

Commerce Committee

Tuesday, February 1, 2022
12:30 PM - 2:30 PM
Webster Hall (212 Knott)

Meeting Packet

Chris Sprowls
Speaker

Blaise Ingoglia
Chair

The Florida House of Representatives

Commerce Committee

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Meeting Agenda

Tuesday, February 1, 2022
12:30 PM – 2:30 PM
Webster Hall (212 Knott)

I. Call to Order

II. Roll Call

III. Welcome and Opening Remarks

IV. Consideration of the following bill(s):

- CS/HB 123 Consumer Finance Loans by Insurance & Banking Subcommittee, Stevenson
- HB 275 Loss Run Statements by Fernandez-Barquin
- CS/HB 481 Temporary Underground Power Panels by Tourism, Infrastructure & Energy Subcommittee, Duggan
- HM 641 Internal Revenue Service Reporting Requirements by Rommel
- CS/HB 831 Licensure Requirements for Land Surveyors and Mappers by Regulatory Reform Subcommittee, Mariano
- CS/HB 925 Benchmark Replacements for London Interbank Offered Rate by Insurance & Banking Subcommittee, Stevenson
- CS/HB 1439 Prostitution, Lewdness, Human Trafficking, and Public Lodging by Criminal Justice & Public Safety Subcommittee, Toledo, Busatta Cabrera

V. Closing Remarks

VI. Adjournment

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 123 Consumer Finance Loans
SPONSOR(S): Insurance & Banking Subcommittee, Stevenson
TIED BILLS: **IDEN./SIM. BILLS:** SB 546

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee	14 Y, 0 N, As CS	Hinshelwood	Luczynski
2) Commerce Committee		Hinshelwood	Hamon

SUMMARY ANALYSIS

The Florida Consumer Finance Act, ch. 516, F.S., permits licensed lenders to make secured or unsecured loans up to $25,000 with a tiered interest rate structure such that the maximum annual interest rate allowed on each tier decreases as principle amounts increase:

- 30 percent on the first $3,000.
- 24 percent on principal above $3,000 and up to $4,000.
- 18 percent on principal above $4,000 and up to $25,000.

Consumer finance lenders must maintain liquid assets of at least $25,000 per location. The bill authorizes consumer finance lenders to provide a surety bond, certificate of deposit, or letter of credit of a specified amount in lieu of maintaining liquid assets.

Consumer finance lenders are permitted to charge a borrower certain fees, including up to $25 for investigating the credit and character of the borrower. The exclusion of "prepayment penalties" from the list of permissible fees implies that consumer finance lenders are prohibited from charging prepayment penalties. The bill provides an express prohibition on prepayment penalties for consumer finance loans.

The bill has no fiscal impact on state or local governments and an indeterminate but likely positive impact on the private sector.

The bill provides an effective date of October 1, 2022.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Consumer Finance Loans

The Office of Financial Regulation's (OFR's) Division of Consumer Finance is responsible for the licensing and regulation of non-depository financial service entities and individuals, and conducts examinations and complaint investigations for licensed entities to determine compliance with Florida law.

One of the loan products regulated by the OFR's Division of Consumer Finance is the Florida Consumer Finance Act, ch. 516, F.S. ("the Act"). Loans permitted under the Act are commonly referred to as "consumer finance loans", which are "loan[s] of money, credit, goods, or choses in action,[1] including, except as otherwise specifically indicated, provision of a line of credit, in an amount or to a value of $25,000 or less for which the lender charges, contracts for, collects, or receives interest at a rate greater than 18 percent per annum."[2] Although consumer finance loans may be secured or unsecured, the Act prohibits lenders from taking a security interest in certain types of collateral.[3]

Consumer finance loans made pursuant to the Act must be repaid in periodic installments as nearly equal as mathematically practicable, except that the final payment may be less than the amount of the prior installments.[4] Installments may be due every two weeks, semimonthly, or monthly.[5] There is no minimum or maximum loan term under the Act. Consumer finance loans have a tiered interest rate structure such that the maximum annual interest rate allowed on each tier decreases as principle amounts increase:

- 30 percent on the first $3,000.
- 24 percent on principal above $3,000 and up to $4,000.
- 18 percent on principal above $4,000 and up to $25,000.[6]

The original principal amount is the amount financed, as defined by the federal Truth in Lending Act (TILA)[7] and TILA's federal implementing regulations.[8] For the purpose of determining compliance with these statutory maximum interest rates, the interest rate computations used must be simple interest.[9] In the event that two or more interest rates are applied to the principal amount of a loan,[10] a lender may charge interest at a single annual percentage rate (APR) which would produce at maturity the total amount of interest as permitted by the tiered interest rate structure above.[11] The APR charged by a lender may not exceed the APR that must be computed and disclosed according to TILA and its

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[1] "Chose in action" is defined as "1. A property right in personam, such as a debt owed by another person . . . 2. The right to bring an action to recover a debt, money, or thing. 3. Personal property that one person owns but another person possesses, the owner being able to regain possession through a lawsuit." BLACK'S LAW DICTIONARY 101 (3d ed. 1996).

[2] S. 516.01(2), F.S.

[3] *See* s. 516.031(1), F.S. (prohibition on taking a security interest in land for a loan less than $1,000); s. 516.17, F.S. (prohibition on assignment of, or order for payment of, wages given to secure a loan).

[4] S. 516.36, F.S. This section does not apply to lines of credit.

[5] *Id.*

[6] S. 516.031(1), F.S.

[7] Codified at 15 U.S.C. § 1601 *et seq.*

[8] Currently, the statute references TILA's implementing regulations as "Regulation Z of the Board of Governors of the Federal Reserve System." s. 516.031(1), F.S. However, the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, H.R. 4173, 124 Stat. 1376-2223, 111th Cong. (July 21, 2010), commonly referred to as the "Dodd-Frank Act", transferred rulemaking authority for TILA to the Bureau of Consumer Financial Protection, effective July 21, 2011. *See also* Truth in Lending (Regulation Z), 76 Fed. Reg. 79768 (Dec. 22, 2011).

[9] *Id.*

[10] For example, on a principle amount of $3,500, an interest rate of 30 percent per annum may be applied to $3,000 of the principle amount, and an interest rate of 24 percent per annum may be applied to the remaining $500 of the principal amount.

[11] S. 516.031(1), F.S.

implementing regulations.[12] A licensee may not induce or permit a borrower to divide a loan and may not induce or permit a person to become obligated to the licensee under more than one loan contract for the purpose of obtaining a greater finance charge than would otherwise be permitted under the parameters described above.[13]

If consideration for a new loan contract includes the unpaid principal balance of a prior loan with the licensee, then the principal amount of the new loan contract may not include more than 60 days' unpaid interest accrued on the prior loan.[14]

The Act prohibits lenders from directly or indirectly charging borrowers additional fees as a condition to the grant of a loan, except for the following allowable fees:

- Up to $25 for investigating the credit and character of the borrower;
- A $25 annual fee on the anniversary date of each line-of-credit account;
- Brokerage fees for certain loans, title insurance, and appraisals of real property offered as security;
- Intangible personal property tax on the loan note or obligation if secured by a lien on real property;
- Documentary excise tax and lawful fees for filing, recording, or releasing an instrument securing the loan;
- The premium for any insurance in lieu of perfecting a security interest otherwise required by the licensee in connection with the loan;
- Actual and reasonable attorney fees and court costs;
- Actual and commercially reasonable expenses for repossession, storing, repairing and placing in condition for sale, and selling of any property pledged as security;
- Depending on the frequency of payments, a delinquency charge of up to $15 for each payment in default for at least 10 days, if agreed upon in writing before the charge is imposed; and
- A bad check charge of up to $20.[15]

The exclusion of "prepayment penalties" from the list of permissible fees implies that consumer finance lenders are prohibited from charging prepayment penalties.[16]

Optional credit property, credit life, and disability insurance may be provided at the borrower's expense via a deduction from the principal amount of the loan.[17]

Licenses granted under the Act are for a single place of business[18] and must be renewed every two years.[19] As of October 28, 2021, there are 188 licensed consumer finance loan companies operating across a total of 389 locations in Florida.[20]

The historical yearly licensing data for ch. 516, F.S., is contained in the charts below.

Chapter 516, F.S., Licenses by Year										
	00-01	01-02	02-03	03-04	04-05	05-06	06-07	07-08	08-09	09-10
Applications Received	318	44	136	82	48	72	192	30	52	32
Applications Approved	228	136	125	76	43	64	95	29	18	19
Active Licenses	589	607	568	609	532	584	626	600	390	386

[12] S. 516.031(2), F.S.
[13] S. 516.031(4), F.S.
[14] S. 516.031(5), F.S.
[15] S. 516.031(3), F.S.
[16] *Id.*; Office of Financial Regulation, Agency Analysis of 2022 Senate Bill 546, pp. 2-3 (Nov. 19, 2021).
[17] S. 516.35(2), F.S.
[18] Ss. 516.01(1) and 516.05(3), F.S.
[19] Ss. 516.03(1) and 516.05(1) & (2), F.S.
[20] Office of Financial Regulation, *supra* note 16 at p. 2.

Renewals & Reactivations	496	1	542	0	523	1	569	0	388	0

Chapter 516, F.S., Licenses by Year (Cont'd)										
	10-11	**11-12**	**12-13**	**13-14**	**14-15**	**15-16**	**16-17**	**17-18**	**18-19**	**19-20**
Applications Received	175	41	82	116	66	102	55	96	109	100
Applications Approved	137	37	53	113	37	81	36	83	104	98
Active Licenses	347	303	293	349	331	349	338	373	348	390
Renewals & Reactivations	226	0	258	0	312	0	326	0	342	0

An application to become a consumer finance lender must be accompanied by a nonrefundable application fee of $625 and a nonrefundable investigation fee of $200.[21] Licenses must be renewed biennially, at which time the licensee must pay a nonrefundable biennial license fee of $625.[22] At the time of application, the applicant must provide evidence of liquid assets of at least $25,000, and a licensee must at all times maintain such liquid assets.[23] Each location of a consumer finance lender must be separately licensed.[24]

The Act does not apply to persons doing business under state or federal laws governing banks, savings banks, trust companies, building and loan associations, credit unions, or industrial loan and investment companies.[25]

Deferred Presentment Transactions (Payday Loans)

Although the bill relates only to consumer finance loans under ch. 516, F.S., questions often arise as to how consumer finance loans compare to other consumer loans authorized in statute, particularly payday loans. Deferred presentment transactions, commonly referred to as "payday loans", are a small-dollar loan product under the OFR's regulatory authority. These transactions are governed by ch. 560, part IV, F.S.

A deferred presentment transaction means providing currency or a payment instrument in exchange for a drawer's (borrower's) check and agreeing to hold the check for a number of days until depositing, presenting, or redeeming the payment instrument.[26] The only persons who may engage in deferred presentment transactions are financial institutions as defined in s. 655.005, F.S.,[27] and money services business licensed under ch. 560, part II[28] or part III,[29] F.S.

There are two types of payday loan products permitted in Florida:

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[21] S. 516.03(1), F.S.
[22] *Id.*; s. 516.05(1), F.S.
[23] Ss. 516.03(1) and 516.07(1)(b), F.S.
[24] S. 516.05(3), F.S.
[25] S. 516.02(4), F.S.
[26] S. 560.402(2) & (3), F.S.
[27] Section 655.005, F.S., defines a "financial institution" to mean a state or federal savings or thrift association, bank, savings back, trust company, international bank agency, international banking corporation, international branch, international representative office, international administrative office, international trust entity, international trust company representative office, qualified limited service affiliate, credit union, or an agreement corporation operating pursuant to s. 25 of the Federal Reserve Act, 12 U.S.C. ss. 601 *et seq*. or Edge Act corporation organized pursuant to s. 25(a) of the Federal Reserve Act, 12 U.S.C. ss. 611 *et seq*.
[28] Licensure as a money transmitter. A money transmitter is defined by s. 560.103(23), F.S., as a corporation, limited liability company, limited liability partnership, or foreign entity qualified to do business in this state which receives currency, monetary value, or payment instruments 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. Money transmitters may engage in check cashing under ch. 560, part III, F.S.
[29] Licensure as a check casher. A check casher is defined by s. 560.103(6), F.S., as a person who sells currency in exchange for payment instruments received, except travelers checks.

- *Deferred presentment transaction not repayable in installments*: The face amount of a check taken for deferred presentment may not exceed $500, exclusive of fees.[30] Fees may not exceed 10 percent of the payment provided to the drawer plus a verification fee of up to $5.[31] The term of a deferred presentment agreement may not be less than seven days or greater than 31 days.[32]
- *Deferred presentment installment transaction*: A deferred presentment installment transaction is repayable in installments, has a term of 60 to 90 days, and may have an outstanding transaction balance (exclusive of fees) of up to $1,000.[33] The permissible fees are a verification fee of up to $5 and up to 8 percent of the outstanding transaction balance on a biweekly basis.[34] The installment periods must be 13 days to one calendar month, except that the first installment period may be longer than the remaining installment periods by not more than 15 days.[35] Prepayment penalties are prohibited.[36]

A deferred presentment provider may not enter into a deferred presentment transaction with a drawer who has an outstanding deferred presentment transaction with any provider or within 24 hours of the termination of a previous transaction.[37] In order to enforce this restriction, the OFR maintains a database against which a deferred presentment provider must verify each transaction before entering into the deferred presentment agreement.[38] A deferred presentment provider may not engage in the rollover of a deferred presentment agreement and may not redeem, extend, or otherwise consolidate a deferred presentment agreement with the proceeds of another deferred presentment transaction made by it or an affiliate.[39]

For deferred presentment transactions not repayable in installments, if the drawer, by the end of the deferment period, informs the deferred presentment provider in person that the drawer cannot redeem or pay in full in cash the amount due, the drawer must be given a grace period that extends the term of the agreement for 60 additional days.[40] As a condition of receiving the grace period, the drawer must make an appointment with a consumer credit counseling agency within seven days after the end of the deferment period and complete counseling by the end of the grace period.[41]

If the drawer in a deferred presentment installment transaction informs the deferred presentment provider in writing or in person by noon of the business day before a scheduled payment that the drawer cannot pay in full the scheduled payment, the provider must give the drawer one opportunity to defer a scheduled payment for no additional fee or charge.[42] The deferred payment is due after the last scheduled installment payment, at an interval which is no shorter than the intervals between the originally scheduled payments.[43] Thus, for a deferred presentment installment transaction in which payments are due once every two weeks, the deferred payment would be due at least two weeks after the final installment payment is due.

A deferred presentment provider may not include in the agreement a hold harmless clause, a confession of judgment clause, an assignment of or order for payment of wages or other compensation for services, or a provision in which the drawer waives any claim or defense arising out of the agreement or any provision of ch. 560, part IV, F.S.[44] A deferred presentment provider must comply

[30] S. 560.404(5), F.S.
[31] S. 560.404(6), F.S.
[32] S. 560.404(8), F.S.
[33] S. 560.404(5) & (8), F.S.
[34] S. 560.404(6), F.S.
[35] S. 560.404(26), F.S.
[36] S. 560.404(6)(c), F.S.
[37] S. 560.404(19), F.S.
[38] S. 560.404(19)(a) & (23), F.S.
[39] S. 560.404(18), F.S.
[40] S. 560.404(22), F.S.
[41] *Id.*
[42] S. 560.404, F.S.
[43] *Id.*
[44] S. 560.404(10), F.S.

with state and federal disclosure requirements.[45]

Effect of the Bill

The bill amends various provisions related to consumer finance loans under ch. 516, F.S.

Surety Bond, Certificate of Deposit, or Letter of Credit in Lieu of Liquid Assets

The bill authorizes consumer finance lenders to provide the OFR a surety bond, certificate of deposit, or irrevocable letter of credit in lieu of maintaining liquid assets. The surety bond must be issued by a bonding company or insurance company authorized to do business in this state. The certificate of deposit must be deposited in a financial institution.[46] The letter of credit must be issued by a financial institution.[47]

The surety bond, certificate of deposit, or letter of credit must be in the amount of at least $25,000. However, a company with multiple licensed locations is authorized to provide a rider or surety bond, certificate of deposit, or letter of credit in the amount of at least $5,000 for each additional license after the first. The aggregate amount of the surety bond, certificate of deposit, or letter of credit required for a company with multiple licenses is capped at $100,000.

The surety bond, certificate of deposit, or letter of credit must name the OFR as beneficiary and must be for the use and benefit of any borrower who is injured by acts of a licensee involving fraud, misrepresentation, or deceit, including willful imposition of illegal or excessive charges; or misrepresentation, circumvention, or concealment of any matter required to be stated or furnished to a borrower, where such acts are in connection with making a consumer finance loan. The OFR, or any claimant, may bring an action in a court of competent jurisdiction on the surety bond, certificate of deposit, or letter of credit. The surety bond, certificate of deposit, or letter of credit must be payable on a pro rata basis, but the aggregate amount may not exceed the amount of the surety bond, certificate of deposit, or letter of credit.

The surety bond, certificate of deposit, or letter of credit may not be canceled by the licensee, bonding or insurance company, or financial institution except upon notice to the OFR by certified mail. A cancellation may not take effect until 30 calendar days after receipt by the OFR of the written notice.

If the bonding or insurance company or financial institution pays a claim, it must give written notice by certified mail to the OFR within 10 calendar days after it pays the claim. The notice must contain details sufficient to identify the claimant and the claim or judgment paid. If the principal sum of the surety bond, certificate of deposit, or letter of credit is reduced by one or more recoveries or payments, the consumer finance lender must furnish to the OFR a new or additional surety bond, certificate of deposit, or letter of credit so that the total or aggregate principal sum equals the required amount. Alternatively, a licensee may furnish an endorsement executed by the bonding or insurance company or financial institution reinstating the required principal amount.

The required surety bond, certificate of deposit, or letter of credit must remain in place for two years after the consumer finance lender ceases licensed operations in this state. During the two-year period, the OFR may allow for a reduction or elimination of the surety bond, certificate of deposit, or letter of credit to the extent the consumer finance lender's outstanding consumer finance loans in this state are reduced.

Failure to maintain the existing liquid asset requirement or the proposed alternatives of the surety bond, certificate of deposit, or letter of credit in the required amount is grounds for denial of license application and grounds for disciplinary action against a consumer finance lender.

[45] S. 560.404(13) & (20), F.S.
[46] As defined in s. 655.005(1)(i), F.S.
[47] As defined in s. 655.005(1)(i), F.S.

The bill makes conforming changes under the Financial Technology Sandbox in s. 559.952, F.S.

Express Prohibition on Prepayment Penalties

The bill provides an express prohibition on prepayment penalties for consumer finance loans.

Effective Date

The bill provides an effective date of October 1, 2022.

Comparison Chart

Below is a chart comparing existing law regarding payday loans and consumer finance loans with the changes proposed by the bill.

	Payday Loans (Ch. 560, Part IV, F.S.)		**Consumer Finance Loans (Ch. 516, F.S.)**	
	Payday Loans (Non-Installment)	**Payday Loans (Installment)**	**Current Law**	**HB 123 Proposed Changes**
Loan Amount	$500 (max)	$1,000 (max)	$25,000 (max)	(No change)
Length of Term	7 - 31 days	60 - 90 days	No min. or max.	(No change)
Payments	• Lump sum at end of loan term	• Installments with 13 days to 1 month in between each, except that the first installment period may be longer than the remaining installment periods by a maximum of 15 days	• Installments due monthly, semi-monthly, or every 2 weeks	(No change)
Interest Rate	• APR equivalent (assuming $500 loan amount and $5 verification fee): 129.52% for a 31 day loan, 573.57% for a 7 day loan	• 8% biweekly on the outstanding transaction balance • APR equivalent: approx. 208% (will be slightly higher as a result of the $5 verification fee)	• 30% per year on the first $3,000 of principal • 24% per year on principal above $3,000 and up to $4,000 • 18% per year on principal above $4,000 and up to $25,000	(No change)
Other Upfront Fees Permitted	• 10% of loan amount • $5 verification fee • No additional fees permitted	• $5 verification fee • No additional fees permitted	• Fees specified in s. 516.031(3), F.S., including up to $25 for investigating the credit and character of the borrower • No additional fees permitted	• Adds express prohibition on prepayment penalties

B. SECTION DIRECTORY:

Section 1. Amends s. 516.03, F.S., relating to application for license; fees; etc.

Section 2. Amends s. 516.031, F.S., relating to finance charge; maximum rates.

Section 3. Amends s. 516.05, F.S., relating to license.

Section 4. Amends s. 516.07, F.S., relating to grounds for denial of license or for disciplinary action.

Section 5. Amends s. 559.952, F.S., relating to Financial Technology Sandbox.

Section 6. Provides an effective date of October 1, 2022.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None. The bill will require minimal changes to the OFR's Regulatory Enforcement and Licensing (REAL) system, but the cost of such changes can be implemented as part of the OFR's existing budget resources.[48]

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill's provisions that would allow a consumer finance lender to provide a surety bond, certificate of deposit, or letter of credit in lieu of liquid assets may have a positive impact on consumer finance lenders and consumers. Shifting from maintaining liquid assets will free up capital for lending activity. In the event that consumer harm coincides with a consumer finance lender's bankruptcy, the surety bond, certificate of deposit, or letter of credit may provide consumers greater means of compensation as compared to the liquid assets. The bill's overall impact on the private sector, while likely positive, is indeterminate.

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.

[48] Office of Financial Regulation, *supra* note 16 at p. 5.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill expressly grants the Financial Services Commission[49] authority to prescribe by rule forms and procedures to implement the provisions relating to a consumer finance lender providing a surety bond, certificate of deposit, or letter of credit in lieu of liquid assets.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On December 1, 2021, the Insurance & Banking Subcommittee considered one amendment, which was adopted, and reported the bill favorably as a committee substitute. The bill authorizes a consumer finance lender to provide a letter of credit in lieu of the current statutory requirement to maintain liquid assets. The committee substitute clarifies that such letter of credit must be issued by a financial institution.

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

[49] The Financial Services Commission (commission) is composed of the Governor, Attorney General, Chief Financial Officer, and Commissioner of Agriculture. S. 20.121(3), F.S. The commission members are the OFR's agency head for the purpose of rulemaking. S. 20.121(3)(c), F.S.

A bill to be entitled

An act relating to consumer finance loans; amending s. 516.03, F.S.; authorizing an applicant for a license to make and collect loans under the Florida Consumer Finance Act to provide a surety bond, certificate of deposit, or letter of credit in lieu of liquid assets; amending s. 516.031, F.S.; prohibiting a person licensed to make and collect consumer finance loans from charging prepayment penalties for loans; amending s. 516.05, F.S.; authorizing an applicant for a license to make and collect consumer finance loans or a licensee to provide a surety bond, certificate of deposit, or letter of credit in lieu of liquid assets; providing requirements for such bonds, certificates of deposit, and letters of credit; providing rulemaking authority; amending s. 516.07, F.S.; revising grounds for denial of license or disciplinary action; amending s. 559.952, F.S.; revising exceptions for a licensee during the Financial Technology Sandbox period; providing an effective date.

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

Section 1. Subsection (1) of section 516.03, Florida Statutes, is amended to read:

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

516.03 Application for license; fees; assets, bonds, certificates of deposit, or letters of credit; etc.—

(1) APPLICATION.—Application for a license to make loans under this chapter shall be in the form prescribed by rule of the commission. The commission may require each applicant to provide any information reasonably necessary to determine the applicant's eligibility for licensure. The applicant shall also provide information that the office requires concerning any officer, director, control person, member, partner, or joint venturer of the applicant or any person having the same or substantially similar status or performing substantially similar functions or concerning any individual who is the ultimate equitable owner of a 10-percent or greater interest in the applicant. The office may require information concerning any such applicant or person, including, but not limited to, his or her full name and any other names by which he or she may have been known, age, social security number, residential history, qualifications, educational and business history, and disciplinary and criminal history. The applicant must provide evidence of liquid assets of at least $25,000 or documents satisfying the requirements in s. 516.05(10). At the time of making such application the applicant shall pay to the office a nonrefundable biennial license fee of $625. Applications, except for applications to renew or reactivate a license, must also be accompanied by a nonrefundable investigation fee of $200. An

application is considered received for purposes of s. 120.60 upon receipt of a completed application form as prescribed by commission rule, a nonrefundable application fee of $625, and any other fee prescribed by law. The commission may adopt rules requiring electronic submission of any form, document, or fee required by this act if such rules reasonably accommodate technological or financial hardship. The commission may prescribe by rule requirements and procedures for obtaining an exemption due to a technological or financial hardship.

Section 2. Subsection (6) is added to section 516.031, Florida Statutes, to read:

516.031 Finance charge; maximum rates.—

(6) PREPAYMENT PENALTIES PROHIBITED.—A licensee may not require a borrower to pay a prepayment penalty for paying all or part of the loan principal before the date on which the payment is due.

Section 3. Subsection (10) is added to section 516.05, Florida Statutes, to read:

516.05 License.—

(10)(a) In lieu of the $25,000 liquid asset requirement in s. 516.03(1):

1. An applicant or a licensee may provide to the office a surety bond in the amount of at least $25,000, issued by a bonding company or insurance company authorized to do business in this state.

2. A company with at least one currently licensed location must provide to the office a rider or surety bond, in the amount of at least $5,000 for each additional license, issued by a bonding company or insurance company authorized to do business in this state. However, in no event may the aggregate amount of the surety bond required for a company with multiple licenses exceed $100,000.

(b) In lieu of a surety bond, the applicant or the licensee may provide evidence of a certificate of deposit or an irrevocable letter of credit in the same amount of the surety bond required under paragraph (a). The certificate of deposit must be deposited in a financial institution, as defined in s. 655.005(1)(i). The letter of credit must be issued by a financial institution, as defined in s. 655.005(1)(i).

(c) The original surety bond, certificate of deposit, or letter of credit must be filed with the office, and the office must be named as beneficiary. The surety bond, certificate of deposit, or letter of credit must be for the use and benefit of any borrower who is injured by acts of a licensee involving fraud, misrepresentation, or deceit, including willful imposition of illegal or excessive charges; or misrepresentation, circumvention, or concealment of any matter required to be stated or furnished to a borrower, where such acts are in connection with a loan made under this chapter. The office, or any claimant, may bring an action in a court of

competent jurisdiction on the surety bond, certificate of deposit, or letter of credit. The surety bond, certificate of deposit, or letter of credit must be payable on a pro rata basis, but the aggregate amount may not exceed the amount of the surety bond, certificate of deposit, or letter of credit.

(d) The surety bond, certificate of deposit, or letter of credit may not be canceled by the licensee, bonding or insurance company, or financial institution except upon notice to the office by certified mail. A cancellation may not take effect until 30 calendar days after receipt by the office of the notice.

(e) The bonding or insurance company or financial institution must, within 10 calendar days after it pays a claim, give notice to the office by certified mail of such payment with details sufficient to identify the claimant and the claim or judgment paid.

(f) If the principal sum of the surety bond, certificate of deposit, or letter of credit is reduced by one or more recoveries or payments, the licensee must furnish to the office a new or additional surety bond, certificate of deposit, or letter of credit so that the total or aggregate principal sum equals the amount required under this subsection. Alternatively, a licensee may furnish an endorsement executed by the bonding or insurance company or financial institution reinstating the required principal amount.

(g) The required surety bond, certificate of deposit, or letter of credit must remain in place for 2 years after the licensee ceases licensed operations in this state. During the 2-year period, the office may allow for a reduction or elimination of the surety bond, certificate of deposit, or letter of credit to the extent the licensee's outstanding consumer finance loans in the state are reduced.

(h) The commission may prescribe by rule forms and procedures to implement this subsection.

Section 4. Paragraph (b) of subsection (1) of section 516.07, Florida Statutes, is amended to read:

516.07 Grounds for denial of license or for disciplinary action.—

(1) The following acts are violations of this chapter and constitute grounds for denial of an application for a license to make consumer finance loans and grounds for any of the disciplinary actions specified in subsection (2):

(b) Failure to maintain liquid assets of at least $25,000 or a surety bond, certificate of deposit, or letter of credit in the amount required by s. 516.05(10) at all times for the operation of business at a licensed location or proposed location.

Section 5. 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 or documents satisfying the requirements in s. 516.05(10), 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 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 6. This act shall take effect October 1, 2022.

HB 275

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 275 Loss Run Statements
SPONSOR(S): Fernandez-Barquin
TIED BILLS: **IDEN./SIM. BILLS:** SB 156

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee	15 Y, 0 N	Fortenberry	Luczynski
2) State Administration & Technology Appropriations Subcommittee	12 Y, 0 N	Lee	Topp
3) Commerce Committee		Fortenberry	Hamon

SUMMARY ANALYSIS

A loss run statement is a report from an insurer that shows the claims a specific insured has filed under that insured's policy during a particular period of time. This report can be provided to a prospective insurer when an insured is shopping for a new insurance policy. 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.

Statutes enacted in 2020, established a 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 loss run statements with a five-year loss run history within 15 days of receiving an insured's written request. If an insured requests 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. However, the insured may still ask the insurer for a loss run statement even after receiving information from a consumer reporting agency.

The bill amends the loss run statutes 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 five years to a minimum of three years to reflect the industry practice of routinely providing insureds with a three-year history upon request before the enactment of the 2020 statutes. 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 ss. 626.9202 and 627.444, F.S., regarding loss run statements, do not apply to life insurers.

The bill also resolves a conflict between the 2020 statutes and an existing statute regarding loss run statements for group health insurance policies by repealing the health-specific statute. Repealing this statute, s. 627.6647, F.S., will create a more seamless process for requesting a loss run statement regardless of the type of insurance for which the statement is requested. The bill 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. Finally, 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.

The bill has no impact on state or local government revenues or expenditures and no direct economic impact on the private sector.

The bill is effective upon becoming law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

A loss run statement[1] is a report from an insurer that shows the claims a specific insured has filed under that insured's policy during a particular period of time.[2] This report can be provided to a prospective insurer when an insured is shopping for a new insurance policy.[3] 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.[4] Prospective insurers often want to review loss run statements showing a loss run history from three to five years to make decisions about writing insurance policies.[5]

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[6] upon cancelation 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 run systems that allow their insureds to log into a portal and to obtain their own detailed reports on claims.[7] 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 or consumer reporting agencies.

Often, personal lines loss history can be obtained from public sources. A Comprehensive Loss Underwriting Exchange, or CLUE, report is a claims report generated by the consumer-reporting agency, LexisNexis.[8] A CLUE report contains claims information reported by insurers for all personal auto and personal property claims in which they pay money, set up a file for a possible claim, or deny a claim.[9] However, CLUE reports and other publicly available reports, may not be completely accurate.[10] Additionally, commercial and health insurance data are not readily available from public sources.

Statutes enacted in 2020, established a framework regarding when, and how, insurers must provide loss run statements to insureds.[11] These statutes define "loss run statement" as 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.[12] This definition also specifies that a loss run statement does not include supporting claim file documents, such as copies of claim files, investigation reports, evaluation statements, insureds' statements, and documents protected by common law or statutory privilege.[13]

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[1] Loss run statements are also referred to as loss runs or loss run reports.
[2] Insureon, https://www.insureon.com/insurance-glossary/loss-runs (last visited Nov. 22, 2021).
[3] *Id.*
[4] *Id.*
[5] *Id.*
[6] *Id.*
[7] *See, e.g.*, MSIG Loss Runs, https://www.msigusa.com/loss-runs/ and StarStone, http://myaccount.starstoneworkcomp.com/index.htm (last visited Nov. 22, 2021).
[8] Office of the Insurance Commissioner Washington State, https://www.insurance.wa.gov/clue-comprehensive-loss-underwriting-exchange (last visited Nov. 19, 2021).
[9] *Id.*
[10] Florida Association of Insurance Agents, *Loss Run Statements*, https://www.faia.com/resources-(1)/legislative-summaries/300-worders/2020-300-worders/loss-run-statements (last visited Dec. 16, 2021). *See also* Forbes Advisor, *What is a C.L.U.E. Report for Insurance?*, https://www.forbes.com/advisor/homeowners-insurance/clue-report/ (last visited Dec. 16, 2021).
[11] *See* ss. 626.9202 and 627.444, F.S.
[12] *Id.*
[13] *Id.*

Pursuant to these statutes, for all lines of insurance written on the admitted and surplus lines markets, insurers must provide loss run statements with a five-year loss run history within 15 days of receiving insured's written requests.[14] If an insured requests 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.[15] However, the insured may still ask the insurer for a loss run statement even after receiving information from a consumer reporting agency.[16] An insurer is prohibited from charging an insured for the first loss run statement that an insured requests annually.[17] Additionally, an insurer is not required to provide loss reserve information as part of a loss run statement provided to an insured.[18]

Effect of the Bill

The bill amends the loss run statutes 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 five years to a minimum of three years to reflect the industry practice of routinely providing insureds with a three-year history upon request before the enactment of the 2020 statutes. 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 ss. 626.9202 and 627.444, F.S., regarding loss run statements, do not apply to life insurers.[19]

The bill also resolves a conflict between the 2020 statutes and an existing statute regarding loss run statements for group health insurance policies by repealing the health-specific statute.[20] Repealing this statute will create a more seamless process for requesting a loss run statement regardless of the type of insurance for which the statement is requested. The bill 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. Finally, 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.

B. SECTION DIRECTORY:

Section 1. Amends s. 626.9202, F.S., relating to loss run statements for all lines of insurance.

Section 2. Amends s. 627.444, F.S., relating to loss run statements for all lines of insurance.

Section 3. Repeals s. 627.6647, F.S., relating to release of claims experience.

Section 4. Provides that the bill is effective upon becoming law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

[14] *Id.*
[15] Ss. 626.9202(2)(b) and 627.444(2)(b), F.S.
[16] *Id.*
[17] Ss. 626.9202(6) and 627.444(6), F.S.
[18] Ss. 626.9202(5) and 627.444(5), F.S.
[19] Because loss run statements are used to shop for new insurance, and life insurance claims are only made after the death of an insured, loss run statements are not necessary for this type of policy.
[20] *See* s. 627.6647, F.S.

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill neither authorizes nor requires administrative rulemaking.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to loss run statements; amending ss. 626.9202 and 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 within a specified timeframe 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 release of claims experience; providing an effective date.

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

Section 1. 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,

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

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 under the reported policy.

(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 shall 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 2. 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 under the reported policy.

(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 shall 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 3. Section 627.6647, Florida Statutes, is repealed.

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

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

COMMERCE COMMITTEE

HB 275 by Rep. Fernandez-Barquin
Loss Run Statements

AMENDMENT SUMMARY
February 1, 2022

Amendment 1 by Rep. Fernandez-Barquin (line 48):

- Clarifies that if a surplus lines agent provides a loss run statement to an insured on behalf of the insurer, the insurer is considered to have responded to an insured's request for a loss run statement.

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 Fernandez-Barquin offered the following:

Amendment (with title amendment)

Between lines 48 and 49, insert:

The insurer is deemed to be in compliance with this subsection if the surplus lines agent provides the loss run statement on behalf of the insurer.

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

Remove lines 2-3 and insert:

An act relating to loss run statements; 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; providing construction; 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. 627.444; revising the definition of

CS/HB 481

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 481 Temporary Underground Power Panels
SPONSOR(S): Tourism, Infrastructure & Energy Subcommittee, Duggan
TIED BILLS: **IDEN./SIM. BILLS:** SB 1332

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Tourism, Infrastructure & Energy Subcommittee	15 Y, 0 N, As CS	Walsh	Keating
2) Local Administration & Veterans Affairs Subcommittee	16 Y, 0 N	Leshko	Miller
3) Commerce Committee		Walsh	Hamon

SUMMARY ANALYSIS

When a residential home is under construction on undeveloped property, the homebuilder may arrange for temporary electric service to provide power to the property through the construction process. If the residence is ultimately going to receive power through an underground service line when the resident takes occupancy, a reduced cost alternative to a temporary power pole on a construction site is temporary underground (TUG) service.

A TUG service connection is available for underground residential services where the permanent approved meter socket, meter, and downpipe are configured such that they can be used for temporary service. After the homeowner takes occupancy of the house, the TUG connection installed during construction is then used to provide electric service to the residence.

Before installing TUG service on a construction site, a builder must get approval from the county or municipality, often through the county or municipality's building department.

The National Electrical Code (NEC) is published by the National Fire Protection Association, and serves to safeguard persons and property from hazards arising from the use of electricity.

The bill provides that neither counties nor municipalities may enact any ordinance, regulation, or policy that prevents, or has the effect of preventing, an electric utility from installing a temporary underground power panel, so long as the panel meets the requirements of Article 590 of the NEC, 2020 edition.

The bill defines the term "temporary underground power panel" and provides that a county or municipality that has conducted an inspection of a temporary underground power panel may not require a subsequent inspection of the panel as a condition of issuance of a Certificate of Occupancy.

The bill does not impact state government revenues or expenditures. The bill appears to have an indeterminate impact on local government revenues and expenditures, as local codes relating to TUG service vary by jurisdiction.

The bill would be effective July 1, 2022.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Temporary Underground Power

When a residential home is under construction on undeveloped property, the homebuilder may arrange for temporary electric service to provide power to the property through the construction process. Builders may opt for temporary power poles, which allow them to get enough energy for the necessary equipment on the job site.[1] If the residence is ultimately going to receive power through an underground service line when the resident takes occupancy, a reduced cost alternative to a temporary power pole is temporary underground (TUG) service.[2]

The TUG alternative is available for underground residential services where the permanent approved meter socket, meter, and downpipe are configured such that they can be used for temporary service.[3] In local jurisdictions that allow TUG service, after construction reaches a certain point and a temporary inspection takes place, the electric utility installs the permanent service to the meter socket.[4] The installed permanent service is then used for construction until the Certificate of Occupancy is obtained.[5] After the homeowner takes occupancy of the house, the permanent connection installed for TUG service during construction is then used to provide electric service to the residence.

Before installing TUG service on a construction site, a builder must get approval from the county or municipality, often through the county or municipality's building department.[6] Many, but not all, Florida counties and municipalities offer TUG agreements. An internet search reflects that some of the counties and municipalities that have a TUG program include: Orange County, Osceola County, Palm Beach County, Pasco County, Pinellas County, Volusia County, Altamonte Springs, Fort Myers, Melbourne, Orlando, and Tarpon Springs.

National Electrical Code

The National Electrical Code (NEC) is published by the National Fire Protection Association and is updated every couple of years.[7] All 50 states have adopted the NEC, as it serves to safeguard persons and property from hazards arising from the use of electricity. [8] The most recent version of the NEC was published in 2020.[9] Article 590 of the NEC covers temporary electrical power and lighting installations.[10]

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[1] *Step-by-Step Guide: Temporary Construction Site Power,* PowerPlus, https://www.powerplus.com/industrial-power-blog/construction-site-temporary-power/ (last visited Jan. 27, 2022).
[2] *See, e.g.,* Florida Power and Light, *Electric Service Standards* (April 2021), at 10.
[3] *See, e.g., Id.*
[4] *See, e.g.,* Orlando Utilities Commission, *How to Obtain Temporary Underground Service*, https://www.ouc.com/docs/customer-brochures/broc_tug.pdf?sfvrsn=9769e278_6 (last visited Jan. 27, 2022); and *Electric Service Standards* at 10.
[5] *See, e.g., Id.*
[6] *See, e.g., Id.*
[7] National Fire Protection Association, *NFPA 70*, https://www.nfpa.org/codes-and-standards/all-codes-and-standards/list-of-codes-and-standards/detail?code=70 (last visited Jan. 27, 2022).
[8] *Id.*; National Fire Protection Association, *National Electrical Code,* 29 (2020), available at https://www.nfpa.org/codes-and-standards/all-codes-and-standards/list-of-codes-and-standards/detail?code=70 (last visited Jan. 27, 2021).
[9] National Fire Protection Association, *NFPA 70*.
[10] National Fire Protection Association, *National Electrical Code* at 504.

Effect of the Bill

The bill provides that neither counties nor municipalities may enact any ordinance, regulation, or policy that prevents, or has the effect of preventing, an electric utility from installing a temporary underground power panel, so long as the panel meets the requirements of Article 590 of the NEC, 2020 edition.

The bill defines the term "temporary underground power panel" as a permanent meter base that includes a meter socket, meter, and downpipe, to which power is provided through an underground service line by an electric utility pursuant to its tariffs or service standards. Per the definition, the temporary underground power panel must be permanently attached to a block residential structure and be intended for use in providing permanent service to the residential structure upon issuance of the Certificate of Occupancy.

Under the bill, a county or municipality that has conducted an inspection of a temporary underground power panel may not require a subsequent inspection of the panel as a condition of issuance of a Certificate of Occupancy.

B. SECTION DIRECTORY:

Section 1: Creates s. 125.488, F.S., relating to county ordinances, regulations, and policies concerning temporary underground power panels.

Section 2: Creates s. 166.0484, F.S., relating to municipal ordinances, regulations, and policies concerning temporary underground power panels.

Section 3: Provides that the bill shall take effect July 1, 2022.

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. See Fiscal Comments.

2. Expenditures:

   Indeterminate. See Fiscal Comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Homebuilders may have fewer expenditures on fees associated with TUG inspections.

D. FISCAL COMMENTS:

Local government codes relating to TUG service, including fees and inspection requirements, vary across the state. Thus, the bill's impact may vary by jurisdiction.

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 require or authorize rulemaking.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On January 12, 2022, the Tourism, Infrastructure & Energy Subcommittee adopted a strike-all amendment to the bill and reported the bill favorably as a committee substitute. The amendment defines the term "temporary underground power panel," corrects a reference to the National Electrical Code, and clarifies that a county or municipality may not require a subsequent inspection of a temporary underground power panel as a condition of issuance of a Certificate of Occupancy.

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 temporary underground power panels; creating ss. 125.488 and 166.0484, F.S.; prohibiting counties and municipalities from enacting ordinances, regulations, or policies that prevent certain electric utilities from installing temporary underground power panels and from requiring subsequent inspections of such panels as a condition of a Certificate of Occupancy under specified conditions; defining the term "temporary underground power panel"; providing an effective date.

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

Section 1. Section 125.488, Florida Statutes, is created to read:

125.488 Ordinances, regulations, and policies concerning temporary underground power panels.—

(1) A county may not enact any ordinance, regulation, or policy that prevents or has the effect of preventing an electric utility, as defined in s. 366.02(2), from installing a temporary underground power panel if the temporary underground power panel meets the requirements of Article 590 of the National Electrical Code, 2020 edition, during the construction and installation of the temporary underground power panel. After the county has

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conducted an inspection of the temporary underground power panel, the county may not require a subsequent inspection of the temporary underground power panel as a condition of issuance of the Certificate of Occupancy.

(2) As used in this section, the term "temporary underground power panel" means a permanent meter base that includes a meter socket, meter, and downpipe, to which power is provided through an underground service line by an electric utility pursuant to its tariffs or service standards, that is permanently attached to a block residential structure, provides temporary power for construction of the residential structure, and is intended for use in providing permanent service to the residential structure upon issuance of the Certificate of Occupancy.

Section 2. Section 166.0484, Florida Statutes, is created to read:

166.0484 Ordinances, regulations, and policies concerning temporary underground power panels.—

(1) A municipality may not enact any ordinance, regulation, or policy that prevents or has the effect of preventing an electric utility, as defined in s. 366.02(2), from installing a temporary underground power panel if the temporary underground power panel meets the requirements of Article 590 of the National Electrical Code, 2020 edition, during the construction and installation of the temporary underground power

panel. After the municipality has conducted an inspection of the temporary underground power panel, the municipality may not require a subsequent inspection of the temporary underground power panel as a condition of issuance of the Certificate of Occupancy.

(2) As used in this section, the term "temporary underground power panel" means a permanent meter base that includes a meter socket, meter, and downpipe, to which power is provided through an underground service line by an electric utility pursuant to its tariffs or service standards, that is permanently attached to a block residential structure, provides temporary power for construction of the residential structure, and is intended for use in providing permanent service to the residential structure upon issuance of the Certificate of Occupancy.

Section 3. This act shall take effect July 1, 2022.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HM 641 Internal Revenue Service Reporting Requirements
SPONSOR(S): Rommel
TIED BILLS: **IDEN./SIM. BILLS:** SM 982

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Ways & Means Committee	14 Y, 3 N	LaTorre	Aldridge
2) Commerce Committee		Hinshelwood	Hamon

SUMMARY ANALYSIS

HM 641 urges the Congress of the United States to oppose the Internal Revenue Service (IRS) reporting requirements placed on financial institutions, small businesses, and law abiding citizens, which are included in the Biden administration's tax increase proposal.

Legislative memorials are not subject to the Governor's veto power and are not presented to the Governor for review. Memorials have no force of law, as they are mechanisms for formally petitioning the federal government to act on a particular subject.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

The Biden Administration Revenue Proposals

In the Biden Administration's proposal released in May 2021, a provision provided the IRS increased scrutiny over bank accounts.[1] The proposal would require banks, credit unions, and other financial companies to report to the IRS gross deposits and withdrawals for accounts that have gross deposits or withdrawals of more than $600.[2] Under a revised proposal, the threshold was raised to $10,000.[3] The financial institution's report to the IRS would include a breakdown for physical cash, transactions with a foreign account, and transfers to and from another account with the same owner.[4]

In the current version of the Build Back Better Act passed by the United States House of Representatives on November 19, 2021, the provision requiring additional reporting by banks, credit unions, and other financial companies was omitted.[5]

Current Law on Reporting of Cash Transactions and Suspicious Activity

Current federal law requires a person to report to the IRS cash transactions of more than $10,000 received in a trade or business.[6] "Person" means an individual, company, corporation, partnership, association, trust, or estate.[7] "Cash" includes coins and currency of the United States or any foreign country.[8] Cash also includes a cashier's check, bank draft, traveler's check, or money order with a face amount of $10,000 or less that a person receives for either a designated reporting transaction or any transaction in which the person knows the payer is trying to avoid a report.[9]

Banks and other financial institutions are required to report each deposit, withdrawal, exchange of currency or other payment or transfer, by, though, or to the bank or financial institution which involves a transaction in currency of more than $10,000, including cash purchases of cashier's checks, treasurer's checks, bank checks, bank drafts, traveler's checks, and money orders with a face value of more than $10,000, to the Financial Crimes Enforcement Network (FinCEN), which is a bureau of the United States Department of the Treasury.[10]

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[1] General Explanations of the Administration's Fiscal Year 2022 Revenue Proposals, United States Department of the Treasury, May 2021, https://home.treasury.gov/system/files/131/General-Explanations-FY2022.pdf (Last visited Jan. 27, 2022).
[2] *Id.*
[3] FACT SHEET: Tax Compliance Proposals Will Improve Tax Fairness While Protecting Taxpayer Privacy, United States Department of Treasury, Oct. 19, 2021, https://home.treasury.gov/news/press-releases/jy0415 (Last visited Jan. 27, 2022).
[4] General Explanations of the Administration's Fiscal Year 2022 Revenue Proposals, *supra* note 1.
[5] Build Back Better Act, H.R. 5376, 117th Cong. (2021) https://www.congress.gov/bill/117th-congress/house-bill/5376 (Last visited Jan. 27, 2022).
[6] Internal Revenue Code (IRC), s. 6050I. Cash payment report helps government combat money laundering, IRS, https://www.irs.gov/newsroom/cash-payment-report-helps-government-combat-money-laundering (Last visited Jan. 27, 2022).
[7] IRC, s. 7701(a)(1).
[8] IRC, s. 6050I(d)
[9] See IRC, s. 6050I(d) and (f). A "designated reporting transaction" is the retail sale of tangible personal property that's generally suited for personal use, expected to last at least one year and has a sales price of more than $10,000, such as sales of automobiles, jewelry, mobile homes, and furniture, the sale of a collectible, or the sale of travel and entertainment if the total price of the items for the same trip or entertainment event is more than $10,000. Cash payment report helps government combat money laundering, IRS, https://www.irs.gov/newsroom/cash-payment-report-helps-government-combat-moneylaundering, (Last visited Jan. 13, 2022).
[10] *Id.* 31 C.F.R. ss. 1010.306, 1010.311, and 1010.313; and 31 U.S.C. ss. 5312 and 5313

Banks and other financial institutions are also required to file suspicious activity reports (SARs) with FinCEN.[11] A SAR is required following the discovery of: insider abuse involving any amount, violations aggregating $5,000 or more where a suspect can be identified, violations aggregating $25,000 or more regardless of a potential suspect, or transactions aggregating $5,000 or more that involve potential money laundering or violations of the Bank Secrecy Act.[12]

Leak of Tax Return Data

On June 8th, 2021, ProPublica published an article which revealed a massive leak of tax return data from the IRS and brought into question IRS's ability to protect taxpayer information.[13]

The Infrastructure Investment and Jobs Act

The Infrastructure Investment and Jobs Act (Act) was signed into law on November 15, 2021.[14] The Act adds additional reporting requirements for a broker that facilitates the movement of "digital assets," or cryptocurrency.[15] Applicable to returns required to be filed and statements required to be furnished after December 31, 2023, the Act:

- Expands the definition of broker to include "any person who (for consideration) is responsible for regularly providing any service effectuating transfers of digital assets on behalf of another person."[16] A broker is required to file a return with the IRS showing the name and address of each customer with details regarding gross proceeds and other information.[17]
- Modifies the definition of "specified security" to include digital assets.
- Requires brokers to report transfers of digital assets that are not otherwise subject to reporting to the IRS.[18]

The act also expands the definition of cash for purposes of cash reporting to include digital assets. By including digital assets in the definition of cash, the Act extends the reporting requirements for transactions of more than $10,000 in cash to transactions involving digital assets of more than $10,000. The new reporting requirement requires a person that is currently required to comply with cash reporting requirements to collect information and report to the IRS details of transactions involving digital assets, or cryptocurrency transactions, of more than $10,000.[19]

Legislative Memorials

Legislative memorials are not subject to the Governor's veto power and are not presented to the Governor for review. Memorials have no force of law, as they are mechanisms for formally petitioning the federal government to act on a particular subject.

[11] 12 C.F.R. 21.11; 31 C.F.R. ss. 1010.320 and 1020.320; s. 655.50, F.S.
[12] National Credit Union Administration, *Suspicious Activity Reports*, https://www.ncua.gov/regulation-supervision/manuals-guides/suspicious-activity-report (last visited Jan. 27, 2022).
[13] The Secret IRS Files: Trove of Never-Before-Seen Records Reveal How the Wealthiest Avoid Income Tax https://www.propublica.org/article/the-secret-irs-files-trove-of-never-before-seen-records-reveal-how-the-wealthiest-avoid-income-tax (last visited Jan. 27, 2022)
[14] Infrastructure and Jobs Act, Pub. L. No. 117-58 (2021), § 80603, https://www.congress.gov/bill/117th-congress/house-bill/3684/text (Last visited Jan. 27, 2022).
[15] *Id*. IRC, s. 6045(g)(3)(D) defines "digital asset" to mean, except as otherwise provided by the [United States] Secretary [of the Treasury], any digital representation of value which is recorded on a cryptographically secured distributed ledger or any similar technology as specified by the Secretary.
[16] *Id*. IRC, s. 6045(c)(1)(D).
[17] *Id*. IRC, s. 6045(a).
[18] *Id*. IRC, s. 6045A(d).
[19] *Id*. IRC, s. 6050I(d).

Proposed Changes

The House memorial would urge the United States Congress to oppose the reporting requirements placed on financial institutions, small businesses, and law abiding citizens, which are included in the Biden administration's tax increase proposal, and would dispatch a message to that effect.

Copies of the memorial will be sent by Florida's Secretary of State to the President of the United States, the President of the United States Senate, the Speaker of the United States House of Representatives, and each member of the Florida delegation to the United States Congress.

The memorial contains seven whereas clauses. The clauses outline concerns regarding data privacy and security relating to a proposed expansion of reporting requirements as well as concerns regarding additional regulations imposed on financial institutions.

B. SECTION DIRECTORY:

Not applicable.

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.

2. Other:

N/A

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

House Memorial

A memorial to the Congress of the United States, urging Congress to oppose the intrusive Internal Revenue Service reporting requirements placed on financial institutions included in the Biden administration's tax increase proposal.

WHEREAS, the Biden administration's tax increase proposal for fiscal year 2022 includes a number of provisions that would place undue burdens on financial institutions, small businesses, and law-abiding citizens, and

WHEREAS, one proposal seeks to increase tax payment enforcement measures by requiring peer-to-peer payment transaction applications as well as financial institutions to annually report aggregated data on all account inflows and outflows of $10,000 or more to the Internal Revenue Service (IRS), and

WHEREAS, the reports would also disclose whether transactions involved physical cash, foreign accounts, or transfers between accounts with the same owner, negatively impacting the privacy rights of Americans, compliance costs, and low-income communities, and

WHEREAS, the proposal's $10,000 threshold for reporting would ensnare many active financial institution accounts, including those owned by individuals and small businesses,

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

requiring the financial data of the majority of those accounts to be sent to the IRS, an agency that experiences more than one billion cyberattacks each year, and

WHEREAS, a June 2021 ProPublica article revealed a massive leak of tax return data from the IRS, demonstrating that the agency is unable or unwilling to protect taxpayer information, and given its many vulnerabilities in cybersecurity, the IRS should not be trusted with more private information, and

WHEREAS, by holding financial institutions responsible for data collection and reporting, the proposal would force financial institutions to increase spending on additional staffing, technology, and other resources, which could then be passed on to the depositors, thus burdening tax-compliant citizens and small businesses, and

WHEREAS, the Biden administration's tax increase proposal fails to consider cybersecurity risks and unjust burdens on law-abiding citizens, financial institutions, and small businesses, and the United States Congress should oppose this unprecedented intrusion into the privacy rights of Americans, NOW, THEREFORE,

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

That the Congress of the United States is urged to oppose the intrusive Internal Revenue Service reporting requirements

placed on financial institutions included in the Biden administration's tax increase proposal.

BE IT FURTHER RESOLVED that copies of this memorial be dispatched to the President of the United States, to the President of the United States Senate, to the Speaker of the United States House of Representatives, and to each member of the Florida delegation to the United States Congress.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 831 Licensure Requirements for Land Surveyors and Mappers
SPONSOR(S): Regulatory Reform Subcommittee, Mariano
TIED BILLS: **IDEN./SIM. BILLS:** SB 1286

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Regulatory Reform Subcommittee	12 Y, 5 N, As CS	Thompson	Anstead
2) Commerce Committee		Thompson	Hamon

SUMMARY ANALYSIS

Chapter 472, F.S., governs the practice of land surveying and mapping in Florida. Through the Florida Board of Professional Surveyors and Mappers (Board), the Department of Agriculture and Consumer Services (DACS) licenses and regulates professional surveyors and mappers in the state. Current law provides education and experience prerequisites that must be met in order to be eligible to take the licensure examination to practice as a surveyor and mapper.

Currently, applicants must **at least** have a **bachelor's degree** in a related course of study and a minimum of **four years of experience** working under a professional surveyor in order to take the licensure examination.

Applicants with a bachelor's degree in an unrelated course of study must have **six years of experience**, and complete a minimum of **25 semester hours** from a college or university approved by the board in surveying and mapping related subjects **in order to take the licensure examination**.

The bill provides **additional pathways** to qualify to take the **licensure examination** as follows:

- Allows applicants with a **high school diploma** or an **associate's degree,** who complete **25 hours of coursework in surveying and mapping,** and **six** years of experience under a professional surveyor and mapper to be eligible to take the licensure examination.
- Allows applicants who qualified to obtain a surveying and mapping license in another state that hold a **license to practice in another state** and have **two years of experience in the active practice** of surveying and mapping to be eligible to take the **licensure examination**.
- Allows applicants with a **registered apprenticeship certificate** in surveying and mapping and an **experience record of two** or more years in the active practice of mapping to be eligible to take the licensure examination.

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

The effective date of the bill is July 1, 2022.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Land Surveying and Mapping

Chapter 472, F.S., governs the practice of land surveying and mapping in Florida. Through the Florida Board of Professional Surveyors and Mappers (Board), the Department of Agriculture and Consumer Services (DACS) licenses and regulates professional surveyors and mappers in the state.[1]

These regulations include, but are not limited to:[2]

- Examination;
- Licensure, including certificates of authorization;
- Continuing education;
- Seals;
- Standards of practice;
- Prohibitions and penalties;
- Disciplinary guidelines;
- Investigative procedures;
- Power to administer oaths, take depositions, and issue subpoenas;
- Unlicensed activities; and
- Elevation certificates.

According to DACS, licensed surveyors and mappers make exact measurements and determine property boundaries. They provide data relevant to the shape, contour, gravitation, location, elevation or dimension of land or land features on or near the earth's surface for engineering, mapmaking, mining, land evaluation, construction and other purposes.[3]

The Board has authority to adopt rules to implement ch. 472, F.S., subject to approval by DACS.[4] Effective October 1, 2009, the regulation of professional surveyors and mappers by the Board was transferred from the Department of Business and Professional Regulation (DBPR) to DACS.[5]

According to DACS, there are 2,579 surveyors and mappers currently licensed in Florida.[6]

Licensing Examinations

Current law provides education and experience prerequisites that must be met in order to be eligible to take the licensure examination to practice as a surveyor and mapper or as a surveyor and mapper intern.[7] All applicants must be approved by the Board prior to taking any examination.

All pathways to licensure as a professional surveyor and mapper in Florida require **at least a four-year college degree.** The prerequisites to take the licensure examination to practice as a surveyor and mapper are as follows:

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[1] S. 472.007, F.S.
[2] *See* ch. 472, F.S.
[3] Florida Department of Agriculture and Consumer Services, Consumer Services, *Surveyors and Mappers*, https://www.fdacs.gov/Business-Services/Surveyors-and-Mappers (last visited Jan. 5, 2022).
[4] S. 472.008, F.S.
[5] Ch. 2009-66, Laws of Fla.
[6] Email from Carlos Nathan, Legislative Affairs Director, Department of Agriculture and Consumer Services, Re: Surveyors Data, (Jan. 6, 2022).
[7] S. 472.013, F.S.

- A bachelor's degree in surveying and mapping or in a similarly titled program:
  - Four or more years of work experience under a professional surveyor;
  - All four years of work experience must have been in responsible charge of the accuracy and correctness of the surveying work performed; or
- A bachelor's degree in a course of study **other than surveying and mapping**:
  - Six or more years of work experience under a professional surveyor;
  - Five of the six years of experience must have been in responsible charge of the accuracy and correctness of the surveying work performed.
  - These applicants must also complete a minimum of **25 semester hours** from a college or university approved by the board in surveying and mapping subjects or in any combination of courses in civil engineering, surveying, mapping, mathematics, photogrammetry, forestry, or land law and the physical sciences.

The following is a chart outlining these education and work experience prerequisites:

Type of Applicant	Type of Degree	Work Experience
Surveyor and Mapper *(Option 1)*	Surveying and Mapping **Bachelor's Degree**	**4** or more years subordinate to surveyor and mapper and in "responsible charge" of work performed
Surveyor and Mapper *(Option 2)*	Non-Surveying and Mapping **Bachelor's Degree**; ***and*** **25 semester hours surveying and mapping subjects**	**6** or more years subordinate to surveyor and mapper of which 5 years must be in "responsible charge" of work performed

The board, by rule,[8] is authorized to establish fees for examination. The initial application and examination fee must not exceed $125 plus the actual per applicant cost to DACS to purchase the examination from the National Council of Engineering Examiners or a similar national organization. The examination fee must be sufficient to cover the cost of obtaining and administering the examination and is refundable if the applicant is found ineligible to sit for the examination. The application fee is nonrefundable.[9]

Exiled Foreign-Trained Professionals

Exiled foreign-trained professionals that wish to become surveyors and mappers must have graduated with an appropriate college degree from a college or university and must have lawfully practiced the profession for at least three years. Specifically, an exiled professional is eligible for examination if the exiled professional satisfies all of the following seven requirements:

- Immigrated to the United States after leaving the person's home country because of political reasons, provided the country is located in the Western Hemisphere and does not have diplomatic relations with the United States;
- Applied to DACS and submits a fee;
- Was a resident of this state immediately preceding the person's application;
- Demonstrated to DACS, through submission of documentation verified by the applicant's respective professional association in exile, that the applicant graduated with an appropriate professional or occupational degree from a college or university.

[8] R. 5J-17.070, F.S.
[9] S. 472.011, F.S.

    - However, DACS may not require receipt of any documentation from the Republic of Cuba as a condition of eligibility under this section;
- Lawfully practiced the profession for at least 3 years;
- Prior to 1980, successfully completed an approved course of study pursuant to chapters 74-105 and 75-177, Laws of Florida; and
- Presented a certificate demonstrating the successful completion of a continuing education program, which offers a course of study that will prepare the applicant for the examination.
    - The department shall develop rules for the approval of such programs for the board.[10]

Upon request of a person who meets the requirements for foreign-trained professionals and submits an examination fee, DACS, for the Board, is required to conduct a written practical examination that tests the person's current ability to practice the profession competently in accordance with the actual practice of the profession. The fees charged for the examinations are established by DACS, for the board, by rule,[11] and must be sufficient to develop or to contract for the development of the examination and its administration, grading, and grade reviews.[12]

Licensure by Endorsement – Out of State Applicants

The board is required to certify as qualified for a license by endorsement an applicant who, at the time of application, holds a valid license to practice surveying and mapping **issued by another state** or territory of the United States, if:

- The license was issued before July 1, 1999; the applicant has passed a national, regional, state, or territorial licensing examination that is substantially equivalent to the examination required by s. 472.013, F.S.; and the applicant has a specific experience record of **at least eight years** as a subordinate to a registered surveyor and mapper in the active practice of surveying and mapping, **six years** of which must be of a nature indicating that the applicant was in responsible charge of the accuracy and correctness of the surveying and mapping work performed; or
- The criteria for issuance of the license by another state are **substantially the same** as the licensure criteria that existed in Florida at the time the license was issued.[13]

All applicants for licensure by endorsement **must also pass the Florida law and rules** portion of the examination prior to licensure.[14]

Florida law **does not** provide practicing surveyors and mappers from other states with less than a four-year degree a pathway to licensure unless they were licensed in the other state **prior to July 1, 1999, or prior to Florida having a four-year degree requirement.**

Recent Trends

According to the Bureau of Labor Statistics, in 2020 there were 45,000 working surveyors in the U.S., 15,000 were 34 years of age or younger, and 11,000 were over the age of 55.[15] Many in the profession are baby boomers who will be retiring and need to be replaced.[16]
The average age of a surveyor in the U.S. is 45 and 69% of surveyors are over the age of 40. In addition, reports indicate that 45% of surveyors in the U.S. hold a bachelor's degree, 42 % hold an associate's degree or a certificate and 18% hold a high school diploma.[17]

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[10] S. 472.001(1), F.S.
[11] R. 5J-17.210, F.A.C.
[12] S. 472.0101, F.S.
[13] S. 472.015, F.S.
[14] *Id*.
[15] U.S. Bureau of Labor Statistics, *Labor Force Statistics from the Current Population Survey*, https://www.bls.gov/cps/cpsaat11b.pdf (last visited Jan. 5, 2022).
[16] U.S. Bureau of Labor Statistics, Occupational Outlook Handbook, https://www.bls.gov/ooh/architecture-and-engineering/surveyors.htm#tab-6 (last visited Jan. 5, 2022).
[17] Florida Surveying & Mapping Society, *FAQ: How to Become a Licensed Surveyor*, https://www.fsms.org/how-to-become-a-surveyor (Last visited Jan. 21, 2022); *See also*, Zippa, The Career Expert, *Surveyor, Demographics and Statistics in the US*, https://www.zippia.com/surveyor-jobs/demographics/

Some in the industry have indicated that a shortage may exist in the profession because of extensive education expectations and cost. Many state boards require a four-year degree before beginning work in the surveying field. These requirements might hinder those from pursuing a surveying path. Nationally there appears to be a decline in the number of students graduating from surveying programs.[18]

In Florida, the number of licensed surveyors has decreased by 305 licensees, from 2,884 licensees in 2013 to 2,579 licensees in 2021.[19]

Other States

Each state and territory in the U.S. require those who perform the tasks defined as the practice of surveying to hold a professional surveying license. Most states require professional surveyors to meet a combination of requirements in education and exams.[20]

Generally, while each state board for surveyors has its own requirements for licensure, potential licensees will follow a similar path of prerequisites to obtain a license in any state. Prerequisites typically include:

- An education requirement - Sometimes a high school diploma but some states also require a four-year degree from an accredited surveying program.
- Successful completion of a Fundamentals of Surveying (FS) written examination - testing an applicant's breadth of understanding of basic surveying principles.
- Successful completion of a written Principles and Practice of Surveying (PS) examination - testing an applicant's knowledge and competency of surveying skills.
- A requisite amount of surveying experience - which for most states is four years and is usually under the supervision of a professional surveyor.[21]

According to research, in 2020, the education and experience requirements in all 50 states appear to indicate the following patterns:

- Most states require at least a four-year degree and four years of professional experience.
- Typically, the extent of the degree is relative to the amount of professional experience required.
- Fourteen states provide an option that requires only a high school diploma (or do not have any educational requirements) along with a certain amount of professional experience.
- Six states provide an option that does not require the completion of a degree, but requires the completion of a certain amount of survey and mapping coursework and professional experience.
- The degrees that are required are typically in a surveying and mapping curriculum, a curriculum related to surveying and mapping, or an unrelated curriculum but with a certain amount of coursework in a surveying related curriculum.
- States that allow postgraduate coursework in a surveying curriculum allow the coursework to be substituted for professional experience.
- Twenty-eight states do not provide an education-less alternative method of licensure.[22]

One example of a state that allows a number of different pathways to licensure is North Carolina:

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[18] Nearterm Blog, *Is There a Shortage of Land Surveyors?* (Nov. 2, 2020), https://nearterm.com/is-there-a-shortage-of-land-surveyors/ (last visited Jan. 5, 2022).
[19] Email from Carlos Nathan, Legislative Affairs Director, Department of Agriculture and Consumer Services, Re: Surveyors Data, (Jan. 6, 2022).
[20] The National Council of Examiners for Engineering and Surveying (NCEES), *Surveying Licensure*, https://ncees.org/surveying/surveying-licensure/ (last visited Jan. 5, 2022).
[21] The National Council of Examiners for Engineering and Surveying (NCEES), *NCEES Member Licensing Boards*, https://ncees.org/member-licensing-boards/ (last visited Jan. 5, 2022).
[22] NCEES, *supra* note 19.

- Graduates with a **Bachelor's degree** can take the **licensing exam** after **two years** of practical land surveying experience. At least one year of experience must be under the supervision of a professional land surveyor.
- Graduates with a two-year **Associate's degree** in surveying can take the licensing exam with **four years** of progressive experience.
- Graduates with a **high school diploma** can take the licensing exam after **seven years**.[23]

Effect of the Bill

The bill changes language in the licensing requirements that allowed the Board to approve educational institutions and coursework to specify that applicants can obtain the required degree from "a college or university accredited by an accrediting body recognized by the United States Department of Education."

The bill creates additional pathways for people to become licensed as a surveyor and mapper, while maintaining the prerequisite to take the licensure examination. Applicants are no longer required to obtain a four year bachelor's degree if the applicant:

- Received an **associate degree or a high school diploma** and completes a minimum of 25 semester hours specific to surveying and mapping at a college or university accredited by an accrediting body recognized by the United States Department of Education.
    - The hours may be from courses in civil engineering, surveying, mapping, mathematics, photogrammetry, forestry, or land law and the physical sciences.
- Such applicants must have **six or more years' experience** as a subordinate to a professional surveyor and mapper in the active practice of surveying and mapping, which experience is of a nature indicating that the applicant was in responsible charge.

The bill amends the licensure by endorsement requirements allowing an out of state applicant to be eligible to take the licensure examination if they:

- Hold a **valid license** to practice surveying and mapping **in another state**, jurisdiction, or territory; and
- Have **two years of experience in the active practice** of surveying and mapping, which experience is of a nature indicating that the applicant was in responsible charge of the accuracy and correctness of the surveying and mapping work performed.

In addition, the bill creates a pathway to be eligible to take the licensure examination for applicants who have:

- Received a **registered apprenticeship certificate** in surveying and mapping after completing a registered apprenticeship program approved by the Department of Education; and
- Have an experience record of **two or more years as a subordinate** to a professional surveyor and mapper in the active practice of surveying and mapping, which experience is of a nature indicating that the applicant was in responsible charge of the accuracy and correctness of the surveying and mapping work performed.

Work experience acquired as a part of the education requirement may not be construed as experience in responsible charge.

The bill allows exiled foreign-trained professionals who have practiced the profession for three years to substitute this experience for the current education requirement.

B. SECTION DIRECTORY:

Section 1: amends s. 472.0101, F.S., relating to foreign-trained professionals, special examination and license provisions.

Section 2: amends s. 472.013, F.S., relating to examinations, prerequisites.

[23] North Carolina Society of Surveyors, *Licensure Requirements in North Carolina*, https://www.ncsurveyors.com/education/licensure_requirements (last visited Jan. 20, 2022).

Section 3: amends s. 472.003, F.S., conforming a cross-reference to changes made by the act.

Section 4: provides an effective date of July 1, 2022.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

Indeterminate. The bill may have a positive impact on examination and licensing revenue, to the extent that additional individuals will take the licensure examination and become licensed. All funds collected are deposited into the DACS General Inspection Trust Fund. According to DACS, the bill will not have a fiscal impact on the Department.[24]

2. Expenditures:

Indeterminate. The bill may result in DACS processing additional applications for examination and licensure. However, DACS can likely absorb the related cost within existing resources. According to DACS, the bill will not have a fiscal impact on the Department.[25]

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill creates additional pathways so that applicants are no longer required to obtain a bachelor's degree to qualify to take the licensure examination to practice as a surveyor and mapper, which will lower the cost and time it takes to become licensed, and allow more people to practice their chosen profession.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

[24] Department of Agriculture and Consumer Services, Agency Analysis of 2022 HB 831, p. 3 (Jan. 3, 2022).
[25] *Id.*

Agency rules may have to be amended to change current education and work experience requirements. Current law appears to provide sufficient rulemaking authority for DACS to implement the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 20, 2022, the Regulatory Reform Subcommittee adopted two amendments and reported the bill favorably as a committee substitute. The committee substitute:

- Removes the definition for "accredited colleges and universities" from the bill.
- Specifies that the colleges and universities referenced in the bill must be accredited by an accrediting body recognized by the United States Department of Education.

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

A bill to be entitled

An act relating to licensure requirements for land surveyors and mappers; amending s. 472.0101, F.S.; authorizing an exiled professional to substitute a specified lawful practice of the profession for the education requirement of the examination; amending s. 472.013, F.S.; revising education requirements for licensure to include an applicant who has received an associate degree under certain circumstances; requiring such education to be from a college or university accredited by an accrediting body recognized by the United States Department of Education; providing that specified experience may be substituted for education requirements for licensure as a land surveyor or mapper; providing that an applicant who holds a valid license from another state, jurisdiction, or territory, and has certain experience in the practice of surveying and mapping may take the licensure examination to practice as a land surveyor or mapper in this state; providing that completion of a specified apprenticeship program may be substituted for education requirements for licensure as a land surveyor or mapper; amending s. 472.003, F.S.; conforming a cross-reference to changes made by the act; providing an effective date.

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

Section 1. Paragraphs (e) and (f) of subsection (1) of section 472.0101, Florida Statutes are amended, and paragraph (d) of that subsection is republished, to read:

472.0101 Foreign-trained professionals; special examination and license provisions.—

(1) When not otherwise provided by law, the department shall by rule provide procedures under which exiled professionals may be examined under this chapter. A person is eligible for the examination if the exiled professional:

(d) Demonstrates to the department, through submission of documentation verified by the applicant's respective professional association in exile, that the applicant was graduated with an appropriate professional or occupational degree from a college or university. However, the department may not require receipt of any documentation from the Republic of Cuba as a condition of eligibility under this section;

(e) A person who has lawfully practiced the profession for at least 3 years may substitute such practice of the profession for the education requirement under paragraph (d);

(f) Before ~~Prior to~~ 1980, successfully completed an approved course of study pursuant to chapters 74-105 and 75-177, Laws of Florida; and

Section 2. Subsection (2) of section 472.013, Florida Statutes, is amended to read:

472.013 Examinations, prerequisites.—

(2) An applicant shall be entitled to take the licensure examination to practice in this state as a surveyor and mapper if the applicant is of good moral character and has satisfied one of the following requirements:

(a) The applicant has received a bachelor's degree, its equivalent, or higher in surveying and mapping or a similarly titled program, including, but not limited to, geomatics, geomatics engineering, and land surveying, from a college or university accredited by an accrediting body recognized by the United States Department of Education ~~board~~ and has a specific experience record of 4 or more years as a subordinate to a professional surveyor and mapper in the active practice of surveying and mapping, which experience is of a nature indicating that the applicant was in responsible charge of the accuracy and correctness of the surveying and mapping work performed. Work experience acquired as a part of the education requirement may not be construed as experience in responsible charge.

(b) The applicant has received a bachelor's degree, its equivalent, or higher in a course of study, other than in surveying and mapping, at a ~~an accredited~~ college or university accredited by an accrediting body recognized by the United

States Department of Education and has a specific experience record of 6 or more years as a subordinate to a registered surveyor and mapper in the active practice of surveying and mapping, which experience is ~~5 years of which shall be~~ of a nature indicating that the applicant was in responsible charge of the accuracy and correctness of the surveying and mapping work performed. The applicant must have completed a minimum of 25 semester hours from a college or university accredited by an accrediting body recognized by the United States Department of Education ~~approved by the board~~ in surveying and mapping subjects or in any combination of courses in civil engineering, surveying, mapping, mathematics, photogrammetry, forestry, or land law and the physical sciences. ~~Any of the required 25 semester hours of study completed not as a part of the bachelor's degree, its equivalent, or higher may be approved at the discretion of the board.~~ Work experience acquired as a part of the education requirement may not be construed as experience in responsible charge.

(c) The applicant has received an associate degree and has a specific experience record of 6 or more years as a subordinate to a professional surveyor and mapper in the active practice of surveying and mapping, which experience is of a nature indicating that the applicant was in responsible charge of the accuracy and correctness of the surveying and mapping work performed. The applicant must have completed a minimum of 25

semester hours from a college or university accredited by an accrediting body recognized by the United States Department of Education in surveying and mapping subjects or in any combination of courses in civil engineering, surveying, mapping, mathematics, photogrammetry, forestry, or land law and the physical sciences. Work experience acquired as a part of the education requirement may not be construed as experience in responsible charge.

(d) The applicant has received a high school diploma, or its equivalent, and has a specific experience record of 6 or more years as a subordinate to a professional surveyor and mapper in the active practice of surveying and mapping, which experience is of a nature indicating that the applicant was in responsible charge of the accuracy and correctness of the surveying and mapping work performed. The applicant must have completed a minimum of 25 semester hours from a college or university accredited by an accrediting body recognized by the United States Department of Education in surveying and mapping subjects or in any combination of courses in civil engineering, surveying, mapping, mathematics, photogrammetry, forestry, or land law and the physical sciences. Work experience acquired as a part of the education requirement may not be construed as experience in responsible charge.

(e) The applicant holds a valid license to practice surveying and mapping in another state, jurisdiction, or

territory, and has 2 years of experience in the active practice of surveying and mapping, which experience is of a nature indicating that the applicant was in responsible charge of the accuracy and correctness of the surveying and mapping work performed.

(f) The applicant has received a registered apprenticeship certificate in surveying and mapping after completing a registered apprenticeship program approved by the Department of Education and has a specified experience record of 2 or more years as a subordinate to a professional surveyor and mapper in the active practice of surveying and mapping, which experience is of a nature indicating that the applicant was in responsible charge of the accuracy and correctness of the surveying and mapping work performed. Work experience acquired as a part of the education requirement may not be construed as experience in responsible charge.

Section 3. Subsection (4) of section 472.003, Florida Statutes, is amended to read:

472.003 Persons not affected by ss. 472.001-472.037.—Sections 472.001-472.037 do not apply to:

(4) Persons employed by county property appraisers, as defined at s. 192.001(3), and persons employed by the Department of Revenue, to prepare maps for property appraisal purposes only, but only to the extent that they perform mapping services which do not include any surveying activities as described in s.

472.005 ~~s. 472.005(4)(a) and (b)~~.

Section 4. This act shall take effect July 1, 2022.

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

COMMERCE COMMITTEE

HB 831 by Rep. Mariano
Licensure Requirements for Land Surveyors and Mappers

AMENDMENT SUMMARY
February 1, 2022

Amendment 1 by Rep. Mariano (lines 72-123):

- Revises the work experience requirements for applicants for the surveying and mapping state licensure examination to be six or more years total work experience, five years of which must be in responsible charge of the work performed. This applies to applicants who have:
    - A bachelor's degree in non-surveying and mapping subjects.
    - An associate degree.
    - A high school diploma.

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 Mariano offered the following:

Amendment

Remove lines 72-123 and insert:

(b) The applicant has received a bachelor's degree, its equivalent, or higher in a course of study, other than in surveying and mapping, at a ~~an accredited~~ college or university accredited by an accrediting body recognized by the United States Department of Education and has a specific experience record of 6 or more years as a subordinate to a registered surveyor and mapper in the active practice of surveying and mapping, 5 years of which shall be of a nature indicating that the applicant was in responsible charge of the accuracy and correctness of the surveying and mapping work performed. The applicant must have completed a minimum of 25 semester hours

from a college or university accredited by an accrediting body recognized by the United States Department of Education ~~approved by the board~~ in surveying and mapping subjects or in any combination of courses in civil engineering, surveying, mapping, mathematics, photogrammetry, forestry, or land law and the physical sciences. ~~Any of the required 25 semester hours of study completed not as a part of the bachelor's degree, its equivalent, or higher may be approved at the discretion of the board.~~ Work experience acquired as a part of the education requirement may not be construed as experience in responsible charge.

(c) The applicant has received an associate degree and has a specific experience record of 6 or more years as a subordinate to a professional surveyor and mapper in the active practice of surveying and mapping, 5 years of which shall be of a nature indicating that the applicant was in responsible charge of the accuracy and correctness of the surveying and mapping work performed. The applicant must have completed a minimum of 25 semester hours from a college or university accredited by an accrediting body recognized by the United States Department of Education in surveying and mapping subjects or in any combination of courses in civil engineering, surveying, mapping, mathematics, photogrammetry, forestry, or land law and the physical sciences. Work experience acquired as a part of the education requirement may not be construed as experience in

responsible charge.

(d) The applicant has received a high school diploma, or its equivalent, and has a specific experience record of 6 or more years as a subordinate to a professional surveyor and mapper in the active practice of surveying and mapping, 5 years of which shall be of a nature indicating that the applicant was in responsible charge of the accuracy and correctness of the surveying and mapping work performed. The applicant must have completed a minimum of 25 semester hours from a college or university accredited by an accrediting body recognized by the United States Department of Education in surveying and mapping subjects or in any combination of courses in civil engineering, surveying, mapping, mathematics, photogrammetry, forestry, or land law and the physical sciences. Work experience acquired as a part of the education requirement may not be construed as experience in responsible charge.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 925 Benchmark Replacements for London Interbank Offered Rate
SPONSOR(S): Insurance & Banking Subcommittee, Stevenson
TIED BILLS: **IDEN./SIM. BILLS:** SB 1246

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee	15 Y, 0 N, As CS	Hinshelwood	Luczynski
2) Civil Justice & Property Rights Subcommittee	16 Y, 0 N	Mawn	Jones
3) Commerce Committee		Hinshelwood	Hamon

SUMMARY ANALYSIS

The London Interbank Offered Rate (LIBOR) is the reference rate at which large banks indicate that they can borrow short-term wholesale funds from one another on an unsecured basis in the interbank market. LIBOR has been used in setting interest rates for adjustable rate mortgages, asset-backed securities, municipal bonds, credit default swaps, private student loans, and other types of debt. Prior to the end of 2021, LIBOR was calculated in five currencies (UK Pound Sterling, the Swiss Franc, the Euro, the Japanese Yen, and the U.S. Dollar), and LIBOR was produced in seven maturity terms or "tenors" (overnight/spot next, 1-week, 1-month, 2-month, 3-month, 6-month, and 12-month).

In 2014, the Federal Reserve Board and the Federal Reserve Bank of New York convened the Alternative Reference Rates Committee (ARRC) to address already-known risks related to the U.S. Dollar LIBOR. In 2017, the entity regulating LIBOR stated that LIBOR would cease after the end of 2021. However, most U.S. Dollar LIBOR tenors have been extended to the end of June 2023 to enable time for the market to transition away from LIBOR, and in 2017, the ARRC identified the Secured Overnight Financing Rate (SOFR) as its recommended alternative to the U.S. Dollar LIBOR. The Federal Reserve Bank of New York currently publishes SOFR data daily, as well as SOFR Averages and a SOFR Index.

The total exposure to the U.S. Dollar LIBOR, as of the fourth quarter of 2020, was $223 trillion. Although the derivatives market accounts for a large majority of the outstanding value of all financial products referencing the U.S. Dollar LIBOR, LIBOR is also referenced in several trillion dollars of corporate loans, floating-rate mortgages, floating-rate notes, and securitized products. While an estimated 67 percent of current LIBOR exposures will mature before LIBOR ceases at the end of June 2023, an estimated $74 trillion will remain outstanding. This fact underscores the importance of finding solutions for legacy contracts, including legacy LIBOR contracts that have no provisions to replace LIBOR upon its cessation.

For contracts and instruments lacking transition provisions, the bill provides for a transition to SOFR as the replacement rate for LIBOR; provides for conforming changes to be made to the contract or instrument; voids fallback provisions based on LIBOR; and provides for construction of rights and duties under contracts affected by the bill. The bill also precludes liability, a claim, or a cause of action arising out of or related to the selection or use of a recommended benchmark replacement or the determination, implementation, or performance of a benchmark replacement conforming change. The bill provides a statement demonstrating the overpowering public necessity for the bill and a finding that there are no alternative means to meet this public necessity. Additionally, the bill contains a statement of legislative intent indicating that the bill is remedial in nature and applies retroactively to all contracts, agreements, mortgages, deeds of trust, leases, instruments, obligations, or securities, whether representing debt or equity, and including all interests in a corporation, partnership, or limited liability company, in existence on December 31, 2021.

The bill has no fiscal impact on state or local governments and an indeterminate fiscal impact on the private sector.

The bill will take effect upon becoming law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

The London Interbank Offered Rate (LIBOR) is the reference rate at which large banks indicate that they can borrow short-term wholesale funds from one another on an unsecured basis in the interbank market.[1] The origins of LIBOR can be traced back to a loan transaction in 1969 in which multiple banks were joint lenders (i.e., a syndicated loan) on a large loan of $80 million.[2] The interest rate of the loan was based on the weighted average of the funding costs for each of the participating banks plus a spread for profit.[3] The rate was recalculated periodically; hence, the rate was variable and reflected market conditions.[4] The idea caught on, and eventually nearly all syndicated loans used LIBOR to calculate the interest charged.[5] Soon the rate was adopted by bankers outside the loan market who were looking for an elegant proxy for bank borrowing costs that was simple, fair, and appeared to be independent.[6]

In addition to providing loans at rates tied to LIBOR, banks whose submissions determined the fixing of LIBOR had also begun to borrow heavily using LIBOR-based contracts by the mid-1980s, creating an incentive to underreport funding costs.[7] As a result, the British Bankers' Association (BBA) took control of the rate in 1986 to formalize the data collection and governance process.[8] In that year, LIBOR settings were calculated for the U.S. dollar, the British pound, and the Japanese yen.[9] Over time, the inclusion of additional currencies and integration of existing currencies into the euro left the BBA with oversight of settings for over ten currencies as of 2012.[10] Fifteen maturity terms were reported for each currency, ranging from overnight to a 1 year term.[11]

Today, LIBOR is calculated daily by the Intercontinental Exchange (ICE) Benchmark Administration.[12] Eighteen international banks submit rates that each bank believes it would pay, not what it actually pays, if it had to borrow money from another bank on the interbank lending market in London.[13] The four highest and four lowest submissions are then removed in order to calculate LIBOR.[14] Prior to the end of 2021, the ICE Benchmark Administration calculated the rate in five currencies (UK Pound Sterling, the Swiss Franc, the Euro, Japanese Yen, and the U.S. Dollar), and LIBOR was produced in seven maturity terms or "tenors" (overnight/spot next, 1-week, 1-month, 2-month, 3-month, 6-month, and 12-month).[15]

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[1] David Hou & David Skeie, *LIBOR: Origins, Economics, Crisis, Scandal, and Reform, Federal Reserve Bank of New York Staff Reports* (Mar. 2014), https://www.newyorkfed.org/medialibrary/media/research/staff_reports/sr667.pdf (last visited Jan. 21, 2022).
[2] *Id.*
[3] Gavin Finch and Liam Vaughan, *The Man Who Invented the World's Most Important Number* (Nov. 29, 2016), https://www.bloomberg.com/news/features/2016-11-29/the-man-who-invented-libor-iw3fpmed (last visited Jan. 21, 2022).
[4] *Id.*
[5] *Id.*
[6] *Id.*
[7] David Hou & David Skeie, *supra* note 1.
[8] *Id.*
[9] *Id.*
[10] *Id.*
[11] *Id.*
[12] Miranda Marquit and Benjamin Curry, *What Is Libor And Why Is It Being Abandoned?*, Forbes (Dec. 16, 2020), https://www.forbes.com/advisor/investing/what-is-libor/ (last visited Jan. 21, 2022).
[13] *Id.*
[14] *Id.*
[15] *Id.*; Financial Conduct Authority, *About LIBOR Transition*, https://www.fca.org.uk/markets/libor-transition (last visited Jan. 21, 2022).

LIBOR has come under increasing scrutiny from regulators and financial markets alike following the 2008 financial crisis as well as documented patterns of manipulation by participating banks.[16] Others have noted the declining correlations between LIBOR and actual bank funding costs.[17] In 2017, the entity that regulates LIBOR, the Financial Conduct Authority (FCA) of the United Kingdom, stated that LIBOR would cease after the end of 2021.[18] However, most U.S. Dollar LIBOR tenors have been extended to the end of June 2023 to enable time for the market to transition away from LIBOR.[19] The 1-week and 2-month U.S. Dollar LIBOR ended at the end of 2021.[20] The FCA has recommended transitions to alternative rates before these dates.[21]

In 2014, the Federal Reserve Board and the Federal Reserve Bank of New York convened the Alternative Reference Rates Committee (ARRC) to address risks related to the U.S. Dollar LIBOR.[22] The ARRC's initial objectives were to identify risk-free alternative reference rates for the U.S. Dollar LIBOR, identify best practices for contract robustness, and create an implementation plan with metrics of success and a timeline to support an orderly adoption.[23] The ARCC was reconstituted in 2018 with an expanded membership to serve as a forum to coordinate planning across cash and derivatives products as well as market participants currently using the U.S. Dollar LIBOR.[24] The ARRC is comprised of a diverse set of private-sector entities, each with an important presence in markets affected by the U.S. Dollar LIBOR, and a wide array of official-sector entities, including banking and financial sector regulators, as ex-officio members.[25]

In 2017, the ARRC identified the Secured Overnight Financing Rate (SOFR) as its recommended alternative to the U.S. Dollar LIBOR.[26] SOFR is fully-transaction based and is a broad measure of the cost of borrowing cash overnight collateralized by U.S. Treasury securities.[27] SOFR is based on transaction data from three segments of the Treasury repurchase agreement market: (1) tri-party repurchase agreements, (2) General Collateral Finance repurchase agreements; and (3) bilateral repurchase agreement transactions cleared through the Fixed Income Clearing Corporation.[28] The Federal Reserve Bank of New York currently publishes SOFR data daily, as well as SOFR Averages and a SOFR Index.[29]

LIBOR has been used in setting interest rates for adjustable rate mortgages, asset-backed securities, municipal bonds, credit default swaps, private student loans, and other types of debt.[30] The total exposure to the U.S. Dollar LIBOR, as of the fourth quarter of 2020, was $223 trillion.[31] Although the derivatives market accounts for a large majority of the outstanding value of all financial products referencing the U.S. Dollar LIBOR, LIBOR is also referenced in several trillion dollars of corporate loans, floating-rate mortgages, floating-rate notes, and securitized products.[32]
Financial institutions and other market participants have been in the process of assessing their exposure to the discontinuation of LIBOR, and various financial regulators have discouraged the use of

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[16] Marquit and Curry, *supra* note 12.
[17] Bowman et al*., How Correlated is LIBOR with Bank Funding Costs?* (June 29, 2020), https://www.federalreserve.gov/econres/notes/feds-notes/how-correlated-is-libor-with-bank-funding-costs-20200629.htm (last visited Jan. 21, 2022).
[18] Financial Conduct Authority, *supra* note 15.
[19] *Id*.
[20] *Id*.
[21] *Id*.
[22] Alternative Reference Rates Committee, *Frequently Asked Questions* (Aug. 27, 2021), https://www.newyorkfed.org/medialibrary/Microsites/arrc/files/ARRC-faq.pdf (last visited Jan. 21, 2022).
[23] *Id*.
[24] *Id*.
[25] *Id*.
[26] *Id.*
[27] *Id*.
[28] *Id*.
[29] *Id.*
[30] Marquit and Curry, *supra* note 12.
[31] Alternative Reference Rates Committee, *supra* note 22.
[32] *Id.*

LIBOR as a reference rate in new contracts after December 31, 2021.[33] Some financial contracts that reference LIBOR include robust fallback language that contemplates a replacement interest rate index or replacement interest rate calculation in the event that the rate referenced in the contract is discontinued. While an estimated 67 percent of current LIBOR exposures will mature before LIBOR ceases at the end of June 2023, an estimated $74 trillion will remain outstanding.[34] This fact underscores the importance of finding solutions for legacy contracts, including legacy LIBOR contracts that have no provisions to replace LIBOR upon its cessation.[35] The ARRC believes that legislation is a necessary step to address those contracts.[36]

Similar to the bill, federal legislation (H.R. 4616) has been proposed that would provide for the transition of certain financial contracts away from LIBOR.[37] In the event a contract referencing LIBOR does not have a fallback or replacement rate provision in effect when LIBOR is retired, or a replacement rate is not selected by a determining person as defined by H.R. 4616, H.R. 4616 provides for a transition to SOFR as the replacement rate.[38] H.R. 4616 also provides for conforming changes to these contracts, the continuity and enforceability of these contracts, and protections against liability as a result of such a transition.[39] H.R. 4616 passed the House but has not yet been acted upon in the Senate.[40]

New York[41] and Alabama[42] have passed similar legislation.

Effect of Proposed Changes

The bill provides the following legislative finding:

> The Legislature finds that the discontinuation of [LIBOR][43] as a viable interest rate threatens the continued viability of certain contracts, securities, and instruments and the rights of the parties to those contracts, securities, or instruments. Furthermore, the threat of unknown and potentially unbounded liability and the viability of contracts, securities, and instruments threatens the state's economy and has created an overpowering public necessity to provide an immediate and remedial legislative solution. Therefore, the Legislature intends for parties to certain contracts, securities, or instruments, as provided in [the bill], to enjoy heightened legal protections as a result of the discontinuation of LIBOR. The Legislature also finds that there are no alternative means to meet this public necessity. The Legislature finds that the public interest as a whole is best served by providing certainty to these contracts, securities, and instruments and the parties thereto, so that these contracts, securities, and instruments may remain viable and continue to be enforceable in the state.

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[33] *See, e.g.*, U.S. Securities and Exchange Commission Office of Compliance Inspections and Examinations, *Risk Alert* (June 18, 2020), https://www.sec.gov/files/Risk%20Alert%20-%20OCIE%20LIBOR%20Initiative_1.pdf (last visited Jan. 21, 2022); Board of Governors of the Federal Reserve System et al., *Statement on LIBOR Transition* (Nov. 30, 2020), https://www.federalreserve.gov/newsevents/pressreleases/files/bcreg20201130a1.pdf (last visited Jan. 21, 2022); Rohit Chopra, *Joint Statement on Managing the LIBOR Transition* (Oct. 20, 2021), https://www.consumerfinance.gov/about-us/newsroom/joint-statement-on-managing-the-libor-transition/#note5 (last visited Jan. 21, 2022).
[34] Alternative Reference Rates Committee, *supra* note 22.
[35] *Id.*
[36] *Id.*
[37] Adjustable Interest Rate (LIBOR) Act of 2021, H.R. 4616, 117th Cong., https://www.congress.gov/bill/117th-congress/house-bill/4616/text (last visited Jan. 21, 2022).
[38] *Id.*
[39] *Id.*
[40] *Id.*
[41] Discontinuance of the London interbank offered rate, Assembly Bill 164B, https://legislation.nysenate.gov/pdf/bills/2021/A164B (last visited Jan. 21, 2022).
[42] Financial transactions, Senate Bill 279, https://legiscan.com/AL/text/SB279/id/2379813 (last visited Jan. 21, 2022).
[43] "LIBOR" means, for purposes of the application of the bill to any particular contract, security, or instrument, the United States Dollar LIBOR, formerly known as the London Interbank Offered Rate, as administered by ICE Benchmark Administration, or any predecessor or successor thereof, or any tenor thereof, as applicable, that is used in making any calculation or determination of benchmark rates.

Under the bill, various LIBOR discontinuance events[44] trigger a LIBOR replacement date[45] for a contract, security, or instrument[46] that uses LIBOR as a benchmark[47] and that:

- Does not contain a fallback provision;[48] or
- Contains fallback provisions resulting in a benchmark replacement[49] that is based in any way on a LIBOR value.

For such a contract, security, or instrument, on the LIBOR replacement date, the recommended benchmark replacement will be the benchmark replacement by operation of law. The recommended benchmark is a benchmark replacement based on SOFR[50] and must include any recommended spread adjustment[51] and any benchmark replacement conforming change[52] that have been selected or

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[44] "LIBOR discontinuance event" means the earliest to occur of any of the following:

a. A public statement or publication of information by, or on behalf of, the administrator of LIBOR announcing that the administrator has ceased or will cease to provide LIBOR permanently or indefinitely, if, at the time of the statement or publication, there is no successor administrator that will continue to provide LIBOR.

b. A public statement or publication of information by the regulatory supervisor for the administrator of LIBOR, the Federal Reserve System, an insolvency official with jurisdiction over the administrator of LIBOR, a resolution authority with jurisdiction over the administrator of LIBOR, or a court or an entity with similar insolvency or resolution authority over the administrator of LIBOR, announcing that the administrator of LIBOR has ceased or will cease to provide LIBOR permanently or indefinitely, if, at the time of the statement or publication, there is no successor administrator that will continue to provide LIBOR.

c. A public statement or publication of information by the regulatory supervisor for the administrator of LIBOR announcing that LIBOR is no longer representative.

A public statement or publication of information that affects one or more tenors of LIBOR does not constitute a LIBOR discontinuance event with respect to a contract, security, or instrument that:

a. Provides for only one tenor of LIBOR, if the contract, security, or instrument requires interpolation and the tenor can be interpolated from LIBOR tenors that are not so affected; or

b. Allows a party to choose from more than one tenor of LIBOR and any of the tenors is not so affected or, if the contract, security, or instrument requires interpolation, can be interpolated from LIBOR tenors that are not so affected.

[45] "LIBOR replacement date" means:

a. In the case of a LIBOR discontinuance event described in a. or b. (*supra* note 44), the later of:

(I) The date of the public statement or publication of information referenced in a. or b. (*supra* note 44); or

(II) The date on which the administrator of LIBOR permanently or indefinitely ceases to provide LIBOR.

b. In the case of a LIBOR discontinuance event described in c. (*supra* note 44), the date of the public statement or publication of information referenced in c. (*supra* note 44).

2. A date that affects one or more tenors of LIBOR does not constitute a LIBOR replacement date with respect to a contract, security, or instrument that:

a. Provides for only one tenor of LIBOR, if the contract, security, or instrument requires interpolation and the tenor can be interpolated from LIBOR tenors that are not so affected; or

b. Allows a party to choose from more than one tenor of LIBOR and any of the tenors is not so affected or, if the contract, security, or instrument requires interpolation, can be interpolated from LIBOR tenors that are not so affected.

[46] "Contract, security, or instrument" includes, without limitation, any contract, agreement, mortgage, deed of trust, lease, instrument, obligation, or security, whether representing debt or equity, and including any interest in a corporation, partnership, or limited liability company.

[47] "Benchmark" means an index of interest rates or dividend rates that is used, in whole or in part, as the basis of, or as a reference for, calculating or determining a valuation, payment, or other measurement under or with respect to a contract, security, or instrument.

[48] "Fallback provision" means a term in a contract, security, or instrument which sets forth a methodology or procedure for determining a benchmark replacement, including any term relating to the date on which the benchmark replacement becomes effective, without regard to whether a benchmark replacement can be determined in accordance with the methodology or procedure.

[49] "Benchmark replacement" means a benchmark, an interest rate, or a dividend rate that may or may not be based, in whole or in part, on a prior setting of LIBOR, to replace LIBOR or any interest rate or dividend rate based on LIBOR, whether on a temporary, permanent, or indefinite basis, under or with respect to a contract, security, or instrument.

[50] "SOFR" means, with respect to any day, the secured overnight financing rate published for the day by the Federal Reserve Bank of New York as the administrator of the benchmark, or a successor administrator, on the Federal Reserve Bank of New York's website.

[51] "Recommended spread adjustment" means a spread adjustment, or method for calculating or determining the spread adjustment, which has been selected or recommended by a relevant recommending body for a recommended benchmark replacement for a particular type of contract, security, or instrument and for a particular term to account for the effects of

recommended by a relevant recommending body[53] with respect to the type of contract, security, or instrument.

After the occurrence of a LIBOR discontinuance event, any fallback provisions in a contract, security, or instrument which provide for a benchmark replacement based on or otherwise involving a poll, survey, or inquiry for quotes or information concerning interbank lending rates or any interest rate or dividend rate based on LIBOR will be void and of no force or effect.

For any contract, security, or instrument that uses LIBOR as a benchmark and that contains fallback provisions allowing or requiring the selection of a benchmark replacement that is based in any way on a LIBOR value or a benchmark replacement that is similar to LIBOR, a determining person[54] may, but is not required to, select the recommended benchmark replacement as the benchmark replacement after the occurrence of a LIBOR discontinuance event. In such case, the selection of the recommended benchmark replacement must be:

- Irrevocable;
- Made by the earlier of the LIBOR replacement date or the latest date for selecting a benchmark replacement according to the contract, security, or instrument; and
- Used in any determination of the benchmark under or with respect to the contract, security, or instrument occurring on and after the LIBOR replacement date.

If a recommended benchmark replacement becomes the benchmark replacement for a contract, security, or instrument under the bill, then all benchmark replacement conforming changes that are applicable to the recommended benchmark replacement must become an integral part of the contract, security, or instrument by operation of law.

The selection or use of a recommended benchmark replacement as a benchmark replacement under or with respect to a contract, security, or instrument, by operation of the bill, constitutes:

- A commercially reasonable replacement for and a commercially substantial equivalent to LIBOR.

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the transition or change from LIBOR to a recommended benchmark replacement. This term may be a positive or negative value or zero.

[52] "Benchmark replacement conforming change" means, with respect to any type of contract, security, or instrument, a technical, administrative, or operational change, alteration, or modification that is associated with and reasonably necessary to the use, adoption, calculation, or implementation of a recommended benchmark replacement and that has been selected or recommended by a relevant recommending body. However, if, in the reasonable judgment of a calculating person, the change, alteration, or modification selected or recommended by a relevant recommending body does not apply to the contract, security, or instrument or is insufficient to allow administration and calculation of the recommended benchmark replacement, the benchmark replacement conforming change may include other changes, alterations, or modifications that, in the reasonable judgment of the calculating person:

1. Are necessary to allow administration and calculation of the recommended benchmark replacement under or with respect to the contract, security, or instrument in a manner consistent with market practice for substantially similar contracts, securities, or instruments and, to the extent practicable, the manner in which the contract, security, or instrument was administered immediately before the LIBOR replacement date.
2. Would not result in a disposition of the contract, security, or instrument for federal income tax purposes.

"Calculating person" means, with respect to any contract, security, or instrument, a person responsible for calculating or determining a valuation, payment, or other measurement based on a benchmark. This person may be the determining person. See *infra* note 54 for the definition of "determining person".

[53] "Relevant recommending body" means the Federal Reserve Board, the Federal Reserve Bank of New York, the ARRC, or a successor to any of these.

[54] "Determining person" means, with respect to any contract, security, or instrument, the following persons in decreasing order of priority:

1. A person so specified.
2. A person with the authority, right, or obligation to do any of the following:

a. Determine the benchmark replacement that will take effect on the LIBOR replacement date.

b. Calculate or determine a valuation, payment, or other measurement based on a benchmark.

c. Notify other persons of the occurrence of a LIBOR discontinuance event, a LIBOR replacement date, or a benchmark replacement.

- A reasonable, comparable, or analogous term for LIBOR under or with respect to the contract, security, or instrument.
- A replacement that is based on a methodology or information that is similar or comparable to LIBOR.
- Substantial performance by any person of any right or obligation relating to or based on LIBOR under or with respect to a contract, security, or instrument.

A LIBOR discontinuance event, a LIBOR replacement date, the selection or use of a recommended benchmark replacement as a benchmark replacement, or the determination, implementation, or performance of a benchmark replacement conforming change, in each case, by operation of the bill, may not:

- Be deemed to impair or affect the right of any person to receive a payment, or affect the amount or timing of the payment, under a contract, security, or instrument;
- Have the effect of discharging or excusing performance under a contract, security, or instrument for any reason, claim, or defense, including, but not limited to, any force majeure or other provision in a contract, security, or instrument;
- Have the effect of giving any person the right to unilaterally terminate or suspend performance under a contract, security, or instrument;
- Have the effect of constituting a breach of a contract, security, or instrument; or
- Have the effect of voiding or nullifying a contract, security, or instrument.

A person is not liable for damages to any other person, and is not subject to any claim or request for equitable relief, arising out of or related to the selection or use of a recommended benchmark replacement or the determination, implementation, or performance of a benchmark replacement conforming change, in each case, by operation of the bill. The selection or use of the recommended benchmark replacement or the determination, implementation, or performance of a benchmark replacement conforming change may not give rise to any claim or cause of action by any person in law or in equity.

The selection or use of a recommended benchmark replacement or the determination, implementation, or performance of a benchmark replacement conforming change, by operation of the bill, may not be deemed to:

- Be an amendment or modification of a contract, security, or instrument.
- Prejudice, impair, or affect a person's rights, interests, or obligations under or with respect to a contract, security, or instrument.

Except as otherwise provided in the bill, the bill may not be interpreted as creating a negative inference or negative presumption regarding the validity or enforceability of any of the following:

- A benchmark replacement that is not a recommended benchmark replacement.
- A spread adjustment, or method for calculating or determining a spread adjustment, which is not a recommended spread adjustment.
- A change, alteration, or modification to or with respect to a contract, security, or instrument which is not a benchmark replacement conforming change.

The bill does not alter or impair any of the following:

- A written agreement by all requisite parties[55] which, retrospectively or prospectively, provides that a contract, security, or instrument is not subject to the bill without necessarily referring specifically to the statute created by the bill.
- A contract, security, or instrument that contains fallback provisions that would result in a benchmark replacement that is not based on LIBOR, including, but not limited to, the prime rate or the federal funds rate. However, after the occurrence of a LIBOR discontinuance event, any fallback provisions in a contract, security, or instrument which provide for a benchmark replacement based on or otherwise involving a poll, survey, or inquiry for quotes or information concerning interbank lending rates or any interest rate or dividend rate based on LIBOR will be void and of no force or effect.
- A contract, security, or instrument as to which a determining person does not elect to use a recommended benchmark replacement or as to which a determining person elects to use a recommended benchmark replacement before the occurrence of a LIBOR discontinuance event. However, after the occurrence of a LIBOR discontinuance event, any fallback provisions in a contract, security, or instrument which provide for a benchmark replacement based on or otherwise involving a poll, survey, or inquiry for quotes or information concerning interbank lending rates or any interest rate or dividend rate based on LIBOR will be void and of no force or effect.
- The application to a recommended benchmark replacement of any cap, floor, modifier, or spread adjustment to which LIBOR had been subject pursuant to the terms of a contract, security, or instrument.

Notwithstanding the Uniform Commercial Code[56] or any other law of this state, and except as otherwise provided in the bill, the bill applies to all contracts, securities, and instruments, including contracts with respect to commercial transactions, and may not be superseded by any other law of this state.

The bill provides that it is remedial in nature and applies retroactively to all contracts, agreements, mortgages, deeds of trust, leases, instruments, obligations, or securities, whether representing debt or equity, and including all interests in a corporation, partnership, or limited liability company, in existence on December 31, 2021.

The bill takes effect upon becoming a law.

B. SECTION DIRECTORY:

Section 1. Amends s. 687.15, F.S., relating to benchmark replacements for the London Interbank Offered Rate.
Section 2. Provides that this act is remedial in nature and applies retroactively.
Section 3. Provides that this act shall take effect upon becoming a law.

II. FICAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

[55] "Requisite parties" means all parties required to amend the terms and provisions of a contract, security, or instrument that would otherwise be altered or affected by the bill.
[56] Chapters 670-680, F.S., comprise the Uniform Commercial Code. s. 671.101, F.S.

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill has an indeterminate impact on the private sector. The bill may have both positive and negative impacts on private sector entities. Replacing LIBOR with SOFR could result in a different interest rate under the contract or instrument, though the ARCC has recommended spread adjustments for various types of financial contracts and instruments for which SOFR replaces LIBOR. Additionally, the bill could prevent an aggrieved party from bringing a claim in court relating to the replacement of LIBOR with SOFR and any accompanying conforming changes, but elimination of such liability and claims may have the effect of quieting financial markets.

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:

   Impairment of Contracts and Due Process

   Both the Florida and the United States Constitutions prohibit the state from passing a law impairing contractual obligations.[57] However, the Legislature may provide that a non-criminal law, including one that affects existing contractual obligations, applies retroactively in certain situations.[58] In determining whether a law may be applied retroactively, courts first determine whether the law is procedural, remedial, or substantive in nature.[59] A purely procedural or remedial law may apply retroactively without offending the Constitution, but a substantive law generally may not apply retroactively absent clear legislative intent to the contrary.[60] However, even where the Legislature has expressly stated that a law will have retroactive application, a court may reject that application if the law impairs a vested right, creates a new obligation, or imposes a new penalty.[61] Further, where a law is designed to serve a remedial purpose, a court may decide not to apply the law retroactively where doing so "would attach new legal consequences to events completed before its enactment."[62]

   Moreover, both the Florida and United States Constitutions prohibit the taking of life, liberty, or property without due process of law.[63] The right to contract, as long as no fraud or deception is involved and the contract is otherwise legal, is both a liberty and a property right subject to due

[57] U.S. Const. art. I, s. 10; Art. I, s. 10, Fla. Const.
[58] U.S. Const. art. I, ss. 9 and 10; Art. 1, s. 10, Fla. Const.
[59] A procedural law merely establishes the means and methods for applying or enforcing existing duties or rights. A remedial law confers or changes a remedy, i.e., the means employed in enforcing an existing right or in redressing an injury. A substantive law creates, alters, or impairs existing substantive rights. *Windom v. State*, 656 So. 2d 432 (Fla. 1995); *St. John's Village I, Ltd. v. Dept. of State*, 497 So. 2d 990 (Fla. 5th DCA 1986); *McMillen v. State Dept. of Revenue*, 74 So. 2d 1234 (Fla. 1st DCA 1999).
[60] *State Farm Mutual Automobile Ins. Co. v. Laforet*, 658 So. 2d 55 (Fla. 1995).
[61] *Menendez v. Progressive Exp. Ins. Co., Inc.*, 35 So. 3d 873 (Fla. 2010).
[62] *L. Ross, Inc. v. R.W. Roberts Const. Co.*, 481 So. 2d 484 (Fla. 1986).
[63] U.S. Const. amends. V and XIV; Art. I, s. 21, Fla. Const.

process protections, and the impairment of contracts may, in certain instances, be viewed as the taking of property without due process.[64]

For certain contracts and instruments, the bill provides for a transition to SOFR as the replacement rate for LIBOR, provides for conforming changes to be made to the contract or instrument, voids fallback provisions that are based on LIBOR, and provides for construction of rights and duties under contracts affected by the bill. Additionally, the bill contains a statement of legislative intent indicating that the bill is remedial in nature and applies retroactively to all contracts, agreements, mortgages, deeds of trust, leases, instruments, obligations, or securities, whether representing debt or equity, and including all interests in a corporation, partnership, or limited liability company, in existence on December 31, 2021. Whether the Legislature's retroactive modification of such contracts and instruments is procedural, remedial, or substantive, and whether such modification implicates the constitutional right to contract or the constitutional right to due process, is for the courts to decide.

Access to Courts

In *Kluger v. White*,[65] the Florida Supreme Court evaluated to what extent the Legislature may alter a civil cause of action. The Court stated that it would not completely prohibit the Legislature from altering a cause of action, but neither would it allow the Legislature "to destroy a traditional and long-standing cause of action upon mere legislative whim . . . ." The takeaway from *Kluger* and other relevant case law is that the Legislature may:

- Reduce the right to bring a cause of action as long as the right is not entirely abolished.[66]
- Abolish a cause of action that is not "traditional and long-standing" – that is, a cause of action that did not exist at common law, and that did not exist in statute before the adoption of the Florida Constitution's Declaration of Rights.[67]
- Abolish a cause of action if the Legislature either:
    - Provides a reasonable commensurate benefit in exchange;[68] or
    - Shows an "overpowering public necessity for the abolishment of such right, and no alternative method of meeting such public necessity can be shown."[69]

The bill precludes liability, a claim, or a cause of action arising out of or related to the selection or use of a recommended benchmark replacement or the determination, implementation, or performance of a benchmark replacement conforming change. The bill also provides a statement demonstrating the overpowering public necessity for the bill and a finding that there are no alternative means to meet this public necessity.

B. RULE-MAKING AUTHORITY:

None.

[64] *Miles v. City of Edgewater Police Dept.*, 190 So. 3d 171 (Fla. 1st DCA 2016); *see, e.g., Griffin v. Sharpe*, 65 So. 2d 751 (Fla. 1953) (finding that a statute removing a specific deed restriction's expiration date both impaired contracts and constituted a taking of private property without due process).
[65] *Kluger*, 281 So. 2d 1 (Fla. 1973).
[66] *See Achord v. Osceola Farms Co.*, 52 So. 3d 699 (Fla. 2010).
[67] *See Anderson v. Gannett Comp.*, 994 So. 2d 1048 (Fla. 2008) (false light was not actionable under the common law); *McPhail v. Jenkins*, 382 So. 2d 1329 (Fla. 1980) (wrongful death was not actionable under the common law); *see also Kluger*, 281 So. 2d at 4 ("We hold, therefore, that where a right of access to the courts for redress for a particular injury has been provided by statutory law predating the adoption of the Declaration of Rights of the Constitution of the State of Florida, or where such right has become a part of the common law of the State . . . the Legislature is without power to abolish such a right without providing a reasonable alternative . . . unless the Legislature can show an overpowering public necessity. . .").
[68] *Kluger*, 281 So. 2d at 4; *see Univ. of Miami v. Echarte*, 618 So. 2d 189 (Fla. 1993) (upholding statutory cap on medical malpractice damages because the Legislature provided arbitration, which is a "commensurate benefit" for a claimant); *accord Lasky v. State Farm Ins. Co.*, 296 So. 2d 9 (Fla. 1974); *but see Smith v. Dept. of Ins.*, 507 So. 2d 1080 (Fla. 1992) (striking down noneconomic cap on damages, which, although not wholly abolishing a cause of action, did not provide a commensurate benefit).
[69] *Kluger*, 281 So. 2d at 4-5 (noting that in 1945, the Legislature abolished the right to sue for several causes of action, but successfully demonstrated "the public necessity required for the total abolition of a right to sue") (citing *Rotwein v. Gersten*, 36 So. 2d 419 (Fla. 1948); *see Echarte*, 618 So. 2d at 195 ("Even if the medical malpractice arbitration statutes at issue did not provide a commensurate benefit, we would find that the statutes satisfy the second prong of *Kluger* which requires a legislative finding that an 'overpowering public necessity' exists, and further that 'no alternative method of meeting such public necessity can be shown'").

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On January 13, 2022, the Insurance & Banking Subcommittee considered one amendment, which was adopted, and reported the bill favorably as a committee substitute. The committee substitute:

- Clarifies the definition of "benchmark replacement conforming change" to reflect that subparagraph 2 (relating to a calculating person's discretion to choose benchmark replacement conforming changes) is permissive rather than a mandatory requirement for every contract, security, or instrument subject to the bill.
- Amends s. 687.15(7), F.S., as created in the bill, to clarify that the bill deems the statements in paragraphs (a) – (d) to be true when a recommended benchmark replacement is selected or used.
- Changes the phrase "recommended replacement benchmark" to "recommended benchmark replacement," as "recommended benchmark replacement" is the defined term.

The staff analysis has been updated to reflect the committee substitute as passed by the Insurance & Banking Subcommittee.

A bill to be entitled

An act relating to benchmark replacements for London Interbank Offered Rate; creating s. 687.15, F.S.; providing legislative findings and intent and a statement of public interest; providing definitions; requiring that recommended benchmark replacements selected or recommended by specified persons be benchmark replacements on the United States dollar London Interbank Offered Rate (LIBOR) replacement date for certain contracts, securities, and instruments; requiring certain fallback provisions in contracts, securities, and instruments providing specified benchmark replacements to be disregarded and void; authorizing specified persons to select benchmark replacements under certain circumstances; providing requirements for such selection; providing applicability; requiring benchmark replacement conforming changes to become an integral part of contracts, securities, and instruments under certain circumstances; providing construction; providing that a person is not liable for damages and is not subject to claims and requests for equitable relief under certain circumstances; providing applicability; prohibiting other laws from superseding specified provisions; providing that the act is remedial in

nature; providing retroactive applicability; providing an effective date.

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

Section 1. Section 687.15, Florida Statutes, is created to read:

687.15 Benchmark replacements for the London Interbank Offered Rate.—

(1) The Legislature finds that the discontinuation of the London Interbank Offered Rate (LIBOR) as a viable interest rate threatens the continued viability of certain contracts, securities, and instruments and the rights of the parties to those contracts, securities, or instruments. Furthermore, the threat of unknown and potentially unbounded liability and the viability of contracts, securities, and instruments threatens the state's economy and has created an overpowering public necessity to provide an immediate and remedial legislative solution. Therefore, the Legislature intends for parties to certain contracts, securities, or instruments, as provided in this section, to enjoy heightened legal protections as a result of the discontinuation of LIBOR. The Legislature also finds that there are no alternative means to meet this public necessity. The Legislature finds that the public interest as a whole is best served by providing certainty to these contracts,

securities, and instruments and the parties thereto, so that these contracts, securities, and instruments may remain viable and continue to be enforceable in the state.

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

(a) "Benchmark" means an index of interest rates or dividend rates that is used, in whole or in part, as the basis of, or as a reference for, calculating or determining a valuation, payment, or other measurement under or with respect to a contract, security, or instrument.

(b) "Benchmark replacement" means a benchmark, an interest rate, or a dividend rate that may or may not be based, in whole or in part, on a prior setting of LIBOR, to replace LIBOR or any interest rate or dividend rate based on LIBOR, whether on a temporary, permanent, or indefinite basis, under or with respect to a contract, security, or instrument.

(c) "Benchmark replacement conforming change" means, with respect to any type of contract, security, or instrument, a technical, administrative, or operational change, alteration, or modification that is associated with and reasonably necessary to the use, adoption, calculation, or implementation of a recommended benchmark replacement and that has been selected or recommended by a relevant recommending body. However, if, in the reasonable judgment of a calculating person, the change, alteration, or modification selected or recommended by a relevant recommending body does not apply to the contract,

security, or instrument or is insufficient to allow administration and calculation of the recommended benchmark replacement, the benchmark replacement conforming change may include other changes, alterations, or modifications that, in the reasonable judgment of the calculating person:

1. Are necessary to allow administration and calculation of the recommended benchmark replacement under or with respect to the contract, security, or instrument in a manner consistent with market practice for substantially similar contracts, securities, or instruments and, to the extent practicable, the manner in which the contract, security, or instrument was administered immediately before the LIBOR replacement date.

2. Would not result in a disposition of the contract, security, or instrument for federal income tax purposes.

(d) "Calculating person" means, with respect to any contract, security, or instrument, a person responsible for calculating or determining a valuation, payment, or other measurement based on a benchmark. This person may be the determining person.

(e) "Contract, security, or instrument" includes, without limitation, any contract, agreement, mortgage, deed of trust, lease, instrument, obligation, or security, whether representing debt or equity, and including any interest in a corporation, partnership, or limited liability company.

(f) "Determining person" means, with respect to any

contract, security, or instrument, the following persons in decreasing order of priority:

1. A person so specified.

2. A person with the authority, right, or obligation to do any of the following:

a. Determine the benchmark replacement that will take effect on the LIBOR replacement date.

b. Calculate or determine a valuation, payment, or other measurement based on a benchmark.

c. Notify other persons of the occurrence of a LIBOR discontinuance event, a LIBOR replacement date, or a benchmark replacement.

(g) "Fallback provision" means a term in a contract, security, or instrument which sets forth a methodology or procedure for determining a benchmark replacement, including any term relating to the date on which the benchmark replacement becomes effective, without regard to whether a benchmark replacement can be determined in accordance with the methodology or procedure.

(h) "LIBOR" means, for purposes of the application of this section to any particular contract, security, or instrument, the United States dollar LIBOR, formerly known as the London Interbank Offered Rate, as administered by ICE Benchmark Administration, or any predecessor or successor thereof, or any tenor thereof, as applicable, that is used in making any

calculation or determination of benchmark rates.

(i)1. "LIBOR discontinuance event" means the earliest to occur of any of the following:

a. A public statement or publication of information by, or on behalf of, the administrator of LIBOR announcing that the administrator has ceased or will cease to provide LIBOR permanently or indefinitely, if, at the time of the statement or publication, there is no successor administrator that will continue to provide LIBOR.

b. A public statement or publication of information by the regulatory supervisor for the administrator of LIBOR, the Federal Reserve System, an insolvency official with jurisdiction over the administrator of LIBOR, a resolution authority with jurisdiction over the administrator of LIBOR, or a court or an entity with similar insolvency or resolution authority over the administrator of LIBOR, announcing that the administrator of LIBOR has ceased or will cease to provide LIBOR permanently or indefinitely, if, at the time of the statement or publication, there is no successor administrator that will continue to provide LIBOR.

c. A public statement or publication of information by the regulatory supervisor for the administrator of LIBOR announcing that LIBOR is no longer representative.

2. A public statement or publication of information that affects one or more tenors of LIBOR does not constitute a LIBOR

discontinuance event with respect to a contract, security, or instrument that:

a. Provides for only one tenor of LIBOR, if the contract, security, or instrument requires interpolation and the tenor can be interpolated from LIBOR tenors that are not so affected; or

b. Allows a party to choose from more than one tenor of LIBOR and any of the tenors is not so affected or, if the contract, security, or instrument requires interpolation, can be interpolated from LIBOR tenors that are not so affected.

(j)1. "LIBOR replacement date" means:

a. In the case of a LIBOR discontinuance event described in sub-subparagraph (i)1.a. or sub-subparagraph (i)1.b., the later of:

(I) The date of the public statement or publication of information referenced in sub-subparagraph (i)1.a. or sub-subparagraph (i)1.b.; or

(II) The date on which the administrator of LIBOR permanently or indefinitely ceases to provide LIBOR.

b. In the case of a LIBOR discontinuance event described in sub-subparagraph (i)1.c., the date of the public statement or publication of information referenced in sub-subparagraph (i)1.c.

2. A date that affects one or more tenors of LIBOR does not constitute a LIBOR replacement date with respect to a contract, security, or instrument that:

a. Provides for only one tenor of LIBOR, if the contract, security, or instrument requires interpolation and the tenor can be interpolated from LIBOR tenors that are not so affected; or

b. Allows a party to choose from more than one tenor of LIBOR and any of the tenors is not so affected or, if the contract, security, or instrument requires interpolation, can be interpolated from LIBOR tenors that are not so affected.

(k) "Recommended benchmark replacement" means, with respect to any particular type of contract, security, or instrument, a benchmark replacement based on SOFR that must include any recommended spread adjustment and any benchmark replacement conforming change that have been selected or recommended by a relevant recommending body with respect to the type of contract, security, or instrument.

(l) "Recommended spread adjustment" means a spread adjustment, or method for calculating or determining the spread adjustment, which has been selected or recommended by a relevant recommending body for a recommended benchmark replacement for a particular type of contract, security, or instrument and for a particular term to account for the effects of the transition or change from LIBOR to a recommended benchmark replacement. This term may be a positive or negative value or zero.

(m) "Relevant recommending body" means the Federal Reserve Board, the Federal Reserve Bank of New York, the Alternative Reference Rates Committee, or a successor to any of them.

(n) "SOFR" means, with respect to any day, the secured overnight financing rate published for the day by the Federal Reserve Bank of New York as the administrator of the benchmark, or a successor administrator, on the Federal Reserve Bank of New York's website.

(3) On the LIBOR replacement date, the recommended benchmark replacement, by operation of law, shall be the benchmark replacement for a contract, security, or instrument that uses LIBOR as a benchmark and that:

(a) Does not contain a fallback provision; or

(b) Contains fallback provisions resulting in a benchmark replacement, other than a recommended benchmark replacement, that is based in any way on a LIBOR value.

(4) After the occurrence of a LIBOR discontinuance event, any fallback provisions in a contract, security, or instrument which provide for a benchmark replacement based on or otherwise involving a poll, survey, or inquiry for quotes or information concerning interbank lending rates or any interest rate or dividend rate based on LIBOR shall be void and of no force or effect.

(5)(a) A determining person may, but is not required to, select the recommended benchmark replacement as the benchmark replacement after the occurrence of a LIBOR discontinuance event. The selection of the recommended benchmark replacement must be:

1. Irrevocable;

2. Made by the earlier of the LIBOR replacement date or the latest date for selecting a benchmark replacement according to the contract, security, or instrument; and

3. Used in any determination of the benchmark under or with respect to the contract, security, or instrument occurring on and after the LIBOR replacement date.

(b) Paragraph (a) applies to a contract, security, or instrument that uses LIBOR as a benchmark and that contains fallback provisions allowing or requiring the selection of a benchmark replacement that is:

1. Based in any way on a LIBOR value; or

2. The substantive equivalent of paragraph (7)(a), paragraph (7)(b), or paragraph (7)(c).

(6) If a recommended benchmark replacement becomes the benchmark replacement for a contract, security, or instrument under this section, then all benchmark replacement conforming changes that are applicable to the recommended benchmark replacement must become an integral part of the contract, security, or instrument by operation of law.

(7) The selection or use of a recommended benchmark replacement as a benchmark replacement under or with respect to a contract, security, or instrument by operation of this section constitutes all of the following:

(a) A commercially reasonable replacement for and a

commercially substantial equivalent to LIBOR.

(b) A reasonable, comparable, or analogous term for LIBOR under or with respect to the contract, security, or instrument.

(c) A replacement that is based on a methodology or information that is similar or comparable to LIBOR.

(d) Substantial performance by any person of any right or obligation relating to or based on LIBOR under or with respect to a contract, security, or instrument.

(8) A LIBOR discontinuance event, a LIBOR replacement date, the selection or use of a recommended benchmark replacement as a benchmark replacement, or the determination, implementation, or performance of a benchmark replacement conforming change, in each case, by operation of this section, may not:

(a) Be deemed to impair or affect the right of any person to receive a payment, or affect the amount or timing of the payment, under a contract, security, or instrument;

(b) Have the effect of discharging or excusing performance under a contract, security, or instrument for any reason, claim, or defense, including, but not limited to, any force majeure or other provision in a contract, security, or instrument;

(c) Have the effect of giving any person the right to unilaterally terminate or suspend performance under a contract, security, or instrument;

(d) Have the effect of constituting a breach of a

contract, security, or instrument; or

(e) Have the effect of voiding or nullifying a contract, security, or instrument.

(9) A person is not liable for damages to any other person, and is not subject to any claim or request for equitable relief, arising out of or related to the selection or use of a recommended benchmark replacement or the determination, implementation, or performance of a benchmark replacement conforming change, in each case, by operation of this section. The selection or use of the recommended benchmark replacement or the determination, implementation, or performance of a benchmark replacement conforming change may not give rise to any claim or cause of action by any person in law or in equity.

(10) The selection or use of a recommended benchmark replacement or the determination, implementation, or performance of a benchmark replacement conforming change, by operation of this section, may not be deemed to:

(a) Be an amendment or modification of a contract, security, or instrument.

(b) Prejudice, impair, or affect a person's rights, interests, or obligations under or with respect to a contract, security, or instrument.

(11) Except as provided in subsection (3) or subsection (5), this section may not be interpreted as creating a negative inference or negative presumption regarding the validity or

enforceability of any of the following:

(a) A benchmark replacement that is not a recommended benchmark replacement.

(b) A spread adjustment, or method for calculating or determining a spread adjustment, which is not a recommended spread adjustment.

(c) A change, alteration, or modification to or with respect to a contract, security, or instrument which is not a benchmark replacement conforming change.

(12) This section does not alter or impair any of the following:

(a) A written agreement by all requisite parties which, retrospectively or prospectively, provides that a contract, security, or instrument is not subject to this section without necessarily referring specifically to this section. As used in this paragraph, the term "requisite parties" means all parties required to amend the terms and provisions of a contract, security, or instrument that would otherwise be altered or affected by this section.

(b) A contract, security, or instrument that contains fallback provisions that would result in a benchmark replacement that is not based on LIBOR, including, but not limited to, the prime rate or the federal funds rate. However, the contract, security, or instrument is subject to subsection (4).

(c) A contract, security, or instrument subject to

subsection (5) as to which a determining person does not elect to use a recommended benchmark replacement or as to which a determining person elects to use a recommended benchmark replacement before the occurrence of a LIBOR discontinuance event. However, the contract, security, or instrument is subject to subsection (4).

(d) The application to a recommended benchmark replacement of any cap, floor, modifier, or spread adjustment to which LIBOR had been subject pursuant to the terms of a contract, security, or instrument.

(13) Notwithstanding the Uniform Commercial Code or any other law of this state, and except as otherwise provided in this section, this section applies to all contracts, securities, and instruments, including contracts with respect to commercial transactions, and may not be superseded by any other law of this state.

Section 2. This act is remedial in nature and applies retroactively to all contracts, agreements, mortgages, deeds of trust, leases, instruments, obligations, or securities, whether representing debt or equity, and including all interests in a corporation, partnership, or limited liability company, in existence on December 31, 2021.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1439 Prostitution, Lewdness, Human Trafficking, and Public Lodging
SPONSOR(S): Criminal Justice & Public Safety Subcommittee, Toledo and others
TIED BILLS: HB 1441 **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice & Public Safety Subcommittee	16 Y, 0 N, As CS	Mathews	Hall
2) Commerce Committee		Wright	Hamon
3) Justice Appropriations Subcommittee			
4) Judiciary Committee			

SUMMARY ANALYSIS

Human trafficking is modern day slavery which involves the transporting, soliciting, recruiting, harboring, providing, enticing, maintaining, or obtaining another person for the purpose of exploiting that person. Victims can be exploited for commercial sex in numerous contexts and traffickers frequently leverage and exploit legitimate businesses or institutions such as social media, financial institutions, transportation systems, and hotels or motels to carry out illegal activities.

In Florida, public lodging establishments, including vacation rentals, are regulated by the Division of Hotels and Restaurants of the Department of Business and Professional Regulation. Florida law does not currently prohibit operators of public lodging establishments from offering hourly rates for accommodations to customers. CS/HB 1439 prohibits an operator of a public lodging establishment from offering an hourly rate for an accommodation, and requires a guest of a public lodging establishment to provide positive proof of identification to the operator of the establishment at the time of occupancy.

Current law provides that a person who solicits, induces, or procures another person to commit prostitution, lewdness, or assignation commits a first degree misdemeanor for a first violation. A person who purchases the services of another person engaged in prostitution commits a second degree misdemeanor for a first violation. The bill amends increases the penalties for soliciting, enticing, or procuring another person to commit prostitution, lewdness, or assignation, and purchasing the services of any person engaged in prostitution. Under the bill, a first offense for either crime is a third degree felony.

A victim of human trafficking is eligible for expunction of their criminal record related to a human trafficking scheme of which the person was a victim or when the offense was committed at the direction of an operator of the scheme. However, certain violent felony offenses are not eligible for expunction. CS/HB 1439 authorizes a victim to seek expunction for an arrest or charges filed for such criminal offenses, so long as he or she was not found guilty of, or did not plead guilty or nolo contendere to, the offense.

Currently, there is no singular statewide data repository for human trafficking data and reports. The bill creates the Statewide Data Repository for Anonymous Human Trafficking Data (Repository). The bill requires the TIP Lab to work with law enforcement and required reporting entities to collect, analyze, and distribute data relating to human trafficking in Florida.

The bill may have an indeterminate positive impact on prison beds by creating new felony offenses and increasing penalties for current felony offenses.

The bill is effective upon becoming a law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Human trafficking is modern day slavery which involves the transporting, soliciting, recruiting, harboring, providing, enticing, maintaining, or obtaining another person for the purpose of exploiting that person. Victims may be exploited for commercial sex in numerous contexts, including street prostitution, illicit massage parlors, brothels, escort services, and online advertising. Further, traffickers frequently leverage and exploit legitimate businesses or institutions such as social media, financial institutions, transportation systems, and hotels or motels.

Public Lodging Establishments and Vacation Rentals

Background

According to research, human trafficking for commercial sexual activity commonly takes place in hotels or motels.[1] In Florida, public lodging establishments and vacation rentals are regulated by the Division of Hotels and Restaurants (H&R) of the Department of Business and Professional Regulation, under ch. 509, F.S. Each public lodging establishment must obtain a license from H&R and is subject to inspections.[2]

"Public lodging establishment" includes:[3]

- "Transient public lodging establishments," which means any unit, group of units, dwelling, building, or group of buildings within a single complex of buildings which is rented to guests more than three times in a calendar year for periods of less than 30 days, or 1 calendar month, whichever is less, or which is advertised or held out to the public as a place regularly rented to guests.
    - "Vacation rental" is defined as any unit or group of units in a condominium or cooperative or any individually or collectively owned single-family, two-family, three-family, or four-family house or dwelling unit that is also a transient public lodging establishment but that is not a timeshare project.[4]
- "Nontransient public lodging establishments," which means any unit, group of units, dwelling, building, or group of buildings within a single complex of buildings which is rented to guests for periods of at least 30 days or 1 calendar month, whichever is less, or which is advertised or held out to the public as a place regularly rented to guests for periods of at least 30 days or 1 calendar month.

Classifications of public lodging establishments include apartments, hotels, motels, vacation rentals, bed and breakfast inns, and timeshare projects.[5]

If a public lodging establishment operates in violation of ch. 509, F.S., or H&R rules, H&R may impose the following disciplinary actions:[6]

- Fines not to exceed $1,000 per offense; and
- The suspension, revocation, or refusal of a license.

[1] The Polaris Project, *The Typology of Modern Slavery: Defining Sex and Labor Trafficking in the United States*, (March 2017) https://polarisproject.org/wp-content/uploads/2019/09/Polaris-Typology-of-Modern-Slavery-1.pdf (last visited January 25, 2022).
[2] S. 509.241(1), F.S.
[3] S. 509.013(4), F.S.
[4] S. 509.242(1)(c), F.S.
[5] S. 509.242, F.S.
[6] S. 509.261(1), F.S.

Each operator of a transient establishment[7] must maintain a register, signed by or for guests who occupy rental units within the establishment, showing the dates upon which the rental units were occupied by such guests and the rates charged for their occupancy. This register must contain records from the last two years, be maintained in chronological order, and be available for inspection by H&R at any time.[8]

Currently, public lodging establishments are not prohibited from offering hourly rates for accommodations to customers. Also, under ch. 509, F.S., public lodging establishments do not need to require guests to prove their identification when they occupy the premises.

Effect of Proposed Changes

CS/HB 1439 creates s. 509.098, F.S., to:

- Prohibit an operator of a public lodging establishment or vacation rental from offering an hourly rate for an accommodation, and
- Require a guest of a public lodging establishment or vacation rental to provide positive proof of identification to the operator of the establishment at the time of occupancy.

The bill defines "vacation rental" in the same manner as it is currently defined in ch. 509, F.S.

Soliciting or Purchasing Prostitution

Background

Section 796.07, F.S., defines prostitution as the giving or receiving of the body for sexual activity for hire.[9]

Under s. 796.07(2)(a)-(e) and (g)-(i), F.S., it is a second degree misdemeanor:[10]

- To own, establish, maintain, or operate any place, structure, building, or conveyance for the purpose of lewdness, assignation, or prostitution;
- To offer, or to offer or agree to secure, another for the purpose of prostitution or for any other lewd or indecent act;
- To receive, or to offer or agree to receive, any person into any place, structure, building, or conveyance for the purpose of prostitution, lewdness, or assignation, or to permit any person to remain there for such purpose;
- To direct, take, or transport, or to offer or agree to direct, take, or transport, any person to any place, structure, or building, or to any other person, with knowledge or reasonable cause to believe that the purpose of such directing, taking, or transporting is prostitution, lewdness, or assignation;
- For a person 18 years of age or older to offer to commit, or to commit, or to engage in, prostitution, lewdness, or assignation;
- To reside in, enter, or remain in, any place, structure, or building, or to enter or remain in any conveyance, for the purpose of prostitution, lewdness, or assignation;
- To aid, abet, or participate in any of the acts or things listed above; or
- *To purchase the services of any person engaged in prostitution.*[11]

The penalty for a violation listed above is reclassified to a first degree misdemeanor for a second violation, and a third degree felony for any third or subsequent violation.[12]

[7] "Transient establishment" means any public lodging establishment that is rented or leased to guests by an operator whose intention is that such guests' occupancy will be temporary. S. 509.013(11), F.S.
[8] S. 509.101(2), F.S.
[9] This definition excludes sexual activity between spouses. S. 796.07(1)(a), F.S.
[10] A second degree misdemeanor is punishable by up to 60 days in county jail and a fine not exceeding $500. Ss. 775.082 and 775.083, F.S.
[11] S. 796.07(2), F.S.
[12] S. 796.07(4), F.S.

Additionally, under s. 796.07(f), F.S., a person who solicits, induces, or procures another person to commit prostitution, lewdness,[13] or assignation[14] commits a first degree misdemeanor for a first violation, a third degree felony for a second violation, and a second degree felony for a third or subsequent violation. [15]

Effect of Proposed Changes

CS/HB 1439 amends s. 796.07, F.S., to increase the penalties for both the offenses of soliciting, enticing, or procuring another person to commit prostitution, lewdness, or assignation, and for purchasing the services of any person engaged in prostitution. Under the bill, the penalties for soliciting, inducing, enticing, or procuring another person to commit prostitution increase from a:

- First degree misdemeanor to a third degree felony for a first violation.
- Third degree felony to a second degree felony for a second violation.
- Second degree felony to a first degree felony for a third or subsequent violation.

The penalties for purchasing the services of any person engaged in prostitution increase from a:

- Second degree misdemeanor to a third degree felony for a first violation.
- First degree misdemeanor to a second degree felony for a second violation.
- Third degree felony to a first degree felony for a third or subsequent violation.

Human Trafficking

Human Trafficking Victim Expunction

Background

In 2013, the Legislature created a process authorizing a victim of human trafficking to petition a court for the expunction of a criminal history record resulting from his or her arrest or filing of charges, regardless of the disposition of the arrest or charges, for an offense committed or reported to have been committed while he or she was a victim of human trafficking. For purposes of human trafficking victim expunction, "victim of human trafficking" means a person subjected to coercion[16] for the purpose of being used in human trafficking, a child or person believed to be a child under 18 years of age subjected to human trafficking, or an individual subjected to human trafficking as defined by federal law.

To be eligible for expunction, the criminal offense must be related to a human trafficking scheme of which the person was a victim or the offense must have been committed at the direction of an operator of the scheme,[17] and must *not* be one of the following offenses:

- Arson;
- Sexual battery;
- Robbery;
- Kidnapping;
- Aggravated child abuse;
- Aggravated abuse of an elderly person or disabled adult;
- Aggravated assault with a deadly weapon;
- Murder;
- Manslaughter;
- Aggravated manslaughter of an elderly person or disabled adult;
- Aggravated manslaughter of a child;
- Unlawful throwing, placing, or discharging of a destructive device or bomb;
- Armed burglary;

[13] Lewdness means any indecent or obscene act. S. 796.07(1)(b), F.S.
[14] Assignation means the making of any appointment or engagement for prostitution or lewdness, or any act in furtherance of such appointment or engagement. S. 796.07(1)(c), F.S.
[15] S. 796.07(2)(f), F.S.
[16] As defined in s. 787.06, F.S.
[17] S. 943.0583, F.S.

- Aggravated battery; or
- Aggravated stalking.

The court with original jurisdiction over the crime the human trafficking victim seeks to expunge is the court designated to hear the victim's petition.[18] A petition must be initiated by the petitioner with due diligence after he or she is no longer a victim of human trafficking or has sought human trafficking services.[19] The petition must be accompanied by the following:

- A sworn statement attesting that the petitioner is eligible for an expunction to the best of his or her knowledge and does not have other petitions to expunge or seal pending before any court; and
- Official documentation of the petitioner's status as a human trafficking victim, if any exists.[20]

Under s. 943.0583, F.S., a petition for expunction that includes official documentation of the victim's status as a human trafficking victim, though not required, creates a presumption that his or her participation in the offense was a result of having been a human trafficking victim. A determination on a petition for expunction with official documentation of victim status requires a showing of a preponderance of the evidence.[21] [22] For a petition for expunction that does not include official documentation of the victim's status, a determination of expunction requires a showing of clear and convincing evidence.[23] Clear and convincing evidence is a higher burden of proof than a preponderance of the evidence.

Any criminal history record of a person that is ordered expunged under s. 943.0583, F.S., must be physically destroyed by any criminal justice agency having custody of such record.[24] However, any criminal history record in the custody of FDLE must be retained in all cases.[25] A human trafficking victim may lawfully deny or fail to acknowledge any expunged record unless he or she is applying for a job with a criminal justice agency or is a defendant in a subsequent criminal prosecution.[26]

Effect of Proposed Changes

The bill expands the types of offenses for which human trafficking victim is available by authorizing a human trafficking victim to seek expunction for an arrest or charges filed for the following offenses, so long as he or she was not found guilty of, or plead guilty or nolo contendere to, the offense:

- Arson;
- Sexual battery;
- Robbery;
- Kidnapping;
- Aggravated child abuse;
- Aggravated abuse of an elderly person or disabled adult;
- Aggravated assault with a deadly weapon;
- Murder;
- Manslaughter;
- Aggravated manslaughter of an elderly person or disabled adult;
- Aggravated manslaughter of a child;

[18] S. 943.0583(2), F.S.
[19] S. 943.0583(4), F.S.
[20] S. 943.0583(6), F.S.
[21] S. 943.0583(3), F.S.
[22] Under the preponderance standard, the burden of proof is met when the party with the burden convinces the fact finder that there is a greater than 50% chance that the claim is true. Cornell Law School: Legal Information Institute, *Preponderance of the Evidence*, https://www.law.cornell.edu/wex/preponderance_of_the_evidence (last visited Jan. 23, 2022).
[23] According to the Supreme Court in *Colorado v. New Mexico*, 467 U.S. 310 (1984), "clear and convincing" means that the evidence is highly and substantially more likely to be true than untrue; the fact finder must be convinced that the contention is highly probable. Cornell Law School: Legal Information Institute, *Clear and Convincing Evidence*, https://www.law.cornell.edu/wex/clear_and_convincing_evidence#:~:text=Definition,the%20contention%20is%20highly%20probable. (last visited Jan. 23, 2022).
[24] S. 943.0583(8), F.S.
[25] *Id*.
[26] S. 943.0583(8)(b), F.S.

- Unlawful throwing, placing, or discharging of a destructive device or bomb;
- Armed burglary;
- Aggravated battery; or
- Aggravated stalking.

The bill removes the requirement that petitions submitted without official documentation of the victim's status include a showing of clear and convincing evidence. As such, the burden of proof reverts to the standard requirement of a preponderance of the evidence, lowering the evidentiary threshold a victim must meet in order to obtain an expunction without official documentation of his or her victim status.

Statewide Data Repository for Anonymous Human Trafficking Data

Background

Currently, human trafficking data is collected across multiple agencies and entities. However, there is no singular, uniform statewide data repository for human trafficking data.

FDLE's Uniform Crime Report (UCR) system provides standardized reports on crime statistics based on statewide data.[27] The fundamental objectives of the Florida UCR Program are to:

- Collect accurate summary crime data from all law enforcement agencies in the state;
- Maintain agency crime statistics in a statewide database and provide a barometer of the frequency and clearance rates of certain crimes;
- Publish semi-annual and annual reports to the FDLE Commissioner, Florida Governor, Florida Legislature, and the public of the various crime trends in the state;
- Collect the number of offenses known to UCR Program contributors for murder, manslaughter, forcible rape, robbery, aggravated assault, burglary, larceny, motor vehicle theft, arson, simple assault, domestic violence, and other offenses and related arrest information.[28]

The Florida Incident Based Reporting System (FIBRS) is a statewide database for incident based reporting. FIBRS streamlines several data collection efforts into one system which includes data collections from:

- NIBRS (National Incident Based Reporting System);
- Hate Crimes;
- Cargo Theft;
- Human Trafficking;
- Use-of-Force;
- Law Enforcement Information Exchange (LInX); and
- Police Employee Counts.[29]

The University of South Florida recently established its Trafficking in Persons – Risk to Resilience Lab (TIP Lab), which is dedicated to eradicating human trafficking in the Tampa Bay area.[30] The TIP Lab conducts innovative and interdisciplinary research to address human trafficking issues and trends and shares knowledge and resources with the community through the establishment of a data depository for use by human trafficking researchers.[31] Prior to the creation of the TIP Lab, Florida did not have a unified data center for human trafficking.[32]

Effect of Proposed Changes

[27] FDLE, *Uniform Crime Report*, https://www.fdle.state.fl.us/FSAC/Uniform-Crime-Report (last visited Jan. 25, 2022).
[28] FDLE, *Uniform Crime Reports Guide Manual* (November 2018), https://www.fdle.state.fl.us/FSAC/UCR/UCRGuideManual.aspx (last visited Jan. 25, 2022).
[29] FDLE, *Florida Incident-Based Reporting System (FIBRS)*, https://www.fdle.state.fl.us/UCR/QR/FIBRS (last visited Jan. 25, 2022).
[30] University of South Florida, *USF Trafficking in Persons – Risk to Resilience Lab*, https://tiplab.cbcs.usf.edu/index.php (last visited January 25, 2022).
[31] *Id*.
[32] University of South Florida St. Petersburg Campus, *Grand Opening of New Research Lab to Combat Human Trafficking in Florida*, (September 15, 2021), https://www.stpetersburg.usf.edu/news/2021/grand-opening-human-trafficing-lab.aspx (last visited Jan. 25, 2022).

CS/HB 1439 creates s. 1004.343, F.S., to create the Statewide Data Repository for Anonymous Human Trafficking Data (Repository) to be housed under the University of South Florida Trafficking in Persons – Risk to Resilience Lab (TIP Lab).

The bill requires the Repository to collect anonymous data on human trafficking to: identify trends in the state over time, evaluate the effectiveness of various state initiatives and interventions, and disseminate relevant data to law enforcement agencies, state agencies, and other entities to assist in combatting human trafficking and apprehending and prosecuting persons responsible for conducting human trafficking.

Under the bill, the TIP Lab is responsible for designing, operating, maintaining and protecting the integrity of the Repository and the data collected. The bill requires the TIP Lab to work with the Florida Department of Law Enforcement (FDLE) and other law enforcement partners to launch a no cost, user-friendly reporting system by which reporting entities may make reports.

The bill designates the following agencies and entities as required reporting entities:

- Law enforcement agencies operating with state or local government tax proceeds, including, but not limited to, municipal police departments, county sheriffs, and state attorneys;
- FDLE and any other state agency that holds data related to human trafficking; and
- Service providers and other nongovernmental organizations that serve human trafficking victims and receive state or federal funding to do so.

The bill exempts a required reporting entity that submits relevant data to FDLE through the Uniform Crime Report System (UCR) or through the Florida Incident Based Reporting System (FIBRS). The bill requires FDLE to provide such data to the Repository on a quarterly basis.

A required reporting entity must submit the following data to the Repository:

- The alleged human trafficking offense and description of the prohibited conduct;
- The age, gender, and race or ethnicity of each suspect or defendant;
- The age, gender, and race or ethnicity of the victim;
- The date, time, and location of the alleged offense;
- The type of human trafficking involved, whether for labor or services or commercial sexual activity;
- Any other alleged offense related to the human trafficking offense;
- Information about any victim services referrals provided to the victim, if available; and
- The disposition of the investigation or prosecution.

The bill requires reporting entities in a county with a population of 500,000 or more to begin reporting to the Repository by July 1, 2023. Required reporting entities in a county with a population less than 500,000 must begin reporting to the Repository by July 1, 2024.

The bill is effective upon becoming a law.

B. SECTION DIRECTORY:

Section 1: Provides the act may be cited as the "Human Trafficking Reduction Act."
Section 2: Creates s. 509.098, F.S., relating to prohibition of hourly rates; proof of identification.
Section 3: Amends s. 796.07, F.S., relating to prohibiting prostitution and related acts.
Section 4: Amends s. 943.0583, F.S., relating to human trafficking victim expunction.
Section 5: Creates s. 1004.343, F.S., relating to Statewide Data Repository for Anonymous Human Trafficking Data.
Section 6: Provides that the bill is effective upon becoming a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The bill may have an indeterminate positive impact on prison beds by creating new felony offenses and increasing penalties for current felony offenses.

The bill requires that a system for reporting anonymous human trafficking data to the Repository be made available by the TIP Lab to required reporting entities at no additional cost to the entity. The bill may have an indeterminate impact on state government due to an increased workload for the TIP Lab.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

The bill requires that a system for reporting anonymous human trafficking data to the Repository be made available by the TIP Lab to required reporting entities at no additional cost to the entity. As such, the bill should not have a fiscal impact on local government entities required to report data to the Repository.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may have an indeterminate fiscal impact on the private sector by prohibiting hourly rates for public lodging establishments. Those consumers who currently rent public lodging establishments by the hour may have to pay the daily rate, which may increase revenues for public lodging establishments, but cost more for consumers.

D. FISCAL COMMENTS:

The bill requires the TIP LAB to house and operate the Repository, but does not address how the Repository will be funded. As such, the fiscal impact to the TIP Lab is indeterminate.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

None.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On January 25, 2022, the Criminal Justice & Public Safety Subcommittee adopted a proposed committee substitute (PCS) and reported the bill favorably as a committee substitute. The PCS differed from the original bill as it:

- Included a definition of the term "vacation rental" in s. 509.098, F.S.;
- Deleted a requirement for case numbers to be reported to the Repository; and
- Made other technical revisions for clarity.

This analysis is drafted to the committee substitute as passed by the Criminal Justice & Public Safety Subcommittee.

A bill to be entitled

An act relating to prostitution, lewdness, human trafficking, and public lodging; providing a short title; creating s. 509.098, F.S.; providing a definition; prohibiting an operator of a public lodging establishment or a vacation rental from offering an hourly rate for an accommodation; requiring a guest of a public lodging establishment or a vacation rental to provide positive proof of identification to such operator at the time of occupancy; amending s. 796.07, F.S.; increasing criminal penalties for soliciting or procuring another person to commit prostitution or other specified offenses or purchasing the services of a person engaged in prostitution; amending s. 943.0583, F.S.; providing that human trafficking victim expunction of criminal history records does not apply to specified offenses; deleting a requirement for a specific evidentiary standard when determining human trafficking victim status in the absence of official documentation; creating s. 1004.343, F.S.; creating the Statewide Data Repository for Anonymous Human Trafficking Data at the University of South Florida; providing purposes of the data repository; specifying duties of the university; designating required

reporting entities; requiring specified information to be reported; providing timeframes for reporting; providing an effective date.

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

Section 1. This act may be cited as the "Human Trafficking Reduction Act."

Section 2. Section 509.098, Florida Statutes, is created to read:

509.098 Prohibition of hourly rates; proof of identification.—

(1) For purposes of this section, the term "vacation rental" has the same meaning as provided in s. 509.242(1)(c).

(2) An operator of a public lodging establishment or a vacation rental may not offer an hourly rate for an accommodation.

(3) A guest of a public lodging establishment or a vacation rental must provide positive proof of identification to the operator of the public lodging establishment or the vacation rental at the time of his or her occupancy of the accommodation.

Section 3. Paragraph (a) of subsection (5) of section 796.07, Florida Statutes, is amended, and paragraphs (f) and (i) of subsection (2) of that section are republished, to read:

796.07 Prohibiting prostitution and related acts.—

(2) It is unlawful:

(f) To solicit, induce, entice, or procure another to commit prostitution, lewdness, or assignation.

(i) To purchase the services of any person engaged in prostitution.

(5)(a) A person who violates paragraph (2)(f) or paragraph (2)(i) commits:

1. A felony of the third ~~misdemeanor of the first~~ degree for a first violation, punishable as provided in s. 775.082, ~~or~~ s. 775.083, or s. 775.084.

2. A felony of the second ~~third~~ degree for a second violation, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

3. A felony of the first ~~second~~ degree for a third or subsequent violation, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 4. Subsections (3) and (5) of section 943.0583, Florida Statutes, are amended to read:

943.0583 Human trafficking victim expunction.—

(3)(a) Except as provided in paragraph (b), a person who is a victim of human trafficking may petition for the expunction of a criminal history record resulting from the arrest or filing of charges for one or more offenses committed or reported to have been committed while the person was a victim of human trafficking, which offense was committed or reported to have

been committed as a part of the human trafficking scheme of which the person was a victim or at the direction of an operator of the scheme, including, but not limited to, violations under chapters 796 and 847, without regard to the disposition of the arrest or of any charges.

(b) ~~However,~~ This section does not apply to any offense listed in s. 775.084(1)(b)1. if the defendant was found guilty of, or pled guilty or nolo contendere to, any such offense.

(c) Determination of the petition under this section should be by a preponderance of the evidence. A conviction expunged under this section is deemed to have been vacated due to a substantive defect in the underlying criminal proceedings. If a person is adjudicated not guilty by reason of insanity or is found to be incompetent to stand trial for any such charge, the expunction of the criminal history record may not prevent the entry of the judgment or finding in state and national databases for use in determining eligibility to purchase or possess a firearm or to carry a concealed firearm, as authorized in s. 790.065(2)(a)4.c. and 18 U.S.C. s. 922(t), nor shall it prevent any governmental agency that is authorized by state or federal law to determine eligibility to purchase or possess a firearm or to carry a concealed firearm from accessing or using the record of the judgment or finding in the course of such agency's official duties.

(5) Official documentation of the victim's status creates

a presumption that his or her participation in the offense was a result of having been a victim of human trafficking but is not required for granting a petition under this section. ~~A determination made without such official documentation must be made by a showing of clear and convincing evidence.~~

Section 5. Section 1004.343, Florida Statutes, is created to read:

1004.343 Statewide Data Repository for Anonymous Human Trafficking Data.—

(1) There is created the Statewide Data Repository for Anonymous Human Trafficking Data. The repository shall be housed in and operated by the University of South Florida Trafficking in Persons - Risk to Resilience Lab.

(a) The Statewide Data Repository for Anonymous Human Trafficking Data shall:

1. Collect and analyze anonymous human trafficking data to identify trends in human trafficking in the state over time.

2. Evaluate the effectiveness of various state-funded initiatives to combat human trafficking to enable the state to make evidence-based decisions in funding future initiatives.

3. Disseminate relevant data to law enforcement agencies, state agencies, and other entities to assist in combatting human trafficking and apprehending and prosecuting persons responsible for conducting human trafficking.

4. Evaluate the effectiveness of interventions and

services provided to assist human trafficking victims.

(b) The University of South Florida Trafficking in Persons - Risk to Resilience Lab shall:

1. Design, operate, maintain, and protect the integrity of the Statewide Data Repository for Anonymous Human Trafficking Data.

2. Design, in consultation with the Department of Law Enforcement and other law enforcement partners, and launch a user-friendly system for efficiently reporting anonymous human trafficking data to the Statewide Data Repository for Anonymous Human Trafficking Data at no additional cost to reporting entities.

3. Analyze anonymous human trafficking data to identify initiatives and interventions that are effective in combatting human trafficking, apprehending and prosecuting persons responsible for conducting human trafficking, and assisting human trafficking victims.

4. Work with law enforcement agencies and state agencies to report data on human trafficking investigations and prosecutions which can aid such agencies in combatting human trafficking and apprehending and prosecuting persons responsible for conducting human trafficking.

(2)(a) Except as provided in paragraph (b), the following agencies and entities shall report anonymous human trafficking data required under this section:

1. Law enforcement agencies operating with state or local government tax proceeds, including, but not limited to, municipal police departments, county sheriffs, and state attorneys.

2. The Department of Law Enforcement and any other state agency that holds data related to human trafficking.

3. Service providers and other nongovernmental organizations that serve human trafficking victims and receive state or federal funding for such purpose.

(b) A required reporting entity that submits the data required under subsection (3) to the Department of Law Enforcement's Uniform Crime Report system or Florida Incident-Based Reporting System may, but is not required to, submit any additional data to the Statewide Data Repository for Anonymous Human Trafficking Data. The Department of Law Enforcement shall report to the Statewide Data Repository for Anonymous Human Trafficking Data, at least quarterly, the data required under subsection (3) that has been reported by a required reporting entity to the department.

(3) A required reporting entity shall submit the following data to the Statewide Data Repository for Anonymous Human Trafficking Data unless such entity is exempt from the reporting requirement under paragraph (2)(b):

(a) The alleged human trafficking offense that was investigated or prosecuted and a description of the alleged

prohibited conduct.

(b) The age, gender, and race or ethnicity of each suspect or defendant and victim.

(c) The date, time, and location of the alleged offense.

(d) The type of human trafficking involved, whether for labor or services or commercial sexual activity.

(e) Any other alleged offense related to the human trafficking offense that was investigated or prosecuted.

(f) Information regarding any victim services organization or related program to which the victim was referred, if available.

(g) The disposition of the investigation or prosecution, regardless of the manner of disposition.

(4)(a) A required reporting entity located in a county with a population of more than 500,000 must begin reporting data required by this section to the Statewide Data Repository for Anonymous Human Trafficking Data, or to the Department of Law Enforcement as authorized under paragraph (2)(b), on or before July 1, 2023, and at least quarterly each year thereafter.

(b) A required reporting entity located in a county with a population of 500,000 or fewer must begin reporting data required by this section to the Statewide Data Repository for Anonymous Human Trafficking Data, or to the Department of Law Enforcement as authorized under paragraph (2)(b), on or before July 1, 2024, and at least biannually each year thereafter.

Section 6. This act shall take effect upon becoming a law.