mutuel activities.
[7] *See* FLA. CONST., art. X, s. 23, and ch. 551, F.S.
[8] S. 849.086(2)(c), F.S., defines "cardroom" to mean "a facility where authorized card games are played for money or anything of value and to which the public is invited to participate in such games and charged a fee for participation by the operator of such facility."
[9] The Department of Business and Professional Regulation (DBPR) has issued licenses to permitholders with 2021-2022 Operating Licenses to operate 27 cardrooms. *See* http://www.myfloridalicense.com/DBPR/pari-mutuel-wagering/permitholder-operating-licenses-2021-2022/ (last visited Apr. 7, 2021).
[10] *See* s. 550.1625(1), F.S., "…legalized pari-mutuel betting at dog tracks is a privilege and is an operation that requires strict supervision and regulation in the best interests of the state." *See also, Solimena v. State*, 402 So.2d 1240, 1247 (Fla. 3d DCA 1981), *review denied*, 412 So.2d 470, which states "Florida courts have consistently emphasized the special nature of legalized racing, describing it as a privilege rather than as a vested right," citing *State ex rel. Mason v. Rose*, 122 Fla. 413, 165 So. 347 (1936).
[11] The pari-mutuel pools that were authorized by law on the effective date of the Florida Constitution, as revised in 1968, include horseracing, greyhound racing, and jai alai games. The revision was ratified by the electorate on November 5, 1968.
[12] The Department of the Lottery is authorized by s. 15, Art. X, Florida Constitution. Chapter 24, F.S., was enacted by ch. 87-65, Laws of Fla., to establish the state lottery. Section 24.102, F.S., states the legislative purpose and intent for the operations of the state lottery.
[13] S. 849.085, F.S.
[14] S. 849.0931, F.S.
[15] S. 849.0935, F.S.
[16] S. 849.094, F.S., authorizes game promotions in connection with the sale of consumer products or services.

tournaments.[17] The Family Amusement Games Act was enacted in 2015 and authorizes skill-based amusement games and machines at specified locations.[18]

Lotteries

Section 7 of Article X of the 1968 State Constitution provides, "Lotteries, other than the types of pari-mutuel pools authorized by law as of the effective date of this constitution, are hereby prohibited in this state."[19]

To allow activities that would otherwise be illegal lotteries, the Legislature has carved out several narrow exceptions to the statutory lottery prohibition. Statutory exceptions are provided for charitable bingo, charitable drawings, and game promotions. Charities use drawings or raffles as a fundraising tool. Organizations suggest a donation, collect entries, and randomly select an entry to win a prize. Under s. 849.0935, F.S., qualified organizations may conduct drawings by chance, provided the organization has complied with all applicable provisions of Chapter 496, F.S. Game promotions, often called sweepstakes, are advertising tools by which businesses promote their goods or services. As they contain the three elements of a lottery: consideration, chance, and prize, they are generally prohibited by Florida law unless they meet a statutory exception.[20]

In 1986, Florida voters approved an amendment to the Florida Constitution to allow the state to operate a lottery. The Florida Lottery—known formally as the Florida Education Lotteries—benefits education by funding the State Education Lotteries Trust Fund. Section 15 of Article X of the State Constitution (adopted by the electors in 1986) provides as follows:

> Lotteries may be operated by the state…. On the effective date of this amendment, the lotteries shall be known as the Florida Education Lotteries. Net proceeds derived from the lotteries shall be deposited to a state trust fund, to be designated The State Education Lotteries Trust Fund, to be appropriated by the Legislature. The schedule may be amended by general law.[21]

Indian Gaming and Regulatory Act

Gambling on Indian lands is subject to federal law, with limited state involvement. The Indian Gaming and Regulatory Act (IGRA), codified at 25 USCA §§ 2701-2721, was enacted in 1988 in response to the United State Supreme Court decision in *California v. Cabazon Band of Mission Indians*, 480 U.S. 202 (1987). The act provides for "a system for joint regulation by tribes and the Federal Government of class II gaming on Indian lands and a system for compacts between tribes and States for regulation of class III gaming."[22] In so doing, IGRA seeks to balance the competing interests of two sovereigns: the interests of the Tribe in engaging in economic activities for the benefit of its members and the interest of the state in either prohibiting or regulating gaming activities within its borders.[23]

IGRA separates gaming activities into three categories:

- Class I games are "social games solely for prizes of minimal value or traditional forms of Indian gaming engaged in by individuals as a part of, or in connection with, tribal ceremonies or celebrations."[24] Class I games are within the exclusive jurisdiction of the Indian tribes.[25]

[17] S. 849.141, F.S.
[18] S. 546.10, F.S.
[19] The pari-mutuel pools that were authorized by law on the effective date of the Florida Constitution, as revised in 1968, include horseracing, greyhound racing, and jai alai games. The new state constitution was ratified by the electorate on November 5, 1968.
[20] *Little River Theatre Corp v. State*, 185 So. 854, 868 (Fla. 1939).
[21] The Department of the Lottery is authorized by Article X, Section 15 of the Florida Constitution. Chapter 24, F.S., was enacted by ch. 87-65, L.O.F., to establish the state lottery. Section 24.102, F.S., creates the Department of the Lottery and states the Legislature's intent that it be self-supporting and revenue-producing and function as an entrepreneurial business enterprise.
[22] United States Senate Report No. 100-446, Aug. 3, 1988.
[23] *Id.*
[24] 25 U.S.C. 2703(6).
[25] 25 U.S.C. 2710(a)(1).

- Class II games are bingo and card games that are explicitly authorized or are not explicitly prohibited by the laws of the State.[26] The tribes may offer Class II card games "only if such card games are played in conformity with those laws and regulations (if any) of the State regarding hours or periods of operation of such card games or limitations on wagers or pot sizes in such card games." Class II gaming does not include "any banking card games, including baccarat, chemin de fer, or blackjack (21), or electronic or electromechanical facsimiles of any game of chance or slot machines of any kind."[27] Class II games are also within the jurisdiction of the Indian tribes, but are also subject to the provisions of IGRA.[28]
- Class III games are defined as any games that are not Class I or Class II. Class III games include slot machines and banked card games such as blackjack, baccarat and chemin de fir.[29]

A tribe can qualify to offer Class III games in the following ways:

- If the state authorizes Class III games for any purpose to any person, organization, or entity, the tribe must:
  - Authorize the games by an ordinance or resolution adopted by the governing body of the Indian tribe, approved by the Chairman of the National Indian Gaming Commission, and in compliance with IGRA; and
  - Conduct the games in conformance with a Tribal-State compact entered into between the tribe and the State.[30]
- If the state does NOT authorize Class III gaming for any purpose by any person, organization, or entity, the tribe must request negotiations for a tribal-state compact governing gaming activities on tribal lands. Upon receiving such a request, the state may be obligated to negotiate with the Indian tribe in good faith.[31] Under IGRA, a tribe is not entitled to a compact.

When the negotiations fail to produce a compact, a tribe may file suit against the state in federal court and seek a determination of whether the state negotiated in good faith. If the court finds the state negotiated in good faith, the tribe's proposal fails. On a finding of lack of good faith by the state, however, the court may order negotiation, followed by mandatory mediation. If the state ultimately rejects a court-appointed mediator's proposal, the Secretary "shall prescribe, in consultation with the Indian tribe, procedures... under which class III gaming may be conducted."[32]

Generally, in accordance with IGRA, a compact may include the following provisions:

- The application of the criminal and civil laws and regulations of the Indian tribe or the State that are directly related to, and necessary for, the licensing and regulation of gaming;
- The allocation of criminal and civil jurisdiction between the State and the Indian tribe necessary for the enforcement of laws and regulations;
- An assessment in an amount necessary to defray the costs of regulation;
- Revenue sharing by the Indian tribe for permitted activities;
- Remedies for breach of contract;
- Standards for the operation of gaming and gaming facilities, including licensing; and
- Any other subjects that are directly related to the operation of gaming activities.[33]

Any compact that is entered into by a tribe and a state will take effect when approval by the Secretary of the Interior is published in the Federal Register.[34] Upon receipt of a proposed compact, the

[26] 25 U.S.C. 2703(7)(A).
[27] 25 U.S.C. 2703(7)(B).
[28] 25 U.S.C. 2710(a)(2) and (b).
[29] 25 U.S.C. 2703; 25 C.F.R. § 502.4.
[30] 25 U.S.C. 2710(d)(1).
[31] 25 U.S.C. 2710 (d)(3)(A).
[32] 25 U.S.C. 2710(d)(7). This option is addressed in *Seminole Tribe of Florida v. Florida*, 517 U.S. 44 (1996), which brought into question whether a tribe has the ability to judicially enforce the provisions of IGRA against a state. The Department of the Interior adopted rules to provide a remedy for the tribes. The validity of the rules were brought into question in *Texas v. United States*, 497 F.3d 491, (5th Cir. 2007).
[33] 25 U.S.C. 2710 (d)(3)(C).
[34] 25 U.S.C. 2710(d)(3)(B).

Secretary has 45 days to approve or disapprove the compact.[35] A compact will be considered approved if the Secretary fails to act within the 45-day period. A compact that has not been validly "entered into" by a state and a tribe (e.g., execution of a compact by a state officer who lacks the authority to bind the state) cannot be put "into effect", even if the Secretary of the Interior publishes the compact in the Federal Register.[36]

There is no explicit provision under IGRA that authorizes revenue sharing. IGRA specifically states:

> Nothing in this section shall be interpreted as conferring upon a State or any of its political subdivisions authority to impose any tax, fee, charge, or other assessment upon an Indian tribe or upon any other person or entity authorized by an Indian tribe to engage in a class III activity. No State may refuse to enter into the negotiations described in paragraph (3) (A) based upon the lack of authority in such State, or its political subdivisions, to impose such a tax, fee, charge, or other assessment.[37]

Notwithstanding this restriction, revenue sharing is permissible so long as the tribe receives a valuable economic benefit in return. Typically, such benefit is in the form of substantial exclusivity in game offerings, geographic monopoly and/or a right to conduct such offerings on more favorable terms than non-Indians.[38]

The 2010 Compact

The Tribe and the State executed the 2010 Compact on April 7, 2010, which was ratified through Chapter 285, F.S. The 2010 Compact took effect when published in the Federal Register on July 6, 2010 and all but the banked card game authorization has a term of 20 years, expiring July 31, 2030, unless renewed.

The 2010 Compact provides for revenue sharing from the Tribe to the State. For the exclusive authority to offer banked card games on tribal lands at five locations for five years and to offer slot machine gaming outside Miami-Dade and Broward Counties, the Tribe pays the State a share of "net win" Revenue sharing payments were approximately $240 million per year. The 2010 Compact required the Tribe to share revenue with the State in the amount of $1 billion over the first five years.

Section 285.710(1)(f), F.S., designates the Division within DBPR as the "state compliance agency" responsible for carrying out the state's oversight responsibilities under the 2010 Compact.

The State of Florida retains the right to authorize or prohibit gaming in the state. However, the 2010 Compact provides consequences for the expansion of gaming:

- If new forms of Class III gaming and casino-style gaming are authorized for the eight licensed pari-mutuel facilities located in Miami-Dade and Broward counties (which may not relocate) and the net win from the Tribe's Broward facilities drops for the year after the new gaming begins, then the Tribe may reduce the payments from its Broward facilities by 50 percent of the amount of the reduction in net win.
- If new forms of Class III gaming and other casino-style gaming are authorized for other locations in Miami-Dade and Broward counties, then the Tribe may exclude the net win from their Broward facilities from their net win calculations when the new games begin to be played.[39]

Revenue sharing payments cease if:

- The state authorizes new forms of Class III gaming or other casino-style gaming after February 1, 2010, or authorizes Class III gaming or other casino-style gaming at any location outside of

[35] 25 U.S.C. 2710(d)(8)(C).
[36] *See Pueblo of Santa Ana v. Kelly*, 104 F.3d 1546 (10th Cir. 1997).
[37] 25 U.S.C. 2710(d)(4).
[38] *See generally In re Indian Gaming Related Cases,* 331 F.3d 1094 (9th Cir. 2003)(upholding revenue sharing where revenues were apportioned to non-gaming tribes); *see also* Letter From Gale A. Norton, Secretary of the Department of the Interior, to Cyrus Schindler, President of the Seneca Nation of Indians, November 12, 2002.
[39] The Tribe would automatically be authorized to conduct the same games authorized for any other person at any location.

Miami-Dade and Broward counties that was not authorized for such games before February 1, 2010; and
- The new gaming begins to be offered for private or public use.

Starting in July 2015, DBPR and the Seminole Tribe engaged in litigation over the conduct of "designated player" card games at pari-mutuel facilities.

On November 9, 2016 a federal court ruled that the State had violated the terms of the Compact and the Tribe was entitled to continue offering banked card games beyond the initial 5-year blackjack authorization and may continue offering such games for the entire 20-year term of the Compact (expiring July 2030). The Tribe continued to make full revenue sharing payments to the State throughout the course of the litigation. The parties did not raise, and consequently the ruling did not address, the future revenue sharing obligations of the Tribe.

The parties subsequently executed a settlement agreement in July 2017, which was extended in April 2018. Under the settlement agreement, the Tribe agreed to continue revenue sharing payments provided that DBPR "aggressively enforced" the statutory ban on banking card games.

In April 2019 the Tribe stopped revenue sharing payments to the State because the Tribe believed that aggressive enforcement had not occurred.

Regulation of Pari-mutuel Wagering

The Division of Pari-mutuel Wagering (division) in the Department of Business and Professional Regulation (DBPR) regulates pari-mutuel wagering. The division has regulatory oversight of permitted and licensed pari-mutuel wagering facilities, cardrooms located at pari-mutuel facilities, and slot machines at pari-mutuel facilities located in Miami-Dade and Broward counties. According to the division, there were eight license suspensions, and $19,075 in fines assessed for violations of all pari-mutuel statutes and administrative rules in Fiscal Year 2019-2020.[40]

Ten permitholders were not issued operating licenses for Fiscal Year 2020-2021: two greyhound permitholders,[41] two jai alai permitholders,[42] one limited thoroughbred permitholder,[43] and five quarter horse permitholders.[44]

Issuance of Pari-mutuel Permits and Annual Licenses

Section 550.054, F.S., provides that any person meeting the qualification requirements of ch. 550, F.S., may apply to the division for a permit to conduct pari-mutuel wagering. Upon approval, a permit must be issued to the applicant that indicates:
- The name of the permitholder;
- The location of the pari-mutuel facility;
- The type of pari-mutuel activity to be conducted; and

[40] Department of Business and Professional Regulation Division of Pari-mutuel Wagering, *89th Annual Report for Fiscal Year 2019-2020*, AnnualReport-2019-2020--89th--20210224.pdf pg. 5, (last visited Apr. 7, 2021).
[41] Jefferson County Kennel Club (Monticello) and North American Racing Association (Key West).
[42] Gadsden Jai-alai (Chattahoochee) and Tampa Jai Alai.
[43] Under s. 550.3345, F.S., during Fiscal Year 2010-2011 only, holders of quarter horse racing permits were allowed to convert their permits to a thoroughbred racing permit, conditioned upon specific use of racing revenues for enhancement of thoroughbred purses and awards, promotion of the thoroughbred horse industry, and the care of retired thoroughbred horses. Two conversions occurred, Gulfstream Park Thoroughbred After Racing Program (GPTARP) (Hallandale, Broward County), which was licensed to operate in 2019-2020, and Ocala Thoroughbred Racing (Marion County), which was not licensed to operate.
[44] ELH Jefferson (Jefferson County), DeBary Real Estate Holdings (Volusia County), North Florida Racing (Jacksonville), Pompano Park Racing (Pompano Beach), and St. Johns Racing (St. Johns County). *See* http://www.myfloridalicense.com/dbpr/pmw/documents/PermitholdersList_2020-2021.pdf (last visited Apr. 7, 2021).

- A statement showing qualifications of the applicant to conduct pari-mutuel performances under ch. 550, F.S.

A permit does not authorize any pari-mutuel performances until approved by a majority of voters in a ratification election in the county in which the applicant proposes to conduct pari-mutuel wagering activities. An application may not be considered, nor may a permit be issued by the division or be voted upon in any county, for the conduct of:

- Harness horse racing, quarter horse racing, thoroughbred horse racing, or greyhound racing at a location within 100 miles of an existing pari-mutuel facility; or
- Jai alai games within 50 miles of an existing pari-mutuel facility.[45]

Distances are measured on a straight line from the nearest property line of one pari-mutuel facility to the nearest property line of the other facility.[46]

After issuance of the permit and a ratification election, the division may issue an annual operating license for wagering at the specified location in a county, indicating the time, place, and number of days during which pari-mutuel operations may be conducted at the specified location.[47]

The division may revoke or suspend any permit or license upon the willful violation by the permitholder or licensee of any provision of ch. 550, F.S., or any administrative rule adopted by the division, and may impose a civil penalty against the permitholder or license up to $1,000 for each offense.[48]

Slot Machine Gaming Locations and Operations

Section 32 of Art. X of the State Constitution, adopted pursuant to a 2004 initiative petition, authorized slot machines in licensed pari-mutuel facilities in Broward and Miami-Dade, if approved by county referendum. The voters in Broward and Miami-Dade counties approved slot machine gaming. Slot machine gaming in the state is limited to Broward and Miami-Dade counties, and as authorized by federal law, in the tribal gaming facilities of the Seminole Tribe.

Current law addresses slot machine gaming operations as follows:

- Restricts the issuance of slot machine licenses to licensed pari-mutuel permitholders, for slot machine gaming only at the facility where pari-mutuel wagering is authorized to be conducted by the permitholder;[49]
- Limits slot machine gaming to 18 hours per day, Monday through Friday, and 24 hours on Saturdays and Sundays;[50] and
- Prohibits the service of complimentary or reduced-cost alcoholic beverages to persons playing a slot machine, among other prohibitions.[51]

Cardrooms

Section 849.086, F.S., authorizes cardrooms at certain pari-mutuel facilities.[52] In Fiscal Year 2021-2022, 27 cardrooms are licensed to operate.[53] A license to offer pari-mutuel wagering, slot machine

[45] S. 550.054(2), F.S.
[46] *Id.*
[47] S. 550.054(9)(a), F.S.
[48] S. 550.054(9)(b), F.S.
[49] S. 551.104(3), F.S.
[50] S. 551.116, F.S.
[51] S. 551.121, F.S.
[52] S. 849.086(2)(c), F.S., defines "cardroom" to mean a facility where authorized games are played for money or anything of value and to which the public is invited to participate in such games and charges a fee for participation by the operator of such facility.
[53] Department of Business and Professional Regulation, *Pari-mutuel Wagering – Permitholder Operating Licenses 2021-2022*, http://www.myfloridalicense.com/DBPR/pari-mutuel-wagering/permitholder-operating-licenses-2021-2022/ (last visited Apr. 7, 2021).

gaming, or a cardroom at a pari-mutuel facility is a privilege granted by the state.[54] A cardroom may be open 18 hours per day on Monday through Friday, and 24 hours per day on Saturday and Sunday.[55]

Sections 849.086(5) and (6), F.S., provide that a licensed pari-mutuel permitholder that holds a valid pari-mutuel permit may hold a cardroom license authorizing the operation of a cardroom and the conduct of authorized games at the cardroom. An authorized game is a game or series of games of poker or dominoes.[56] Such games must be played in a non-banking manner,[57] where the participants play against each other, instead of against the house (cardroom). At least four percent of the gross cardroom receipts of greyhound racing permitholders and jai alai permitholders conducting live races or games must supplement greyhound purses, and quarter horse permitholders must have a contract with a horsemen's association governing the payment of purses on live quarter horse races conducted by the permitholder.[58]

Live Performance Requirements

A license to offer pari-mutuel wagering, slot machine gambling, or a cardroom at a pari-mutuel facility is a privilege granted by the state.[59] Currently the State requires that:

- To offer intertrack or simulcast wagering, permitholders must conduct a full schedule of live racing as defined in ch. 550 and meet other requirements.[60]
- To remain eligible for a cardroom license, permitholders must conduct at least 90 percent of the performances conducted the year they applied for the initial cardroom license or the prior year, if the permitholder ran a full schedule of live performances.[61]
- To remain eligible for a slot machine license, permitholders must conduct a full schedule of live racing as defined in ch. 550.[62]

Amendment 3 to the State Constitution (Voter Control of Gambling)

During the 2018 General Election, the electorate approved an initiative constitutional amendment (Amendment 3, Voter Control of Gambling in Florida). The amendment is codified in the State Constitution as article X, section 30).[63]

Amendment 3 requires a vote proposed by citizen's initiative to amend the State Constitution pursuant to Article XI, section 3 to authorize "casino gambling" in Florida. Casino gambling is defined in section (b) of Amendment 3 as:

- Any of the "types of games typically found in casinos" and that are:
    - Within the definition of Class III gaming in the Federal Indian Gaming Regulatory Act, 25 U.S.C. 2701 et seq; and
    - In 25 C.F.R. § 502.4 upon the adoption of the amendment and any that are added to such definition of Class III gaming in the future.

Section (b) of Amendment 3 provides that casino gambling includes but is not limited to the following:

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[54] *Solimena v. State*, 402 So.2d 1240, 1247 (Fla. 3d DCA 1981), review denied, 412 So.2d 470, states "Florida courts have consistently emphasized the special nature of legalized racing, describing it as a privilege rather than as a vested right," citing *State ex rel. Mason v. Rose*, 122 Fla. 413, 165 So. 347 (1936). *See* s. 550.1625(1), F.S., "…legalized pari-mutuel betting at dog tracks is a privilege and is an operation that requires strict supervision and regulation in the best interests of the state."
[55] S. 849.086(7)(b), F.S.
[56] S. 849.086(2)(a), F.S.
[57] *Id.*
[58] S. 849.086(13)(d), F.S.
[59] *See* s. 550.1625(1), F.S., (legalized pari-mutuel betting at dog tracks "is a privilege and is an operation that requires strict supervision and regulation in the best interests of the state").
[60] S. 550.615, F.S.
[61] s. 849.086(5)(b), F.S.
[62] s. 551.104(4)(c), F.S.
[63] See the text of Amendment 3, now codified as art. X, s. 30, at http://www.leg.state.fl.us/Statutes/index.cfm?Mode=Constitution&Submenu=3&Tab=statutes&CFID=44933245&CFTOKEN=f39b1ca7cab71561-BE329BC7-5056-B837-1A6123F335C4849F#A10S30 (last visited Apr. 7, 2021).

- Any house banking game, including but not limited to card games such as baccarat, chemin de fer, blackjack (21), and pai gow (if played as house banking games);
- Any player-banked game that simulates a house banking game, such as California blackjack;
- Casino games such as roulette, craps, and keno;
- Any slot machines as defined in 15 U.S.C. 1171(a)(1); and
- Any other game not authorized by Article X, section 15 of the State Constitution, relating to state operated lotteries, whether or not defined as a slot machine, in which outcomes are determined by random number generator or are similarly assigned randomly, such as instant or historical racing.

Section (b) of Amendment 3 also further defines "casino gambling" as including the following devices:

- Any electronic gambling devices;
- Simulated gambling devices;
- Video lottery devices;
- Internet sweepstakes devices; and
- Any other form of electronic or electromechanical facsimiles of any game of chance, slot machine, or casino-style game, regardless of how such devices are defined under the Indian Gaming Regulatory Act.

Under Amendment 3, the term casino "casino gambling" does not include pari-mutuel wagering on horse racing, dog racing, or jai alai exhibitions. For the purposes of Amendment 3, "gambling" and "gaming" are synonymous.

Additionally, Amendment 3 provides:

> Nothing in Amendment 3 shall be deemed to limit the right of the Legislature to exercise its authority through general law to restrict, regulate, or tax any gaming or gambling activities. In addition, nothing in Amendment 3 shall be construed to limit the ability of the state or Native American tribes to negotiate gaming compacts pursuant to the Federal Indian Gaming Regulatory Act for the conduct of casino gambling on tribal lands, or to affect any existing gambling on tribal lands pursuant to compacts executed by the state and Native American tribes pursuant to the Indian Gaming Regulatory Act.

By its terms, Amendment 3 became effective on November 6, 2018, is self-executing, and no legislative implementation is required. If any part of Amendment 3 is held invalid for any reason, the remaining portion(s) must be severed from the invalid portion and given "the fullest possible force and effect."

Amendment 13 to the State Constitution (Prohibition on Racing of and Wagering on Greyhounds or Other Dogs)

During the 2018 General Election, the electorate approved an initiative constitutional amendment (Amendment 13, Prohibition on Racing of and Wagering on Greyhounds or Other Dogs). The amendment is codified in the State Constitution as article X, section 32.[64]

Amendment 13 states that, beginning on January 1, 2019, greyhound tracks may discontinue live greyhound racing while continuing to operate its other forms of gaming. Beginning on January 1, 2021, Amendment 13 completely prohibits wagering on live greyhound racing in Florida, requiring the closure of all greyhound racetracks in the state. Cardroom and slot machine facilities at the greyhound tracks may continue to operate after the closure of racing activities.

[64] [64] See the text of Amendment 13, now codified as art. X, s. 32, at http://www.leg.state.fl.us/Statutes/index.cfm?Mode=Constitution&Submenu=3&Tab=statutes#A10S32 (last visited Apr. 11, 2021).

United States Gaming Regulatory Agencies (Gaming Commissions)

The National Council of Legislators from Gaming States (NCLGS) is an organization of state lawmakers which meets to discuss gaming issues, and includes committees on lotteries, pari-mutuels, casinos, responsible gaming, Indian gaming issues, and telephone/internet wagering.[65]

Regulatory resources cited by NCLGS include the:

- Association of Racing Commissioners International, Inc. (ARCI), a non-profit corporation founded in the 1930's to uphold uniform pari-mutuel racing rules and practice, serves as a resource for pari-mutuel rulings, including equine medication issues. The ARCI works to preserve the integrity of horseracing, jai-alai, and dog-racing.[66]
- North American Gaming Regulators Association (NAGRA), created in 1984, includes as members federal, state, local, tribal, and provincial government gaming regulators.[67]
- National Indian Gaming Commission (NIGC), established under the Indian Gaming Regulatory Act, is an independent federal regulatory agency charged with the regulation of Indian gaming on Indian land, specifically to protect tribes from corrupt influences, including organized crime, to make sure it is tribes that are receiving the benefit of Indian gaming, and to ensure that fair playing practices that protect tribes and players are adhered to. The NIGC maintains a list of gaming tribes on its site, searchable by tribe or state.[68]
- International Association of Gaming Regulators (IAGR), which is an organization of international government agencies responsible for the regulation of gaming in their home jurisdictions concerned with sharing information and resources among each other on issues relevant to the regulation of gaming.[69]

According to NAGRA, there are approximately 75 gaming regulatory agencies in the United States and Canada, including lottery commissions, pari-mutuel commissions, racing commissions, casino control commissions, and gambling control commissions.[70] Two of the most well-known gaming control entities are the Nevada Gaming Commission and Gaming Control Board,[71] and the New Jersey Casino Control Commission.[72]

In Nevada, members of the Board and Commission are appointed by the Governor of Nevada to four-year terms. In addition to other requirements, each member must be a resident of Nevada and no member may hold elective office while serving. Members are also not permitted to possess any direct pecuniary interest in gaming activities while serving in their capacity as members.[73]

The New Jersey Casino Control Commission is the independent licensing authority of the state's casinos and key employees, comprised of up to three members, appointed by the governor and confirmed by the state senate.[74] As a quasi-judicial panel, the commission conducts hearings on contested casino key employee license matters, and appeals from decisions and penalties imposed by the state's division of gaming enforcement. Commissioners serve staggered, five-year terms and may only be removed for cause.[75] The commission notes:

- The success and ongoing viability of the gaming industry remains inextricably linked to the public's confidence that the State of New Jersey will ensure that people in the industry possess

[65] The National Council of Legislators from Gaming States, https://www.nclgs.org/index.php/about-us (last visited Apr. 7, 2021).
[66] Association of Racing Commissioners International, http://arci.com/ (last visited Apr. 7, 2021).
[67] North American Gaming Regulators Association, https://www.nagra.org/default.aspx (last visited Apr. 7, 2021).
[68] National Indian Gaming Commission, https://www.nigc.gov/ (last visited Apr. 7, 2021).
[69] International Association of Gaming Regulators https://www.iagr.org/ (last visited April 10, 2021).
[70] See links to the numerous state and province gaming regulatory agencies, commissions, control boards, and lotteries at https://www.nagra.org/State-and-Province-Gaming-Regulatory-Agencies (last visited Apr. 7, 2021).
[71] Nevada Gaming Commission and Gaming Control Board, https://gaming.nv.gov/ (last visited Apr. 7, 2021).
[72] New Jersey Casino Control Commission, https://www.nj.gov/casinos/ (last visited Apr. 7, 2021).
[73] Nevada Gaming Control Board, *Information Packet*, https://gaming.nv.gov/index.aspx pg. 3, (last visited Apr. 7, 2021).
[74] New Jersey Casino Control Commission, *Overview*, https://www.nj.gov/casinos/about/overview/ (last visited Apr. 7, 2021
[75] *Id*.

good character, honesty and integrity. Stewardship over that public confidence is a principal responsibility of the Commission and its Chairman.
- The Commission's regulatory efforts through the years have helped create an environment in which New Jersey's casinos can prosper and from which the citizens of New Jersey benefit. With proper regulatory controls, the industry serves as a catalyst to create economic benefits for Atlantic City, the Greater Atlantic City Region, and the entire State of New Jersey.[76]

Effect of the Bill

Department of Legal Affairs Office of Statewide Prosecution

The bill amends s. 16.56(1)(a), F.S., relating to the Office of Statewide Prosecution in the Department of Legal Affairs (office), to authorize the office to investigate and prosecute, in addition to gambling offenses, any violation of ch. 24, F.S., (State Lotteries), ch. 546, F.S., (Amusement Facilities), ch. 550, F.S., (Pari-mutuel Wagering), ch. 551, F.S., (Slot Machines), or ch. 849, F.S., (Gambling), including violations referred by the Department of Agriculture and Consumer Services, the Department of Business and Professional Regulation (DBPR), the Department of the Lottery, the Gaming Control Commission, the Seminole Tribe of Florida, or any person licensed under those chapters.

Florida Gaming Control Commission

The bill creates s. 16.71, F.S., to establish a Gaming Control Commission (commission), to be administratively housed in the Department Legal Affairs, Office of the Attorney General. The commission is a separate budget entity and serves as the agency head for all purposes, and is a criminal justice agency as defined in s. 119.011, F.S. The commission is not subject to control, supervision, or direction by the Department of Legal Affairs or the Attorney General in the performance of its duties, including but not limited to personnel, purchasing transactions involving real or personal property, and budget matters.

The commission consists of five members, one from each appellate district, to be appointed by the Governor by January 1, 2022, subject to Senate confirmation. Of the five members:
- At least one member with at least 10 years of experience in law enforcement and criminal investigation.
- At least one member must be a certified public accountant licensed in this state with at least 10 years of experience in accounting and auditing.
- At least one member must be an attorney admitted and authorized to practice law in this state for the preceding 10 years.

After initial appointments to create staggered terms, all members will serve four year terms, but may not serve more than 8 years. The salary of a member is the same as a commissioner serving on the Public Service Commission (approximately $136,000 annually).

A person is ineligible for appointment to the commission if they have:
- Been convicted of or found guilty of or pleading nolo contendere to, regardless of adjudication, in any jurisdiction, a felony or misdemeanor that directly relates to related to gambling, dishonesty, theft, or fraud within the 10 years immediately preceding such appointment;
- Been convicted of or found guilty of or pleading nolo contendere to, regardless of adjudication, in any jurisdiction, a forcible felony or a sexual predator crime; or
- Had a permit or license issued under ch. 546, F.S., (Amusement Facilities), ch. 550, F.S., (Pari-mutuel Wagering), ch. 551, F.S., (Slot Machines), or ch. 849, F.S., (Gambling), or a gaming licensed issued by any other jurisdiction denied, suspended, or revoked.

The Governor may remove a member for cause, including, but not limited to, circumstances in which the member:
- Commits gross misconduct or malfeasance in office;

[76] *Id.*

- Substantially neglects or is unable to discharge his or her duties as a member; or
- Is convicted of or found guilty of or pleading nolo contendere to, regardless of adjudication, in any jurisdiction, a felony or misdemeanor that directly relates to related to gambling, dishonesty, theft, or fraud.

The Governor may remove a member without cause subject to approval by a majority of the Senate. Upon a member's resignation or removal from office, the Governor must appoint a successor who, subject to confirmation by the Senate, will serve the remainder of the unfinished term.

A person may not apply to the Governor for appointment to the commission until after a background investigation of the person is conducted by the Department of Law Enforcement and the investigation is forwarded to the Governor.

A person who holds any office in a political party, who has been convicted of a felony, or who has been convicted of a misdemeanor related to gambling within the previous 10 years may not apply to the Governor for appointment.

The Governor may not solicit or request any nominations, recommendations or communications about potential candidates for appointment to the commission from:
- Any person that holds a permit or license issued under chs. 550, 551, 546, or 849, an officer, official, or employee of such permitholder or licensee, or an ultimate equitable owner, as defined in s. 550.002(37), F.S., of such permitholder or licensee.
- Any officer, official, employee, contractor, or subcontractor of a tribe that has a valid and active compact with the state or an entity employed, licensed, or contracted by such tribe, or an ultimate equitable owner, as defined in s. 550.002(37),F.S., of such entity.
- Any registered lobbyist for the executive or legislative branch that represents any person or entity identified above.

Commission Employees

All commission employees, except the executive director and attorneys, are subject to part II of ch. 110, F.S., relating to the Career Service System, which provides uniform personnel rules, guidelines, records, and reports related to employees and positions in career service developed by the Department of Management Services (DMS) in consultation with affected agencies.

The commission's executive director is subject to part III of ch. 110, F.S., relating to the Senior Management Service System, which is a separate system of personnel administration for positions in the executive branch the duties and responsibilities of which are primarily and essentially policymaking or managerial in nature. The Senior Management Service is limited to those positions which are exempt from the Career Service System and for which the salaries and benefits are set by DMS in accordance with the rules of the Senior Management Service.

Attorneys employed by the commission are subject to part V of ch. 110, F.S., relating to the Selected Exempt Service System, which positions include those which are exempt from the Career Service System and the salaries and benefits are set by DMS in accordance with the rules of the Selected Exempt Service. DMS designates all positions included in the Selected Exempt Service as either managerial/policymaking, professional, or nonmanagerial/nonpolicymaking.

For a period of 4 years immediately preceding appointment to, or employment with, the commission, and while appointed or employed with the commission, a person may not:
- Hold a permit or license issued under ch. 550, F.S., (Pari-mutuel Wagering), a license issued under ch. 551, F.S., (Slot Machines), ch. 546, F.S., (Amusement Facilities) or ch. 849, F.S., (Gambling); be an officer, official, or employee of such permitholder or licensee; or be an ultimate equitable owner, as defined in s. 550.002(37), F.S.,[77] of such permitholder or licensee;

[77] Section 550.002, F.S., defines the term "ultimate equitable owner" to mean "a natural person who, directly or indirectly, owns or controls 5 percent or more of an ownership interest in a corporation, foreign corporation, or alien business organization, regardless of

- Be an officer, official, employee, or other person with duties or responsibilities relating to a gaming operation owned by an Indian tribe that has a valid and active compact with the state; be a contractor or subcontractor of such tribe or an entity employed, licensed, or contracted by such tribe; or be an ultimate equitable owner, as defined in s. 550.002(37), of such entity;; or
- Be a registered lobbyist for the executive or legislative branch, except while a commissioner when solely representing the commission.

Persons are ineligible for appointment to or employment with the commission if, within the 4 years immediately preceding such appointment or employment, he or she:

- Has violated the above employment restrictions; or
- Has solicited or accepted employment with, acquired any direct or indirect interest in, or has had any direct or indirect business association, partnership, or financial relationship with, or is a relative of, any person or entity who is an applicant, licensee, or registrant with the division or the commission.

The bill defines "relative" as a spouse, father, mother, son, daughter, grandfather, grandmother, brother, sister, uncle, aunt, cousin, nephew, niece, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half-brother, or half-sister.

A person is ineligible for employment with the commission if:

- the person has been convicted of a felony within 5 years of the date of application;
- convicted of a misdemeanor within 5 years of the date of application which the commission determines bears a close relationship to the duties and responsibilities of the position for which employment is sought; or
- dismissed from prior employment for gross misconduct or incompetence or if he or she intentionally made a false statement concerning a material fact in connection with his or her application to the commission.

If an employee of the commission is charged with a felony while employed by the commission, the commission must suspend the employee, with or without pay, and terminate employment with the commission upon conviction. If an employee of the commission is charged with a misdemeanor while employed by the commission, the commission must suspend the employee, with or without pay, and may terminate employment with the commission upon conviction if the commission determines that the offense for which he or she has been convicted bears a close relationship to the duties and responsibilities of the position held with the commission.

All employees authorized by the commission must have access to and the right to inspect premises licensed by the division, to collect and remit taxes, and to examine the books and records of all licensees and permitholders. The authorized employees must require strict compliance by each licensee and permitholder with Florida law relating to such licenses and permits.

Restrictions After Appointment or Employment

For the 6 years immediately following the date of resignation or termination from the commission, and for the 2 years immediately following the date of termination or resignation from employment with the commission, a person may not:

- Hold a permit or license issued under ch. 550, F.S., (Pari-mutuel Wagering), a license issued under ch. 551, F.S., (Slot Machines), ch. 546, F.S., (Amusement Facilities) or ch. 849, F.S., (Gambling);, be an officer, official, or employee of such permitholder or licensee, or be an ultimate equitable owner, as defined in s. 550.002(37), F.S., of such permitholder or licensee;

- Be an officer, official, employee, or other person with duties or responsibilities relating to a gaming operation owned by an Indian tribe that has a valid and active compact with the state; be a contractor or subcontractor of such tribe or an entity employed, licensed, or contracted by such tribe; or be an ultimate equitable owner, as defined in s. 550.002(37), of such entity; or
- Lobby the Governor or any agency of the state, members or employees of the Legislature, or any county or municipal government or governmental agency.

Violations of this provisions are subject to the penalties for violations of standards of conduct for public officers, employees of agencies, and local government attorneys provided in s. 112.317, F.S., and a civil penalty of an amount equal to the compensation which the person receives for the prohibited conduct.

Commission Law Enforcement Officers

Each employee serving as a law enforcement officer for the commission must meet the qualifications for employment or appointment as a law enforcement officer under s. 943.13, F.S., and be certified as a law enforcement officer by the Department of Law Enforcement under ch. 943, F.S. Upon certification, each law enforcement officer has statewide jurisdiction and is subject to and has the same authority provided in ch. 901, F.S., for law enforcement officers generally. Each officer also has arrest authority pursuant to s. 901.15, F.S., and possesses the full law enforcement powers granted to other peace officers of this state, including the authority to make arrests, carry firearms, serve court process, and seize contraband and the proceeds of illegal activities.

The responsibilities of each officer are:
- Primarily, to investigate, enforce, and prosecute, throughout the state, violations and violators of ch. 24, F.S., (State Lotteries), ch. 285, F.S., (Indian Reservations and Affairs), ch. 546, F.S., (Amusement Facilities), ch. 550, F.S., (Pari-mutuel Wagering), ch. 551, F.S., (Slot Machines), or ch. 849, F.S. (Gambling), and the rules adopted thereunder, as well as other state laws that the division officers or all state law enforcement officers are specifically authorized to enforce.
- Secondarily, to enforce all other state laws, provided that the enforcement is incidental to exercising the officer's primary responsibilities described above.

The bill provides an officer may exercise the powers of a deputy sheriff only after consultation or coordination with the appropriate local sheriff's office or municipal police department, or when the division participates in the Florida Mutual Aid Plan during a declared state emergency.

Seizure of Contraband

The commission and its law enforcement officers are specifically authorized to seize any contraband in accordance with the Florida Contraband Forfeiture Act. For purposes of this section, "contraband" has the same meaning as s. 932.701(2)(a)2., which includes, any gambling paraphernalia, lottery tickets, money, currency, or other means of exchange which was used, was attempted, or intended to be used in violation of the gambling laws of the state.

The commission is specifically authorized to store and test any contraband that is seized in accordance with the Florida Contraband Forfeiture Act and may authorize any of its staff to implement this provision.

The bill authorizes the commission to adopt rules to implement this provision, and specifies that this provision does not limit the authority of any other person authorized by law to seize contraband.

The bill amends s. 932.701, F.S., the Florida Contraband Forfeiture Act to include in the definition of "contraband article" certain gaming related terms, including, equipment, gambling device, apparatus, material of gaming, proceeds, substituted proceeds, real or personal property, and Internet domain name. The bill also updates the violations in this section to include violations of ch. 24, F.S., (State Lotteries), ch. 285, F.S., (Indian Reservations and Affairs), ch. 546, F.S., (Amusement Facilities), ch. 550, F.S., (Pari-mutuel Wagering), ch. 551, F.S., (Slot Machines), or ch. 849, F.S. (Gambling).

Commission Powers and Duties

The commission must convene at the call of the chair, or at the request of a majority of its members, and:

- Exercise all state regulatory and executive powers respecting gambling, including, without limitation, pari-mutuel wagering, cardrooms, slot machine facilities, oversight of gaming compacts executed by the state pursuant to the Federal Indian Gaming Regulatory Act, and any other forms of gambling authorized by the state constitution or law, but not lottery games operated by the state.
- Establish procedures consistent with ch. 120, F.S., (Administrative Procedure Act) to ensure adequate due process in exercising its regulatory and executive functions.
- Ensure that Florida law is not interpreted in any manner that expands the activities authorized in ch. 24, F.S., (State Lotteries), ch. 285, F.S., (Indian Reservations and Affairs), ch. 546, F.S., (Amusement Facilities), ch. 550, F.S., (Pari-mutuel Wagering), ch. 551, F.S., (Slot Machines), or ch. 849, F.S. (Gambling).
- Review any matter within the scope of the jurisdiction of the division.
- Review the regulation of licensees, permitholders, or persons regulated by the division and the procedures used by the division to implement and enforce the law.
- Review the procedures of the division used to qualify applicants for a license, permit, or registration.
- Refer criminal violations of ch. 24, F.S., (State Lotteries), ch. 546, F.S., (Amusement Facilities), ch. 550, F.S., (Pari-mutuel Wagering), ch. 551, F.S., (Slot Machines), or ch. 849, F.S., (Gambling) to the appropriate state attorney or to the Office of Statewide Prosecution, as applicable.
- Exercise all other powers and perform any other duties prescribed by the Legislature.

The presence of three members is required to constitute a quorum, and the affirmative vote of the majority of the members present is required for any action or recommendation by the commission. The commission may meet in any city or county of the state.

The bill authorizes the commission to subpoena witnesses and compel their attendance and testimony, administer oaths and affirmations, take evidence, and require by subpoena the production of any books, papers, records, or other items relevant to the commission's duties or powers. The commission may meet in any city or county of the state.

The commission chair may schedule hearings to determine whether enforcement of the gaming laws of this state is sufficient to protect residents from an abuse or misinterpretation of law that may expand gaming or gambling in this state. The chair may direct that a hearing be held before one member or a panel of less than the full commission, and must adopt rules to provide for the filing of a report for hearings held by a single commissioner or a panel and prescribe the requirements for the content and filing of such reports.

The commission may submit written recommendations to enhance the enforcement of Florida gaming laws to the Governor, the President of the Senate, and the Speaker of the House of Representatives, and is authorized to contract or consult with other state agencies as may be needed to discharge its duties.

The bill requires the commission's exercise of executive powers in the area of planning, budgeting, personnel management, and purchasing to conform to state law. The commission must develop annual budget requests pursuant to ch. 216, F.S., relating to Planning and Budgeting; while a budget is not subject to change by the Department of Legal Affairs or the Attorney General, it must be submitted by the Department of Legal Affairs to the Governor for transmittal to the Legislature.

All rules adopted pursuant to ch. 285, F.S., (Indian Reservations and Affairs), ch. 546, F.S., (Amusement Facilities), ch. 550, F.S., (Pari-mutuel Wagering), ch. 551, F.S., (Slot Machines), or ch.

849, F.S. (Gambling), prior to the effective date of the act are preserved and remain in full force and effect.

The commission must exercise all of the regulatory and executive powers granted to it, and apply, construe, and interpret all laws and administrative rules, in a manner consistent with the gaming compact ratified, approved, and described in s. 285.710(3), F.S.

Background Screening

The bill provides that prior to serving on the commission or being employed by the commission, a person must submit their fingerprints for a fingerprint-based search by the Florida Department of Law Enforcement (FDLE) and the Federal Bureau of the Investigation (FBI) databases for state and national criminal arrest records. If the person is a foreign national, he or she must also submit any necessary documentation to allow the commission to conduct a criminal history records check in the person's home country.

The bill requires the person to have his or her fingerprints taken by a vendor approved by FDLE[78] and electronically sent to FDLE. The FDLE must forward the set of fingerprints to the FBI. All fingerprints submitted to FDLE, must be retained by FDLE and enrolled in the national retained print arrest notification program at the FBI, effective when FDLE begins participation in the program. The commission must notify FDLE when a person, whose fingerprints have been retained, is no longer a commissioner or employed by the commission.

The bill provides that the commission is responsible for the costs of fingerprint processing, including the costs for retaining the fingerprints.

Annual Report

The bill requires the commission to make an annual report to the Governor, the President of the Senate, and the Speaker of the House of Representatives. The report must, at a minimum, include the following:

- Recent events in the gaming industry, including pending litigation, pending facility license applications, and new and pending rules.
- Actions of the commission relative to the implementation and administration of this law.
- The state revenues and expenses associated with each form of authorized gaming. Revenues and expenses associated with pari-mutuel wagering must be further delineated by the class of license.
- The performance of each pari-mutuel wagering licensee, cardroom licensee, and slot licensee.
- A summary of disciplinary actions taken by the department.
- The receipts and disbursements of the gaming commission.
- A summary of actions and investigations taken by the gaming commission.
- Any additional information and recommendations that the commission considers useful or that the Governor, the Speaker of the House or the President of the Senate requests.

The bill requires the commission to annually, prior to the issuance of an operating license, confirm that each permitholder has submitted proof with their annual application for a license, in such a form as the commission may require, that the permitholder continues to possess the qualifications prescribed by chapter 550, F.S., and that the permit has not been disapproved by voters in an election.

Standards of Conduct

[78] FDLE keeps a list of vendors, who have met FDLE's technical specifications for electronic submission of fingerprints, on their website. FDLE, *Livescan Service Providers*, http://www.fdle.state.fl.us/Criminal-History-Records/Documents/InternetDoc_ServiceProviders.aspx (last visited Apr. 11, 2021).

The bill creates s. 16.715, F.S., to provide standards of conduct and prohibit ex parte communications (i.e., communications from only one party to a proceeding). Commissioners are public officers and employees of the commission are public employees subject to the Code of Ethics for Public Officers and Employees set forth in part III of ch. 112, F.S., (Code of Ethics), but they are also governed by standards of conduct and provisions limiting ex parte communications, as provided in the bill, similar to the standards applicable to commissioners serving on the Public Service Commission. The standards of conduct may be more restrictive than the Code of Ethics but may not be construed to contravene the restrictions of Code of Ethics. In the event of a conflict, the more restrictive provision applies. Many of the prohibitions involve activities with persons regulated by the commission (regulated entity).

A commissioner or employee:

- May not accept anything from any business entity which, either directly or indirectly, owns or controls any regulated entity, or from any business entity which, either directly or indirectly, is an affiliate or subsidiary of any regulated entity.
- May attend conferences along with associated meals and events that are generally available to all conference participants without payment of fees in addition to the conference fee.
- May attend meetings, meals, or events while attending a conference, that are not sponsored, in whole or in part, by any representative of any regulated entity and that are limited to commissioners or employees only, committee members, or speakers, if the commissioner or employee is a member of a committee of the association of regulatory agencies that organized the conference or is a speaker at the conference;
- May attend a conference for which conference participants who are employed by a regulated entity have paid a higher conference registration fee than the commissioner or employee, or to attend a meal or event that is generally available to all conference participants without payment of any fees in addition to the conference fee, and that is sponsored, in whole or in part, by a regulated entity.
    - If during the course of an investigation by the Commission on Ethics into an alleged violation, a person is alleged to have given or provided a prohibited gift, that person must be given notice and an opportunity to participate in the investigation and relevant proceedings to present a defense; and
    - If the Commission on Ethics determines that the person gave or provided a prohibited gift, the person may not appear before the gaming control commission or otherwise represent anyone before that commission for a period of six years.
- May not accept any form of employment with or engage in any business activity with while employed and for 6 years after service as a commissioner or 2 years after employment:
    - Any business entity which, either directly or indirectly, owns or controls any regulated entity:
    - Any regulated entity; or
    - Any business entity which, either directly or indirectly, is an affiliate or subsidiary of any regulated entity.
- May not accept anything from a party in a proceeding currently pending before the commission.
    - If, during the course of an investigation by the Commission on Ethics into an alleged violation, a person is alleged to have given or provided a prohibited gift, that person must be given notice and an opportunity to participate in the investigation and relevant proceedings to present a defense.
    - If the Commission on Ethics determines that the person gave or provided a prohibited gift, the person may not appear before the gaming control commission or otherwise represent anyone before that commission for a period of two years.
- May not act in an unprofessional manner at any time during the performance of their official duties.
- Must avoid impropriety in all activities and must act at all times in a manner that promotes public confidence in the integrity and impartiality of the commission.
- May not directly or indirectly, through staff or other means, solicit anything of value from:
    - Any regulated entity;
    - Any business entity that, whether directly or indirectly, is an affiliate or subsidiary of any regulated entity; or

    - Any party appearing in a proceeding considered by the commission in the last two years.
- Must annually complete at least four hours of ethics training that addresses, at a minimum, s. 8, Art. II of the State Constitution, the Code of Ethics for Public Officers and Employees, and the public records and public meetings laws of this state; this requirement may be satisfied by completion of a continuing legal education class or other continuing professional education class, seminar, or presentation, if the required subjects are covered.
- Must notify the commission within three calendar days of an arrest for any offense.
- Must provide detailed written notice to the commission and the Commission of Ethics within 30 days of being indicted, charged with, convicted of, pleads guilty or nolo contendere to, or forfeits bail for:
    - A misdemeanor involving gambling, dishonesty, theft, or fraud;
    - A violation of any law in any state, or a law of the United States or any other jurisdiction, involving gambling, dishonesty, theft, or fraud which substantially corresponds to a misdemeanor in this state; or
    - A felony under the laws of this or any other state, the United States, or any other jurisdiction.

A commissioner, employee, or a relative living in the same household as a commissioner or employee while employed and for 6 years after service as a commissioner or 2 years after employment:

- May not have any financial interest, other than shares in a mutual fund, in:
    - Any regulated entity;
    - Any business entity which, either directly or indirectly, owns or controls any regulated entity; or
    - Any business entity which, either directly or indirectly, is an affiliate or subsidiary of any regulated entity.
- Must immediately, if the commissioner, employee, or relative acquires any prohibited financial interest, during the commissioner's term of office or employee's employment with the commission, as a result of events or actions beyond the commissioner's control sell such financial interest.
- Place a wager in any facility licensed by the commission or any facility in the state operated by an Indian tribe.

A commissioner may not:

- Serve as the representative of any political party or on any executive committee or other governing body of a political party; serve as an executive officer or employee of any political party, committee, organization, or association; receive remuneration for activities on behalf of any candidate for public office; engage on behalf of any candidate for public office in the solicitation of votes or other activities on behalf of such candidacy; or become a candidate for election to any public office without first resigning from office.
- Make any public comment, during his or her term of office, regarding the merits of any proceeding under ss. 120.569 and 120.57, F.S., relating to decisions affecting substantial interests and hearings involving disputed issues of material fact, currently pending before the commission.
- Personally represent another person or entity for compensation before the commission for a period of six years following commissioner's end of service unless employed by another agency of state government.
- Lobby the Governor or any agency of the state, members or employees of the Legislature, or any county or municipal government or governmental agency except to represent the commission and department in his or her official capacity as a member.

The above standards of conduct may be more restrictive than the Code of Ethics, but may not be construed to contravene that code's restrictions. In the event of a conflict, the more restrictive provision applies.

The Commission on Ethics must accept and investigate any alleged violations of the above standards of conduct pursuant to the procedures contained in the Code of Ethics as described in ss. 112.322 through 112.3241, F.S., and provide the Governor, the President of the Senate, and the Speaker of the House of Representatives with a report of its findings and recommendations. The Governor is

authorized to enforce the findings and recommendations of the Commission on Ethics, pursuant to the Code of Ethics.

A commissioner or an employee of the commission may request an advisory opinion from the Commission on Ethics, pursuant to s. 112.322(3)(a), F.S., regarding the standards of conduct or the prohibitions set forth in ss. 16.71 and 16.715, F.S., created by the bill.

Ex Parte Communications

The bill defines an "ex parte communication" as any communication that is:

- Not served on all parties to a proceeding, if the communication is written or printed; or
- Made without adequate notice to the parties and without an opportunity for the parties to be present and heard, if the communication is oral.

The bill prohibits commissioners from initiating or considering ex parte communications concerning the merits, threat, or offer of reward in any proceeding that is currently pending before the commission, or that the commissioner knows or reasonably expects will be filed with the commission within 180 days after the communication. An individual may not discuss ex parte with a commissioner the merits of any issue that he or she knows will be filed with the commission within 180 days. These prohibitions do not apply to commission staff.

If a commissioner knowingly receives a prohibited ex parte communication relative to a proceeding to which he or she is assigned, the commissioner must place on the record of the proceeding copies of:

- All written communications received;
- All written responses to the communications; and
- A memorandum stating the substance of all oral communications received and all oral responses made.

The commissioner must give written notice to all parties to the ex parte communication that such matters have been placed on the record. Any party who desires to respond to an ex parte communication may do so. The response must be received by the commission within 10 days after receiving notice that the ex parte communication has been placed on the record. The commissioner may, if he or she deems it necessary to eliminate the effect of an ex parte communication, withdraw from the proceeding, in which case the chair must substitute another commissioner for the proceeding.

Any individual who makes an ex parte communication must submit to the commission a written statement describing the nature of such communication, to include:

- The name of the person making the communication;
- The name of the commissioner or commissioners receiving the communication;
- Copies of all written communications made and all written responses to such communications; and
- A memorandum stating the substance of all oral communications received and all oral responses made.

The commission must place on the record of a proceeding all such communications. Any commissioner who knowingly fails to place on the record any such communications within 15 days of the date of such communication, is subject to removal and may be assessed a civil penalty not to exceed $5,000.

The Commission on Ethics must receive and investigate sworn complaints of violations of the standards of conduct or prohibitions against ex parte communications, pursuant to the procedures contained in the Code of Ethics as described in ss. 112.322 through 112.3241, F.S.

If the Commission on Ethics finds that there has been a violation of the standards of conduct or prohibitions against ex parte communications by a commissioner, it must provide the Governor, the President of the Senate, and the Speaker of the House of Representatives with a report of its findings and recommendations. The Governor is authorized to enforce the findings and recommendations of the

Commission on Ethics, pursuant to the Code of Ethics, and to remove from office a commissioner who is found by the Commission on Ethics to have willfully and knowingly violated the standards is subsection. The Governor must remove from office a commissioner who is found by the Commission on Ethics to have willfully and knowingly violated the standards of conduct or prohibitions against ex parte communications, after a previous finding by the Commission on Ethics that the commissioner willfully and knowingly violated the standards of conduct or the prohibitions against ex parte communications in a separate matter.

If a commissioner fails or refuses to pay the Commission on Ethics any civil penalties for such violations, the Commission on Ethics may bring an action in any circuit court to enforce such penalty.

If, during the course of an investigation by the Commission on Ethics into an alleged violation of the standards of conduct or prohibitions against ex parte communications, allegations are made as to the identity of the person who participated in the ex parte communication, that person must be given notice and an opportunity to participate in the investigation and relevant proceedings to present a defense. If the Commission on Ethics determines that the person participated in the ex parte communication, the person may not appear before the gaming control commission or otherwise represent anyone before that commission for a period of two years.

Seminole Compact Oversight

The bill amends s. 285.710, F.S., effective July 1, 2022, to provide that the commission is the state compliance agency designated as the state agency with authority to carry out the state's oversight responsibilities under the 2010 Compact with the Seminole Tribe, rather than the division.

Type Two Transfer

The bill provides for a type two transfer pursuant to s. 20.06(2), F.S., effective July 1, 2022, of all powers, duties, functions, records, offices, personnel, associated administrative support positions, property, pending issues, existing contracts, administrative authority, administrative rules, and unexpended balances of appropriations, allocations, and other funds of DBPR, relating to the oversight responsibilities by the state compliance agency for authorized gaming compacts under s. 285.710, F.S., the regulation of pari-mutuel wagering under chapter 550, F.S., the regulation of slot machines and slot machine gaming under chapter 551, F.S., and the regulation of cardrooms under s. 849.086, F.S., are transferred by a type two transfer, as defined in s. 20.06(2), F.S., to the Florida Gaming Control Commission within the Department of Legal Affairs, Office of the Attorney General.

The Department of Legal Affairs must provide administrative support to the commission until the transfer is complete, but the commission is not subject to control, supervision, or direction by the Department of Legal Affairs, including, but not limited to, personnel, purchasing, transactions involving real or personal property, and budgetary matters. Those employees transferred from DBPR to the commission retain and transfer accrued leave balances.

Reviser's Bill

The bill directs the Division of Law Revision to prepare a reviser's bill to conform the Florida Statutes to the Type Two transfer.

Effective Date

The bill provides that except as otherwise expressly provided in this act, and except for this section, which shall take effect upon this act becoming a law, this act shall take effect on the same date that

PCB COM 21-05 or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes a law.

B. SECTION DIRECTORY:

Section 1: Amends s. 16.56, F.S., relating to the Department of Legal Affairs Office of Statewide Prosecution.

Section 2: Creates s. 16.71, F.S., relating to the Florida Gaming Control Commission.

Section 3: Creates s. 16.17, F.S., relating to Florida Gaming Control Commission background screenings.

Section 4. Creates s. 16.715, F.S., relating to the Florida Gaming Control Commission standards of conduct, ex parte communications.

Section 5: Amends s. 285.710, F.S., compact authorization.

Section 6: Provides for a type two transfer.

Section 7: Provides for the creation of a reviser's bill.

Section 8: Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   The bill may increase revenues associated with the implementation of additional enforcement measures relating to gambling law violations. The Revenue Estimating Conference has not yet reviewed this bill.

2. Expenditures:

   The bill may increase expenditures associated with the establishment and administration of a new state agency, compensation of its staff, and the implementation of additional enforcement measures relating to gambling law violations. The Revenue Estimating Conference has not yet reviewed this bill.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   To the extent that local law enforcement agencies are incurring costs related to enforcement, including but not limited to, investigation and prosecution, of violations of gambling laws, the bill will have an indeterminate positive fiscal impact on 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 affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Rules may need to be revised and/or created to implement the changes made by the bill.

The commission and its law enforcement officers are specifically authorized to seize any contraband in accordance with the Florida Contraband Forfeiture Act. The commission is authorized to adopt rules to implement this provision.

The commission is required to adopt rules to provide for the filing of a report when hearings are held by a single commissioner or a panel.

The bill provides for a type two transfer pursuant to s. 20.06(2), F.S., effective July 1, 2022, of all powers and duties, including administrative rules, of DBPR, relating to the regulation of pari-mutuel wagering, slot machines, and cardrooms, and the state compliance agency's oversight responsibilities for authorized gaming compacts under s. 285.710, F.S., the regulation of pari-mutuel wagering under chapter 550, F.S., the regulation of slot machines and slot machine gaming under chapter 551, F.S., and the regulation of cardrooms under s. 849.086, F.S., to the commission.

The bill provides that all rules adopted pursuant to ch. 24, F.S., (State Lotteries), ch. 285, F.S., (Indian Reservations and Affairs), ch. 546, F.S., (Amusement Facilities), ch. 550, F.S., (Pari-mutuel Wagering), ch. 551, F.S., (Slot Machines), or ch. 849, F.S., (Gambling), prior to the effective date of this act are preserved and remain in full force and effect.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

A bill to be entitled

An act relating to gaming enforcement; amending s. 16.56, F.S.; expanding the authority of the Office of Statewide Prosecution within the Department of Legal Affairs to investigate and prosecute the offenses of certain crimes; creating s. 16.71, F.S.; creating the Florida Gaming Control Commission within the Office of the Attorney General; providing for membership of the commission; providing for the removal of members of the commission by the Governor under certain circumstances; providing rights for certain employees of the commission; providing requirements and powers for employees serving as law enforcement officers for the commission; providing powers and duties of the commission; providing requirements for hearings relating to the commission; authorizing the commission to submit certain written recommendations to the Governor and the Legislature upon certain findings; requiring the commission to annually develop a budget request; requiring the department to submit the budget request to the Governor for transmittal to the Legislature; authorizing the commission to contract or consult with certain agencies; requiring an annual report be made by the division to the Governor and the Legislature; specifying content required for the

report; creating s. 16.712, F.S.; requiring a person to submit to certain background screening requirements prior to serving on or being employed with the commission; providing procedures and conditions for retention of fingerprints; requiring a person subject to the background screening to pay the costs of fingerprint processing; creating s. 16.715, F.S.; providing construction; providing standards of conduct for commissioners and employees of the commission; requiring commissioners and employees of the commission to complete specified annual training; requiring the Commission on Ethics to accept and investigate any alleged violations of the standards of conduct for commissioners and employees; providing requirements for such investigations; authorizing a commissioner or an employee of the commission to request an advisory opinion from the Commission on Ethics; providing a definition for ex parte communication; providing requirements relating to ex parte communications; providing civil penalties; amending s. 285.710, F.S.; revising the definition of the term "state compliance agency"; designating the Florida Gaming Control Commission as the state compliance agency having authority to carry out certain responsibilities; transferring all powers,

duties, functions, records, offices, personnel, property, pending issues, existing contracts, administrative authority, administrative rules, trust funds, and unexpended balances of appropriations, allocations, and other funds of the Department of Business and Professional Regulation to the commission by a type two transfer; requiring the Department of Legal Affairs to provide administrative support to the commission until such transfer is complete; providing a directive to the Division of Law Revision; providing contingent effective dates.

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

Section 1. Paragraph (a) of subsection (1) of section 16.56, Florida Statutes, is amended to read:

16.56 Office of Statewide Prosecution.—

(1) There is created in the Department of Legal Affairs an Office of Statewide Prosecution. The office shall be a separate "budget entity" as that term is defined in chapter 216. The office may:

(a) Investigate and prosecute the offenses of:

1. Bribery, burglary, criminal usury, extortion, gambling, kidnapping, larceny, murder, prostitution, perjury, robbery, carjacking, home-invasion robbery, and patient brokering;

2. Any crime involving narcotic or other dangerous drugs;

3. Any violation of the Florida RICO (Racketeer Influenced and Corrupt Organization) Act, including any offense listed in the definition of racketeering activity in s. 895.02(8)(a), providing such listed offense is investigated in connection with a violation of s. 895.03 and is charged in a separate count of an information or indictment containing a count charging a violation of s. 895.03, the prosecution of which listed offense may continue independently if the prosecution of the violation of s. 895.03 is terminated for any reason;

4. Any violation of the Florida Anti-Fencing Act;

5. Any violation of the Florida Antitrust Act of 1980, as amended;

6. Any crime involving, or resulting in, fraud or deceit upon any person;

7. Any violation of s. 847.0135, relating to computer pornography and child exploitation prevention, or any offense related to a violation of s. 847.0135 or any violation of chapter 827 where the crime is facilitated by or connected to the use of the Internet or any device capable of electronic data storage or transmission;

8. Any violation of chapter 815;

9. Any criminal violation of part I of chapter 499;

10. Any violation of the Florida Motor Fuel Tax Relief Act of 2004;

11. Any criminal violation of s. 409.920 or s. 409.9201;

12. Any crime involving voter registration, voting, or candidate or issue petition activities;

13. Any criminal violation of the Florida Money Laundering Act;

14. Any criminal violation of the Florida Securities and Investor Protection Act; ~~or~~

15. Any violation of chapter 787, as well as any and all offenses related to a violation of chapter 787; or

16. Any violation of chapter 24, chapter 285, chapter 546, chapter 550, chapter 551, or chapter 849, including violations referred by the Department of Agriculture and Consumer Services, the Department of Business and Professional Regulation, the Department of the Lottery, the Florida Gaming Control Commission, or the Seminole Tribe of Florida.

or any attempt, solicitation, or conspiracy to commit any of the crimes specifically enumerated above. The office shall have such power only when any such offense is occurring, or has occurred, in two or more judicial circuits as part of a related transaction, or when any such offense is connected with an organized criminal conspiracy affecting two or more judicial circuits. Informations or indictments charging such offenses shall contain general allegations stating the judicial circuits and counties in which crimes are alleged to have occurred or the

judicial circuits and counties in which crimes affecting such circuits or counties are alleged to have been connected with an organized criminal conspiracy.

Section 2. Section 16.71, Florida Statutes, is created to read:

16.71 Florida Gaming Control Commission.—

(1)(a) There is created within the Department of Legal Affairs, Office of the Attorney General, a Florida Gaming Control Commission, hereinafter referred to as the commission. The commission shall be a separate budget entity and the agency head for all purposes. The Florida Gaming Control Commission is a criminal justice agency as defined in s. 119.011.

(b) The commission is not subject to control, supervision, or direction by the Department of Legal Affairs or the Attorney General in the performance of its duties, including, but not limited to, personnel, purchasing transactions involving real or personal property, and budgetary matters.

(2)(a) The commission shall consist of five members appointed by the Governor, and subject to confirmation by the Senate, for terms of 4 years. Members of the commission must be appointed by January 1, 2022.

1. For the purpose of providing staggered terms, of the initial appointments, 2 members shall be appointed to 4-year terms, 2 members shall be appointed to 3-year terms, and 1 member shall be appointed to a 2-year term.

2. Of the five members at least one member must have at least 10 years of experience in law enforcement and criminal investigations, at least one member must be a certified public accountant licensed in this state with at least 10 years of experience in accounting and auditing, and at least one member must be an attorney admitted and authorized to practice law in this state for the preceding 10 years.

3. Of the five members, each appellate district shall have one member appointed from the district to the commission who is a resident of the district at the time of the original appointment.

4. A person may not apply to the Governor for appointment to the Gaming Control Commission until after a background investigation of the person is conducted by the Department of Law Enforcement and the investigation is forwarded to the Governor.

5. A person who holds any office in a political party, who has been convicted of a felony, or who has been convicted of a misdemeanor related to gambling within the previous 10 years may not apply to the Governor for appointment.

6. The Governor may not solicit or request any nominations, recommendations or communications about potential candidates for appointment to the commission from:

a. Any person that holds a permit or license issued under chapter 550, or a license issued under chapter 551, chapter 546,

or chapter 849; or an officer, official, or employee of such permitholder or licensee; or an ultimate equitable owner, as defined in s. 550.002(37), of such permitholder or licensee; or

b. Any officer, official, employee, contractor, or subcontractor of a tribe that has a valid and active compact with the state or an entity employed, licensed, or contracted by such tribe; or an ultimate equitable owner, as defined in s. 550.002(37), of such entity; or

c. Any registered lobbyist for the executive or legislative branch that represents any person or entity identified in subparagraphs a. and b.

(b)1. The Governor may remove a member for cause, including but not limited to, circumstances in which the member commits gross misconduct or malfeasance in office, substantially neglects or is unable to discharge their duties as a member, or is convicted of or found guilty of or has plead nolo contendere to, regardless of adjudication, in any jurisdiction, a felony or misdemeanor that directly relates to gambling, dishonesty, theft, or fraud.

2. The Governor may remove a member without cause subject to approval by a majority of the Senate. Upon the resignation or removal from office of a member, the Governor shall appoint a successor pursuant to paragraph (a) who, subject to confirmation by the Senate, shall serve the remainder of the unfinished term.

(c) A commissioner shall serve until a successor is

appointed, but commissioners may not serve more than 8 years. Vacancies shall be filled for the unexpired portion of the term. The salary of each commissioner is equal to that paid under state law to a commissioner on the Florida Public Service Commission. The commission shall elect a chair and a vice chair.

(d) To aid the commission in its duties, the commission must appoint a person who is not a member of the commission to serve as the executive director of the commission. The executive director shall supervise, direct, coordinate, and administer all activities necessary to fulfill the commission's responsibilities. The commission must appoint the executive director by July 1, 2022. The executive director, with the consent of the commission, shall employ such staff as are necessary to adequately perform the functions of the commission, within budgetary limitations. All employees, except the executive director and attorneys, are subject to part II of chapter 110. The executive director shall serve at the pleasure of the commission and be subject to part III of chapter 110. Attorneys employed by the commission shall be subject to part V of chapter 110. The executive director shall maintain headquarters in and reside in Leon County. The salary of the executive director is equal to that paid under state law to a commissioner on the Florida Public Service Commission.

(e)1. A person may not, for the 4 years immediately preceding the date of appointment to or employment with the

commission and while appointed to or employed with the commission:

a. Hold a permit or license issued under chapter 550, or a license issued under chapter 551, chapter 546, or chapter 849; be an officer, official, or employee of such permitholder or licensee; or be an ultimate equitable owner, as defined in s. 550.002(37), of such permitholder or licensee;

b. Be an officer, official, employee, or other person with duties or responsibilities relating to a gaming operation owned by an Indian tribe that has a valid and active compact with the state; be a contractor or subcontractor of such tribe or an entity employed, licensed, or contracted by such tribe; or be an ultimate equitable owner, as defined in s. 550.002(37), of such entity; or

c. Be a registered lobbyist for the executive or legislative branch, except while a commissioner when officially representing the commission.

2. A person is ineligible for appointment to or employment with the commission if, within the 4 years immediately preceding such appointment or employment, they violated subparagraph 1. or solicited or accepted employment with, acquired any direct or indirect interest in, or had any direct or indirect business association, partnership, or financial relationship with, or is a relative of, any person or entity who is an applicant, licensee, or registrant with the Division of Pari-mutuel

Wagering or the commission.

For the purposes of this paragraph, the term "relative" means a spouse, father, mother, son, daughter, grandfather, grandmother, brother, sister, uncle, aunt, cousin, nephew, niece, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half-brother, or half-sister.

(f)1. A person may not, for the 6 years immediately following the date of resignation or termination from the commission:

a. Hold a permit or license issued under chapter 550, or a license issued under chapter 551, chapter 546, or chapter 849; be an officer, official, or employee of such permitholder or licensee; or be an ultimate equitable owner, as defined in s. 550.002(37), of such permitholder or licensee;

b. Be an officer, official, employee, or other person with duties or responsibilities relating to a gaming operation owned by an Indian tribe that has a valid and active compact with the state; be a contractor or subcontractor of such tribe or an entity employed, licensed, or contracted by such tribe; or be an ultimate equitable owner, as defined in s. 550.002(37), of such entity; or

c. Lobby the Governor or any agency of the state, members or employees of the Legislature, or any county or municipal

government or governmental agency.

(g)1. A person employed by the commission may not, for the 2 years immediately following the date of termination or resignation from employment with the commission:

a. Hold a permit or license issued under chapter 550, or a license issued under chapter 551, chapter 546, or chapter 849; be an officer, official, or employee of such permitholder or licensee; or be an ultimate equitable owner, as defined in s. 550.002(37), of such permitholder or licensee;

b. Be an officer, official, employee, or other person with duties or responsibilities relating to a gaming operation owned by an Indian tribe that has a valid and active compact with the state; be a contractor or subcontractor of such tribe or an entity employed, licensed, or contracted by such tribe; or be an ultimate equitable owner, as defined in s. 550.002(37), of such entity; or

c. Lobby the Governor or any agency of the state, members or employees of the Legislature, or any county or municipal government or governmental agency.

(h) Any person violating paragraphs (f) or (g) shall be subject to the penalties for violations of standards of conduct for public officers, employees of agencies, and local government attorneys provided in s. 112.317, and a civil penalty of an amount equal to the compensation which the person receives for the prohibited conduct.

(i) A person is ineligible for appointment to the commission if he or she has committed any of the following:

1. Been convicted of or found guilty of or plead nolo contendere to, regardless of adjudication, in any jurisdiction, a felony or misdemeanor that directly relates to gambling, dishonesty, theft, or fraud, within the 10 years immediately preceding such appointment.

2. Been convicted of or found guilty of or plead nolo contendere to, regardless of adjudication, in any jurisdiction, a crime listed s. 775.21(4)(a)1. or s. 776.08.

3. Had a license or permit issued under chapters 550, 551, 546, or chapter 849 or a gaming license issued by any other jurisdiction denied, suspended, or revoked.

(j)1. A person is ineligible for employment with the commission if he or she has been convicted of a felony within 5 years of the date of application; convicted of a misdemeanor within 5 years of the date of application which the commission determines bears a close relationship to the duties and responsibilities of the position for which employment is sought; or dismissed from prior employment for gross misconduct or incompetence or intentionally making a false statement concerning a material fact in connection with the application for employment to the commission.

2. If an employee of the commission is charged with a felony while employed by the commission, the commission shall

suspend the employee, with or without pay, and terminate employment with the commission upon conviction. If an employee of the commission is charged with a misdemeanor while employed by the commission, the commission shall suspend the employee, with or without pay, and may terminate employment with the commission upon conviction if the commission determines that the offense bears a close relationship to the duties and responsibilities of the position held with the commission.

(k) A commissioner or employee of the commission must notify the commission within 3 calendar days of arrest for any offense.

(l) A member of the commission or an employee must immediately provide detailed written notice of the circumstances to the commission if the member or employee is indicted, charged with, convicted of, pleads guilty or nolo contendere to, or forfeits bail for:

1. A misdemeanor involving gambling, dishonesty, theft, or fraud;

2. A violation of any law in any state, or a law of the United States or any other jurisdiction, involving gambling, dishonesty, theft, or fraud which substantially corresponds to a misdemeanor in this state; or

3. A felony under the laws of this or any other state, the United States, or any other jurisdiction.

(m)1. All employees authorized by the commission shall

have access to, and shall have the right to inspect, premises licensed by the Department of Business and Professional Regulation, to collect taxes and remit them to the officer entitled to them, and to examine the books and records of all persons subject to chapter 24, chapter 285, chapter 546, chapter 550, chapter 551, or chapter 849. The authorized employees shall require of each such person strict compliance with the laws of this state relating to the license or permit of the licensee.

2. Each employee serving as a law enforcement officer for the commission must meet the qualifications for employment or appointment as a law enforcement officer set forth under s. 943.13 and must be certified as a law enforcement officer by the Department of Law Enforcement under chapter 943. Upon certification, each law enforcement officer is subject to and has the same authority as provided for law enforcement officers generally in chapter 901 and has statewide jurisdiction. Each officer also has arrest authority as provided for state law enforcement officers in s. 901.15. Each officer possesses the full law enforcement powers granted to other peace officers of this state, including the authority to make arrests, carry firearms, serve court process, and seize contraband and the proceeds of illegal activities.

a. The primary responsibility of each officer appointed under this paragraph is to investigate, enforce, and prosecute, throughout the state, violations and violators of chapter 24,

chapter 285, chapter 546, chapter 550, chapter 551, or chapter 849, and the rules adopted thereunder, as well as other state laws that the commission or all state law enforcement officers are specifically authorized to enforce.

b. The secondary responsibility of each officer appointed under this paragraph is to enforce all other state laws, provided that the enforcement is incidental to exercising the officer's primary responsibility and the officer exercises the powers of a deputy sheriff, only after consultation or coordination with the appropriate local sheriff's office or municipal police department or when the commission participates in the Florida Mutual Aid Plan during a declared state emergency.

(3)(a) The commission and its law enforcement officers are specifically authorized to seize any contraband in accordance with the Florida Contraband Forfeiture Act. For purposes of this section, "contraband" has the same meaning as s. 932.701(2)(a)2.

(b) The commission is specifically authorized to store and test any contraband that is seized in accordance with the Florida Contraband Forfeiture Act and may authorize any of its staff to implement this provision.

(c) The commission may adopt rules to implement this provision.

(d) This subsection does not limit the authority of any other person authorized by law to seize contraband.

(4) The commission shall convene at the call of its chair or at the request of a majority of the members of the commission. The presence of three members is required to constitute a quorum, and the affirmative vote of the majority of the members present is required for any action or recommendation by the commission. The commission may meet in any city or county of the state. The commission shall do all of the following:

(a) Exercise all of the regulatory and executive powers of the state with respect to gambling, including, without limitation thereto, pari-mutuel wagering, cardrooms, slot machine facilities, oversight of gaming compacts executed by the state pursuant to the Federal Indian Gaming Regulatory Act, and any other forms of gambling authorized by the State Constitution or law, excluding games authorized by s. 15, Art. X of the State Constitution.

(b) Establish procedures consistent with chapter 120 to ensure adequate due process in the exercise of its regulatory and executive functions.

(c) Ensure that the laws of this state are not interpreted in any manner that expands the activities authorized in chapters 24, 285, 546, 550, 551, or 849.

(d) Review any matter within the scope of the jurisdiction of the Division of Pari-mutuel Wagering.

(e) Review the regulation of licensees, permitholders, or persons regulated by the Division of Pari-mutuel Wagering and

the procedures used by the division to implement and enforce the law.

(f) Review the procedures of the Division of Pari-mutuel Wagering which are used to qualify applicants applying for a license, permit, or registration.

(g) Refer criminal violations of chapters 24, 285, 546, 550, 551, or 849 to the appropriate state attorney or to the Office of Statewide Prosecution, as applicable.

(h) Exercise all other powers and perform any other duties prescribed by the Legislature.

(i) The commission may adopt rules to implement this section.

The commission may subpoena witnesses and compel their attendance and testimony, administer oaths and affirmations, take evidence, and require by subpoena the production of any books, papers, records, or other items relevant to the performance of the duties of the commission or to the exercise of its powers.

(5) Hearings shall be held before the commission, except that the chair may direct that any hearing be held before one member of the commission or a panel of less than the full commission. The commission shall adopt rules to provide for the filing of a report when hearings are held by a single commissioner or a panel, which rules shall prescribe the time

for filing the report and the contents of the report. The chair may schedule hearings to determine whether enforcement of the gaming laws of this state is sufficient to protect residents from abuse and misinterpretation of the law or create expansion of gaming or gambling in this state.

(6) The commission may submit written recommendations to enhance the enforcement of gaming laws of the state to the Governor, the President of the Senate, and the Speaker of the House of Representatives.

(7) The commission shall make an annual report to the Governor, the President of the Senate, and the Speaker of the House of Representatives. The report shall, at a minimum, include the following:

(a) Recent events in the gaming industry, including pending litigation, pending facility license applications, and new and pending rules.

(b) Actions of the commission relative to the implementation and administration of this section.

(c) The state revenues and expenses associated with each form of authorized gaming. Revenues and expenses associated with pari-mutuel wagering shall be further delineated by the class of license.

(d) The performance of each pari-mutuel wagering licensee, cardroom licensee, and slot licensee.

(e) A summary of disciplinary actions taken by the

department.

(f) The receipts and disbursements of the gaming commission.

(g) A summary of actions and investigations taken by the gaming commission.

(h) Any additional information and recommendations that the commission considers useful or that the Governor, the Speaker of the House or the President of the Senate requests.

(8) The commission's exercise of executive powers in the area of planning, budgeting, personnel management, and purchasing shall be as provided by law.

(9) The commission shall develop a budget request pursuant to chapter 216 annually. The budget is not subject to change by the Department of Legal Affairs or the Attorney General, but it shall be submitted by the Department of Legal Affairs to the Governor for transmittal to the Legislature.

(10) The commission is authorized to contract or consult with appropriate agencies of state government for such professional assistance as may be needed in the discharge of its duties.

(11) All rules adopted pursuant to chapters 24, 285, 546, 550, 551, and 849 prior to the effective date of this act are preserved and remain in full force and effect.

(12) The commission shall exercise all of its regulatory and executive powers and shall apply, construe, and interpret

all laws and administrative rules in a manner consistent with the gaming compact ratified, approved, and described in s. 285.710(3).

(13) The commission shall annually, prior to the issuance of an operating license, confirm that each permitholder has submitted proof with their annual application for a license, in such a form as the commission may require, that the permitholder continues to possess the qualifications prescribed by chapter 550, and that the permit has not been disapproved by voters in an election.

(14) The commission shall review matters, and issue or deny right to sue letters that grant a person the right to sue under s. 849.27.

Section 3. Section 16.712, Florida Statutes, is created to read:

16.712 Florida Gaming Control Commission background screening provisions.—

(1) Prior to serving as a commissioner on the Florida Gaming Control Commission or becoming an employee of the commission, a person must have his or her fingerprints taken by a vendor approved by the Department of Law Enforcement. The set of fingerprints must be electronically sent to the Department of Law Enforcement for state processing, and the Department of Law Enforcement must forward the fingerprints to the Federal Bureau of Investigation for national processing. Persons who are

foreign nationals must submit such documents as necessary to allow the commission to conduct criminal history records checks in the person's home country.

(2) All fingerprints submitted to the Department of Law Enforcement as required under subsection (1) must be retained by the Department of Law Enforcement as provided under s. 943.05(2)(g) and (h) and (3) and enrolled in the national retained print arrest notification program at the Federal Bureau of Investigation when the Department of Law Enforcement begins participation in the program. The commission must notify the Department of Law Enforcement when any person whose fingerprints have been retained is no longer a commissioner or employee of the commission.

(3) The costs of fingerprint processing, including the cost for retaining fingerprints, shall be borne by the commission.

Section 4. Section 16.715, Florida Statutes, is created to read:

16.715 Florida Gaming Control Commission standards of conduct; ex parte communications.—

(1) STANDARDS OF CONDUCT.—

(a) In addition to the provisions of part III of chapter 112, which are applicable to commissioners on and employees with the Florida Gaming Control Commission by virtue of their being public officers and public employees, the conduct of

commissioners and employees shall be governed by the standards of conduct provided in this subsection. Nothing shall prohibit the standards of conduct from being more restrictive than part III of chapter 112. Further, this subsection may not be construed to contravene the restrictions of part III of chapter 112. In the event of a conflict between this subsection and part III of chapter 112, the more restrictive provision shall apply.

(b)1. A commissioner or employee of the commission may not accept anything from any business entity which, either directly or indirectly, owns or controls any person regulated by the commission or from any business entity which, either directly or indirectly, is an affiliate or subsidiary of any person regulated by the commission.

2. A commissioner or an employee may attend conferences, along with associated meals and events that are generally available to all conference participants without payment of any fees in addition to the conference fee. Additionally, while attending a conference, a commissioner or an employee may attend meetings, meals, or events that are not sponsored, in whole or in part, by any representative of any person regulated by the commission and that are limited to commissioners or employees only, committee members, or speakers if the commissioner or employee is a member of a committee of the association of regulatory agencies that organized the conference or is a speaker at the conference. It is not a violation of this

subparagraph for a commissioner or an employee to attend a conference for which conference participants who are employed by a person regulated by the commission have paid a higher conference registration fee than the commissioner or employee, or to attend a meal or event that is generally available to all conference participants without payment of any fees in addition to the conference fee and that is sponsored, in whole or in part, by a person regulated by the commission.

3. If, during the course of an investigation by the Commission on Ethics into an alleged violation of this subparagraph, allegations are made as to the identity of the person giving or providing the prohibited gift, that person must be given notice and an opportunity to participate in the investigation and relevant proceedings to present a defense.

4. If the Commission on Ethics determines that the person gave or provided a prohibited gift, the person may not appear before the commission or otherwise represent anyone before the commission for a period of 6 years.

5. A commissioner or an employee may not accept any form of employment with or engage in any business activity with any business entity which, either directly or indirectly, owns or controls any person regulated by the commission, any person regulated by the commission, or any business entity which, either directly or indirectly, is an affiliate or subsidiary of any person regulated by the commission while employed and for 6

years after service as a commissioner or 2 years after employment.

6. A commissioner, an employee, or a relative living in the same household as such commissioner or employee may not have any financial interest, other than shares in a mutual fund, in any person regulated by the commission, in any business entity which, either directly or indirectly, owns or controls any person regulated by the commission, or in any business entity which, either directly or indirectly, is an affiliate or subsidiary of any person regulated by the commission while serving or employed and for 6 years after such service or 2 years after employment. If a commissioner, employee, or a relative living in the same household as such commissioner or employee acquires any financial interest prohibited by this subsection during the commissioner's term of office or the employee's employment with the commission as a result of events or actions beyond the commissioner, employee or relative's control, they shall immediately sell such financial interest. For purposes of this subsection, the term "relative" has the same meaning as provided in s. 16.71(2)(e).

7. A commission member or an employee may not lobby the Governor or any agency of the state, members or employees of the Legislature, or any county or municipal government or governmental agency except to represent the commission and department in his or her official capacity as a member.

8. A commissioner or an employee may not accept anything from a party in a proceeding currently pending before the commission. If, during the course of an investigation by the Commission on Ethics into an alleged violation of this subparagraph, allegations are made as to the identity of the person giving or providing the prohibited gift, that person must be given notice and an opportunity to participate in the investigation and relevant proceedings to present a defense. If the Commission on Ethics determines that the person gave or provided a prohibited gift, the person may not appear before the commission or otherwise represent anyone before the commission for a period of 6 years.

9. A commissioner may not serve as the representative of any political party or on any executive committee or other governing body of a political party; serve as an executive officer or employee of any political party, committee, organization, or association; receive remuneration for activities on behalf of any candidate for public office; engage on behalf of any candidate for public office in the solicitation of votes or other activities on behalf of such candidacy; or become a candidate for election to any public office without first resigning from office.

10. A commissioner, during his or her term of office, may not make any public comment regarding the merits of any proceeding under ss. 120.569 and 120.57 currently pending before

the commission.

11. A commissioner or an employee may not act in an unprofessional manner at any time during the performance of official duties.

12. A commissioner or an employee must avoid impropriety in all activities and must act at all times in a manner that promotes public confidence in the integrity and impartiality of the commission.

13. A commissioner or an employee may not directly or indirectly, through staff or other means, solicit anything of value from any person regulated by the commission, or from any business entity that, whether directly or indirectly, is an affiliate or subsidiary of any person regulated by the commission, or from any party appearing in a proceeding considered by the commission in the last 6 years.

14. A commissioner or an employee may not personally represent another person or entity for compensation before the commission for a period of 6 years following the commissioner's end of service or a period of 2 years following employment unless employed by another agency of state government.

15. A commissioner may not lobby the Governor or any agency of the state, members or employees of the Legislature, or any county or municipal government or governmental agency except to represent the commission and department in an official capacity.

(c) A commissioner or an employee of the commission must annually complete at least 4 hours of ethics training that addresses, at a minimum, s. 8, Art. II of the State Constitution, the Code of Ethics for Public Officers and Employees, and the public records and public meetings laws of this state. This requirement may be satisfied by completion of a continuing legal education class or other continuing professional education class, seminar, or presentation, if the required subjects are covered.

(d) The Commission on Ethics shall accept and investigate any alleged violations of this subsection pursuant to the procedures contained in ss. 112.322-112.3241. The Commission on Ethics shall provide the Governor, the President of the Senate, and the Speaker of the House of Representatives with a report of its findings and recommendations. The Governor is authorized to enforce the findings and recommendations of the Commission on Ethics, pursuant to part III of chapter 112. A commissioner or an employee of the commission may request an advisory opinion from the Commission on Ethics, pursuant to s. 112.322(3)(a), regarding the standards of conduct or prohibitions set forth in this section or s. 16.71.

(e) A commissioner, an employee of the commission, or a relative living in the same household as such commissioner or employee may not place a wager in any facility licensed by the commission or any facility in the state operated by an Indian

tribe.

(3) EX PARTE COMMUNICATIONS.—

(a) As used in this section, the term "ex parte communication" means any communication that:

1. If it is a written or printed communication or a communication in electronic form, is not served on all parties to a proceeding; or

2. If it is an oral communication, is made without adequate notice to the parties and without an opportunity for the parties to be present and heard.

(b) A commissioner may not initiate or consider ex parte communications concerning the merits, threat, or offer of reward in any proceeding that is currently pending before the commission or that he or she knows or reasonably expects will be filed with the commission within 180 days after the date of any such communication. An individual may not discuss ex parte with a commissioner the merits of any issue that he or she knows will be filed with the commission within 180 days. This paragraph does not apply to commission staff.

(c) If a commissioner knowingly receives an ex parte communication relative to a proceeding other than as set forth in paragraph (a), to which the commissioner is assigned, the commissioner must place on the record of the proceeding copies of all written communications received, all written responses to the communications, and a memorandum stating the substance of

all oral communications received and all oral responses made, and shall give written notice to all parties to the communication that such matters have been placed on the record. Any party who desires to respond to an ex parte communication may do so. The response must be received by the commission within 10 days after receiving notice that the ex parte communication has been placed on the record. The commissioner may, if deemed by such commissioner to be necessary to eliminate the effect of an ex parte communication, withdraw from the proceeding, in which case the chair shall substitute another commissioner for the proceeding.

(d) Any individual who makes an ex parte communication shall submit to the commission a written statement describing the nature of such communication, to include the name of the person making the communication, the name of the commissioner or commissioners receiving the communication, copies of all written communications made, all written responses to such communications, and a memorandum stating the substance of all oral communications received and all oral responses made. The commission shall place on the record of a proceeding all such communications.

(e) Any commissioner who knowingly fails to place on the record any such communications, in violation of this subsection, within 15 days of the date of such communication is subject to removal and may be assessed a civil penalty not to exceed

$5,000.

(f)1. It shall be the duty of the Commission on Ethics to receive and investigate sworn complaints of violations of this subsection pursuant to the procedures contained in ss. 112.322-112.3241.

2. If the Commission on Ethics finds that there has been a violation of this subsection by a commissioner, it shall provide the Governor, the President of the Senate, and the Speaker of the House of Representatives with a report of its findings and recommendations. The Governor is authorized to enforce the findings and recommendations of the Commission on Ethics, pursuant to part III of chapter 112 and to remove from office a commissioner who is found by the Commission on Ethics to have willfully and knowingly violated this subsection. The Governor shall remove from office a commissioner who is found by the Commission on Ethics to have willfully and knowingly violated this subsection after a previous finding by the Commission on Ethics that the commissioner willfully and knowingly violated this subsection in a separate matter.

3. If a commissioner fails or refuses to pay the Commission on Ethics any civil penalties assessed pursuant to this subsection, the Commission on Ethics may bring an action in any circuit court to enforce such penalty.

4. If, during the course of an investigation by the Commission on Ethics into an alleged violation of this

subsection, allegations are made as to the identity of the person who participated in the ex parte communication, that person must be given notice and an opportunity to participate in the investigation and relevant proceedings to present a defense. If the Commission on Ethics determines that the person participated in the ex parte communication, the person may not appear before the commission or otherwise represent anyone before the commission for a period of 2 years.

Section 5. Effective July 1, 2022, paragraph (f) of subsection (1) and subsection (7) of section 285.710, Florida Statutes, are amended to read:

285.710 Compact authorization.—

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

(f) "State compliance agency" means the Florida Gaming Control Commission ~~Division of Pari-mutuel Wagering of the Department of Business and Professional Regulation~~ which is designated as the state agency having the authority to carry out the state's oversight responsibilities under the compact.

(7) The Florida Gaming Control Commission ~~The Division of Pari-mutuel Wagering of the Department of Business and Professional Regulation~~ is designated as the state compliance agency having the authority to carry out the state's oversight responsibilities under the compact authorized by this section.

Section 6. (1) Effective July 1, 2022, all powers, duties, functions, records, offices, personnel, associated

administrative support positions, property, pending issues, existing contracts, administrative authority, administrative rules, and unexpended balances of appropriations, allocations, and other funds in the Department of Business and Professional Regulation related to the oversight responsibilities by the state compliance agency for authorized gaming compacts under s. 285.710, Florida Statutes, the regulation of pari-mutuel wagering under chapter 550, Florida Statutes, the regulation of slot machines and slot machine gaming under chapter 551, Florida Statutes, and the regulation of cardrooms under s. 849.086, Florida Statutes, are transferred by a type two transfer, as defined in s. 20.06(2), Florida Statutes, to the Florida Gaming Control Commission within the Department of Legal Affairs, Office of the Attorney General.

(2) Notwithstanding chapter 60L-34, Florida Administrative Code, or any law to the contrary, employees who are transferred from the Department of Business and Professional Regulation to the Florida Gaming Control Commission within the Department of Legal Affairs, Office of the Attorney General to fill positions transferred by this act, retain and transfer any accrued annual leave, sick leave, and regular and special compensatory leave balances.

(3) The Department of Legal Affairs shall provide administrative support to the Florida Gaming Control Commission until the transfer in subsection (1) is complete.

Section 7. Paragraph (a) of subsection (2) of section 932.701, Florida Statutes, is amended to read:

932.701 Short title; definitions.—

(2) As used in the Florida Contraband Forfeiture Act:

(a) "Contraband article" means:

1. Any controlled substance as defined in chapter 893 or any substance, device, paraphernalia, or currency or other means of exchange that was used, was attempted to be used, or was intended to be used in violation of any provision of chapter 893, if the totality of the facts presented by the state is clearly sufficient to meet the state's burden of establishing probable cause to believe that a nexus exists between the article seized and the narcotics activity, whether or not the use of the contraband article can be traced to a specific narcotics transaction.

2. Any equipment, gambling device, apparatus, material of gaming, proceeds, substituted proceeds, real or personal property, Internet domain name, gambling paraphernalia, lottery tickets, money, currency, or other means of exchange which was obtained, received, used, ~~was~~ attempted to be used, or intended to be used in violation of the gambling laws of the state, including any violation of ch. 24, ch. 285, ch. 546, ch. 550, ch. 551, and ch. 849.

3. Any equipment, liquid or solid, which was being used, is being used, was attempted to be used, or intended to be used

in violation of the beverage or tobacco laws of the state.

4. Any motor fuel upon which the motor fuel tax has not been paid as required by law.

5. Any personal property, including, but not limited to, any vessel, aircraft, item, object, tool, substance, device, weapon, machine, vehicle of any kind, money, securities, books, records, research, negotiable instruments, or currency, which was used or was attempted to be used as an instrumentality in the commission of, or in aiding or abetting in the commission of, any felony, whether or not comprising an element of the felony, or which is acquired by proceeds obtained as a result of a violation of the Florida Contraband Forfeiture Act.

6. Any real property, including any right, title, leasehold, or other interest in the whole of any lot or tract of land, which was used, is being used, or was attempted to be used as an instrumentality in the commission of, or in aiding or abetting in the commission of, any felony, or which is acquired by proceeds obtained as a result of a violation of the Florida Contraband Forfeiture Act.

7. Any personal property, including, but not limited to, equipment, money, securities, books, records, research, negotiable instruments, currency, or any vessel, aircraft, item, object, tool, substance, device, weapon, machine, or vehicle of any kind in the possession of or belonging to any person who takes aquaculture products in violation of s. 812.014(2)(c).

8. Any motor vehicle offered for sale in violation of s. 320.28.

9. Any motor vehicle used during the course of committing an offense in violation of s. 322.34(9)(a).

10. Any photograph, film, or other recorded image, including an image recorded on videotape, a compact disc, digital tape, or fixed disk, that is recorded in violation of s. 810.145 and is possessed for the purpose of amusement, entertainment, sexual arousal, gratification, or profit, or for the purpose of degrading or abusing another person.

11. Any real property, including any right, title, leasehold, or other interest in the whole of any lot or tract of land, which is acquired by proceeds obtained as a result of Medicaid fraud under s. 409.920 or s. 409.9201; any personal property, including, but not limited to, equipment, money, securities, books, records, research, negotiable instruments, or currency; or any vessel, aircraft, item, object, tool, substance, device, weapon, machine, or vehicle of any kind in the possession of or belonging to any person which is acquired by proceeds obtained as a result of Medicaid fraud under s. 409.920 or s. 409.9201.

12. Any personal property, including, but not limited to, any vehicle, item, object, tool, device, weapon, machine, money, security, book, or record, that is used or attempted to be used as an instrumentality in the commission of, or in aiding and

abetting in the commission of, a person's third or subsequent violation of s. 509.144, whether or not comprising an element of the offense.

Section 8. The Division of Law Revision shall prepare a reviser's bill to conform the Florida Statutes to the transfer described in section 6 of this act.

Section 9. Except as otherwise expressly provided in this act, and except for this section, which shall take effect upon this act becoming a law, this act shall take effect on the same date that PCB COM 21-05 or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes a law.

COMMERCE COMMITTEE

PCB COM 21-03
Gaming Enforcement

AMENDMENT SUMMARY
April 14, 2021

Amendment 1 by Rep. Beltran (line 162):

- Clarifies that a background check must be completed before a commissioner is appointed.

Amendment 2 by Rep. Beltran (line 511):

- Removes a drafting error.

Amendment 3 by Rep. Beltran (line 621):

- Removes a duplicative provision.

Amendment 4 by Rep. Beltran (line 701):

- Clarifies that the provision only applies to tribes with a valid compact with the state.

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 Beltran offered the following:

Amendment

Remove lines 162-175 and insert:

4. A person may not be appointed by the Governor to the Gaming Control Commission until after a background investigation of the person is conducted by the Department of Law Enforcement and the investigation is forwarded to the Governor.

5. A person who holds any office in a political party, who has been convicted of a felony, or who has been convicted of a misdemeanor related to gambling within the previous 10 years may not apply to the Governor for appointment.

6. The Governor may not solicit or request any nominations, recommendations or communications about potential candidates for appointment to the commission from:

a. Any person that holds a permit or license issued under chapter 550, or a license issued under chapter 551

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 Beltran offered the following:

Amendment

Remove lines 511-513

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 Beltran offered the following:

Amendment

Remove lines 621-625

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 Beltran offered the following:

Amendment

Remove line 701 and insert:

tribe that has a valid and active compact with the state.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB COM 21-04 Public Records and Public Meetings Exemptions/Florida Gaming Control Commission
SPONSOR(S): Commerce Committee
TIED BILLS: **IDEN./SIM. BILLS:** SB 7078

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

SUMMARY ANALYSIS

In general, gambling is illegal in Florida. However, certain gaming activities are authorized by law and regulated by the state, including the state lottery, pari-mutuel wagering at licensed greyhound and horse tracks and jai alai frontons, slot machine gaming at certain licensed pari-mutuel locations in Miami-Dade County and Broward County, and cardrooms at certain pari-mutuel facilities, penny-ante games, bingo, charitable drawings, game promotions (sweepstakes), and bowling tournaments. The Department of Business and Professional Regulation (DBPR), Division of Pari-Mutuel Wagering (division) regulates pari-mutuel wagering, slot machines, and cardrooms, and the criminal prosecution of illegal gambling is generally referred to the county or local prosecuting authority

PCB COM 21-03, to which this bill is linked, establishes additional enforcement measures to address violations of gambling laws and the conduct of unauthorized gaming in the state, including the creation of the Florida Gaming Control Commission (commission) within the Department of Law Enforcement (DLA). The commission will be responsible for regulation of pari-mutuel wagering, slot machines, and cardrooms, and the state compliance agency's oversight responsibilities for authorized gaming compacts via a type two transfer from DBPR. The commission will also be a criminal justice agency.

The bill provides that portions of meetings of the commission during which information made exempt or confidential and exempt is discussed are exempt from Florida public meetings requirements.

The bill provides that recordings of, and any minutes and notes generated during, that portion of a commission meeting which is closed to the public pursuant to this public meetings exemptions, are confidential and exempt from public records requirements until such time as the information discussed is no longer exempt or confidential and exempt.

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:

Public Records

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

Public policy regarding access to government records is addressed further in the Florida Statutes. Section 119.07(1), F.S., guarantees every person a right to inspect and copy any state, county, or municipal record, unless the record is exempt.

Public Meetings

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

Public policy regarding access to government meetings is also addressed in the Florida Statutes. Section 286.011, F.S., known as the "Government in the Sunshine Law" or "Sunshine Law," further requires all meetings of any board or commission of any state agency or authority or of any agency or authority of any county, municipal corporation, or political subdivision at which official acts are to be taken to be open to the public at all times. The board or commission must provide reasonable notice of all public meetings.[4] Minutes of a public meeting must be promptly recorded and be open to public inspection.[5]

No resolution, rule, or formal action is considered binding, unless action is taken or made at a public meeting.[6] Acts taken by a board or commission in violation of this requirement are considered void,[7] though a failure to comply with open meeting requirements may be cured by independent final action by the board or commission fully in compliance with public meeting requirements.[8]

Public Record and Public Meeting Exemptions

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

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[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. 286.011(1), F.S.
[5] S. 286.011(2), F.S.
[6] S. 286.011(1), F.S.
[7] *Grapski v. City of Alachua*, 31 So. 3d 193 (Fla. 1st DCA 2010).
[8] *Finch v. Seminole Cnty. Sch. Bd.*, 995 So. 2d 1068 (Fla. 5th DCA 2008).
[9] Art. I, s. 24(c), FLA. CONST.
[10] *Id.*

Furthermore, the Open Government Sunset Review Act[11] 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.[12]

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.[13]

Division of Pari-mutuel Wagering

In general, gambling is illegal in Florida.[14] Chapter 849, F.S., prohibits keeping a gambling house,[15] running a lottery,[16] or the manufacture, sale, lease, play, or possession of slot machines.[17] However, the following gaming activities are authorized by law and regulated by the state:

- Pari-mutuel[18] wagering at licensed greyhound and horse tracks and jai alai frontons;[19]
- Slot machine gaming at certain licensed pari-mutuel locations in Miami-Dade County and Broward County;[20] and
- Cardrooms[21] at certain pari-mutuel facilities.[22]

The 1968 State Constitution states that "[l]otteries, other than the types of pari-mutuel pools authorized by law as of the effective date of this constitution . . ." are prohibited.[23] A constitutional amendment approved by the voters in 1986 authorized state-operated lotteries. Net proceeds of the lottery are deposited to the Educational Enhancement Trust Fund (EETF) and appropriated by the Legislature. Lottery operations are self-supporting and function as an entrepreneurial business enterprise.[24]

Chapter 849, F.S., also authorizes, under specific and limited conditions, the conduct of penny-ante games,[25] bingo,[26] charitable drawings,[27] game promotions (sweepstakes),[28] and bowling

[11] S. 119.15, F.S.
[12] S. 119.15(6)(b), F.S.
[13] S. 119.15(3), F.S.
[14] S. 849.08, F.S.
[15] S. 849.01, F.S.
[16] S. 849.09, F.S.
[17] S. 849.16, F.S.
[18] "Pari-mutuel" is defined in Florida law as "a system of betting on races or games in which the winners divide the total amount bet, after deducting management expenses and taxes, in proportion to the sums they have wagered individually and with regard to the odds assigned to particular outcomes. *See* s. 550.002(22), F.S.
[19] *See* ch. 550, F.S., relating to the regulation of pari-mutuel activities.
[20] *See* FLA. CONST., art. X, s. 23, and ch. 551, F.S.
[21] S. 849.086(2)(c), F.S., defines "cardroom" to mean "a facility where authorized card games are played for money or anything of value and to which the public is invited to participate in such games and charged a fee for participation by the operator of such facility."
[22] The Department of Business and Professional Regulation (DBPR) has issued licenses to permitholders with 2021-2022 Operating Licenses to operate 27 cardrooms. *See* http://www.myfloridalicense.com/DBPR/pari-mutuel-wagering/permitholder-operating-licenses-2021-2022/ (last visited Apr. 7, 2021).
[23] The pari-mutuel pools that were authorized by law on the effective date of the Florida Constitution, as revised in 1968, include horseracing, greyhound racing, and jai alai games. The revision was ratified by the electorate on November 5, 1968.
[24] The Department of the Lottery is authorized by s. 15, Art. X, Florida Constitution. Chapter 24, F.S., was enacted by ch. 87-65, Laws of Fla., to establish the state lottery. Section 24.102, F.S., states the legislative purpose and intent for the operations of the state lottery.
[25] S. 849.085, F.S.
[26] S. 849.0931, F.S.
[27] S. 849.0935, F.S.

tournaments.[29] The Family Amusement Games Act was enacted in 2015 and authorizes skill-based amusement games and machines at specified locations.[30]

A license to offer pari-mutuel wagering, slot machine gambling, or a cardroom at a pari-mutuel facility is a privilege granted by the state.[31] The Division of Pari-mutuel Wagering (division) in the Department of Business and Professional Regulation (DBPR) regulates pari-mutuel wagering. The division has regulatory oversight of permitted and licensed pari-mutuel wagering facilities, cardrooms located at pari-mutuel facilities, and slot machines at pari-mutuel facilities located in Miami-Dade and Broward counties. According to the division, there were eight license suspensions, and $19,075 in fines assessed for violations of all pari-mutuel statutes and administrative rules in Fiscal Year 2019-2020.[32]

Ten permitholders were not issued operating licenses for Fiscal Year 2020-2021: two greyhound permitholders,[33] two jai alai permitholders,[34] one limited thoroughbred permitholder,[35] and five quarter horse permitholders.[36]

PCB COM 21-03

PCB COM 21-03, to which this bill is linked, establishes additional enforcement measures to address violations of gambling laws and the conduct of unauthorized gaming in the state, including granting additional investigatory and prosecutorial authority to the Office of Statewide Prosecution in Department of Legal Affairs (DLA), and the creation of the Florida Gaming Control Commission (commission) within the DLA.

The commission consists of five members, one from each appellate district, to be appointed by the Governor by January 1, 2022, subject to Senate confirmation. Of the five members:

- At least one member must be experienced in law enforcement and criminal investigation.
- At least one member must be a certified public accountant licensed in this state and experienced in accounting and auditing.
- At least one member must be an attorney admitted and authorized to practice law in this state.

The commission must meet at the call of the chair, or at the request of a majority of its members, and:

- Exercise all state regulatory and executive powers respecting gambling, including, without limitation, pari-mutuel wagering, cardrooms, slot machine facilities, oversight of gaming compacts executed by the state pursuant to the Federal Indian Gaming Regulatory Act, and any other forms of gambling authorized by the state constitution or law, but not lottery games operated by the state.
- Establish procedures consistent with ch. 120, F.S., (Administrative Procedure Act) to ensure adequate due process in exercising its regulatory and executive functions.

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[28] S. 849.094, F.S., authorizes game promotions in connection with the sale of consumer products or services.
[29] S. 849.141, F.S.
[30] S. 546.10, F.S.
[31] *See* s. 550.1625(1), F.S., "…legalized pari-mutuel betting at dog tracks is a privilege and is an operation that requires strict supervision and regulation in the best interests of the state." *See also, Solimena v. State*, 402 So.2d 1240, 1247 (Fla. 3d DCA 1981), *review denied*, 412 So.2d 470, which states "Florida courts have consistently emphasized the special nature of legalized racing, describing it as a privilege rather than as a vested right," citing *State ex rel. Mason v. Rose*, 122 Fla. 413, 165 So. 347 (1936).
[32] Department of Business and Professional Regulation Division of Pari-mutuel Wagering, *89th Annual Report for Fiscal Year 2019-2020*, AnnualReport-2019-2020--89th--20210224.pdf pg. 5, (last visited Apr. 7, 2021).
[33] Jefferson County Kennel Club (Monticello) and North American Racing Association (Key West).
[34] Gadsden Jai-alai (Chattahoochee) and Tampa Jai Alai.
[35] Under s. 550.3345, F.S., during Fiscal Year 2010-2011 only, holders of quarter horse racing permits were allowed to convert their permits to a thoroughbred racing permit, conditioned upon specific use of racing revenues for enhancement of thoroughbred purses and awards, promotion of the thoroughbred horse industry, and the care of retired thoroughbred horses. Two conversions occurred, Gulfstream Park Thoroughbred After Racing Program (GPTARP) (Hallandale, Broward County), which was licensed to operate in 2019-2020, and Ocala Thoroughbred Racing (Marion County), which was not licensed to operate.
[36] ELH Jefferson (Jefferson County), DeBary Real Estate Holdings (Volusia County), North Florida Racing (Jacksonville), Pompano Park Racing (Pompano Beach), and St. Johns Racing (St. Johns County). *See* http://www.myfloridalicense.com/dbpr/pmw/documents/PermitholdersList_2020-2021.pdf (last visited Apr. 7, 2021).

- Ensure that Florida law is not interpreted in any manner that expands the activities authorized in ch. 24, F.S., (State Lotteries), ch. 285, F.S., (Indian Reservations and Affairs), ch. 546, F.S., (Amusement Facilities), ch. 550, F.S., (Pari-mutuel Wagering), ch. 551, F.S., (Slot Machines), or ch. 849, F.S. (Gambling).
- Review any matter within the scope of the jurisdiction of the division.
- Review the regulation of licensees, permitholders, or persons regulated by the division and the procedures used by the division to implement and enforce the law.
- Review the procedures of the division used to qualify applicants for a license, permit, or registration.
- Refer criminal violations of ch. 24, F.S., (State Lotteries), ch. 546, F.S., (Amusement Facilities), ch. 550, F.S., (Pari-mutuel Wagering), ch. 551, F.S., (Slot Machines), or ch. 849, F.S., (Gambling) to the appropriate state attorney or to the Office of Statewide Prosecution, as applicable.
- Exercise all other powers and perform any other duties prescribed by the Legislature.

PCB COM 21-03 authorizes the commission to subpoena witnesses and compel their attendance and testimony, administer oaths and affirmations, take evidence, and require by subpoena the production of any books, papers, records, or other items relevant to the commission's duties or powers. The commission may meet in any city or county of the state.

PCB COM 21-03 provides for a type two transfer pursuant to s. 20.06(2), F.S., effective July 1, 2022, of all powers and duties, personnel, administrative rules, and funding of DBPR, relating to the regulation of pari-mutuel wagering, slot machines, and cardrooms, and the state compliance agency's oversight responsibilities for authorized gaming compacts, to the commission.

Effect of the Bill

The bill creates s. 16.71(11), F.S., to require that portions of meetings of the commission during which information made exempt or confidential and exempt[37] is discussed are exempt from s. 286.011, F.S., and s. 24(b), Art I. of the State Constitution (Florida public meetings requirements).

Under the bill:
- The chair of the commission is required to advise the commission at a public meeting that, in connection with the performance of a commission duty, it is necessary that the commission hear or discuss information that is exempt or confidential and exempt.
- The chair's declaration of necessity for closure and the specific reasons for such necessity must be stated in writing in a document that is a public record and must be filed with the official records of the commission.
- The entire closed session must be recorded, and:
    - The recording must include the times of commencement and termination of the closed session, all discussion and proceedings, and the names of all persons present.
    - No portion of the session is allowed to be off the record.
    - Such recording must be maintained by the commission.

Further, only members of the commission, Department of Law Enforcement staff supporting the commission's function, and other persons whose presence is necessary for the presentation of exempt or confidential and exempt information shall be allowed to attend the exempted portions of the commission meetings. The commission shall assure that any closure of its meetings as authorized by this paragraph is limited so that the general policy of this state in favor of public meetings is maintained.

[37] 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. (1985).

The bill provides that recordings of, and any minutes and notes generated during, that portion of a commission meeting which is closed to the public pursuant to this subsection are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution (Florida public records requirements), until such time as the information discussed is no longer exempt or confidential and exempt.

The bill provides a statement of public necessity as required by the Florida Constitution, which provides the following legislative findings:

- "That it is a public necessity to maintain the exempt or confidential and exempt status of any exempt or confidential and exempt information obtained by the Florida Gaming Control Commission. In the absence of this exemption, sensitive confidential or exempt information would be disclosed. In addition, the Legislature finds that it is a public necessity that portions of meetings of the Florida Gaming Control Commission wherein confidential and exempt information is discussed be made exempt from public meetings requirements. The release of confidential and exempt information via a public meeting defeats the purpose of a public records exemption. Accordingly, the Legislature finds that the harm to the public that would result from the release of such information substantially outweighs any minimal public benefit derived therefrom."
- "That during limited portions of the meetings of the Florida Gaming Control Commission it is necessary that the commission be presented with and discuss details, information, and documents related to active criminal intelligence information or active criminal investigative information. These presentations and discussions are necessary for the commission to make its decisions for licensing of persons for pari-mutuel and gaming activities, and for decisions related to gaming enforcement and enforcement of gambling laws as required by the Legislature under this act. The Legislature finds that to reveal the contents of documents containing active criminal investigative or intelligence information or to allow active criminal investigative or active criminal intelligence matters to be discussed in a meeting open to the public negatively impacts the ability of law enforcement agencies to efficiently continue their investigative or intelligence gathering activities. The Legislature finds that information coming before the commission that pertains to active criminal investigations or intelligence should remain confidential and exempt from public disclosure. The Legislature finds that the Florida Gaming Control Commission may, by declaring only those portions of commission meetings in which active criminal investigative or active criminal intelligence information is to be presented or discussed closed to the public, assure an appropriate balance between the policy of this state that meetings be public and the policy of this state to facilitate efficient law enforcement efforts."

Accordingly, the Legislature finds that the harm to the public that would result from the release of such information substantially outweighs any minimal public benefit derived therefrom.

This section 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 exemptions by that date.

The bill takes effect on the same date that PCB COM 21-03 or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes a law.

B. SECTION DIRECTORY:

Section 1: Creates a public records exemption for certain information and meetings of the Florida Gaming Control Commission in s. 16.71, F.S.

Section 2: Provides a public necessity statement as required by the Florida Constitution.

Section 3: Provides an effective date of the same date that PCB COM 21-03 or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   See Fiscal Comments.

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:

   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 a public record exemption; thus, it requires a two-thirds vote for final passage.

   Public Necessity Statement

   Article I, section 24(c) of the Florida Constitution requires a public necessity statement for a newly created or expanded public record or public meeting exemption. The bill creates a public meeting exemption; thus, it includes a public necessity statement.

   Breadth of Exemption

   Article 1, section 24(c) of the Florida Constitution requires a newly created or expanded public record or public meeting exemption to be no broader than necessary to accomplish the stated purpose of the law. The bill creates a public meeting exemption for portions of meetings of the commission during which information made exempt or confidential and exempt is discussed, which does not appear to be broader than necessary to accomplish its purpose.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

A bill to be entitled

An act relating to public records and public meetings; amending s. 16.71, F.S.; specifying that any exempt or confidential and exempt information obtained by the Florida Gaming Control Commission retains its exempt or confidential and exempt status; providing an exemption from public meetings requirements for portions of meetings of the commission wherein confidential or exempt information is discussed; specifying the commission is a criminal justice agency; authorizing the commission to close portions of meetings during which certain criminal matters are discussed if certain requirements are met; providing an exemption from public meetings requirements for such portions of meetings; providing an exemption from public records requirements for documents and recordings relating to such exempt portions of meetings; providing for future review and repeal; 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 (15) is added to section 16.71, as created by HB ___, 2021 Regular Session, to read:

16.71 Florida Gaming Control Commission.—

(15)(a) Portions of meetings of the commission during which information made exempt or confidential and exempt is discussed are exempt from s. 286.011 and s. 24(b), Art I. of the State Constitution.

1. The chair of the commission shall advise the commission at a public meeting that, in connection with the performance of a commission duty, it is necessary that the commission hear or discuss information that is exempt or confidential and exempt.

2. The chair's declaration of necessity for closure and the specific reasons for such necessity shall be stated in writing in a document that shall be a public record and shall be filed with the official records of the commission.

3. The entire closed session shall be recorded. The recording shall include the times of commencement and termination of the closed session, all discussion and proceedings, and the names of all persons present. No portion of the session shall be off the record. Such recording shall be maintained by the commission.

(b) Only members of the commission, Department of Law Enforcement staff supporting the commission's function, and other persons whose presence is necessary for the presentation of exempt or confidential and exempt information shall be allowed to attend the exempted portions of the commission meetings. The commission shall assure that any closure of its

meetings as authorized by this paragraph is limited so that the general policy of this state in favor of public meetings is maintained.

(c) A recording of, and any minutes and notes generated during, that portion of a Florida Gaming Control Commission meeting which is closed to the public pursuant to this subsection are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution until such time as the information discussed is no longer exempt or confidential and exempt.

(d) This subsection is subject to the Open Government Sunset Review Act in accordance with s. 119.115 and is repealed on October 2, 2026, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2. (1) The Legislature finds that it is a public necessity to maintain the exempt or confidential and exempt status of any exempt or confidential and exempt information obtained by the Florida Gaming Control Commission. In the absence of this exemption, sensitive confidential or exempt information would be disclosed. In addition, the Legislature finds that it is a public necessity that portions of meetings of the Florida Gaming Control Commission wherein confidential and exempt information is discussed be made exempt from public meetings requirements. The release of confidential and exempt information via a public meeting defeats the purpose of a public

records exemption. Accordingly, the Legislature finds that the harm to the public that would result from the release of such information substantially outweighs any minimal public benefit derived therefrom.

(2) The Legislature finds that during limited portions of the meetings of the Florida Gaming Control Commission it is necessary that the commission be presented with and discuss details, information, and documents related to active criminal intelligence information or active criminal investigative information. These presentations and discussions are necessary for the commission to make its decisions for licensing of persons for pari-mutuel and gaming activities, and for decisions related to gaming enforcement and enforcement of gambling laws as required by the Legislature under this act. The Legislature finds that to reveal the contents of documents containing active criminal investigative or intelligence information or to allow active criminal investigative or active criminal intelligence matters to be discussed in a meeting open to the public negatively impacts the ability of law enforcement agencies to efficiently continue their investigative or intelligence gathering activities. The Legislature finds that information coming before the commission that pertains to active criminal investigations or intelligence should remain confidential and exempt from public disclosure. The Legislature finds that the Florida Gaming Control Commission may, by declaring only those

portions of commission meetings in which active criminal investigative or active criminal intelligence information is to be presented or discussed closed to the public, assure an appropriate balance between the policy of this state that meetings be public and the policy of this state to facilitate efficient law enforcement efforts. Accordingly, the Legislature finds that the harm to the public that would result from the release of such information substantially outweighs any minimal public benefit derived therefrom.

Section 3. This act shall take effect on the same date that PCB COM 21-03 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 #: PCB COM 21-05 Requirements for Pari-mutuel Permitholders to Conduct Racing or Games
SPONSOR(S): Commerce Committee
TIED BILLS: **IDEN./SIM. BILLS:**

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

SUMMARY ANALYSIS

During the 2018 General Election, the electorate approved an initiative constitutional amendment, Amendment 13, Prohibition on Racing of and Wagering on Greyhounds or Other Dogs. Amendment 13 states that, beginning on January 1, 2019, greyhound tracks may discontinue live greyhound racing while continuing to operate its other forms of gaming. Beginning on January 1, 2021, Amendment 13 completely prohibits wagering on live greyhound racing in Florida, requiring the closure of all greyhound racetracks in the state. Cardroom and slot machine facilities at the greyhound tracks may continue to operate after the closure of racing activities.

The bill:

- Codifies the prohibition of greyhound racing, updates certain provisions in Florida law that are inconsistent with the prohibition of live racing of greyhounds, and removes requirements for greyhound permitholders, jai alai permitholders, and harness horse permitholders to conduct live racing or games.
- Limits permits for the operation of a pari-mutuel facility, cardroom, or slot machine facility to facilities with permits on November 6, 2018.
- Provides that no pari-mutuel facility, cardroom, or slot machine facility may be relocated, and no pari-mutuel wagering permit may be converted to another class of permit.
- Revises the requirement for pari-mutuel permitholders to conduct live racing or games to provide:
    - A greyhound permitholder may not conduct live racing.
    - A jai alai permitholder, harness horse racing permitholder, or quarter horse racing permitholder may elect not to conduct live racing or games.
    - A thoroughbred permitholder must conduct live racing.
- Provides that a greyhound permitholder, jai alai permitholder, harness horse racing permitholder, or quarter horse racing permitholder that does not conduct live racing or games:
    - Retains its permit;
    - Is a pari-mutuel facility as defined in law;
    - Is eligible, but not required, to be a guest track, and if the permitholder is a harness horse racing permitholder, is eligible to be a host track for purposes of intertrack wagering and simulcasting;
    - Remains eligible for a cardroom license; and
    - If such permitholder has been issued a slot machine license, that facility continues to be eligible for a slot machine license.
- Maintains current law requiring thoroughbred permitholders to continue live racing to maintain eligibility for a cardroom license or slot machine license.
- Authorizes permitholders (those without a live requirement and those in compliance with live requirements) to receive broadcasts of any class of pari-mutuel race or game and accept wagers on such races or games.
- Modifies requirements for the locations of designated slot machine gaming areas.
- For Fiscal Year 2021-2022 only, the division may approve changes to a permitholder's operating dates if the request is received before July 1, 2021.

The bill may have an indeterminate impact on state government.

The effective date of the bill is July 1, 2021, but only if PCB COM 21-03 or similar legislation takes effect.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Background

In general, gambling is illegal in Florida.[1] Chapter 849, F.S., prohibits keeping a gambling house,[2] running a lottery,[3] or the manufacture, sale, lease, play, or possession of slot machines.[4] However, the following gaming activities are authorized by law and regulated by the state:

- Pari-mutuel[5] wagering at licensed greyhound and horse tracks and jai alai frontons;[6]
- Slot machine gaming at certain licensed pari-mutuel locations in Miami-Dade County and Broward County;[7] and
- Cardrooms[8] at certain pari-mutuel facilities.[9]

A license to offer pari-mutuel wagering, slot machine gambling, or a cardroom at a pari-mutuel facility is a privilege granted by the state.[10]

The 1968 State Constitution states that "[l]otteries, other than the types of pari-mutuel pools authorized by law as of the effective date of this constitution . . ." are prohibited.[11] A constitutional amendment approved by the voters in 1986 authorized state-operated lotteries. Net proceeds of the lottery are deposited to the Educational Enhancement Trust Fund (EETF) and appropriated by the Legislature. Lottery operations are self-supporting and function as an entrepreneurial business enterprise.[12]

Chapter 849, F.S., also authorizes, under specific and limited conditions, the conduct of penny-ante games,[13] bingo,[14] charitable drawings,[15] game promotions (sweepstakes),[16] and bowling tournaments.[17] The Family Amusement Games Act was enacted in 2015 and authorizes skill-based amusement games and machines at specified locations.[18]

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[1] S. 849.08, F.S.
[2] S. 849.01, F.S.
[3] S. 849.09, F.S.
[4] S. 849.16, F.S.
[5] "Pari-mutuel" is defined in Florida law as "a system of betting on races or games in which the winners divide the total amount bet, after deducting management expenses and taxes, in proportion to the sums they have wagered individually and with regard to the odds assigned to particular outcomes. *See* s. 550.002(22), F.S.
[6] *See* ch. 550, F.S., relating to the regulation of pari-mutuel activities.
[7] *See* FLA. CONST., art. X, s. 23, and ch. 551, F.S.
[8] S. 849.086(2)(c), F.S., defines "cardroom" to mean "a facility where authorized card games are played for money or anything of value and to which the public is invited to participate in such games and charged a fee for participation by the operator of such facility."
[9] The Department of Business and Professional Regulation (DBPR) has issued licenses to permitholders with 2021-2022 Operating Licenses to operate 27 cardrooms. *See* http://www.myfloridalicense.com/DBPR/pari-mutuel-wagering/permitholder-operating-licenses-2021-2022/ (last visited Apr. 7, 2021).
[10] *See* s. 550.1625(1), F.S., "…legalized pari-mutuel betting at dog tracks is a privilege and is an operation that requires strict supervision and regulation in the best interests of the state." *See also, Solimena v. State*, 402 So.2d 1240, 1247 (Fla. 3d DCA 1981), *review denied*, 412 So.2d 470, which states "Florida courts have consistently emphasized the special nature of legalized racing, describing it as a privilege rather than as a vested right," citing *State ex rel. Mason v. Rose*, 122 Fla. 413, 165 So. 347 (1936).
[11] The pari-mutuel pools that were authorized by law on the effective date of the Florida Constitution, as revised in 1968, include horseracing, greyhound racing, and jai alai games. The revision was ratified by the electorate on November 5, 1968.
[12] The Department of the Lottery is authorized by s. 15, Art. X, Florida Constitution. Chapter 24, F.S., was enacted by ch. 87-65, Laws of Fla., to establish the state lottery. Section 24.102, F.S., states the legislative purpose and intent for the operations of the state lottery.
[13] S. 849.085, F.S.
[14] S. 849.0931, F.S.
[15] S. 849.0935, F.S.
[16] S. 849.094, F.S., authorizes game promotions in connection with the sale of consumer products or services.
[17] S. 849.141, F.S.
[18] S. 546.10, F.S.

Lotteries

Section 7 of Article X of the 1968 State Constitution provides, "Lotteries, other than the types of pari-mutuel pools authorized by law as of the effective date of this constitution, are hereby prohibited in this state."[19]

To allow activities that would otherwise be illegal lotteries, the Legislature has carved out several narrow exceptions to the statutory lottery prohibition. Statutory exceptions are provided for charitable bingo, charitable drawings, and game promotions. Charities use drawings or raffles as a fundraising tool. Organizations suggest a donation, collect entries, and randomly select an entry to win a prize. Under s. 849.0935, F.S., qualified organizations may conduct drawings by chance, provided the organization has complied with all applicable provisions of Chapter 496, F.S. Game promotions, often called sweepstakes, are advertising tools by which businesses promote their goods or services. As they contain the three elements of a lottery: consideration, chance, and prize, they are generally prohibited by Florida law unless they meet a statutory exception.[20]

In 1986, Florida voters approved an amendment to the Florida Constitution to allow the state to operate a lottery. The Florida Lottery—known formally as the Florida Education Lotteries—benefits education by funding the State Education Lotteries Trust Fund. Section 15 of Article X of the State Constitution (adopted by the electors in 1986) provides as follows:

> Lotteries may be operated by the state…. On the effective date of this amendment, the lotteries shall be known as the Florida Education Lotteries. Net proceeds derived from the lotteries shall be deposited to a state trust fund, to be designated The State Education Lotteries Trust Fund, to be appropriated by the Legislature. The schedule may be amended by general law.[21]

Indian Gaming and Regulatory Act

Gambling on Indian lands is subject to federal law, with limited state involvement. The Indian Gaming and Regulatory Act (IGRA), codified at 25 USCA §§ 2701-2721, was enacted in 1988 in response to the United State Supreme Court decision in *California v. Cabazon Band of Mission Indians*, 480 U.S. 202 (1987). The act provides for "a system for joint regulation by tribes and the Federal Government of class II gaming on Indian lands and a system for compacts between tribes and States for regulation of class III gaming."[22] In so doing, IGRA seeks to balance the competing interests of two sovereigns: the interests of the Tribe in engaging in economic activities for the benefit of its members and the interest of the state in either prohibiting or regulating gaming activities within its borders.[23]

IGRA separates gaming activities into three categories:

- Class I games are "social games solely for prizes of minimal value or traditional forms of Indian gaming engaged in by individuals as a part of, or in connection with, tribal ceremonies or celebrations."[24] Class I games are within the exclusive jurisdiction of the Indian tribes.[25]
- Class II games are bingo and card games that are explicitly authorized or are not explicitly prohibited by the laws of the State.[26] The tribes may offer Class II card games "only if such card games are played in conformity with those laws and regulations (if any) of the State regarding hours or periods of operation of such card games or limitations on wagers or pot sizes in such card games." Class II gaming does not include "any banking card games, including baccarat,

[19] The pari-mutuel pools that were authorized by law on the effective date of the Florida Constitution, as revised in 1968, include horseracing, greyhound racing, and jai alai games. The new state constitution was ratified by the electorate on November 5, 1968.
[20] *Little River Theatre Corp v. State*, 185 So. 854, 868 (Fla. 1939).
[21] The Department of the Lottery is authorized by Article X, Section 15 of the Florida Constitution. Chapter 24, F.S., was enacted by ch. 87-65, L.O.F., to establish the state lottery. Section 24.102, F.S., creates the Department of the Lottery and states the Legislature's intent that it be self-supporting and revenue-producing and function as an entrepreneurial business enterprise.
[22] United States Senate Report No. 100-446, Aug. 3, 1988.
[23] *Id.*
[24] 25 U.S.C. 2703(6).
[25] 25 U.S.C. 2710(a)(1).
[26] 25 U.S.C. 2703(7)(A).

chemin de fer, or blackjack (21), or electronic or electromechanical facsimiles of any game of chance or slot machines of any kind."[27] Class II games are also within the jurisdiction of the Indian tribes, but are also subject to the provisions of IGRA.[28]

- Class III games are defined as any games that are not Class I or Class II. Class III games include slot machines and banked card games such as blackjack, baccarat and chemin de fir.[29]

A tribe can qualify to offer Class III games in the following ways:

- If the state authorizes Class III games for any purpose to any person, organization, or entity, the tribe must:
  - Authorize the games by an ordinance or resolution adopted by the governing body of the Indian tribe, approved by the Chairman of the National Indian Gaming Commission, and in compliance with IGRA; and
  - Conduct the games in conformance with a Tribal-State compact entered into between the tribe and the State.[30]
- If the state does NOT authorize Class III gaming for any purpose by any person, organization, or entity, the tribe must request negotiations for a tribal-state compact governing gaming activities on tribal lands. Upon receiving such a request, the state may be obligated to negotiate with the Indian tribe in good faith.[31] Under IGRA, a tribe is not entitled to a compact.

When the negotiations fail to produce a compact, a tribe may file suit against the state in federal court and seek a determination of whether the state negotiated in good faith. If the court finds the state negotiated in good faith, the tribe's proposal fails. On a finding of lack of good faith by the state, however, the court may order negotiation, followed by mandatory mediation. If the state ultimately rejects a court-appointed mediator's proposal, the Secretary "shall prescribe, in consultation with the Indian tribe, procedures... under which class III gaming may be conducted."[32]

Generally, in accordance with IGRA, a compact may include the following provisions:

- The application of the criminal and civil laws and regulations of the Indian tribe or the State that are directly related to, and necessary for, the licensing and regulation of gaming;
- The allocation of criminal and civil jurisdiction between the State and the Indian tribe necessary for the enforcement of laws and regulations;
- An assessment in an amount necessary to defray the costs of regulation;
- Revenue sharing by the Indian tribe for permitted activities;
- Remedies for breach of contract;
- Standards for the operation of gaming and gaming facilities, including licensing; and
- Any other subjects that are directly related to the operation of gaming activities.[33]

Any compact that is entered into by a tribe and a state will take effect when approval by the Secretary of the Interior is published in the Federal Register.[34] Upon receipt of a proposed compact, the Secretary has 45 days to approve or disapprove the compact.[35] A compact will be considered approved if the Secretary fails to act within the 45-day period. A compact that has not been validly "entered into" by a state and a tribe (e.g., execution of a compact by a state officer who lacks the authority to bind the state) cannot be put "into effect", even if the Secretary of the Interior publishes the compact in the Federal Register.[36]

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[27] 25 U.S.C. 2703(7)(B).
[28] 25 U.S.C. 2710(a)(2) and (b).
[29] 25 U.S.C. 2703; 25 C.F.R. § 502.4.
[30] 25 U.S.C. 2710(d)(1).
[31] 25 U.S.C. 2710 (d)(3)(A).
[32] 25 U.S.C. 2710(d)(7). This option is addressed in *Seminole Tribe of Florida v. Florida*, 517 U.S. 44 (1996), which brought into question whether a tribe has the ability to judicially enforce the provisions of IGRA against a state. The Department of the Interior adopted rules to provide a remedy for the tribes. The validity of the rules were brought into question in *Texas v. United States*, 497 F.3d 491, (5th Cir. 2007).
[33] 25 U.S.C. 2710 (d)(3)(C).
[34] 25 U.S.C. 2710(d)(3)(B).
[35] 25 U.S.C. 2710(d)(8)(C).
[36] *See Pueblo of Santa Ana v. Kelly*, 104 F.3d 1546 (10th Cir. 1997).

There is no explicit provision under IGRA that authorizes revenue sharing. IGRA specifically states:

> [N]othing in this section shall be interpreted as conferring upon a State or any of its political subdivisions authority to impose any tax, fee, charge, or other assessment upon an Indian tribe or upon any other person or entity authorized by an Indian tribe to engage in a class III activity. No State may refuse to enter into the negotiations described in paragraph (3) (A) based upon the lack of authority in such State, or its political subdivisions, to impose such a tax, fee, charge, or other assessment.[37]

Notwithstanding this restriction, revenue sharing is permissible so long as the tribe receives a valuable economic benefit in return. Typically, such benefit is in the form of substantial exclusivity in game offerings, geographic monopoly and/or a right to conduct such offerings on more favorable terms than non-Indians.[38]

The 2010 Compact

The Tribe and the State executed the 2010 Compact on April 7, 2010, which was ratified through Chapter 285, F.S. The 2010 Compact took effect when published in the Federal Register on July 6, 2010 and all but the banked card game authorization has a term of 20 years, expiring July 31, 2030, unless renewed.

The 2010 Compact provides for revenue sharing from the Tribe to the State. For the exclusive authority to offer banked card games on tribal lands at five locations for five years and to offer slot machine gaming outside Miami-Dade and Broward Counties, the Tribe pays the State a share of "net win." Revenue sharing payments were approximately $240 million per year. The 2010 Compact required the Tribe to share revenue with the State in the amount of $1 billion over the first five years.

Section 285.710(1)(f), F.S., designates the Division within DBPR as the "state compliance agency" responsible for carrying out the state's oversight responsibilities under the 2010 Compact.

The State of Florida retains the right to authorize or prohibit gaming in the state. However, the 2010 Compact provides consequences for the expansion of gaming:

- If new forms of Class III gaming and casino-style gaming are authorized for the eight licensed pari-mutuel facilities located in Miami-Dade and Broward counties (which may not relocate) and the net win from the Tribe's Broward facilities drops for the year after the new gaming begins, then the Tribe may reduce the payments from its Broward facilities by 50 percent of the amount of the reduction in net win.
- If new forms of Class III gaming and other casino-style gaming are authorized for other locations in Miami-Dade and Broward counties, then the Tribe may exclude the net win from their Broward facilities from their net win calculations when the new games begin to be played.[39]

Revenue sharing payments cease if:

- The state authorizes new forms of Class III gaming or other casino-style gaming after February 1, 2010, or authorizes Class III gaming or other casino-style gaming at any location outside of Miami-Dade and Broward counties that was not authorized for such games before February 1, 2010; and
- The new gaming begins to be offered for private or public use.

Starting in July 2015, DBPR and the Seminole Tribe engaged in litigation over the conduct of "designated player" card games at pari-mutuel facilities.

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[37] 25 U.S.C. 2710(d)(4).

[38] *See generally In re Indian Gaming Related Cases,* 331 F.3d 1094 (9th Cir. 2003)(upholding revenue sharing where revenues were apportioned to non-gaming tribes); *see also* Letter From Gale A. Norton, Secretary of the Department of the Interior, to Cyrus Schindler, President of the Seneca Nation of Indians, November 12, 2002.

[39] The Tribe would automatically be authorized to conduct the same games authorized for any other person at any location.

On November 9, 2016 a federal court ruled that the State had violated the terms of the Compact and the Tribe was entitled to continue offering banked card games beyond the initial 5-year blackjack authorization and may continue offering such games for the entire 20-year term of the Compact (expiring July 2030). The Tribe continued to make full revenue sharing payments to the State throughout the course of the litigation. The parties did not raise, and consequently the ruling did not address, the future revenue sharing obligations of the Tribe.

The parties subsequently executed a settlement agreement in July 2017, which was extended in April 2018. Under the settlement agreement, the Tribe agreed to continue revenue sharing payments provided that DBPR "aggressively enforced" the statutory ban on banking card games.

In April 2019 the Tribe stopped revenue sharing payments to the State because the Tribe believed that aggressive enforcement had not occurred.

Amendment 3 to the State Constitution (Voter Control of Gambling)

During the 2018 General Election, the electorate approved an initiative constitutional amendment (Amendment 3, Voter Control of Gambling in Florida). The amendment is codified in the State Constitution as article X, section 30).[40]

Amendment 3 requires a vote proposed by citizen's initiative to amend the State Constitution pursuant to Article XI, section 3 to authorize "casino gambling" in Florida. Casino gambling is defined in section (b) of Amendment 3 as:

- Any of the "types of games typically found in casinos" and that are:
    - Within the definition of Class III gaming in the Federal Indian Gaming Regulatory Act, 25 U.S.C. 2701 et seq; and
    - In 25 [Code of Federal Regulations] (C.F.R.) § 502.4 upon the adoption of the amendment and any that are added to such definition of Class III gaming in the future.

Section (b) of Amendment 3 provides that casino gambling includes but is not limited to the following:

- Any house banking game, including but not limited to card games such as baccarat, chemin de fer, blackjack (21), and pai gow (if played as house banking games);
- Any player-banked game that simulates a house banking game, such as California blackjack;
- Casino games such as roulette, craps, and keno;
- Any slot machines as defined in 15 U.S.C. 1171(a)(1); and
- Any other game not authorized by Article X, section 15 [of the State Constitution, relating to state operated lotteries], whether or not defined as a slot machine, in which outcomes are determined by random number generator or are similarly assigned randomly, such as instant or historical racing.

Section (b) of Amendment 3 also further defines "casino gambling" as including the following devices:

- Any electronic gambling devices;
- Simulated gambling devices;
- Video lottery devices;
- Internet sweepstakes devices; and
- Any other form of electronic or electromechanical facsimiles of any game of chance, slot machine, or casino-style game, regardless of how such devices are defined under [the Indian Gaming Regulatory Act].

Under Amendment 3, the term casino "casino gambling" does not include pari-mutuel wagering on horse racing, dog racing, or jai alai exhibitions. For the purposes of [Amendment 3], "gambling" and "gaming" are synonymous.

[40] See the text of Amendment 3, now codified as art. X, s. 30, at http://www.leg.state.fl.us/Statutes/index.cfm?Mode=Constitution&Submenu=3&Tab=statutes&CFID=44933245&CFTOKEN=f39b1ca7cab71561-BE329BC7-5056-B837-1A6123F335C4849F#A10S30 (last visited Apr. 7, 2021).

Additionally, Amendment 3 provides:

> Nothing in [Amendment 3] shall be deemed to limit the right of the Legislature to exercise its authority through general law to restrict, regulate, or tax any gaming or gambling activities. In addition, nothing in [Amendment 3] shall be construed to limit the ability of the state or Native American tribes to negotiate gaming compacts pursuant to the Federal Indian Gaming Regulatory Act for the conduct of casino gambling on tribal lands, or to affect any existing gambling on tribal lands pursuant to compacts executed by the state and Native American tribes pursuant to [the Indian Gaming Regulatory Act].

By its terms, Amendment 3 became effective on November 6, 2018, is self-executing, and no legislative implementation is required. If any part of Amendment 3 is held invalid for any reason, the remaining portion(s) must be severed from the invalid portion and given "the fullest possible force and effect."

Regulation of Pari-mutuel Wagering

The Division of Pari-mutuel Wagering (division) in the Department of Business and Professional Regulation (DBPR) regulates pari-mutuel wagering. The division has regulatory oversight of permitted and licensed pari-mutuel wagering facilities, cardrooms located at pari-mutuel facilities, and slot machines at pari-mutuel facilities located in Miami-Dade and Broward counties. According to the division, there were eight license suspensions, and $19,075 in fines assessed for violations of all pari-mutuel statutes and administrative rules in Fiscal Year 2019-2020.[41]

Ten permitholders were not issued operating licenses for Fiscal Year 2020-2021: two greyhound permitholders,[42] two jai alai permitholders,[43] one limited thoroughbred permitholder,[44] and five quarter horse permitholders.[45]

Issuance of Pari-mutuel Permits and Annual Licenses

Section 550.054, F.S., provides that any person meeting the qualification requirements of ch. 550, F.S., may apply to the division for a permit to conduct pari-mutuel wagering. Upon approval, a permit must be issued to the applicant that indicates:

- The name of the permitholder;
- The location of the pari-mutuel facility;
- The type of pari-mutuel activity to be conducted; and
- A statement showing qualifications of the applicant to conduct pari-mutuel performances under ch. 550, F.S.

A permit does not authorize any pari-mutuel performances until approved by a majority of voters in a ratification election in the county in which the applicant proposes to conduct pari-mutuel wagering activities. An application may not be considered, nor may a permit be issued by the division or be voted upon in any county, for the conduct of:

- Harness horse racing, quarter horse racing, thoroughbred horse racing, or greyhound racing at a location within 100 miles of an existing pari-mutuel facility; or

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[41] Department of Business and Professional Regulation Division of Pari-mutuel Wagering, *89th Annual Report for Fiscal Year 2019-2020*, AnnualReport-2019-2020--89th--20210224.pdf pg. 5, (last visited Apr. 7, 2021).
[42] Jefferson County Kennel Club (Monticello) and North American Racing Association (Key West).
[43] Gadsden Jai-alai (Chattahoochee) and Tampa Jai Alai.
[44] Under s. 550.3345, F.S., during Fiscal Year 2010-2011 only, holders of quarter horse racing permits were allowed to convert their permits to a thoroughbred racing permit, conditioned upon specific use of racing revenues for enhancement of thoroughbred purses and awards, promotion of the thoroughbred horse industry, and the care of retired thoroughbred horses. Two conversions occurred, Gulfstream Park Thoroughbred After Racing Program (GPTARP) (Hallandale, Broward County), which was licensed to operate in 2019-2020, and Ocala Thoroughbred Racing (Marion County), which was not licensed to operate.
[45] ELH Jefferson (Jefferson County), DeBary Real Estate Holdings (Volusia County), North Florida Racing (Jacksonville), Pompano Park Racing (Pompano Beach), and St. Johns Racing (St. Johns County). *See* http://www.myfloridalicense.com/dbpr/pmw/documents/PermitholdersList_2020-2021.pdf (last visited Apr. 7, 2021).

- Jai alai games within 50 miles of an existing pari-mutuel facility.[46]

Distances are measured on a straight line from the nearest property line of one pari-mutuel facility to the nearest property line of the other facility.[47]

After issuance of the permit and a ratification election, the division may issue an annual operating license for wagering at the specified location in a county, indicating the time, place, and number of days during which pari-mutuel operations may be conducted at the specified location.[48]

The division may revoke or suspend any permit or license upon the willful violation by the permitholder or licensee of any provision of ch. 550, F.S., or any administrative rule adopted by the division, and may impose a civil penalty against the permitholder or license up to $1,000 for each offense.[49]

Slot Machine Gaming Locations and Operations

Section 32 of Art. X of the State Constitution, adopted pursuant to a 2004 initiative petition, authorized slot machines in licensed pari-mutuel facilities in Broward and Miami-Dade, if approved by county referendum. The voters in Broward and Miami-Dade counties approved slot machine gaming. Slot machine gaming in the state is limited to Broward and Miami-Dade counties, and as authorized by federal law, in the tribal gaming facilities of the Seminole Tribe.

Current law addresses slot machine gaming operations as follows:

- Restricts the issuance of slot machine licenses to licensed pari-mutuel permitholders, for slot machine gaming only at the facility where pari-mutuel wagering is authorized to be conducted by the permitholder;[50]
- Limits slot machine gaming to 18 hours per day, Monday through Friday, and 24 hours on Saturdays and Sundays;[51] and
- Prohibits the service of complimentary or reduced-cost alcoholic beverages to persons playing a slot machine, among other prohibitions.[52]

Cardrooms

Section 849.086, F.S., authorizes cardrooms at certain pari-mutuel facilities.[53]In Fiscal Year 2021-2022, 27 cardrooms are licensed to operate.[54] A license to offer pari-mutuel wagering, slot machine gaming, or a cardroom at a pari-mutuel facility is a privilege granted by the state.[55] A cardroom may be open 18 hours per day on Monday through Friday, and 24 hours per day on Saturday and Sunday.[56]

Sections 849.086(5) and (6), F.S., provide that a licensed pari-mutuel permitholder that holds a valid pari-mutuel permit may hold a cardroom license authorizing the operation of a cardroom and the conduct of authorized games at the cardroom. An authorized game is a game or series of games of

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[46] S. 550.054(2), F.S.
[47] *Id.*
[48] S. 550.054(9)(a), F.S.
[49] S. 550.054(9)(b), F.S.
[50] S. 551.104(3), F.S.
[51] S. 551.116, F.S.
[52] S. 551.121, F.S.
[53] S. 849.086(2)(c), F.S., defines "cardroom" to mean a facility where authorized games are played for money or anything of value and to which the public is invited to participate in such games and charges a fee for participation by the operator of such facility.
[54] Department of Business and Professional Regulation, *Pari-mutuel Wagering – Permitholder Operating Licenses 2021-2022*, http://www.myfloridalicense.com/DBPR/pari-mutuel-wagering/permitholder-operating-licenses-2021-2022/ (last visited Apr. 7, 2021).
[55] *Solimena v. State*, 402 So.2d 1240, 1247 (Fla. 3d DCA 1981), review denied, 412 So.2d 470, states "Florida courts have consistently emphasized the special nature of legalized racing, describing it as a privilege rather than as a vested right," citing *State ex rel. Mason v. Rose*, 122 Fla. 413, 165 So. 347 (1936). *See* s. 550.1625(1), F.S., "…legalized pari-mutuel betting at dog tracks is a privilege and is an operation that requires strict supervision and regulation in the best interests of the state."
[56] S. 849.086(7)(b), F.S.

poker or dominoes.[57] Such games must be played in a non-banking manner,[58] where the participants play against each other, instead of against the house (cardroom). At least four percent of the gross cardroom receipts of greyhound racing permitholders and jai alai permitholders conducting live races or games must supplement greyhound purses, and quarter horse permitholders must have a contract with a horsemen's association governing the payment of purses on live quarter horse races conducted by the permitholder.[59]

Live Performance Requirements

A license to offer pari-mutuel wagering, slot machine gambling, or a cardroom at a pari-mutuel facility is a privilege granted by the state.[60] Currently the State requires that:

- To offer intertrack or simulcast wagering, permitholders must conduct a full schedule of live racing as defined in ch. 550 and meet other requirements.[61]
- To remain eligible for a cardroom license, permitholders must conduct at least 90 percent of the performances conducted the year they applied for the initial cardroom license or the prior year, if the permitholder ran a full schedule of live performances.[62]
- To remain eligible for a slot machine license, permitholders must conduct a full schedule of live racing as defined in ch. 550.[63]

Amendment 13 to the State Constitution (Prohibition on Racing of and Wagering on Greyhounds or Other Dogs)

During the 2018 General Election, the electorate approved an initiative constitutional amendment (Amendment 13, Prohibition on Racing of and Wagering on Greyhounds or Other Dogs). The amendment is codified in the State Constitution as article X, section 32).[64]

Amendment 13 states that, beginning on January 1, 2019, greyhound tracks may discontinue live greyhound racing while continuing to operate its other forms of gaming. Beginning on January 1, 2021, Amendment 13 completely prohibits wagering on live greyhound racing in Florida, requiring the closure of all greyhound racetracks in the state. Cardroom and slot machine facilities at the greyhound tracks may continue to operate after the closure of racing activities.

Proposed Changes

The bill updates provisions in Florida law that are inconsistent with the prohibition of live racing of greyhounds as provided in Amendment 13 adopted in 2018. The bill removes requirements for greyhound permitholders, jai alai permitholders, and harness horse permitholders to conduct live racing or games. The bill maintains the requirement that thoroughbred permitholders continue to conduct live racing.

The bill amends s. 550.002, F.S., to revise live racing requirements at pari-mutuel permitholders affected by Amendment 13. Technical drafting changes, conforming changes, and elimination of obsolete language are also included.

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[57] S. 849.086(2)(a), F.S.
[58] *Id.*
[59] S. 849.086(13)(d), F.S.
[60] *See* s. 550.1625(1), F.S., (legalized pari-mutuel betting at dog tracks "is a privilege and is an operation that requires strict supervision and regulation in the best interests of the state").
[61] S. 550.615, F.S.
[62] s. 849.086(5)(b), F.S.
[63] s. 551.104(4)(c), F.S.
[64] [64] See the text of Amendment 13, now codified as art. X, s. 32, at http://www.leg.state.fl.us/Statutes/index.cfm?Mode=Constitution&Submenu=3&Tab=statutes#A10S32 (last visited Apr. 11, 2021).

The bill amends s. 550.01215, F.S., relating to operating license applications filed annually with the division for the conduct of pari-mutuel wagering, including intertrack and simulcast wagering. The application of each permitholder must indicate whether the permitholder intends to accept wagers on intertrack and simulcast events.

The bill revises the requirement for pari-mutuel permitholders to conduct live racing or games as follows:

- A greyhound permitholder may not conduct live racing, as such racing is prohibited in Florida after December 31, 2020.
- A jai alai permitholder, harness horse racing permitholder, or quarter horse racing permitholder may elect not to conduct live racing or games.
- A thoroughbred permitholder must conduct live racing.

The bill provides that a greyhound permitholder, jai alai permitholder, harness horse racing permitholder, or quarter horse racing permitholder that does not conduct live racing or games:

- Retains its permit;
- Is a pari-mutuel facility as defined in s. 550.002(23), F.S.
- Is eligible, but not required, to be a guest track, and if the permitholder is a harness horse racing permitholder, is eligible to be a host track for purposes of intertrack wagering and simulcasting pursuant to ss. 550.3551, 550.615, 550.625, and 550.6305, F.S.; and
- Remains eligible for a cardroom license.

The bill provides that for a greyhound permitholder, jai alai permitholder, harness horse racing permitholder, or quarter horse racing permitholder that does not conduct live racing or games, but has been issued a slot machine license, the facility where such permit is located:

- Remains an eligible facility as defined in s. 551.102(4), F.S.;
- Continues to be eligible for a slot machine license pursuant to s. 551.104(3), F.S.; and
- Is exempt from ss. 551.104(4)(c) and (10), F.S., and s. 551.114(2) and (4); F.S.

The bill provides that a permitholder or licensee may not conduct live greyhound racing or dogracing in connection with any wager for money or any other thing of value in the state. The division may deny, suspend, or revoke any permit or license under ch. 550, F.S., if a permitholder or licensee conducts live greyhound racing or dogracing in violation of this provision. In addition to, or in lieu of, denial, suspension, or revocation, the division is authorized to impose a civil penalty of up to $5,000 against the permitholder or licensee for a violation of this provision. All penalties imposed and collected must be deposited with the Chief Financial Officer to the credit of the General Revenue Fund.

Notwithstanding any other provision of law, no pari-mutuel facility, cardroom, or slot machine facility may be issued an operating license if the permitholder did not hold an operating license on November 6, 2018.

The bill provides that for Fiscal Year 2021-2022 only, the division may approve changes to a permitholder's operating dates if the request is received before July 1, 2021.

The bill amends s. 550.0235, F.S., to substitute the term "a permitholder licensed to conduct pari-mutuel wagering," and delete the obsolete term "a permittee conducting a racing meet."

The bill provides that notwithstanding any other provision of law:

- A permit for the operation of a pari-mutuel facility, cardroom, or slot machine facility may only be held by facilities with permits on November 6, 2018.
- No pari-mutuel facility, cardroom, or slot machine facility may be relocated, and no pari-mutuel wagering permit may be converted to another class of permit.

The bill amends s. 550.09511(4), F.S., to delete a requirement for payment of daily license fees and tax on admissions and bets, if fewer than 100 live jai alai games are conducted in a calendar year.

The bill amends s. 550.09512, F.S., to clarify a provision relating to taxes payable by harness horse permitholders who conduct live harness horse performances, and adds “pandemic” to the list of exemptions for failure to operate and pay such tax.

The bill amends s. 550.1647, F.S., related to unclaimed pari-mutuel tickets, to delete references to greyhound racing.

The bill repeals s. 550.1648, F.S., related to obsolete provisions concerning greyhound adoption booths at pari-mutuel facilities and associated charity racing days.

The bill amends s. 550.3551, F.S., relating to broadcasting of racing and jai alai information, to conform references to permitholders and to delete a limitation on the number of broadcasts that may be received from outside the state by certain greyhound permitholders. The bill revises the requirement that all permitholders conduct at least eight live races or games on a race day, and meet certain minimum live racing or games requirements, to limit application of those requirements to permitholders who conduct live races or games. The bill deletes the requirement that a permitholder obtain authorization from the division for special racing events, and deletes the associated approval process and limits on such authorization.

The bill amends s. 550.475, F.S., relating to the leasing of pari-mutuel facilities by pari-mutuel permitholders, to conform references to permitholders and to ensure a lessee may conduct intertrack wagering.

The bill amends s. 550.615, F.S., relating to intertrack wagering, to conform references to pari-mutuel facilities and live racing or games requirements, and to provide that a permitholder that has met the live racing or games requirement applicable to that permitholder under s. 550.01215(1)(b), F.S., is qualified to receive broadcasts of any class of pari-mutuel races or games and to accept wagers on such races or games. The bill provides any greyhound permitholder licensed under ch. 550, F.S., to conduct pari-mutuel wagering is qualified to, at any time, receive broadcasts and accept wagers on any class of pari-mutuel race or game.

The bill amends s. 551.104(4)(c), F.S., relating to the requirement that a permitholder conduct a full schedule of live racing or games as a condition for eligibility to obtain a license to conduct slot machine gaming. The bill applies the live racing requirements for such eligibility only to thoroughbred permitholders, as under the bill, greyhound permitholders may not conduct live racing, jai alai permitholders may elect not to conduct live games, and harness horse and quarter horse permitholders may elect not to conduct live racing.

The bill amends s. 551.114, F.S., relating to slot machine gaming areas, regarding the locations at which designated slot machine gaming areas may be located. The undefined term “live gaming facility” in current law is no longer applicable to greyhound permitholders prohibited from conducting live racing after December 31, 2020. The bill provides that slot machine gaming areas must be located at the location specified in the licensed permitholder’s operating license. Provisions relating to the types of buildings and the connection of such buildings to the live gaming facility are deleted as obsolete.

The bill amends s. 849.086, F.S., relating to cardrooms, to:

- Delete a requirement that pari-mutuel permitholders seeking renewal of a cardroom operating license must have conducted a certain number of live races or games in the previous year (the 90 percent rule);
- Revise provisions in current law that are no longer applicable to greyhound permitholders prohibited from conducting live racing after December 31, 2020;

The bill re-enacts s. 380.0651, F.S., relating to developments of regional impact, for the purpose of incorporating the definitions in s. 550.002, F.S., amended by the bill. A pari-mutuel facility continues to be subject to certain statewide guidelines and standards for developments of regional impact, as set forth in s. 380.06, F.S.

The bill re-enacts s. 402.82, F.S., relating to the electronic benefits transfer program, for the purpose of incorporating the definitions in s. 550.002, F.S., amended by the bill. The use of electronic benefits transfer cards continues to be prohibited at pari-mutuel facilities.

The bill re-enacts s. 480.0475, F.S., relating to certain overnight hours that massage establishments are prohibited from operating, for the purpose of incorporating the definitions in s. 550.002, F.S., amended by the bill. Massage establishments at pari-mutuel facilities continue to be exempt from the prohibition, and may operate between the hours of midnight and 5 a.m.

B. SECTION DIRECTORY:

Section 1: Amends s. 550.002, F.S., relating to definitions.

Section 2: Amends s. 550.0115, F.S., relating to permitholder operating license.

Section 3: Amends s. 550.01215, F.S., relating to license application; periods of operation; license fees; bond.

Section 4: Amends s. 550.0235, F.S., relating to limitation of civil liability.

Section 5: Amends s. 550.0351, F.S., relating to charity racing days.

Section 6: Amends s. 550.0425, F.S., relating to minors attendance at pari-mutuel performances; restrictions.

Section 7: Amends s. 550.054, F.S., relating to application for permit to conduct pari-mutuel wagering.

Section 8: Amends s. 550.09511, F.S., relating to jai alai taxes; abandoned interest in a permit for nonpayment of taxes.

Section 9: Amends s. 550.09512, F.S., relating to harness horse taxes; abandoned interest in a permit for nonpayment of taxes.

Section 10: Amends s. 550.105, F.S., relating to occupational licenses of racetrack employees; fees; denial, suspension, and revocation of license; penalties and fines.

Section 11: Amends s. 550.1155, F.S., relating to authority of stewards, judges, panel of judges, or player's manager to impose penalties against occupational licensees; disposition of funds collected.

Section 12: Amends s. 550.1647, F.S., relating to greyhound permitholders; unclaimed tickets; breaks.

Section 13: Repeals s. 550.1648, F.S., relating to greyhound adoptions.

Section 14: Amends s. 550.175, F.S., relating to petition for election to revoke permit.

Section 15: Amends s. 550.1815, F.S., relating to certain persons prohibited from holding racing or jai alai permits; suspension and revocation.

Section 16: Amends s. 550.24055, F.S., relating to use of controlled substances or alcohol prohibited; testing of certain occupational licensees; penalty; evidence of test or action taken and admissibility for criminal prosecution limited.

Section 17: Amends s. 550.2415, F.S., relating to racing of animals under certain conditions prohibited; penalties; exceptions.

Section 18: Amends s. 550.3551, F.S., relating to transmission of racing and jai alai information; commingling of pari-mutuel pools.

Section 19: Amends s. 550.3615, F.S., relating to bookmaking on the grounds of a permitholder; penalties; reinstatement; duties of track employees; penalty; exceptions.

Section 20: Amends s. 550.475, F.S., relating to lease of pari-mutuel facilities by pari-mutuel permitholders.

Section 21: Amends s. 550.615, F.S., relating to intertrack wagering.

Section 22: Amends s. 550.6305, F.S., relating to intertrack wagering; guest track payments; accounting rules.

Section 23: Amends s. 551.104, F.S., relating to license to conduct slot machine gaming.

Section 24: Amends s. 551.114, F.S., relating to slot machine gaming areas.

Section 25: Amends s. 565.02, F.S., relating to license fees; vendors; clubs; caterers; and others.

Section 26: Amends s. 849.086, F.S., relating to cardrooms authorized.

Section 27: Reenacts s. 380.0651, F.S., relating to statewide guidelines, standards, and exemptions.

Section 28: Reenacts s. 402.82, F.S., relating to electronic benefits transfer program.

Section 29: Reenacts s. 480.0475, F.S., relating to massage establishments; prohibited practices.

Section 30: This act shall take effect July 1, 2021, but only if PCB COM 21-03 or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes a law.

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:

Individuals and businesses associated with jai alai, harness horse, and quarter horse racing will experience and indeterminate impact associated with the election by permitholders to conduct or not conduct live racing or games.

D. FISCAL COMMENTS:

State funds associated with jai alai, harness horse, and quarter horse racing will experience and indeterminate impact associated with the election by permitholders to conduct or not conduct live racing or games. The Revenue Estimating Conference has not yet reviewed this bill.

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:

State agencies associated with the provisions in the bill may need to revise their rules to the extent the rules are inconsistent with the prohibition of live racing of greyhounds, and the removal of the requirements for greyhound permitholders, jai alai permitholders, and harness horse permitholders to conduct live racing or games.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

A bill to be entitled

An act relating to requirements for pari-mutuel permitholders to conduct racing or games; amending s. 550.002, F.S.; revising and providing definitions; amending s. 550.0115, F.S.; conforming provisions to changes made by the act; amending s. 550.01215, F.S.; revising the application requirements for an operating license to conduct pari-mutuel wagering for a pari-mutuel facility; prohibiting greyhound permitholders from conducting live racing; authorizing jai alai permitholders, harness horse racing permitholders, and quarter horse racing permitholders to elect not to conduct live racing or games; requiring thoroughbred permitholders to conduct live racing; specifying that certain permitholders that do not conduct live racing or games retain their permit and remain pari-mutuel facilities; specifying that, if such permitholder has been issued a slot machine license, the permitholder's facility remains an eligible facility, continues to be eligible for a slot machine license, is exempt from certain provisions of ch. 551, F.S., is eligible to be a guest track, and, if the permitholder is a harness horse racing permitholder, is eligible to be a host track for intertrack wagering and simulcasting, and remains eligible for a cardroom license; authorizing

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the Division of Pari-mutuel Wagering to approve a change in racing dates for a permitholder if the request for a change is received before a specified date and under certain circumstances; deleting a provision authorizing the conversion of certain permits to a jai alai permit under certain circumstances; amending s. 550.0235, F.S.; conforming provisions to changes made by the act; amending s. 550.0351, F.S.; deleting a provision relating to hound dog derbies and mutt derbies; amending s. 550.0425, F.S.; deleting a provision authorizing certain children to be granted access to kennel compound areas under certain circumstances; amending s. 550.054, F.S.; deleting provisions relating to the conversion of jai alai permits to greyhound racing permits; conforming a provision to changes made by the act; amending s. 550.09511, F.S.; deleting a provision relating to the payment of certain taxes and fees by jai alai permitholders conducting fewer than a specified number of live performances; amending s. 550.09512, F.S.; revising the circumstances for which a harness horse permitholder's permit is voided for failing to pay certain taxes; amending ss. 550.105 and 550.1155, F.S.; conforming provisions to changes made by the act; amending s. 550.1647, F.S.; conforming a

provision to changes made by the act; repealing s. 550.1648, F.S., relating to greyhound adoptions; amending ss. 550.175 and 550.1815, F.S.; conforming provisions to changes made by the act; amending s. 550.24055, F.S.; conforming provisions to changes made by the act; amending s. 550.2415, F.S.; deleting provisions relating to the testing, euthanasia, and training of racing greyhounds; amending s. 550.3551, F.S.; conforming provisions to changes made by the act; conforming provisions to changes made by the act; amending s. 550.3615, F.S.; conforming provisions to changes made by the act; prohibiting a person convicted of bookmaking from attending or being admitted to a pari-mutuel facility; requiring pari-mutuel facility employees to notify certain persons of unlawful activities; providing civil penalties; requiring a permittee to display certain warnings relating to bookmaking at his or her pari-mutuel facility; revising applicability; amending s. 550.475, F.S.; revising provisions relating to leasing pari-mutuel facilities; amending s. 550.615, F.S.; revising requirements relating to intertrack wagering; specifying that greyhound permitholders are qualified to receive certain broadcasts and accept specified wagers; amending s. 550.6305, F.S.; conforming

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provisions to changes made by the act; amending s. 551.104, F.S.; conforming provisions to changes made by the act; amending s. 551.114, F.S.; revising requirements for the locations of designated slot machine gaming areas; amending s. 565.02, F.S.; conforming provisions to changes made by the act; amending s. 849.086, F.S.; revising requirements relating to the annual renewal of a cardroom license; conforming provisions to changes made by the act; reenacting ss. 380.0651(2)(c), 402.82(4)(c), and 480.0475(1), F.S., relating to statewide guidelines, the electronic benefits transfer program, and massage establishments, respectively, to incorporate the amendments made to s. 550.002, F.S., in references thereto; providing a contingent effective date.

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

Section 1. Present subsections (24) through (28) of section 550.002, Florida Statutes, are redesignated as subsections (25) through (29), respectively, a new subsection (24) is added to that section, and subsections (11), (17), (20), (21), (22), (23), and (31) and present subsections (26) and (29) of that section are amended, to read:

550.002 Definitions.—As used in this chapter, the term:

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(11) "Full schedule of live racing or games" means, for a ~~greyhound or~~ jai alai permitholder, the conduct of a combination of at least 100 live evening or matinee performances during the preceding year; for a permitholder who has a converted permit or filed an application on or before June 1, 1990, for a converted permit, the conduct of a combination of at least 100 live evening and matinee wagering performances during either of the 2 preceding years; for a jai alai permitholder who does not operate slot machines in its pari-mutuel facility, who has conducted at least 100 live performances per year for at least 10 years after December 31, 1992, and whose handle on live jai alai games conducted at its pari-mutuel facility has been less than $4 million per state fiscal year for at least 2 consecutive years after June 30, 1992, the conduct of a combination of at least 40 live evening or matinee performances during the preceding year; for a jai alai permitholder who operates slot machines in its pari-mutuel facility, the conduct of a combination of at least 150 performances during the preceding year; for a harness permitholder, the conduct of at least 100 live regular wagering performances during the preceding year; for a quarter horse permitholder at its facility unless an alternative schedule of at least 20 live regular wagering performances is agreed upon by the permitholder and either the Florida Quarter Horse Racing Association or the horsemen's association representing the majority of the quarter horse

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owners and trainers at the facility and filed with the division along with its annual date application, in the 2010-2011 fiscal year, the conduct of at least 20 regular wagering performances, in the 2011-2012 and 2012-2013 fiscal years, the conduct of at least 30 live regular wagering performances, and for every fiscal year after the 2012-2013 fiscal year, the conduct of at least 40 live regular wagering performances; for a quarter horse permitholder leasing another licensed racetrack, the conduct of 160 events at the leased facility; and for a thoroughbred permitholder, the conduct of at least 40 live regular wagering performances during the preceding year. For a permitholder which is restricted by statute to certain operating periods within the year when other members of its same class of permit are authorized to operate throughout the year, the specified number of live performances which constitute a full schedule of live racing or games shall be adjusted pro rata in accordance with the relationship between its authorized operating period and the full calendar year and the resulting specified number of live performances shall constitute the full schedule of live games for such permitholder and all other permitholders of the same class within 100 air miles of such permitholder. A live performance must consist of no fewer than eight races or games conducted live for each of a minimum of three performances each week at the permitholder's licensed facility under a single admission charge.

(17) "Intertrack wager" or "intertrack wagering" means a particular form of pari-mutuel wagering in which wagers are accepted at a permitted, in-state track, fronton, or pari-mutuel facility on a race or game transmitted from and performed live at, or simulcast signal rebroadcast from, another in-state pari-mutuel facility.

(20) "Meet" or "meeting" means the conduct of live racing or jai alai, or wagering on intertrack or simulcast events, for any stake, purse, prize, or premium.

(21) "Operating day" means a continuous period of 24 hours starting with the beginning of the first performance of a race or game, even though the operating day may start during one calendar day and extend past midnight except that no ~~greyhound race or~~ jai alai game may commence after 1:30 a.m.

(22) "Pari-mutuel" or "pari-mutuel wagering" means a system of betting on races or games in which the winners divide the total amount bet, after deducting management expenses and taxes, in proportion to the sums they have wagered individually and with regard to the odds assigned to particular outcomes.

(23) "Pari-mutuel facility" means the grounds or property of a cardroom, racetrack, fronton, or other facility used by a licensed permitholder ~~for the conduct of pari-mutuel wagering~~.

(24) "Permitholder" or "permittee" means a holder of a permit to conduct pari-mutuel wagering in this state as authorized in this chapter.

(27)~~(26)~~ "Post time" means the time set for the arrival at the starting point of the horses ~~or greyhounds~~ in a race or the beginning of a game in jai alai.

~~(29) "Racing greyhound" means a greyhound that is or was used, or is being bred, raised, or trained to be used, in racing at a pari-mutuel facility and is registered with the National Greyhound Association.~~

(31) "Same class of races, games, or permit" means, with respect to a jai alai permitholder, jai alai games or other jai alai permitholders; with respect to a greyhound permitholder, ~~greyhound races or~~ other greyhound permitholders conducting pari-mutuel wagering; with respect to a thoroughbred permitholder, thoroughbred races or other thoroughbred permitholders; with respect to a harness permitholder, harness races or other harness permitholders; with respect to a quarter horse permitholder, quarter horse races or other quarter horse permitholders.

Section 2. Section 550.0115, Florida Statutes, is amended to read:

550.0115 Permitholder operating license.—After a permit has been issued by the division, and after the permit has been approved by election, the division shall issue to the permitholder an annual operating license to conduct pari-mutuel wagering ~~operations~~ at the location specified in the permit pursuant to the provisions of this chapter.

Section 3. Section 550.01215, Florida Statutes, is amended to read:

550.01215 License application; periods of operation; license fees; bond~~, conversion of permit~~.~~—~~

(1) Each permitholder shall annually, during the period between December 15 and January 4, file in writing with the division its application for an operating ~~a~~ license for a pari-mutuel facility for the conduct of pari-mutuel wagering during the next state fiscal year, including intertrack and simulcast race wagering ~~to conduct performances during the next state fiscal year~~. Each application for live performances must ~~shall~~ specify the number, dates, and starting times of all live performances that ~~which~~ the permitholder intends to conduct. It must ~~shall~~ also specify which performances will be conducted as charity or scholarship performances.

(a) ~~In addition,~~ Each application for an operating ~~a~~ license also must ~~shall~~ include:~~,~~

1. For each permitholder, whether the permitholder intends to accept wagers on intertrack or simulcast events.

2. For each permitholder that ~~which~~ elects to operate a cardroom, the dates and periods of operation the permitholder intends to operate the cardroom. ~~or,~~

3. For each thoroughbred racing permitholder that ~~which~~ elects to receive or rebroadcast out-of-state races after 7 p.m., the dates for all performances that ~~which~~ the permitholder

intends to conduct.

(b)1. A greyhound permitholder may not conduct live racing. A jai alai permitholder, harness horse racing permitholder, or quarter horse racing permitholder may elect not to conduct live racing or games. A thoroughbred permitholder must conduct live racing. A greyhound permitholder, jai alai permitholder, harness horse racing permitholder, or quarter horse racing permitholder that does not conduct live racing or games retains its permit; is a pari-mutuel facility as defined in s. 550.002(23); if such permitholder has been issued a slot machine license, the facility where such permit is located remains an eligible facility as defined in s. 551.102(4), continues to be eligible for a slot machine license pursuant to s. 551.104(3), and is exempt from ss. 551.104(4)(c) and (10) and 551.114(2) and (4); is eligible, but not required, to be a guest track and, if the permitholder is a harness horse racing permitholder, to be a host track for purposes of intertrack wagering and simulcasting pursuant to ss. 550.3551, 550.615, 550.625, and 550.6305; and remains eligible for a cardroom license.

2. A permitholder or licensee may not conduct live greyhound racing or dogracing in connection with any wager for money or any other thing of value in the state. The division may deny, suspend, or revoke any permit or license under this chapter if a permitholder or licensee conducts live greyhound

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racing or dogracing in violation of this subparagraph. In addition to, or in lieu of, denial, suspension, or revocation, the division may impose a civil penalty of up to $5,000 against the permitholder or licensee for a violation of this subparagraph. All penalties imposed and collected must be deposited with the Chief Financial Officer to the credit of the General Revenue Fund.

(c) Permitholders may ~~shall be entitled to~~ amend their applications through February 28.

(d) Notwithstanding any other provision of law, no pari-mutuel facility, cardroom, or slot machine facility may be issued an operating license if the permitholder did not hold an operating license on November 6, 2018.

(2) After the first license has been issued to a permitholder, all subsequent annual applications for a license shall be accompanied by proof, in such form as the division may by rule require, that the permitholder continues to possess the qualifications prescribed by this chapter, and that the permit has not been disapproved at a later election.

(3) The division shall issue each license no later than March 15. Each permitholder shall operate all performances at the date and time specified on its license. The division shall have the authority to approve minor changes in racing dates after a license has been issued. The division may approve changes in racing dates after a license has been issued when

there is no objection from any operating permitholder located within 50 miles of the permitholder requesting the changes in operating dates. In the event of an objection, the division shall approve or disapprove the change in operating dates based upon the impact on operating permitholders located within 50 miles of the permitholder requesting the change in operating dates. In making the determination to change racing dates, the division shall take into consideration the impact of such changes on state revenues. Notwithstanding any other provision of law, and for the 2021-2022 state fiscal year only, the division may approve changes in operating dates for permitholders if the request for such changes is received before July 1, 2021.

(4) In the event that a permitholder fails to operate all performances specified on its license at the date and time specified, the division shall hold a hearing to determine whether to fine or suspend the permitholder's license, unless such failure was the direct result of fire, strike, war, or other disaster or event beyond the ability of the permitholder to control. Financial hardship to the permitholder shall not, in and of itself, constitute just cause for failure to operate all performances on the dates and at the times specified.

(5) In the event that performances licensed to be operated by a permitholder are vacated, abandoned, or will not be used for any reason, any permitholder shall be entitled, pursuant to

rules adopted by the division, to apply to conduct performances on the dates for which the performances have been abandoned. The division shall issue an amended license for all such replacement performances which have been requested in compliance with ~~the provisions of~~ this chapter and division rules.

~~(6) Any permit which was converted from a jai alai permit to a greyhound permit may be converted to a jai alai permit at any time if the permitholder never conducted greyhound racing or if the permitholder has not conducted greyhound racing for a period of 12 consecutive months.~~

Section 4. Section 550.0235, Florida Statutes, is amended to read:

550.0235 Limitation of civil liability.—No permitholder licensed to conduct pari-mutuel wagering ~~permittee conducting a racing meet~~ pursuant to the provisions of this chapter; no division director or employee of the division; and no steward, judge, or other person appointed to act pursuant to this chapter shall be held liable to any person, partnership, association, corporation, or other business entity for any cause whatsoever arising out of, or from, the performance by such permittee, director, employee, steward, judge, or other person of her or his duties and the exercise of her or his discretion with respect to the implementation and enforcement of the statutes and rules governing the conduct of pari-mutuel wagering, so long as she or he acted in good faith. This section shall not limit

liability in any situation in which the negligent maintenance of the premises or the negligent conduct of a race contributed to an accident; nor shall it limit any contractual liability.

Section 5. Subsections (1) and (7) of section 550.0351, Florida Statutes, are amended to read:

550.0351 Charity racing days.—

(1) The division shall, upon the request of a permitholder, authorize each horseracing permitholder~~, dogracing permitholder,~~ and jai alai permitholder up to five charity or scholarship days in addition to the regular racing days authorized by law.

~~(7) In addition to the charity days authorized by this section, any dogracing permitholder may allow its facility to be used for conducting "hound dog derbies" or "mutt derbies" on any day during each racing season by any charitable, civic, or nonprofit organization for the purpose of conducting "hound dog derbies" or "mutt derbies" if only dogs other than those usually used in dogracing (greyhounds) are permitted to race and if adults and minors are allowed to participate as dog owners or spectators. During these racing events, betting, gambling, and the sale or use of alcoholic beverages is prohibited.~~

Section 6. Subsection (4) of section 550.0425, Florida Statutes, is amended to read:

550.0425 Minors attendance at pari-mutuel performances; restrictions.—

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~~(4) Minor children of licensed greyhound trainers, kennel operators, or other licensed persons employed in the kennel compound areas may be granted access to kennel compound areas without being licensed, provided they are in no way employed unless properly licensed, and only when under the direct supervision of one of their parents or legal guardian.~~

Section 7. Subsections (2) and (14) of section 550.054, Florida Statutes, are amended to read:

550.054 Application for permit to conduct pari-mutuel wagering.—

(2) Upon each application filed and approved, a permit shall be issued to the applicant setting forth the name of the permitholder, the location of the pari-mutuel facility, the type of pari-mutuel activity desired to be conducted, and a statement showing qualifications of the applicant to conduct pari-mutuel performances under this chapter; however, a permit is ineffectual to authorize any pari-mutuel performances until approved by a majority of the electors participating in a ratification election in the county in which the applicant proposes to conduct pari-mutuel wagering activities. In addition, an application may not be considered, nor may a permit be issued by the division or be voted upon in any county, to conduct horseraces, harness horse races, or pari-mutuel wagering ~~dograces~~ at a location within 100 miles of an existing pari-mutuel facility, or for jai alai within 50 miles of an existing

pari-mutuel facility; this distance shall be measured on a straight line from the nearest property line of one pari-mutuel facility to the nearest property line of the other facility.

(14)(a) Notwithstanding any other provision of law, a permit for the operation of a pari-mutuel facility, cardroom, or slot machine facility may only be held by facilities with permits on November 6, 2018.

(b) Notwithstanding any other provision of law, no pari-mutuel facility, cardroom, or slot machine facility may be relocated, and no pari-mutuel wagering permit may be converted to another class of permit.

~~(14)(a) Any holder of a permit to conduct jai alai may apply to the division to convert such permit to a permit to conduct greyhound racing in lieu of jai alai if:~~

~~1. Such permit is located in a county in which the division has issued only two pari-mutuel permits pursuant to this section;~~

~~2. Such permit was not previously converted from any other class of permit; and~~

~~3. The holder of the permit has not conducted jai alai games during a period of 10 years immediately preceding his or her application for conversion under this subsection.~~

~~(b) The division, upon application from the holder of a jai alai permit meeting all conditions of this section, shall convert the permit and shall issue to the permitholder a permit~~

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~~to conduct greyhound racing. A permitholder of a permit converted under this section shall be required to apply for and conduct a full schedule of live racing each fiscal year to be eligible for any tax credit provided by this chapter. The holder of a permit converted pursuant to this subsection or any holder of a permit to conduct greyhound racing located in a county in which it is the only permit issued pursuant to this section who operates at a leased facility pursuant to s. 550.475 may move the location for which the permit has been issued to another location within a 30-mile radius of the location fixed in the permit issued in that county, provided the move does not cross the county boundary and such location is approved under the zoning regulations of the county or municipality in which the permit is located, and upon such relocation may use the permit for the conduct of pari-mutuel wagering and the operation of a cardroom. The provisions of s. 550.6305(9)(d) and (f) shall apply to any permit converted under this subsection and shall continue to apply to any permit which was previously included under and subject to such provisions before a conversion pursuant to this section occurred.~~

Section 8. Subsection (4) of section 550.09511, Florida Statutes, is amended to read:

550.09511 Jai alai taxes; abandoned interest in a permit for nonpayment of taxes.—

~~(4) A jai alai permitholder conducting fewer than 100 live~~

~~performances in any calendar year shall pay to the state the same aggregate amount of daily license fees on live jai alai games, admissions tax, and tax on live handle as that permitholder paid to the state during the most recent prior calendar year in which the jai alai permitholder conducted at least 100 live performances.~~

Section 9. Paragraph (a) of subsection (3) of section 550.09512, Florida Statutes, is amended to read:

550.09512 Harness horse taxes; abandoned interest in a permit for nonpayment of taxes.—

(3)(a) The permit of a harness horse permitholder who is conducting live harness horse performances and who does not pay tax on handle for any such ~~live harness horse~~ performances conducted ~~for a full schedule of live races~~ during any 2 consecutive state fiscal years shall be void and shall not be reissued ~~escheat to and become the property of the state~~ unless such failure to operate and pay tax on handle was the direct result of fire, strike, war, pandemic, or other disaster or event beyond the ability of the permitholder to control. Financial hardship to the permitholder shall not, in and of itself, constitute just cause for failure to operate and pay tax on handle.

Section 10. Subsections (2) and (9) of section 550.105, Florida Statutes, are amended to read:

550.105 Occupational licenses of racetrack employees;

fees; denial, suspension, and revocation of license; penalties and fines.—

(2)(a) The following licenses shall be issued to persons or entities with access to the backside, racing animals, jai alai players' room, jockeys' room, drivers' room, totalisator room, the mutuels, or money room, or to persons who, by virtue of the position they hold, might be granted access to these areas or to any other person or entity in one of the following categories and with fees not to exceed the following amounts for any 12-month period:

1. Business licenses: any business such as a vendor, contractual concessionaire, ~~contract kennel,~~ business owning racing animals, trust or estate, totalisator company, stable name, or other fictitious name: $50.

2. Professional occupational licenses: professional persons with access to the backside of a racetrack or players' quarters in jai alai such as trainers, officials, veterinarians, doctors, nurses, EMT's, jockeys and apprentices, drivers, jai alai players, owners, trustees, or any management or officer or director or shareholder or any other professional-level person who might have access to the jockeys' room, the drivers' room, the backside, racing animals, ~~kennel compound,~~ or managers or supervisors requiring access to mutuels machines, the money room, or totalisator equipment: $40.

3. General occupational licenses: general employees with

access to the jockeys' room, the drivers' room, racing animals, the backside of a racetrack or players' quarters in jai alai, such as grooms, ~~kennel helpers,~~ leadouts, pelota makers, cesta makers, or ball boys, or a practitioner of any other occupation who would have access to the animals or~~,~~ the backside, ~~or the kennel compound,~~ or who would provide the security or maintenance of these areas, or mutuel employees, totalisator employees, money-room employees, or any employee with access to mutuels machines, the money room, or totalisator equipment or who would provide the security or maintenance of these areas: $10.

The individuals and entities that are licensed under this paragraph require heightened state scrutiny, including the submission by the individual licensees or persons associated with the entities described in this chapter of fingerprints for a Federal Bureau of Investigation criminal records check.

(b) The division shall adopt rules pertaining to pari-mutuel occupational licenses, licensing periods, and renewal cycles.

(9) The tax imposed by this section is in lieu of all license, excise, or occupational taxes to the state or any county, municipality, or other political subdivision, except that, if a race meeting or game is held or conducted in a municipality, the municipality may assess and collect an

additional tax against any person conducting live racing or games within its corporate limits, which tax may not exceed $150 per day for horseracing or $50 per day for ~~dogracing or~~ jai alai. Except as provided in this chapter, a municipality may not assess or collect any additional excise or revenue tax against any person conducting race meetings within the corporate limits of the municipality or against any patron of any such person.

Section 11. Section 550.1155, Florida Statutes, is amended to read:

550.1155 Authority of stewards, judges, panel of judges, or player's manager to impose penalties against occupational licensees; disposition of funds collected.—

(1) The stewards at a horse racetrack~~; the judges at a dog track;~~ or the judges, a panel of judges, or a player's manager at a jai alai fronton may impose a civil penalty against any occupational licensee for violation of the pari-mutuel laws or any rule adopted by the division. The penalty may not exceed $1,000 for each count or separate offense or exceed 60 days of suspension for each count or separate offense.

(2) All penalties imposed and collected pursuant to this section at each horse ~~or dog~~ racetrack or jai alai fronton shall be deposited into a board of relief fund established by the pari-mutuel permitholder. Each association shall name a board of relief composed of three of its officers, with the general manager of the permitholder being the ex officio treasurer of

such board. Moneys deposited into the board of relief fund shall be disbursed by the board for the specific purpose of aiding occupational licenseholders and their immediate family members at each pari-mutuel facility.

Section 12. Section 550.1647, Florida Statutes, is amended to read:

550.1647 Greyhound permitholders; unclaimed tickets; breaks.—All money or other property represented by any unclaimed, uncashed, or abandoned pari-mutuel ticket which has remained in the custody of or under the control of any greyhound permitholder authorized to conduct ~~greyhound racing~~ pari-mutuel wagering ~~pools~~ in this state for a period of 1 year after the date the pari-mutuel ticket was issued, if the rightful owner or owners thereof have made no claim or demand for such money or other property within that period of time, shall~~, with respect to live races conducted by the permitholder,~~ be remitted to the state pursuant to s. 550.1645; however, such permitholder shall be entitled to a credit in each state fiscal year in an amount equal to the actual amount remitted in the prior state fiscal year which may be applied against any taxes imposed pursuant to this chapter. In addition, each permitholder shall pay, from any source, ~~including the proceeds from performances conducted pursuant to s. 550.0351,~~ an amount not less than 10 percent of the amount of the credit provided by this section to any bona fide organization that promotes or encourages the adoption of

greyhounds. As used in this chapter, the term "bona fide organization that promotes or encourages the adoption of greyhounds" means any organization that provides evidence of compliance with chapter 496 and possesses a valid exemption from federal taxation issued by the Internal Revenue Service. Such bona fide organization, as a condition of adoption, must provide sterilization of greyhounds by a licensed veterinarian before relinquishing custody of the greyhound to the adopter. The fee for sterilization may be included in the cost of adoption.

Section 13. Section 550.1648, Florida Statutes, is repealed.

Section 14. Section 550.175, Florida Statutes, is amended to read:

550.175 Petition for election to revoke permit.—Upon petition of 20 percent of the qualified electors of any county wherein any pari-mutuel wagering ~~racing~~ has been licensed and conducted under this chapter, the county commissioners of such county shall provide for the submission to the electors of such county at the then next succeeding general election the question of whether any permit or permits theretofore granted shall be continued or revoked, and if a majority of the electors voting on such question in such election vote to cancel or recall the permit theretofore given, the division may not thereafter grant any license on the permit so recalled. Every signature upon every recall petition must be signed in the presence of the

clerk of the board of county commissioners at the office of the clerk of the circuit court of the county, and the petitioner must present at the time of such signing her or his registration receipt showing the petitioner's qualification as an elector of the county at the time of the signing of the petition. Not more than one permit may be included in any one petition; and, in all elections in which the recall of more than one permit is voted on, the voters shall be given an opportunity to vote for or against the recall of each permit separately. Nothing in this chapter shall be construed to prevent the holding of later referendum or recall elections.

Section 15. Subsection (1) of section 550.1815, Florida Statutes, is amended to read:

550.1815 Certain persons prohibited from holding racing or jai alai permits; suspension and revocation.—

(1) A corporation, general or limited partnership, sole proprietorship, business trust, joint venture, or unincorporated association, or other business entity may not hold any horseracing or greyhound ~~dogracing~~ permit or jai alai fronton permit in this state if any one of the persons or entities specified in paragraph (a) has been determined by the division not to be of good moral character or has been convicted of any offense specified in paragraph (b).

(a)1. The permitholder;

2. An employee of the permitholder;

3. The sole proprietor of the permitholder;

4. A corporate officer or director of the permitholder;

5. A general partner of the permitholder;

6. A trustee of the permitholder;

7. A member of an unincorporated association permitholder;

8. A joint venturer of the permitholder;

9. The owner of more than 5 percent of any equity interest in the permitholder, whether as a common shareholder, general or limited partner, voting trustee, or trust beneficiary; or

10. An owner of any interest in the permit or permitholder, including any immediate family member of the owner, or holder of any debt, mortgage, contract, or concession from the permitholder, who by virtue thereof is able to control the business of the permitholder.

(b)1. A felony in this state;

2. Any felony in any other state which would be a felony if committed in this state under the laws of this state;

3. Any felony under the laws of the United States;

4. A felony under the laws of another state if related to gambling which would be a felony under the laws of this state if committed in this state; or

5. Bookmaking as defined in s. 849.25.

Section 16. Subsection (2) of section 550.24055, Florida Statutes, is amended to read:

550.24055 Use of controlled substances or alcohol

prohibited; testing of certain occupational licensees; penalty; evidence of test or action taken and admissibility for criminal prosecution limited.—

(2) The occupational licensees, by applying for and holding such licenses, are deemed to have given their consents to submit to an approved chemical test of their breath for the purpose of determining the alcoholic content of their blood and to a urine or blood test for the purpose of detecting the presence of controlled substances. Such tests shall only be conducted upon reasonable cause that a violation has occurred as shall be determined solely by the stewards at a horseracing meeting or the judges or board of judges at a ~~dogtrack or~~ jai alai meet. The failure to submit to such test may result in a suspension of the person's occupational license for a period of 10 days or until this section has been complied with, whichever is longer.

(a) If there was at the time of the test 0.05 percent or less by weight of alcohol in the person's blood, the person is presumed not to have been under the influence of alcoholic beverages to the extent that the person's normal faculties were impaired, and no action of any sort may be taken by the stewards, judges, or board of judges or the division.

(b) If there was at the time of the test an excess of 0.05 percent but less than 0.08 percent by weight of alcohol in the person's blood, that fact does not give rise to any presumption

that the person was or was not under the influence of alcoholic beverages to the extent that the person's faculties were impaired, but the stewards, judges, or board of judges may consider that fact in determining whether or not the person will be allowed to officiate or participate in any given race or jai alai game.

(c) If there was at the time of the test 0.08 percent or more by weight of alcohol in the person's blood, that fact is prima facie evidence that the person was under the influence of alcoholic beverages to the extent that the person's normal faculties were impaired, and the stewards or judges may take action as set forth in this section, but the person may not officiate at or participate in any race or jai alai game on the day of such test.

All tests relating to alcohol must be performed in a manner substantially similar, or identical, to the provisions of s. 316.1934 and rules adopted pursuant to that section. Following a test of the urine or blood to determine the presence of a controlled substance as defined in chapter 893, if a controlled substance is found to exist, the stewards, judges, or board of judges may take such action as is permitted in this section.

Section 17. Paragraph (d) of subsection (5), paragraphs (b) and (c) of subsection (6), paragraph (a) of subsection (9), and subsection (13) of section 550.2415, Florida Statutes, are

amended to read:

550.2415 Racing of animals under certain conditions prohibited; penalties; exceptions.—

(5) The division shall implement a split-sample procedure for testing animals under this section.

~~(d) For the testing of a racing greyhound, if there is an insufficient quantity of the secondary (split) sample for confirmation of the division laboratory's positive result, the division may commence administrative proceedings as prescribed in this chapter and consistent with chapter 120.~~

(6)

~~(b) The division shall, by rule, establish the procedures for euthanizing greyhounds. However, a greyhound may not be put to death by any means other than by lethal injection of the drug sodium pentobarbital. A greyhound may not be removed from this state for the purpose of being destroyed.~~

~~(c) It is a violation of this chapter for an occupational licensee to train a greyhound using live or dead animals. A greyhound may not be taken from this state for the purpose of being trained through the use of live or dead animals.~~

(9)(a) The division may conduct a postmortem examination of any animal that is injured at a permitted racetrack while in training or in competition and that subsequently expires or is destroyed. The division may conduct a postmortem examination of any animal that expires while housed at a permitted racetrack,

association compound, or licensed ~~kennel or~~ farm. Trainers and owners shall be requested to comply with this paragraph as a condition of licensure.

~~(13) The division may implement by rule medication levels for racing greyhounds recommended by the University of Florida College of Veterinary Medicine developed pursuant to an agreement between the Division of Pari-mutuel Wagering and the University of Florida College of Veterinary Medicine. The University of Florida College of Veterinary Medicine may provide written notification to the division that it has completed research or review on a particular drug pursuant to the agreement and when the College of Veterinary Medicine has completed a final report of its findings, conclusions, and recommendations to the division.~~

Section 18. Subsections (2) and (4), paragraph (a) of subsection (6), and subsection (11) of section 550.3551, Florida Statutes, are amended to read:

550.3551 Transmission of racing and jai alai information; commingling of pari-mutuel pools.—

(2) Any horse track~~, dog track,~~ or fronton licensed under this chapter may transmit broadcasts of races or games conducted at the enclosure of the licensee to locations outside this state.

(a) All broadcasts of horseraces transmitted to locations outside this state must comply with the provisions of the

Interstate Horseracing Act of 1978, 92 Stat. 1811, 15 U.S.C. ss. 3001 et seq.

(b) Wagers accepted by any out-of-state pari-mutuel permitholder or licensed betting system on a race broadcasted under this subsection may be, but are not required to be, included in the pari-mutuel pools of the horse track in this state that broadcasts the race upon which wagers are accepted. The handle, as referred to in s. 550.0951(3), does not include any wagers accepted by an out-of-state pari-mutuel permitholder or licensed betting system, irrespective of whether such wagers are included in the pari-mutuel pools of the Florida permitholder as authorized by this subsection.

(4) Any greyhound permitholder or jai alai permitholder ~~dog track or fronton~~ licensed under this chapter may receive at its licensed location broadcasts of dograces or jai alai games conducted at other tracks or frontons located outside the state ~~at the track enclosure of the licensee during its operational meeting~~. All forms of pari-mutuel wagering are allowed on dograces or jai alai games broadcast under this subsection. All money wagered by patrons on dograces broadcast under this subsection shall be computed in the amount of money wagered each performance for purposes of taxation under ss. 550.0951 and 550.09511.

(6)(a) ~~A maximum of 20 percent of the total number of races on which wagers are accepted by a greyhound permitholder~~

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~~not located as specified in s. 550.615(6) may be received from locations outside this state.~~ A permitholder conducting live races or games may not conduct fewer than eight live races or games on any authorized race day except as provided in this subsection. A thoroughbred permitholder may not conduct fewer than eight live races on any race day without the written approval of the Florida Thoroughbred Breeders' Association and the Florida Horsemen's Benevolent and Protective Association, Inc., unless it is determined by the department that another entity represents a majority of the thoroughbred racehorse owners and trainers in the state. If conducting live racing, a harness permitholder may conduct fewer than eight live races on any authorized race day.~~, except that such permitholder must conduct a full schedule of live racing during its race meet consisting of at least eight live races per authorized race day for at least 100 days~~. Any harness horse permitholder ~~that during the preceding racing season conducted a full schedule of live racing~~ may~~, at any time during its current race meet,~~ receive full-card broadcasts of harness horse races conducted at harness racetracks outside this state at the harness track of the permitholder and accept wagers on such harness races. ~~With specific authorization from the division for special racing events, a permitholder may conduct fewer than eight live races or games when the permitholder also broadcasts out-of-state races or games. The division may not grant more than two such~~

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~~exceptions a year for a permitholder in any 12-month period, and those two exceptions may not be consecutive.~~

(11) Greyhound permitholders ~~tracks~~ and jai alai permitholders ~~frontons~~ have the same privileges as provided in this section to horserace permitholders ~~horse tracks~~, as applicable, subject to rules adopted under subsection (10).

Section 19. Subsections (1), (3), (4), (5), and (6) of section 550.3615, Florida Statutes, are amended to read:

550.3615 Bookmaking on the grounds of a permitholder; penalties; reinstatement; duties of track employees; penalty; exceptions.—

(1) Any person who engages in bookmaking, as defined in s. 849.25, on the grounds or property of a pari-mutuel facility commits ~~permitholder of a horse or dog track or jai alai fronton is guilty of~~ a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. Notwithstanding the provisions of s. 948.01, any person convicted under the provisions of this subsection shall not have adjudication of guilt suspended, deferred, or withheld.

(3) Any person who has been convicted of bookmaking in this state or any other state of the United States or any foreign country shall be denied admittance to and shall not attend any pari-mutuel facility ~~racetrack or fronton~~ in this state during its racing seasons or operating dates, including any practice or preparational days, for a period of 2 years

after the date of conviction or the date of final appeal. Following the conclusion of the period of ineligibility, the director of the division may authorize the reinstatement of an individual following a hearing on readmittance. Any such person who knowingly violates this subsection commits ~~is guilty of~~ a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(4) If the activities of a person show that this law is being violated, and such activities are either witnessed or are common knowledge by any pari-mutuel facility ~~track or fronton~~ employee, it is the duty of that employee to bring the matter to the immediate attention of the permitholder, manager, or her or his designee, who shall notify a law enforcement agency having jurisdiction. Willful failure by the pari-mutuel facility ~~on the part of any track or fronton~~ employee to comply with the provisions of this subsection is a ground for the division to suspend or revoke that employee's license for pari-mutuel facility ~~track or fronton~~ employment.

(5) Each permittee shall display, in conspicuous places at a pari-mutuel facility ~~track or fronton~~ and in all race and jai alai daily programs, a warning to all patrons concerning the prohibition and penalties of bookmaking contained in this section and s. 849.25. The division shall adopt rules concerning the uniform size of all warnings and the number of placements throughout a pari-mutuel facility ~~track or fronton~~. Failure on

the part of the permittee to display such warnings may result in the imposition of a $500 fine by the division for each offense.

(6) This section does not apply to any person ~~attending a track or fronton or~~ employed by or attending a pari-mutuel facility ~~a track or fronton~~ who places a bet through the legalized pari-mutuel pool for another person, provided such service is rendered gratuitously and without fee or other reward.

Section 20. Section 550.475, Florida Statutes, is amended to read:

550.475 Lease of pari-mutuel facilities by pari-mutuel permitholders.—Holders of valid pari-mutuel permits for the conduct of any pari-mutuel wagering ~~jai alai games, dogracing, or thoroughbred and standardbred horse racing~~ in this state are entitled to lease any and all of their facilities to any other holder of a same class valid pari-mutuel permit ~~for jai alai games, dogracing, or thoroughbred or standardbred horse racing~~, when located within a 35-mile radius of each other; and such lessee is entitled to a permit and license to conduct intertrack wagering and operate its race meet or jai alai games at the leased premises.

Section 21. Subsections (2) and (8) of section 550.615, Florida Statutes, are amended, and subsection (11) is added to that section, to read:

550.615 Intertrack wagering.—

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(2) A pari-mutuel permitholder that ~~has~~ met the applicable requirement for that permitholder to conduct live racing or games under s. 550.01215(1)(b), if any, on November 6, 2018, ~~Any track or fronton licensed under this chapter which in the preceding year conducted a full schedule of live racing~~ is qualified to, at any time, receive broadcasts of any class of pari-mutuel race or game and accept wagers on such races or games conducted by any class of permitholders licensed under this chapter.

(8) In any three contiguous counties of the state where there are only three permitholders, all of which are greyhound permitholders, if any permitholder leases the facility of another permitholder for all or any portion of the conduct of its live race meet pursuant to s. 550.475, such lessee may conduct intertrack wagering at its pre-lease permitted facility throughout the entire year~~, including while its live meet is being conducted at the leased facility, if such permitholder has conducted a full schedule of live racing during the preceding fiscal year at its pre-lease permitted facility or at a leased facility, or combination thereof~~.

(11) Any greyhound permitholder licensed under this chapter to conduct pari-mutuel wagering is qualified to, at any time, receive broadcasts of any class of pari-mutuel race or game and accept wagers on such races or games conducted by any class of permitholders licensed under this chapter.

Section 22. Subsection (2) of section 550.6305, Florida Statutes, is amended to read:

550.6305 Intertrack wagering; guest track payments; accounting rules.—

(2) For the purposes of calculation of odds and payoffs and distribution of the pari-mutuel pools, all intertrack wagers shall be combined with the pari-mutuel pools at the host track. ~~Notwithstanding this subsection or subsection (4), a greyhound pari-mutuel permitholder may conduct intertrack wagering without combining pari-mutuel pools on not more than three races in any week, not to exceed 20 races in a year. All other provisions concerning pari-mutuel takeout and payments, including state tax payments, apply as if the pool had been combined.~~

Section 23. Paragraph (c) of subsection (4) of section 551.104, Florida Statutes, is amended to read:

551.104 License to conduct slot machine gaming.—

(4) As a condition of licensure and to maintain continued authority for the conduct of slot machine gaming, the slot machine licensee shall:

(c) If a thoroughbred permitholder, conduct no fewer than a full schedule of live racing or games as defined in s. 550.002(11). A permitholder's responsibility to conduct ~~such number of~~ live races or games shall be reduced by the number of races or games that could not be conducted due to the direct result of fire, war, hurricane, or other disaster or event

beyond the control of the permitholder.

Section 24. Subsection (4) of section 551.114, Florida Statutes, is amended to read:

551.114 Slot machine gaming areas.—

(4) Designated slot machine gaming areas must ~~may~~ be located at the location specified in the licensed permitholder's operating license ~~within the current live gaming facility or in an existing building that must be contiguous and connected to the live gaming facility. If a designated slot machine gaming area is to be located in a building that is to be constructed, that new building must be contiguous and connected to the live gaming facility~~.

Section 25. Subsection (5) of section 565.02, Florida Statutes, is amended to read:

565.02 License fees; vendors; clubs; caterers; and others.—

(5) A caterer at a horse ~~or dog~~ racetrack or jai alai fronton may obtain a license upon the payment of an annual state license tax of $675. Such caterer's license shall permit sales only within the enclosure in which such races or jai alai games are conducted, and such licensee shall be permitted to sell only during the period beginning 10 days before and ending 10 days after racing or jai alai under the authority of the Division of Pari-mutuel Wagering of the Department of Business and Professional Regulation is conducted at such racetrack or jai

alai fronton. Except as in this subsection otherwise provided, caterers licensed hereunder shall be treated as vendors licensed to sell by the drink the beverages mentioned herein and shall be subject to all the provisions hereof relating to such vendors.

Section 26. Subsection (5) and paragraph (d) of subsection (13) of section 849.086, Florida Statutes, are amended to read:

849.086 Cardrooms authorized.—

(5) LICENSE REQUIRED; APPLICATION; FEES.—No person may operate a cardroom in this state unless such person holds a valid cardroom license issued pursuant to this section.

(a) Only those persons holding a valid cardroom license issued by the division may operate a cardroom. A cardroom license may only be issued to a licensed pari-mutuel permitholder and an authorized cardroom may only be operated at the same facility at which the permitholder is authorized under its valid pari-mutuel wagering permit to conduct pari-mutuel wagering activities. An initial cardroom license shall be issued to a pari-mutuel permitholder only after its facilities are in place and after it conducts its first day of pari-mutuel activities on ~~live~~ racing or games.

(b) After the initial cardroom license is granted, the application for the annual license renewal shall be made in conjunction with the applicant's annual application for its pari-mutuel license. If a permitholder has operated a cardroom during any of the 3 previous fiscal years and fails to include a

renewal request for the operation of the cardroom in its annual application for license renewal, the permitholder may amend its annual application to include operation of the cardroom.

(c) Notwithstanding any other provision of law, a cardroom license may not be issued to any permitholder that did not hold a cardroom license on November 6, 2018. ~~In order for a cardroom license to be renewed the applicant must have requested, as part of its pari-mutuel annual license application, to conduct at least 90 percent of the total number of live performances conducted by such permitholder during either the state fiscal year in which its initial cardroom license was issued or the state fiscal year immediately prior thereto if the permitholder ran at least a full schedule of live racing or games in the prior year. If the application is for a harness permitholder cardroom, the applicant must have requested authorization to conduct a minimum of 140 live performances during the state fiscal year immediately prior thereto. If more than one permitholder is operating at a facility, each permitholder must have applied for a license to conduct a full schedule of live racing.~~

(d)~~(c)~~ Persons seeking a license or a renewal thereof to operate a cardroom shall make application on forms prescribed by the division. Applications for cardroom licenses shall contain all of the information the division, by rule, may determine is required to ensure eligibility.

(e)~~(d)~~ The annual cardroom license fee for each facility shall be $1,000 for each table to be operated at the cardroom. The license fee shall be deposited by the division with the Chief Financial Officer to the credit of the Pari-mutuel Wagering Trust Fund.

(13) TAXES AND OTHER PAYMENTS.—

(d)1. Each ~~greyhound and~~ jai alai permitholder that conducts live performances and operates a cardroom facility shall use at least 4 percent of such permitholder's cardroom monthly gross receipts to supplement ~~greyhound purses or~~ jai alai prize money~~, respectively,~~ during the permitholder's next ensuing pari-mutuel meet.

2. Each thoroughbred permitholder or ~~and~~ harness horse racing permitholder that conducts live performances and operates a cardroom facility shall use at least 50 percent of such permitholder's cardroom monthly net proceeds as follows: 47 percent to supplement purses and 3 percent to supplement breeders' awards during the permitholder's next ensuing racing meet.

3. No cardroom license or renewal thereof shall be issued to an applicant holding a permit under chapter 550 to conduct pari-mutuel wagering meets of quarter horse racing and conducting live performances unless the applicant has on file with the division a binding written agreement between the applicant and the Florida Quarter Horse Racing Association or

the association representing a majority of the horse owners and trainers at the applicant's eligible facility, governing the payment of purses on live quarter horse races conducted at the licensee's pari-mutuel facility. The agreement governing purses may direct the payment of such purses from revenues generated by any wagering or gaming the applicant is authorized to conduct under Florida law. All purses shall be subject to the terms of chapter 550.

Section 27. For the purpose of incorporating the amendment made by this act to section 550.002, Florida Statutes, in a reference thereto, paragraph (c) of subsection (2) of section 380.0651, Florida Statutes, is reenacted to read:

380.0651 Statewide guidelines, standards, and exemptions.—

(2) STATUTORY EXEMPTIONS.—The following developments are exempt from s. 380.06:

(c) Any proposed addition to an existing sports facility complex if the addition meets the following characteristics:

1. It would not operate concurrently with the scheduled hours of operation of the existing facility;

2. Its seating capacity would be no more than 75 percent of the capacity of the existing facility; and

3. The sports facility complex property was owned by a public body before July 1, 1983.

This exemption does not apply to any pari-mutuel facility as

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defined in s. 550.002.

If a use is exempt from review pursuant to paragraphs (a)-(u), but will be part of a larger project that is subject to review pursuant to s. 380.06(12), the impact of the exempt use must be included in the review of the larger project, unless such exempt use involves a development that includes a landowner, tenant, or user that has entered into a funding agreement with the state land planning agency under the Innovation Incentive Program and the agreement contemplates a state award of at least $50 million.

Section 28. For the purpose of incorporating the amendment made by this act to section 550.002, Florida Statutes, in a reference thereto, paragraph (c) of subsection (4) of section 402.82, Florida Statutes, is reenacted to read:

402.82 Electronic benefits transfer program.—

(4) Use or acceptance of an electronic benefits transfer card is prohibited at the following locations or for the following activities:

(c) A pari-mutuel facility as defined in s. 550.002.

Section 29. For the purpose of incorporating the amendment made by this act to section 550.002, Florida Statutes, in a reference thereto, subsection (1) of section 480.0475, Florida Statutes, is reenacted to read:

480.0475 Massage establishments; prohibited practices.—

(1) A person may not operate a massage establishment between the hours of midnight and 5 a.m. This subsection does not apply to a massage establishment:

(a) Located on the premises of a health care facility as defined in s. 408.07; a health care clinic as defined in s. 400.9905(4); a hotel, motel, or bed and breakfast inn, as those terms are defined in s. 509.242; a timeshare property as defined in s. 721.05; a public airport as defined in s. 330.27; or a pari-mutuel facility as defined in s. 550.002;

(b) In which every massage performed between the hours of midnight and 5 a.m. is performed by a massage therapist acting under the prescription of a physician or physician assistant licensed under chapter 458, an osteopathic physician or physician assistant licensed under chapter 459, a chiropractic physician licensed under chapter 460, a podiatric physician licensed under chapter 461, an advanced practice registered nurse licensed under part I of chapter 464, or a dentist licensed under chapter 466; or

(c) Operating during a special event if the county or municipality in which the establishment operates has approved such operation during the special event.

Section 30. This act shall take effect July 1, 2021, but only if PCB COM 21-03 or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes a law.

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COMMERCE COMMITTEE

PCB COM 21-05
Requirements for Pari-mutuel Permitholders to Conduct Racing or Games

AMENDMENT SUMMARY
April 14, 2021

Amendment 1 by Rep. Latvala (lines 263, 382, 853, 956):

- Corrects a date from November 6, 2018, to January 1, 2021.

Amendment 2 by Rep. Latvala (line 404):

- Returns language inadvertently removed.

Amendment 3 by Rep. Latvala (line 714):

- Conforms language with other provisions in the bill.

Amendment 4 by Rep. Latvala (line 906):

- Ensures operation of slot machines at the same location listed on the license.

Amendment 5 by Rep. Latvala (line 917):

- Conforms language with other provisions in the bill.

COMMITTEE/SUBCOMMITTEE ACTION

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

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

Amendment

Remove line 263 and insert:

operating license on January 1, 2021.

Remove line 382 and insert:

permits on January 1, 2021.

Remove line 853 and insert:

games under s. 550.01215(1)(b), if any, on January 1, 2021, ~~Any~~

Remove line 956 and insert:

a cardroom license on January 1, 2021. ~~In order for a cardroom~~

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 Latvala offered the following:

Amendment

Remove lines 404-420 and insert:

~~eligible for any tax credit provided by this chapter.~~ The holder of a permit converted under former subsection (14) of this section, Florida Statutes 2020, ~~pursuant to this subsection~~ or any holder of a permit to conduct greyhound racing located in a county in which it is the only permit issued pursuant to this section who operates at a leased facility pursuant to s. 550.475 may move the location for which the permit has been issued to another location within a 30-mile radius of the location fixed in the permit issued in that county, provided the move does not cross the county boundary and such location is approved under the zoning regulations of the county or municipality in which

the permit is located, and upon such relocation may use the permit for the conduct of pari-mutuel wagering and the operation of a cardroom. The provisions of s. 550.6305(9)(d) and (f) shall apply to any permit converted under former subsection (14) of this section, Florida Statutes 2020, ~~this subsection~~ and shall continue to apply to any permit which was previously included under and subject to such provisions before a conversion pursuant to this section occurred.

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 Latvala offered the following:

Amendment

Between lines 714 and 715, insert:

Section 18. Subsection (8) of section 550.334, Florida Statutes, is amended to read

550.334 Quarter horse racing; substitutions.—

~~(8) To be eligible to conduct intertrack wagering, a quarter horse racing permitholder must have conducted a full schedule of live racing in the preceding year.~~

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 Latvala offered the following:

Amendment

Remove lines 906-907 and insert:

located at the address specified in the licensed permitholder's slot machine license issued for fiscal year 2020-2021 ~~within the~~

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 Latvala offered the following:

Amendment

Remove lines 917-929 and insert:

(5) A caterer at ~~a horse~~ pari-mutuel facility licensed used chapter 550~~or dog racetrack or jai alai fronton~~ may obtain a license upon the payment of an annual state license tax of $675. Such caterer's license shall permit sales only within the enclosure in which pari-mutuel wagering is conducted ~~such races or jai alai games are conducted, and such licensee shall be permitted to sell only during the period beginning 10 days before and ending 10 days after racing or jai alai under~~ the authority of the Division of Pari-mutuel Wagering of the Department of Business and Professional Regulation ~~is conducted at such racetrack or jai alai fronton~~. Except as in this

subsection otherwise provided, caterers licensed hereunder shall be treated as vendors licensed to sell by the drink the beverages mentioned herein and shall be subject to all the provisions hereof relating to such vendors.