

Commerce Committee

Monday, April 19, 2021
10:00 AM – 2:00 PM
And
8:30 PM – 9:30 PM
Webster Hall (212 Knott)

Meeting Packet

Chris Sprowls
Speaker

Blaise Ingoglia
Chair

The Florida House of Representatives

Commerce Committee

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Meeting Agenda

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10:00 AM – 2:00 PM
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Webster Hall (212 Knott)

I. Call to Order

II. Roll Call

III. Welcome and Opening Remarks

IV. Consideration of the following bill(s):

- CS/HB 57 Transportation by Tourism, Infrastructure & Energy Subcommittee, Andrade
- CS/CS/HB 267 State Preemption of Seaport Regulations by Local Administration & Veterans Affairs Subcommittee, Tourism, Infrastructure & Energy Subcommittee, Roach, Sirois
- CS/HB 273 Motor Vehicle Insurance Coverage Exclusions by Insurance & Banking Subcommittee, Plakon
- CS/HB 305 Insurance by Insurance & Banking Subcommittee, Rommel
- CS/HB 365 Motor Vehicle Rentals by Ways & Means Committee, Caruso
- CS/HB 387 Improvements to Real Property by Tourism, Infrastructure & Energy Subcommittee, Fine

- CS/HB 605 Bicycle and Pedestrian Safety by Tourism, Infrastructure & Energy Subcommittee, Hunschofsky

- CS/CS/HB 613 Tax Collector and License Plate Agency Operations by Infrastructure & Tourism Appropriations Subcommittee, Tourism, Infrastructure & Energy Subcommittee, Aloupis

- CS/HB 717 Consumer Protection by Insurance & Banking Subcommittee, Clemons

- CS/HB 815 Insurance by Insurance & Banking Subcommittee, Gregory

- CS/HB 911 Medical Treatment of Animals by Regulatory Reform Subcommittee, Buchanan

- CS/CS/HB 987 Tobacco and Nicotine Products by State Administration & Technology Appropriations Subcommittee, Regulatory Reform Subcommittee, Toledo, Duran

- CS/HB 1239 Broadband Internet Infrastructure by Ways & Means Committee, Tomkow

- CS/HB 1307 Telephone Solicitation by Regulatory Reform Subcommittee, Beltran

- CS/HB 1351 Money Services Businesses by Insurance & Banking Subcommittee, Aloupis

- CS/HB 1567 Utility and Communication Service Poles by Tourism, Infrastructure & Energy Subcommittee, DiCeglie

Consideration of the following proposed committee substitute(s):

- PCS for HB 249 -- Specialty License Plates

V. Closing Remarks

VI. Adjournment

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 57 Transportation
SPONSOR(S): Tourism, Infrastructure & Energy Subcommittee, Andrade
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 1194

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

SUMMARY ANALYSIS

The bill contains various provisions related to transportation. In summary, the bill:

- Prohibits governmental entities from prohibiting certain entities holding a certificate of qualification from the Department of Transportation (DOT) or the appropriate construction license from bidding on road, bridge, or other specified public construction projects.
- Increases the statutory weight limit of a personal delivery device from 80 pounds to 550 pounds, excluding cargo.
- Authorizes vehicles to display flashing lights if certain conditions exist.
- Authorizes specified road construction vehicles to display flashing blue lights under certain circumstances.
- Authorizes portable radar speed display units to display flashing red or blue lights under certain circumstances.
- Revises statutory provisions regarding innovative transportation projects.
- Revises financial statement requirements for certificates for qualification of DOT contractors.
- Clarifies that the submission of an application for qualification and subsequent approval does not affect an applicant's ability factor or maximum capacity rating.
- Revises construction, engineering, and inspection requirements for airports.
- Revises statutory provisions regarding the State Arbitration Board within DOT, by clarifying court review, providing subpoena power, and increasing payments to certain board members.
- Requires the Central Florida Expressway Authority to consult with, instead of obtain consent from, the Secretary of DOT prior to constructing any extensions, additions, or improvements to the expressway system in Lake County.
- Defines the term "borrow pit" and requires notification to the Department of Environmental Protection for certain activities relating to borrow pits.

The bill has an insignificant negative fiscal impact to state government associated with an increase in compensation for members of the State Arbitration Board. Local governments operating airports may see a reduction in expenditures due to the exemption from construction, engineering, and inspection requirements in the bill. *See* Fiscal Analysis for details.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Procurement of Public Construction Services

Current Situation

State Procurement Law
Chapter 287, F.S., governs the state's procurement of personal property and services.

> The Legislature recognizes that fair and open competition is a basic tenet of public procurement. It is essential to the effective and ethical procurement of commodities and contractual services that there be a system of uniform procedures utilized by state agencies in managing and procuring commodities and contractual services, that detailed justification of agency[1] decisions in the procurement of commodities and contractual services be maintained, and that adherence by the agency and the vendor to specific ethical considerations be required.[2]

Depending on the cost and characteristics of the needed goods or services, agencies may utilize a variety of procurement methods, which include:[3]

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

Construction Contracting
Administered by the Department of Business and Professional Regulation, ch. 489, F.S., relates to various forms of construction contracting and generally requires licensing of construction contractors. However, there is an exemption for road and railroad construction and services incidental to such work.[4]

Department of Transportation Certification for Qualification
Florida law requires that any contractor desiring to bid on any Department of Transportation (DOT) construction contract in excess of $250,000 must first be certified by DOT as qualified pursuant to state

[1] Section 287.012(1), F.S., defines the term "agency" as any of the various state officers, departments, boards, commissions, divisions, bureaus, and councils and any other unit of organization, however designated, of the executive branch of state government. "Agency" does not include the university and college boards of trustees or the state universities and colleges.
[2] S. 287.001, F.S.
[3] *See* ss. 287.012(6) and 287.057, F.S.
[4] S. 489.103(1), F.S. Rule 61G4-12.011, F.A.C., defines the term "services incidental thereto" for the purpose of s. 489.103(1), F.S., only, to mean all work on bridges, roads, streets, highways, and railroads except building construction and those subcontractor categories, defined in Sections 489.105(3)(d)-(q), F.S. However, notwithstanding the previous provision, services incidental thereto specifically includes storm drainage and excavation work necessary for the construction of bridges, roads, streets, highways, and railroads; and includes directly contracting with a governmental entity for work on bridges, roads, street, highways, and railroads when any building construction included in the contract is subcontracted to a contractor appropriately licensed under ch. 489, Part I, F.S., to perform building construction or those subcontractor categories defined in ss. 489.105(3)(d)-(q), F.S., and such building construction does not constitute more than 50 percent of the total contract amount.

law[5] and DOT's rules.[6] DOT's rules must include requirements with respect to the equipment, past record, experience, financial resources, and organizational personnel of the applying contractor which are necessary to perform the specific class of work for which the contractor seeks certification.[7] DOT's rules provide the requirements for contractors to be certified as qualified to bid for the performance of road, bridge, or public transportation construction contracts in excess of $250,000.[8]

Effect of the Bill

The bill provides that a governmental entity[9] procuring certain services via a competitive solicitation[10] may not prohibit a response from a vendor that possesses a valid certificate of qualification or license under ch. 489, F.S., corresponding to the contractual services being procured. Specifically, this provision applies to procurement of contractual services[11] that are limited to the classes of work for which DOT issues certificates of qualification and that do not involve the construction, remodeling, repair, or improvement of any building. This applies to all competitive solicitations issued by a governmental entity on or after October 1, 2021.

Personal Delivery Devices

Current Situation

A personal delivery device (PDD) is an electrically powered device that:

- Is operated on sidewalks and crosswalks and intended primarily for transporting property;
- Weighs less than 80 pounds, excluding cargo;
- Has a maximum speed of 10 miles per hour; and
- Is equipped with technology to allow for operation of the device with or without the active control or monitoring of a natural person.[12]

A PDD may operate on sidewalks and crosswalks where it has all the rights and duties applicable to a pedestrian, except that a PDD may not unreasonably interfere with pedestrians or traffic and must yield the right-of-way to pedestrians on the sidewalk or crosswalk.[13]

A PDD must obey all official traffic and pedestrian control signals and devices, display identifying information, and be equipped with a braking system.[14] A PDD may not:

- Operate on a public highway except to the extent necessary to cross a crosswalk;
- Operate on a sidewalk or crosswalk unless the PDD operator is actively controlling or monitoring its navigation and operation; or
- Transport hazardous materials.[15]

Effect of the Bill

[5] S. 337.14, F.S.
[6] DOT's rules regarding contractor qualification are codified in Rule 14-22, F.A.C.
[7] S. 337.14(1), F.S.
[8] R. 14-22.0011(1), F.A.C.
[9] Section 287.102(14), F.S., defines the term "governmental entity" as a political subdivision or agency of this state or of any state of the United States, including, but not limited to, state government, county, municipality, school district, nonprofit public university or college, single-purpose or multipurpose special district, single-purpose or multipurpose public authority, metropolitan or consolidated government, separate legal entity or administrative entity, or any agency of the Federal Government.
[10] Section 287.012(6), F.S., defines the term "competitive solicitation" as the process of requesting and receiving two or more sealed bids, proposals, or replies submitted by responsive vendors in accordance with the terms of a competitive process, regardless of the method of procurement.
[11] Section 287.012(8), F.S., defines the term "contractual service" as the rendering by a contractor of its time and effort rather than the furnishing of specific commodities. The term applies only to those services rendered by individuals and firms who are independent contractors, and such services may include, but are not limited to, evaluations; consultations; maintenance; accounting; security; management systems; management consulting; educational training programs; research and development studies or reports on the findings of consultants engaged thereunder; and professional, technical, and social services. The term does not include a contract for the furnishing of labor or materials for the construction, renovation, repair, modification, or demolition of a facility, building, portion of building, utility, park, parking lot, or structure or other improvement to real property entered into pursuant to Ch. 255, F.S., and rules adopted thereunder.
[12] S. 316.003(56), F.S.
[13] S. 316.2071(1), F.S.
[14] S. 316.0271(2), F.S.
[15] S. 316.2071(3), F.S.

The bill increases the statutory weight limit of a PDD from 80 pounds to 550 pounds, excluding cargo. This will allow larger PDDs to assist with such tasks as package delivery.

Flashing Blue Lights

Current Situation
Florida law prohibits the display of blue lights on any vehicle or equipment, except police vehicles and vehicles of the Department of Corrections or any county correctional agency when responding to emergencies.[16]

Road or street maintenance equipment, road or street maintenance vehicles, road service vehicles, refuse collection vehicles, petroleum tankers, and mail carrier vehicles may display amber lights when in operation or where a hazard exists.[17] Additionally, 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.[18]

The Manual on Uniform Traffic Control Devices (MUTCD), adopted by DOT pursuant s. 316.0745, F.S., describes portable changeable message signs as temporary traffic control devices installed for temporary use with the flexibility to display a variety of messages, including warning messages where traffic speed is expected to drop substantially.[19] Warning lights used in a temporary traffic control zone, in either a steady burn or a flashing mode, are yellow in color as required by the MUTCD.[20] In addition, the MUTCD provides that "If a changeable message sign displaying approach speeds is installed, the legend YOUR SPEED XX MPH or such similar legend should be displayed. The color of the changeable message legend should be a yellow legend on a black background or the reverse of these colors."[21]

Effect of the Bill
The bill authorizes paving machines or compaction rollers within a work zone on roadways with a posted speed limit of 55 mph or higher to show or display flashing blue lights while performing paving operations or where a hazard exists. Additionally, under the direction of a law enforcement officer, the bill authorizes portable radar speed display units to show or display flashing red or blue lights when placed in advance of a work zone on roadways with a posted speed limit of 55 mph or higher and when workers are present.

Flashing Lights on Vehicles

Current Situation
Florida law prohibits the use of flashing lights on vehicles except:

- As a means of indicating a right or left turn, to change lanes, or to indicate that the vehicle is lawfully stopped or disabled upon the highway;
- When a motorist intermittently flashes his or her vehicle's headlamps at an oncoming vehicle notwithstanding the motorist's intent for doing so; and
- For certain lamps authorized in statute, which may flash, including various types of emergency vehicles.[22]

With the exception of funeral processions,[23] Florida law does not expressly authorize the use of hazard lights on moving vehicles. The Florida Driver Handbook indicates that a driver should not use

[16] S. 316.2397(2), F.S.
[17] S. 316.2397(4), F.S.
[18] S. 316.2397(5), F.S.
[19] MUTCD, Section 6F.60, available at https://mutcd.fhwa.dot.gov/pdfs/2009r1r2/mutcd2009r1r2edition.pdf (last visited Dec. 14, 2020).
[20] MUTCD, Section 1A.13 definition of "warning light."
[21] MUTCD, Section 2B.13.
[22] S. 316.2397(7), F.S.
[23] S. 316.1974(3)(c), F.S.

emergency flashers in instances of low visibility or rain, and may only use emergency flashers when a vehicle is disabled or stopped on the side of the road.[24]

Effect of the Bill
The bill authorizes the use of flashing lights on vehicles during periods of extreme low visibility on roadways with a posted speed limit of 55 mph or higher.

Innovative Transportation Projects

Current Situation

Innovative Transportation Projects
Current law authorizes DOT to establish a program for transportation projects that demonstrate innovative techniques of highway and bridge design, construction, maintenance, and finance which have the intended effect of measuring resiliency and structural integrity and controlling time and cost increases on construction projects. These techniques may include, but are not limited to, state-of-the-art technology for pavement, safety, and other aspects of highway and bridge design, construction, and maintenance; innovative bidding and financing techniques; accelerated construction procedures; and techniques that have the potential to reduce project life cycle costs. To the maximum extent practical, DOT must use the existing standard process to award and administer construction and maintenance contracts. When specific innovative techniques are to be used, DOT is not required to adhere to provisions of law that would prevent it from using the innovative technique. However, before using an innovative technique that is inconsistent with another provision of law, DOT must document the need for the exception and identify what benefits the traveling public and the affected community are anticipated to receive.[25]

DOT may enter into no more than $120 million in contracts annually for the purposes of innovative transportation projects.[26] This annual cap on contracts for innovative transportation projects does not apply to:
- Turnpike enterprise projects.
- Transportation projects funded by the American Recovery and Reinvestment Act of 2009.[27]

Effect of the Bill
The bill removes redundant language regarding the exception for turnpike enterprise projects and the exception for projects funded by the American Recovery and Reinvestment Act of 2009. The bill provides that the annual cap on contracts does not apply to low-bid design-build milling[28] and resurfacing contracts.

Application for Qualification

Current Situation
Any contractor that desires to bid for the performance of any DOT construction contract in excess of $250,000 must first be certified by DOT as qualified.[29]

A contractor who is not already qualified and in good standing with DOT as of January 1, 2019, and who desires to bid on DOT contracts in excess of $50 million must have satisfactorily completed two projects, each in excess of $15 million, for DOT or for any other state's department of transportation.[30]

[24] Department of Highway Safety and Motor Vehicles, *Florida Driver Handbook,* available at: https://www3.flhsmv.gov/handbooks/englishdriverhandbook.pdf (last visited Dec, 14, 2020).
[25] S. 337.025(1), F.S.
[26] *Id.*
[27] S. 337.025(2), F.S.
[28] Pavement milling, is a process that removes part of a paved surface, such as a parking lot or road. Milling can remove just the surface of the pavement, or anywhere up to the entire depth, referred to as full depth removal. https://www.dykespaving.com/blog/how-does-pavement-milling-work/ (last visited Jan. 22, 2021).
[29] S, 337.14(1), F.S. DOT's rules regarding qualifications to bid are contained in Rule. 14-22, F.A.C.
[30] S. 337.14(1), F.S.

Each application for certification must be accompanied by the contractor's latest annual financial statement, which must have been completed within the last 12 months. If the application or the annual financial statement shows the contractor's financial condition more than four months prior to the date on which DOT receives the application, the contractor must also submit an interim financial statement and an updated application. Each required annual or interim financial statement must be audited and accompanied by the opinion of a certified public accountant.[31]

Effect of the Bill
The bill provides that any contractor who desires to bid on contracts in excess of $50 million must be certified by DOT as qualified in addition to meeting existing experience requirements.

The bill requires each application for certification to be accompanied by audited, certified financial statements prepared in accordance with United States generally accepted accounting principles and United States generally accepted auditing standards by a certified public accountant licensed in this state or another state. The applying contractor's audited, certified financial statements must specifically address the applying contractor and must have been prepared within the immediately preceding 12 months. DOT may not consider any financial information relating to the parent entity of the applying contractor, if any. DOT may not certify as qualified any applying contractor that fails to submit the required audited, certified financial statements.

If the application or the annual financial statement shows the applying contractor's financial condition more than four months before the date on which DOT receives the application, the bill authorizes DOT to request, rather than require, the applying contractor to also submit interim audited, certified financial statements prepared in accordance with United States generally accepted accounting and auditing principles and standards. Financial statements must be prepared by a certified public accountant licensed in this state or another state.

Certificate of Qualification

Current Situation
Current law provides that if an applicant for a certificate of qualification is found to possess the prescribed qualifications, DOT must issue to him or her a certificate of qualification that, unless revoked by DOT for good cause, will be valid for a period of 18 months after the date of the applicant's financial statement or such shorter period as DOT prescribes. Submission of a new application does not affect expiration of the certificate of qualification.[32]

The ability factor is a performance score which a contractor receives from DOT upon completion of a project. The initial ability factor is based on the applicant's organization, management, work experience, and letters of recommendation.[33]

The maximum capacity rating is the total aggregate dollar amount of uncompleted work an applicant may have under contract at one time either as a prime contractor and/or subcontractor, regardless of its location or with whom contracted.[34]

Effect of the Bill
The bill provides that the submission of an application of qualification and subsequent approval of such application do not affect the ability factor of the applicant, or the maximum capacity rating of the applicant.

Construction, Engineering, and Inspection at Airports

Current Situation

[31] *Id.*
[32] S. 337.14(4), F.S.
[33] R. 14.22-003, F.A.C.
[34] R. 14-22.003, F.A.C.

Under current law, a contractor,[35] or his or her affiliate[36] qualified with DOT may not also qualify to provide testing services, or construction, engineering, and inspection (CEI) services to DOT.[37] This limitation does not apply to any design-build prequalification[38] and does not apply when DOT otherwise determines by written order entered at least 30 days before advertisement that the limitation is not in the public's best interests with respect to a particular contract for testing services or CEI services.

DOT has adopted procedures governing conflicts of interest involving professional services consultant contracts and design-build contracts. The procedures contain a set of matrices illustrating the variety of scenarios encountered with prime contractor or subcontractors and when DOT would consider the arrangement a conflict.[39]

In 2019, the Legislature passed HB 905,[40] which provided that for a construction project wholly or partially funded by DOT and administered by a local governmental entity, the same entity may not perform both design services and CEI services. That bill exempted certain seaports from that provision.

According to the Florida Airports Council, the 2019 statutory changes relating to CEI requirements will increase construction costs, increase project schedules due to additional coordination with consultants, and reduce project efficiency. Depending on the project, airports may leverage different delivery methods for CEI activities. Additionally, airports indicate that they deliver more than road projects and that DOT's professional services requirements do not always accommodate airport construction projects.[41] The Florida Airports Council maintains that due to the unique and specialized nature of airports, they need to remain agile in the projects they delivery to ensure that each project is completed in a safe, timely, and cost effective manner.[42]

Effect of the Bill

The bill amends s. 337.14(7), F.S., by providing an exemption for airports from the requirement that, for a project wholly or partially funded by DOT and administered by a local governmental entity, the same entity may not perform both design services and CEI services. This exemption is identical to the one currently in place for seaports.

State Arbitration Board

Current Situation

Florida law creates the State Arbitration Board (board) within DOT to facilitate the prompt settlement of claims[43] for additional compensation arising out of construction and maintenance contracts between DOT and its various contractors.[44]

Florida law provides that every contractual claim in an amount up to $250,000 per contract or, at the claimant's option, up to $1 million per contract or, upon agreement of the parties, up to $2 million per contract, which cannot be resolved by negotiation between DOT and the contractor must be arbitrated by the board after DOT's acceptance of the project. However, either party may request that the claim

[35] Section 337.165(1)(d), F.S., defines the term "contractor" as any person who bids or applies to bid on work let by the department or any counterpart agency of any other state or of the Federal Government or who provides professional services to the department or other such agency. The term "contractor" includes the officers, directors, executives, shareholders active in management, employees, and agents of the contractor.

[36] Section 337.165(1)(a), F.S., defines the term "affiliate" as a predecessor or successor of a contractor under the same, or substantially the same, control or a group of business entities which are connected or associated so that one entity controls or has the power to control each of the other business entities. The term "affiliate" includes the officers, directors, executives, shareholders active in management, employees, and agents of the affiliate. The ownership by one business entity of a controlling interest in another business entity or a pooling of equipment or income among business entities shall be prima facie evidence that one business entity is an affiliate of another.

[37] S. 337.14, F.S.

[38] Design-build prequalification is pursuant to s. 337.11(7), F.S.

[39] DOT Topic No.: 375-030-006-c, Conflict of Interest Procedure for Department Contracts. (Aug. 2008)

[40] Ch. 2019-153, L.O.F.

[41] Email from Darrick McGhee, Florida Airports Council, Re. HB: 1441-Airport Contracts. (Jan. 21, 2020).

[42] Email from Darrick McGhee, Florida Airports Council, Re. House Bill: 1441-Contracted Airport Projects. (Feb. 1, 2020).

[43] For the purpose of s. 337.185, F.S., the term "claim" means the aggregate of all outstanding claims by a party arising out of a construction or maintenance contract.

[44] S. 337.185(1), F.S.

be submitted to binding private arbitration. A court of law may not consider the settlement of a claim until the board arbitration process has been exhausted.[45]

The board is composed of three members: one member is appointed by the head of DOT;[46] one member is elected by those construction or maintenance companies who are under contract with DOT; and the third member is chosen by agreement of the other two members. Whenever the third member has a conflict of interest regarding an affiliation with one of the parties, the other two members select an alternate member for that hearing. The head of DOT may select an alternative or substitute to serve as DOT's member for any hearing or term. Each member serves a two-year term. The board elects a chair, each term, who is the administrator of the board and custodian of its records.[47]

An arbitration hearing may be requested by DOT or by a contractor who has a dispute with DOT which, under the board's rules,[48] may be the subject of arbitration. For all contracts entered into after June 30, 1993, the request must be made to the board within 820 days after the final acceptance of the work. The board must conduct the hearing within 45 days of the request. The party requesting the board's consideration must give notice of the hearing to each board member. If the board finds that a third party is necessary to resolve the dispute, the board may vote to dismiss the claim, which may thereafter be pursued in accordance with the Florida law.[49]

All members must be present to conduct a meeting. Upon being called into session, the board must promptly proceed to a determination of the issue or issues in dispute.[50]

When a valid contract is in effect defining the rights, duties, and liabilities of the parties with respect to any matter in dispute, the board may only determine the proper interpretation and application of the appropriate contract provisions. Any investigation made by less than the whole membership of the board must be by authority of a written directive by the chair, and the investigation must be summarized in writing and considered by the board as part of the record of its proceedings.[51]

The board must hand down its order within 60 days after it is called into session. If all three members of the board do not agree, the order of the majority constitutes the order of the board.[52]

The board members may receive compensation for the performance of their duties from administrative fees received by the board, except that a DOT employee may not receive compensation from the board. The compensation amount is determined by the board, but may not exceed $125 per hour, up to $1,000 per day for each member authorized to receive compensation. This does not prevent the member elected by construction or maintenance companies from being an employee of an association affiliated with the industry, even if the sole responsibility of that member is service on the board. Travel expenses for the industry member may be paid by an industry association, if necessary. The board may allocate funds annually for clerical and other administrative services.[53]

The party requesting arbitration must pay a fee to the board in accordance with a schedule established by it, to cover the cost of administration and compensation of the board, not to exceed:

- $500 per claim which is $25,000 or less;
- $1,000 per claim which is in excess of $25,000 but not exceeding $50,000;
- $1,500 per claim which is in excess of $50,000 but not exceeding $100,000;
- $2,000 per claim which is in excess of $100,000 but not exceeding $200,000;
- $3,000 per claim which is in excess of $200,000 but not exceeding $300,000;
- $4,000 per claim which is in excess of $300,000 but not exceeding $400,000; and

[45] S. 337.185(1), F.S.
[46] The head of DOT is the Secretary of Transportation.
[47] S. 337.185(2), F.S.
[48] Current State Arbitration Board procedures are available at: https://cdn.ymaws.com/ftba.site-ym.com/resource/resmgr/website_files/arbitration_board/11-19-20_State_Arbitration_B.pdf (last visited Dec. 22, 2020).
[49] S. 337.185(3), F.S.
[50] S. 337.185(4), F.S.
[51] S. 337.185(5), F.S.
[52] S. 337.185(6), F.S.
[53] S. 337.185(7), F.S.

- $5,000 per claim which is in excess of $400,000.[54]

The board in its order may apportion the above fees, and the cost of recording and preparing a transcript of the hearing, among the parties in accordance with the board's finding of liability.[55]

Effect of the Bill

The bill revises statutory provisions relating to the State Arbitration Board. The bill defines the following terms for purposes of the board:

> "Claim" -- the aggregate of all outstanding written requests for additional monetary compensation, time, or other adjustments to the contract, the entitlement or impact of which is disputed with DOT and could not be resolved by negotiations between DOT and the contractor.
>
> "Contractor" -- a person or firm having a contract for rendering services to DOT relating to the construction or maintenance of a transportation facility.
>
> "Final acceptance" -- the contractor has completely performed the work provided for under the contract, DOT or its agent has determined that the contractor has satisfactorily completed the work provided for under the contract, and DOT or its agent has submitted written notice of final acceptance to the contractor.

The bill requires that every claim of up to $250,000 per contract that could not be resolved by negotiations between DOT and the contractor be arbitrated by the board and may not go to private arbitration. An award issued by the board pursuant to this provision is final and enforceable by a court of competent jurisdiction.

A contractor may submit a claim greater than $250,000 up to $1 million per contract or, upon agreement of the parties, up to $2 million per contract to be arbitrated by the board. An award issued by the board pursuant to this provision is final if a request for a trial de novo[56] is not filed within the time provided by Rule 1.830, Florida Rules of Civil Procedure.[57] At the trial de novo, the court may not admit evidence that there has been an arbitration proceeding, the nature or amount of the award, or any other matter concerning the conduct of the arbitration proceeding, except that testimony given at an arbitration hearing may be used for any purpose otherwise permitted by the Florida Evidence Code.[58] If a request for trial de novo is not filed within the time provided, the award issued by the board is final and enforceable by a court of competent jurisdiction.

An arbitration request may not be made to the board before final acceptance, but must be made within 820 days after final acceptance.

The board must still schedule a hearing within 45 days after an arbitration request and, if possible, must now conduct the hearing within 90 days after the request instead of the previous 45 day deadline.

The bill authorizes the board to administer oaths and conduct the proceedings as provided by the Florida Rules of Civil Procedure and the Florida Evidence Code. The bill requires the hearing must be conducted informally, with the presentation of testimony and evidence being kept to a minimum. The bill requires matters to be presented to the arbitrators primarily through the statements and arguments of counsel. The board must address the scope of discovery, presentation of testimony, and evidence at a preliminary hearing by considering the size, subject matter, and complexity of the dispute. Any party to the arbitration may petition the board, for good cause shown, to issue subpoenas for the attendance of witnesses and the production of books, records, documents, and other evidence at the arbitration

[54] S. 337.185(8), F.S.
[55] S. 337.185(9), F.S.
[56] A trial de novo refers to a new trial on the entire case and is conducted as if there had been no trial in the first instance. https://definitions.uslegal.com/t/trial-de-novo/ (last visited Dec. 22, 2020).
[57] Rule 1.830, Florida Rules of Civil Procedure relates to voluntary binding arbitration. The rule provides that a voluntary binding arbitration decision may be appealed within 30 days after service of the decision on the parties. Appeal is limited to the grounds specified in s. 44.104(10), F.S.
[58] Ch. 90, F.S.

and may petition the board for orders compelling such attendance and production at the arbitration. Subpoenas must be served and are enforceable in the manner provided in the Florida Rules of Civil Procedure.

The board must issue its award within 45 days after the conclusion of the arbitration hearing. If all three members of the board do not agree, the award agreed to by the majority of the board constitutes the award of the board.

The board is still composed of three members who are selected in the same manner as in current law. If a member has a conflict of interest, an alternative member is appointed in the same manner as the original appointment. Each member serves a 4-year term instead of the current 2-year term. The board still elects a chair for each term, who is the administrator of the board and custodian of its records.

The presence of all board members is required to conduct a meeting. A meeting may be conducted either in person or via communications media technology[59] in accordance with rules established by the Administration Commission.[60]

The bill requires all board members, including DOT employees appointed to serve, to receive compensation for the performance of their duties from deposits made by the parties based on an estimate of compensation. All deposits will be held in escrow by the chair in advance of the hearing. Each member eligible for compensation is compensated at $200 per hour (currently $150 per hour), up to $1,500 per day (currently up to $1,000 per day). A member must be reimbursed for the actual cost of his or her travel expenses. The board may annually allocate funds for clerical and other administrative services.

The bill maintains the filing fees provided in current law keeps the authorization for the board to apportion the filing fees and the cost of recording and preparing a transcript of the hearing among the parties in its award.

Central Florida Expressway Authority

Current Situation

Central Florida Expressway Authority
Part III of ch. 348, F.S., creates the Central Florida Expressway Authority (CFX).[61] CFX may acquire, hold, construct, improve, maintain, operate, own, and lease in the capacity of lessor the Central Florida Expressway System within the geographical boundaries of Orange, Seminole, Lake, Brevard, and Osceola Counties.[62] However, to ensure the continued financial feasibility of the portion of the Wekiva Parkway to be constructed by DOT, the authority may not, without the prior consent of the secretary of DOT, construct any extensions, additions, or improvements to the expressway system in Lake County.[63]

CFX operates a series of expressways in Central Florida including the East-West Expressway (SR 408), the Apopka Expressway (SR 414), the Central Florida Greenway (SR 417) and the Beachline Expressway (SR 528).[64]

Wekiva Parkway
The Wekiva Parkway (SR 429) is a cooperative effort between DOT, CFX, and the Florida Turnpike Enterprise.[65] The Wekiva Parkway will connect to the Central Florida Greenway (SR 417), completing the beltway around Central Florida, while helping to protect the natural resources surrounding the

[59] Section 120.54(5)(b)2., F.S., defines the term "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.
[60] The Administration Commission has adopted rules pursuant to s. 120.54(5), F.S. These rules are codified in R. 28-109, F.A.C.
[61] S. 348.753(1), F.S. CFX was previously known as the Orland-Orange County Expressway Authority.
[62] S. 248.754(1)(a), F.S.
[63] S. 348.754(1)(c), F.S.
[64] CFX, https://www.cfxway.com/ (last visited Feb. 17, 2021).
[65] The Florida Turnpike Enterprise is part of DOT and operates Florida's turnpike system.

Wekiva River. This estimated $1.6 billion project includes $500 million of non-toll road improvements including:

- Widening seven miles of SR 46 in Lake and Seminole Counties;
- Rebuilding the US 441/SR 46 interchange in Mount Dora;
- Shifting the CR 46A connection to SR 46 so wildlife can more safely move between habitats;
- Providing non-tolled, one-lane service roads parallel to the parkway in part of east Lake and Seminole Counties; and
- Building a 10-mile, multi-use trail along portions of the parkway in Lake and Seminole Counties.

In 2020, 13 miles of the parkway were open to traffic, and some of the non-tolled, roadway improvements had been made. The entire parkway is scheduled to be open to traffic in 2023.[66]

Effect of the Bill

The bill amends CFX's purposes and powers as it relates to obtaining consent from the secretary of DOT to construct any extensions, additions, or improvements to the expressway system in Lake County. The bill changes the requirement to obtain consent from the secretary of DOT to a requirement that CFX consult with the secretary of DOT prior to constructing any extensions, additions, or improvements to the expressway system in Lake County.

Resource Extraction Reclamation Act

Current Situation

Federal Law

The Federal Mine Safety and Health Act of 1977,[67] authorizes the United States Secretary of Labor to promulgate and enforce safety and health standards regarding working conditions of employees engaged in underground and surface mineral extraction (mining), related operations, and preparation and milling of the minerals extracted.[68]

The Occupational Safety and Health Act of 1970[69] (OSHAct) gives the United States Secretary of Labor authority over all working conditions of employees engaged in business affecting commerce except those conditions with respect to which other Federal agencies exercise statutory authority to prescribe or enforce regulations affecting occupational safety or health. The OSHAct also provides that states may operate their own occupational safety and health programs under a plan approved by the United States Secretary of Labor.[70]

Pursuant to a 1979 interagency agreement between the federal Mine Safety and Health Administration and the Occupational Safety and Health Administration (OSHA), "borrow pits" are subject to OSHA jurisdiction except those borrow pits located on mine property or related to mining.[71]

State Law

Currently, the term "borrow pit" is not defined in Florida law.

[66] Wekiva Parkway, http://www.wekivaparkway.com/ (last visited Feb. 17, 2021).
[67] Pub. L. 91-173 as amended by Pub. L. 95-164
[68] United States Department of Labor, Mine Safety and Health Administration, *Interagency Agreement Between the Mine Safety and Health Administration and the Occupational Safety and Health Administration,* https://www.msha.gov/msha-and-osha-memorandum (last visited Jan. 21, 2021).
[69] Pub. L. 91-596
[70] United States Department of Labor, Mine Safety and Health Administration, *Interagency Agreement Between the Mine Safety and Health Administration and the Occupational Safety and Health Administration.*
[71] *Id.* For purposes of the federal interagency agreement, the term "borrow pit" means an area of land where the overburden, consisting of unconsolidated rock, glacial debris, other earth material overlying bedrock is extracted from the surface. Extraction occurs on a one-time only basis or only intermittently as need occurs, for use as fill materials by the extracting party in the form in which it is extracted. No milling is involved, except for the use of a scalping screen to remove large rocks, wood and trash. The material is used by the extracting party more for its bulk than its intrinsic qualities on land which is relatively near the borrow pit.

Part III of Ch. 378, F.S., contains the Resource Extraction Reclamation Act,[72] which prohibits an operator[73] from beginning the process of extracting clay, peat, gravel, sand, or any other solid substance of commercial value found in natural deposits or in the earth, except fuller's earth clay, heavy minerals, limestone, or phosphate, which are regulated elsewhere in Ch. 378, F.S., at a new mine[74] without notifying the secretary of the Department of Environmental Protection (DEP) of the intention to mine.[75] The operator's notice of intent to mine must consist of the operator's estimated life of the mine and the operator's signed acknowledgment of the performance standards provided in s. 378.803, F.S.[76]

The act also provides that after January 1, 1989, all operators of existing mines for the extraction of resources as described above must meet the performance standards provided by s. 378.803, F.S., for any new surface area disturbed at such mines.[77]

Section 378.803, F.S., provides the following performance standards for the reclamation of other resources:[78]

- Reclamation must achieve the stormwater, drainage, wetlands, and other surface and groundwater requirements of DEP and the appropriate water management district.
- The final slopes must be at such an angle as to minimize the possibility of slides and may not exceed the natural angle of repose of the material being mined.
- Provisions for safety to persons, wildlife, and adjoining property must be provided.
- Any overburden and spoil must be left in a configuration which is in accordance with accepted soil conservation practices and which is suitable for the proposed future use of the land.
- Reclamation must be designed to avoid the collection of water in pools which are, or are likely to become, noxious, odious, or foul.
- All reclamation activities must, to the extent possible, be coordinated with resource extraction and in any event must be initiated at the earliest practicable time.
- Reclamation activities must be consistent with all applicable local government ordinances at least as stringent as the criteria and standards contained in s. 378.803, F.S.

Effect of the Bill

The bill defines the term “borrow pit” for purposes of the Resource Extraction Reclamation Act, as an area of land upon which excavation of surface resources has been conducted, is being conducted, or is planned to be conducted, as the term is commonly used in the trade, and is not considered a mine. Such resources are limited to soil, organic soil, sand, or clay that can be removed with construction excavating equipment and loaded on a haul truck with no additional processing.

The bill provides that an operator may not begin the operation of a borrow pit at a new location without notifying the secretary of DEP of the intention to extract. The operator's notice of intent to extract must consist of the operator's estimated life of the extraction location and the operator's signed acknowledgment of the performance standards provided by s. 378.803, F.S.

The bill provides that all operators of existing locations, instead of mines, for the extraction of resources as described in s. 378.801, F.S., must meet the performance standards provided by s. 378.803, F.S. for any new surface area disturbed at such locations.

Effective Date

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

[72] S.378.401, F.S.
[73] S. 378.403(13), F.S., defines the term “operator” as any person engaged in an operation.
[74] Section 348.403(10), F.S., defines the term “mine” as an area of land upon which mining operations have been conducted, are being conducted, or are planned to be conducted, as the term is commonly used in the trade.
[75] S. 378.801(1), F.S.
[76] S. 378.801(2), F.S.
[77] S. 378.802, F.S.
[78] Section 378.403(17), F.S., defines the term “resource” as soil, clay, peat, stone, gravel, sand, limerock, metallic ore, or any other solid substance of commercial value found in natural deposits on or in the earth, except phosphate, which is regulated by part III.

B. SECTION DIRECTORY:

Section 1 Creates s. 287.05705, F.S., relating to procurements of road, bridge, and other specified public construction services.

Section 2 Amends s. 316.003, F.S., providing definitions.

Section 3 Amends s. 316.2397, F.S., relating to certain lights prohibited; exceptions.

Section 4 Amends s. 337.025, F.S., relating to innovative transportation projects.

Section 5 Amends s. 337.14, F.S., relating to application for qualification; certificate of qualification; restrictions; request for hearing.

Section 6 Amends s. 337.185, F.S., relating to the State Arbitration Board.

Section 7 Amends s. 348.754, F.S., providing the purposes and powers of the Central Florida Expressway Authority.

Section 8 Amends s. 378.403, F.S., providing definitions.

Section 9 Amends s. 378.801, F.S., relating to other resources; notice of intent to extract required.

Section 10 Amends s. 378.802, F.S., relating to existing extraction locations.

Section 11 Provides an effective date of July 1, 2020.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   The bill requires and increases hourly compensation for members of the State Arbitration Board from $150 to $200, and increases the daily maximum compensation from $1,000 to $1,500 per member. However, both current law and the bill require parties bringing arbitrations to the board to pay filing fees, based on the amount of the dispute, to defray the costs of operating the board. However, the filing fees do not increase, and it is unknown if they will cover the increased cost of the board.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   Local governments operating airports may see a reduction in expenditures due to the exemption from the construction, engineering, and inspection requirements in the bill. However, the cost savings are associated with specific projects; therefore, this reduction in expenditures is indeterminate.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not authorize rulemaking, nor does it require rulemaking.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The authorization of blue lights on paving machines, compaction rollers, and portable radar speed display units may conflict with s. 843.081, F.S., which provides that it is unlawful for a person to use in or on any nongovernmentally owned vehicle or vessel any flashing or rotating blue light[79] unless such person is a law enforcement officer employed by a federal, state, county, or city law enforcement agency or is a person appointed by the Governor pursuant to ch. 354, F.S.[80,81]

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On February 17, 2021, the Tourism, Infrastructure & Energy Subcommittee adopted a strike-all amendment as amended and reported the bill favorably as a committee substitute. The committee substitute:

- Removes a provision from the bill requiring a $50 reduction on the sales tax for every motor vehicle sold in this state in fiscal years 2021-2022.
- Clarifies that the provision regarding the procurements of roads, bridges, and other specified construction projects applies to all governmental entities.
- Limits the bill's authorization for flashing blue lights on construction vehicles to paving machines and compaction rollers.
- Returns $120 million annual cap on innovative transportation projects to apply to all projects.
- Authorizes DOT to request interim financial statements from contractors under certain circumstances, instead of requiring the contractor to submit them.
- Clarifies that the ability factor and the maximum capacity rating apply to the applicant instead of the project.
- Revises and clarifies provisions regarding the State Arbitration Board, including references to the Florida Rules of Civil Procedure and the Florida Evidence Code, and meetings being conducted via communications media technology.
- Requires CFX to consult with, instead of obtain consent from, the secretary of DOT prior to constructing any extensions, additions, or improvements to the expressway system in Lake County.

[79] Section 843.081(4), F.S., defines the term "flashing or rotating blue light" to include all forms of lights which display a blue light source or which were designed with the intent of displaying a blue light source whether or not such light is actually in use.
[80] S. 384.081(2), F.S.
[81] Department of Highway Safety and Motor Vehicles, Agency Analysis of 2021 House Bill 57, p.7. (Feb. 16, 2021).

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; creating s. 287.05705, F.S.; providing that governmental entities may not prohibit certain vendors from responding to competitive solicitations of certain contractual services; providing applicability; amending s. 316.003, F.S.; revising the definition of the term "personal delivery device"; amending s. 316.2397, F.S.; authorizing certain equipment to show or display flashing lights; authorizing vehicles to display flashing lights during certain periods under certain conditions; amending s. 337.025, F.S.; revising the application of the cap on innovative transportation projects; amending s. 337.14, F.S.; requiring contractors wishing to bid on certain contracts to first be certified by the Department of Transportation as qualified; revising requirements for applying for and issuing a certificate of qualification; revising provisions regarding interim financial statements; providing construction with respect to submission and approval of an application for such certificate; exempting airports from certain restrictions regarding entities performing design and construction engineering and inspection services; amending s. 337.185, F.S.; revising and providing definitions;

revising requirements for arbitration of certain contracts by the State Arbitration Board; revising requirements regarding arbitration requests, hearings, procedures, and awards; revising membership and meeting requirements; revising compensation of board members; amending s. 348.754, F.S.; prohibiting the Central Florida Expressway Authority from performing certain activities in Lake County without prior consultation with the secretary of the department; amending s. 378.403, F.S.; defining the term "borrow pit"; amending s. 378.801, F.S.; prohibiting operation of a borrow pit at a new location without notifying the Secretary of Environmental Protection of the intent to extract; conforming provisions; amending s. 378.802, F.S.; revising application of provisions to exclude existing mines; providing an effective date.

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

Section 1. Section 287.05705, Florida Statutes, is created to read:

287.05705 Procurements of road, bridge, and other specified public construction services.—

(1) With respect to competitive solicitations for the procurement of contractual services that are limited to the

classes of work for which the Department of Transportation issues certificates of qualification pursuant to s. 337.14, which services do not involve the construction, remodeling, repair, or improvement of any building, a governmental entity procuring such services may not prohibit a response from a vendor possessing a valid certificate of qualification under s. 337.14 or license under chapter 489 corresponding to the contractual services being procured.

(2) This section applies to all competitive solicitations issued by a governmental entity on or after October 1, 2021.

Section 2. Paragraph (b) of subsection (56) of section 316.003, Florida Statutes, is amended to read:

316.003 Definitions.—The following words and phrases, when used in this chapter, shall have the meanings respectively ascribed to them in this section, except where the context otherwise requires:

(56) PERSONAL DELIVERY DEVICE.—An electrically powered device that:

(b) Weighs less than 550 ~~80~~ pounds, excluding cargo;

A personal delivery device is not considered a vehicle unless expressly defined by law as a vehicle. A mobile carrier is not considered a personal delivery device.

Section 3. Subsection (10) of section 316.2397, Florida Statutes, is renumbered as subsection (12), subsections (2) and

(7) are amended, and new subsections (10) and (11) are added to that section, to read:

316.2397 Certain lights prohibited; exceptions.—

(2) It is expressly prohibited for any vehicle or equipment, except police vehicles and road construction equipment specified in subsections (10) and (11), to show or display blue lights. However, vehicles owned, operated, or leased by the Department of Corrections or any county correctional agency may show or display blue lights when responding to emergencies.

(7) Flashing lights are prohibited on vehicles except:

(a) As a means of indicating a right or left turn, to change lanes, or to indicate that the vehicle is lawfully stopped or disabled upon the highway;

(b) When a motorist intermittently flashes his or her vehicle's headlamps at an oncoming vehicle notwithstanding the motorist's intent for doing so;

(c) During periods of extreme low visibility on roadways with a posted speed limit of 55 mph or higher; and

(d) ~~(c)~~ For the lamps authorized under subsections (1), (2), (3), (4), and (9), s. 316.2065, or s. 316.235(6) which may flash.

(10) Paving machines or compaction rollers within a work zone area on roadways with a posted speed limit of 55 mph or higher may show or display flashing blue lights while performing

paving operations or where a hazard exists.

(11) Under the direction of a law enforcement officer, portable radar speed display units in advance of a work zone area on roadways with a posted speed limit of 55 mph or higher may show or display flashing red and blue lights when workers are present.

Section 4. Section 337.025, Florida Statutes, is amended to read:

337.025 Innovative transportation projects; department to establish program.—

(1) The department may establish a program for transportation projects demonstrating innovative techniques of highway and bridge design, construction, maintenance, and finance which have the intended effect of measuring resiliency and structural integrity and controlling time and cost increases on construction projects. Such techniques may include, but are not limited to, state-of-the-art technology for pavement, safety, and other aspects of highway and bridge design, construction, and maintenance; innovative bidding and financing techniques; accelerated construction procedures; and those techniques that have the potential to reduce project life cycle costs. To the maximum extent practical, the department must use the existing process to award and administer construction and maintenance contracts. When specific innovative techniques are to be used, the department is not required to adhere to those

provisions of law that would prevent, preclude, or in any way prohibit the department from using the innovative technique. However, before using an innovative technique that is inconsistent with another provision of law, the department must document in writing the need for the exception and identify what benefits the traveling public and the affected community are anticipated to receive. The department may enter into no more than $120 million in contracts annually for the purposes authorized by this section.

(2) The annual cap on contracts provided in subsection (1) does ~~shall~~ not apply to:

(a) Turnpike enterprise projects~~, and turnpike enterprise projects shall not be counted toward the department's annual cap~~.

(b) Low-bid design-build milling and resurfacing contracts ~~Transportation projects funded by the American Recovery and Reinvestment Act of 2009~~.

Section 5. Subsections (1), (4), and (7) of section 337.14, Florida Statutes, are amended to read:

337.14 Application for qualification; certificate of qualification; restrictions; request for hearing.—

(1) Any contractor desiring to bid for the performance of any construction contract in excess of $250,000 which the department proposes to let must first be certified by the department as qualified pursuant to this section and rules of

the department. The rules of the department must address the qualification of contractors to bid on construction contracts in excess of $250,000 and must include requirements with respect to the equipment, past record, experience, financial resources, and organizational personnel of the applying contractor which are necessary to perform the specific class of work for which the contractor seeks certification. Any contractor who desires to bid on contracts in excess of $50 million and who is not qualified and in good standing with the department as of January 1, 2019, must first be certified by the department as qualified and ~~desires to bid on contracts in excess of $50 million~~ must have satisfactorily completed two projects, each in excess of $15 million, for the department or for any other state department of transportation. The department may limit the dollar amount of any contract upon which a contractor is qualified to bid or the aggregate total dollar volume of contracts such contractor is allowed to have under contract at any one time. Each applying contractor seeking qualification to bid on construction contracts in excess of $250,000 shall furnish the department a statement under oath, on such forms as the department may prescribe, setting forth detailed information as required on the application. Each application for certification must be accompanied by audited, certified financial statements prepared in accordance with generally accepted accounting principles and auditing standards by a

certified public accountant licensed in this state or another state. The audited, certified financial statements must be for the applying contractor and must have been prepared ~~the latest annual financial statement of the applying contractor completed~~ within the immediately preceding ~~last~~ 12 months. The department may not consider any financial information of the parent entity of the applying contractor, if any. The department may not certify as qualified any applying contractor that fails to submit the audited, certified financial statements required by this subsection. If the application or the annual financial statement shows the financial condition of the applying contractor more than 4 months before ~~prior to~~ the date on which the application is received by the department, a reviewed interim financial statement or an interim audited, certified financial statement prepared in accordance with generally accepted accounting principles and auditing standards by a certified public accountant licensed in this state or another state may be requested by the department ~~statement and an updated application must be submitted~~. The interim financial statements, if requested, ~~statement~~ must cover the period from the end date of the annual statement and must show the financial condition of the applying contractor no more than 4 months before ~~prior to~~ the date that the interim financial statements are ~~statement is~~ received by the department. However, upon the request of the applying contractor, an application and

accompanying annual or interim financial statement received by the department within 15 days after either 4-month period under this subsection shall be considered timely. ~~Each required annual or interim financial statement must be audited and accompanied by the opinion of a certified public accountant.~~ An applying contractor desiring to bid exclusively for the performance of construction contracts with proposed budget estimates of less than $1 million may submit reviewed annual or reviewed interim financial statements prepared by a certified public accountant. The information required by this subsection is confidential and exempt from s. 119.07(1). The department shall act upon the application for qualification within 30 days after the department determines that the application is complete. The department may waive the requirements of this subsection for projects having a contract price of $500,000 or less if the department determines that the project is of a noncritical nature and the waiver will not endanger public health, safety, or property.

(4) If the applicant is found to possess the prescribed qualifications, the department shall issue to him or her a certificate of qualification that, unless thereafter revoked by the department for good cause, will be valid for a period of 18 months after the date of the applicant's financial statement or such shorter period as the department prescribes. Submission of an application and subsequent approval do ~~shall~~ not affect

expiration of the certificate of qualification, the ability factor of the applicant, or the maximum capacity rating of the applicant. If the department finds that an application is incomplete or contains inadequate information or information that cannot be verified, the department may request in writing that the applicant provide the necessary information to complete the application or provide the source from which any information in the application may be verified. If the applicant fails to comply with the initial written request within a reasonable period of time as specified therein, the department shall request the information a second time. If the applicant fails to comply with the second request within a reasonable period of time as specified therein, the application shall be denied.

(7) A "contractor" as defined in s. 337.165(1)(d) or his or her "affiliate" as defined in s. 337.165(1)(a) qualified with the department under this section may not also qualify under s. 287.055 or s. 337.105 to provide testing services, construction, engineering, and inspection services to the department. This limitation does not apply to any design-build prequalification under s. 337.11(7) and does not apply when the department otherwise determines by written order entered at least 30 days before advertisement that the limitation is not in the best interests of the public with respect to a particular contract for testing services, construction, engineering, and inspection services. This subsection does not authorize a contractor to

provide testing services, or provide construction, engineering, and inspection services, to the department in connection with a construction contract under which the contractor is performing any work. Notwithstanding any other provision of law to the contrary, for a project that is wholly or partially funded by the department and administered by a local governmental entity, except for a seaport listed in s. 311.09 or an airport as defined in s. 332.004, the entity performing design and construction engineering and inspection services may not be the same entity.

Section 6. Section 337.185, Florida Statutes, is amended to read:

(Substantial rewording of section. See s. 337.185, F.S., for present text.)

337.185 State Arbitration Board.—

(1) To facilitate the prompt resolution of claims arising out of or in connection with a construction or maintenance contract with the department, the Legislature has established the State Arbitration Board, referred to in this section as the "board."

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

(a) "Claim" means the aggregate of all outstanding written requests for additional monetary compensation, time, or other adjustments to the contract, the entitlement or impact of which is disputed with the department and could not be resolved by

negotiations between the department and the contractor.

(b) "Contractor" means a person or firm having a contract for rendering services to the department relating to the construction or maintenance of a transportation facility.

(c) "Final acceptance" means that the contractor has completely performed the work provided for under the contract, the department or its agent has determined that the contractor has satisfactorily completed the work provided for under the contract, and the department or its agent has submitted written notice of final acceptance to the contractor.

(3) Every claim in an amount of up to $250,000 per contract that could not be resolved by negotiations between the department and the contractor shall be arbitrated by the board. An award issued by the board pursuant to this subsection is final and enforceable by a court of competent jurisdiction.

(4) The contractor may submit a claim greater than $250,000 up to $1 million per contract or, upon agreement of the parties, up to $2 million per contract to be arbitrated by the board. An award issued by the board pursuant to this subsection is final if a request for a trial de novo is not filed within the time provided by Rule 1.830, Florida Rules of Civil Procedure. At the trial de novo, the court may not admit evidence that there has been an arbitration proceeding, the nature or amount of the award, or any other matter concerning the conduct of the arbitration proceeding, except that testimony

given at an arbitration hearing may be used for any purpose otherwise permitted by the Florida Evidence Code. If a request for trial de novo is not filed within the time provided, the award issued by the board is final and enforceable by a court of competent jurisdiction.

(5) An arbitration request may not be made to the board before final acceptance but must be made to the board within 820 days after final acceptance.

(6) The board shall schedule a hearing within 45 days after an arbitration request and, if possible, shall conduct the hearing within 90 days after the request. The board may administer oaths and conduct the proceedings as provided by the Florida Rules of Civil Procedure and the Florida Evidence Code. The hearing may be conducted informally. Presentation of testimony and evidence shall be kept to a minimum, and matters shall be presented to the board primarily through the statements and arguments of counsel. The board shall address the scope of discovery, presentation of testimony, and evidence at a preliminary hearing by considering the size, subject matter, and complexity of the dispute. Any party to the arbitration may petition the board, for good cause shown, to issue subpoenas for the attendance of witnesses and the production of books, records, documents, and other evidence at the arbitration and may petition the board for orders compelling such attendance and production at the arbitration. Subpoenas shall be served and are

enforceable in the manner provided in the Florida Rules of Civil Procedure.

(7) The board must issue an award within 45 days after the conclusion of the arbitration hearing. If all three members of the board do not agree, the award agreed to by the majority of the board shall constitute the award of the board.

(8) The board shall be composed of three members. The first member shall be appointed by the Secretary of Transportation, and the second member shall be elected by those construction or maintenance companies that are under contract with the department. The third member shall be chosen by agreement of the first and second members. If the first or second member has a conflict of interest regarding affiliation with one of the parties to an arbitration hearing, the appointing entity shall appoint an alternate member for that hearing. If the third member has such a conflict of interest, the first and second members shall select an alternate member. Each member shall serve a 4-year term. The board shall elect a chair for each term, who shall be the administrator of the board and custodian of its records.

(9) The presence of all board members is required to conduct a meeting either in person or by means of communications media technology used in accordance with rules adopted by the Administration Commission under s. 120.54(5).

(10) The members of the board may receive compensation for

the performance of their duties from deposits made by the parties based on an estimate of compensation by the board, except that no employee of the department may receive compensation from the board. All deposits shall be held in escrow in advance of the hearing. Each member eligible for compensation shall be compensated at a rate of $200 per hour, up to a maximum of $1,500 per day. Members of the board are entitled to receive per diem and travel expenses pursuant to s. 112.061. The board may allocate funds annually for clerical and other administrative services.

(11) To cover the cost of administration and initial compensation of the board, the party requesting arbitration shall pay a filing fee to the board, according to a schedule established by the board, of:

(a) Up to $500 for a claim that is $25,000 or less.

(b) Up to $1,000 for a claim that is more than $25,000 but is $50,000 or less.

(c) Up to $1,500 for a claim that is more than $50,000 but is $100,000 or less.

(d) Up to $2,000 for a claim that is more than $100,000 but is $200,000 or less.

(e) Up to $3,000 for a claim that is more than $200,000 but is $300,000 or less.

(f) Up to $4,000 for a claim that is more than $300,000 but is $400,000 or less.

(g) Up to $5,000 for a claim that is more than $400,000.

The board may apportion the filing fees and the cost of recording and preparing a transcript of the hearing among the parties in its award.

Section 7. Paragraph (c) of subsection (1) of section 348.754, Florida Statutes, is amended to read:

348.754 Purposes and powers.—

(1)

(c) Notwithstanding any other provision of this section to the contrary, to ensure the continued financial feasibility of the portion of the Wekiva Parkway to be constructed by the department, the authority may not, without ~~the~~ prior consultation with ~~consent of~~ the secretary of the department, construct any extensions, additions, or improvements to the expressway system in Lake County.

Section 8. Subsections (3) through (19) of section 378.403, Florida Statutes, are renumbered as subsections (4) through (20), respectively, and a new subsection (3) is added to that section to read:

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

(3) "Borrow pit" means an area of land upon which excavation of surface resources has been conducted, is being conducted, or is planned to be conducted, as the term is commonly used in the trade, and is not considered a mine. Such

resources are limited to soil, organic soil, sand, or clay that can be removed with construction excavating equipment and loaded on a haul truck with no additional processing.

Section 9. Section 378.801, Florida Statutes, is amended to read:

378.801 Other resources; notice of intent to extract ~~mine~~ required.—

(1) An ~~No~~ operator may not begin the operation of a borrow pit, or the process of extracting clay, peat, gravel, sand, or any other solid substance of commercial value found in natural deposits or in the earth, except fuller's earth clay, heavy minerals, limestone, or phosphate, which are regulated elsewhere in this chapter, at a new location ~~mine~~ without notifying the secretary of the intention to extract ~~mine~~.

(2) The operator's notice of intent to extract ~~mine~~ shall consist of the operator's estimated life of the extraction location ~~mine~~ and the operator's signed acknowledgment of the performance standards provided by s. 378.803.

Section 10. Section 378.802, Florida Statutes, is amended to read:

378.802 Existing extraction locations ~~mines~~.—After January 1, 1989, all operators of existing locations ~~mines~~ for the extraction of resources as described in s. 378.801 shall meet the performance standards provided by s. 378.803 for any new surface area disturbed at such locations ~~mines~~.

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

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

COMMERCE COMMITTEE

CS/HB 57 by Rep. Andrade
TRANSPORTATION

AMENDMENT SUMMARY
APRIL 19, 2021

Amendment 1 by Rep. Andrade (Strike-All):
Adds the following provisions to the bill:

- Authorizes counties and municipalities to convey roads to community development districts under certain circumstances.
- Amends the definition of autocycle.
- Authorizes flashing green, amber, and red lights on construction vehicles under certain circumstances.
- Provides that if a motor carrier requires safety improvements on a commercial motor vehicle, this does not change an owner-operators employment status.
- Requires certain notifications to the Department of Highway Safety and Motor Vehicles (DHSMV) regarding salvage titles to be made on specified forms.
- Defines “electric vertical takeoff and landing aircraft.”
- Clarifies that permanent registration stickers for for-hire vehicles are required only for rental vehicles.
- Revises provisions regarding insurance and surety bond requirements for motor vehicle dealers.
- Allows the Department of Transportation (DOT) and its contractors to extract materials from borrow pits meeting statutory requirements already in the bill.
- Authorizes revenues from high-occupancy toll lanes and express lanes to be used for certain public transportation projects.
- Authorizes the metropolitan planning organization in Miami-Dade County to assess membership fees.
- Repeals the inactive Northwest Florida Transportation Corridor Authority.
- Makes clarifying changes regarding the Tampa Bay Area Regional Transit Authority.
- Extends the maximum term for the Jacksonville Transportation Authority to enter into leases from 40 years to 99 years.
- Requires DOT to create and implement an electronic database of outdoor advertising permits.

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 Andrade offered the following:

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

Section 1. Section 177.107, Florida Statutes, is created to read:

177.107 Closing and abandonment of roads; optional conveyance to a community development district; traffic control jurisdiction.—

(1) The governing body of a municipality or county may abandon the roads and rights-of-way dedicated in a recorded residential subdivision plat and simultaneously convey its interest in such roads, rights-of-way, and appurtenant drainage facilities to a community development district established under chapter 190 in which the subdivision is located, if all of the

following conditions are met:

(a) The community development district has requested the abandonment and conveyance by written resolution for the purpose of converting the subdivision to a gated neighborhood with monitored public access.

(b) The community development district has received approval for the conveyance by a vote of two-thirds of the landowners who are subject to the non-ad valorem assessments of the community development district and who are present by person or proxy at a properly noticed landowners meeting.

(c) The community development district has executed an interlocal agreement with the municipality or county, as applicable, requiring the community development district to do all of the following:

1. Maintain the roads and any associated drainage, street lighting, or sidewalks identified in the interlocal agreement to municipal or county standards, as applicable.

2. Every 5 years, conduct a reserve study of the roads and any associated drainage, street lighting, or sidewalks identified in the interlocal agreement.

3. Levy annual special assessments in amounts sufficient to maintain the roads and any drainage, street lighting, or sidewalks identified in the interlocal agreement to municipal or county standards, as applicable.

4. Annually fund the amounts set forth in the reserve

study.

(2) The community development district shall install, operate, maintain, repair, and replace all signs, signals, markings, striping, guardrails, and other traffic control devices necessary or useful for the roads unless an agreement has been entered into between the municipality or county and the community development district, as authorized under s. 316.006(2)(b) and (3)(b), respectively, expressly providing that the municipality or county has traffic control jurisdiction.

(3) Upon abandonment of the roads and rights-of-way and the conveyance thereof to the community development district, the community development district shall have all the rights, title, and interest in the roads and rights-of-way, including all appurtenant drainage facilities, as were previously vested in the municipality or county. Thereafter, the community development district shall hold the roads and rights-of-way in trust for the benefit of the public and owners of the property in the subdivision and shall operate, maintain, repair, and from time to time replace and reconstruct the roads and any associated street lighting, sidewalks, or drainage facilities identified in the interlocal agreement as necessary to ensure their use and enjoyment by the public and property owners, tenants, and residents of the subdivision and their guests and invitees.

(4) The provisions of this section are supplemental and

additional to the powers of municipalities and counties.

Section 2. Section 287.05705, Florida Statutes, is created to read:

287.05705 Procurements of road, bridge, and other specified public construction services.—

(1) With respect to competitive solicitations for the procurement of contractual services that are limited to the classes of work for which the Department of Transportation issues certificates of qualification pursuant to s. 337.14, which services do not involve the construction, remodeling, repair, or improvement of any building, a governmental entity procuring such services may not prohibit a response from a vendor possessing a valid certificate of qualification under s. 337.14 or license under chapter 489 corresponding to the contractual services being procured.

(2) This section applies to all competitive solicitations issued by a governmental entity on or after October 1, 2021.

Section 3. Subsections subsection (2) and paragraph (b) of subsection (56), are amended, to read:

316.003 Definitions.—The following words and phrases, when used in this chapter, shall have the meanings respectively ascribed to them in this section, except where the context otherwise requires:

(2) AUTOCYCLE.—A three-wheeled motorcycle that has two wheels in the front and one wheel in the back; is equipped with

a roll cage or roll hoops, a seat belt for each occupant, ~~antilock~~ brakes that meet the requirements of Federal Motor Vehicle Safety Standard No. 122, a steering mechanism ~~wheel~~, and seating that does not require the operator to straddle or sit astride it; and is manufactured in accordance with the applicable federal motorcycle safety standards in 49 C.F.R. part 571 by a manufacturer registered with the National Highway Traffic Safety Administration.

(56) PERSONAL DELIVERY DEVICE.—An electrically powered device that:

(b) Weighs less than 550 ~~80~~ pounds, excluding cargo;

A personal delivery device is not considered a vehicle unless expressly defined by law as a vehicle. A mobile carrier is not considered a personal delivery device.

Section 4. Subsections (5) and (7) of section 316.2397, Florida Statutes, are amended to read:

316.2397 Certain lights prohibited; exceptions.—

(5) 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. Construction equipment in a work zone on roadways with a posted speed limit of 55 miles per hour or higher may show or display a combination of flashing green, amber, and red lights in conjunction with periods when workers are present. Additionally,

school buses and vehicles that are used to transport farm workers may display flashing white strobe lights.

(7) Flashing lights are prohibited on vehicles except:

(a) As a means of indicating a right or left turn, to change lanes, or to indicate that the vehicle is lawfully stopped or disabled upon the highway;

(b) When a motorist intermittently flashes his or her vehicle's headlamps at an oncoming vehicle notwithstanding the motorist's intent for doing so;

(c) During periods of extreme low visibility on roadways with a posted speed limit of 55 mph or higher; and

(d) ~~(c)~~ For the lamps authorized under subsections (1), (2), (3), (4), and (9), s. 316.2065, or s. 316.235(6) which may flash.

Section 5. Subsection (14) is added to section 316.302, Florida Statutes, to read:

316.302 Commercial motor vehicles; safety regulations; transporters and shippers of hazardous materials; enforcement; motor carrier safety improvements.—

(14)(a) The deployment, implementation, or use of a motor carrier safety improvement by or as required by a motor carrier, its related entity, or a third-party, including by contract, shall not be considered when evaluating an individual's status as an employee or independent contractor, or as a jointly employed employee under any state law.

(b) For the purpose of this subsection, a motor carrier safety improvement shall mean any device, equipment, software, technology, procedure, training, policy, program, or operational practice intended and primarily used to improve or facilitate:

1. Compliance with traffic safety or motor carrier safety laws;

2. Safety of a motor vehicle;

3. Safety of the operator of a motor vehicle; or

4. Safety of third-party users of public roadways.

Section 6. Paragraph (b) of subsection (3) of section 319.30, Florida Statutes, is amended to read:

319.30 Definitions; dismantling, destruction, change of identity of motor vehicle or mobile home; salvage.—

(3)

(b) The owner, including persons who are self-insured, of a motor vehicle or mobile home that is considered to be salvage shall, within 72 hours after the motor vehicle or mobile home becomes salvage, forward the title to the motor vehicle or mobile home to the department for processing. However, an insurance company that pays money as compensation for the total loss of a motor vehicle or mobile home shall obtain the certificate of title for the motor vehicle or mobile home, make the required notification to the National Motor Vehicle Title Information System, and, within 72 hours after receiving such certificate of title, forward such title by the United States

Postal Service, by another commercial delivery service, or by electronic means, when such means are made available by the department, to the department for processing. The owner or insurance company, as applicable, may not dispose of a vehicle or mobile home that is a total loss before it obtains a salvage certificate of title or certificate of destruction from the department. Effective January 1, 2020:

1. Thirty days after payment of a claim for compensation pursuant to this paragraph, the insurance company may receive a salvage certificate of title or certificate of destruction from the department if the insurance company is unable to obtain a properly assigned certificate of title from the owner or lienholder of the motor vehicle or mobile home, if the motor vehicle or mobile home does not carry an electronic lien on the title and the insurance company:

a. Has obtained the release of all liens on the motor vehicle or mobile home;

b. Has attested on a form provided by the department that ~~provided proof of~~ payment of the total loss claim has been distributed; and

c. Has attested on a form provided by the department and ~~provided an affidavit on letterhead~~ signed by the insurance company or its authorized agent stating the attempts that have been made to obtain the title from the owner or lienholder and further stating that all attempts are to no avail. The form

~~affidavit~~ must include a request that the salvage certificate of title or certificate of destruction be issued in the insurance company's name due to payment of a total loss claim to the owner or lienholder. The attempts to contact the owner may be by written request delivered in person or by first-class mail with a certificate of mailing to the owner's or lienholder's last known address.

2. If the owner or lienholder is notified of the request for title in person, the insurance company must provide an affidavit attesting to the in-person request for a certificate of title.

3. The request to the owner or lienholder for the certificate of title must include a complete description of the motor vehicle or mobile home and the statement that a total loss claim has been paid on the motor vehicle or mobile home.

Section 7. Paragraph (b) of subsection (1) of section 320.06, Florida Statutes, as amended by section 1 of chapter 2020-181, Laws of Florida, is amended to read:

320.06 Registration certificates, license plates, and validation stickers generally.—

(1)

(b)1. Registration license plates bearing a graphic symbol and the alphanumeric system of identification shall be issued for a 10-year period. At the end of the 10-year period, upon renewal, the plate shall be replaced. The department shall

extend the scheduled license plate replacement date from a 6-year period to a 10-year period. The fee for such replacement is $28, $2.80 of which shall be paid each year before the plate is replaced, to be credited toward the next $28 replacement fee. The fees shall be deposited into the Highway Safety Operating Trust Fund. A credit or refund may not be given for any prior years' payments of the prorated replacement fee if the plate is replaced or surrendered before the end of the 10-year period, except that a credit may be given if a registrant is required by the department to replace a license plate under s. 320.08056(8)(a). With each license plate, a validation sticker shall be issued showing the owner's birth month, license plate number, and the year of expiration or the appropriate renewal period if the owner is not a natural person. The validation sticker shall be placed on the upper right corner of the license plate. The license plate and validation sticker shall be issued based on the applicant's appropriate renewal period. The registration period is 12 months, the extended registration period is 24 months, and all expirations occur based on the applicant's appropriate registration period. Rental vehicles taxed pursuant to s. 320.08(6)(a) may elect a permanent registration period, provided payment of the appropriate license taxes and fees occurs annually. A vehicle that has an apportioned registration shall be issued an annual license plate and a cab card that denote the declared gross vehicle weight for

each apportioned jurisdiction in which the vehicle is authorized to operate.

2. In order to retain the efficient administration of the taxes and fees imposed by this chapter, the 80-cent fee increase in the replacement fee imposed by chapter 2009-71, Laws of Florida, is negated as provided in s. 320.0804.

Section 8. Subsection (3) and paragraph (a) of subsection (10) of section 320.27, Florida Statutes, are amended to read:

320.27 Motor vehicle dealers.—

(3) APPLICATION AND FEE.—The application for the license shall be in such form as may be prescribed by the department and shall be subject to such rules with respect thereto as may be so prescribed by it. Such application shall be verified by oath or affirmation and shall contain a full statement of the name and birth date of the person or persons applying therefor; the name of the firm or copartnership, with the names and places of residence of all members thereof, if such applicant is a firm or copartnership; the names and places of residence of the principal officers, if the applicant is a body corporate or other artificial body; the name of the state under whose laws the corporation is organized; the present and former place or places of residence of the applicant; and prior business in which the applicant has been engaged and the location thereof. Such application shall describe the exact location of the place of business and shall state whether the place of business is

owned by the applicant and when acquired, or, if leased, a true copy of the lease shall be attached to the application. The applicant shall certify that the location provides an adequately equipped office and is not a residence; that the location affords sufficient unoccupied space upon and within which adequately to store all motor vehicles offered and displayed for sale; and that the location is a suitable place where the applicant can in good faith carry on such business and keep and maintain books, records, and files necessary to conduct such business, which shall be available at all reasonable hours to inspection by the department or any of its inspectors or other employees. The applicant shall certify that the business of a motor vehicle dealer is the principal business which shall be conducted at that location. The application shall contain a statement that the applicant is either franchised by a manufacturer of motor vehicles, in which case the name of each motor vehicle that the applicant is franchised to sell shall be included, or an independent (nonfranchised) motor vehicle dealer. The application shall contain other relevant information as may be required by the department, including evidence that the applicant is insured under a garage liability insurance policy or a general liability insurance policy coupled with a business automobile policy, which shall include, at a minimum, $25,000 combined single-limit liability coverage including bodily injury and property damage protection and $10,000

personal injury protection. However, a salvage motor vehicle dealer as defined in subparagraph (1)(c)5. is exempt from the requirements for garage liability insurance and personal injury protection insurance on those vehicles that cannot be legally operated on roads, highways, or streets in this state. Franchise dealers must submit a garage liability insurance policy, and all other dealers must submit a garage liability insurance policy or a general liability insurance policy coupled with a business automobile policy. Such policy shall be for the license period, and evidence of a new or continued policy shall be delivered to the department at the beginning of each license period. A licensee shall deliver to the department, in the manner prescribed by the department, within 10 calendar days after any renewal or continuation of or change in such policy or within 10 calendar days after any issuance of a new policy, a copy of the renewed, continued, changed, or new policy. Upon making initial application, the applicant shall pay to the department a fee of $300 in addition to any other fees required by law. Applicants may choose to extend the licensure period for 1 additional year for a total of 2 years. An initial applicant shall pay to the department a fee of $300 for the first year and $75 for the second year, in addition to any other fees required by law. An applicant for renewal shall pay to the department $75 for a 1-year renewal or $150 for a 2-year renewal, in addition to any other fees required by law. Upon making an application for a

change of location, the person shall pay a fee of $50 in addition to any other fees now required by law. The department shall, in the case of every application for initial licensure, verify whether certain facts set forth in the application are true. Each applicant, general partner in the case of a partnership, or corporate officer and director in the case of a corporate applicant, must file a set of fingerprints with the department for the purpose of determining any prior criminal record or any outstanding warrants. The department shall submit the fingerprints to the Department of Law Enforcement for state processing and forwarding to the Federal Bureau of Investigation for federal processing. The actual cost of state and federal processing shall be borne by the applicant and is in addition to the fee for licensure. The department may issue a license to an applicant pending the results of the fingerprint investigation, which license is fully revocable if the department subsequently determines that any facts set forth in the application are not true or correctly represented.

(10) SURETY BOND OR IRREVOCABLE LETTER OF CREDIT REQUIRED.—

(a) Annually, before any license shall be issued to a motor vehicle dealer, the applicant-dealer of new or used motor vehicles shall deliver to the department a good and sufficient surety bond or irrevocable letter of credit, executed by the applicant-dealer as principal, in the sum of $25,000. A licensee

shall deliver to the department, in the manner prescribed by the department, within 10 calendar days after any renewal or continuation of or change in such surety bond or irrevocable letter of credit or within 10 calendar days after any issuance of a new surety bond or irrevocable letter of credit, a copy of such renewed, continued, changed, or new surety bond or irrevocable letter of credit.

Section 9. Subsections (4) through (8) of section 330.27, Florida Statutes, are renumbered as subsections (5) through (9), respectively, and subsection (4) is added to that section to read:

330.27 Definitions, when used in ss. 330.29-330.39.—

(4) "Electric vertical takeoff and landing aircraft" means a type of aircraft that uses electric power to hover, take off, and land vertically.

Section 10. Section 337.025, Florida Statutes, is amended to read:

337.025 Innovative transportation projects; department to establish program.—

(1) The department may establish a program for transportation projects demonstrating innovative techniques of highway and bridge design, construction, maintenance, and finance which have the intended effect of measuring resiliency and structural integrity and controlling time and cost increases on construction projects. Such techniques may include, but are

not limited to, state-of-the-art technology for pavement, safety, and other aspects of highway and bridge design, construction, and maintenance; innovative bidding and financing techniques; accelerated construction procedures; and those techniques that have the potential to reduce project life cycle costs. To the maximum extent practical, the department must use the existing process to award and administer construction and maintenance contracts. When specific innovative techniques are to be used, the department is not required to adhere to those provisions of law that would prevent, preclude, or in any way prohibit the department from using the innovative technique. However, before using an innovative technique that is inconsistent with another provision of law, the department must document in writing the need for the exception and identify what benefits the traveling public and the affected community are anticipated to receive. The department may enter into no more than $120 million in contracts annually for the purposes authorized by this section.

(2) The annual cap on contracts provided in subsection (1) does ~~shall~~ not apply to:

(a) Turnpike enterprise projects~~, and turnpike enterprise projects shall not be counted toward the department's annual cap~~.

(b) Low-bid design-build milling and resurfacing contracts ~~Transportation projects funded by the American Recovery and~~

~~Reinvestment Act of 2009~~.

Section 11. Section 337.0262, Florida Statutes, is created to read:

337.0262 Purchase and use of clay, peat, gravel, sand, or any other solid substance extracted from borrow pits.—

(1) The department, and any contractor or subcontractor of the department, may not purchase or use any clay, peat, gravel, sand, or other solid substance extracted from a borrow pit as defined in s. 378.403 unless:

(a) Certification is provided to the department, contractor, or subcontractor by the operator of the borrow pit that it is in compliance with the notice requirements and substantive requirements of s. 378.801; and

(b) The operator of the borrow pit is in compliance with the performance standards in s. 378.803, including, but not limited to, providing proof of currently valid permits required by the Department of Environmental Protection and the appropriate water management district.

(2) All contracts and purchase orders executed by the department and all subcontracts and purchase orders executed by contractors or subcontractors after July 1, 2021, must include specific requirements for compliance with this section.

(3) In the event that the department determines that substances are being obtained and used from a borrow pit that is not in compliance with this section, the department must cease

to accept any substances from that borrow pit within 48 hours after such determination. The department may resume acceptance of substances from the borrow pit once the borrow pit is in compliance with this section.

Section 12. Subsections (1), (4), and (7) of section 337.14, Florida Statutes, are amended to read:

337.14 Application for qualification; certificate of qualification; restrictions; request for hearing.—

(1) Any contractor desiring to bid for the performance of any construction contract in excess of $250,000 which the department proposes to let must first be certified by the department as qualified pursuant to this section and rules of the department. The rules of the department must address the qualification of contractors to bid on construction contracts in excess of $250,000 and must include requirements with respect to the equipment, past record, experience, financial resources, and organizational personnel of the applying contractor which are necessary to perform the specific class of work for which the contractor seeks certification. Any contractor who desires to bid on contracts in excess of $50 million and who is not qualified and in good standing with the department as of January 1, 2019, must first be certified by the department as qualified and ~~desires to bid on contracts in excess of $50 million~~ must have satisfactorily completed two projects, each in excess of $15 million, for the department or for any other state

department of transportation. The department may limit the dollar amount of any contract upon which a contractor is qualified to bid or the aggregate total dollar volume of contracts such contractor is allowed to have under contract at any one time. Each applying contractor seeking qualification to bid on construction contracts in excess of $250,000 shall furnish the department a statement under oath, on such forms as the department may prescribe, setting forth detailed information as required on the application. Each application for certification must be accompanied by audited, certified financial statements prepared in accordance with generally accepted accounting principles and auditing standards by a certified public accountant licensed in this state or another state. The audited, certified financial statements must be for the applying contractor and must have been prepared ~~the latest annual financial statement of the applying contractor completed~~ within the immediately preceding ~~last~~ 12 months. The department may not consider any financial information of the parent entity of the applying contractor, if any. The department may not certify as qualified any applying contractor that fails to submit the audited, certified financial statements required by this subsection. If the application or the annual financial statement shows the financial condition of the applying contractor more than 4 months before ~~prior to~~ the date on which the application is received by the department, a reviewed

interim financial statement or an interim audited, certified financial statement prepared in accordance with generally accepted accounting principles and auditing standards by a certified public accountant licensed in this state or another state may be requested by the department ~~statement and an updated application must be submitted~~. The interim financial statements, if requested, ~~statement~~ must cover the period from the end date of the annual statement and must show the financial condition of the applying contractor no more than 4 months before ~~prior to~~ the date that the interim financial statements are ~~statement is~~ received by the department. However, upon the request of the applying contractor, an application and accompanying annual or interim financial statement received by the department within 15 days after either 4-month period under this subsection shall be considered timely. ~~Each required annual or interim financial statement must be audited and accompanied by the opinion of a certified public accountant.~~ An applying contractor desiring to bid exclusively for the performance of construction contracts with proposed budget estimates of less than $1 million may submit reviewed annual or reviewed interim financial statements prepared by a certified public accountant. The information required by this subsection is confidential and exempt from s. 119.07(1). The department shall act upon the application for qualification within 30 days after the department determines that the application is complete. The

department may waive the requirements of this subsection for projects having a contract price of $500,000 or less if the department determines that the project is of a noncritical nature and the waiver will not endanger public health, safety, or property.

(4) If the applicant is found to possess the prescribed qualifications, the department shall issue to him or her a certificate of qualification that, unless thereafter revoked by the department for good cause, will be valid for a period of 18 months after the date of the applicant's financial statement or such shorter period as the department prescribes. Submission of an application and subsequent approval do ~~shall~~ not affect expiration of the certificate of qualification, the ability factor of the applicant, or the maximum capacity rating of the applicant. If the department finds that an application is incomplete or contains inadequate information or information that cannot be verified, the department may request in writing that the applicant provide the necessary information to complete the application or provide the source from which any information in the application may be verified. If the applicant fails to comply with the initial written request within a reasonable period of time as specified therein, the department shall request the information a second time. If the applicant fails to comply with the second request within a reasonable period of time as specified therein, the application shall be denied.

(7) A "contractor" as defined in s. 337.165(1)(d) or his or her "affiliate" as defined in s. 337.165(1)(a) qualified with the department under this section may not also qualify under s. 287.055 or s. 337.105 to provide testing services, construction, engineering, and inspection services to the department. This limitation does not apply to any design-build prequalification under s. 337.11(7) and does not apply when the department otherwise determines by written order entered at least 30 days before advertisement that the limitation is not in the best interests of the public with respect to a particular contract for testing services, construction, engineering, and inspection services. This subsection does not authorize a contractor to provide testing services, or provide construction, engineering, and inspection services, to the department in connection with a construction contract under which the contractor is performing any work. Notwithstanding any other provision of law to the contrary, for a project that is wholly or partially funded by the department and administered by a local governmental entity, except for a seaport listed in s. 311.09 or an airport as defined in s. 332.004, the entity performing design and construction engineering and inspection services may not be the same entity.

Section 13. Section 337.185, Florida Statutes, is amended to read:

(Substantial rewording of section. See

s. 337.185, F.S., for present text.)

337.185 State Arbitration Board.—

(1) To facilitate the prompt resolution of claims arising out of or in connection with a construction or maintenance contract with the department, the Legislature has established the State Arbitration Board, referred to in this section as the "board."

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

(a) "Claim" means the aggregate of all outstanding written requests for additional monetary compensation, time, or other adjustments to the contract, the entitlement or impact of which is disputed with the department and could not be resolved by negotiations between the department and the contractor.

(b) "Contractor" means a person or firm having a contract for rendering services to the department relating to the construction or maintenance of a transportation facility.

(c) "Final acceptance" means that the contractor has completely performed the work provided for under the contract, the department or its agent has determined that the contractor has satisfactorily completed the work provided for under the contract, and the department or its agent has submitted written notice of final acceptance to the contractor.

(3) Every claim in an amount of up to $250,000 per contract that could not be resolved by negotiations between the department and the contractor shall be arbitrated by the board.

An award issued by the board pursuant to this subsection is final and enforceable by a court of competent jurisdiction.

(4) The contractor may submit a claim greater than $250,000 up to $1 million per contract or, upon agreement of the parties, up to $2 million per contract to be arbitrated by the board. An award issued by the board pursuant to this subsection is final if a request for a trial de novo is not filed within the time provided by Rule 1.830, Florida Rules of Civil Procedure. At the trial de novo, the court may not admit evidence that there has been an arbitration proceeding, the nature or amount of the award, or any other matter concerning the conduct of the arbitration proceeding, except that testimony given at an arbitration hearing may be used for any purpose otherwise permitted by the Florida Evidence Code. If a request for trial de novo is not filed within the time provided, the award issued by the board is final and enforceable by a court of competent jurisdiction.

(5) An arbitration request may not be made to the board before final acceptance but must be made to the board within 820 days after final acceptance.

(6) The board shall schedule a hearing within 45 days after an arbitration request and, if possible, shall conduct the hearing within 90 days after the request. The board may administer oaths and conduct the proceedings as provided by the Florida Rules of Civil Procedure and the Florida Evidence Code.

The hearing may be conducted informally. Presentation of testimony and evidence shall be kept to a minimum, and matters shall be presented to the board primarily through the statements and arguments of counsel. The board shall address the scope of discovery, presentation of testimony, and evidence at a preliminary hearing by considering the size, subject matter, and complexity of the dispute. Any party to the arbitration may petition the board, for good cause shown, to issue subpoenas for the attendance of witnesses and the production of books, records, documents, and other evidence at the arbitration and may petition the board for orders compelling such attendance and production at the arbitration. Subpoenas shall be served and are enforceable in the manner provided in the Florida Rules of Civil Procedure.

(7) The board must issue an award within 45 days after the conclusion of the arbitration hearing. If all three members of the board do not agree, the award agreed to by the majority of the board shall constitute the award of the board.

(8) The board shall be composed of three members. The first member shall be appointed by the Secretary of Transportation, and the second member shall be elected by those construction or maintenance companies that are under contract with the department. The third member shall be chosen by agreement of the first and second members. If the first or second member has a conflict of interest regarding affiliation

with one of the parties to an arbitration hearing, the appointing entity shall appoint an alternate member for that hearing. If the third member has such a conflict of interest, the first and second members shall select an alternate member. Each member shall serve a 4-year term. The board shall elect a chair for each term, who shall be the administrator of the board and custodian of its records.

(9) The presence of all board members is required to conduct a meeting either in person or by means of communications media technology used in accordance with rules adopted by the Administration Commission under s. 120.54(5).

(10) The members of the board may receive compensation for the performance of their duties from deposits made by the parties based on an estimate of compensation by the board, except that no employee of the department may receive compensation from the board. All deposits shall be held in escrow in advance of the hearing. Each member eligible for compensation shall be compensated at a rate of $200 per hour, up to a maximum of $1,500 per day. Members of the board are entitled to receive per diem and travel expenses pursuant to s. 112.061. The board may allocate funds annually for clerical and other administrative services.

(11) To cover the cost of administration and initial compensation of the board, the party requesting arbitration shall pay a filing fee to the board, according to a schedule

established by the board, of:

(a) Up to $500 for a claim that is $25,000 or less.

(b) Up to $1,000 for a claim that is more than $25,000 but is $50,000 or less.

(c) Up to $1,500 for a claim that is more than $50,000 but is $100,000 or less.

(d) Up to $2,000 for a claim that is more than $100,000 but is $200,000 or less.

(e) Up to $3,000 for a claim that is more than $200,000 but is $300,000 or less.

(f) Up to $4,000 for a claim that is more than $300,000 but is $400,000 or less.

(g) Up to $5,000 for a claim that is more than $400,000.

The board may apportion the filing fees and the cost of recording and preparing a transcript of the hearing among the parties in its award.

Section 14. Subsection (3) of section 338.166, Florida Statutes, is amended to read:

338.166 High-occupancy toll lanes or express lanes.—

(3) Any remaining toll revenue from the high-occupancy toll lanes or express lanes shall be used by the department for the construction, maintenance, or improvement of any road or to support public transportation projects that benefit the operation of high-occupancy toll lanes or express lanes on the

State Highway System within the county or counties in which the toll revenues were collected or to support express bus service on the facility where the toll revenues were collected.

Section 15. Paragraphs (f) and (i) of subsection (6) of section 339.175, Florida Statutes, is amended to read:

339.175 Metropolitan planning organization.—

(6) POWERS, DUTIES, AND RESPONSIBILITIES.—The powers, privileges, and authority of an M.P.O. are those specified in this section or incorporated in an interlocal agreement authorized under s. 163.01. Each M.P.O. shall perform all acts required by federal or state laws or rules, now and subsequently applicable, which are necessary to qualify for federal aid. It is the intent of this section that each M.P.O. shall be involved in the planning and programming of transportation facilities, including, but not limited to, airports, intercity and high-speed rail lines, seaports, and intermodal facilities, to the extent permitted by state or federal law.

(f)~~1.~~ The department shall allocate to each M.P.O., for the purpose of accomplishing its transportation planning and programming duties, an appropriate amount of federal transportation planning funds.

~~2. In a county as defined in s. 125.011(1), the M.P.O. may not assess any fees for municipalities, counties, or other governmental entities that are members of the M.P.O.~~

(i) <u>There is created</u> the ~~Tampa Bay Area Regional Transit~~

~~Authority Metropolitan Planning Organization~~ Chairs Coordinating Committee ~~is created within the Tampa Bay Area Regional Transit Authority~~, composed of the M.P.O.'s serving Citrus, Hernando, Hillsborough, Manatee, Pasco, Pinellas, Polk, and Sarasota Counties. ~~The authority shall provide administrative support and direction to the committee.~~ The committee must, at a minimum:

1. Coordinate transportation projects deemed to be regionally significant by the committee.

2. Review the impact of regionally significant land use decisions on the region.

3. Review all proposed regionally significant transportation projects in the respective transportation improvement programs which affect more than one of the M.P.O.'s represented on the committee.

4. Institute a conflict resolution process to address any conflict that may arise in the planning and programming of such regionally significant projects.

Section 16. Part III of chapter 343, Florida Statutes, consisting of sections 343.80, 343.805, 343.81, 343.82, 343.83, 343.835, 343.836, 343.84, 343.85, 343.87, 343.875, 343.88, 343.881, 343.884, and 343.89, Florida Statutes, is repealed.

Section 17. Notwithstanding any other law, the Northwest Florida Transportation Corridor Authority is dissolved. The authority shall discharge or make provision for the authority's debts, obligations, and other liabilities; settle and close the

authority's activities and affairs; and provide for distribution of the authority's assets, or the proceeds of such assets, such that each local general-purpose government represented on the authority's board receives a distribution generally in proportion to each entity's contribution to the acquisition of the assets.

Section 18. Paragraph (b) of subsection (2) and subsections (8) and (9) of section 343.92, Florida Statutes, are amended to read:

343.92 Tampa Bay Area Regional Transit Authority.—

(2) The governing board of the authority shall consist of 13 voting members appointed no later than 45 days after the creation of the authority.

(b) The 13 voting members of the board shall be as follows:

1. The county commissions of Hernando, Hillsborough, Manatee, Pasco, and Pinellas Counties shall each appoint one county commissioner to the board. Members appointed under this subparagraph shall serve 2-year terms with not more than three consecutive terms being served by any person. If a member under this subparagraph leaves elected office, a vacancy exists on the board to be filled as provided in this subparagraph within 90 days.

2.a. Two members of the board shall be the mayor, or the mayor's designated alternate, of the largest municipality within

the service area of each of the following independent transit agencies or their legislatively created successor agencies: Pinellas Suncoast Transit Authority and Hillsborough Area Regional Transit Authority. The largest municipality is that municipality with the largest population as determined by the most recent United States Decennial Census.

b. The mayor's designated alternate must be an elected member of the municipality's city council and approved as the mayor's designated alternate by the municipality's city council. In the event the mayor is unable to attend a meeting, the mayor's designated alternate shall attend the meeting on the mayor's behalf and has the full right to vote.

3. The following independent transit agencies or their legislatively created successor agencies shall each appoint from the membership of their governing bodies one member to the board: Pinellas Suncoast Transit Authority and Hillsborough Area Regional Transit Authority. Each member appointed under this subparagraph shall serve a 2-year term with not more than three consecutive terms being served by any person. If a member no longer meets the transit authority's criteria for appointment, a vacancy exists on the board, which must be filled as provided in this subparagraph within 90 days.

4. The Governor shall appoint to the board four members from the regional business community, each of whom must reside in one of the counties governed by the authority and may not be

an elected official. Of the members initially appointed under this subparagraph, one shall serve a 1-year term, two shall serve 2-year terms, and one shall serve a term as the initial chair as provided in subsection (5). Thereafter, a member appointed under this subparagraph shall serve a 2-year term with not more than three consecutive terms being served by any person.

Appointments may be staggered to avoid mass turnover at the end of any 2-year or 4-year period. A vacancy during a term shall be filled within 90 days in the same manner as the original appointment for the remainder of the unexpired term.

(8) A simple majority ~~Seven members~~ of the board shall constitute a quorum, and a simple majority of the voting members present shall be necessary for any action to be taken by the board ~~the vote of seven members is necessary for any action to be taken by the authority~~. The authority may meet upon the constitution of a quorum. A vacancy does not impair the right of a quorum of the board to exercise all rights and the ability to perform all duties of the authority.

~~(9) Beginning July 1, 2017, the board must evaluate the abolishment, continuance, modification, or establishment of the following committees:~~

~~(a) Planning committee.~~

~~(b) Policy committee.~~

~~(c) Finance committee.~~

~~(d) Citizens advisory committee.~~

~~(e) Tampa Bay Area Regional Transit Authority Metropolitan Planning Organization Chairs Coordinating Committee.~~

~~(f) Transit management committee.~~

~~(g) Technical advisory committee.~~

~~The board must submit its recommendations for abolishment, continuance, modification, or establishment of the committees to the President of the Senate and the Speaker of the House of Representatives before the beginning of the 2018 Regular Session.~~

Section 19. Paragraphs (e), (f), and (g) of subsection (3) of section 343.922, Florida Statutes, are amended to read:

343.922 Powers and duties.—

(3)

(e) The authority shall present the ~~original~~ regional transit development plan and updates to the governing bodies of the counties within the designated region~~, to the TBARTA Metropolitan Planning Organization Chairs Coordinating Committee,~~ and to the legislative delegation members representing those counties within 90 days after adoption.

~~(f) The authority shall coordinate plans and projects with the TBARTA Metropolitan Planning Organization Chairs Coordinating Committee, to the extent practicable, and~~

~~participate in the regional M.P.O. planning process to ensure regional comprehension of the authority's mission, goals, and objectives.~~

~~(g) The authority shall provide administrative support and direction to the TBARTA Metropolitan Planning Organization Chairs Coordinating Committee as provided in s. 339.175(6)(i).~~

Section 20. Paragraph (c) of subsection (1) of section 348.754, Florida Statutes, is amended to read:

348.754 Purposes and powers.—

(1)

(c) Notwithstanding any other provision of this section to the contrary, to ensure the continued financial feasibility of the portion of the Wekiva Parkway to be constructed by the department, the authority may not, without ~~the~~ prior consultation with ~~consent of~~ the secretary of the department, construct any extensions, additions, or improvements to the expressway system in Lake County.

Section 21. Paragraph (d) of subsection (2) of section 349.04, Florida Statutes, is amended to read:

349.04 Purposes and powers.—

(2) The authority is hereby granted, and shall have and may exercise all powers necessary, appurtenant, convenient, or incidental to the carrying out of the aforesaid purposes, including, but without being limited to, the right and power:

(d) To enter into and make leases for terms not exceeding

99 ~~40~~ years, as either lessee or lessor, in order to carry out the right to lease as set forth in this chapter.

Section 22. Subsections (3) through (19) of section 378.403, Florida Statutes, are renumbered as subsections (4) through (20), respectively, and a new subsection (3) is added to that section to read:

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

(3) "Borrow pit" means an area of land upon which excavation of surface resources has been conducted, is being conducted, or is planned to be conducted, as the term is commonly used in the trade, and is not considered a mine. Such resources are limited to soil, organic soil, sand, or clay that can be removed with construction excavating equipment and loaded on a haul truck with no additional processing.

Section 23. Section 378.801, Florida Statutes, is amended to read:

378.801 Other resources; notice of intent to extract ~~mine~~ required.—

(1) An ~~No~~ operator may not begin the operation of a borrow pit, or the process of extracting clay, peat, gravel, sand, or any other solid substance of commercial value found in natural deposits or in the earth, except fuller's earth clay, heavy minerals, limestone, or phosphate, which are regulated elsewhere in this chapter, at a new location ~~mine~~ without notifying the secretary of the intention to extract ~~mine~~.

(2) The operator's notice of intent to extract ~~mine~~ shall consist of the operator's estimated life of the extraction location ~~mine~~ and the operator's signed acknowledgment of the performance standards provided by s. 378.803.

Section 24. Section 378.802, Florida Statutes, is amended to read:

378.802 Existing extraction locations ~~mines~~.—After January 1, 1989, all operators of existing locations ~~mines~~ for the extraction of resources as described in s. 378.801 shall meet the performance standards provided by s. 378.803 for any new surface area disturbed at such locations ~~mines~~.

Section 25. Subsection (5) of section 479.07, Florida Statutes, is amended to read:

479.07 Sign permits.—

(5)(a) For each permit issued, the department shall furnish to the applicant a serially numbered permanent metal permit tag. The permittee is responsible for maintaining a valid permit tag on each permitted sign facing at all times. The tag shall be securely attached to the upper 50 percent of the sign structure, and attached in such a manner as to be plainly visible from the main-traveled way. The permit tag must be properly and permanently displayed at the permitted site within 30 days after the date of permit issuance. If the permittee fails to erect a completed sign on the permitted site within 270 days after the date on which the permit was issued, the permit

will be void, and the department may not issue a new permit to that permittee for the same location for 270 days after the date on which the permit becomes void.

(b) If a permit tag is lost, stolen, or destroyed, the permittee to whom the tag was issued must apply to the department for a replacement tag. The department shall establish a service fee for replacement tags in an amount that will recover the actual cost of providing the replacement tag. Upon receipt of the application accompanied by the service fee, the department shall issue a replacement permit tag.

(c)1. As soon as practicable, the department shall create and implement a publicly accessible electronic database to include all permits issued by the department. At a minimum, the database must include the name and contact information of the permit operator, the structure identification number or numbers, the panel or face identification number or numbers, the latitude and longitude of the permitted sign, the compass bearing, images of the permitted sign once constructed, and the most recent date the department visually inspected the permitted sign.

2. Once the department creates and implements the publicly accessible electronic database:

a. The department may not furnish permanent metal permit tags or replacement tags to permittees;

b. The department may not enforce the provisions relating to permanent metal permit tags or replacement tags specified in

paragraphs (a) and (b); and

c. Permittees are not required to return permit tags to the department as provided in subsection (8).

Section 26. Paragraph (e) of subsection (3) and subsection (4) of section 330.30, Florida Statutes, are amended to read:

330.30 Approval of airport sites; registration and licensure of airports.—

(3) EXEMPTIONS.—The provisions of this section do not apply to:

(e) An airport which meets the criteria of s. 330.27(8) ~~s. 330.27(7)~~ used exclusively for aerial application or spraying of crops on a seasonal basis, not to include any licensed airport where permanent crop aerial application or spraying facilities are installed, if the period of operation does not exceed 30 days per calendar year. Such proposed airports, which will be located within 3 miles of existing airports or approved airport sites, shall establish safe air-traffic patterns with such existing airports or approved airport sites, by memorandums of understanding, or by letters of agreement between the parties representing the airports or sites.

(4) EXCEPTIONS.—Private airports with 10 or more based aircraft may request to be inspected and licensed by the department. Private airports licensed according to this subsection shall be considered private airports as defined in s. 330.27(6) ~~s. 330.27(5)~~ in all other respects.

Section 27. This act shall take effect July 1, 2021.

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 transportation; creating s. 177.107, F.S.; authorizing governing bodies of municipalities and counties to abandon and convey interests in certain roads and rights-of-way to community development districts under specified conditions; specifying duties for community development districts relating to such roads and rights-of-way; providing for traffic control jurisdiction of such roads; specifying that the community development district has all rights, title, and interest in such roads and rights-of-way upon abandonment and conveyance; requiring community development districts to thereafter hold such roads and rights-of-way in trust; providing construction; creating s. 287.05705, F.S.; providing that governmental entities may not prohibit certain vendors from responding to competitive solicitations of certain contractual services; providing applicability; amending s. 316.003, F.S.; revising the definitions of the terms "autocycle" and "personal delivery device"; amending s. 316.2397, F.S.; authorizing certain equipment to show or display flashing lights; authorizing vehicles to display flashing lights during certain periods under certain conditions; amending s. 316.302, F.S.; providing that

certain required motor carrier safety improvements may not be considered when evaluating an individual's employment status; defining the term "motor carrier safety improvements"; amending s. 319.30, F.S.; revising conditions under which insurance companies are authorized to receive salvage certificates of title or certificates of destruction for motor vehicles and mobile homes from the Department of Highway Safety and Motor Vehicles; amending s. 320.06, F.S.; authorizing short-term rental vehicles to elect permanent registration; amending s. 320.27, F.S.; requiring motor vehicle dealer licensees to deliver copies of renewed, continued, changed, or new insurance policies to the department within specified timeframes under certain conditions; requiring such licensees to deliver copies of renewed, continued, changed, or new surety bonds or irrevocable letters of credit to the department within specified timeframes under certain conditions; amending s. 330.27, F.S.; defining the term "electric vertical takeoff and landing aircraft"; amending s. 337.025, F.S.; revising the application of the cap on innovative transportation projects; amending s. 337.0262, F.S.; prohibiting the Department of Transportation and contractors and subcontractors of the department from purchasing specified substances from a borrow pit unless specified conditions are satisfied; requiring certain contracts, subcontracts, and purchase orders to require compliance with the prohibition; requiring the department to cease acceptance of

substances from a borrow pit under certain conditions; authorizing the department to resume acceptance of such substances under certain conditions; amending s. 337.14, F.S.; requiring contractors wishing to bid on certain contracts to first be certified by the Department of Transportation as qualified; revising requirements for applying for and issuing a certificate of qualification; revising provisions regarding interim financial statements; providing construction with respect to submission and approval of an application for such certificate; exempting airports from certain restrictions regarding entities performing design and construction engineering and inspection services; amending s. 337.185, F.S.; revising and providing definitions; revising requirements for arbitration of certain contracts by the State Arbitration Board; revising requirements regarding arbitration requests, hearings, procedures, and awards; revising membership and meeting requirements; revising compensation of board members; amending s. 338.166, F.S.; authorizing the use of specified toll revenue to support certain public transportation projects; amending s. 339.175, F.S.; deleting a provision prohibiting certain metropolitan planning organizations from assessing any fees for municipalities, counties, or other governmental entities that are members of the organization; renaming the Tampa Bay Area Regional Transit Authority Metropolitan Planning Organization Chairs Coordinating Committee as the Chairs Coordinating

Committee; deleting a requirement that the Tampa Bay Area Regional Transit Authority provide the committee with administrative support and direction; repealing part III of ch. 343, F.S., relating to the creation and operation of the Northwest Florida Transportation Corridor Authority; dissolving the Northwest Florida Transportation Corridor Authority and requiring the authority to discharge its liabilities, settle and close its activities and affairs, and provide for the distribution of the authority's assets; amending s. 343.92, F.S.; providing that a mayor's designated alternate may be a member of the governing board of the Tampa Bay Area Regional Transit Authority; requiring that the alternate be an elected member of the city council of the mayor's municipality and be approved by the municipality's city council; requiring a mayor's designated alternate to attend meetings under certain circumstances with full voting rights; providing that a simple majority of board members constitutes a quorum and that a simple majority of those members present is necessary for any action to be taken; deleting obsolete language; amending s. 343.922, F.S.; revising a provision requiring the authority to present the regional transit development plan and updates to specified entities; deleting a provision requiring that the authority coordinate plans and projects with the TBARTA Metropolitan Planning Organization Chairs Coordinating Committee and participate in the regional M.P.O. planning process to ensure

regional comprehension of the authority's mission, goals, and objectives; deleting a provision requiring that the authority provide administrative support and direction to the TBARTA Metropolitan Planning Organization Chairs Coordinating Committee; amending s. 348.754, F.S.; prohibiting the Central Florida Expressway Authority from performing certain activities in Lake County without prior consultation with the secretary of the department; amending s. 349.04, F.S.; increasing the maximum term of a lease into which the Jacksonville Transportation Authority may enter; amending s. 378.403, F.S.; defining the term "borrow pit"; amending s. 378.801, F.S.; prohibiting operation of a borrow pit at a new location without notifying the Secretary of the Department of Environmental Protection of the intent to extract; conforming provisions; amending s. 378.802, F.S.; revising application of provisions to exclude existing mines; amending s. 479.07, F.S.; requiring the Department of Transportation to create and implement a publicly accessible electronic database for sign permit information; specifying requirements for the database; prohibiting the department from furnishing permanent metal permit tags or replacement tags and from enforcing specified provisions once the department creates and implements the database; specifying that permittees are not required to return permit tags to the department once the department creates and implements the

database; amending s. 330.30, F.S.; conforming a cross-reference; providing an effective date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 267 State Preemption of Seaport Regulations
SPONSOR(S): Local Administration & Veterans Affairs Subcommittee; Tourism, Infrastructure & Energy Subcommittee; Roach, Sirois
TIED BILLS: **IDEN./SIM. BILLS:** CS/CS/CS/SB 426

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	11 Y, 6 N, As CS	Miller	Miller
3) Commerce Committee		Willson	Hamon

SUMMARY ANALYSIS

Federal admiralty and maritime law generally controls the regulation of maritime commerce upon the navigable waters of the United States. Municipalities and counties derive broad home rule authority from the Florida Constitution and general law.

Florida has 15 deepwater ports, including Port Canaveral, Port Citrus, Port Everglades, Port of Fernandina, Port of Fort Pierce, Port of Jacksonville, Port of Key West, Port Manatee, Port of Miami, Port of Palm Beach, Port of Panama City, Port of Pensacola, Port of Port St. Joe, Port of St. Petersburg, and Port of Tampa.

The bill provides that a local ballot initiative or referendum may not restrict maritime commerce in the seaports of this state, including, but not limited to, regulating or restricting a vessel's type, size, or capacity; the source, type, loading, or unloading of cargo; the number, origin, nationality, embarkation, or disembarkation of passengers; or the environmental or health records of particular vessels. Any such ballot initiative or referendum, or any charter amendment, ordinance, resolution, regulation, or policy adopted by such initiative or referendum, whether before or after the effective date of the bill, is expressly preempted to the state, prohibited, and void.

The bill prohibits a municipality or its political subdivision from restricting maritime commerce as to any federally authorized passenger cruise ship including, but not limited to, a restriction based on a vessel's type, size, or capacity; the source, type, loading, or unloading of cargo; the number, origin, nationality, embarkation, or disembarkation of passengers; or the environmental or health records of particular vessels. An exception is provided as to vessel type, size, number, or capacity if due to certain physical limitations the port cannot accommodate such vessels. Any conflicting law, charter provision, ordinance, resolution, regulation, policy, initiative, or referendum predating or adopted after the effective date of the bill is prohibited, void, and expressly preempted to the state. Special districts created by special law, municipal governments consolidated with county governments, and certain defined counties are exempt from this provision of the bill.

The bill does not limit municipal or special district authority to engage in certain port regulatory or managerial activities.

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

The bill takes effect upon becoming law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Federal Regulation of Vessels and Maritime Commerce

Federal law controls[1] the regulation of maritime commerce,[2] navigation,[3] seaport security,[4] the regulation of commercial vessels, shipping[5] and common carriers, vessel-related environmental and pollution standards,[6] disease and quarantine efforts,[7] and other aspects of admiralty law in and upon the navigable waters of the United States. The U.S. Supreme Court has consistently determined that federal supremacy principles mandate preemption of efforts of state and local governments to impose conditions on port entry controlled by federal law.[8]

Federal law requires the formulation of federal policies applicable to navigation, vessel safety, and security of ports and waterways to consider local practices, customs, and the input of local authorities.[9] The U.S. Supreme Court has held that fees to defray the cost of purely local regulation of harbor traffic is not an objectionable burden on commerce.[10]

The United States Coast Guard (USCG) regulates all commercial vessels, including cruise vessels, calling on U.S. ports, regardless of the vessel's country of origin. The USCG inspects each foreign-flagged cruise vessel calling on a U.S. port at least twice a year to ensure compliance with certain treaties and U.S. regulations governing safety, security, and environmental protections.[11]

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[1] *Cipollone v. Liggett Group, Inc.*, 505 U.S. 504, 516 (1992) Where Congress has explicitly preempted state law in an area, federal law supplants all state regulation in that area. Even in the absence of express congressional intent to preempt state law, federal preemption is implied where (1) state law "actually conflicts with federal law" or (2) federal law so thoroughly occupies a legislative field "as to make reasonable the inference that Congress left no room for the States to supplement it."

[2] *United States v. Locke*, 529 U.S. 89, 103 (2000). ("The existence of the treaties and agreements on standards of shipping is of relevance, of course, for these agreements give force to the longstanding rule that the enactment of a uniform federal scheme displaces state law, and the treaties indicate Congress will have demanded national uniformity regarding maritime commerce.")

[3] *See, generally,* 46 U.S.C. §§ 101 et seq.

[4] For example, the Maritime Transportation Security Act of 2002 created a broad range of programs to improve the security conditions at the ports and along American waterways, such as identifying and tracking vessels, assessing security preparedness, and limiting access to sensitive areas.

[5] *See* Shipping Act of 1984. 46 U.S.C. §§ 40101(1), 40101(2). One purpose of the Act is to 'establish a nondiscriminatory regulatory process for the common carriage of goods by water in the foreign commerce of the United States with a minimum of government intervention and regulatory costs.' A second purpose is to ensure that U.S.-flag ships are on a level playing field with foreign vessels.

[6] In 1973, the International Maritime Organization (IMO) adopted the International Convention for the Prevention of Pollution by Ships and subsequently modified it by Protocol in 1978. The Convention is widely known as MARPOL 73/78. Its objective is to limit ship-borne pollution by restricting operational pollution and reducing the possibility of accidental pollution. MARPOL specifies standards for stowing, handling, shipping, and transferring pollutant cargoes, as well as standards for discharge of ship-generated operational wastes. Acceptance of the convention by national government obliges them to make the requirements part of domestic law. USCG, *Office of Commercial Vessel Compliance,* https://www.dco.uscg.mil/Our-Organization/Assistant-Commandant-for-Prevention-Policy-CG-5P/Inspections-Compliance-CG-5PC-/Commercial-Vessel-Compliance/Domestic-Compliance-Division/MARPOL/ (last visited Mar. 1, 2021).

[7] *See* John T. Oliver, *Legal and Policy Factors Governing the Imposition of Conditions on Access and Jurisdiction Over Foreign-Flag Vessels in U.S. Ports*, 5 S.C. J. Int'l. L. & Bus. 209, 2 (2009) footnotes 153 & 154. 42 U.S.C. § 267(a): "[The Surgeon General] shall from time to time select suitable sites for and establish such additional ... anchorages in the States and possessions of the United States as in his judgment are necessary to prevent the introduction of communicable diseases into the States and possessions of the United States." "It shall be the duty of the customs officers and of Coast Guard officers to aid in the enforcement of quarantine rules and regulations ...." U.S.C. § 268(b). Congress has provided statutory authority for controlling infectious diseases, including quarantining of suspect vessels and their crews and passengers. 42 U.S.C. §§ 264-272. The President regularly updates the list of communicable diseases subject to quarantine. Exec. Order No. 13,295, Apr. 4, 2003, 68 Fed. Reg. 17,255 (Apr. 9, 2003), reprinted in 42 U.S.C. § 264, as amended by Exec. Order No. 13,375, Apr. 1, 2005, 70 Fed. Reg. 17299 (Apr. 5, 2005). He has also delegated to the Secretary of Health and Human Services his authority to carry out duties under the statute.

[8] *See Locke*, 529 U.S. at 103.

[9] *See* 46 U.S.C. §§ 70001, 70004. *See also Locke*, 529 U.S. at 109.

[10] *See Clyde Mallory Lines v. State of Alabama ex rel. State Docks Comm'n,* 296 U.S. 261, 267 (1935). The Court observed that state regulations of harbor traffic, even if they incidentally affect commerce, interstate or foreign, are of local concern, so long as they do not impede the free flow of commerce and are not made the subject of regulation by Congress are not forbidden.

[11] U.S. House of Representatives, Subcommittee on Coast Guard and Maritime Transportation. *Hearing on "Commercial and Passenger Vessel Safety: Challenges and Opportunities*, p. 4 (Nov. 9, 2019) https://www.congress.gov/116/meeting/house/110181/documents/HHRG-116-PW07-20191114-SD001.pdf (last visited Feb. 28, 2021).

Florida Ports

There are 15 deepwater seaports in Florida:[12]

- Port Canaveral,
- Port Citrus,
- Port Everglades,
- Port of Fernandina,
- Port of Fort Pierce,
- Port of Jacksonville
- Port of Key West,
- Port Manatee,
- Port of Miami,
- Port of Palm Beach
- Port of Panama City,
- Port of Pensacola,
- Port of Port St. Joe,
- Port of St. Petersburg, and
- Port of Tampa.

Approximately half of Florida's deepwater ports are organized as independent or dependent special districts.[13] The remainder are organized within their respective municipal or county governments.[14]

According to the Florida Ports Council, Florida seaports generate nearly 900,000 direct and indirect jobs and contribute $117.6 billion in economic value to the state through cargo and cruise activities. Florida maritime activities account for approximately 13 percent of Florida's gross domestic product while contributing $4.2 billion in state and local taxes.[15] In 2018, approximately 110,268,130 tons of cargo and 16,835,986 passengers moved through Florida's seaports.[16]

State Law Relating to Seaports

Florida Seaport and Economic Development Program

In 1990, the Legislature created ch. 311, F.S., authorizing the Florida Seaport Transportation and Economic Development (FSTED) Program.[17] The program established a collaborative relationship between the Florida Department of Transportation (DOT) and the seaports, and codified an annual minimum appropriation of $25 million for a seaport grant program.[18] Grants under the FSTED program are limited to the following port facilities or port transportation projects:

- Transportation facilities within the jurisdiction of the port;
- The dredging or deepening of channels, turning basins, or harbors;
- The construction or rehabilitation of wharves, docks, structures, jetties, piers, storage facilities, cruise terminals, automated people mover systems, or any facilities necessary or useful in connection with the foregoing;

[12] For a map of Florida's deepwater seaports which indicates the primary streams of commerce (i.e., cargo, cruise passenger, other, or a combination thereof) see DOT, *Seaport System*, https://www.fdot.gov/seaport/seamap.shtm (last visited Mar. 16, 2021).
[13] Ports operated by independent special districts are Port Canaveral, Port of Fernandina, Port of Palm Beach, Port of Port St. Joe, and Port of Tampa. Ports operated by dependent special districts are Port Citrus, Port of Jacksonville, Port Manatee, and Port of Panama City. http://specialdistrictreports.floridajobs.org/webreports/criteria.aspx (last visited Mar. 16, 2021). A "dependent special district" is a special district subject to significant control by the governing body of a single county or municipality. S. 189.012(2), F.S. An "independent special district" is any district that is not a dependent special district. S. 189.012(3), F.S.
[14] The Ports of Key West, Pensacola, and St. Petersburg are departments of their respective municipalities. *See* at https://flaports.org/seaports/ (last visited Mar. 31, 2021).
[15] Florida Ports Council, *The Florida System of Seaports*, https://flaports.org/about/the-florida-system-of-seaports/ (last visited Mar. 1, 2021).
[16] FDOT, *2018 Update of Tables and Figures, p.4*, https://fdotwww.blob.core.windows.net/sitefinity/docs/default-source/seaport/pdfs/2018-update-of-tables-and-figures-florida-seaport-system-plan-717752830.pdf?sfvrsn=e1879b60_2 (last visited Mar. 1, 2021).
[17] Ch. 90-136, Laws of Fla.
[18] Ss. 311.07 and 311.09, F.S.

- The acquisition of vessel tracking systems, container cranes, or other mechanized equipment used in the movement of cargo or passengers in international commerce;
- The acquisition of land to be used for port purposes;
- The acquisition, improvement, enlargement, or extension of existing port facilities;
- Environmental protection projects: those necessary to meet requirements imposed by a state agency as a condition of a permit or other form of state approval; those necessary for environmental mitigation required as a condition of a state, federal, or local environmental permit; those necessary for the acquisition of spoil disposal sites; or those resulting from the funding of eligible projects;
- Transportation facilities which are not otherwise part of DOT's adopted Work Program.[19]
- Intermodal access projects;
- Construction or rehabilitation of port facilities, excluding any park or recreational facility, in ports listed in statute,[20] with operating revenues of $5 million or less, provided that such project creates economic development opportunities, capital improvements, and positive financial returns to such ports; and
- Seaport master plan or strategic plan development updates, including the purchase of data to support such plans or other provisions of the Community Planning Act.[21]

The FSTED program is managed by the FSTED Council, which consists of each port director, or director's designee, of the 15 deepwater ports, the Secretary of DOT or his or her designee, and the Executive Director of the Department of Economic Opportunity or his or her designee.[22]
To be eligible for consideration by the FSTED Council, a project must be consistent with the port's comprehensive master plan, which is incorporated as part of the approved local government comprehensive plan.

Community Planning Act

The Community Planning Act includes four primary references to deepwater ports:

1. A local government's comprehensive plan transportation element must include different levels of transportation analysis based on the size and location of the local government and whether it is in the metropolitan planning area of a Metropolitan Planning Organization. Traffic circulation issues related to ports must be addressed as well as plans for port facilities. Cities with populations greater than 50,000 and counties with populations greater than 75,000 must include "Plans for port . . . and related facilities coordinated with the general circulation and transportation element." Some or all of these requirements can be addressed in the port master plan.[23]

2. A comprehensive plan's coastal management element must "(d)irect the orderly development, maintenance, and use of ports to facilitate deepwater commercial navigation and other related activities." This requirement also can be addressed in the port master plan.[24]

3. Port master plans must be included in the local government's coastal management element and must identify existing port facilities and any proposed expansions.[25] To the extent the following are applicable, port master plans must:
   - Provide a land use and inventory map of existing coastal uses;
   - Analyze the environmental, socioeconomic, and fiscal impact of development;
   - Analyze effects of existing drainage systems on estuarine water quality;
   - Outline principles for hazard mitigation and protection of human life;
   - Outline principles for protecting existing beach and dune systems;

[19] DOT's Work Program is adopted pursuant to s. 339.135, F.S.
[20] S. 311.09(1), F.S. The ports listed are 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.
[21] Ch. 163, part II, F.S.
[22] S. 311.09(1), F.S.
[23] S. 163.3177(6)(b), F.S.
[24] S. 163.3177(6)(g)8., F.S.
[25] S. 163.3178(2), F.S.

- Outline principles to eliminate inappropriate and unsafe development;
- Identify public access to shoreline areas and preservation of working waterfronts;
- Designate coastal high-hazard areas and mitigation criteria;
- Outline principles to assure that public facilities will be in place; and,
- Mitigate the threat to human life and protect the coastal environment.

4. Certain eligible port expansions, projects, and facilities, both on the port and within three miles of the port, may not be designated as Developments of Regional Impact if they are consistent with a port master plan.[26]

Port Facility Financing

Any county, port district,[27] port authority,[28] municipality, or certain governmental units created pursuant to the Florida Interlocal Cooperation Act[29] that include at least one deepwater port are authorized[30] to:

- Exercise jurisdiction, control and supervision over any port facilities now or hereafter acquired, owned, or constructed by the local government(s).
- Operate and maintain, and to fix and collect rates, rentals, fees and other charges for any of the services and facilities provided by the port facilities now or hereafter acquired, owned or constructed by the unit excluding state bar pilots.
- Lease or rent, or contract with others for the operation of all or any part of any port facilities now or hereafter acquired, owned or constructed by the unit, on such terms and for such period or periods and subject to such conditions as the governing body shall determine to be in the best interests of the local government(s).

Vessel Movement and Related Fees

A port has authority to regulate vessel movements within its jurisdiction, whether involving public or private facilities or areas, by:

- Scheduling vessels for use of berths, anchorages, or other facilities at the port.
- Ordering and enforcing a vessel, at its own expense and risk, to vacate or change position at a berth, anchorage, or facility, whether public or private, in order to facilitate navigation, commerce, protection of other vessels or property, or dredging of channels or berths.
- Designating port facilities for the loading or discharging of vessels.
- Assigning berths at wharves for arriving vessels.[31]

Ports are authorized to establish fees and compensation for these services when provided by the port.

Harbor Safety

Ports, in agreement with the USCG, state harbor pilots, and other ports in its operating port area, must adopt guidelines for:

- Minimum bottom clearance for each berth and channel,
- The movement of vessels, and
- Radio communications of vessel traffic for all commercial vessels entering and leaving its harbor channels.[32]

County Seaport Projects and Facilities

[26] S. 163.3178(3), F.S.
[27] A "port district" is any district created by or pursuant to the provisions of any general or special law and authorized to own or operate any port facilities. S. 315.02(1), F.S.
[28] A "port authority" is created by or pursuant to the provisions of any general or special law or any district or board of county commissioners acting as a port authority under or pursuant to the provisions of any general or special law. S. 315.02(2), F.S.
[29] S. 163.01(7)(d), F.S.
[30] S. 315.03, F.S.
[31] S. 313.22, F.S.
[32] S. 313.23, F.S.

Counties have broad authority to provide for port improvements within their jurisdiction,[33] including the ability to:

- Construct, acquire, establish, improve, extend, enlarge, reconstruct, equip, maintain, repair, and operate any project,[34] either within or without the territorial boundaries of the county.
- Subject to the jurisdiction of the United States and the State of Florida and the general laws of Florida relating to dredging and filling, to construct, establish, and improve harbors in the county and all navigable and nonnavigable waters connected therewith; to regulate and control all such waters; to construct and maintain such canals, slips, turning basins, and channels and upon such terms and conditions as may be required by the United States; and to enact, adopt, and establish by resolution rules and regulations for the complete exercise of jurisdiction and control over all such waters.
- Appoint shipping masters for ports or harbors under its control, to determine their qualifications, and to adopt rules and regulations prescribing their duties.
- License stevedores as independent contractors for hire to handle stevedoring at and in the harbors of the county, to fix the terms and conditions of such licenses, and to determine the fees to be charged for same.
- Make and enter into all contracts and agreements and to do and perform all acts and deeds necessary and incidental to the performance of its duties and the exercise of its powers.
- Fix, regulate, and collect rates and charges for the services and facilities furnished by any project under its control; to establish, limit, and control the use of any project as may be deemed necessary to ensure the proper operation of the project; to impose sanctions to promote and enforce compliances; to prescribe rules and regulations and impose penalties and sanctions to ensure the proper performance of the duties of any stevedore or of any shipping master and the enforcement of any rule or regulation which the county may adopt in the regulation of the ports, harbors, wharves, docks, airports, and other projects under its control.
- Fix the rates of wharfage, dockage, warehousing, storage, and port and terminal charges for the use of the port and harbor facilities located within or without the county and owned or operated by the county; and to fix and determine the rates, tolls, and other charges for the use of harbor and airport improvements and harbor and airport facilities located within or without the county insofar as it may do so under the State Constitution and the Constitution and laws of the United States.
- Regulate the operation, docking, storing, and conduct of all watercraft of any kind plying or using the waterways within the county and of all aircraft of any kind operating over and within the county or utilizing any other area, field, location, or place within the county for air navigation purposes or for the repair, storage, or handling of aircraft within the county.
- Receive and accept, from any federal agency, grants for or in aid of the construction, improvement, or operation of any project and to receive and accept contributions from any source of either money, property, labor, or other things of value.
- Make any and all applications required by the Treasury Department and other departments or agencies of the United States Government as a condition precedent to the establishment within the county of a free port, foreign trade zone, or area for the reception from foreign countries of articles of commerce; to expedite and encourage foreign commerce and the handling, processing, and delivery thereof into foreign commerce free from the payment of custom duties and to enter into any agreements required by such departments or agencies in connection therewith; and to make like applications and agreements with respect to the establishment within the county of one or more bonded warehouses.
- Enter into any contract with the government of the United States or any agency thereof which may be necessary in order to procure assistance, appropriations, and aid for the deepening, widening, and extending of channels and turning basins, the building and construction of public mass transit facilities, airport and airport facilities, slips, wharves, breakwaters, jetties, bulkheads, and any and all other harbor and air navigation improvements and facilities.

[33] S. 125.012, F.S.

[34] S. 125.011(2)(a), F.S., defines "project" as one or more of the following: "harbor, port, shipping, and airport facilities of all kinds and includes, but is not limited to, harbors, channels, turning basins, anchorage areas, jetties, breakwaters, waterways, canals, locks, tidal basins, wharves, docks, piers, slips, bulkheads, public landings, warehouses, terminals, refrigerating and cold storage plants, railroads and motor terminals for passengers and freight, rolling stock, car ferries, boats, conveyors and appliances of all kinds for the handling, storage, inspection and transportation of freight and the handling of passenger traffic, … and the loading and unloading and handling of passengers, mail, express and freight;"

- Make or cause to be made such surveys, investigations, studies, borings, maps, plans, drawings, and estimates of cost and revenues as it may deem necessary and to prepare and adopt a comprehensive plan or plans for the location, construction, improvement, and development of any project.
- Grant exclusive or nonexclusive franchises to persons, firms, or corporations for the operating of restaurants, cafeterias, bars, taxicabs, vending machines, and other concessions of a nonaeronautical nature in, on, and in connection with any project owned and operated by the county.
- Adopt and promulgate suitable rules, regulations, and directions for the operation and conduct of any project owned or operated by the county and for the use of any such project and any facility connected therewith by others.
- Enter into contracts with utility companies or others for the supplying by such utility companies or others of water, electricity, or telephone service to or in connection with any project.
- Own, maintain, operate, and control export trading companies, foreign sales corporations, and consulting services corporations as provided by the laws of the United States or this state; to enter into management contracts with such corporations or companies established for the purpose of providing or operating such facilities; to own, maintain, operate, and control cargo clearance centers and customs clearance facilities, and to enter into management contracts with corporations established for the purpose of providing or operating such facilities; to maintain the confidentiality of trade information and data pursuant to the patent or copyright laws of the United States, pursuant to the patent or copyright laws of foreign nations to the extent that same are enforced by the courts of the United States, and pursuant to the trade secrets doctrine; and to authorize airport and port employees to serve as officers and directors of export trading companies, foreign sales corporations, customs and cargo clearance corporations, and consulting services corporations for the sale of services to others. Counties are hereby authorized to expend any unobligated and available surplus funds from the activities authorized in this subsection for the construction of capital facilities.

State Freight Logistics Zones and The Intermodal Logistics Center Infrastructure Support Program

Counties may designate geographic areas as freight logistics zones.[35] A freight logistics zone is a grouping of activities and infrastructure associated with freight transportation and related services within a defined area around an intermodal logistics center. The Intermodal Logistics Center Infrastructure Support Program is designed to provide DOT funds for roads, rail facilities, or other means for the conveyance or shipment of goods through a seaport and allow the state to respond to private sector market demands and meet the state's economic development goal of becoming a hub for trade, logistics, and export-oriented activities.

Passenger Transportation Fees and For-Hire Vehicles

A seaport may charge reasonable fees to for-hire vehicles for their use of the airport's or seaport's facilities as well as designate locations for staging, pickup, or other similar operations at the seaport.[36]

Municipal Government, Consolidated Government, and Defined Counties

Municipalities may be established or abolished by general or special law.[37] Once created, they have governmental, corporate and proprietary powers enabling them to conduct municipal government, perform municipal functions, render municipal services, and may exercise any power for municipal purposes consistent with general law.[38] Unlike counties,[39] municipalities are not political subdivisions of the state and are not entitled to the same immunities and privileges unless so provided in law.[40] Not

[35] S. 311.103, F.S.
[36] Ss. 316.85(6) and 627.748(17)(b), F.S.
[37] Art. VIII, s. 2(a), Fla. Const. Under a separate provision, Miami-Dade County has sole authority to establish or abolish municipalities within the County. *See* art. VIII, s. 6(e), Fla. Const., incorporating art. VIII, s. 11, Fla. Const. (1885, as amended).
[38] Art. VIII, s. 2(b), Fla. Const.
[39] Art. VIII, s. 1(a), Fla. Const.
[40] *Dept. of Revenue v. City of Gainesville*, 918 So. 2d 250 (Fla. 2005).

every action of a municipality is a "municipal purpose"[41] unless it meets the current statutory definition.[42] "Municipal government" does not always mean "municipality," as counties may be authorized to exercise municipal powers in certain contexts.[43]

The Florida Constitution authorizes a county and one or more municipalities in that county to consolidate their governmental powers under a special act approved by the voters.[44] Currently, the only consolidated government in Florida is that of the City of Jacksonville/Duval County.[45]

For certain statutory purposes, "county" is defined as any county operating under a home rule charter adopted under specified provisions of the Florida Constitution of 1885.[46]

Port Districts

A port district is a type of special district created by general or special law and authorized to own or operate port facilities.[47] A "special district" is a unit of local government created for a particular purpose, with jurisdiction to operate within a limited geographic boundary.[48] A special district has only those powers expressly provided by, or reasonably implied from, the authority provided in the district's charter.[49] A "dependent special district" is a special district subject to significant control by the governing body of a single county or municipality.[50] An "independent special district" is any district that is not a dependent special district.[51]

Special districts do not possess "home rule" powers and may impose only those taxes, assessments, or fees authorized by special or general law. The special act creating an independent special district may provide for funding from a variety of sources while prohibiting others. For example, ad valorem tax authority is not mandatory for a special district.[52]

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. Where state preemption applies it precludes a local government from exercising authority in that particular area.[53]

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[41] *See City of Miami Beach v. Fleetwood Hotel, Inc.*, 261 So. 2d 801 (Fla. 1972).
[42] S. 166.021(2), F.S.
[43] Counties providing municipal services are authorized to levy additional ad valorem taxes of no more than 10 mills for municipal purposes. Art. VII, s. 9(b), Fla. Const.; s. 125.01(1)(q), F.S. Miami-Dade County is authorized to exercise all powers provided to municipalities to the extent not inconsistent with general law. Art. VIII, s. 6(f), Fla. Const.
[44] Art. VIII, s. 3, Fla. Const.
[45] The consolidated government of the City of Jacksonville was created by ch. 67-1320, Laws of Fla., adopted pursuant to Art. VIII, s. 9, Fla. Const. (1885). The charter was readopted by ch. 92-341, Laws of Fla.
[46] S. 125.011(1), F.S. The incorporated provisions include ss. 10 (Monroe County), 11 (Miami-Dade County), and (24) (Hillsborough County) of article VIII of the 1885 Constitution.
[47] S. 315.02, F.S.
[48] *See Halifax Hospital Medical Center v. State of Fla., et al.*, 278 So. 3d 545, 547 (Fla. 2019).
[49] *2020 – 2022 Local Gov't Formation Manual*, pp. 60-61, at 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 Jan. 26, 2021).
[50] S. 189.012(2), F.S. Types of such control include the county or municipality governing body acting as the district governing body, having the authority to appoint or remove at will district board members, or having final approval authority over the district's budget.
[51] S. 189.012(3), F.S.
[52] Art. VII, s. 9(a), Fla. Const.
[53] Wolf, *The Effectiveness of Home Rule: A Preemptions and Conflict Analysis*, 83 Fla. B.J. 92 (June 2009). Historically, certain types of local action have been found to frustrate the purpose of state law, and, thus, conflict has resulted. Specifically, Florida jurisprudence makes clear that local action cannot 1) provide for more stringent regulation than the state legislation in violation of the express wording of the statute; 2) provide for a more stringent penalty than that allowed by state statute; 3) prohibit behavior otherwise allowed by state legislation; 4) allow behavior otherwise prohibited by state statute; or 5) provide for a different method for doing a particular act than the method proscribed by state legislation.
Generally, a local government can pass more stringent regulations than those provided for by statute. However, if the state legislation expressly forbids a stricter regulation or if the imposition of a stricter regulation frustrates the purpose of the statute, the local government must abstain.

Florida law recognizes two types of preemption: express and implied. Express preemption requires a specific legislative statement; it cannot be implied or inferred.[54] Express preemption of a field by the Legislature must be accomplished by clear language stating that intent.[55] In cases where the Legislature expressly or specifically preempts a field, there is no problem with ascertaining what the Legislature intended.[56] In cases determining the validity of ordinances enacted in a field preempted by the state, the effect has been to find such ordinances null and void.[57]

Key West Ordinance

On November 3, 2020, voters adopted three charter amendments to the City Charter for the City of Key West.[58] The amendments:

- Limit the number of persons disembarking from cruise ships to a total of not more than 1,500 persons per day at any and all public and privately owned or leased property located within the municipal boundary of the City of Key West.
- Prohibit cruise ships with a capacity of 1,300 or more persons (passengers and crew) from disembarking individuals at any and all public and privately owned or leased property located within the municipal boundary of the City of Key West.
- Give preference and priority to cruise ships and cruise lines that have the best record (the lowest number of environmental violations, penalties and fines) and best health record (the best scores and least number of violations in health inspections and reports issued by the Center for Disease Control Vessel Sanitation Program).

Effect of the Bill

The bill creates s. 311.25, F.S., to provide that a ballot initiative or referendum, or a provision of a local government charter, ordinance, resolution, regulation, or policy created by ballot initiative or referendum, may not restrict or regulate[59] commerce[60] in the seaports of this state, including, but not limited to, regulating or restricting a vessel's type or size, source or type of cargo, or number, origin, or nationality of passengers. Any such initiative, referendum, charter provision, ordinance, resolution, regulation, or policy predating or adopted after the effective date of the bill is expressly preempted to the state, prohibited, and void.

The bill prohibits a municipality or its political subdivision from restricting maritime commerce as to any federally authorized passenger cruise ship including, but not limited to, a restriction based on a vessel's type, size, or capacity; the source, type, loading, or unloading of cargo; the number, origin, nationality, embarkation, or disembarkation of passengers; or the environmental or health records of particular vessels. An exception is provided as to vessel type, size, number, or capacity if due to certain physical limitations the port cannot accommodate such vessels. Any conflicting law, charter provision, ordinance, resolution, regulation, policy, initiative, or referendum predating or adopted after the effective date of the bill is expressly preempted to the state, prohibited, and void. The bill exempts special districts created by special law, municipal governments consolidated with county governments, and certain defined counties from this provision.

The bill specifies that, unless preempted by federal or state law, the bill does not limit the authority of a municipality or port district owned or operated by a municipality to:

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[54] *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).
[55] *Mulligan*, 934 So. 2d at 1243.
[56] *Sarasota Alliance for Fair Elections, Inc. v. Browning*, 28 So. 3d 880, 886 (Fla. 2010).
[57] *See, e.g., Nat'l Rifle Ass'n of Am., Inc. v. City of S. Miami,* 812 So. 2d 504 (Fla. 3d DCA 2002).
[58] City of Key West, *Code of Ordinances*, Charter Amendment of 11-16-2020, https://library.municode.com/fl/key_west/ordinances/code_of_ordinances?nodeId=1052747 (last visited Feb. 28, 2021).
[59] "Regulate" means "to govern or direct according to rule;" "to bring under the control of law or constituted authority;" "to make regulations for or concerning;" or "to bring order, method, or uniformity to." https://www.merriam-webster.com/dictionary/regulate (last visited Mar. 1, 2021).
[60] "Commerce" means "an interchange of goods or commodities, especially on a large scale between different countries (foreign commerce) or between different parts of the same country (domestic commerce); trade; business." https://www.dictionary.com/browse/commerce (last visited Mar. 1, 2021).

- Operate seaport programs and facilities pursuant to ch. 311, F.S.;
- Finance port facilities pursuant to ch. 315, F.S.;
- Regulate vessel movements within its jurisdiction pursuant to s. 313.22(1), F.S.;
- Establish fees and compensation for its services pursuant to s. 313.22(2), F.S.;
- Adopt guidelines for minimum bottom clearance, for the movement of vessels, and for radio communications of vessel traffic pursuant to s. 313.23, F.S.;
- Implement seaport security measures pursuant to ss. 311.12-311.124, F.S.
- Issue and enforce tariffs properly filed with the Federal Maritime Commission; or
- Enter into leases and other contracts pertaining to the management of the port.

B. SECTION DIRECTORY:

Section 1 Creates s. 311.25, F.S.; preempting to the state the regulation of commerce in state seaports; providing exceptions.

Section 2 Directs the Division of Law Revision to replace a certain phrase with the actual date the bill becomes law.

Section 3 Provides the act is effective upon becoming 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 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 neither provides authority for nor requires rulemaking by executive branch agencies.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 3, 2021, the Tourism, Infrastructure & Energy Subcommittee adopted four amendments and reported the bill favorably as a committee substitute. The amendments:

- Narrowed the breadth of the preemption by replacing “Notwithstanding any other law to the contrary” with “Except as authorized by general law”.
- Limited the scope of the preemption to the regulation of seaports by municipal governments only.

On April 1, 2021, the Local Administration & Veterans Affairs Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment:

- Prohibits certain restrictions on maritime commerce from being adopted by ballot initiative or referendum or from being adopted as ordinances, resolutions, regulations, or policies by ballot initiative or referendum. All such provisions adopted by ballot initiative or referendum are preempted and declared void whether or not those provisions predated or were adopted after the effective date of the bill.
- Prohibits municipalities or special port districts not created by the Legislature from restricting maritime commerce as to federally authorized passenger cruise ships. Any charter provision, ordinance, regulation, resolution, policy, ballot initiative, or referendum in conflict with the statute is preempted and void.
- Exempts consolidated county/municipal governments, defined counties, and special districts created by special act from the passenger cruise ship prohibition.
- Does not limit the authority of municipal governments and special port districts created and controlled by municipalities to continue regulating and managing their ports generally as provided in statute.

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 state preemption of seaport regulations; creating s. 311.25, F.S.; prohibiting a local ballot initiative or referendum from restricting maritime commerce in the seaports of this state; providing that such a local ballot initiative, referendum, or action adopted therein is prohibited, void, and expressly preempted to the state; prohibiting municipalities and certain special districts from restricting maritime commerce in the seaports of this state with respect to any federally authorized passenger cruise vessel; providing that certain actions relating to such restrictions are prohibited, void, and expressly preempted to the state; providing applicability; clarifying remaining authority of certain local entities; providing a directive to the Division of Law Revision; providing an effective date.

WHEREAS, maritime commerce between and among seaports, both foreign and domestic, is the subject of extensive federal and state regulation designed to protect the marine environment and the health, safety, and welfare of the general public and those involved in conducting that commerce, and

WHEREAS, the economic impact of a seaport extends far

beyond the boundaries of the local jurisdiction in which the port is located, materially contributing to the economies of multiple cities and counties within the region and to the economy of this state as a whole, and

WHEREAS, Florida seaports currently generate nearly 900,000 direct and indirect jobs and contribute $117.6 billion in economic value to this state through cargo and cruise activities, accounting for approximately 13 percent of this state's gross domestic product and $4.2 billion in state and local taxes, and

WHEREAS, because this state is a peninsula, much of this state is highly dependent upon the unimpeded flow of maritime commerce through its seaports, which is made even more critical when this state is threatened or impacted by natural disasters, such as tropical storms and hurricanes, and

WHEREAS, because of its geographic location, this state is a hub for global maritime commerce and is uniquely positioned to capture an even larger share of this commerce as global trade routes shift, and

WHEREAS, the international, national, statewide, and regional importance of Florida seaports has long been recognized in federal and state law with respect to the regulation, planning, and public financing of seaport operations and facilities, and

WHEREAS, this state is widely known as the cruise capital

of the world, and the cruise industry is vital to this state's economy, contributing more than $9 billion in direct spending on an annual basis and supporting 159,000 jobs with more than $8 billion in total wages and salaries before the current pandemic, and

WHEREAS, 8.3 million passengers boarded cruises from one of this state's five cruise ports in 2019, accounting for 60 percent of embarkations in the United States, generating 11 million passenger and crew onshore visits in both home port and transit port calls in this state, and

WHEREAS, allowing a ballot initiative or referendum in each local seaport jurisdiction to impose its own requirements on the maritime commerce conducted in that port could result in abrupt changes in the supply lines bringing goods into and out of this state and could reasonably be expected to suppress such commerce and potentially drive it out of the port and out of this state in search of a more consistent and predictable operating environment, thus disrupting this state's economy and threatening the public's health, safety, and welfare, and

WHEREAS, allowing a ballot initiative or referendum in each local seaport jurisdiction to impose its own requirements on the maritime commerce conducted in that port could result in abrupt changes in vessel traffic, frustrating the multi-year planning process for all Florida seaports and the assumptions and forecasts underlying federal and state financing of port

improvement projects, and

WHEREAS, there are similar concerns regarding the capacity of a municipality and certain special districts to impose such requirements on the maritime commerce conducted in a port, as the more limited geographic and political scope of a municipality and certain special districts may make such entity less sensitive to the negative impact of such requirements on neighboring municipalities and on the county, region, and state, and

WHEREAS, many local economies in this state depend heavily on tourism, on which the surrounding politics can be particularly complex at the municipal level, which significantly heightens those concerns with respect to the ability of municipalities and certain special districts to impose local requirements affecting passenger cruise vessels or cruise lines, and

WHEREAS, in light of these potential negative impacts, the permissible scope of local ballot initiatives or referenda and of the powers of a municipality and certain special districts must be appropriately limited, NOW, THEREFORE,

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

Section 1. Section 311.25, Florida Statutes, is created to read:

311.25 Regulation of commerce in Florida seaports.—

(1)(a) A local ballot initiative or referendum may not restrict maritime commerce in the seaports of this state, including, but not limited to, restricting such commerce based on any of the following:

1. Vessel type, size, number, or capacity.

2. Number, origin, nationality, embarkation, or disembarkation of passengers or crew or their entry into this state or any local jurisdiction.

3. Source, type, loading, or unloading of cargo.

4. Environmental or health records of a particular vessel or vessel line.

(b) Any local ballot initiative or referendum, or any local law, charter amendment, ordinance, resolution, regulation, or policy adopted in a local ballot initiative or referendum, in violation of paragraph (a) which was adopted before, on, or after the effective date of this act is prohibited, void, and expressly preempted to the state.

(2)(a) A municipality or political subdivision thereof, or a special district other than one established for port management by special act of the Legislature, may not restrict maritime commerce in the seaports of this state with respect to any federally authorized passenger cruise vessel, including, but not limited to, a restriction based on any of the following:

1. Vessel type, size, number, or capacity, except when the

port, by virtue of the physical limitations of its docking, berthing, or navigational capabilities, is unable to accommodate a passenger cruise vessel pursuant to applicable federal or state laws or regulations.

2. Number, origin, nationality, embarkation, or disembarkation of passengers or crew or their entry into this state or any local jurisdiction.

3. Source, type, loading, or unloading of cargo related or incidental to its use as a passenger cruise vessel.

4. Environmental or health records of a particular passenger cruise vessel or cruise line.

(b) Any provision of a law, a charter, an ordinance, a resolution, a regulation, a policy, an initiative, or a referendum which is in conflict with paragraph (a) and which existed before, on, or after the effective date of this act is prohibited, void, and expressly preempted to the state.

(c) This subsection does not apply to a municipality the government of which has been consolidated with that of a county or to a municipal government that is a county as defined in s. 125.011(1).

(d) Except as provided in paragraph (a), this subsection does not otherwise limit the authority of a subject municipality, political subdivision thereof, or special district to:

1. Engage in any activity authorized under this chapter,

chapter 315, s. 313.22, or s. 313.23, including those surrounding the continued operation and development of the port and port facilities and the implementation of seaport security measures pursuant to ss. 311.12-311.124.

2. Issue and enforce tariffs properly filed with the Federal Maritime Commission.

3. Enter into leases, terminal agreements, or other contracts with tenants, customers, and other users of port facilities.

Section 2. The Division of Law Revision is directed to replace the phrase "the effective date of this act" wherever it occurs in this act with the date this act becomes a law.

Section 3. This act shall take effect upon becoming a law.

COMMERCE COMMITTEE

CS/CS/HB 267 by Rep. Roach
State Preemption of Seaport Regulations

AMENDMENT SUMMARY
April 19, 2021

Amendment 1 by Rep. Roach (line 113):
Narrows the scope of the preemption relating to the restriction of maritime commerce with respect to federally authorized cruise vessels to only those seaports located in or adjoining an area designated as an area of critical state concern.

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 Roach offered the following:

Amendment (with title amendment)

Remove lines 113-159 and insert:

(b) Any local ballot initiative or referendum that is in conflict with paragraph (a) and that was adopted before, on, or after the effective date of this act, and any local law, charter amendment, ordinance, resolution, regulation, or policy adopted in such an initiative or referendum, is prohibited, void, and expressly preempted to the state.

(2)(a) A local government or a political subdivision or special district thereof may not restrict maritime commerce in any seaport of this state located in or adjoining an area designated as an area of critical state concern before, on, or after the effective date of this act with respect to any

federally authorized passenger cruise vessel, including, but not limited to, a restriction based on any of the following:

1. Vessel type, size, number, or capacity, except when the port, by virtue of the physical limitations of its docking, berthing, or navigational capabilities, is unable to accommodate a passenger cruise vessel pursuant to applicable federal or state laws or regulations.

2. Number, origin, nationality, embarkation, or disembarkation of passengers or crew or their entry into this state or any local jurisdiction.

3. Source, type, loading, or unloading of cargo related or incidental to its use as a passenger cruise vessel.

4. Environmental or health records of a particular passenger cruise vessel or cruise line.

(b) Any provision of a local law, a charter, an ordinance, a resolution, a regulation, a policy, an initiative, or a referendum which is in conflict with paragraph (a) and which existed before, on, or after the effective date of this act is prohibited, void, and expressly preempted to the state.

(c) This subsection does not apply to a special district established for port management by special act of the Legislature.

(d) Except as provided in paragraph (a), this subsection does not otherwise limit the authority of a subject local

government or a political subdivision or special district thereof to:

1. Engage in any activity authorized under this chapter, chapter 315, s. 313.22, or s. 313.23, including those surrounding the continued operation and development of the port and port facilities and the implementation of seaport security measures pursuant to ss. 311.12-311.124.

2. Issue and enforce tariffs properly filed with the Federal Maritime Commission.

3. Enter into leases, terminal agreements, or other contracts with tenants, customers, and other users of port facilities.

Section 2. If any provision of this act or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this act which can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

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

Remove lines 9-95 and insert:
prohibiting local governments and their political subdivisions and special districts from restricting maritime commerce in a seaport located in or adjoining

an area of critical state concern with respect to any federally authorized passenger cruise vessel; providing that certain actions relating to such restrictions are prohibited, void, and expressly preempted to the state; providing applicability; clarifying remaining authority of certain local entities; providing for severability; providing a directive to the Division of Law Revision; providing an effective date.

WHEREAS, maritime commerce between and among seaports, both foreign and domestic, is the subject of extensive federal and state regulation designed to protect the marine environment and the health, safety, and welfare of the general public and those involved in conducting that commerce, and

WHEREAS, the economic impact of a seaport extends far beyond the boundaries of the local jurisdiction in which the port is located, materially contributing to the economies of multiple cities and counties within the region and to the economy of this state as a whole, and

WHEREAS, Florida seaports currently generate nearly 900,000 direct and indirect jobs and contribute $117.6 billion in economic value to this state through cargo and cruise activities, accounting for approximately 13 percent of this

state's gross domestic product and $4.2 billion in state and local taxes, and

WHEREAS, because this state is a peninsula, much of this state is highly dependent upon the unimpeded flow of maritime commerce through its seaports, which is made even more critical when this state is threatened or impacted by natural disasters, such as tropical storms and hurricanes, and

WHEREAS, because of its geographic location, this state is a hub for global maritime commerce and is uniquely positioned to capture an even larger share of this commerce as global trade routes shift, and

WHEREAS, the international, national, statewide, and regional importance of Florida seaports has long been recognized in federal and state law with respect to the regulation, planning, and public financing of seaport operations and facilities, and

WHEREAS, this state is widely known as the cruise capital of the world, and the cruise industry is vital to this state's economy, contributing more than $9 billion in direct spending on an annual basis and supporting 159,000 jobs with more than $8 billion in total wages and salaries before the current pandemic, and

WHEREAS, 8.3 million passengers boarded cruises from one of this state's five cruise ports in 2019, accounting for 60 percent of embarkations in the United States, generating 11

million passenger and crew onshore visits in both home port and transit port calls in this state, and

WHEREAS, allowing a ballot initiative or referendum in each local seaport jurisdiction to impose its own requirements on the maritime commerce conducted in that port could result in abrupt changes in the supply lines bringing goods into and out of this state and could reasonably be expected to suppress such commerce and potentially drive it out of the port and out of this state in search of a more consistent and predictable operating environment, thus disrupting this state's economy and threatening the public's health, safety, and welfare, and

WHEREAS, allowing a ballot initiative or referendum in each local seaport jurisdiction to impose its own requirements on the maritime commerce conducted in that port could result in abrupt changes in vessel traffic, frustrating the multiyear planning process for all Florida seaports and the assumptions and forecasts underlying federal and state financing of port improvement projects, and

WHEREAS, this state must establish land and water management policies to guide local decisions relating to growth and development, protecting and optimizing the use of this state's natural resources and environment while also preserving private property rights and advancing the health, safety, and welfare of the residents of this state, and

WHEREAS, the need for specific guidance and oversight in the balancing of all of these interests, including the state's interest in fostering tourism, is even more acute in areas of critical state concern designated under part I of chapter 380, which help protect significant environmental, natural, or other resources of regional or statewide importance from uncoordinated development, and

WHEREAS, areas of critical state concern generate tourism from both the residents of this state and visitors to this state, allowing them to directly experience and learn about these unique areas and generating additional tourism in the broader region and the state, and

WHEREAS, passenger cruise vessels allow for increased tourism in areas of critical state concern while avoiding many of the environmental impacts that would otherwise be generated by land-based tourism with respect to transportation, utility, wastewater, and other infrastructure, and

WHEREAS, the necessary constraints on development in areas of critical state concern may increase the cost of land-based tourism to such a degree that many people and families may find themselves financially unable to visit these areas, and the local workforce may find it more difficult to secure affordable housing, and

WHEREAS, when considering local requirements that would restrict cruise tourism in an area of critical state concern,

the more limited geographic and political scope of a local government may make it less sensitive to the negative impact of those requirements on neighboring jurisdictions and on the region and the state, and

WHEREAS, many local and regional economies in this state rely heavily on tourism, and the surrounding politics can be particularly complex at a local level, significantly heightening concerns over the ability of a local government to impose requirements that would restrict cruise tourism, and

WHEREAS, in light of the matters of regional and statewide concern directly and indirectly affected by such actions, a local government with jurisdiction over a seaport located in or adjoining an area of critical state concern should not be permitted to impose its own requirements that would restrict maritime commerce with respect to federally authorized passenger cruise vessels, and

WHEREAS, due to the potential negative impacts, the permissible scope of local ballot initiatives or referendums and of the powers of certain local governments in areas of critical state concern must be appropriately limited, NOW, THEREFORE,

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 273 Motor Vehicle Insurance Coverage Exclusions
SPONSOR(S): Insurance & Banking Subcommittee, Plakon
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 420

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee	12 Y, 3 N, As CS	Rowley	Luczynski
2) Commerce Committee		Rowley	Hamon

SUMMARY ANALYSIS

Chapter 627, part XI, F.S., Motor Vehicle and Casualty Insurance Contracts, and ch. 324, F.S., the Financial Responsibility Law of 1955, establish motor vehicle insurance coverage requirements. Motor vehicle insurance includes two types of coverage: financial responsibility (i.e., bodily injury, death, and property damage or (BI/PD) and no-fault (i.e., personal injury protection or PIP). A policy providing coverage for BI/PD is required to cover individuals named on the policy and anyone operating a motor vehicle listed on the policy when the operator has the express or implied permission of the insured motor vehicle owner. A policy providing PIP coverage is required to cover the motor vehicle owner, persons operating the insured motor vehicle, relatives residing in the same household as the policyholder, passengers in the motor vehicle, anyone struck and injured by the motor vehicle while not a passenger in a self-propelled vehicle, and anyone specifically named on the policy. For the mandatory motor vehicle insurance coverages of BI/PD and PIP, neither the policyholder nor the insurer can exclude an individual required to be covered by law.

Because there is no authority under the motor vehicle insurance laws for an insurer to exclude a specific individual (i.e., an excluded named driver) from coverage, an insurer may choose not to write a policy in order to avoid covering specific individuals (e.g., a high insurance risk driver). This results in some consumers being denied opportunities to purchase motor vehicle insurance or having to pay more because they live with individuals the policyholder or insurer would like to exclude from the policy. Additionally, policyholders may have their policies cancelled if the license or registration of a co-resident is suspended or revoked.

The bill authorizes the specific exclusion of named drivers from private passenger motor vehicle insurance coverages, except for periods when the excluded named driver is not operating a covered vehicle (e.g., when he or she is a passenger in the vehicle), if the exclusion is discriminatory, or if the exclusion is inconsistent with filed underwriting guidelines. The exclusion of a named driver is contingent upon the written consent of the named insured. The bill requires insurers to list excluded drivers on the policy's declarations page or on a policy endorsement.

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

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Chapter 627, part XI, F.S., Motor Vehicle and Casualty Insurance Contracts, and ch. 324, F.S., the Financial Responsibility Law of 1955, establish motor vehicle insurance coverage requirements. Owners and operators of motor vehicles must maintain the ability to respond in damages at specified minimum amounts for personal injury protection, bodily injury or death, and property damage.

Motor vehicle insurance includes two types of coverage: financial responsibility (i.e., bodily injury, death, and property damage or BI/PD) and no-fault (i.e., personal injury protection or PIP). A policy providing coverage for bodily injury, death, and property damage is required to provide coverage for: [1]

- Individuals named on the policy; and
- Anyone operating a motor vehicle listed on the policy when the operator has the express or implied permission of the insured motor vehicle owner.

A policy providing PIP coverage is required to cover: [2]

- The owner of the motor vehicle;
- Persons operating the insured motor vehicle;
- Relatives residing in the same household[3] as the policyholder;
- Passengers in the motor vehicle;
- Anyone struck by the motor vehicle who suffers bodily injury while not occupying a self-propelled vehicle; and
- Anyone specifically named on the policy.

For the mandatory motor vehicle insurance coverages of BI/PD and PIP, neither the policyholder nor the insurer can exclude an individual required to be covered by law. [4] The law also prohibits an insurer from "knowingly making or permitting unfair discrimination between individuals of the same actuarially supportable class and equal expectation of life."[5] However, an insurer may cancel a motor vehicle insurance policy if the policyholder or any operator who resides in the same household or customarily operates a motor vehicle insured under the policy has her or his driver license revoked or suspended.[6]

Because the law does not expressly permit insurers to exclude or remove specifically named individuals from motor vehicle insurance policies, individuals with resident relatives considered by insurers to be high insurance risks may have existing policies cancelled and/or be denied opportunities to purchase new policies.

Effect of the Bill

The bill authorizes insurers and the named insured to exclude specific individuals from a private passenger motor vehicle insurance policy. An excluded individual would not be covered for damages

[1] S. 324.151(1), F.S.
[2] Ss. 627.736(1) and (4)(e) and 627.7407(5)(b), F.S.
[3] "Relative residing in the same household" means a relative of any degree by blood or by marriage who usually makes her or his home in the same family unit, whether or not temporarily living elsewhere. S. 627.732(6), F.S.
[4] The insurer may shift certain liabilities from BI/PD and PIP coverage to uninsured/underinsured vehicle coverage (UM). S. 627.727(3)(c), F.S. UM coverage includes damages caused to a policyholder, a resident relative of the policyholder, or an individual named on the policy who is injured by non-family member who was operating an insured vehicle, if the BI/PD and PIP coverage excludes coverage of these damages.
[5] S. 626.9541(1)(g), F.S.
[6] Ss. 627.7275 and 627.728, F.S.

that occur if he or she operates a motor vehicle that is insured under a policy that excludes the individual by name. The bill prohibits exclusion for periods when the excluded named driver is not operating a motor vehicle covered under the policy (e.g., a passenger in the vehicle), if the exclusion is discriminatory, or if the exclusion is inconsistent with the underwriting guidelines filed by the insurer. The exclusion is contingent upon the written consent of the named insured. The bill requires insurers to list excluded named drivers on the policy's declarations page or on a policy endorsement.

B. SECTION DIRECTORY:

Section 1. Creates s. 627.747, F.S., relating to named driver exclusion.

Section 2. Amends s. 324.151, F.S., relating to motor vehicle liability policies; required provisions.

Section 3. Amends s. 627.736, F.S., relating to required personal injury protection benefits; exclusions; priority; claims.

Section 4. Amends s. 627.7407, F.S., relating to application of the Florida Motor Vehicle No-Fault Law.

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

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may positively affect consumers by increased availability and/or lowered premiums of motor vehicle insurance written with named driver exclusions. However, high-risk consumers may experience increased application denials or higher premiums if they need to secure their own coverage following exclusion from a policy.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 4, 2021, the Insurance & Banking Subcommittee considered the bill, adopted one amendment, and reported the bill favorably as a committee substitute. The amendment clarifies that an individual may not be excluded from a motor vehicle policy solely because of his or her race, color, religion, sex, national origin, age, handicap, pregnancy, or marital status.

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

A bill to be entitled

An act relating to motor vehicle insurance coverage exclusions; creating s. 627.747, F.S.; providing that private passenger motor vehicle policies may exclude certain identified individuals from specified coverages under certain circumstances; providing that such policies may not exclude coverage under certain circumstances; amending ss. 324.151, 627.736, and 627.7407, F.S.; conforming provisions to changes made by the act; providing an effective date.

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

Section 1. Section 627.747, Florida Statutes, is created to read:

627.747 Named driver exclusion.—

(1) A private passenger motor vehicle policy may exclude an identified individual who is not a named insured from the following coverages while the identified individual is operating a motor vehicle, provided the identified individual is named on the declarations page or by endorsement and the named insured consents in writing to such exclusion:

(a) Notwithstanding the Florida Motor Vehicle No-Fault Law, the personal injury protection coverage specifically applicable to the identified individual's injuries, lost wages,

and death benefits.

(b) Property damage liability coverage.

(c) Bodily injury liability coverage, if required by law and purchased by the named insured.

(d) Uninsured motorist coverage for any damages sustained by the identified excluded individual, if the named insured has purchased such coverage.

(e) Any coverage the named insured is not required by law to purchase.

(2) A private passenger motor vehicle policy may not exclude coverage when:

(a) The identified individual is injured while not operating a motor vehicle;

(b) The identified individual is being excluded solely because of his or her race, color, religion, sex, national origin, age, handicap, pregnancy, or marital status; or

(c) The exclusion is inconsistent with the underwriting rules filed by the insurer pursuant to s. 627.0651(13)(a).

Section 2. Paragraph (a) of subsection (1) of section 324.151, Florida Statutes, is amended to read:

324.151 Motor vehicle liability policies; required provisions.—

(1) A motor vehicle liability policy to be proof of financial responsibility under s. 324.031(1)~~,~~ shall be issued to owners or operators under the following provisions:

(a) An owner's liability insurance policy must ~~shall~~ designate by explicit description or by appropriate reference all motor vehicles with respect to which coverage is thereby granted, must ~~and shall~~ insure the owner named therein, and, except for a named driver excluded under s. 627.747, must insure any other person as operator using such motor vehicle or motor vehicles with the express or implied permission of such owner against loss from the liability imposed by law for damage arising out of the ownership, maintenance, or use of such motor vehicle or motor vehicles within the United States or the Dominion of Canada, subject to limits, exclusive of interest and costs with respect to each such motor vehicle as is provided for under s. 324.021(7). Insurers may make available, with respect to property damage liability coverage, a deductible amount not to exceed $500. In the event of a property damage loss covered by a policy containing a property damage deductible provision, the insurer shall pay to the third-party claimant the amount of any property damage liability settlement or judgment, subject to policy limits, as if no deductible existed.

Section 3. Subsection (1) of section 627.736, Florida Statutes, is amended to read:

627.736 Required personal injury protection benefits; exclusions; priority; claims.—

(1) REQUIRED BENEFITS.—An insurance policy complying with the security requirements of s. 627.733 must provide personal

injury protection to the named insured, relatives residing in the same household unless excluded under s. 627.747, persons operating the insured motor vehicle, passengers in the motor vehicle, and other persons struck by the motor vehicle and suffering bodily injury while not an occupant of a self-propelled vehicle, subject to subsection (2) and paragraph (4)(e), to a limit of $10,000 in medical and disability benefits and $5,000 in death benefits resulting from bodily injury, sickness, disease, or death arising out of the ownership, maintenance, or use of a motor vehicle as follows:

(a) *Medical benefits.*—Eighty percent of all reasonable expenses for medically necessary medical, surgical, X-ray, dental, and rehabilitative services, including prosthetic devices and medically necessary ambulance, hospital, and nursing services if the individual receives initial services and care pursuant to subparagraph 1. within 14 days after the motor vehicle accident. The medical benefits provide reimbursement only for:

1. Initial services and care that are lawfully provided, supervised, ordered, or prescribed by a physician licensed under chapter 458 or chapter 459, a dentist licensed under chapter 466, a chiropractic physician licensed under chapter 460, or an advanced practice registered nurse registered under s. 464.0123 or that are provided in a hospital or in a facility that owns, or is wholly owned by, a hospital. Initial services and care may

also be provided by a person or entity licensed under part III of chapter 401 which provides emergency transportation and treatment.

2. Upon referral by a provider described in subparagraph 1., followup services and care consistent with the underlying medical diagnosis rendered pursuant to subparagraph 1. which may be provided, supervised, ordered, or prescribed only by a physician licensed under chapter 458 or chapter 459, a chiropractic physician licensed under chapter 460, a dentist licensed under chapter 466, or an advanced practice registered nurse registered under s. 464.0123, or, to the extent permitted by applicable law and under the supervision of such physician, osteopathic physician, chiropractic physician, or dentist, by a physician assistant licensed under chapter 458 or chapter 459 or an advanced practice registered nurse licensed under chapter 464. Followup services and care may also be provided by the following persons or entities:

a. A hospital or ambulatory surgical center licensed under chapter 395.

b. An entity wholly owned by one or more physicians licensed under chapter 458 or chapter 459, chiropractic physicians licensed under chapter 460, advanced practice registered nurses registered under s. 464.0123, or dentists licensed under chapter 466 or by such practitioners and the spouse, parent, child, or sibling of such practitioners.

c. An entity that owns or is wholly owned, directly or indirectly, by a hospital or hospitals.

d. A physical therapist licensed under chapter 486, based upon a referral by a provider described in this subparagraph.

e. A health care clinic licensed under part X of chapter 400 which is accredited by an accrediting organization whose standards incorporate comparable regulations required by this state, or

(I) Has a medical director licensed under chapter 458, chapter 459, or chapter 460;

(II) Has been continuously licensed for more than 3 years or is a publicly traded corporation that issues securities traded on an exchange registered with the United States Securities and Exchange Commission as a national securities exchange; and

(III) Provides at least four of the following medical specialties:

(A) General medicine.

(B) Radiography.

(C) Orthopedic medicine.

(D) Physical medicine.

(E) Physical therapy.

(F) Physical rehabilitation.

(G) Prescribing or dispensing outpatient prescription medication.

(H) Laboratory services.

3. Reimbursement for services and care provided in subparagraph 1. or subparagraph 2. up to $10,000 if a physician licensed under chapter 458 or chapter 459, a dentist licensed under chapter 466, a physician assistant licensed under chapter 458 or chapter 459, or an advanced practice registered nurse licensed under chapter 464 has determined that the injured person had an emergency medical condition.

4. Reimbursement for services and care provided in subparagraph 1. or subparagraph 2. is limited to $2,500 if a provider listed in subparagraph 1. or subparagraph 2. determines that the injured person did not have an emergency medical condition.

5. Medical benefits do not include massage as defined in s. 480.033 or acupuncture as defined in s. 457.102, regardless of the person, entity, or licensee providing massage or acupuncture, and a licensed massage therapist or licensed acupuncturist may not be reimbursed for medical benefits under this section.

6. The Financial Services Commission shall adopt by rule the form that must be used by an insurer and a health care provider specified in sub-subparagraph 2.b., sub-subparagraph 2.c., or sub-subparagraph 2.e. to document that the health care provider meets the criteria of this paragraph. Such rule must include a requirement for a sworn statement or affidavit.

(b) *Disability benefits.*—Sixty percent of any loss of gross income and loss of earning capacity per individual from inability to work proximately caused by the injury sustained by the injured person, plus all expenses reasonably incurred in obtaining from others ordinary and necessary services in lieu of those that, but for the injury, the injured person would have performed without income for the benefit of his or her household. All disability benefits payable under this provision must be paid at least every 2 weeks.

(c) *Death benefits.*—Death benefits of $5,000 per individual. Death benefits are in addition to the medical and disability benefits provided under the insurance policy. The insurer may pay death benefits to the executor or administrator of the deceased, to any of the deceased's relatives by blood, legal adoption, or marriage, or to any person appearing to the insurer to be equitably entitled to such benefits.

Only insurers writing motor vehicle liability insurance in this state may provide the required benefits of this section, and such insurer may not require the purchase of any other motor vehicle coverage other than the purchase of property damage liability coverage as required by s. 627.7275 as a condition for providing such benefits. Insurers may not require that property damage liability insurance in an amount greater than $10,000 be purchased in conjunction with personal injury protection. Such

insurers shall make benefits and required property damage liability insurance coverage available through normal marketing channels. An insurer writing motor vehicle liability insurance in this state who fails to comply with such availability requirement as a general business practice violates part IX of chapter 626, and such violation constitutes an unfair method of competition or an unfair or deceptive act or practice involving the business of insurance. An insurer committing such violation is subject to the penalties provided under that part, as well as those provided elsewhere in the insurance code.

Section 4. Paragraph (a) of subsection (5) of section 627.7407, Florida Statutes, is amended to read:

627.7407 Application of the Florida Motor Vehicle No-Fault Law.—

(5) No later than November 15, 2007, each motor vehicle insurer shall provide notice of the provisions of this section to each motor vehicle insured who is subject to subsection (1). The notice is not subject to approval by the Office of Insurance Regulation. The notice must clearly inform the policyholder:

(a) That beginning on January 1, 2008, Florida law requires the policyholder to maintain personal injury protection ("PIP") insurance coverage and that this insurance pays covered medical expenses for injuries sustained in a motor vehicle crash by the policyholder, passengers, and relatives residing in the policyholder's household unless excluded under s. 627.747.

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

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

COMMERCE COMMITTEE

CS/HB 273 by Rep. Plakon
Motor Vehicle Insurance Coverage Exclusions

AMENDMENT SUMMARY
April 19, 2021

Amendment 1 by Rep. Plakon (lines 14-69):

- Provides that a private passenger motor vehicle policy may exclude coverages for all claims or suits resulting from the operation of a motor vehicle by an identified individual who is not a named insured, provided the identified individual is named on the declarations page or by endorsement and the named insured consents in writing to such exclusion.
- Clarifies that the identified individual must comply with existing financial responsibility and security requirements before operating a motor vehicle, but that such compliance does not affect the validity of a policy's exclusion of coverage.
- Makes changes to refer to the excluded named driver consistently as the "identified individual".

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 Plakon offered the following:

Amendment (with title amendment)

Remove lines 14-69 and insert:

Section 1. Section 627.747, Florida Statutes, is created to read:

627.747 Named driver exclusion.—

(1) A private passenger motor vehicle policy may exclude the following coverages for all claims or suits resulting from the operation of a motor vehicle by an identified individual who is not a named insured, provided the identified individual is named on the declarations page or by endorsement and the named insured consents in writing to such exclusion:

(a) Notwithstanding the Florida Motor Vehicle No-Fault Law, the personal injury protection coverage specifically

applicable to the identified individual's injuries, lost wages, and death benefits.

(b) Property damage liability coverage.

(c) Bodily injury liability coverage, if required by law and purchased by the named insured.

(d) Uninsured motorist coverage for any damages sustained by the identified individual, if the named insured has purchased such coverage.

(e) Any coverage the named insured is not required by law to purchase.

(2) A private passenger motor vehicle policy may not exclude coverage when:

(a) The identified individual is injured while not operating a motor vehicle;

(b) The identified individual is being excluded solely because of his or her race, color, religion, sex, national origin, age, handicap, pregnancy, or marital status; or

(c) The exclusion is inconsistent with the underwriting rules filed by the insurer pursuant to s. 627.0651(13)(a).

(3) An identified individual excluded pursuant to this section must:

(a) Establish, maintain, and show proof of financial ability to respond for damages arising out of the ownership, maintenance or use of a motor vehicle as required by chapter 324; and

(b) Maintain security as required by s. 627.733.

(4) An identified individual's failure to comply with subsection (3) will not invalidate a properly executed exclusion issued in compliance with subsections (1) and (2).

Section 2. Paragraph (a) of subsection (1) of section 324.151, Florida Statutes, is amended to read:

324.151 Motor vehicle liability policies; required provisions.—

(1) A motor vehicle liability policy to be proof of financial responsibility under s. 324.031(1)~~,~~ shall be issued to owners or operators under the following provisions:

(a) An owner's liability insurance policy must ~~shall~~ designate by explicit description or by appropriate reference all motor vehicles with respect to which coverage is thereby granted, must ~~and shall~~ insure the owner named therein, and, except for an identified individual excluded under s. 627.747, must insure any other person as operator using such motor vehicle or motor vehicles with the express or implied permission of such owner against loss from the liability imposed by law for damage arising out of the ownership, maintenance, or use of such motor vehicle or motor vehicles within the United States or the Dominion of Canada, subject to limits, exclusive of interest and costs with respect to each such motor vehicle as is provided for under s. 324.021(7). Insurers may make available, with respect to property damage liability coverage, a deductible amount not

to exceed $500. In the event of a property damage loss covered by a policy containing a property damage deductible provision, the insurer shall pay to the third-party claimant the amount of any property damage liability settlement or judgment, subject to policy limits, as if no deductible existed.

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

Remove line 8 and insert:

circumstances; requiring identified individual to meet certain requirements for financial responsibility; providing that the exclusion remains valid under specified circumstances; amending ss. 324.151, 627.736, and

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 305 Insurance
SPONSOR(S): Rommel and others
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee	12 Y, 2 N, As CS	Fortenberry	Luczynski
2) Civil Justice & Property Rights Subcommittee	11 Y, 7 N	Mawn	Jones
3) Commerce Committee		Fortenberry	Hamon

SUMMARY ANALYSIS

The bill makes several changes related to insurance:

- **Residential Property Insurance Claims for Roof Damage –** Establishes that a contractor or unlicensed person acting on behalf of the contractor may not solicit or incentivize the filing of a roof damage insurance claim by a residential property owner or interpret policy provisions. It also establishes that a public adjuster, a public adjuster apprentice, or unlicensed persons acting on their behalf may not incentivize the filing of a roof damage insurance claim by a residential property insurance owner.
- **Office of Insurance Regulation (OIR) – Authority to examine managing general agents (MGAs) –** Clarifies that OIR has the authority to examine MGAs, including affiliates of insurers, as it examines insurers, even if the MGA represents a single domestic insurer. It requires that each insurer paying an affiliate produce information about fees paid to the affiliate upon request by OIR. It also requires that all MGAs execute contracts with the insurers they do business with even if they are affiliates of the insurers.
- **Collection of property insurance claims litigation data by OIR –** All insurers with a Florida certificate of authority must file quarterly and annual reports with OIR that contain various financial data and actuarial opinions. However, they are not required to collect or report data regarding the litigation of property insurance claims. The bill establishes that each insurer or insurer group doing business in Florida shall file specific data regarding litigation of personal and commercial residential property insurance claims on a quarterly basis.
- **Citizens Property Insurance Corporation (Citizens) –** Makes several changes to the operations of, and requirements for, Citizens, the state-run property insurer:
    - Revises the eligibility for residential property owners to obtain coverage from Citizens so that they are not eligible for Citizens' coverage if they can obtain coverage from private insurers that is less than 20 percent greater than the premium for comparable coverage from Citizens.
    - Establishes that if Citizens does not buy reinsurance to cover its projected 100-year probable maximum loss, it must still include the cost of such reinsurance in its rate calculations.
    - Establishes that no employees of Citizens may receive salaries in excess of 150 percent of the salary received by the head of OIR, with certain exceptions.
- **Notice of property insurance claims –** Notice of hurricane or windstorm loss must be provided to a property insurer within three years of the date of loss. Notice for all other types of property insurance claims must be provided within five years of the date of loss. The bill changes the notice of claim deadlines in the Insurance Code so that notice of any property insurance claim must be provided to a property insurer within two years of the date of loss.
- **Presuit notice and demand requirements for property insurance claims –** Creates new statutory requirements for residential or commercial property suits that are not brought by an assignee, including a ten-day presuit notice and demand, after a determination of coverage, before bringing suit against an insurer. An insurer served with this notice must respond in writing within ten days by either making a settlement offer or requiring participation in an appraisal or alternative dispute resolution proceeding as provided for in the policy.

The bill has no impact on state or local government revenues or expenditures. It may have a positive direct economic impact on the private sector.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Residential Property Insurance Claims for Roof Damage

Background

The Florida Office of Insurance Regulation (OIR) has reported a significant increase in the number of roof damage claims, many of which include litigation.[1] These roof damage claims include claims made by residential property owners after being solicited to file an insurance claim that they may not otherwise have filed but for the promise of a new roof at no cost to the property owner.[2]

Effect of the Bill

The bill limits certain property insurance practices by contractors, public adjusters, public adjuster apprentices, and those unlicensed persons acting on their behalf.

Contractors

The bill establishes that no contractor, including a general, building, residential, or roofing contractors, or someone acting on the contractor's behalf, may:

- Solicit a residential property owner to file an insurance claim.
- Offer an incentive to a residential property owner for allowing the inspection of the residential property owner's roof or for making an insurance claim for roof damage.
- Offer or accept any compensation or reward for referral of services for which property insurance proceeds are payable.
- Interpret policy provisions, advise an insured about policy provisions, or adjust claims on behalf of an insurer unless licensed as a public adjuster.
- Provide an insured with an agreement authorizing repairs without providing a good faith estimate of the cost of repairs.

The bill establishes that a contractor may not enter into a contract with a residential property owner to repair or replace a roof without including notice in the contract that the contractor is prohibited from engaging in the above acts. If the contractor fails to include the notice in the contract, the property owner may void the contract within 10 days of its execution.

Public Adjusters

The bill establishes that a public adjuster, public adjuster apprentice, or those acting on their behalf may not:

- Offer an incentive to a residential property owner for allowing the inspection of the residential property owner's roof or for making an insurance claim for roof damage.
- Offer or receive compensation or a reward for referral of any services for which property insurance proceeds would be used for roofing repairs or replacement.

Penalties

[1] Report from David Altmaier, Florida Insurance Commissioner, to Chair Blaise Ingoglia, Commerce Committee, regarding cost drivers affecting Florida's insurance rates, p. 7 (Feb. 24, 2021).
[2] *Id.* A "free" roof replacement may be achieved by giving a residential property owner whose policy provides for replacement cost coverage for a roof a gift card or something else valued at the amount of the deductible under the policy so that the entire cost of a new roof is paid by the insurer and the individual soliciting the residential property owner.

The bill provides that any contractor, public adjuster, public adjuster apprentice, or unlicensed person acting on their behalf may be subject to a fine of up to $10,000 per violation for each of the statutory prohibitions established. Finally, the bill provides that any unlicensed person who engages in the prohibited acts shall be guilty of unlicensed contracting or public adjusting, as applicable.

OIR – Authority to Examine Managing General Agents (MGAs)

Background

MGAs

An MGA is a specialized type of insurance agent or broker that has underwriting authority from an insurer.[3] MGAs can perform certain functions that insurers typically handle, including binding coverage, underwriting and pricing, agent appointments, and claims adjusting and settlement.[4] An MGA may be an affiliate of an insurer. Section 624.10(1), F.S., defines an affiliate as an entity that exercises control over or is directly or indirectly controlled by an insurer. Under current law, MGAs must enter into contracts with insurers with which they do business unless the MGA is a controlled or controlling person of the insurer (i.e., an affiliate).[5] These contracts must specify the division of responsibilities between the insurer and the MGA.[6]

Examination of Insurers and MGAs

OIR is responsible for examining the affairs, transactions, accounts, records, and assets of each insurer that holds a certificate of authority to transact insurance business in Florida.[7] Examination authority extends to the examination of MGAs[8] unless the MGA solely represents a single domestic insurer.[9] With certain exceptions, OIR must examine domestic insurers[10] at least once every five years and the exam shall cover the preceding five fiscal years.[11]

As part of the examination process, all persons being examined must make available to OIR the accounts, records, documents, files, information, assets, and matters in their possession or control that relate to the subject of the examination.[12] As part of an examination, OIR reviews contracts between insurers and MGAs, so that it can determine how much an insurer is paying its MGA and what services the insurer is receiving for the fee it pays. However, the lack of contracts between insurers and their affiliate MGAs sometimes makes it difficult to determine how much the insurer is paying and what services it is receiving from the MGA.

Effect of the Bill

The bill clarifies that OIR has the same authority to examine MGAs as it has to examine insurers, whether or not an MGA is an affiliate of an insurer. This authority applies even if the MGA solely represents a single domestic insurer. The bill also requires each insurer paying an affiliate to produce information regarding the fee paid to the affiliate upon request by OIR. OIR may determine whether the fee an insurer pays to an affiliate is fair and reasonable and, in so doing, may consider the actual cost of the services being provided in exchange for the fee. Further, the bill establishes that all MGAs must execute contracts with the insurers that they do business with, even if they are MGAs that control, or are controlled by, an insurer.

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[3] IRMI, https://www.irmi.com/term/insurance-definitions/managing-general-agent (last visited Apr. 2, 2021).
[4] *Id.*
[5] S. 626.7451, F.S.
[6] *Id.*
[7] S. 624.316(1)(a), F.S.
[8] *Id.*
[9] S. 626.7452, F.S.
[10] A domestic insurer is one formed under the laws of Florida. S. 624.06(1), F.S.
[11] S. 624.316(2)(a), F.S. While s. 624.316(1)(a), F.S., clearly states that OIR may examine MGAs, because some MGAs are considered affiliates of insurers, and s. 624.316(2)(a), F.S., does not specify that OIR may examine affiliates in the same way as insurers, OIR has indicated that some MGAs have not been completely cooperative with the examination process.
[12] S. 624.318(2), F.S.

Collection of Property Insurance Claims Litigation Data by OIR

Background

All insurers with a Florida certificate of authority to transact insurance business must file quarterly and annual reports with OIR containing various financial data and actuarial opinions.[13] However, the law does not currently specify that insurers must report data regarding the litigation of claims.

OIR recently conducted a data survey of property insurers to gather information regarding the litigation of personal or commercial residential property insurance claims.[14] In response to this survey, several insurers indicated that they could not provide OIR with answers to questions related to litigation trends because they did not collect the requested data as part of their claims evaluation and adjusting process.[15]

Effect of the Bill

The bill establishes that each insurer or insurer group doing business in Florida must provide specific pieces of data regarding litigation of personal and commercial residential property insurance claims to OIR on a quarterly basis. This data includes, but is not limited to, the following information on a per claim basis:

- Type of policy;
- Date, location, and type of loss;
- Dates on which the claim was reported to the insurer, closed by the insurer, and reopened by the insurer;
- Whether the claimant had a public adjuster or an attorney;
- Total amounts that the insurer paid for indemnity, loss adjustment expenses,[16] and insured's attorney fees;
- Whether the insured's attorney requested that a contingency risk multiplier (CRM)[17] be applied to the attorney fees calculation and, if so, what CRM was applied.

If insurers collect and report this data, OIR and the Legislature should be able to more effectively identify current and emerging property insurance litigation trends that may be affecting insurance rates.[18]

Citizens Property Insurance Corporation (Citizens)

Citizens is a state-created, not-for-profit, tax-exempt government entity that is an integral part of the state, whose public purpose is to provide property insurance to those unable to find affordable coverage in the private market.[19]

[13] S. 624.424, F.S.
[14] Altmaier, *supra*, note 1, at 12.
[15] *Id.*
[16] Loss adjustment expenses are the costs associated with investigating and adjusting losses or insurance claims. IRMI, https://www.irmi.com/term/insurance-definitions/loss-adjustment-expense (last visited Apr. 2, 2021).
[17] A CRM is a multiplier applied to attorney fees that reflects the risk of attorneys accepting, on a contingency fee basis, cases that may be difficult to win. *See e.g., Joyce v. Federated Nat'l Ins. Co.*, 228 So. 3d 1122 (Fla. 2017).
[18] Altmaier, *supra*, note 1, at 12.
[19] S. 627.351(6)(a)1., F.S.

Eligibility and Rates

Background

New applicants are eligible for coverage from Citizens if no private carrier will write them a policy for a premium that is less than 15 percent greater than what Citizens would offer them for comparable coverage.[20] The rate cap, also known as the "glide path," is not closing the gap between Citizens rates and private market rates. Instead, because of the rate cap and the increasing rates of private property insurance, the gap is growing and making Citizens more like a competitor to private insurers than an insurer of last resort. Annual rate increases for existing Citizens' policyholders are capped at no more than 10 percent for any single policy.[21] It is unclear if, or how, the law allows OIR to approve a rate reduction for Citizens.

Because Citizens' rates are often well below those of private carriers, Citizens may be more competitive than otherwise intended. Due to Citizens' structure, its rates do not contain certain elements that the rates of private insurers contain. Citizens does not pay taxes like private carriers do and does not need to purchase as much reinsurance as private carriers do due to higher levels of capital and surplus.

Current law also requires that Citizens make its best efforts to procure catastrophe reinsurance at reasonable rates to cover its projected 100-year probable maximum loss.[22] Due to the high cost of reinsurance over the recent years, Citizens has determined that it is not available at reasonable rates and has not purchased it. This lack of purchase has contributed to its rates remaining more competitive and more consumers being eligible for coverage from Citizens.

Effect of the Bill

The bill establishes that residential property owners are not eligible for coverage from Citizens if they can obtain coverage from private insurers that is less than 20 percent greater than the premium for comparable coverage from Citizens.

The bill also establishes that on or after January 1, 2022, Citizens must implement rate increases that do not exceed the following percentages for any single policy that it issues:

- Eleven percent for 2022;
- Twelve percent for 2023;
- Thirteen percent for 2024;
- Fourteen percent for 2025;
- Fifteen percent for 2026 and all subsequent years.

Additionally, the bill prohibits Citizens from filing with OIR a request for the approval of a rate reduction at any time.

The bill clarifies that Citizens need not purchase catastrophe reinsurance to cover its projected 100-year probable maximum loss if it is not available at reasonable rates. However, Citizens must include the cost of this reinsurance in its rate calculations even if it does not purchase the reinsurance.

[20] S. 627.351(6)(c)5.a., F.S.
[21] S. 627.351(6)(n)6., F.S.
[22] S. 627.351(6)(c)9., F.S. "Probable maximum loss" refers to the value that may be reasonably expected to be lost in a single casualty. IRMI, https://www.irmi.com/term/insurance-definitions/probable-maximum-loss (last visited Apr. 2, 2021). If an insurer is buying reinsurance to cover its 100-year probable maximum loss, it is purchasing reinsurance to cover the maximum loss that has a chance of occurring once in 100 years.

Salaries of Citizens' Personnel

Background

Citizens operates pursuant to a plan of operation (plan) that is approved by the Financial Services Commission (FSC).[23] Pursuant to the applicable statute, the plan may contain certain criteria regarding Citizens' employees.[24] Additionally, the applicable statute specifies that candidates for senior management positions with Citizens must undergo background checks, that employees must attest annually that they do not have any conflicts of interests with their employment, and that certain employees of Citizens are subject to ethics disclosures.[25] However, neither the statute nor the plan provide any parameters for the salaries that Citizens may pay its employees.

Effect of the Bill

The bill provides statutory guidance that Citizens can utilize in its plan to set parameters for employee compensation. Specifically, the bill establishes that no employees of Citizens may receive salaries in excess of 150 percent of the salary received by the Florida Insurance Commissioner, with certain exceptions. Anyone employed by Citizens as of June 30, 2021, whose salary exceeds this cap may keep his or her salary, but may not receive a raise. Anyone employed by Citizens whose salary does not exceed this cap as of June 30, 2021, may receive a raise as long as that raise does not cause his or her salary to exceed this cap.

Notice of Property Insurance Claims

Background

Until 2011, the Florida Insurance Code (Code)[26] did not contain a time limit for giving notice of any type of property insurance claim. Section 95.11, F.S., requires that actions on contracts be brought within five years. Because an insurance policy is a contract, the five-year statute of limitations for contract actions generally applied to claims under insurance policies. Since a claim must have been made before a policyholder could sue for breach of contract, and a policyholder had five years to sue for breach of contract, the claim must have been made within five years of the date of loss.

Section 627.70132, F.S., enacted in 2011, established that notice of any hurricane or windstorm claim, supplemental claim, or reopened claim[27] under a property insurance policy must be provided to an insurer within three years after the hurricane made landfall or the windstorm caused the covered damage. Any claim for which notice is not given within the three-year timeframe is barred.[28] The three-year time limit for providing notice of a hurricane or windstorm claim does not affect the five-year statute of limitations for bringing suit under s. 95.11, F.S.[29] This means that while notice of a windstorm or hurricane claim must be provided to an insurer within three years of the date of loss, suit may still be brought for an additional two years past the notice deadline.[30] The time limit for notice of all other property insurance claims besides hurricane and windstorm claims has remained equal to the five-year statute of limitations because statutes do not specify otherwise.

[23] S 627.351(6)(a)2., F.S. The FSC is composed of the Governor, Attorney General, Chief Financial Officer, and Commissioner of Agriculture. S. 20.121(3), F.S.
[24] S. 627.351(6)(c)3., F.S.
[25] S. 627.351(6)(d), F.S.
[26] The Florida Insurance Code is comprised of chapters 624-632, 634-636, 641, 642, 648, and 651, F.S.
[27] S. 627.70132, F.S., defines both "supplemental claim" and "reopened claim" as "any additional claim for recovery from the insurer for losses from the same hurricane or windstorm which the insurer has previously adjusted pursuant to the initial claim." Because these terms have the same definition, it is unclear why the statute uses both of them.
[28] S. 627.70132, F.S.
[29] *Id.*
[30] Often, the type of suit that an insured brings against an insurer is a breach of contract suit based upon a denial of a claim.

Effect of the Bill

The bill changes the notice of claim deadlines in the Code so that notice of any property insurance claim, including a claim made under a property insurance policy issued by an eligible surplus lines insurer, must be provided to a property insurer within two years of the date of loss. It also makes technical changes to the statute regarding alternative dispute resolution of property insurance claims so that the changes to the notice of claim statute do not conflict with that statute.[31]

Presuit Notice and Demand Requirements for Property Insurance Claims

Background

Under existing law, within 90 days after a residential property insurer receives a notice of an initial, reopened, or supplemental property insurance claim from a policyholder, the insurer must pay or deny the claim or a portion of the claim, unless the failure to pay is due to circumstances beyond the insurer's control which reasonably prevent payment.[32] In some circumstances, a claimant will hire an attorney and file suit against an insurer before the expiration of the allotted time for the insurer to pay or deny a claim. In contrast, as a condition precedent to bringing a third-party cause of action to enforce an assignment agreement against an insurer, the assignee must provide the name insured and the assignor a written notice of intent to initiate litigation, delivered at least ten business days before filing suit, but not before the insurer has made a determination of coverage.[33]

Effect of the Bill

The bill creates a new statutory section which applies to all residential and commercial property suits not brought by an assignee. Under that section, a claimant or claimant's attorney must give presuit notice of intent to initiate litigation at least ten business days prior to filing suit, but not before the insurer has made a determination of coverage as provided for under existing law.[34] The notice must include the following information:

- Insurer's acts or omissions that give rise to the suit;
- Damages in dispute;
- Demand;[35] and
- Amount of reasonable and necessary attorney fees and costs incurred by the claimant.

An insurer served with a presuit notice must respond to the notice in writing within ten business days after receiving the notice by making a settlement offer or by requiring the claimant to participate in appraisal or another form of alternative dispute resolution as provided for under the insurance policy. The bill establishes that time limits for filing a suit under s. 95.11, F.S., are tolled during the ten-day period for the insurer to respond to the presuit notice and while appraisal or alternative dispute resolution is ongoing.

The bill also requires that a court dismiss without prejudice any claimant's suit relating to a claim for which presuit notice is given if the suit is commenced before the expiration of the ten-day period for the insurer to respond. If a court dismissed a claimant's suit under these circumstances, the claimant's attorney is not entitled to an award of attorney fees for services rendered before the suit's dismissal.

Finally, the bill:

- Establishes that presuit notice is admissible as evidence in a civil suit or an alternative dispute resolution proceeding relating to the claim in which the notice is given;

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[31] S. 627.7015, F.S.
[32] S. 627.70131, F.S. This statute is sometimes referred to as the "prompt pay" statute for property insurance claims.
[33] An assignee is someone who receives policy rights through an assignment by a policyholder (assignor). IRMI, https://www.irmi.com/term/insurance-definitions/assignee (last visited April 2, 2021). *See* s. 627.7152, F.S., for presuit requirements placed on assignees.
[34] S. 627.70131, F.S.
[35] The bill defines demand as "the specific amount alleged to be owed by the insurer to the claimant under the residential or commercial property insurance policy."

- Provides that the presuit notice does not limit the evidence of attorney fees or costs, damages, or loss, which may be offered at trial; and
- Provides that the presuit notice does not relieve the insured or an assignee of the burden of providing any other notices required by law.

B. SECTION DIRECTORY:

Section 1. Creates s. 489.147, F.S., relating to prohibited property insurance practices.

Section 2. Amends s. 624.316, F.S., relating to examination of insurers.

Section 3. Amends s. 624.318, F.S., relating to conduct of examination or investigation; access to records; correction of accounts; appraisals.

Section 4. Amends s. 624.424, F.S., relating to annual statement and other information.

Section 5. Amends s. 626.7451, F.S., relating to managing general agents; required contract provisions.

Section 6. Amends s. 626.7452, F.S., relating to managing general agents; examination authority.

Section 7. Amends s. 626.854, F.S., relating to "public adjuster" defined; prohibitions.

Section 8. Amends s. 627.351, F.S., relating to insurance risk reapportionment plans.

Section 9. Amends s. 627.3518, F.S., relating to Citizens Property Insurance Corporation policyholder eligibility clearinghouse program.

Section 10. Amends s. 627.70132, F.S., relating to notice of windstorm or hurricane claim.

Section 11. Amends s. 627.7015, F.S., relating to alternative procedure for resolution of disputed property insurance claims.

Section 12. Creates s. 627.70152, F.S., relating to suits arising under a property insurance policy.

Section 13. Provides an effective date of July 1, 2021.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

To the extent the bill reduces property insurance rates and claims litigation, the bill may have a positive indeterminate impact on the private sector.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill requires no additional rulemaking authority for OIR. While the bill requires the adoption of a form prescribed by the FSC on which insurers will report their property insurance claims litigation data, the Florida Insurance Code contains existing authority for the promulgation of such forms by the FSC.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Although the Department of Financial Services (DFS) has very broad rulemaking authority, consideration should be given to amending the bill to require DFS to promulgate rules regarding the assessment of fines against public adjusters, public adjuster apprentices, and unlicensed persons engaging in public adjusting who engage in the prohibited acts set forth in the bill.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 23, 2021, the Insurance & Banking Subcommittee considered a proposed committee substitute (PCS) along with one amendment to the committee substitute and reported the bill favorably as a committee substitute. The PCS:

- Removed the contingency risk multiplier provision.
- Removed the portion that clarified that that insurers are authorized to provide limited roof coverage in personal lines residential property insurance policies by including a roof surface reimbursement schedule.
- Clarified that OIR has the same authority to examine MGAs that it has to examine insurers.
- Established that each insurer or insurer group doing business in Florida must provide specific pieces of data regarding litigation of personal and residential property insurance claims to OIR on a quarterly basis.
- Modified certain rating and eligibility requirements for Citizens.
- Placed salary limits on Citizens' employees.
- Added presuit notice requirements for all residential and commercial property suits not brought by an assignee.

The amendment to the PCS made the following changes:

- Established that no contractor, including a general, building, residential, or roofing contractor, or someone acting on the contractor's behalf may:
  - Solicit a residential property owner to file an insurance claim.
  - Offer an incentive to a residential homeowner for allowing the inspection of the residential property owner's roof or for making an insurance claim for roof damage.
  - Offer or accept any compensation or reward for referral of services for which property insurance proceeds are payable.
  - Interpret policy provisions, advise an insured about policy provisions, or adjust claims on behalf of an insured unless licensed as a public adjuster.
  - Provide an insured with an agreement authorizing repairs without providing a good faith estimate of the cost of the repairs.
- Established that a contractor may not enter into a contract with a residential property owner to repair or replace a roof without including notice that the contractor is prohibited from engaging in certain acts.
- Established that a public adjuster, public adjuster apprentice, or those acting on their behalf may not:
  - Offer an incentive to a residential homeowner for allowing the inspection of the residential property owner's roof or for making an insurance claim for roof damage.
  - Offer or receive any compensation or reward for referral of any services for which property insurance proceeds would be used for roofing repairs or replacement.
- Provided that any contractor, public adjuster, public adjuster apprentice, or person acting on their behalf may be subject to a fine of $10,000 per violation for each of the statutory prohibitions.
- Provided that any unlicensed person who engages in the prohibited acts shall be guilty of unlicensed contracting or public adjusting, as applicable, and is subject to a fine of $10,000 per violation for each of the statutory prohibitions.

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

A bill to be entitled

An act relating to insurance; creating s. 489.147, F.S.; providing definitions; prohibiting certain practices by contractors; providing for disciplinary proceedings; providing that the acts of any persons on behalf of a contractor are considered the acts of a contractor; providing that certain acts constitute unlicensed contracting; providing penalties; prohibiting a contractor from executing a contract with a residential property owner for a roofing repair or replacement unless certain notice is included; authorizing the residential property owner to void the contract within a specified timeframe when such notice is not included; amending s. 624.316, F.S.; authorizing the Office of Insurance Regulation to examine insurer affiliates; amending s. 624.318, F.S.; requiring insurer affiliates to provide certain items and information to the office during examination or investigation; amending s. 624.424, F.S.; requiring property insurers to include certain data regarding closed claims in their quarterly reports to the office; requiring insurers to provide information regarding payments to affiliates upon request by the office; requiring the office to consider certain costs in determining whether payments made by an insurer to

an affiliate are fair and reasonable; amending s. 626.7451, F.S; requiring that managing general agents enter into specified contracts with insurers even when the managing general agents control, or are controlled by, the insurers; amending s. 626.7452, F.S.; providing that a managing general agent may be examined as if it were the insurer even if the managing general agent solely represents a single domestic insurer; amending s. 626.854, F.S.; prohibiting certain acts by a public adjuster, public adjuster apprentice, and certain other persons; providing that certain acts constitute unlicensed practice of public adjusting; providing penalties; amending s. 627.351, F.S.; revising a procedure that the plan of operation of Citizens Property Insurance Corporation must provide; requiring the corporation to include the costs of catastrophe reinsurance to its projected 100-year probable maximum loss in its rate calculations even if the corporation does not purchase such reinsurance; deleting obsolete language relating to the corporation's rate filings; requiring the corporation to annually implement a rate increase that does not exceed a certain percent for specified years; prohibiting the corporation from seeking approval by the office for a rate reduction; providing limits on

salaries and salary raises of current employees of the corporation and employees hired by the corporation on or after a specified date; amending s. 627.3518, F.S.; conforming a cross-reference; amending s. 627.70132, F.S.; providing that claims, supplemental claims, and reopened claims under certain property insurance policies for loss or damage caused by perils are barred unless notice is given within a specified timeframe; revising the timeframe for notice for loss or damage caused by windstorm or hurricane; providing date of loss for weather-related events; revising the definition of the term "supplemental claim" or "reopened claim" to include all perils; amending s. 627.7015, F.S.; conforming a provision to changes made by the act; creating s. 627.70152, F.S.; providing applicability; providing definitions; requiring that written notice be provided to an insurer before suit is filed under an insurance policy; requiring that certain information be included in the notice; requiring that notice be served within specified time limits; requiring that an insurer provide a response to the notice within specified timeframe; providing for tolling of time if appropriate; requiring an insurer to investigate, review, and evaluate a dispute stated in the notice; requiring an insurer to

investigate each claim in the notice in accordance with the Florida Insurance Code; requiring a court to dismiss without prejudice a claimant's suit under certain circumstances; providing for evidentiary requirements regarding the notice; prohibiting a court from awarding attorney fees to a claimant under certain circumstances; providing an effective date.

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

Section 1. Section 489.147, Florida Statutes, is created to read:

489.147 Prohibited property insurance practices.—

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

(a) "Prohibited advertisement" means any written or electronic communication that encourages, instructs, or induces a consumer to contact a contractor or public adjuster for the purpose of making an insurance claim for roof damage. The term includes, but is not limited to, door hangers, business cards, magnets, flyers, pamphlets, and e-mails.

(b) "Soliciting" means contacting:

1. In person;

2. By electronic means, including, but not limited to, e-mail, telephone, and any other real-time communication directed to a specific person; or

3. By delivery to a specific person.

(2) A contractor may not directly or indirectly engage in any of the following practices:

(a) Soliciting a residential property owner by means of a prohibited advertisement.

(b) Offering to a residential property owner a rebate, gift, gift card, cash, coupon, waiver of any insurance deductible, or any other thing of value in exchange for:

1. Allowing the contractor to conduct an inspection of the residential property owner's roof; or

2. Making an insurance claim for damage to the residential property owner's roof.

(c) Offering, delivering, receiving, or accepting any compensation, inducement, or reward for the referral of any services for which property insurance proceeds are payable.

(d) Interpreting policy provisions or advising an insured regarding coverages or duties under the insured's property insurance policy or adjusting a property insurance claim on behalf of the insured, unless the contractor holds a license as a public adjuster pursuant to part VI of chapter 626.

(e) Providing an insured with an agreement authorizing repairs without providing a good faith estimate of the itemized and detailed cost of services and materials for repairs undertaken pursuant to a property insurance claim. A contractor does not violate this paragraph if, as a result of the process

of the insurer adjusting a claim, the actual cost of repairs differs from the initial estimate.

(3) A contractor who violates this section is subject to disciplinary proceedings as set forth in s. 489.129. A contractor may receive up to a $10,000 fine for each violation of this section.

(4) For the purposes of this section:

(a) The acts of any person on behalf of a contractor, including, but not limited to, the acts of a compensated employee or a nonemployee who is compensated for soliciting, shall be considered the actions of the contractor.

(b) An unlicensed person who engages in an act prohibited by this section is guilty of unlicensed contracting and is subject to the penalties set forth in s. 489.13. Notwithstanding s. 489.13(3), an unlicensed person who violates this section may be fined up to $10,000 for each violation.

(5) A contractor may not execute a contract with a residential property owner to repair or replace a roof without including a notice that the contractor may not engage in the practices set forth in paragraph (2)(b). If the contractor fails to include such notice, the residential property owner may void the contract within 10 days after executing it.

Section 2. Paragraph (a) of subsection (2) of section 624.316, Florida Statutes, is amended to read:

Section 624.316 Examination of insurers.—

(2)(a) Except as provided in paragraph (f), the office may examine each insurer, including affiliates, as often as may be warranted for the protection of the policyholders and in the public interest, and shall examine each domestic insurer not less frequently than once every 5 years. The examination shall cover the preceding 5 fiscal years of the insurer and shall be commenced within 12 months after the end of the most recent fiscal year being covered by the examination. The examination may cover any period of the insurer's operations since the last previous examination. The examination may include examination of events subsequent to the end of the most recent fiscal year and the events of any prior period that affect the present financial condition of the insurer.

Section 3. Subsection (2) of section 624.318, Florida Statutes, is amended to read:

624.318 Conduct of examination or investigation; access to records; correction of accounts; appraisals.—

(2) Every person, including an affiliate, being examined or investigated, and its officers, attorneys, employees, agents, and representatives, shall make freely available to the department or office or its examiners or investigators the accounts, records, documents, files, information, assets, and matters in their possession or control relating to the subject of the examination or investigation. An agent who provides other products or services or maintains customer information not

related to insurance must maintain records relating to insurance products and transactions separately if necessary to give the department or office access to such records. If records relating to the insurance transactions are maintained by an agent on premises owned or operated by a third party, the agent and the third party must provide access to the records by the department or office.

Section 4. Subsection (11) of section 624.424, Florida Statutes, is renumbered as subsection (12), and a new subsection (11) and subsection (13) are added to that section, to read:

624.424 Annual statement and other information.—

(11) Each authorized insurer or insurer group issuing personal lines or commercial lines residential property insurance policies in this state shall file with the office on a quarterly basis in conjunction with the statements required by paragraph (1)(a) a supplemental report on an individual and group basis for closed claims. The report must be on a form prescribed by the commission and must include the following information for each claim closed, excluding liability only claims, within the reporting period in this state:

(a) Unique claim identification number.

(b) Type of policy.

(c) Zip code of the property where the claim occurred.

(d) County where the claim occurred.

(e) Date of loss.

(f) Peril or type of loss.

(g) Date reported to insurer.

(h) Initial date closed.

(i) Date claim most recently reopened, if applicable.

(j) Most recent date closed.

(k) Public adjuster on the claim.

(l) Attorney for the claimant.

(m) Water mitigation firm used.

(n) Total indemnity paid by the insurer.

(o) Total loss adjustment expenses paid by the insurer.

(p) Amount paid for insured's attorney fees.

(q) Contingency fee multiplier requested to be applied to the calculation of the insured's attorney fees payment, and, if so, contingency risk multiplier requested.

(r) Contingency risk multiplier applied to the calculation of the insured's attorney fees payment, and, if so, contingency fee multiplier applied.

(s) Other information deemed necessary by the commission to provide the office with the ability to track litigation and claims trends occurring in the property market.

(13) Each insurer doing business in this state which pays a fee, commission, or other financial consideration or payment to any affiliate directly or indirectly is required upon request to provide to the office any information the office deems necessary. The fee, commission, or other financial consideration

or payment to any affiliate must be fair and reasonable. In determining whether the fee, commission, or other financial consideration or payment is fair and reasonable, the office shall consider, among other things, the actual cost of the service being provided.

Section 5. Subsection (6) of section 626.7451, Florida Statutes, is amended to read:

626.7451 Managing general agents; required contract provisions.—No person acting in the capacity of a managing general agent shall place business with an insurer unless there is in force a written contract between the parties which sets forth the responsibility for a particular function, specifies the division of responsibilities, and contains the following minimum provisions:

(6) The contract shall specify appropriate underwriting guidelines, including:

(a) The maximum annual premium volume.

(b) The basis of the rates to be charged.

(c) The types of risks which may be written.

(d) Maximum limits of liability.

(e) Applicable exclusions.

(f) Territorial limitations.

(g) Policy cancellation provisions.

(h) The maximum policy period.

~~This subsection shall not apply when the managing general agent is a controlled or controlling person.~~

For the purposes of this section and ss. 626.7453 and 626.7454, the term "controlling person" or "controlling" has the meaning set forth in s. 625.012(5)(b)1., and the term "controlled person" or "controlled" has the meaning set forth in s. 625.012(5)(b)2.

Section 6. Section 626.7452, Florida Statutes, is amended to read:

Section 626.7452 Managing general agents; examination authority.—The acts of the managing general agent are considered to be the acts of the insurer on whose behalf it is acting. A managing general agent may be examined as if it were the insurer ~~except in the case where the managing general agent solely represents a single domestic insurer~~.

Section 7. Subsection (20) is added to section 626.854, Florida Statutes, to read:

626.854 "Public adjuster" defined; prohibitions.—The legislature finds that it is necessary for the protection of the public to regulate public insurance adjusters and to prevent the unauthorized practice of law.

(20)(a) Any following act by a public adjuster, a public adjuster apprentice, or a person acting on behalf of a public adjuster or public adjuster apprentice is prohibited and shall

result in discipline as applicable under part VI of this chapter:

1. Offering to a residential property owner a rebate, gift, gift card, cash, coupon, waiver of any insurance deductible, or any other thing of value in exchange for:

a. Allowing a contractor, a public adjuster, a public adjuster apprentice, or a person acting on behalf of a public adjuster or public adjuster apprentice to conduct an inspection of the residential property owner's roof; or

b. Making an insurance claim for damage to the residential property owner's roof.

2. Offering, delivering, receiving, or accepting any compensation, inducement, or reward for the referral of any services for which property insurance proceeds would be used for roofing repairs or replacement.

(b) Notwithstanding the fine set forth in s. 626.8698, a public adjuster or public adjuster apprentice may be subject to a fine not to exceed $10,000 per act for a violation of this subsection.

(c) A person who engages in an act prohibited by this subsection and who is not a public adjuster or a public adjuster apprentice, or is not otherwise exempt from licensure, is guilty of the unlicensed practice of public adjusting and may be:

1. Subject to all applicable penalties set forth in part VI of this chapter.

2. Notwithstanding subparagraph 1., subject to a fine not to exceed $10,000 per act for a violation of this subsection.

Section 8. Paragraphs (c) and (n) of subsection (6) of section 627.351, Florida Statutes, are amended, and a new paragraph (jj) is added to subsection (6) of that section, to read:

627.351 Insurance risk apportionment plans.—

(6) CITIZENS PROPERTY INSURANCE CORPORATION.—

(c) The corporation's plan of operation:

1. Must provide for adoption of residential property and casualty insurance policy forms and commercial residential and nonresidential property insurance forms, which must be approved by the office before use. The corporation shall adopt the following policy forms:

a. Standard personal lines policy forms that are comprehensive multiperil policies providing full coverage of a residential property equivalent to the coverage provided in the private insurance market under an HO-3, HO-4, or HO-6 policy.

b. Basic personal lines policy forms that are policies similar to an HO-8 policy or a dwelling fire policy that provide coverage meeting the requirements of the secondary mortgage market, but which is more limited than the coverage under a standard policy.

c. Commercial lines residential and nonresidential policy forms that are generally similar to the basic perils of full

coverage obtainable for commercial residential structures and commercial nonresidential structures in the admitted voluntary market.

d. Personal lines and commercial lines residential property insurance forms that cover the peril of wind only. The forms are applicable only to residential properties located in areas eligible for coverage under the coastal account referred to in sub-subparagraph (b)2.a.

e. Commercial lines nonresidential property insurance forms that cover the peril of wind only. The forms are applicable only to nonresidential properties located in areas eligible for coverage under the coastal account referred to in sub-subparagraph (b)2.a.

f. The corporation may adopt variations of the policy forms listed in sub-subparagraphs a.-e. which contain more restrictive coverage.

g. Effective January 1, 2013, the corporation shall offer a basic personal lines policy similar to an HO-8 policy with dwelling repair based on common construction materials and methods.

2. Must provide that the corporation adopt a program in which the corporation and authorized insurers enter into quota share primary insurance agreements for hurricane coverage, as defined in s. 627.4025(2)(a), for eligible risks, and adopt property insurance forms for eligible risks which cover the

peril of wind only.

a. As used in this subsection, the term:

(I) "Quota share primary insurance" means an arrangement in which the primary hurricane coverage of an eligible risk is provided in specified percentages by the corporation and an authorized insurer. The corporation and authorized insurer are each solely responsible for a specified percentage of hurricane coverage of an eligible risk as set forth in a quota share primary insurance agreement between the corporation and an authorized insurer and the insurance contract. The responsibility of the corporation or authorized insurer to pay its specified percentage of hurricane losses of an eligible risk, as set forth in the agreement, may not be altered by the inability of the other party to pay its specified percentage of losses. Eligible risks that are provided hurricane coverage through a quota share primary insurance arrangement must be provided policy forms that set forth the obligations of the corporation and authorized insurer under the arrangement, clearly specify the percentages of quota share primary insurance provided by the corporation and authorized insurer, and conspicuously and clearly state that the authorized insurer and the corporation may not be held responsible beyond their specified percentage of coverage of hurricane losses.

(II) "Eligible risks" means personal lines residential and commercial lines residential risks that meet the underwriting

criteria of the corporation and are located in areas that were eligible for coverage by the Florida Windstorm Underwriting Association on January 1, 2002.

b. The corporation may enter into quota share primary insurance agreements with authorized insurers at corporation coverage levels of 90 percent and 50 percent.

c. If the corporation determines that additional coverage levels are necessary to maximize participation in quota share primary insurance agreements by authorized insurers, the corporation may establish additional coverage levels. However, the corporation's quota share primary insurance coverage level may not exceed 90 percent.

d. Any quota share primary insurance agreement entered into between an authorized insurer and the corporation must provide for a uniform specified percentage of coverage of hurricane losses, by county or territory as set forth by the corporation board, for all eligible risks of the authorized insurer covered under the agreement.

e. Any quota share primary insurance agreement entered into between an authorized insurer and the corporation is subject to review and approval by the office. However, such agreement shall be authorized only as to insurance contracts entered into between an authorized insurer and an insured who is already insured by the corporation for wind coverage.

f. For all eligible risks covered under quota share

primary insurance agreements, the exposure and coverage levels for both the corporation and authorized insurers shall be reported by the corporation to the Florida Hurricane Catastrophe Fund. For all policies of eligible risks covered under such agreements, the corporation and the authorized insurer must maintain complete and accurate records for the purpose of exposure and loss reimbursement audits as required by fund rules. The corporation and the authorized insurer shall each maintain duplicate copies of policy declaration pages and supporting claims documents.

g. The corporation board shall establish in its plan of operation standards for quota share agreements which ensure that there is no discriminatory application among insurers as to the terms of the agreements, pricing of the agreements, incentive provisions if any, and consideration paid for servicing policies or adjusting claims.

h. The quota share primary insurance agreement between the corporation and an authorized insurer must set forth the specific terms under which coverage is provided, including, but not limited to, the sale and servicing of policies issued under the agreement by the insurance agent of the authorized insurer producing the business, the reporting of information concerning eligible risks, the payment of premium to the corporation, and arrangements for the adjustment and payment of hurricane claims incurred on eligible risks by the claims adjuster and personnel

of the authorized insurer. Entering into a quota sharing insurance agreement between the corporation and an authorized insurer is voluntary and at the discretion of the authorized insurer.

3. May provide that the corporation may employ or otherwise contract with individuals or other entities to provide administrative or professional services that may be appropriate to effectuate the plan. The corporation may borrow funds by issuing bonds or by incurring other indebtedness, and shall have other powers reasonably necessary to effectuate the requirements of this subsection, including, without limitation, the power to issue bonds and incur other indebtedness in order to refinance outstanding bonds or other indebtedness. The corporation may seek judicial validation of its bonds or other indebtedness under chapter 75. The corporation may issue bonds or incur other indebtedness, or have bonds issued on its behalf by a unit of local government pursuant to subparagraph (q)2. in the absence of a hurricane or other weather-related event, upon a determination by the corporation, subject to approval by the office, that such action would enable it to efficiently meet the financial obligations of the corporation and that such financings are reasonably necessary to effectuate the requirements of this subsection. The corporation may take all actions needed to facilitate tax-free status for such bonds or indebtedness, including formation of trusts or other affiliated

entities. The corporation may pledge assessments, projected recoveries from the Florida Hurricane Catastrophe Fund, other reinsurance recoverables, policyholder surcharges and other surcharges, and other funds available to the corporation as security for bonds or other indebtedness. In recognition of s. 10, Art. I of the State Constitution, prohibiting the impairment of obligations of contracts, it is the intent of the Legislature that no action be taken whose purpose is to impair any bond indenture or financing agreement or any revenue source committed by contract to such bond or other indebtedness.

4. Must require that the corporation operate subject to the supervision and approval of a board of governors consisting of nine individuals who are residents of this state and who are from different geographical areas of the state, one of whom is appointed by the Governor and serves solely to advocate on behalf of the consumer. The appointment of a consumer representative by the Governor is deemed to be within the scope of the exemption provided in s. 112.313(7)(b) and is in addition to the appointments authorized under sub-subparagraph a.

a. The Governor, the Chief Financial Officer, the President of the Senate, and the Speaker of the House of Representatives shall each appoint two members of the board. At least one of the two members appointed by each appointing officer must have demonstrated expertise in insurance and be deemed to be within the scope of the exemption provided in s.

112.313(7)(b). The Chief Financial Officer shall designate one of the appointees as chair. All board members serve at the pleasure of the appointing officer. All members of the board are subject to removal at will by the officers who appointed them. All board members, including the chair, must be appointed to serve for 3-year terms beginning annually on a date designated by the plan. However, for the first term beginning on or after July 1, 2009, each appointing officer shall appoint one member of the board for a 2-year term and one member for a 3-year term. A board vacancy shall be filled for the unexpired term by the appointing officer. The Chief Financial Officer shall appoint a technical advisory group to provide information and advice to the board in connection with the board's duties under this subsection. The executive director and senior managers of the corporation shall be engaged by the board and serve at the pleasure of the board. Any executive director appointed on or after July 1, 2006, is subject to confirmation by the Senate. The executive director is responsible for employing other staff as the corporation may require, subject to review and concurrence by the board.

b. The board shall create a Market Accountability Advisory Committee to assist the corporation in developing awareness of its rates and its customer and agent service levels in relationship to the voluntary market insurers writing similar coverage.

(I) The members of the advisory committee consist of the following 11 persons, one of whom must be elected chair by the members of the committee: four representatives, one appointed by the Florida Association of Insurance Agents, one by the Florida Association of Insurance and Financial Advisors, one by the Professional Insurance Agents of Florida, and one by the Latin American Association of Insurance Agencies; three representatives appointed by the insurers with the three highest voluntary market share of residential property insurance business in the state; one representative from the Office of Insurance Regulation; one consumer appointed by the board who is insured by the corporation at the time of appointment to the committee; one representative appointed by the Florida Association of Realtors; and one representative appointed by the Florida Bankers Association. All members shall be appointed to 3-year terms and may serve for consecutive terms.

(II) The committee shall report to the corporation at each board meeting on insurance market issues which may include rates and rate competition with the voluntary market; service, including policy issuance, claims processing, and general responsiveness to policyholders, applicants, and agents; and matters relating to depopulation.

5. Must provide a procedure for determining the eligibility of a risk for coverage, as follows:

a. Subject to s. 627.3517, with respect to personal lines

residential risks, if the risk is offered coverage from an authorized insurer at the insurer's approved rate under a standard policy including wind coverage or, if consistent with the insurer's underwriting rules as filed with the office, a basic policy including wind coverage, for a new application to the corporation for coverage, the risk is not eligible for any policy issued by the corporation unless the premium for coverage from the authorized insurer is more than 20 ~~15~~ percent greater than the premium for comparable coverage from the corporation. Whenever an offer of coverage for a personal lines residential risk is received for a policyholder of the corporation at renewal from an authorized insurer, if the offer is equal to or less than the corporation's renewal premium for comparable coverage, the risk is not eligible for coverage with the corporation. If the risk is not able to obtain such offer, the risk is eligible for a standard policy including wind coverage or a basic policy including wind coverage issued by the corporation; however, if the risk could not be insured under a standard policy including wind coverage regardless of market conditions, the risk is eligible for a basic policy including wind coverage unless rejected under subparagraph 8. However, a policyholder removed from the corporation through an assumption agreement remains eligible for coverage from the corporation until the end of the assumption period. The corporation shall determine the type of policy to be provided on the basis of

objective standards specified in the underwriting manual and based on generally accepted underwriting practices.

(I) If the risk accepts an offer of coverage through the market assistance plan or through a mechanism established by the corporation other than a plan established by s. 627.3518, before a policy is issued to the risk by the corporation or during the first 30 days of coverage by the corporation, and the producing agent who submitted the application to the plan or to the corporation is not currently appointed by the insurer, the insurer shall:

(A) Pay to the producing agent of record of the policy for the first year, an amount that is the greater of the insurer's usual and customary commission for the type of policy written or a fee equal to the usual and customary commission of the corporation; or

(B) Offer to allow the producing agent of record of the policy to continue servicing the policy for at least 1 year and offer to pay the agent the greater of the insurer's or the corporation's usual and customary commission for the type of policy written.

If the producing agent is unwilling or unable to accept appointment, the new insurer shall pay the agent in accordance with sub-sub-sub-subparagraph (A).

(II) If the corporation enters into a contractual

agreement for a take-out plan, the producing agent of record of the corporation policy is entitled to retain any unearned commission on the policy, and the insurer shall:

(A) Pay to the producing agent of record, for the first year, an amount that is the greater of the insurer's usual and customary commission for the type of policy written or a fee equal to the usual and customary commission of the corporation; or

(B) Offer to allow the producing agent of record to continue servicing the policy for at least 1 year and offer to pay the agent the greater of the insurer's or the corporation's usual and customary commission for the type of policy written.

If the producing agent is unwilling or unable to accept appointment, the new insurer shall pay the agent in accordance with sub-sub-sub-subparagraph (A).

b. With respect to commercial lines residential risks, for a new application to the corporation for coverage, if the risk is offered coverage under a policy including wind coverage from an authorized insurer at its approved rate, the risk is not eligible for a policy issued by the corporation unless the premium for coverage from the authorized insurer is more than 15 percent greater than the premium for comparable coverage from the corporation. Whenever an offer of coverage for a commercial lines residential risk is received for a policyholder of the

corporation at renewal from an authorized insurer, if the offer is equal to or less than the corporation's renewal premium for comparable coverage, the risk is not eligible for coverage with the corporation. If the risk is not able to obtain any such offer, the risk is eligible for a policy including wind coverage issued by the corporation. However, a policyholder removed from the corporation through an assumption agreement remains eligible for coverage from the corporation until the end of the assumption period.

(I) If the risk accepts an offer of coverage through the market assistance plan or through a mechanism established by the corporation other than a plan established by s. 627.3518, before a policy is issued to the risk by the corporation or during the first 30 days of coverage by the corporation, and the producing agent who submitted the application to the plan or the corporation is not currently appointed by the insurer, the insurer shall:

(A) Pay to the producing agent of record of the policy, for the first year, an amount that is the greater of the insurer's usual and customary commission for the type of policy written or a fee equal to the usual and customary commission of the corporation; or

(B) Offer to allow the producing agent of record of the policy to continue servicing the policy for at least 1 year and offer to pay the agent the greater of the insurer's or the

corporation's usual and customary commission for the type of policy written.

If the producing agent is unwilling or unable to accept appointment, the new insurer shall pay the agent in accordance with sub-sub-sub-subparagraph (A).

(II) If the corporation enters into a contractual agreement for a take-out plan, the producing agent of record of the corporation policy is entitled to retain any unearned commission on the policy, and the insurer shall:

(A) Pay to the producing agent of record, for the first year, an amount that is the greater of the insurer's usual and customary commission for the type of policy written or a fee equal to the usual and customary commission of the corporation; or

(B) Offer to allow the producing agent of record to continue servicing the policy for at least 1 year and offer to pay the agent the greater of the insurer's or the corporation's usual and customary commission for the type of policy written.

If the producing agent is unwilling or unable to accept appointment, the new insurer shall pay the agent in accordance with sub-sub-sub-subparagraph (A).

c. For purposes of determining comparable coverage under sub-subparagraphs a. and b., the comparison must be based on

those forms and coverages that are reasonably comparable. The corporation may rely on a determination of comparable coverage and premium made by the producing agent who submits the application to the corporation, made in the agent's capacity as the corporation's agent. A comparison may be made solely of the premium with respect to the main building or structure only on the following basis: the same coverage A or other building limits; the same percentage hurricane deductible that applies on an annual basis or that applies to each hurricane for commercial residential property; the same percentage of ordinance and law coverage, if the same limit is offered by both the corporation and the authorized insurer; the same mitigation credits, to the extent the same types of credits are offered both by the corporation and the authorized insurer; the same method for loss payment, such as replacement cost or actual cash value, if the same method is offered both by the corporation and the authorized insurer in accordance with underwriting rules; and any other form or coverage that is reasonably comparable as determined by the board. If an application is submitted to the corporation for wind-only coverage in the coastal account, the premium for the corporation's wind-only policy plus the premium for the ex-wind policy that is offered by an authorized insurer to the applicant must be compared to the premium for multiperil coverage offered by an authorized insurer, subject to the standards for comparison specified in this subparagraph. If the

corporation or the applicant requests from the authorized insurer a breakdown of the premium of the offer by types of coverage so that a comparison may be made by the corporation or its agent and the authorized insurer refuses or is unable to provide such information, the corporation may treat the offer as not being an offer of coverage from an authorized insurer at the insurer's approved rate.

6. Must include rules for classifications of risks and rates.

7. Must provide that if premium and investment income for an account attributable to a particular calendar year are in excess of projected losses and expenses for the account attributable to that year, such excess shall be held in surplus in the account. Such surplus must be available to defray deficits in that account as to future years and used for that purpose before assessing assessable insurers and assessable insureds as to any calendar year.

8. Must provide objective criteria and procedures to be uniformly applied to all applicants in determining whether an individual risk is so hazardous as to be uninsurable. In making this determination and in establishing the criteria and procedures, the following must be considered:

a. Whether the likelihood of a loss for the individual risk is substantially higher than for other risks of the same class; and

b. Whether the uncertainty associated with the individual risk is such that an appropriate premium cannot be determined.

The acceptance or rejection of a risk by the corporation shall be construed as the private placement of insurance, and the provisions of chapter 120 do not apply.

9. Must provide that the corporation make its best efforts to procure catastrophe reinsurance at reasonable rates, to cover its projected 100-year probable maximum loss as determined by the board of governors. If catastrophe reinsurance is not available at reasonable rates, the corporation need not purchase it, but the corporation shall include the costs of reinsurance to cover its projected 100-year probable maximum loss in its rate calculations even if it does not purchase catastrophe reinsurance.

10. The policies issued by the corporation must provide that if the corporation or the market assistance plan obtains an offer from an authorized insurer to cover the risk at its approved rates, the risk is no longer eligible for renewal through the corporation, except as otherwise provided in this subsection.

11. Corporation policies and applications must include a notice that the corporation policy could, under this section, be replaced with a policy issued by an authorized insurer which does not provide coverage identical to the coverage provided by

the corporation. The notice must also specify that acceptance of corporation coverage creates a conclusive presumption that the applicant or policyholder is aware of this potential.

12. May establish, subject to approval by the office, different eligibility requirements and operational procedures for any line or type of coverage for any specified county or area if the board determines that such changes are justified due to the voluntary market being sufficiently stable and competitive in such area or for such line or type of coverage and that consumers who, in good faith, are unable to obtain insurance through the voluntary market through ordinary methods continue to have access to coverage from the corporation. If coverage is sought in connection with a real property transfer, the requirements and procedures may not provide an effective date of coverage later than the date of the closing of the transfer as established by the transferor, the transferee, and, if applicable, the lender.

13. Must provide that, with respect to the coastal account, any assessable insurer with a surplus as to policyholders of $25 million or less writing 25 percent or more of its total countrywide property insurance premiums in this state may petition the office, within the first 90 days of each calendar year, to qualify as a limited apportionment company. A regular assessment levied by the corporation on a limited apportionment company for a deficit incurred by the corporation

for the coastal account may be paid to the corporation on a monthly basis as the assessments are collected by the limited apportionment company from its insureds, but a limited apportionment company must begin collecting the regular assessments not later than 90 days after the regular assessments are levied by the corporation, and the regular assessments must be paid in full within 15 months after being levied by the corporation. A limited apportionment company shall collect from its policyholders any emergency assessment imposed under sub-subparagraph (b)3.d. The plan must provide that, if the office determines that any regular assessment will result in an impairment of the surplus of a limited apportionment company, the office may direct that all or part of such assessment be deferred as provided in subparagraph (q)4. However, an emergency assessment to be collected from policyholders under sub-subparagraph (b)3.d. may not be limited or deferred.

14. Must provide that the corporation appoint as its licensed agents only those agents who throughout such appointments also hold an appointment as defined in s. 626.015 by an insurer who is authorized to write and is actually writing or renewing personal lines residential property coverage, commercial residential property coverage, or commercial nonresidential property coverage within the state.

15. Must provide a premium payment plan option to its policyholders which, at a minimum, allows for quarterly and

semiannual payment of premiums. A monthly payment plan may, but is not required to, be offered.

16. Must limit coverage on mobile homes or manufactured homes built before 1994 to actual cash value of the dwelling rather than replacement costs of the dwelling.

17. Must provide coverage for manufactured or mobile home dwellings. Such coverage must also include the following attached structures:

a. Screened enclosures that are aluminum framed or screened enclosures that are not covered by the same or substantially the same materials as those of the primary dwelling;

b. Carports that are aluminum or carports that are not covered by the same or substantially the same materials as those of the primary dwelling; and

c. Patios that have a roof covering that is constructed of materials that are not the same or substantially the same materials as those of the primary dwelling.

The corporation shall make available a policy for mobile homes or manufactured homes for a minimum insured value of at least $3,000.

18. May provide such limits of coverage as the board determines, consistent with the requirements of this subsection.

19. May require commercial property to meet specified

hurricane mitigation construction features as a condition of eligibility for coverage.

20. Must provide that new or renewal policies issued by the corporation on or after January 1, 2012, which cover sinkhole loss do not include coverage for any loss to appurtenant structures, driveways, sidewalks, decks, or patios that are directly or indirectly caused by sinkhole activity. The corporation shall exclude such coverage using a notice of coverage change, which may be included with the policy renewal, and not by issuance of a notice of nonrenewal of the excluded coverage upon renewal of the current policy.

21. As of January 1, 2012, must require that the agent obtain from an applicant for coverage from the corporation an acknowledgment signed by the applicant, which includes, at a minimum, the following statement:

ACKNOWLEDGMENT OF POTENTIAL SURCHARGE
AND ASSESSMENT LIABILITY:

1. AS A POLICYHOLDER OF CITIZENS PROPERTY INSURANCE CORPORATION, I UNDERSTAND THAT IF THE CORPORATION SUSTAINS A DEFICIT AS A RESULT OF HURRICANE LOSSES OR FOR ANY OTHER REASON, MY POLICY COULD BE SUBJECT TO SURCHARGES, WHICH WILL BE DUE AND PAYABLE UPON RENEWAL, CANCELLATION, OR TERMINATION OF THE POLICY, AND THAT THE SURCHARGES COULD BE AS HIGH AS 45 PERCENT

OF MY PREMIUM, OR A DIFFERENT AMOUNT AS IMPOSED BY THE FLORIDA LEGISLATURE.

2. I UNDERSTAND THAT I CAN AVOID THE CITIZENS POLICYHOLDER SURCHARGE, WHICH COULD BE AS HIGH AS 45 PERCENT OF MY PREMIUM, BY OBTAINING COVERAGE FROM A PRIVATE MARKET INSURER AND THAT TO BE ELIGIBLE FOR COVERAGE BY CITIZENS, I MUST FIRST TRY TO OBTAIN PRIVATE MARKET COVERAGE BEFORE APPLYING FOR OR RENEWING COVERAGE WITH CITIZENS. I UNDERSTAND THAT PRIVATE MARKET INSURANCE RATES ARE REGULATED AND APPROVED BY THE STATE.

3. I UNDERSTAND THAT I MAY BE SUBJECT TO EMERGENCY ASSESSMENTS TO THE SAME EXTENT AS POLICYHOLDERS OF OTHER INSURANCE COMPANIES, OR A DIFFERENT AMOUNT AS IMPOSED BY THE FLORIDA LEGISLATURE.

4. I ALSO UNDERSTAND THAT CITIZENS PROPERTY INSURANCE CORPORATION IS NOT SUPPORTED BY THE FULL FAITH AND CREDIT OF THE STATE OF FLORIDA.

a. The corporation shall maintain, in electronic format or otherwise, a copy of the applicant's signed acknowledgment and provide a copy of the statement to the policyholder as part of the first renewal after the effective date of this subparagraph.

b. The signed acknowledgment form creates a conclusive presumption that the policyholder understood and accepted his or her potential surcharge and assessment liability as a policyholder of the corporation.

(n)1. Rates for coverage provided by the corporation must be actuarially sound and subject to s. 627.062, except as otherwise provided in this paragraph. The corporation shall file its recommended rates with the office at least annually. The corporation shall provide any additional information regarding the rates which the office requires. The office shall consider the recommendations of the board and issue a final order establishing the rates for the corporation within 45 days after the recommended rates are filed. The corporation may not pursue an administrative challenge or judicial review of the final order of the office.

2. In addition to the rates otherwise determined pursuant to this paragraph, the corporation shall impose and collect an amount equal to the premium tax provided in s. 624.509 to augment the financial resources of the corporation.

3. After the public hurricane loss-projection model under s. 627.06281 has been found to be accurate and reliable by the Florida Commission on Hurricane Loss Projection Methodology, the model shall be considered when establishing the windstorm portion of the corporation's rates. The corporation may use the public model results in combination with the results of private models to calculate rates for the windstorm portion of the corporation's rates. This subparagraph does not require or allow the corporation to adopt rates lower than the rates otherwise required or allowed by this paragraph.

~~4. The rate filings for the corporation which were approved by the office and took effect January 1, 2007, are rescinded, except for those rates that were lowered. As soon as possible, the corporation shall begin using the lower rates that were in effect on December 31, 2006, and provide refunds to policyholders who paid higher rates as a result of that rate filing. The rates in effect on December 31, 2006, remain in effect for the 2007 and 2008 calendar years except for any rate change that results in a lower rate. The next rate change that may increase rates shall take effect pursuant to a new rate filing recommended by the corporation and established by the office, subject to this paragraph.~~

4.~~5. Beginning on July 15, 2009, and annually thereafter,~~ The corporation must make a recommended actuarially sound rate filing for each personal and commercial line of business it writes~~, to be effective no earlier than January 1, 2010~~.

5.~~6. Beginning on or after January 1, 2010, and~~ Notwithstanding the board's recommended rates and the office's final order regarding the corporation's filed rates under subparagraph 1., the corporation shall annually implement a rate increase which, except for sinkhole coverage, does not exceed the following ~~10 percent~~ for any single policy issued by the corporation, excluding coverage changes and surcharges:

a. Eleven percent for 2022.

b. Twelve percent for 2023.

c. Thirteen percent for 2024.

d. Fourteen percent for 2025.

e. Fifteen percent for 2026 and all subsequent years.

6. At no time may the corporation file for approval by the office for a rate reduction.

7. The corporation may also implement an increase to reflect the effect on the corporation of the cash buildup factor pursuant to s. 215.555(5)(b).

8. The corporation's implementation of rates as prescribed in subparagraph 5. ~~6.~~ shall cease for any line of business written by the corporation upon the corporation's implementation of actuarially sound rates. Thereafter, the corporation shall annually make a recommended actuarially sound rate filing for each commercial and personal line of business the corporation writes.

(jj) An employee of the corporation may not receive an annual salary, whether base pay or base pay combined with any bonus or incentive payments, in excess of 150 percent of the annual salary paid to the head of the office, subject to the following:

1. Anyone employed by the corporation as of June 30, 2021, whose salary exceeds the salary limits in this paragraph may retain his or her current salary but may not receive a raise.

2. Anyone employed by the corporation as of June 30, 2021, whose salary does not exceed the salary limits in this paragraph

may receive a raise such that his or her salary does not exceed the salary limits in this paragraph.

3. Anyone hired by the corporation on or after July 1, 2021, is subject to the salary limits in this paragraph.

Section 9. Subsection (5) of section 627.3518, Florida Statutes, is amended to read:

627.3518 Citizens Property Insurance Corporation policyholder eligibility clearinghouse program.—The purpose of this section is to provide a framework for the corporation to implement a clearinghouse program by January 1, 2014.

(5) Notwithstanding s. 627.3517, any applicant for new coverage from the corporation is not eligible for coverage from the corporation if provided an offer of coverage from an authorized insurer through the program at a premium that is at or below the eligibility threshold established in s. 627.351(6)(c)5.a. Whenever an offer of coverage for a personal lines risk is received for a policyholder of the corporation at renewal from an authorized insurer through the program, if the offer is equal to or less than the corporation's renewal premium for comparable coverage, the risk is not eligible for coverage with the corporation. In the event an offer of coverage for a new applicant is received from an authorized insurer through the program, and the premium offered exceeds the eligibility threshold contained in s. 627.351(6)(c)5.a., the applicant or insured may elect to accept such coverage, or may elect to

accept or continue coverage with the corporation. In the event an offer of coverage for a personal lines risk is received from an authorized insurer at renewal through the program, and the premium offered is more than the corporation's renewal premium for comparable coverage, the insured may elect to accept such coverage, or may elect to accept or continue coverage with the corporation. Section 627.351(6)(c)5.a.(I) does not apply to an offer of coverage from an authorized insurer obtained through the program. An applicant for coverage from the corporation who was declared ineligible for coverage at renewal by the corporation in the previous 36 months due to an offer of coverage pursuant to this subsection shall be considered a renewal under this section if the corporation determines that the authorized insurer making the offer of coverage pursuant to this subsection continues to insure the applicant and increased the rate on the policy in excess of the increase allowed for the corporation under s. 627.351(6)(n)5. ~~s. 627.351(6)(n)6.~~

Section 10. Section 627.70132, Florida Statutes, is amended to read:

627.70132 Notice of property insurance ~~windstorm or hurricane~~ claim.—A claim, supplemental claim, or reopened claim under an insurance policy that provides property insurance, as defined in s. 624.604, including a property insurance policy issued by an eligible surplus lines insurer, for loss or damage caused by any ~~the~~ peril ~~of windstorm or hurricane~~ is barred

unless notice of the claim, supplemental claim, or reopened claim was given to the insurer in accordance with the terms of the policy within 2 ~~3~~ years after the date of loss ~~hurricane first made landfall or the windstorm caused the covered damage~~. For claims resulting from hurricanes, tornadoes, windstorms, severe rain, or other weather-related events that are tracked by weather services and media, the date of loss is the date that the hurricane made landfall, or the tornado, windstorm, severe rain, or other weather-related event is verified by the National Oceanic and Atmospheric Administration or another disinterested verifiable third party to have occurred, in the location of the property that is the subject of the claim. For purposes of this section, the term "supplemental claim" or "reopened claim" means any additional claim for recovery from the insurer for losses from the same peril ~~hurricane or windstorm~~ which the insurer has previously adjusted pursuant to the initial claim. This section does not affect any applicable limitation on civil actions provided in s. 95.11 for claims, supplemental claims, or reopened claims timely filed under this section.

Section 11. Paragraph (e) of subsection (9) of section 627.7015, Florida Statutes, is amended to read:

627.7015 Alternative procedure for resolution of disputed property insurance claims.—

(9) For purposes of this section, the term "claim" refers to any dispute between an insurer and a policyholder relating to

a material issue of fact other than a dispute:

(e) With respect to a ~~windstorm or hurricane~~ loss that does not comply with s. 627.70132.

Section 12. Section 627.70152, Florida Statutes, is created to read:

627.70152 Suits arising under a property insurance policy.—

(1) APPLICATION.—This section applies to all residential or commercial property suits not brought by an assignee.

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

(a) "Claimant" means an insured who is filing suit under a residential or commercial property insurance policy.

(b) "Demand" means the specific amount alleged to be owed by the insurer to the claimant under the residential or commercial property insurance policy.

(c) "Notice" means claimant presuit notice.

(3) NOTICE.—

(a) As a condition precedent to filing a suit under a property insurance policy, a claimant or the claimant's attorney must provide the insurer with a written notice of intent to initiate litigation before filing suit under the policy. Such notice must be served by certified mail, return receipt requested, or electronic delivery at least 10 business days before filing suit, but may not be served before the insurer has made a determination of coverage under s. 627.70131. The notice

must specify all of the following:

1. That the notice is being provided pursuant to this section.

2. The alleged acts or omissions of the insurer giving rise to the suit.

3. The damages in dispute.

4. The demand.

5. The amount of reasonable and necessary attorney fees and costs incurred by the claimant, to be calculated by multiplying the number of hours actually worked on the claim as of the date of the notice by the claimant's attorney by a reasonable hourly rate.

6. If provided by an attorney or other representative, that a copy of the notice was provided to the claimant.

Documentation to support the information provided in this paragraph may be provided along with the notice to the insurer.

(b) A notice of intent to initiate litigation must be served within the time limits provided in s. 95.11. However, the notice is not required if the suit is a counterclaim. Service of a notice tolls the time limits provided in s. 95.11 for 10 days if such time limits will expire before the end of the 10-day notice period.

(c) An insurer must respond in writing to the notice within 10 business days after receiving the notice specified in

paragraph (a) by making a settlement offer or requiring the claimant to participate in appraisal or another method of alternative dispute resolution under the policy. The time limits provided in s. 95.11 are tolled as long as appraisal or other alternative dispute resolution is ongoing. An insurer must have a procedure for the prompt investigation, review, and evaluation of the dispute stated in the notice and must investigate each claim contained in the notice in accordance with the Florida Insurance Code.

(d) A court must dismiss without prejudice any claimant's suit relating to a claim for which a notice of intent to initiate litigation is given as required by this subsection if such suit is commenced before the expiration of the 10-day notice period.

(4) ADMISSIBILITY OF NOTICE AND RESPONSE.—The notice provided pursuant to subsection (3) and, if applicable, the documentation to support the information provided pursuant to paragraph (3)(a):

(a) Are admissible as evidence in a civil suit or an alternative dispute resolution proceeding relating to the claim for which the notice is given.

(b) Do not limit the evidence of attorney fees or costs, damages, or loss which may be offered at trial.

(c) Do not relieve any obligation that an insured or assignee has to give notice under any other provision of law.

(5) ATTORNEY FEES.—If a court dismisses a claimant's suit pursuant to paragraph (3)(d), the court may not award to the claimant any incurred attorney fees for services rendered before the dismissal of the suit.

Section 13. This act shall take effect July 1, 2021.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 365 Motor Vehicle Rentals
SPONSOR(S): Ways & Means Committee, Caruso
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 566

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Tourism, Infrastructure & Energy Subcommittee	13 Y, 3 N	Fortenberry	Keating
2) Ways & Means Committee	14 Y, 1 N, As CS	Berg	Aldridge
3) Commerce Committee		Fortenberry	Hamon

SUMMARY ANALYSIS

In recent years, the private market, through the Internet and smart phone technology, has allowed the development of new forms of direct person-to-person economic arrangements. Companies have emerged to facilitate the sharing of motor vehicles such that a private passenger vehicle is given over to another individual to operate for a period. This is known as “peer-to-peer car-sharing.” Unlike transportation network companies, another person takes over possession and control of the motor vehicle from the owner, rather than simply obtaining a ride. Car-sharing services, where one can rent a car from a business on an hourly basis, are similar to, but distinct from traditional rental car companies. Unlike transportation network companies and car-sharing services, peer-to-peer car-sharing is not regulated.

The bill establishes statutory requirements for peer-to-peer car-sharing, including surcharge and tax payments, and liabilities and insurance obligations among participants. The bill:

- Requires peer-to-peer car-sharing programs to collect and remit sales tax on the lease or rental of motor vehicles on their platform.
- Requires peer-to-peer car-sharing programs to collect and remit a $1 surcharge on the lease or rental of a motor vehicle.
- Defines terms, including “peer-to-peer car sharing,” which is the authorized use of a motor vehicle by an individual other than the vehicle's owner through a peer-to-peer car-sharing program. Further, it is not rental, for-hire, or joint use of motor vehicles, such as ridesharing or carpooling.
- Establishes insurance requirements and coordinated coverage for each party involved in car sharing.
- Allows motor vehicle insurers insuring the shared vehicle owner to exclude coverage for use of the vehicle in car-sharing.
- Provides that the peer-to-peer car-sharing program and vehicle owner are not vicariously liable for the actions and damages of the driver during periods of peer-to-peer car-sharing use.
- Specifies recordkeeping requirements and retention periods.
- Includes requirements for consumer protection notifications.
- Addresses the repair, use, and non-use of motor vehicles under a safety recall notice.
- Provides that the bill does not limit the liability of the peer-to-peer car-sharing program for its acts or omissions that cause bodily harm during peer-to-peer car-sharing nor the owner or driver to the peer-to-peer car-sharing program for economic losses due to a breach of contract.

The Revenue Estimating Conference (REC) has not estimated the potential revenue impacts of the bill. Staff estimates that the bill will have a recurring positive indeterminate impact on state and local government revenues.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

In recent years, the private market, using the Internet and smart phone technology, has allowed the development of new forms of direct person-to-person economic arrangements. Transportation network companies (TNCs) allow individuals to earn extra income by providing rides in their personal cars. TNCs like Uber and Lyft facilitate the connection of individuals seeking rides with those offering rides and manage payment transactions for the service. Because of safety, regulatory, and insurance considerations, the Legislature passed CS/HB 221[1] in 2017 to preempt local regulations and establish statutory requirements for TNCs, including defining insurance liabilities and standards.

In a manner similar to TNCs, new companies have emerged to facilitate the sharing of motor vehicles such that a private passenger vehicle is provided to another individual to operate for a period of time. This is known as peer-to-peer car-sharing. Peer-to-peer car-sharing adds a third motor vehicle rental or sharing model to the existing two models, which consist of motor vehicle rental companies and car-sharing services. Motor vehicle rental companies and car-sharing services are regulated by statute; however, peer-to-peer car-sharing is not regulated.

For-Hire Vehicles

With certain exceptions, offering for lease or rent any motor vehicle in the state qualifies the vehicle as a "for-hire vehicle." Specifically, s. 320.01(15)(a), F.S., provides:

> "For-hire vehicle" means any motor vehicle, when used for transporting persons or goods for compensation; let or rented to another for consideration; offered for rent or hire as a means of transportation for compensation; advertised in a newspaper or generally held out as being for rent or hire; used in connection with a travel bureau; or offered or used to provide transportation for persons solicited through personal contact or advertised on a "share-expense" basis. When goods or passengers are transported for compensation in a motor vehicle outside a municipal corporation of this state, or when goods are transported in a motor vehicle not owned by the person owning the goods, such transportation is "for hire." The carriage of goods and other personal property in a motor vehicle by a corporation or association for its stockholders, shareholders, and members, cooperative or otherwise, is transportation "for hire."

Renting a Motor Vehicle to Another

Current law establishes requirements for a person[2] who wishes to rent a motor vehicle to another.[3] These include inspecting the driver license of the person to whom the vehicle is to be rented and comparing and verifying the signature thereon with the signature of such person written in his or her presence before the vehicle can be rented. Further, a record must be kept of the registration number of the motor vehicle rented, the name and address of the person renting, and the number, date, and place of issue.[4]

[1] Ch. 2017-12, Laws of Fla.
[2] In this context, person means both natural persons and businesses.
[3] S. 322.38, F.S.
[4] *Id.*

Car-Sharing Service

A "car-sharing service"[5] is a membership-based organization or business that requires the payment of an application or membership fee and provides member access to motor vehicles[6]:

- Only at locations that are not staffed by car-sharing service personnel employed solely for the purpose of interacting with car-sharing service members;
- Twenty-four hours per day, seven days per week;
- Only through automated means, which may include, but are not limited to, smartphone applications or electronic membership cards;
- On hourly or shorter increments;
- Without a separate fee for refueling the motor vehicle;
- Without a separate fee for minimum financial responsibility liability insurance; and
- Owned or controlled by the car-sharing service or its affiliates.

Peer-to-Peer Car-Sharing

In peer-to-peer car-sharing, owners interested in sharing their vehicles so that renters can drive them can register as a host on a peer-to-peer car-sharing site.[7] Sites require photos of the car and help the owner determine a fee based on the location and type of vehicle. The host then specifies the vehicle's availability. The host may choose to have the vehicle picked up at his or her house, deliver the vehicle, or have it picked up at another location, such as an airport. Hosts typically receive between 65 and 75 percent of fees collected on their behalf by the site from the guest. Payments are typically made to the owner through direct deposit.[8] The site provides the recordkeeping necessary to the transaction and in compliance with requirements of law.

Guests also register with the peer-to-peer car-sharing site. The site will conduct a background check and look at the guests' driving records before approving them. The process involves choosing an available vehicle, reserving a date and time, and providing credit card information, if it is not already on file. At the end of the sharing period, the driver replaces any consumed fuel before returning the vehicle to its pickup location.[9]

One peer-to-peer car-sharing website, Turo.com, reports that its company has users in over 5,500 cities across the world. It offers over 850 makes and models of vehicles and up to $750,000 in liability insurance.[10] According to Turo, the average host earns over $700 per month.[11]

Rental Car Taxes and Fees

The lease or rental of tangible personal property, including vehicles, is subject to state and local sales and use tax.[12] When a motor vehicle is leased or rented in Florida for a period of less than 12 months, the entire amount of such rental is taxable at the rate of 6 percent[13] of the gross proceeds derived from the lease or rental.[14] A "lease or rental" is defined as the leasing or renting or tangible personal property and the possession or use of property by the lessee or renter for a consideration, without transfer of

[5] The definition for a "car-sharing service" is in s. 212.0606, F.S.
[6] One well-known example of a car-sharing service is Zipcar. *See* Zipcar, https://www.zipcar.com/ (last visited Mar. 11, 2021).
[7] Turo, Getaround, and Avail are examples of car sharing websites/applications.
[8] Russ Heaps, *The Good, Bad and Ugly of Peer-to-Peer Car Sharing*, Autotrader, (Feb. 2015), https://www.autotrader.com/car-shopping/good-bad-and-ugly-peer-peer-car-sharing-234961 (last visited Mar. 11, 2021).
[9] *Id.*
[10] Turo, *About Turo*, https://turo.com/en-us/about (last visited Mar. 11, 2021). Turo's insurance offering is a policy purchased from Liberty Surplus Lines, a Liberty Mutual Group company, which is issued through Turo Insurance Agency, LLC.
[11] *Id.*
[12] S. 212.05(1), F.S.
[13] Discretionary county sales surtax, if any, is also owed if the 6 percent Florida state sales tax applies. *See* s. 212.054, F.S.
[14] S. 212.05(1)(c), F.S.

title.[15] The lessor is required to be registered as a dealer and to collect tax on the total amount of the lease or rental charges from the lessee.[16]

Florida law imposes a surcharge[17] of $2.00 per day, or any part of a day, upon the lease or rental of a "motor vehicle licensed for hire"[18] and designed to carry less than nine passengers, regardless of whether such motor vehicle is licensed in Florida.[19] The surcharge applies to the first 30 days of the term of any lease or rental.[20] Pursuant to Rule 12A-16.002(1)(b), F.A.C., "[e]ach person engaged in the business of leasing or renting for hire passenger motor vehicles is required to collect the rental car surcharge when the lease or rental payments are to be paid under the terms of the lease or rental agreement." The term "person" includes "any individual, firm, copartnership, joint adventure, association, corporation, estate, trust, business trust, receiver, syndicate, or other group or combination acting as a unit…."[21] The term "business" is defined to mean "any activity engaged in by any person, or caused to be engaged in by him or her, with the object or public gain, benefit, or advantage, either direct or indirect."[22]

Rule 12A-16.002(7), F.A.C., provides in pertinent part that "any person who has leased or rented a for hire passenger motor vehicle under the terms of a lease or rental agreement…and cannot prove that the rental car surcharge has been paid to the lessor or other person will be directly liable to the state for any surcharge, interest, or penalty due on such transaction." The lessee, therefore, is also liable for payment of the rental car surcharge if the lessor fails to collect.

The $2.00 surcharge only applies to rentals by a member of a car-sharing service when the motor vehicle is used for more than 24 hours.[23] Members of a car-sharing service who use a motor vehicle for less than 24 hours (pursuant to an agreement with the service) are required to pay a $1.00 surcharge, per usage.[24] The car-rental surcharge applicable to car-sharing services does not apply to the lease, rental, or usage of a motor vehicle from a location-owned, operated, or leased by or for the benefit of an airport or airport authority.[25]

Total rental car surcharge collections in FY 2019-20 were $176.0 million.[26] After deduction for administrative fees and the general revenue service charge, the rental car surcharge is distributed as follows:

- 80 percent to the State Transportation Trust Fund;
- 15.75 percent to the Tourism Promotional Trust Fund; and
- 4.25 percent to the Florida International Trade and Promotion Trust Fund.

Documentation Required for Operation of a Vehicle

Section 320.0605(1), F.S., requires that at all times while a vehicle is being used or operated on the roads of Florida, the operator of the vehicle must be in the possession of:

- The registration certificate or an official copy;
- A true copy of rental or lease documentation issued for a motor vehicle or issued for a replacement vehicle in the same registration period;

[15] S. 212.02(10)(g), F.S.
[16] Rule 12A-1.007(13)(a)1, F.A.C.
[17] The rental car surcharge is subject to sales and use tax. *See* s. 212.0606(1), F.S. and Rule 12A-16.002(6)(c), F.A.C.
[18] The term "for hire passenger motor vehicle" means any automobile designed to carry fewer than nine passengers let or rented to another for consideration; offered for lease or rent as a means of transportation for compensation; advertised; or generally held out as being for lease or rent. The term "for hire passenger motor vehicle" does not include any motorcycle, moped, truck, truck trailer, travel trailer, camping trailer, recreational vehicle with living facilities, or van conversion. See Rule 12A-16.002(2)(c), F.A.C.
[19] S. 212.0606(1), F.S.
[20] *Id.*
[21] S. 212.02(12), F.S.
[22] S. 212.02(2), F.S.
[23] Rule 12A-16.002(3), F.A.C.
[24] S. 212.0606(2), F.S.
[25] S. 212.0606(2), F.S.
[26] Table 8 of the Revenues to State Transportation Trust Fund Forecast, adopted by the Revenue Estimating Conference March 24, 2021, available at http://edr.state.fl.us/Content/conferences/transportation/Transresults.pdf (last visited March 27, 2021).

- A temporary receipt printed upon self-initiated electronic renewal of a registration via the Internet; or
- A cab card issued for a vehicle registered under the International Registration Plan.[27]

The certificate or document of any vehicle, other than a fleet vehicle[28] or a replacement vehicle purchased within the last 30 days, must be shown upon demand by any authorized law enforcement officer or Department of Highway Safety and Motor Vehicles (DHSMV) agent. A violation of this request is a noncriminal traffic infraction, punishable as a nonmoving violation as provided in ch. 318, F.S.[29]

Section 320.0605(2), F.S., specifies that for a vehicle rented from a motor vehicle rental company, the rental or lease documentation must include:

- Date of rental and time of exit from rental facility;
- Rental station identification;
- Rental agreement number;
- Rental vehicle identification number;
- Rental vehicle license plate number and state of registration;
- Vehicle's make, model, and color;
- Vehicle's mileage; and
- Authorized renter's name.

Motor Vehicle Insurance Requirements

Chapter 324, F.S., is the Financial Responsibility Law of 1955.[30] Florida's Financial Responsibility Law requires proof of ability to pay monetary damages for bodily injury (BI) and property damage (PD) liability arising out of a motor vehicle accident or serious traffic violation.[31] The owner or operator of a motor vehicle is not required to provide proof of BI coverage at the time of vehicle registration. Motorcycle owners also are not required to provide proof of BI coverage at the time of registration. Proof of such coverage is only required after an accident.[32] At that time, a driver proves financial responsibility by furnishing an active motor vehicle liability policy, a certificate showing a qualifying security deposit with the DHSMV, or proof of qualifying self-insurance.[33]

The required minimum amounts of BI insurance coverages are $10,000, in the event of bodily injury to, or death of, one person, and $20,000, in the event of bodily injury to, or death of, two or more persons.[34] The required minimum amount of PD insurance coverage is $10,000, in the event of damage to property of others, or $30,000 combined for both BI and PD coverage.[35]

Financial responsibility requirements are common. All states have financial responsibility laws that require persons involved in auto accidents (or serious traffic infractions) to furnish proof of BI and PD liability insurance and the minimum coverage amounts vary for each state.

[27] The International Registration Plan is a reciprocity agreement among the states of the United States, Washington, D.C., and the provinces of Canada, which recognizes the registration of commercial vehicles registered in other jurisdictions. International Registration Plan, Inc., https://www.irponline.org/ (last visited Mar. 11, 2021).
[28] A fleet vehicle registered under s. 320.0657, F.S., provides for the permanent registration of fleet license plates.
[29] Ch. 318, F.S., relates to the disposition of traffic infractions.
[30] S. 324.251, F.S.
[31] Ch. 324, F.S.
[32] Ss. 320.02 and 324.011, F.S.
[33] Ss. 324.031, 324.061, 324.161, and 324.171, F.S. Businesses that choose to self-insure the financial responsibility requirements must deposit $30,000 per vehicle, up to a maximum of $120,000, with DHSMV and maintain excess insurance with limits of $125,000/$250,000/$300,000. Individuals that choose to self-insure must deposit $30,000 with DHSMV. Individuals and businesses can also obtain a certificate of self-insurance to satisfy the financial responsibility requirements. Individuals must have an unencumbered net worth of $40,000 and businesses must have either an unencumbered net worth of $40,000 for the first vehicle and $20,000 for each additional vehicle or a sufficient net worth determined by DHSMV by rule. Currently, the applicable rule provides that $40,000 for the first vehicle and an amount less than $20,000 for each additional vehicle is sufficient if the applicant carries excess insurance in the amounts of $25,000/$50,000/$100,000. The amount applicable to each additional vehicle is determined annually under a "Manual of Financial Responsibility Rates" (Revised 05-89) adopted by rule by the Office of Insurance Regulation. Rule 15A-3.011, F.A.C.
[34] S. 324.021(7), F.S.
[35] S. 324.022(1), F.S. These coverage amounts are commonly referred to in a summary manner, i.e., $10,000/$20,000/$10,000 or 10/20/10.

Florida's Motor Vehicle No-Fault Law (No-Fault Law)[36] requires motorists to carry no-fault insurance known as personal injury protection (PIP) coverage. The purpose of PIP coverage under the No-Fault Law is to provide for medical, surgical, funeral, and disability insurance benefits without regard to who is responsible for a motor vehicle accident. In return for assuring payment of these benefits, the No-Fault Law provides limitations on the right to bring lawsuits arising from motor vehicle accidents. Florida motorists are required to carry $10,000 of PIP coverage.[37] However, motorcycles are excluded from this requirement.

A driver's license and vehicle registration are subject to suspension for failure to comply with the PD and PIP coverage requirements.[38] A suspended driver's license and registration may be reinstated by obtaining a liability policy and by paying a fee to DHSMV.[39]

Effect of the Bill

The bill creates a new section of the Florida Insurance Code[40] providing requirements for "peer-to-peer car-sharing," also called "car-sharing" in the bill. Peer-to-peer car-sharing is the authorized use of a shared vehicle (vehicle or car) through a peer-to-peer car-sharing program by an individual, the shared vehicle driver (driver), who is not the shared vehicle owner (owner).

"Peer-to-peer car-sharing" does not include the renting of a motor vehicle through a rental company, the use of a for-hire vehicle, or joint use of motor vehicles, such as ridesharing, carpooling, or a car-sharing service. The bill defines the term "peer-to-peer car-sharing program" (program) as a business platform that enables peer-to-peer car-sharing by connecting motor vehicle owners with drivers for financial consideration. It does not include a rental car company, taxi cab association, the owner of a for-hire vehicle, a car-sharing service, or a program that might otherwise be considered a peer-to-peer car-sharing program, if it is not used to process payment for use of a shared vehicle.[41]

Sales Tax and Surcharge

The bill provides that peer-to-peer car-sharing programs are required to collect sales tax and a $1 per day rental car surcharge from the customer and remit them to the state. The bill requires the peer-to-peer car-sharing program to report surcharge collections and surcharge revenues as attributable to the county corresponding to the car-sharing start time.

Peer-to-Peer Car-Sharing Insurance Requirements

The bill requires the program to ensure that, during each car-sharing period, the owner and the driver of the vehicle and the peer-to-peer car-sharing program have the following minimum coverage for motor vehicle insurance, during peer-to-peer car-sharing periods:

- Property damage coverage of at least $10,000;
- Bodily injury coverage of at least $10,000 for injury to one person and $20,000 for injury to two or more persons;
- Personal injury protection of $10,000; and

[36] Ss. 627.730-627.7405, F.S.
[37] S. 627.7275, F.S. Under Florida's Financial Responsibility Law (Ch. 324, F.S.), motorists must also provide proof of ability to pay monetary damages for Bodily Injury and Property Damage liability at the time of motor vehicle accidents or when serious traffic violations occur. The Financial Responsibility Law requires $10,000, per person, and $20,000, per incident, of Bodily Injury coverage, and $10,000 of Property Damage liability coverage.
[38] S. 324.0221(2), F.S.
[39] S. 324.0221(3), F.S.
[40] The Florida Insurance Code is chapters 624-632, 634, 635, 636, 641, 642, 648, and 651, F.S. S. 624.01, F.S.
[41] A "for-hire vehicle" means any motor vehicle, when used for transporting persons or goods for compensation; let or rented to another for consideration; offered for rent or hire as a means of transportation for compensation; advertised in a newspaper or generally held out as being for rent or hire; used in connection with a travel bureau; or offered or used to provide transportation for persons solicited through personal contact or advertised on a "share-expense" basis. When goods or passengers are transported for compensation in a motor vehicle outside a municipal corporation of this state, or when goods are transported in a motor vehicle not owned by the person owning the goods, such transportation is "for hire." The carriage of goods and other personal property in a motor vehicle by a corporation or association for its stockholders, shareholders, and members, cooperative or otherwise, is transportation "for hire." s. 320.01(15), F.S.

- Uninsured/underinsured motorist coverage, as required by s. 627.727, F.S. While uninsured/underinsured motorist coverage is required to be offered to every purchaser of motor vehicle insurance in this state, the purchaser may reject such coverage in writing. Therefore, such insurance is elective.

The program must also ensure that the insurance policy either recognizes the use of the vehicle in peer-to-peer car-sharing or does not exclude shared use. Compliant insurance coverage may be maintained by the vehicle owner, driver, the program, or any combination thereof, which will be the primary insurance coverage during periods the vehicle is shared. If a claim occurs during the car-sharing period in another state with higher minimum financial responsibility limits requiring under ch. 324, F.S., the minimum insurance requirements under the peer-to-peer car-sharing program satisfy the difference in minimum coverage amounts up to the applicable policy limits.

If the owner's or driver's insurance lapses or does not provide the required coverage, the program's coverage must provide coverage as if it were primary from day one, i.e., provide coverage from the first dollar claimed. Further, the program's coverage must not require that a claim be denied by another insurer. The program is authorized to maintain multiple insurance policies to meet its obligations.[42]

Liabilities and Exclusions

If it is determined that the vehicle owner was in control[43] of the vehicle at the time of a loss, the owner must indemnify the program to the extent of the insurer's obligation.

During shared periods, the program assumes the liability of the vehicle owner for bodily injury and property damage to third parties, uninsured/underinsured motorists, and personal injury protection coverages in the amount specified in the car-sharing agreement, which must meet statutory minimums.[44] This shifting of liability is void if the owner makes an intentional or fraudulent material misrepresentation or omission to the program before the sharing period when the loss occurred or if the owner acts in concert with a vehicle driver who fails to return the vehicle as provided in the peer-to-peer car-sharing agreement.

If a dispute exists about who was in control of a vehicle at the time of a loss and the program does not have, did not retain, or fails to provide specific required information, the program will have primary liability for a claim.

If the owner's insurer defends or indemnifies a claim related to a vehicle that it has excluded from coverage and for which it is not liable under the bill, the owner's insurer is entitled to contribution from the program's insurer under certain conditions.

Exemption from Vicarious Liability

The program and the shared vehicle owner are exempted from vicarious liability under any local or state law that imposes liability based on vehicle ownership.[45] This means that the actions and liabilities of the driver cannot be imputed to be those of the program or the vehicle owner.

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[42] Under the bill, the program has an insurable interest in the shared vehicle. Also, it may meet its insurance obligations by purchasing insurance from an admitted insurer, which means claims are backed by the Florida Insurance Guaranty Association, in the event the insurer becomes insolvent, or the insurance may be purchased from an authorized surplus lines company, provided the company carries a minimum rating specified by the bill.

[43] *See* Section III.C. Drafting Issues or Other Comments.

[44] This requirement seems to conflict with the requirements explained above in Peer-to-Peer Car-Sharing Insurance Requirements, whereby the car-sharing program provides coverage if the owner's or driver's policy lapses. *See* Section III. C. Drafting Issues or Other Comments.

[45] The bill references the federal Graves Amendment, 49 U.S.C. 30106 (2005). The Graves Amendment provides that the owner of a motor vehicle who engages in the business of renting or leasing vehicles and has not been negligent or committed a crime is not liable for the damages caused by a renter/lessee during the rental or lease period merely based on being the owner of the rented or leased vehicle. The Graves Amendment defines owner as a person who is—

(A) a record or beneficial owner, holder of title, lessor, or lessee of a motor vehicle;

(B) entitled to the use and possession of a motor vehicle subject to a security interest in another person; or

(C) a lessor, lessee, or a bailee of a motor vehicle, in the trade or business of renting or leasing motor vehicles, having the use or possession thereof, under a lease, bailment, or otherwise.

Motor Vehicle Insurance Policy Exclusions

The bill specifies that a motor vehicle insurer may exclude coverage and the duty to defend or indemnify any claim under an owner's policy, including, but not limited to, all types of motor vehicle coverage. The bill provides that current insurance policies approved for use in Florida that exclude coverage of vehicles offered for rent, sharing, or hire or for any business use are not invalidated or limited.

Notification Regarding Liens

If the vehicle has a lien against it at the time it is registered for use within the program, the program must notify the owner that using the vehicle for car-sharing may violate the terms of the contract with the lienholder.

Required Recordkeeping

The program must collect and verify records regarding vehicle use, including the times used, fees paid by the driver, and revenues received by the owner. These records must be retained for at least the duration of the statute of limitations for personal injuries and be provided on request to the vehicle owner, the owner's insurer, or the vehicle driver's insurer. The program must also keep the following records:[46]

- The name and address of the driver;
- The driver license number of the driver and each other person, if any, who will operate the vehicle; and
- The place of issuance of the driver license.

Consumer Protections

The peer-to-peer car-sharing agreement must include the following disclosures to the owner and driver:

- Any right of the program to seek indemnification from either the owner or driver for economic losses due to a breach of contract;
- A motor vehicle insurance policy issued to the owner for the vehicle or to the driver does not provide a defense or indemnification for any claim asserted by the program;
- The program's insurance is only in effect during the sharing period;
- If the driver uses the vehicle beyond the agreed termination time, the owner and driver may not have insurance coverage;
- The daily rate, fees, and, if applicable, any insurance or protection package costs that are charged to the owner or the driver;
- The vehicle owner's motor vehicle liability insurance may exclude coverage for a vehicle;
- An emergency telephone number of the personnel capable of fielding calls for roadside assistance and other customer service inquiries; and
- Any conditions under which a vehicle driver must maintain a personal motor vehicle insurance policy with certain coverage on a primary basis in order to book a vehicle.

The program may not enter into an agreement with a driver, unless the driver:

- Holds a Florida driver license of the type required for the class of vehicle shared;
- Holds a driver license issued by the driver's state or country of the type required for the class of vehicle and the driver is the minimum age to operate a vehicle in Florida; or
- Is specifically authorized by DHSMV to drive vehicles of the class shared.

The program is solely responsible for program equipment installed in or on the vehicle for the purposes of allowing use of the vehicle in car-sharing through the program. The program must indemnify the

[46] *See* Section III.C. Drafting Issues or Other Comments.

owner for any damage to or theft of such equipment during share periods that is not caused by the owner; the program may seek indemnification from the driver for such damage.

Motor Vehicle Safety Recalls

The program must verify the recall and repair status of the vehicle when it is registered for use with the program. The owner must be notified by the program that: vehicles under recall cannot be shared until repaired; if the owner receives a recall notice while the vehicle is available for sharing, the vehicle must be removed from sharing as soon as practicable; and, if the vehicle is in the possession of a driver, the owner must notify the program as soon as practicable so that it can be repaired.[47]

Construction

The bill specifically provides that it does not limit the liability of the program for acts and omissions by the program that cause bodily harm to a person as a result of peer-to-peer car-sharing. It also provides that it does not limit the program's right to contract for indemnification from owners or drivers for economic losses due to a breach of contract.

B. SECTION DIRECTORY:

Section 1. Amends s. 212.05, F.S., relating to sales, storage, and use tax.

Section 2. Amends s. 212.0606, F.S., relating to rental car surcharge.

Section 3. Creates s. 627.7483, F.S., relating to peer-to-peer car sharing; insurance requirements.

Section 4. Provides an effective date of January 1, 2022.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The Revenue Estimating Conference (REC) has not estimated the potential revenue impacts of the bill. Staff estimates that the bill will have a recurring positive indeterminate impact on General Revenue and state trust fund revenues.

2. Expenditures:

The bill will likely have no impact on state government expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The REC has not estimated the potential revenue impacts of the bill. Staff estimates that the bill will have a recurring positive indeterminate impact on local government revenues.

2. Expenditures:

The bill will likely have no impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

[47] *Id.*

Peer-to-peer car-sharing programs will be required to remit the rental car surcharge and appropriate sales taxes as well as comply with insurance regulations. Therefore, the bill may have both and positive and negative impacts on certain entities within the private sector.

D. FISCAL COMMENTS:

According to the Department of Revenue, the rental car surcharge under s. 212.0606, F.S., and sales and use taxes under s. 212.05, F.S., on rental revenue generated by participating in a "Peer-to-Peer", or other, ride-share model program, apply under current law and are currently required to be remitted to the state.[48] At present, the owner of the car is responsible for collecting and remitting the tax and surcharge amounts.[49] Compliance is relatively low.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The Department of Revenue notes that the bill will require rulemaking to update both rules and forms. The bill does not provide specific authority for that rulemaking, but the statutory changes fall within chapters the department has standing rulemaking authority to administer. The department has also requested emergency rulemaking authority.[50]

C. DRAFTING ISSUES OR OTHER COMMENTS:

Insurance and Liability Issues

The bill defines a "shared vehicle owner" as the registered owner, or a natural person or entity designated by the registered owner, of a motor vehicle made available for sharing to shared vehicle drivers through a peer-to-peer car-sharing program. The bill uses the term "shared vehicle owner" exclusively in the context of the role of the registered owner of the motor vehicle. It does not provide a separate context for when an individual or entity designated by the owner would act on behalf of the owner or limit the liability of the designated person or entity to only the liabilities that could arise from their actions performed in the interest of the owner. Therefore, all responsibilities, obligations, and liabilities that the bill places on the owner are shared by the designee, without limitation. This may create a situation where a person is designated only to facilitate delivery or return of a vehicle and they become liable for all of the owner's insurance obligations with respect to the vehicle and the program.

[48] Email from Debra Longman, Director of the Office of Legislative and Cabinet Services, Department of Revenue, RE: SB 1148 Questions (March 18, 2019), and subsequent email from same confirming that responses from that email are still accurate in the context of this bill (March 26, 2021).
[49] *Id.*
[50] Department of Revenue's analysis of HB 365, dated February 15, 2021.

The bill requires the peer-to-peer car-sharing program to ensure that the owner and driver of a vehicle have uninsured/underinsured motorist coverage as required by law. The uninsured/underinsured motorist coverage statute is elective. However, on lines 404-413, the bill shifts liability for specified coverages from the owner to the program, including liability to uninsured/underinsured motorists. This language implies that the program is required to provide uninsured/underinsured motorist coverage meeting or exceeding statutory minimums. It is unclear if the intent of the bill is to require uninsured/underinsured motorist coverage, despite its elective status, or to allow the program to accept arrangements and be free from liability where the owner and or the driver have rejected uninsured/underinsured motorist coverage.

General Drafting Issues

The definitions of "peer-to-peer car sharing" and related terms in lines 256-327 of the bill are inconsistent in describing what is excluded from each definition. For example, the definitions of "peer-to-peer car-sharing," "peer-to-peer car-sharing program," and "peer-to-peer car-sharing program agreement," all exclude application to rental cars from rental car companies and for-hire vehicles, but ride-share vehicles are only excluded from the definitions of "peer-to-peer car-sharing" and "peer-to-peer car-sharing program." This lack of consistency is confusing. Unless there is a specific reason not to exclude a type of vehicle sharing or driving arrangement from a particular definition, consideration should be given to making all of the exclusions from each definition consistent throughout these lines of the bill.

On lines 519-521, the bill requires designation of personnel capable of fielding calls for roadside assistance and other customer service inquiries. It is not clear to whom the term "personnel" refers to for this purpose or who will designate them (e.g. shared vehicle owner or program).

On lines 543-549, the bill specifies certain records that the program must keep. This occurs in a section titled "Consumer Protections" rather than in an earlier section titled "Recordkeeping." The bill requires the retention of a non-exclusive list of specified records for a designated period. It is unclear if listing additional recordkeeping requirements in another portion of the bill is subject to the same retention period. It may avoid confusion to list all recordkeeping requirements in a single section of the bill.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On April 8, 2021, the Ways & Means Committee adopted a strike-all amendment that:

- Reduces the daily rental car surcharge under s. 212.0606, F.S., from $2 to $1 for rentals through peer-to-peer car sharing programs.
- Requires that the peer-to-peer car-sharing program report surcharge collections and surcharge revenues as attributable to the county corresponding to the car-sharing start time.
- Revises the definition of "car-sharing termination time" to require that if a car is returned to a location other than that originally agreed to, that the revised location must be incorporated into the peer-to-peer car-sharing program agreement, and to remove language stating that possession of the vehicle by the owner's authorized designee constitutes a terminating event.
- Revises the definition of "peer-to-peer car-sharing program" to exclude services limited to hardware or software provided as a service when no payment is being made for use of the vehicle.
- Provides that Florida's minimum insurance requirements for peer-to-peer car-sharing programs satisfy the difference in coverage requirements in another state with higher minimum insurance requirements.
- Requires the insurer, insurers, or peer-to-peer car-sharing program that satisfies the minimum insurance requirements to assuming primary liability for the claim under certain conditions.
- Preserves an insurer's authority to underwrite, cancel, or nonrenew an insurance policy under current law.
- Removes "fees" from the required disclosure in a peer-to-peer car-sharing agreement.
- Moves the effective date of the bill to January 1, 2022.
- Makes additional technical and conforming changes.

The analysis is drafted to the committee substitute as passed by the Ways & Means Committee.

A bill to be entitled

An act relating to motor vehicle rentals; amending s. 212.05, F.S.; specifying the applicable sales tax rate on motor vehicle leases and rentals by motor vehicle rental companies and peer-to-peer car-sharing programs; requiring peer-to-peer car-sharing programs to collect and remit the applicable sales tax; amending s. 212.0606, F.S.; providing definitions; specifying the applicable rental car surcharge on motor vehicle leases and rentals by motor vehicle rental companies; specifying applicability of the surcharge; requiring motor vehicle rental companies to collect and remit the surcharge; specifying the applicable rental car surcharge on motor vehicle leases and rentals by peer-to-peer car-sharing programs; specifying applicability of the surcharge; requiring car-sharing services to collect a certain surcharge; requiring peer-to-peer car-sharing programs to collect the surcharge; providing that the surcharge for peer-to-peer car-sharing is attributable to the county corresponding to the location of the motor vehicle at the car-sharing start time; requiring a dealer to report collected surcharge revenue accordingly; providing an exception; providing application of a surcharge imposed on a shared

vehicle; creating s. 627.7483, F.S.; providing definitions; specifying insurance requirements for shared vehicle owners and shared vehicle drivers under peer-to-peer car-sharing programs; providing that a peer-to-peer car-sharing program has an insurable interest in a shared vehicle during certain periods; providing construction; authorizing peer-to-peer car-sharing programs to own and maintain certain motor vehicle insurance policies; requiring peer-to-peer car-sharing programs to assume certain liability; providing exceptions; requiring a shared vehicle owner's insurer to indemnify the peer-to-peer car-sharing program under certain circumstances; providing an exemption from vicarious liability for peer-to-peer car-sharing programs and shared vehicle owners; authorizing motor vehicle insurers to exclude coverages and a duty to defend or indemnify claims under a shared vehicle owner's policy; providing construction relating to exclusions; providing a right of recovery to a shared vehicle owner's insurer for certain claims; requiring peer-to-peer car-sharing programs to provide certain information to shared vehicle owners regarding liens; specifying recordkeeping, record retention, and record-sharing requirements for peer-to-peer car-sharing programs;

specifying disclosure requirements for peer-to-peer car-sharing program agreements; specifying driver license verification and data retention requirements for peer-to-peer car-sharing programs; providing that peer-to-peer car-sharing programs have sole responsibility for certain equipment in or on a shared vehicle; providing for indemnification regarding such equipment; specifying requirements for peer-to-peer car-sharing programs relating to safety recalls on a shared vehicle; providing construction; providing an effective date.

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

Section 1. Paragraph (c) of subsection (1) of section 212.05, Florida Statutes, is amended to read:

212.05 Sales, storage, use tax.—It is hereby declared to be the legislative intent that every person is exercising a taxable privilege who engages in the business of selling tangible personal property at retail in this state, including the business of making mail order sales, or who rents or furnishes any of the things or services taxable under this chapter, or who stores for use or consumption in this state any item or article of tangible personal property as defined herein and who leases or rents such property within the state.

(1) For the exercise of such privilege, a tax is levied on each taxable transaction or incident, which tax is due and payable as follows:

(c) At the rate of 6 percent of the gross proceeds derived from the lease or rental of tangible personal property, as defined herein; however, the following special provisions apply to the lease or rental of motor vehicles and to peer-to-peer car-sharing programs:

1. When a motor vehicle is leased or rented by a motor vehicle rental company or a peer-to-peer car-sharing program, as those terms are defined in s. 212.0606(1), for a period of less than 12 months:

a. If the motor vehicle is rented in Florida, the entire amount of such rental is taxable, even if the vehicle is dropped off in another state.

b. If the motor vehicle is rented in another state and dropped off in Florida, the rental is exempt from Florida tax.

c. If the motor vehicle is rented through a peer-to-peer car-sharing program, the peer-to-peer car-sharing program shall collect and remit the applicable tax due in connection with the rental.

2. Except as provided in subparagraph 3., for the lease or rental of a motor vehicle for a period of not less than 12 months, sales tax is due on the lease or rental payments if the vehicle is registered in this state; provided, however, that no

tax shall be due if the taxpayer documents use of the motor vehicle outside this state and tax is being paid on the lease or rental payments in another state.

3. The tax imposed by this chapter does not apply to the lease or rental of a commercial motor vehicle as defined in s. 316.003(13)(a) to one lessee or rentee for a period of not less than 12 months when tax was paid on the purchase price of such vehicle by the lessor. To the extent tax was paid with respect to the purchase of such vehicle in another state, territory of the United States, or the District of Columbia, the Florida tax payable shall be reduced in accordance with ~~the provisions of~~ s. 212.06(7). This subparagraph shall only be available when the lease or rental of such property is an established business or part of an established business or the same is incidental or germane to such business.

Section 2. Section 212.0606, Florida Statutes, is amended to read:

212.0606 Rental car surcharge.—

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

(a) "Car-sharing service" means a membership-based organization or business, or division thereof, which requires the payment of an application fee or a membership fee and provides member access to motor vehicles:

1. Only at locations that are not staffed by car-sharing service personnel employed solely for the purpose of interacting

with car-sharing service members;

2. Twenty-four hours per day, 7 days per week;

3. Only through automated means, including, but not limited to, a smartphone application or an electronic membership card;

4. On an hourly basis or for a shorter increment of time;

5. Without a separate fee for refueling the motor vehicle;

6. Without a separate fee for minimum financial responsibility liability insurance; and

7. Owned or controlled by the car-sharing service or its affiliates.

(b) "Motor vehicle rental company" means an entity that is in the business of providing, for financial consideration, motor vehicles to the public under a rental agreement.

(c) "Peer-to-peer car-sharing program" has the same meaning as in s. 627.7483(1).

(2) Except as provided in subsections (3) and (4) ~~subsection (2)~~, a surcharge of $2 per day or any part of a day is imposed upon the lease or rental by a motor vehicle rental company of a motor vehicle that is licensed for hire and designed to carry fewer than nine passengers, regardless of whether the motor vehicle is licensed in this state, for financial consideration and without transfer of the title of the motor vehicle. The surcharge is imposed regardless of whether the lease or rental occurs in person or through digital means.

The surcharge applies to only the first 30 days of the term of a lease or rental and must be collected and remitted by the motor vehicle rental company. The surcharge is subject to all applicable taxes imposed by this chapter.

(3) A surcharge of $1 per day or any part of a day is imposed upon each peer-to-peer car-sharing program agreement involving a shared vehicle that is registered in this state and designed to carry fewer than nine passengers for financial consideration and without transfer of the title of the shared vehicle. If the duration of the car-sharing period for a peer to-peer car-sharing program agreement subject to the surcharge established pursuant to this subsection is less than 24 hours, the applicable surcharge will be $1 per usage. The surcharge applies to the first 30 days only of a car-sharing period for any peer-to-peer car-sharing program agreement to which the surcharge applies and must be collected by the peer-to-peer car-sharing program. The surcharge is subject to all applicable taxes imposed by this chapter.

(4) ~~(2)~~ A member of a car-sharing service who uses a motor vehicle as described in subsection (2) ~~(1)~~ for less than 24 hours pursuant to an agreement with the car-sharing service shall pay a surcharge of $1 per usage. A member of a car-sharing service who uses the same motor vehicle for 24 hours or more shall pay a surcharge of $2 per day or any part of a day as provided in subsection (2) ~~(1)~~. The car-sharing service shall

collect the surcharge ~~For purposes of this subsection, the term "car-sharing service" means a membership-based organization or business, or division thereof, which requires the payment of an application or membership fee and provides member access to motor vehicles:~~

~~(a) Only at locations that are not staffed by car-sharing service personnel employed solely for the purpose of interacting with car-sharing service members;~~

~~(b) Twenty-four hours per day, 7 days per week;~~

~~(c) Only through automated means, including, but not limited to, smartphone applications or electronic membership cards;~~

~~(d) On an hourly basis or for a shorter increment of time;~~

~~(e) Without a separate fee for refueling the motor vehicle;~~

~~(f) Without a separate fee for minimum financial responsibility liability insurance; and~~

~~(g) Owned or controlled by the car-sharing service or its affiliates~~.

The surcharge imposed under this subsection does not apply to the lease, rental, or use of a motor vehicle from a location owned, operated, or leased by or for the benefit of an airport or airport authority.

(5)(a) ~~(3)(a)~~ Notwithstanding s. 212.20, and less the costs

of administration, 80 percent of the proceeds of this surcharge shall be deposited in the State Transportation Trust Fund, 15.75 percent of the proceeds of this surcharge shall be deposited in the Tourism Promotional Trust Fund created in s. 288.122, and 4.25 percent of the proceeds of this surcharge shall be deposited in the Florida International Trade and Promotion Trust Fund. For the purposes of this subsection, the term "proceeds of this surcharge" ~~of the surcharge~~ means all funds collected and received by the department under this section, including interest and penalties on delinquent surcharges. The department shall provide the Department of Transportation rental car surcharge revenue information for the previous state fiscal year by September 1 of each year.

(b) Notwithstanding any other ~~provision of~~ law, the proceeds deposited in the State Transportation Trust Fund shall be allocated on an annual basis in the Department of Transportation's work program to each department district, except the Turnpike District. The amount allocated to each district shall be based on the amount of proceeds attributed to the counties within each respective district.

(6)(a) ~~(4)~~ Except as provided in this section, the department shall administer, collect, and enforce the surcharges ~~surcharge~~ as provided in this chapter.

(b) ~~(a)~~ The department shall require a dealer ~~dealers~~ to report surcharge collections according to the county to which

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

the surcharge was attributed. For purposes of this section, the surcharge shall be attributed to the county in which ~~where~~ the rental agreement was entered into, except that, for peer-to-peer car-sharing, the surcharge shall be attributable to the county corresponding to the location of the motor vehicle at the car-sharing start time.

(c) ~~(b)~~ A dealer ~~Dealers~~ who collects a ~~collect the rental car~~ surcharge pursuant to this section shall report to the department all surcharge revenues attributed to the county in which ~~where~~ the rental agreement was entered into on a timely filed return for each required reporting period, except that, in the case of peer-to-peer car sharing, the peer-to-peer car-sharing program shall report the applicable surcharge revenue attributed to the county corresponding to the location of the motor vehicle at the car-sharing start time. The provisions of this chapter which apply to interest and penalties on delinquent taxes apply to the surcharge. The surcharge shall not be included in the calculation of estimated taxes pursuant to s. 212.11. The dealer's credit provided in s. 212.12 does not apply to any amount collected under this section.

(7) ~~(5)~~ The surcharge imposed by this section does not apply to a motor vehicle or a shared vehicle provided at no charge to a person whose motor vehicle is being repaired, adjusted, or serviced by the entity providing the replacement motor vehicle.

Section 3. Section 627.7483, Florida Statutes, is created to read:

627.7483 Peer-to-peer car sharing; insurance requirements.—

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

(a) "Car-sharing delivery period" means the period of time during which a shared vehicle is being delivered to the location of the car-sharing start time, if applicable, as documented by the governing peer-to-peer car-sharing program agreement.

(b) "Car-sharing period" means the period of time that commences either at the car-sharing delivery period or, if there is no car-sharing delivery period, at the car-sharing start time and that ends at the car-sharing termination time.

(c) "Car-sharing start time" means the time when the shared vehicle is under the control of the shared vehicle driver, which time occurs at or after the time the reservation of the shared vehicle is scheduled to begin, as documented in the records of a peer-to-peer car-sharing program.

(d) "Car-sharing termination time" means the earliest of the following events:

1. The expiration of the agreed-upon period of time established for the use of a shared vehicle according to the terms of the peer-to-peer car-sharing program agreement if the shared vehicle is delivered to the location agreed upon in the peer-to-peer car-sharing program agreement;

2. The time the shared vehicle is returned to a location as alternatively agreed upon by the shared vehicle owner and shared vehicle driver, as communicated through a peer-to-peer car-sharing program, which alternatively agreed-upon location must be incorporated into the peer-to-peer car-sharing program agreement; or

3. The time the shared vehicle owner takes possession and control of the shared vehicle.

(e) "Peer-to-peer car sharing" or "car sharing" means the authorized use of a motor vehicle by an individual other than the vehicle's owner through a peer-to-peer car-sharing program. For the purposes of this section, the term does not include the renting of a motor vehicle through a rental car company, the use of a for-hire vehicle as defined in s. 320.01(15), ridesharing as defined in s. 341.031(9), a carpool as defined in s. 450.28(3), or the use of a motor vehicle under an agreement for a car-sharing service as defined in s. 212.0606(1).

(f) "Peer-to-peer car-sharing program" means a business platform that enables peer-to-peer car sharing by connecting motor vehicle owners with drivers for financial consideration. For the purposes of this section, the term does not include a rental car company, a car-sharing service as defined in s. 212.0606(1), a taxicab association, the owner of a for-hire vehicle as defined in s. 320.01(15), or a service provider that is solely providing hardware or software as a service to a

person or an entity that is not effectuating payment of financial consideration for use of a shared vehicle.

(g) "Peer-to-peer car-sharing program agreement" means the terms and conditions established by the peer-to-peer car-sharing program which are applicable to a shared vehicle owner and a shared vehicle driver and which govern the use of a shared vehicle through a peer-to-peer car-sharing program. For the purposes of this section, the term does not include a rental agreement or an agreement for a for-hire vehicle as defined in s. 320.01(15) or for a car-sharing service as defined in s. 212.0606(1).

(h) "Shared vehicle" means a motor vehicle that is available for sharing through a peer-to-peer car-sharing program. For the purposes of this section, the term does not include a rental car, a for-hire vehicle as defined in s. 320.01(15), or a motor vehicle used for ridesharing as defined in s. 341.031(9), for a carpool as defined in s. 450.28(3), or for a car-sharing service as defined in s. 212.0606(1).

(i) "Shared vehicle driver" means an individual who has been authorized by the shared vehicle owner to drive the shared vehicle under the peer-to-peer car-sharing program agreement.

(j) "Shared vehicle owner" means the registered owner, or a natural person or an entity designated by the registered owner, of a motor vehicle made available for sharing to shared vehicle drivers through a peer-to-peer car-sharing program. For

the purposes of this section, the term does not include an owner of a for-hire vehicle as defined in s. 320.01(15).

(2) INSURANCE COVERAGE REQUIREMENTS.—

(a)1. A peer-to-peer car-sharing program shall ensure that, during each car-sharing period, the shared vehicle owner and the shared vehicle driver are insured under a motor vehicle insurance policy that provides all of the following:

a. Property damage liability coverage that meets the minimum coverage amounts required under s. 324.022.

b. Bodily injury liability coverage limits as described in s. 324.021(7)(a) and (b).

c. Personal injury protection benefits that meet the minimum coverage amounts required under s. 627.736.

d. Uninsured and underinsured vehicle coverage as required under s. 627.727.

2. The peer-to-peer car-sharing program shall also ensure that the motor vehicle insurance policy under subparagraph 1.:

a. Recognizes that the shared vehicle insured under the policy is made available and used through a peer-to-peer car-sharing program; or

b. Does not exclude the use of a shared vehicle by a shared vehicle driver.

(b)1. The insurance described under paragraph (a) may be satisfied by a motor vehicle insurance policy maintained by:

a. A shared vehicle owner;

b. A shared vehicle driver;

c. A peer-to-peer car-sharing program; or

d. A combination of a shared vehicle owner, a shared vehicle driver, and a peer-to-peer car-sharing program.

2. The insurance policy maintained in subparagraph 1. which satisfies the insurance requirements under paragraph (a) is primary during each car-sharing period. If a claim occurs during the car-sharing period in another state with minimum financial responsibility limits higher than those limits required under chapter 324, the coverage maintained under paragraph (a) satisfies the difference in minimum coverage amounts up to the applicable policy limits.

3.a. If the insurance maintained by a shared vehicle owner or shared vehicle driver in accordance with subparagraph 1. has lapsed or does not provide the coverage required under paragraph (a), the insurance maintained by the peer-to-peer car-sharing program must provide the coverage required under paragraph (a), beginning with the first dollar of a claim, and must defend such claim, except under circumstances as set forth in subparagraph (3)(a)2.

b. Coverage under a motor vehicle insurance policy maintained by the peer-to-peer car-sharing program must not be dependent on another motor vehicle insurer first denying a claim, and another motor vehicle insurance policy is not required to first deny a claim.

c. Notwithstanding any other law, statute, rule, or regulation to the contrary, a peer-to-peer car-sharing program has an insurable interest in a shared vehicle during the car-sharing period. This sub-subparagraph does not create liability for a peer-to-peer car-sharing program for maintaining the coverage required under paragraph (a) and under this paragraph, if applicable.

d. A peer-to-peer car-sharing program may own and maintain as the named insured one or more policies of motor vehicle insurance which provide coverage for:

(I) Liabilities assumed by the peer-to-peer car-sharing program under a peer-to-peer car-sharing program agreement;

(II) Liability of the shared vehicle owner;

(III) Liability of the shared vehicle driver;

(IV) Damage or loss to the shared motor vehicle; or

(V) Damage, loss, or injury to persons or property to satisfy the personal injury protection and uninsured and underinsured motorist coverage requirements of this section.

e. Insurance required under paragraph (a), when maintained by a peer-to-peer car-sharing program, may be provided by an insurer authorized to do business in this state which is a member of the Florida Insurance Guaranty Association or an eligible surplus lines insurer that has a superior, excellent, exceptional, or equivalent financial strength rating by a rating agency acceptable to the office. A peer-to-peer car-sharing

program is not transacting in insurance when it maintains the insurance required under this section.

(3) LIABILITIES AND INSURANCE EXCLUSIONS.—

(a) Liability.—

1. A peer-to-peer car-sharing program shall assume liability, except as provided in subparagraph 2., of a shared vehicle owner for bodily injury or property damage to third parties or uninsured and underinsured motorist or personal injury protection losses during the car-sharing period in an amount stated in the peer-to-peer car-sharing program agreement, which amount may not be less than those set forth in ss. 324.021(7)(a) and (b), 324.022, 627.727, and 627.736, respectively.

2. The assumption of liability under subparagraph 1. does not apply if a shared vehicle owner:

a. Makes an intentional or fraudulent material misrepresentation or omission to the peer-to-peer car-sharing program before the car-sharing period in which the loss occurs; or

b. Acts in concert with a shared vehicle driver who fails to return the shared vehicle pursuant to the terms of the peer-to-peer car-sharing program agreement.

3. The insurer, insurers, or peer-to-peer car-sharing program providing coverage under paragraph (2)(a) shall assume primary liability for a claim when:

a. A dispute exists over who was in control of the shared motor vehicle at the time of the loss, and the peer-to-peer car-sharing program does not have available, did not retain, or fails to provide the information required under subsection (5); or

b. A dispute exists over whether the shared vehicle was returned to the alternatively agreed-upon location as required under subparagraph (1)(d)2.

(b) Vicarious liability.—A peer-to-peer car-sharing program and a shared vehicle owner are exempt from vicarious liability consistent with 49 U.S.C. s. 30106 (2005) under any state or local law that imposes liability solely based on vehicle ownership.

(c) Exclusions in motor vehicle insurance policies.—An authorized insurer that writes motor vehicle liability insurance in this state may exclude any coverage and the duty to defend or indemnify for any claim under a shared vehicle owner's motor vehicle insurance policy, including, but not limited to:

1. Liability coverage for bodily injury and property damage;

2. Personal injury protection coverage;

3. Uninsured and underinsured motorist coverage;

4. Medical payments coverage;

5. Comprehensive physical damage coverage; and

6. Collision physical damage coverage.

This paragraph does not invalidate or limit any exclusion contained in a motor vehicle insurance policy, including any insurance policy in use or approved for use which excludes coverage for motor vehicles made available for rent, sharing, or hire or for any business use. This paragraph does not invalidate, limit, or restrict an insurer's ability under existing law to underwrite, cancel, or nonrenew any insurance policy.

(d) Contribution against indemnification.—A shared vehicle owner's motor vehicle insurer that defends or indemnifies a claim against a shared vehicle which is excluded under the terms of its policy has the right to seek recovery against the motor vehicle insurer of the peer-to-peer car-sharing program if the claim is:

1. Made against the shared vehicle owner or the shared vehicle driver for loss or injury that occurs during the car-sharing period; and

2. Excluded under the terms of its policy.

(4) NOTIFICATION OF IMPLICATIONS OF LIEN.—At the time a motor vehicle owner registers as a shared vehicle owner on a peer-to-peer car-sharing program and before the shared vehicle owner may make a shared vehicle available for car sharing on the peer-to-peer car-sharing program, the peer-to-peer car-sharing program must notify the shared vehicle owner that, if the shared

vehicle has a lien against it, the use of the shared vehicle through a peer-to-peer car-sharing program, including the use without physical damage coverage, may violate the terms of the contract with the lienholder.

(5) RECORDKEEPING.—A peer-to-peer car-sharing program shall:

(a) Collect and verify records pertaining to the use of a shared vehicle, including, but not limited to, the times used, car-sharing period pickup and dropoff locations, and revenues received by the shared vehicle owner.

(b) Retain the records in paragraph (a) for a time period not less than the applicable personal injury statute of limitations.

(c) Provide the information contained in the records in paragraph (a) upon request to the shared vehicle owner, the shared vehicle owner's insurer, or the shared vehicle driver's insurer to facilitate a claim coverage investigation, settlement, negotiation, or litigation.

(6) CONSUMER PROTECTIONS.—

(a) Disclosures.—Each peer-to-peer car-sharing program agreement made in this state must disclose to the shared vehicle owner and the shared vehicle driver:

1. Any right of the peer-to-peer car-sharing program to seek indemnification from the shared vehicle owner or the shared vehicle driver for economic loss resulting from a breach of the

terms and conditions of the peer-to-peer car-sharing program agreement.

2. That a motor vehicle insurance policy issued to the shared vehicle owner for the shared vehicle or to the shared vehicle driver does not provide a defense or indemnification for any claim asserted by the peer-to-peer car-sharing program.

3. That the peer-to-peer car-sharing program's insurance coverage on the shared vehicle owner and the shared vehicle driver is in effect only during each car-sharing period and that, for any use of the shared vehicle by the shared vehicle driver after the car-sharing termination time, the shared vehicle driver and the shared vehicle owner may not have insurance coverage.

4. The daily rate and, if applicable, any insurance or protection package costs that are charged to the shared vehicle owner or the shared vehicle driver.

5. That the shared vehicle owner's motor vehicle liability insurance may exclude coverage for a shared vehicle.

6. An emergency telephone number of the personnel capable of fielding calls for roadside assistance and other customer service inquiries.

7. Any conditions under which a shared vehicle driver must maintain a personal motor vehicle insurance policy with certain applicable coverage limits on a primary basis in order to book a shared vehicle.

(b) Driver license verification and data retention.—

1. A peer-to-peer car-sharing program may not enter into a peer-to-peer car-sharing program agreement with a driver unless the driver:

a. Holds a driver license issued under chapter 322 which authorizes the driver to drive vehicles of the class of the shared vehicle;

b. Is a nonresident who:

(I) Holds a driver license issued by the state or country of the driver's residence which authorizes the driver in that state or country to drive vehicles of the class of the shared vehicle; and

(II) Is at least the same age as that required of a resident to drive; or

c. Is otherwise specifically authorized by the Department of Highway Safety and Motor Vehicles to drive vehicles of the class of the shared vehicle.

2. A peer-to-peer car-sharing program shall keep a record of:

a. The name and address of the shared vehicle driver;

b. The driver license number of the shared vehicle driver and each other person, if any, who will operate the shared vehicle; and

c. The place of issuance of the driver license.

(c) Responsibility for equipment.—A peer-to-peer car-

sharing program has sole responsibility for any equipment that is put in or on the shared vehicle to monitor or facilitate the peer-to-peer car-sharing transaction, including a GPS system. The peer-to-peer car-sharing program shall indemnify and hold harmless the shared vehicle owner for any damage to or theft of such equipment during the car-sharing period which is not caused by the shared vehicle owner. The peer-to-peer car-sharing program may seek indemnity from the shared vehicle driver for any damage to or loss of such equipment which occurs during the car-sharing period.

(d) Motor vehicle safety recalls.—At the time a motor vehicle owner registers as a shared vehicle owner on a peer-to-peer car-sharing program and before the shared vehicle owner may make a shared vehicle available for car sharing on the peer-to-peer car-sharing program, the peer-to-peer car-sharing program must:

1. Verify that the shared vehicle does not have any safety recalls on the vehicle for which the repairs have not been made; and

2. Notify the shared vehicle owner that if the shared vehicle owner:

a. Has received an actual notice of a safety recall on the vehicle, he or she may not make a vehicle available as a shared vehicle on the peer-to-peer car-sharing program until the safety recall repair has been made.

b. Receives an actual notice of a safety recall on a shared vehicle while the shared vehicle is made available on the peer-to-peer car-sharing program, he or she shall remove the shared vehicle as available on the peer-to-peer car-sharing program as soon as practicably possible after receiving the notice of the safety recall and until the safety recall repair has been made.

c. Receives an actual notice of a safety recall while the shared vehicle is in the possession of a shared vehicle driver, he or she shall notify the peer-to-peer car-sharing program about the safety recall as soon as practicably possible after receiving the notice of the safety recall, so that he or she may address the safety recall repair.

(7) CONSTRUCTION.—This section does not limit:

(a) The liability of a peer-to-peer car-sharing program for any act or omission of the peer-to-peer car-sharing program which results in bodily injury to a person as a result of the use of a shared vehicle through peer-to-peer car sharing; or

(b) The ability of a peer-to-peer car-sharing program to seek, by contract, indemnification from the shared vehicle owner or the shared vehicle driver for economic loss resulting from a breach of the terms and conditions of the peer-to-peer car-sharing program agreement.

Section 4. This act shall take effect January 1, 2022.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 387 Improvements to Real Property
SPONSOR(S): Tourism, Infrastructure & Energy Subcommittee, Fine and others
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Tourism, Infrastructure & Energy Subcommittee	17 Y, 0 N	Willson	Keating
2) Local Administration & Veterans Affairs Subcommittee	15 Y, 0 N	Darden	Miller
3) Ways & Means Committee	15 Y, 2 N	Curry	Aldridge
4) Commerce Committee		Willson	Hamon

SUMMARY ANALYSIS

In 2010, the Legislature provided specific authority for local governments to create Property Assessed Clean Energy (PACE) programs to provide up-front financing for certain qualifying improvements. Under these programs, property owners may apply to the local government for funding to finance a qualifying improvement and voluntarily enter into a financing agreement with the local government. “Qualifying improvements” include energy conservation and efficiency improvements, renewable energy improvements, and wind resistance improvements to existing facilities. Property owners finance qualifying improvements through a non-ad valorem assessment on their property. Local governments determine whether to offer a residential or commercial PACE program, whether to administer the program directly or through a for-profit or not-for-profit administrator, or any combination thereof.

The bill adds several consumer protections relating to the current PACE program, including:

- Specifying that a financing agreement may not be used to fund ancillary work not meeting specified conditions.
- Capping the total of all non-ad valorem assessments, plus any mortgage-related debt on the property, at 97 percent of a residential property’s fair market value.
- Requiring a determination that a residential property owner is able to pay the assessment and meets certain minimum creditworthiness requirements.
- Allowing property owners to cancel a financing agreement within three days of execution.
- Ensuring that financing agreements do not exceed the estimated useful life of the qualifying improvement.
- Requiring acknowledgement of a number of key terms and disclosures, both orally and in writing, before execution of the financing agreement by the property owner.
- Requiring the appropriate licensure and background screening for contractors who install qualifying improvements under a PACE program.
- Requiring verification that the work was completed to code before funds are disbursed.
- Imposing certain marketing and communication guidelines, including limitations and prohibitions on solicitation, advertising, and other inducements.
- Specifying terms relating to enforceability of contracts for qualifying improvements and associated remedies.

The bill also requires the local government to post an online annual report documenting certain PACE activities.

The bill does not have a fiscal impact on state government. The bill does not appear to impact local government revenues, but may have an insignificant negative impact on local government expenditures.

The bill takes effect on July 1, 2021.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Property Assessed Clean Energy (PACE) Programs

Generally, Property Assessed Clean Energy (PACE) programs enable local governments to establish programs to provide financing for certain qualifying improvements on real property which reduce energy consumption and increase energy efficiency. PACE allows individual property owners to contract directly with qualified contractors for energy efficiency and renewable energy projects. The local government issues revenue bonds and uses the proceeds to provide initial project funding, which bonds are repaid by non-ad valorem assessments on participating property owners' tax bills.[1] The first residential PACE program was launched in 2008 in Berkeley and Palm Desert, California.[2] PACE programs are active in 24 states plus Washington D.C., but only California, Florida, and Missouri offer residential PACE programs.[3]

PACE in Florida

In 2010, the Legislature provided specific authority for local governments to create PACE programs.[4] The statute[5] provides supplemental authority to local governments[6] concerning qualified improvements to residential and non-residential real property. The law provides that if a local government authorizes a PACE program, property owners may apply to the local government for funding to finance a qualifying improvement and voluntarily enter into a financing agreement with the local government.[7] "Qualifying improvements" include energy conservation and efficiency improvements, renewable energy improvements, and wind resistance improvements to existing facilities.[8]

At least 30 days before entering into the financing agreement, the property owner must provide notice to any mortgage holder or loan servicer of the intent to enter into the agreement, the maximum amount to be financed, and the maximum annual assessment required to repay the amount.[9] The law provides that an acceleration clause for "payment of the mortgage, note, or lien or other unilateral modification solely as a result of entering into a financing agreement … is not enforceable."[10] However, the mortgage holder or loan servicer may increase the required monthly escrow by an amount necessary to pay annually the qualifying improvement assessment.

The law authorizes a local government to partner with one or more other local governments to provide and finance qualifying improvements, levy a non-ad valorem assessment to fund a qualifying improvement, incur debt to provide financing for qualifying improvements, and collect costs incurred from financing qualifying improvements through a non-ad valorem assessment. These non-ad valorem assessments are senior to existing mortgage debt,[11] so if the homeowner defaults on their mortgage or

[1] For more information, *See* http://www.pacenation.org and http://floridapace.gov/ (last visited Mar. 7, 2021).
[2] NCSL, *PACE Financing* https://www.ncsl.org/research/energy/pace-financing.aspx (last visited Mar. 7, 2021).
[3] California offers residential PACE financing for improvements related to electric vehicle charging, infrastructure, energy efficiency, renewable energy, seismic strengthening and water efficiency. Missouri offers PACE financing for improvements related to energy efficiency and renewable energy. Additionally, Maine offers residential programs without holding a lien against properties. NCSL, *A Clean-Energy Financing Program for Homeowners Now Has Tougher Consumer Protections* (Nov. 17, 2017), https://www.ncsl.org/bookstore/state-legislatures-magazine/clean-energy-financing-consumer-protection.aspx. *See also* PACE Nation, *PACE Programs* https://www.pacenation.org/pace-programs/ (last visited Mar. 9, 2021).
[4] Ch. 2010-139, Laws of Fla.
[5] S. 163.08, F.S.
[6] Section 163.08(2)(a), F.S., defines "local government" as a county, a municipality, a dependent special district as defined in s. 189.012, or a separate legal entity created pursuant to s. 163.01(7) (the Florida Interlocal Cooperation Act)."
[7] S. 163.08(4), F.S.
[8] S. 163.08(2)(b), F.S.
[9] S. 163.08(13), F.S.
[10] S. 163.08(15), F.S.
[11] *See* ss. 125.01(1)(r), 170.01 and 170.09, F.S.

goes into foreclosure, the delinquent PACE assessment payments may be recovered before the mortgage. Current law also specifies that a PACE program may be administered by a for-profit entity or a not-for-profit organization on behalf of and at the discretion of the local government.

In 2012, the Legislature expanded the definition of "local government" to allow a partnership of local governments formed pursuant to the Florida Interlocal Cooperation Act[12] to enter into a financing agreement wherein the partnership, as a separate legal entity, imposes the PACE assessment.[13]

To participate in a PACE program, a property owner must have paid property taxes and not been delinquent for the previous three years.[14] The total assessment cannot be for an amount greater than 20 percent of the just value of the property as determined by the county property appraiser, unless consent is obtained from the mortgage holders.[15]

In Florida, local governments typically have multiple non-exclusive agreements with a number of PACE providers.[16] Generally, PACE providers are private companies that administer the local government's PACE program on behalf of the local government and provide funding from private sources. PACE providers generally act as the program administrator for special districts created pursuant to an interlocal agreement between two or more Florida local governments. Once the PACE district is created, additional counties or municipalities may join the special district as members, authorizing the PACE provider for the special district to administer PACE programs on behalf of the newly joined members.[17] PACE providers generally maintain a list of approved contractors authorized to provide qualifying improvements.[18]

For example, Broward County authorizes the following PACE providers:[19]

- Counterpointe Energy Solutions provides financing under the "AllianceNRG" Program (residential) and the "CounterpointeSRE" Program (commercial). Administers PACE program for the Florida PACE Funding District.
- Berkadia administers a commercial PACE program. Administers PACE program for the Florida Renewable Energy District.
- CleanFund administers a commercial PACE program. Administers PACE program for the Florida Renewable Energy District.
- Dividend Finance administers the "Dividend" Program. Administers PACE program for the Florida Renewable Energy District.
- Greenworks Lending administers a commercial PACE program. Administers PACE program for the Florida Renewable Energy District.
- Lever Energy Capital administers a commercial PACE program. Administers PACE program for the Florida Resiliency and Energy District.
- PACE Funding Group, LLC administers the "PACEfunding" Program (residential). Administers PACE program for the Florida Resiliency and Energy District.
- Rahill administers a commercial PACE program. Administers PACE program for the Florida Resiliency and Energy District.
- Renew Financial administers PACE programs under the "RenewPACE" Program (residential and commercial). Administers PACE program for the Florida Green Finance Authority.
- Renovate America administers the "HERO" Program.
- Structured Finance Associates administers a commercial PACE program. Administers PACE program for the Florida Renewable Energy District.

[12] S. 163.01(7), F.S.
[13] Ch. 2012-117, Laws of Fla.
[14] S. 163.08(9), F.S.
[15] S. 163.08(12)(a), F.S.
[16] *See* Florida Pace Funding Agency, *Service Areas*, https://floridapace.gov/serviceareas/ (last visited Mar. 17, 2021).
[17] *See* Green Corridor Property Assessed Clean Energy (PACE) District Town of Cutler Bay, Florida Financial Report for the Fiscal Year Ended Sept. 30, 2014, at 13, https://flauditor.gov/pages/specialdistricts_efile%20rpts/2014%20green%20corridor%20property%20assessed%20clean%20energy%20(pace)%20district.pdf (last visited Mar. 9, 2021).
[18] *See* Sarasota County, *PACE*, https://www.scgov.net/government/uf-ifas-extension-and-sustainability/pace (last visited Mar. 9, 2021).
[19] Broward County, *Energy & Sustainability Program: Property Assessed Clean Energy (PACE)* https://www.broward.org/Climate/EnergyAndSustainabilityProgram/pages/pace.aspx (last visited Mar. 9, 2021).

- Twain Financial Partners administers a commercial PACE program. Administers PACE program for the Florida Resiliency and Energy District.
- Ygrene administers the "Clean Energy Program" (residential and commercial). Administers PACE program for the Clean Energy Green Corridor Pace District.[20]

Local governments may choose whether to offer a residential or commercial PACE program, whether to administer the program directly or through a third-party PACE provider, or any combination thereof.

Currently, PACE financing typically offers an average interest rate of 6 to 8 percent, not including additional associated fees, which is repaid over a term of 15 to 20 years. Interest rates and fees for a project are set by the PACE provider when the agreement is finalized with the property owner.[21]

Federal Housing Finance Agency and Super-Priority Liens

In 2010,[22] and again in 2014,[23] the Federal Housing Finance Agency (FHFA) directed mortgage underwriters Fannie Mae and Freddie Mac not to purchase mortgages of homes encumbered by a first-lien PACE loan due to its senior status above a mortgage. Under normal circumstances, real estate lien priority is established by the order in which the liens are filed.[24]

According to the FHFA, such super-priority liens increase the risk of losses to taxpayers. Fannie Mae and Freddie Mac support the housing finance market by purchasing, guaranteeing, and securitizing single-family mortgages. Therefore, mortgages supported by Fannie Mae and Freddie Mac must remain in first-lien position, meaning they have first priority in receiving the proceeds from the sale of a property in foreclosure. Although FHFA generally supports energy retrofit financing programs, FHFA acknowledges that such programs should be structured to ensure protection of the core financing for the home.[25]

This restriction has two potential implications for borrowers. First, a homeowner with a first-lien PACE loan may not refinance their existing mortgage with a Fannie Mae or Freddie Mac mortgage. Second, anyone wanting to buy a home that already has a first-lien PACE loan cannot use a Fannie Mae or Freddie Mac loan for the purchase. These restrictions may reduce the marketability of the house or require the homeowner to pay off the PACE loan before selling the house.[26]

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[20] *See* PACE Broward, *Frequently Asked Questions*, https://www.broward.org/Climate/EnergyAndSustainabilityProgram/Documents/PACE%20Broward%20FAQ%20Sheet_Update4_09212018.pdf (last visited Mar. 9, 2021).

[21] Palm Beach County, *PACE Frequently Asked Questions* https://discover.pbcgov.org/resilience/Pages/PACE-Frequently-Asked-Questions.aspx (last visited Mar. 9, 2021).

[22] Federal Housing Finance Agency, *FHFA Statement on Certain Energy Retrofit Loan Programs* (July, 6, 2010), http://www.fhfa.gov/Media/PublicAffairs/Pages/FHFA-Statement-on-Certain-Energy-Retrofit-Loan-Programs.aspx (last visited Mar. 7, 2021). *See also* Federal Housing Financial Agency, *Statement of the Federal Housing Finance Agency on Certain Super Priority Liens* (December 22, 2014)("FHFA wants to make clear to homeowners, lenders, other financial institutions, state officials, and the public that Fannie Mae and Freddie Mac's policies prohibit the purchase of a mortgage where the property has a first-lien PACE loan attached to it") http://www.fhfa.gov/Media/PublicAffairs/Pages/Statement-of-the-Federal-Housing-Finance-Agency-on-Certain-Super-Priority-Liens.aspx (last visited Mar. 7, 2021).

[23] FHFA, *Statement of the Federal Housing Finance Agency on Certain Super-Priority Liens* (Dec. 22, 2014), https://www.fhfa.gov/Media/PublicAffairs/Pages/Statement-of-the-Federal-Housing-Finance-Agency-on-Certain-Super-Priority-Liens.aspx (last visited Mar. 9, 2021).

[24] "Real estate liens generally are ordered so that prior liens are paid in foreclosure before liens filed later in time. For example, a mortgage loan used to buy the property takes priority over a later mortgage loan used to remodel the home. The earliest and thus highest priority mortgage loan is known as a first lien, while the subsequent mortgage loan is deemed a second lien. If the homeowner defaults on the second lien loan, the first lien mortgage holder retains the lien even if the second lien mortgage holder forecloses; however, the converse is not true. Tax assessments are an exception to this lien priority rule. Generally, unpaid property tax assessments have priority over other liens, regardless of the date the prior liens were recorded or when the tax assessments became delinquent. This makes the lien priority for PACE financing senior to liens for mortgage loans closed prior to the homeowner's acceptance of the PACE financing. In the case of default by the homeowner on the PACE assessment, local governments and investors in PACE bonds can expect to collect the balance owed on a PACE assessment before any recovery by a mortgage lender." Prentiss Cox, *Keeping PACE?: The Case Against Property Assessed Clean Energy Financing Programs*, 83 U. Colo. L. Rev. 83, 94 (2011), https://scholarship.law.umn.edu/faculty_articles/549 (last visited Mar. 9, 2021).

[25] *FHFA Statement on Certain Energy Retrofit Loan Programs, supra*, note 22.

[26] *FHFA Statement on Certain Energy Retrofit Loan Programs*, *supra*, note 22.

Additionally, in December 2017, the Department of Housing and Urban Development announced that the Federal Housing Administration will no longer insure new mortgages on properties that include PACE assessments, citing concerns about the potential for increased losses to the Mutual Mortgage Insurance Fund resulting from the priority lien status given to such assessments.[27]

Some residential PACE programs are now operating with loan loss reserve funds, appropriate disclosures, or other protections meant to address FHFA's concerns.[28] For example, in 2013 California created a reserve fund to compensate first mortgage lenders in case of a foreclosure or a forced sale attributable to a PACE loan. Additionally, Oklahoma and Vermont have passed legislation to downgrade PACE from senior lien to junior lien, and there have been attempts by Congress to revise residential PACE programs at the federal level, including the 2014 PACE Assessment Protection Act.[29]

Consumer Protection

Consumer issues have surrounded the PACE programs from their inception.[30] These include the cost of funding, contractor sales techniques (notably, responding to a limited homeowner problem and marketing a full house retrofit), rolling the administrative fees for the local government into the PACE loan amount, product sales at above market interest rates, workmanship issues, inadequate disclosures, and indiscriminate lending regardless of ability to repay.[31]

In response to these consumer issues, Congress amended the Truth in Lending Act in 2018 to direct the Consumer Financial Protection Bureau to implement federal regulations which provide more effective consumer protections relating to PACE loans, especially those related to the ability of a homeowner to repay the loan.[32]

The United States Department of Energy maintains “best practice guidelines” for residential PACE financing programs, which includes measures relating to:

- Establishing financial eligibility and verifying property ownership;
- Confirming property-based debt, tax assessments, and property valuation;
- Reviewing property owner income and debt obligations;
- Establishing consumer and lender protections;
- Establishing property owner education and disclosures;
- Providing a right to cancel the purchase;
- Determining appropriate minimum equity requirements and appropriate maximum assessments;
- Providing equipment specifications and energy assessments;
- Defining the relationship between PACE assessments and mortgage financing;
- Providing for non-acceleration upon property owner default;
- Notifying mortgage holders of record; and
- Addressing the needs and potential vulnerabilities of low-income and elderly households.[33]

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[27] FHFA, Property Assessed Clean Energy (PACE) Program, 85 Fed. Reg. 11,2738 (Jan. 16, 2020).
[28] Commercial PACE programs were not directly affected by FHFA’s actions because Fannie Mae and Freddie Mac do not underwrite commercial mortgages.
[29] NCSL, *PACE Financing* https://www.ncsl.org/research/energy/pace-financing.aspx (last visited Mar. 7, 2021).
[30] “PACE loans, offered through home improvement contractors, often in door-to-door sales, and secured by a property tax lien, are collected through a property tax assessment that takes priority over any existing mortgage. PACE programs must be authorized by state and local governments, but are privately run with little or no government oversight. Over the last two years, there has been a sharp increase in homeowners seeking assistance from legal services and other organizations in relation to PACE loans. The goal of improving home energy efficiency is being overshadowed by the lack of adequate consumer protection for these loans. Weak PACE loan regulation enables contractors to saddle homeowners with debt they cannot afford and puts their homes at risk for foreclosure.” National Consumer Law Center, *Advocates Applaud CFPB’s Intention to Deal with PACE Loan Program Abuses* (Mar. 4, 2019), https://www.nclc.org/media-center/advocates-applaud-cfpbs-intention-to-deal-with-pace-loan-program-abuses.html (last visited Mar. 9, 2021).
[31] FHFA, Property Assessed Clean Energy (PACE) Program, 85 Fed. Reg. 11,2738 (Jan. 16, 2020).
[32] FHFA, Property Assessed Clean Energy (PACE) Program, 85 Fed. Reg. 11,2738 (Jan. 16, 2020). *See also* Public Law 115–174 (2018), section 307; codified at 15 U.S.C. 1639c(b)(3)(C). and Bureau of Consumer Financial Protection, Advance Notice of Proposed Rulemaking on Residential Property Assessed Clean Energy Financing, 84 FR 8479 (Mar. 8, 2019).
[33] Department of Energy, *Best Practice Guidelines for Residential PACE Financing Programs* (Nov. 18, 2016), https://www.energy.gov/sites/prod/files/2016/11/f34/best-practice-guidelines-RPACE.pdf (last visited Mar. 9, 2021).

Some local governments in Florida have implemented more stringent consumer protections than those required by Florida law.[34]

Effect of the Bill

The bill amends s. 163.08, F.S., providing a number of changes to the PACE program.

Eligibility for PACE Loans

The bill provides that the total amount of any non-ad valorem assessment for a property under this section may not exceed 20 percent of the fair market value of the property. Additionally, the total of any non-ad valorem assessments plus any mortgage-related debt on the property may not exceed 97 percent of the fair market value of the property. The fair market value of the property must be derived using any methodology commonly used in the real estate finance industry.

The bill requires a PACE program administrator to use certain information to reasonably determine whether the property owner has the ability to pay the annual assessment for the qualifying improvement, including the property owner's household income, housing expenses, assets, and other debt obligations.

The bill specifies that a financing agreement may not be used to fund ancillary work unless the scope of the ancillary work is directly related to and necessary for the installation and safe operation of a qualifying improvement and the cost of the ancillary work does not exceed the cost of the individual qualifying improvement to which it is directly related.

The bill creates definitions for the following terms:

- "Facility," means any portion of a building, structure, or site improvement located on a site as defined in Section 202 of the 2020 Florida Building Code.
- "PACE contractor" means an independent contractor who is authorized under this section to contract with a property owner to install qualifying improvements on real property and who is not the owner of the property.
- "Program administrator" means a for-profit or not-for-profit entity which administers a qualifying improvement program on behalf and at the discretion of a local government.
- "Qualifying improvement program" means a program that includes financing and administration activities undertaken by a program administrator or other authorized entity for property owners to purchase and install qualifying improvements on a building or facility.
- "Residential property" means real estate on which any of the following is located:
    - One single-family residential unit or one multifamily structure containing one to four residential units;
    - Single-family residential units such as condominiums, townhouses, timeshares, mobile homes, or houses in a subdivision that may be legally sold, leased, or otherwise conveyed on a unit-by-unit basis, regardless of whether the units are a part of a larger building or parcel containing more than four residential units.

Written Disclosures

The bill specifies that, before entering into a financing agreement for a qualifying improvement, the local government or program administrator must determine if:

- The property owner is current on all mortgage debt on the property and has had no more than one late payment exceeding 30 days during the 12 months immediately preceding the application date.
- The holders or loan servicers of any mortgage encumbering or otherwise secured by the property have received notice of the assessment at least 30 days in advance.

[34] *See, e.g.,* Palm Beach County, Ord. No. 2017-012, Section 6. Disclosure Requirements https://discover.pbcgov.org/resilience/PDF/PACE_ORDINANCE_2017-012%20-%20ADA%20Compliant.pdf (last visited Mar. 9, 2021).

- Property owners whose taxes are paid through an escrow account have notified the holder of the escrow account that a non-ad valorem assessment will be imposed upon the property.
- The term of the financing agreement does not exceed the estimated useful life of the qualifying improvement.
- The property owner has acknowledged certain written disclosures, as described below.
- A residential property owner has not been subject to a bankruptcy proceeding within the last 7 years unless it was discharged or dismissed more than 2 years prior.
- A residential property owner is current on nonmortgage debt excluding medical debt, and has had no more than one late payment exceeding 30 days during the 12 months.
- The property is within the geographic boundaries of the applicable qualifying improvement program.
- The property owner has obtained or sought to obtain additional qualifying improvements on the same property that have not yet been recorded.

The bill requires that the local government or program administrator, before execution of the financing agreement, provide a written disclosure form to the property owner, which contains the key terms of the agreement, including:

- A description of the qualifying improvement;
- The total financed amount, including the cost of the qualifying improvement, ancillary work, installation, program fees, and prepaid interest, if any;
- The annual assessment process and yearly payment schedule;
- The amount of the annual assessment;
- The term of the total financed amount;
- The interest rate for the financed amount;
- The annual percentage rate;
- The total estimated annual costs that the residential real property owner will have to pay under the assessment contract, including applicable fees;
- The total estimated average monthly equivalent amount of funds the residential real property owner would have to save in order to pay the annual costs of the assessment, including applicable fees;
- The estimated date when the residential real property owner's first property tax payment, which includes the assessment, will be due.

The disclosure form must contain the following statements, which must be individually acknowledged in writing:

- "I UNDERSTAND THAT IF I SELL OR REFINANCE THE PROPERTY, I MAY BE REQUIRED TO PAY OFF THE OUTSTANDING FINANCED AMOUNT AS A CONDITION OF THE SALE OR THE REFINANCE OF THE PROPERTY." (This disclosure must be made in 24-point, bold font.)
- "I understand that the annual assessment will be paid when property taxes are paid and will result in a lien being placed on my property."
- "I understand that the annual assessment will be added to my property tax bill and if I pay my property taxes through my mortgage payment using an escrow account, I must notify my mortgage lender."
- "I understand that if I fail to pay the annual assessment, I may incur penalties and fees and the local government could issue a tax certificate which might result in the loss of my property."
- “I understand that any potential utility or insurance savings are not guaranteed and will not reduce the assessment or total assessment amount.”
- "I understand that I have 3 days to cancel the financing agreement. The 3-day right expires on midnight of the third business day after I sign the agreement."
- “I understand that the local government, program administrator, or PACE contractor do not provide tax advice and that I should seek professional tax advice if I have questions regarding tax credits, tax deductibility, or other tax impacts of the qualifying improvement or the assessment contract.
- "I understand that I cannot be assessed a penalty if I prepay the outstanding financed amount."

A printed cancellation form must be provided to the property owner no later than the time the property owner signs the financing agreement that allows the property owner to cancel the contract.

Oral Disclosures

The bill requires the local government or program administrator to conduct an oral, recorded, telephone call in the owner's preferred language, and which uses plain language, confirming the disclosures described above. The owner or their representative must provide written acknowledgement that the oral confirmation was given. The bill also requires that the local government or program administrator develop additional procedures to address the needs and concerns of elderly persons.

Other Encumbrances on Property

The bill prohibits a PACE loan on any residential real property where an existing loan encumbering the property is subject to:

- A negative amortization schedule;
- A balloon payment; or
- Pre-payment fees, other than nominal administrative costs.

Contractor Screening

The bill states that a local government or program administrator may not enroll a PACE contractor who offers financing on residential real property unless:

- The PACE contractor maintains in good standing an appropriate license from the state, if applicable, as well as any other permits, licenses, or registrations required for engaging in its business in the jurisdiction where it operates and maintains all state required bond and insurance coverage.
- The PACE contractor agrees, in writing, to comply with all applicable laws, including applicable advertising and marketing laws and regulations and other requirements in the bill.
- A process exists to enroll new PACE contractors, including a reasonable review of the contractor's:
    - Relevant work or project history,
    - Financial and reputational background checks, and
    - Status on the Better Business Bureau or other online platforms that track contractor reviews.

Contractor Payment

The bill requires that, before disbursing funds to a PACE contractor for a qualifying improvement on residential real property, the local government or program administrator must first confirm that the applicable work or service has been completed and that the local government has determined the work complies with applicable codes and standards, including but not limited to the Florida Building Code and the Florida Fire Prevention Code.

The bill also prohibits disclosure of the maximum financing amount for which a residential real property owner is eligible to the PACE contractor or to a third party engaged in soliciting assessment contracts under the PACE program.

Marketing and Communications Guidelines

The bill requires that a local government, program administrator, or PACE contractor, or a third party engaged in marketing on the behalf of these entities, must comply with the following marketing and communications guidelines and may not:

- Suggest or imply that:
  - An assessment authorized pursuant to this section is a government assistance program;
  - Qualifying improvements are free or provided at no cost, or that the financing related to an assessment authorized pursuant to this section is a free or no cost program; or
  - The financing of a qualifying improvement using the PACE program does not require the property owner to repay the financial obligation.
- Make any representation as to the tax deductibility of an assessment on residential real property, but they may encourage a property owner to seek the advice of a tax professional regarding tax matters related to assessments.

Unenforceable Contracts and Associated Remedies

The bill specifies that a contract to sell or install a qualifying improvement that is related to an application for financing under a PACE program for a residential property is unenforceable, and a PACE contractor may not begin work under such a contract, if:

- The property owner would not have entered into the contract but for the belief that the qualifying improvement or its installation would be paid under the financing agreement;
- The property owner applied for, accepted, and canceled a qualifying improvement financing agreement within the 3-day right-to-cancel period.

If a PACE contractor has initiated work on a residential property under an unenforceable contract as determined above, the PACE contractor:

- May not receive compensation for that work under the financing agreement.
- Must restore the property to its original condition at no cost to the property owner.
- Must immediately return any money, property, and other consideration given by the property owner. If the property owner provided any property and the PACE contractor does not or cannot return it, the PACE contractor must immediately return the fair market value of the property or its value as designated in the contract, whichever is greater.

If the PACE contractor has delivered chattel[35] or fixtures to the residential property pursuant to an unenforceable contract, the PACE contractor has 90 days from the date the contract was executed to retrieve the chattel or fixtures provided that:

- The PACE contractor has fulfilled certain requirements under the bill.
- The chattel and fixtures can be removed at the PACE contractor's expense without damaging the property owner's property and practically returned.

[35] "Chattel" means "A catch-all category of property mostly associated with movable goods. At common law, chattel included all property that was not real estate and not attached to real estate. Examples included everything from leases, to cows, to clothes. In modern usage, chattel often merely refers to tangible movable personal property." Cornell Law School, *Legal Information Institute,* https://www.law.cornell.edu/wex/chattel#:~:text=A%20catch%2Dall%20category%20of,to%20tangible%20movable%20personal%20property (last visited Apr. 17, 2021).

- The residential property owner may retain any chattel or fixtures provided pursuant to an unenforceable contract if a PACE contractor fails to comply with these provisions.

A contract which is otherwise unenforceable remains enforceable if the residential property owner waives his or her right to cancel the contract, allows the PACE contractor to proceed with the installation of the qualifying improvement, and cancels the financing agreement.

Limitations and Prohibitions on Solicitation, Advertising, and Other Inducements

The bill specifies that a program administrator may not authorize a PACE contractor or third party to advertise the availability of financing agreements or solicit property owners on behalf of the program administrator, unless:

- The PACE contractor or third party maintains the appropriate registration or certification from the Construction Industry Licensing Board or any other permit, license, or registration required to conduct business in the jurisdiction where it operates, and provides proof of having the required bond and insurance coverage amounts.
- The program administrator obtains the PACE contractor's or third party's written agreement that the PACE contractor or third party will meet applicable laws and rules and qualifying improvement program policies and procedures, including those on advertising and marketing.

A local government or program administrator may not:

- Provide any direct or indirect cash payment or thing of material value to a PACE contractor in excess of the actual price charged by that PACE contractor for the sale and installation of the qualifying improvements that are financed by a financing agreement. However, a local government or program administrator may provide information or services to a PACE contractor to facilitate the installation of a qualifying improvement for a property owner.
- Reimburse a PACE contractor for its expenses for advertising and marketing campaigns and materials. A program administrator and a PACE contractor may share expenses in connection with joint advertising and marketing campaigns and materials, if the expenses are shared on a commercially reasonable basis.
- Provide any direct cash payment or other thing of material value to a property owner explicitly conditioned upon the property owner entering into a financing agreement. However, a program administrator may offer programs or promotions that provide reduced fees or interest rates if the reduced fees or interest rates are reflected in the financing agreements and are not provided to the property owners as cash consideration.
- Provide to a PACE contractor engaged in soliciting financing agreements on its behalf any information that discloses the amount of funds for which a property owner is eligible for qualifying improvements or the amount of equity in a property.

For residential properties, a PACE contractor may not provide a different price for a qualifying improvement financed under this section than the PACE contractor would provide if the property owner paid for the improvement in cash.

Annual Report

The bill requires each local government that has authorized a PACE program post an annual report on its website by April 1 containing the following information:

- The number of qualifying improvements funded.
- The aggregate, average, and median dollar amounts of annual and total qualifying improvements assessments funded.
- The percentage, the number, and the dollar value of qualifying improvements assessments represented by the category types consisting of energy efficiency, renewable energy, and wind resistance.
- The number of defaulted assessments including the total number and defaulted amount, the number and dates of missed payments, the total number of parcels defaulted and years in default, and the percentage of defaults by total assessments.
- A summary of all reported violations of this section, including the resolution of each.

- The estimated number of jobs created.
- The number and percentage of homeowners 60 years of age or older participating in a qualifying improvement program.

B. SECTION DIRECTORY:

Section 1 Amends s. 163.08, F.S., providing for certain requirements related the property assessed clean energy program.

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

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   The bill may have an insignificant negative impact on local government expenditures as a result of the annual report requirement.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

To the extent that a local government or program administrator does not already impose similar consumer protection measures, the bill will benefit property owners who choose to finance qualifying improvements through a PACE program by ensuring that property owners are fully informed as to the key terms and potential consequences of a PACE loan and by requiring a determination that they are capable of repaying the loan. The bill may result in fewer defaults and potential foreclosures.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

The bill neither mandates nor authorizes rulemaking by executive branch agencies.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

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

- Removed all provisions of the bill that expanded the list of qualifying improvements eligible for the PACE program; and
- Enhanced consumer protections for the PACE program.

This analysis is drafted to the committee substitute as passed by the Tourism, Infrastructure & Energy Subcommittee.

A bill to be entitled

An act relating to improvements to real property; amending s. 163.08, F.S.; providing and revising definitions; prohibiting financing agreements for qualifying improvements to fund ancillary work unless specified criteria are met; prohibiting financing agreements for qualifying improvements from being approved unless specified criteria are met; requiring the program administrator or other entity to use specified information provided by the property owner to determine the owner's ability to pay the annual non-ad valorem assessment; providing criteria to be used in making the determination; requiring the local government or program administrator to develop a written disclosure form to be given to property owners that meets specified criteria; requiring the local government or program administrator to provide a printed cancellation form to and conduct an oral, recorded telephone call with the property owner at a specified time and containing specified information; requiring the local government or program administrator to develop procedures to address the needs of elderly persons; specifying the total amount of any non-ad valorem assessment that may be assessed on properties as a result of qualifying improvements;

prohibiting local governments or program administrators from offering financing for certain qualifying improvements if those financing agreements meet certain criteria; providing criteria that must be met before a local government or program administrator may enroll a PACE contractor to offer financing for residential properties; specifying criteria that must be met before a PACE contractor may receive funds for qualifying improvements on residential properties; providing market and communications guidelines that must be met when communicating with residential real property owners; specifying the types of contracts that are unenforceable and for which PACE contractors may not begin work; providing procedures for the return of chattel and fixtures that were installed in an unenforceable contract; prohibiting PACE contractors from engaging in specified activities concerning PACE contractors; requiring local governments that have authorized qualifying improvement programs to post specified information on their websites on an annual basis; providing an effective date.

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

Section 1. Section 163.08, Florida Statutes, is amended to read:

163.08 Supplemental authority for improvements to real property.—

(1)(a) In chapter 2008-227, Laws of Florida, the Legislature amended the energy goal of the state comprehensive plan to provide, in part, that the state shall reduce its energy requirements through enhanced conservation and efficiency measures in all end-use sectors and reduce atmospheric carbon dioxide by promoting an increased use of renewable energy resources. That act also declared it the public policy of the state to play a leading role in developing and instituting energy management programs that promote energy conservation, energy security, and the reduction of greenhouse gases. In addition to establishing policies to promote the use of renewable energy, the Legislature provided for a schedule of increases in energy performance of buildings subject to the Florida Energy Efficiency Code for Building Construction. In chapter 2008-191, Laws of Florida, the Legislature adopted new energy conservation and greenhouse gas reduction comprehensive planning requirements for local governments. In the 2008 general election, the voters of this state approved a constitutional amendment authorizing the Legislature, by general law, to prohibit consideration of any change or improvement made for the purpose of improving a property's resistance to wind damage or

the installation of a renewable energy source device in the determination of the assessed value of residential real property.

(b) The Legislature finds that all energy-consuming-improved properties that are not using energy conservation strategies contribute to the burden affecting all improved property resulting from fossil fuel energy production. Improved property that has been retrofitted with energy-related qualifying improvements receives the special benefit of alleviating the property's burden from energy consumption. All improved properties not protected from wind damage by wind resistance qualifying improvements contribute to the burden affecting all improved property resulting from potential wind damage. Improved property that has been retrofitted with wind resistance qualifying improvements receives the special benefit of reducing the property's burden from potential wind damage. Further, the installation and operation of qualifying improvements not only benefit the affected properties for which the improvements are made, but also assist in fulfilling the goals of the state's energy and hurricane mitigation policies. In order to make qualifying improvements more affordable and assist property owners who wish to undertake such improvements, the Legislature finds that there is a compelling state interest in enabling property owners to voluntarily finance such improvements with local government assistance.

(c) The Legislature determines that the actions authorized under this section, including, but not limited to, the financing of qualifying improvements through the execution of financing agreements and the related imposition of voluntary assessments are reasonable and necessary to serve and achieve a compelling state interest and are necessary for the prosperity and welfare of the state and its property owners and inhabitants.

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

(a) "Facility" means any portion of a building, structure, or site improvement located on a site as defined in s. 202 of the 2020 Florida Building Code.

(b) "Local government" means a county, a municipality, a dependent special district as defined in s. 189.012, or a separate legal entity created pursuant to s. 163.01(7).

(c) "PACE contractor" means an independent contractor who is authorized under this section to contract with a property owner to install qualifying improvements on real property and who is not the owner of such property.

(d) "Program administrator" means a for-profit or not-for-profit entity which administers a qualifying improvement program on behalf and at the discretion of a local government.

(e) ~~(b)~~ "Qualifying improvement" includes any:

1. Energy conservation and efficiency improvement, which is a measure to reduce consumption through conservation or a more efficient use of electricity, natural gas, propane, or

other forms of energy on the property, including, but not limited to, air sealing; installation of insulation; installation of energy-efficient heating, cooling, or ventilation systems; building modifications to increase the use of daylight; replacement of windows; installation of energy controls or energy recovery systems; installation of electric vehicle charging equipment; and installation of efficient lighting equipment.

2. Renewable energy improvement, which is the installation of any system in which the electrical, mechanical, or thermal energy is produced from a method that uses one or more of the following fuels or energy sources: hydrogen, solar energy, geothermal energy, bioenergy, and wind energy.

3. Wind resistance improvement, which includes the products and installation for~~, but is not limited to~~:

a. Improving the strength of the roof deck attachment;

b. Creating a secondary water barrier to prevent water intrusion;

c. Installing wind-resistant shingles;

d. Installing gable-end bracing;

e. Reinforcing roof-to-wall connections;

f. Installing storm shutters; or

g. Installing opening protections.

(f) "Qualifying improvement program" means a program that includes the financing and administration activities undertaken

by a local government or program administrator for property owners to purchase and install qualifying improvements on a building or facility.

(g) "Residential property" means real property upon which any of the following is located:

1. One single-family residential unit or one multifamily structure containing one to four residential units; or

2. Single-family residential units such as condominiums, townhouses, timeshares, mobile homes, or houses in a subdivision that may be legally sold, leased, or otherwise conveyed on a unit-by-unit basis, regardless of whether the units are a part of a larger building or parcel containing more than four residential units.

(3) A local government may levy non-ad valorem assessments to fund qualifying improvements.

(4) Subject to local government ordinance or resolution, a property owner may apply to the local government for funding to finance a qualifying improvement and enter into a financing agreement with the local government. Costs incurred by the local government for such purpose may be collected as a non-ad valorem assessment. A non-ad valorem assessment shall be collected pursuant to s. 197.3632 and, notwithstanding s. 197.3632(8)(a), shall not be subject to discount for early payment. However, the notice and adoption requirements of s. 197.3632(4) do not apply if this section is used and complied with, and the intent

resolution, publication of notice, and mailed notices to the property appraiser, tax collector, and Department of Revenue required by s. 197.3632(3)(a) may be provided on or before August 15 in conjunction with any non-ad valorem assessment authorized by this section, if the property appraiser, tax collector, and local government agree.

(5) Pursuant to this section or as otherwise provided by law or pursuant to a local government's home rule power, a local government may enter into a partnership with one or more local governments for the purpose of providing and financing qualifying improvements.

(6) A qualifying improvement program may be administered by a for-profit entity or a not-for-profit organization on behalf of and at the discretion of the local government.

(7) A local government may incur debt for the purpose of providing such improvements, payable from revenues received from the improved property, or any other available revenue source authorized by law.

(8) A local government may enter into a financing agreement only with the record owner of the affected property. Any financing agreement entered into pursuant to this section or a summary memorandum of such agreement shall be recorded in the public records of the county within which the property is located by the sponsoring unit of local government within 5 days after execution of the agreement. The recorded agreement shall

provide constructive notice that the non-ad valorem assessment to be levied on the property constitutes a lien of equal dignity to county taxes and assessments from the date of recordation.

(9) A financing agreement may not be used to fund ancillary work unless the scope of the ancillary work is directly related to and necessary for the installation and safe operation of a qualifying improvement and the cost of the ancillary work does not exceed the cost of the individual qualifying improvement to which it is directly related.

(10) ~~(9)~~ A ~~Before entering into a~~ financing agreement for a qualifying improvement may not be approved unless~~,~~ the local government or program administrator, as applicable, has ~~shall~~ reasonably determined ~~determine~~ that:

(a) All property taxes and any other assessments levied on the same bill as property taxes are paid and have not been delinquent for the preceding 3 years or the property owner's period of ownership, whichever is less; ~~that~~

(b) There are no involuntary liens, including, but not limited to, construction liens on the property; ~~that~~

(c) No notices of default or other evidence of property-based debt delinquency have been recorded during the preceding 3 years or the property owner's period of ownership, whichever is less; ~~and that~~

(d) The property owner is current on all mortgage debt on the property and has had no more than one late payment exceeding

30 days during the 12 months immediately preceding the application date; ~~The property owner is current on all mortgage debt on the property.~~

(e) The holders or loan servicers of any mortgage encumbering or otherwise secured by the property have received the written notice required by subsection (16);

(f) Any property owner whose real property taxes are paid through an escrow account has notified the holder of the escrow account that a non-ad valorem assessment will be imposed upon the property pursuant to this section;

(g) The term of the financing agreement does not exceed the estimated useful life of the qualifying improvement. The local government or program administrator, as applicable, shall determine the useful life using established third-party standards, including certification criteria from government agencies or nationally recognized standards and testing organizations;

(h) The property owner has acknowledged in writing the disclosure statements required by paragraph (12)(b);

(i) For residential properties, the property owner has not been subject to a bankruptcy proceeding within the last 7 years unless it was discharged or dismissed more than 2 years before the date that the property owner applied for funding as set forth in subsection (4);

(j) For residential properties, the property owner is

current on nonmortgage debt excluding medical debt, and has had no more than one late payment exceeding 30 days during the 12 months immediately preceding the date that the property owner applied for funding as set forth in subsection (4);

(k) The property is within the geographic boundaries of the applicable qualifying improvement program; and

(l) The local government or program administrator, as applicable, has asked if the property owner has obtained or sought to obtain additional qualifying improvements on the same property that have not yet been recorded. The failure of a property owner to disclose information set forth in this subsection does not invalidate a financing agreement or any obligation thereunder, even if the total financed amount of the qualifying improvement exceeds the amount that would otherwise be authorized under subsection (15).

The existence of a prior qualifying improvement non-ad valorem assessment or a prior financing agreement is not evidence that the financing agreement under consideration is affordable or meets other program requirements.

(11) In addition to obtaining the information in subsection (10), and before a local government or program administrator, as applicable, approves a qualifying improvement on residential property, he or she must use information contained in the property owner's application, reasonably

reliable third-party records, or an automated verification system to reasonably determine whether the property owner has the ability to pay the annual non-ad valorem assessment for the qualifying improvement. The local government or program administrator, as applicable, must review the property owner's household income, housing expenses, assets, and other debt obligations. If the local government or program administrator, as applicable, uses an automated verification system, it must be a system that can verify the property owner's income, is not based on predictive or estimation methodologies, and has been determined sufficient for such verification purposes by a federal mortgage lending authority or regulator. In reviewing the property owner's ability to pay, the local government or program administrator, as applicable:

(a) When determining the household income, may include the income of any property owner aged 18 years old or older whose name is on the property title. If a person's income is considered, that person's debt obligations must also be considered.

(b) May not consider the equity in the property that will secure the non-ad valorem assessment.

(c) Shall determine the property owner's debt obligations using reasonably reliable third-party records, including at least, one consumer credit report from an agency that meets the requirements of 15 U.S.C. s. 1681a(p). Debt obligations to be

reviewed include:

1. Secured and unsecured debt.

2. Housing expenses. The local government or program administrator, as applicable, shall make a reasonable estimate of the basic housing expenses based on the number of persons in the household.

3. Stated alimony or child support obligations.

(d) Shall determine whether the property owner has sufficient income to pay the annual non-ad valorem assessment and that he or she has sufficient residual income to meet his or her household living expenses.

(12) Each local government or program administrator that offers a qualifying improvement program must:

(a) Develop a written disclosure form that must be provided to the property owner before he or she executes the financing agreement and which contains the key terms of the agreement, including:

1. A description of the qualifying improvement;

2. The total financed amount, including the cost of the qualifying improvement, ancillary work, installation, program fees, and prepaid interest, if any;

3. The annual non-ad valorem assessment process and yearly payment schedule;

4. The amount of the annual non-ad valorem assessment;

5. The term of the total financed amount;

6. The interest rate for the financed amount;

7. The annual percentage rate;

8. The total estimated annual costs that the residential real property owner will have to pay under the assessment contract, including applicable fees;

9. The total estimated average monthly equivalent amount of funds the residential real property owner would have to save in order to pay the annual costs of the non-ad valorem assessment, including applicable fees; and

10. The estimated due date of the residential real property owner's first property tax payment that includes the non-ad valorem assessment.

(b) Include the following statements in the written disclosure form, using the same order as listed in this paragraph, each of which must be individually acknowledged in writing by the property owner:

1. "I UNDERSTAND THAT IF I SELL OR REFINANCE THE PROPERTY, I MAY BE REQUIRED TO PAY OFF THE OUTSTANDING FINANCED AMOUNT AS A CONDITION OF THE SALE OR THE REFINANCE OF THE PROPERTY."

The previous statement must be made in at least 24-point boldfaced type.

2. "I understand that the annual non-ad valorem assessment will be paid when property taxes are paid and will result in a

lien being placed on my property."

3. "I understand that the annual non-ad valorem assessment will be added to my property tax bill and if I pay my property taxes through my mortgage payment using an escrow account, I must notify my mortgage lender."

4. "I understand that if I fail to pay the annual non-ad valorem assessment, I may incur penalties and fees and the local government could issue a tax certificate which might result in the loss of my property."

5. "I understand that any potential utility or insurance savings are not guaranteed and will not reduce the annual non-ad valorem assessment or total assessment amount."

6. "I understand that I have 3 days to cancel the financing agreement. The 3-day right expires at midnight of the third business day after I sign the agreement."

7. "I understand that the local government, program administrator, or PACE contractor do not provide tax advice and that I should seek professional tax advice if I have questions regarding tax credits, tax deductibility, or other tax impacts of the qualifying improvement or the assessment contract.

8. "I understand that I cannot be assessed a penalty if I prepay the outstanding financed amount."

(c) Provide a printed cancellation form to the property owner no later than the time the property owner signs the financing agreement which allows the property owner to cancel

the contract, within the 3-day period specified in subparagraph (b)6.

(d) Conduct, with at least one residential real property owner or an authorized representative, an oral, recorded telephone call during which time the local government or program administrator, as applicable, must use plain language. The local government or program administrator, as applicable, must ask the residential real property owner if he or she would like to communicate primarily in a language other than English and, if so, must conduct the call in the owner's preferred language. A local government or program administrator, as applicable may not leave a voicemail to the residential real property owner to satisfy this requirement. The owner or their representative must provide written acknowledgement that the oral confirmation was given. A local government or program administrator, as applicable, as part of this telephone call, must confirm with the residential real property owner:

1. That at least one residential real property owner has access to a copy of the assessment contract and financing estimates and disclosures.

2. The qualifying improvement that is being financed.

3. The total estimated annual costs that the residential real property owner will have to pay under the assessment contract, including applicable fees.

4. The total estimated average monthly equivalent amount

of funds the residential real property owner would have to save in order to pay the annual costs of the non-ad valorem assessment, including applicable fees.

5. The estimated due date of the residential real property owner's first property tax payment that includes the non-ad valorem assessment.

6. The term of the assessment contract.

7. That payments for the assessment contract will cause the residential real property owner's annual tax bill to increase, that payments will be made through an additional annual non-ad valorem assessment on the property, and will be paid either directly to the county tax collector's office as part of the total annual secured property tax bill or may be paid through the residential real property owner's mortgage escrow account.

8. That the qualifying residential property owner has disclosed whether the property has received or is seeking additional non-ad valorem assessments and has disclosed all other assessments or special taxes that are or are about to be placed on the property.

9. That the property will be subject to a lien during the term of the assessment contract and that the obligations under the contract may be required to be paid in full before the residential real property owner sells or refinances the property.

10. That any potential utility or insurance savings are not guaranteed and will not reduce the annual non-ad valorem assessment or total assessment amount.

11. That the local government, program administrator, or PACE contractor do not provide tax advice and that the residential real property owner should seek professional tax advice if he or she has questions regarding tax credits, tax deductibility, or other tax impacts of the qualifying improvement or the assessment contract.

(e) The local government or program administrator shall develop additional procedures under this subsection to address the needs and concerns of elderly persons.

(13) ~~(10)~~ A qualifying improvement shall be affixed or connected to a building or facility that is part of the property and shall constitute an improvement to the building or facility or a fixture attached to the building or facility. An agreement between a local government and a qualifying property owner may not cover wind-resistance improvements in buildings or facilities under new construction or construction for which a certificate of occupancy or similar evidence of substantial completion of new construction or improvement has not been issued.

(14) ~~(11)~~ Any work requiring a license under any applicable law to make or install a qualifying improvement shall be performed by a contractor properly certified or registered

pursuant to ~~part I or part II of~~ chapter 489.

(15) ~~(12)(a) Without the consent of the holders or loan servicers of any mortgage encumbering or otherwise secured by the property,~~ The total amount of any non-ad valorem assessment for a property under this section may not exceed 20 percent of the fair market value of the property ~~just value of the property as determined by the county property appraiser~~. In addition, the total of any non-ad valorem assessments plus any mortgage-related debt on the property may not exceed 97 percent of the fair market value of the property. The fair market value of the property shall be derived using any methodology commonly used in the real estate finance industry.

~~(b) Notwithstanding paragraph (a), a non-ad valorem assessment for a qualifying improvement defined in subparagraph (2)(b)1. or subparagraph (2)(b)2. that is supported by an energy audit is not subject to the limits in this subsection if the audit demonstrates that the annual energy savings from the qualified improvement equals or exceeds the annual repayment amount of the non-ad valorem assessment.~~

(16) ~~(13)~~ At least 30 days before entering into a financing agreement, the property owner shall provide to the holders or loan servicers of any existing mortgages encumbering or otherwise secured by the property a notice of the owner's intent to enter into a financing agreement together with the maximum principal amount to be financed and the maximum annual

assessment necessary to repay that amount. A verified copy or other proof of such notice shall be provided to the local government or program administrator, as applicable. A provision in any agreement between the ~~a~~ mortgagee or other lienholder and a property owner, or otherwise now or hereafter binding upon a property owner, which allows for acceleration of payment of the mortgage, note, or lien or other unilateral modification solely as a result of entering into a financing agreement as provided for in this section is not enforceable. This subsection does not limit the authority of the holder or loan servicer to increase the required monthly escrow by an amount necessary to annually pay the qualifying improvement assessment.

(17) ~~(14)~~ At or before the time a purchaser executes a contract for the sale and purchase of any property for which a non-ad valorem assessment has been levied under this section and has an unpaid balance due, the seller shall give the prospective purchaser a written disclosure statement in the following form, which shall be set forth in the contract or in a separate writing:

QUALIFYING IMPROVEMENTS FOR ENERGY EFFICIENCY, RENEWABLE ENERGY, OR WIND RESISTANCE.—The property being purchased is located within the jurisdiction of a local government that has placed an non-ad valorem assessment on the property pursuant to s. 163.08, Florida Statutes. The non-ad valorem assessment is for a

qualifying improvement to the property relating to energy efficiency, renewable energy, or wind resistance, and is not based on the value of property. You are encouraged to contact the county property appraiser's office to learn more about this and other assessments that may be provided by law.

(18) ~~(15)~~ A provision in any agreement between a local government and a public or private power or energy provider or other utility provider is not enforceable to limit or prohibit any local government from exercising its authority under this section.

(19) ~~(16)~~ This section is additional and supplemental to county and municipal home rule authority and not in derogation of such authority or a limitation upon such authority.

(20) A local government or program administrator, as applicable, may not offer financing for an qualifying improvement authorized pursuant to this section on any residential real property that includes any of the following:

(a) A negative amortization schedule;

(b) A balloon payment; or

(c) Pre-payment fees, other than nominal administrative costs.

(21) For residential real property, a local government or program administrator, as applicable:

(a) May not enroll a PACE contractor who offers financing on residential real property unless:

1. The local government or program administrator, as applicable, determines that the PACE contractor maintains in good standing an appropriate license from the state, if applicable, as well as any other permits, licenses, or registrations required for engaging in its business in the jurisdiction where it operates and maintains all state required bond and insurance coverage.

2. A local government or program administrator, as applicable, obtains the PACE contractor's written agreement that the PACE contractor will comply with all applicable laws, including applicable advertising and marketing laws and regulations and the requirements of subsection (23).

(b) Must maintain a process to enroll new PACE contractors that includes reasonable review of the following for each contractor:

1. Relevant work or project history.

2. Financial and reputational background checks.

3. The contractor's status on the Better Business Bureau platform or other online platforms that track contractor reviews.

(22)(a) Before disbursing funds to a PACE contractor for a qualifying improvement on residential real property, the local government or program administrator, as applicable, must first confirm that the applicable work or service has been completed and the local government has determined the work complies with

applicable codes and standards, including, but not limited to, the Florida Building Code and the Florida Fire Prevention Code.

(b) A local government or program administrator, as applicable, may not disclose the maximum financing amount for which a residential real property owner is eligible to a PACE contractor or to a third party engaged in soliciting assessment contracts financed pursuant to this section.

(23) When communicating with residential real property owners, a local government, program administrator, PACE contractor, or a third party engaged in marketing on behalf of these entities, must comply with the following marketing and communications guidelines and may not:

(a) Suggest or imply:

1. That a non-ad valorem assessment authorized under this section is a government assistance program;

2. That qualifying improvements are free or provided at no cost, or that the financing related to an non-ad valorem assessment authorized under this section is free or provided at no cost; or

3. That the financing of a qualifying improvement using the program authorized pursuant to this section does not require the property owner to repay the financial obligation.

(b) Make any representation as to the tax deductibility of a non-ad valorem assessment on residential real property. A local government, program administrator, or PACE contractor, or

a third party engaged in marketing on behalf of these entities, may encourage a property owner to seek the advice of a tax professional regarding tax matters related to assessments.

(24)(a) A contract to sell or install a qualifying improvement that is related to an application for financing in a qualifying improvement program for a residential property is unenforceable and a PACE contractor may not begin work under such a contract if:

1. The property owner would not have entered into the contract but for the belief that the qualifying improvement or its installation would be paid under the financing agreement; or

2. The property owner applied for, accepted, and canceled a qualifying improvement financing agreement within the 3-day right-to-cancel period set forth in subparagraph (12)(b)6.

(b) If a PACE contractor has initiated work on a residential property under an unenforceable contract as determined under paragraph (a), the PACE contractor:

1. May not receive compensation for that work under the financing agreement.

2. Shall restore the property to its original condition at no cost to the property owner.

3. Shall immediately return any money, property, and other consideration given by the property owner. If the property owner provided any property and the PACE contractor does not or cannot return it, the PACE contractor shall immediately return the fair

market value of the property or its value as designated in the contract, whichever is greater.

(c) If the PACE contractor has delivered chattel or fixtures to the residential property pursuant to an unenforceable contract, the PACE contractor shall have 90 days from the date the contract was executed to retrieve the chattel or fixtures provided that:

1. The PACE contractor has fulfilled the requirements of subparagraphs (b)2. and 3.

2. The chattel and fixtures can be removed at the PACE contractor's expense without damaging the property owner's property and practically returned.

(d) The residential property owner may retain any chattel or fixtures provided pursuant to an unenforceable contract if a PACE contractor fails to comply with the provisions of this subsection.

(e) A contract which is otherwise unenforceable under this subsection remains enforceable if the residential property owner waives his or her right to cancel the contract, allows the PACE contractor to proceed with the installation of the qualifying improvement, and cancels the financing agreement.

(25)(a) A PACE contractor or third party may not advertise the availability of financing agreements or solicit property owners on behalf of the local government or program administrator unless:

1. The PACE contractor or third party maintains the appropriate registration or certification from the Construction Industry Licensing Board or any other permit, license, or registration required to conduct business in the jurisdiction where it operates, and provides proof of having the required bond and insurance coverage amounts.

2. The local government or program administrator, as applicable, obtains the PACE contractor's or third party's written agreement that the PACE contractor or third party will meet applicable laws and rules and qualifying improvement program policies and procedures, including those on advertising and marketing.

(b) A local government or program administrator may not provide any direct or indirect cash payment or thing of material value to a PACE contractor or third party in excess of the actual price charged by that PACE contractor for the sale and installation of the qualifying improvements that are financed by a financing agreement. However, a program administrator may provide information or services to a PACE contractor to facilitate the installation of a qualifying improvement for a property owner.

(c) A local government or program administrator may not reimburse a PACE contractor or third party for its expenses in advertising and marketing campaigns and materials. A local government or program administrator, as applicable, and a PACE

contractor may share expenses in connection with joint advertising and marketing campaigns and materials, if the expenses are shared on a commercially reasonable basis.

(d) A local government or program administrator may not provide to a PACE contractor engaged in soliciting financing agreements on its behalf any information that discloses the amount of funds for which a property owner is eligible for qualifying improvements or the amount of equity in a property.

(e) For residential properties, a PACE contractor may not provide a different price for a qualifying improvement financed under this section than the PACE contractor would provide if the property owner paid for the improvement in cash.

(f) A program administrator may not provide any direct cash payment or other thing of material value to a property owner explicitly conditioned upon the property owner entering into a financing agreement. However, a program administrator may offer programs or promotions that provide reduced fees or interest rates if the reduced fees or interest rates are reflected in the financing agreements and are not provided to the property owners as cash consideration.

(26) Each local government that has authorized a qualifying improvement program shall post on its website an annual report for the period ending December 31 each year containing the following information:

(a) The number of qualifying improvements funded.

(b) The aggregate, average, and median dollar amounts of annual and total number of assessments that funded qualifying improvements.

(c) The percentage, the number, and the dollar value of assessments that funded qualifying improvements, represented by the category types consisting of energy efficiency, renewable energy, and wind resistance.

(d) The number of defaulted assessments including the total number and defaulted amount, the number and dates of missed payments, the total number of parcels defaulted and years in default, and the percentage of defaults by total assessments.

(e) A summary of all reported violations of this section, including the resolution of each.

(f) Estimated number of jobs created.

(g) The number and percentage of homeowners 60 years of age or older participating in a qualifying improvement program.

This report shall be posted no later than April 1 of the year following the calendar year covered by the report.

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

CS/HB 605

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 605 Bicycle and Pedestrian Safety
SPONSOR(S): Tourism, Infrastructure & Energy Subcommittee, Hunschofsky and others
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 950

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Tourism, Infrastructure & Energy Subcommittee	14 Y, 0 N, As CS	Johnson	Keating
2) Infrastructure & Tourism Appropriations Subcommittee	11 Y, 0 N	Hicks	Davis
3) Commerce Committee		Johnson	Hamon

SUMMARY ANALYSIS

The bill addresses issues relating to bicycle and pedestrian safety. In summary, the bill:

- Defines the terms “bicycle lane” and “separated bicycle lane.”
- Provides requirements for a vehicle overtaking a bicycle or other nonmotorized vehicle, an electric bicycle, or a pedestrian occupying the same travel lane.
- Requires the Department of Highway Safety and Motor Vehicles (DHSMV) to annually provide an awareness and safety campaign regarding vehicles overtaking a bicycle, other nonmotorized vehicle, an electric bicycle, or a pedestrian.
- Provides that no-passing zones do not apply to drivers who safely and briefly drive to the left of center of the roadway to overtake a bicycle, other nonmotorized vehicle, an electric bicycle, or a pedestrian.
- Requires a vehicle making a right turn while overtaking and passing a bicycle proceeding in the same direction, to do so only if the bicycle is at least 20 feet from the intersection.
- Provides guidelines for riding a bicycle in a substandard-width lane and authorizes riders to ride two abreast if certain conditions exit.
- Authorizes bicyclists riding in groups, after coming to a full stop, to go through an intersection in groups of 10 or fewer.
- Requires at least 25 questions in the test bank for the driver license test to address bicycle and pedestrian safety.

The bill will have an indeterminate but likely insignificant fiscal impact to state government revenues and expenditures. 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:

Definitions

Current Situation
Florida law defines the term "bicycle" as every vehicle[1] propelled solely by human power, having two tandem wheels, and including any device generally recognized as a bicycle though equipped with two front or two rear wheels. The term does not include a scooter or similar device.[2]

Florida law defines the term "electric bicycle" as a bicycle or tricycle equipped with fully operable pedals, a seat or saddle for the use of the rider, and an electric motor of less than 750 watts which meets the requirements of one of the following three classifications:

- "Class 1 electric bicycle" means an electric bicycle equipped with a motor that provides assistance only when the rider is pedaling and that ceases to provide assistance when the electric bicycle reaches the speed of 20 miles per hour.
- "Class 2 electric bicycle" means an electric bicycle equipped with a motor that may be used exclusively to propel the electric bicycle and that ceases to provide assistance when the electric bicycle reaches the speed of 20 miles per hour.
- "Class 3 electric bicycle" means an electric bicycle equipped with a motor that provides assistance only when the rider is pedaling and that ceases to provide assistance when the electric bicycle reaches the speed of 28 miles per hour.[3]

An electric bicycle is subject to the same rules and regulations applicable to a bicycle.[4]

Florida law does not define the terms "bicycle lane" or "separated bicycle lane."

Effect of the Bill
The bill defines the term "bicycle lane" as any portion of a roadway or highway which is designated by pavement markings and signs for preferential or exclusive use by bicycles.

The bill defines the term "separated bicycle lane" as a bicycle lane that is separated from motor vehicle traffic by a physical barrier.

Overtaking or Passing a Vehicle

Current Situation
Under Florida law, the driver of a vehicle overtaking another vehicle proceeding in the same direction must give an appropriate signal,[5] must pass to the left of the vehicle at a safe distance, and may not again drive to the right side of the roadway until he or she is safely clear of the overtaken vehicle. A driver overtaking a bicycle or other nonmotorized vehicle,[6] or an electric bicycle, must pass the bicycle, other nonmotorized vehicle, or electric bicycle at a safe distance of not less than three feet between the vehicle and the bicycle, other nonmotorized vehicle, or electric bicycle.[7] A violation is a noncriminal

[1] S. 316.003(103), F.S., defines the term "vehicle" as every device in, upon, or by which any person or property is or may be transported or drawn upon a highway, except personal delivery devices, mobile carriers, and devices used exclusively upon stationary rails or tracks.
[2] S. 316.003(4), F.S.
[3] S. 316.003(22), F.S.
[4] S. 316.20655(1), F.S.
[5] Signals are provided for in s. 316.156, F.S.
[6] The term "other nonmotorized vehicle" is not defined in ch. 316, F.S.
[7] S. 316.083(1), F.S.

traffic infraction, punishable as a moving violation as provided in chapter 318, F.S.[8] The statutory base fine is $60,[9] but with additional fees and surcharges, the total fine is up to $158.[10]

Effect of the Bill

The bill provides that the driver of a vehicle overtaking a bicycle or other nonmotorized vehicle, electric bicycle, or pedestrian occupying the same travel lane must pass the bicycle, other nonmotorized vehicle, electric bicycle or pedestrian at a safe distance of not less than three feet, or if such movement cannot be safely accomplished, must remain at a safe distance behind the bicycle or other nonmotorized vehicle, electric bicycle, or pedestrian until the driver can safely pass at a distance of not less than three feet and must safely clear the overtaken bicycle, other nonmotorized vehicle, electric bicycle or pedestrian.

The provisions relating to overtaking bicycles, other nonmotorized vehicles, electric bicycles, do not apply when the bicycle, other nonmotorized vehicle, or electric bicycle occupies a separated bicycle lane. A violation is a noncriminal traffic infraction, punishable as a moving violation as provided in chapter 318, F.S. The statutory base fine is $60,[11] but with additional fees and surcharges, the total fine is up to $158.[12]

Pedestrian and Bicycle Safety Efforts

Current Situation

The Department of Highway Safety and Motor Vehicles (DSHMV) works to promote traffic safety and educate citizens on traffic laws and regulations that protect the safety of pedestrians and bicyclists. In addition to partnering with the Department of Transportation (DOT), Florida's Pedestrian and Bicycle Safety Coalition, and Alert Today Florida on education and outreach efforts, DSHMV incorporates safety messages into its driver education materials and its communications and outreach efforts.[13]

Each May, DHSMV leads the Share the Road campaign, which works to educate individuals on bicycle and pedestrian safety and educates motorists on the importance of sharing the road with all road users. The 2019 Share the Road campaign utilized billboards, online ads, and internet radio advertisements.[14]

Current law provides for the examination of applicants for various classes of driver licenses. For an applicant for a noncommercial driver license, the examination must include a test of the applicant's ability to read and understand highway signs regulating, warning, and directing traffic and his or her knowledge of the state's traffic laws, including laws related to driving under the influence of alcohol or controlled substances.[15] However, there is no requirement that the driver license test contain questions regarding bicycle and pedestrian safety.

Currently, the driver license exam consists of up to 50 questions. There are 309 questions in DSHMV's test bank, with 18 questions specific to pedestrian and bicyclist safety. Whether or not an applicant will see a bicycle or pedestrian question on the test depends on the number of questions within that category, the number of questions pulled from a category, and how many questions a customer sees while taking the test.[16,17]

Effect of the Bill

[8] S. 316.083(3), F.S. Chapter 318, F.S., relates to the disposition of traffic infractions.
[9] S. 318.18(3)(a), F.S.
[10] Florida Clerk of Courts, *2020 Distribution Schedule,* 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. 8, 2021).
[11] S. 318.18(3)(a), F.S.
[12] Florida Clerk of Courts, *2020 Distribution Schedule,* p. 23.
[13] Department of Highway Safety and Motor Vehicles, Agency Analysis of 2020 House Bill 950, p. 3. (Mar. 9, 2021).
[14] Id.
[15] S. 322.12(3), F.S.
[16] The test has a quick pass/quick fail delivery; a customer passes after answering 40 questions correctly and fails after answering 11 questions incorrectly.
[17] Department of Highway Safety and Motor Vehicles, Agency Analysis of 2021 House Bill 950, p. 4. (Mar. 9, 2021).

The bill requires DHSMV to provide an annual awareness and safety campaign informing the motoring public about the safety precautions that must be taken when overtaking a bicycle, other nonmotorized vehicle, electric bicycle, or pedestrian.

The bill requires 25 questions in DHSMV's test bank for a noncommercial driver license applicant to address bicycle and pedestrian safety.

No Passing Zones

Current Situation
Section 316.0875, F.S., authorizes DOT and local authorities[18] to determine those portions of any highway under their respective jurisdiction where overtaking and passing or driving to the left of the center of the roadway would be especially hazardous and may, by appropriate signs or markings on the roadway, indicate the beginning and end of such zones. When such signs or markings are in place and clearly visible to an ordinarily observant person, every driver of a vehicle must obey those directions.[19]

Where signs or markings define a no-passing zone, a driver may not drive on the left side of the roadway with the no-passing zone or on the left side of any pavement striping designed to mark such no-passing zone throughout its length.[20]

Section 316.0875, F.S., does not apply when an obstruction exists making it necessary to drive to the left of the center of the highway, nor to the driver of a vehicle turning left into or from an alley, private road, or driveway.[21]

Effect of the Bill
The bill provides that s. 316.0875, F.S., does not apply to the driver of a vehicle overtaking or passing a bicycle, other nonmotorized vehicle, electric bicycle, or pedestrian occupying the same travel lane.

Required Method for Turning at Intersections

Current Situation
Current law provides that the driver of a vehicle intending to make a right turn must make both the approach for the right turn and the right turn as close as practicable to the right-hand curb or edge of the roadway.[22]

A violation of s. 316.151, F.S., is a noncriminal traffic infraction, punishable as a moving violation as provided in chapter 318, F.S.[23] The statutory base fine is $60,[24] but with additional fees and surcharges, the total fine is up to $158.[25]

Effect of the Bill
The bill requires that the driver of a vehicle intending to turn right at an intersection, when overtaking or passing a bicycle proceeding in the same direction, must give an appropriate signal and make the right turn only if the bicycle is at least 20 feet from the intersection.

Bicycle Regulations

Current Situation

[18] S. 316.003(36), F.S., defines the term "local authorities" as all officers and public officials of the several counties and municipalities of this state.
[19] S. 316.0875(1), F.S.
[20] S. 316.0875(2), F.S.
[21] S. 316.0875(3), F.S.
[22] S. 316.151(1)(a), F.S.
[23] S. 316.151(3), F.S.
[24] S. 318.18(3)(a), F.S.
[25] Florida Clerk of Courts, *2020 Distribution Schedule,* p. 23.

Chapter 316, F.S., is the Florida Uniform Traffic Control Law,[26] which is designed for the state to have uniform traffic laws throughout the state and its counties, and uniform traffic ordinances in all municipalities.[27]

Under Florida law, every person propelling a vehicle by human power has all of the rights and all of the duties applicable to the driver of any other vehicle under the law except as to special regulations in the Florida Uniform Traffic Control Law and except as to provisions of the law which by their nature can have no application.[28] Additionally, an electric bicycle is subject to the same rules and regulations afforded a bicycle, including s. 316.2065, F.S., relating to bicycle regulation.[29]

Any person operating a bicycle upon a roadway at less than the normal speed of traffic at the time and place and under the conditions then existing must ride in the lane marked for bicycle use or, if no lane is marked for bicycle use, as close as practicable to the right-hand curb or edge of the roadway except under any of the following situations:

- When overtaking and passing another bicycle or vehicle proceeding in the same direction.
- When preparing for a left turn at an intersection or into a private road or driveway.
- When reasonably necessary to avoid any condition or potential conflict, including, but not limited to, a fixed or moving object, parked or moving vehicle, bicycle, pedestrian, animal, surface hazard, turn lane, or substandard-width lane,[30] which makes it unsafe to continue along the right-hand curb or edge or within a bicycle lane.[31]

Any person operating a bicycle upon a one-way highway with two or more marked traffic lanes may ride as near the left-hand curb or edge of such roadway as practicable.[32]

Persons riding bicycles upon a roadway may not ride more than two abreast except on paths or parts of roadways set aside for the exclusive use of bicycles. Persons riding two abreast may not impede traffic when traveling at less than the normal speed of traffic at the time and place and under the conditions then existing and must ride within a single lane.[33]

Except as otherwise provided in s. 316.2065, F.S., a violation of s. 316.2065, F.S., is a noncriminal traffic infraction, punishable as a pedestrian violation as provided in ch. 318, F.S.[34] The base fine is $15,[35] but with additional fees and surcharges, the total fine is up to $56.60.[36]

Effect of the Bill

The bill provides that on roads that contain a substandard width lane, persons riding a bicycle must ride single file to maintain a minimum of three feet of space for vehicles to pass persons operating a bicycle.

The bill prohibits persons riding bicycles in a bike lane from riding more than two abreast. However, persons riding a bicycle may ride two abreast if both can stay within the bicycle lane. If the bicycle lane is too narrow to allow two persons riding a bicycle to ride two abreast, the persons must ride single file and within the bicycle lane. On roads that contain a substandard width lane, persons riding a bicycle may temporarily ride two abreast only to avoid hazards in the roadway or to overtake another person riding a bicycle.

The bill also provides that when stopping at a stop sign, persons riding bicycles in groups, after coming to a full stop and obeying all traffic laws, may proceed through the stop sign in a group of 10 or fewer at

[26] S. 316.001, F.S.
[27] S. 316.002, F.S.
[28] S. 316.2065(1), F.S.
[29] S. 316.20655(1), F.S.
[30] For the purposes of s. 316.2065(5), F.S., the term "substandard-width lane" means a lane that is too narrow for a bicycle and another vehicle to travel safely side by side within the lane.
[31] S. 316.2065(5)(a), F.S.
[32] S. 316.2065(5)(b), F.S.
[33] S. 316.2065(6), F.S.
[34] S. 316.2065(19), F.S.
[35] S. 318.18(1), F.S.
[36] Florida Clerk of Courts, 2020 Distribution Schedule, p. 21.

a time. Motor vehicle operators must allow each such group to travel through the intersection before moving forward. However, the bill does not specify how, such as single file, the groups of bicyclists may travel through an intersection.[37]

A violation of this provision would be a noncriminal traffic infraction, punishable as a pedestrian violation. The base fine is $15,[38] but with additional fees and surcharges, the total fine is up to $56.50.[39]

Conforming Changes

The bill also amends ss. 212.05, 316.306, and 655.960, F.S., conforming cross-references.

Effective Date

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. 316.083, F.S., relating to overtaking and passing a vehicle, a bicycle, or other nonmotorized vehicle, an electric bicycle, or a pedestrian.

Section 3: Amends s. 316.0875, F.S., relating to no-passing zones.

Section 4: Amends s. 316.151, F.S., relating to required position and method of turning at intersections.

Section 5: Amends s. 316.2065, F.S., relating to bicycle regulations.

Section 6: Amends s. 322.12, F.S. relating to the examination of applicants.

Sections 7-9: Amend ss. 212.05, 316.306, and 655.960, F.S., conforming cross-references.

Section 10: Provides an effective date of July 1, 2021.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   There would be a positive indeterminate, but insignificant, impact to state revenues as a result of expanding the overtaking and passing violation provisions to include pedestrians, and a new requirement to keep a safe distance behind bicycles, nonmotorized vehicles and pedestrians until a driver can safely pass. These are considered noncriminal traffic infraction, punishable as moving violations. The bill also expands violations relating to bicycle riders riding two abreast. This is considered a noncriminal pedestrian violation.

   However, the bill also expands the exceptions to a current violation for overtaking and passing a bicycle and other types of vehicles and pedestrians in a no-passing zone; a noncriminal traffic infraction, punishable as a moving violation. This would have a negative indeterminate, but insignificant, impact to state revenues.

2. Expenditures:

[37] Department of Highway Safety and Motor Vehicles, Agency Analysis of 2021 Senate Bill 950. p. 4. (Mar. 9, 2021).
[38] S. 318.318(1), F.S.
[39] Florida Clerk of Courts, 2020 Distribution Schedule, p. 21.

The bill appears to have an insignificant negative impact on state government expenditures.

DHSMV will incur expenditures associated with redesigning its driver license test banks to provide that at least 25 questions in the test bank address bicycle and pedestrian safety. This cost can be absorbed within existing resources.[40]

According to DHSMV, there are no costs associated with the implementation of the annual awareness and safety campaign that cannot be absorbed within existing resources.[41] DHSMV currently promotes traffic safety and educates citizens on traffic laws and regulations that protect the safety of pedestrians and bicyclists through partnerships with DOT, Florida's Pedestrian and Bicycle Safety Coalition, and Alert Today Florida.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill requires the driver of a vehicle to remain at a safe distance behind a pedestrian until the driver can safely vacate the lane. This language is appropriate for bicycles, other nonmotorized vehicles, and electric bicycles, which are required to travel in the same direction as vehicle traffic. However, Florida law requires pedestrians to walk facing traffic on the left side of the roadway, which would prevent the driver of a vehicle from remaining a safe distance behind a pedestrian as the bill requires.[42]

[40] Department of Highway Safety and Motor Vehicles, Agency Analysis of 2021 Senate Bill 950. p. 4. (Mar. 9, 2021).
[41] Email from Susan Carey, Chief Financial Officer, Florida Department of Highway Safety and Motor Vehicles, RE: CS/HB 605, March 25, 2021.
[42] *Id.* at 6.

The bill allows a vehicle to make a right turn at an intersection and pass a bicyclist only if the bicyclist is at least 20 feet from the intersection. However, depending on the speed of the bicycle and the speed of the vehicle turning, this may or may not be an appropriate distance for the vehicle to complete its turn without affecting the bicyclist and potentially causing a crash.[43]

The bill provides that "when stopping at a stop sign, persons riding bicycles in groups, after coming to a full stop and obeying all traffic laws, may proceed through the stop sign in a group of 10 or fewer at a time." Motor vehicle operators must allow each such group to travel through the intersection before moving forward." As the bill is drafted, it is unclear whether "each such group" refers to a single group of 10 bicyclists or more than one group of 10 bicyclists.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 22, 2021, the Tourism, Infrastructure & Energy adopted two amendments and reported the bill favorably as a committee substitute. In summary, the committee substitute:

- Clarifies that when overtaking a bicycle, other motorized vehicle, electric bicycle, or pedestrian on the road, a vehicle must pass at a safe distance of not less than three feet from the bicycle, other motorized vehicle, electric bicycle, or pedestrian.
- Requires the Department of Highway Safety and Motor Vehicles to annually conduct a bicycle and pedestrian safety and awareness campaign.
- Requires persons riding bicycles to ride single-file in substandard width lanes.
- Authorizes persons riding bicycles to ride two abreast in a bicycle lane, if both are able to remain within the bicycle lane.
- Requires persons riding bicycles to ride single-file in a bicycle lane if the bicycle lane is not wide enough to ride two abreast.
- Authorizes persons riding bicycles to temporarily ride two abreast to avoid hazards or to overtake another bicyclist.
- Removes the requirement that 20 percent of the questions on the driver license test be related to bicycle and pedestrian safety, and replaces it with a requirement that a minimum of 25 questions in the test bank be related to bicycle and pedestrian safety.

This analysis is drafted to the committee substitute as approved by the Tourism, Infrastructure & Energy Subcommittee.

[43] *Id.*

A bill to be entitled

An act relating to bicycle and pedestrian safety; amending s. 316.003, F.S.; defining the terms "bicycle lane" and "separated bicycle lane"; amending s. 316.083, F.S.; revising and providing requirements for the driver of a motor vehicle overtaking a bicycle or other nonmotorized vehicle, an electric bicycle, or a pedestrian; providing exceptions; providing a penalty; requiring the Department of Highway Safety and Motor Vehicles to provide an annual awareness and safety campaign regarding certain safety precautions; amending s. 316.0875, F.S.; exempting a motor vehicle driver from certain provisions relating to no-passing zones when overtaking a bicycle or other nonmotorized vehicle, an electric bicycle, or a pedestrian; making a technical change; amending s. 316.151, F.S.; revising requirements for vehicles turning at intersections; providing turn signaling and distance requirements for a motor vehicle driver when overtaking and passing a bicycle; making a technical change; amending s. 316.2065, F.S.; providing requirements for persons riding bicycles on a substandard-width lane; prohibiting persons riding bicycles in a bicycle lane from riding more than two abreast; providing requirements for riding in a

bicycle lane; providing requirements for persons riding bicycles in groups when stopping at a stop sign; making a technical change; amending s. 322.12, F.S.; requiring a minimum number of questions in the test bank for a Class E driver license to address bicycle and pedestrian safety; amending ss. 212.05, 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. Present subsections (5) through (76) and (77) through (105) of section 316.003, Florida Statutes, are redesignated as subsections (6) through (77) and (79) through (107), respectively, new subsections (5) and (78) are added to that section, and present subsection (62) of that section is amended, to read:

316.003 Definitions.—The following words and phrases, when used in this chapter, shall have the meanings respectively ascribed to them in this section, except where the context otherwise requires:

(5) BICYCLE LANE.—Any portion of a roadway or highway which is designated by pavement markings and signs for preferential or exclusive use by bicycles.

(63) ~~(62)~~ PRIVATE ROAD OR DRIVEWAY.—Except as otherwise

provided in paragraph (86)(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.

(78) SEPARATED BICYCLE LANE.—A bicycle lane that is separated from motor vehicle traffic by a physical barrier.

Section 2. Section 316.083, Florida Statutes, is amended to read:

316.083 Overtaking and passing a vehicle, a bicycle or other nonmotorized vehicle, an electric bicycle, or a pedestrian.—The following rules shall govern the overtaking and passing of vehicles, bicycles and other nonmotorized vehicles, electric bicycles, and pedestrians ~~proceeding in the same direction~~, subject to those limitations, exceptions, and special rules hereinafter stated:

(1) The driver of a vehicle overtaking another vehicle proceeding in the same direction must ~~shall~~ give an appropriate signal as provided for in s. 316.156, must ~~shall~~ pass to the left thereof at a safe distance, and must ~~shall~~ not again drive to the right side of the roadway until safely clear of the overtaken vehicle.

(2) The driver of a vehicle overtaking a bicycle or other nonmotorized vehicle, an electric bicycle, or a pedestrian occupying the same travel lane must pass the bicycle or other nonmotorized vehicle, electric bicycle, or pedestrian at a safe

distance of not less than 3 feet or, if such movement cannot be safely accomplished, must remain at a safe distance behind the bicycle or other nonmotorized vehicle, electric bicycle, or pedestrian until the driver can safely pass at a distance of not less than 3 feet and must safely clear the overtaken bicycle or other nonmotorized vehicle, electric bicycle, or pedestrian.

(3) The driver of a vehicle overtaking a bicycle or other nonmotorized vehicle, or an electric bicycle, occupying a bicycle lane must pass the bicycle, other nonmotorized vehicle, or electric bicycle at a safe distance of not less than 3 feet between the vehicle and the bicycle, other nonmotorized vehicle, or electric bicycle.

(4) Subsections (2) and (3) do not apply when a bicycle or other nonmotorized vehicle, or an electric bicycle, occupies a separated bicycle lane.

(5)~~(2)~~ Except when overtaking and passing on the right is permitted, the driver of an overtaken vehicle must ~~shall~~ give way to the right in favor of the overtaking vehicle, on audible signal or upon the visible blinking of the headlamps of the overtaking vehicle if such overtaking is being attempted at nighttime, and must ~~shall~~ not increase the speed of his or her vehicle until completely passed by the overtaking vehicle.

(6)~~(3)~~ A person who violates ~~violation of~~ this section commits ~~is~~ a noncriminal traffic infraction, punishable as a moving violation as provided in chapter 318.

(7) The department must provide an annual awareness and safety campaign informing the public about the safety precautions to be taken when overtaking a bicycle or other nonmotorized vehicle, an electric bicycle, or a pedestrian.

Section 3. Section 316.0875, Florida Statutes, is amended to read:

316.0875 No-passing zones.—

(1) The Department of Transportation and local authorities may ~~are authorized to~~ determine those portions of any highway under their respective jurisdictions ~~jurisdiction~~ where overtaking and passing or driving to the left of the roadway would be especially hazardous and may, by appropriate signs or markings on the roadway, indicate the beginning and end of such zones.~~, and~~ When such signs or markings are in place and clearly visible to an ordinarily observant person, a ~~every~~ driver of a vehicle must ~~shall~~ obey the directions thereof.

(2) Where signs or markings are in place to define a no-passing zone as set forth in subsection (1), a ~~no~~ driver may not, ~~shall~~ at any time, drive on the left side of the roadway within ~~with~~ such no-passing zone or on the left side of any pavement striping designed to mark such no-passing zone throughout its length.

(3) This section does not apply to a driver who safely and briefly drives to the left of the center of the roadway only to the extent necessary to:

(a) Avoid ~~when~~ an obstruction;

(b) Turn ~~exists making it necessary to drive to the left of the center of the highway, nor to the driver of a vehicle turning~~ left into or from an alley, a private road, or a driveway; or

(c) Overtake and pass a bicycle or other nonmotorized vehicle, an electric bicycle, or a pedestrian pursuant to s. 316.083(2) or (3).

(4) A person who violates ~~violation of~~ this section commits ~~is~~ a noncriminal traffic infraction, punishable as a moving violation as provided in chapter 318.

Section 4. Section 316.151, Florida Statutes, is amended to read:

316.151 Required position and method of turning at intersections.—

(1)(a) Right turn.—The driver of a vehicle intending to turn right at an intersection onto a highway, public or private roadway, or driveway must ~~shall do so as follows~~:

1.~~(a)~~ Make ~~Right turn.—~~both the approach for a right turn and a right turn ~~shall be made~~ as close as practicable to the right-hand curb or edge of the roadway.

2. When overtaking and passing a bicycle proceeding in the same direction, give an appropriate signal as provided for in s. 316.156 and make the right turn only if the bicycle is at least 20 feet from the intersection.

(b) Left turn.—

1. The driver of a vehicle intending to turn left at an ~~any~~ intersection onto a highway, public or private roadway, or driveway must ~~shall~~ approach the intersection in the extreme left-hand lane lawfully available to traffic moving in the direction of travel of such vehicle~~,~~ and must make~~, after entering the intersection,~~ the left turn ~~shall be made~~ so as to leave the intersection in a lane lawfully available to traffic moving in such direction upon the roadway being entered.

2. A person riding a bicycle and intending to turn left in accordance with this section is entitled to the full use of the lane from which the turn may legally be made. The person must:

a. Whenever practicable, make the left turn ~~shall be made~~ in that portion of the intersection to the left of the center of the intersection; or~~.~~

~~(c) Left turn by bicycle.—In addition to the method of making a left turn described in paragraph (b), a person riding a bicycle and intending to turn left has the option of following the course described hereafter: The rider shall~~

b. Approach the turn as close as practicable to the right curb or edge of the roadway; after proceeding across the intersecting roadway, make the turn ~~shall be made~~ as close as practicable to the curb or edge of the roadway on the far side of the intersection; and, before proceeding, ~~the bicyclist shall~~ comply with any official traffic control device or police

officer regulating traffic on the highway along which the person ~~bicyclist~~ intends to proceed.

(2) The state, county, and local authorities in their respective jurisdictions may cause official traffic control devices to be placed within or adjacent to intersections and thereby require and direct that a different course from that specified in this section be traveled by vehicles turning at an intersection. When such devices are so placed, a ~~no~~ driver of a vehicle may not turn a vehicle at an intersection other than as directed and required by such devices.

(3) A person who violates ~~violation of~~ this section commits ~~is~~ a noncriminal traffic infraction, punishable as a moving violation as provided in chapter 318.

Section 5. Subsections (5), (6), and (19) of section 316.2065, Florida Statutes, are amended to read:

316.2065 Bicycle regulations.—

(5)(a) A ~~Any~~ person operating a bicycle upon a roadway at less than the normal speed of traffic at the time and place and under the conditions then existing must ~~shall~~ ride in the bicycle lane ~~marked for bicycle use~~ or, if there is no bicycle lane on the roadway ~~is marked for bicycle use~~, as close as practicable to the right-hand curb or edge of the roadway except under any of the following situations:

1. When overtaking and passing another bicycle or vehicle proceeding in the same direction.

2. When preparing for a left turn at an intersection or into a private road or driveway.

3. When reasonably necessary to avoid any condition or potential conflict, including, but not limited to, a fixed or moving object, parked or moving vehicle, bicycle, pedestrian, animal, surface hazard, turn lane, or substandard-width lane, which makes it unsafe to continue along the right-hand curb or edge or within a bicycle lane. On roads that contain a substandard-width lane, persons operating bicycles must ride single-file to maintain the minimum 3 feet of space for motor vehicles to pass persons operating a bicycle as provided in s. 316.083. For the purposes of this subsection, a "substandard-width lane" is a lane that is too narrow for a bicycle and another vehicle to travel safely side by side within the lane.

(b) A ~~Any~~ person operating a bicycle upon a one-way highway with two or more marked traffic lanes may ride as near the left-hand curb or edge of such roadway as practicable.

(6)(a) Persons riding bicycles upon a roadway or in a bicycle lane may not ride more than two abreast except on a bicycle path ~~paths or parts of roadways set aside for the exclusive use of bicycles~~. Persons riding two abreast may not impede traffic when traveling at less than the normal speed of traffic at the time and place and under the conditions then existing and must ~~shall~~ ride within a single lane. Where bicycle lanes exist, persons riding bicycles may ride two abreast if

both are able to remain within the bicycle lane. If the bicycle lane is too narrow to allow two persons riding bicycles to ride two abreast, the persons must ride single-file and within the bicycle lane. On roads that contain a substandard-width lane as defined in subparagraph (5)(a)3., persons riding bicycles may temporarily ride two abreast only to avoid hazards in the roadway or to overtake another person riding a bicycle.

(b) When stopping at a stop sign, persons riding bicycles in groups, after coming to a full stop and obeying all traffic laws, may proceed through the stop sign in a group of 10 or fewer at a time. Motor vehicle operators must allow each such group to travel through the intersection before moving forward.

(19) Except as otherwise provided in this section, a person who violates ~~violation of~~ this section commits ~~is~~ a noncriminal traffic infraction, punishable as a pedestrian violation as provided in chapter 318. A law enforcement officer may issue traffic citations for a violation of subsection (3) or subsection (15) only if the violation occurs on a bicycle path or road, as defined in s. 334.03. However, a law enforcement officer may not issue citations to persons on private property, except any part thereof which is open to the use of the public for purposes of vehicular traffic.

Section 6. Subsection (3) of section 322.12, Florida Statutes, is amended to read:

322.12 Examination of applicants.—

(3) For an applicant for a Class E driver license, such examination shall include all of the following:

(a) A test of the applicant's eyesight given by the driver license examiner designated by the department or by a licensed ophthalmologist, optometrist, or physician.

(b) ~~and~~ A test of the applicant's hearing given by a driver license examiner or a licensed physician.

(c) ~~The examination shall also include~~ A test of the applicant's ability to read and understand highway signs regulating, warning, and directing traffic; his or her knowledge of the traffic laws of this state, including laws regulating driving under the influence of alcohol or controlled substances, driving with an unlawful blood-alcohol level, and driving while intoxicated; and his or her knowledge of the effects of alcohol and controlled substances upon persons and the dangers of driving a motor vehicle while under the influence of alcohol or controlled substances. At least 25 questions within the bank of test questions must address bicycle and pedestrian safety.

(d) ~~and shall include~~ An actual demonstration of ability to exercise ordinary and reasonable control in the operation of a motor vehicle.

Section 7. Paragraph (c) of subsection (1) of section 212.05, Florida Statutes, is amended to read:

212.05 Sales, storage, use tax.—It is hereby declared to be the legislative intent that every person is exercising a

taxable privilege who engages in the business of selling tangible personal property at retail in this state, including the business of making mail order sales, or who rents or furnishes any of the things or services taxable under this chapter, or who stores for use or consumption in this state any item or article of tangible personal property as defined herein and who leases or rents such property within the state.

(1) For the exercise of such privilege, a tax is levied on each taxable transaction or incident, which tax is due and payable as follows:

(c) At the rate of 6 percent of the gross proceeds derived from the lease or rental of tangible personal property, as defined herein; however, the following special provisions apply to the lease or rental of motor vehicles:

1. When a motor vehicle is leased or rented for a period of less than 12 months:

a. If the motor vehicle is rented in Florida, the entire amount of such rental is taxable, even if the vehicle is dropped off in another state.

b. If the motor vehicle is rented in another state and dropped off in Florida, the rental is exempt from Florida tax.

2. Except as provided in subparagraph 3., for the lease or rental of a motor vehicle for a period of not less than 12 months, sales tax is due on the lease or rental payments if the vehicle is registered in this state; provided, however, that no

tax shall be due if the taxpayer documents use of the motor vehicle outside this state and tax is being paid on the lease or rental payments in another state.

3. The tax imposed by this chapter does not apply to the lease or rental of a commercial motor vehicle as defined in s. 316.003(14)(a) ~~s. 316.003(13)(a)~~ to one lessee or rentee for a period of not less than 12 months when tax was paid on the purchase price of such vehicle by the lessor. To the extent tax was paid with respect to the purchase of such vehicle in another state, territory of the United States, or the District of Columbia, the Florida tax payable shall be reduced in accordance with the provisions of s. 212.06(7). This subparagraph shall only be available when the lease or rental of such property is an established business or part of an established business or the same is incidental or germane to such business.

Section 8. 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(107) ~~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 9. 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(86)(a) or (b) ~~s. 316.003(84)(a) or (b)~~, including any adjacent sidewalk, as defined in s. 316.003.

Section 10. This act shall take effect July 1, 2021.

COMMERCE COMMITTEE

CS/HB 605 by Rep. Hunschofsky
BICYCLE AND PEDESTRIAN SAFETY

AMENDMENT SUMMARY
APRIL 19, 2021

Amendment 1 by Rep. Hunschofsky (Line 57):

- Removes the term “pedestrian” from provisions related to motor vehicles overtaking bicycles, other nonmotorized vehicles, and electric bicycles.
- Adds that a motor vehicle overtaking and passing a bicycle may make a right turn if the bicycle is of such a distance that the motor vehicle may safely turn.
- Requires drivers to stop for one group of 10 or fewer bicyclists to travel through an intersection prior to proceeding through the intersection.

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 Hunschofsky offered the following:

Amendment (with title amendment)

Remove lines 57-237 and insert:

Section 2. Section 316.083, Florida Statutes, is amended to read:

316.083 Overtaking and passing a vehicle, a bicycle or other nonmotorized vehicle or an electric bicycle.—The following rules shall govern the overtaking and passing of vehicles, bicycles and other nonmotorized vehicles and electric bicycles, ~~proceeding in the same direction~~, subject to those limitations, exceptions, and special rules hereinafter stated:

(1) The driver of a vehicle overtaking another vehicle proceeding in the same direction must ~~shall~~ give an appropriate signal as provided for in s. 316.156, must ~~shall~~ pass to the

left thereof at a safe distance, and must ~~shall~~ not again drive to the right side of the roadway until safely clear of the overtaken vehicle.

(2) The driver of a vehicle overtaking a bicycle or other nonmotorized vehicle or an electric bicycle occupying the same travel lane must pass the bicycle or other nonmotorized vehicle or electric bicycle at a safe distance of not less than 3 feet or, if such movement cannot be safely accomplished, must remain at a safe distance behind the bicycle or other nonmotorized vehicle or electric bicycle until the driver can safely pass at a distance of not less than 3 feet and must safely clear the overtaken bicycle or other nonmotorized vehicle or electric bicycle.

(3) The driver of a vehicle overtaking a bicycle or other nonmotorized vehicle, or an electric bicycle, occupying a bicycle lane must pass the bicycle, other nonmotorized vehicle, or electric bicycle at a safe distance of not less than 3 feet between the vehicle and the bicycle, other nonmotorized vehicle, or electric bicycle.

(4) Subsections (2) and (3) do not apply when a bicycle or other nonmotorized vehicle, or an electric bicycle, occupies a separated bicycle lane.

(5)~~(2)~~ Except when overtaking and passing on the right is permitted, the driver of an overtaken vehicle must ~~shall~~ give way to the right in favor of the overtaking vehicle, on audible

signal or upon the visible blinking of the headlamps of the overtaking vehicle if such overtaking is being attempted at nighttime, and must ~~shall~~ not increase the speed of his or her vehicle until completely passed by the overtaking vehicle.

(6)~~(3)~~ A person who violates ~~violation of~~ this section commits ~~is~~ a noncriminal traffic infraction, punishable as a moving violation as provided in chapter 318.

(7) The department must provide an annual awareness and safety campaign informing the public about the safety precautions to be taken when overtaking a bicycle or other nonmotorized vehicle, or an electric bicycle.

Section 3. Section 316.0875, Florida Statutes, is amended to read:

316.0875 No-passing zones.—

(1) The Department of Transportation and local authorities may ~~are authorized to~~ determine those portions of any highway under their respective jurisdictions ~~jurisdiction~~ where overtaking and passing or driving to the left of the roadway would be especially hazardous and may, by appropriate signs or markings on the roadway, indicate the beginning and end of such zones.~~, and~~ When such signs or markings are in place and clearly visible to an ordinarily observant person, a ~~every~~ driver of a vehicle must ~~shall~~ obey the directions thereof.

(2) Where signs or markings are in place to define a no-passing zone as set forth in subsection (1), a ~~no~~ driver may

not, ~~shall~~ at any time, drive on the left side of the roadway within ~~with~~ such no-passing zone or on the left side of any pavement striping designed to mark such no-passing zone throughout its length.

(3) This section does not apply to a driver who safely and briefly drives to the left of the center of the roadway only to the extent necessary to:

(a) Avoid ~~when~~ an obstruction;

(b) Turn ~~exists making it necessary to drive to the left of the center of the highway, nor to the driver of a vehicle turning~~ left into or from an alley, a private road, or a driveway; or

(c) Overtake and pass a bicycle or other nonmotorized vehicle or an electric bicycle pursuant to s. 316.083(2) or (3).

(4) A person who violates ~~violation of~~ this section commits ~~is~~ a noncriminal traffic infraction, punishable as a moving violation as provided in chapter 318.

Section 4. Section 316.151, Florida Statutes, is amended to read:

316.151 Required position and method of turning at intersections.—

(1)(a) Right turn.—The driver of a vehicle intending to turn right at an intersection onto a highway, public or private roadway, or driveway must ~~shall do so as follows~~:

1.~~(a)~~ Make ~~Right turn.—~~both the approach for a right turn

and a right turn ~~shall be made~~ as close as practicable to the right-hand curb or edge of the roadway.

2. When overtaking and passing a bicycle proceeding in the same direction, give an appropriate signal as provided for in s. 316.156 and make the right turn only if the bicycle is at least 20 feet from the intersection, and is of such a distance that the driver of a vehicle may safely turn.

(b) Left turn.—

1. The driver of a vehicle intending to turn left at an ~~any~~ intersection onto a highway, public or private roadway, or driveway must ~~shall~~ approach the intersection in the extreme left-hand lane lawfully available to traffic moving in the direction of travel of such vehicle~~,~~ and must make~~, after entering the intersection,~~ the left turn ~~shall be made~~ so as to leave the intersection in a lane lawfully available to traffic moving in such direction upon the roadway being entered.

2. A person riding a bicycle and intending to turn left in accordance with this section is entitled to the full use of the lane from which the turn may legally be made. The person must:

a. Whenever practicable, make the left turn ~~shall be made~~ in that portion of the intersection to the left of the center of the intersection; or~~.~~

~~(c) Left turn by bicycle.—In addition to the method of making a left turn described in paragraph (b), a person riding a bicycle and intending to turn left has the option of following~~

~~the course described hereafter: The rider shall~~

b. Approach the turn as close as practicable to the right curb or edge of the roadway; after proceeding across the intersecting roadway, make the turn ~~shall be made~~ as close as practicable to the curb or edge of the roadway on the far side of the intersection; and, before proceeding, ~~the bicyclist shall~~ comply with any official traffic control device or police officer regulating traffic on the highway along which the person ~~bicyclist~~ intends to proceed.

(2) The state, county, and local authorities in their respective jurisdictions may cause official traffic control devices to be placed within or adjacent to intersections and thereby require and direct that a different course from that specified in this section be traveled by vehicles turning at an intersection. When such devices are so placed, a ~~no~~ driver of a vehicle may not turn a vehicle at an intersection other than as directed and required by such devices.

(3) A person who violates ~~violation of~~ this section commits ~~is~~ a noncriminal traffic infraction, punishable as a moving violation as provided in chapter 318.

Section 5. Subsections (5), (6), and (19) of section 316.2065, Florida Statutes, are amended to read:

316.2065 Bicycle regulations.—

(5)(a) A ~~Any~~ person operating a bicycle upon a roadway at less than the normal speed of traffic at the time and place and

under the conditions then existing must ~~shall~~ ride in the bicycle lane ~~marked for bicycle use~~ or, if there is no bicycle lane on the roadway ~~is marked for bicycle use~~, as close as practicable to the right-hand curb or edge of the roadway except under any of the following situations:

1. When overtaking and passing another bicycle or vehicle proceeding in the same direction.

2. When preparing for a left turn at an intersection or into a private road or driveway.

3. When reasonably necessary to avoid any condition or potential conflict, including, but not limited to, a fixed or moving object, parked or moving vehicle, bicycle, pedestrian, animal, surface hazard, turn lane, or substandard-width lane, which makes it unsafe to continue along the right-hand curb or edge or within a bicycle lane. On roads that contain a substandard-width lane, persons operating bicycles must ride single-file to maintain the minimum 3 feet of space for motor vehicles to pass persons operating a bicycle as provided in s. 316.083. For the purposes of this subsection, a "substandard-width lane" is a lane that is too narrow for a bicycle and another vehicle to travel safely side by side within the lane.

(b) A ~~Any~~ person operating a bicycle upon a one-way highway with two or more marked traffic lanes may ride as near the left-hand curb or edge of such roadway as practicable.

(6)(a) Persons riding bicycles upon a roadway or in a

bicycle lane may not ride more than two abreast except on a bicycle path ~~paths or parts of roadways set aside for the exclusive use of bicycles~~. Persons riding two abreast may not impede traffic when traveling at less than the normal speed of traffic at the time and place and under the conditions then existing and must ~~shall~~ ride within a single lane. Where bicycle lanes exist, persons riding bicycles may ride two abreast if both are able to remain within the bicycle lane. If the bicycle lane is too narrow to allow two persons riding bicycles to ride two abreast, the persons must ride single-file and within the bicycle lane. On roads that contain a substandard-width lane as defined in subparagraph (5)(a)3., persons riding bicycles may temporarily ride two abreast only to avoid hazards in the roadway or to overtake another person riding a bicycle.

(b) When stopping at a stop sign, persons riding bicycles in groups, after coming to a full stop and obeying all traffic laws, may proceed through the stop sign in a group of 10 or fewer at a time. Motor vehicle operators must allow one such group to travel through the intersection before moving forward.

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

Remove lines 7-15 and insert:

other nonmotorized vehicle or an electric bicycle; providing exceptions; providing a penalty; requiring the Department of Highway Safety and Motor Vehicles to provide an annual awareness and safety campaign regarding certain safety precautions; amending s. 316.0875, F.S.; exempting a motor vehicle driver from certain provisions relating to no-passing zones when overtaking a bicycle or other nonmotorized vehicle or an electric bicycle; making

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 613 Tax Collector and License Plate Agency Operations
SPONSOR(S): Infrastructure & Tourism Appropriations Subcommittee, Tourism, Infrastructure & Energy Subcommittee, Aloupis
TIED BILLS: **IDEN./SIM. BILLS:** SB 884

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Tourism, Infrastructure & Energy Subcommittee	13 Y, 2 N, As CS	Johnson	Keating
2) Infrastructure & Tourism Appropriations Subcommittee	14 Y, 0 N, As CS	Hicks	Davis
3) Commerce Committee		Johnson	Hamon

SUMMARY ANALYSIS

County tax collectors are the Department of Highway Safety and Motor Vehicles' (DHSMV) authorized agents to title and register motor vehicles, motor homes, and vessels, and to provide driver license services. However, appointed tax collectors in some charter counties are not authorized to provide driver license services. Some county tax collectors have contracted with privately-owned license plate agents (LPAs) to provide title and registration services. LPAs currently do not provide driver license services in Florida. Additionally, terms describing LPAs are not consistent across statute, nor are any of these terms defined.

The bill defines the term "license plate agency" and conforms various statutory provisions to use that term. The bill provides that operational requirements established by DHSMV policies and procedures must be the same for both governmentally and privately managed license plate agencies.

The bill provides that, effective October 1, 2021, the appointed tax collector of any charter county may contract with one or more LPAs to provide the following driver license services:

- Processing applications for the renewal of any driver license that is currently compliant with federal REAL ID Act requirements.
- Processing a reinstatement of a suspended driver license when the only condition of such reinstatement is payment of fees.
- Processing a licensee's or cardholder's change of address and application for a replacement driver license or identification card, if the driver license or identification card is currently compliant with federal REAL ID Act requirements.

The bill requires DHSMV, upon application of each tax collector electing to participate in the pilot project, to enter into an interagency agreement allowing the tax collector to provide driver license services. The bill clarifies that an LPA is not authorized to issue a driver license or identification card. The bill requires fingerprinting and background checks for a covered employee of an LPA prior to being able to provide such services. The bill prohibits the automatic transfer of information gathered for the completion of a driver license or identification card renewal or change of address to a voter registration application and requires that a printed notice with instructions on how to register to vote or update a voter registration record be provided. The bill provides that the funds collected by license plate agencies must be deposited into the state treasury within the same time period as required for tax collectors. The bill requires a review of the pilot project and establishes a submission date of December 31, 2025, for a final report that addresses the implementation of the project and the provision of the specified driver license services.

The bill will have a significant, negative fiscal 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:

Current Situation

Under chs. 320 and 328, F.S., county tax collectors are the Department of Highway Safety and Motor Vehicles' (DHSMVs) authorized agents to title and register motor vehicles, motor homes, and vessels.[1] When processing these transactions, tax collectors charge and collect fees specified in state law,[2] which are remitted to the state. However, chs. 319, 320, and 328, F.S., also require tax collectors to retain certain statutorily prescribed service fees and charges.[3]

Currently, 65 counties have elected tax collectors who are constitutional officers, while Broward and Miami-Dade Counties have appointed tax collectors under each county's charter government. However, pursuant to s. 1(d), Article VIII of the State Constitution, these counties will have elected tax collectors effective January 7, 2025.[4]

Sixteen counties have, or until recently had, contracts with privately owned license plate agents (LPAs) to operate 57 offices to perform title and registration services for motor vehicles, mobile homes, and vessels. In counties with elected tax collectors, LPAs only charge the fees for those services as expressly authorized in statute. In these counties, the LPAs may retain all or a portion of the statutorily authorized service fee that tax collectors are allowed to collect for motor vehicle, mobile home, and vessel title and registration services, as provided in the contracts between the LPA and the tax collector.[5] The LPAs in Broward and Miami-Dade Counties charge fees[6] for motor vehicle, mobile home, and vessel title and registration fees *in addition* to the statutory fees authorized in chs. 319, 320, and 328, F.S. The additional fees levied in Broward and Miami-Dade Counties are levied pursuant to county ordinance and are retained by the LPAs.[7]

Terms such as "license tag agent" and "tag agency" appear throughout Florida Statutes, relating to private tag agencies authorized to perform certain motor vehicle-related transactions. However, these terms are not defined, nor are they used consistently across the statutes.

DHSMV has transitioned its driver license services from DHSMV-owned facilities to elected county tax collectors. Florida law required DHSMV to completely transition all driver license issuance services to tax collectors who are constitutional officers under s. 1(d), Article VIII of the State Constitution with this transition to be completed by June 30, 2015. The transition of services to appointed charter county tax collectors may occur on a limited basis as directed by DHSMV.[8]

Currently, LPAs do not provide driver license services anywhere in Florida.

Driver License Issuance Systems

DHSMV's Florida Driver License Information System (FDLIS) is the legacy driver license issuance system that will be completely replaced by May 2021 with the newly launched Online Registration and Identity Operating Network (ORION). ORION is the replacement database application which will be used to conduct all driver license and identification card issuances. ORION provides real-time access

[1] County tax collectors are expressly made agents of the state with respect to motor vehicle registration in s. 320.03(1), F.S., and with respect to vessel registration in s. 328.73(1), F.S.
[2] *See* s. 319.32, F.S., for motor vehicle title fees, s. 320.03, for motor vehicle registration fees, s. 320.04, F.S., as to motor vehicle service charges, and s. 328.72, F.S., as to vessel registration fees.
[3] Department of Highway Safety and Motor Vehicles, Agency Analysis of 2021 SB 342, p 2. (January 14, 2021).
[4] *Id*.
[5] *Id.*
[6] Formerly the LPAs in Volusia County charged fees. An elected county tax collector took office on January 5, 2021, and the LPA offices closed by February 4, 2021. *Id.*
[7] *Id.*
[8] Section 322.02(1), F.S.

to extensive information on every driver, including driving history, vehicle insurance information, and personal identity information and documents.

FDLIS/ORION is installed in 195 tax collector offices in 63 counties in Florida and in the 15 driver license offices DHSMV operates in Broward and Miami-Dade counties.

Only DHSMV and elected tax collectors have access to FDLIS/ORION. Access to these systems is governed by individual memoranda of understanding (MOUs) between DHSMV and each tax collector.

Section 322.135(1)(c) F.S., requires county tax collectors to charge a $6.25 service fee for providing driver license services.[9]

Federal REAL ID Act

The federal REAL ID Act of 2005 provides minimum security requirements for the issuance and production of state and territory driver licenses and identification cards in order for federal agencies to accept these documents for official purposes,[10] which include entering federal facilities and boarding commercial aircraft.

Real ID Act compliant state-issued driver licenses and identification cards must include the following information:

- The person's full legal name, date of birth, and gender;
- The person's driver's license or identification card number;
- A digital photograph of the person[11] (all in-office transactions require the taking of the customer's photograph, even if the customer is only taking a test);
- The person's address of principal residence;
- The person's signature;
- Physical security features designed to prevent tampering, counterfeiting, or duplication of the driver licenses and identification cards for fraudulent purposes; and
- A common machine-readable technology, with defined minimum elements.

Additionally, the REAL ID Act mandates minimum standards that states must adopt when issuing driver license and ID cards. Each state or territory must:

- Require, at a minimum, presentation and verification of certain documents verifying a person's identity or address.
- Require valid documentary evidence of the applicant's lawful presence in the United States.
- Establish procedures verifying each document required to be presented by the applicant.
- Enter into a MOU with the Department of Homeland Security to access its system to verify the lawful status of an applicant, other than a U.S. citizen.
- Confirm with the Social Security Administration that the social security number presented by an applicant is registered to that person.
- Ensure the physical security of facilities where driver licenses and identification cards are produced; and the security of document materials and papers from which driver licenses and identification cards are produced.
- Require that all persons authorized to manufacture or produce driver licenses and identification cards must satisfy appropriate security clearance requirements.
- Incorporate physical security features on the driver licenses and identification cards which are designed to prevent tampering, counterfeiting, and duplication of the documents for a fraudulent purpose.

DHSMV has fully complied with and has been certified as compliant with the Real ID Act. As of January 2021, almost 95 percent of all Florida credentials are REAL ID compliant. Certification as compliant with the REAL ID Act means that Florida achieved and met the mandatory minimum requirements noted above. The consequences for a state or territory that fails to be certified as REAL ID compliant is

[9] Department of Highway Safety and Motor Vehicles, Agency Analysis of 2021 House Bill 613, p. 5-6. (Mar. 5, 2021).
[10] 49 U.S.C. 30301 note; 6 U.S.C. 111, 112.
[11] Section 202(b) of the Real ID Act.

that its driver license and identification cardholders will not be permitted to use their state-issued driver license or identification card for federal purposes, including as the identification required to board a commercial airplane.[12]

Due to the federal REAL ID Act, driver license offices must have specific types of equipment to issue driver licenses and identification cards over the counter. When a tax collector opens a driver license office, the tax collector pays the initial cost for all the equipment, a security safe, and security cameras; DHSMV provides and pays for the blank driver license and identification card stock. Approximately every five years, this equipment becomes obsolete and must be replaced. The cost to replace the outdated driver license equipment is paid for by DHSMV, pursuant to an appropriation.[13]

Motor Voter Law

The Federal Voter Registration Act of 1993, also known as the motor voter law, requires a voter registration form to be included with each driver license application, including renewal applications, and there are federal requirements regarding the transmission of this data to the state election's office.[14]

Section 97.057(1), F.S., requires DHSMV to provide the opportunity to apply to register to vote or to update a voter registration record to each individual who comes to an office to:

- Apply for or renew a driver license;
- Apply for or renew an identification card; or
- Change an address on an existing driver license or identification card.[15]

Effect of the Bill

The bill defines the term "license plate agency" as an office appointed by the tax collector which is equipped with DHSMV's Florida Real Time Vehicle Information System (FRVIS) and managed by a governmental or private entity to process transactions related to motorist services on behalf of DHSMV. The bill amends various sections of statute referring to license tag agencies and tag agencies to change these references to the newly defined term "license plate agency."

The bill provides that operational requirements for license plate agencies, as established by DHSMV policies and procedures, including, but not limited to, purchases of equipment, license plates, and validation stickers and other costs incurred by DHSMV, must be the same for both governmentally and privately managed license plate agencies.

The bill provides that, effective October 1, 2021, the appointed tax collector of any charter county may, at the tax collector's discretion, participate in a pilot project through which the tax collector contracts with one or more license plate agencies to provide the following driver license services:

- Processing a licensee's application and collecting the required fees for renewal of any driver license that is currently compliant with federal REAL ID Act requirements.
- Processing a licensee's application for reinstatement of a suspended driver license and collecting the required fees, if the only condition for reinstatement is the payment of such fees.
- Processing a licensee's or cardholder's request to change his or her address and application for a replacement driver license or identification card, and collecting the required fees, if the driver license or identification card is currently compliant with federal REAL ID Act requirements.

The bill provides that DHSMV shall, upon application from each tax collector electing to participate in the pilot project, authorize the tax collector by interagency agreement, to provide these services as DHSMV's agent through one or more license plate agencies.

The bill provides that a tax collector's election to contract with an LPA does not require the tax collector to provide all authorized driver license services. The bill does not authorize an LPA to issue driver

[12] Department of Highway Safety and Motor Vehicles, Agency Analysis of 2021 House Bill 613. pp. 7-8. (March 5, 2021)
[13] *Id.* at 5.
[14] United States Department of Justice, *The National Voter Registration Act of 1993*, https://www.justice.gov/crt/national-voter-registration-act-1993-nvra (last visited March 4, 2021).
[15] Department of Highway Safety and Motor Vehicles, Agency Analysis of 2021 House Bill 613. p. 8. (March 5, 2021)

licenses or identification cards or possess any blank driver licenses or identification cards. The bill requires that a covered employee of an LPA, prior to providing driver license services, must be fingerprinted, undergo background checks, and be subject to disqualification from providing such services to the extent required by federal law. The bill prohibits information gathered for the completion of a driver license or identification card renewal or change of address to be automatically transferred to a voter registration application. Instead, an LPA must provide each licensee or cardholder a printed notice with instructions on how to register to vote or update a voter registration record. If the LPA collects funds to be deposited into the state treasury, these funds must be paid into the state treasury within the same time frame as required for county tax collectors.[16]

The bill sets forth provisions requiring each tax collector participating in the pilot project to review implementation of the pilot project and the provisions of the specified driver license services by LPAs in the respective county. The tax collector must submit a preliminary report of its findings and recommendations to DHSMV, and the department must provide comments to the tax collector regarding their findings and recommendations. A final report must be submitted by the tax collector, inclusive of DHSMV's comments, to the Governor and Cabinet, the President of the Senate, and the Speaker of the House of Representative by December 31, 2025.

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

B. SECTION DIRECTORY:

Section 1: Amends s. 320.01, F.S., defining the term "license plate agency."

Section 2: Amends s. 320.03, F.S., relating to the registration duties of tax collectors.

Sections 3-5: Amends ss. 320.04, 320.06, and 320.0894, F.S., to conform.

Section 6: Amends s. 322.135, F.S., relating to driver license agents.

Sections 7-9: Amends ss. 212.1832, 681.117, and 1002.40, F.S., to conform.

Section 10: 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:

   Although this bill establishes an optional pilot project, to the extent any LPA participates, according to DHSMV there will be a significant, negative impact on expenditures that cannot be absorbed within existing resources. DHSMV reports it would require approximately $142,688 of additional contracting resources for programming, development, and installation of the driver license issuance system in LPA offices.[17] Training costs, however, to ensure LPAs can deliver the driver license services, cannot be quantified and are indeterminate.

   Additionally, the bill requires both governmentally and privately managed LPA costs be the same. This provision requires DHSMV to assume the annual, recurring network costs for 57 LPAs

[16] Section 322.135(6), F.S., requires tax collectors to pay all sums due to the State Treasury no later than five working days after the close of the business day in which the funds were received.
[17] Attachment to e-mail from Kevin Jacobs, Legislative Affairs Director, Department of Highway Safety and Motor Vehicles, Info for meeting. (Apr. 9, 2021).

statewide, estimated to be approximately $513,864.[18] DHSMV reports that a specific appropriation would be needed as they cannot absorb this increase in costs within existing resources.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill may have a negative fiscal impact on local government revenues, as county tax collectors that elect to participate in the pilot project may see a reduction in revenues associated with additional services being provided by private license plate agencies. Any revenue losses may be offset to some extent by a reduction in expenditures.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

License plate agencies may see additional revenues associated with providing additional services. LPAs would also be responsible for the initial equipment purchases, estimated to be approximately $1.8 million.[19]

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

Drafting Issue

The bill makes conforming changes to the Hope Scholarship Program to the replace the term “tag agency” with “license plate agency.” According to the Department of Revenue, where the word “agency” is replaced in this context, the term refers to both a “designated agent” and a “private tag agent” and the word “agent” should be put back in the bill in both locations.[20]

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 9, 2021, the Tourism, Infrastructure & Energy Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The committee substitute:

[18] *Id.*

[19] *Id.*

[20] Florida Department of Revenue, Agency Analysis of 2021 House Bill 613, pp. 4-5. (Feb. 26, 2021).

- Relocates provisions of the bill that authorize license plate agencies to provide driver license services.
- Authorizes all tax collectors, effective October 1, 2021, to contract with one or more license plate agencies for specified driver license services.
- Requires a tax collector to enter into an interagency agreement with DHSMV to provide driver license services.
- Provides that license plate agents are not authorized to issue driver licenses or identification cards or to possess blank driver licenses and identification cards.
- Requires funds collected from license plate agencies to be deposited into the state treasury in the same time frame as required for county tax collectors.

On April 6, 2021, the Infrastructure and Tourism Appropriations Subcommittee adopted an amendment and reported the bill favorably as a committee substitute. The committee substitute:

- Authorizes the appointed tax collector of any charter county, effective October 1, 2021, to participate in a pilot project through which the tax collector contracts with LPAs for specified driver license services.
- Processes applications for the renewal of any driver license, change of address, and application for a replacement driver license or identification card that is currently compliant with federal REAL ID Act requirements.
- Requires that a covered employee of an LPA must be fingerprinted, undergo background checks, and be subject to disqualification from providing such services to the extent required by federal law.
- Prohibits the automatic transfer of information gathered for the completion of a driver license or identification card renewal or change of address to a voter registration application.
- Requires that a printed notice, as prescribed by DHSMV, with instructions on how to register to vote or update a voter registration record be provided.
- Requires a review of the pilot project and that a final report be submitted by the tax collector, inclusive of DHSMV's comments, to the Governor and Cabinet, the President of the Senate, and the Speaker of the House of Representatives by December 31, 2025.

This analysis is drafted to the committee substitute as approved by the Infrastructure and Tourism Appropriations Subcommittee.

A bill to be entitled

An act relating to tax collector and license plate agency operations; amending s. 320.01, F.S.; defining the term "license plate agency"; amending s. 320.03, F.S.; conforming provisions to changes made by the act; requiring certain operational requirements to be the same for governmentally and privately managed license plate agencies; amending ss. 320.04, 320.06, and 320.0894, F.S.; conforming provisions to changes made by the act; amending s. 322.135, F.S.; authorizing certain tax collectors to participate in a pilot project through which the tax collector contracts with license plate agencies for the provision of specified driver license services; requiring the Department of Highway Safety and Motor Vehicles to enter into interagency agreements with participating tax collectors; providing applicability; requiring certain license plate agency employees to be fingerprinted and undergo background checks according to specified federal requirements; prohibiting certain driver license or identification card information gathered by license plate agencies from being transferred automatically to a voter registration application; requiring license plate agencies providing certain driver license or identification

card services to provide licensees and cardholders with certain printed notices about voter registration; providing for the deposit of funds collected by license plate agencies; requiring each participating tax collector to submit reports of findings and recommendations concerning the pilot project; amending ss. 212.1832, 681.117, and 1002.40, 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. Subsection (46) is added to section 320.01, Florida Statutes, to read:

320.01 Definitions, general.—As used in the Florida Statutes, except as otherwise provided, the term:

(46) "License plate agency" means an office appointed by the tax collector which is equipped with the department's Florida Real Time Vehicle Information System and managed by a governmental or private entity to process transactions related to motorist services on behalf of the department.

Section 2. Subsections (4) and (8) 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 or license plate agency ~~tag agent who has online computer access to the department data center or other reasonable access thereto~~ shall, except when the department has issued a registration renewal notice, upon receipt of an application for the registration of a ~~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 s. 322.251 ~~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.

(b) The Florida Real Time Vehicle Information System shall be installed in every tax collector's office and license plate agency ~~tag agent's office~~ in accordance with a schedule established by the department in consultation with the tax collectors and contingent upon funds being made available for the system by the state.

(c) Operational requirements for license plate agencies which are established by department policies and procedures, including, but not limited to, purchases of equipment, license plates, and validation stickers and other costs incurred by the department, shall be the same for both governmentally and

privately managed license plate agencies.

(8) If the applicant's name appears on the list referred to in s. 316.1001(4), s. 316.1967(6), s. 318.15(3), or s. 713.78(13), a license plate or revalidation sticker may not be issued until that person's name no longer appears on the list or until the person presents a receipt from the governmental entity or the clerk of court that provided the data showing that the fines outstanding have been paid. This subsection does not apply to the owner of a leased vehicle if the vehicle is registered in the name of the lessee of the vehicle. The tax collector and the clerk of the court are each entitled to receive monthly, as costs for implementing and administering this subsection, 10 percent of the civil penalties and fines recovered from such persons. As used in this subsection, the term "civil penalties and fines" does not include a wrecker operator's lien as described in s. 713.78(13). If the tax collector has private license plate agencies ~~tag agents~~, such license plate agencies ~~tag agents~~ are entitled to receive a pro rata share of the amount paid to the tax collector, based upon the percentage of license plates and revalidation stickers issued by the license plate agency ~~tag agent~~ compared to the total issued within the county. The authority of a ~~any~~ private license plate agent to issue license plates shall be revoked, after notice and a hearing as provided in chapter 120, if he or she issues a ~~any~~ license plate or revalidation sticker contrary to the provisions

of this subsection. This section applies only to the annual renewal in the owner's birth month of a motor vehicle registration and does not apply to the transfer of a registration of a motor vehicle sold by a motor vehicle dealer licensed under this chapter, except for the transfer of registrations which includes the annual renewals. This section does not affect the issuance of the title to a motor vehicle, notwithstanding s. 319.23(8)(b).

Section 3. Paragraph (b) of subsection (1) of section 320.04, Florida Statutes, is amended to read:

320.04 Registration service charge.—

(1)

(b) A service charge of $1 shall also be imposed for the issuance of each license plate validation sticker, vessel decal, and mobile home sticker issued from an automated vending facility or printer dispenser machine. This service charge is payable to the department and shall be used to provide for automated vending facilities or printer dispenser machines that are used to dispense such stickers and decals by each tax collector's or license plate agency's ~~tag agent's~~ employee.

Section 4. Subsection (2) of section 320.06, Florida Statutes, is amended to read:

320.06 Registration certificates, license plates, and validation stickers generally.—

(2) The department shall provide the several tax

collectors and license plate agencies ~~agents~~ with the necessary number of validation stickers.

Section 5. Paragraph (b) of subsection (4) of section 320.0894, Florida Statutes, is amended to read:

320.0894 Motor vehicle license plates to Gold Star family members.—The department shall develop a special license plate honoring the family members of servicemembers who have been killed while serving in the Armed Forces of the United States. The license plate shall be officially designated as the Gold Star license plate and shall be developed and issued as provided in this section.

(4)

(b) The applicant must provide documentation of the fact that the servicemember was killed while serving and proof of relationship to the servicemember to the tax collector or license plate agency ~~agent~~ before being issued a Gold Star license plate. The tax collector or license plate agent may waive the requirement for such documentation and proof if he or she has actual knowledge of the family relationship and that the servicemember was killed while serving.

Section 6. Subsection (1) of section 322.135, Florida Statutes, is amended to read:

322.135 Driver license agents.—

(1)(a) The department shall, upon application, authorize by interagency agreement any or all of the tax collectors who

are constitutional officers under s. 1(d), Art. VIII of the State Constitution in the several counties of the state, subject to the requirements of law, in accordance with rules of the department, to serve as the department's ~~its~~ agent for the provision of specified driver license services.

~~(a)~~ These services shall be limited to the issuance of driver licenses and identification cards as authorized by this chapter.

(b)1. Effective October 1, 2021, the appointed tax collector of any charter county may, at the tax collector's discretion, participate in a pilot project through which the tax collector contracts with one or more license plate agencies for the provision of the following specified driver license services:

a. Processing a licensee's application and collecting the required fees for renewal of any driver license that is currently compliant with federal REAL ID Act requirements.

b. Processing a licensee's application for reinstatement of a suspended driver license and collecting the required fees therefor, if the only condition of reinstatement is payment of such fees.

c. Processing a licensee's or cardholder's request to change his or her address and application for a replacement driver license or identification card, and collecting the required fees therefor, if the driver license or identification

card is currently compliant with federal REAL ID Act requirements.

2. The department shall, upon application of each tax collector electing to participate in the pilot project, authorize the tax collector by interagency agreement, subject to the requirements of law, in accordance with rules of the department, to provide these services as the department's agent through one or more license plate agencies.

3. A participating tax collector's election to contract with a license plate agency under this paragraph does not require the tax collector to provide all driver license services authorized under paragraph (a).

4. This paragraph does not authorize a license plate agency to issue driver licenses or identification cards or possess any blank driver licenses or identification cards.

5. Before providing driver license services under this paragraph, a covered employee of a license plate agency must be fingerprinted, undergo background checks, and be subject to disqualification from providing such services, to the extent required by 6 C.F.R. s. 37.45.

6. Notwithstanding s. 97.057, information gathered under this paragraph for completion of a driver license or identification card renewal or change of address shall not be transferred automatically to a voter registration application. A license plate agency providing services under this paragraph

shall provide to each licensee or cardholder, in the format prescribed by the department, a printed notice with instructions on how to register to vote or update a voter registration record.

7. If funds to be deposited into the State Treasury are collected under this paragraph by a license plate agency, the funds shall be paid into the State Treasury within the period specified in subsection (6) calculated from the date the funds are collected by the license plate agency.

8. Each participating tax collector shall review implementation of the pilot project and the provision of the specified driver license services by license plate agencies in the respective county. The tax collector shall submit a preliminary report of its findings and recommendations to the department, and the department shall return comments to the tax collector. By December 31, 2025, the tax collector shall submit a final report, together with the department's comments, to the Governor and Cabinet, the President of the Senate, and the Speaker of the House of Representatives.

(c) ~~(b)~~ Each tax collector who is authorized by the department to provide driver license services shall bear all costs associated with providing those services.

(d) ~~(c)~~ A service fee of $6.25 must be charged, in addition to the fees set forth in this chapter, for providing all

services pursuant to this chapter. The service fee may not be charged:

1. More than once per customer during a single visit to a tax collector's office.

2. For a reexamination requested by the Medical Advisory Board or required pursuant to s. 322.221.

3. For a voter registration transaction.

4. In violation of any federal or state law.

5. To a veteran receiving any service pursuant to this chapter, upon presentation of a copy of the veteran's:

a. DD Form 214, issued by the United States Department of Defense;

b. Veteran health identification card, issued by the United States Department of Veterans Affairs;

c. Veteran identification card, issued by the United States Department of Veterans Affairs pursuant to the Veterans Identification Card Act of 2015, Pub. L. No. 114-31; or

d. Other acceptable form specified by the Department of Veterans' Affairs.

Section 7. Subsection (1) of section 212.1832, Florida Statutes, is amended to read:

212.1832 Credit for contributions to eligible nonprofit scholarship-funding organizations.—

(1) The purchaser of a motor vehicle shall be granted a credit of 100 percent of an eligible contribution made to an

eligible nonprofit scholarship-funding organization under s. 1002.40 against any tax imposed by the state under this chapter and collected from the purchaser by a dealer, designated agent, or private license plate agency ~~tag agent~~ as a result of the purchase or acquisition of a motor vehicle, except that a credit may not exceed the tax that would otherwise be collected from the purchaser by a dealer, designated agent, or private license plate agency ~~tag agent~~. For purposes of this subsection, the term "purchase" does not include the lease or rental of a motor vehicle.

Section 8. Subsection (1) of section 681.117, Florida Statutes, is amended to read:

681.117 Fee.—

(1) A $2 fee shall be collected by a motor vehicle dealer, or by a person engaged in the business of leasing motor vehicles, from the consumer at the consummation of the sale of a motor vehicle or at the time of entry into a lease agreement for a motor vehicle. Such fees shall be remitted to the county tax collector or private license plate ~~tag~~ agency acting as agent for the Department of Revenue. If the purchaser or lessee removes the motor vehicle from the state for titling and registration outside this state, the fee shall be remitted to the Department of Revenue. All fees, less the cost of administration, shall be transferred monthly to the department for deposit into the Motor Vehicle Warranty Trust Fund.

Section 9. Paragraphs (a), (b), (c), and (g) of subsection (13) of section 1002.40, Florida Statutes, are amended to read:

1002.40 The Hope Scholarship Program.—

(13) SCHOLARSHIP FUNDING TAX CREDITS.—

(a) A tax credit is available under s. 212.1832(1) for use by a person that makes an eligible contribution. Eligible contributions shall be used to fund scholarships under this section and may be used to fund scholarships under s. 1002.395. Each eligible contribution is limited to a single payment of $105 per motor vehicle purchased at the time of purchase of a motor vehicle or a single payment of $105 per motor vehicle purchased at the time of registration of a motor vehicle that was not purchased from a dealer, except that a contribution may not exceed the state tax imposed under chapter 212 that would otherwise be collected from the purchaser by a dealer, designated agent, or private license plate agency ~~tag agent~~. Payments of contributions shall be made to a dealer at the time of purchase of a motor vehicle or to a designated agent or private license plate agency ~~tag agent~~ at the time of registration of a motor vehicle that was not purchased from a dealer. An eligible contribution shall be accompanied by a contribution election form provided by the Department of Revenue. The form shall include, at a minimum, the following brief description of the Hope Scholarship Program and the Florida Tax Credit Scholarship Program: "THE HOPE SCHOLARSHIP

PROGRAM PROVIDES A PUBLIC SCHOOL STUDENT WHO WAS SUBJECTED TO AN INCIDENT OF VIOLENCE OR BULLYING AT SCHOOL THE OPPORTUNITY TO APPLY FOR A SCHOLARSHIP TO ATTEND AN ELIGIBLE PRIVATE SCHOOL RATHER THAN REMAIN IN AN UNSAFE SCHOOL ENVIRONMENT. THE FLORIDA TAX CREDIT SCHOLARSHIP PROGRAM PROVIDES A LOW-INCOME STUDENT THE OPPORTUNITY TO APPLY FOR A SCHOLARSHIP TO ATTEND AN ELIGIBLE PRIVATE SCHOOL." The form shall also include, at a minimum, a section allowing the consumer to designate, from all participating scholarship funding organizations, which organization will receive his or her donation. For purposes of this subsection, the term "purchase" does not include the lease or rental of a motor vehicle.

(b) A dealer, designated agent, or private license plate agency ~~tag agent~~ shall:

1. Provide the purchaser the contribution election form, as provided by the Department of Revenue, at the time of purchase of a motor vehicle or at the time of registration of a motor vehicle that was not purchased from a dealer.

2. Collect eligible contributions.

3. Using a form provided by the Department of Revenue, which shall include the dealer's or agency's ~~agent's~~ federal employer identification number, remit to an organization no later than the date the return filed pursuant to s. 212.11 is due the total amount of contributions made to that organization and collected during the preceding reporting period. Using the

same form, the dealer or agency ~~agent~~ shall also report this information to the Department of Revenue no later than the date the return filed pursuant to s. 212.11 is due.

4. Report to the Department of Revenue on each return filed pursuant to s. 212.11 the total amount of credits granted under s. 212.1832 for the preceding reporting period.

(c) An organization shall report to the Department of Revenue, on or before the 20th day of each month, the total amount of contributions received pursuant to paragraph (b) in the preceding calendar month on a form provided by the Department of Revenue. Such report shall include:

1. The federal employer identification number of each designated agent, private license plate agency ~~tag agent~~, or dealer who remitted contributions to the organization during that reporting period.

2. The amount of contributions received from each designated agent, private license plate agency ~~tag agent~~, or dealer during that reporting period.

(g) A ~~Any~~ dealer, designated agent, private license plate agency ~~tag agent~~, or organization that fails to timely submit reports to the Department of Revenue as required in paragraphs (b) and (c) is subject to a penalty of $1,000 for every month, or part thereof, the report is not provided, up to a maximum amount of $10,000. Such penalty shall be collected by the Department of Revenue and shall be transferred into the General

Revenue Fund. Such penalty must be settled or compromised if it is determined by the Department of Revenue that the noncompliance is due to reasonable cause and not due to willful negligence, willful neglect, or fraud.

Section 10. This act shall take effect July 1, 2021.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 717 Consumer Protection
SPONSOR(S): Insurance & Banking Subcommittee, Clemons and others
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 1598

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee	15 Y, 0 N, As CS	Rowley	Luczynski
2) State Administration & Technology Appropriations Subcommittee	14 Y, 0 N	Lee	Topp
3) Commerce Committee		Rowley	Hamon

SUMMARY ANALYSIS

The bill makes the following changes to the laws governing the divisions under the Florida Department of Financial Services (DFS):

- **Consumer Credit Scores and Security Freezes** – The bill prohibits consumer reporting agencies from charging a fee for reissuing a personal identification number used to remove a security freeze. It requires insurers to notify applicants of the availability of DFS's free financial literacy resources at certain times.
- **Consumer Services** – The bill requires that licensees provide documents when responding to written requests from DFS's Division of Consumer Services.
- **Professions** – The bill defines "claims adjusting," establishes insurance adjusting firms' licensure requirements and penalties, removes the licensure fee, and adds grounds upon which DFS may revoke or suspend licenses. The bill also establishes penalties for aiding and abetting unlicensed adjusting firms and bail bond agents.
- **Insurance Agency Names** – The bill provides specific authority for DFS to disapprove insurance agency names containing the words "Medicaid" and "Medicare."
- **Industrial Class Insurers** – The bill amends the laws regarding industrial life insurance, small policies written upon individual lives, so that no such policies may be sold in Florida after July 1, 2021.
- **Policyholder Rights** – The bill extends the time that a policyholder has to cancel a contract with a public adjuster and amends the Homeowner Claims Bill of Rights. The bill also provides claims handling requirements, including policyholder notification of a change in adjuster, for both admitted and surplus lines insurers.
- **Export to Surplus Lines** – The bill mandates that the notification regarding the export of a policy to the surplus lines market, currently given only to commercial policyholders, be given to all policyholders.
- **Unfair or Deceptive Acts** – The bill adds two grounds, based upon effectuating an entire insurance policy without consent, to the list of acts that constitute sliding.
- **Foreign Venue Clauses Prohibited** – The bill requires dispute resolution for policies sold in Florida, and insuring property in Florida, on the admitted or surplus lines markets, occurs in Florida.
- **Florida Insurance Guaranty Association (FIGA) Deductible** – The bill eliminates a $100 deductible that a policyholder must pay for a claim covered by FIGA.
- **Florida Workers' Compensation Insurance Guaranty Association (FWCIGA)** – FWCIGA covers claims for workers' compensation policies that are in effect on the date of the final order of an insurer's liquidation, leaving some policyholders whose policies have lapsed prior to liquidation with unpaid claims. The bill eliminates that disparity by removing an exception to the definition of "covered claim."

The bill may have a minimal positive fiscal impact on state government revenues. It has a minimal negative impact on state expenditures and no impact on local government revenues or expenditures. The bill may have a positive economic benefit to consumers and a possible indeterminate negative economic impact on insurers. Except where otherwise provided, the bill is effective upon becoming law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

The Department of Financial Services (DFS) is composed of 13 divisions and one independent office. They are the Divisions of:

- Accounting and Auditing;
- Consumer Services;
- Funeral, Cemetery, and Consumer Services;
- Insurance Agent and Agency Services;
- Investigative and Forensic Services;
- Public Assistance Fraud;
- Rehabilitation and Liquidation;
- Risk Management;
- State Fire Marshal;
- Treasury;
- Unclaimed Property;
- Workers' Compensation;
- Administration; and the
- Office of Insurance Consumer Advocate.

Consumer Credit Reports and Scores and Security Freezes

Security Freezes

Section 501.0051, F.S., allows a third party, such as a parent or guardian, to place a security freeze on a minor child's credit report, which prohibits a consumer reporting agency from releasing the credit report, credit score, or any information contained in the consumer report without express authorization from the parent or guardian.[1] Within 10 days of placing a security freeze, a consumer reporting agency is required to provide the consumer with a unique personal identification number (PIN) that must then be utilized to request removal of the freeze.[2] Current law permits a consumer reporting agency to charge up to $10 to reissue a lost or misplaced PIN.[3]

Effect of the Bill

The bill removes a credit reporting agency's ability to charge a fee to reissue a PIN.

Credit Reports and Scores

Under certain circumstances, insurers are permitted to utilize applicants' credit reports and scores in underwriting and rating decisions.[4] The insurer must notify applicants that credit reports and scores are being utilized for these purposes.[5] DFS currently offers free financial literacy programs and maintains a toll-free insurance consumer helpline and a website to assist consumers with insurance questions, concerns, and complaints.[6] Insurers are not required to provide applicants with information regarding these resources when notifying applicants of the use of their credit reports and scores.

[1] S. 501.0051(1), F.S.
[2] S. 501.0051(5), F.S.
[3] S. 501.0051(9)(b), F.S.
[4] *See* s. 626.9741, F.S.
[5] *Id.*
[6] Florida Department of Financial Services (DFS), Agency Analysis of 2021 House Bill 717, p. 3 (Feb. 25, 2021).

Effect of the Bill

The bill provides that, at the same time that insurers inform consumers of the use of credit reports and scores for underwriting and rating purposes, the insurers must provide consumers with notification that DFS offers free financial literacy programs to assist them in understanding how credit scores are calculated and how credit works.

Companies' Responses to the Department's Division of Consumer Services

Current law requires that licensees holding certificates of authority from DFS (agents and agencies) or the Office of Insurance Regulation (OIR) (insurance companies) must respond to written requests from DFS's Division of Consumer Services concerning consumer complaints.[7] It does not specifically require that licensees provide documents in response to such requests.

Effect of the Bill

The bill adds requested documents to the response that a licensee must provide to the Division of Consumer Services when the division makes a written request to a licensee regarding a consumer complaint, but specifies that documents need not be released if they are protected by attorney-client or work-product privilege.

Requirements Placed on Licensees of the Department of Financial Services

Agents, Customer and Service Representatives, Adjusters, Insurance Agencies, Managing General Agents, and Insurance Adjusting Firms

Section 626.112, F.S., sets forth various requirements that insurance agents, agencies, adjusters, customer and service representatives, and managing general agents must meet in order to operate within Florida. In 2017, the legislature passed a law modifying the requirements for licensure for adjusters, including adjusting firms.[8] Prior to 2017, an adjusting firm was required to be licensed only if it failed to designate a primary adjuster within 30 days of starting the firm or changing the primary adjuster. Current law still authorizes, but does not require, licensure of adjusting firms.

Although current law provides penalties for acting as an unlicensed insurance agent, adjuster, customer or service representative, or managing general agent, it does not provide any penalties for aiding or abetting an unlicensed person in transacting insurance or otherwise engaging in insurance activities within the state. Additionally, the law does not define the practice of "claims adjusting."

Effect of the Bill

The bill establishes that no individual or entity may act as an adjusting firm without complying with the legal requirements for obtaining an adjusting firm license for each location where activity occurs that only a licensed adjuster may perform. However, a licensed adjusting firm owned and operated by a single licensed adjuster conducting business in his or her individual name and not employing or using the services of other licensees is exempt from this requirement. The licensing requirements for an adjusting firm are essentially notification requirements. An application for licensure as an adjusting firm requires providing the name of each majority owner, partner, officer, and director of the firm, the home address of each, and firm's location. The bill removes the $60 licensure fee. If an adjusting firm is required to be licensed, but fails to apply for licensure, DFS shall impose on the firm an administrative penalty of up to $10,000.

The bill provides that any person who knowingly aids or abets an unlicensed person in transacting insurance or otherwise engaging in insurance activities in Florida without a license commits a third-degree felony. The bill also defines "claims adjusting" and provides that no person, except a duly

[7] S. 624.307(10)(b), F.S.
[8] Ch. 2017-147, Laws of Fla.

licensed attorney exempted under s. 626.860, F.S., or agent exempted under s. 626.862, F.S., shall provide claims adjusting services unless licensed and appointed as an adjuster.

Grounds for Refusal, Suspension, or Revocation of Agent's, Adjuster's, Customer or Service Representative's, or Managing General Agent's License or Appointment

Section 626.621, F.S., provides grounds under which DFS may deny an application for, suspend, revoke, or refuse to renew or continue the license or appointment of an applicant, agent, adjuster, customer or service representative, or managing general agent. Currently, these licensees or appointees are not required to maintain the privacy of consumers' financial and medical information. Additionally, Florida law does not provide for administrative action when a person violates Federal Trade Commission laws regarding telephone solicitation.

Effect of the Bill

The bill adds the following to the grounds for which DFS can deny an application for, suspend, revoke, or refuse to renew or continue the license or appointment of the above-listed persons:

- taking action that allows a consumer's or customer's personal financial or medical information to be made available or accessible to the general public; and
- initiating in-person or telephone solicitation after 9 p.m. or before 8 a.m. local time of the prospective customer unless the prospective customer requests such contact.

Bail Bond Agents

Bail bond agents and temporary bail bond agents must be licensed in order to operate within Florida. While the law provides for penalties for operating as a bail bond agent or temporary bail bond agent without a license, it does not currently provide any penalty for a licensee under ch. 648, F.S., who aids or abets an unlicensed individual to violate the provisions of the chapter.[9]

Effect of the Bill

The bill provides that any licensee under ch. 648, F.S., who knowingly aids or abets an unlicensed person in violating the licensure and appointment requirements of the chapter commits a third-degree felony.

Insurance Agency Names

Florida law permits DFS to disapprove insurance agency names under certain circumstances, including when the use of those names may mislead the public.[10] DFS has concerns that the inclusion of the words "Medicare" or "Medicaid" in the name of an insurance agency may confuse "vulnerable consumers" about the nature of the agency, but it lacks the specific authority to disapprove an agency name that includes those words.[11]

Effect of the Bill

The bill adds use of the words "Medicare" and "Medicaid" to the grounds for which DFS may disapprove an insurance agency name. An agency licensed as of July 1, 2021, whose name contains the word Medicare or Medicaid, may continue to use the name until June 30, 2023, as long as its license remains valid. A license containing the word Medicare or Medicaid will automatically expire on July 1, 2023, unless these words are removed.

[9] S. 648.30, F.S.
[10] S. 626.602, F.S.
[11] DFS, *supra* note 6, at 2.

Industrial Class Insurers

Industrial class insurers write industrial life insurance policies, which are life insurance policies written upon individual lives in small amounts for which agents generally collect weekly or monthly premiums.[12] In general, the prevalence of industrial life insurance policies has continued to decline. Based upon data available from DFS, no new industrial life insurance has been written in the past year and few licensed life insurers continue to maintain industrial life insurance policies.[13]

Effect of the Bill

The bill amends and repeals the statutes related to industrial class insurers and industrial life insurance so that no industrial life insurance policy may be sold in Florida after July 1, 2021. The bill has no effect on industrial life insurance policies that were sold prior to that date and have continued to remain in force.

Policyholder Rights

Public Adjusters

Public adjusters are regulated under ch. 626, part VI, F.S. Florida law defines a public adjuster as someone who, for something of value, directly or indirectly, prepares, completes, or files an insurance claim for an insured or third-party claimant, or who, for something of value, acts on behalf of, or aids, an insured or third-party claimant in settling a claim for loss or damage covered by an insurance contract, or who advertises for employment as an adjuster of such claims.[14] In general, a claimant executes a contract for the public adjuster to provide claims adjusting services.[15] At present, absent a state of emergency, such a contract may only be canceled within three days after the latter of the date on which the contract was executed or within three days after the date on which the claimant has notified the insurer of the claim.[16] During a state of emergency, and for one year after the date of loss, an insured or claimant has five days after the date on which the contract was executed to cancel the contract without penalty or obligation.

Public adjusters who have contracted with claimants must also provide to the claimant a written estimate of loss to assist the claimant with obtaining a claim payment from the insurance company. According to information received from DFS, following the hurricanes that have affected Florida in recent years, consumers have complained about claims resolution delays due to the lack of responsiveness of public adjusters they hired and the inability to cancel contracts they have executed with these adjusters.[17]

Effect of the Bill

The bill changes the timeframe for an insured or claimant to cancel a contract with a public adjuster without penalty or obligation to 10 calendar days, rather than from three business days after the latter of the date on which the contract was executed or the date on which the insured or claimant has notified the insurer of the claim. The bill provides that the 10-day timeframe applies regardless of whether there is a state of emergency.

The bill also provides that the written estimate that the public adjuster must provide to the claimant must include an itemized per-unit estimate of the repairs, including itemized information on equipment, materials, labor, and supplies. The written estimate must be provided to the insured within 60 days after the date the contract is executed. Additionally, the bill prohibits a licensed contractor or subcontractor from soliciting an insured to file a claim with an insurer.

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[12] S. 627.502, F.S.
[13] DFS, *supra* note 6, at 5.
[14] S. 626.854, F.S.
[15] *See id.*
[16] *Id.*
[17] DFS, *supra* note 6, at 2-3.

Homeowner Claims Bill of Rights

Section 627.7142, F.S., contains a Homeowner Claims Bill of Rights (Bill of Rights) that insurers issuing personal lines residential property insurance policies in Florida must provide to policyholders within 14 days after receiving an initial communication with respect to a claim, unless the claim follows an event that is the subject of a declaration of a state of emergency by the Governor. While the Bill of Rights does not contain all of the rights of a policyholder, it is designed to summarize some of the significant rights, including rights regarding communications from insurers, payments of claims, and resolution of disputed claims.[18] The Bill of Rights contains no requirements that an insurer notify the policyholder when it assigns a different adjuster to the claim. It does not specify that a policyholder may be entitled to receive interest from an insurer when the insurer fails to timely fulfill claim obligations. Furthermore, the Bill of Rights does not mention that a policyholder may take video of damage before and after repairs in addition to photographs of the damage.

Effect of the Bill

The bill amends the Bill of Rights in the following ways:

- states that a policyholder to which the Bill of Rights applies must receive the payment of interest from the insurance company if the insurance company does not pay full settlement of a claim or deny the claim within 90 days after the claim is filed; and
- clarifies that in addition to photographs, a policyholder may take video of damage before and after repairs.

The bill requires an insurer to provide the Bill of Rights to a policyholder within 14 days after receiving an initial claim communication, even during a state of emergency.

Insurer's Duties to Acknowledge and Investigate Claims

Pursuant to Florida law, residential property insurers have certain obligations regarding the handling of claims, including responding to communications and timely payment or denial of claims.[19] Policyholders have complained to DFS that repeated changes in adjusters for insurance companies have contributed to significant delays in the claim handling process.[20] In addition, policyholders have indicated that because of a lack of access to claims information, their insurance agents are not able to respond claims-related questions in a meaningful way.[21]

The applicable law neither requires that any licensed adjuster assigned by an insurer to conduct a physical inspection of damage property provide the policyholder with his or her name, license number, and contact information, nor requires that the insurer provide a copy of the inspection report to the policyholder following receipt from the adjuster. There is no statutory requirement that an insurer notify a policyholder when it has assigned a new adjuster to the policyholder's claim. Further, the law does not contain any mandate that the insurer inform the policyholder of the fact that an estimate may be preliminary in nature and may be revised or the fact that when a partial payment is issued the insurer is continuing to evaluate a claim and may issue additional payments.

Effect of the Bill

The bill makes the following changes to existing law regarding the investigation and adjusting of residential property insurance claims:

- Changes the timeframe from 10 business days to 14 days from receipt of a proof of loss statement for an insurer to begin the investigation of a claim.

[18] S. 627.7142, F.S.
[19] S. 627.70131, F.S.
[20] DFS, *supra* note 6, at 4.
[21] *Id.*

- If an investigation of a claim involves a physical inspection of property, a licensed adjuster assigned by the insurer must provide a policyholder with his or her name and license number.
- Provides that any subsequent communication with the policyholder regarding the claim must include the name and license number of the adjuster communicating about the claim.
- Requires the insurer to maintain a record or log of each adjuster who communicates with the policyholder and to provide a list of those adjusters to the policyholder, DFS, or OIR upon request.
- When providing a preliminary or partial damage claim estimate or a preliminary or partial claim payment, an insurer must provide a detailed disclosure as specified in the bill.

The bill provides that the above changes regarding residential property insurance claims shall be applicable to surplus lines policies in addition to policies written on the admitted market.

Export of Policies to Surplus Lines

Notification of Export

When insurance is not available to Florida consumers from authorized insurance carriers[22], it generally becomes necessary and legally permissible to obtain a policy on the surplus lines market.[23] However, under current surplus lines law, only consumers purchasing commercial insurance policies on the surplus lines market receive notification at the time of purchase that policies are being issued on that market.[24] Consequently, the first time that some residential policyholders are informed that their policies have been issued by surplus lines carriers is after their policies have been issued.[25] The notification currently provided to commercial policyholders whose policies are issued on the surplus lines market also includes the statement that "superior coverage may be available in the admitted market and at a lesser cost."[26]

Effect of the Bill

The bill amends surplus lines law to require that, at the time policies are exported to the surplus lines market, the notification statement currently signed by consumers whose commercial insurance policies are being exported to the surplus lines market must be signed, or otherwise acknowledged by all consumers whose insurance policies are being exported to the surplus lines market. The bill also replaces the statement "superior coverage may be available in the admitted market and at a lesser cost," with "coverage may be available in the admitted market." Additionally, the notification statement advises consumers whose policies are being exported that surplus lines carriers are not protected under the Florida Insurance Guaranty Act in the event of the carrier's insolvency.

Unfair Methods of Competition and Unfair or Deceptive Acts – Sliding

The Florida Insurance Code prohibits licensees from engaging in unfair methods of competition and unfair or deceptive acts or practices, including sliding.[27] Under Florida law, sliding currently includes: representing to an applicant that a specific ancillary coverage or product is required by law when it is not; representing to an applicant that a specific ancillary coverage or product is included in the policy applied for without an additional charge where there is a charge for it; and charging an applicant for a specific ancillary coverage or product, in addition to the cost of insurance applied for, without informing

[22] Authorized insurance carriers are those who have received a certificate of authority from OIR to transact insurance business within the state. S. 624.09, F.S.
[23] *See* s. 626.913, F.S.
[24] S. 626.916(3)(b)3, F.S.
[25] DFS, *supra* note 6, at 3.
[26] S. 626.916(3)(b)3, F.S.
[27] S. 626.9541, F.S.

the applicant.[28] According to DFS, some Florida insurers have begun a practice of effectuating entire policies without informing consumers they have done so.[29]

Effect of the Bill

The bill adds the following to the list of prohibited conduct that constitutes sliding:

- Initiating, effectuating, binding, or otherwise issuing an insurance policy without prior informed consent from the owner of the property being insured; and
- Mailing, transmitting, or otherwise submitting a premium invoice to a mortgagee or escrow agent in order to effectuate an insurance policy without the prior informed consent from the owner of the property being insured. However, collateral protection insurance by a mortgagee or escrow does not constitute sliding.

Foreign Venue Clauses in Property Insurance Policies

Currently, Florida law does not mandate that property claims dispute resolution for policies sold in Florida, whether such resolution occurs through litigation, arbitration, or mediation, occur within Florida.

Effect of the Bill

The bill provides that no property insurance policy sold in Florida, insuring property located in Florida, after July 1, 2021, whether issued on the admitted or surplus lines markets, may require that an insured engage in dispute resolution, through litigation, arbitration, or mediation, outside Florida.

Florida Insurance Guaranty Association Deductible

Under federal law, insurance companies cannot file for bankruptcy.[30] Instead, they are either rehabilitated or liquidated by their state of domicile. Florida law establishes the system for the treatment of impaired or insolvent insurers[31] in Florida and sets up guaranty associations where necessary.[32] Florida operates five guaranty associations including the Florida Insurance Guaranty Association (FIGA).[33]

FIGA provides a "mechanism for the payment of covered claims under certain insurance policies to avoid excessive delay in payment and to avoid financial loss to claimants or policyholders because of the insolvency of an insurer."[34] It issues guaranty fund payments and provides related services for all lines of property and casualty insurance with certain exceptions.[35]

When a Florida property and casualty insurer becomes insolvent, FIGA takes over the claims of that insurer and pays the claims of its policyholders, ensuring that policyholders are not left with unpaid claims. Florida law provides that FIGA is only obligated to pay the portions of claims made to insolvent property and casualty insurers, which are in excess of $100, and less than $300,000.[36] Under current law, therefore, there is a $100 deductible on all property and casualty claims covered by FIGA.

Effect of the Bill

[28] S. 626.9541(1)(z), F.S.
[29] DFS, *supra* note 6, at 3.
[30] 11 U.S.C. § 109(b)(2).
[31] An "insolvent insurer" means an insurer that was authorized to transact insurance in this state, either at the time the policy was issued or when the insured event occurred, and against which an order of liquidation with a finding of insolvency has been entered by a court of competent jurisdiction if such order has become final by the exhaustion of appellate review. S. 631.904(4), F.S.
[32] Ch. 631, F.S.
[33] Ch. 631, part II, F.S.
[34] S. 631.51, F.S.
[35] S. 631.52, F.S.
[36] S. 631.57(1), F.S.

The bill eliminates the $100 deductible on claims paid by FIGA so that such claims will be covered for any amount exceeding $0 and less than $300,000.

Florida Workers' Compensation Insurance Guaranty Association

The Florida Workers' Compensation Insurance Guaranty Association (FWCIGA) was created in 1997 by merging the workers' compensation account in FIGA with the Florida Self-Insurance Fund Guaranty Association.[37] FWCIGA "provides a mechanism for the payment of covered claims under chapter 440, F.S., to avoid" delay and financial loss to claimants due to the insolvency of a workers' compensation insurer.[38] When a workers' compensation insurer or self-insurance fund becomes insolvent, FWCIGA takes over the claims of that insurer and pays the claims of its policyholders, ensuring that policyholders are not left with unpaid claims. Because FWCIGA covers claims for workers' compensation policies that are in effect on the date of the final order of liquidation, this leaves policyholders whose policies have lapsed prior to liquidation with unpaid claims.

Effect of the Bill

The bill removes the language "any return of premium resulting from a policy that was not in force on the date of the final order of liquidation" from the definition of what is excluded as a "covered claim."

B. SECTION DIRECTORY:

Section 1. Amends s. 501.0051, F.S., relating to protected consumer report security freeze.

Section 2. Amends s. 624.307, F.S., relating to general powers; duties.

Section 3. Amends s. 624.501, F.S., relating to filing, license, appointment, and miscellaneous fees.

Section 4. Amends s. 626.112, F.S., relating to license and appointment required; agents, customer representatives, adjusters, insurance agencies, service representatives, managing general agents.

Section 5. Creates s. 626.5813, F.S., relating to claims adjusting.

Section 6. Amends s. 626.602, F.S., relating to insurance agency names; disapproval.

Section 7. Amends s. 626.621, F.S., relating to grounds for discretionary refusal, suspension, or revocation of agent's, adjuster's, customer representative's, service representative's, or managing general agent's license or appointment.

Section 8. Amends s. 626.782, F.S., relating to "Industrial class insurer" defined.

Section 9. Amends s. 626.783, F.S., relating to "Ordinary-combination class insurer" defined.

Section 10. Repeals s. 626.796, F.S., relating to representing another insurer in same industrial debit territory.

Section 11. Amends s. 626.854, F.S., relating to "Public adjuster" defined; prohibitions.

Section 12. Amends s. 626.916, F.S., relating to eligibility for export.

Section 13. Amends s. 626.9541, F.S., relating to unfair methods of competition and unfair or deceptive acts or practices defined.

Section 14. Amends s. 626.9741, F.S., relating to use of credit reports and credit scores by insurers.

[37] Ch. 97-262, Laws of Fla.
[38] S. 631.902, F.S.

Section 15. Amends s. 626.9953, F.S. to conform cross-references.

Section 16. Amends s. 626.9957, F.S., to conform cross-references.

Section 17. Amends s. 627.062, F.S., to conform cross-references.

Section 18. Amends s. 627.502, F.S., relating to "Industrial life insurance"; defined; reporting.

Section 19. Amends s. 627.70131, F.S., relating to insurer's duty to acknowledge communications regarding claims; investigation.

Section 20. Creates s. 627.7031, relating to foreign venue clauses prohibited.

Section 21. Amends s. 627.7142, F.S., relating to Homeowner Claims Bill of Rights.

Section 22. Amends s. 631.57, F.S., relating to powers and duties of the association.

Section 23. Amends s. 631.904, F.S., relating to definitions.

Section 24. Amends s. 648.30, F.S., relating to licensure and appointment required.

Section 25. Provides an effective date of upon becoming law, except as otherwise provided.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   The bill has the potential to result in increased revenues for DFS in the form of administrative fines imposed on adjusting firms for violations of ss. 624.307 and 626.112, F.S. The increase may be offset by a simultaneous decrease in fines against individual adjusters, since DFS will have authority to levy fines against the firm instead of the individual.[39]

2. Expenditures:

   The bill has an insignificant fiscal impact on DFS. Changes to DFS's licensing system for adjusting firms to be licensed in Florida will have a minimal negative fiscal impact on the Insurance Regulatory Trust Fund.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

[39] Email from Meredith Stanfield, Director of Legislative and Cabinet Affairs, Department of Financial Services, RE: HB 717 Fiscal, (Mar. 9, 2021).

The bill may have positive economic impacts for consumers. It removes fees charged by consumer reporting agencies for the reissuance of PINs and eliminates the $100 deductible FIGA charges for covered claims.

The bill has potential negative direct economic impacts on the private sector. The inability of a consumer reporting agency to charge fees to reissue PINs will result in an indeterminate decrease in revenues for consumer reporting agencies. Adjusting firms will no longer be subject to the $60 licensure fee but could be assessed administrative fines up $10,000 for violations of ss. 624.307 and 626.112, F.S.

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:

Section 1 of the bill, amending s. 501.0051, F.S., may be federally preempted to the extent it prohibits one of the national consumer reporting agencies (Experian, Equifax, and Trans Union) from charging a fee to reissue a PIN to remove a security freeze.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 4, 2021, the Insurance & Banking Subcommittee considered the bill, adopted two amendments, and reported the bill favorably as a committee substitute. One amendment removed the $60 licensure fee for insurance adjusting firms. The second amendment exempted “agents” from the adjuster licensure requirement in the new section that clarifies what constitutes claims adjusting for the purpose of licensure as a claims adjuster.

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

A bill to be entitled

An act relating to consumer protection; amending s. 501.0051, F.S.; prohibiting consumer reporting agencies from charging to reissue or provide a new unique personal identifier to certain consumers, rather than authorizing such agencies to charge the customers' representatives; amending s. 624.307, F.S.; revising a requirement for persons licensed or authorized by the Department of Financial Services or the Office of Insurance Regulation to respond to the department's Division of Consumer Services regarding consumer complaints; amending s. 624.501, F.S.; deleting a fee for adjusting firm licenses; amending s. 626.112, F.S.; removing a provision requiring the department to automatically convert registrations of approved registered insurance agencies to insurance agency licenses; prohibiting unlicensed activity by an adjusting firm unless the firm complies with a specified requirement; providing an exemption; providing an exemption from licensure for branch firms that meet certain criteria; providing an administrative penalty for failing to apply for certain licensure; providing a criminal penalty for aiding or abetting unlicensed activity; creating s. 626.5813, F.S.; defining the term "claims adjusting";

prohibiting a person from providing claims adjusting services unless the person meets specified requirements; amending s. 626.602, F.S.; authorizing the department to disapprove the use of insurance agency names containing the words "Medicare" or "Medicaid"; providing a time-limited exception for certain insurance agencies; prohibiting relicensing of insurance agencies using such names; providing for future expiration of such licenses; providing an exception from future expiration; amending s. 626.621, F.S.; adding grounds on which the department may take certain actions against a license, appointment, or application of certain insurance representatives; amending ss. 626.782 and 626.783, F.S.; revising the definitions of the terms "industrial class insurer" and "ordinary-combination class insurer," respectively, to conform to changes made by the act; repealing s. 626.796, F.S., relating to the representation of multiple insurers in the same industrial debit territory; amending s. 626.854, F.S.; revising the timeframes in which an insured or claimant may cancel a public adjuster's contract to adjust a claim without penalty or obligation; requiring that certain public adjuster's contracts include a specified disclosure; specifying

requirements for written estimates of loss provided by public adjusters to claimants or insureds; prohibiting licensed contractors and subcontractors from engaging in certain activities unless licensed and compliant as public adjusters; amending s. 626.916, F.S.; providing a disclosure requirement that an insurance coverage must meet before being eligible for export under the Surplus Lines Law; amending s. 626.9541, F.S.; adding certain acts or practices to the definition of the term "sliding" as unfair methods of competition and unfair or deceptive acts; amending s. 626.9741, F.S.; requiring an insurer's notification regarding certain credit report or score information to include specified language under certain circumstances; amending ss. 626.9953, 626.9957, and 627.062, F.S.; conforming cross-references; amending s. 627.502, F.S.; prohibiting a life insurer from writing new policies of industrial life insurance beginning on a certain date; amending s. 627.70131, F.S.; providing that communication made to or by an insurer's representative, rather than to or by an insurer's agent, constitutes communication to or by the insurer; replacing the defined term "agent" with the term "representative"; revising the timeframe in which an insurer must begin an investigation after receipt of

proof of loss statements; requiring an insurer-assigned licensed adjuster to provide the policyholder with certain information; specifying information that must be included in certain communication with the policyholder regarding a claim; requiring an insurer to keep records of the licensed adjusters interacting with policyholders; requiring an insurer to establish a process to provide the policyholder, the office, or the department with a list of adjusters associated with a claim; requiring an insurer to include specified notices when providing preliminary or partial damage estimates or claim payments; providing applicability; creating s. 627.7031, F.S.; prohibiting foreign venue clauses in property insurance policies; providing applicability; amending s. 627.7142, F.S.; revising circumstances under which an insurer must provide a Homeowner Claims Bill of Rights to a policyholder; revising information contained in the Homeowner Claims Bill of Rights; conforming provisions to changes made by the act; amending s. 631.57, F.S.; deleting a deductible on the obligation of the Florida Insurance Guaranty Association, Incorporated, as to certain covered claims; amending s. 631.904, F.S.; revising the definition of the term "covered claim" to exclude certain premium returns; amending s. 648.30,

F.S.; providing penalties for a licensed bail bond agent or temporary bail bond agent who knowingly engages in certain activities; providing effective dates.

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

Section 1. Paragraph (b) of subsection (9) of section 501.0051, Florida Statutes, is amended to read:

501.0051 Protected consumer report security freeze.—

(9)

(b) A consumer reporting agency may not charge to ~~a reasonable fee, not to exceed $10, if the representative fails to retain the original unique personal identifier provided by the consumer reporting agency and the agency must~~ reissue the unique personal identifier or provide a new unique personal identifier to the protected consumer ~~representative~~.

Section 2. Paragraph (b) of subsection (10) of section 624.307, Florida Statutes, is amended to read:

624.307 General powers; duties.—

(10)

(b) Any person licensed or issued a certificate of authority by the department or the office shall respond, in writing, to the division within 20 days after receipt of a written request for documents and information from the division

concerning a consumer complaint. The response must address the issues and allegations raised in the complaint and include any requested documents concerning the consumer complaint that are not subject to attorney-client or work-product privilege. The division may impose an administrative penalty for failure to comply with this paragraph of up to $2,500 per violation upon any entity licensed by the department or the office and $250 for the first violation, $500 for the second violation, and up to $1,000 for the third or subsequent violation upon any individual licensed by the department or the office.

Section 3. Subsection (20) of section 624.501, Florida Statutes, is amended to read:

624.501 Filing, license, appointment, and miscellaneous fees.—The department, commission, or office, as appropriate, shall collect in advance, and persons so served shall pay to it in advance, fees, licenses, and miscellaneous charges as follows:

~~(20) Adjusting firm, original or renewal 3-year license.... $60.00~~

Section 4. Subsection (9) of section 626.112, Florida Statutes, is renumbered as subsection (10), paragraph (d) of subsection (7) and present subsection (9) are amended, and a new subsection (9) is added to that section, to read:

626.112 License and appointment required; agents, customer representatives, adjusters, insurance agencies, service

representatives, managing general agents, adjusting firms.—

(7)

~~(d) Effective October 1, 2015, the department must automatically convert the registration of an approved registered insurance agency to an insurance agency license.~~

(9)(a) An individual, firm, partnership, corporation, association, or other entity may not act in its own name or under a trade name, directly or indirectly, as an adjusting firm unless it complies with s. 626.8696 with respect to possessing an adjusting firm license for each place of business at which it engages in an activity that may be performed only by a licensed insurance adjuster. However, an adjusting firm that is owned and operated by a single licensed adjuster conducting business in his or her individual name and not employing or otherwise using the services of or appointing other licensees is exempt from the adjusting firm licensing requirements of this paragraph.

(b) A branch place of business that is established by a licensed adjusting firm is considered a branch firm and is not required to be licensed if:

1. It transacts business under the same name and federal tax identification number as the licensed adjusting firm;

2. It has designated with the department a primary adjuster operating the location as required by s. 626.8695; and

3. The address and telephone number of the branch location have been submitted to the department for inclusion in the

licensing record of the licensed adjusting firm within 30 days after insurance transactions begin at the branch location.

(c) If an adjusting firm is required to be licensed but fails to file an application for licensure in accordance with this section, the department shall impose on the firm an administrative penalty of up to $10,000.

(10)~~(9)~~ Any person who knowingly transacts insurance or otherwise engages in insurance activities in this state without a license in violation of this section or who knowingly aids or abets an unlicensed person in transacting insurance or otherwise engaging in insurance activities in this state without a license commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 5. Section 626.5813, Florida Statutes, is created to read:

626.5813 Claims adjusting.—

(1)(a) As used in this section, the term "claims adjusting" means directly or indirectly:

1. Attempting or undertaking to ascertain and determine the amount of any claim, loss, or damage payable under an insurance contract or undertaking to negotiate or effect settlement of a claim, loss, or damage under an insurance contract, if such action results in payment to or receipt of money, commission, or any other thing of value by the party or parties rendering such service or persons affiliated with such

party or parties; or

2. Soliciting services as described in subparagraph 1. or soliciting an insured or policyholder to file an insurance claim.

(b) The term does not include:

1. Paid services as a spokesperson used as part of a written or an electronic advertisement.

2. Paid services as a photographer or videographer used to capture images of damage.

3. Paid services to inventory personal property or business personal property.

4. Discussion or explanation of a bid for construction or repair services by a licensed contractor under part I of chapter 489, or a subcontractor for a licensed contractor, with a property owner or the insurer of such property.

(2) Except for a duly licensed attorney at law as exempted under s. 626.860 or an agent as exempted under s. 626.862, a person may not provide claims adjusting services unless licensed and appointed as an adjuster under this part.

Section 6. Subsection (4) is added to section 626.602, Florida Statutes, to read:

626.602 Insurance agency names; disapproval.—The department may disapprove the use of any true or fictitious name, other than the bona fide natural name of an individual, by any insurance agency on any of the following grounds:

(4) The name contains the word "Medicare" or "Medicaid." An agency whose name contains the word "Medicare" or "Medicaid" but which is licensed as of July 1, 2021, may continue to use that name until June 30, 2023, as long as the agency's license remains valid. If the agency's license expires or is suspended or revoked, the agency may not be relicensed using that name. Licenses containing either of these words automatically expire on July 1, 2023, unless these words are removed from the name.

Section 7. Subsections (16) and (17) are added to section 626.621, Florida Statutes, to read:

626.621 Grounds for discretionary refusal, suspension, or revocation of agent's, adjuster's, customer representative's, service representative's, or managing general agent's license or appointment.—The department may, in its discretion, deny an application for, suspend, revoke, or refuse to renew or continue the license or appointment of any applicant, agent, adjuster, customer representative, service representative, or managing general agent, and it may suspend or revoke the eligibility to hold a license or appointment of any such person, if it finds that as to the applicant, licensee, or appointee any one or more of the following applicable grounds exist under circumstances for which such denial, suspension, revocation, or refusal is not mandatory under s. 626.611:

(16) Taking an action that allows the personal financial or medical information of a consumer or customer to be made

available or accessible to the general public, regardless of the format in which the record is stored.

(17) Initiating in-person or telephone solicitation after 9 p.m. or before 8 a.m. local time of the prospective customer unless requested by the prospective customer.

Section 8. Section 626.782, Florida Statutes, is amended to read:

626.782 "Industrial class insurer" defined.—An "industrial class insurer" is an insurer collecting premiums on policies of ~~writing~~ industrial life insurance, as defined in s. 627.502, written before July 1, 2021, and as to such insurance, operates under a system of collecting a debit by its agent.

Section 9. Section 626.783, Florida Statutes, is amended to read:

626.783 "Ordinary-combination class insurer" defined.—An "ordinary-combination class insurer" is an insurer writing ~~both~~ ordinary class insurance and collecting premiums on existing industrial life ~~class~~ insurance under s. 626.782.

Section 10. Section 626.796, Florida Statutes, is repealed.

Section 11. Subsections (6), (11), and (15) of section 626.854, Florida Statutes, are amended to read:

626.854 "Public adjuster" defined; prohibitions.—The Legislature finds that it is necessary for the protection of the public to regulate public insurance adjusters and to prevent the

unauthorized practice of law.

(6) An insured or claimant may cancel a public adjuster's contract to adjust a claim without penalty or obligation within 10 calendar ~~3 business~~ days after the date on which the contract is executed ~~or within 3 business days after the date on which the insured or claimant has notified the insurer of the claim, whichever is later~~. The public adjuster's contract must contain the following language in minimum 18-point bold type: "You, the insured, may cancel this contract for any reason without penalty or obligation to you within 10 days after the date of this contract by providing notice to (name of public adjuster) , submitted in writing and sent by certified mail, return receipt requested, or other form of mailing that provides proof thereof, at the address specified in the contract." ~~disclose to the insured or claimant his or her right to cancel the contract and advise the insured or claimant that notice of cancellation must be submitted in writing and sent by certified mail, return receipt requested, or other form of mailing that provides proof thereof, to the public adjuster at the address specified in the contract; provided, during any state of emergency as declared by the Governor and for 1 year after the date of loss, the insured or claimant has 5 business days after the date on which the contract is executed to cancel a public adjuster's contract.~~

(11) Each public adjuster must provide to the claimant or insured a written estimate of the loss to assist in the

submission of a proof of loss or any other claim for payment of insurance proceeds within 60 days after the date of the public adjuster's contract. The written estimate must include an itemized, per-unit estimate of the repairs, including itemized information on equipment, materials, labor, and supplies, in accordance with accepted industry standards. The public adjuster shall retain such written estimate for at least 5 years and shall make the estimate available to the claimant or insured, the insurer, and the department upon request.

(15) A licensed contractor under part I of chapter 489, or a subcontractor, may not adjust a claim on behalf of an insured, or solicit an insured to file an insurance claim, unless licensed and compliant as a public adjuster under this chapter. However, the contractor may discuss or explain a bid for construction or repair of covered property with the residential property owner who has suffered loss or damage covered by a property insurance policy, or the insurer of such property, if the contractor is doing so for the usual and customary fees applicable to the work to be performed as stated in the contract between the contractor and the insured.

Section 12. Effective January 1, 2022, subsection (3) of section 626.916, Florida Statutes, is amended, and paragraph (f) is added to subsection (1) of that section, to read:

626.916 Eligibility for export.—

(1) No insurance coverage shall be eligible for export

unless it meets all of the following conditions:

(f) The insured has signed or otherwise provided documented acknowledgment of a disclosure in substantially the following form: "You are agreeing to place coverage in the surplus lines market. Coverage may be available in the admitted market. Persons insured by surplus lines carriers are not protected under the Florida Insurance Guaranty Act with respect to any right of recovery for the obligation of an insolvent unlicensed insurer."

(3)(a) Subsection (1) does not apply to wet marine and transportation or aviation risks that ~~which~~ are subject to s. 626.917.

(b) Paragraphs (1)(a)-(d) do not apply to classes of insurance which are subject to s. 627.062(3)(d)1. These classes may be exportable under the following conditions:

1. The insurance must be placed only by or through a surplus lines agent licensed in this state;

2. The insurer must be made eligible under s. 626.918; and

3. The insured has complied with paragraph (1)(f) ~~must sign a disclosure that substantially provides the following: "You are agreeing to place coverage in the surplus lines market. Superior coverage may be available in the admitted market and at a lesser cost. Persons insured by surplus lines carriers are not protected under the Florida Insurance Guaranty Act with respect to any right of recovery for the obligation of an insolvent~~

~~unlicensed insurer."~~ If the disclosure in paragraph (1)(f) ~~notice~~ is signed by the insured, the insured is presumed to have been informed and to know that other coverage may be available, and, with respect to the diligent-effort requirement under subsection (1), there is no liability on the part of, and no cause of action arises against, the retail agent presenting the form.

Section 13. Paragraph (z) of subsection (1) of section 626.9541, Florida Statutes, is amended to read:

626.9541 Unfair methods of competition and unfair or deceptive acts or practices defined.—

(1) UNFAIR METHODS OF COMPETITION AND UNFAIR OR DECEPTIVE ACTS.—The following are defined as unfair methods of competition and unfair or deceptive acts or practices:

(z) Sliding.—Sliding is the act or practice of any of the following:

1. Representing to the applicant that a specific ancillary coverage or product is required by law in conjunction with the purchase of insurance when such coverage or product is not required.~~;~~

2. Representing to the applicant that a specific ancillary coverage or product is included in the policy applied for without an additional charge when such charge is required.~~; or~~

3. Charging an applicant for a specific ancillary coverage or product, in addition to the cost of the insurance coverage

applied for, without the informed consent of the applicant.

4. Initiating, effectuating, binding, or otherwise issuing a policy of insurance without the prior informed consent of the owner of the property to be insured.

5. Mailing, transmitting, or otherwise submitting by any means an invoice for premium payment to a mortgagee or escrow agent for the purpose of effectuating an insurance policy, without the prior informed consent of the owner of the property to be insured. However, this subparagraph does not apply in cases where the mortgagee or escrow agent is renewing insurance or issuing collateral protection insurance, as defined in s. 624.6085, pursuant to the mortgage or other pertinent loan documents or communications regarding the property.

Section 14. Effective January 1, 2022, subsection (3) of section 626.9741, Florida Statutes, is amended to read:

626.9741 Use of credit reports and credit scores by insurers.—

(3) An insurer must inform an applicant or insured, in the same medium as the application is taken, that a credit report or score is being requested for underwriting or rating purposes. The notification to the applicant or insured must include the following language: "The Department of Financial Services offers free financial literacy programs to assist you with insurance-related questions, including how credit works and how credit scores are calculated. To learn more, visit

www.myfloridacfo.com." An insurer that makes an adverse decision based, in whole or in part, upon a credit report must provide at no charge~~,~~ a copy of the credit report to the applicant or insured or provide the applicant or insured with the name, address, and telephone number of the consumer reporting agency from which the insured or applicant may obtain the credit report. The insurer must provide notification to the consumer explaining the reasons for the adverse decision. The reasons must be provided in sufficiently clear and specific language so that a person can identify the basis for the insurer's adverse decision. Such notification must ~~shall~~ include a description of the four primary reasons, or such fewer number as existed, which were the primary influences of the adverse decision. The use of generalized terms such as "poor credit history," "poor credit rating," or "poor insurance score" does not meet the explanation requirements of this subsection. A credit score may not be used in underwriting or rating insurance unless the scoring process produces information in sufficient detail to permit compliance with the requirements of this subsection. It is ~~shall~~ not ~~be deemed~~ an adverse decision if, due to the insured's credit report or credit score, the insured continues to receive a less favorable rate or placement in a less favorable tier or company at the time of renewal except for renewals or reunderwriting required by this section.

Section 15. Subsection (5) of section 626.9953, Florida

Statutes, is amended to read:

626.9953 Qualifications for registration; application required.—

(5) An applicant must submit a set of his or her fingerprints to the department and pay the processing fee established under s. 624.501(23) ~~s. 624.501(24)~~. The department shall submit the applicant's fingerprints to the Department of Law Enforcement for processing state criminal history records checks and local criminal records checks through local law enforcement agencies and for forwarding to the Federal Bureau of Investigation for national criminal history records checks. The fingerprints shall be taken by a law enforcement agency, a designated examination center, or another department-approved entity. The department may not approve an application for registration as a navigator if fingerprints have not been submitted.

Section 16. Subsection (1) of section 626.9957, Florida Statutes, is amended to read:

626.9957 Conduct prohibited; denial, revocation, or suspension of registration.—

(1) As provided in s. 626.112, only a person licensed as an insurance agent or customer representative may engage in the solicitation of insurance. A person who engages in the solicitation of insurance as described in s. 626.112(1) without such license is subject to the penalties provided under s.

626.112(10) ~~s. 626.112(9)~~.

Section 17. Subsection (10) of section 627.062, Florida Statutes, is amended to read:

627.062 Rate standards.—

(10) Any interest paid pursuant to s. 627.70131(7) ~~s. 627.70131(5)~~ may not be included in the insurer's rate base and may not be used to justify a rate or rate change.

Section 18. Section 627.502, Florida Statutes, is amended to read:

627.502 "Industrial life insurance" defined; reporting; prohibition on new policies after a certain date.—

(1) For the purposes of this code, "industrial life insurance" is that form of life insurance written under policies under which premiums are payable monthly or more often, bearing the words "industrial policy" or "weekly premium policy" or words of similar import imprinted upon the policies as part of the descriptive matter, and issued by an insurer that ~~which~~, as to such industrial life insurance, is operating under a system of collecting a debit by its agent.

(2) Every life insurer servicing existing ~~transacting~~ industrial life insurance shall report to the office all annual statement data regarding the exhibit of life insurance, including relevant information for industrial life insurance.

(3) Beginning July 1, 2021, a life insurer may not write a new policy of industrial life insurance.

Section 19. Effective January 1, 2022, section 627.70131, Florida Statutes, is amended to read:

627.70131 Insurer's duty to acknowledge communications regarding claims; investigation.—

(1)(a) Upon an insurer's receiving a communication with respect to a claim, the insurer shall, within 14 calendar days, review and acknowledge receipt of such communication unless payment is made within that period of time or unless the failure to acknowledge is caused by factors beyond the control of the insurer which reasonably prevent such acknowledgment. If the acknowledgment is not in writing, a notification indicating acknowledgment shall be made in the insurer's claim file and dated. A communication made to or by a representative ~~an agent~~ of an insurer with respect to a claim shall constitute communication to or by the insurer.

(b) As used in this subsection, the term "representative" ~~"agent"~~ means any person to whom an insurer has granted authority or responsibility to receive or make such communications with respect to claims on behalf of the insurer.

(c) This subsection does ~~shall~~ not apply to claimants represented by counsel beyond those communications necessary to provide forms and instructions.

(2) Such acknowledgment shall be responsive to the communication. If the communication constitutes a notification of a claim, unless the acknowledgment reasonably advises the

claimant that the claim appears not to be covered by the insurer, the acknowledgment shall provide necessary claim forms, and instructions, including an appropriate telephone number.

(3)(a) Unless otherwise provided by the policy of insurance or by law, within 14 ~~10 working~~ days after an insurer receives proof of loss statements, the insurer shall begin such investigation as is reasonably necessary unless the failure to begin such investigation is caused by factors beyond the control of the insurer which reasonably prevent the commencement of such investigation.

(b) If such investigation involves a physical inspection of the property, the licensed adjuster assigned by the insurer must provide the policyholder with a printed or electronic document containing his or her name and license number.

(c) Any subsequent communication with the policyholder regarding the claim must also include the name and license number of the adjuster communicating about the claim. Communication of the adjuster's name and license number may be included along with other information already being provided to the policyholder.

(4) An insurer shall maintain a record or log of each adjuster who communicates with the policyholder as provided in paragraphs (3)(b) and (3)(c), and shall provide a list of the adjusters to the policyholder, the office, or the department upon request.

(5) For purposes of this section, the term "insurer" means any residential property insurer.

(6)(a) When providing a preliminary or partial estimate of damage regarding a claim, an insurer shall include with the estimate the following statement printed in at least 12-point bold, uppercase type: THIS ESTIMATE REPRESENTS OUR CURRENT EVALUATION OF THE COVERED DAMAGES TO YOUR INSURED PROPERTY AND MAY BE REVISED AS WE CONTINUE TO EVALUATE YOUR CLAIM. IF YOU HAVE QUESTIONS, CONCERNS, OR ADDITIONAL INFORMATION REGARDING YOUR CLAIM, WE ENCOURAGE YOU TO CONTACT US.

(b) When providing a payment on a claim which is not the full and final payment for the claim, an insurer shall include with the payment the following statement printed in at least 12-point bold, uppercase type: WE ARE CONTINUING TO EVALUATE YOUR CLAIM INVOLVING YOUR INSURED PROPERTY AND MAY ISSUE ADDITIONAL PAYMENTS. IF YOU HAVE QUESTIONS, CONCERNS, OR ADDITIONAL INFORMATION REGARDING YOUR CLAIM, WE ENCOURAGE YOU TO CONTACT US.

(7)(a) ~~(5)(a)~~ Within 90 days after an insurer receives notice of an initial, reopened, or supplemental property insurance claim from a policyholder, the insurer shall pay or deny such claim or a portion of the claim unless the failure to pay is caused by factors beyond the control of the insurer which reasonably prevent such payment. Any payment of an initial or supplemental claim or portion of such claim made 90 days after

the insurer receives notice of the claim, or made more than 15 days after there are no longer factors beyond the control of the insurer which reasonably prevented such payment, whichever is later, bears interest at the rate set forth in s. 55.03. Interest begins to accrue from the date the insurer receives notice of the claim. The provisions of this subsection may not be waived, voided, or nullified by the terms of the insurance policy. If there is a right to prejudgment interest, the insured shall select whether to receive prejudgment interest or interest under this subsection. Interest is payable when the claim or portion of the claim is paid. Failure to comply with this subsection constitutes a violation of this code. However, failure to comply with this subsection does not form the sole basis for a private cause of action.

(b) Notwithstanding subsection (5) ~~(4)~~, for purposes of this subsection, the term "claim" means any of the following:

1. A claim under an insurance policy providing residential coverage as defined in s. 627.4025(1);

2. A claim for structural or contents coverage under a commercial property insurance policy if the insured structure is 10,000 square feet or less; or

3. A claim for contents coverage under a commercial tenant policy if the insured premises is 10,000 square feet or less.

(c) This subsection does ~~shall~~ not apply to claims under an insurance policy covering nonresidential commercial

structures or contents in more than one state.

(8) This section also applies to surplus lines insurers and to surplus lines insurance authorized under ss. 626.913-626.937 providing residential coverage.

Section 20. Section 627.7031, Florida Statutes, is created to read:

627.7031 Foreign venue clauses prohibited.—After July 1, 2021, a personal residential property insurance policy sold in the state and insuring only real property located in the state may not require an insured to pursue dispute resolution through litigation, arbitration, or mediation outside the state. This section also applies to surplus lines insurers and to surplus lines insurance authorized under ss. 626.913-626.937.

Section 21. Effective January 1, 2022, section 627.7142, Florida Statutes, is amended to read:

627.7142 Homeowner Claims Bill of Rights.—An insurer issuing a personal lines residential property insurance policy in this state must provide a Homeowner Claims Bill of Rights to a policyholder within 14 days after receiving an initial communication with respect to a claim~~, unless the claim follows an event that is the subject of a declaration of a state of emergency by the Governor~~. The purpose of the bill of rights is to summarize, in simple, nontechnical terms, existing Florida law regarding the rights of a personal lines residential property insurance policyholder who files a claim of loss. The

Homeowner Claims Bill of Rights is specific to the claims process and does not represent all of a policyholder's rights under Florida law regarding the insurance policy. The Homeowner Claims Bill of Rights does not create a civil cause of action by any individual policyholder or class of policyholders against an insurer or insurers. The failure of an insurer to properly deliver the Homeowner Claims Bill of Rights is subject to administrative enforcement by the office but is not admissible as evidence in a civil action against an insurer. The Homeowner Claims Bill of Rights does not enlarge, modify, or contravene statutory requirements, including, but not limited to, ss. 626.854, 626.9541, 627.70131, 627.7015, and 627.7074, and does not prohibit an insurer from exercising its right to repair damaged property in compliance with the terms of an applicable policy or ss. 627.7011(5)(e) and 627.702(7). The Homeowner Claims Bill of Rights must state:

HOMEOWNER CLAIMS
BILL OF RIGHTS

This Bill of Rights is specific to the claims process and does not represent all of your rights under Florida law regarding your policy. There are also exceptions to the stated timelines when conditions are beyond your insurance company's control. This document does not create a civil cause of action by an individual policyholder, or a class of policyholders, against an

insurer or insurers and does not prohibit an insurer from exercising its right to repair damaged property in compliance with the terms of an applicable policy.

YOU HAVE THE RIGHT TO:

1. Receive from your insurance company an acknowledgment of your reported claim within 14 days after the time you communicated the claim.

2. Upon written request, receive from your insurance company within 30 days after you have submitted a complete proof-of-loss statement to your insurance company, confirmation that your claim is covered in full, partially covered, or denied, or receive a written statement that your claim is being investigated.

3. Within 90 days, subject to any dual interest noted in the policy, receive full settlement payment for your claim or payment of the undisputed portion of your claim, or your insurance company's denial of your claim.

4. Receive payment of interest, as provided in section 627.70131, Florida Statutes, from your insurance company, which begins accruing from the date your claim is filed if your insurance company does not pay full settlement of your initial, reopened, or supplemental claim or the undisputed portion of your claim or does not deny your claim within 90 days after your claim is filed. The interest, if applicable, must be paid when

your claim or undisputed portion of your claim is paid.

5.~~4.~~ Have free mediation of your disputed claim by the Florida Department of Financial Services, Division of Consumer Services, under most circumstances and subject to certain restrictions.

6.~~5.~~ Have neutral evaluation of your disputed claim, if your claim is for damage caused by a sinkhole and is covered by your policy.

7.~~6.~~ Contact the Florida Department of Financial Services, Division of Consumer Services' toll-free helpline for assistance with any insurance claim or questions pertaining to the handling of your claim. You can reach the Helpline by phone at...(toll-free phone number)..., or you can seek assistance online at the Florida Department of Financial Services, Division of Consumer Services' website at...(website address)....

YOU ARE ADVISED TO:

1. Contact your insurance company before entering into any contract for repairs to confirm any managed repair policy provisions or optional preferred vendors.

2. Make and document emergency repairs that are necessary to prevent further damage. Keep the damaged property, if feasible, keep all receipts, and take photographs or video of damage before and after any repairs to provide to your insurer.

3. Carefully read any contract that requires you to pay

out-of-pocket expenses or a fee that is based on a percentage of the insurance proceeds that you will receive for repairing or replacing your property.

4. Confirm that the contractor you choose is licensed to do business in Florida. You can verify a contractor's license and check to see if there are any complaints against him or her by calling the Florida Department of Business and Professional Regulation. You should also ask the contractor for references from previous work.

5. Require all contractors to provide proof of insurance before beginning repairs.

6. Take precautions if the damage requires you to leave your home, including securing your property and turning off your gas, water, and electricity, and contacting your insurance company and provide a phone number where you can be reached.

Section 22. Paragraph (a) of subsection (1) and subsection (6) of section 631.57, Florida Statutes, are amended to read:

631.57 Powers and duties of the association.—

(1) The association shall:

(a)1. Be obligated to the extent of the covered claims existing:

a. Before ~~Prior to~~ adjudication of insolvency and arising within 30 days after the determination of insolvency;

b. Before the policy expiration date if less than 30 days after the determination; or

c. Before the insured replaces the policy or causes its cancellation, if she or he does so within 30 days of the determination.

2. The obligation under subparagraph 1. includes ~~only~~ the amount of each covered claim which is ~~in excess of $100 and is~~ less than $300,000, except that policies providing coverage for homeowner's insurance shall provide for an additional $200,000 for the portion of a covered claim which relates only to the damage to the structure and contents.

3.a. Notwithstanding subparagraph 2., the obligation under subparagraph 1. for policies covering condominium associations or homeowners' associations, which associations have a responsibility to provide insurance coverage on residential units within the association, shall include that amount of each covered property insurance claim which is less than $200,000 multiplied by the number of condominium units or other residential units; however, as to homeowners' associations, this sub-subparagraph applies only to claims for damage or loss to residential units and structures attached to residential units.

b. Notwithstanding sub-subparagraph a., the association has no obligation to pay covered claims that are to be paid from the proceeds of bonds issued under s. 631.695. However, the association shall assign and pledge the first available moneys from all or part of the assessments to be made under paragraph (3)(a) to or on behalf of the issuer of such bonds for the

benefit of the holders of such bonds. The association shall administer any such covered claims and present valid covered claims for payment in accordance with the provisions of the assistance program in connection with which such bonds have been issued.

4. In no event shall the association be obligated to a policyholder or claimant in an amount in excess of the obligation of the insolvent insurer under the policy from which the claim arises.

(6) The association may extend the time limits specified in paragraph (1)(a) by up to an additional 60 days ~~or waive the applicability of the $100 deductible specified in paragraph (1)(a)~~ if the board determines that either or both such actions are necessary to facilitate the bulk assumption of obligations.

Section 23. Subsection (2) of section 631.904, Florida Statutes, is amended to read:

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

(2) "Covered claim" means an unpaid claim, including a claim for return of unearned premiums, which arises out of, is within the coverage of, and is not in excess of the applicable limits of, an insurance policy to which this part applies, which policy was issued by an insurer and which claim is made on behalf of a claimant or insured who was a resident of this state at the time of the injury. The term "covered claim" includes unpaid claims under any employer liability coverage of a

workers' compensation policy limited to the lesser of $300,000 or the limits of the policy. The term "covered claim" does not include any amount sought as a return of premium under any retrospective rating plan; any amount due any reinsurer, insurer, insurance pool, or underwriting association, as subrogation recoveries or otherwise; any claim that would otherwise be a covered claim that has been rejected or denied by any other state guaranty fund based upon that state's statutory exclusions, including, but not limited to, those based on coverage, policy type, or an insured's net worth, except this exclusion from the definition of covered claim does not apply to employers who, before ~~prior to~~ April 30, 2004, entered into an agreement with the corporation preserving the employer's right to seek coverage of claims rejected by another state's guaranty fund~~; or any return of premium resulting from a policy that was not in force on the date of the final order of liquidation~~. Member insurers have no right of subrogation against the insured of any insolvent insurer. This provision applies retroactively to cover claims of an insolvent self-insurance fund resulting from accidents or losses incurred before ~~prior to~~ January 1, 1994, regardless of the date the petition in circuit court was filed alleging insolvency and the date the court entered an order appointing a receiver.

Section 24. 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 25. Except as otherwise expressly provided in this

act, this act shall take effect upon becoming a law.

COMMERCE COMMITTEE

CS/HB 717 by Rep. Clemons
Consumer Protection

AMENDMENT SUMMARY
April 19, 2021

Amendment 1 by Rep. Clemons (strike-all):

- Deletes a provision specifying the fee a consumer reporting agency may charge to reissue or provide a new unique personal identifier to a consumer's representative to remove a security freeze.
- Removes a new statutory section relating to claims adjusting.
- Provides that no person, except an attorney or licensed public adjuster, may, for money, commission, or any other thing of value, directly or indirectly, offer to initiate or negotiate a claim on behalf of an insured or advertise services that require a public adjuster license.
- Provides that the Department of Financial Services may take administrative actions and impose fines against a person performing claims adjusting or soliciting without a license.
- Provides that a public adjuster, public adjuster apprentice, or public adjusting firm that solicits a claim and does not enter into a lawful contract with an insured or third-party claimant may not charge or receive payment for any service related to the claim.
- Removes a new statutory section providing that no property insurance policy sold in Florida that insures property in Florida may require that an insured engage in dispute resolution, through litigation, arbitration, or mediation, outside Florida.
- Adds a provision to the Homeowner Claims Bill of Rights advising a personal lines residential property insurance policyholder to file all claims directly with his or her insurance company.
- Removes a section relating to licensure and appointment of bail bonds agents.

COMMITTEE/SUBCOMMITTEE ACTION

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

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

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

Section 1. Subsection (9) of section 501.0051, Florida Statutes, is amended to read:

501.0051 Protected consumer report security freeze.—

(9)~~(a)~~ A consumer reporting agency may not charge any fee to place or remove a security freeze.

~~(b) A consumer reporting agency may charge a reasonable fee, not to exceed $10, if the representative fails to retain the original unique personal identifier provided by the consumer reporting agency and the agency must reissue the unique personal identifier or provide a new unique personal identifier to the representative.~~

Section 2. Paragraph (b) of subsection (10) of section 624.307, Florida Statutes, is amended to read:

624.307 General powers; duties.—

(10)

(b) Any person licensed or issued a certificate of authority by the department or the office shall respond, in writing, to the division within 20 days after receipt of a written request for documents and information from the division concerning a consumer complaint. The response must address the issues and allegations raised in the complaint and include any requested documents concerning the consumer complaint that are not subject to attorney-client or work-product privilege. The division may impose an administrative penalty for failure to comply with this paragraph of up to $2,500 per violation upon any entity licensed by the department or the office and $250 for the first violation, $500 for the second violation, and up to $1,000 for the third or subsequent violation upon any individual licensed by the department or the office.

Section 3. Subsection (20) of section 624.501, Florida Statutes, is amended to read:

624.501 Filing, license, appointment, and miscellaneous fees.—The department, commission, or office, as appropriate, shall collect in advance, and persons so served shall pay to it in advance, fees, licenses, and miscellaneous charges as follows:

~~(20) Adjusting firm, original or renewal 3-year license.....$60.00~~

Section 4. Subsection (9) of section 626.112, Florida Statutes, is renumbered as subsection (10), paragraph (d) of subsection (7) and present subsection (9) are amended, and a new subsection (9) is added to that section, to read:

626.112 License and appointment required; agents, customer representatives, adjusters, insurance agencies, service representatives, managing general agents, adjusting firms.—

(7)

~~(d) Effective October 1, 2015, the department must automatically convert the registration of an approved registered insurance agency to an insurance agency license.~~

(9)(a) An individual, firm, partnership, corporation, association, or other entity may not act in its own name or under a trade name, directly or indirectly, as an adjusting firm unless it complies with s. 626.8696 with respect to possessing an adjusting firm license for each place of business at which it engages in an activity that may be performed only by a licensed insurance adjuster. However, an adjusting firm that is owned and operated by a single licensed adjuster conducting business in his or her individual name and not employing or otherwise using the services of or appointing other licensees is exempt from the adjusting firm licensing requirements of this paragraph.

(b) A branch place of business that is established by a

licensed adjusting firm is considered a branch firm and is not required to be licensed if:

1. It transacts business under the same name and federal tax identification number as the licensed adjusting firm;

2. It has designated with the department a primary adjuster operating the location as required by s. 626.8695; and

3. The address and telephone number of the branch location have been submitted to the department for inclusion in the licensing record of the licensed adjusting firm within 30 days after insurance transactions begin at the branch location.

(c) If an adjusting firm is required to be licensed but fails to file an application for licensure in accordance with this section, the department shall impose on the firm an administrative penalty of up to $10,000.

(10) ~~(9)~~ Any person who knowingly transacts insurance or otherwise engages in insurance activities in this state without a license in violation of this section or who knowingly aids or abets an unlicensed person in transacting insurance or otherwise engaging in insurance activities in this state without a license commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 5. Subsection (4) is added to section 626.602, Florida Statutes, to read:

626.602 Insurance agency names; disapproval.—The department may disapprove the use of any true or fictitious

name, other than the bona fide natural name of an individual, by any insurance agency on any of the following grounds:

(4) The name contains the word "Medicare" or "Medicaid." An agency whose name contains the word "Medicare" or "Medicaid" but which is licensed as of July 1, 2021, may continue to use that name until June 30, 2023, as long as the agency's license remains valid. If the agency's license expires or is suspended or revoked, the agency may not be relicensed using that name. Licenses containing either of these words automatically expire on July 1, 2023, unless these words are removed from the name.

Section 6. Subsections (16) and (17) are added to section 626.621, Florida Statutes, to read:

626.621 Grounds for discretionary refusal, suspension, or revocation of agent's, adjuster's, customer representative's, service representative's, or managing general agent's license or appointment.—The department may, in its discretion, deny an application for, suspend, revoke, or refuse to renew or continue the license or appointment of any applicant, agent, adjuster, customer representative, service representative, or managing general agent, and it may suspend or revoke the eligibility to hold a license or appointment of any such person, if it finds that as to the applicant, licensee, or appointee any one or more of the following applicable grounds exist under circumstances for which such denial, suspension, revocation, or refusal is not mandatory under s. 626.611:

(16) Taking an action that allows the personal financial or medical information of a consumer or customer to be made available or accessible to the general public, regardless of the format in which the record is stored.

(17) Initiating in-person or telephone solicitation after 9 p.m. or before 8 a.m. local time of the prospective customer unless requested by the prospective customer.

Section 7. Section 626.782, Florida Statutes, is amended to read:

626.782 "Industrial class insurer" defined.—An "industrial class insurer" is an insurer collecting premiums on policies of ~~writing~~ industrial life insurance, as defined in s. 627.502, written before July 1, 2021, and as to such insurance, operates under a system of collecting a debit by its agent.

Section 8. Section 626.783, Florida Statutes, is amended to read:

626.783 "Ordinary-combination class insurer" defined.—An "ordinary-combination class insurer" is an insurer writing ~~both~~ ordinary class insurance and collecting premiums on existing industrial life ~~class~~ insurance.

Section 9. Section 626.796, Florida Statutes, is repealed.

Section 10. Subsections (6), (11), and (19) of section 626.854, Florida Statutes, are amended, and subsections (20) and (21) are added to that section, to read:

626.854 "Public adjuster" defined; prohibitions.—The Legislature finds that it is necessary for the protection of the public to regulate public insurance adjusters and to prevent the unauthorized practice of law.

(6) An insured or claimant may cancel a public adjuster's contract to adjust a claim without penalty or obligation within 10 calendar ~~3 business~~ days after the date on which the contract is executed ~~or within 3 business days after the date on which the insured or claimant has notified the insurer of the claim, whichever is later~~. The public adjuster's contract must contain the following language in minimum 18-point bold type: "You, the insured, may cancel this contract for any reason without penalty or obligation to you within 10 days after the date of this contract by providing notice to (name of public adjuster) , submitted in writing and sent by certified mail, return receipt requested, or other form of mailing that provides proof thereof, at the address specified in the contract." ~~disclose to the insured or claimant his or her right to cancel the contract and advise the insured or claimant that notice of cancellation must be submitted in writing and sent by certified mail, return receipt requested, or other form of mailing that provides proof thereof, to the public adjuster at the address specified in the contract; provided, during any state of emergency as declared by the Governor and for 1 year after the date of loss, the insured or claimant has 5 business days after the date on which the~~

~~contract is executed to cancel a public adjuster's contract.~~

(11) Each public adjuster must provide to the claimant or insured a written estimate of the loss to assist in the submission of a proof of loss or any other claim for payment of insurance proceeds within 60 days after the date of the public adjuster's contract. The written estimate must include an itemized, per-unit estimate of the repairs, including itemized information on equipment, materials, labor, and supplies, in accordance with accepted industry standards. The public adjuster shall retain such written estimate for at least 5 years and shall make the estimate available to the claimant or insured, the insurer, and the department upon request.

(19) Except as otherwise provided in this chapter, no person, except an attorney at law or a licensed public adjuster, may for money, commission, or any other thing of value, directly or indirectly:

(a) Prepare, complete, or file an insurance claim for an insured or a third-party claimant;

(b) Act on behalf of or aid an insured or a third-party claimant in negotiating for or effecting the settlement of a claim for loss or damage covered by an insurance contract;

(c) Offer to initiate or negotiate a claim on behalf of an insured;

(d)~~(c)~~ Advertise services that require a license ~~for employment~~ as a public adjuster; or

(e)~~(d)~~ Solicit, investigate, or adjust a claim on behalf of a public adjuster, an insured, or a third-party claimant.

(20) The department may take administrative actions and impose fines not to exceed $10,000 per violation, against any persons performing claims adjusting, soliciting, or any other services under this section without the required licensure under s. 626.112 or this section. The department shall adopt rules to implement this section.

(21) A public adjuster, public adjuster apprentice, or public adjusting firm that solicits a claim and does not enter into a lawful contract with an insured or third-party claimant pursuant to paragraph (10)(a) may not charge an insured or third-party claimant or receive payment by any other source for any type of service related to the insured's or third-party claimant's claim.

Section 11. Effective January 1, 2022, subsection (3) of section 626.916, Florida Statutes, is amended, and paragraph (f) is added to subsection (1) of that section, to read:

626.916 Eligibility for export.—

(1) No insurance coverage shall be eligible for export unless it meets all of the following conditions:

(f) The insured has signed or otherwise provided documented acknowledgment of a disclosure in substantially the following form: "You are agreeing to place coverage in the surplus lines market. Coverage may be available in the admitted

market. Persons insured by surplus lines carriers are not protected under the Florida Insurance Guaranty Act with respect to any right of recovery for the obligation of an insolvent unlicensed insurer."

(3)(a) Subsection (1) does not apply to wet marine and transportation or aviation risks that ~~which~~ are subject to s. 626.917.

(b) Paragraphs (1)(a)-(d) do not apply to classes of insurance which are subject to s. 627.062(3)(d)1. These classes may be exportable under the following conditions:

1. The insurance must be placed only by or through a surplus lines agent licensed in this state;

2. The insurer must be made eligible under s. 626.918; and

3. The insured has complied with paragraph (1)(f). ~~must sign a disclosure that substantially provides the following: "You are agreeing to place coverage in the surplus lines market. Superior coverage may be available in the admitted market and at a lesser cost. Persons insured by surplus lines carriers are not protected under the Florida Insurance Guaranty Act with respect to any right of recovery for the obligation of an insolvent unlicensed insurer."~~ If the disclosure in paragraph (1)(f) ~~notice~~ is signed by the insured, the insured is presumed to have been informed and to know that other coverage may be available, and, with respect to the diligent-effort requirement under subsection (1), there is no liability on the part of, and no

cause of action arises against, the retail agent presenting the form.

Section 12. Paragraph (z) of subsection (1) of section 626.9541, Florida Statutes, is amended to read:

626.9541 Unfair methods of competition and unfair or deceptive acts or practices defined.—

(1) UNFAIR METHODS OF COMPETITION AND UNFAIR OR DECEPTIVE ACTS.—The following are defined as unfair methods of competition and unfair or deceptive acts or practices:

(z) Sliding.—Sliding is the act or practice of any of the following:

1. Representing to the applicant that a specific ancillary coverage or product is required by law in conjunction with the purchase of insurance when such coverage or product is not required.~~;~~

2. Representing to the applicant that a specific ancillary coverage or product is included in the policy applied for without an additional charge when such charge is required.~~; or~~

3. Charging an applicant for a specific ancillary coverage or product, in addition to the cost of the insurance coverage applied for, without the informed consent of the applicant.

4. Initiating, effectuating, binding, or otherwise issuing a policy of insurance without the prior informed consent of the owner of the property to be insured.

5. Mailing, transmitting, or otherwise submitting by any means an invoice for premium payment to a mortgagee or escrow agent for the purpose of effectuating an insurance policy without the prior informed consent of the owner of the property to be insured. However, this subparagraph does not apply to cases in which the mortgagee or escrow agent is renewing insurance or issuing collateral protection insurance, as defined in s. 624.6085, pursuant to the mortgage or other pertinent loan documents or communications regarding the property.

Section 13. Effective January 1, 2022, subsection (3) of section 626.9741, Florida Statutes, is amended to read:

626.9741 Use of credit reports and credit scores by insurers.—

(3) An insurer must inform an applicant or insured, in the same medium as the application is taken, that a credit report or score is being requested for underwriting or rating purposes. The notification to the applicant or insured must include the following language: "The Department of Financial Services offers free financial literacy programs to assist you with insurance-related questions, including how credit works and how credit scores are calculated. To learn more, visit www.myfloridacfo.com." An insurer that makes an adverse decision based, in whole or in part, upon a credit report must provide at no charge~~,~~ a copy of the credit report to the applicant or insured or provide the applicant or insured with the name,

address, and telephone number of the consumer reporting agency from which the insured or applicant may obtain the credit report. The insurer must provide notification to the consumer explaining the reasons for the adverse decision. The reasons must be provided in sufficiently clear and specific language so that a person can identify the basis for the insurer's adverse decision. Such notification must ~~shall~~ include a description of the four primary reasons, or such fewer number as existed, which were the primary influences of the adverse decision. The use of generalized terms such as "poor credit history," "poor credit rating," or "poor insurance score" does not meet the explanation requirements of this subsection. A credit score may not be used in underwriting or rating insurance unless the scoring process produces information in sufficient detail to permit compliance with the requirements of this subsection. It is ~~shall~~ not ~~be deemed~~ an adverse decision if, due to the insured's credit report or credit score, the insured continues to receive a less favorable rate or placement in a less favorable tier or company at the time of renewal except for renewals or reunderwriting required by this section.

Section 14. Subsection (5) of section 626.9953, Florida Statutes, is amended to read:

626.9953 Qualifications for registration; application required.—

(5) An applicant must submit a set of his or her fingerprints to the department and pay the processing fee established under s. 624.501(23) ~~s. 624.501(24)~~. The department shall submit the applicant's fingerprints to the Department of Law Enforcement for processing state criminal history records checks and local criminal records checks through local law enforcement agencies and for forwarding to the Federal Bureau of Investigation for national criminal history records checks. The fingerprints shall be taken by a law enforcement agency, a designated examination center, or another department-approved entity. The department may not approve an application for registration as a navigator if fingerprints have not been submitted.

Section 15. Subsection (1) of section 626.9957, Florida Statutes, is amended to read:

626.9957 Conduct prohibited; denial, revocation, or suspension of registration.—

(1) As provided in s. 626.112, only a person licensed as an insurance agent or customer representative may engage in the solicitation of insurance. A person who engages in the solicitation of insurance as described in s. 626.112(1) without such license is subject to the penalties provided under s. 626.112(10) ~~s. 626.112(9)~~.

Section 16. Subsection (10) of section 627.062, Florida Statutes, is amended to read:

627.062 Rate standards.—

(10) Any interest paid pursuant to s. 627.70131(7) ~~s. 627.70131(5)~~ may not be included in the insurer's rate base and may not be used to justify a rate or rate change.

Section 17. Section 627.502, Florida Statutes, is amended to read:

627.502 "Industrial life insurance" defined; reporting; prohibition on new policies after a certain date.—

(1) For the purposes of this code, "industrial life insurance" is that form of life insurance written under policies under which premiums are payable monthly or more often, bearing the words "industrial policy" or "weekly premium policy" or words of similar import imprinted upon the policies as part of the descriptive matter, and issued by an insurer that ~~which~~, as to such industrial life insurance, is operating under a system of collecting a debit by its agent.

(2) Every life insurer servicing existing ~~transacting~~ industrial life insurance shall report to the office all annual statement data regarding the exhibit of life insurance, including relevant information for industrial life insurance.

(3) Beginning July 1, 2021, a life insurer may not write a new policy of industrial life insurance.

Section 18. Effective January 1, 2022, section 627.70131, Florida Statutes, is amended to read:

627.70131 Insurer's duty to acknowledge communications

regarding claims; investigation.—

(1) As used in this section, the term "insurer" means a residential property insurer.

(2) ~~(1)~~ (a) Upon an insurer's receiving a communication with respect to a claim, the insurer shall, within 14 calendar days, review and acknowledge receipt of such communication unless payment is made within that period of time or unless the failure to acknowledge is caused by factors beyond the control of the insurer which reasonably prevent such acknowledgment. If the acknowledgment is not in writing, a notification indicating acknowledgment shall be made in the insurer's claim file and dated. A communication made to or by a representative ~~an agent~~ of an insurer with respect to a claim shall constitute communication to or by the insurer.

(b) As used in this subsection, the term "representative" ~~"agent"~~ means any person to whom an insurer has granted authority or responsibility to receive or make such communications with respect to claims on behalf of the insurer.

(c) This subsection does ~~shall~~ not apply to claimants represented by counsel beyond those communications necessary to provide forms and instructions.

(3) ~~(2)~~ Such acknowledgment shall be responsive to the communication. If the communication constitutes a notification of a claim, unless the acknowledgment reasonably advises the claimant that the claim appears not to be covered by the

insurer, the acknowledgment shall provide necessary claim forms, and instructions, including an appropriate telephone number.

(4)(a) ~~(3)~~ Unless otherwise provided by the policy of insurance or by law, within 14 ~~10 working~~ days after an insurer receives proof of loss statements, the insurer shall begin such investigation as is reasonably necessary unless the failure to begin such investigation is caused by factors beyond the control of the insurer which reasonably prevent the commencement of such investigation.

(b) If such investigation involves a physical inspection of the property, the licensed adjuster assigned by the insurer must provide the policyholder with a printed or electronic document containing his or her name and license number.

(c) Any subsequent communication with the policyholder regarding the claim must also include the name and license number of the adjuster communicating about the claim. Communication of the adjuster's name and license number may be included along with other information already being provided to the policyholder.

(5) ~~(4)~~ An insurer shall maintain a record or log of each adjuster who communicates with the policyholder as provided in paragraphs (4)(b) and (4)(c) and shall provide a list of the adjusters to the policyholder, the office, or the department upon request ~~For purposes of this section, the term "insurer" means any residential property insurer~~.

(6)(a) When providing a preliminary or partial estimate of damage regarding a claim, an insurer shall include with the estimate the following statement printed in at least 12-point bold, uppercase type: "THIS ESTIMATE REPRESENTS OUR CURRENT EVALUATION OF THE COVERED DAMAGES TO YOUR INSURED PROPERTY AND MAY BE REVISED AS WE CONTINUE TO EVALUATE YOUR CLAIM. IF YOU HAVE QUESTIONS, CONCERNS, OR ADDITIONAL INFORMATION REGARDING YOUR CLAIM, WE ENCOURAGE YOU TO CONTACT US."

(b) When providing a payment on a claim which is not the full and final payment for the claim, an insurer shall include with the payment the following statement printed in at least 12-point bold, uppercase type: "WE ARE CONTINUING TO EVALUATE YOUR CLAIM INVOLVING YOUR INSURED PROPERTY AND MAY ISSUE ADDITIONAL PAYMENTS. IF YOU HAVE QUESTIONS, CONCERNS, OR ADDITIONAL INFORMATION REGARDING YOUR CLAIM, WE ENCOURAGE YOU TO CONTACT US."

(7)(a) ~~(5)(a)~~ Within 90 days after an insurer receives notice of an initial, reopened, or supplemental property insurance claim from a policyholder, the insurer shall pay or deny such claim or a portion of the claim unless the failure to pay is caused by factors beyond the control of the insurer which reasonably prevent such payment. Any payment of an initial or supplemental claim or portion of such claim made 90 days after the insurer receives notice of the claim, or made more than 15 days after there are no longer factors beyond the control of the

insurer which reasonably prevented such payment, whichever is later, bears interest at the rate set forth in s. 55.03. Interest begins to accrue from the date the insurer receives notice of the claim. The provisions of this subsection may not be waived, voided, or nullified by the terms of the insurance policy. If there is a right to prejudgment interest, the insured shall select whether to receive prejudgment interest or interest under this subsection. Interest is payable when the claim or portion of the claim is paid. Failure to comply with this subsection constitutes a violation of this code. However, failure to comply with this subsection does not form the sole basis for a private cause of action.

(b) Notwithstanding subsection (1) ~~(4)~~, for purposes of this subsection, the term "claim" means any of the following:

1. A claim under an insurance policy providing residential coverage as defined in s. 627.4025(1);

2. A claim for structural or contents coverage under a commercial property insurance policy if the insured structure is 10,000 square feet or less; or

3. A claim for contents coverage under a commercial tenant policy if the insured premises is 10,000 square feet or less.

(c) This subsection does ~~shall~~ not apply to claims under an insurance policy covering nonresidential commercial structures or contents in more than one state.

(8) This section also applies to surplus lines insurers and to surplus lines insurance authorized under ss. 626.913-626.937 providing residential coverage.

Section 19. Effective January 1, 2022, section 627.7142, Florida Statutes, is amended to read:

627.7142 Homeowner Claims Bill of Rights.—An insurer issuing a personal lines residential property insurance policy in this state must provide a Homeowner Claims Bill of Rights to a policyholder within 14 days after receiving an initial communication with respect to a claim~~, unless the claim follows an event that is the subject of a declaration of a state of emergency by the Governor~~. The purpose of the bill of rights is to summarize, in simple, nontechnical terms, existing Florida law regarding the rights of a personal lines residential property insurance policyholder who files a claim of loss. The Homeowner Claims Bill of Rights is specific to the claims process and does not represent all of a policyholder's rights under Florida law regarding the insurance policy. The Homeowner Claims Bill of Rights does not create a civil cause of action by any individual policyholder or class of policyholders against an insurer or insurers. The failure of an insurer to properly deliver the Homeowner Claims Bill of Rights is subject to administrative enforcement by the office but is not admissible as evidence in a civil action against an insurer. The Homeowner Claims Bill of Rights does not enlarge, modify, or contravene

statutory requirements, including, but not limited to, ss. 626.854, 626.9541, 627.70131, 627.7015, and 627.7074, and does not prohibit an insurer from exercising its right to repair damaged property in compliance with the terms of an applicable policy or ss. 627.7011(5)(e) and 627.702(7). The Homeowner Claims Bill of Rights must state:

HOMEOWNER CLAIMS
BILL OF RIGHTS

This Bill of Rights is specific to the claims process and does not represent all of your rights under Florida law regarding your policy. There are also exceptions to the stated timelines when conditions are beyond your insurance company's control. This document does not create a civil cause of action by an individual policyholder, or a class of policyholders, against an insurer or insurers and does not prohibit an insurer from exercising its right to repair damaged property in compliance with the terms of an applicable policy.

YOU HAVE THE RIGHT TO:

1. Receive from your insurance company an acknowledgment of your reported claim within 14 days after the time you communicated the claim.

2. Upon written request, receive from your insurance company within 30 days after you have submitted a complete

proof-of-loss statement to your insurance company, confirmation that your claim is covered in full, partially covered, or denied, or receive a written statement that your claim is being investigated.

3. Within 90 days, subject to any dual interest noted in the policy, receive full settlement payment for your claim or payment of the undisputed portion of your claim, or your insurance company's denial of your claim.

4. Receive payment of interest, as provided in section 627.70131, Florida Statutes, from your insurance company, which begins accruing from the date your claim is filed if your insurance company does not pay full settlement of your initial, reopened, or supplemental claim or the undisputed portion of your claim or does not deny your claim within 90 days after your claim is filed. The interest, if applicable, must be paid when your claim or undisputed portion of your claim is paid.

5.~~4.~~ Have free mediation of your disputed claim by the Florida Department of Financial Services, Division of Consumer Services, under most circumstances and subject to certain restrictions.

6.~~5.~~ Have neutral evaluation of your disputed claim, if your claim is for damage caused by a sinkhole and is covered by your policy.

7.~~6.~~ Contact the Florida Department of Financial Services, Division of Consumer Services' toll-free helpline for assistance

with any insurance claim or questions pertaining to the handling of your claim. You can reach the Helpline by phone at...(toll-free phone number)..., or you can seek assistance online at the Florida Department of Financial Services, Division of Consumer Services' website at...(website address)....

YOU ARE ADVISED TO:

1. File all claims directly with your insurance company.

2.~~1.~~ Contact your insurance company before entering into any contract for repairs to confirm any managed repair policy provisions or optional preferred vendors.

3.~~2.~~ Make and document emergency repairs that are necessary to prevent further damage. Keep the damaged property, if feasible, keep all receipts, and take photographs or video of damage before and after any repairs to provide to your insurer.

4.~~3.~~ Carefully read any contract that requires you to pay out-of-pocket expenses or a fee that is based on a percentage of the insurance proceeds that you will receive for repairing or replacing your property.

5.~~4.~~ Confirm that the contractor you choose is licensed to do business in Florida. You can verify a contractor's license and check to see if there are any complaints against him or her by calling the Florida Department of Business and Professional Regulation. You should also ask the contractor for references from previous work.

6.~~5.~~ Require all contractors to provide proof of insurance before beginning repairs.

7.~~6.~~ Take precautions if the damage requires you to leave your home, including securing your property and turning off your gas, water, and electricity, and contacting your insurance company and provide a phone number where you can be reached.

Section 20. Paragraph (a) of subsection (1) and subsection (6) of section 631.57, Florida Statutes, are amended to read:

631.57 Powers and duties of the association.—

(1) The association shall:

(a)1. Be obligated to the extent of the covered claims existing:

a. Before ~~Prior to~~ adjudication of insolvency and arising within 30 days after the determination of insolvency;

b. Before the policy expiration date if less than 30 days after the determination; or

c. Before the insured replaces the policy or causes its cancellation, if she or he does so within 30 days of the determination.

2. The obligation under subparagraph 1. includes ~~only~~ the amount of each covered claim which is ~~in excess of $100 and is~~ less than $300,000, except that policies providing coverage for homeowner's insurance shall provide for an additional $200,000 for the portion of a covered claim which relates only to the damage to the structure and contents.

3.a. Notwithstanding subparagraph 2., the obligation under subparagraph 1. for policies covering condominium associations or homeowners' associations, which associations have a responsibility to provide insurance coverage on residential units within the association, shall include that amount of each covered property insurance claim which is less than $200,000 multiplied by the number of condominium units or other residential units; however, as to homeowners' associations, this sub-subparagraph applies only to claims for damage or loss to residential units and structures attached to residential units.

b. Notwithstanding sub-subparagraph a., the association has no obligation to pay covered claims that are to be paid from the proceeds of bonds issued under s. 631.695. However, the association shall assign and pledge the first available moneys from all or part of the assessments to be made under paragraph (3)(a) to or on behalf of the issuer of such bonds for the benefit of the holders of such bonds. The association shall administer any such covered claims and present valid covered claims for payment in accordance with the provisions of the assistance program in connection with which such bonds have been issued.

4. In no event shall the association be obligated to a policyholder or claimant in an amount in excess of the obligation of the insolvent insurer under the policy from which the claim arises.

(6) The association may extend the time limits specified in paragraph (1)(a) by up to an additional 60 days ~~or waive the applicability of the $100 deductible specified in paragraph (1)(a)~~ if the board determines that either or both such actions are necessary to facilitate the bulk assumption of obligations.

Section 21. Subsection (2) of section 631.904, Florida Statutes, is amended to read:

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

(2) "Covered claim" means an unpaid claim, including a claim for return of unearned premiums, which arises out of, is within the coverage of, and is not in excess of the applicable limits of, an insurance policy to which this part applies, which policy was issued by an insurer and which claim is made on behalf of a claimant or insured who was a resident of this state at the time of the injury. The term "covered claim" includes unpaid claims under any employer liability coverage of a workers' compensation policy limited to the lesser of $300,000 or the limits of the policy. The term "covered claim" does not include any amount sought as a return of premium under any retrospective rating plan; any amount due any reinsurer, insurer, insurance pool, or underwriting association, as subrogation recoveries or otherwise; any claim that would otherwise be a covered claim that has been rejected or denied by any other state guaranty fund based upon that state's statutory exclusions, including, but not limited to, those based on

coverage, policy type, or an insured's net worth, except this exclusion from the definition of covered claim does not apply to employers who, before ~~prior to~~ April 30, 2004, entered into an agreement with the corporation preserving the employer's right to seek coverage of claims rejected by another state's guaranty fund~~; or any return of premium resulting from a policy that was not in force on the date of the final order of liquidation~~. Member insurers have no right of subrogation against the insured of any insolvent insurer. This provision applies retroactively to cover claims of an insolvent self-insurance fund resulting from accidents or losses incurred before ~~prior to~~ January 1, 1994, regardless of the date the petition in circuit court was filed alleging insolvency and the date the court entered an order appointing a receiver.

Section 22. Except as otherwise expressly provided in this act, this act shall take effect upon becoming a law.

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

Remove lines 3-103 and insert:

501.0051, F.S.; deleting a provision specifying the fee a consumer reporting agency may charge to reissue or provide a new unique personal identifier; amending s. 624.307, F.S.; revising a requirement for persons licensed or authorized by the Department of Financial Services or the Office of Insurance

Regulation to respond to the department's Division of Consumer Services regarding consumer complaints; amending s. 624.501, F.S.; deleting a fee for adjusting firm licenses; amending s. 626.112, F.S.; removing a provision requiring the department to automatically convert registrations of approved registered insurance agencies to insurance agency licenses; prohibiting an entity from unlicensed activity as an adjusting firm unless the entity complies with a specified requirement; providing an exemption; providing an exemption from licensure for branch firms that meet certain criteria; providing an administrative penalty for failing to apply for certain licensure; providing a criminal penalty for aiding or abetting unlicensed activity; amending s. 626.602, F.S.; authorizing the department to disapprove the use of insurance agency names containing the words "Medicare" or "Medicaid"; providing a time-limited exception for certain insurance agencies; prohibiting relicensing of insurance agencies using such names; providing for future expiration of such licenses; providing an exception from future expiration; amending s. 626.621, F.S.; adding grounds on which the department may take certain actions against a license, appointment, or application of certain insurance representatives; amending ss. 626.782 and 626.783, F.S.; revising the definitions of the terms "industrial class insurer" and "ordinary-combination class insurer," respectively, to conform to changes made by the act; repealing s. 626.796, F.S.,

relating to the representation of multiple insurers in the same industrial debit territory; amending s. 626.854, F.S.; revising the timeframe in which an insured or claimant may cancel a public adjuster's contract to adjust a claim without penalty or obligation; providing the language that certain public adjuster's contracts must include relating to contract cancellation; specifying requirements for written estimates of loss provided by public adjusters to claimants or insureds; authorizing the department to take administrative actions and impose fines against persons performing specified activities without licensure; requiring rulemaking; prohibiting public adjusters, public adjuster apprentices, and public adjusting firms from charging insureds or claimants or receiving payments under certain circumstances; amending s. 626.916, F.S.; providing a disclosure requirement that an insurance coverage must meet before being eligible for export under the Surplus Lines Law; amending s. 626.9541, F.S.; adding certain acts or practices to the definition of the term "sliding" as unfair methods of competition and unfair or deceptive acts; amending s. 626.9741, F.S.; requiring an insurer's notification regarding certain credit report or score information to include specified language under certain circumstances; amending ss. 626.9953, 626.9957, and 627.062, F.S.; conforming cross-references; amending s. 627.502, F.S.; prohibiting a life insurer from writing new policies of industrial life insurance beginning on a

certain date; amending s. 627.70131, F.S.; providing that communication made to or by a residential property insurer's representative, rather than to or by a residential property insurer's agent, constitutes communication to or by the insurer; replacing the defined term "agent" with the term "representative"; revising the timeframe in which an insurer must begin an investigation after receipt of proof of loss statements; requiring an insurer-assigned licensed adjuster to provide the policyholder with certain information; specifying information that must be included in certain communication with the policyholder regarding a claim; requiring an insurer to keep records or logs of the licensed adjusters interacting with policyholders and to provide the policyholders, the office, or the department with a list of the adjusters; requiring an insurer to include specified notices when providing preliminary or partial damage estimates or claim payments; providing applicability; amending s. 627.7142, F.S.; revising circumstances under which an insurer must provide a Homeowner Claims Bill of Rights to a policyholder; revising information contained in the Homeowner Claims Bill of Rights; conforming provisions to changes made by the act; amending s. 631.57, F.S.; deleting a deductible on the obligation of the Florida Insurance Guaranty Association, Incorporated, as to certain covered claims; amending s. 631.904, F.S.; revising the definition of

the term "covered claim" to exclude certain premium returns; providing an effective date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 815 Insurance
SPONSOR(S): Insurance & Banking Subcommittee, Gregory
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 742

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee	18 Y, 0 N, As CS	Rowley	Luczynski
2) State Administration & Technology Appropriations Subcommittee	13 Y, 0 N	Lee	Topp
3) Commerce Committee		Rowley	Hamon

SUMMARY ANALYSIS

The bill makes the following changes regarding insurance:

Florida Hurricane Catastrophe Fund (FHCF) Coverage – Modifies when a collateral protection insurance policy is eligible for FHCF coverage.
Service of Process – Provides that service of process is perfected on an insurer when process served on the Department of Financial Services (DFS) is delivered to the insurer or DFS has notified the insurer of its availability online.
Meeting Requirements – Authorizes associations, trusts, and pools that provide self-insurance for public entities to use communications media technology to establish a quorum and conduct public business.
Loss Run Statements – Revises requirements related to requests for and insurers' production of loss run statements.
Hurricane Modeling – Provides that a property insurer may use a weighted or straight average of two or more approved hurricane models in a rate filing.
Mitigation Credits in Residential Property Insurance Rate Filings – Makes the use of building code enforcement rating factors in rating plans optional and allows insurers to give mitigation credit for evaluation by, and compliance with, standards developed by an independent, not-for-profit, scientific research organization.
Workers' Compensation Rates – Provides that past and prospective loss experience for insolvent insurers must be used in the determination and fixing of workers' compensation rates and that data previously reported by insolvent insurers may be used to assess the impact on rates.
Citizens Property Insurance Corporation – Allows Citizens the option to insure residential condominiums under commercial residential wind-only coverage if the units are intended for residential use, but are rented on a short-term basis.
Policy Documents – Authorizes electronic transmission of policy documents and claims communications and revises notice requirements for certain automobile insurance policies.
Replacement Cost Coverage and Law and Ordinance Coverage – Provides the laws and ordinances that are applicable to a particular covered loss are those that were enacted on or before the date of that loss.
Export of Flood Coverage to Surplus Lines – Reenacts the exemption from diligent search efforts when an agent is placing flood insurance on the surplus lines market.
Assignment Agreements – Amends the scope of services covered by regulations governing post-loss property insurance assignment agreements.
Agent Licensing – Allows licensed general or personal lines agents to sell service agreements or warranties without a salesperson or sales representative license, expands the definition of "company employee adjuster", and adds a designation related to the qualifications for customer representative licensure.

The bill has no impact on state or local government revenues or expenditures. It has an unknown direct economic impact on the private sector.

Except where otherwise provided, the bill is effective on July 1, 2021.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Hurricane Catastrophe Fund – Collateral Protection Insurance

The Florida Hurricane Catastrophe Fund (FHCF) is a tax-exempt trust fund created by the Legislature in 1993 as a form of reinsurance for residential property losses.[1] The FHCF is administered by the State Board of Administration and reimburses property insurers for a selected percentage of hurricane losses to residential property above the insurer's retention (deductible).[2] As a condition of doing business in Florida, property insurers are required to enter into reimbursement contracts with the FHCF. The purpose of the FHCF is to protect and advance the state's interest in maintaining insurance capacity in Florida by providing reimbursements to insurers for a portion of their catastrophic hurricane losses.

The FHCF reimburses its participating insurers for losses on covered policies, subject to limitations.[3] Covered policies include collateral protection insurance[4] policies covering personal residences that protect both the borrower's and the lender's financial interests, in an amount at least equal to the coverage for the dwelling in place under the lapsed homeowner's policy, if such policy meets certain statutory conditions.[5]

Collateral protection insurance is placed by an insurer when a borrower's policy on the property has lapsed. Sometimes, the insurer is unable to obtain correct information from the homeowner and places coverage at an amount other than the amount of the homeowner's lapsed policy. This can create a discrepancy between the coverage in place and the amount of the homeowner's lapsed policy, which makes the policy ineligible for FHCF coverage.

Effect of the Bill

The bill amends the conditions for which a collateral protection insurance policy can be considered a "covered policy" and thus eligible for FHCF coverage. The bill provides that a collateral protection insurance policy is eligible for coverage if it is placed for the amount of the last known coverage, the amount the homeowner was notified of, or the amount that the homeowner requests, in addition to the current law requirement that it also protects the homeowner's interest.

Service of Process

The law provides for the designation of a public officer, board, agency, or commission as the agent for service of process on a person, firm, or corporation in Florida.[6] The Chief Financial Officer (CFO) is designated as the agent for service of process on insurers and other specific entities or persons licensed by the Department of Financial Services (DFS) and the Office of Insurance Regulation (OIR).[7] Service of process on the CFO is made by mail, personal service, or electronic service.[8]

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[1] S. 215.555, F.S.
[2] *Id*.
[3] S. 215.555(1)(d), F.S.
[4] "Collateral protection insurance" means commercial property insurance under which a creditor is the primary beneficiary and policyholder and which protects or covers an interest of the creditor arising out of a credit transaction secured by real or personal property. Initiation of such coverage is triggered by the mortgagor's failure to maintain insurance coverage as required by the mortgage or other lending document. Collateral protection insurance is not residential coverage. S. 624.6085, F.S.
[5] S. 215.555(2)(c), F.S.
[6] S. 48.151, F.S.
[7] *Id*.
[8] *Id*.; Florida Department of Financial Services, https://www.myfloridacfo.com/division/generalcounsel/service-of-process/ (last visited Mar. 7, 2021).

After receiving service of process, the CFO is required to promptly send a copy by registered or certified mail, or by any other verifiable means, to the person designated by the insurer to receive the process.[9] "Verifiable means" includes making the documents available by electronic transmission from a secure network established by DFS.[10] If the documents are made available electronically, the CFO is required to send a notice of receipt of process to the person designated by the insurer to receive legal process.[11] The notice must state the date and manner in which the copy of the process was made available and contain a hyperlink to obtain a copy of the process.[12]

Service is considered perfected on an insurer when the CFO is served with process.[13] Although an insurer is not required to respond to a lawsuit except within 20 days after the date the CFO sends or makes available a copy of the process, the triggering date for other legal deadlines is the date the CFO is served with process.[14] This can create problems for an insurer when there is a delay between the time the CFO is served and the time the CFO notifies the insurer of the process.

Effect of the Bill

The bill provides that service of process is perfected on an insurer when the process served on the CFO is delivered to the insurer or the insurer is notified that a copy of the process is available on a secured network.

Meeting Requirements

Current law does not address whether associations, trusts, and pools formed to provide self-insurance for public entities can establish a quorum and conduct public business virtually.

Effect of the Bill

The bill authorizes associations, trusts, and pools formed to provide self-insurance for public entities to establish a quorum and conduct public business through communications media technology.

Company Employee Adjuster

DFS, through its Division of Insurance Agent and Agency Services, regulates the licensure of insurance adjusters.[15] An adjuster may be licensed as either an "all-lines adjuster" or a "public adjuster."[16] A company employee adjuster is "a person licensed as an all-lines adjuster who is appointed and employed on an insurer's staff of adjusters or a wholly owned subsidiary of the insurer, and who undertakes on behalf of such insurer or other insurers under common control or ownership to ascertain and determine the amount of any claim, loss, or damage payable under a contract of insurance, or undertakes to effect settlement of such claim, loss, or damage."[17]

Effect of the Bill

The bill expands the definition of a "company employee adjuster" to include a licensed all-lines adjuster who is appointed and employed by an insurer's affiliate.

Customer Representative

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[9] S. 624.423, F.S.
[10] S. 624.307(9), F.S.
[11] *Id*.
[12] *Id*.
[13] S. 624.423(3), F.S.
[14] S. 624.423(2), F.S.
[15] Division of Insurance Agent and Agency Services, https://myfloridacfo.com/Division/Agents/ (last visited Mar. 3, 2021).
[16] S. 626.864, F.S. An individual may be licensed as either an all-lines adjuster or a public adjuster, but not both. An all-lines adjuster may be appointed as one, but no more than one at a time, of the following: independent adjuster, public adjuster apprentice, or company employee adjuster.
[17] S. 626.856, F.S.

To qualify for licensure as a customer representative, an applicant must, among other requirements, within 4 years preceding the date an application was filed with DFS, earn a designation from the list of approved designations or a degree from an accredited institution.[18]

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.

Loss Run Statements

A loss run statement[19] is a report from an insurer that shows how many claims a specific insured has filed under that insured's policy during a particular period of time.[20] This report can be provided to a prospective insurer when an insured is shopping for a new insurance policy.[21] The prospective insurer can use the loss run statement to review the types, frequency, and dollar value of prior claims in order to determine whether to write a policy for the prospective insured and what premium to charge for that policy.[22] Prospective insurers review loss run statements showing a loss run history from three to five years to make decisions about writing insurance policies.[23]

While insureds may request loss run statements for any line of insurance, insureds seeking new general liability, business owner's, commercial property, commercial auto insurance, or workers' compensation insurance, often request them to shop for new insurance[24] upon cancellation or nonrenewal of a policy by an insurer or when the insured chooses to shop for new insurance at the time a policy is up for renewal. Some insurers, especially those providing commercial lines coverage or workers' compensation insurance, have existing loss runs systems that allow their insureds to log into a portal and to obtain their own detailed reports on claims.[25] However, other insurers, in these and other lines of insurance, may provide insureds with loss run statements that they have created upon request or direct the insureds to obtain such statements from their agents of record.

Statutes enacted in 2020 established a statutory framework regarding when and how insurers must provide loss run statements to insureds. Pursuant to these statutes, for all lines of insurance written on the admitted and surplus lines markets, insurers must provide a loss run statement with a 5-year loss history within 15 days of receiving an insured's written request.[26] In the event of a request for a loss run statement regarding a personal lines policy, an insurer may provide the insured information about how to obtain a loss run statement at no charge through a consumer reporting agency.[27] However, the insured may still ask the insurer for a loss run statement even after receiving information from a consumer reporting agency.[28]

Effect of the Bill

The bill amends the statutes regarding loss run statements that were enacted in 2020, so that they better reflect existing industry standards. It revises the number of years of loss history that an insurer must provide from a minimum of 5 years to a minimum of 3 years to reflect the fact that many insurers were routinely providing insureds with a 3-year history upon request before the 2020 statutes were

[18] S. 626.7351, F.S.
[19] Loss run statements are also referred to as loss runs or loss run reports.
[20] Insureon, https://www.insureon.com/insurance-glossary/loss-runs (last visited Mar. 4, 2021).
[21] *Id.*
[22] *Id.*
[23] *Id.*
[24] *Id.*
[25] *See, e.g.,* MSIG Loss Runs, https://www.msigusa.com/loss-runs/ and StarStone, http://myaccount.starstoneworkcomp.com/index.htm (last visited Mar. 4, 2021).
[26] *See* ss. 626.9202 and 627.444, F.S.
[27] S. 627.444(2)(b), F.S.
[28] *Id.*

enacted. The bill requires that if a personal lines insured asks an insurer for a loss run statement after receiving information from a consumer reporting agency, the insurer must provide that statement within 15 days. It establishes that sections 626.9202 and 627.444, F.S., regarding loss run statements, do not apply to life insurers.[29]

The bill also resolves a conflict between the newly enacted statutes and an existing statute regarding loss run statements for group health insurance policies by repealing the health-insurance-specific statute.[30] It establishes that, as applied to group health insurance, a loss run statement also includes premiums paid, number of insureds on a monthly basis, and dependent status. The bill clarifies that for group health insurance, only plan sponsors, not individual employees covered by the group policy, may request a loss run statement.

Rate Disapprovals Based Upon Hurricane Modeling

The law governing OIR's review and approval of residential property insurance rate filings requires that a rate filing account for mitigation measures that policyholders undertake to reduce hurricane losses.[31] It sets forth the criteria under which OIR may disapprove rate filings, including disapproval of rates that are determined to be excessive, inadequate, or unfairly discriminatory.[32] The law also establishes criteria for the Florida Commission on Hurricane Loss Projection Methodology's (Commission) consideration and approval of hurricane loss models and prescribes how those models affect OIR's approval of property insurance rate filings.[33]

Effect of the Bill

The bill provides parameters for OIR's approval or disapproval of rate filings by providing that, with respect to residential property insurance rate filings, the rate filing may use a modeling indication that is the weighted or straight average of two or more models found to be accurate or reliable by the Commission.

Mitigation Credits in Residential Property Insurance Rate Filings

Current law requires residential property insurers to include "positive and negative rate factors that reflect the manner in which building code enforcement in a particular jurisdiction addresses risk of wind damage" in their rate filing that are filed for approval by OIR.[34] Insurers utilize factors from statewide organizations' building code rating factor plans that evaluate how building code enforcement in particular jurisdictions evaluate risk.[35] Often times these ratings are flawed and not an accurate depiction of actual building code enforcement activity in a jurisdiction.

Since 2003, residential property insurers have been required to provide credits, discounts, and other rate differentials to reduce insurance premiums for properties with mitigation features.[36] Mitigation features are construction techniques used or items installed to protect a structure against windstorm damage and loss.[37]

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[29] Because loss run statements are used to shop for new insurance and life insurance claims are only made after the death of an insured, a loss run statement is not necessary for this type of policy.
[30] *See* s. 627.6647, F.S.
[31] S. 627.062(2)(j), F.S.
[32] S. 627.062, F.S.
[33] Ss. 627.0628–627.06281, F.S.
[34] S. 627.0629(2)(b), F.S.
[35] *See, e.g.,* ISO Mitigation, *How Do Building Code Effectiveness Classifications Affect Insurance Pricing?*, https://www.isomitigation.com/bcegs/how-do-building-code-effectiveness-classifications-affect-insurance-pricing/ (last visited Mar. 6, 2021). The Insurance Service Office (ISO) has a program known as Building Code Effectiveness Grading Schedule (BCEGS®), which provides these rating factors.
[36] *See* s. 627.0629, F.S.
[37] Examples of mitigation features include hurricane shutters, a hip roof, or a specific type of roof covering.

Code-plus programs help property owners avoid or reduce damage caused by natural hazards and other risks by implementing additional levels of resilience to hazard beyond those required by building codes.[38] Presently, insurers are unable to submit rating plans for review and approval by OIR that include mitigation credits for those insureds that are evaluated by, and comply with, code-plus standards established by independent, not-for-profit, scientific research organizations.[39]

Effect of the Bill

The bill allows insurers the option to include the building code enforcement rating factor within their rating formula rather than requiring them to include it. Therefore, they will no longer be required to use rating factors that may be flawed. The bill also allows insurers to file a rating plan with OIR in which it offers additional windstorm mitigation credits based on standards established by an independent, not-for-profit, scientific research organization (the rating plan) that meets the requirements of the rate filing statute. Additionally the bill contains a provision that allows insurers to require that insureds who elect to construct or retrofit a structure to receive premium discounts, credits, or rate reductions allowed under the rating plan provide evidence of compliance with mitigation standards prior to receiving the discounts, credits, or rate reductions.

Workers' Compensation Insurance Reporting Requirements

Workers' compensation insurance carriers are required to record and report certain loss, expense, and claims experience to aid OIR in making determinations concerning the adequacy of workers' compensation experience for ratemaking purposes.[40] Additionally, carriers are required to provide the following information annually on both Florida experience and nationwide experience separately:

- Payrolls by classification;
- Manual premiums by classification;
- Standard premiums by classification;
- Losses by classification and injury type; and
- Expenses.

Carriers satisfy these requirements by providing their data to the National Council on Compensation Insurance, Inc. (NCCI). When a carrier goes into receivership due to insolvency, they cease reporting to NCCI and, therefore, their data is no longer reported to OIR.

Effect of the Bill

The bill provides for a new factor in the determination and fixing of workers' compensation and employer's liability insurance rates. This factor represents the loss experience of insurers whose data is missing due to insolvency. Insurers may use prior reported data for such insurers and all other relevant information to assess the impact on rates.

Citizens Property Insurance Corporation

Citizens Property Insurance Corporation (Citizens) is a state-created, not-for-profit, tax-exempt governmental entity that provides property insurance coverage to those unable to find coverage in the admitted market. Citizens offers property insurance in three separate accounts: the personal lines account; the commercial lines account; and the coastal account. The commercial lines account offers commercial lines residential and nonresidential policies. Currently, residential condominiums are

[38] Whole Building Design Guide, *Code-Plus Programs For Disaster Resistance,* https://www.wbdg.org/resources/code-plus-programs-disaster-resistance (last visited Mar. 6, 2021).
[39] *See, e.g.,* Institute for Business & Home Safety, https://ibhs.org/ (last visited Mar. 6, 2021).
[40] S. 627.914, F.S.

ineligible for coverage as “commercial residential” if 50 percent or more of the units are rented more than eight times in a calendar year for a rental agreement period of less than 30 days.[41]

Effect of the Bill

The bill allows Citizens the option to insure residential condominiums under commercial residential wind-only coverage if the units are intended for residential use, but are rented on a short-term basis.

Delivery of Policy Documents

The law requires that an insurance policy be mailed, delivered, or electronically transmitted to an insured within 60 days of taking effect.[42]

Effect of the Bill

The bill authorizes an insurer to electronically transmit all policy documents and claims communications to an insured, provided the policy is sold in a wholly electronic manner and the insurer provides a disclosure to the insured or policyholder at the time of sale.

Limited Coverage Notice Requirements

Automobile insurance policies (i.e., policies for certain antique cars) that do not contain coverage for bodily injury and property damage are required to include a notice of limited coverage that is rubber stamped on the policy jacket.

Effect of the Bill

The bill eliminates the rubber stamp requirement for the notice of limited coverage. By removing the rubber stamp requirement, the notice of limited coverage for such policies can be provided to policyholders electronically.

Replacement Cost Coverage and Law and Ordinance Coverage

The law requires insurers to offer homeowner’s insurance policies providing that any loss will be adjusted on the basis of replacement costs to the dwelling.[43] Replacement cost is usually defined in a policy as the cost to repair or replace damaged property with materials of like kind and quality, without any deduction for depreciation.[44] For a dwelling, an insurer must initially pay at least the actual cash value of the insured loss, less any applicable deductible, and then pay any remaining amounts (i.e., replacement costs) only as to repairs and expenses that are actually incurred.[45]

Insurers must also offer replacement cost coverage that includes law and ordinance coverage, which covers the additional costs incurred in repairing a home to bring it into compliance with new laws and ordinances that were not in effect when the home was originally built. The law provides that law and ordinance coverage may be limited to either 25 percent or 50 percent of the dwelling unit.[46] Law and

[41] S. 627.351(6), F.S.
[42] S. 627.421(1), F.S.
[43] S. 627.7011, F.S.
[44] National Association of Insurance Commissioners, *Glossary of Insurance Terms*, https://content.naic.org/consumer_glossary.htm (last visited Mar. 3, 2021).
[45] S. 627.7011(3)(a), F.S.
[46] S. 627.7011(1), F.S.

ordinance coverage assists in paying for increased construction costs as a result of newer building codes or ordinances when repairing or replacing a dwelling after a covered loss.

Effect of the Bill

The bill provides that for purposes of law and ordinance coverage, the applicable laws and ordinances are those which were enacted on or before the time of a covered loss.

Surplus Lines

Surplus lines insurance refers to a category of insurance for risks that the admitted market is unable or unwilling to provide coverage.[47] There are three basic categories of surplus lines risks:

- Specialty risks that have unusual underwriting characteristics or underwriting characteristics that admitted insurers view as undesirable;
- Niche risks for which admitted carriers do not have a filed policy form or rate; and
- Capacity risks that are risks where an insured needs higher coverage limits than those that are available in the admitted market.

Surplus lines insurers are not "authorized" insurers as defined in the Florida Insurance Code, which means they do not obtain a certificate of authority from OIR to transact insurance in Florida.[48] Rather, surplus lines insurers are "unauthorized" insurers that may transact surplus lines insurance, if they are made eligible by OIR.[49]

The Florida Surplus Lines Service Office (FSLSO) is a self-regulating, nonprofit association of approved unauthorized insurers established by the Legislature in 1997.[50] The FSLSO was created to protect consumers seeking surplus line insurance in the state, monitor marketplace compliance, and protect state revenues.[51] All licensed surplus lines agents are deemed to be members of the FSLSO.[52] The FSLSO operates under the supervision of a nine-member board of governors, which has oversight responsibilities for the Florida surplus lines market.

"To export" a policy[53] means to place it with an unauthorized insurer under the Surplus Lines Law.[54] Unless an exception applies, the insurance agent must make a diligent effort to procure the desired coverage from admitted insurers before the agent can place insurance in the surplus lines market.[55] "Diligent effort" means, subject to certain exceptions, seeking coverage from and being rejected by at least three authorized insurers in the admitted market.[56]

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.[57] 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 OIR determined there was an adequate flood insurance market among admitted insurers.[58] The exemption expired on July 1, 2019.

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[47] S. 626.921, F.S.
[48] S. 624.09, F.S.
[49] *Id*.
[50] S. 626.921, F.S.
[51] *Id*.
[52] S. 626.921(2), F.S.
[53] S. 626.914(3), F.S.
[54] Sections 626.913 – 626.937, F.S., constitute the "Surplus Lines Law."
[55] S. 626.916(1)(a), F.S.
[56] If the cost to replace a residential dwelling is $700,000 or more, then only one coverage rejection is needed prior to export. S. 626.914(4), F.S.
[57] Ch. 2014-80, Laws of Fla.
[58] Ch. 2017-142, Laws of Fla.

Effect of the Bill

The bill allows surplus lines agents to export flood coverage to eligible surplus lines insurers without meeting the diligent effort requirement.

Assignment Agreements

An assignment is the voluntary transfer of the rights of one party under a contract to another party. Current law generally allows an insurance policyholder to assign the benefits of the policy, such as the right to be paid, to another party. This assignment is often called an "assignment of benefits" or "AOB". An "assignment agreement" is an instrument that assigns or transfers post-loss benefits under a residential or commercial property insurance policy to or from a person who protects, repairs, restores, or replaces property or mitigates against further property damage.[59]

Once an assignment is made, the assignee can take action to enforce the contract. Accordingly, if the benefits are assigned and the insurer refuses to pay, the assignee may file a lawsuit against the insurer. An assignee must give an insurer and the assignor prior written notice of at least 10 business days before filing suit on a claim.[60] The notice may not be served before the insurer has made a determination of coverage.[61] The notice must specify the damages in dispute, the amount claimed, and a pre-suit settlement demand, and must include an itemized, detailed written invoice or estimate of the work performed or to be performed.[62]

The law requires that pre-suit notice be sent by certified mail, return receipt requested, or by electronic delivery, but does not specify the mailing address or e-mail address where it must be sent. This may delay receipt of notice and thus reduce an insurer's actual time to respond.

Effect of the Bill

The bill expands the scope of services covered under the definition of "assignment agreement." The bill adds inspection services to the scope of services covered by an "assignment agreement" and specifies that the list of services enumerated in the statute is not exhaustive. The bill provides that fees charged by a public adjuster are not included in the definition of "assignment agreement." Additionally, the bill requires that notice of intent to initiate litigation, sent by certified mail, be sent to the name and mailing address specified by the insurer in the policy forms and that notice sent electronically be sent to the e-mail address designated by the insurer in the policy forms.

Agent Licensing

General Lines Agent

A general lines agent[63] is one who sells the following lines of insurance: property;[64] casualty,[65] including commercial liability insurance underwritten by a risk retention group, a commercial self-insurance fund,[66] or a workers' compensation self-insurance fund;[67] surety;[68] health;[69] and, marine.[70] The general lines agent may only transact health insurance for an insurer that the general lines agent also

[59] S. 627.7152(1)(b), F.S.
[60] S. 627.7152(9)(a), F.S.
[61] *Id*.
[62] *Id*.
[63] S. 626.015(5), F.S.
[64] S. 624.604, F.S.
[65] S. 624.605, F.S.
[66] S. 624.462, F.S.
[67] S. 624.4621, F.S.
[68] S. 626.606, F.S.
[69] Ss. 624.603 and 627.6482, F.S.
[70] S. 624.607, F.S.

represents for property and casualty insurance. If the general lines agent wishes to represent health insurers that are not also property and casualty insurers, they must be licensed as a health insurance agent.[71]

Personal Lines Agent

A personal lines agent is a general lines agent who is limited to transacting business related to property and casualty insurance sold to individuals and families for noncommercial purposes.[72]

Motor Vehicle Servicing Agreements

Motor vehicle service agreements provide vehicle owners with protection when the manufacturer's warranty expires. A motor vehicle service agreement indemnifies the vehicle owner (or holder of the agreement) against loss caused by failure of any mechanical or other component part, or any mechanical or other component part that does not function as it was originally intended. Motor vehicle service agreements can only be sold by a licensed and appointed salesperson. Salespersons are licensed in the same manner as insurance representatives under ch. 626, F.S., with some exceptions to the requirements applied to insurance representatives.

Service Warranty Associations

Service warranty associations are entities, other than insurers, which issue service warranties. A service warranty is an agreement or maintenance service contract equal to or greater than 1 year in length to repair, replace, or maintain a consumer product, or for indemnification for repair, replacement, or maintenance, for operational or structural failure due to a defect in materials or workmanship, normal wear and tear, power surge, or accidental damage from handling in return for the payment of a segregated charge by the consumer.[73] No person or entity shall solicit, negotiate, advertise, or effectuate service warranty contracts in this state unless such person or entity is licensed and appointed as a sales representative.[74]

Home Warranty Contracts

A home warranty association is any corporation or any other organization, other than an authorized insurer, issuing home warranties. A home warranty is any contract or agreement whereby a person undertakes to indemnify the warranty holder against the cost of repair or replacement, or actually furnishes repair or replacement, of any structural component or appliance of a home, necessitated by wear and tear or an inherent defect of any such structural component or appliance or necessitated by the failure of an inspection to detect the likelihood of any such loss. No person may solicit, negotiate, or effectuate home warranty contracts for remuneration in this state unless such person is licensed and appointed as a sales representative.[75]

Effect of the Bill

The bill allows a licensed general lines agent or licensed personal lines agent to advertise, solicit, negotiate, or sell motor vehicle service agreements, home warranty contracts, or service warranty

[71] S. 626.829, F.S.
[72] S. 626.015(17), F.S.
[73] S. 634.401(13), F.S.
[74] S. 634.419, F.S. A "sales representative" is any person, retail store, corporation, partnership, or sole proprietorship utilized by an insurer or service warranty association for the purpose of selling or issuing service warranties. However, in the case of service warranty associations selling service warranties from one or more business locations, the person in charge of each location may be considered the sales representative. S. 634.401(12), F.S.
[75] S. 634.317, F.S. "Sales representative" is any person with whom an insurer or home inspection or warranty association has a contract and who is utilized by such insurer or association for the purpose of selling or issuing home warranties. The term includes all employees of an insurer or association engaged directly in the sale or issuance of home warranties. S. 634.301(12), F.S.

contracts without being separately licensed as a sales representative or insurance representative, as applicable.

B. SECTION DIRECTORY:

Section 1. Amends s. 215.555, F.S., relating to Florida Hurricane Catastrophe Fund.

Section 2. Amends s. 624.423, F.S., relating to serving process.

Section 3. Creates s. 624.46227, F.S., relating to meeting requirements.

Section 4. Amends s. 626.7351, F.S., relating to qualifications for customer representative's license.

Section 5. Amends s. 626.856, F.S., relating to "company employee adjuster" defined.

Section 6. Amends s. 626.9202, F.S., relating to loss run statements for all lines of insurance.

Section 7. Amends s. 627.062, F.S., relating to rate standards.

Section 8. Amends s. 627.0629, F.S., relating to residential property insurance; rate filings.

Section 9. Amends s. 627.072, F.S., relating to making and use of rates.

Section 10. Amends s. 627.351, F.S., relating to insurance risk apportionment plans.

Section 11. Amends s. 627.421, F.S., relating to delivery of policy.

Section 12. Amends s. 627.444, F.S., relating to loss run statements for all lines of insurance.

Section 13. Repeals s. 627.6647, F.S., relating to release of claims experience.

Section 14. Amends s. 627.7011, F.S., relating to homeowners' policies; offer of replacement cost coverage and law and ordinance coverage.

Section 15. Amends s. 627.715, F.S., relating to flood insurance.

Section 16. Amends s. 627.7152, F.S., relating to assignment agreements.

Section 17. Amends s. 627.7276, F.S., relating to notice of limited coverage.

Section 18. Amends s. 634.171, F.S., relating to salesperson to be licensed and appointed.

Section 19. Amends s. 634.317, F.S., relating to license and appointment required.

Section 20. Amends s. 634.419, F.S., relating to license and appointment required.

Section 21. Reenacts s. 627.7153, F.S., relating to policies restricting assignment of post-loss benefits under a property insurance policy.

Section 22. 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:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

OIR has indicated the bill may have positive economic impacts for policyholders, who may benefit from lower collateral protection insurance costs if more policies are eligible for coverage from the FHCF.[76]

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

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

- Added a new section to the bill authorizing an association, trust, or pool created for the purpose of forming or managing a risk management mechanism or providing self-insurance for a public entity to establish a quorum and conduct public business through communication media technology.
- Added a new section to the bill adding the designation of Insurance Customer Service Representative from Statewide Insurance Associates LLC to the list of several designations, one of which meets a required qualification for an applicant for licensure as a customer representative if earned within 4 years preceding the date of filing an application for licensure.
- Restored language in two statutes relating to loss run statements by replacing “each claim” with “all claims” in order to ensure that protected medical information is not inadvertently disclosed on a loss run statement.

[76] OIR Agency Analysis of 2021 House Bill 815, p. 6 (Feb. 23, 2021).

- Moved a new provision in the bill that a residential property insurance filing may use a weighted or straight average of two or more models found by the Florida Commission on Hurricane Loss Projection Methodology to be accurate or reliable to a more appropriate location in the same section.
- Made a modification to a provision in the bill allowing an insurer to file a rating plan with rate differentials based on windstorm mitigation construction standards to add that the standards must meet the requirements of the rate filing statute.
- Added a new section to the bill authorizing an insurer to electronically transmit policy documents and claims communications to an insured, provided the policy is sold in a wholly electronic manner and the insurer provides a disclosure to the insured or policyholder at the time of sale.
- Deleted language in the bill requiring that an insured request reimbursement from an insurer for the difference between actual cash value and replacement costs by the latter of no less than 2 years from the date of the loss or 1 year from the notice of the claim.
- Provided that fees charged by a public adjuster are not included in the definition of "assignment agreement."
- Revised the notice requirements for certain motor vehicle policies that do not provide coverage for bodily injury and property damage liability and deletes a requirement that such policies be rubber stamped. By removing the rubber stamp requirement, the notice of limited coverage for such policies can be provided to policyholders electronically.

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

A bill to be entitled

An act relating to insurance; amending s. 215.555, F.S.; redefining the term "covered policy" under the Florida Hurricane Catastrophe Fund in relation to certain collateral protection insurance policies; amending s. 624.423, F.S.; specifying when service of process is valid and binding upon insurers; creating s. 624.46227, F.S.; authorizing an association, trust, or pool created for the purpose of forming a risk management mechanism or providing self-insurance for a public entity to establish a quorum and conduct public business through communications media technology; amending s. 626.7351, F.S.; revising a qualification for licensure as a customer representative; amending s. 626.856, F.S.; revising the definition of the term "company employee adjuster"; amending s. 626.9202, F.S.; revising the definition of the term "loss run statement"; specifying the entities that must receive requests for loss run statements; specifying that insurers must provide loss run statements under certain circumstances; revising the required claims history in loss run statements; providing applicability; limiting loss run statement requests with respect to group health insurance policies to group policyholders; amending s. 627.062, F.S.;

revising the factors for determining whether an insurance rate filing is excessive, inadequate, or unfairly discriminatory; amending s. 627.0629, F.S.; authorizing, rather than requiring, rate filings for certain residential property insurance to include certain rate factors; authorizing insurers to file certain insurance rating plans based on certain windstorm mitigation construction standards; authorizing insurers to require policyholders to provide evidence of compliance with mitigation standards under certain conditions; amending s. 627.072, F.S.; providing a ratemaking factor for workers' compensation and employer's liability insurance; amending s. 627.351, F.S.; revising conditions for determining the ineligibility of condominiums for wind-only coverage; amending s. 627.421, F.S.; authorizing insurers to electronically transmit policy documents and claims communications under certain circumstances; amending s. 627.444, F.S.; revising the definition of the term "loss run statement"; specifying the entities that must receive requests for loss run statements; specifying that insurers must provide loss run statements under certain circumstances; revising the required claims history in loss run statements; providing

applicability; limiting loss run statement requests with respect to group health insurance policies to group policyholders; repealing s. 627.6647, F.S., relating to the release of information required for bid to group health insurance policyholders; amending s. 627.7011, F.S.; revising conditions for inclusion of costs for law and ordinance coverage in loss adjustments under certain homeowners' policies; amending s. 627.715, F.S.; providing an exemption from a diligent effort requirement for agents exporting contracts or endorsements providing flood coverage; amending s. 627.7152, F.S.; revising the definition of the term "assignment agreement"; specifying the addresses to which a notice of intent to initiate litigation must be served; amending s. 627.7276, F.S.; revising notice requirements for motor vehicle policies that do not provide coverage for bodily injury and property damage liability; amending ss. 634.171, 634.317, and 634.419, F.S.; authorizing licensed personal lines or general lines agents to solicit, negotiate, advertise, or sell motor vehicle service agreements, home warranty contracts, and service warranties, respectively, without a sales representative license; reenacting s. 627.7153(1) and (2)(d), F.S., relating to policies restricting

assignment of post-loss benefits under a property insurance policy, to incorporate the amendment made by the act to s. 627.7152, F.S., in references thereto; providing effective dates.

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

Section 1. Effective June 1, 2021, paragraph (c) of subsection (2) of section 215.555, Florida Statutes, is amended to read:

215.555 Florida Hurricane Catastrophe Fund.—

(2) DEFINITIONS.—As used in this section:

(c) "Covered policy" means any insurance policy covering residential property in this state, including, but not limited to, any homeowner, mobile home owner, farm owner, condominium association, condominium unit owner, tenant, or apartment building policy, or any other policy covering a residential structure or its contents issued by any authorized insurer, including a commercial self-insurance fund holding a certificate of authority issued by the Office of Insurance Regulation under s. 624.462, the Citizens Property Insurance Corporation, and any joint underwriting association or similar entity created under law. The term "covered policy" includes any collateral protection insurance policy covering personal residences which protects both the borrower's and the lender's financial

interests, in an amount at least equal to the coverage amount for the dwelling in place under the lapsed homeowner's policy, the coverage amount that the homeowner has been notified of, or the coverage amount the homeowner requests from the collateral protection insurer, if such collateral protection insurance policy can be accurately reported as required in subsection (5). Additionally, covered policies include policies covering the peril of wind removed from the Florida Residential Property and Casualty Joint Underwriting Association or from the Citizens Property Insurance Corporation, created under s. 627.351(6), or from the Florida Windstorm Underwriting Association, created under s. 627.351(2), by an authorized insurer under the terms and conditions of an executed assumption agreement between the authorized insurer and such association or Citizens Property Insurance Corporation. Each assumption agreement between the association and such authorized insurer or Citizens Property Insurance Corporation must be approved by the Office of Insurance Regulation before the effective date of the assumption, and the Office of Insurance Regulation must provide written notification to the board within 15 working days after such approval. "Covered policy" does not include any policy that excludes wind coverage or hurricane coverage or any reinsurance agreement and does not include any policy otherwise meeting this definition which is issued by a surplus lines insurer or a reinsurer. All commercial residential excess policies and all

deductible buy-back policies that, based on sound actuarial principles, require individual ratemaking shall be excluded by rule if the actuarial soundness of the fund is not jeopardized. For this purpose, the term "excess policy" means a policy that provides insurance protection for large commercial property risks and that provides a layer of coverage above a primary layer insured by another insurer.

Section 2. Effective upon this act becoming a law, subsection (3) of section 624.423, Florida Statutes, is amended to read:

624.423 Serving process.—

(3) Service of process is valid and binding upon the insurer on the date process served upon the Chief Financial Officer is delivered to the insurer ~~and sent~~ or the insurer has been notified such information has been made available on a secured network in accordance with this section and s. 624.307(9) ~~shall for all purposes constitute valid and binding service thereof upon the insurer~~.

Section 3. Section 624.46227, Florida Statutes, is created to read:

624.46227 Meeting requirements.—Any association, trust, or pool authorized by state law and created for the purpose of forming a risk management mechanism or providing self-insurance for public entities in this state may establish a quorum and conduct public business through communications media technology.

Section 4. 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 Insurance Customer Service Representative (ICSR) from Statewide Insurance Associates LLC; the designation of Professional Customer Service Representative (PCSR) from the Professional Career Institute; 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 5. Section 626.856, Florida Statutes, is amended to read:

626.856 "Company employee adjuster" defined.—A "company employee adjuster" means a person licensed as an all-lines adjuster who is appointed and employed on an insurer's staff of adjusters, by an affiliate, or by a wholly owned subsidiary of the insurer, and who undertakes on behalf of such insurer or other insurers under common control or ownership to ascertain and determine the amount of any claim, loss, or damage payable under a contract of insurance, or undertakes to effect settlement of such claim, loss, or damage.

Section 6. Effective upon this act becoming a law, subsections (1), (2), and (4) of section 626.9202, Florida Statutes, are amended, and subsections (7) and (8) are added to that section, to read:

626.9202 Loss run statements for all lines of insurance.—

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

(a) "Loss run statement" means a report that contains the policy number, the period of coverage, the number of claims, the paid losses on all claims, and the date of each loss. The term does not include supporting claim file documentation, including, but not limited to, copies of claim files, investigation reports, evaluation statements, insureds' statements, and documents protected by a common law or statutory privilege. As applied to group health insurance, the term means a report that also contains the premiums paid, the number of insureds on a monthly basis, and the dependent status.

(b) "Provide" means to electronically send a document or to allow access through an electronic portal to view or generate a document.

(2) Notwithstanding any other law, an insurer shall provide to an insured within 15 calendar days after an individual or entity designated by the insurer receives ~~receipt of~~ the insured's written request, either:

(a) A loss run statement; or

(b) For personal lines of insurance, information on how to obtain a loss run statement at no charge through a consumer reporting agency. However, this section does not prohibit an insured from requesting a loss run statement after receiving information from a consumer reporting agency, in which case the insurer must then provide the loss run statement within 15

calendar days after the individual or entity designated by the insurer receives the insured's subsequent written request.

(4) A loss run statement provided pursuant to this section must contain a claims history with the insurer for the preceding 3 ~~5~~ years or, if the claims history is less than 3 ~~5~~ years, a complete claims history with the insurer.

(7) This section does not apply to a life insurer as defined in s. 624.602.

(8) For group health insurance, only the group policyholder may request and be provided a loss run statement pursuant to this section.

Section 7. Paragraph (b) of subsection (2) of section 627.062, Florida Statutes, is amended to read:

627.062 Rate standards.—

(2) As to all such classes of insurance:

(b) Upon receiving a rate filing, the office shall review the filing to determine if a rate is excessive, inadequate, or unfairly discriminatory. In making that determination, the office shall, in accordance with generally accepted and reasonable actuarial techniques, consider the following factors:

1. Past and prospective loss experience within and without this state.

2. Past and prospective expenses.

3. The degree of competition among insurers for the risk insured.

4. Investment income reasonably expected by the insurer, consistent with the insurer's investment practices, from investable premiums anticipated in the filing, plus any other expected income from currently invested assets representing the amount expected on unearned premium reserves and loss reserves. The commission may adopt rules using reasonable techniques of actuarial science and economics to specify the manner in which insurers calculate investment income attributable to classes of insurance written in this state and the manner in which investment income is used to calculate insurance rates. Such manner must contemplate allowances for an underwriting profit factor and full consideration of investment income that produces a reasonable rate of return; however, investment income from invested surplus may not be considered.

5. The reasonableness of the judgment reflected in the filing.

6. Dividends, savings, or unabsorbed premium deposits allowed or returned to policyholders, members, or subscribers in this state.

7. The adequacy of loss reserves.

8. The cost of reinsurance. The office may not disapprove a rate as excessive solely due to the insurer having obtained catastrophic reinsurance to cover the insurer's estimated 250-year probable maximum loss or any lower level of loss.

9. Trend factors, including trends in actual losses per

insured unit for the insurer making the filing.

10. Conflagration and catastrophe hazards, if applicable.

11. Projected hurricane losses, if applicable, which must be estimated using a model or method found to be acceptable or reliable by the Florida Commission on Hurricane Loss Projection Methodology, and as further provided in s. 627.0628. A residential property insurance rate filing may use a weighted or straight average of two or more such models or methods.

12. Projected flood losses for personal residential property insurance, if applicable, which may be estimated using a model or method, or a straight average of model results or output ranges, independently found to be acceptable or reliable by the Florida Commission on Hurricane Loss Projection Methodology and as further provided in s. 627.0628.

13. A reasonable margin for underwriting profit and contingencies.

14. The cost of medical services, if applicable.

15. Other relevant factors that affect the frequency or severity of claims or expenses.

The provisions of this subsection do not apply to workers' compensation, employer's liability insurance, and motor vehicle insurance.

Section 8. Paragraph (b) of subsection (2) of section 627.0629, Florida Statutes, is amended, and subsection (9) is

added to that section, to read:

627.0629 Residential property insurance; rate filings.—

(2)

(b) A rate filing for residential property insurance made more than 150 days after approval by the office of a building code rating factor plan submitted by a statewide rating organization may ~~shall~~ include positive and negative rate factors that reflect the manner in which building code enforcement in a particular jurisdiction addresses risk of wind damage. The rate filing must ~~shall~~ include variations from standard rate factors on an individual basis based on inspection of a particular structure by a licensed home inspector. If an inspection is requested by the insured, the insurer may require the insured to pay the reasonable cost of the inspection. This paragraph applies to structures constructed or renovated after the implementation of this paragraph.

(9) An insurer may file with the office a personal lines residential property insurance rating plan that provides justified premium discounts, credits, or other rate differentials based on windstorm mitigation construction standards developed by an independent, not-for-profit, scientific research organization, if such standards meet the requirements of this section. The insurer may require a policyholder who elects to construct or retrofit the structure, in whole or in part, for windstorm mitigation purposes to

present to the insurer evidence of compliance with the mitigation standards before receiving any premium discount, credit, or rate reduction allowed under the rating plan.

Section 9. Subsection (1) of section 627.072, Florida Statutes, is amended to read:

627.072 Making and use of rates.—

(1) As to workers' compensation and employer's liability insurance, the following factors shall be used in the determination and fixing of rates:

(a) The past loss experience and prospective loss experience within and outside this state;

(b) The impact resulting from the past loss experience and prospective loss experience for insurers whose data are missing from statewide experience due to insolvency. Prior reported data for such insurers and all other relevant information may be used to assess the impact on rates;

(c) ~~(b)~~ The conflagration and catastrophe hazards;

(d) ~~(c)~~ A reasonable margin for underwriting profit and contingencies;

(e) ~~(d)~~ Dividends, savings, or unabsorbed premium deposits allowed or returned by insurers to their policyholders, members, or subscribers;

(f) ~~(e)~~ Investment income on unearned premium reserves and loss reserves;

(g) ~~(f)~~ Past expenses and prospective expenses, both those

countrywide and those specifically applicable to this state; and

(h) ~~(g)~~ All other relevant factors, including judgment factors, within and outside this state.

Section 10. Paragraph (a) of subsection (6) of section 627.351, Florida Statutes, is amended to read:

627.351 Insurance risk apportionment plans.—

(6) CITIZENS PROPERTY INSURANCE CORPORATION.—

(a) The public purpose of this subsection is to ensure that there is an orderly market for property insurance for residents and businesses of this state.

1. The Legislature finds that private insurers are unwilling or unable to provide affordable property insurance coverage in this state to the extent sought and needed. The absence of affordable property insurance threatens the public health, safety, and welfare and likewise threatens the economic health of the state. The state therefore has a compelling public interest and a public purpose to assist in assuring that property in the state is insured and that it is insured at affordable rates so as to facilitate the remediation, reconstruction, and replacement of damaged or destroyed property in order to reduce or avoid the negative effects otherwise resulting to the public health, safety, and welfare, to the economy of the state, and to the revenues of the state and local governments which are needed to provide for the public welfare. It is necessary, therefore, to provide affordable property

insurance to applicants who are in good faith entitled to procure insurance through the voluntary market but are unable to do so. The Legislature intends, therefore, that affordable property insurance be provided and that it continue to be provided, as long as necessary, through Citizens Property Insurance Corporation, a government entity that is an integral part of the state, and that is not a private insurance company. To that end, the corporation shall strive to increase the availability of affordable property insurance in this state, while achieving efficiencies and economies, and while providing service to policyholders, applicants, and agents which is no less than the quality generally provided in the voluntary market, for the achievement of the foregoing public purposes. Because it is essential for this government entity to have the maximum financial resources to pay claims following a catastrophic hurricane, it is the intent of the Legislature that the corporation continue to be an integral part of the state and that the income of the corporation be exempt from federal income taxation and that interest on the debt obligations issued by the corporation be exempt from federal income taxation.

2. The Residential Property and Casualty Joint Underwriting Association originally created by this statute shall be known as the Citizens Property Insurance Corporation. The corporation shall provide insurance for residential and commercial property, for applicants who are entitled, but, in

good faith, are unable to procure insurance through the voluntary market. The corporation shall operate pursuant to a plan of operation approved by order of the Financial Services Commission. The plan is subject to continuous review by the commission. The commission may, by order, withdraw approval of all or part of a plan if the commission determines that conditions have changed since approval was granted and that the purposes of the plan require changes in the plan. For the purposes of this subsection, residential coverage includes both personal lines residential coverage, which consists of the type of coverage provided by homeowner, mobile home owner, dwelling, tenant, condominium unit owner, and similar policies; and commercial lines residential coverage, which consists of the type of coverage provided by condominium association, apartment building, and similar policies.

3. With respect to coverage for personal lines residential structures:

a. Effective January 1, 2014, a structure that has a dwelling replacement cost of $1 million or more, or a single condominium unit that has a combined dwelling and contents replacement cost of $1 million or more, is not eligible for coverage by the corporation. Such dwellings insured by the corporation on December 31, 2013, may continue to be covered by the corporation until the end of the policy term. The office shall approve the method used by the corporation for valuing the

dwelling replacement cost for the purposes of this subparagraph. If a policyholder is insured by the corporation before being determined to be ineligible pursuant to this subparagraph and such policyholder files a lawsuit challenging the determination, the policyholder may remain insured by the corporation until the conclusion of the litigation.

b. Effective January 1, 2015, a structure that has a dwelling replacement cost of $900,000 or more, or a single condominium unit that has a combined dwelling and contents replacement cost of $900,000 or more, is not eligible for coverage by the corporation. Such dwellings insured by the corporation on December 31, 2014, may continue to be covered by the corporation only until the end of the policy term.

c. Effective January 1, 2016, a structure that has a dwelling replacement cost of $800,000 or more, or a single condominium unit that has a combined dwelling and contents replacement cost of $800,000 or more, is not eligible for coverage by the corporation. Such dwellings insured by the corporation on December 31, 2015, may continue to be covered by the corporation until the end of the policy term.

d. Effective January 1, 2017, a structure that has a dwelling replacement cost of $700,000 or more, or a single condominium unit that has a combined dwelling and contents replacement cost of $700,000 or more, is not eligible for coverage by the corporation. Such dwellings insured by the

corporation on December 31, 2016, may continue to be covered by the corporation until the end of the policy term.

The requirements of sub-subparagraphs b.-d. do not apply in counties where the office determines there is not a reasonable degree of competition. In such counties a personal lines residential structure that has a dwelling replacement cost of less than $1 million, or a single condominium unit that has a combined dwelling and contents replacement cost of less than $1 million, is eligible for coverage by the corporation.

4. It is the intent of the Legislature that policyholders, applicants, and agents of the corporation receive service and treatment of the highest possible level but never less than that generally provided in the voluntary market. It is also intended that the corporation be held to service standards no less than those applied to insurers in the voluntary market by the office with respect to responsiveness, timeliness, customer courtesy, and overall dealings with policyholders, applicants, or agents of the corporation.

5.a. Effective January 1, 2009, a personal lines residential structure that is located in the "wind-borne debris region," as defined in s. 1609.2, International Building Code (2006), and that has an insured value on the structure of $750,000 or more is not eligible for coverage by the corporation unless the structure has opening protections as required under

the Florida Building Code for a newly constructed residential structure in that area. A residential structure is deemed to comply with this sub-subparagraph if it has shutters or opening protections on all openings and if such opening protections complied with the Florida Building Code at the time they were installed.

b. Any major structure, as defined in s. 161.54(6)(a), that is newly constructed, or rebuilt, repaired, restored, or remodeled to increase the total square footage of finished area by more than 25 percent, pursuant to a permit applied for after July 1, 2015, is not eligible for coverage by the corporation if the structure is seaward of the coastal construction control line established pursuant to s. 161.053 or is within the Coastal Barrier Resources System as designated by 16 U.S.C. ss. 3501-3510.

6. With respect to wind-only coverage for commercial lines residential condominiums, ~~effective July 1, 2014,~~ a condominium may ~~shall~~ be deemed ineligible for coverage when ~~if~~ 50 percent or more of the units are rented more than eight times in a calendar year for a rental agreement period of less than 30 days.

Section 11. Subsection (6) is added to section 627.421, Florida Statutes, to read:

627.421 Delivery of policy.—

(6) If a policy is sold in a wholly electronic manner, the

insurer may electronically transmit all policy documents and claims communications to the insured or policyholder if the insurer provides a disclosure to the insured or policyholder at the time of sale.

Section 12. Effective upon this act becoming a law, subsections (1), (2), and (4) of section 627.444, Florida Statutes, are amended, and subsections (7) and (8) are added to that section, to read:

627.444 Loss run statements for all lines of insurance.—

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

(a) "Loss run statement" means a report that contains the policy number, the period of coverage, the number of claims, the paid losses on all claims, and the date of each loss. The term does not include supporting claim file documentation, including, but not limited to, copies of claim files, investigation reports, evaluation statements, insureds' statements, and documents protected by a common law or statutory privilege. As applied to group health insurance, the term means a report that also contains the premiums paid, the number of insureds on a monthly basis, and the dependent status.

(b) "Provide" means to electronically send a document or to allow access through an electronic portal to view or generate a document.

(2) Notwithstanding any other law, an insurer shall provide to an insured within 15 calendar days after an

individual or entity designated by the insurer receives ~~receipt of~~ the insured's written request, either:

(a) A loss run statement; or

(b) For personal lines of insurance, information on how to obtain a loss run statement at no charge through a consumer reporting agency. However, this section does not prohibit an insured from requesting a loss run statement after receiving information from a consumer reporting agency, in which case the insurer must then provide the loss run statement within 15 calendar days after the individual or entity designated by the insurer receives the insured's subsequent written request.

(4) A loss run statement provided pursuant to this section must contain a claims history with the insurer for the preceding 3 ~~5~~ years or, if the claims history is less than 3 ~~5~~ years, a complete claims history with the insurer.

(7) This section does not apply to a life insurer as defined in s. 624.602.

(8) For group health insurance, only the group policyholder may request and be provided a loss run statement pursuant to this section.

Section 13. Section 627.6647, Florida Statutes, is repealed.

Section 14. Paragraph (b) of subsection (1) of section 627.7011, Florida Statutes, is amended to read:

627.7011 Homeowners' policies; offer of replacement cost

coverage and law and ordinance coverage.—

(1) Prior to issuing a homeowner's insurance policy, the insurer must offer each of the following:

(b) A policy or endorsement providing that, subject to other policy provisions, any loss that is repaired or replaced at any location will be adjusted on the basis of replacement costs to the dwelling not exceeding policy limits, rather than actual cash value, and also including costs necessary to meet applicable laws and ordinances enacted on or before the time of loss which regulate ~~regulating~~ the construction, use, or repair of any property or require ~~requiring~~ the tearing down of any property, including the costs of removing debris. However, additional costs necessary to meet applicable laws and ordinances may be limited to 25 percent or 50 percent of the dwelling limit, as selected by the policyholder, and such coverage applies only to repairs of the damaged portion of the structure unless the total damage to the structure exceeds 50 percent of the replacement cost of the structure.

An insurer is not required to make the offers required by this subsection with respect to the issuance or renewal of a homeowner's policy that contains the provisions specified in paragraph (b) for law and ordinance coverage limited to 25 percent of the dwelling limit, except that the insurer must offer the law and ordinance coverage limited to 50 percent of

the dwelling limit. This subsection does not prohibit the offer of a guaranteed replacement cost policy.

Section 15. Effective upon this act becoming a law, present subsections (4) through (10) of section 627.715, Florida Statutes, are redesignated 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 16. Effective upon this act becoming a law, paragraph (b) of subsection (1) and paragraph (a) of subsection (9) of section 627.7152, Florida Statutes, are amended to read:

627.7152 Assignment agreements.—

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

(b) "Assignment agreement" means any instrument by which post-loss benefits under a residential property insurance policy or commercial property insurance policy, as that term is defined in s. 627.0625(1), are assigned or transferred, or acquired in any manner, in whole or in part, to or from a person providing services, including, but not limited to, scopes of service, to inspect, protect, repair, restore, or replace property or to mitigate against further damage to the property. The term does not include fees collected by a public adjuster as defined in s. 626.854(1).

(9)(a) An assignee must provide the named insured, insurer, and the assignor, if not the named insured, with a written notice of intent to initiate litigation before filing suit under the policy. Such notice must be served by certified mail, return receipt requested, to the name and mailing address designated by the insurer in the policy forms, or by electronic delivery at the e-mail address designated by the insurer in the policy forms, at least 10 business days before filing suit, but may not be served before the insurer has made a determination of coverage under s. 627.70131. The notice must specify the damages in dispute, the amount claimed, and a presuit settlement demand. Concurrent with the notice, and as a precondition to filing suit, the assignee must provide the named insured, insurer, and the assignor, if not the named insured, a detailed written

invoice or estimate of services, including itemized information on equipment, materials, and supplies; the number of labor hours; and, in the case of work performed, proof that the work has been performed in accordance with accepted industry standards.

Section 17. Section 627.7276, Florida Statutes, is amended to read:

627.7276 Notice of limited coverage.—

(1) An automobile policy that does not contain coverage for bodily injury and property damage must include a notice ~~be clearly stamped or printed to the effect~~ that such coverage is not included in the policy in the following manner:

"THIS POLICY DOES NOT PROVIDE BODILY INJURY AND PROPERTY DAMAGE LIABILITY INSURANCE OR ANY OTHER COVERAGE FOR WHICH A SPECIFIC PREMIUM CHARGE IS NOT MADE, AND DOES NOT COMPLY WITH ANY FINANCIAL RESPONSIBILITY LAW."

(2) This notice ~~legend~~ must accompany ~~appear on~~ the policy declaration page and ~~on the filing back of the policy and~~ be ~~printed~~ in a ~~contrasting color from that used on the policy and in~~ type and ~~larger than the largest type used in the~~ text at least as large as the type and text used on the declaration page ~~thereof, as an overprint or by a rubber stamp impression~~.

Section 18. Section 634.171, Florida Statutes, is amended to read:

634.171 Salesperson to be licensed and appointed; exemptions.—Salespersons for motor vehicle service agreement companies and insurers shall be licensed, appointed, renewed, continued, reinstated, or terminated as prescribed in chapter 626 for insurance representatives in general. However, they shall be exempt from all other provisions of chapter 626 including fingerprinting, photo identification, education, and examination provisions. License, appointment, and other fees shall be those prescribed in s. 624.501. A licensed and appointed salesperson shall be directly responsible and accountable for all acts of her or his employees and other representatives. Each service agreement company or insurer shall, on forms prescribed by the department, within 30 days after termination of the appointment, notify the department of such termination. An ~~No~~ employee or salesperson of a motor vehicle service agreement company or insurer may not directly or indirectly solicit or negotiate insurance contracts, or hold herself or himself out in any manner to be an insurance agent, unless so qualified, licensed, and appointed therefor under the Florida Insurance Code. A licensed personal lines or general lines agent is not required to be licensed as a salesperson under this section to solicit, negotiate, advertise, or sell motor vehicle service agreements. A motor vehicle service

agreement company is not required to be licensed as a salesperson to solicit, sell, issue, or otherwise transact the motor vehicle service agreements issued by the motor vehicle service agreement company.

Section 19. Section 634.317, Florida Statutes, is amended to read:

634.317 License and appointment required; exemptions.—A ~~No~~ person may not solicit, negotiate, or effectuate home warranty contracts for remuneration in this state unless such person is licensed and appointed as a sales representative. A licensed and appointed sales representative shall be directly responsible and accountable for all acts of the licensee's employees. A licensed personal lines or general lines agent is not required to be licensed as a sales representative under this section to solicit, negotiate, advertise, or sell home warranty contracts.

Section 20. Section 634.419, Florida Statutes, is amended to read:

634.419 License and appointment required; exemptions.—A ~~No~~ person or entity may not ~~shall~~ solicit, negotiate, advertise, or effectuate service warranty contracts in this state unless such person or entity is licensed and appointed as a sales representative. Sales representatives shall be responsible for the actions of persons under their supervision. However, a service warranty association licensed as such under this part is ~~shall~~ not ~~be~~ required to be licensed and appointed as a sales

representative to solicit, negotiate, advertise, or effectuate its products. A licensed personal lines or general lines agent is not required to be licensed as a sales representative under this section to solicit, negotiate, advertise, or sell service warranties.

Section 21. Effective upon this act becoming a law, for the purpose of incorporating the amendment made by this act to section 627.7152, Florida Statutes, in references thereto, subsection (1) and paragraph (d) of subsection (2) of section 627.7153, Florida Statutes, are reenacted to read:

627.7153 Policies restricting assignment of post-loss benefits under a property insurance policy.—

(1) As used in this section, the term "assignment agreement" has the same meaning as provided in s. 627.7152.

(2) An insurer may make available a policy that restricts in whole or in part an insured's right to execute an assignment agreement only if all of the following conditions are met:

(d) Each restricted policy include on its face the following notice in 18-point uppercase and boldfaced type:

THIS POLICY DOES NOT ALLOW THE UNRESTRICTED ASSIGNMENT OF POST-LOSS INSURANCE BENEFITS. BY SELECTING THIS POLICY, YOU WAIVE YOUR RIGHT TO FREELY ASSIGN OR TRANSFER THE POST-LOSS PROPERTY INSURANCE BENEFITS AVAILABLE UNDER THIS POLICY TO A THIRD PARTY OR TO

OTHERWISE FREELY ENTER INTO AN ASSIGNMENT AGREEMENT AS THE TERM IS DEFINED IN SECTION 627.7152 OF THE FLORIDA STATUTES.

Section 22. Except as otherwise expressly provided in this act, and except for this section, which shall take effect upon this act becoming a law, this act shall take effect July 1, 2021.

COMMERCE COMMITTEE

CS/HB 815 by Rep. Gregory
Insurance

AMENDMENT SUMMARY
April 19, 2021

Amendment 1 by Rep. Gregory (Line 323):

- Removes a new provision that allows insurers to require that insureds who elect to construct or retrofit a structure for windstorm mitigation purposes provide evidence of compliance with mitigation standards before receiving any premium discounts, credits, or rate reductions allowed under a personal lines residential property insurance rating plan.
- Removes the section relating to replacement cost coverage and law and ordinance coverage.

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 Gregory offered the following:

Amendment (with title amendment)

Remove lines 323-577 and insert:

requirements of this section.

Section 9. Subsection (1) of section 627.072, Florida Statutes, is amended to read:

627.072 Making and use of rates.—

(1) As to workers' compensation and employer's liability insurance, the following factors shall be used in the determination and fixing of rates:

(a) The past loss experience and prospective loss experience within and outside this state;

(b) The impact resulting from the past loss experience and prospective loss experience for insurers whose data are missing

from statewide experience due to insolvency. Prior reported data for such insurers and all other relevant information may be used to assess the impact on rates;

(c) ~~(b)~~ The conflagration and catastrophe hazards;

(d) ~~(c)~~ A reasonable margin for underwriting profit and contingencies;

(e) ~~(d)~~ Dividends, savings, or unabsorbed premium deposits allowed or returned by insurers to their policyholders, members, or subscribers;

(f) ~~(e)~~ Investment income on unearned premium reserves and loss reserves;

(g) ~~(f)~~ Past expenses and prospective expenses, both those countrywide and those specifically applicable to this state; and

(h) ~~(g)~~ All other relevant factors, including judgment factors, within and outside this state.

Section 10. Paragraph (a) of subsection (6) of section 627.351, Florida Statutes, is amended to read:

627.351 Insurance risk apportionment plans.—

(6) CITIZENS PROPERTY INSURANCE CORPORATION.—

(a) The public purpose of this subsection is to ensure that there is an orderly market for property insurance for residents and businesses of this state.

1. The Legislature finds that private insurers are unwilling or unable to provide affordable property insurance coverage in this state to the extent sought and needed. The

absence of affordable property insurance threatens the public health, safety, and welfare and likewise threatens the economic health of the state. The state therefore has a compelling public interest and a public purpose to assist in assuring that property in the state is insured and that it is insured at affordable rates so as to facilitate the remediation, reconstruction, and replacement of damaged or destroyed property in order to reduce or avoid the negative effects otherwise resulting to the public health, safety, and welfare, to the economy of the state, and to the revenues of the state and local governments which are needed to provide for the public welfare. It is necessary, therefore, to provide affordable property insurance to applicants who are in good faith entitled to procure insurance through the voluntary market but are unable to do so. The Legislature intends, therefore, that affordable property insurance be provided and that it continue to be provided, as long as necessary, through Citizens Property Insurance Corporation, a government entity that is an integral part of the state, and that is not a private insurance company. To that end, the corporation shall strive to increase the availability of affordable property insurance in this state, while achieving efficiencies and economies, and while providing service to policyholders, applicants, and agents which is no less than the quality generally provided in the voluntary market, for the achievement of the foregoing public purposes.

Because it is essential for this government entity to have the maximum financial resources to pay claims following a catastrophic hurricane, it is the intent of the Legislature that the corporation continue to be an integral part of the state and that the income of the corporation be exempt from federal income taxation and that interest on the debt obligations issued by the corporation be exempt from federal income taxation.

2. The Residential Property and Casualty Joint Underwriting Association originally created by this statute shall be known as the Citizens Property Insurance Corporation. The corporation shall provide insurance for residential and commercial property, for applicants who are entitled, but, in good faith, are unable to procure insurance through the voluntary market. The corporation shall operate pursuant to a plan of operation approved by order of the Financial Services Commission. The plan is subject to continuous review by the commission. The commission may, by order, withdraw approval of all or part of a plan if the commission determines that conditions have changed since approval was granted and that the purposes of the plan require changes in the plan. For the purposes of this subsection, residential coverage includes both personal lines residential coverage, which consists of the type of coverage provided by homeowner, mobile home owner, dwelling, tenant, condominium unit owner, and similar policies; and commercial lines residential coverage, which consists of the

type of coverage provided by condominium association, apartment building, and similar policies.

3. With respect to coverage for personal lines residential structures:

a. Effective January 1, 2014, a structure that has a dwelling replacement cost of $1 million or more, or a single condominium unit that has a combined dwelling and contents replacement cost of $1 million or more, is not eligible for coverage by the corporation. Such dwellings insured by the corporation on December 31, 2013, may continue to be covered by the corporation until the end of the policy term. The office shall approve the method used by the corporation for valuing the dwelling replacement cost for the purposes of this subparagraph. If a policyholder is insured by the corporation before being determined to be ineligible pursuant to this subparagraph and such policyholder files a lawsuit challenging the determination, the policyholder may remain insured by the corporation until the conclusion of the litigation.

b. Effective January 1, 2015, a structure that has a dwelling replacement cost of $900,000 or more, or a single condominium unit that has a combined dwelling and contents replacement cost of $900,000 or more, is not eligible for coverage by the corporation. Such dwellings insured by the corporation on December 31, 2014, may continue to be covered by the corporation only until the end of the policy term.

c. Effective January 1, 2016, a structure that has a dwelling replacement cost of $800,000 or more, or a single condominium unit that has a combined dwelling and contents replacement cost of $800,000 or more, is not eligible for coverage by the corporation. Such dwellings insured by the corporation on December 31, 2015, may continue to be covered by the corporation until the end of the policy term.

d. Effective January 1, 2017, a structure that has a dwelling replacement cost of $700,000 or more, or a single condominium unit that has a combined dwelling and contents replacement cost of $700,000 or more, is not eligible for coverage by the corporation. Such dwellings insured by the corporation on December 31, 2016, may continue to be covered by the corporation until the end of the policy term.

The requirements of sub-subparagraphs b.-d. do not apply in counties where the office determines there is not a reasonable degree of competition. In such counties a personal lines residential structure that has a dwelling replacement cost of less than $1 million, or a single condominium unit that has a combined dwelling and contents replacement cost of less than $1 million, is eligible for coverage by the corporation.

4. It is the intent of the Legislature that policyholders, applicants, and agents of the corporation receive service and treatment of the highest possible level but never less than that

generally provided in the voluntary market. It is also intended that the corporation be held to service standards no less than those applied to insurers in the voluntary market by the office with respect to responsiveness, timeliness, customer courtesy, and overall dealings with policyholders, applicants, or agents of the corporation.

5.a. Effective January 1, 2009, a personal lines residential structure that is located in the "wind-borne debris region," as defined in s. 1609.2, International Building Code (2006), and that has an insured value on the structure of $750,000 or more is not eligible for coverage by the corporation unless the structure has opening protections as required under the Florida Building Code for a newly constructed residential structure in that area. A residential structure is deemed to comply with this sub-subparagraph if it has shutters or opening protections on all openings and if such opening protections complied with the Florida Building Code at the time they were installed.

b. Any major structure, as defined in s. 161.54(6)(a), that is newly constructed, or rebuilt, repaired, restored, or remodeled to increase the total square footage of finished area by more than 25 percent, pursuant to a permit applied for after July 1, 2015, is not eligible for coverage by the corporation if the structure is seaward of the coastal construction control line established pursuant to s. 161.053 or is within the Coastal

Barrier Resources System as designated by 16 U.S.C. ss. 3501-3510.

6. With respect to wind-only coverage for commercial lines residential condominiums, ~~effective July 1, 2014,~~ a condominium may ~~shall~~ be deemed ineligible for coverage when ~~if~~ 50 percent or more of the units are rented more than eight times in a calendar year for a rental agreement period of less than 30 days.

Section 11. Subsection (6) is added to section 627.421, Florida Statutes, to read:

627.421 Delivery of policy.—

(6) If a policy is sold in a wholly electronic manner, the insurer may electronically transmit all policy documents and claims communications to the insured or policyholder if the insurer provides a disclosure to the insured or policyholder at the time of sale.

Section 12. Effective upon this act becoming a law, subsections (1), (2), and (4) of section 627.444, Florida Statutes, are amended, and subsections (7) and (8) are added to that section, to read:

627.444 Loss run statements for all lines of insurance.—

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

(a) "Loss run statement" means a report that contains the policy number, the period of coverage, the number of claims, the paid losses on all claims, and the date of each loss. The term

does not include supporting claim file documentation, including, but not limited to, copies of claim files, investigation reports, evaluation statements, insureds' statements, and documents protected by a common law or statutory privilege. As applied to group health insurance, the term means a report that also contains the premiums paid, the number of insureds on a monthly basis, and the dependent status.

(b) "Provide" means to electronically send a document or to allow access through an electronic portal to view or generate a document.

(2) Notwithstanding any other law, an insurer shall provide to an insured within 15 calendar days after an individual or entity designated by the insurer receives ~~receipt of~~ the insured's written request, either:

(a) A loss run statement; or

(b) For personal lines of insurance, information on how to obtain a loss run statement at no charge through a consumer reporting agency. However, this section does not prohibit an insured from requesting a loss run statement after receiving information from a consumer reporting agency, in which case the insurer must then provide the loss run statement within 15 calendar days after the individual or entity designated by the insurer receives the insured's subsequent written request.

(4) A loss run statement provided pursuant to this section must contain a claims history with the insurer for the preceding

3 ~~5~~ years or, if the claims history is less than 3 ~~5~~ years, a complete claims history with the insurer.

(7) This section does not apply to a life insurer as defined in s. 624.602.

(8) For group health insurance, only the group policyholder may request and be provided a loss run statement pursuant to this section.

Section 13. Section 627.6647, Florida Statutes, is repealed.

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

Remove lines 34-58 and insert:

amending s. 627.072, F.S.; providing a ratemaking factor for workers' compensation and employer's liability insurance; amending s. 627.351, F.S.; revising conditions for determining the ineligibility of condominiums for wind-only coverage; amending s. 627.421, F.S.; authorizing insurers to electronically transmit policy documents and claims communications under certain circumstances; amending s. 627.444, F.S.; revising the definition of the term "loss run statement"; specifying the entities that must receive requests for loss run statements; specifying that insurers must provide loss run statements under certain circumstances; revising the required

claims history in loss run statements; providing applicability; limiting loss run statement requests with respect to group health insurance policies to group policyholders; repealing s. 627.6647, F.S., relating to the release of information required for bid to group health insurance policyholders;

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 911 Medical Treatment of Animals
SPONSOR(S): Regulatory Reform Subcommittee, Buchanan and others
TIED BILLS: **IDEN./SIM. BILLS:** CS/CS/SB 1370

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Regulatory Reform Subcommittee	17 Y, 0 N, As CS	Thompson	Anstead
2) Commerce Committee		Thompson	Hamon

SUMMARY ANALYSIS

In Florida, the practice of "veterinary medicine" means the diagnosis of medical conditions of animals, and the prescribing or administering of medicine and treatment to animals for the prevention, cure, or relief of a wound, fracture, bodily injury, or disease. Veterinarians are regulated by the Board of Veterinary Medicine (Board) in the Department of Business and Professional Regulation (DBPR) pursuant to ch. 474, F.S., relating to veterinary medical practice (practice act). The purpose of the practice act is to ensure that every veterinarian practicing in this state meets minimum requirements for safe practice to protect public health and safety.

Current law defines a "veterinarian/client/patient relationship" (VCPR) as one in which a veterinarian has assumed responsibility for making medical judgments about the health of an animal and its need for medical treatment. Veterinarians are permitted to prescribe drugs in the course of veterinary practice; however, the veterinarian must be either personally acquainted with the keeping and caring of the animal and have recently seen the animal, or have made medically appropriate and timely visits to the premises where the animal is kept before prescribing drugs in the course of practice.

The use of electronic communications to facilitate patient health care (telemedicine) is not addressed in the practice act and is not specifically authorized for practitioners of veterinary medicine in Florida. However, medical doctors may practice telemedicine in Florida and establish a patient relationship with a patient evaluation via telemedicine under certain circumstances.

The bill allows veterinarians to establish a VCPR and prescribe drugs remotely, and to remotely supervise rabies vaccinations of impounded animals by an animal control authority. Specifically, the bill:

- Allows the VCPR to be established in person, or by means of veterinary telemedicine if audio-visual technology is used to establish such relationship.
- Specifies that a physical examination is not required for the veterinarian to assume responsibility for making medical judgments or providing treatment.
- Authorizes the practice of "veterinary telemedicine" in a remote setting, including through the use of telephone or audio-visual technology or by other means consistent with the veterinarian's professional judgment, as long as the veterinarian/client/patient relationship is established either in person or by audio-visual technology.
- Prohibits veterinarians from prescribing controlled substances via veterinary telemedicine, unless the controlled substance is prescribed for inpatient treatment or hospice services.
- Requires only licensed veterinarians to practice veterinary telemedicine, grants the Board jurisdiction over the practice of veterinary telemedicine, and specifies standard of care and discipline.
- Allows an animal control authority under indirect supervision of a veterinarian to administer rabies vaccinations.

The bill is not expected to have a fiscal impact on state or local government, and may have a positive fiscal impact on the private sector.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Practice of Veterinary Medicine

The Board of Veterinary Medicine (Board) in the Department of Business and Professional Regulation (DBPR) implements the provisions of ch. 474, F.S., relating to veterinary medical practice (practice act). The purpose of the practice act is to ensure that every veterinarian practicing in this state meets minimum requirements for safe practice to protect public health and safety.[1]

A "veterinarian" is a health care practitioner licensed by the Board to engage in the practice of veterinary medicine in Florida[2] and subject to disciplinary action from the Board for various violations of the practice act.[3]

The practice of "veterinary medicine" is the diagnosis of medical conditions of animals, and the prescribing or administering of medicine and treatment to animals for the prevention, cure, or relief of a wound, fracture, bodily injury, or disease, or holding oneself out as performing any of these functions.[4]

Veterinary medicine includes, with respect to animals:[5]

- Surgery;
- Acupuncture;
- Obstetrics;
- Dentistry;
- Physical therapy;
- Radiology;
- Theriogenology (reproductive medicine);[6] and
- Other branches or specialties of veterinary medicine.

The practice act does not apply to the following categories of persons:

- Veterinary aides, nurses, laboratory technicians, preceptors,[7] or other employees of a licensed veterinarian, who administer medication or provide help or support under the responsible supervision[8] of a licensed veterinarian;
- Certain non-Florida licensed veterinarians who are consulting upon request of a Florida-licensed veterinarian on the treatment of a specific animal or on the treatment on a specific case of the animals of a single owner.
- Faculty veterinarians when they have assigned teaching duties at accredited[9] institutions;
- Certain graduated intern/resident veterinarians of accredited institutions;

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[1] S. 474.201, F.S.
[2] S. 474.202(11), F.S.
[3] Ss. 474.213 & 474.214, F.S.
[4] *See* s. 474.202(9), F.S. Also included is the determination of the health, fitness, or soundness of an animal, and the performance of any manual procedure for the diagnosis or treatment of pregnancy or fertility or infertility of animals.
[5] *See* s. 474.202(13), F.S. Section 474.202(1), F.S., defines "animal" as "any mammal other than a human being or any bird, amphibian, fish, or reptile, wild or domestic, living or dead."
[6] The Society for Theriogenology, established in 1954, is composed of veterinarians dedicated to standards of excellence in animal reproduction. *See* https://www.therio.org/page/HistoryTheriogenolog (last visited Feb. 26, 2021).
[7] A preceptor is a skilled practitioner or faculty member who directs, teaches, supervises, and evaluates students in a clinical setting to allow practical experience with patients. *See also* https://www.merriam-webster.com/dictionary/preceptor#medicalDictionary (last visited Feb. 26, 2021).
[8] The term "responsible supervision" is defined in s. 474.202(10), F.S., as the "control, direction, and regulation by a licensed doctor of veterinary medicine of the duties involving veterinary services" delegated to unlicensed personnel.
[9] Ss. 474.203(1) and (2), F.S., provide that accreditation of a school or college must be granted by the American Veterinary Medical Association (AVMA) Council on Education, or the AVMA Commission for Foreign Veterinary Graduates.

- Certain students in a school or college of veterinary medicine who perform assigned duties by an instructor or work as preceptors;
- Certain doctors of veterinary medicine employed by a state agency or the United States Government;
- Persons or their employees caring for the persons' own animals, as well as certain part-time or temporary employees, or independent contractors, who are hired by an owner to help with herd management and animal husbandry tasks; and
- Certain entities or persons[10] that conduct experiments and scientific research on animals as part of the development of pharmaceuticals, biologicals, serums, or treatment methods of treatment or techniques to diagnose or treatment of human ailments, or in the study and development of methods and techniques applicable to the practice of veterinary medicine.[11]

Any permanent or mobile establishment where a licensed veterinarian practices must have a premises permit issued by DBPR.[12] Each person to whom a veterinary license or premises permit is issued must conspicuously display such document in her or his office, place of business, or place of employment in a permanent or mobile veterinary establishment or clinic.[13]

By virtue of accepting a license to practice veterinary medicine in Florida, a veterinarian consents to render handwriting samples and waive confidentiality pertaining to and authorize certain mental and physical examinations, related to certain investigations or complaints.[14]

For Fiscal Year 2019-2020, there were 11,433 actively licensed veterinarians in Florida, and DBPR received 362 complaints and took 34 disciplinary actions.[15]

Veterinarian/Client/Patient Relationship

The practice act defines a "patient" as any animal for which the veterinarian practices veterinary medicine.[16]

The practice act defines a "veterinarian/client/patient relationship" (VCPR) as one in which a veterinarian has assumed responsibility for making medical judgments about the health of an animal and its need for medical treatment.[17]

Veterinarians are permitted to prescribe drugs in the course of veterinary practice, but may be disciplined by the Board for certain related violations, including ordering, prescribing, or making available medicinal drugs or drugs[18] or controlled substances[19] for use other than for the specific treatment of animal patients for which there is a documented veterinarian/client/patient relationship and without:

- Having sufficient knowledge of the animal to initiate at least a general or preliminary diagnosis of the medical condition of the animal, which means that the veterinarian is personally acquainted with the keeping and caring of the animal and has recently seen the animal or has made medically appropriate and timely visits to the premises where the animal is kept;
- Being available to provide for follow-up care and treatment in case of adverse reactions or failure of the regimen of therapy; and

[10] *See* s. 474.203(6), F.S., which states that the exemption applies to "[s]tate agencies, accredited schools, institutions, foundations, business corporations or associations, physicians licensed to practice medicine and surgery in all its branches, graduate doctors of veterinary medicine, or persons under the direct supervision thereof . . . ."
[11] *See* s. 474.203, F.S.
[12] S. 474.215(1), F.S.
[13] S. 474.216, F.S.
[14] S. 474.2185, F.S.
[15] Department of Business and Professional Regulation, Division of Professions Annual Report Fiscal Year 2019-2020, http://www.myfloridalicense.com/DBPR/os/documents/DivisionAnnualReport_FY1920.pdf (last visited Feb. 26, 2021).
[16] S. 474.202(8), F.S.
[17] S. 474.202(12), F.S.
[18] As defined in s. 465.003(8), F.S.
[19] As defined in s. 893.02(4), F.S.

- Maintaining records which document patient visits, diagnosis, treatment, and other relevant information required under the practice act.[20]

Veterinary Telemedicine

The use of electronic communications to facilitate patient health care (telemedicine) is not addressed in the practice act and is not specifically authorized for practitioners of veterinary medicine in Florida.[21]

Veterinary Telemedicine During the Pandemic

On March 24, 2020, the U.S. Food and Drug Administration (FDA) announced that it would temporarily suspend enforcement of certain prescription limitations in order to allow veterinarians to better utilize telemedicine to address animal health needs during the COVID-19 pandemic. Specifically, the FDA has provided guidance related to suspending the enforcement of the animal examination and premises visit VCPR requirements relevant to FDA regulations governing **Extralabel Drug Use in Animals**[22] and **Veterinary Feed Directive Drugs**.[23] This allows veterinarians to prescribe or authorize the use of drugs without direct examination or making visits to patients, which will limit human-to-human interaction and potential spread of COVID-19 in the community.[24]

According to the FDA, veterinarians are licensed by their state veterinary licensing board and must meet the requirements of the licensing board to practice in that state. FDA regulates the devices and drugs that veterinarians use, and the conditions under which veterinarians may **prescribe drugs for extra-label uses**. When an approved drug is used in a manner other than what is stated on the label, it is an extra-label use. This is commonly called an "off-label" use because the drug is used in a way that is "off the label."[25]

On March 27, 2020, DBPR issued emergency order EO 2020-04, which suspends any restriction of ch. 474, F.S., or ch. 61G-18, F.A.C., which would prohibit an active Florida-licensed veterinarian from practicing telemedicine on a patient. The order specifies that attending veterinarians must be comfortable assessing the patient remotely and feel able to exercise good clinical judgment to assist the patient. The emergency order will expire with the expiration of Executive Order 20-52, including any extension thereof.[26]

Telemedicine in Other States

The use of telemedicine by veterinarians varies by state. Some states allow telemedicine to be used at the veterinarian's discretion, others allow it after the establishment of a VCPR, some do not allow it at all, and others limit telemedicine for purposes of prescribing medication or controlled substances.

In 2017, Virginia passed a law that generally allows telemedicine for veterinarians. In addition, it allows a veterinarian who performs or has performed an appropriate examination of a patient to prescribe certain controlled substances to a patient via the practice of telemedicine. The Virginia Board of Veterinary Medicine provides guidance for telehealth in the practice of veterinary medicine, which indicates that:

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[20] S. 474.214(1)(y)., F.S.
[21] R. 64B8-9.0141, F.A.C. Currently, medical doctors may practice telemedicine in Florida in a patient relationship with a patient evaluation, under certain circumstances.
[22] 21 C.F.R. part 530.
[23] 21 C.F.R. § 558.6.
[24] U.S. Food and Drug Administration, *Coronavirus (COVID-19) Update: FDA Helps Facilitate Veterinary Telemedicine During Pandemic*, https://www.fda.gov/news-events/press-announcements/coronavirus-covid-19-update-fda-helps-facilitate-veterinary-telemedicine-during-pandemic (last visited Feb. 26, 2021).
[25] .S. Food and Drug Administration, What FDA Does and Does Not Regulate, https://www.fda.gov/animal-veterinary/animal-health-literacy/what-fda-does-and-does-not-regulate#top (last visited Mar. 3, 2021).
[26] Department of Business and Professional Regulation, *Emergency Order EO 2020-04*, Mar. 27, 2020, http://www.myfloridalicense.com/dbpr/os/documents/EO_2020-04.pdf (last visited Feb. 26, 2021).

> "Using telehealth technologies in veterinary practice is considered a method of service delivery. The current, applicable regulations apply to all methods of service delivery, including telehealth. The licensee is responsible for using professional judgment to determine if the type of service can be delivered via telehealth at the same standard of care as in-person service."[27]

The Idaho Board of Veterinary Medicine provides the following guidance on telehealth:

> "The veterinarian must employ sound profession judgment to determine whether using Telehealth is appropriate in particular circumstances each and every time animal care is provided and only provide medical advice or treatment via Telehealth to the extent that it is possible without a hands on examination. A veterinarian using Telehealth must take appropriate steps to obtain Informed Consent, establish the VCPR and conduct all appropriate evaluations and history of the patient consistent with traditional standards of care for the particular patient presentation. As such, some situations and patient presentations are appropriate for the utilization of Telehealth as a component of, or in lieu of, hands on medical care, while others are not."[28]

The state of Oklahoma only allows a veterinarian to prescribe drugs via telemedicine under the following conditions:

> "The veterinarian accepts that he or she cannot prescribe drugs when practicing via telehealth alone, unless the veterinarian has sufficient knowledge of the animal or group of animals by virtue of a history and inquiry, and either physical examination or medically appropriate and timely visits to the premises where the animal or group of animals is kept."[29]

The state of Washington only allows telemedicine after a VCPR has been established:

> "The veterinarian shall not establish a veterinary-client-patient relationship solely by telephonic or other electronic means. However, once established, a veterinary-client-patient relationship may be maintained between medically necessary examinations via telephone or other types of consultations."[30]

Florida Telehealth for Medical Doctors

In 2019, the Legislature passed and the Governor approved CS/CS/HB 23, which created s. 456.47, F.S. The bill became effective on July 1, 2019.[31] It authorized Florida-licensed health care providers[32] to use "telehealth" to deliver health care services within their respective scopes of practice.[33] The bill also authorized out-of-state health care providers to use telehealth to deliver health care services to Florida patients if they register with the Department of Health (DOH) or the applicable board[34] and meet

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[27] Virginia Board of Veterinary Medicine Guidance for Telehealth in the Practice of Veterinary Medicine, Guidance Document: 150-25, https://www.dhp.virginia.gov/media/dhpweb/docs/vet/guidance/150-25.pdf (last visited Mar. 3, 2021).
[28] Idaho Board of Veterinary Medicine, Policy Number 2018-2 Telemedicine, https://elitepublic.bovm.idaho.gov/IBVMPortal/IBVM/BoardPolicies/Policy%20Statement-2018-2%20Telemedicine.pdf (last visited Mar. 3, 2021).
[29] Oklahoma State Board of Veterinary Medical Examiners, Board Telemedicine/Telehealth Position Statement, https://www.okvetboard.com/veterinarian-faq/95-board-telemedicine-telehealth-position-statement (last visited Mar. 3, 2021).
[30] Wash. Rev. Code
[31] Chapter 2019-137, s. 6, Laws of Fla.
[32] S. 456.47(1)(b), F.S.
[33] *See also* s. 394.453(3), F.S. The Florida Mental Health Act (popularly known as "The Baker Act," s. 394.451, F.S.), contains a legislative finding that "the use of telemedicine for patient evaluation, case management, and ongoing care will improve management of patient care and reduce costs of transportation."
[34] Under s. 456.001(1), F.S., the term "board" is defined as any board, commission, or other statutorily created entity, to the extent such entity is authorized to exercise regulatory or rulemaking functions within the DOH or, in some cases, within the DOH's Division of Medical Quality Assurance.

certain eligibility requirements.[35] A registered out-of-state telehealth provider may use telehealth, within the relevant scope of practice established by Florida law and rule, to provide health care services to Florida patients but is prohibited from opening an office in Florida and from providing in-person health care services to patients located in Florida.

On March 16, 2020, Surgeon General Scott Rivkees executed DOH Emergency Order 20-002 authorizing certain out-of-state physicians, osteopathic physicians, physician assistants, and advanced practice registered nurses to provide telehealth in Florida without the need to register as a telehealth provider under s. 456.47(4), F.S.[36] This emergency order was extended[37] and will remain in effect until the expiration of the Governor's Executive Order No. 20-52 and extensions thereof.[38]

Five days later, the Surgeon General executed DOH Emergency Order 20-003[39] to also authorize certain out-of-state clinical social workers, marriage and family therapists, mental health counselors, and psychologists to provide telehealth in Florida without the need to register as a telehealth provider under s. 456.47(4), F.S. This emergency order was also extended[40] and will remain in effect until the expiration of Executive Order No. 20-52 and extensions thereof.

Controlled Substances

Chapter 893, F.S., sets forth the Florida Comprehensive Drug Abuse Prevention and Control Act. This chapter classifies controlled substances into five schedules in order to regulate the manufacture, distribution, preparation, and dispensing of the substances. The scheduling of substances in Florida law is generally consistent with the federal scheduling of substances under 21 U.S.C. s. 812:

- A Schedule I substance has a high potential for abuse and no currently accepted medical use in treatment in the United States and its use under medical supervision does not meet accepted safety standards. Examples include heroin and lysergic acid diethylamide (LSD).
- A Schedule II substance has a high potential for abuse, a currently accepted but severely restricted medical use in treatment in the United States, and abuse may lead to severe psychological or physical dependence. Examples include cocaine and morphine.
- A Schedule III substance has a potential for abuse less than the substances contained in Schedules I and II, a currently accepted medical use in treatment in the United States, and abuse may lead to moderate or low physical dependence or high psychological dependence or, in the case of anabolic steroids, may lead to physical damage. Examples include lysergic acid; ketamine; and some anabolic steroids.
- A Schedule IV substance has a low potential for abuse relative to the substances in Schedule III, a currently accepted medical use in treatment in the United States, and abuse may lead to limited physical or psychological dependence relative to the substances in Schedule III. Examples include alprazolam, diazepam, and phenobarbital.
- A Schedule V substance has a low potential for abuse relative to the substances in Schedule IV, a currently accepted medical use in treatment in the United States, and abuse may lead to limited physical or psychological dependence relative to the substances in Schedule IV. Examples include low dosage levels of codeine, certain stimulants, and certain narcotic compounds.

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[35] Section 456.47(4), F.S.

[36] Department of Health, State of Florida, *Emergency Order DOH No. 20-002* (Mar. 16, 2020) http://floridahealthcovid19.gov/wp-content/uploads/2020/03/filed-eo-doh-no.-20-002-medical-professionals-03.16.2020.pdf (last visited Feb. 26, 2021).

[37] Department of Health, State of Florida, *Emergency Order DOH No. 20-011* (June 30, 2020) https://floridahealthcovid19.gov/wp-content/uploads/2020/06/DOH-Emergency-Order-DOH-No.-20-011.pdf (last visited Feb. 26, 2021).

[38] Under s. 252.36(2), F.S., no state of emergency declared pursuant to the Florida Emergency Management Act, may continue for more than 60 days unless renewed by the Governor. The state of emergency declared in Executive Order 20-52, was extended by Executive Orders 20-114, 20- 166, 20-192, 20-213, 20-276, and 20-316. Executive Order 20-316 will remain in effect until Feb. 27, 2020. Office of the Governor, State of Florida, *Executive Order 20-316* (Dec. 29, 2020) https://www.flgov.com/wp-content/uploads/orders/2020/EO_20-316.pdf (last visited Feb. 26, 2021).

[39] Department of Health, State of Florida, *Emergency Order DOH No. 20-003* (Mar. 21, 2020) https://s33330.pcdn.co/wp-content/uploads/2020/03/DOH-EO-20-003-3.21.2020.pdf (last visited Feb. 14, 2021).

[40] Department of Health, State of Florida, *Emergency Order DOH No. 20-005* (Apr. 21, 2020) https://s33330.pcdn.co/wp-content/uploads/2020/04/DOH-Emergency-Order-20-005-extending-20-003.pdf (last visited Feb. 14, 2021).

Prescription Drug Law for Medical Doctors

Section 456.44, F.S., limits the authorization to prescribe only a three-day supply of a Schedule II opioid[41] or up to a seven-day supply if medically necessary. The prescribing limits on Schedule II opioids do not apply to prescriptions for acute pains related to: cancer, a terminal condition, pain treated with palliative care, or a traumatic injury with an Injury Severity Score of 9 or higher.[42] A prescriber and dispenser must also report to and review the Prescription Drug Monitoring Program database to review a patient's controlled substance dispensing history prior to prescribing or dispensing a Schedule II-IV controlled substance for patients 16 years older.[43] These limitations and requirements apply to practitioners providing services in-person and through telehealth.

Section 456.47(2)(c), F.S., prohibits telehealth providers from prescribing any controlled substance unless the controlled substance is prescribed for:

- The treatment of a psychiatric disorder;
- Inpatient treatment at a licensed hospital;
- The treatment of a patient receiving hospice services; or
- The treatment of a resident of a nursing home facility.

According to a study published by the University of Florida College of Pharmacy,[44] the "2018 Florida law restricting opioid prescriptions for acute pain has led to a drop in opioid use." Specifically, the study "found the number of new opioid users per month dropped 16 percent immediately after the law was implemented, and the number of new users continues to decrease each month. Additionally, the average days' supply fell from 5.4 days prior to the law to three days. The law was also associated with an immediate decrease in the use of hydrocodone, the most commonly used Schedule II opioid."[45]

Prescription Drug Law for Veterinarians

In order to purchase, prescribe, administer or dispense controlled substances in Florida, veterinarians must obtain a license from the U.S. Drug Enforcement Agency (DEA). Florida does not require any additional licensure for veterinarians to purchase and prescribe controlled drugs.[46]

The DEA is a division within the U.S. Department of Justice and reports to the U.S. Attorney General. In consultation with the Secretary of Health and Human Services and others, the Attorney General oversees the listing of substances on five schedules (Classes I, II, III, IV or V) of controlled agents as described in Title 21 United States Code (USC) of the Controlled Substances Act. The central mission of the DEA is to enforce controlled substances laws and regulations.

With respect to veterinarians and other health professionals, the major focus of the DEA is to prevent illegal diversion of controlled prescription drugs for the purpose of illicit or non-medical uses. In order to legally purchase, dispense or prescribe controlled prescription drugs, a veterinarian must be licensed by the DEA. Prescription drugs that are regulated or controlled by the DEA include many important drugs that are used routinely by veterinarians. DEA-controlled drugs are tightly controlled at all aspects of manufacturing, distribution, ordering, storage, use and disposition.[47]

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[41] All opioids are controlled substances. Opioids range in classification between Schedule I and Schedule V.
[42] S. 456.44(1)(a), F.S.
[43] S. 893.055, F.S.
[44] Juan M. Hincapie-Castillo, *Changes in Opioid Use After Florida's Restriction Law for Acute Pain Prescriptions* (Feb. 28, 2020), https://jamanetwork.com/journals/jamanetworkopen/fullarticle/2762015?utm_source=For_The_Media&utm_medium=referral&utm_campaign=ftm_links&utm_term=022820 (last visited Feb. 27, 2021).
[45] Matthew Splett, *UF College of Pharmacy, Department of Pharmaceutical Outcomes and Policy* (Feb. 27, 2020), https://ufhealth.org/news/2020/new-florida-law-leads-decline-opioid-use-according-uf-study (last visited Feb. 27, 2021).
[46] Thomas Vickory, PhD, DEA REGULATION OF CONTROLLED DRUGS, https://www.vetfolio.com/learn/article/florida-drug-laws-update-2013 (last visited Feb. 27, 2021).
[47] Thomas, *supra* note 46.

While veterinarians are allowed to write prescriptions for controlled drugs, they cannot order controlled drugs from their local pharmacy for "in-house" use nor for secondary re-sale. Like any other prescription, controlled drug prescriptions must be written for a specific patient and cannot be for general use. As a licensed DEA registrant, veterinarians are expected to create and maintain a system that provides strong safeguards against theft or diversion of controlled drugs in their practice.[48]

Two opioids are approved and marketed for use in animals, butorphanol and buprenorphine. Due to the limited number of approved and marketed veterinary opioids, veterinarians who need to use opioids to control pain in their patients generally use products approved for use in people.[49]

Federal Controlled Substance Law[50]

The Ryan Haight Online Pharmacy Consumer Protection Act of 2008[51] amended the federal Controlled Substances Act, to prohibit a practitioner from issuing a "valid prescription" for a controlled substance through the Internet without having first conducted at least one in-person medical evaluation, except in certain circumstances. Thereafter, the prescriber may prescribe controlled substances to that patient via Internet or a phone call. The Act offers seven exceptions to the in-person exam. One such exception occurs when the Secretary of the federal Department of Health and Human Services (HHS) has declared a public health emergency.

Florida DOH Emergency Order No. 20-002

The HHS Secretary authorized qualified prescribers to prescribe Schedule II-V controlled substances, and Surgeon General Rivkees issued DOH Emergency Order No. 20-002[52], which suspended s. 456.47(2)(c), F.S., and authorized specified Florida-licensed prescribers[53] to issue a renewal prescription for a Schedule II-IV controlled substance only for an existing patient for the purpose of treating chronic nonmalignant pain without conducting another physical examination of the patient. This emergency order was extended[54] and will remain in effect until the expiration of Executive Order No. 20-52 and extensions thereof.[55]

Federal Prescription Guidance During the COVID-19 Public Health Emergency

On January 31, 2020, the Secretary of HHS issued a public health emergency.[56] On March 16, 2020, the DEA published a COVID-19 Information page on the Diversion Control Division website, authorizing DEA-registered practitioners to issue prescriptions for all Schedule II-V controlled substances to patients without first conducting an in-person medical evaluation, provided all of the following conditions are met:

- The prescription is issued for a legitimate medical purpose by a practitioner acting in the usual course of his/her professional practice.

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[48] Thomas, *supra* note 46.
[49] U.S. FDA, *The Opioid Epidemic: What Veterinarians Need to Know*, https://www.fda.gov/animal-veterinary/resources-you/opioid-epidemic-what-veterinarians-need-know (last visited Feb. 27, 2021).
[50] 21 U.S.C. s. 829.
[51] Public Law No. 110-435 (2008).
[52] Department of Health, State of Florida, *Emergency Order DOH No. 20-002* (Mar. 16, 2020) http://floridahealthcovid19.gov/wp-content/uploads/2020/03/filed-eo-doh-no.-20-002-medical-professionals-03.16.2020.pdf (last visited Feb. 14, 2021).
[53] Physicians, osteopathic physicians, physician assistants, or advanced practice registered nurses that have designated themselves as a controlled substance prescribing practitioner on their practitioner profiles pursuant to s. 456.44, F.S.
[54] Department of Health, State of Florida, *Emergency Order DOH No. 20-011* (June 30, 2020) https://floridahealthcovid19.gov/wp-content/uploads/2020/06/DOH-Emergency-Order-DOH-No.-20-011.pdf (last visited Feb. 14, 2021).
[55] Under s. 252.36(2), F.S., no state of emergency declared pursuant to the Florida Emergency Management Act, may continue for more than 60 days unless renewed by the Governor. The state of emergency declared in Executive Order 20-52, was extended by Executive Orders 20-114, 20- 166, 20-192, 20-213, 20-276, and 20-316. Executive Order 20-316 will remain in effect until Feb. 27, 2020. Office of the Governor, State of Florida, *Executive Order 20-316* (Dec. 29, 2020) https://www.flgov.com/wp-content/uploads/orders/2020/EO_20-316.pdf (last visited Feb. 9, 2021).
[56] Determination that a Public Health Emergency Exists, Alex M. Azar II, Secretary of U.S. Department of Health and Human Services (January 31, 2020) *available at* https://www.phe.gov/emergency/news/healthactions/phe/Pages/2019-nCoV.aspx (last visited Feb. 9, 2021).

- The evaluation is conducted using an audio-visual, real-time, two-way interactive communication system.
- The practitioner is acting in accordance with applicable federal and state law.[57]

Rabies Vaccinations

All dogs, cats, and ferrets four months of age or older must be vaccinated **by a licensed veterinarian** against rabies with a vaccine that is licensed by the U.S. Department of Agriculture (USDA) for use in those species. The owner must have the animal revaccinated 12 months after the initial vaccination, and subsequent vaccinations must conform to the vaccine manufacturer's directions. The cost of vaccination must be borne by the animal's owner. Violations of this requirement are a civil infraction, punishable as provided in s. 828.27(2), F.S.[58]

Currently, Florida law does not appear to allow anyone other than the veterinarian to administer the rabies vaccine. The law allows certain vaccines, anesthesia and tranquilization to be administered by a veterinary aide, nurse, laboratory technician, intern, or other employee of a licensed veterinarian while under the "immediate supervision" of a licensed veterinarian.[59] In addition, the following tasks may be performed without the licensed veterinarian on the premises:

- The administration of medication and treatment, **excluding vaccinations**, as directed by the licensed veterinarian; and
- The obtaining of samples and the performance of those diagnostic tests, including radiographs, directed by the licensed veterinarian.[60]

The Board has recognized that the following diseases are communicable to humans and are of public health significance, and as a result, **only a veterinarian** is authorized to immunize or treat an animal for these diseases. The diseases include:

- Brucellosis.
- Tuberculosis.
- Rabies.
- Equine Encephalomyelitis.[61]

Effect of the Bill

The bill allows licensed veterinarians to establish a VCPR remotely and practice veterinary telemedicine as follows:

Related to the VCPR:

- Allows the VCPR to be established in person, or by means of veterinary telemedicine if audio-visual technology is used to establish such relationship.
- Specifies that a physical examination is not required for the veterinarian to assume responsibility for making medical judgments or providing treatment.

Related to Veterinary Telemedicine:

- Defines "veterinary telemedicine" to mean the practice of veterinary medicine in a remote setting, including through the use of telephone or audio-visual technology or by other means consistent with the veterinarian's professional judgment, as long as the

[57] Diversion Control Division, U.S. Department of Justice Drug Enforcement Administration, *COVID-19 Information Page*, *available at* https://www.deadiversion.usdoj.gov/coronavirus.html (last visited Feb. 9, 2021). Letter from Thomas Prevoznik, Deputy Assistant Administrator, Diversion Control Division, U.S. Department of Justice Drug Enforcement Administration, to DEA Qualifying Practitioners and Other Practitioners, (Mar. 31, 2020) *available at* https://www.deadiversion.usdoj.gov/GDP/(DEA-DC-022)(DEA068)%20DEA%20SAMHSA%20buprenorphine%20telemedicine%20%20(Final)%20+Esign.pdf (last visited Feb. 9, 2021).
[58] S. 828.30(1), F.S.
[59] S. 474.202(5), F.S., defines "immediate supervision" or words of similar purport to mean a licensed doctor of veterinary medicine is on the premises whenever veterinary services are being provided.
[60] R. 61G18-17.005, F.A.C.
[61] R. 61G18-17.006, F.A.C.

veterinarian/client/patient relationship is established either in person or by audio-visual technology.

- Prohibits veterinarians from prescribing controlled substances if the veterinarian/client/patient relationship has been established remotely and the veterinarian has not previously performed a physical examination, unless the controlled substance is prescribed for the following:
  - Inpatient treatment at an animal clinic or hospital; or
  - The treatment of a patient receiving hospice services.
- Requires veterinarians to hold a current license to practice veterinary medicine in Florida in order to practice veterinary telemedicine in Florida.
- Grants the Board jurisdiction over a veterinarian practicing veterinary telemedicine in Florida, regardless of where the veterinarian's physical offices are located.
- Specifies that the practice of veterinary telemedicine is not a violation of the standard of care, and a veterinarian may not be disciplined solely for practicing veterinary telemedicine.
- Removes the requirement that a veterinarian be personally acquainted and have made timely visits with the animal in order to prescribe certain drugs in certain situations.

Related to Rabies Vaccinations:

- Allows an employee, agent, or contractor of an animal control authority acting under the indirect supervision of a veterinarian to administer rabies vaccinations to impounded animals that will be transferred, rescued, fostered, adopted, or reclaimed by the owner.
- Defines "indirect supervision," to mean the supervising veterinarian is available for consultation by telecommunications but is not required to be on the premises during such consultation.
  - The supervising veterinarian assumes responsibility for the veterinary care given to the animal by any person working under or at his or her direction and supervision.
- Authorizes veterinarians who supervise an employee, agent, or contractor of an animal control authority administering the rabies vaccination to an animal to affix his or her signature stamp in lieu of an actual signature.

B. SECTION DIRECTORY:

Section 1: Amends s. 474.202, F.S., revising the definition of "veterinarian/client/patient relationship."

Section 2: Creates s. 474.2021, F.S., authorizing veterinarians to practice veterinary telemedicine, prohibiting veterinarians from prescribing controlled substances if VCPR is established remotely, providing exceptions, granting the Board jurisdiction, specifying standard of care and discipline.

Section 3: Amends s. 474.203, F.S., conforming a cross reference.

Section 4: Amends s. 474.214, F.S., relating to disciplinary proceedings.

Section 5: Amends s. 828.30, F.S., relating to rabies vaccination of dogs, cats, and ferrets.

Section 6: Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

Indeterminate. Animal control authorities will be able to administer rabies vaccinations of impounded animals without a veterinarian having to be physically present. This may create a savings for local animal control authorities to the extent they are incurring extra veterinary costs associated with veterinarians giving rabies vaccinations.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Licensed veterinarians will be permitted to establish a VCPR remotely, and practice veterinary telemedicine, thus giving them more flexibility in their practice. This allows veterinarians to use their professional judgement and determine when an animal needs to be physically seen, and will place them on equal footing with licensed health care providers in the state who are already allowed to practice telehealth.

Animal owners may have greater access to veterinarians and may feel more comfortable, especially during a state of emergency. Visitors and tourists with pets may be able to obtain veterinarian care while on vacation in Florida without the need for locating and conveying their animal to a veterinarian's office.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

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

- Defines "veterinary telemedicine" as "the practice of veterinary medicine in a remote setting, including through the use of telephone or audio-visual technology or by other means consistent with the veterinarian's professional judgment."
- Authorizes veterinarians to establish a veterinarian/client/patient relationship in person, or by means of veterinary telemedicine.

- Specifies that a physical examination is not required for the veterinarian to assume responsibility for making medical decisions or providing treatment.
- Prohibits veterinarians from prescribing controlled substances if the veterinarian/client/patient relationship has been established remotely and a physical examination has not previously occurred, unless the controlled substance is prescribed for the following:
    - Inpatient treatment at an animal clinic or hospital; or
    - The treatment of a patient receiving hospice services.
- Requires veterinarians to hold a current license to practice veterinary medicine in the State of Florida in order to practice veterinary telemedicine in Florida.
- Grants the Florida Board of Veterinary Medicine jurisdiction over a veterinarian practicing veterinary telemedicine in Florida, regardless of where the veterinarian's physical offices are located.
- Specifies that the practice of veterinary telemedicine is not a violation of the standard of care, and a veterinarian may not be disciplined solely for practicing veterinary telemedicine.

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 medical treatment of animals; amending s. 474.202, F.S.; revising and providing definitions; creating s. 474.2021, F.S.; authorizing veterinarians to establish veterinarian/client/patient relationship remotely; prohibiting veterinarians from prescribing controlled substances; providing exceptions; providing licensure requirements to practice veterinary telemedicine; providing jurisdiction of the Florida Board of Veterinary Medicine; providing construction; amending s. 474.203, F.S.; providing an exception to who may immunize or treat an animal for certain diseases; amending s. 474.214, F.S.; revising grounds for disciplinary action against a veterinarian; amending s. 828.30, F.S.; authorizing employees, agents, or contractors of animal control authorities to administer rabies vaccinations under certain circumstances; providing that a supervising veterinarian assumes responsibility for any person working at his or her discretion or under his or her supervision; defining the term "indirect supervision"; providing requirements; authorizing a veterinarian who indirectly supervises the administration of the rabies vaccination to affix his or her signature stamp on a rabies vaccination

certificate; providing an effective date.

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

Section 1. Subsection (12) of section 474.202, Florida Statutes, is amended, and subsection (14) is added to that section, to read:

474.202 Definitions.—As used in this chapter:

(12) "Veterinarian/client/patient relationship" means a relationship where the veterinarian has assumed the responsibility for making medical judgments regarding the health of the animal and its need for medical treatment. Such relationship may be established in person, or by means of veterinary telemedicine if audio-visual technology is used to establish such relationship. A physical examination is not required for the veterinarian to assume responsibility for making medical judgments or providing treatment.

(14) "Veterinary telemedicine" means the practice of veterinary medicine in a remote setting, including through the use of telephone or audio-visual technology or by other means consistent with the veterinarian's professional judgment, as long as the veterinarian/client/patient relationship is established either in person or by audio-visual technology.

Section 2. Section 474.2021, Florida Statutes, is created to read:

474.2021 Veterinary Telemedicine.—

(1) A veterinarian may practice veterinary telemedicine.

(2) A veterinarian may not prescribe controlled substances if the veterinarian/client/patient relationship has been established remotely under this section and the veterinarian has not previously performed a physical examination, unless the controlled substance is prescribed for the following:

(a) Inpatient treatment at an animal clinic or hospital; or

(b) The treatment of a patient receiving hospice services.

(3) A veterinarian must hold a current license to practice veterinary medicine in this state in order to practice veterinary telemedicine.

(4) The board has jurisdiction over a veterinarian practicing veterinary telemedicine in this state, regardless of where the veterinarian's physical offices are located. The practice of veterinary telemedicine in accordance with this section is not a standard of care violation, and a veterinarian may not be disciplined solely for practicing veterinary telemedicine.

Section 3. Paragraph (a) of subsection (5) of section 474.203, Florida Statutes, is amended to read:

474.203 Exemptions.—This chapter does not apply to:

(5)(a) Any person, or the person's regular employee, administering to the ills or injuries of her or his own animals,

including, but not limited to, castration, spaying, and dehorning of herd animals, unless title is transferred or employment provided for the purpose of circumventing this law. This exemption does not apply to any person licensed as a veterinarian in another state or foreign jurisdiction and practicing temporarily in this state. However, except as provided in s. 828.30, only a veterinarian may immunize or treat an animal for diseases that are communicable to humans and that are of public health significance.

For the purposes of chapters 465 and 893, persons exempt pursuant to subsection (1), subsection (2), or subsection (4) are deemed to be duly licensed practitioners authorized by the laws of this state to prescribe drugs or medicinal supplies.

Section 4. Paragraph (y) of subsection (1) of section 474.214, Florida Statutes, is amended to read:

474.214 Disciplinary proceedings.—

(1) The following acts shall constitute grounds for which the disciplinary actions in subsection (2) may be taken:

(y) Using the privilege of ordering, prescribing, or making available medicinal drugs or drugs as defined in chapter 465, or controlled substances as defined in chapter 893, for use other than for the specific treatment of animal patients for which there is a documented veterinarian/client/patient relationship. ~~Pursuant thereto,~~ The veterinarian shall:

1. Have sufficient knowledge of the animal to initiate at least a general or preliminary diagnosis of the medical condition of the animal, which means that the veterinarian is ~~personally~~ acquainted with the keeping and caring of the animal ~~and has recently seen the animal or has made medically appropriate and timely visits to the premises where the animal is kept~~.

2. Be available or provide for followup care and treatment in case of adverse reactions or failure of the regimen of therapy.

3. Maintain records which document patient visits, diagnosis, treatment, and other relevant information required under this chapter.

Section 5. Subsections (1) and (3) of section 828.30, Florida Statutes, are amended to read:

828.30 Rabies vaccination of dogs, cats, and ferrets.—

(1)(a) Except as provided in paragraph (b), all dogs, cats, and ferrets 4 months of age or older must be vaccinated by a licensed veterinarian against rabies with a vaccine that is licensed by the United States Department of Agriculture for use in those species.

(b) An employee, agent, or contractor of an animal control authority acting under the indirect supervision of a veterinarian may vaccinate impounded animals that will be transferred, rescued, fostered, adopted, or reclaimed by the

owner. As used in this subsection, the term "indirect supervision," means that the supervising veterinarian is available for consultation by telecommunications but is not required to be on the premises during such consultation. The supervising veterinarian assumes responsibility for the veterinary care given to the animal by any person working under or at his or her direction and supervision.

(c) The owner of every dog, cat, and ferret shall have the animal revaccinated 12 months after the initial vaccination. Thereafter, the interval between vaccinations shall conform to the vaccine manufacturer's directions. The cost of vaccination must be borne by the animal's owner. Evidence of circulating rabies virus neutralizing antibodies may ~~shall~~ not be used as a substitute for current vaccination in managing rabies exposure or determining the need for booster vaccinations.

(3) Upon vaccination against rabies, the licensed veterinarian shall provide the animal's owner and the animal control authority with a rabies vaccination certificate. Each animal control authority and veterinarian shall use the "Rabies Vaccination Certificate" of the National Association of State Public Health Veterinarians (NASPHV) or an equivalent form approved by the local government that contains all the information required by the NASPHV Rabies Vaccination Certificate. The veterinarian who administers the rabies vaccination, or who supervises an employee, agent, or contractor

of an animal control authority administering the rabies vaccination, ~~vaccine~~ to an animal as required under this section may affix his or her signature stamp in lieu of an actual signature.

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

COMMERCE COMMITTEE

CS/HB 911 by Rep. Buchanan
Medical Treatment of Animals

AMENDMENT SUMMARY
April 19, 2021

Amendment 1 by Rep. Buchanan (strike-all):
The amendment:

- Defines a "limited veterinarian/client/patient relationship" to include establishing a relationship with a client/patient using veterinary telemedicine that includes audio-visual communication.
- Defines "virtual physical examination" to mean a limited physical examination performed through the use of a video-based platform that allows for audio-visual communication between the veterinarian and the client/patient.
- Requires a virtual physical examination for the veterinarian to practice veterinary telemedicine.
- Limits veterinarians that have a limited veterinarian/client/patient relationship, to only use veterinary telemedicine to provide for the triage of patients in first aid and emergency cases, and consultation and prescription of drugs for the following areas of care: nutrition, training, dermatological conditions, and anxiety.
- Prohibits veterinarians from prescribing drugs for extralabel use or veterinary feed directive drugs without a full veterinarian/client/patient relationship.
- Prohibits veterinarians from prescribing controlled substances if the veterinarian/client/patient relationship is established only by veterinary telemedicine.
- Limits veterinarians with a limited veterinarian/client/patient relationship to only prescribe certain medications via veterinary telemedicine.
- Provides a sunset and review provision that requires the veterinary telemedicine portions of the bill to expire December 31, 2024, unless reenacted by the legislature.

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 Buchanan offered the following:

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

Section 1. Section 474.202, Florida Statutes, is amended, to read:

474.202 Definitions.—As used in this chapter:

(14) "Limited veterinarian/client/patient relationship" means a relationship where the veterinarian has assumed the responsibility for making medical judgments regarding the health of the animal and its need for medical treatment where the relationship is established with a video-based platform that allows for audio-visual communication between the veterinarian and the client/patient.

(15) "Veterinary telemedicine" means the practice of

veterinary medicine in a remote setting where the veterinarian has a limited veterinarian/client/patient relationship.

(16) "Virtual physical examination" means a limited physical examination performed by the client under the direction of the veterinarian and a visual examination performed by the veterinarian during the same consult, which must take place through the use of a video-based platform that allows for audio-visual communication between the veterinarian and the client/patient.

Section 2. Section 474.2021, Florida Statutes, is created to read:

474.2021 Veterinary telemedicine.—

(1) A veterinarian may practice veterinary telemedicine as defined in s. 474.202(15), and is responsible for using professional judgement to determine if the service can be delivered according to the same standard of care as required in-person. A virtual physical examination as defined in s. 474.202(16), is required for the veterinarian to assume responsibility for making medical judgments or providing treatment by means of veterinary telemedicine in a manner consistent with the veterinary standard of care. A veterinarian that has a full veterinary/client/patient relationship as defined in s. 474.202(12), that is not limited in nature may practice veterinary medicine and veterinary telemedicine and may communicate with the client via any remote means, including

audio-visual, telephonic and e-mail communication.

(2)(a) A veterinarian that has a limited veterinarian/client/patient relationship as defined in s. 474.202(14), may only provide the following services through veterinary telemedicine:

1. triage of patients in first aid and emergency cases.

2. consultation and prescription of drugs for the following areas of care: nutrition, training, dermatological conditions, and anxiety.

(b) Notwithstanding paragraph (a), a veterinarian may not prescribe drugs for extralabel use or veterinary feed directive drugs without a full veterinarian/client/patient relationship that is established through a physical examination or medically appropriate and timely visits to the premises where the animal is kept and is otherwise consistent with federal law.

(3) A veterinarian may not prescribe controlled substances if the veterinarian has a veterinarian/client/patient relationship established only by veterinary telemedicine. A veterinarian with a limited veterinarian/client/patient relationship, may only prescribe the following medications via veterinary telemedicine:

1. antimicrobials;

2. anxiolytics;

3. antiparasitics;

4. antipruritics;

5. noncontrolled analgesics;
6. ophthalmic medications;
7. topical medications;
8. prescription diets;
9. aural medications; and
10. dosage form animal health products.

a. Dosage form animal health product means any product intended to affect the structure or function of the animal's body other than by providing nutrition to the animal. These products include oils, tinctures, capsules, tables, liquids, soft chews and chewable limited dose products. Such term would not include animal feed supplements, products that are represented as a primary meal for the intended animal species or any other product that is intended as a snack treat or as a behavioral reward treat or dental product providing mechanical and/or abrasive action.

b. Dosage Form Animal Health Products shall bear a label with the following information:

(I) the net weight or count.

(II) the product name and the brand name, if any, under which the animal health product is distributed.

(III) the established name of each active ingredient and the amount of active ingredient per serving in descending order.

(IV) precautionary statements and warnings required to ensure the safe and effective use of the animal health product.

(V) the name and principal mailing address of the manufacturer or the company responsible for distributing the animal health product unless listed in the local telephone directory then name, city, state and zip code is only required.

(VI) the established name of each inactive ingredient in alphabetical order.

(VII) adequate directions for use of the animal health product.

(VIII) structure-function claim stating the intended non-nutritional benefit of the animal health product.

(4) A veterinarian must hold a current license to practice veterinary medicine in this state in order to practice veterinary telemedicine.

(5) The board has jurisdiction over a veterinarian practicing veterinary telemedicine in this state, regardless of where the veterinarian's physical offices are located. The practice of veterinary telemedicine in accordance with this section is not itself a standard of care violation, and a veterinarian may not be disciplined solely for practicing veterinary telemedicine. The same veterinary standard of care applies to services provided through veterinary telemedicine as applies to veterinary care provided during an in-person visit.

Section 3. Paragraph (a) of subsection (5) of section 474.203, Florida Statutes, is amended to read:

474.203 Exemptions.—This chapter does not apply to:

(5)(a) Any person, or the person's regular employee, administering to the ills or injuries of her or his own animals, including, but not limited to, castration, spaying, and dehorning of herd animals, unless title is transferred or employment provided for the purpose of circumventing this law. This exemption does not apply to any person licensed as a veterinarian in another state or foreign jurisdiction and practicing temporarily in this state. However, except as provided in s. 828.30, only a veterinarian may immunize or treat an animal for diseases that are communicable to humans and that are of public health significance.

For the purposes of chapters 465 and 893, persons exempt pursuant to subsection (1), subsection (2), or subsection (4) are deemed to be duly licensed practitioners authorized by the laws of this state to prescribe drugs or medicinal supplies.

Section 4. Paragraph (y) of subsection (1) of section 474.214, Florida Statutes, is amended to read:

474.214 Disciplinary proceedings.—

(1) The following acts shall constitute grounds for which the disciplinary actions in subsection (2) may be taken:

(y) Using the privilege of ordering, prescribing, or making available medicinal drugs or drugs as defined in chapter 465, or controlled substances as defined in chapter 893, for use other than for the specific treatment of animal patients for

which there is a documented veterinarian/client/patient relationship. ~~Pursuant thereto,~~ The veterinarian shall:

1. Have sufficient knowledge of the animal to initiate at least a general or preliminary diagnosis of the medical condition of the animal, which means that the veterinarian is ~~personally~~ acquainted with the keeping and caring of the animal or ~~and~~ has recently seen the animal or has made medically appropriate and timely visits to the premises where the animal is kept.

2. Be available or provide for followup care and treatment in case of adverse reactions or failure of the regimen of therapy.

3. Maintain records which document patient visits, diagnosis, treatment, and other relevant information required under this chapter.

Section 5. Subsections (1) and (3) of section 828.30, Florida Statutes, are amended to read:

828.30 Rabies vaccination of dogs, cats, and ferrets.—

(1)(a) Except as provided in paragraph (b), all dogs, cats, and ferrets 4 months of age or older must be vaccinated by a licensed veterinarian against rabies with a vaccine that is licensed by the United States Department of Agriculture for use in those species.

(b) An employee, an agent, or a contractor of an animal control authority acting under the indirect supervision of a

veterinarian may vaccinate impounded animals that will be transferred, rescued, fostered, adopted, or reclaimed by the owner. As used in this subsection, the term "indirect supervision," means that the supervising veterinarian is available for consultation by any remote means, including audio-visual, telephonic, or e-mail communication, but is not required to be on the premises during such consultation. The supervising veterinarian assumes responsibility for the veterinary care given to the animal by any person working under or at his or her direction and supervision.

(c) The owner of every dog, cat, and ferret shall have the animal revaccinated 12 months after the initial vaccination. Thereafter, the interval between vaccinations shall conform to the vaccine manufacturer's directions. The cost of vaccination must be borne by the animal's owner. Evidence of circulating rabies virus neutralizing antibodies may ~~shall~~ not be used as a substitute for current vaccination in managing rabies exposure or determining the need for booster vaccinations.

(3) Upon vaccination against rabies, the licensed veterinarian shall provide the animal's owner and the animal control authority with a rabies vaccination certificate. Each animal control authority and veterinarian shall use the "Rabies Vaccination Certificate" of the National Association of State Public Health Veterinarians (NASPHV) or an equivalent form approved by the local government that contains all the

information required by the NASPHV Rabies Vaccination Certificate. The veterinarian who administers the rabies vaccination, or who supervises an employee, an agent, or a contractor of an animal control authority administering the rabies vaccination, ~~vaccine~~ to an animal as required under this section may affix his or her signature stamp in lieu of an actual signature.

Section 6. Unless reviewed and reenacted by the legislature, section 1, section 2, and section 4 of this act shall expire December 31, 2024, and those laws shall revert to that in existence on June 30, 2021, except that any amendments to those laws enacted other than by this act shall be preserved and continue to operate to the extent that such amendments are not dependent upon the portions of text which expire pursuant to this section.

Section 7. This act shall take effect July 1, 2021.

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 the medical treatment of animals; amending s. 474.202, F.S.; defining the term "Limited veterinarian/client/patient relationship"; defining the term "veterinary telemedicine"; defining the term "virtual physical examination"; creating s. 474.2021,

F.S.; authorizing veterinarians to practice veterinary telemedicine; specifying the services a veterinarian may provide without first establishing a limited veterinarian/client/patient relationship; specifying the services a veterinarian may provide without first establishing a veterinarian/client/patient relationship; prohibiting veterinarians from prescribing controlled substances under certain circumstances; providing exceptions; providing license requirements; providing jurisdiction of the Florida Board of Veterinary Medicine; providing construction; amending s. 474.203, F.S.; revising exceptions to who may immunize or treat an animal for certain diseases; amending s. 474.214, F.S.; revising grounds for disciplinary action against a veterinarian; amending s. 828.30, F.S.; authorizing employees, agents, or contractors of animal control authorities to administer rabies vaccinations under certain circumstances; providing that a supervising veterinarian assumes responsibility for any person working at his or her discretion or under his or her supervision; defining the term "indirect supervision"; providing requirements; authorizing a veterinarian who indirectly supervises the administration of the rabies vaccination to affix his or her signature stamp on a

242 rabies vaccination certificate; providing for future
243 legislative review and repeal of the act; providing an
244 effective date.

CS/CS/HB 987

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 987 Age Restrictions on Tobacco and Nicotine Products
SPONSOR(S): State Administration & Technology Appropriations Subcommittee, Regulatory Reform Subcommittee, Toledo and others
TIED BILLS: **IDEN./SIM. BILLS:** CS/CS/SB 1080

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Regulatory Reform Subcommittee	12 Y, 4 N, As CS	Brackett	Anstead
2) State Administration & Technology Appropriations Subcommittee	9 Y, 5 N, As CS	Helpling	Topp
3) Commerce Committee		Brackett	Hamon

SUMMARY ANALYSIS

The Division of Alcoholic Beverages and Tobacco (Division) within the Department of Business and Professional Regulation (DBPR) is responsible for the regulation of tobacco products. "Tobacco products" are loose tobacco leaves, products made from tobacco leaves, and cigarette wrappers, which can be used for smoking, sniffing, or chewing. Retailers that sell or deal, at retail, in tobacco products are required to have a permit issued by the Division and are required to comply with certain provisions related to the sale of such products. The Division enforces the tobacco regulations, and may issue fines to permit holders or suspend or revoke such permits for violations.

Nicotine products and nicotine dispensing devices are not included in the definition of tobacco products. Retailers that sell only nicotine products and nicotine dispensing devices are not required to obtain a tobacco retailer permit or a permit from any other state agency. As such, these retailers are not subject to state regulatory oversight.

Current state law prohibits anyone under the age of 18 from purchasing or knowingly possessing tobacco products, nicotine products, and nicotine dispensing devices, unless the person falls under an exemption such as being in the military or handling tobacco products as a part of a person's lawful employment. However, federal law was amended in 2019 to raise the minimum age to 21.

The bill:

- Increases the minimum age to lawfully purchase and knowingly possess tobacco products, nicotine products, and nicotine dispensing devices in Florida from 18 to 21 years of age.
- Prohibits the sale, delivery, bartering, furnishing, shipping, or giving of tobacco products, nicotine products, or electronic nicotine dispensing devices to persons under 21 years of age.
- Creates regulations for the sale and delivery of nicotine products and nicotine dispensing devices through the mail and over the Internet, which are similar to the regulations for tobacco products.
- Preempts the establishment of the minimum age to possess or purchase nicotine dispensing devices, nicotine products, and tobacco products and the marketing, sale, and delivery of such products to the state.
- Modifies current exceptions to the minimum age requirements to purchase or knowingly possess tobacco products and applies the same exceptions to nicotine products and nicotine dispensing devices.

The bill creates a retail nicotine products permit, which must be obtained from the Division to sell nicotine products and nicotine dispensing devices. This establishes state regulatory oversight for retailers of nicotine products and nicotine dispensing devices. The regulations for the sale of nicotine products and nicotine dispensing devices mirror the regulations for the sale of tobacco products; however, the bill does not impose a tax or licensing fee similar to tobacco products.

The bill authorizes a holder of a tobacco retail permit to sell nicotine products and nicotine dispensing devices in addition to tobacco products.

The bill may have an indeterminate negative fiscal impact to DBPR and may have a significant but indeterminate negative fiscal impact to state revenues. *See* Fiscal Analysis and Economic Impact Statement.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Federal Regulation of Tobacco Products

The Family Smoking Prevention and Tobacco Control Act of 2009 (Tobacco Control Act) gives the U.S. Food and Drug Administration (FDA) authority to regulate the manufacture, distribution, and marketing of tobacco products to protect the public health. The Tobacco Control Act provides advertising and labeling guidelines, provides standards for tobacco products, and requires face-to-face transactions for tobacco sales with certain exceptions.[1]

On August 8, 2016, the FDA extended the definition of "tobacco product[s]" regulated under the Act to include electronic nicotine delivery systems (ENDS). ENDS include e-cigarettes, e-cigars, e-hookah, vape pens, personal vaporizers and electronic pipes. Additionally, the definition of tobacco products includes components and parts such as e-liquids, tanks, cartridges, pods, wicks, and atomizers.

Federal law requires that a retailer may sell cigarettes and smokeless tobacco only in "direct, face-to-face exchanges between the retailer and the customer." This language explicitly prohibits vending machines and self-service displays.[2] This language is referred to in the industry as the "behind the counter" language; however, this does not specifically require that a retailer place cigarettes or smokeless tobacco behind the counter. A locked display case would likely meet the self-service display prohibition. Facilities that prohibit minors under the age of 21 are exempt from this federal requirement. Retailers are also required to check a purchaser's ID unless the purchaser is over the age of 30.[3]

Federal law preempts states from providing additional or different requirements for tobacco products in regards to "standards, premarket review, adulteration, misbranding, labeling, registration, good manufacturing standards, or modified risk tobacco products." However, federal law explicitly preserves the right of states, or any political subdivision of a state, to enact laws, rules, regulations or other measures related to prohibiting the sale, distribution, possession, exposure to, access to, advertising and promotion of tobacco products which are more stringent than federal requirements.[4]

Tobacco 21

In 2013, the FDA contracted with the Institute of Medicine (IOM) to conduct a study to better understand the potential health benefits of raising the minimum age to purchase tobacco. In 2015, the IOM published their report and submitted it to Congress. The report concluded that raising the minimum age to purchase tobacco to 21:[5]

- Would most likely lead to substantial reduction in smoking related mortality, and
- Could result in significant health benefits for those born between 2000 and 2018, including:
    - approximately 249,000 fewer premature deaths,
    - 45,000 fewer deaths from lung cancer; and
    - 4.2 million fewer years of life lost.

The report also concluded that the age group most affected by increasing the minimum age to purchase tobacco products to 21 would be those who are age 15 to 17 years old. Because 21 year olds are less likely than 18 year olds to be in the same social circles of 15-17 year olds, increasing the

[1] Federal Food, Drug, and Cosmetic Act, 21 USC § 351 et seq; 15 U.S.C. s. 1333, s. 1335; 21 U.S.C. s. 387g, s. 387f.
[2] 21 C.F.R. § 1140.14.
[3] *Id.*
[4] 21 U.S.C. § 387p.
[5] Institute of Medicine, *Public Health Implications Raising the Minimum Age of Legal Access to Tobacco Products Report Brief*, (Jul. 23, 2015) https://www.ncbi.nlm.nih.gov/books/NBK310401/ (last visited on Mar. 15, 2021).

minimum age would likely result in 15 to 17 year olds having less access to tobacco products and delaying the age that a person is first exposed to tobacco.[6]

According to the report, delaying the date a person uses a tobacco product is critical because the adolescent brain is uniquely vulnerable to nicotine and adolescents are particularly susceptible to peer pressure. Delaying the age a person is first exposed to tobacco will likely decrease the prevalence of tobacco users.[7]

The FDA also reports that between 2011 and 2014, the number of high school students who had used an e-cigarette in the last 30 days increased nearly 800 percent, with 13.4 percent of high school students reporting usage in 2014.[8] In 2018, over 4.9 million middle and high school students were current users of e-cigarettes.[9] As of 2018, more than one in four high school seniors and one in ten middle school students used e-cigarettes.[10] In 2020, among middle and high school students, 3.6 million were current users of e-cigarettes.[11]

In order to decrease youth usage of ENDS, the FDA has begun a Youth Tobacco Prevention Plan. The plan has three main components: preventing youth access to tobacco products, ending marketing aimed at youth, educating youth about the dangers of using tobacco and educating retailers about their role in preventing underage usage of tobacco.[12]

Federal Minimum Age to Purchase Tobacco Products

On December 20, 2019, the Tobacco Control Act was amended to raise the federal minimum age of the sale of tobacco products, including ENDS, from 18 to 21 years.[13] The law was also changed to require retailers to check a purchaser's ID unless the purchaser is 30 years or older, instead of if the purchaser is over 26 years of age. The law became effective on January 15, 2020, with the FDA announcing that retailers may no longer sell tobacco products to anyone under the age of 21.[14] Prior to the enactment of this amendment the FDA used minors to ensure that retailers were complying with the law. However, the FDA has begun using persons under the age of 21 for compliance checks.[15]

The federal government does not require states to enforce the federal minimum age, but states that do not demonstrate that their retailers are complying with the federal minimum age are subject to a possible reduction in funding for Substance Abuse Prevention and Treatment Block Grants.[16] Substance Abuse Prevention and Treatment Block Grants are administered by the U.S. Department of Health and Human Services (USDHHS), and are federal funds provided to the states to prevent substance abuse.[17]

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[6] *Id.*
[7] *Id.*
[8] FDA, 81 C.F.R. 28973, https://www.federalregister.gov/d/2016-10685/p-635 (last visited Mar. 16, 2021).
[9] FDA, *Statement from FDA Commissioner Scott Gottlieb, M.D., on new data demonstrating rising youth use of tobacco products and the agency's ongoing actions to confront the epidemic of youth e-cigarette use,* https://www.fda.gov/news-events/press-announcements/statement-fda-commissioner-scott-gottlieb-md-new-data-demonstrating-rising-youth-use-tobacco (last visited Mar. 16, 2021).
[10] *Id.*
[11] FDA, *Vaporizers, E-Cigarettes, and other Electronic Nicotine Delivery Systems (ENDS),* https://www.fda.gov/tobacco-products/products-ingredients-components/vaporizers-e-cigarettes-and-other-electronic-nicotine-delivery-systems-ends (last visited Mar. 16, 2021).
[12] Food and Drug Administration, *FDA's Youth Tobacco Prevention Plan,* https://www.fda.gov/TobaccoProducts/PublicHealthEducation/ProtectingKidsfromTobacco/ucm608433.htm (last visited Mar. 16, 2021).
[13] *Newly Signed Legislation Raises Federal Minimum Age of Sale of Tobacco Products to 21*, United States Food and Drug Administration, (Jan. 15, 2020) https://www.fda.gov/tobacco-products/ctp-newsroom/newly-signed-legislation-raises-federal-minimum-age-sale-tobacco-products-21 (last visited Mar. 16, 2021).
[14] *Id.* H.R. 1865 Further Consolidated Appropriations Act, 2020, 116th Congress (2019-2020).
[15] FDA, *Tobacco 21*, (Fe. 12, 2020) https://www.fda.gov/tobacco-products/retail-sales-tobacco-products/tobacco-21 (last visited Mar. 16, 2021).
[16] H.R. 1865 Further Consolidated Appropriations Act, 2020, 116th Congress (2019-2020).; 42. U.S.C. § 300x-26.
[17] USDHHS, Substance Abuse Prevention and Treatment Block Grant, https://www.samhsa.gov/grants/block-grants/sabg (last visited Mar. 16, 2021).

Failure to demonstrate a state's retailers are complying with the federal minimum age could lead to a reduction of a block grant by up to 10% for the fiscal year. The federal government will not reduce a block grant for failing to enforce the federal minimum wage for three years in order to give the states a chance to make any necessary changes.[18]

According to the USDHHS, in the fiscal year 2020, Florida received a Substance Abuse and Prevention and Treatment Block Grant of $111,385,315.[19]

The federal government considers a state to be failing the requirement that its retailers are complying with the federal minimum age if its retail violation rate is more than 20 percent. A violation is defined as the fraction (or percentage) of tobacco-selling outlets in a state that are accessible to and sell tobacco to persons under the age of 21.[20]

States are required to conduct annual surveys to determine their compliance rate. In conducting their surveys, states must:[21]

- Develop a sampling frame that includes both over-the-counter and vending machine locations accessible to youth and young adults under the age of 21
- Ensure that the sampling frame includes, at a minimum, 80% of the tobacco outlets in the state (CSAP requires states that use a list frame to conduct and report the results of a coverage study designed to assess the completeness of the sampling frame.)
- Design a sampling methodology and implementation plan that are based on sound survey sampling methodology
- Sample a large enough number of outlets to meet USDHHS's precision requirement (one-sided 95% confidence interval)
- Obtain a completion rate of 90% or better
- Record the actual steps of the survey process in the field and keep records of all sources of sample attrition in the field
- Weight the results of the survey to account for unequal probabilities of selection, differences in percentages of eligible outlets between strata or clusters, and other deviations from the intended design

The latest date for each state's retail violation rate is 2018. In 2018, Florida's retail violation rate was 9.2%. However, that was before the federal government raised the minimum age to purchase tobacco products to 21 years of age.[22]

Additionally, according to news reports, the recent increase in the federal minimum age is causing confusion among retailers in states where the minimum age is still 18 years of age. Retailers are not sure which law they are required to follow, which may lead to one retailer enforcing the state minimum age and another retailer enforcing the federal minimum age.[23]

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[18] H.R. 1865 Further Consolidated Appropriations Act, 2020, 116th Congress (2019-2020).; 42. U.S.C. § 300x-26; Substance Abuse and Mental Health Services Administration, *Revision to Guidance*, (June 12, 2020) https://www.samhsa.gov/sites/default/files/synar-guidance-tobacco-21.pdf (last visited Mar. 18, 2021).
[19] USDHHS, *Florida Summaries FY 2020*, https://www.samhsa.gov/grants-awards-by-state/FL/2020 (last visited Mar. 18, 2021).
[20] Substance Abuse and Mental Health Services Administration, *Revision to Guidance*, (June 12, 2020) https://www.samhsa.gov/sites/default/files/synar-guidance-tobacco-21.pdf (last visited Mar. 18, 2021).
[21] Substance Abuse and Mental Health Services Administration, *Programmatic Requirements for the Synar Program*, https://www.samhsa.gov/synar/requirements (last visited Mar. 18, 2021).
[22] Substance Abuse and Mental Health Services Administration, *State Target and Reported Retailer Violation Rates*, https://www.samhsa.gov/sites/default/files/synar_program_rvr_table_1997-2018_dec_11_2018.pdf (last visited Mar. 18, 2021).
[23] Adam Kurtz, *New Tobacco 21 law causes confusion about enforcement, start date*, Grand Forks Herald (Jan. 10, 2020) https://www.grandforksherald.com/business/retail/4853919-New-Tobacco-21-law-causes-confusion-about-enforcement-start-date (last visited Mar. 18, 2021); Naomi Kowles, *Some local confusion after federal passage of new minimum age for tobacco purchases*, WSAW-TV (Jan. 16, 2020) https://www.wsaw.com/content/news/Some-local-confusion-after-federal-passage-of-new-minimum-age-for-tobacco-purchases-567056371.html (last visited Mar. 18, 2021).

Jurisdictions that Raised the Minimum Age from 18 to 21

Thirty states, and the U.S. Territory of Guam, have passed legislation raising the minimum age for a person to lawfully possess or purchase tobacco products and nicotine products to 21 years of age:[24]

• Arkansas	• New Mexico
• California	• New Jersey
• Colorado	• New York
• Connecticut	• Ohio
• Delaware	• Oklahoma
• Hawaii	• Oregon
• Illinois	• Pennsylvania
• Indiana	• South Dakota
• Iowa	• Tennessee
• Kentucky	• Texas
• Maine	• Utah
• Maryland	• Vermont
• Massachusetts	• Virginia
• Minnesota	• Washington
• Mississippi	• Wyoming

At least 530 localities, including New York City, Chicago, San Francisco, San Antonio, Boston, Cincinnati, Cleveland, Columbus, and Kansas City (in Kansas and Missouri), plus Washington, D.C., have also raised the minimum age to 21 years of age.[25]

In January of 2019, Alachua County became the first local government in Florida to raise the minimum legal age to purchase tobacco to 21 years of age. The Alachua County ordinance applies to tobacco products, nicotine products, and nicotine dispensing devices. Municipalities in the county are authorized to opt out of the ordinance if they choose. In addition, retailers are required to purchase and maintain a special license to sell tobacco, nicotine products, and nicotine dispensing devices. Businesses located within 1,000 feet of a public school are prohibited from licensure; however, businesses previously licensed to sell tobacco products by the state prior to the adoption of the ordinance are not required to give up their license. Penalties for violations include license suspensions ranging from seven days up to losing the license permanently for four violations in a 24-month period.[26]

In September of 2019, Fort Lauderdale became the second local government in Florida to raise the minimum age to purchase tobacco to 21 years of age. The Fort Lauderdale ordinance applies to tobacco products, nicotine products, and nicotine dispensing devices. Penalties for violations include warnings and civil citations ranging from $500 to $1,000.[27]

Private Sector

[24] *See* Campaign for Tobacco-Free Kids, States and Localities that have Raised the Minimum Legal Sale Age for Tobacco Products to 21, available at https://www.tobaccofreekids.org/what-we-do/us/sale-age-21 (last visited Mar. 16, 2021).
[25] *Id.*
[26] Alachua County Ord. No. 2019-04.
[27] City of Fort Lauderdale Ord. No C-19-21.

Recently, members of the nicotine product manufacturing industry indicated support for increasing the minimum age to purchase tobacco products, including nicotine products, and nicotine dispensing devices, from 18 to 21 years of age. Juul Labs, the largest e-cigarette company, stated that they support raising the minimum age to purchase tobacco products, nicotine products, and nicotine dispensing devices from 18 to 21 years of age. One of Juul Labs' ads states:[28]

> "It's time to raise the legal age to purchase tobacco products, including vapor, from 18 to 21. Because when youth never start smoking and vaping, they never have to stop."

E-Cigarette, or Vaping, Product Use-Associated Lung Injury (EVALI)

As of February 18, 2020, there have been 2,807 cases of EVALI and 68 deaths in the United States. 119 of the cases and two of the deaths have been in Florida. According to the Centers for Disease Control (CDC), tetrahydrocannabinol (THC) and Vitamin E acetate are strongly linked to the outbreak of EVALI. The CDC and FDA recommend that people not use THC-containing vaping products, particularly products from informal sources like friends, family, or in-person or online dealers.[29]

Symptoms of the lung injury include:[30]

- Cough, shortness of breath, or chest pain;
- Nausea, vomiting, or diarrhea; and
- Fatigue, fever, or abdominal pain.

The CDC has the following data on the age and sex of 2,668 of the cases:[31]

- 66% of the patients are male;
- The median age of patients is 24 years old and ranges from 13-85 years. However, 76% of the patients are under 35 years old;
- By age group category:
    - 15% of patients are under 18 years old;
    - 37% of patients are 18 to 24 years old;
    - 24% of patients are 25 to 34 years old; and
    - 24% of patients are 35 years or older.

Effect of Smoking and Vaping on COVID-19

According to the CDC, being a current or former smoker increases a person's risk to develop a severe illness from COVID-19. According to the Massachusetts General Hospital, a person who smokes and tests positive for COVID-19, is twice as likely to develop a severe case of COVID-19 than a person with no smoking history, and is more likely to be admitted to an Intensive Care Unit, placed on a ventilator, or die from the illness.[32]

According to a study led by researchers at the Stanford University School of Medicine, teens and young adults who vaped were five to seven times more likely to be infected with COVID-19 than those who did

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[28] Juul Labs, *Our Support For T21 Laws,* https://newsroom.juul.com/t21/ (last visited Mar. 16, 2021).
[29] CDC, *Outbreak of Lung Injury Associated with the Use of E-Cigarette, or Vaping, Products*, https://www.cdc.gov/tobacco/basic_information/e-cigarettes/severe-lung-disease.html#latest-outbreak-information (last visited Mar. 16, 2021).Florida Department of Health, *Lung Injury Associated with E-Cigarette Use, or Vaping- Florida*, Florida Department of Health http://www.flhealthcharts.com/ChartsReports/rdPage.aspx?rdReport=ChartsProfiles.LungInjuryE-CigaretteUse (last visited Mar. 16, 2021).
[30] CDC, *For the Public,* https://www.cdc.gov/tobacco/basic_information/e-cigarettes/severe-lung-disease/need-to-know/index.html (last visited Mar. 18, 2021).
[31] CDC *supra*, note 29.
[32] CDC, People with Certain Medical Conditions, (Mar. 15, 2021) https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-with-medical-conditions.html#smoking (last visited Mar. 18, 2021); Massachusetts General Hospital, Smoking, Vaping and COVID-19: About the Connection and How to Quit, https://www.massgeneral.org/assets/MGH/pdf/children/adolescent-medicine-smoking-and-covid19.pdf (last visited Mar. 18, 2021).

not use e-cigarettes.[33] Also, according to Massachusetts General Hospital, people who smoke or vape have a higher risk of developing chronic obstructive pulmonary disease (COPD), which is a long-term lung disease that affects airflow through the lungs, which according to the CDC, puts users at a higher risk of developing a severe case of COVID-19.[34]

Regulation of Tobacco Products in Florida

The Division of Alcoholic Beverages and Tobacco (Division) within the Department of Business and Professional Regulation (DBPR) is the state agency responsible for the regulation and enforcement of the tobacco products under ch. 569, F.S. "Tobacco products" include loose tobacco leaves, and products made from tobacco leaves, in whole or in part, and cigarette wrappers, which can be used for smoking, sniffing, or chewing.[35]

Section 210.25(11), F.S., relating to the tax on tobacco products other than cigarettes or cigars, defines the term "tobacco products" differently 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."

"Tobacco products" in either definition does not include nicotine products or nicotine dispensing devices.

Cigarette and Tobacco Products Wholesalers, Distributors, and Manufacturers

A person must obtain a permit from the Division in order to distribute tobacco products, not including cigarettes or cigars. A person must obtain a permit for each place of business. The fee for such permit is $25. There is no minimum age requirement to obtain a permit to distribute tobacco products.[36]

A person must obtain a cigarette permit from the Division in order to import, export, manufacture, deal at wholesale, or distribute cigarettes in the state. A person must obtain a permit for each place of business in the state or its principal place of business if the person does not have a business in this state. The fee for such permit is $100. The Division may only issue permits to persons who are 18 years or older or corporations with officers who are 18 years or older.[37]

Tobacco Products Retailers

In order to sell tobacco products at retail or operate a tobacco products vending machine in Florida, a person must obtain a retail tobacco products dealer permit from the Division. A person must obtain a permit for each place of business or premises where tobacco products are sold. Any person who owns, leases, furnishes, or operates a vending machines that dispense tobacco products must also obtain a permit for each machine. The fee for such permit is $50.[38] The Division may only issue permits to persons who are 18 years or older or corporations with officers who are 18 years or older.[39]

Anyone who deals in tobacco products at retail or allows a vending machine on the premises without a permit is subject to a $500 fine.[40]

[33] Erin Digitale, *Vaping linked to COVID-19 risk in teens and young adults*, Stanford Medicine, News Center (Aug. 11, 2020) https://med.stanford.edu/news/all-news/2020/08/vaping-linked-to-covid-19-risk-in-teens-and-young-adults.html (last visited Mar. 18, 2021).
[34] CDC *supra* note 32.
[35] S. 569.002(6), F.S.
[36] S. 210.40, F.S.
[37] S. 210.15, F.S.
[38] S. 569.003, F.S.
[39] S. 569.003, F.S.
[40] S. 569.005, F.S.

The place or premises covered by a permit is subject to inspection and search without a search warrant by the Division or its authorized assistants, and by sheriffs, deputy sheriffs, or police officers, to determine compliance with requirements for tobacco sales and dealing.[41]

DBPR is required to submit an annual report to the Governor and Legislature regarding the enforcement of tobacco products, including:[42]

- The number and results of compliance visits by the Division;
- The number of violations for failure of a retailer to hold a valid license;
- The number of violations for selling tobacco products to anyone under the age of 18 and the results of administrative hearings on such violations; and
- The number of people under the age of 18 cited, including sanctions imposed as a result of such citation, for misrepresenting their age, purchasing tobacco products underage, and misrepresenting military service for the purpose of obtaining tobacco products underage.

Florida also has an excise tax and surcharge on cigarettes and other tobacco products, not including cigars. The tax and surcharge for cigarettes is $0.1695 to $0.42375 per pack and a surcharge of $0.50 to $1.25 per pack depending on the number of cigarettes in the pack. The excise tax for tobacco products is 25% of the wholesale price and the surcharge is 60% of the wholesale price. There is no excise tax or surcharge for nicotine products or nicotine dispensing devices.[43]

Requirements for Tobacco Products Retailers

Retail tobacco products dealers (retailers) must post a clear and conspicuous sign that the sale of tobacco products is prohibited to persons under the age of 18 and that proof of age is required for purchase. The Division is required to make the signs available to retailers. Retailers must also have instructional material in the form of a calendar or similar format to assist in determining the age of the person attempting to purchase a tobacco product.[44]

The sale or delivery of tobacco products is prohibited, except when those products are under the direct control or line of sight of the retailer or the retailer's agent or employee in order to prevent persons under 18 years of age from purchasing or receiving tobacco products.

If a tobacco product is sold from a vending machine, the vending machine must have:

- An operational lockout device which is under the control of the retailer or the retailer's agent or employee who directly regulates the sale of items through the machine by triggering the lockout device to allow the dispensing of one tobacco product;
- A mechanism on the lockout device to prevent the machine from functioning if the power source for the lockout device fails or if the lockout device is disabled;
- A mechanism to ensure that only one tobacco product is dispensed at a time.[45]

These requirements for the sale of tobacco products do not apply to an establishment that prohibits persons under 18 years of age on the premises and do not apply to the sale or delivery of cigars and pipe tobacco.[46]

If the Division determines a tobacco product retailer or a tobacco product retailer's employee violated the regulations for tobacco product retailers, the Division can suspend or revoke the retailer's permit or assess a fine up to $1,000 for each violation.[47]

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[41] S. 569.004, F.S.
[42] S. 569.19, F.S.
[43] Ss. 210.011, 210.02, 210.276, and 210.30, F.S.; DBPR, Alcholic Beverages & Tobacco – Tax & Reporting Information For Licensees, http://www.myfloridalicense.com/DBPR/alcoholic-beverages-and-tobacco/tax-and-reporting-information-for-licensees/#1510753842753-25986d10-086f (last visited Mar. 16, 2021).
[44] S. 569.14, F.S.
[45] S. 569.007(1), F.S.
[46] S. 569.007(2) and (3), F.S.
[47] S. 569.006, F.S.

If the Division discovers a tobacco product retailer's employee illegally sold tobacco products to a person under 18 years of age, the Division may mitigate penalties, if:

- The retailer is qualified as a responsible retailer by establishing and implementing specified practices designed to ensure that the retailer's employees comply with ch. 569, F.S., such as employee training.
- The retailer had no knowledge of that employee's violation at the time of the violation and did not direct, approve, or participate in the violation.
- The sale was made through a vending machine equipped with an operational lock-out device.[48]

Mail Order, Internet, and Other Remote Sales of Tobacco Products in Florida

Section 210.095, F.S., provides requirements for the delivery of mail order, Internet, and other remote sales of tobacco products and cigarettes, referred to as "delivery sales."

Each person who mails, ships, or otherwise delivers tobacco products or cigarettes in connection with an order for a delivery sale to a consumer is required to:

- Include, as part of the shipping documents, in a clear and conspicuous manner, the following statement: "Tobacco Products: Florida law prohibits shipping to individuals under 18 years of age and requires the payment of all applicable taxes."
- Use a method of mailing, shipping, or delivery which obligates the delivery service to:
    - Require the signature of an adult who resides at the delivery address and obtain proof of the legal minimum purchase age of the individual accepting delivery, if the individual appears to be under 27 years of age.
    - Require proof that the individual accepting delivery is either the addressee or the adult designated by the addressee, in the form of a valid, government-issued identification card bearing a photograph of the individual who signs to accept delivery of the shipping container.
- Provide to the delivery service, if such service is used, evidence of full compliance with requirements for the collection and remittance of all taxes imposed on tobacco products or cigarettes by this state with respect to the delivery sale.

Before the first delivery to a consumer, the person mailing, shipping, or delivering the tobacco products or cigarettes must also:[49]

- Obtain a certification from the person accepting delivery that includes reliable confirmation that the person accepting delivery is an adult, and a written statement under penalty of perjury providing the person's date of birth, address, and confirmation that the person wants to accept the delivery;
- Make a good faith effort to verify the information in the certification by checking the information against a commercially available database or obtaining a photocopy of the person's ID;
- Provide the person accepting the delivery a notice stating tobacco products are illegal for underage persons and sales of such products are restricted to individuals who provide verifiable proof of legal age to purchase, and tobacco products are taxable;
- Impose a two-carton minimum on each order of cigarettes;
- Submit to the credit card company necessary information so that the words "tobacco product" appear on the person's credit card statement when a purchase is made using a credit card;
- Make a phone call to the individual who made the order to confirm the order before shipping the order; and
- Receive payment by a credit card or debit card in the name of the person accepting delivery or a personal or company check in the name of the person, if the order is made in accordance with an advertisement on the Internet.

[48] *See* s. 569.008(3), F.S.
[49] *Id.*

A person who accepts an order for a delivery sale of tobacco products or cigarettes and delivers such products without using a delivery service must comply with all of the delivery service requirements listed above.[50]

Section 210.095(8), F.S., currently provides that the penalty for the following violations of the delivery sale requirements is a misdemeanor of the third degree:[51]

- A delivery of tobacco products, on behalf of a delivery service, to an individual who is under 18 years of age.
- A person under the age of 18 who knowingly violates any of the provisions of the mail order or internet sales requirements.

These provisions do not apply to nicotine products and nicotine dispensing devices. However, it is illegal for a person to deliver nicotine products or nicotine dispensing devices to persons under 18 years of age.[52]

Tobacco Products and Minors

The sale, delivery, bartering, furnishing or giving of tobacco products or giving sample to products to persons under the age of 18 is prohibited.[53] A violation of this prohibition is a second degree misdemeanor.[54] A second or subsequent violation within one year of the first violation is a first degree misdemeanor.[55]

It is a complete defense to a person charged with such a violation if the buyer or recipient falsely evidenced that he or she was 18 years of age or older, a prudent person would believe the buyer or recipient to be 18 years of age or older, and the buyer or recipient presented false identification upon which the person relied upon in good faith.[56]

Persons under the age of 18 years are prohibited from knowingly possessing, directly or indirectly, any tobacco products, or misrepresenting their age or military service for obtaining such products. Persons who violate this noncriminal violation are punishable as follows:[57]

- A first violation of this prohibition is a non-criminal violation with a penalty of 16 hours of community service or a $25 fine, and attendance at a school-approved anti-tobacco program, if locally available.
- A second violation within 12 weeks of the first violation is punishable with a $25 fine.
- A court may suspend or withhold issuance of a driver license for persons under 18 years of age who fail to complete the noncriminal penalties for knowingly possessing or misrepresenting their age in order to purchase tobacco products.
    - A court may suspend or withhold issuance of a drivers' license for 30 days for a first violation, and for 45 days for a second violation within 12 weeks of the first violation.

[50] S. 210.095, F.S.
[51] Section 775.082, F.S., does not provide a third degree misdemeanor. Section 775.082, F.S., provides that a misdemeanor of the second degree is punishable by a term of imprisonment not to exceed 60 days. Section 775.083, F.S., does not provide a third degree misdemeanor. Section 775.083, F.S., provides that a misdemeanor of the second degree is punishable by a fine not to exceed $500.
[52] S. 877.112(2), F.S.
[53] Ss. 569.0075 and 569.101, F.S.
[54] S. 775.082, F.S., provides that the penalty for a misdemeanor of the second degree is punishable by a term of imprisonment not exceeding 60 days. Section 775.083, F.S. provides that the penalty for a misdemeanor of the second degree is punishable by a fine not to exceed $500.
[55] S. 775.082, F.S., provides that the penalty for a misdemeanor of the first degree is punishable by a term of imprisonment not exceeding one year. Section 775.083, F.S. provides that the penalty for a misdemeanor of the first degree is punishable by a fine not to exceed $1,000.
[56] S. 569.101(3), F.S.
[57] S. 569.11, F.S.

However, this does not include any person under the age of 18 who:[58]

- Has had his or her disability of nonage removed under ch. 743, F.S.;
- Is in the military reserve or on active duty in the Armed Forces of the United States;
- Is otherwise emancipated by a court of competent jurisdiction and released from parental care and responsibility; or
- Is acting in his or her scope of lawful employment with an entity licensed under the provisions of ch. 210, F.S., relating to taxation of cigarettes and other tobacco products, or ch. 569, F.S., relating to tobacco products.

The Division and any law enforcement officer may enforce these provisions. A local government may also designate certain employees or agents as tobacco product enforcement officers. A tobacco enforcement officer or a correctional probation officer may issue a citation to a person under the age of 18, whom the officer has reasonable cause to believe an underage person is knowingly possessing tobacco products or is lying about their age or military service in order to obtain such products.[59]

Eighty percent of all civil penalties received from violating prohibitions related to the possession or sale of tobacco products by a county court must be remitted to the Department of Revenue for transfer to the Department of Education for teacher training and for research and evaluation to reduce and prevent the use of tobacco products by children.[60] The remaining 20 percent of civil penalties received by a county court must remain with the clerk of the county court to cover administrative costs.[61]

Nicotine Products Regulation in Florida

Section 877.112, F.S., provides for the regulation of nicotine products and nicotine dispensing devices, such as electronic cigarettes (e-cigarettes). This statute extends the current prohibitions related to tobacco products to the sale, gifting, possession, or use of nicotine products and nicotine dispensing devices to and by persons under 18 years of age.

A “nicotine product” is any product that contains nicotine, including liquid nicotine intended for human consumption, whether inhaled, chewed, absorbed, dissolved or ingested by any means.[62] The definition does not include a tobacco product under Florida law, a drug or device under federal law, or a product that contains incidental nicotine.[63]

A “nicotine dispensing device” is any product that employs an electronic, chemical, or mechanical means to produce vapor from a nicotine product, including, but not limited to, an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or other similar device or product, any replacement cartridge for such device, and any other container of nicotine in a solution or other form intended to be used with or within an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or other similar device or product.[64]

The sale or giving of nicotine products or nicotine dispensing devices to any person under 18 years of age is prohibited and punishable as a second degree misdemeanor.[65] It is a complete defense to a violation if an underage person falsely misrepresented his or her age, the underage person had the appearance to a prudent person to be 18 years of age or older, and the person carefully checked, and relied on, the driver license or identification card of the recipient.[66]

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[58] S. 569.002(7), F.S.
[59] S. 569.12, F.S.
[60] S. 569.11(6), F.S.
[61] *Id.*
[62] S. 877.112(1)(b), F.S.
[63] *Id.*
[64] S. 877.112(1)(a), F.S.
[65] Section 775.082, F.S., provides that a misdemeanor of the second degree is punishable by a term of imprisonment not to exceed 60 days. Section 775.083, F.S. provides that a misdemeanor of the second degree is punishable by a fine not to exceed $500.
[66] S. 877.112(5), F.S.

Persons under the age of 18 years are prohibited from knowingly possessing, directly or indirectly, any nicotine products or nicotine dispensing devices, or misrepresenting their age or military service for obtaining such products. Persons who violate this noncriminal violation are punishable as follows:[67]

- A first violation of this prohibition is a non-criminal violation with a penalty of 16 hours of community service or a $25 fine, and attendance at a school-approved anti-tobacco and nicotine program, if locally available.
- A second violation within 12 weeks of the first violation is punishable with a $25 fine.
- A court may suspend or withhold issuance of a driver license for persons under 18 years of age who fail to satisfies the penalties for knowingly possessing or misrepresenting their age in order to purchase tobacco products.
    - A court may suspend or withhold issuance of a drivers' license for 30 days for a first violation, and for 45 days for a second violation within 12 weeks of the first violation.

Eighty percent of civil penalties related to the unlawful possession or sale of nicotine products are remitted to the Department of Revenue for transfer to the Department of Education for teacher training and for research and evaluation to reduce and prevent the use of tobacco products, nicotine products, or nicotine dispensing devices by children.[68] The remaining 20 percent of civil penalties received by a county court are retained by the clerk of the county court to cover administrative costs.[69]

Retail dealers of nicotine products and nicotine dispensing devices are required to post signs indicating that the sale of nicotine products and nicotine dispensing devices to persons under 18 years of age is prohibited and that proof of age is required for purchase. Retailers must also have instructional material in the form of a calendar or similar format to assist in determining the age of the person attempting to purchase a nicotine product or nicotine dispensing device.[70]

Retail Sale of Nicotine Products and Nicotine Dispensing Devices

The sale or delivery of nicotine products and nicotine dispensing devices are prohibited, except when those products are under the direct control or line of sight of the retailer or the retailer's agent or employee in order to prevent persons under 18 years of age from purchasing or receiving such products.[71]

Nicotine products or nicotine dispensing devices may not be sold or displayed by means of self-service merchandising.[72] Self-service merchandising means the open display of nicotine products or nicotine dispensing devices for direct customer access and handling before the purchase of such product without the assistance of the retailer or the retailer's employee.

If a nicotine product or nicotine dispensing device is sold from a vending machine, the vending machine must have:[73]

- An operational lockout device which is under the control of the retailer or the retailer's agent or employee who directly regulates the sale of items through the machine by triggering the lockout device to allow the dispensing of one nicotine product or nicotine dispensing device;
- A mechanism on the lockout device to prevent the machine from functioning if the power source for the lockout device fails or if the lockout device is disabled;
- A mechanism to ensure that only one nicotine product or nicotine dispensing device is dispensed at a time.

[67] Ss. 877.112(6), and (7), F.S.
[68] S. 877.112(9), F.S.
[69] *Id.*
[70] S. 877.112(10), F.S
[71] Ss. 877.112(11) and (12), F.S.
[72] *Id.*
[73] *Id.*

However, this does not apply to establishments that prohibit persons under the age of 18 on the premises.[74]

Laws related to nicotine products and nicotine dispensing devices are different from tobacco laws in the following ways:

- Nicotine retailers are not required to obtain a retail tobacco products dealer permit from the Division.
- Nicotine retailers are not subject to inspection without a search warrant.
- The Division does not have authority to discipline a nicotine retailer for violating any of the regulations relating to the retail sale of nicotine products and nicotine dispensing devices.
- The requirements for internet and remote sales of tobacco products do not apply to nicotine products or nicotine dispensing devices.
- There are no exemptions for the prohibition of the purchase and possession of nicotine products and nicotine dispensing devices by persons under 18 years old, such as military service or possession of such products as part of a person's lawful scope employment.

Florida Clean Indoor Air ACT (FCIAA)

The FCIAA, implements Article X, Section 20 of the Florida Constitution, which prohibits a person from smoking tobacco or vaping, in an enclosed indoor workplace, with certain exceptions.

The FCIAA also prohibits any person under the age of 18 from smoking tobacco or vaping within 1,000 feet of a public or private elementary, middle, or secondary school between the hours of 6 a.m. and midnight. A violation of this prohibition is punishable by a maximum noncriminal civil penalty not to exceed $25, or 50 hours of community service or, where available, successful completion of a school-approved anti-tobacco "alternative to suspension" program.[75]

Senate Bill 810, Use of Tobacco Products and Nicotine Products – 2020 Legislative Session

In 2020, Governor DeSantis vetoed Senate Bill 810 of the 2020 Legislative Session, the bill included the following:

- Increased the minimum age from 18 years of age to 21 years of age to lawfully purchase and possess tobacco products, nicotine products, and nicotine dispensing devices.
- Prohibited smoking and vaping by any person under 21 years of age on or near school property.
- Increased the age from 18 years of age to 21 years of age to obtain a cigarette permit required to be a cigarette wholesaler, cigarette distributor, or a cigarette manufacturer.
- Authorized DBPR to regulate nicotine products and nicotine dispensing devices in the same manner as they do for tobacco products.
- Required retailers of nicotine products and nicotine dispensing devices to obtain a permit from DBPR.

Senate Bill 810 also included a provision, **which is not in this bill**, that prohibited the sale of flavored liquid nicotine products (other than tobacco or menthol flavors), unless such products had a marketing order from the FDA to permit the product to be sold.[76]

[74] *Id.*; S. 877.112(1), F.S.
[75] S. 386.212, F.S.
[76] The Tobacco Control Act requires any manufacturer wishing to market a new tobacco product, including ENDS, that was not commercially marketed on or before February 1, 2007, to obtain a marketing order from the FDA or an exemption from the marketing order requirement from the FDA. The Tobacco Control Act contains a grandfather exemption from the marketing order requirement for certain tobacco products. Manufacturers of tobacco products on the market on or before February 15, 2007, are not required to have a marketing order for such products. Manufacturers of tobacco products that were on the market on or before August 8, 2016, must have applied for a marketing order for such products by September 2020. 21 U.S.C. § 387j.

Governor DeSantis stated his reasons for vetoing Senate Bill 810 were:[77]

> "While originally conceived as a bill to raise the legal age to buy tobacco to 21, (which is superfluous given this is already mandated by federal law) CS/CS/CS/SB 810 effectively bans tobacco free vaping flavors used by hundreds of thousands of Floridians as a reduced-risk alternative to cigarettes, which are more dangerous.
>
> This legislation would almost assuredly lead more people to resume smoking cigarettes, and it would drive others to the hazardous black market. The latter consequence is especially significant because the much-publicized cases of lung injury associated with vaping in recent years have been traced to illegal, or black market, vape cartridges containing THC, not to the types of legal vaping products that this bill (CS/CS/CS/SB 810) would abolish.
>
> Reducing the use of all nicotine-related products, including vaping, among our youth is an important goal, but this will not be achieved by eliminating legal products for adults and by devastating the small businesses who provide these adults with reduced risk alternatives to cigarettes."

Local Government Authority

The Florida Constitution grants local 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.[78] 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.[79]

Likewise, municipalities[80] have those governmental, corporate, and proprietary powers that enable them to conduct municipal government, perform their functions and provide services, and exercise any power for municipal purposes, except as otherwise provided by law.[81]

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. Where state preemption applies, it precludes a local government from exercising authority in that particular area.[82]

Florida law recognizes two types of preemption: express and implied. Express preemption requires a specific legislative statement; it cannot be implied or inferred.[83] Express preemption of a field by the Legislature must be accomplished by clear language stating that intent.[84] In cases where the Legislature expressly or specifically preempts an area, the intent of the Legislature is readily

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[77] Veto letter of Ron DeSantis, Governor (Sept. 8, 2020) https://www.flgov.com/wp-content/uploads/2020/09/Transmittal-Letter-09.08.2020.pdf (last visited Mar. 17, 2021).
[78] Art. VIII, s. 1(f), Fla. Const.
[79] Art. VIII, s. 1(g), Fla. Const.
[80] 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."
[81] Art. VIII, s. 2(b), Fla. Const. *See also* s. 166.021(1), F.S.
[82] Wolf, 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/ (last visited Mar. 22, 2021).
[83] 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).
[84] Mulligan, 934 So. 2d at 1243.

ascertained.[85] 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.[86]

Florida Sunrise Act

A proposal for new regulation of a profession must meet the requirements of s. 11.62, F.S., the Sunrise Act. In general, the act states that regulation should not occur unless it is:

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

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

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

The act requires proponents of legislation proposing new regulation to provide the following information, upon request, to document the need for regulation:

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

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

- The cost of regulation, including the indirect cost to consumers, and the method proposed to finance the regulation;
- The cost imposed on applicants or practitioners or on employers of applicants or practitioners as a result of the regulation; and
- The details of any previous efforts in this state to implement regulation of the profession or occupation.
- The act requires the agency proposed to have jurisdiction over the regulation to provide the Legislature with the following information:
- The resources required to implement and enforce the regulation;
- The technical sufficiency of the proposal, including its consistency with the regulation of other professions; and
- Any alternatives that may result in less restrictive or more cost-effective regulation.
- In determining whether to recommend regulation, the legislative committee reviewing the proposal is directed to assess whether the proposed regulation is:
- Justified based on the statutory criteria and the information provided by both the proponents of regulation and the agency responsible for its implementation;
- The least restrictive and most cost-effective regulatory scheme necessary to protect the public; and
- Technically sufficient and consistent with the regulation of other professions under existing law.

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

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

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

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

According to the sponsor of the bill, half of all middle school and high school students have used e-cigarettes, and the lack of regulation of nicotine products and nicotine dispensing devices poses a substantial harm to the public health, safety, or welfare. Specifically, the sponsor of the bill has indicated that a regulatory framework for nicotine products and nicotine dispensing devices is needed to ensure establishments that sell nicotine products and nicotine dispensing devices do not sell such products to underage persons.[87]

In addition, the federal government has determined that the regulation of nicotine products and nicotine dispensing devices is necessary for the protection of the health, safety, or welfare of citizens, and has raised the age to purchase such products to 21 years of age.

Effect of Proposed Changes

Tobacco 21

[87] *See* The Florida Channel, 3/24/2021 House Regulatory Reform Subcommittee, https://thefloridachannel.org/videos/3-24-21-house-regulatory-reform-subcommittee/ (last visited Mar. 25, 2021).

The bill increases the minimum age to lawfully purchase and knowingly possess tobacco products in Florida from 18 years old to 21 years old, unless a person falls under a current law exemption to the minimum age requirement.

Specifically the bill:

- Prohibits the sale, delivery, bartering, furnishing, shipping, or giving tobacco products to persons under the age of 21.
- Provides that anyone under the age of 21 commits a noncriminal penalty for knowingly possessing tobacco products.
- Provides that anyone under the age of 21 who is cited for knowingly possessing tobacco products must attend a school approved anti-tobacco program.
- Provides that anyone who delivers tobacco products through a remote sale to a person under age of 21 or a person under the age of 21 who knowingly violates any of the requirements for remote sales of tobacco products and cigarettes commits a second degree misdemeanor instead of a third degree misdemeanor, which is not provided for in current law.
- Removes the following exemptions to the minimum age requirements that allow certain persons under the minimum age to possess or purchase tobacco products:
    - A person who has had his or her disability of nonage removed under ch. 743, F.S; and
    - A person who is emancipated by a court of competent jurisdiction and released from parental care and responsibility.
- Provides that retailers must require proof of age from a purchaser of tobacco products unless the purchaser appears to be 30 years of age or older, and similarly requires a delivery person to require proof of age in similar circumstances.
- Increases the age that a person is prohibited from smoking tobacco or vaping within 1,000 feet of a school, from a person under 18 years of age to a person under 21 years of age.

Nicotine Products Regulation in Florida

The bill increases the minimum age to lawfully purchase and knowingly possess nicotine products and nicotine dispensing devices in Florida from 18 years old to 21 years old, unless a person falls under an exemption to the minimum age requirement including being in the military or acting in the scope of lawful employment.

The bill also establishes state regulatory oversight for retailers of nicotine products and nicotine dispensing devices. The regulations for the sale of nicotine products and nicotine dispensing devices mirror the regulations for the sale of tobacco products. However, the bill **does not impose** a tax or permit fee similar to tobacco products.

The bill includes regulations for the sale and delivery of nicotine products and nicotine dispensing devices through the mail and over the Internet, which are similar to the regulations for tobacco products, to ensure sales and deliveries are not to persons under age.

The bill creates a retail nicotine products dealer permit, which must be obtained from DBPR to be able to sell nicotine products and nicotine dispensing devices, at retail, in this state. This permit however does not allow for the sale of tobacco products. However, the bill does allow a tobacco products dealer permit holder to sell nicotine products and nicotine dispensing devices, in addition to tobacco products.

The bill requires a person to obtain a retail nicotine products dealer permit for each place of business or the premises where nicotine products or nicotine dispensing devices are to be sold face-to-face or through a vending machine. The bill also requires a person who owns, leases, furnishes, or operates vending machines that dispense nicotine products or nicotine dispensing devices to obtain a permit. **There is no fee for the permit.**

The Division may only issue permits to persons who are 18 years of age or older or corporations with officers who are 18 years of age or older.[88] The bill allows the place or premises covered by a permit to be subject to inspection and search without a search warrant by the Division or its authorized assistants, and by sheriffs, deputy sheriffs, or police officers, to determine compliance with requirements for nicotine sales and dealing.

Anyone who deals nicotine products or nicotine dispensing devices at retail or allows a vending machine on the premises without a permit is subject to a $500 fine.

The bill repeals s. 877.112, F.S., which currently regulates nicotine products in this state.

Requirements for Retail Nicotine Products Dealers

The bill requires nicotine product retailers to post a clear and conspicuous sign that the sale of nicotine products is prohibited to persons under the age of 21 and that proof of age is required for purchase. The Division is required to make the signs available to nicotine product retailers. Nicotine product retailers must also have instructional material in the form of a calendar or similar format to assist in determining the age of the person attempting to purchase a nicotine product.

Any person who fails to post a clear and conspicuous sign commits a second degree misdemeanor.

The bill prohibits the sale or delivery of nicotine products except when those products are under the direct control or line of sight of the nicotine product retailer or the nicotine product retailer's agent or employee. The bill permits nicotine products to be sold from a vending machine if the vending machine has:

- An operational lockout device which is under the control of the nicotine product retailer or the nicotine product retailer's agent or employee who directly controls the sale of items through the machine by triggering the lockout device to allow the dispensing of one nicotine product;
- A mechanism on the lockout device to prevent the machine from functioning if the power source for the lockout device fails or if the lockout device is disabled; and
- A mechanism to ensure that only one nicotine product is dispensed at a time.

The bill also prohibits nicotine products from being sold or displayed by means of self-service merchandising. Self-service merchandising means the open display of nicotine products or nicotine dispensing devices for direct customer access and handling before the purchase of such product without the assistance of the retailer or the retailer's employee.[89]

The bill exempts establishments that prohibit people under the age of 21 on premises from such sales requirements.

The bill requires retailers to require proof of age from a purchaser of a nicotine product or a nicotine dispensing device unless the purchaser appears to be 30 years of age or older.

Mitigating Penalties for Underage Sales

If the Division determines a nicotine product retailer or a nicotine product retailer's employee violated the regulations for nicotine product and nicotine dispensing device retailers, the Division can suspend or revoke the retailer's permit or assess a fine up to $1,000 for each violation.

If the Division discovers a nicotine product retailer's employee illegally sold tobacco products to a person under the age of 21, the bill allows the Division to mitigate penalties if:

[88] S. 569.003, F.S.
[89] S. 877.112(1), F.S.

- The nicotine product retailer is qualified as a responsible retailer by establishing and implementing specified practices designed to ensure that the nicotine product retailer's employees comply with Florida laws regulating the sale of nicotine products and nicotine dispensing devices, such as employee training;
- The nicotine product retailer had no knowledge of that employee's violation at the time of the violation and did not direct, approve, or participate in the violation; and
- If the sale was made through a vending machine, the machine was equipped with an operational lock-out device.

Nicotine Products and Persons under 21 Years of Age

The bill prohibits the sale, delivery, bartering, furnishing or giving of nicotine products or giving sample to products to anyone under the age of 21. A violation of this prohibition is a second degree misdemeanor. A second or subsequent violation within one year of the first violation is a first degree misdemeanor.

A person charged with such a violation has a complete defense if:

- The buyer falsely represented that he or she was 21 years of age or older;
- The appearance of the buyer would indicate, to a prudent person, that the buyer was 21 years of age or older; and
- The buyer presented false identification upon which the person relied upon in good faith.

The bill prohibits persons under the age of 21 from knowingly possessing, directly or indirectly, any nicotine products, or misrepresenting their age or military service for the purpose of obtaining such products. Any person who violates such prohibition commits a non-criminal violation, punishable as follows:

- A first violation carries a penalty of 16 hours of community service or a $25 fine, and attendance at a school-approved anti-tobacco and anti-nicotine program, if locally available.
- A second violation within 12 weeks of the first violation is punishable with a $25 fine.
- A court may suspend or withhold issuance of a driver's license for anyone who has failed to complete the community service, pay the fine, or attend the school-approved anti-tobacco and anti-nicotine program.
    - A court may suspend or withhold issuance of a drivers' license for 30 days for a first violation, and for 45 days for a second violation within 12 weeks of the first violation.

However, this does not include any person under the age of 21 who:

- Is in the military reserve or on active duty in the Armed Forces of the United States; or
- Is acting in his or her scope of lawful employment.

The bill requires 80 percent of all civil penalties received from violating prohibitions related to the possession or sale of nicotine products by a county court to be remitted to the Department of Revenue for transfer to the Department of Education for teacher training and for research and evaluation to reduce and prevent the use of nicotine products and or nicotine products by children. The remaining 20 percent of civil penalties received by a county court is required to remain with the clerk of the county court to cover administrative costs.

The bill authorizes the Division and any law enforcement officer to enforce these provisions. A local government may also designate certain employees or agents as tobacco and nicotine product enforcement officers. A tobacco and nicotine product enforcement officer or a correctional probation officer may issue a citation to a person under the age of 21, whom the officer has reasonable cause to believe is knowingly possessing tobacco products, nicotine products, or nicotine dispensing devices, or is lying about their age or military service in order to obtain such products.[90]

[90] S. 569.12, F.S.

Mail Order, Internet, and Other Remote Sales of Nicotine Products in Florida

The bill creates requirements for the delivery of mail order, Internet, and other remote sales of nicotine products and nicotine dispensing devices to consumers, referred to as "delivery sales." Each person who mails, ships, or otherwise delivers nicotine products or nicotine dispensing devices in connection with an order for a delivery sale to a consumer must:

- Include, as part of the shipping documents, in a clear and conspicuous manner, the following statement: "Nicotine Products: Florida law prohibits shipping to individuals under 21 years of age."
- Use a method of mailing, shipping, or delivery which obligates the delivery service to:
    - Require the signature of a person 21 years of age or older who resides at the delivery address and obtain proof of the legal minimum purchase age of the individual accepting delivery, if the individual appears to be under 30 years of age.
    - Require proof that the individual accepting delivery is either the addressee or the adult designated by the addressee, in the form of a valid, government-issued identification card bearing a photograph of the individual who signs to accept delivery of the shipping container.

Before the first delivery to a consumer, the bill requires the person mailing, shipping, or delivering the nicotine products to:

- Obtain a certification from the person accepting delivery that includes reliable confirmation that the person accepting the delivery is 21 years of age or older, and a written statement under penalty of perjury providing the person's date of birth, address, and confirmation that the person wants to accept the delivery;
- Make a good faith effort to verify the information in the certification by checking the information against a commercially available database or obtaining a photocopy of the person's ID;
- Provide the person accepting the delivery a notice stating nicotine products are illegal for underage persons and sales of such products are restricted to individuals who provide verifiable proof of legal age to purchase;
- Receive payment by a credit card or debit card in the name of the person accepting the delivery or a personal or company check of the person accepting the delivery, if the order is made in accordance with an advertisement on the Internet;
- Submit to the credit card company necessary information so that the words "nicotine product" appear on the person's credit card statement when a purchase is made using a credit card; and
- Make a phone call to the person accepting the delivery to confirm the order before shipping the order.

The bill requires a person who accepts an order for a delivery sale of nicotine products or nicotine dispensing devices and delivers such products without using a delivery service to comply with all of the delivery service requirements listed above.

The bill imposes a penalty for any person, who is 21 years or older, who knowingly violates the delivery sale's requirements as a misdemeanor of the second degree.

The bill requires the Division to submit an annual report, by December 31st, to the Governor and Legislature on the progress of implementing and enforcing the above requirements, including:

- The number and results of compliance visits by the Division;
- The number of violations for failure of a retailer to hold a valid permit;
- The number of violations for selling nicotine products and nicotine dispensing devices to anyone under the age of 21 and the results of administrative hearings on such violations; and
- The number of people under the age of 21 cited, including sanctions imposed as a result of such citation, for misrepresenting their age, purchasing nicotine products or nicotine dispensing

devices underage, and misrepresenting military service for the purpose of obtaining such products underage.

The bill changes the title of ch. 569, F.S., from “Tobacco Products” to “Tobacco and Nicotine Products.” The bill directs the Division of Law Revision to create parts I and II of ch. 569, F.S., entitled “Tobacco Products” and “Nicotine Products,” respectively.

Preemption

The bill preempts to the state the establishment of the minimum age to purchase or possess tobacco products, nicotine products, and nicotine dispensing devices, and the regulation of the marketing, sale, and delivery of such products.

B. SECTION DIRECTORY:

Section 1. Amending s. 210.095, F.S., increasing the age of a person who may receive tobacco products that have been shipped and violations thereof.

Section 2. Amending s. 386.212, F.S., increasing the age of person who may smoke or vape within a certain distance of a school.

Section 3. Renames ch. 569, F.S., as "Tobacco and Nicotine Products."

Section 4. Directs the Division of Law Revision to create part I of ch. 569, F.S., entitled “Tobacco Products” and to create part II of ch. 569, F.S., entitled “Nicotine Products.”

Section 5. Amending s. 569.002, F.S., relating to definitions.

Section 6. Amending s. 569.003, F.S., relating to tobacco products dealer permits.

Section 7. Amending s. 569.004, F.S., relating to consent to inspection and search without warrant.

Section 8. Amending s. 569.006, F.S., relating to retail tobacco products dealers; administrative penalties.

Section 9. Amending s. 569.007, F.S., relating to the sale or delivery of tobacco products.

Section 10. Amending s. 569.0075, F.S., relating to the prohibition of giving samples of tobacco products.

Section 11. Amending s. 569.008, F.S., relating to responsible retail tobacco products dealers.

Section 12. Amending s. 569.009, F.S., relating to rulemaking authority.

Section 13. Amending s. 569.101, F.S., increasing the age of a person who may purchase tobacco products.

Section 14. Amending s. 569.11, F.S., increasing the age of a person who may possess tobacco products.

Section 15. Amending s. 569.12, F.S., relating to jurisdiction; tobacco product enforcement officers or agents; enforcement.

Section 16. Amending s. 569.14, F.S., relating to posting of a sign stating that the sale of tobacco products to persons under 18 years of age is unlawful; enforcement; penalty.

Section 17. Amending s. 569.19, F.S., relating to annual report.

Section 18. Creating s. 569.24, F.S., preempting the establishment of the minimum age for the sale and delivery of tobacco and nicotine products and the marketing of such products to the state.

Section 19. Creating s. 569.31, F.S., relating to definitions.

Section 20. Creating s. 569.32, F.S., requiring retailers of nicotine products to obtain a retail nicotine products dealer permits.

Section 21. Creating s. 569.33, F.S., requiring retail nicotine products dealer permit holders to consent to certain inspections.

Section 22. Creating s. 569.34, F.S., creating penalties for operating without a retail nicotine products dealer permit.

Section 23. Creating s. 569.35, F.S., creating administrative penalties for retail nicotine products dealers.

Section 24. Creating s. 569.37, F.S., creating regulations for the retail sale of nicotine products.

Section 25. Creating s. 569.38, F.S., creating prohibitions for giving samples of nicotine products.

Section 26. Creating s. 569.381, F.S., creating responsible retail nicotine products dealer qualifications.

Section 27. Creating s. 569.39, F.S., granting rulemaking authority to DBPR.

Section 28. Creating s. 569.41, F.S., providing penalties for the sale of nicotine products to underage persons.

Section 29. Creating s. 569.42, F.S., providing penalties for underage persons possessing nicotine products.

Section 30. Creating s. 569.43, F.S., requiring nicotine product retailers to post certain signs.

Section 31. Creating s. 569.44, F.S., requiring DBPR to perform an annual report.

Section 32. Creating s. 569.45, F.S., creating regulations for the delivery of nicotine products and penalties for violations of such regulations.

Section 33. Repeals s. 877.112, F.S.

Section 34. Provides an effective date of December 1, 2021.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

On April 12, 2019, the Revenue Estimating Impact Conference reviewed HB 7119 of the 2019 Florida Legislative Session. HB 7119 also increased the minimum age to purchase tobacco and nicotine products to 21 years of age. The Revenue Estimating Impact Conference estimated it will

result in a reduction in Tobacco Tax and Surcharge collections. The following chart shows the impact over the 2019-20 through 2023-24 fiscal years (in millions):[91]

Fiscal Year	General Revenue	Trust Fund	Total
2019-20	$ (0.4)	$ (1.1)	$ (1.6)
2020-21	$ (0.6)	$ (1.7)	$ (2.3)
2021-22	$ (0.9)	$ (2.2)	$ (3.1)
2022-23	$ (1.1)	$ (2.8)	$ (3.9)
2023-24	$ (1.1)	$ (2.8)	$ (3.9)

However, as previously discussed, federal law was amended in 2019 to increase the age to purchase tobacco and nicotine products to 21 and became effective January 15, 2020. The fiscal impact to the state and any reduction in revenue is currently taking place to the extent tobacco and nicotine sellers are currently complying with federal law. The total impact for Fiscal Year 2021-22 is indeterminate but likely less than the 2019 estimates above as tobacco and nicotine sellers comply with federal law.

The Department of Revenue (DOR) may see an increase in revenue as the bill allows 80 percent of civil penalties received by a county court relating to enforcement of underage possession and purchasing of nicotine products to be remitted to DOR. The impact is indeterminate.

There may be an indeterminate positive fiscal impact on the state due to a possible reduction in treatment of smoking and vaping related diseases and illnesses if these persons received services from a state program (e.g., Medicaid).

2. Expenditures:

The bill may have a significant negative fiscal impact on DBPR. The bill creates new duties of the Division relating to the regulation and enforcement of nicotine products and sales which will increase current workload on Division employees. The impact is indeterminate because the number of current retailers who sell nicotine products is unknown as they are not currently regulated by any state agency. If the Division determines additional resources are required to enforce provisions related to nicotine products and sales, a request for such resources can be made through the Legislative Budget Request process for Fiscal Year 2022-23.

The bill requires the Division to create a new application for a retail nicotine products dealer permit, and issue such permits, the cost of which may be able to be absorbed within current resources.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The clerk of the county court may see an increase in revenue as the bill allows twenty percent of civil penalties received by a county court relating to enforcement of underage possession and purchasing of nicotine products to remain with the clerk. The impact is indeterminate.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

[91] Office of Economic & Demographic Research, April 12, 2019 Revenue Estimating Conference (http://edr.state.fl.us/Content/conferences/revenueimpact/archives/2019/_pdf/Impact0412.pdf). (last visited Mar. 19, 2021). Note: There is a possible negative impact on sales tax collected on nicotine dispensing devices. The EDR analysis only focuses on the impact on Tobacco Tax and Surcharge.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill provides sufficient rule-making authority for DBPR to implement the provisions of this bill.

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 and one amendment and reported the bill favorably as a committee substitute. The PCS and the amendment differed from HB 987 in the following ways:

- Removes the provision adding nicotine products and nicotine dispensing devices to the definition of tobacco products for purposes of regulation by DBPR.
- Removes the provision repealing a retailer's ability to sell tobacco products, nicotine products, and nicotine dispensing devices from a vending machine in certain circumstances.
- Creates a separate part of ch. 569, F.S., for the regulation of nicotine products and nicotine dispensing devices, which mirrors the regulation of tobacco products and requires DBPR to regulate nicotine products and nicotine dispensing devices.
- Maintains the exemption to the minimum age to purchase and possess tobacco products for people in the military and people handling such products as a part of their lawful employment, and provides that such exemptions also apply to nicotine products and nicotine dispensing devices.
- Creates regulations for the mail order, internet order, and delivery of nicotine dispensing devices and nicotine products that are similar to the regulations for tobacco products.
- Does not increase the minimum age to obtain a cigarette permit or a tobacco products dealer permit, and provides that the minimum age to obtain a nicotine products dealer permit is 18 years of age.
- Provides that a vending machine used for the sale of tobacco products, nicotine products, or nicotine dispensing devices must be equipped with a lockout device, unless it is located in an establishment that only allows persons who are 21 years of age or older.
- Preempts to the state the establishment of the minimum age to purchase or possess tobacco products, nicotine products, and nicotine dispensing devices, and the regulation of the marketing, sale, and delivery of such products.
- Changes the criminal penalty for a person who delivers tobacco products for a delivery service to a person who is not an adult from a third degree-misdemeanor, which does not exist, to a second-degree misdemeanor.

On April 7, 2021, the State Administration & Technology Appropriations Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment modified the effective date from October 1, 2021, to December 1, 2021.

The staff analysis is drafted to the committee substitute as passed by the State Administration & Technology Appropriations Subcommittee.

A bill to be entitled

An act relating to tobacco and nicotine products; amending s. 210.095, F.S.; deleting a definition; revising age restrictions relating to mail order, Internet, and remote sales of tobacco products; amending s. 386.212, F.S.; revising age restrictions relating to smoking and vaping near school property; renaming ch. 569, F.S.; providing directives to the Division of Law Revision; amending s. 569.002, F.S.; revising and providing definitions; amending ss. 569.003, 569.004, 569.006, 569.0075, 569.008, 569.009, 569.101, 569.11, and 569.19, F.S.; conforming provisions to changes made by the act; amending s. 569.007, F.S.; requiring verification of the age of persons purchasing tobacco products under certain circumstances; conforming provisions to changes made by the act; amending s. 569.12, F.S.; expanding authority of tobacco product enforcement officers to include nicotine products; amending s. 569.14, F.S.; revising requirements for certain signage; creating s. 569.24, F.S.; preempting the establishment of the minimum age for purchasing or possessing tobacco products or nicotine products and the regulation of the marketing, sale, or delivery of such products to the state; creating s. 569.31, F.S.; providing

definitions; creating s. 569.32, F.S.; requiring retail nicotine products dealers to obtain a permit; providing requirements for such permit; creating s. 569.33, F.S.; providing for consent to inspection and search without warrant; creating s. 569.34, F.S.; prohibiting certain persons, firms, associations, or corporations from operating without a retail nicotine products dealer permit; providing civil penalties; creating s. 569.35, F.S.; providing administrative penalties for retail nicotine products dealers under certain circumstances; creating s. 569.37, F.S.; providing restrictions on the sale or delivery of nicotine products; creating s. 569.38, F.S.; prohibiting giving nicotine product samples to certain persons; creating s. 569.381, F.S.; providing legislative intent; providing qualifications for responsible retail nicotine products dealers; authorizing the Division of Alcoholic Beverages and Tobacco within the Department of Business and Professional Regulation to mitigate administrative penalties under certain circumstances; requiring the division to develop and make available a nicotine products training program; requiring nicotine products dealers to exercise diligence in the management and supervision of their premises and the supervision and

training of certain persons; creating s. 569.39, F.S.; requiring the division to adopt rules; creating s. 569.41, F.S.; prohibiting the selling, delivering, bartering, furnishing, or giving of nicotine products to certain persons; providing criminal penalties; providing a defense; creating s. 569.42, F.S.; prohibiting possessing, misrepresenting age or military service to purchase, and purchasing nicotine products by certain persons; providing civil penalties; authorizing the Department of Highway Safety and Motor Vehicles to withhold issuance of or suspend a driver license or driving privileges under certain circumstances; providing for the use of fees collected; creating s. 569.43, F.S.; providing signage requirements; providing for enforcement; providing criminal penalties; creating s. 569.44, F.S.; requiring the division to provide an annual report containing specified information to the Governor and Legislature; creating s. 569.45, F.S.; providing definitions; providing requirements for mail order, Internet, and remote sales of nicotine products; providing applicability; providing criminal penalties; providing for a cause of action to prevent or restrain specified violations; repealing s. 877.112, F.S., relating to nicotine products and nicotine dispensing

devices; providing an effective date.

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

Section 1. Paragraphs (b) through (j) of subsection (1) of section 210.095, Florida Statutes, are redesignated as paragraphs (a) through (i), respectively, and present paragraph (a) of subsection (1), paragraphs (a) and (c) of subsection (2), paragraph (a) of subsection (3), paragraph (a) of subsection (4), paragraphs (a) and (b) of subsection (5), and paragraphs (a), (b), (e), and (g) of subsection (8) of that section are amended to read:

210.095 Mail order, Internet, and remote sales of tobacco products; age verification.—

(1) For purposes of this section, the term:

~~(a) "Adult" means an individual who is at least of the legal minimum purchase age for tobacco products.~~

(2)(a) A sale of tobacco products constituting a delivery sale pursuant to paragraph (1)(b) ~~(1)(c)~~ is a delivery sale regardless of whether the person accepting the order for the delivery sale is located inside or outside this state.

(c) A person may not make a delivery sale of tobacco products to any individual who is not 21 years of age or older ~~an adult~~.

(3) A person may not mail, ship, or otherwise deliver

tobacco products in connection with an order for a delivery sale unless, before the first delivery to the consumer, the person accepting the order for the delivery sale:

(a) Obtains from the individual submitting the order a certification that includes:

1. Reliable confirmation that the individual is 21 years of age or older ~~an adult~~; and

2. A statement signed by the individual in writing and under penalty of perjury which:

a. Certifies the address and date of birth of the individual; and

b. Confirms that the individual wants to receive delivery sales from a tobacco company and understands that, under the laws of this state, the following actions are illegal:

(I) Signing another individual's name to the certification;

(II) Selling tobacco products to individuals under the legal minimum purchase age; and

(III) Purchasing tobacco products, if the person making the purchase is under the legal minimum purchase age.

In addition to the requirements of this subsection, a person accepting an order for a delivery sale may request that a consumer provide an electronic mail address.

(4) The notice described in paragraph (3)(c) must include

prominent and clearly legible statements that sales of tobacco products are:

(a) Illegal if made to individuals who are not 21 years of age or older ~~adults~~.

The notice must include an explanation of how each tax has been, or is to be, paid with respect to the delivery sale.

(5) Each person who mails, ships, or otherwise delivers tobacco products in connection with an order for a delivery sale must:

(a) Include as part of the shipping documents, in a clear and conspicuous manner, the following statement: "Tobacco Products: Florida law prohibits shipping to individuals under 21 ~~18~~ years of age and requires the payment of all applicable taxes."

(b) Use a method of mailing, shipping, or delivery which obligates the delivery service to require:

1. The individual submitting the order for the delivery sale or another individual who is 21 years of age or older ~~adult~~ who resides at the individual's address to sign his or her name to accept delivery of the shipping container. Proof of the legal minimum purchase age of the individual accepting delivery is required only if the individual appears to be under 30 ~~27~~ years of age.

2. Proof that the individual is either the addressee or

the individual who is 21 years of age or older ~~adult~~ designated by the addressee, in the form of a valid, government-issued identification card bearing a photograph of the individual who signs to accept delivery of the shipping container.

If the person accepting a purchase order for a delivery sale delivers the tobacco products without using a delivery service, the person must comply with all of the requirements of this section which apply to a delivery service. Any failure to comply with a requirement of this section constitutes a violation thereof.

(8)(a) Except as otherwise provided in this section, a violation of this section by a person other than an individual who is not 21 years of age or older ~~an adult~~ is a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083, and:

1. For a first violation of this section, the person shall be fined $1,000 or five times the retail value of the tobacco products involved in the violation, whichever is greater.

2. For a second or subsequent violation of this section, the person shall be fined $5,000 or five times the retail value of the tobacco products involved in the violation, whichever is greater.

(b) A person who is 21 years of age or older ~~an adult~~ and knowingly submits a false certification under subsection (3)

commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083. For each offense, the person shall be fined $10,000 or five times the retail value of the tobacco products involved in the violation, whichever is greater.

(e) A person who, in connection with a delivery sale, delivers tobacco products on behalf of a delivery service to an individual who is not 21 years of age or older ~~an adult~~ commits a misdemeanor of the second ~~third~~ degree, punishable as provided in s. 775.082 or s. 775.083.

(g) An individual who is not 21 years of age or older ~~an adult~~ and who knowingly violates any provision of this section commits a misdemeanor of the second ~~third~~ degree, punishable as provided in s. 775.082 or s. 775.083.

Section 2. Subsection (1) of section 386.212, Florida Statutes, is amended to read:

386.212 Smoking and vaping prohibited near school property; penalty.—

(1) It is unlawful for any person under 21 ~~18~~ years of age to smoke tobacco or vape in, on, or within 1,000 feet of the real property comprising a public or private elementary, middle, or secondary school between the hours of 6 a.m. and midnight. This section does not apply to any person occupying a moving vehicle or within a private residence.

Section 3. Chapter 569, Florida Statutes, entitled

"Tobacco Products" is renamed "Tobacco and Nicotine Products."

Section 4. The Division of Law Revision is directed to:

(1) Create part I of chapter 569, Florida Statutes, consisting of ss. 569.002-569.24, Florida Statutes, to be entitled "Tobacco Products."

(2) Create part II of chapter 569, Florida Statutes, consisting of ss. 569.31-569.45, Florida Statutes, to be entitled "Nicotine Products."

Section 5. Section 569.002, Florida Statutes, is amended to read:

569.002 Definitions.—As used in this part ~~chapter~~, the term:

(1) ~~(7)~~ "Any person under the age of 21 ~~18~~" does not include any person under the age of 21 ~~18~~ who:

~~(a) Has had his or her disability of nonage removed under chapter 743;~~

(a) ~~(b)~~ Is in the military reserve or on active duty in the Armed Forces of the United States; or

~~(c) Is otherwise emancipated by a court of competent jurisdiction and released from parental care and responsibility; or~~

(b) ~~(d)~~ Is acting in his or her scope of lawful employment with an entity licensed under the provisions of chapter 210 or this part ~~chapter~~.

(2) ~~(1)~~ "Dealer" is synonymous with the term "retail

tobacco products dealer."

(3) ~~(2)~~ "Division" means the Division of Alcoholic Beverages and Tobacco of the Department of Business and Professional Regulation.

(4) "Nicotine dispensing device" has the same meaning as in s. 569.31.

(5) "Nicotine product" has the same meaning as in s. 569.31.

(6) ~~(3)~~ "Permit" is synonymous with the term "retail tobacco products dealer permit."

(7) ~~(4)~~ "Retail tobacco products dealer" means the holder of a retail tobacco products dealer permit.

(8) ~~(5)~~ "Retail tobacco products dealer permit" means a permit issued by the division pursuant to s. 569.003.

(9) ~~(6)~~ "Tobacco products" includes loose tobacco leaves, and products made from tobacco leaves, in whole or in part, and cigarette wrappers, which can be used for smoking, sniffing, or chewing.

Section 6. Paragraph (c) of subsection (1) of section 569.003, Florida Statutes, is amended to read:

569.003 Retail tobacco products dealer permits; application; qualifications; fees; renewal; duplicates.—

(1)

(c) Permits shall be issued annually, upon payment of the annual permit fee prescribed by the division. The division shall

fix the fee in an amount sufficient to meet the costs incurred by it in carrying out its permitting, enforcement, and administrative responsibilities under this part ~~chapter~~, but the fee may not exceed $50. The proceeds of the fee shall be deposited into the Alcoholic Beverage and Tobacco Trust Fund.

Section 7. Section 569.004, Florida Statutes, is amended to read:

569.004 Consent to inspection and search without warrant.—An applicant for a permit, by accepting the permit when issued, agrees that the place or premises covered by the permit is subject to inspection and search without a search warrant by the division or its authorized assistants, and by sheriffs, deputy sheriffs, or police officers, to determine compliance with this chapter, including part II of this chapter if the applicant deals, at retail, in nicotine products within the state or allows a nicotine products vending machine to be located on its premises within the state.

Section 8. Section 569.006, Florida Statutes, is amended to read:

569.006 Retail tobacco products dealers; administrative penalties.—The division may suspend or revoke the permit of the dealer upon sufficient cause appearing of the violation of any of the provisions of this chapter, including part II of this chapter if the dealer deals, at retail, in nicotine products within the state or allows a nicotine products vending machine

to be located on its premises within the state, by a dealer or by a dealer's agent or employee. The division may also assess and accept administrative fines of up to $1,000 against a dealer for each violation. The division shall deposit all fines collected into the General Revenue Fund as collected. An order imposing an administrative fine becomes effective 15 days after the date of the order. The division may suspend the imposition of a penalty against a dealer, conditioned upon the dealer's compliance with terms the division considers appropriate.

Section 9. Subsections (1), (2), and (4) of section 569.007, Florida Statutes, are amended to read:

569.007 Sale or delivery of tobacco products; restrictions.—

(1) In order to prevent persons under 21 ~~18~~ years of age from purchasing or receiving tobacco products, the sale or delivery of tobacco products is prohibited, except:

(a) When under the direct control or line of sight of the dealer or the dealer's agent or employee; or

(b) Sales from a vending machine are prohibited under the provisions of paragraph ~~(1)~~(a) and are only permissible from a machine that is equipped with an operational lockout device which is under the control of the dealer or the dealer's agent or employee who directly regulates the sale of items through the machine by triggering the lockout device to allow the dispensing of one tobacco product. The lockout device must include a

mechanism to prevent the machine from functioning if the power source for the lockout device fails or if the lockout device is disabled, and a mechanism to ensure that only one tobacco product is dispensed at a time.

(2) The provisions of subsection (1) shall not apply to an establishment that prohibits persons under 21 ~~18~~ years of age on the licensed premises.

(4) A dealer or a dealer's agent or employee must ~~may~~ require proof of age of a purchaser of a tobacco product before selling the product to that person, unless the purchaser appears to be 30 years of age or older.

Section 10. Section 569.0075, Florida Statutes, is amended to read:

569.0075 Gift of sample tobacco products prohibited.—The gift of sample tobacco products to any person under the age of 21 ~~18~~ by an entity licensed or permitted under the provisions of chapter 210 or this part ~~chapter~~, or by an employee of such entity, is prohibited and is punishable as provided in s. 569.101.

Section 11. Subsections (1), (2), and (3) of section 569.008, Florida Statutes, are amended to read:

569.008 Responsible retail tobacco products dealers; qualifications; mitigation of disciplinary penalties; diligent management and supervision; presumption.—

(1) The Legislature intends to prevent the sale of tobacco

products to persons under 21 ~~18~~ years of age and to encourage retail tobacco products dealers to comply with responsible practices in accordance with this section.

(2) To qualify as a responsible retail tobacco products dealer, the dealer must establish and implement procedures designed to ensure that the dealer's employees comply with the provisions of this part ~~chapter~~. The dealer must provide a training program for the dealer's employees which addresses the use and sale of tobacco products and which includes at least the following topics:

(a) Laws covering the sale of tobacco products.

(b) Methods of recognizing and handling customers under 21 ~~18~~ years of age.

(c) Procedures for proper examination of identification cards in order to verify that customers are not under 21 ~~18~~ years of age.

(d) The use of the age audit identification function on electronic point-of-sale equipment, where available.

(3) In determining penalties under s. 569.006, the division may mitigate penalties imposed against a dealer because of an employee's illegal sale of a tobacco product to a person under 21 ~~18~~ years of age if the following conditions are met:

(a) The dealer is qualified as a responsible dealer under this section.

(b) The dealer provided the training program required

under subsection (2) to that employee before the illegal sale occurred.

(c) The dealer had no knowledge of that employee's violation at the time of the violation and did not direct, approve, or participate in the violation.

(d) If the sale was made through a vending machine, the machine was equipped with an operational lock-out device.

Section 12. Section 569.009, Florida Statutes, is amended to read:

569.009 Rulemaking authority.—The division shall adopt any rules necessary to administer and enforce the provisions of this part ~~chapter~~.

Section 13. Section 569.101, Florida Statutes, is amended to read:

569.101 Selling, delivering, bartering, furnishing, or giving tobacco products to persons under 21 ~~18~~ years of age; criminal penalties; defense.—

(1) It is unlawful to sell, deliver, barter, furnish, or give, directly or indirectly, to any person who is under 21 ~~18~~ years of age, any tobacco product.

(2) Any person who violates subsection (1) commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083. However, any person who violates subsection (1) for a second or subsequent time within 1 year after ~~of~~ the first violation~~,~~ commits a misdemeanor of the first

degree, punishable as provided in s. 775.082 or s. 775.083.

(3) A person charged with a violation of subsection (1) has a complete defense if, at the time the tobacco product was sold, delivered, bartered, furnished, or given:

(a) The buyer or recipient falsely evidenced that she or he was 21 ~~18~~ years of age or older;

(b) The appearance of the buyer or recipient was such that a prudent person would believe the buyer or recipient to be 21 ~~18~~ years of age or older; and

(c) Such person carefully checked a driver license or an identification card issued by this state or another state of the United States, a passport, or a United States Armed Services identification card presented by the buyer or recipient and acted in good faith and in reliance upon the representation and appearance of the buyer or recipient in the belief that the buyer or recipient was 21 ~~18~~ years of age or older.

Section 14. Section 569.11, Florida Statutes, is amended to read:

569.11 Possession, misrepresenting age or military service to purchase, and purchase of tobacco products by persons under 21 ~~18~~ years of age prohibited; penalties; jurisdiction; disposition of fines.—

(1) It is unlawful for any person under 21 ~~18~~ years of age to knowingly possess any tobacco product. Any person under 21 ~~18~~ years of age who violates this subsection commits a noncriminal

violation as provided in s. 775.08(3), punishable by:

(a) For a first violation, 16 hours of community service or, instead of community service, a $25 fine. In addition, the person must attend a school-approved anti-tobacco program, if locally available; or

(b) For a second or subsequent violation within 12 weeks after the first violation, a $25 fine.

Any second or subsequent violation not within the 12-week period after the first violation is punishable as provided for a first violation.

(2) It is unlawful for any person under 21 ~~18~~ years of age to misrepresent his or her age or military service for the purpose of inducing a dealer or an agent or employee of the dealer to sell, give, barter, furnish, or deliver any tobacco product, or to purchase, or attempt to purchase, any tobacco product from a person or a vending machine. Any person under 21 ~~18~~ years of age who violates this subsection commits a noncriminal violation as provided in s. 775.08(3), punishable by:

(a) For a first violation, 16 hours of community service or, instead of community service, a $25 fine and, in addition, the person must attend a school-approved anti-tobacco program, if available; or

(b) For a second or subsequent violation within 12 weeks

after the first violation, a $25 fine.

Any second or subsequent violation not within the 12-week period after the first violation is punishable as provided for a first violation.

(3) Any person under 21 ~~18~~ years of age cited for committing a noncriminal violation under this section must sign and accept a civil citation indicating a promise to appear before the county court or comply with the requirement for paying the fine and must attend a school-approved anti-tobacco program, if locally available. If a fine is assessed for a violation of this section, the fine must be paid within 30 days after the date of the citation or, if a court appearance is mandatory, within 30 days after the date of the hearing.

(4) A person charged with a noncriminal violation under this section must appear before the county court or comply with the requirement for paying the fine. The court, after a hearing, shall make a determination as to whether the noncriminal violation was committed. If the court finds the violation was committed, it shall impose an appropriate penalty as specified in subsection (1) or subsection (2). A person who participates in community service shall be considered an employee of the state for the purpose of chapter 440, for the duration of such service.

(5)(a) If a person under 21 ~~18~~ years of age is found by

the court to have committed a noncriminal violation under this section and that person has failed to complete community service, pay the fine as required by paragraph (1)(a) or paragraph (2)(a), or attend a school-approved anti-tobacco program, if locally available, the court may direct the Department of Highway Safety and Motor Vehicles to withhold issuance of or suspend the driver license or driving privilege of that person for a period of 30 consecutive days.

(b) If a person under 21 ~~18~~ years of age is found by the court to have committed a noncriminal violation under this section and that person has failed to pay the applicable fine as required by paragraph (1)(b) or paragraph (2)(b), the court may direct the Department of Highway Safety and Motor Vehicles to withhold issuance of or suspend the driver license or driving privilege of that person for a period of 45 consecutive days.

(6) Eighty percent of all civil penalties received by a county court pursuant to this section shall be remitted by the clerk of the court to the Department of Revenue for transfer to the Department of Education to provide for teacher training and for research and evaluation to reduce and prevent the use of tobacco products by children. The remaining 20 percent of civil penalties received by a county court pursuant to this section shall remain with the clerk of the county court to cover administrative costs.

Section 15. Section 569.12, Florida Statutes, is amended

to read:

569.12 Jurisdiction; tobacco product and nicotine product enforcement officers or agents; enforcement.—

(1) In addition to the Division of Alcoholic Beverages and Tobacco of the Department of Business and Professional Regulation, any law enforcement officer certified under s. 943.10(1), (6), or (8) shall enforce the provisions of this chapter.

(2)(a) A county or municipality may designate certain of its employees or agents as tobacco product and nicotine product enforcement officers. The training and qualifications of the employees or agents for such designation shall be determined by the county or the municipality. Nothing in this section shall be construed to permit the carrying of firearms or other weapons by a tobacco product and nicotine product enforcement agent, nor does designation as a tobacco product and nicotine product enforcement officer provide the employee or agent with the power of arrest or subject the employee or agent to the provisions of ss. 943.085-943.255. Nothing in this section amends, alters, or contravenes the provisions of any state-administered retirement system or any state-supported retirement system established by general law.

(b) A tobacco product and nicotine product enforcement officer is authorized to issue a citation to a person under the age of 21 ~~18~~ when, based upon personal investigation, the

officer has reasonable cause to believe that the person has committed a civil infraction in violation of s. 386.212, ~~or~~ s. 569.11, or s. 569.42.

(3) A correctional probation officer as defined in s. 943.10(3) is authorized to issue a citation to a person under the age of 21 ~~18~~ when, based upon personal investigation, the officer has reasonable cause to believe that the person has committed a civil infraction in violation of s. 569.11 or s. 569.42.

(4) A citation issued to any person violating the provisions of s. 569.11 or s. 569.42 shall be in a form prescribed by the Division of Alcoholic Beverages and Tobacco of the Department of Business and Professional Regulation and shall contain:

(a) The date and time of issuance.

(b) The name and address of the person to whom the citation is issued.

(c) The date and time the civil infraction was committed.

(d) The facts constituting reasonable cause.

(e) The number of the Florida statute violated.

(f) The name and authority of the citing officer.

(g) The procedure for the person to follow in order to contest the citation, perform the required community service, attend the required anti-tobacco or anti-tobacco and anti-nicotine program, or ~~to~~ pay the civil penalty.

Section 16. Section 569.14, Florida Statutes, is amended to read:

569.14 Posting of a sign stating that the sale of tobacco products or nicotine products to persons under 21 ~~18~~ years of age is unlawful; enforcement; penalty.—

(1) A dealer that sells tobacco products shall post a clear and conspicuous sign in each place of business where such products are sold which substantially states the following: THE SALE OF TOBACCO PRODUCTS TO PERSONS UNDER THE AGE OF 21 ~~18~~ IS AGAINST FLORIDA LAW. PROOF OF AGE IS REQUIRED FOR PURCHASE.

(2) A dealer that sells tobacco products and nicotine products or nicotine dispensing devices~~, as defined in s. 877.112,~~ may use a sign that substantially states the following:

THE SALE OF TOBACCO PRODUCTS, NICOTINE PRODUCTS, OR NICOTINE DISPENSING DEVICES TO PERSONS UNDER THE AGE OF 21 ~~18~~ IS AGAINST FLORIDA LAW. PROOF OF AGE IS REQUIRED FOR PURCHASE.

A dealer that uses a sign as described in this subsection meets the signage requirements of subsection (1) and s. 569.43(1) ~~s. 877.112~~.

(3) The division shall make available to dealers of tobacco products signs that meet the requirements of subsection (1) or subsection (2).

(4) Any dealer that sells tobacco products shall provide at the checkout counter in a location clearly visible to the dealer or the dealer's agent or employee instructional material in a calendar format or similar format to assist in determining whether a person is of legal age to purchase tobacco products. This point of sale material must contain substantially the following language:

IF YOU WERE NOT BORN BEFORE THIS DATE

(insert date and applicable year)

YOU CANNOT BUY TOBACCO PRODUCTS, NICOTINE PRODUCTS, OR NICOTINE DISPENSING DEVICES.

Upon approval by the division, in lieu of a calendar a dealer may use card readers, scanners, or other electronic or automated systems that can verify whether a person is of legal age to purchase tobacco products. Failure to comply with the provisions contained in this subsection shall result in imposition of administrative penalties as provided in s. 569.006.

(5) The division, through its agents and inspectors, shall enforce this section.

(6) Any person who fails to comply with subsection (1) is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

Section 17. Section 569.19, Florida Statutes, is amended to read:

569.19 Annual report.—The division shall report annually

with written findings to the Legislature and the Governor by December 31, on the progress of implementing the enforcement provisions of this part ~~chapter~~. This must include, but is not limited to:

(1) The number and results of compliance visits.

(2) The number of violations for failure of a retailer to hold a valid license.

(3) The number of violations for selling tobacco products to persons under age 21 ~~18~~, and the results of administrative hearings on the above and related issues.

(4) The number of persons under age 21 ~~18~~ cited for violations of s. 569.11 and sanctions imposed as a result of citation.

Section 18. Section 569.24, Florida Statutes, is created to read:

569.24 Preemption.—

(1) As used in this section, the term "minimum age" means the lawful age to purchase or knowingly possess tobacco products or nicotine products as set by the state at 21 years of age.

(2) The establishment of the minimum age for purchasing or possessing tobacco products or nicotine products and the regulation of the marketing, sale, or delivery of tobacco products or nicotine products is preempted to the state.

Section 19. Section 569.31, Florida Statutes, is created to read:

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

(1) "Any person under the age of 21" does not include any person under the age of 21 who:

(a) Is in the military reserve or on active duty in the Armed Forces of the United States; or

(b) Is acting in his or her scope of lawful employment.

(2) "Dealer" has the same meaning as the term "retail nicotine products dealer" as defined in this section.

(3) "Division" means the Division of Alcoholic Beverages and Tobacco of the Department of Business and Professional Regulation.

(4) "Nicotine dispensing device" means any product that employs an electronic, chemical, or mechanical means to produce vapor or aerosol from a nicotine product, including, but not limited to, an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or other similar device or product, any replacement cartridge for such device, and any other container of nicotine in a solution or other form intended to be used with or within an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or other similar device or product.

(5) "Nicotine product" means any product that contains nicotine, including liquid nicotine, which is intended for human consumption, whether inhaled, chewed, absorbed, dissolved, or ingested by any means. The term also includes any nicotine

dispensing device. The term does not include a:

(a) Tobacco product, as defined in s. 569.002;

(b) Product regulated as a drug or device by the United States Food and Drug Administration under Chapter V of the Federal Food, Drug, and Cosmetic Act; or

(c) Product that contains incidental nicotine.

(6) "Permit" has the same meaning as the term "retail nicotine products dealer permit" as defined in this section.

(7) "Retail nicotine products dealer" means the holder of a retail nicotine products dealer permit.

(8) "Retail nicotine products dealer permit" means a permit issued by the division under s. 569.32.

(9) "Self-service merchandising" means the open display of nicotine products, whether packaged or otherwise, for direct retail customer access and handling before purchase without the intervention or assistance of the dealer or the dealer's owner, employee, or agent. An open display of such products and devices includes the use of an open display unit.

Section 20. Section 569.32, Florida Statutes, is created to read:

569.32 Retail nicotine products dealer permits; application; qualifications; renewal; duplicates.—

(1)(a) Each person, firm, association, or corporation that seeks to deal, at retail, in nicotine products within the state, or to allow a nicotine products vending machine to be located on

its premises in the state, must obtain a retail nicotine products dealer permit for each place of business or premises at which nicotine products are sold. Each dealer owning, leasing, furnishing, or operating vending machines through which nicotine products are sold must obtain a permit for each machine and shall post the permit in a conspicuous place on or near the machine; however, if the dealer has more than one vending machine at a single location or if nicotine products are sold both over the counter and through a vending machine at a single location, the dealer need obtain only one permit for that location.

(b) Application for a permit must be made on a form furnished by the division and must set forth the name under which the applicant transacts or intends to transact business, the address of the location of the applicant's place of business within the state, and any other information the division requires. If the applicant has or intends to have more than one place of business dealing in nicotine products within the state, a separate application must be made for each place of business. If the applicant is a firm or an association, the application must set forth the names and addresses of the persons constituting the firm or association; if the applicant is a corporation, the application must set forth the names and addresses of the principal officers of the corporation. The application must also set forth any other information prescribed

by the division for the purpose of identifying the applicant firm, association, or corporation. The application must be signed and verified by oath or affirmation by the owner, if a sole proprietor, or, if the owner is a firm, association, or partnership, by the members or partners thereof, or, if the owner is a corporation, by an executive officer of the corporation or by a person authorized by the corporation to sign the application, together with the written evidence of this authority.

(2)(a) Permits may be issued only to persons who are 18 years of age or older or to corporations the officers of which are 18 years of age or older.

(b) The division may refuse to issue a permit to any person, firm, association, or corporation the permit of which has been revoked, to any corporation an officer of which has had his or her permit revoked, or to any person who is or has been an officer of a corporation the permit of which has been revoked. Any permit issued to a firm, association, or corporation prohibited from obtaining a permit under this part shall be revoked by the division.

(3) Upon approval of an application for a permit, the division shall issue to the applicant a permit for the place of business or premises specified in the application. A permit is not assignable and is valid only for the person in whose name the permit is issued and for the place designated in the permit.

The permit shall be conspicuously displayed at all times at the place for which it is issued.

Section 21. Section 569.33 Florida Statutes, is created to read:

569.33 Consent to inspection and search without warrant.—An applicant for a retail nicotine products dealer permit, by accepting the permit when issued, agrees that the place or premises covered by the permit is subject to inspection and search without a search warrant by the division or its authorized assistants, and by sheriffs, deputy sheriffs, or police officers, to determine compliance with this part.

Section 22. Section 569.34, Florida Statutes, is created to read:

569.34 Operating without a retail nicotine products dealer permit; penalty.—

(1) It is unlawful for a person, firm, association, or corporation to deal, at retail, in nicotine products, in any manner, or to allow a nicotine products vending machine to be located on its premises, without having a retail nicotine products dealer permit as required by s. 569.32. A person who violates this section commits a noncriminal violation, punishable by a fine of not more than $500.

(2) A retail tobacco products dealer, as defined in s. 569.002, is not required to have a separate or additional retail nicotine products dealer permit to deal, at retail, in nicotine

products within the state, or allow a nicotine products vending machine to be located on its premises in the state. Any retail tobacco products dealer that deals, at retail, in nicotine products or allows a nicotine products vending machine to be located on its premises in the state is subject to, and must be in compliance with, this part.

(3) Any person who violates this section shall be cited for such infraction and shall be cited to appear before the county court. The citation may indicate the time, date, and location of the scheduled hearing and must indicate that the penalty for a noncriminal violation is a fine of not more than $500.

(a) A person cited for an infraction under this section may:

1. Post a $500 bond; or

2. Sign and accept the citation indicating a promise to appear.

(b) A person cited for a violation of this section may:

1. Pay the fine, either by mail or in person, within 10 days after receiving the citation; or

2. If the person has posted bond, forfeit the bond by not appearing at the scheduled hearing.

(c) If the person pays the fine or forfeits the bond, the person is deemed to have admitted to a violation of this section and to have waived the right to a hearing on the issue of

commission of the violation. Such admission may not be used as evidence in any other proceeding.

(d) The court, after a hearing, shall make a determination as to whether an infraction has been committed. If the commission of an infraction has been proven beyond a reasonable doubt, the court may impose a civil penalty in an amount that may not exceed $500.

(e) If a person is found by the court to have committed the infraction, that person may appeal that finding to the circuit court.

Section 23. Section 569.35, Florida Statutes, is created to read:

569.35 Retail nicotine product dealers; administrative penalties.—The division may suspend or revoke the permit of a dealer, including the retail tobacco products dealer permit of a retail tobacco products dealer as defined in s. 569.002, upon sufficient cause appearing of the violation of any of the provisions of this part by a dealer or by a dealer's agent or employee. The division may also assess and accept an administrative fine of up to $1,000 against a dealer for each violation. The division shall deposit all fines collected into the General Revenue Fund as collected. An order imposing an administrative fine becomes effective 15 days after the date of the order. The division may suspend the imposition of a penalty against a dealer, conditioned upon the dealer's compliance with

terms the division considers appropriate.

Section 24. Section 569.37, Florida Statutes, is created to read:

569.37 Sale or delivery of nicotine products; restrictions.—

(1) In order to prevent persons under 21 years of age from purchasing or receiving nicotine products, the sale or delivery of nicotine products is prohibited, except:

(a) When under the direct control or line of sight of the dealer or the dealer's agent or employee; or

(b) Sales from a vending machine are prohibited under paragraph (a) and are only permissible from a machine that is equipped with an operational lockout device which is under the control of the dealer or the dealer's agent or employee who directly regulates the sale of items through the machine by triggering the lockout device to allow the dispensing of one nicotine product. The lockout device must include a mechanism to prevent the machine from functioning if the power source for the lockout device fails or if the lockout device is disabled, and a mechanism to ensure that only one nicotine product is dispensed at a time.

(2)(a) A dealer that sells nicotine products may not sell, permit to be sold, offer for sale, or display for sale such products or devices by means of self-service merchandising.

(b) A dealer that sells nicotine products may not place

such products or devices in an open display unit unless the unit is located in an area that is inaccessible to customers.

(3) The provisions of subsections (1) and (2) shall not apply to an establishment that prohibits persons under 21 years of age on the licensed premises.

(4) A dealer or a dealer's agent or employee must require proof of age of a purchaser of a nicotine product before selling the product to that person, unless the purchaser appears to be 30 years of age or older.

Section 25. Section 569.38, Florida Statutes, is created to read:

569.38 Gift of sample nicotine products.—The gift of sample nicotine products to any person under the age of 21 by an entity permitted under this part, or by an employee of such entity, is prohibited and is punishable as provided in s. 569.41.

Section 26. Section 569.381, Florida Statutes, is created to read:

569.381 Responsible retail nicotine products dealers; qualifications; mitigation of disciplinary penalties; diligent management and supervision; presumption.—

(1) It is the intent of the Legislature to prevent the sale of nicotine products to persons under 21 years of age and to encourage retail nicotine products dealers to comply with responsible practices in accordance with this section.

(2) To qualify as a responsible retail nicotine products dealer, the dealer must establish and implement procedures designed to ensure that the dealer's employees comply with this part. The dealer must provide a training program for the dealer's employees which addresses the use and sale of nicotine products and which includes at least the following topics:

(a) Laws covering the sale of nicotine products.

(b) Methods of recognizing and handling customers under 21 years of age.

(c) Procedures for proper examination of identification cards in order to verify that customers are not under 21 years of age.

(d) The use of the age audit identification function on electronic point-of-sale equipment, where available.

(3) In determining penalties under s. 569.35, the division may mitigate penalties imposed against a dealer because of an employee's illegal sale of a nicotine product to a person under 21 years of age if the following conditions are met:

(a) The dealer is qualified as a responsible dealer under this section.

(b) The dealer provided the training program required under subsection (2) to that employee before the illegal sale occurred.

(c) The dealer had no knowledge of that employee's violation at the time of the violation and did not direct,

approve, or participate in the violation.

(d) If the sale was made through a vending machine, the machine was equipped with an operational lock-out device.

(4) The division shall develop and make available a model nicotine products training program designed to ensure adherence to this part by dealers and their employees which, if followed, will qualify dealers as responsible dealers.

(5) Dealers shall exercise diligence in the management and supervision of their premises and in the supervision and training of their employees, agents, or servants. In proceedings to impose penalties under s. 569.35, proof that employees, agents, or servants of the dealer, while in the scope of their employment, committed at least three violations of s. 569.41 during a 180-day period shall be prima facie evidence of a lack of due diligence by the dealer in the management and supervision of his or her premises and in the supervision and training of employees, agents, officers, or servants.

(6) The division may consider qualification as a responsible retail nicotine products dealer under this section as evidence that the dealer properly exercised the diligence required under this section.

Section 27. Section 569.39, Florida Statutes, is created to read:

569.39 Rulemaking authority.—The division shall adopt rules to administer and enforce this part.

Section 28. Section 569.41, Florida Statutes, is created to read:

569.41 Selling, delivering, bartering, furnishing, or giving nicotine products to persons under 21 years of age; criminal penalties; defense.—

(1) It is unlawful to sell, deliver, barter, furnish, or give, directly or indirectly, any nicotine product to any person who is under 21 years of age.

(2) Any person who violates subsection (1) commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083. However, any person who violates subsection (1) for a second or subsequent time within 1 year after the first violation commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(3) A person charged with a violation of subsection (1) has a complete defense if, at the time the nicotine product was sold, delivered, bartered, furnished, or given:

(a) The buyer or recipient falsely evidenced that she or he was 21 years of age or older;

(b) The appearance of the buyer or recipient was such that a prudent person would believe the buyer or recipient to be 21 years of age or older; and

(c) Such person carefully checked a driver license or an identification card issued by the state or another state of the United States, a passport, or a United States Armed Services

identification card presented by the buyer or recipient and acted in good faith and in reliance upon the representation and appearance of the buyer or recipient in the belief that the buyer or recipient was 21 years of age or older.

Section 29. Section 569.42, Florida Statutes, is created to read:

569.42 Possession, misrepresenting age or military service to purchase, and purchase of nicotine products by persons under 21 years of age prohibited; penalties; jurisdiction; disposition of fines.—

(1) It is unlawful for any person under 21 years of age to knowingly possess any nicotine product. Any person under 21 years of age who violates this subsection commits a noncriminal violation as provided in s. 775.08(3), punishable by:

(a) For a first violation, 16 hours of community service or, instead of community service, a $25 fine. In addition, the person must attend a school-approved anti-tobacco and anti-nicotine program, if locally available; or

(b) For a second or subsequent violation within 12 weeks after the first violation, a $25 fine.

Any second or subsequent violation not within the 12-week period after the first violation is punishable as provided for a first violation.

(2) It is unlawful for any person under 21 years of age to

misrepresent his or her age or military service for the purpose of inducing a dealer or an agent or employee of the dealer to sell, give, barter, furnish, or deliver any nicotine product, or to purchase, or attempt to purchase, any nicotine product from a person or a vending machine. Any person under 21 years of age who violates this subsection commits a noncriminal violation as defined in s. 775.08(3), punishable by:

(a) For a first violation, 16 hours of community service or, instead of community service, a $25 fine and, in addition, the person must attend a school-approved anti-tobacco and anti-nicotine program, if available; or

(b) For a second or subsequent violation within 12 weeks after the first violation, a $25 fine.

Any second or subsequent violation not within the 12-week period after the first violation is punishable as provided for a first violation.

(3) Any person under 21 years of age cited for committing a noncriminal violation under this section must sign and accept a civil citation indicating a promise to appear before the county court or comply with the requirement for paying the fine and must attend a school-approved anti-tobacco and anti-nicotine program, if locally available. If a fine is assessed for a violation of this section, the fine must be paid within 30 days after the date of the citation or, if a court appearance is

mandatory, within 30 days after the date of the hearing.

(4) A person charged with a noncriminal violation under this section must appear before the county court or comply with the requirement for paying the fine. The court, after a hearing, shall make a determination as to whether the noncriminal violation was committed. If the court finds the violation was committed, it shall impose an appropriate penalty as specified in subsection (1) or subsection (2). A person who participates in community service shall be considered an employee of the state for the purpose of chapter 440 for the duration of such service.

(5)(a) If a person under 21 years of age is found by the court to have committed a noncriminal violation under this section and the person has failed to complete community service, pay the fine as required by paragraph (1)(a) or paragraph (2)(a), or attend a school-approved anti-tobacco and anti-nicotine program, if locally available, the court may direct the Department of Highway Safety and Motor Vehicles to withhold issuance of or suspend the driver license or driving privilege of that person for a period of 30 consecutive days.

(b) If a person under 21 years of age is found by the court to have committed a noncriminal violation under this section and that person has failed to pay the applicable fine as required by paragraph (1)(b) or paragraph (2)(b), the court may direct the Department of Highway Safety and Motor Vehicles to

withhold issuance of or suspend the driver license or driving privilege of that person for a period of 45 consecutive days.

(6) Eighty percent of all civil penalties received by a county court under this section shall be remitted by the clerk of the court to the Department of Revenue for transfer to the Department of Education to provide for teacher training and for research and evaluation to reduce and prevent the use of nicotine products by children. The remaining 20 percent of civil penalties received by a county court under this section shall remain with the clerk of the county court to cover administrative costs.

Section 30. Section 569.43, Florida Statutes, is created to read:

569.43 Posting of a sign stating that the sale of nicotine products or nicotine dispensing devices to persons under 21 years of age is unlawful; enforcement; penalty.—

(1) A dealer that sells nicotine products shall post a clear and conspicuous sign in each place of business at which such products are sold which substantially states the following:

THE SALE OF NICOTINE PRODUCTS OR NICOTINE DISPENSING DEVICES TO PERSONS UNDER THE AGE OF 21 IS AGAINST FLORIDA LAW. PROOF OF AGE IS REQUIRED FOR PURCHASE.

(2) The division shall make available to dealers of

nicotine products signs that meet the requirements of subsection (1).

(3) Any dealer that sells nicotine products shall provide at the checkout counter in a location clearly visible to the dealer or the dealer's agent or employee instructional material in a calendar format or similar format to assist in determining whether a person is of legal age to purchase nicotine products. This point of sale material must contain substantially the following language:

IF YOU WERE NOT BORN BEFORE THIS DATE
(insert date and applicable year)
YOU CANNOT BUY TOBACCO PRODUCTS, NICOTINE PRODUCTS, OR NICOTINE DISPENSING DEVICES.

Upon approval by the division, in lieu of a calendar a dealer may use card readers, scanners, or other electronic or automated systems that can verify whether a person is of legal age to purchase nicotine products. Failure to comply with the provisions contained in this subsection shall result in imposition of administrative penalties as provided in s. 569.35.

(4) The division, through its agents and inspectors, shall enforce this section.

(5) Any person who fails to comply with subsection (1) commits a misdemeanor of the second degree, punishable as

provided in s. 775.082 or s. 775.083.

Section 31. Section 569.44, Florida Statutes, is created to read:

569.44 Annual report.—The division shall report annually with written findings to the Legislature and the Governor by December 31 on the progress of implementing the enforcement provisions of this part. The report must include, but is not limited to:

(1) The number and results of compliance visits.

(2) The number of violations for failure of a retailer to hold a valid permit.

(3) The number of violations for selling nicotine products to persons under age 21, and the results of administrative hearings on the above and related issues.

(4) The number of persons under age 21 cited for violations of s. 569.42 and sanctions imposed as a result of citation.

Section 32. Section 569.45, Florida Statutes, is created to read:

569.45 Mail order, Internet, and remote sales of nicotine products; age verification.—

(1) For purposes of this section, the term:

(a) "Consumer" means a person in the state who comes into possession of any nicotine product who, at the time of possession, is not intending to sell or distribute the nicotine

product, or is not a retailer.

(b) "Delivery sale" means any sale of nicotine products to a consumer in the state for which:

1. The consumer submits the order for the sale by telephonic or other voice transmission, mail, delivery service, or the Internet or other online service; or

2. The nicotine products are delivered by use of mail or a delivery service.

(c) "Delivery service" means any person engaged in the commercial delivery of letters, packages, or other containers.

(d) "Legal minimum purchase age" means the minimum age at which an individual may legally purchase nicotine products in the state.

(e) "Retailer" means any person who is required to obtain a retail nicotine products dealer permit or a retail tobacco products dealer permit, as those terms are defined in s. 569.002.

(f) "Shipping container" means a container in which nicotine products are shipped in connection with a delivery sale.

(g) "Shipping document" means a bill of lading, airbill, United States Postal Service form, or any other document used to verify the undertaking by a delivery service to deliver letters, packages, or other containers.

(2)(a) A sale of nicotine products constituting a delivery

sale as defined in paragraph (1)(b) is a delivery sale regardless of whether the person accepting the order for the delivery sale is located inside or outside the state.

(b) A retailer must obtain a retail nicotine products dealer permit or a retail tobacco products dealer permit, as those terms are defined in s. 569.002, from the division under the requirements of this chapter before accepting an order for a delivery sale.

(c) A person may not make a delivery sale of nicotine products to any individual who is not 21 years of age or older.

(d) Each person accepting an order for a delivery sale must comply with each of the following:

1. The age verification requirements set forth in subsection (3).

2. The disclosure requirements set forth in subsection (4).

3. The shipping requirements set forth in subsection (5).

(3) A person may not mail, ship, or otherwise deliver nicotine products in connection with an order for a delivery sale unless, before the first delivery to the consumer, the person accepting the order for the delivery sale:

(a) Obtains from the person submitting the order a certification that includes:

1. Reliable confirmation that the person is 21 years of age or older; and

2. A statement signed by the person in writing and under penalty of perjury which:

a. Certifies the address and date of birth of the person; and

b. Confirms that the person wants to receive delivery sales from a nicotine products company and understands that, under the laws of the state, the following actions are illegal:

(I) Signing another person's name to the certification;

(II) Selling nicotine products to individuals who are not 21 years of age or older; and

(III) Purchasing nicotine products, if the person making the purchase is not 21 years of age or older.

(b) Makes a good faith effort to verify the information contained in the certification provided by the individual under paragraph (a) against a commercially available database that may be reasonably relied upon for accurate age information or obtains a photocopy or other image of a valid government-issued identification card stating the date of birth or age of the individual.

(c) Provides to the individual, via electronic mail or other means, a notice meeting the requirements of subsection (4).

(d) If an order for nicotine products is made pursuant to an advertisement on the Internet, receives payment for the delivery sale from the consumer by a credit or debit card issued

in the name of the consumer, or by personal or company check of the consumer.

(e) Submits, to each credit card acquiring company with which the person has credit card sales, identification information in an appropriate form and format so that the words "nicotine product" may be printed in the purchaser's credit card statement when a purchase of a nicotine product is made by credit card payment.

(f) Makes a telephone call after 5 p.m. to the purchaser confirming the order before shipping the nicotine products. The telephone call may be a person-to-person call or a recorded message. The person accepting the order for delivery sale is not required to speak directly with a person and may leave a message on an answering machine or through voice mail.

In addition to the requirements of this subsection, a person accepting an order for a delivery sale may request that a consumer provide an electronic mail address.

(4) The notice described in paragraph (3)(c) must include prominent and clearly legible statements that sales of nicotine products are:

(a) Illegal if made to individuals who are not 21 years of age or older.

(b) Restricted to those individuals who provide verifiable proof of age in accordance with subsection (3).

(5) Each person who mails, ships, or otherwise delivers nicotine products in connection with an order for a delivery sale must:

(a) Include as part of the shipping documents, in a clear and conspicuous manner, the following statement: "Nicotine Products: Florida law prohibits shipping to individuals under 21 years of age."

(b) Use a method of mailing, shipping, or delivery which obligates the delivery service to require:

1. The individual submitting the order for the delivery sale or another person 21 years of age or older who resides at the individual's address to sign his or her name to accept delivery of the shipping container. Proof of the legal minimum purchase age of the individual accepting delivery is required only if the individual appears to be under 30 years of age.

2. Proof that the individual is either the addressee or the individual who is 21 years of age or older designated by the addressee, in the form of a valid, government-issued identification card bearing a photograph of the individual who signs to accept delivery of the shipping container.

If the person accepting a purchase order for a delivery sale delivers the nicotine products without using a delivery service, the person must comply with all of the requirements of this section which apply to a delivery service. Any failure to comply

with a requirement of this section constitutes a violation of this section.

(6) This section does not apply to delivery sales of nicotine products to a retail nicotine products dealer or a retail tobacco products dealer, as those terms are defined in s. 569.002.

(7) An individual 21 years of age or older who knowingly violates any provision of this section commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(8) The Attorney General, the Attorney General's designee, or a state attorney may bring an action in the appropriate court in the state to prevent or restrain violations of this section by any person.

Section 33. Section 877.112, Florida Statutes, is repealed.

Section 34. This act shall take effect December 1, 2021.

CS/HB 1239

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1239 Broadband Internet Infrastructure
SPONSOR(S): Ways & Means Committee, Tomkow and others
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Tourism, Infrastructure & Energy Subcommittee	15 Y, 1 N	Willson	Keating
2) Ways & Means Committee	15 Y, 1 N, As CS	Berg	Aldridge
3) Commerce Committee		Willson	Hamon

SUMMARY ANALYSIS

Federal law provides that a state or local government may not prohibit the ability of any entity to provide telecommunications services. Federal law also recognizes the authority of state and local governments to manage the public right-of-way (ROW) and to require fair and reasonable compensation from telecommunications service providers, on a competitively neutral and nondiscriminatory basis, for the use of such ROW.

Federal law requires investor-owned utilities to provide nondiscriminatory access for attachments to their poles, conduit, or ROW by cable television systems and telecommunications carriers, and authorizes the Federal Communications Commission (FCC) to regulate the rates, terms, and conditions of such attachments in the absence of parallel state regulation.

Most attachments of cable and telecommunications carrier facilities to utility poles owned by a municipal electric utility are not currently regulated at the state or federal level.

The bill requires and provides a procedure for access by broadband providers for attachments to poles owned and operated by municipal electric utilities. It provides for the adoption of rates, terms, and conditions for such access consistent with federal requirements for pole attachments. Each municipal electric utility must:

- Make available all records necessary to calculate the pole attachment rate pursuant to the current FCC formula used to calculate attachment rates for cable service providers.
- Rearrange, expand, replace, or reengineer any pole if necessary to accommodate the new attachment.
- If replacement is required, the municipal utility must complete all necessary work within 90 days of a request and may be reimbursed only the cost associated with advancing the retirement of the existing pole.

The bill provides that existing pole attachment agreements must be renegotiated at the request of either party in order to bring the agreement in compliance with the bill. The bill specifies that disputes over pole attachment agreements must be adjudicated in circuit court, and that the effect of a court's determination is retroactive to the date of the request to renegotiate.

The bill does not appear to have a fiscal impact on state government, but appears to have an indeterminate impact on local government revenues and expenditures.

The bill takes effect on July 1, 2021.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Regulation of Pole Attachments

The term pole attachment refers to the process by which communications companies can collocate communications infrastructure on existing electric utility poles. Utility poles are divided into various "spaces" for specific uses, and different vertical portions of the pole serve different functions.[1] Utility poles often accommodate equipment used to provide a variety of services, including electric power, telephone, cable, wireline broadband, and wireless, which benefits the public by minimizing "unnecessary and costly duplication of plant for all pole users."[2]

The bottom of the pole generally is unusable for most types of attachments, although providers of wireless services and facilities sometimes attach equipment associated with distributed antenna systems and other small wireless facilities to the portion of the pole near the ground.[3] Above that, the lower usable space on a pole (known as the "communications space") houses low-voltage communications equipment, including fiber, coaxial cable, and copper wiring.[4] The topmost portion of the pole, the "electric space," houses high-voltage electrical equipment.[5] Historically, communications equipment attachers used only the communications space; however, mobile wireless providers increasingly are seeking access to areas above the communications space, including the electric space, to attach pole-top small wireless facilities. When a new attacher seeks access to a pole, it is necessary to evaluate whether adding the attachment will be safe and whether there is room for it. In many cases, existing attachments must be moved to make room for the new attachment. In some cases, it is necessary to install a larger pole to accommodate a new attachment.[6]

Federal law provides that a state or local government may not prohibit the ability of any entity to provide telecommunications services.[7] Federal law also recognizes the authority of state and local governments to manage the public right-of-way (ROW) and to require fair and reasonable compensation from telecommunication providers, on a competitively neutral and nondiscriminatory basis, for the use of such ROW.[8]

Congress began regulating pole attachments[9] in 1978.[10] The Telecommunications Act (Act) of 1996[11] expanded pole attachment rights to telecommunications[12] carriers. The Act requires utilities[13] to provide

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[1] *See* Florida Public Service Commission, What's on a Utility Pole? http://www.psc.state.fl.us/ConsumerAssistance/UtilityPole (last visited Mar. 17, 2021).
[2] S. REP. NO. 95-580, at 13 (1977), *as reprinted in* 1978 U.S.C.C.A.N. 109, 121.
[3] *See* EEI Oct. 3, 2017 Wireline *Ex Parte* Letter at Attach*. Pole Attachments: Safety and Reliability*; Crown Castle Wireline NPRM Comments at 5.
[4] PSC, *supra,* note 1.
[5] PSC, *supra*, note 1.
[6] FCC-CIRC1808-03 at 4-5.
[7] 47 U.S.C. § 253(a).
[8] 47 U.S.C. § 253(c). states that "Nothing in this section affects the authority of a State or local government to manage the public rights-of-way or to require fair and reasonable compensation from telecommunications providers, on a competitively neutral and nondiscriminatory basis, for use of public rights-of-way on a nondiscriminatory basis, if the compensation required is publicly disclosed by such government."
[9] 47 U.S.C. § 224(a)(4), defines ''pole attachment'' as "any attachment by a cable television system or provider of telecommunications service to a pole, duct, conduit, or right-of-way owned or controlled by a utility."
[10] The Pole Attachment Act of 1978 granted utility pole access to cable companies and was designed to promote utility competition and service to the public. Communications Act Amendments of 1978, Pub. L. No. 95-234. (Feb. 21, 1978).
[11] Telecommunications Act of 1996, Pub. LA. No. 104-104, 110 Stat. 56 (1996).
[12] The term "telecommunications" means the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received. 47 U.S.C. § 153(50).
[13] 47 U.S.C. § 224(a)(1), defines ''utility'' as "any person who is a local exchange carrier or an electric, gas, water, steam, or other public utility, and who owns or controls poles, ducts, conduits, or rights-of-way used, in whole or in part, for any wire communications.

nondiscriminatory access to cable television systems and telecommunications carriers. The Act also authorizes the Federal Communications Commission[14] (FCC) to regulate the rates, terms, and conditions of attachments by cable television operators to the poles, conduit, or ROW owned or controlled by utilities in the absence of parallel state regulation.[15] The Act withheld from FCC jurisdiction the authority to regulate attachments where the utility is a railroad, cooperatively organized, or owned by a government entity.[16]

In April 2011, the FCC approved a pole attachment order which established a revised telecommunications formula and included make-ready[17] provisions which provided a benchmark for pole attachment rates and access.[18]

In September 2018, the FCC issued an order[19] which preempted state and local laws and agreements, including those related to pole attachments, to remove regulatory barriers that would inhibit the deployment of "small cell" infrastructure necessary to support new wireless broadband services. The order set uniform rates and regulations for attachments on poles owned and controlled by publicly-owned electric utilities.[20] The order provided that state or local fees charged to mobile service providers for deploying small cell sites violate federal law unless they:

- Are a reasonable approximation of the state or local government's costs;
- Only factor in costs that are "objectively reasonable;" and
- Are no higher than fees charged to similarly situated competitors.[21]

Except for small cell wireless facilities, attachments of cable and telecommunications carrier facilities to utility poles owned by a municipal electric utility are not currently regulated at the state or federal level.

Effect of the Bill

Broadband Service Infrastructure

The bill creates s. 364.0137, F.S., to provide requirements for broadband provider attachments to municipal electric utility poles.

Such term does not include any railroad, any person who is cooperatively organized, or any person owned by the Federal Government or any State."

[14] The FCC regulates interstate and international communications by radio, television, wire, satellite and cable in all 50 states, the District of Columbia and U.S. territories. An independent U.S. government agency overseen by Congress, the FCC is the United States' primary authority for communications law, regulation and technological innovation. FCC, *What We Do*, https://www.fcc.gov/about-fcc/what-we-do (last visited Mar 13, 2021).

[15] 47 U.S.C. § 224.

[16] *In the Matter of Implementation of Section 224 of the Act A Nat'l Broadband Plan for Our Future*, 26 F.C.C. Rcd. 5240, 5245–46 (2011).

[17] "Make-ready" generally refers to the modification of poles or lines or the installation of guys and anchors to accommodate additional attachments. FCC, *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket Nos. 96-98, 95-185, Order on Reconsideration, 14 FCC Rcd 18049, 18056 n.50 (1999).

[18] FCC, *In the Matter of A National Broadband Plan for Our Future* (GN Docket No. 09-51) Implementation of Section 224 of the Act (WC Docket No. 07-245) Report And Order And Order On Reconsideration, FCC 11-50. (Apr. 7, 2011).

[19] FCC, *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment, Report and Order*, 33 FCC Rcd 9088 (14), FCC-18-133. *See also* Congressional Research Service, *Overview of Legal Challenges to the FCC's 5G Order on Small Cell Siting* (Feb. 25, 2019) The Order's discussion of preemption begins by interpreting the Telecommunication Act's two relevant preemption provisions: Sections 253 and 332(c)(7). Subject to certain exceptions, these sections preempt state and local requirements that "prohibit or have the effect of prohibiting the ability of any entity" to provide "telecommunications" or "personal wireless services." The Order interprets these provisions as imposing a "material inhibition" standard, concluding that a law "ha[s] the effect of prohibiting" a telecommunications entity from providing service if it "materially limits or inhibits the ability of any competitor or potential competitor to compete in a fair and balanced legal and regulatory environment."

[20] American Public Power Association, *Preserving the Municipal Exemption from Federal Pole Attachment Regulations*, at 2. https://www.publicpower.org/system/files/documents/January%202021%20-%20Federal%20Pole%20Attachment%20Regulations.pdf (last visited Mar. 17, 2021).

[21] CRS, *supra,* note 19, at 2-3. The order also identifies specific fee limits that are presumptively allowed under federal law. For non-recurring fees, such as up-front applications for small cell site installations, localities may charge up to $500, subject to certain exceptions. For recurring fees, such as access fees, localities may charge up to $270 per year. Under certain circumstances, higher fees may be charged due to local cost variances.

The bill provides legislative findings that just, reasonable, and nondiscriminatory rates, terms, and condition for access and use of municipal electric utility poles by broadband service providers is essential for the deployment of broadband service to the residents of the state.

The bill defines the following terms:

- "Attachment" means any attachment to a utility pole or structure, duct, conduit, or right-of-way owned or controlled by a municipal electric utility.
- "Broadband provider" means a person who provides broadband service, and includes a person who provides or offers additional services to the public in addition to broadband service.
- "Broadband service" means a service that provides high-speed access to the Internet at a rate of at least 25 megabits per second in the downstream direction and at least 3 megabits per second in the upstream direction.
- "Utility pole" means a pole owned or controlled by a municipal electric utility which is used in whole or in part for electric distribution.

The bill provides that to promote the deployment of broadband service to all residents, each municipal utility must provide broadband providers with access to any utility pole it owns or operates and adopt rates, terms and conditions for such access that are consistent with 47 U.S.C. s. 224 and any FCC regulations and decisions adopted as of July 1, 2021. The rates, terms, and conditions must be nondiscriminatory, just, and reasonable and may not favor a pole owner, owner, or affiliate of the pole owner.

A municipal electric utility may not discriminate between providers and any attaching entity, regardless of the services furnished. The annual recurring rate established by the utility may not exceed the rate calculated pursuant to the cable service rate formula established by 47 U.S.C. s. 224(d) and FCC regulations and decisions in existence on July 1, 2021. The utility must maintain the records necessary to calculate the charges, including costs, description, and depreciation of the utility poles, including any ancillary poles.

The bill requires a municipal utility to rearrange or otherwise reengineer any utility pole if necessary to accommodate the broadband provider's new attachment. If the utility pole must be replaced to accommodate the attachment, the utility may only charge the broadband provider its actual and reasonable costs of "advancing the retirement of the existing utility pole." The costs must be measured by all of the following:

- Net book value of the existing utility pole;
- Incremental cost of installing a utility pole with greater capacity than the existing pole; and
- Other incremental costs that may not include the cost of a pole that the municipal utility would have installed at the same location.

A municipal utility may not prohibit a broadband provider from using boxing techniques, extension arms, attachments below existing attachments where space is unavailable above the existing attachments, temporary attachments, or other methods or equipment, provided that they comply with the National Electric Safety Code, or any other applicable safety codes.

For any pole replacement, the bill requires the municipal utility to complete all work necessary to accommodate the broadband provider's attachments within 90 days after receipt of an attachment request from the provider. The municipal utility may not require the provider to comply with any attachment specifications that exceed the National Electric Safety Code or any applicable codes.

A municipal electric utility or a broadband provider may submit a written request to negotiate an agreement or to amend, modify, or renew an existing agreement on attachments to conform to the provisions of the bill. The parties must negotiate in good faith for at least 60 days, and after that time, either party may petition the circuit court to determine rates, terms and conditions of the agreements consistent with the provisions of the bill, which include application of current federal law, such as the FCC-approved formula for calculating cable service attachment rates. The court must enter a decision within 180 days after the filing of the petition. The court's decision is retroactive to apply to existing

attachments and to the date of the written request to negotiate and applies to the continuing terms of all existing attachments installed before the written request.

Between the date of the written request and the court's decision:

- The terms of any existing agreement on attachments apply, subject to true-up, to put the parties in the position they would have been if the court's decision had been in effect on the date of the negotiation request.
- In the absence of an existing agreement, unless the parties agree otherwise, the court, within 30 days following the petition for determination, is required to establish interim rates and conditions, subject to a true-up, to put the parties in the position they would have been if the court's decision had been in effect on the date of the negotiation request.

A utility or provider may seek available remedies at law or equity for violations of the provisions of the bill. The court is required to give effect to the provisions of 47 U.S.C. s. 224 and FCC regulations and decisions in existence on July 1, 2021, in making its decision.

The bill takes effect on July 1, 2021.

B. SECTION DIRECTORY:

Section 1 Provides a short title.

Section 2 Creates s. 364.0137, F.S., relating to broadband service infrastructure.

Section 3 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:

   The bill may have an indeterminate impact on local government revenues associated with potential changes to the pole attachment charges.

2. Expenditures:

   The bill appears to have an indeterminate negative impact on local government expenditures associated with the renegotiation and possible litigation of pole attachment rates, terms, and conditions. The bill may also negatively impact local governments that are required to replace poles sooner than planned.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Broadband service providers may see an adjustment in the pole attachment fees paid to municipal electric utilities for installation of attachments to the utilities' poles.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

On line 100, the first word "to" appears to be a drafting error.

Line 198 refers to the "commission's determination" but should read "court's determination."

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On April 8, 2021, The Ways & Means Committee adopted an amendment that removed provisions in the bill that created a sales tax exemption for equipment purchased, leased, or sold in Florida for use by providers of telecommunications services and providers of Internet access services.

This analysis is drafted to the bill as amended.

A bill to be entitled

An act relating to broadband Internet infrastructure; providing a short title; creating s. 364.0137, F.S.; providing legislative findings; providing definitions; requiring municipal electric utilities to ensure that their broadband provider rates and fees meet certain requirements, make certain records available to broadband providers, and establish just and reasonable terms and conditions for broadband provider attachments; prohibiting utilities from prohibiting a broadband provider from using certain techniques and equipment if used in accordance with certain safety standards; requiring any required pole replacement to be completed within a specified timeframe; prohibiting utilities from requiring a broadband provider to comply with attachment specifications that exceed specified established safety levels; providing construction; authorizing municipal electric utilities and broadband providers to negotiate agreements or renegotiate existing agreements and to petition the court after a specified timeframe if unable to reach an agreement; requiring the court to make a determination within a specified timeframe; specifying that such determination applies retroactively; authorizing municipal electric utilities and broadband

providers to seek any available remedies; providing an effective date.

WHEREAS, although this state is a national leader in private sector broadband investment, including billions of dollars invested by existing service providers, estimates show that as many as 804,000 residents lack access to the services, particularly in rural areas where the cost to deploy facilities is significantly higher than in more densely populated areas, and

WHEREAS, the lack of advanced communication capabilities, broadband facilities, and services in certain areas deprives residents of access to opportunities, and

WHEREAS, the Legislature finds that it is in the public interest of this state to encourage private-sector investment in broadband deployment and upgrades, encourage greater participation and access for all residents, and remove regulatory and economic barriers to such investment, and

WHEREAS, the Legislature finds that it is in the public interest of this state to encourage and facilitate the development of and investment in broadband facilities to advance Florida's economic competitiveness, create job opportunities, enhance health care, and enhance educational advancement, and

WHEREAS, the Legislature finds that reasonable rates, terms, and conditions for access and use of municipal utility

poles by broadband service providers are essential for the deployment, upgrade, and maintenance of broadband service, and

WHEREAS, it is critical that such access rates, terms, and conditions be reasonable and fully compensatory, as approved by the federal pole attachment framework imposed by the Communications Act of 1934, as amended, 47 U.S.C. s. 224, and the regulations of the Federal Communications Commission governing utilities whose pole attachments are regulated under federal law, NOW, THEREFORE,

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

Section 1. This act may be cited as the "Florida Broadband Deployment Act of 2021."

Section 2. Section 364.0137, Florida Statutes, is created to read:

364.0137 Broadband service infrastructure.—

(1) The Legislature finds that just, reasonable, and nondiscriminatory rates, terms, and conditions for the access and use of municipal electric utility poles by broadband service providers is essential to deploy, upgrade, and maintain broadband service to residents of the state. It is critical that municipal electric utility pole access and use rates are just, reasonable, nondiscriminatory, and fully compensatory, which may be achieved under the federal law framework applicable to

utility poles owned and operated by investor-owned utilities. The terms and conditions associated with the access and use of utility poles must be consistent with 47 U.S.C. s. 224, the Communications Act of 1934, as amended, and the regulations of the Federal Communications Commission, as those regulations existed on July 1, 2021.

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

(a) "Attachment" means any attachment to a utility pole or structure, duct, conduit, or right-of-way owned or controlled by a municipal electric utility.

(b) "Broadband provider" means a person who provides broadband service, and includes a person who provides or offers additional services to the public in addition to broadband service.

(c) "Broadband service" means a service that provides high-speed access to the Internet at a rate of at least 25 megabits per second in the downstream direction and at least 3 megabits per second in the upstream direction.

(d) "Utility pole" means a pole owned or controlled by a municipal electric utility which is used in whole or in part for electric distribution.

(3) To promote the deployment of broadband service to all residents, each municipal electric utility:

(a) Shall provide broadband providers with access to any to utility poles it owns or operates and adopt rates, terms, and

conditions for such access which are consistent with the provisions of 47 U.S.C. s. 224 and any Federal Communications Commission regulations and decisions adopted thereunder, as such regulations and decisions existed on July 1, 2021. The rates, terms, and conditions must be nondiscriminatory, just, and reasonable and may not favor a pole owner or an affiliate of the pole owner.

(b)1. Shall ensure that any rate or fee that the municipal electric utility charges to a broadband provider for an attachment to a utility pole does not:

a. Discriminate between or among such providers and any other attaching entity, regardless of the services furnished.

b. Exceed the annual recurring rate calculated in accordance with the cable service rate formula established by 47 U.S.C. s. 224(d) or any Federal Communications Commission rule, regulation, or decision adopted thereunder, as such existed on July 1, 2021.

2. Shall maintain and make available to a broadband provider all records necessary to calculate the rate it charges to the provider. The records must include:

a. All costs associated with utility poles; any improvements or reinforcements thereto; and any appurtenances, including costs associated with storm hardening efforts, which must be identified with particularity.

b. Identification of the actual height, usable space, and

appurtenances associated with each utility pole.

c. Information regarding any ancillary utility poles and the costs associated with such poles, which are separately identifiable from the principal utility poles they support.

d. To the extent the accumulated depreciation for a utility pole which is used to calculate the rate is based on records specific to pole plant rather than based on proration of accumulated depreciation tracked at a higher aggregated plant amount, sufficiently detailed data to support the pole specific figure.

(c) Shall establish just and reasonable terms and conditions for a broadband provider attachment which do not discriminate between or among providers or any other attaching entity and which are consistent with 47 U.S.C. s. 224 and any Federal Communications Commission rule, regulation, or decision adopted thereunder, as such existed on July 1, 2021, except that:

1. If necessary to accommodate a broadband provider's new attachment, the municipal electric utility shall rearrange, expand, replace, or otherwise safely reengineer any utility pole upon the request of the broadband provider. If the municipal electric utility is required to replace a utility pole pursuant to this subparagraph, the municipal electric utility may not require a broadband provider to reimburse any costs associated with such pole replacement beyond the recovery of its actual and

reasonable costs of advancing the retirement of the existing utility pole. Such costs shall be measured by all of the following:

a. The net book value of the existing utility pole.

b. The incremental cost, if any, of installing a utility pole with greater capacity than the utility pole the municipal electric utility would have installed in the normal course of its operations.

c. Any other incremental costs proved by the municipal electric utility, provided that such incremental costs do not include any costs associated with a utility pole the utility would have installed at the same location.

2. The municipal electric utility may not prohibit the broadband provider from using boxing techniques, extension arms, attachments below existing attachments where space is unavailable above existing attachments, temporary attachments, or other methods or equipment, provided that such use complies with the National Electric Safety Code or other applicable safety codes.

3. With respect to a utility pole replacement, the municipal electric utility must complete such pole replacement and any other work necessary to accommodate the broadband provider's attachment to the replaced pole within 90 days after receiving a complete attachment request from a broadband provider.

(d) May not require a broadband provider to comply with any utility pole attachment specifications that exceed the specifications in the National Electric Safety Code, applicable fire safety codes, or any building code or similar code of general applicability for the protection of public health, safety, or welfare which was adopted by the applicable local governmental jurisdiction before the broadband provider filed a utility pole attachment application. However, this section may not be construed to expand the power of any local governmental jurisdiction.

(4) A municipal electric utility or broadband provider may submit a written request to negotiate any agreement or to amend, modify, or renew any existing agreement addressing attachments by the broadband provider to conform such agreements to this section. The parties must negotiate in good faith for at least 60 days after the written request, after which either party may petition the circuit court to determine rates, terms, and conditions for the agreements consistent with this section. The court shall make a determination within 180 days after the filing of the petition for that determination. The court's determination applies retroactively to attachments between the date of the written request to negotiate and the date of the commission's determination, and applies to the continuing terms of all existing attachments that were installed before the written request. Between the date of the written request to

negotiate and the date of the court's determination:

(a) The terms and conditions of any existing agreement addressing such attachments apply, subject to true-up, to put the parties in the positions in which they would have been had the court's determination been in effect on the date of the written request to negotiate.

(b) In the absence of such existing agreement, unless the parties agree otherwise, the court, within 30 days after the petition for a determination, must establish interim rates, terms, and conditions that will apply, subject to true-up, to put the parties in the positions in which they would have been had the court's determination been in effect on the date of the written request to negotiate.

(5) A municipal electric utility or broadband provider may seek any available remedies at law or equity for violations of this section. In all cases involving this section, and to the extent not otherwise provided by this section, the court shall give effect to the provisions and intent of 47 U.S.C. s. 224 and any Federal Communications Commission rules, regulations, or decisions adopted thereunder, as such existed on July 1, 2021.

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

COMMERCE COMMITTEE

CS/HB 1239 by Rep. Tomkow
BROADBAND INTERNET INFRASTRUCTURE

AMENDMENT SUMMARY
APRIL 19, 2021

Amendment 1 by Rep. Tomkow (Strike-all):

- Provides for discounted rates and terms for the attachment of broadband facilities onto municipal electric utility poles to reach unserved end users within a utility's service territory.
- Creates a grant program in the Florida Office of Broadband for the installation or deployment of broadband Internet infrastructure to reach unserved areas of the state.
- Updates provisions related to the Florida Office of Broadband.

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 everything after the enacting clause and insert:

Section 1. This act may be cited as the "Florida Broadband Deployment Act of 2021."

Section 2. Part XV of chapter 288, Florida Statutes, consisting of sections 288.9961, 288.9962, and 288.9963 is created and entitled "Florida Office of Broadband."

Section 3. Section 364.0135, Florida Statutes, is transferred, renumbered as section 288.9961, Florida Statutes, and amended to read:

288.9961 ~~364.0135~~ Promotion of broadband adoption; Florida Office of Broadband.—

(1) LEGISLATIVE FINDINGS.—The Legislature finds that the

sustainable adoption of broadband Internet service is critical to the economic and business development of this ~~the~~ state and is beneficial for libraries, schools, colleges and universities, health care providers, and community organizations.

(2) DEFINITIONS.—As used in this part, unless otherwise specified ~~section~~, the term:

(a) "Broadband Internet service" means any service that provides access to the Internet with a capacity for transmission at a consistent speed of at least 25 megabits per second download and 3 megabits per second upload.

(b) ~~(a)~~ "Department" means the Department of Economic Opportunity.

(c) "Deployed" means that a provider meets either of the following:

1. Currently provides broadband Internet service in a specific geographic area; or

2. Is able to provide broadband Internet service in a specific geographic area to a customer that requests that service not later than 30 days after the customer requests installation of that service and without an extraordinary commitment of resources or construction charges or fees exceeding an ordinary service activation fee. The 30-day time period shall be extended to 60 days if permits are needed before the broadband Internet service is installed and activated.

(d) ~~(b)~~ "Office" means the Florida Office of Broadband.

(e) ~~(c)~~ "Sustainable adoption" means the ability for communications service providers to offer broadband Internet services in all areas of this ~~the~~ state by encouraging adoption and utilization levels that allow for these services to be offered in the free market absent the need for governmental subsidy.

~~(d) "Underserved" means a geographic area of the state in which there is no provider of broadband Internet service that offers a connection to the Internet with a capacity for transmission at a consistent speed of at least 10 megabits per second downstream and at least 1 megabit per second upstream.~~

(f) "Unserved" means a geographic area of the state in which broadband Internet service is not deployed.

(3) STATE AGENCY.—The department is designated as the lead state agency to facilitate the expansion of broadband Internet service in this ~~the~~ state. The department shall work collaboratively with private businesses and receive staffing support and other resources from Enterprise Florida, Inc., state agencies, local governments, and community organizations.

(4) FLORIDA OFFICE OF BROADBAND.—The Florida Office of Broadband is created within the Division of Community Development in the department for the purpose of developing, marketing, and promoting broadband Internet services in this ~~the~~ state. The office, in the performance of its duties, shall do all of the following:

(a) Create a strategic plan that has goals and strategies for increasing the use of broadband Internet service in this ~~the~~ state. The plan must include a process to review and verify public input regarding transmission speeds and availability of broadband Internet service throughout the state.

(b) Build and facilitate local technology planning teams or partnerships with members representing cross-sections of the community, which may include, but are not limited to, representatives from the following organizations and industries: libraries, K-12 education, colleges and universities, local health care providers, private businesses, community organizations, economic development organizations, local governments, tourism, parks and recreation, and agriculture. These local technology planning teams shall work with rural communities to help the communities determine their current broadband Internet service availability, locate unserved and underserved customers, identify assets relevant to broadband deployment, build partnerships with broadband Internet service providers, and identify opportunities to leverage assets and reduce barriers to the deployment of public and private broadband Internet service in the community. The teams or partnerships must be proactive in fiscally constrained counties in identifying and providing assistance with applying for federal grants for broadband Internet service.

(c) Encourage the use of broadband Internet service,

especially in the rural or~~,~~ unserved~~, or underserved~~ communities of the state through grant programs having effective strategies to facilitate the statewide deployment of broadband Internet service. For any grants to be awarded, priority must be given to projects that:

1. Provide access to broadband education, awareness, training, access, equipment, and support to libraries, schools, colleges and universities, health care providers, and community support organizations.

2. Encourage the sustainable adoption of broadband Internet service in primarily unserved ~~underserved~~ areas by removing barriers to entry.

3. Work toward encouraging investments in establishing affordable and sustainable broadband Internet service in unserved ~~underserved~~ areas of this ~~the~~ state.

4. Facilitate the development of applications, programs, and services, including, but not limited to, telework, telemedicine, and e-learning to increase the usage of, and demand for, broadband Internet service in this ~~the~~ state.

(d) Monitor, participate in, and provide input in proceedings of the Federal Communications Commission and other federal agencies related to the geographic availability and deployment of broadband Internet service in the state as necessary to ensure that this information is accurately presented and that rural or~~,~~ unserved~~, and underserved~~ areas of

the state are best positioned to benefit from federal and state broadband deployment programs.

(e) Administer the Broadband Opportunity Program established in s. 288.9962.

(5) ADMINISTRATION.—The department may:

(a) Apply for and accept federal funds for purposes of this section.

(b) Enter into contracts necessary or useful to carry out the purposes of this section.

(c) Establish any committee or workgroup to administer and carry out the purposes of this section.

(d) Adopt rules to implement this part.

Section 4. Section 288.9962, Florida Statutes, is created to read:

288.9962 Broadband Opportunity Program.—

(1) The Broadband Opportunity Program is established within the office to award grants to applicants who seek to expand broadband Internet service to unserved areas of this state. The office must administer and act as fiscal agent for the program and is responsible for receiving and reviewing applications and awarding grants.

(2) Subject to appropriation, grants shall be awarded under this section to fund the installation or deployment of infrastructure that supports the provision of broadband Internet service. State funds may not be used to install or deploy

broadband Internet service to a geographic area in which broadband Internet service is already deployed by at least one provider.

(3) Applicants eligible for grant awards include:

(a) Corporations, nonprofit corporations, limited liability companies, general partnerships, and limited partnerships that are organized under the laws of this state or otherwise authorized to transact business in this state.

(b) Political subdivisions.

(c) Indian tribes.

(4) The office may not award, directly or indirectly, grants under this section to a governmental entity or an educational institution or affiliate to provide broadband Internet service to any residential or commercial premises, unless other broadband Internet service providers have not deployed service to an unserved area.

(5) An eligible applicant shall submit a grant application to the office on a form prescribed by the office. A grant application must include the following information:

(a) A description of the project area.

(b) A description of the kind and amount of broadband Internet service infrastructure that is proposed.

(c) Evidence demonstrating the unserved nature of the project area.

(d) The number of households and businesses that would

have access to broadband Internet service as a result of the grant.

(e) A list of significant community institutions that would benefit from the grant.

(f) The total cost of the project and the timeframe in which it would be completed.

(g) A list identifying sources of funding or in-kind contributions that would supplement any awarded grant.

(h) Any other information required by the office.

(6)(a) At least 30 days before the first day grant applications may be submitted each fiscal year, the office shall publish on its website the specific criteria and quantitative scoring system it will use to evaluate or rank grant applications. Such criteria and quantitative scoring system must include the criteria set forth in subsection (8).

(b) Within 3 business days after the close of the grant application process, the office shall publish on its website, from each grant application submitted, the proposed unserved areas to be served and the proposed broadband Internet speeds of the areas to be served.

(c) A broadband Internet service provider that provides existing service in or adjacent to a proposed project area may submit to the office, within 45 days after publication of the information under paragraph (b), a written challenge to an application. The challenge shall contain information

demonstrating that:

1. The provider currently has deployed broadband Internet service to retail customers within the project area;

2. The provider has begun construction to provide broadband Internet service to retail customers within the proposed project area within the timeframe proposed by the applicant; or

3. The provider commits to providing broadband Internet service to retail customers within the proposed project area within the timeframe proposed by the applicant.

(d) Within 3 business days after the submission of a written challenge, the office shall notify the applicant, in writing, of the challenge.

(e) The office shall evaluate each challenge submitted under this subsection. If the office determines that the provider currently has deployed, has begun construction to provide, or commits to provide broadband Internet service in the proposed project area, the office may not fund the challenged project.

(f) If the office denies funding to an applicant as a result of a broadband Internet service provider's challenge and the provider does not fulfill its commitment to provide broadband Internet service in the unserved area, the office may not consider another challenge from the provider for the next two grant application cycles, unless the office determines that

the failure to fulfill the commitment was due to circumstances beyond the provider's control.

(7)(a) In evaluating grant applications and awarding grants, the office must give priority to applications that:

1. Offer broadband Internet service to important community institutions, including, but not limited to, libraries, educational institutions, public safety facilities, and health care facilities;

2. Facilitate the use of telemedicine and electronic health records;

3. Serve economically distressed areas of the state, as measured by indices of unemployment, poverty, or population loss that are significantly greater than the statewide average;

4. Provide for scalability to transmission speeds of at least 100 megabits per second download and 10 megabits per second upload;

5. Include a component to actively promote the adoption of the newly available broadband Internet service in the community;

6. Provide evidence of strong support for the project from citizens, government, businesses, and institutions in the community;

7. Provide access to broadband Internet service to the greatest number of unserved households and businesses;

8. Leverage greater amounts of funding for a project from private sources; or

9. Demonstrate consistency with the strategic plan adopted under s. 288.9961.

(b) The office must endeavor to award grants to qualified applications serving all regions of the state.

(8)(a) The office may not award any grant to an otherwise eligible grant applicant to provide broadband Internet service in a project area for which any other federal funding has been awarded.

(b) A grant awarded under this section may not be used to serve any retail end user that already has access to broadband Internet service.

(c) A grant awarded under this section, when combined with any state or local funds, may not fund more than 50 percent of the total cost of a project.

(d) A single project may not be awarded a grant in excess of $5 million.

(9) For each grant awarded, the office shall enter into an agreement with the applicant. The agreement must specify the total amount of the grant, performance conditions that must be met to obtain the grant, the schedule of payment, and sanctions that would apply for failure to meet performance conditions, including, but not limited to, requiring the return of grant funds.

(10) By January 1, 2023, and each year thereafter, the office shall publish on its website and provide to the Governor,

the President of the Senate, and the Speaker of the House of Representatives:

(a) A list of all grant applications received during the previous fiscal year and for each application:

1. The results of any quantitative weighting or scoring system the office used to award grants or rank the applications.

2. The grant amounts requested.

3. The grant amounts awarded, if any.

4. A report on the progress of each grant recipient in acquiring and installing infrastructure that supports the provision of broadband Internet service in the project areas for which that grant was awarded and in securing adoption of such service in each project area.

(b) All written challenges filed during the previous year and the results of those challenges.

Section 5. Section 288.9963, Florida Statutes, is created to read:

288.9963 Attachment of broadband facilities to municipal electric utility poles.--

(1) The Legislature finds that there is a need for increased availability of broadband Internet access throughout the state, particularly in areas where citizens do not have access to acceptable Internet download and upload speeds, or any access at all. The lack of Internet connectivity and widespread broadband availability is detrimental to the growth of the

economy, access to telehealth, and educational opportunities. The federal government has provided vast resources for private cable and other broadband providers to expand the deployment of broadband Internet infrastructure in areas where Internet access and broadband Internet services are inadequate or non-existent.

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

(a) "Broadband provider" means a person or entity who provides fixed broadband Internet service.

(b) "Broadband service" means a service that provides high speed access to the Internet at a rate of at least 25 megabits per second in the downstream direction and at least 3 megabits per second in the upstream direction.

(c) "Safety and reliability standards" includes all applicable engineering, reliability, and safety standards governing the installation, maintenance, and operation of facilities and poles and the performance of all work in and around electric utility facilities, including particular utility standards made available to a broadband provider, and shall include the most current versions of the National Electric Safety Code, the National Electric Code, and the regulations of the Occupational Safety and Health Administration, and other reasonable non-discriminatory safety and engineering requirements, including, but not limited to requirements addressing overloading of electric utility facilities.

(d) "Underserved" means there is no retail access to the Internet at speeds of at least 25 megabits per seconds for downloading and 3 megabits per second for uploading.

(e) "Unserved" means that there is no retail access to the Internet at speeds of at least 10 megabits per seconds for downloading and 1 megabits per second for uploading.

(f) "Wireline attachment" means a wire or cable and associated equipment affixed to a utility pole in the communications space of the pole.

(3) After July 1, 2021, a broadband provider shall receive a promotional rate of $1 per wireline attachment per pole per year for any new attachment necessary to make broadband service available to an unserved or underserved end user within a municipal electric system service territory for the time period specified herein.

(a) A broadband provider who wishes to make wireline attachments subject to the promotional rate shall submit an application, including a route map, to the municipal electric utility specifying which wireline attachments on which utility poles are necessary to extend broadband service to unserved and underserved end users and therefore qualify for the promotional rate set forth herein, together with such information necessary to identify which unserved or underserved end users within the municipal electric utility's service territory will gain access

to broadband service as a result. A copy of such application and plan shall also be submitted simultaneously to the Office.

(b) A municipal electric utility shall report to the Office which attachments on which utility poles were made available to broadband providers subject to the promotional rate, together with any information available to it regarding which of its municipal electric utility customers do and do not have access to broadband service and whether they are unserved or underserved.

(c) A broadband provider who makes application to attach under the promotional rate shall make all reasonable efforts to make broadband service available to the unserved or underserved municipal electric utility customers identified in the application. If a broadband provider fails to make broadband service available to those customers within twelve months, it may be required to pay the prevailing rate for those attachments that failed to make broadband service available to the intended customers.

(d) Except to the extent provided in this section, wireline attachments which are subject to the promotional rate shall conform to all other terms and conditions of existing pole attachment agreements between the broadband provider and the municipal electric utility. If no such agreement exists, the parties shall have 90 days to enter into a pole attachment agreement for all other terms and conditions of attachment.

(e) The promotional rate of $1 per wireline attachment per pole per year shall apply to all pole attachments made pursuant to this section until July 1, 2024.

(4) All wireline attachments must comply with safety and reliability standards; provided, however, wireline attachments and their replacements, which complied with safety and reliability standards when installed, need not be modified to comply with new requirements except as may be necessary for safety reasons, as reasonably determined by the municipal electric utility.

(5) If the municipal electric utility is required to replace a utility pole due to a broadband provider's attachment, the municipal electric utility may require, as a condition to pole attachment, that the broadband provider reimburse all reasonable and nondiscriminatory costs attributable solely to the new attachment minus the salvage value of the removed pole, if positive. The municipal electric utility may not require a utility pole to be replaced to accommodate a broadband provider's attachment except where necessary to comply with applicable engineering and safety standards. With respect to such replacement poles, if the replacement is necessary to correct an existing violation, or to bring the pole into compliance with any changes in applicable standards, or because the pole is at the end of its useful life, such replacement cost shall not be charged to the broadband provider. As used in this

subsection, "useful life" means not less than 30 years for wood utility poles and 50 years for concrete, steel, ductile iron, and all other utility poles.

(6) No municipal electric system may increase the fees charged to broadband providers for pole attachments as of the effective date of this act prior to July 31, 2022.

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

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 broadband Internet deployment; creating pt. XV of ch. 288, F.S.; relating to the Florida Office of Broadband; transferring, renumbering, and amending s. 364.0135, F.S.; revising and providing definitions relating to broadband Internet service; revising duties of the Florida Office of Broadband; providing rulemaking authority; creating s. 288.9962, F.S.; creating the Broadband Opportunity Program within the Department of Economic Opportunity; providing for administration of the program; providing requirements for grant awards; providing eligibility requirements; providing application requirements; requiring the publication of certain information related to grant applications and grant awards on a website; authorizing grant applications to be challenged under certain circumstances; specifying contents of a challenge; providing

procedures to be used by the office in evaluating challenges; providing direction for prioritizing grant funding; specifying conditions for the award of grants; requiring that office to enter into an agreement containing specified information with each grant recipient; requiring the office to publish specified information annually on its website; requiring specified information to be delivered to the Governor and Legislature; creating s. 288.9963, F.S.; providing legislative findings; providing definitions; establishing a promotional rate and related terms for certain attachments of broadband facilities to municipal electric utility poles; establishing cost responsibility for replacement utility poles in certain circumstances; providing an effective date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1307 Telephone Solicitation
SPONSOR(S): Regulatory Reform Subcommittee, Beltran
TIED BILLS: **IDEN./SIM. BILLS:** SB 1682

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

SUMMARY ANALYSIS

Chapter 501, part IV, the Florida Telemarketing Act (FTA), requires non-exempt businesses engaged in telemarketing and their salespeople to be licensed by the Florida Department of Agriculture and Consumer Services (DACS) before operating in Florida. The law prohibits telephonic sales calls that use an automated system for the selection or dialing of telephone numbers or the playing of a recorded message (robocall) when a connection is completed. However, the law allows the use of an automated telephone dialing system with live messages if:

- The calls are made or messages given solely in response to calls initiated by the persons to whom the automatic calls or live messages are directed;
- The telephone numbers selected for automatic dialing have been screened to exclude any telephone subscriber who is included on DACS' then-current "no sales solicitation calls" listing or any unlisted telephone number; or
- The calls concern goods or services that have been previously ordered or purchased.

The bill prohibits robocalls when a connection is completed to a number called without the prior **express written consent** of the called party. Such consent must include a clear and conspicuous disclosure informing the called party that by executing the agreement, the called party is agreeing to receive automated telephonic sales calls, but is not required to sign or enter into such an agreement as a condition of purchasing any property, goods, or services.

In addition, the bill:

- Authorizes a called party to revoke his or her express written consent through any reasonable means clearly expressing a desire to receive no further calls, texts, or messages.
- Clarifies that the use of an automated telephone dialing system is not prohibited if the calls or messages are made in response to calls "originally" initiated by the persons to whom the calls or messages are directed, and clarifies that repeated calls in response to a call originally initiated by a called party are not allowed.
- Clarifies that the use of an automated telephone dialing system is not prohibited if the calls concern the order, purchase, or delivery of goods or services that have previously been ordered by the called party, and prohibits calls made solely because the called party previously conducted business with the person initiating the call.
- Removes the requirement that calls be screened by using the DACS do not call list prior to making calls related to goods or services previously purchased.
- Provides a rebuttable presumption that such calls made to a Florida area code are considered to be made to a resident of, or person in, this state.

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

The effective date of the bill is July 1, 2021.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Florida Telemarketing Act

Chapter 501, part IV, the Florida Telemarketing Act (FTA), requires non-exempt businesses engaged in telemarketing and their salespeople to be licensed by the Florida Department of Agriculture and Consumer Services (DACS) before operating in Florida. Certain exempt entities must have a valid affidavit of exemption on file prior to operating in Florida. There are approximately 28 exemptions, including, but not limited to: soliciting for religious, charitable, political or educational purposes, research companies, newspapers, book and video clubs, cable television, and persons or companies with whom the consumer has a prior business relationship.[1]

The FTA generally requires businesses that solicit the sale of consumer goods or services to:

- Be licensed;[2]
- Post a form of security;[3]
- License all of their salespeople;[4] and
- Provide DACS with a list of all telephone numbers used to make sales calls.[5]

An application for licensure as a telemarketer must include the applicant's identifying information, prior experience in the field, criminal and administrative history, especially relating to fraud, theft, or unfair and deceptive trade practices, phone numbers from which the telemarketer will make sales calls, and parent or affiliate entity under which it will transact business, if applicable.[6]

Additionally, a telemarketer applicant must submit with the application:

- A script that will be used by its salespersons during calls, or other related literature;
- The identity, address, date of birth, and alias of each of the applicant's principal officers, directors, trustees, shareholders, owners, partners, office managers, and salespersons who are employed by or affiliated with the applicant; and
- A $1,500 licensing fee.[7]

In Florida, it is unlawful for telemarketers to:

- Accept novelty payments.[8]
- Employ or be affiliated with an unlicensed salesperson.
- Be employed by or affiliated with an unlicensed commercial telephone seller.
- Operate without a license.
- Make calls before 8 a.m. or after 9 p.m. local time at the called person's location.
- Fail to provide the call recipient with their name and telephone number.[9]

[1] S. 501.604, F.S.
[2] S. 501.605, F.S.
[3] Section 501.611, F.S., requires a $50,000 bond, irrevocable letter of credit issued for the applicant, or a certificate of deposit in favor of the Department for payment on findings of fraud, misrepresentation, breach of contract, or other violation by the applicant.
[4] Section 501.607, F.S.
[5] Section 501.605, F.S.
[6] S. 501.605(2), F.S.
[7] S. 501.605(5)(b), F.S.
[8] S. 501.603(8), F.S., defines a "novelty payment" as a payment method that does not have systematic monitoring and includes remotely created checks, remotely created payment orders, cash-to-cash money transfers (such as Western Union) and cash reload mechanisms (such as MoneyPak or ReloadIt). Novelty payment methods are not systematically monitored, have little to no consumer protection in the case of fraud or theft, and are used frequently in scams and other fraudulent activity.
[9] S. 501.616, F.S.

Violations of the FTA are punishable by a civil fine of up to $10,000 per violation,[10] the imposition of criminal penalties, and up to a third degree felony with repeat violations constituting a second degree felony.[11] DACS and the office of the state attorney have investigative authority, including the power to subpoena witnesses if a violation occurs.[12] Reasonable attorney's fees and costs may be awarded to the prevailing party in a civil action as part of a judgment or administrative order.[13]

Florida Do Not Call Act

A component of the FTA, the Florida Do Not Call Act, also known as the "Do Not Call" list (list), prohibits unsolicited phone calls and text messages from telemarketers. Residents who do not wish to receive sales calls may have their residential, mobile, or paging device telephone number included on the list.[14] DACS maintains the list, it is free to register, and a registered number remains on the list indefinitely.[15]

Telephone solicitors[16] are prohibited from making telephonic sales calls to consumers who register for the list. A "telephonic sales call" is a telephone call, text message, or voicemail transmission to a consumer for the purpose of soliciting a sale of any consumer goods or services, soliciting an extension of credit for consumer goods or services, or obtaining information that will or may be used for the direct solicitation of a sale of consumer goods or services or an extension of credit for such purposes.[17]

In addition to those consumers who are registered for the list, a telephone solicitor may not call or text a consumer who previously communicated to the telephone solicitor that they do not wish to be contacted. Businesses and charities are required to maintain a list of consumers who have made a do-not-call registration request, and it is a violation to call a consumer who has asked to be placed on the company's do-not-call list.[18]

When a telephone number is made available through a caller ID service during a telephonic sales call, the solicitor must ensure that the number is capable of receiving phone calls, and that the dialing of the number will connect the call recipient with the telephone solicitor or the seller on behalf of which the phone call was placed.[19]

Anyone who receives an unsolicited sales call can report the call to DACS using the online Do Not Call Complaint Form.[20]

A telephone solicitor who violates the provisions of Florida's "Do Not Call" program is currently subject to an injunction and a civil penalty[21] with a maximum fine of $10,000 per violation, or an administrative fine[22] with a maximum of $1,000 per violation. Additionally, a telephone solicitor may be subject to responsibility for the consumer's attorney fees and costs.

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[10] S. 501.619, F.S.
[11] S. 501.623, F.S.
[12] S. 501.617, F.S.
[13] S. 501.621, F.S.
[14] *See* s. 501.059, F.S., FDACS, *Florida Do Not Call*, https://www.fdacs.gov/Consumer-Resources/Florida-Do-Not-Call (last visited Mar. 30, 2021). The Florida No Sales Solicitation Act added specific language to prohibit unwanted sales texts.
[15] Department of Agriculture and Consumer Services, Florida Do Not Call, https://www.fdacs.gov/Consumer-Resources/Florida-Do-Not-Call (last visited April 15, 2021).
[16] Section 501.059(1)(f), F.S., defines "Telephone solicitor" as "a natural person, firm, organization, partnership, association, or corporation, or a subsidiary or affiliate thereof, doing business in this state, who makes or causes to be made a telephonic sales call, including, but not limited to, calls made by use of automated dialing or recorded message devices."
[17] S. 501.059(1)(g), F.S.
[18] S. 501.059(5), F.S.
[19] S. 501.059(8)(c), F.S.
[20] FDACS, http://www.freshfromflorida.com/Consumer-Resources/Florida-Do-Not-Call (last visited Mar. 30, 2021).
[21] s. 501.059(9)(a), F.S.
[22] s. 501.059(9)(b), F.S.

Telephone Consumer Protection Act (TCPA) History

In an effort to address a growing number of telephone marketing calls, Congress enacted the Telephone Consumer Protection Act (TCPA) in 1991. The TCPA restricts the making of telemarketing calls and the use of automatic telephone dialing systems and artificial or prerecorded voice messages. The rules apply to common carriers as well as to other marketers. In 1992, the Commission adopted rules to implement the TCPA, including the requirement that entities making telephone solicitations institute procedures for maintaining company-specific do-not-call lists.[23]

In July 2015, the Federal Communications Commission (FCC) established rules indicating that telephone carriers can block unwanted calls at the request of consumers.[24] Following the FCC's ruling, the National Association of Attorneys General (NAAG) called upon the major telephone carriers to do more to provide these services to consumers.[25] Currently there are a number of call-blocking applications that provide some relief from unwanted and spam calls.[26]

On November 16, 2017, the FCC adopted new rules to allow voice service providers to proactively block certain types of robocalls that are likely to be fraudulent because they come from certain types of phone numbers, including those that do not or cannot make outgoing calls.[27] For example, perpetrators have used IRS phone numbers that do not dial out to impersonate the tax agency, informing the people who answer that they are calling to collect money owed to the U.S. government. Such calls appear to be legitimate to those who receive them and can result in fraud or identity theft. Service providers now can block such calls, as well as calls from invalid numbers, such as those with area codes that do not exist, from numbers that have not been assigned to a provider, and from numbers allocated to a provider but not currently in use.[28]

The FCC requires telemarketers to transmit caller identification information, including the number and name of the caller. The telephone number provided must permit any individual to make a do-not-call request during regular business hours. It also provides that any person or entity that engages in telemarketing is prohibited from blocking the transmission of caller identification information. However, tax-exempt nonprofit organizations are not required to comply with these rules.[29]

With regard to telephone carriers, the FCC allows carriers to offer their customers external call-blocking apps on their landlines and allows carriers to block certain illegal robocalls directly. In addition, in December 2019, Congress enacted the "TRACED Act" to aid enforcement efforts between law enforcement agencies and the private sector on traceback issues, and required the FCC to issue rules "for the registration of a single consortium that conducts private-led efforts to trace back the origin of suspected unlawful robocalls." In July 2020, the FCC designated the US Telecom-led Industry Traceback Group (ITG) as the Official Consortium for coordinating industry-led efforts to trace back the origin of suspected unlawful robocalls.[30]

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[23] Federal Communications Commission, FCC Actions on Robocalls, Telemarketing, https://www.fcc.gov/general/telemarketing-and-robocalls (last visited Mar. 30, 2021).

[24] Declaratory Ruling and Order, In the Matter of Rules and Regulations Implementing the Telecommunications Consumer Protection Act of 1991, 30 FCC Rcd. 7961 (July 10, 2015).

[25] National Association of Attorneys General, *Do Not Call: The History of Do Not Call and How Telemarketing Has Evolved*, https://www.naag.org/consumer-protection/attorney-general-journal/do-not-call-the-history-of-do-not-call-and-how-telemarketing-has-evolved/ (last visited Mar. 30, 2021).

[26] CTIA, The Wireless Association, How to Stop Robocalls, https://www.ctia.org/consumer-tips/robocalls (last visited Mar. 30, 2021).

[27] 32 FCC Rcd 9706 (11).

[28] FCC, Stop Unwanted Calls and Texts, https://www.fcc.gov/consumers/guides/stop-unwanted-calls-and-texts (last visited Mar. 30, 2021).

[29] 47 C.F.R. § 64.1601.

[30] USTelecom The Boradband Association, FCC Names USTelecom's Industry Traceback Group as Official Robocall Traceback Consortium, https://www.ustelecom.org/fcc-names-ustelecoms-industry-traceback-group-as-official-robocall-traceback-consortium/ (last visited Mar. 30, 2021).

According to the ITG's first annual report, in 2019, over 100 companies participated in over 1,000 ITG traceback investigations, implicating more than 10 million illegal robocalls and resulting in more than 20 subpoenas and/or civil investigative demands from federal and state enforcement agencies.[31]

The ITG reported in a letter to the FCC on November 13, 2020, that about 100 providers have failed to cooperate with the ITG, including approximately 30 that are based in the United States. [32] The ITG encouraged the FCC to bring aggressive enforcement against robocallers and voice service providers that routinely refuse to participate in the traceback process.[33]

In its Fourth Report and Order on Advanced Methods to Target and Eliminate Unlawful Robocalls released December 30, 2020, the FCC required "all voice service providers to respond to traceback requests from the FCC, civil and criminal law enforcement and the Consortium." [34]

National Do Not Call Registry

Although individual states were first to address consumers' requests to stop unwanted telemarketing calls,[35] the federal government soon followed with a National Do Not Call Registry in 2003.[36] In July 2003, the federal government issued a report and order establishing the National Do Not Call registry. The national registry covers all telemarketers (with the exception of certain nonprofit organizations), and applies to both interstate and intrastate calls. The registry is administered by the FTC. To reduce the number of hang-up and dead air calls consumers experience, the Commission's telemarketing rules also contain restrictions on the use of autodialers and requirements for transmitting caller ID information.

As the National Do Not Call Registry has gained popularity, some states have decided to forgo the expense of maintaining their own lists. As of September 2017, only 12 states maintained their own Do Not Call lists: Colorado, Florida, Indiana, Louisiana, Massachusetts, Mississippi, Missouri, Oklahoma, Pennsylvania, Tennessee, Texas and Wyoming.[37]

Constitutionality of Do Not Call Registries

Do Not Call registries have been subject to numerous state and federal lawsuits challenging their constitutionality. These suits have failed and the National Registry has been upheld. The courts have found that the Do Not Call Registry is a reasonable restriction on commercial speech and that the FTC is authorized to promulgate rules for the registry. The Tenth Circuit Court of Appeals has stated, "the do-not-call registry prohibits only telemarketing calls aimed at consumers who have affirmatively indicated that they do not want to receive such calls and for whom such calls would constitute and invasion of privacy." Thus, the government may have a role in restricting the ability of a telemarketer to reach a household via telephone, and because the government has left the ultimate decision of whether or not to be placed on the registry up to the individual, the government did not restrict the First Amendment rights of the solicitor.[38]

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[31] InsideArm, *The Latest Developments in the World of Call Delivery*, https://www.insidearm.com/news/00047073-latest-developments-world-call-delivery/ (last visited Mar. 30, 2021).
[32] USTelecom, Enforcement Bureau Requests Information on the Status of Private-Led Traceback Efforts of Suspected Unlawful Robocalls, EB Docket No. 20-195, Nov. 13, 2020, https://docs.fcc.gov/public/attachments/DOC-368957A2.pdf (last visited Mar. 30, 2021).
[33] InsideArm, *The Latest Developments in the World of Call Delivery*, https://www.insidearm.com/news/00047073-latest-developments-world-call-delivery/ (last visited Mar. 30, 2021).
[34] FCC, Fourth Report and Order, Dec. 29, 2020, https://docs.fcc.gov/public/attachments/FCC-20-187A1.pdf (last visited Mar. 30, 2021).
[35] At least 28 states, starting with Florida in 1987, have implemented Do Not Call registries.
[36] Federal Trade Commission, *National Do Not Call Registry*, https://www.donotcall.gov/ (last visited Mar. 30, 2021).
[37] Donald Peterson, TCPA – Telephone Consumer Protection Act, State Do Not Call Lists, https://tcpa.mobi/state-do-not-call-list/#:~:text=Today%20(September%2C%202017)%2C,and%20Wyoming, (last visited Apr. 15, 2021).
[38] *Mainstream Marketing Services Inc v. Federal Trade Commission*, 358 F.3d 1228 (10th Cir. 2004).

Claims of preemption have also been unsuccessful. The TCPA's non-preemption clause,[39] often referred to as the savings clause, has been relied upon by courts to uphold states' Do Not Call Registries. The clause states that: "[n]othing in this section or in the regulations prescribed under this section shall preempt any State law that imposes more restrictive intrastate requirements or regulation." The clause indicates specific types of actions that a state may prohibit or place more restrictive regulations on, such as sending unsolicited advertisements via fax, regulation of the use of automatic dialing systems and prerecorded messages, and the making of telephone solicitations.[40]

The TPCA is silent on a state's ability to place regulations that are more stringent than the TCPA requirements for interstate calls.[41] However, at least one court has held that state regulations and prohibitions of telemarketing can cross state lines.[42]

Caller ID and "Spoofing"

"Spoofing" is the practice of altering or manipulating the caller ID information that is received in conjunction with an incoming telephone call. In the past, caller ID services were not common and spoofing required special equipment or a relatively high degree of technical sophistication. However, advances in technology, such as the proliferation of cellular phones, cell phone applications, and the widespread availability of Voice over Internet Protocol (VoIP) allows anyone to inexpensively spoof his or her caller ID using the services of a third-party spoofing provider.[43] For example, one such spoofing provider allows a consumer to download an app on their smartphone, purchase credits towards call time, and simply input the number that they want displayed on the receiving end in order to place an untraceable, spoofed call.[44]

In response to the growing practice of spoofing, Congress amended the TCPA to add the Truth in Caller ID Act of 2009. Under the Act and FCC rules, a person or entity is prohibited from transmitting false or misleading caller ID information "**with the intent to defraud**, cause harm, or wrongly obtain anything of value," and carries a penalty of up to $10,000 for each violation.[45] However, spoofing is not illegal when no harm is intended or caused, or if the caller has legitimate reasons to hide his or her information. Examples may include law enforcement agencies working on cases, victims of domestic abuse, or doctors who wish to discuss private medical matters.[46]

In 2008, Florida passed its own anti-spoofing legislation, The Florida Caller ID Anti-Spoofing Act (2008).[47] The Act prohibits **any person** from:

- Making a call with knowledge that false information was entered into a telephone caller ID system with the intent to deceive, defraud, or mislead the call's recipient; and
- Entering false information into a telephone caller ID system "with the intent to deceive, defraud, or mislead" the call's recipient.

However, a U.S. District Court in Miami found that Florida's Caller ID Anti-Spoofing Act (2008) violated the Commerce Clause of the United State Constitution because it had the effect of controlling spoofing practices that took place entirely outside the state, wherein individuals or companies could not ascertain what telephone numbers are subject to Florida law, and would have to subject all of their call

[39] 47 U.S.C. § 227(f)(1).
[40] National Association of Attorneys General, *Do Not Call: The History of Do Not Call and How Telemarketing Has Evolved*, NAGTRI Journal, Vol. 1 No. 4.
[41] 47 U.S.C. s. 227 (f)(1).
[42] *See Patriotic Veterans, Inc. v. Indiana*, 736 F.3d 1041 at 1044-45 (7th Cir. 2013) and *Patriotic Veterans, Inc. v. State of Indiana*, No. 16-2059 (7th Cir. 2017)("Preventing automated messages to persons who don't want their peace and quiet disturbed is a valid time, place, and manner restriction.").
[43] *See* FCC 11-100, *Rules and Regulations Implementing the Truth in Caller ID Act of 2009*, WC Docket No. 11-39, (June 22, 2011), at 9116, https://apps.fcc.gov/edocs_public/attachmatch/FCC-11-100A1_Rcd.pdf (last visited Mar. 30, 2021).
[44] Business Insider, *It's Surprisingly Easy for a Hacker to Call Anyone From Your Personal Phone Number* (March 1, 2016), http://www.businessinsider.com/phone-number-spoofing-2016-2 (last visited Mar. 30, 2021).
[45] 47 U.S.C. § 227(e).
[46] FCC, *Caller ID Spoofing*, https://www.fcc.gov/consumers/guides/spoofing-and-caller-id (last visited Mar. 30, 2021).
[47] s. 817.487, F.S. (2008).

practices to Florida law to avoid liability.[48] Similarly, in 2011, a federal court in Mississippi struck Mississippi's anti-spoofing law, which was substantially similar to Florida's.[49]

Spam Robocalls

According to the American Association of Retired Persons (AARP), robocalls have become an epidemic. YouMail, a company that provides call-blocking and call-management services, estimates that there were 58.5 billion robocalls in the U.S. in 2019 and that 44 percent of them were placed by scammers.[50]

A February 2021 survey found that 46 percent of Americans reported receiving spam phone calls on their cell phone every day, and another 24 percent receiving them multiple times per week.[51]

Scammers often use caller ID spoofing to mask their true location and make it appear the call is from a legitimate or local number to raise the odds of the called party to answer. What follows is a robotic voice on the other end claiming to represent a utility, a name-brand company or a government agency (such as the Social Security Administration or the Internal Revenue Service). It might offer a free cruise, inexpensive health insurance or a low-interest loan. Answering and/or engaging with the call may lead to a live scammer, who realizes they have found a "live" number, and thus may call repeatedly.[52]

Many robocalls are legal. The FCC allows such robocalls for informational or noncommercial purposes, such as polling, political campaigning and outreach by nonprofit groups.

Advances in technology have magnified fundamental flaws in the American phone system, enabling unrelenting robocalls from untraceable origins. As a result, it is incredibly profitable to use spam calls to drive business whether the caller is a scammer or an actual business using telemarketing to increase sales.[53]

Consent and Revocation

The TCPA prohibits a telemarketer from using an automatic telephone dialing system (ATDS) to place a call or send a text message to a cell phone without the recipient's "**prior express consent**."[54] The type of consent depends on the nature of the call or text. Consent generally can be revoked by any reasonable method. However, some courts recently have considered whether revocation may be restricted in circumstances where the consent is included on a bilateral agreement.[55]

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[48] *TelTech Systems, Inc. v. McCollum*, No. 08-61664-CIV-MARTINEZ-BROWN (S.D. Fla. Filed Oct. 16, 2008).
[49] *TelTech Systems, Inc. v. Barbour*, 866 F. Supp. 2d 571 (S.D. Miss. 2011), *aff'd sub nom Teltech Systems, Inc. v. Bryant*, 702 F. 2d 232 (5th Cir. 2012).
[50] American Association of Retired Persons, Robocalls, https://www.aarp.org/money/scams-fraud/info-2019/robocalls.html?CMP=KNC-DSO-Adobe-Google-FRD-Ongoing-Robocalls-NonBrand-Exact-Robocalls&gclid=EAIaIQobChMIlvmq_4Sr7wIVFYvICh2RAwjqEAAYAiAAEgJD4vD_BwE&gclsrc=aw.ds (last visited Mar. 30, 2021).
[51] Simon van Zuylen-Wood, *How Robo-Callers Outwitted the Government and Completely Wrecked the Do Not Call List* (Jan. 11, 2018), https://www.washingtonpost.com/lifestyle/magazine/how-robo-call-moguls-outwitted-the-government-and-completely-wrecked-the-do-not-call-list/2018/01/09/52c769b6-df7a-11e7-bbd0-9dfb2e37492a_story.html?utm_term=.8a6e6ea55f32 (Last visited Mar. 30, 2021).
[52] AARP, *supra* note 49.
[53] *Supra* note 50.
[54] 47 U.S.C. § 227(b)(1)(A)(iii).
[55] The National Law Review, Consent and Revocation Under the TCPA, https://www.natlawreview.com/print/article/consent-and-revocation-under-tcpa (last visited Mar. 30, 2021).

There are two types of prior consent provided under the TCPA:

- **Prior express consent** is required to place autodialed, non-solicitation calls or texts to a cell phone.
- **Prior express written consent** is a heightened form of consent, must be evidenced by a written agreement signed by the call recipient, and is required to place autodialed telemarketing oradvertising calls or texts to a cell phone. The written agreement must include a clear and conspicuous disclosure informing the consumer signing that:
    - By signing the agreement, the consumer is authorizing autodialed telemarketing or advertising calls or texts; and
    - The consumer is not required to sign the agreement as a condition of purchasing any property, goods, or services.[56]

Prior express consent can be written or verbal. Voluntarily providing one's cellular number also constitutes prior express consent where:

- The individual gives "prior express consent" to be called or texted at the number provided;
- The individual has provided his or her number to the party calling or texting; and
- There is some relation between the communications and the reason for which an individual provided his or her number.[57]

Prior express written consent is required for calls or texts to cell phones that introduce an advertisement,[58] or constitute "telemarketing"[59] and are sent using an ATDS. The TCPA's advertising prong merely requires introducing at the most basic level the commercial availability of a service. In similar fashion, telemarketing occurs when the context of a text or call indicates that it was initiated and transmitted to a person for promoting property, goods, or services. Neither the TCPA nor its implementing regulations require an explicit mention of a good, product, or service where the implication of an improper purpose is clear from the context.[60]

Revocation of consent is controlled by the consenting party, and may be communicated orally or in writing by any reasonable means. However, where consent is contractually provided, as in credit agreements, the parties can bargain to require mutuality or particular revocation methods. Recently, a number of courts have addressed whether a consumer may unilaterally revoke consent when it is a term in a bargained-for contract.[61]

In 2017, the Second Circuit Court of Appeal held that a consumer **may not unilaterally revoke** consent in a bargained-for, bilateral contract.[62] The court based its decision on "black-letter" contract law, referring to a fundamental aspect of contractual relationships that one party may not alter or revoke a term of a bilateral agreement without the other party's consent. The court found that a consumer, having consented to be contacted via an auto-dialer, could not unilaterally revoke consent without the caller's permission. Notably, the court distinguished case law from the Third and Eleventh Circuit Courts of Appeal, where consumers retained their ability to revoke consent because it was given in credit applications, rather than as part of a bilateral contract.[63]

In 2018, a United States District Court in Florida also held that consent provided by contract **cannot be unilaterally revoked**.[64] The court noted that no provision in the TCPA indicates that contractually-granted consent can be unilaterally revoked where it would contradict black-letter contract law. The

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[56] *Id.*
[57] Federal Communications Commission, Rules & Regulations Implementing the TCP Act of 1991 et al., 30 FCC Rcd at 7991–92.
[58] 47 C.F.R. § 64.1200(f)(1), defines an "advertisement" as "any material advertising the commercial availability or quality of any property, goods, or services," and "telemarketing" is defined as "the initiation of a telephone call or message for the purpose of encouraging the purchase or rental of, or investment in, property, goods, or services, which is transmitted to any person."
[59] 47 C.F.R. § 64.1200(f)(12).
[60] The National Law Review, *supra* note 54.
[61] *Id.*
[62] *Reyes v. Lincoln Auto. Fin. Servs.*, 861 F.3d 51, 53 (2d Cir. 2017).
[63] The National Law Review, *supra* note 54.
[64] *Medley v. Dish Network, LLC*, Case No. 8:16-cv-2534-T-36TBM, 2018 WL 4092120, at *10 (M.D. Fla. Aug. 27, 2018).

court held that a consumer who has consented to auto-dialed communication in a contract for services cannot later revoke such consent.[65]

However, other courts have disagreed, rejecting the argument that consent is irrevocable. In 2018, a United States District Court in Tennessee adopted the general rule that consumer consent **may be revoked** at any time by "any reasonable means."[66] The court held that consumers **retain the ability to revoke** their prior consent despite having a bilateral agreement with the caller. Other courts have also allowed for revocation of consent by any means in the absence of a contractual restriction on the means by which a consumer may revoke consent.[67]

In December 2020, the U.S. Supreme Court heard oral arguments in a landmark case that may determine whether consumers can sue a company for using an ATDS to text or call the consumers at a phone number saved in the company's system. At issue is the meaning of the TCPA's prohibition on using an ATDS to transmit communications to cell phones. The question before the Supreme Court is "whether the definition of ATDS in the TCPA encompasses any device that can 'store' and 'automatically dial' telephone numbers, even if the device does not use a random or sequential number generator."[68]

Currently, the TCPA rules require telemarketers to:

- Obtain prior express written consent from consumers before robocalling them;
- No longer be able to use an "established business relationship" to bypass the consent requirement; and
- Provide an automated, interactive "opt-out" mechanism during each robocall so consumers can immediately tell the telemarketer to stop calling.[69]

The TCPA includes a private right of action.[70] A caller who places a call to a cell phone without consent using an ATDS is subject to $500 in damages per call. The damages amount is $1,500 per call if the court finds that the defendant willfully or knowingly committed the violation.[71]

The Florida telephone solicitation law prohibits robocalls.[72] However, the law allows the use of an automated telephone dialing system with live messages if:

- The calls are made or messages given solely in response to calls initiated by the persons to whom the automatic calls or live messages are directed;
- The telephone numbers selected for automatic dialing have been screened to exclude any telephone subscriber who is included on the department's then-current "no sales solicitation calls" listing or any unlisted telephone number; or
- The calls concern goods or services that have been previously ordered or purchased.[73]

Effect of the Bill

The bill amends s. 501.059, F.S., prohibits robocalls and provides related exceptions. The bill prohibits such calls without the prior express written consent of the called party, and allows a called party to revoke his or her express written consent through any reasonable means clearly expressing a desire to receive no further calls, texts, or messages.

The bill creates s. 501.059(8)(c) and specifies that express written consent must include a clear and conspicuous disclosure informing the called party that:

[65] The National Law Review, *supra* note 54.
[66] *Ammons v. Ally Fin., Inc*., Case No. 3:17-cv-00505, 2018 WL 3134619, at *15 (M.D. Tenn. June 27, 2018).
[67] *Few v. Receivables Performance Mgmt*., Case No. 1:17-CV-2038-KOB, 2018 WL 5923765 at *1 (N.D. Ala. Nov. 13, 2018).
[68] *Facebook, Inc., Petitioner vs. Noah Duguid*, et al., U.S., No. 19-511.
[69] FCC, *supra* note 22.
[70] 47 U.S.C. § 227(b)(3).
[71] *Id.* at § 227(b)(3)(B)-(C).
[72] S. 501.059(8), F.S.
[73] *Id.*

- By executing the agreement, the called party authorizes a person to make or knowingly allow a telephonic sales call to be made using an automated system for selecting or dialing telephone numbers, playing a recorded message when a connection is completed to a telephone number called, transmitting a text message, or transmitting a prerecorded voicemail.
- The called party is not required to sign the agreement or consent to enter into such an agreement as a condition of purchasing any property, goods, or services.

The bill clarifies the exemption that allows the use of an automated telephone dialing system with live messages when the calls or messages are made in response to calls “originally” initiated by the persons to whom the calls or messages are directed. However, the bill specifies that this does not authorize repeated calls in response to a call originally initiated by a called party.

The bill maintains the exemption that allows the use of an automated telephone dialing system when the calls concern the order, purchase, or delivery of goods or services that have previously been ordered by the called party. However, the bill specifies that this does not authorize telephonic sales calls made solely because the called party conducted business with the person initiating the call.

The bill removes the requirement that prior to the use of an automated telephone dialing system with live messages the telephone numbers selected for calling must be screened to exclude subscribers to the Florida Do Not Call list or any unlisted telephone number.

The bill provides a rebuttable presumption that any telephonic sales call made to a Florida area code is considered to be made to a resident of this state or to a person who is in this state at the time of the telephonic sales call.

The bill defines a "called party" as a person who is the regular user of the telephone number that is delivered a telephonic sales call.

The bill defines "express written consent" as a written consent agreement bearing the handwritten, electronic, or digital signature of a called party that states the telephone number to which the called party authorizes a telephonic sales call to be delivered and clearly authorizes a person to make or knowingly allow a telephonic sales call to be made using an automated system for selecting or dialing telephone numbers, playing a recorded message when a connection is completed to a telephone number called, transmitting a text message, or transmitting a prerecorded voicemail.

B. SECTION DIRECTORY:

Section 1: Amends s. 501.059, F.S., relating to telephone solicitation.

Section 2: Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may have an indeterminate negative fiscal impact on legitimate telemarketers to the extent they do not currently engage in business practices consistent with the requirements in the bill.

The bill may protect consumers from unwanted and fraudulent telephone solicitations.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

The bill 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 17, 2021, the Regulatory Reform Subcommittee adopted a strike-all amendment and reported the bill favorably as a committee substitute. The committee substitute:

- Prohibited calls made using an automated telephone dialing system with live messages without the prior express written consent of the called party.
- Authorized a called party to revoke their express written consent through any reasonable means clearly expressing a desire to receive no further calls, texts, or messages.
- Clarified that the use of an automated telephone dialing system is not prohibited in certain instances.
- Clarified that repeated calls in response to a call originally initiated by a called party are not allowed.
- Prohibited calls made solely because the called party previously conducted business with the person initiating the call.
- Removed the requirement that calls be screened by using the DACS do not call list prior to making calls related to goods or services previously purchased.
- Provided a rebuttable presumption that such calls made to a Florida area code are considered to be made to a resident of, or person in, this state.

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

A bill to be entitled

An act relating to telephone solicitation; amending s. 501.059, F.S.; prohibiting certain telephonic sales calls without the prior express written consent of the called party; providing definitions; providing requirements for written consent agreements; providing that a called party may revoke express written consent; providing a rebuttable presumption for telephonic sales calls made to specified area codes; removing the requirement that certain telephone numbers be excluded from calls made by automated telephone dialing systems with live messages; providing construction; providing an effective date.

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

Section 1. Subsection (8) of section 501.059, Florida Statutes, is amended to read:

501.059 Telephone solicitation.—

(8)(a) A ~~No~~ person may not ~~shall~~ make or knowingly allow a telephonic sales call to be made if such call involves an automated system for the selection or dialing of telephone numbers or the playing of a recorded message when a connection is completed to a number called without the prior express written consent of the called party.

(b) As used in this subsection, the term:

1. "Called party" means a person who is the regular user of the telephone number that is delivered a telephonic sales call.

2. "Express written consent" means a written consent agreement bearing the handwritten, electronic, or digital signature of a called party that states the telephone number to which the called party authorizes a telephonic sales call to be delivered and clearly authorizes a person to make or knowingly allow a telephonic sales call to be made using an automated system for selecting or dialing telephone numbers, playing a recorded message when a connection is completed to a telephone number called, transmitting a text message, or transmitting a prerecorded voicemail.

(c) The express written consent must include a clear and conspicuous disclosure informing the called party that:

1. By executing the agreement, the called party authorizes a person to make or knowingly allow a telephonic sales call to be made using an automated system for selecting or dialing telephone numbers, playing a recorded message when a connection is completed to a telephone number called, transmitting a text message, or transmitting a prerecorded voicemail.

2. The called party is not required to sign the agreement or consent to enter into such an agreement as a condition of purchasing any property, goods, or services.

(d) A called party may revoke express written consent through any reasonable means clearly expressing a desire to not receive further calls, recorded messages, text messages, or prerecorded voicemails.

(e) There is a rebuttable presumption that any telephonic sales call made to a Florida area code is made to a resident of this state or to a person who is in this state at the time of the telephonic sales call.

(f) This subsection does not prohibit ~~Nothing herein prohibits~~ the use of an automated telephone dialing system ~~with live messages~~ if the calls are made or messages are given solely in response to calls originally initiated by the persons to whom the automatic calls or live messages are directed. This paragraph does not authorize repeated calls in response to a call made by a called party to the person who originally initiated a telephonic sales call to the called party.

(g) This subsection does not prohibit the use of an automated telephone dialing system ~~or if the telephone numbers selected for automatic dialing have been screened to exclude any telephone subscriber who is included on the department's then-current "no sales solicitation calls" listing or any unlisted telephone number, or~~ if the calls made concern goods or services that have been previously ordered or purchased by the called party and concern the order, purchase, or delivery of, or payment for, such goods or services. This paragraph does not

authorize telephonic sales calls to a called party solely because the called party has previously conducted business with the person initiating the telephonic sales call.

(h) ~~(c)~~ It is ~~shall be~~ unlawful for any person who makes a telephonic sales call or causes a telephonic sales call to be made to fail to transmit or cause not to be transmitted the originating telephone number and, when made available by the telephone solicitor's carrier, the name of the telephone solicitor to any caller identification service in use by a recipient of a telephonic sales call. However, it is ~~shall~~ not ~~be~~ a violation to substitute, for the name and telephone number used in or billed for making the call, the name of the seller on behalf of which a telephonic sales call is placed and the seller's customer service telephone number, which is answered during regular business hours. If a telephone number is made available through a caller identification service as a result of a telephonic sales call, the solicitor must ensure that telephone number is capable of receiving telephone calls and must connect the original call recipient, upon calling such number, to the telephone solicitor or to the seller on behalf of which a telephonic sales call was placed. For purposes of this section, the term "caller identification service" means a service that allows a telephone subscriber to have the telephone number and, where available, the name of the calling party transmitted contemporaneously with the telephone call and

displayed on a device in or connected to the subscriber's telephone.

(i) ~~(d)~~ It is ~~shall be~~ unlawful for any person who makes a telephonic sales call or causes a telephonic sales call to be made to intentionally alter the voice of the caller in an attempt to disguise or conceal the identity of the caller in order to defraud, confuse, or financially or otherwise injure the recipient of a telephonic sales call or in order to obtain personal information from the recipient of a telephonic sales call which may be used in a fraudulent or unlawful manner.

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

COMMERCE COMMITTEE

CS/HB 1307 by Rep. Beltran
Telephone Solicitation

AMENDMENT SUMMARY
April 19, 2021

Amendment 1 by Rep. Beltran (line-110):

- Extends the timeframe during which telephone solicitations are prohibited by one hour, making it begin at 8 p.m. instead of 9 p.m., thereby prohibiting telephone sellers or salespersons from calling consumers outside of the hours of 8 a.m. and 8 p.m.
- Revises the area within which the restriction applies to include the person's "time zone" instead of "location."
- Prohibits more than three commercial telephone solicitation phone calls from any number to a person over a 24-hour period on the same subject matter or issue, regardless of the phone number used to make the call.
- Clarifies that calls made through an automated dialer or recorded message are subject to the same prohibitions.

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 (with title amendment)

Between lines 110 and 111, insert:

Section 2. Subsection (6) of section 501.616, Florida Statutes, is amended to read:

501.616 Unlawful acts and practices.—

(6) A commercial telephone seller or salesperson may not make any of the following types of phone calls, including calls made through automated dialing or recorded messages:

(a) A commercial telephone solicitation phone call before 8 a.m. or after 8 ~~9~~ p.m. local time in ~~at~~ the called person's time zone ~~location~~.

(b) More than three commercial telephone solicitation phone calls from any number to a person over a 24-hour period on

the same subject matter or issue, regardless of the phone number used to make the call.

Section 3. For the purpose of incorporating the amendment made by this act to section 501.616, Florida Statutes, in a reference thereto, section 501.604, Florida Statutes, is reenacted to read:

501.604 Exemptions.—The provisions of this part, except ss. 501.608 and 501.616(6) and (7), do not apply to:

(1) A person engaging in commercial telephone solicitation where the solicitation is an isolated transaction and not done in the course of a pattern of repeated transactions of like nature.

(2) A person soliciting for religious, charitable, political, or educational purposes. A person soliciting for other noncommercial purposes is exempt only if that person is soliciting for a nonprofit corporation and if that corporation is properly registered as such with the Secretary of State and is included within the exemption of s. 501(c)(3) or (6) of the Internal Revenue Code.

(3) A person who does not make the major sales presentation during the telephone solicitation and who does not intend to, and does not actually, complete or obtain provisional acceptance of a sale during the telephone solicitation, but who makes the major sales presentation and completes the sale at a later face-to-face meeting between the seller and the

prospective purchaser in accordance with the home solicitation provisions in this chapter. However, if a seller, directly following a telephone solicitation, causes an individual whose primary purpose it is to go to the prospective purchaser to collect the payment or deliver any item purchased, this exemption does not apply.

(4) A licensed securities, commodities, or investment broker, dealer, or investment adviser, when soliciting within the scope of his or her license, or a licensed associated person of a securities, commodities, or investment broker, dealer, or investment adviser, when soliciting within the scope of his or her license. As used in this section, "licensed securities, commodities, or investment broker, dealer, or investment adviser" means a person subject to license or registration as such by the Securities and Exchange Commission, by the Financial Industry Regulatory Authority or other self-regulatory organization as defined by the Securities Exchange Act of 1934, 15 U.S.C. s. 78l, or by an official or agency of this state or of any state of the United States. As used in this section, "licensed associated person of a securities, commodities, or investment broker, dealer, or investment adviser" means an associated person registered or licensed by the Financial Industry Regulatory Authority or other self-regulatory organization as defined by the Securities Exchange Act of 1934,

15 U.S.C. s. 78l, or by an official or agency of this state or of any state of the United States.

(5) A person primarily soliciting the sale of a newspaper of general circulation.

(6) A book, video, or record club or contractual plan or arrangement:

(a) Under which the seller provides the consumer with a form which the consumer may use to instruct the seller not to ship the offered merchandise.

(b) Which is regulated by the Federal Trade Commission trade regulation concerning "use of negative option plans by sellers in commerce."

(c) Which provides for the sale of books, records, or videos which are not covered under paragraph (a) or paragraph (b), including continuity plans, subscription arrangements, standing order arrangements, supplements, and series arrangements under which the seller periodically ships merchandise to a consumer who has consented in advance to receive such merchandise on a periodic basis.

(7) A supervised financial institution or parent, subsidiary, or affiliate thereof operating within the scope of supervised activity. As used in this section, "supervised financial institution" means a commercial bank, trust company, savings and loan association, mutual savings bank, credit union, industrial loan company, consumer finance lender, commercial

finance lender, or insurer, provided that the institution is subject to supervision by an official or agency of this state, of any state, or of the United States. For the purposes of this exemption, "affiliate" means a person who directly, or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, a supervised financial institution.

(8) Any licensed insurance broker, agent, customer representative, or solicitor when soliciting within the scope of his or her license. As used in this section, "licensed insurance broker, agent, customer representative, or solicitor" means any insurance broker, agent, customer representative, or solicitor licensed by an official or agency of this state or of any state of the United States.

(9) A person soliciting the sale of services provided by a cable television system operating under authority of a franchise or permit.

(10) A business-to-business sale where:

(a) The commercial telephone seller has been lawfully operating continuously for at least 3 years under the same business name and has at least 50 percent of its dollar volume consisting of repeat sales to existing businesses;

(b) The purchaser business intends to resell or offer for purposes of advertisement or as a promotional item the property or goods purchased; or

(c) The purchaser business intends to use the property or goods purchased in a recycling, reuse, remanufacturing, or manufacturing process.

(11) A person who solicits sales by periodically publishing and delivering a catalog of the seller's merchandise to prospective purchasers, if the catalog:

(a) Contains a written description or illustration of each item offered for sale.

(b) Includes the business address or home office address of the seller.

(c) Includes at least 20 pages of written material and illustrations and is distributed in more than one state.

(d) Has an annual circulation by mailing of not less than 150,000.

(12) A person who solicits contracts for the maintenance or repair of goods previously purchased from the person making the solicitation or on whose behalf the solicitation is made.

(13) A commercial telephone seller licensed pursuant to chapter 516 or part III of chapter 520. For purposes of this exemption, the seller must solicit to sell a consumer good or service within the scope of his or her license and the completed transaction must be subject to the provisions of chapter 516 or part III of chapter 520.

(14) A telephone company subject to chapter 364, or affiliate thereof or its agents, or a telecommunications

business that is regulated by the Florida Public Service Commission, or a Federal Communications Commission licensed cellular telephone company or other bona fide radio telecommunication services provider. For the purposes of this exemption, "affiliate" means a person who directly, or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, a telephone company subject to chapter 364.

(15) A person who is licensed pursuant to chapter 497 and who is soliciting within the scope of the license.

(16) An issuer or a subsidiary of an issuer that has a class of securities which is subject to s. 12 of the Securities Exchange Act of 1934, 15 U.S.C. s. 78l, and which is either registered or exempt from registration under paragraph (A), paragraph (B), paragraph (C), paragraph (E), paragraph (F), paragraph (G), or paragraph (H) of subsection (g)(2) of that section.

(17) A business soliciting exclusively the sale of telephone answering services provided that the telephone answering services will be supplied by the solicitor.

(18) A person soliciting a transaction regulated by the Commodity Futures Trading Commission if the person is registered or temporarily licensed for this activity with the Commodity Futures Trading Commission under the Commodity Exchange Act, 7

U.S.C. ss. 1 et seq., and the registration or license has not expired or been suspended or revoked.

(19) A person soliciting the sale of food or produce as defined in chapter 500 or chapter 504 if the solicitation neither intends to result in, or actually results in, a sale which costs the purchaser in excess of $500.

(20) A person who is registered pursuant to part XI of chapter 559 and who is soliciting within the scope of the registration.

(21) A person soliciting business from prospective consumers who have an existing business relationship with or who have previously purchased from the business enterprise for which the solicitor is calling, if the solicitor is operating under the same exact business name.

(22) A person who has been operating, for at least 1 year, a retail business establishment under the same name as that used in connection with telemarketing, and both of the following occur on a continuing basis:

(a) Either products are displayed and offered for sale or services are offered for sale and provided at the business establishment.

(b) A majority of the seller's business involves the buyer obtaining such products or services at the seller's location.

(23) A person who is a registered developer or exchange company pursuant to chapter 721 and who is soliciting within the scope of the chapter.

(24) Any person who has been lawfully providing telemarketing sales services continuously for at least 5 years under the same ownership and control and who derives 75 percent of its gross telemarketing sales revenues from contracts with persons exempted in this section.

(25) A person licensed pursuant to chapter 475 and who is soliciting within the scope of the chapter.

(26) A publisher, or an agent of a publisher by written agreement, who solicits the sale of his or her periodical or magazine of general, paid circulation. The term "paid circulation" shall not include magazines that are only circulated as part of a membership package or that are given as a free gift or prize from the publisher or agent of the publisher by written agreement.

(27) A person who is a licensed operator or an identification cardholder as defined in chapter 482, and who is soliciting within the scope of the chapter.

(28) A licensee, or an affiliate of a licensee, regulated under chapter 560, the Money Transmitters' Code, for foreign currency exchange services.

Section 4. For the purpose of incorporating the amendment made by this act to section 501.616, Florida Statutes, in a

reference thereto, paragraph (c) of subsection (1) of section 648.44, Florida Statutes, is reenacted to read:

648.44 Prohibitions; penalty.—

(1) A bail bond agent or temporary bail bond agent may not:

(c) Initiate in-person or telephone solicitation after 9:00 p.m. or before 8:00 a.m., in the case of domestic violence cases, at the residence of the detainee or the detainee's family. Any solicitation not prohibited by this chapter must comply with the telephone solicitation requirements in ss. 501.059(2) and (4), 501.613, and 501.616(6).

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

Remove line 13 and insert:
providing construction; amending s. 501.616, F.S.; prohibiting a commercial telephone seller or salesperson from using automated dialing or recorded messages to make certain commercial telephone solicitation phone calls; revising the timeframe during which a commercial telephone seller or salesperson may make commercial solicitation phone calls; prohibiting commercial telephone sellers or salespersons from making a specified number of commercial telephone solicitation phone calls to a

person over a specified timeframe; reenacting s. 501.604, F.S., relating to exemptions to the Florida Telemarketing Act, to incorporate the amendment made to s. 501.616, F.S., in a reference thereto; reenacting s. 648.44(1)(c), F.S., relating to prohibitions regarding bail bond agent telephone solicitations, to incorporate the amendment made to s. 501.616, F.S., in a reference thereto; providing an effective date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1351 Money Services Businesses
SPONSOR(S): Insurance & Banking Subcommittee, Aloupis and others
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee	16 Y, 1 N, As CS	Hinshelwood	Luczynski
2) State Administration & Technology Appropriations Subcommittee	12 Y, 0 N	Lee	Topp
3) Commerce Committee		Hinshelwood	Hamon

SUMMARY ANALYSIS

The Office of Financial Regulation's (OFR) Division of Consumer Finance licenses and regulates various aspects of the non-depository financial services industries, including money services businesses (MSBs) regulated under ch. 560, F.S. Money transmitters and payment instrument sellers are two types of MSBs. Currently, virtual currency is not expressly within ch. 560, F.S., though in the last 6 years OFR has received approximately 64 petitions for declaratory statement relating to whether and how virtual currency is regulated under that chapter.

Virtual currency is a digital representation of value that functions as a medium of exchange, a unit of account, and/or a store of value. In some environments, it operates like "fiat" currency (i.e., the coin and paper money of the United States or of any other country that is designated as legal tender, circulates, and is customarily used and accepted as a medium of exchange in the country of issuance), but it does not have legal tender status in any jurisdiction. Bitcoin is one example of a virtual currency.

In a recent case, the Third District Court of Appeal's holdings related to Bitcoin illustrate the need to expressly provide whether and how virtual currency falls within ch. 560, F.S., as well as the need to clarify certain definitions in that chapter. In particular, the court held that the definition of "money transmitter" requires licensure for third-party intermediaries as well as for individuals in a two-party transaction.

Within ch. 560, F.S., the bill adds a definition for "virtual currency" and amends the definitions of "electronic instrument", "monetary value", "money transmitter", "payment instrument", and "stored value". The amendments to these definitions provide clarity as to their meaning; make virtual currency expressly subject to money transmitter regulations but not regulations for other types of licenses under ch. 560, F.S.; and clarify that a money transmitter license is only required for a person acting as an intermediary between two parties, meaning that neither person in a two-party transaction is required to be licensed. As a result of the addition of virtual currency to ch. 560, F.S., the bill makes conforming changes to the prohibition on unlicensed activity, adds rulemaking authority for recordkeeping requirements related to virtual currency, and amends the permissible investments statute. Without a change to the permissible investments statute, the effect would be to require a money transmitter that transmits virtual currency to not only have control over the virtual currency being transmitted but also hold the equivalent value in cash or other assets on the list of permissible investments. Instead, the bill would only require that, during the period of transmission, the money transmitter must hold virtual currency of the same type and amount owed or obligated to the other location or person on the receiving end of the transmission. Lastly, the bill makes conforming changes under the Financial Technology Sandbox in s. 559.952, F.S., as well as other conforming changes within ch. 560, F.S., to reflect the addition of virtual currency to money transmitter regulations.

The bill has no fiscal impact on local governments and an indeterminate fiscal impact on the private sector and the state. See *Fiscal Analysis & Economic Impact Statement*.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Regulation of Money Transmitters and Payment Instrument Sellers

State Regulation

The Office of Financial Regulation (OFR) regulates banks, credit unions, other financial institutions, finance companies, and the securities industry.[1] The Division of Consumer Finance within OFR licenses and regulates various aspects of the non-depository financial services industries, including money services businesses (MSBs) regulated under ch. 560, F.S. Money transmitters and payment instrument sellers are two types of MSBs, and both are regulated under part II of ch. 560, F.S.

A money transmitter receives currency,[2] monetary value,[3] or payment instruments[4] for the purpose of transmitting the same by any means, including transmission by wire, facsimile, electronic transfer, courier, the Internet, or through bill payment services or other businesses that facilitate such transfer within this country, or to or from this country.[5] A payment instrument seller sells, issues, provides, or delivers a payment instrument.[6] State and federally chartered depository institutions, such as banks and credit unions, are exempt from licensure as an MSB.[7] Currently, virtual currency is not expressly within ch. 560, F.S., though in the last 6 years OFR has received approximately 64 petitions for declaratory statement relating to whether and how virtual currency is regulated under that chapter.

An applicant for an MSB license under ch. 560, F.S., must file an application with OFR and pay an application fee of $375.[8] The license must be renewed every 2 years by paying a renewal fee of $750.[9] Money transmitters and payment instrument sellers may operate through authorized vendors by providing OFR with specified information about the authorized vendor and by paying a fee of $38 per authorized vendor location at the time of application and renewal.[10] A money transmitter or payment instrument seller may also engage in the activities authorized for check cashers[11] and foreign currency exchangers[12] without paying additional licensing fees.[13]

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[1] S. 20.121(3)(a)2., F.S.
[2] The term "currency" means the coin and paper money of the United States or of any other country which is designated as legal tender and which circulates and is customarily used and accepted as a medium of exchange in the country of issuance. Currency includes United States silver certificates, United States notes, and Federal Reserve notes. Currency also includes official foreign bank notes that are customarily used and accepted as a medium of exchange in a foreign country. S. 560.103(11), F.S.
[3] The term "monetary value" means a medium of exchange, whether or not redeemable in currency. S. 560.103(21), F.S.
[4] The term "payment instrument" means a check, draft, warrant, money order, travelers check, electronic instrument, or other instrument, payment of money, or monetary value whether or not negotiable. The term does not include an instrument that is redeemable by the issuer in merchandise or service, a credit card voucher, or a letter of credit. S. 560.103(29), F.S.
[5] S. 560.103(23), F.S.
[6] S. 560.103(30) and (34), F.S.; definition of "payment instrument", *supra* note 4.
[7] S. 560.104, F.S.
[8] Ss. 560.141 and 560.143, F.S.
[9] *Id.*; s. 560.142, F.S.
[10] *Id.*; ss. 560.203, 560.205, and 560.208, F.S.
[11] The term "check casher" means a person who sells currency in exchange for payment instruments received, except travelers checks. S. 560.103(6), F.S.
[12] The term "foreign currency exchanger" means a person who exchanges, for compensation, currency of the United States or a foreign government to currency of another government. S. 560.103(17), F.S.
[13] S. 560.204(2), F.S.

A money transmitter or payment instrument seller must at all times:

- Have a net worth of at least $100,000 and an additional net worth of $10,000 per location in this state, up to a maximum of $2 million.[14]
- Have a corporate surety bond in an amount between $50,000 and $2 million depending on the financial condition, number of locations, and anticipated volume of the licensee.[15] In lieu of a corporate surety bond, the licensee may deposit collateral such as cash or interest-bearing stocks and bonds with a federally insured financial institution.[16]
- Possess permissible investments, such as cash and certificates of deposit, with an aggregate market value of at least the aggregate face amount of all outstanding money transmissions and payment instruments issued or sold by the licensee or an authorized vendor in the United States.[17] OFR may waive the permissible investments requirement if the dollar value of a licensee's outstanding payment instruments and money transmitted do not exceed the bond or collateral deposit.[18]

While MSBs are generally subject to federal anti-money laundering laws,[19] Florida law contains many of the same anti-money laundering reporting requirements and recordkeeping requirements with the added benefit of state enforcement. An MSB applicant must have an anti-money laundering program that meets the requirements of federal law.[20]

Pursuant to the Florida Control of Money Laundering in Money Services Business Act, an MSB must maintain certain records of each transaction involving currency or payment instruments in order to deter the use of a money services business to conceal proceeds from criminal activity and to ensure the availability of such records for criminal, tax, or regulatory investigations or proceedings.[21] An MSB must keep records of each transaction occurring in this state that it knows to involve currency or other payment instruments having a greater value than $10,000; to involve the proceeds of specified unlawful activity; or to be designed to evade the reporting requirements of ch. 896, F.S., or the Florida Control of Money Laundering in Money Services Business Act.[22] OFR may take administrative action against an MSB for failure to maintain or produce documents required by ch. 560, F.S., or federal anti-money laundering laws.[23] OFR may also take administrative action against an MSB for other violations of federal anti-money laundering laws such as failure to file suspicious activity reports.[24]

A money transmitter or payment instrument seller must maintain specified records for at least 5 years, including the following:[25]

- A daily record of payment instruments sold and money transmitted.
- A general ledger containing all asset, liability, capital, income, and expense accounts, which must be posted at least monthly.
- Daily settlement records received from authorized vendors.
- Monthly financial institution statements and reconciliation records.
- Records of outstanding payment instruments and money transmitted.
- Records of each payment instrument paid and money transmission delivered.
- A list of the names and addresses of the licensee's authorized vendors.
- Records that document the establishment, monitoring, and termination of relationships with authorized vendors and foreign affiliates.
- Any additional records, as prescribed by rule, designed to detect and prevent money laundering.

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[14] S. 560.209, F.S.
[15] *Id.*
[16] *Id.*
[17] S. 560.210, F.S.
[18] *Id.*
[19] 31 C.F.R. pt. 1022.
[20] S. 560.1401, F.S.
[21] S. 560.123, F.S.
[22] *Id.*
[23] S. 560.114, F.S.
[24] *Id.*
[25] Ss. 560.1105 and 560.211, F.S.

Recent Case Law: State v. Espinoza

Through an online directory of buyers and sellers of bitcoin, a detective with the Miami Beach Police Department arranged to meet a person with the username Michelhack, which turned out to be the defendant Michell Espinoza, in order to purchase bitcoin.[26] The detective arranged multiple transactions with the defendant as follows:

- During the course of the first transaction, the detective made clear his desire to remain anonymous and implied that he was involved in illicit activity.[27] The detective paid Mr. Espinoza $500 in cash and received a portion of a bitcoin valued at $416.12, thus earning Mr. Espinoza a profit of $83.67.[28]
- The detective arranged a second transaction with Mr. Espinoza during which he told Mr. Espinoza that he needed the bitcoins to pay for stolen credit card numbers, since he was in the business of buying and selling stolen credit card numbers from Russian sellers.[29] The detective paid Mr. Espinoza $1,000 in cash and received one bitcoin, thus earning Mr. Espinoza a profit of approximately $167.56.[30]
- The detective then arranged a third transaction with Mr. Espinoza.[31] The detective inquired how fast the transaction could be completed because his "Russian buddies" would not send him his "[stuff] until they get the coin."[32] The detective deposited $500 into Mr. Espinoza's bank account, and Mr. Espinoza transferred 0.54347826 bitcoins to the detective.[33]
- In the fourth and final transaction, the detective negotiated the transfer of bitcoins worth $30,000 and represented to Mr. Espinoza that it was to pay for a new batch of stolen credit card numbers acquired from a recent data breach.[34] Although Mr. Espinoza questioned the authenticity of the $30,000 roll of money that the detective gave him, he otherwise remained ready and willing to consummate the entire transaction.[35] Mr. Espinoza was then taken into custody.[36]

Mr. Espinoza was charged with: (1) one count of unlawfully engaging in the business of a money transmitter and acting as a payment instrument seller as a result of not being licensed to conduct such activity (Count one); and (2) two counts of money laundering (Counts two and three).[37] Mr. Espinoza filed a motion to dismiss as to all counts, which the trial court granted for the following reasons:

- As to Count one, the trial court found that neither Bitcoin nor Mr. Espinoza's conduct fell within the ambit of ch. 560, F.S., requiring registration as a money services business.[38] Regarding Mr. Espinoza's conduct, the trial court reasoned that a "money transmitter" would necessarily operate like a middleman in a financial transaction, much like how Western Union accepts money from person A, and at the direction of person A, transmits it to person or entity B.[39] Mr. Espinoza was not acting as a middleman; rather the transactions with the detective were two-party transactions in which Mr. Espinoza sold his own bitcoin to the detective and received U.S. Dollars in return.
- As to Counts two and three, the trial court found that the conduct at issue qualifies as a "financial transaction" under the money laundering statutes but that Mr. Espinoza lacked the requisite intent to be guilty of money laundering.[40]

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[26] State v. Espinoza, 264 So. 3d 1055, 1059-60 (Fla. 3d DCA 2019).
[27] *Id.* at 1060.
[28] *Id.*
[29] *Id.*
[30] *Id.*
[31] *Id.*
[32] *Id.*
[33] *Id.*
[34] *Id*. at 1060-61.
[35] *Id*. at 1061.
[36] *Id.*
[37] *Id*. at 1057 and 1061.
[38] *Id*. at 1057 and 1061.
[39] *Id.* at 1065.
[40] *Id.* at 1057 and 1061.

The state then appealed the trial court's dismissal of the information.[41] On appeal, the Third District Court of Appeal (court) held that:

- The trial court erred in dismissing Count one because Mr. Espinoza acted as both a money transmitter and a payment instrument seller and, as such, was required to be licensed as a money services business.[42]
- The trial court erred in dismissing Counts two and three on the basis that Espinoza lacked the requisite intent to be guilty of money laundering.[43]

Most importantly, in the reasoning as to count one, the court determined that Bitcoin is both "monetary value" and a "payment instrument" under ch. 560, F.S.[44] This interpretation illustrates the need to expressly provide whether and how virtual currency falls within ch. 560, F.S. The court's interpretation also illustrates the need to clarify the definition of "payment instrument". "Monetary value" is akin to "currency" within ch. 560, F.S. Conceptually, a payment instrument is an instrument *denominated in* currency (or monetary value), but currency and monetary value should not in and of themselves be a payment instrument.

Another important aspect of the Espinoza case is that in determining that Mr. Espinoza acted as a money transmitter, the court addressed whether the definition of "money transmitter" covers only third-party intermediaries, in which case Mr. Espinoza selling his own bitcoins to the detective would not have run afoul of the prohibition on unlicensed money transmission.[45] On this point, the court held that "[t]he statute's plain language clearly contains no third party transmission requirement in order for an individual's conduct to fall under the 'money transmitter' definition. As such, we decline to add any third party or 'middleman' requirement to the money transmitter definition found in section 560.103(23)."[46] The court's holding illustrates the need to clarify the definition of "money transmitter" such that a money transmitter license is only required for a person acting an intermediary between two parties, but neither person in a two-party transaction is required to be licensed.[47]

Virtual Currency

Virtual currency is a digital representation of value that functions as a medium of exchange, a unit of account, and/or a store of value.[48] In some environments, it operates like "real" currency[49] (i.e., the coin and paper money of the United States or of any other country that is designated as legal tender, circulates, and is customarily used and accepted as a medium of exchange in the country of issuance), but it does not have legal tender status in any jurisdiction.[50] Virtual currency that has an equivalent value in real currency, or that acts as a substitute for real currency, is referred to as "convertible" virtual currency.[51] Bitcoin is one example of a convertible virtual currency, as it can be digitally traded between

[41] *Id.* at 1061.
[42] *Id.* at 1057 and 1061-62.
[43] *Id*.
[44] *Id.* at 1064.
[45] *Id*. at 1065.
[46] *Id.* (citations omitted).
[47] This is consistent with the historical interpretation of the money transmitter definition by OFR and industry, and it avoids the untenable result of requiring persons in a two-party transaction to be licensed. Additionally, this is consistent with the substance of the money transmitter regulations.
[48] IRS, *Virtual Currencies: What is virtual currency?*, https://www.irs.gov/businesses/small-businesses-self-employed/virtual-currencies (last visited Mar. 14, 2021).
[49] Also often referred to as "fiat" currency.
[50] IRS, *supra* note 48.
[51] *Id.*

users and can be purchased for, or exchanged into, U.S. dollars, Euros, and other real or virtual currencies.[52]

Virtual currencies generally consist of computers operating the network software (nodes) that enable, validate, and store transaction records on a distributed digital ledger (a blockchain).[53] To transfer an asset on a blockchain, a person enters an alphanumeric code known only to the transferor (a private key) into a cryptographic hash function enabled by the network software, which allows the transferor to request that the network software validate a new entry on the ledger showing that control of an asset has been assigned to the recipient.[54] Once the network software has validated this transfer, the ledger is altered and the recipient may transfer the asset to another recipient using their own private key.[55] Ledger entries are cryptographically secured, and accounts are identified on a blockchain by alphanumeric ''public keys''—not by the owner's name.[56]

Some persons use the services of a third-party to acquire or transact in virtual currency.[57] For example, certain third-parties provide custody services for their customers' virtual currency in so called ''hosted wallets.''[58] In such arrangements, the third-party wallet host may execute transactions on a blockchain on behalf of a customer using a private key controlled by the third-party wallet host.[59] Other persons do not use the services of such a third-party, in which case they use the private key controlling their virtual currency to transact directly on a blockchain.[60] Such persons may store the private key in a software program or written record, often referred to as an ''unhosted wallet.''[61]

Virtual currency networks present opportunities as well as risks.[62] The G7 Finance Ministers and Central Bank Governors recently noted that ''[t]he widespread adoption of digital payments . . . has the potential to address frictions in existing payment systems by improving access to financial services, reducing inefficiencies, and lowering costs.''[63] At the same time, however, virtual currencies are used in illicit financial activity that presents substantial national security concerns.[64]

Determining the true amount of illicit activity that is conducted in virtual currency is challenging.[65] One industry estimate is that approximately 1 percent of overall market transaction volume, or $10 billion, in virtual currency activity conducted globally in 2019 was illicit.[66] This figure, however, may underestimate such illicit activity.[67] Despite significant underreporting due to compliance challenges in parts of the virtual currency sector, in 2019, FinCEN received approximately $119 billion in suspicious activity reporting associated with virtual currency activity taking place wholly or in substantial part in the

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[52] *Id.*
[53] FinCEN, *Notice of Proposed Rulemaking: Requirements for Certain Transactions Involving Convertible Virtual Currency or Digital Assets*, https://www.govinfo.gov/content/pkg/FR-2020-12-23/pdf/2020-28437.pdf (last visited Mar. 14, 2021).
[54] *Id*.
[55] *Id*.
[56] *Id.*
[57] *Id.*.
[58] *Id.*
[59] *Id*.
[60] *Id*.
[61] *Id*.
[62] *Id.*
[63] *Id*. (citing the G7 Finance Ministers and Central Bank Governors' Statement on Digital Payments on Oct. 13, 2020).
[64] FinCEN Notice of Proposed Rulemaking, *supra* note 53.
[65] *Id*.
[66] *Id*. (citing Chainalysis, *2020 Crypto Crime Report* (Jan. 2020), https://go.chainalysis.com/2020-CryptoCrime-Report.html).
[67] FinCEN Notice of Proposed Rulemaking, *supra* note 53.

United States.[68] By industry measures, this would equate to approximately 11.9 percent of total virtual currency market activity being relevant to a possible violation of law or regulation.[69]

Virtual Currency in Florida Statutes

Currently, Florida law includes virtual currency as a type of monetary instrument under the Florida Money Laundering Act.[70] Thus, Florida law criminalizes the use of virtual currency for illicit purposes in the same manner that the law criminalizes use of fiat currency for illicit purposes. Under that act, "'virtual currency' means a medium of exchange in electronic or digital format that is not a coin or currency of the United States or any other country."[71] This definition was added in 2017[72] and is the only instance of "virtual currency" in Florida Statutes.

Federal Regulation of MSBs

The Financial Crimes Enforcement Network of the United States Department of Treasury (FinCEN) serves as the nation's financial intelligence unit and is charged with safeguarding the United States financial system from the abuses of money laundering, terrorist financing, and other financial crimes.[73] The basic concept underlying FinCEN's core activities is "follow the money" because criminals leave financial trails as they try to launder the proceeds of crimes or attempt to spend their ill-gotten profits.[74] To that end, FinCEN administers the Bank Secrecy Act (BSA).[75] BSA regulations require banks and other financial institutions, including MSBs, to take a number of precautions against financial crime.[76] BSA regulations require financial institutions to establish an anti-money laundering program (such as verifying customer identity), maintain certain records (such as transaction related data), and file reports (such as suspicious activity reports and currency transaction reports) that have been determined to have a high degree of usefulness in criminal, tax, and regulatory investigations, as well as in certain intelligence and counter-terrorism matters.[77]

Generally, an MSB is required to register with FinCEN, regardless of whether the MSB is licensed with the state, if it conducts more than $1,000 in business with one person in one or more transactions on the same day, in one or more of the following services: money orders, traveler's checks, check cashing, currency dealing, or exchange.[78] However, an MSB must register with FinCEN if it provides money transfer services in any amount.[79]

BSA regulations define "money transmission services" as "the acceptance of currency, funds, or *other value that substitutes for currency* from one person and the transmission of currency, funds, or *other value that substitutes for currency* to another location or person by any means."[80] Depending on the facts and circumstances surrounding a transaction, a person transmitting virtual currency may fall under FinCEN's BSA regulations.[81]

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[68] *Id*. FinCEN notes that a significant majority of this $119 billion related to suspicious activity that took place before 2019 based on subsequent lookbacks. *Id.* FinCEN anticipates that in the future it will receive additional suspicious activity reporting for activity that took place in 2019 but that has not yet been recognized as suspicious. *Id.*
[69] *Id*. Suspicious activity is not a clear indication of a crime but is activity that is potentially illicit. *Id*.
[70] S. 896.101, F.S.
[71] *Id*.
[72] Ch. 2017-155, Laws of Fla.
[73] FinCEN, *What We Do*, https://www.fincen.gov/what-we-do (last visited Mar. 14, 2021).
[74] *Id.*
[75] Many of the federal provisions of the BSA have been codified in ch. 560, F.S., which has provided OFR with additional compliance and enforcement tools.
[76] FinCEN, s*upra* note 73.
[77] *Id.*
[78] 31 C.F.R. §§ 1010.100 and 1022.380.
[79] *Id.*
[80] 31 C.F.R. § 1010.100 (emphasis added).
[81] FinCEN Guidance, *Application of FinCEN's Regulations to Certain Business Models Involving Convertible Virtual Currencies, FIN-2019-G001* (May 9, 2019), https://www.fincen.gov/sites/default/files/2019-05/FinCEN%20Guidance%20CVC%20FINAL%20508.pdf (last visited Mar. 14, 2021); FinCEN Notice of Proposed Rulemaking, *supra* note 53.

Federal law criminalizes money transmission if the money transmitting business:[82]

- Is operated without a license in a state where such unlicensed activity is subject to criminal sanctions;
- Fails to register with FinCEN; or
- Otherwise involves the transportation or transmission of funds that are known to have been derived from a criminal offense or are intended to be used to promote or support unlawful activity.

Effect of the Bill

Definitions (Section 2)

The bill makes the following changes to definitions in ch. 560, F.S.:

- Amends the definition of "electronic instrument" to replace the undefined term "money" with the defined term "currency". Leaving an undefined term such as "money" in statute may lead to confusion as to whether the term includes virtual currency. The definition of "electronic instrument" is also reworded for clarity.
- Excludes virtual currency from the definition of "monetary value" in order to narrow the regulation of virtual currency to only regulations for money transmitters but not other types of licenses under ch. 560, F.S.
- Amends the definition of "money transmitter" to expressly include virtual currency and to clarify that a money transmitter license is only required for a person acting an intermediary between two parties if the intermediary has the ability to unilaterally execute or indefinitely prevent a transaction; neither person in a two-party transaction is required to be licensed.
- Amends the definition of "payment instrument" to replace the undefined term "money" with the defined term "currency". Leaving an undefined term such as "money" in statute may lead to confusion as to whether the term includes virtual currency. The definition of "payment instrument" is also amended to clarify that the term means an instrument that is *used for* the transmission, exchange, or payment of currency or monetary value, but a payment instrument is not the currency or monetary value itself.
- Amends the definition of "stored value" to replace the undefined term "funds" with the defined term "currency". Leaving an undefined term such as "funds" in statute may lead to confusion as to whether the term includes virtual currency.
- Adds the following definition of "virtual currency" – Virtual currency means a medium of exchange in electronic or digital format that is not currency. The term does not include a medium of exchange in electronic or digital format that is used:
    - Solely within online gaming platforms with no market or application outside such gaming platforms; or
    - Exclusively as part of a consumer affinity or rewards program and can be applied solely as payment for purchases with the issuer or other designated merchants, but cannot be converted into or redeemed for currency, monetary value, or virtual currency.

Prohibition on Unlicensed Activity (Section 5)

The bill amends the prohibition on unlicensed money transmitter activity and payment instrument selling in order to better align the wording with the definition of payment instrument seller. One element of the prohibition is that a person is doing such activity *for compensation*, and "compensation" includes profit or loss on the exchange of currency. The bill adds that "compensation" includes profit or loss on the exchange of monetary value or virtual currency.

Permissible Investments (Section 8)

The bill amends the permissible investments statute in relation to virtual currency. Under current law, a money transmitter must possess permissible investments, such as cash and certificates of deposit, with

[82] 31 U.S.C. § 1960.

an aggregate market value of at least the aggregate face amount of all outstanding money transmissions. Without an amendment to this statute, the effect would be to require a money transmitter that transmits virtual currency to not only have control over the virtual currency being transmitted but also hold the equivalent value in cash or other assets on the list of permissible investments. Instead, the bill would only require that, during the period of transmission, the money transmitter must hold virtual currency of the same type and amount owed or obligated to the other location or person on the receiving end of the transmission.

Required Records (Section 9)

The bill adds rulemaking authority for recordkeeping requirements related to virtual currency.

Conforming Changes (Sections 1, 3, 4, 6, 7, 9, 10)

The bill amends the Financial Technology Sandbox in s. 559.952, F.S., in order to conform to changes made to s. 560.204, F.S. The bill also conforms portions of ss. 560.123, 560.125, 560.208, 560.2085, 560.211, 560.212, F.S., to reflect the addition of virtual currency to money transmitter regulations.

Effective Date (Section 11)

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

B. SECTION DIRECTORY:

Section 1. Amends s. 559.952, F.S., relating to Financial Technology Sandbox.

Section 2. Amends s. 560.103, F.S., relating to definitions.

Section 3. Amends s. 560.123, F.S., relating to Florida Control of Money Laundering in Money Services Business Act.

Section 4. Amends s. 560.125, F.S., relating to unlicensed activity; penalties.

Section 5. Amends s. 560.204, F.S., relating to license required.

Section 6. Amends s. 560.208, F.S., relating to conduct of business.

Section 7. Amends s. 560.2085, F.S., relating to authorized vendors.

Section 8. Amends s. 560.210, F.S., relating to permissible investments.

Section 9. Amends s. 560.211, F.S., relating to required records.

Section 10. Amends s. 560.212, F.S., relating to financial liability.

Section 11. Provides an effective date of January 1, 2022.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   See *Fiscal Comments*.

2. Expenditures:

   See *Fiscal Comments*.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill's overall impact on the private sector, while likely positive, is indeterminate. The bill provides regulatory clarity as to the way in which virtual currency is regulated under ch. 560, F.S. To the extent that the Espinoza case may have caused some businesses to become licensed out of an abundance of caution when buying and selling virtual currency in two-party transactions, the regulatory clarity provided by the bill may result in such businesses foregoing licensure. Additionally, the bill may lead to greater protection for consumers transacting in virtual currency through third-party intermediaries. The regulatory clarity provided by the bill may lead to more money transmitter licensees, especially those that deal in virtual currency. Those businesses must apply for a money transmitter license and would be subject to initial licensure ($375) and biannual renewal ($750) fees, and reimbursing OFR for examinations expenses every 5 years.[83]

D. FISCAL COMMENTS:

The fiscal impact on OFR is indeterminate. The regulatory clarity provided by the bill may lead to more money transmitter licensees, especially those that deal in virtual currency. This may increase revenues in the Regulatory Trust Fund, though OFR would incur additional costs for examination expenses associated with the new licensees. However, to the extent that the Espinoza case may have caused some businesses to become licensed out of an abundance of caution when buying and selling virtual currency in two-party transactions, the regulatory clarity provided by the bill may result in such businesses foregoing licensure.

Since the potential number of additional licensees and corresponding expenses for oversight is unknown, the fiscal impact on the Regulatory Trust Fund is indeterminate. While OFR has indicated that any fiscal impact can be handled within existing resources, the agency noted that additional staff and funding may be required in the future if the number of new licensees dealing in virtual currency significantly increases beyond its capacity to absorb the additional workload.[84]

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill adds rulemaking authority for recordkeeping requirements related to virtual currency. Other changes made by the bill may necessitate amendment to current rules.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

[83] Office of Financial Regulation (OFR), Agency Analysis of 2021 House Bill 1351, p. 6 (Mar. 4, 2021).
[84] OFR, *supra* note 83, at 6-7.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 17, 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:

- Clarifies that a money transmitter license is only required for an intermediary that has *control* over the currency, monetary value, payment instrument, or virtual currency in transmission. This clarification is important especially in the realm of virtual currency. Without this clarification, there may be confusion as to whether a node on a blockchain network or a computer program that matches buyers and sellers would count as an intermediary and thus be required to have a money transmitter license.
- Conforms other sections of ch. 560, F.S., to reflect the addition of virtual currency to money transmitter regulations.

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

A bill to be entitled

An act relating to money services businesses; amending s. 559.952, F.S.; revising exceptions for a licensee during the Financial Technology Sandbox period; amending s. 560.103, F.S.; revising and providing definitions; amending s. 560.123, F.S.; revising the purpose of the Florida Control of Money Laundering in Money Services Business Act; revising duties of money services businesses; amending s. 560.125, F.S.; revising provisions related to violations of money services business activities; amending s. 560.204, F.S.; revising provisions related to certain prohibited activities without a license; revising the definition of the term "compensation"; amending s. 560.208, F.S.; revising requirements for a money transmitter or payment instrument seller to conduct business; amending s. 560.2085, F.S.; revising requirements for a written contract between a money transmitter or payment instrument seller and an authorized vendor; amending s. 560.210, F.S.; providing requirements for a money transmitter that receives virtual currency; excluding virtual currency in the calculation of permissible investments; amending s. 560.211, F.S.; revising recordkeeping requirements for a money transmitter or payment

instrument seller; amending s. 560.212, F.S.; revising financial liability requirements for a money transmitter or payment instrument seller; providing an effective date.

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

Section 1. Paragraph (a) of subsection (4) of section 559.952, Florida Statutes, is amended to read:

559.952 Financial Technology Sandbox.—

(4) EXCEPTIONS TO GENERAL LAW AND WAIVERS OF RULE REQUIREMENTS.—

(a) Notwithstanding any other law, upon approval of a Financial Technology Sandbox application, the following provisions and corresponding rule requirements are not applicable to the licensee during the sandbox period:

1. Section 516.03(1), except for the application fee, the investigation fee, the requirement to provide the social security numbers of control persons, evidence of liquid assets of at least $25,000, and the office's authority to investigate the applicant's background. The office may prorate the license renewal fee for an extension granted under subsection (7).

2. Section 516.05(1) and (2), except that the office shall investigate the applicant's background.

3. Section 560.109, only to the extent that the section

requires the office to examine a licensee at least once every 5 years.

4. Section 560.118(2).

5. Section 560.125(1), only to the extent that the subsection would prohibit a licensee from engaging in the business of a money transmitter or payment instrument seller during the sandbox period.

6. Section 560.125(2), only to the extent that the subsection would prohibit a licensee from appointing an authorized vendor during the sandbox period. Any authorized vendor of such a licensee during the sandbox period remains liable to the holder or remitter.

7. Section 560.128.

8. Section 560.141, except for s. 560.141(1)(a)1., 3., 7.-10. and (b), (c), and (d).

9. Section 560.142(1) and (2), except that the office may prorate, but may not entirely eliminate, the license renewal fees in s. 560.143 for an extension granted under subsection (7).

10. Section 560.143(2), only to the extent necessary for proration of the renewal fee under subparagraph 9.

11. Section 560.204(1), only to the extent that the subsection would prohibit a licensee from engaging in, or advertising that it engages in, ~~the selling or issuing of payment instruments or in~~ the activity of a payment instrument

seller or money transmitter during the sandbox period.

12. Section 560.205(2).

13. Section 560.208(2).

14. Section 560.209, only to the extent that the office may modify, but may not entirely eliminate, the net worth, corporate surety bond, and collateral deposit amounts required under that section. The modified amounts must be in such lower amounts that the office determines to be commensurate with the factors under paragraph (5)(c) and the maximum number of consumers authorized to receive the financial product or service under this section.

Section 2. Subsections (14), (21), (23), (29), and (35) of section 560.103, Florida Statutes, are amended, and subsection (36) is added to that section, to read:

560.103 Definitions.—As used in this chapter, the term:

(14) "Electronic instrument" means a card, tangible object, or other form of electronic payment used for the transmission, ~~or~~ payment, ~~of money~~ or ~~the~~ exchange of currency or monetary value, including a stored value card or device that contains a microprocessor chip, magnetic stripe, or other means for storing information; that is prefunded; and for which the value is decremented upon each use.

(21) "Monetary value" means a medium of exchange, other than virtual currency, regardless of whether it is ~~or not~~ redeemable in currency.

(23) "Money transmitter" means a corporation, limited liability company, limited liability partnership, or foreign entity qualified to do business in this state which receives currency, monetary value, a ~~or~~ payment instrument, or virtual currency ~~instruments~~ for the purpose of acting as an intermediary to transmit currency, monetary value, a payment instrument, or virtual currency from one person to another location or person ~~transmitting the same~~ by any means, including transmission by wire, facsimile, electronic transfer, courier, the Internet, or through bill payment services or other businesses that facilitate such transfer within this country, or to or from this country. The term includes only an intermediary that has the ability to unilaterally execute or indefinitely prevent a transaction.

(29) "Payment instrument" means a check, draft, warrant, money order, travelers check, electronic instrument, or other instrument used for the transmission, exchange, or payment of currency ~~money,~~ or monetary value, regardless of whether it is ~~or not~~ negotiable. The term does not include an instrument that is redeemable by the issuer in merchandise or service, a credit card voucher, or a letter of credit.

(35) "Stored value" means currency ~~funds~~ or monetary value represented in digital electronic format, regardless of whether it is ~~or not~~ specially encrypted, and stored or capable of storage on electronic media in such a way as to be retrievable

and transferred electronically.

(36) "Virtual currency" means a medium of exchange in electronic or digital format that is not currency. The term does not include a medium of exchange in electronic or digital format that is used:

(a) Solely within online gaming platforms with no market or application outside such gaming platforms; or

(b) Exclusively as part of a consumer affinity or rewards program and can be applied solely as payment for purchases with the issuer or other designated merchants, but cannot be converted into or redeemed for currency, monetary value, or virtual currency.

Section 3. Subsections (2), (3), and (4) and paragraphs (b), (c), and (d) of subsection (8) of section 560.123, Florida Statutes, are amended to read:

560.123 Florida Control of Money Laundering in Money Services Business Act.—

(2) The purpose of this section is to require the maintenance of certain records of transactions involving currency, monetary value, ~~or~~ payment instruments, or virtual currency in order to deter the use of a money services business to conceal proceeds from criminal activity and to ensure the availability of such records for criminal, tax, or regulatory investigations or proceedings.

(3) A money services business shall keep a record, as

prescribed by the commission, of each financial transaction occurring in this state which it knows to involve currency, monetary value, a ~~or other~~ payment instrument, or virtual currency ~~as prescribed by the commission,~~ having a value greater than $10,000; to involve the proceeds of specified unlawful activity; or to be designed to evade the reporting requirements of this section or chapter 896. The money services business must maintain appropriate procedures to ensure compliance with this section and chapter 896.

(a) Multiple financial transactions shall be treated as a single transaction if the money services business has knowledge that they are made by or on behalf of any one person and result in value ~~cash~~ in or value ~~cash~~ out totaling a value of more than $10,000 during any day.

(b) A money services business may keep a record of any financial transaction occurring in this state, regardless of the value, if it suspects that the transaction involves the proceeds of unlawful activity.

(c) The money services business must file a report with the office of any records required by this subsection, at such time and containing such information as required by rule. The timely filing of the report required by 31 U.S.C. s. 5313 with the appropriate federal agency shall be deemed compliance with the reporting requirements of this subsection unless the reports are not regularly and comprehensively transmitted by the federal

agency to the office.

(d) A money services business, or officer, employee, or agent thereof, that files a report in good faith pursuant to this section is not liable to any person for loss or damage caused in whole or in part by the making, filing, or governmental use of the report, or any information contained therein.

(4) A money services business must comply with the money laundering, enforcement, and reporting provisions of s. 655.50 relating to reports of transactions involving currency transactions and payment instruments, as applicable, and of chapter 896 concerning offenses relating to financial transactions.

(8)

(b) A person who willfully violates any provision of this section, if the violation involves:

1. Currency, monetary value, ~~or~~ payment instruments, or virtual currency of a value exceeding $300 but less than $20,000 in any 12-month period, commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

2. Currency, monetary value, ~~or~~ payment instruments, or virtual currency of a value totaling or exceeding $20,000 but less than $100,000 in any 12-month period, commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

3. Currency, monetary value, ~~or~~ payment instruments, or virtual currency of a value totaling or exceeding $100,000 in any 12-month period, commits a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(c) In addition to the penalties authorized by s. 775.082, s. 775.083, or s. 775.084, a person who has been convicted of, or entered a plea of guilty or nolo contendere, regardless of adjudication, to having violated paragraph (b) may be sentenced to pay a fine of up to the greater of $250,000 or twice the value of the currency, monetary value, ~~or~~ payment instruments, or virtual currency ~~whichever is greater~~, except that on a second or subsequent conviction for or plea of guilty or nolo contendere, regardless of adjudication, to a violation of paragraph (b), the fine may be up to the greater of $500,000 or quintuple the value of the currency, monetary value, ~~or~~ payment instruments, or virtual currency ~~whichever is greater~~.

(d) A person who violates this section is also liable for a civil penalty of up to ~~not more than~~ the greater of the value of the currency, monetary value, ~~or~~ payment instruments, or virtual currency involved or $25,000.

Section 4. Subsections (5), (6), and (7) of section 560.125, Florida Statutes, are amended to read:

560.125 Unlicensed activity; penalties.—

(5) A person who violates this section, if the violation involves:

(a) Currency, monetary value, ~~or~~ payment instruments, or virtual currency of a value exceeding $300 but less than $20,000 in any 12-month period, commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(b) Currency, monetary value, ~~or~~ payment instruments, or virtual currency of a value totaling or exceeding $20,000 but less than $100,000 in any 12-month period, commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(c) Currency, monetary value, ~~or~~ payment instruments, or virtual currency of a value totaling or exceeding $100,000 in any 12-month period, commits a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(6) In addition to the penalties authorized by s. 775.082, s. 775.083, or s. 775.084, a person who has been convicted of, or entered a plea of guilty or nolo contendere to, having violated this section may be sentenced to pay a fine of up to the greater of $250,000 or twice the value of the currency, monetary value, ~~or~~ payment instruments, or virtual currency ~~whichever is greater~~, except that on a second or subsequent violation of this section, the fine may be up to the greater of $500,000 or quintuple the value of the currency, monetary value, ~~or~~ payment instruments, or virtual currency ~~whichever is greater~~.

(7) A person who violates this section is also liable for

a civil penalty of up to the greater of ~~not more than~~ the value of the currency, monetary value, ~~or~~ payment instruments, or virtual currency involved or $25,000~~, whichever is greater~~.

Section 5. Subsection (1) of section 560.204, Florida Statutes, is amended to read:

560.204 License required.—

(1) Unless exempted, a person may not engage in, or in any manner advertise that they engage in, ~~the selling or issuing of payment instruments or in~~ the activity of a payment instrument seller or money transmitter, for compensation, without first obtaining a license under this part. For purposes of this subsection ~~section~~, the term "compensation" includes profit or loss on the exchange of currency, monetary value, or virtual currency.

Section 6. Subsections (5) and (6) of section 560.208, Florida Statutes, are amended to read:

560.208 Conduct of business.—In addition to the requirements specified in s. 560.1401, a licensee under this part:

(5) Shall, in the normal course of business, ensure that currency, monetary value, payment instruments, or virtual currency ~~money~~ transmitted is available to the designated recipient within 10 business days after receipt.

(6) Shall immediately upon receipt of currency, monetary value, a ~~or~~ payment instrument, or virtual currency provide a

confirmation or sequence number to the customer verbally, by paper, or electronically.

Section 7. Paragraph (b) of subsection (2) of section 560.2085, Florida Statutes, is amended to read:

560.2085 Authorized vendors.—A licensee under this part shall:

(2) Enter into a written contract, signed by the licensee and the authorized vendor, which:

(b) Includes contract provisions that require the authorized vendor to:

1. Report to the licensee, immediately upon discovery, the theft or loss of currency, monetary value, a payment instrument, or virtual currency received for a transmission or for a payment instrument sold;

2. Display a notice to the public, in such form as prescribed by rule, that the vendor is the authorized vendor of the licensee;

3. Remit all amounts owed to the licensee for all transmissions accepted and all payment instruments sold in accordance with the contract between the licensee and the authorized vendor;

4. Hold in trust all currency, monetary value, ~~or~~ payment instruments, or virtual currency received for transmissions or for the purchase of payment instruments from the time of receipt by the licensee or authorized vendor until the time the

transmission obligation is completed;

5. Not commingle the currency, monetary value, payment instruments, or virtual currency ~~money~~ received for transmissions accepted or payment instruments sold on behalf of the licensee with the assets ~~money~~ or property of the authorized vendor, except for making change in the ordinary course of the vendor's business;~~, and~~

6. Ensure that the currency, monetary value, payment instruments, or virtual currency received for transmissions accepted or payment instruments sold ~~money~~ is accounted for at the end of the business day;

7.~~6.~~ Consent to examination or investigation by the office;

8.~~7.~~ Adhere to the applicable state and federal laws and rules pertaining to a money services business; and

9.~~8.~~ Provide such other information or disclosure as may be required by rule.

Section 8. Subsections (2) and (3) of section 560.210, Florida Statutes, are renumbered as subsections (3) and (4), respectively, and a new subsection (2) is added to that section to read:

560.210 Permissible investments.—

(2) Each money transmitter that receives virtual currency, either directly or through an authorized vendor, for the purpose of transmitting such virtual currency from one person to another

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

location or person must at all times hold virtual currency of the same type and amount owed or obligated to the other location or person. Virtual currency received and held under this subsection is not included in the amount of outstanding money transmissions for purposes of calculating the permissible investments required by subsection (1).

Section 9. Paragraphs (a), (e), and (f) of subsection (1) of section 560.211, Florida Statutes, are amended, and paragraph (j) is added to subsection (1) of that section, to read:

560.211 Required records.—

(1) In addition to the record retention requirements under s. 560.1105, each licensee under this part must make, keep, and preserve the following books, accounts, records, and documents for 5 years:

(a) A daily record of payment instruments sold and of currency, monetary value, payment instruments, or virtual currency ~~money~~ transmitted.

(e) Records of outstanding payment instruments and of currency, monetary value, payment instruments, or virtual currency ~~money~~ transmitted.

(f) Records of each payment instrument paid and of currency, monetary value, payment instruments, or virtual currency ~~money~~ transmission delivered.

(j) Any additional records, as prescribed by rule, related to virtual currency.

Section 10. Section 560.212, Florida Statutes, is amended to read:

560.212 Financial liability.—A licensee under this part is liable for the payment of all currency, monetary value, payment instruments, or virtual currency ~~money~~ transmitted and payment instruments that it sells, in whatever form and whether directly or through an authorized vendor, as the maker, drawer, or principal thereof, regardless of whether such item is negotiable or nonnegotiable.

Section 11. This act shall take effect January 1, 2022.

COMMERCE COMMITTEE

CS/HB 1351 by Rep. Aloupis
Money Services Businesses

AMENDMENT SUMMARY
April 19, 2021

Amendment 1 by Rep. Aloupis (line 326): The amendment adds the phrase “until the transmission obligation is completed” to the permissible investments statute in relation to virtual currency transmission. This change clarifies that the amount of virtual currency a money transmitter is required to hold is that which is in the process of transmission.

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 Aloupis offered the following:

Amendment

Remove line 326 and insert:

location or person must at all times, until the transmission obligation is completed, hold virtual currency of

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1567 Utility and Communication Service Poles
SPONSOR(S): Tourism, Infrastructure & Energy Subcommittee, DiCeglie and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 1944

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Tourism, Infrastructure & Energy Subcommittee	16 Y, 1 N, As CS	Willson	Keating
2) State Administration & Technology Appropriations Subcommittee	12 Y, 2 N	Lee	Topp
3) Commerce Committee		Willson	Hamon

SUMMARY ANALYSIS

"Pole attachment" refers to the process by which telecommunications companies can collocate telecommunications infrastructure on existing electric utility poles. Telecommunications companies and electric utilities have an established system of utility poles to carry the wires that move their resources from provider to the consumer. However, telecommunications companies typically own relatively few poles so they often lease space from electric utility pole owners. Historically, rates, terms, and conditions for attachments to municipal and cooperative utility poles have been established through private contracts.

Federal law broadly preempts the regulation of telecommunications services, including pole attachments. Federal regulations apply only to attachments made to poles owned by investor-owned electric utilities (IOUs); municipal and cooperative electric utilities are specifically exempted. Federal law allows states to exercise reverse preemption over the Federal Communications Commission's (FCC) jurisdiction over pole attachments.

The bill requires the Florida Public Service Commission (PSC) to regulate pole attachments in Florida, taking over the role currently performed by the FCC. The bill requires the PSC to hear and resolve complaints concerning rates, charges, terms, conditions, voluntary agreements, or any denial of access relative to pole attachments. The bill provides that FCC precedent is not binding upon the PSC. Additionally, the bill specifies that the PSC, upon the request of a party to a complaint proceeding pending before the FCC, must assume jurisdiction over the matter if it is not yet subject to a final order of the FCC at the time of the request.

The bill defines "redundant pole" and requires that attaching entities remove their pole attachments from a redundant pole within 180 days of a written request by the pole owner. Under certain circumstances, the pole owner may transfer or relocate the pole attachment to a new pole at the noncompliant attaching entity's expense, unless the pole attachments are owned by an electric utility.

The bill requires the PSC to regulate the maintenance of certain telecommunications infrastructure and requires telecommunications companies to create storm reserve funds overseen by the PSC.

The bill requires the PSC to impose monetary penalties upon any entity that violates the provisions of the bill. Upon petition by a pole owner, the bill authorizes the PSC to resolve disputes or order the removal or transfer of pole attachments by noncompliant attaching entities, and requires the PSC to impose monetary penalties. Revenues collected from these penalties must be used by the PSC to provide broadband infrastructure grants.

The bill requires the PSC to adopt rules by October 1, 2021.

The PSC indicates a fiscal impact to implement the provisions of CS/HB 1567. However, it is expected this can be absorbed within existing resources. See *Fiscal Analysis & Economic Impact Statement*.

The bill takes effect upon becoming law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Regulation of Pole Attachments

First deployed in America in 1844 to extend telegraph service, utility poles provide the scaffolding for the technology of the twenty-first century. In the mid-nineteenth and early twentieth centuries, many states adopted laws granting rights-of-way (ROW) to construct utility poles, wires, and facilities to transmit electricity and communications signals. First telegraph, then telephone, electricity, cable, wireless, and Internet Service Providers have sought to attach facilities to wooden, and later steel or composite, utility poles.[1]

The term pole attachment refers to the process by which communications companies can collocate communications infrastructure on existing electric utility poles. This reduces the number of poles that must be built to accommodate utility services, while reducing costs to users of both services by allowing providers to share costs. Rules governing pole attachments seek to balance the desire to maximize value for users of both electric and communications services with concerns unique to electric utility poles, such as safety and reliability.[2] The space requested for a pole attachment is typically one foot.

Pole attachments, originally by mutual agreement but later by federal statute and regulation, provide non-pole-owning cable and telecommunication service providers (e.g. cable TV, local exchange carriers) with access to a utility's distribution poles, conduits, and ROW for:

- Installing fiber, coaxial cable or wires, and other equipment;
- Building an interconnected network; and
- Reaching customers.[3]

Congress began regulating pole attachments[4] in 1978.[5] The Telecommunications Act of 1996[6] expanded pole attachment rights to telecommunications[7] carriers. The Act requires utilities[8] to provide nondiscriminatory access to cable television systems and telecommunications carriers. The Act also authorizes the Federal Communications Commission[9] (FCC) to regulate the rates, terms, and conditions of attachments by cable television operators to the poles, conduit, or ROW owned or controlled by utilities in the absence of parallel state regulation.[10] The Legislation withheld from FCC jurisdiction the authority to regulate attachments where the utility is a railroad, cooperatively organized,

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[1] Catherine J.K. Sandoval, *Contested Places, Utility Pole Spaces: A Competition and Safety Framework for Analyzing Utility Pole Association Rules, Roles, and Risks*, 69 Cath. U. L. Rev. 473, 474–75 (2020).
[2] American Public Power Association, *Issue Brief: Preserving the Municipal Exemption from Federal Pole Attachment Regulations* (Jan. 2021) https://www.publicpower.org/policy/preserving-municipal-exemption-federal-pole-attachment-regulations (last visited Mar. 13, 2021).
[3] Edison Electric Institute, Pole Attachments 101, https://ecfsapi.fcc.gov/file/7020708245.pdf (last visited Mar. 13, 2021).
[4] 47 U.S.C. § 224(a)(4), defines ''pole attachment'' as "any attachment by a cable television system or provider of telecommunications service to a pole, duct, conduit, or right-of-way owned or controlled by a utility."
[5] The Pole Attachment Act of 1978 granted utility pole access to cable companies, and was designed to promote utility competition and service to the public. Communications Act Amendments of 1978, Pub. L. No. 95-234. (Feb. 21, 1978).
[6] Telecommunications Act of 1996, Pub. LA. No. 104-104, 110 Stat. 56 (1996).
[7] The term "telecommunications" means the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received. 47 U.S.C. § 153(50).
[8] 47 U.S.C. § 224(a)(1), defines ''utility'' as "any person who is a local exchange carrier or an electric, gas, water, steam, or other public utility, and who owns or controls poles, ducts, conduits, or rights-of-way used, in whole or in part, for any wire communications. Such term does not include any railroad, any person who is cooperatively organized, or any person owned by the Federal Government or any State."
[9] The FCC regulates interstate and international communications by radio, television, wire, satellite and cable in all 50 states, the District of Columbia and U.S. territories. An independent U.S. government agency overseen by Congress, the FCC is the United States' primary authority for communications law, regulation and technological innovation. FCC, *What We Do*, https://www.fcc.gov/about-fcc/what-we-do (last visited Mar 13, 2021).
[10] 47 U.S.C. § 224.

or owned by a government entity.[11] Thus, federal pole attachment regulations apply only to investor-owned electric utilities (IOUs). Municipal and cooperative electric utilities are specifically exempted from federal pole attachment regulations.

The 1996 Act permits utilities to deny access where there is insufficient capacity and for reasons of safety, reliability or generally applicable engineering purposes. In addition to establishing a right of access, the Act provides a rate methodology for "attachments used by telecommunications carriers to provide telecommunications services"[12] in addition to the existing methodology for attachments "used by a cable television system solely to provide cable service.[13]

Federal law broadly preempts the regulation of telecommunications services.[14] However, federal law allows states to exercise reverse preemption over the FCC's jurisdiction of communications infrastructure access,[15] meaning that once a state adopts its own utility pole access rules, the FCC loses jurisdiction over pole attachments to the extent that the state regulates such matters.[16]

Federal law specifically recognizes the authority of state and local governments to manage the public ROW, and to require fair and reasonable compensation for the use of such ROW.[17] The law also provides that states may adopt, on a competitively neutral basis, requirements necessary to preserve and advance universal service, protect the public safety and welfare, ensure the continued quality of telecommunications services, and safeguard the rights of consumers."[18]

Pursuant to section 224(c) of the Telecommunications Act of 1996[19], each state that regulates the rates, terms, and conditions for pole attachments must certify to the FCC that:

- It regulates such rates, terms, and conditions; and
- In so regulating such rates, terms, and conditions, the state has the authority to consider and does consider the interests of the subscribers of the services offered via such attachments, as well as the interests of the consumers of the utility services provided by the pole owners.

Furthermore, a state is not considered to regulate the rates, terms, and conditions for pole attachments:

- Unless the state has issued and made effective rules and regulations implementing the state's regulatory authority over pole attachments; and
- With respect to any individual matter, unless the state takes final action on a complaint regarding such matter:
    - Within 180 days after the complaint is filed with the state, or
    - Within the applicable period prescribed for such final action in such rules and regulations of the state, if the prescribed period does not extend beyond 360 days after the filing of such complaint.

[11] *In the Matter of Implementation of Section 224 of the Act A Nat'l Broadband Plan for Our Future*, 26 F.C.C. Rcd. 5240, 5245–46 (2011)
[12] 47 U.S.C. § 224(e).
[13] 47 U.S.C. § 224(d).
[14] "No State or local statute or regulation, or other State or local legal requirement, may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service." 47 U.S.C. § 253(a).
[15] 47 U.S.C. § 224(c)(1).
[16] Catherine J.K. Sandoval, *Contested Places, Utility Pole Spaces: A Competition and Safety Framework for Analyzing Utility Pole Association Rules, Roles, and Risks*, 69 Cath. U. L. Rev. 473, 486–87 (2020).
[17] 47 U.S.C. § 253(c).
[18] 47 U.S.C. § 253.
[19] 47 U.S.C. § 224(c)

Regulation of Utility Infrastructure in Florida

The Florida Public Service Commission ("PSC" or "commission") is an arm of the legislative branch of government.[20] 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.[21] 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.[22]

The PSC monitors the safety and reliability of the electric power grid[23] and may order the addition or repair of infrastructure as necessary.[24] Additionally, the PSC has broad jurisdiction over the rates and service of investor-owned electric utilities (IOUs) in Florida. However, the PSC does not regulate pole attachments or provide construction and reliability standards relating to pole attachments. Additionally, the PSC generally does not regulate providers of communications services,[25] cable television operators, local exchange carriers, or streetlight fixtures.

Telecommunications carriers in Florida are subject to limited regulation under ch. 364, F.S. During the 2011 legislative session House Bill CS/CS/HB 1231, the "Regulatory Reform Act" (Act), was passed and signed into law by the Governor, effective July 1, 2011. Under the Act, the Legislature eliminated most of the PSC's retail oversight authority over the telecommunications wireline companies, yet maintained the PSC's authority over wholesale intercarrier issues. The Act eliminated most of the retail regulation of local exchange telecommunications services by the PSC, including the elimination of rate caps on all retail telecommunications services, elimination of telecommunications-related consumer protection and assistance duties of the PSC, and elimination of the PSC's remaining oversight of telecommunications service quality.[26]

Effect of the Bill

The bill requires the PSC to regulate pole attachments in Florida, taking over the role currently performed by the FCC.

The bill defines the following terms:

- "Attaching entity" means a person that is a local exchange carrier, a public utility,[27] a

[20] s. 350.001, F.S.
[21] FLA. PUBLIC SERVICE COMMISSION, *The PSC's Role*, http://www.psc.state.fl.us (last visited Feb. 26, 2021).
[22] *Id.* The PSC regulates five investor-owned electric companies, eight investor-owned natural gas utilities, and 151 investor-owned water and/or wastewater utilities. While the PSC does not fully regulate municipal or cooperative electric utilities, the Commission does have jurisdiction, with regard to rate structure, territorial boundaries, bulk power supply operations, and planning, over 35 municipally owned electric systems and 18 rural electric cooperatives. The PSC has jurisdiction, with regard to territorial boundaries and safety, over 27 municipally owned natural gas utilities and 4 gas districts, and also exercises safety authority over all electric and natural gas systems operating in the state. FLA. PUBLIC SERVICE COMMISSION, 2020 ANNUAL REPORT 14 (2020), http://www.psc.state.fl.us/Files/PDF/Publications/Reports/General/Annualreports/2020.pdf. (last visited Feb. 28, 2021).
[23] S. 366.04(5) & (6), F.S.
[24] S. 366.05(1) & (8), F.S.
[25] Section 202.11(1), F.S., defines "Communications services" as "the transmission, conveyance, or routing of voice, data, audio, video, or any other information or signals, including video services, to a point, or between or among points, by or through any electronic, radio, satellite, cable, optical, microwave, or other medium or method now in existence or hereafter devised, regardless of the protocol used for such transmission or conveyance. The term includes such transmission, conveyance, or routing in which computer processing applications are used to act on the form, code, or protocol of the content for purposes of transmission, conveyance, or routing without regard to whether such service is referred to as voice-over-Internet-protocol services or is classified by the Federal Communications Commission as enhanced or value-added. The term does not include: Information services. Installation or maintenance of wiring or equipment on a customer's premises. The sale or rental of tangible personal property. The sale of advertising, including, but not limited to, directory advertising. Bad check charges. Late payment charges. Billing and collection services. Internet access service, electronic mail service, electronic bulletin board service, or similar online computer services."
[26] PSC, *Local Competition* http://www.psc.state.fl.us/Telecommunication/TelecomLocalCompetition (last visited Mar. 13, 2021).
[27] Section 366.02(1), F.S., defines "Public utility" as "every person, corporation, partnership, association, or other legal entity and their lessees, trustees, or receivers supplying electricity or gas (natural, manufactured, or similar gaseous substance) to or for the public within this state; but the term "public utility" does not include either a cooperative now or hereafter organized and existing under the Rural Electric Cooperative Law of the state; a municipality or any agency thereof; any dependent or independent special natural gas district; any natural gas transmission pipeline company making only sales or transportation delivery of natural gas at wholesale and to direct industrial consumers; any entity selling or arranging for sales of natural gas which neither owns nor operates natural gas

communications services provider, a broadband provider, or a cable television operator who owns or controls pole attachments.
- "Communications services" has the same meaning as in s. 202.11, F.S.
- "Pole" means a pole, duct, conduit, or right-of-way that is used for wire or wireless communications or electricity distribution and that is owned in whole or in part by a pole owner, or a streetlight fixture that is owned in whole or in part by a public utility.
- "Pole attachments" means local exchange carrier, electric, communications services, broadband, or cable television facilities attached to a pole by an entity other than the pole owner.
- "Pole owner" means a local exchange carrier, a public utility, a communications services provider, a cable television operator, or other public utility which owns a pole used in whole or in part, for electrical purposes or for any wire or wireless communications.
- "Redundant pole" means a pole owned or controlled by a pole owner which is:
    - Within 50 feet of a new pole which is intended to replace the old pole from which some or all of the pole attachments have not been removed and transferred to the new pole;
    - Left standing after the pole owner has relocated its facilities to underground but on which pole attachments of other attaching entities remain; or
    - Left standing after a pole owner's attachments have been removed from that route or location to accommodate a new route or design for the delivery of service.

Regulation of Pole Attachments

In the event that a pole owner is unable to reach an agreement with a party seeking pole attachments, the bill requires the PSC to regulate and enforce rates, charges, terms, and conditions for pole attachments and to ensure that they are just and reasonable. The bill authorizes the PSC to regulate attachments by a cable television system or provider of telecommunications service to investor-owned electric utility poles, attachments to streetlight fixtures, and attachments to poles owned by a communications services provider. The bill clarifies that the Legislature encourages parties to enter into voluntary pole attachment agreements, and that voluntary pole attachment agreements do not require PSC approval.

The bill provides that the PSC's authority to regulate such matters includes, but is not limited to, the state regulatory authority provided under federal law. Additionally, the bill requires the PSC to consider the interests of the subscribers and users of the services offered through pole attachments, as well as the interests of the consumers of any pole owner providing such attachments, when developing such rules.

The bill requires the PSC to hear and resolve complaints concerning rates, charges, terms, conditions, voluntary agreements, or any denial of access relative to pole attachments.

The bill specifies that a party's right to nondiscriminatory access to a pole is identical to the rights afforded under 47 U.S.C. s. 224(f)(1), and that a pole owner may deny access to its poles on a nondiscriminatory basis when there is insufficient capacity, for reasons of safety and reliability, and when required by generally applicable engineering purposes.

The bill requires a pole owner to consider relevant construction and reliability standards approved by the PSC when evaluating capacity, safety, reliability, and engineering requirements, as well as the financial and performance-related capabilities of the entity requesting attachment.

The bill provides that FCC precedent is not binding upon the PSC. Additionally, the bill specifies that the PSC, upon the request of a party to a complaint proceeding pending before the FCC, must assume jurisdiction over the matter if it is not yet subject to a final order of the FCC at the time of the request.

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transmission or distribution facilities within the state; or a person supplying liquefied petroleum gas, in either liquid or gaseous form, irrespective of the method of distribution or delivery, or owning or operating facilities beyond the outlet of a meter through which natural gas is supplied for compression and delivery into motor vehicle fuel tanks or other transportation containers, unless such person also supplies electricity or manufactured or natural gas."

By October 1, 2021, the bill requires the PSC to adopt rules to administer and implement these provisions, including one or more appropriate formulae for apportioning costs, and to provide certification to the FCC upon adoption of such rules.

The bill specifies that it may not be construed to:

- Prevent a party from entering into a voluntary agreement authorizing a pole owner to remove an attaching entity's pole attachment.
- Impair the contract rights of a party to a valid pole attachment agreement in existence before the effective date of the bill.

Regulation of Telecommunications Infrastructure

The bill requires the PSC to regulate the safety, vegetation management, repair, replacement, maintenance, relocation, emergency response, and storm restoration requirements for poles, conduits, ducts, pipes, pole attachments, wires, cables, and related plant and equipment of communication services providers.

The bill requires communications services providers to establish storm reserve funds for the repair and replacement of facilities after natural disasters.

The bill requires the PSC, by October 1, 2021, to adopt rules to administer and implement these provisions, including:

- Mandatory pole inspections, including provisions relating to:
    - repair or replacement;
    - vegetation management requirements for poles owned by providers of communications services;
    - the establishment of storm reserve funds; and
    - the sequential and timely removal of pole attachments.
- Monetary penalties for any communication services provider that fails to comply with such rules.

Redundant Poles

The bill enumerates certain legislative findings, as follows:

- It is in the public interest for public utilities, communications services providers, and cable television operators that own poles to harden their infrastructure to strengthen the ability of their above-ground infrastructure to withstand extreme weather conditions, by and among other things, replacing older poles with newer, stronger poles; however, this work combined with the undergrounding of electrical facilities may result in redundant poles within public rights-of-way and easements for significant durations because owners of third-party pole attachments may not keep pace in removing their facilities from the old poles.
- Currently, pole owners that set new poles are prevented from removing redundant poles when the pole attachments of other entities remain on the old poles.
- Redundant poles in the public rights-of-way and easements are aesthetically unappealing and potentially create over-crowding of, and unsafe conditions in, the public rights-of-way and easements.
- It is in the public interest to timely remove pole attachments from redundant poles and to transfer the ownership of poles from the pole owners who no longer use the poles to the entities that continue to attach facilities to the poles.

The bill requires that attaching entities remove their pole attachments from a redundant pole within 180 days of an electronic or written request by the pole owner, and requires the PSC to determine by rule the sufficiency of, and any related requirements for, such a notice. Absent a force majeure event or other good cause as determined by the PSC, the pole owner may transfer or relocate the pole attachment to the new pole at the noncompliant attaching entity's expense, unless the pole attachments are owned by an electric utility. The noncompliant attaching entity must indemnify, defend, and hold harmless the pole owner and its directors, officers, agents and employees from and against all liability, except to the extent of any finding of gross negligence or willful misconduct, including

attorneys' fees and litigation costs, arising in connection with the transfer of the pole attachment from a redundant pole to a new pole by the pole owner.

Relating to unused pole attachments, the bill:

- Authorizes the pole owner to remove the pole attachment at the noncompliant attaching entity's expense, unless the PSC finds good cause for noncompliance.
- Authorizes the pole owner to sell or dispose of the pole attachment.
- Requires the noncompliant attaching entity to indemnify, defend, and hold harmless the pole owner and its directors, officers, agents, and employees from and against all liability, except to the extent of any finding of gross negligence or willful misconduct, including attorney fees and litigation costs, arising in connection with the removal, transfer, sale, or disposal of the pole attachments from a redundant pole by the pole owner.

In the event that a pole owner removes and relocates its overhead facilities or converts its overhead facilities to underground and the attaching entity does not remove their attachments within 180 calendar days of the written notice, unless good cause is found by the PSC, the bill:

- Authorizes a pole owner to transfer legal title of the redundant pole, by operation of law, to an attaching entity.
- Requires the attaching entity to pay the pole owner an amount equal to the total of the remaining book value for all poles,
- Allows the pole owner to enforce their rights in circuit court, and specifies that the prevailing party is entitled to recover attorney fees and court costs.
- Entitles the pole owner to prejudgment interest.

Upon transfer of title, all obligation, responsibility, and liability incumbent upon a pole owner becomes the legal obligation, responsibility, and liability of the new pole owner.

The bill enables the PSC to require, by rule, that an attaching entity post security instruments[28] in favor of pole owners in amounts reasonably sufficient to cover the cost of the removal, transfer, sale, or disposal of pole attachments.

Monetary Penalties

The bill requires the PSC to impose monetary penalties, as defined by rule, upon any entity that violates the provisions of the bill. Although the specifics of the monetary penalties will be outlined by PSC in rule, current law authorizes the PSC to impose and collect a penalty up to $5,000 per offense per day that an entity willfully violates any lawful rule or order of the PSC.[29] Upon petition by a pole owner, the bill authorizes the PSC to order the removal or transfer of pole attachments by noncompliant attaching entities, or issue orders to resolve disputes relating to the transfer of title or the remaining book value of such poles.

The bill specifies that the proceeds of any monetary penalties must be used by the PSC to provide grants for the installing and upgrading of broadband infrastructure in unserved and underserved rural and low-income areas of this state. The bill requires the PSC to establish criteria for the award of grants from the fund[30] to businesses and organizations that have demonstrated the ability to construct and install infrastructure and that have submitted an application and proposal detailing how the grant funds would further the objectives of this subsection to expand broadband services in unserved and underserved areas.

Rulemaking, Generally

[28] A security instrument is a performance bond or an equivalent financial instrument that guarantees payment for certain obligations.
[29] S. 366.095, F.S.
[30] The bill does not specify the fund from which the collected penalties will be used for broadband infrastructure grants.

The bill requires the PSC to adopt rules which implement the bill by October 1, 2021, including rules providing for the timely and coordinated removal of all pole attachments from redundant poles and to establish monetary penalties.

The bill takes effect upon becoming law.

B. SECTION DIRECTORY:

Section 1. Amends s. 366.02, F.S.; defining terms.

Section 2. Amends s. 366.04, F.S.; relating to jurisdiction of the Public Service Commission.

Section 3. Creates s. 366.97, F.S.; relating to redundant poles; transfer of ownership; and penalties.

Section 4. Provides a directive to the Division of Law Revision.

Section 5. Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None. The bill does not authorize the PSC to impose new or existing regulatory assessment fees on communications services providers to account for its new regulatory responsibilities over these providers.[31] However, the bill requires the PSC to impose monetary penalties on entities that do not comply with the provisions of the bill. Current law[32] authorizes the PSC to impose a penalty up to $5,000 per occurrence, per day. Any additional revenues collected by the PSC for penalties imposed under the bill must be used to provide broadband infrastructure grants. Therefore, the bill has no fiscal impact on state revenues.

[31] *See* s. 364.336, F.S.
[32] S. 366.095, F.S.

2. Expenditures:

The bill is likely to have a fiscal impact on the PSC's Regulatory Trust Fund, as the PSC is directed to adopt rules and regulate entirely new matters, including pole attachments, reliability of communications services infrastructure, and broadband infrastructure grants.

The PSC estimates that up to 13 new positions (FTE) and a total of $925,566 ($186,123 nonrecurring) in additional budget authority will be needed to implement the bill.[33] A breakdown of the positions and funding is provided below.

Category	Amount
Salaries and Benefits (13 FTE)	$656,919
- 6 Public Utility Analysts	
- 4 Engineer Specialists	
- 3 Attorneys	
Expense Package: 13 new FTE	$82,524
Total Recurring Costs	**$739,443**
Expense package: 13 new FTE	$50,635
Other Operating Expenses	$135,488
- 2 new vehicles	
- Hardware/Application Development	
Total Nonrecurring Costs	**$186,123**
Total Costs for FY 2021-22	**$925,566**

The PSC currently has a total of 33 vacant positions (FTE), with 22 FTE vacant over 180 days. The annualized amount of these vacancies is approximately $1.3 million. Current vacancies and historical reversions could offset the need for additional funding for the PSC during FY 2021-22. Therefore, due to the high number of vacant positions and annual reversions averaging approximately $1.4 million in budget authority over the last three fiscal years, the PSC will likely be able to handle the workload associated with CS/HB 1567 within existing resources.

Public Service Commission Reversions for the Last 3 Years			
Appropriation Category	**FY 17-18**	**FY 18-19**	**FY 19-20**
Salaries and Benefits	-$636,278	-$698,524	-$982,721
Other Personal Services	-$43,862	-$43,666	-$40,583
Expenses	-$477,549	-$419,660	-$434,576
Operating Capital Outlay	-$93,805	-$68,675	-$12,563
Contracted Services	-$98,957	-$85,494	-$97,867
Other Data Processing Services	-$7,540	-$13,780	-$1,318
Totals	**-$1,357,991**	**-$1,329,799**	**-$1,569,628**

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

[33] Email from Peter Queirolo, Budget Analyst, Public Service Commission, RE: PSC Explanation of the Fiscal Impact of HB 1567 (Mar. 22, 2021).

Depending on the PSC's implementation of its authority over pole attachments under the bill, the financial and legal responsibilities of parties to pole attachment arrangements in Florida could change substantially.

It is likely that the PSC's adoption of rules and implementation of this new authority will involve litigation between the affected parties.

Further, entities with attachments on redundant poles may face negative financial impacts not contemplated in current negotiated pole attachment agreements.

The bill will impose new regulatory expenses on communications service providers that own poles, wires, and other facilities in the state.

D. FISCAL COMMENTS:

The bill requires communications services providers to establish storm reserve funds for the repair and replacement of facilities after natural disasters. PSC is required to adopt rules addressing this provision of the bill. It is anticipated the PSC will handle the rulemaking process within existing resources.

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 requires the PSC to adopt rules by October 1, 2021. See *Drafting Issues or Other Comments*.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill requires the PSC, upon request by a party to a complaint proceeding pending before the FCC, to take jurisdiction over the matter. This could lead to forum shopping for specific pending complaints and cause additional expenses due to relitigation.

The bill requires the PSC to use the proceeds from certain monetary penalties to provide grants for the installation of infrastructure in certain areas. The PSC will need to create a grant program to implement this section. The PSC does not have experience in implementing grant programs.

The bill requires the PSC to adopt implementing rules by October 1, 2021. While the PSC has control over the timing of proposing a rule, the timing of rule adoption depends on matters outside of its control, including challenges brought by stakeholders.

The new statute created in the bill, s. 366.97, F.S., states the PSC "shall establish criteria for the award of grants from the fund to businesses and organizations" for constructing and installing infrastructure to expand broadband services. It is unclear what fund is being referenced. Chapter 366, F.S., does not specifically define the term "fund". The PSC can establish a separate account within the Regulatory Trust Fund or submit a Legislative Budget Request in a future legislative session to create a new trust fund to account for revenues received from penalties and grant fund awards authorized in the bill.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 16, 2021, the Tourism, Infrastructure & Energy Subcommittee adopted a strike-all amendment and reported the bill favorably as a committee substitute. The amendment:

- Clarifies that "broadband service providers" are also attaching entities.
- Specifies that the Florida Public Service Commission (PSC) "shall" hear and resolve complaints concerning pole attachments.
- Requires the PSC to provide certification to the Federal Communications Commission upon the adoption of certain rules.
- Removes a liability provision for pole owners relating to unused poles.
- Increases the time for an attaching entity to remove its pole attachments from 90 to 180 days.
- Clarifies that certain notices may be sent electronically.
- Provides an exception for certain actions for good cause as determined by the PSC.
- Authorizes the PSC to issue orders involving certain disputes between pole owners and attaching entities.

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

A bill to be entitled

An act relating to utility and communication service poles; amending s. 366.02, F.S.; defining terms; amending s. 366.04, F.S.; requiring the Public Service Commission to regulate and enforce rates, charges, terms, and conditions for pole attachments under certain circumstances; providing requirements for such rules; providing construction; providing situations under which a pole owner may deny access to the owner's poles on a nondiscriminatory basis; requiring the commission to hear and resolve complaints concerning rates, charges, terms, conditions, voluntary agreements, and denial of access relative to pole attachments; requiring the commission, at the request of a party, to assume jurisdiction over certain complaints before the Federal Communications Commission; requiring the commission to adopt rules by a specified date; requiring the commission to regulate the safety, vegetation management, repair, replacement, maintenance, relocation, emergency response, and storm restoration requirements for certain plants and equipment of communications services providers; requiring the commission to adopt rules, including monetary penalties, by a specified date; creating s. 366.97, F.S.; providing legislative

findings; requiring attaching entities to remove their pole attachments from redundant poles within a specified timeframe after receipt of electronic or written notice from the pole owner; requiring the commission to determine by rule the sufficiency of, and requirements for, such notice; authorizing a pole owner or its agent to transfer or relocate pole attachments of an attaching entity at the entity's expense under certain circumstances; providing an exception; authorizing a pole owner or its agent to remove and sell or dispose of certain pole attachments; requiring that the pole owner and its directors, officers, agents, and employees be held harmless under certain circumstances for such actions; authorizing the commission to require by rule attaching entities to post certain security instruments; authorizing certain pole owners to transfer legal title of a redundant pole to an attaching entity that has not removed a pole attachment within a specified timeframe; providing for such transfer of title; providing for the transfer of obligation, responsibility, and liability of a pole owner to the new pole owner upon such a transfer of title; requiring the commission to impose monetary penalties for violations; requiring the commission to

provide grants to install and upgrade broadband infrastructure in specified areas of this state from any monetary penalties collected; providing construction; requiring the commission to adopt rules by a specified date; providing a directive to the Division of Law Revision; providing an effective date.

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

Section 1. Subsection (4) through (9) are added to section 366.02, Florida Statutes, to read:

366.02 Definitions.—As used in this chapter:

(4) "Attaching entity" means a person that is a local exchange carrier, a public utility, a communications services provider, a broadband service provider, or a cable television operator that owns or controls pole attachments.

(5) "Communications services" has the same meaning as in s. 202.11(1).

(6) "Pole" means a pole, duct, conduit, or right-of-way that is used for wire or wireless communications or electricity distribution and that is owned in whole or in part by a pole owner, or a streetlight fixture that is owned in whole or in part by a public utility.

(7) "Pole attachments" means local exchange carrier, electric, communications services, broadband, or cable

television facilities attached to a pole by an entity other than the pole owner.

(8) "Pole owner" means a local exchange carrier, a public utility, a communications services provider, a cable television operator, or other public utility which owns a pole used in whole or in part, for electrical purposes or for any wire or wireless communications.

(9) "Redundant pole" means a pole owned or controlled by a pole owner which is:

(a) Within 50 feet of a new pole which is intended to replace the old pole from which some or all of the pole attachments have not been removed and transferred to the new pole;

(b) Left standing after the pole owner has relocated its facilities to underground but on which pole attachments of other attaching entities remain; or

(c) Left standing after a pole owner's attachments have been removed from that route or location to accommodate a new route or design for the delivery of service.

Section 2. Subsections (8) and (9) are added to section 366.04, Florida Statutes, to read:

366.04 Jurisdiction of commission.—

(8)(a) The commission shall regulate and enforce rates, charges, terms, and conditions for pole attachments in situations in which a pole owner is unable to reach an agreement

with a party seeking pole attachments, including the types of pole attachments regulated under 47 U.S.C. s. 224(a)(4), attachments to streetlight fixtures, or attachments to poles owned by a communications services provider, to ensure that such rates, charges, terms, and conditions are just and reasonable. The commission's authority under this subsection includes, but is not limited to, the state regulatory authority referenced in 47 U.S.C. s. 224(c).

(b) In developing the rules, the commission shall consider the interests of the subscribers and users of the services offered through such pole attachments, as well as the interests of the consumers of any pole owner providing such attachments.

(c) It is the intent of the Legislature to encourage parties to enter into voluntary pole attachment agreements, and this subsection may not be construed to prevent parties from voluntarily entering into pole attachment agreements, without commission approval.

(d) A party's right to nondiscriminatory access to a pole under this subsection is identical to the rights afforded under 47 U.S.C. s. 224(f)(1). A pole owner may deny access to its poles on a nondiscriminatory basis when there is insufficient capacity, for reasons of safety and reliability, and when required by generally applicable engineering purposes. A pole owner's evaluation of capacity, safety, reliability, and engineering requirements must consider relevant construction and

reliability standards approved by the commission, and may include an evaluation of the financial and performance-related capabilities of the entity requesting attachment.

(e) The commission shall hear and resolve complaints concerning rates, charges, terms, conditions, voluntary agreements, or any denial of access relative to the type of pole attachments regulated under 47 U.S.C. s. 224(a)(4), attachments to streetlight fixtures, or attachments to poles owned by a communications services provider. Federal Communications Commission precedent is not binding upon the commission in the exercise of its authority under this subsection.

(f) Upon commencement of its authority under this subsection, the commission, upon the request of a party to a complaint proceeding pending before the Federal Communications Commission, shall assume jurisdiction over the matter if it is not yet subject to a final order of the Federal Communications Commission at the time of the request.

(g) The commission shall adopt rules by October 1, 2021, to administer and implement this subsection, including one or more appropriate formulae for apportioning costs, and shall, upon adoption of such rules, provide certification to the Federal Communications Commission pursuant to 47 U.S.C. s. 224(c)(2).

(9)(a) The commission shall regulate the safety, vegetation management, repair, replacement, maintenance,

relocation, emergency response, and storm restoration requirements for poles, conduits, ducts, pipes, pole attachments, wires, cables, and related plant and equipment of communications services providers. The commission shall require communications services providers to establish storm reserve funds for the repair and replacement of facilities after natural disasters.

(b) The commission shall adopt rules by October 1, 2021, to administer and implement this subsection, including, but not limited to:

1. Mandatory pole inspections, including repair or replacement; vegetation management requirements for poles owned by communications services providers; the establishment of storm reserve funds; and the timely removal of pole attachments; and

2. Monetary penalties to be imposed upon any communications services provider that fails to comply with any such rule of the commission.

Section 3. Section 366.97, Florida Statutes, is created to read:

366.97 Redundant poles; transfer of ownership; penalties.—

(1) The Legislature finds that:

(a) It is in the public interest for public utilities, communications services providers, and cable television operators that own poles to harden their infrastructure to strengthen the ability of their above-ground infrastructure to

withstand extreme weather conditions, by and among other things, replacing older poles with newer, stronger poles; however, this work combined with the undergrounding of electrical facilities may result in redundant poles within public rights-of-way and easements for significant durations because owners of third-party pole attachments may not keep pace in removing their facilities from the old poles.

(b) Pole owners that set new poles are prevented from removing redundant poles when the pole attachments of other entities remain on the old poles.

(c) Redundant poles in the public rights-of-way and easements are aesthetically unappealing and potentially create overcrowding of, and unsafe conditions in, the public rights-of-way and easements.

(d) It is in the public interest to timely remove pole attachments from redundant poles and to transfer the ownership of poles from pole owners that are no longer using the poles to entities that continue to attach facilities to the poles.

(2)(a) An attaching entity must remove its pole attachments from a redundant pole within 180 calendar days after receipt of electronic or written notice from the pole owner requesting such removal. The commission shall determine by rule the sufficiency of, and requirements for, such notice.

(b) If an attaching entity fails to remove a pole attachment pursuant to paragraph (a), except to the extent

excused in the event of a force majeure or other good cause as determined by the commission, the pole owner or its agent may transfer or relocate the pole attachment to the new pole at the noncompliant attaching entity's expense. This subsection does not apply to an electric utility's pole attachments. The noncompliant attaching entity shall indemnify, defend, and hold harmless the pole owner and its directors, officers, agents, and employees from and against all liability, except to the extent of any finding of gross negligence or willful misconduct, and must reimburse the pole owner for its attorney fees and court costs arising in connection with the transfer or relocation of the pole attachment from a redundant pole to a new pole.

(c) If a pole attachment is no longer in use by a noncompliant attaching entity, the pole owner or its agent may remove the pole attachment at the noncompliant attaching entity's expense and may sell or dispose of the pole attachment, except to the extent the noncompliance is excused in the event of a force majeure or other good cause as determined by the commission. The noncompliant attaching entity shall indemnify, defend, and hold harmless the pole owner and its directors, officers, agents, and employees from and against all liability, except to the extent of any finding of gross negligence or willful misconduct, and must reimburse the pole owner for its attorney fees and court costs, arising in connection with the removal, transfer, sale, or disposal of the pole attachments

from a redundant pole.

(d) The commission may require by rule that an attaching entity post security instruments in favor of pole owners in amounts reasonably sufficient to cover the cost of the removal, transfer, sale, or disposal of pole attachments.

(3)(a) When a pole owner removes and relocates its overhead facilities or converts its overhead facilities to underground, in lieu of removal, transfer, sale, or disposal of the pole attachments as provided in subsection (2), the pole owner may transfer legal title of the redundant pole to an attaching entity that has not removed a pole attachment within 180 calendar days after receipt of a notice to remove, except to the extent excused in the event of a force majeure or other good cause as determined by the commission.

(b) Transfer of title shall occur by operation of law upon the date a written notice of title transfer is sent by the pole owner. The notice of title transfer must include pole identification numbers, if applicable, and must describe with specificity the locations of the pole or poles to be transferred and their corresponding remaining book value.

(c) Within 60 days after transferring title, the attaching entity shall remit payment to the transferor pole owner an amount equal to the total of the remaining book value for all poles listed in the notice of title transfer.

(d) A transferor pole owner may seek to enforce its rights

under this subsection, including its right to payment, in the circuit court in whose jurisdiction the transferred poles are located. The transferor pole owner is entitled to prejudgment interest at the prevailing statutory rate and the prevailing party in any such action is entitled to recover its reasonable attorney fees and court costs.

(e) Upon transfer of title, all obligation, responsibility, and liability incumbent upon a pole owner in this state, including, but not limited to, safety, vegetation management, repair, replacement, maintenance, relocation, removal, emergency response, storm restoration, taxes, and third-party liability, shall immediately become the legal obligation, responsibility, and liability of the new pole owner. The transferor pole owner is relieved of all such obligation, responsibility, and liability immediately upon transfer of title.

(4) The commission shall impose monetary penalties upon any entity subject to its jurisdiction which is found to be in violation of this section. Upon petition by a pole owner, the commission may issue orders requiring the removal or transfer of pole attachments by noncompliant attaching entities and may issue orders resolving disputes between pole owners and attaching entities over the transfer of title of poles or the amount of remaining book value of transferred poles. The commission shall impose monetary penalties in accordance with

this section.

(5) All monetary penalties assessed and collected by the commission pursuant to this section must be used by the commission to provide grants for the installing and upgrading of broadband infrastructure in unserved and underserved rural and low-income areas of this state. The commission shall establish criteria for the award of grants from the fund to businesses and organizations that have demonstrated the ability to construct and install infrastructure and that have submitted an application and proposal detailing how the grant funds would further the objectives of this subsection to expand broadband services in unserved and underserved areas.

(6) This section may not be construed to do any of the following:

(a) Prevent a party at any time from entering into a voluntary agreement authorizing a pole owner to remove an attaching entity's pole attachment. It is the intent of the Legislature to encourage parties to enter into such voluntary agreements without commission approval.

(b) Impair the contract rights of a party to a valid pole attachment agreement in existence before the effective date of this act.

(7) The commission shall adopt rules by October 1, 2021, to implement this section, including rules providing for the timely and coordinated removal of all pole attachments from

redundant poles and establishing monetary penalties to be imposed against any entity in violation of this section.

Section 4. The Division of Law Revision is directed to replace the phrase "the effective date of this act" wherever it occurs in this act with the date this act becomes a law.

Section 5. This act shall take effect upon becoming a law.

PCS for HB 249

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCS for HB 249 Specialty License Plates
SPONSOR(S): Commerce Committee
TIED BILLS: **IDEN./SIM. BILLS:**

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

SUMMARY ANALYSIS

Approximately 120 specialty license plates are available to any owner or lessee of a motor vehicle who is willing to pay the additional annual use fee for such plate. The collected fees are distributed by the Department of Highway Safety and Motor Vehicles (DHSMV) to statutorily designated organizations in support of a particular cause or charity. Prior to production of a specialty license plate, the law requires the sale of at least 3,000 presale vouchers. The lowest selling plates are subject to discontinuance. The law also provides for a standard specialty license plate for independent colleges and universities located in Florida.

The PCS authorizes purchasers of presale vouchers to obtain a refund if the plate has met the presale requirement, but has not been issued. It also clarifies that DHSMV may not issue a new specialty license plate until a sufficient number are discontinued so that the number of available plate does not exceed 150. The PCS also provides that if an independent college or university elects to use the standard template license plate, DHSMV must discontinue its existing license plate.

The PCS also creates the Florida State Parks, Honor Flight, Biscayne Bay, Disease Prevention & Early Detection, and Protect Marine Wildlife specialty license plates, each with an annual use fee of $25. Each plate must bear DHSMV approved colors and designs with “Florida” appearing at the top of the plate and the plate-related slogan appearing at the bottom of the plate. The annual use fees are distributed as provided in the provisions related to each specialty license plate.

The PCS will have a negative, but insignificant, fiscal impact to state expenditures associated with DHSMV’s programming costs associated with the creation of the specialty license plates. These costs can be absorbed within existing resources.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

The first Florida specialty license plates were enacted in 1986 and included the creation of the Challenger plate and ten Florida collegiate plates. Today, there are approximately 120 specialty license plates available to any owner or lessee of a motor vehicle who is willing to pay the additional use fee for the privilege, typically $25 annually.[1] Current law provides that if the Legislature[2] has approved 150 or more specialty license plates, the Department of Highway Safety and Motor Vehicles (DHMSV) may not make any new specialty license plate available for design or issuance until a sufficient number of plates are discontinued[3] so that the number of plates being issued does not exceed 150.[4]

Establishment of Specialty License Plates

Section 320.08053, F.S., provides the statutory requirements to establish a specialty license plate. If a specialty license plate requested by an organization is approved by law, the organization submits its proposed art design to DHSMV as soon as practicable, but no later than 60 days after the act approving the plate becomes a law.[5]

Within 120 days after the act approving the specialty license plate becomes law, DHSMV must establish a method to issue a voucher allowing for the presale of the plate. A $5 processing fee,[6] a service charge and branch fee,[7] and an annual use fee for the specialty license plate are charged for the voucher. All other applicable fees are charged at the time the license plate is issued.[8]

Within 24 months after establishing a presale specialty license plate voucher, the approved specialty license plate organization must record with DHSMV a minimum of 3,000 voucher sales[9] before the license plate may be manufactured. If, at the conclusion of the 24-month presale period, the minimum sales requirement is not met, the specialty license plate is deauthorized and DHSMV discontinues the plate's development and the issuance of the presale vouchers. Upon deauthorization of the specialty license plate, a purchaser of the specialty license plate voucher may use the annual use fee collected as a credit towards any other specialty license plate or apply to DHSMV for a refund.[10]

New specialty license plates that have been approved by law, but are awaiting issuance, will be issued in the order they appear in s. 320.08058, F.S.,[11] if all statutory requirements, including the presale requirement, have been met. If the next awaiting specialty license plate has not met its presale requirement, DHSMV proceeds in the order provided in s. 320.08058, F.S., to identify the next qualified specialty license plate that has met the presale requirement. DHSMV must cycle through the list in statutory order.[12]

If the Legislature has approved 150 or more specialty license plates, DHSMV may not make any new specialty license plates available for design or issuance until a sufficient number of plates are discontinued[13] so that the number of plates being issued is fewer than 150. The 150-license-plate limit

[1] Section 320.08056(3)(d), F.S., provides that except if specifically provided in s. 320.08056(4), the annual use fee for a specialty license plate is $25.
[2] Creation of a specialty license plate requires an act of the Legislature.
[3] Specialty license plates are discontinued pursuant to s. 320.08056(8), F.S.
[4] S. 320.08053(3)(b), F.S.
[5] S. 320.08053(1), F.S.
[6] The processing fee is prescribed in s. 320.08056, F.S.
[7] Service charges and branch fees are prescribed in s. 320.04, F.S.
[8] S. 320.08053(2)(a), F.S.
[9] In the case of out-of-state college or university license plate, the license plate must register 4,000 voucher sales.
[10] S. 320.08053(2)(b), F.S.
[11] S. 320.08058, F.S., creates each specialty license plate.
[12] S. 320.08053(3)(a), F.S.
[13] Specialty license plates will be discontinued pursuant to s. 320.08056(8), F.S.

applies to all specialty license plates, including those above the minimum sales threshold and those exempt from the minimum sales threshold.[14]

Specialty License Plates, Generally

DHSMV is responsible for developing authorized specialty license plates.[15] DHSMV must issue a specialty license plate to the owner or lessee of any motor vehicle, except a vehicle registered under the International Registration Plan, a commercial truck required to display two license plates, or a truck tractor, upon request and payment of the appropriate license tax and fees.[16] Specific specialty license plates are authorized for dealer and fleet vehicles.[17] A specialty license plate for motorcycles is addressed separately in s. 320.08068, F.S.

Each request for a specialty license plate must be made annually to DHSMV or its authorized agent[18] accompanied by the following tax and fees: the vehicle's required license tax,[19] a processing fee of $5,[20] a license plate fee,[21] and a license plate annual use fee as required for the specialty license plate.[22]

Independent Colleges and University Standard License Plate

In 2020, the Legislature required DHSMV, in cooperation with Florida's independent colleges and universities, to create a standard template specialty license plate with a unique logo or graphic identifying each independent college or university. Each independent college or university may elect to use this standard template specialty license plate in lieu of its own specialty license plate. Annual use fees from the sale of these license plates are distributed to the independent college or university for which the logo or graphic is displayed and must be used in the same manner as the fees for other collegiate license plates.[23] Independent colleges and universities opting to use the standard template specialty license plate will have their plate sales combined for purposes of meeting the 3,000 plate minimum sales threshold and determining the 150 plate limit. Standard independent college and university license plates must be ordered directly from DHSMV.[24] However, the law is silent as to what happens to an independent college or university's existing collegiate license plate once the college or university elects to use the standard independent college and university license plate.

Effect of the Bill

The bill clarifies provisions that authorize refunds of specialty license plate vouchers if a plate has met the presale requirements, but has not been issued. The bill also clarifies that DSHMV may not issue, instead of make available for design or issuance, any new specialty license plates until the number of plates being issued does not exceed 150.

The bill also provides that if an independent college or university elects to use the standard template license plate, DHSMV must discontinue the existing independent college or university's specialty license plate.

Florida State Parks License Plate

Current Situation

Founded in 1993, the Florida State Parks Foundation, Inc., supports the Florida State Park system through programs that preserve and protect state parks, educate visitors about the value of state parks, encourage community engagement and active use of state parks, and provide financial support to

[14] S. 320.08053(3)(b), F.S.
[15] S. 320.08056(1), F.S.
[16] S. 320.08056(2), F.S.
[17] *See* ss. 320.06(3)(a), 320.0657(2)(a), 320.08(12) and 320.08056(2)(b) and (c), F.S.
[18] DHSMV's authorized agents are the county tax collectors.
[19] Motor vehicle license taxes are set forth in s. 320.08, F.S.
[20] The $5 processing fee is deposited into the Highway Safety Operating Trust Fund.
[21] Section 320.06(1)(b), F.S., provides for a $2.80 annual license plate replacement fee.
[22] S. 320.08056(3), F.S.
[23] *See* s. 320.08058(3), F.S.
[24] Section 320.08056(12), F.S.

supplement state funding. The foundation is a non-profit Florida corporation under s. 501(c)(3) of the Internal Revenue Code.[25]

Effect of the Bill
The bill creates the Florida State Parks license plate, with an annual use fee of $25.[26] The plate must bear DHSMV-approved colors and designs, with "Florida" appearing at the top of the plate and "Explore Our State Parks" appearing at the bottom of the plate.

The annual use fees from the sale of the plate are distributed to the Florida State Parks Foundation, Inc. Up to 10 percent of the fees from the sale of the plate may be used for marketing the plate and costs directly associated with the administration of the Florida State Parks Foundation.

Honor Flight License Plate

Current Situation
Honor Flight's mission is to transport America's veterans to Washington, D.C., to visit the memorials dedicated to honoring those who have served and sacrificed for our country. It is a national network of independent hubs working together to further Honor Flight's mission. The network currently serves veterans from World War II, the Korean War, and the Vietnam War, as well as terminally ill veterans who served during any era.[27] Florida's Honor Flight Network hubs are non-profit corporations under s. 501(c)(3) of the Internal Revenue Code. Honor Flight Hubs in Florida include Collier-Lee, First Coast, Central Florida, West Central Florida, South Florida, Tallahassee, Southeast Florida, Southwest Florida, Space Coast, and Villages.[28]

Effect of the Bill
The bill creates the Honor Flight license plate, with an annual use fee of $25. The plate must bear DHSMV-approved colors and designs, with "Florida" appearing at the top of the plate and "Honor Flight" appearing at the bottom of the plate.

The annual use fees from the sale of the plate are distributed equally among Florida's Honor Flight Network Hubs. Up to 10 percent of the fees from the sale of the plate may be used for marketing the plate and costs directly associated promoting and marketing the license plate. The remaining fees must be used to further Honor Flight.

The bill also authorizes fees collected from the sale of the Honor Flight license plate to be spent outside of the State of Florida.

Biscayne Bay License Plate

Current Situation
Established in 1967, The Miami Foundation (foundation) is focused on building a stronger Miami and has invested more than $400 million into the community. The foundation has partnered with individuals, families, and corporations who have created more than 1,000 personalized, philanthropic funds, and it has awarded $350 million in grants.[29] The foundation is registered as a not-for-profit corporation with the Department of State.

Biscayne Bay is the largest estuary on the coast of southeast Florida and is contiguous with the southern Florida Everglades and Florida Bay.[30]

Effect of the Bill

[25] Florida State Parks Foundation Website, https://floridastateparksfoundation.org/About-Us1 (last visited Jan. 14, 2021).
[26] The $25 annual use fee is provided for in existing s. 320.08056(3)(d), F.S.
[27] Honor Flight, https://www.honorflight.org/about-us.html (last visited Feb. 2, 2021).
[28] Honor Flight, https://www.honorflight.org/regional-honor-flight-hubs.html#florida (last visited Mar. 5, 2021).
[29] The Miami Foundation Website, https://miamifoundation.org/about (last visited Feb. 3, 2021).
[30] Discover Biscayne Bay Website: http://www.discoverbiscaynebay.org/ (last visited Feb. 3, 2021).

The bill creates the Biscayne Bay specialty license plate, with an annual use fee of $25. The plate must bear DHSMV-approved colors and designs, with “Florida” appearing at the top of the plate and “Protect Biscayne Bay” appearing at the bottom of the plate.

The annual use fees from the sale of the plate are distributed to The Miami Foundation to be used as follows:

- Up to 10 percent of the fees may be used for promotion and marketing the license plate and for direct reimbursement for administrative costs, startup costs, and costs incurred in the development and approval process of the license plate. All vendors associated with administrative costs must be selected by competitive bid.
- The remaining fees must be used to raise awareness and support the mission and efforts of conserving Biscayne Bay. The Miami Foundation’s Board of Trustees must approve and is accountable for all such expenditures.

Disease Prevention & Early Detection License Plate

Current Situation
Established in 2005 with the goal of providing at-risk women access to early detection and proper treatment for breast cancer, Women’s Breast & Heart Initiative (WBHI) created a door-to-door neighborhood outreach program that increases awareness of breast health and the importance of early detection, as well as provides access to mammograms for women who are uninsured and underserved. In 2013, WBHI incorporated education and awareness of heart disease – the leading cause of death in women – into its grassroots campaigns.[31] The Woman’s Breast & Heart Initiative, Florida Affiliate, Inc., is registered as a not for profit corporation with the Department of State.

Effect of the Bill
The bill creates the Disease Prevention & Early Detection specialty license plate, with an annual use fee of $25. The plate must bear DHSMV-approved colors and designs, with “Florida” appearing at the top of the plate and “Disease Prevention & Detection” appearing at the bottom of the plate.

The annual use fees from the sale of the plate are distributed to The Women’s Breast and Heart Initiative, Florida Affiliate, Inc., which may use up to 10 percent of the proceeds to promote and market the plate. The remainder of the proceeds must be used by The Women’s Breast & Heart Initiative, Florida Affiliate, Inc., to provide increased education and awareness relating to early detection, prevention, and screening of breast and heart issues.

Protect Marine Wildlife License Plate

Current Situation
The Protect Wild Dolphins Alliance, Inc., is a not-for-profit 501(c)3 organization supporting and research, scientific, and educational activities for the protection and preservation of marine mammals. These programs include release to the wild programs, the rescue, rehabilitation, release or retirement of marine mammals as well as the establishment and operation of a safe haven for unwanted or surplus dolphins and other marine mammals.[32]

Effect of the Bill
The bill creates a Protect Marine Wildlife license plate with an annual use fee of $25. The plate must bear DHSMV-approved colors and designs, with "Florida" appearing at the top of the plate, and "Protect Marine Wildlife" appearing at the bottom of the plate.

The annual use fees from the sale of the plate are distributed to the Protect Wild Dolphins Alliance, Inc., which may use up to 10 percent of the proceeds for administration, promotion, and marketing of the plate. All remaining proceeds must be used by the Protect Wild Dolphins Alliance, Inc., to fund its

[31] The Women’s Breast & Heart Initiative, *Our Story*: https://flbreasthealth.com/about-us/ (Last visited Feb. 2, 2021).
[32] Protect Wild Dolphins Alliance, https://protectwilddolphinsalliance.com/index.html#:~:text=Protect%20Wild%20Dolphins%20Alliance%20rescues,sick%20and%20injured%20marine%20animals. (last visited Apr. 17, 2021).

conservation, research, and educational programs that focus on the conservation of Florida's threatened and protected marine wildlife species.

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

B. SECTION DIRECTORY:

Section 1 Amends s. 320.08053, F.S., relating to the establishment of specialty license plates.

Section 2 Amends s. 320.08056, F.S., relating to specialty license plates.

Section 3 Amends s. 320.08058, F.S., relating to specialty license plates.

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:

   DHSMV will incur programming costs associated with the creation of this specialty license plate. One specialty license plate with a single distribution recipient will require between 200 and 250 hours of programming at a rate of $35 to $40 per hour.[33] This programing can be done using existing DHSMV resources.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Once a new specialty license plate goes into production, the recipient organizations may see an increase in revenues associated with the sale of the license plate.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

[33] Email from Kevin Jacobs, Legislative Affairs Director, Florida Department of Highway Safety and Motor Vehicles, RE: Specialty License Plates, (Jan. 26, 2021).

2. Other:

None.

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to specialty license plates; amending s. 320.08053, F.S.; authorizing a refund of the annual use fee if a specified condition is met; amending s. 320.08056, F.S.; providing that the Department of Highway Safety and Motor Vehicles may not issue any new specialty license plates until a sufficient number of plates are discontinued; providing an exception to the requirement that specialty license plate annual use fees and interest earned from those fees only be expended in this state; amending s. 320.08058, F.S.; requiring the department to develop specified specialty license plates; providing for the distribution and use of fees collected from the sale of such plates; providing an effective date.

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

Section 1. Paragraph (b) of subsection (2) and paragraph (b) of subsection (3) of section 320.08053, Florida Statutes, are amended to read:

320.08053 Establishment of specialty license plates.—

(2)

(b) Within 24 months after the presale specialty license plate voucher is established, the approved specialty license

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

plate organization must record with the department a minimum of 3,000 voucher sales, or in the case of an out-of-state college or university license plate, 4,000 voucher sales, before manufacture of the license plate may commence. If, at the conclusion of the 24-month presale period, the minimum sales requirement has not been met, the specialty plate is deauthorized and the department shall discontinue development of the plate and discontinue issuance of the presale vouchers. Upon deauthorization of the license plate or if the plate has met the presale requirement but has not been issued, a purchaser of the license plate voucher may use the annual use fee collected as a credit towards any other specialty license plate or apply for a refund on a form prescribed by the department.

(3)

(b) If the Legislature has approved 150 or more specialty license plates, the department may not issue ~~make~~ any new specialty license plates ~~available for design or issuance~~ until a sufficient number of plates are discontinued pursuant to s. 320.08056(8) such that the number of plates being issued does not exceed 150. Notwithstanding s. 320.08056(8)(a), the 150-license-plate limit includes license plates above the minimum sales threshold and those exempt from that threshold.

Section 2. Paragraph (a) of subsection (10) and subsection (12) of section 320.08056, Florida Statutes, are amended to read:

320.08056 Specialty license plates.—

(10)(a) A specialty license plate annual use fee collected and distributed under this chapter, or any interest earned from those fees, may not be used for commercial or for-profit activities nor for general or administrative expenses, except as authorized by s. 320.08058 or to pay the cost of the audit or report required by s. 320.08062(1). The fees and any interest earned from the fees may be expended only for use in this state unless the annual use fee is derived from the sale of United States Armed Forces and veterans-related specialty license plates pursuant to paragraph (3)(d) for the Support Our Troops, ~~and~~ American Legion, and Honor Flight license plates; paragraphs (4)(b), (q), and (v) for the Florida Salutes Veterans, United States Marine Corps, and Military Services license plates, respectively; and s. 320.0891 for the U.S. Paratrooper license plate.

(12) Notwithstanding s. 320.08058(3)(a), the department, in cooperation with the independent colleges or universities as defined in s. 1009.89 or s. 1009.891, shall create a standard template specialty license plate with a unique logo or graphic identifying each independent college or university. Each independent college or university may elect to use this standard template specialty license plate in lieu of its own specialty license plate. Annual use fees from the sale of these license plates shall be distributed to the independent college or

university for which the logo or graphic is displayed on the license plate and shall be used as provided in s. 320.08058(3). Independent colleges or universities opting to use the standard template specialty license plate shall have their plate sales combined for purposes of meeting the minimum license plate sales threshold in paragraph (8)(a) and for determining the license plate limit in s. 320.08053(3)(b). Specialty license plates created pursuant to this subsection must be ordered directly from the department. If the independent college or university elects to use the standard template license plate, the department shall discontinue the existing specialty license plate.

Section 3. Subsections (112) through (116) are added to section 320.08058, Florida Statutes, to read:

320.08058 Specialty license plates.—

(112) FLORIDA STATE PARKS LICENSE PLATES.—

(a) The department shall develop a Florida State Parks license plate as provided in this section and s. 320.08053. The plate must bear the colors and design approved by the department. The word "Florida" must appear at the top of the plate, and the words "Explore Our State Parks" must appear at the bottom of the plate.

(b) The annual use fees from the sale of the plate shall be distributed to the Florida State Parks Foundation, Inc., a nonprofit Florida corporation under s. 501(c)(3) of the Internal

Revenue Code, the mission of which is to preserve, protect, sustain, and grow Florida state parks. Up to 10 percent of the fees may be used for marketing of the plate and costs directly associated with administration of the foundation.

(113) HONOR FLIGHT LICENSE PLATES.—

(a) The department shall develop an Honor Flight license plate as provided in this section and s. 320.08053. The plate must bear the colors and design approved by the department. The word "Florida" must appear at the top of the plate, and the words "Honor Flight" must appear at the bottom of the plate.

(b) The annual use fees from the sale of the plate shall be distributed equally among the Honor Flight Network hubs in this state, each of which is a nonprofit corporation under s. 501(c)(3) of the Internal Revenue Code, to be used as follows:

1. Up to 10 percent of the fees may be used for promotion and marketing of the license plate.

2. The remaining fees shall be used to further the Honor Flight Network's mission of transporting military veterans to Washington, D.C., in order to visit the memorials dedicated to honoring those who have served and sacrificed for the United States.

(114) BISCAYNE BAY LICENSE PLATES.—

(a) The department shall develop a Biscayne Bay license plate as provided in this section and s. 320.08053. The plate must bear the colors and design approved by the department. The

word "Florida" must appear at the top of the plate, and the words "Protect Biscayne Bay" must appear at the bottom of the plate.

(b) The annual use fees from the sale of the plate shall be distributed to The Miami Foundation, a Florida nonprofit corporation, to be used as follows:

1. Up to 10 percent of the fees may be used for promotion and marketing of the license plate and for direct reimbursement for administrative costs, startup costs, and costs incurred in the development and approval process of the license plate. All vendors associated with administrative costs shall be selected by competitive bid.

2. The remaining fees shall be used to raise awareness and support the mission and efforts of conserving Biscayne Bay. The Miami Foundation Board of Trustees must approve and is accountable for all such expenditures.

(115) DISEASE PREVENTION & EARLY DETECTION LICENSE PLATES.—

(a) The department shall develop a Disease Prevention & Early Detection license plate as provided in this section and s. 320.08053. The plate must bear the colors and design approved by the department. The word "Florida" must appear at the top of the plate, and the words "Disease Prevention & Early Detection" must appear at the bottom of the plate.

(b) The license plate annual use fees shall be distributed

to The Women's Breast & Heart Initiative, Florida Affiliate, Inc., a Florida nonprofit corporation, which may use a maximum of 10 percent of the proceeds to promote and market the plate. The remainder of the proceeds shall be used by The Women's Breast & Heart Initiative, Florida Affiliate, Inc., to provide increased education and awareness relating to early detection, prevention, and screening of breast and heart issues.

(116) PROTECT MARINE WILDLIFE LICENSE PLATES.—

(a) The department shall develop a Protect Marine Wildlife license plate as provided in this section and s. 320.08053. The plate must bear the colors and design approved by the department. The word "Florida" must appear at the top of the plate, and the words "Protect Marine Wildlife" must appear at the bottom of the plate.

(b) The annual use fees shall be distributed to the Protect Wild Dolphins Alliance, Inc., which may use up to 10 percent of the proceeds for administration, promotion, and marketing of the plate. All remaining proceeds shall be used by the Protect Wild Dolphins Alliance, Inc., to fund its conservation, research, and educational programs that focus on the conservation of Florida's threatened and protected marine wildlife species.

Section 4. This act shall take effect October 1, 2021.